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THE SOCIAL ORGANIZATION AND CUSTOMARY LAW OF THE NEPALESE TRIBES¹

By LEONHARD ADAM

INTRODUCTORY REMARKS

THE anthropology of Nepal can claim a special interest by reason of the syncretism of Tibetan, Indian, and partly also Chinese elements, composing Nepalese culture. In particular the close intercourse with Tibet must be borne in mind. The religious art of Lamaism in both Tibet and Nepal is almost identical, so that in many cases it is simply impossible to decide whether a given piece is Nepalese or Tibetan. Spiritual influences from both Tibet and, on the other side, from India have affected Nepal, while, in addition, we can trace Chinese influence on the decorative art and architecture. Unfortunately the early history of this forbidden land is veiled in legend and mystery, and it is not before the 4th century A.D. that the country appears in the light of authentic history. Thus the latter requires all the more assistance from anthropology if we are finally to understand the growth of Nepalese culture.

However, the anthropological study of Nepal is only beginning. Archaeology is somewhat more advanced owing to the well known investigations made by the late Professor Sylvain Lévi. The only books which provide us with trustworthy anthropological material are Brian H. Hodgson's works, Colonel Eden Vansittart's handbook² and, more recently, the books published by Major Northey and Captain (now Major) C. John Morris.³

The ethnological jurisprudence of Nepal is also only in its beginnings. Hodgson's "Miscellaneous Essays Relating to Indian Subjects"⁴ offer us

¹ The present article is a lecture delivered at the India Institute, Oxford University, on the 26th November, 1935.

² Notes on Goorkhas (Calcutta, 1890; 2nd [revised] edition, 1906). The third (revised) edition, under the title "Gurkhas," prepared by Colonel B. U. Nicolay, appeared in 1915 and was reprinted in 1918. Major Morris' handbook, "Gurkhas" (Delhi, 1933), is an entirely rewritten edition containing practically nothing of the original book.

³ W. Brook Northey and C. J. Morris, *The Gurkhas* (London, 1928).

⁴ London, 1880.

some interesting records of legal institutions collected by the author during his long stay in the country. His informants were educated men in the Nepalese sense of the term, and their reports deal with religious prescriptions, rules of procedure, etc., considered from the standpoint of the learned Brahman. The underlying legal rules are Brahmanic and thus Indian, and not Nepalese in the proper sense of the term, though there are a few exceptions to this. But Hodgson's valuable books contain nothing on the customary law of the tribes in remote districts of the country where we may expect to find at least some survivals of a more primitive law. Now it is worth noting that ethnographers without a juristic training are wont, when dealing with law, to restrict themselves to a study of family law and tribal organization, or, as a jurist would call it, to constitutional law on one side and criminal law on the other. Accordingly, before 1934 we find almost nothing in the literature on civil law and its details.

In regard to my own qualifications to touch on these matters, may I explain that I was fortunate to be appointed by the Prussian Minister of Justice early in 1918 for the special purpose of collecting records on customs and tribal laws from various Oriental prisoners of war, in particular from Gurkhas. The German authorities had drafted these men to Rumania where the climate and conditions were much more suitable to their needs and health. A brief description of the Indian camp at Morile-Marculesti in southern Rumania is contained in my article on a marriage ceremony of the Pun clan, Magar tribe, at Rigah, Nepal.⁵ The men lived there almost in freedom in houses built by themselves and surrounded by beautiful gardens on the banks of the lovely Jalomitza River. Under these favorable psychological conditions some of the more intelligent men were willingly prepared to give me much information. Thus I was able to collect seven rather detailed records on the customary law of some of the Nepalese tribes. These records of mine received confirmation fifteen years later on the appearance of Major Morris' handbook; for we then found that the bulk of the material was to be considered as trustworthy. Thus our publications are to some extent supplementary to each other.⁶

GENERAL OBSERVATIONS ON THE LAW OF NEPAL

The law of Nepal, i.e. the official law, is to be distinguished from the tribal law of the various tribes. If we remember the two principal elements

⁵ A Marriage Ceremony of the Pun-clan (Magar) at Rigah (Nepal) (*Man*, Vol. 34, No. 23, 1934).

⁶ Leonhard Adam, *Sitte und Recht in Nepal* (*Zeitschrift für vergleichende Rechtswissenschaft*, Vol. 49, pp. 1-269, Stuttgart, 1934). Compare John H. Wigmore in 9 *Tulane Law Review* 310 *et seq.*

composing Nepalese culture, that is to say the Tibetan element, and, on the other side, the Hindu element, we should expect Nepalese law to show the characteristic features of both. The trouble is that, while we are rather well informed on Brahmanic law, this is not the case with the tribal law as it was before the Hindu influence overshadowed the original customary law of those tribes which immigrated from Tibet. So we must study the various legal institutions and then deduce what is undoubtedly of Indian origin.

The first code of Nepal was promulgated by King Rama Sah (1606–1633 A.D.). During the period of Maharajah Jung Bahadur (1846–1877 A.D.) another code, known as the Nepalese Ain, came into force, and is now in use as the standard code of the country. This code is based mainly on the Shastras. The codification has abolished some characteristic legal institutions of the tribes, for instance blood revenge. This institution has now entirely disappeared, as proven by the fact that not one of my informants dared to suggest that, even in cases of manslaughter or adultery, blood revenge could be carried out. Still some of the men remembered the custom of blood revenge very well. That does not mean, however, that all institutions of the original customary law have been entirely lost.

The Newars require a few particular observations. They are supposed to be the original inhabitants of the Nepal Valley, while some scholars suggest that they are related to the Nairs of southern India, on the ground that men of this tribe belonged to Nanya Deva's army which invaded Nepal in the 11th century A.D. This assumption is not very likely. Anyhow, it is stated that the present Newars represent a mixed tribe derived from Indian and Tibetan sources. They differ considerably from the purely Tibeto-Burmese tribes; in particular their language, Newari, is somewhat different. The geographical situation of the Nepal Valley, whose people have always been in closer contact with India than the rest of the country, can explain the similarity of various cultural traits of the Newars to those of the adjacent Indian peoples.⁷ Unlike the social organization of the other Nepalese tribes, the social structure of the Newars has not yet been satisfactorily studied, though their religious division into Buddha-mārgas and Shīva-mārgas (Buddhist and Hindu) is clearly established. While the Shīva-mārgas show a social organization similar to that of the Hindus, the Buddha-mārgas are divided into three grades.⁸ A very slight possibility

⁷ What is known as Nepalese art (metal work, painting, sculpture, architecture) and literature from the middle ages (approximately 1200 A.D.) up to the 19th century is entirely the work of the Newars. Compare my forthcoming article *Die kombinierten ghī-Kannen und Dochtlampen von Nepal* (*Ostasiatische Zeitschrift*, Vol. 12, Berlin).

⁸ Compare Morris, Gurkhas, p. 123.

exists that the Newar tribe still conserves *totemistic ideas*. I am thinking here of M. Waddell's report on "Frog Worship Amongst the Nevars."⁹ In considering the customs of some of the Tibeto-Burmese tribes we have recently been led to the assumption that their organization originally also had to do with totemism. But before dealing with this point, a word must be said concerning tribal organization.

TRIBAL ORGANIZATION

I. The population of Nepal is divided into numerous tribes. The principal are the following: Thakur, Chetri, Gurung, Magar, Rai, Limbu, Sunwar, Damang (or Murmi or Murmi-Lama). In addition to these there exist numerous divisions not easily defined either as tribes or castes in the stricter meanings of those terms. Such are among others Damai (tailors and musicians), Kami (blacksmiths), Sunnar (goldsmiths), Kumhal (potters), Pore (sweepers), and Sarkhi (shoemakers, leather workers). These belong to a group of sixteen "menial tribes" who can do only their specific professional business, but are not warriors. Consequently men of the fighting classes are not allowed to eat in company with them.¹⁰ It is highly interesting to ask a Gurkha to enumerate the various "castes" (jat) representing the population of his village. He will never call them tribes but only castes; and this is a proof that, as Morris says, Hindu ideas are steadily gaining ground in Nepal. The reason is that the ruling family of the country is strictly Hindu. Consequently the caste system has already been spread all over the country including even the smallest villages in remote valleys. If you ask a native of Nepal to tell you who are the inhabitants of his village, he will give you a peculiar list wherein castes and tribes are almost inextricably mixed. Let me give an example here. A man of the Sunwar tribe gave me the following list wherein we meet with both Hindu caste names and names of Nepalese tribes, both being denoted as "castes" by the informant: Brahman, Chetri, Gurung, Magar, Limbu, Rai, Sunwar, Newar, Kami, Sunnar, Damai, Sarkhi, and Pore. The first two, of course, are well known Indian castes whereas the rest are the names of Nepalese tribes. The word "Chetri" is a corrupt form of the Sanskrit "Ksatriya" which means literally "a fighting man, one of the warrior caste." It must be pointed out that, at least in modern times, the tribal organization is not political. The political or administrative unit is the village community, and the headman (mukhiya) of a village may belong to any group except the lowest tribes or castes.

⁹ Indian Antiquary, Vol. 22, 1893.

¹⁰ See Morris, Gurkhas, p. 125 *et seq.*

One phenomenon is very remarkable: Morris suggests that although the caste system exists only in a very loose and ill-defined form at present and would appear to be foreign to the social organization of the tribes, it is not impossible that if the present political seclusion of the country is maintained, the caste system will tend to grow stronger in Nepal as it weakens in India. Morris calls this "a startling reversal of the conditions of a hundred years ago, when the ceremonial excesses of the 'barbarians' of Nepal were looked upon with horror by the orthodox Hindus of the plains."

The amalgamation of tribes with the Hindu caste system is to some extent facilitated by the fact that most of the tribes are actually spread all over the country, though every tribe has its home district where the bulk of its people live.

II. Every Gurka tribe is divided into a number of clans or "thars." Some of these clans are exogamous, others not. Every clan is divided into kindreds or "gotras" which are strictly exogamous. The numbers of both clans and kindreds vary considerably. Thus the Magar tribe has six clans, and the numbers of kindreds of these clans are 153, 35, 58, 70, 175, 335. The Limbus, however, have no less than sixty-two clans. Their kindreds are not as numerous as those of the Rai clans; some clans are identical with one kindred. It is to be observed that it is not always absolutely clear whether a social unit is a clan or merely a kindred. It is also most likely that a large number of kindreds have come into existence since Colonel Eden Vansittart published his handbook on Gurkhas in 1890, wherein he was the first to give detailed lists of the divisions of the Nepalese tribes. If this is correct, and if the other possibility is excluded that these numerous kindreds had merely not been noted before—and I personally am aware that they were not omitted, but did not exist at that time—this would be proof that new kindreds come into existence by the splitting off of a family from an existing kindred. It is remarkable, in this connection, to observe that in some exceptional cases we come across names of kindreds which we meet again in other tribes. Morris notes over a hundred names of social units which claim to belong to the Sunwar clan Bara Thare but are not yet satisfactorily classified. It is, of course, impossible to enter into details of clan and kindred names here, and it would require many pages to discuss all the clan-lists and the various doubtful questions arising therefrom. Much more attractive and interesting from the anthropological point of view is the problem of the underlying principle of these organizations.

III. There is a slight possibility that the tribal organization is or, better, was at remote times combined with totemism. It is well known that totem-

ism shows so many different forms all over the world that it is almost impossible to give a definition which would embrace every single form of this institution. One thing, however, is certain, and this is that totemism requires the belief in an altogether intimate relation between a class of objects, chiefly an animal-species, and man; and when speaking of group-totemism we extend and confine these relations to a group representing a unit within a human social organization. Furthermore, we know that the respect with which primitive man considers the totem animal is often manifested by food prohibitions and that, on the other hand, the taboo on the totem animal will sometimes slowly and gradually decrease. In Nepal the Hindu caste rules governing the social life, which are of growing importance, have associated with them other food prohibitions. This makes it rather difficult to trace real totemistic prohibitions. Still Mr Morris and myself independently met with food prohibitions among the Rai which have obviously nothing to do with Brahmanic prescriptions.

The following information was obtained from Nar Bahadur, a Rai of the Yampang thar:

Everybody is free to eat goat's flesh as long as his father or mother is alive. After the death of either father or mother, this is strictly forbidden.

The man explained this custom as a religious prescription, saying it was not to be found in a book but was a custom from time immemorial. Another Rai of the Lohorong clan, who lived near Darjeeling, said that after a man's death the eldest son must not touch goat's flesh during six months from the thirteenth day after the burial, on which day the house and the members of the family of the deceased are purified. At my suggestion Mr Morris was kind enough to collect some more records on the subject, partly from men of his regiment, and partly by courtesy of some friends at Darjeeling. I may point out that the results of these enquiries are based on information obtained by him from very few individuals, so that further, more detailed researches are necessary. But already the material obtained is extraordinarily interesting. First of all there exists no general prescription among the Rai that after the parents' or father's death the children must not eat goat's flesh. There is a somewhat elaborate system of restriction on the eating of goat's flesh amongst the Rai tribe. It is said that for fear of injuring the forefathers and family gods many, but not all, Rais do not touch goat's flesh at all. Especially is this the case amongst those who must from time to time do *pūjā*¹¹ to the family gods, that is to say the senior male in each household, and thus, for the most

¹¹ The *pūjā* consists of sacrificing and praying.

part, the eldest son. In these cases, however, the other children are allowed, and usually do eat goat's flesh.

The following Rai thars never touch goat's flesh:¹²

- | | |
|-------------|---------------------|
| 1. Camlīg | 7. Sōgdali |
| 2. Bāngdali | 8. Bākasili |
| 3. Dimmāli | 9. Sōgpāgi (Sāgpāg) |
| 4. Parāli | 10. Bantāwā |
| 5. Sotāge | 11. Kulūg |
| 6. Rākhāli | 12. Thulūg |

The following Rai thars *do* eat goat's flesh:

- | | |
|------------|------------|
| 1. Khālīg | 3. Lohorūg |
| 2. Caurāse | 4. Yākkā |

Specific enquiries made by Major Morris' friend among educated Rais, students of Darjeeling High School, had the following considerably varying results:

(1) Bahadur Rai—Camlīg—said that no member of his family eats goat's flesh, not even little children.

(2) Nandahoj Rai—Thulūg—said that his parents as well as his married brothers do not eat goat's flesh; but the rest of the family do so.

(3) Dhanraj Rai and Birdhan Rai—both Camlīg—said that their parents do not eat goat's flesh, but the remainder of the families do so. On the death of the father the eldest living son must give up eating this meat.

(4) Manidas Rai—Bantāwā—said that in his family there is no restriction of any sort on the eating of goat's flesh.

(5) Likewise Yuddhatur Rai—Bantāwā—said there are no restrictions.

(6) Randhoj Rai—Camlīg—said that his parents do not eat goat's flesh but the rest of the family do so.

Curiously enough, the information obtained by Morris is that there is no restriction among the Lohorūg, while my own record is contradictory.

It must be added that if a man becomes a sādhu (ascetic), he may then eat goat's flesh, even though he belongs to one of the thars noted as never eating this meat. The reason given for this is, according to Morris, that once a man becomes a sādhu he gives up all connection with his home and has no longer any need to propitiate his household gods and ancestors.

Similar food prohibitions or taboos exist among other tribes. Thus some Limbus do not touch the flesh of a certain bird. Some Tamangs do not eat

¹² Transliteration according to Professor Turner in his "Nepali Dictionary" (London, 1932). The consonant "c" is to be pronounced like "ch" in "which." A macron over a vowel denotes the "open" sound and a tilde a nasalization like that in the French word "en."

pork. And, above all, Gurungs will not eat, nor even touch domestic pig when alive, while they have no objection to wild pig. This distinction proves that the custom has absolutely nothing to do with Islamic prescriptions.

It is impossible to draw definite conclusions from this scanty and insufficient material. Still, Major Morris tentatively suggests that it may possibly be connected with some former relic of totemism.

The Rais are more in touch with Tibet and more closely allied to the Tibetans than any of the other Nepalese tribes. Morris considers the possibility that, since the Tibetans, as Buddhists, are not supposed to touch any sort of flesh (although many do), the Rais only took to eating flesh of any sort after their immigration to Nepal;¹³ or it may be due to the fact, he says, that goats are not commonly found in Tibet, and thus to the Rais, when they first came from Tibet, the goat appeared a strange and unknown animal, and so it gradually acquired a magical or religious significance. Whether or not this theory is correct and whether these food prohibitions or taboos have really anything to do with totemism can only be decided when complete lists of the existence or non-existence of similar taboos among all Nepalese tribes are to hand. But there is an alternative possibility, which should be noted by those who seek to interpret sociological phenomena in terms of psychoanalytic theory. It was pointed out to me by J. R. de la Haule Marett that this choice of the goat as a taboo object, whose mana is sometimes intensified on the death of the parent, strongly suggests some conscious or unconscious identification between this frequently revered animal and the parent. Only the goat taboo seems to be dependent upon the death of the parents. What other parallels to this can be found in ethnographic literature?

SOME CHARACTERISTIC INSTITUTIONS OF THE NEPALESE CIVIL LAW

I. I will now turn to some typical institutions of the civil law of Nepal, starting with *family law*, in particular with the artificial brotherhood. This term was introduced by Professor Josef Kohler. It is often preferable to the term "blood brotherhood," since it can embrace states in which a similar psychological bond is made by a ceremony in which no blood is actually shed.

Sylvain Lévi, in his standard work on Nepal, mentions artificial brother-

¹³ The advance of the Mongolian tribes down the southern slopes of the Himalaya is assumed to have taken place at a comparatively recent period. This is suggested by Professor R. L. Turner on the basis of linguistic facts. See Morris, Gurkhas, p. 37. No absolute chronology, however, can be given.

Buddhism is supposed to have been introduced in Tibet in 632 A.D.

hood very briefly, without any particulars.¹⁴ I was fortunate in obtaining rather detailed information on this institution which seems to be prevalent among the tribes of Nepal and adjacent territories.

There exists artificial brotherhood and likewise artificial sisterhood. Artificial brothers call themselves "mit," and sisters "mitni," which means "friend." One Magar translated the term "brother of virtue." When in 1933 Major Morris' book "Gurkhas" appeared, I found, on page 40, a few remarks on "mit" and "mitni" which are in full agreement with my more detailed records, so that I trust that all that I noted fifteen years ago will be found correct.

This relationship has evidently a religious basis, for the presence of a Brahman, or "bahun," is required for the initial ceremony. A man of the Pun clan told me that the day of the ceremony must be fixed by the Brahman according to the horoscopes of both partners. Inspection of the horoscope, to find out a lucky day, is quite common for all important events. Furthermore, one of my men told me that the ceremony is performed in front of what is called a "jagge." The jagge has been described by Morris and Northey in their book "The Gurkhas," while my own description of a simpler type will be found in my paper cited above.¹⁵ I wish to confine myself here to stating that, in the villages of Nepal, a jagge is a square platform, three feet in length and one foot in height, made of earth and cowdung which will eventually be sprinkled with Ganga water and flour forming certain lines and figures, among others sun and moon. The ceremony itself consists mainly of an exchange of the contents of two men's pockets or simply of mutual gifts. Exchanging the contents of pockets is likewise in use in the Punjab and in Afghanistan, where artificial brothers are called "pogbot bhai," or "turban-brothers."

The legal effect of the mit-relationship is twofold:

(1) The artificial relationship, like adoption, *naturam imitatur*; thus the position of artificial brothers is like that of natural born brothers. An incest barrier between a man or woman and the family of his or her partner's family is erected. One is no longer allowed to marry one of the relatives of one's mit or mitni. Even the mit's widow cannot be married. In this connection it is remarkable that, according to one of my men, a Thapa Maga, a mit is not allowed to speak to the wife of his mit, and she has to cover her face in his presence.

¹⁴ Le Népal. Étude historique d'un royaume Hindou (Annales du Musée Guimet, Bibliothèque d'études, Vols. 17-19, Paris, 1905, 1908), Vol. 1, p. 224.

¹⁵ See footnote 5.

(2) Another consequence is that the fathers of the partners consider them equally as sons. Accordingly, there exists a fictitious relationship between a man and a son of his mit. The latter will call him, that is to say his father's mit, "mit ba," which means "mit-father." Correspondingly, the children of a woman who has a mitni call the latter "mit ama" ("mit-mother").

Except for incest barrier and artificial relationship with the mit's family, no legal obligations or rights seem to arise. Above all there is no inheritance from a man to the family of his mit.

All my men stressed the fact that the mit have to help each other in any way; and a Sunwar said that, if a man were to die and leave his family in distress, his mit would help the family in every way he could. But even this was denied by other men, and, no doubt, this is only a voluntary act of charity and not a legal obligation.

I saw two mit during the Dasahara festival who gave me a moving example of mutual assistance. One of the men, who was clad only in trousers, was dancing, standing in one place and trembling convulsively in rhythmic movements. Such a dance generally leads to a complete exhaustion of the dancer who eventually falls down and becomes unconscious. His mit stood by his side and carefully watched the movements of his brother, drying his body from time to time. At last he held the man, leaving him sufficient space to continue his dance, and thus prevented him from falling down.

Whether a mit is married or not is immaterial. Some of the men said that one can have one mit only, while others told me that one can have as many mit as one liked. A mit is not allowed to call his artificial brother by his name but he has to call him simply "mit," which corresponds to the custom existing among natural born brothers of calling themselves "daju" (elder brother) or "bhai" (younger brother), or, as a rule, only by their number, as "jetha," "mainla," "sainla," "kanchha," etc., which means "first," "second," "third," and so on.

Dhanbir, a member of the Magar tribe, Thapa clan, mentioned that a man can become the mit of a married or an unmarried woman and that he will then be considered her brother. This information is contradictory to most of the other records, but in consideration of what I learned from a Murmi Lama, there seems to be some truth in it. In the Murmi Lama tribe artificial relationship can be established between two married couples and between a single man and a married couple. The Murmi term for mit is "leng" and for mitni "leng shiya." The effect is just the same as in the other tribes. The leng is strictly forbidden to touch his leng's wife, and,

consequently, the exchanging of rings between the two couples, which is part of the ceremony, is performed with the assistance of a Brahman or, in Murmi, a "ghiyabring," who will take the ring from the male partner on one side and hand it over to the woman on the other. The ceremony must take place at a "bar-tree" or a pipal-tree, and is evidently a matter of both families and not of the individuals alone. The ceremony is rather interesting, but I cannot enter into details here.¹⁶ An interesting parallel to this institution is the artificial relationship between married couples among the modern Quiché Indians of Santo Tomás Chichicastenango, Guatemala.¹⁷

Artificial brotherhood and sisterhood are obviously widely spread among all tribes of Nepal. It is true that we find similar institutions among various Indian peoples, but it seems to me that the Nepalese artificial relationship grew up independently. The Nepalese relationship is particularly interesting for its occurrence in a country where there are not only castes but also various tribes with different languages.

I gathered my records from nine individuals of whom seven were born in Nepal. I noted the tribes and castes living in the respective villages. It was stated that there are villages where only one tribe, as, for instance, Sunwar or Magar, is represented, and other villages where various tribes are living together. For example, in Sisneri, near Bhojpur, which, according to Major Morris' map, is situated in the territory of the Rais, we find not only Rais but also Brahmans, Chetris, Magars, Newars, and low castes as Damais, Kamis, and Sarkhis. In Kalebang, Murmi Lamas live together with Brahmans, Chetris, Rais, Limbus, Gurungs, Magars, Damais, Kamis, Sarkhis, and Lepchas from Sikkim.

Now, it is remarkable that the partners of an artificial brotherhood *may belong to different tribes*, except only the lowest castes (*sanu jat*). It was stated that artificial brotherhood between Gurungs, Magars, Limbus, Rais, and Sunwars is quite common, but I learned that artificial brotherhood is also possible between Chetris, and even Brahmans, on one side and castes of middle rank (*matwala*) on the other. In this case the partner who belongs to the higher class (*thulo jat*) is, however, forbidden to have his meal with his mit; that is to say, he cannot have any food which was made in the house or by one of the relatives of his partner.

In Nepal, where clans or kindreds play an important rôle, the life of the individual is generally limited to the circle of his kindred, and likewise,

¹⁶ See the detailed description in my "Sitte und Recht in Nepal," p. 203 *et seq.*

¹⁷ See Leonhard Schulze-Jena, *Indiana: I, Glaube und Sprache der Quiché von Guatemala* (Jena, 1933), p. 4 *et seq.*

the social life within the tribe is regularly limited to its members. In Nepal we find, as a rule, a strict tribal endogamy. Artificial brotherhood helps to extend the social instinct of the individuals beyond the range of their clan and even beyond the tribe. Kohler used to recommend the revival of artificial brotherhood as an institution of high moral value. In Nepal, the functional side of the institution consists, no doubt, more in its contributing to strengthen the social intercourse between the tribes and in this way, ultimately, the unity of the population of the country.

II. Another institution of the family law on which I wish to remark is the *remarriage of widows*. According to the Brahmanic law, remarriage of widows is strictly forbidden. This prescription is derived from the Dharmaśūtras and other sources, and is simply a consequence of both the rule that the bride has to be a virgin and the custom of marrying children. The English Act of 1856 permitted the remarriage of widows in the proper sense of the term, as well as of such girls as were married in their childhood and became, formally, widows without having ever lived in conjugal life with their husbands. On the other hand we find, in India, the well-known levirate; but it is stated that a woman who, if there were no brother-in-law, was given to one of the distant relatives, was considered as a "punarbhu" whose social standing is only a little higher than that of an immoral woman, "svairini." The position of widows in India, then, remained very low, and this is one of the well-known subjects of modernizing tendencies in India. The position of widows in Nepal was formerly quite under Brahmanic influence. In 1898, when Sylvain Lévi was in the country, Nepalese widows were free to have themselves burned with their deceased husbands. But Lévi mentions that Jang Bahadur forbade those widows who had children from having themselves burned, and that actually widows were no longer forced to commit suicide. As to remarriage of widows, however, Sylvain Lévi wrote (Vol. 1, p. 269):

Un second mariage est naturellement interdit aux veuves; la loi brahmanique est intransigeante sur ce point, mais au lieu de la condition misérable et désespérée qui les attend dans l'Inde, elles peuvent, chez les Gourkhas, contracter sans dés-honneur une union irrégulière.

It is remarkable that only one of my informants, a line-boy,¹⁸ gave me the same information: that no remarriage is possible, but that a widow may live with another man as his concubine. All the other informants, that is

¹⁸ "Line-boys" are the progeny of Gurkha soldiers who are born and brought up in the regiment. But the term is now loosely used to denote any Gurkha who has been born and brought up in British India. Compare Morris' handbook, Gurkhas, p. 124.

to say, real Nepalese from the inner districts of the country, spoke of a real marriage of the widow, though they confirmed the statement that this marriage is performed without any ceremony. But this is also the case of a second, third, or further wife of a man. The ceremonies are performed only with the first wife. Thus Major Morris' statement that in Nepal a widow can remarry, but without the *byāhā*-ceremony, is confirmed by my informants. Major Morris observes that the practical side of this in the Indian army is, that a remarried widow, after her second husband's death, will have a pension claim. In a word, the present situation of widows in Nepal is actually that they are free to remarry and that in public opinion this is no longer considered as concubinage but real marriage. It must be added, however, that in any case the children of the deceased husband remain with the family of their father.

There exists, then, in Nepal a much greater freedom and a better legal position of widows than in any other part of the peninsula.

III. Passing to the *law of property*, I will confine myself to only one subject. Some of my informants gave me rather detailed reports on *loans* and, in connection herewith, on *securities*. This is remarkable, since, as a rule, we can hardly expect to find these institutions in a pure peasant population. But as a matter of fact it was stated that, even among the natives in the remote villages of the interior, direct exchange of goods hardly exists or may even be unknown, and any business transaction is performed with Nepalese money. As an exception to this rule, my Sunwar informant told me that in his district barter is quite common, and that the inhabitants used to exchange agricultural products, such as, for instance, butter for clothes, etc.

I must say a few words on sanctions of debts in ancient Indian law. In *Nārada I*, 117,¹⁹ it is stated that there exist two securities: warranters and pawns. Securities must be held in pledge, whether it be an estate or a movable thing; there were no mortgages, and the actual possession of the security was required. A difference existed between a "*bhogya*" where the creditor was allowed to use the security, and the "*gopya*" which he was only entitled to keep in pledge without using it (*Nārada I*, 125). Thus there was no security without possession. Furthermore, there were warranters, or bondsmen, called "*pratibhū*" which means "representative," or "*lag-*

¹⁹ The *Nārada-smṛti*, one of the principal sources of the Brahmanic law, to be dated approximately at about 500 A.D. Cf. *Sacred Books of the East* 31; *The Institutes Nārada*, by Julius Jolly (London, 1876, and Calcutta, 1885); *Hindu Law and Custom*, by Julius Jolly, authorized translation by Batakrishna Ghosh (Calcutta: Greater India Society, 1928), p. 44 *et. seq.*

naka," which means "responsible." Let us compare these classical legal institutions with my notes on Nepalese customary law. The only informant who said that the creditor could take a material object in pawn from the debtor, was Motilal, a clever man of thirty-four years, but whose information was proved as being partly based on what he had read in some books. He was certainly not naïve and thus no orthodox informant. All the other men agreed that taking anything in pawn is quite unusual in Nepal, and some emphasized that it would never be done. The Thapa Magar Dhanbir, from Dhustung, near Tansing, gave the following detailed report.

There are, he said, four different ways of lending money.

First, if the creditor considers the debtor a reliable person, he can lend him the money without a written instrument and without a witness. He will do so for one or two months, and without taking any interest. Dhanbir added: If on the day when the debt is payable, the debtor has no money to repay, the creditor can do nothing, but, of course, he will not lend him any money again.

Second, if a poor man is in distress, he can get money from a wealthy man if he brings him a witness. The creditor will write an instrument wherein it is agreed that the money must be repaid on a certain day and that interest must be paid at a rate of from five to ten percent per annum. Furthermore, it will be added that the debtor promised to give a security to the creditor. The term for this security is "dik." As such security a field, a buffalo, other domestic animals, or any movable object can be promised, but not the house. The text runs as follows: "If I cannot repay, you shall have my field, or buffalo, and so on." The debtor, but not the witness, has to sign the instrument. If afterwards the debtor cannot repay, the creditor will not grant him a respite for payment, but he will address himself to the mukhiya (i.e., the headman of the village), who will then order the debtor to deliver the dik to the creditor. The dik, then, is no longer a security, but the creditor will now consider it his property. In a word, the dik will then become a compensation for the creditor's loss.

Third, a man who wants much money, say 400 to 500 Rupees, must bring another "witness," who is called "gawāhi." As a matter of fact, this is a warranter who will become responsible for the debt. The instrument, the term for which is "damsuk," must be signed by the debtor as well as by the gawāhi. But also in this case a dik must be promised to the creditor. Thus there is a double security in this case.

Fourth, another institution is less a security than a means for the repayment of debts. A poor fellow who cannot repay his debts can be invited by the creditor to come to his house and to work in his fields until the value

of his work reaches the amount of his debt. Such a debtor is called "bandā," and this institution is often confirmed in the literature.

The criticism of these institutions and of others with which I cannot deal here leads to the following statement. There is a typically Nepalese legal institution, consisting of the mere promise to give a security in the case of insolvency. This is quite different from ancient Indian law. On the other hand, Indian influence was evidently at work. In Nārada I, 7-9, we find a passage according to which unpaid debts persecuted the debtor after his death in his future existence. He is believed to be reborn as a slave in his creditor's house for the purpose of working off his debts, and until this happens even the religious merits of his sacrifices and prayers will be placed to the credit of the creditor.

IV. Generally speaking, the information noted by Hodgson,²⁰ according to which "many of the decisions of the court are founded on customary laws only," is apparently still valid. A detailed analysis of the elements composing Nepalese tribal law is not yet possible. The syncretism of various elements composing Nepalese culture can also be recognized in the sphere of law. It would be difficult to decide whether the Brahmanic influence is gradually decreasing or, on the contrary, increasing in the out of the way villages of Nepal. But it seems to me that specifically Nepalese legal conceptions and institutions which show a high standard of morality (like the artificial brotherhood), or a greater freedom for the individual than under Brahmanic law (like the rules governing the legal position of widows) are becoming predominant. The most interesting point is that there are nowadays evidently very few tribal differences, so that we can speak of Nepalese law instead of Chetri-, Magar-, Sunwar-, or other group laws.

BERLIN, GERMANY

²⁰ *Miscellaneous Essays Relating to Indian Subjects* (London, 1880), p. 231, question 77.