SUMMARY OF TRIBAL CUSTOM.

DEFINITION OF TRIBAL CUSTOM.

The term "custom" (*rít, áchár, riwáj, rasm*) has not the same meaning to a Sirsa peasant that it carries to a mind familiar with elaborate systems of law. Such a mind is apt to consider a custom as something exceptional, something different from the common law of the land. Blackstone indeed divides the unwritten law of England into *general customs, particular customs,* and *particular laws;* but the general customs are usually spoken of as the Common Law of England, and when the word "custom" is used, it is ordinarily applied to the particular or peculiar customs which are exceptions to the Common Law, and affect only the inhabitants of particular parts of the kingdom. The Sirsa peasant has no idea of such a distinction. He knows, of course, that there is a written law imposed by his English rulers, which defines offences and prescribes the manner in which they must be proved and punished, and which regulates the procedure of the Civil Courts. The Musalmán agriculturist knows that there is a written law of Muhammad closely connected with his religion, but, as I shall show, he does not consider it applicable to him except in regard to the semi-religious ceremony of marriage. The Hindú agriculturist is unaware that there is any written code of Hindú law which could ever interfere with his social life. The peasant is not in the habit of comparing the customs of his tribe with those of other tribes or other tracts of country, and thus has no idea of a Common Law of the land to which some of his tribal customs are exceptions. In such matters as adoption, inheritance, and partition, whatever is consistent with the principles underlying the general practice of his tribe, whatever does not strike him as unusual or unfair, is considered by him to be in accordance with his tribal custom. Common Law on those points means to him the common custom of his tribe, whether it be the same as the common custom of other tribes, or altogether peculiar to his own.

2. An English lawyer, speaking of tribal customs, is apt to think of them as similar to the "particular customs" of

the English law, as something peculiar and exceptional, to apply to them the rules which in English law are applicable to such particular customs, and to require that, before a tribal custom can be admitted by a court of law, it must be proved that it is, as Blackstone puts it, immemorial, uninterrupted, peaceably enjoyed, reasonable, certain, compulsory, and consistent with other customs. It would be more in accordance with the ideas of the peasants to consider tribal custom as equivalent to the *general customs* or Common Law of England. Much that is said by Blackstone and other English lawyers regarding the general character of the Common Law is applicable, *mutatis mutandis*, to tribal custom. It is that custom by which all ordinary affairs within the tribe are guided and directed. And just as the English judges are supposed to be the repositaries of the common law, and to decide all cases according to that law, so the older and more influential members of the tribe are the repositaries of the tribal custom, a knowledge of which is handed on from generation to generation,—not that the younger generation are directly taught what is the custom of the tribe, but as they grow up they see all matters of importance within the tribe decided in accordance with the principles which underlie their tribal custom; they rarely have occasion to formulate those principles, but they are always present to their minds. In English Common Law, by a fiction the judges are supposed to decide each case as it comes up strictly in accordance with precedent, and yet every new decision forms a new precedent, and so modifies the law,—in fact, the judges decide each new case which comes before them rather in accordance with the principles that underlie the precedents than strictly according to any particular set of precedents. Similarly the tribesmen among themselves decide any new case that may arise in accordance with the principles underlying the whole body of their tribal custom, and find no difficulty in applying those principles, though unconsciously, to altogether new sets of circumstances. Just as the Common Law of England has been gradually and almost unconsciously extended by the judges until its rules are co-extensive with the complicated interests of modern society, so the leaders of a tribe are ready, without hesitation, to extend their tribal custom, and to decide in accordance with its principles any new question that comes before them. Often when I have put a question to the assembled headmen regarding their custom on some particular point, and received an unhesitating answer,

a call for instances and precedents has, after much racking of brains, elicited the unanimous reply, "We never heard of such a case, but our custom is as we have said." They were unconsciously deciding the new set of circumstances in accordance with the principles of their tribal custom, familiar to the minds of all. It would suit the ideas of the tribesmen that the courts, in deciding what is the custom in any particular case, should, instead of insisting on evidence regarding exactly similar precedents, require only evidence as to the underlying principle of the whole body of tribal custom which may be applicable to the case in hand, and should, when satisfied regarding the principle, decide the case in accordance therewith after the manner of the English Common Law judges in applying the principles of past decisions to new sets of circumstances.

3. If, on the contrary, the rules applicable to "particular customs" in English law be insisted on in the proof of tribal customs, many customs universally admitted throughout the tribe when no particular case is in dispute will be in danger of being disregarded by the courts for want of one or other of the conditions required by the English law. It is only some 45 years since the greater part of the Sirsa District first came under British rule. Before that, there were no regular courts of law and no settled rules of procedure. Disputes were decided by force of arms or by the general feeling of the tribe. Even now, for every case that is disputed and brought into court, many are decided by the tribe or family among themselves, their decision being often a compromise which is acquiesced in by all the parties, and not strictly in accordance with any rule. Such being the case, it is almost impossible to obtain direct proof that a custom is of old standing. Moreover, the rapid development of the district under British rule has so changed the circumstances of the people that precedents cannot be given under the old state of things similar to the cases which arise under the new. It is thus difficult to prove that an alleged tribal custom is ancient and immemorial. Again, when within recent times superior force was the arbiter of most disputes, and when even now the person considering himself aggrieved often does not feel so much injured as to justify his coming into court, or is too poor to institute the necessary proceedings, and so submits to the action of his opponents or acquiesces in the decision of the family, it must be difficult to prove that a custom is certain and uninterrupted, and has always

been peaceably enjoyed. Even regarding the most universal of customs, almost every tribe has instances in which, for some special reason, the custom was departed from, the person who, according to the general custom of the tribe, would have exercised certain rights, having, from natural affection, or out of deference to the wishes of some influential relation, or from simple laziness or carelessness, allowed some other relative to usurp some portion of his rights. Such exceptional instances, unless they are numerous and consistent enough to establish a "particular custom" as an exception to the "general custom" or "common law" of the tribe, should not be allowed to weaken the force of the general tribal custom. Indeed, if the exceptional circumstances can be proved which brought about the departure from the general custom, those exceptions are among the best proof of the existence of the general custom. If a case were put before an assembly of the tribesmen, they would, unconsciously perhaps, decide it in accordance with the principles underlying their whole custom; and it would be well if the courts before whom such cases come were to follow their example and seek for evidence of general principles, not for precedents exactly similar to the case for decision.

4. If this be so, a comparison of the customs of different tribes is of great value, for it enables us to supplement from one the deficiencies in the evidence regarding another; and as the customs of wholly distinct tribes are very similar in their general character, we can by comparison work out the general principles underlying the customs of all, and so arrive at a sort of *jus gentium*, a set of principles common to all tribes, a "common law" applicable to the whole population. I shall endeavour to give a summary of the fundamental principles of the customs followed by all the different tribes of the Sirsa District.

GENERAL PRINCIPLES UNDERLYING THE CUSTOM OF ALL TRIBES.

5. The chief division of the population of the Sirsa District is into tribes (*Ját* or *qaum*) clearly separated from each other. As a general rule no tribe can eat, drink, smoke, or intermarry with the members of another tribe, and thus the line of separation is permanent and marked, and there is little sign of any fusion between any two different tribes, nor to an ordinary peasant would it seem possible that his tribe

should become intermixed with another. In not a few instances these caste prejudices not only separate tribe from tribe, but split up the tribe itself into different sections, each refusing to intermarry or allow social intercourse with the other sections. Often this distinction has only gone so far as to prevent the more ambitious section of the tribe from giving its daughters in marriage to the other sections, while still it takes daughters in marriage from them: so that family pride has at least something to do with the development of such caste prejudices. In other cases, distance of residence and the separate growth of peculiar habits has made two sections of the same tribe forget their common origin, and refuse to associate with each other on again coming into contact. On the other hand, there are cases in which tribes quite distinct in other respects have, by reason of similar occupations or common characteristics, come to be ordinarily classed together under a common name: for example, the collection of sacerdotal tribes known as Bráhmans, or the commercial tribes classed together as Banyas. The caste prejudice, or family pride, or whatever it may be, that keeps the tribes so markedly apart, has many important social and political consequences, but that which most concerns the present enquiry is the effect it has in preventing a member of one tribe from marrying a member of another,—in keeping each tribe strictly endogamous.

6. All tribes, without exception, are sub-divided into groups of agnates, males related to each other through males only, ordinarily known by the name of *got*, which may be translated "clan." The *got* has a strong resemblance both to the Roman *gens* and to our own system of family relationship, according to which all agnates, and agnates only, bear the same family name, and a woman on marriage gives up the family name of her father, *i.e.*, leaves his *got* and adopts that of her husband; thus, in a sense, becoming a member of his *got*. The sons belong to the *got* of their father, as with us they take the family name of their father. The *got* is sometimes further sub-divided into smaller groups of agnates, each consisting of the agnatic descendants of a common ancestor a few generations back. As each woman on marriage leaves her father's *got*, and her children belong to the *got* of her husband, the *got* or family contains no persons related to each other through a female. The Sirsa peasant considers the relations of his mother, sister, and daughter, to be relations indeed, but not members of his family or *got*, or in any

sense his heirs. He has a complicated system of names for those different relationships, each denoting that the relationship is through a female. The names for agnatic relationships are much fewer and simpler. All agnate cousins of his own generation he calls simply "brother;" all agnates of his father's generation he calls "uncle;" all agnates of his grandfather's generation he calls "grandfather." The degree of relationship is measured by the number of generations up to the common ancestor. His own agnatic descendants are nearer relations than his brothers; all agnatic descendants of his father are nearer than his uncles, and all agnatic descendants of his father's father are nearer than his granduncles. The peasant, of course, does not ordinarily look at the tribal system from a standpoint outside and above it; does not consider the whole population as divided into tribes, each tribe into clans, each clan into families. He begins with himself, or rather his immediate family, and considers them as belonging to a wider group of agnates, the branch of a clan, that again as belonging to a certain clan, and lastly the clan as being a sub-division of the tribe which he considers distinct from all other tribes. Thus when a man is asked his tribe, he will often answer by giving the name of his clan, or of the branch of it to which he belongs, and it requires a second question to bring out the name of the tribe or race of which he is a member.

7. Except where the Muhammadan law of marriage has changed the ideas of the people, a man cannot marry in his *got*, for all women of the *got* of his own generation are considered to be his sisters, and indeed are called "sisters." He must of course marry within his tribe, but must take a daughter of another *got*. He must not marry any one nearly related to him through his mother. Some tribes extend the prohibition still further, and forbid a man to marry in his mother's *got* or village, or even in his grandmother's *got*. Marriage is a contract, not between the persons to be married, but between their families, and is arranged for them by their agnates with the consent of the mothers, generally while the parties themselves are still of a tender age and unable to give an intelligent consent. When the contract has been privately agreed on between the families, the betrothal is completed with elaborate ceremonies of the nature of a sale, in which money plays a principal part. A girl is a valuable piece of property, and betrothal is a contract by which the girl's family bind themselves, often for a money con-

sideration, to transfer the ownership of the girl to the boy's family on her reaching a marriageable age. If the girl die after the betrothal, the contract is at an end, for the particular piece of property which was to be transferred is no longer existent. But the death or illness of the boy does not cancel the betrothal. The contract made by the girl's agnates was to transfer the ownership of the girl, not to the boy, but to his agnatic family, and their claim still holds good. They can still demand the girl and marry her to a brother or agnate cousin of the boy to whom she was originally betrothed. The ceremony of marriage actually transfers the ownership of the girl from her agnates to those of the boy. It is accompanied by many elaborate ceremonies, the chief of which are that the boy and his agnates go in a formal procession to the girl's house, and there go through an ancient form of gift or sale, in which again money plays a part, and the girl is formally handed over by her agnates to the boy's family in a ceremony partly civil, partly religious. But the actual possession of the girl is not transferred at this period. She returns for a time to her own family until both parties reach puberty, and then the boy comes with a procession to claim possession of his bride. Thenceforth she belongs to her husband's agnates. Divorce is almost unknown; a wife is very rarely divorced or expelled from her husband's house, and then only for adultery. On her husband's death she may remain a widow in her husband's house, or may marry her agnate brother or cousin with hardly any ceremony. As she already belongs to the family, no formal transfer is required; the widow's marriage to her husband's brother is simply an arrangement within the family. She cannot marry any one but an agnate of her husband without the consent of her husband's agnates to whom she belongs. If they give her in marriage to an outsider, none of the elaborate ceremonies employed in the transfer of a virgin are required. The transaction is simply a sale, and the widow is transferred for a money price with no more ceremony than a camel or a buffalo. She then becomes a member of the family of her new husband, and has no further claim of any kind on the family of her former husband; she has even to give up the custody of his children.

8. Women are always under guardianship. Until formally made over to the husband's family, they are under the guardianship of their own agnates; after that under the guardianship of their husband's agnates. Minor children are under

the guardianship of their father or nearest fit agnate, and remain in the custody of their mother unless she remarries out of the family. A father very rarely makes special arrangements for the guardianship of his children.

9. Ordinarily, the whole family remains living in common until the father's death, and his wife, children, and sons' wives and children are under his control, as well as the whole of the joint property. As the daughters grow up they are married into other families, and leave their father's control for that of their husband's father. As the sons grow up, wives are found for them, who join the father's family and come under his control. On the father's death, the whole joint family estate devolves on all the sons, who sometimes continue to live as a joint family as before, but more often make a division among them of the moveable property and dwelling-houses, and not uncommonly of the land also. The sons take equal shares without regard to age. The only part of the father's estate in the devolution of which any regard is paid to the age of the sons is his right to be appointed headman of his village. This post must be held by one man only, and goes strictly by primogeniture to the eldest son of the eldest branch of the family. In succeeding to all other kinds of property, the eldest and youngest sons take equal shares with their brothers. Generally, all the sons of the father, of whatever mother, provided she belonged to the tribe and was properly married according to the custom of the tribe, whether by regular marriage (*byáh*) or by *kareiwa*, take equal shares in the estate. It is only on rare occasions and for special reasons that the sons take the estate in proportion to the number of mothers. Owing to the almost universal custom of early marriage of girls, and the strictness with which each tribe, by inflicting severe social penalties, prevents a member of the tribe from cohabiting with a woman with whom marriage is not allowed by custom, illegitimate children are almost unknown. If one of the sons have died before his father, his sons or widow take his share of the estate by representation. The daughters take no share of the father's estate; they are maintained by their brothers until suitably married into another family.

10. When there are sons, their widowed mother gets no share of the father's estate, which goes only to the sons. She lives with them and is maintained by them; and if they divide the joint estate among themselves, they usually set aside some portion for the mother's maintenance for her lifetime.

Where there are no sons, or sons' sons, the whole of the estate devolves on the widow, two or more sonless widows taking equal shares. She holds the whole estate until her death or remarriage, and has power to make all ordinary arrangements with regard to it and to enjoy the whole of its produce. Generally she can do as she pleases with the moveable property, but must not alienate the immoveable property without the consent of her husband's agnates. Should, however, any expenses become necessary which cannot be met by the alienation of the moveable property, such as the marriage of daughters, or the payment of the Government revenue, the husband's agnates are bound either to help her or to allow her to alienate so much of her husband's immoveable property as may be necessary to meet those expenses. The widow of an agnate who has died without sons or sons' sons is in all cases entitled thus to succeed to the whole of her husband's share, even although, owing to his father being still alive, it had not yet come into his separate possession, or although he was living associated with his brothers. Even the sonless widow of an agnate who has left sons by another wife, generally gets for her lifetime a share of the estate equal to a son's share. When a widow in possession of her husband's estate dies or marries into another family, the whole of her former husband's estate, moveable and immoveable, reverts to her husband's agnates, who take it in the shares in which they would have taken it had he died without leaving a widow. A widow who marries into another family is not allowed to take away with her even her personal ornaments: she must leave everything behind her to her former husband's family. If, however, she marries her husband's brother, as is commonly done, and thus remains in the family, she is often allowed to remain in possession of her former husband's estate until her death. A widow having minor sons, has much the same power over the estate as has the sonless widow, until her sons are old enough to manage it for themselves. If she remarry out of the family, she loses not only her control over her former husband's estate, but also the guardianship of her former husband's children. If she does take them away with her, they cannot succeed to any share in the estate of their stepfather; they still belong to the family of their own father and (if sons) are entitled to succeed to their father's share of the estate.

11. When a man dies without agnatic descendants or widow, his father, if alive, takes his estate; failing the father,

it goes to his brothers in equal shares. Ordinarily all the brothers, whether of the same mother or not, whether associated with or separate from the deceased, take equal shares. If one of the brothers have died, his sons or sonless widow take his share of the estate by representation. If there be no brothers and no brothers' sons or widow, no agnatic descendants of the deceased's father, his mother takes a life-interest in the estate; failing the mother, or on her death, the father's brothers and their agnatic descendants take the estate in shares proportioned to the number of brothers; and so on, the nearest agnates and their agnatic descendants taking the estate in preference to the more remote. Where there are two of a class, they share equally, and the right of representation prevails to the fullest extent. No heir excludes the agnatic descendant or the sonless widow of another heir of the same class. Only agnates and the sonless widows of agnates inherit. The sonless widow takes a life-interest only, and excludes for her lifetime the collateral or ascending heirs of her husband.

12. The daughter has no right to inherit. She is only entitled to suitable maintenance and to be suitably married. Marriage of girls is almost universal. The daughter on marriage leaves her father's family for that of her husband, to which she thenceforth belongs, and has no further claim on her father's family. Should her father die before giving her away in marriage, the agnates who succeed to the estate are bound to maintain her and to arrange a suitable marriage for her, but she has no right to a share in the estate. Her sons belong to their father's family, and have no claim on the family of their mother and no right to inherit a share in her father's estate. Nor can her husband, even though he lives for years in her father's house, make any claim through her on the estate of his father-in-law. He can only succeed as an agnate to his share of the estate of his own family. As with daughters and their children, so with sisters and their children. The sister is married into another family to which she and her children belong, and they have no claim to inherit any share in the estate of her brother.

13. There is no general custom of considering part of the joint-estate as being the special property of the women. Whatever is given with the daughter is not given to her, but with her to the husband's family, and becomes merged in their joint-estate under the control of the agnates. Whatever influence the females of the family have in the control of the

family estate is indirect and unrecognised, except when a widow holds for her lifetime her husband's estate, or manages the estate of her minor sons till they grow up.

14. Wills are quite unknown. If a proprietor wishes to interfere with the devolution of his property according to the ordinary rules of inheritance, he must carry out his intentions in his lifetime. An expression of his wishes as to the disposition of his property, if not carried out in his lifetime, has no force after his death. The modes in which a proprietor can in his lifetime interfere with the devolution of his property are adoption, gift, sale, and partition.

15. A man who has no son of his own may adopt a son of his brother, who is then considered his own son, and succeeds to his estate to the exclusion of all the other agnates, forfeiting his right to succeed to a share in the estate of his own father. No particular ceremony is required. All that is necessary is that the sonless agnate should, with the consent of the boy's father, take the boy to live with him as a son, and give the family to understand that he has adopted him. The son adopted must be an agnate of a lower generation than the adopter; a man must not, without the consent of the agnates, adopt his daughter's son or husband or sister's son. He must also be a near agnate; a man may not pass over the sons of his brothers and adopt the son of an agnate cousin. So well-established is this custom of adoption that the sonless widow of a proprietor in possession of her husband's estate may adopt the son of one of her husband's brothers who succeeds to her husband's estate as his son. Perhaps this is the strongest instance of the power of a widow over the estate of her deceased husband; for by this action of hers she practically gifts the whole estate of her husband to one agnate nephew, and prevents all the other agnate nephews from succeeding to the shares to which by ordinary inheritance they would be entitled.

16. While a number of persons hold an estate in common, one sharer cannot make a gift of any part of it without the consent of the other sharers; but when a father holds his estate separate from his brothers, his power of gift as regards his moveable property is almost absolute. It is usual to give at the marriage of a daughter a large dowry in cattle, clothing, ornaments, and other moveable property; and on such occasions as the birth or marriage of a child, the mother's father or brothers often send presents of moveable property. A father, too, sometimes gives part of his moveable

property to a separated son, or gives some of it away in charity or for religious purposes. There is practically no restriction on such gifts. Instances of a proprietor's having gifted away an unreasonably large amount of the moveable property of the family are not common enough for any custom to have grown up restricting his power. But with regard to immoveable property the case is very different. A father cannot, without the consent of his sons or near agnates, gift any part of his house or land to a stranger or to his daughter or her son or husband, or even to a son or other agnate. Unless the agnates agree, the immoveable property must not be interfered with; it will remain with the father until his death, when it will descend to the sons or agnates in accordance with the ordinary custom of inheritance. If a father wishes to gift a few acres of land for religious purposes, or to grant occupancy rights in a field to a daughter's son or husband, the agnates often give their consent, but they rarely consent to the alienation of a share of the proprietary right in the family land. A proprietor ought not to sell the immovable property without the consent of the agnates. The English-made law gives the agnates the right of pre-emption: custom would allow them to forbid the sale altogether, except in case of dire necessity.

17. Ordinarily, the whole family remain living in common until after the father's death; all the family, including the sons with their wives and children, living in the same enclosure and enjoying together the produce of the joint-estate. Often as the sons grow up and marry, they and their wives and children live in separate houses and have separate fireplaces and separate arrangements for food, while they all work together on the family land and share its produce in common. Sometimes the sons continue this arrangement after the father's death, but they generally after a short time effect a permanent partition of the moveable property, and sometimes also of the land. Any one sharer can demand partition and separate possession of his share. When an estate, hitherto held by all in common, is thus divided among the sons, all the property, moveable or immoveable, ancestral or acquired, is brought into partition, except clothes and ornaments which one son may have received after his marriage from his mother's or wife's family. All property received at one son's marriage from his wife's family, and all cattle and other property, except jewels and clothes, even received from the family of one son's wife after his

marriage, are considered to form part of the joint-estate, and brought into the partition. If the mother be still alive, sometimes a share of the estate is set apart for her maintenance for her lifetime, and on her death is divided among the sons. This may either be a share equal to that of one son, or a piece of land, or simply a portion of the produce of the family holding. It is not uncommon, however, for the father in his lifetime to make a more or less complete partition of the family estate. In that case he generally makes it on the same principles as rule a partition made among the sons after his decease. Ordinarily he keeps all the land still recorded in his own name, and as each son grows up and marries, he gives him a separate house and a separate share of the cattle and moveable property, and separate possession of a share of the family holding. The father has in his lifetime full power to make what arrangements he pleases, and to keep as much of the family estate as he likes under his own direct control, but ordinarily he makes a fair division of the property among all the sons, keeping for himself and his wife a share equal to the share of one son. Each son then cultivates separately the share of the family land made over to him, and keeps for his own use and that of his wife and children the produce of his share of the land and of the moveable property. On the death of the parents, the share they had reserved for themselves is equally divided among the sons. The father cannot make an unequal distribution of the land among the sons; if he does, the son who has received less than his share can claim his full share of the land on the father's death. But ordinarily the father can distribute the moveable property much as he pleases among his sons, and unless the distribution is very unequal and unfair, the sons rarely attempt to have it redistributed after the father's death; each son keeps the moveables the father gave him and his own acquisitions since he separated off from the father. If the father, with the share he had reserved for himself, continues to live in common with one son, that son acquires no better title to keep his father's portion than the other sons; all are entitled to share it alike on the death of the parents. The liabilities of the family are shared in the same way as the assets. The sons share among them the debts of the father, and join in defraying the funeral expenses of their parents and the expenses of marrying their sisters.

18. These are the fundamental principles underlying the customs of all the tribes of the Sirsa District, and I may add

of the Gurgaon District also. They are a sort of *jus gentium* or "Common Law" more or less prevalent throughout the whole district. Most of them are developments of more general principles which may be briefly expressed as follows:—A man must marry in his own tribe, but not the daughter of an agnate of his own. A woman must be given in marriage to a member of her own tribe, but not to an agnate of her own, and thereafter she and her children belong to her husband's family and have no further claim on her father and his agnates. A proprietor has full control of his estate during his lifetime, and can dispose of the moveable property as he pleases, but cannot alienate the immoveable property from the agnates. On his death his whole estate goes to his nearest agnates, all of one class taking equal shares, and no agnate excluding the agnatic descendants of another of the same class. The widow of a sonless agnate takes her husband's share for his lifetime. No one related through a female can inherit, nor can a proprietor, without the consent of the agnates, alienate any part of the immoveable property to any such relation.

I shall now mention some of the cases in which these general customs are departed from by the customs of particular tribes.

POINTS OF DIFFERENCE IN THE CUSTOM OF DIFFERENT TRIBES.

19. The most marked deviation from the general principles above enumerated is found among Musalmán tribes, where the influence of the Muhammadan law and religion has broken down some of the barriers imposed by ancient tribal custom in the matter of marriage. As I shall show hereafter, it is only in the semi-religious question of marriage that Muhammadan law has had any appreciable effect. Among Hindú tribes one of the most stringent of customs is that a man must marry within his own tribe, that a marriage with a woman of another tribe is no marriage. Muhammadan law teaches that a marriage with any Musalmán of whatever tribe is valid, and the Musalmán peasants dare not deny this; yet so strong is the tribal feeling that many of the Musalmán tribes are almost as strictly endogamous as the Hindús, and the only tribe whose headmen said that a marriage with a Musalmán woman of any tribe would be valid, and the offspring entitled to inherit as legitimate, were the Wattus; and even they do not give their daughters in marriage except to a few closely-connected

clans. The other Musalmán tribes, while they admit that a marriage performed by the Muhammadan rite of *nikáh* could not be considered void and the children illegitimate, yet would not allow the children to inherit as of pure blood, and as a matter of fact they never do intermarry except with a few tribes or rather clans with whom custom authorises their intermarrying; the tribal feeling is too strong to allow such marriages to be numerous, and has hitherto withstood the influence of Muhammadan law on this point. It is true that among the Wattus the Muhammadan law has succeeded in breaking down caste prejudice to a certain extent, and there are indications of its having had some influence among other tribes; yet, generally speaking, the idea of intermarriage with a wholly different tribe is almost as repugnant to a Musalmán as to a Hindú peasant.

20. In the opposite direction, the influence of Muhammadan law has been more successful. Among all Hindú tribes a man is forbidden to marry in his own *got;* he must not marry the daughter of an agnate. Muhammadan law allows first cousins to intermarry, and almost all the Muhammadan tribes have given up the former prohibition; indeed, most of them think it a good thing that a boy should be married to his first cousin, whether she be the daughter of an agnate or related on his mother's side; and they try to arrange this before seeking for the daughter of a non-relative. Some trace of the old feeling may be found among the Musalmán Kumhárs and Lohárs, some of whom will not allow a man to marry his first cousin, though he may marry a more distant relative of his own *got.* It will be seen that this change, effected by the influence of the Muhammadan religion, backed no doubt by a natural feeling that it is pleasant to marry the daughters to near relatives and thus retain them in the family, is likely to have an important effect upon the whole system of inheritance, adoption, and gift. When, as among Hindú tribes, a daughter necessarily marries into another family, and her children cannot possibly be agnates of the father, a sharp line is drawn between agnates and relations through a female, who are not agnates; and the agnates are more ready to object to any alienation of the family estate to a relation through a female. But when a daughter marries an agnate nephew, she does not leave the family, and her husband's sons, being agnates, are more likely to be allowed to succeed to her father than if they belonged to an altogether different *got.* Notwithstanding this tend-

ency, the Musalmán tribes are almost as particular in upholding the rights of the nearest agnates against the claims of relations through a female as are the Hindú tribes.

21. Some tribes maintain that the death of the boy after betrothal does not free the girl's family from the contract; they are still bound to give the girl in marriage to a brother or agnate cousin of the boy, and if they give her in marriage to another family without the consent of the boy's agnates, the tribe makes them pay heavy damages to the boy's family. Other tribes hold that only a brother of the boy to whom she was betrothed can claim her, and if there is no brother fit to marry her, the contract is at an end; a cousin cannot claim her. The Sikh Jats say that formerly the boy's brother or cousin was considered entitled to claim a girl in marriage, but that now the boy's death sets her free to marry elsewhere. The Banyas, Roras, and Bráhmans also hold that the boy's death ends the contract of betrothal, which is no longer binding on the girl's family.

22. In marriage, all Hindú tribes forbid a man to marry in his own *got;* but, as I have already pointed out, the different tribes have different customs as to the other prohibited degrees, the widest prohibition being that of those tribes who forbid a man to marry in his own or his mother's *got,* or in the *got* of either of his grandmothers. The Sikh Jats and the Gaur Bráhmans to some extent substitute the branch for the *got* in calculating prohibited degrees.

23. A Hindú may, and not infrequently does, marry his wife's sister in his wife's lifetime. A Musalmán is forbidden to do so by the Muhammadan law, which in this respect he obeys.

24. Among all Hindús, the binding ceremony of a regular marriage, employed in the marriage of virgins only, is the *phere,* or walking round the sacred fire. Among all Musalmán tribes, the Muhammadan *nikáh* is the only form of marriage allowable.

25. Some tribes, both Hindú and Musalmán, do not allow their widows to remarry; others allow a widow to marry only her husband's younger brother or younger agnate cousin, not an elder brother. Others allow her to marry either her husband's younger or elder brother or agnate cousin, but not a non-agnate; others allow her to marry out of the family, but not an agnate of her former husband; others allow her tc marry either an agnate of her husband or a non-agnate. Most tribes require the widow to obtain the

consent of the husband's agnates before marrying again out of the family; some exact a money price from the new husband before allowing the widow to go to him; some exact on price. The Ráins say the widow may remarry without obtaining the consent of her husband's agnates.

26. As a rule, when the sons inherit the father's estate, they take it equally without regard to the number of mothers; but some tribes and some members of other tribes say that the estate should be divided according to the number of mothers (*chúndávand*). The Sikh Jats and Wattus say that formerly the rule of division according to the number of mothers was more commonly followed than it is now, and that now division according to the number of sons is the almost universal rule. If the deceased have left a sonless widow, besides sons by another wife, some allow her half the estate for her life, some only a share equal to a son's, some only enough land for her maintenance, and some only enough of the produce of the land to maintain her.

27. While all tribes allow the widow of a sonless proprietor to hold her husband's estate till her death or remarriage, and all forbid her to alienate the immoveable property, some give her more power over the moveables than do others. All are agreed that when she marries a non-agnate, she at once loses all right to her husband's former estate; but when she marries a brother of her deceased husband, some say that she at once loses the deceased husband's estate; others say that she keeps it till her death, when it reverts to her first husband's agnates; while others again have the curious custom of allowing a man to "raise up seed" to his deceased brother, so that the sons born to the widow by the brother of the deceased succeed to the estate of the deceased.

28. When the property devolves on the brothers, some tribes do, and others do not, allow the full-brother to exclude the half-brother. When one brother was associated with the deceased, and another was not, some tribes allow both to share equally in all the property; others say that the house and moveables go to the associated brother, while both share the land equally; and the Banyas say that the associated brother takes all the property, to the exclusion of the separate brother.

29. In adoption, some tribes require a widow to have either the permission of her husband or the consent of his agnates before adopting a son; others say she can adopt without such permission or consent. Some say that if the natural

father die without other sons, the adopted son succeeds to his natural father as well as to his adoptive father; others say he does not succeed to his natural father except as the son of his adoptive father.

30. In partition, while all exclude jewels and clothes received from the family of one son's wife, some exclude all other moveable property so received, while others require it to be brought into partition.

31. These points of difference are, as compared with the numerous points of resemblance between the customs of the different tribes, comparatively unimportant. The broad principles underlying the custom of all tribes are the same throughout.

DEVELOPMENTS OF CUSTOM NOW IN PROGRESS.

32. Custom developes with the progress of society, and as the influences at work on the population of the Sirsa District during the present century have been much more encouraging to progress than at any other period of its history, we might expect signs of change in tribal custom corresponding to the general development of social phenomena. Some of the points of difference above enumerated in the customs of various tribes are really signs of this development, the custom of one tribe having reached a further stage than that of another in the progress, which is generally from the archaic family system towards modern individualism, from status to contract, to a state of society in which the individual has more liberty of action. It must not be thought, however, that the progress is rapid or that the stage reached at all approaches the state of society in Western Europe. On the contrary, as compared with the Aryan peoples generally, or even with other parts of the Panjáb, the state of society in Sirsa is very primitive, and the individual has little liberty of action. His family ties bind him closely on all sides. Witness the strictness with which he is bound to marry in his own tribe, the extent of the prohibited degrees in marriage, the inferior position of women, the restrictions on the power of the proprietor to alienate the immoveable property, the absence of wills, the varity of cases in which any interference is made with the ordinary rules of inheritance, and especially of cases in which land has been allowed to go to a relation through a female.

33. A few instances of the development of custom within the limits of a particular tribe may be given. Many tribes say

that formerly the decisions of *panchâyats* of the tribe were much more readily obeyed than they now are, and that now men considering themselves aggrieved by the *panchâyat's* decision very often refuse to obey, so that the case has to go into the Civil Court. A new custom has grown up within the last two generations among the Bodlas and Wattus of the Satlaj of going through the form of *ijáb qabúl* at the betrothal before the *Qází*. This is borrowed from the *nikáh*, but is not the regular marriage ceremony, for the full *nikáh* is performed afterwards. They say it has been introduced because our courts showed some reluctance in holding the betrothal so binding as the tribesmen considered it, and this form has been adopted in order to render the betrothal more binding and more readily capable of proof. The Sikh Jats say that formerly the death of the boy did not annul the contract of betrothal, but that now the death of the boy leaves the girl's family at liberty to consider the contract void and to betroth and marry the girl into another family. The Sikh Jats ordinarily forbid intermarriage with another tribe, but there are a few recent cases in which the offspring of a woman of another tribe has been allowed to succeed; and a few headmen ventured to say that if a Sikh Jat married by regular form with no bad motive a well-behaved woman of some tribe approximately equal, such as a Tarkhání, the sons might be allowed to succeed. The Ráins of the Ghaggar have until lately been strictly endogamous within their own section of the tribe, but recently there have been a few cases in which a Ráin of the Ghaggar has married a Ráin of the Satlaj, and the sons have been allowed to succeed, though not to a full share of the father's property. Some of the Musalmán tribes are gradually widening the circle of tribes with which they may intermarry. The Sikh Jats and Wattus say that in the succession of sons to their father's estate, it is now the universal rule that all the sons take equal shares without regard to the number of mothers (*pagvand*); but that formerly cases in which the inheritance was divided among the sons in proportion to the number of mothers were not uncommon, though even then exceptions to the general rule. Some Sikh Jats allow a sonless widow who marries her deceased husband's brother to remain in possession of her former husband's estate, and even allow the brother to raise up seed to the deceased; while others say that on marrying even her deceased husband's brother the widow at once loses all right to the deceased

husband's estate. Among the Sikh Jats there have been a few instances of late in which in the absence of sons an unmarried daughter has been allowed to remain in possession of her father's house and land until her marriage. The Bodlas say that their widows are not allowed to remarry, but there have recently been a few cases in which Bodla widows have married again. In the partition of a joint-estate among the sons, the Bodlas say that until about fifteen years ago they exempted from distribution cattle, horses, &c., received from the relatives of the wife or mother of one son, but that now the custom is to divide all moveable property so received, except clothes and ornaments.

34. Perhaps the most extraordinary instance of the development of custom in adaptation to changed conditions is the importance now attached to rights in land, especially in the case of the Musalmán tribes. Until it came under British rule in 1837, great part of the district was a desert prairie, and there were no boundaries, little cultivation, and no defined rights in the land. The Musalmán tribes lived a life almost wholly pastoral, wandering about from place to place with their herds of cattle, and having no settled place of abode and no particular areas of land which they could call their own, and transfer from one to another, or hand down from father to son; they had only the vague right, or rather custom, of pasturing their herds over large tracts of country. Under British rule, the boundaries of villages were demarcated and every acre of land was mapped and measured; and now there are well-defined and complicated rights recorded regarding every plot of land,—rights of Government, rights of grantees of land revenue, rights of landlords and farmers of villages, rights of tenants of every degree. All the Musalmán tribes who fifty years ago were living a wholly pastoral life have now settled down to agriculture, and their custom now attaches quite as much importance to these rights in land, new to the tribe, as does the custom of the Sikh Jats and Ráins who have lived an agricultural life from time immemorial.

GENERAL CHARACTER OF THE CUSTOM OF EACH TRIBE.

35. The tribal custom of the Bodlas and Chishtís is of the most primitive character. They have been settled in this district only for some three generations, have been under

British rule for little more than one generation, and have only lately given up a pastoral for an agricultural life. Their system of relationship is essentially agnatic and inheritance is strictly confined to the agnates. Their women are *pardah-nashín* and always under guardianship—till consummation of marriage under the guardianship of their father and his agnates, afterwards of the husband and his agnates. Betrothal takes place generally at an early age, and is conducted by the agnates of the parties. A betrothal once made is irrevocable, and even the death of the boy does not free the girl's family from the contract. Marriage is performed by the Muhammadan ceremony of *nikáh*, accompanied by elaborate tribal ceremonies. The Muhammadan law is followed as regards prohibited degrees of relationship, and marriage of first cousins is common. Daughters are married within the tribe, and women of only a few other tribes are taken in marriage. There is no custom of divorce or dower, and widows very rarely remarry. A minor is under the guardianship of his agnates in the order of inheritance. Succession is confined to the agnates,—first the agnatic descendants of the deceased, then those of the deceased's father, then those of his father's father, the right of representation prevailing to the fullest extent. The widow of a sonless agnate takes a life-interest in her husband's whole estate, before it goes to the husband's agnates; but she cannot alienate it from them, and is under their control regarding any extraordinary disposal even of the moveable property. The rule of inheritance is *pagvand*—all the sons take in equal shares, without regard to age or to the number or tribe of the mothers. Daughters' sisters and their sons and husbands do not inherit. There is no custom of *gharjanwái*, or of adoption, or of wills, or of peculiar property of women. Land cannot be gifted to persons related through a female, but the father has the power to alienate the moveable property. Even when partition is made by the father in his lifetime, the sons are entitled to share equally after the father's death. There is practically no distinction between ancestral and acquired property, but immoveable property is subject to many restrictions on alienation from which moveable property is exempt.

36. The Musalmán Jats and Rájputs also led a pastoral life until a few generations ago, and their custom is almost as primitive as that of the Bodlas. Refinements regarding guardianship, dower, divorce, wills, property of women, and

gifts are almost quite unknown, and the Muhammadan law has had no influence on custom except in the matter of marriage, which always takes place by *nikáh*. Some tribes are almost wholly endogamous; some give their daughters to, and take daughters from, only a few other tribes; others, such as the Wattu, take in marriage the women of almost any tribe. Some few tribes do not allow their widows to remarry, but in most tribes remarriage of widows is common. Women are generally not *pardahnashín*, and a widow has considerable independence regarding the disposal of the moveable property when acting for her minor children or in possession of her husband's estate. In other respects their custom is the same as that of the Bodlas.

37. The Bágrí Játs are an agricultural race, and have been so for many generations. Their wealth consists chiefly in land, houses, camels, implements, utensils, jewels, and money, which they are fond of hoarding. They draw in their customs and ideas a very sharp distinction between moveable and immoveable property. Rights in land are much more tied down by custom than are moveables, which are left much more at the will of the owner. As compared with the sharp distinction between moveable and immoveable property, there is comparatively little difference made between ancestral and self-acquired property. In the ideas of a Ját, self-acquired immoveable property is much less at the disposal of the individual owner than is ancestral moveable property. Their system of relationship is even more strictly agnatic than that of the Musalmáns, for a woman cannot be given in marriage to an agnate; on marriage she leaves the *got* of her father, and enters that of her husband, to which her children belong. A man may not marry in his own *got* or among his near relations through the mother or grandmothers. Marriage is performed with the aid of Bráhmans by the religious ceremony of walking round the sacred fire. A widow belongs to her husband's agnates, and often marries one of them by *karáwa;* she cannot marry any one else without their consent, and is often regularly sold by them to a stranger, in which case she loses all claim to her deceased husband's estate, and loses the guardianship of his children. Adoption of an agnate by a sonless proprietor or widow is not uncommon; in that case the adopted son succeeds to the estate of the adopter, and loses all right to inherit from his natural father, unless there be no other son. A relation through a female cannot be adopted without the consent of

the agnates. In other respects the custom of the Bágrí Játs resembles that of the Musalmán tribes.

38. The custom of the Sikh Jats is very much the same as that of the Bágrí Játs. In betrothal the death of the boy cancels the contract, but often the girl is given in marriage to a brother or agnate cousin of the deceased. A widow seldom marries any but a near agnate of her husband. If she marries a near agnate, she generally remains for her lifetime in possession of his estate. The custom of the Kumhárs, Khátís, Lohárs, Chamárs, Chúhras, Báwariyas, and Herís is, in all important points, the same as that of the Bágrí Játs.

39. Among the Banyas and Roras, both commercial classes, property is divided not so much into moveable and immoveable as into ancestral and self-acquired property; and while the father may at partition distribute the self-acquired property, moveable or immoveable, among his sons as he pleases, he is bound to give them equal shares of the ancestral property, moveable or immoveable. The good-will of a business, handed down from father to son, is an important part of the property of a Banya or Rora, and the powers of a father regarding its disposal are restricted in a manner similar to the restrictions imposed among agriculturists on the transfer of ancestral land. In adoption, when there are no near agnates, a son of another *got* is sometimes adopted, seemingly with greater freedom than among the Játs. Gifts are more often made in writing than among agriculturists. When once a partition meant to be final has been made, and each son has received his fair share of the ancestral property, his right regarding the shares of the other sons or the share reserved by the father is not so strong as among agriculturists. If the father, as is usual at partition, keep a share to himself and remain joint with one son, then either all the sons pay the father's funeral expenses and divide his share equally, or the son with whom the father remained joint pays all the funeral expenses and keeps the whole of the father's share. When two brothers after partition join their shares, and one dies without sons or widow, the associated brother takes the whole of his property, to the exclusion of the separated brothers.

40. The custom of the Bráhmans is very similar to that of the Bágrí Játs. They have a peculiar form of property known as *birt*, the right of performing religious ceremonies for certain clients (*jajmán*) among other tribes, which is inherited like other property and is considered much in the same light as immoveable property. The father has no

power to alienate it, and each son is on partition entitled to his share of it, the *chientéle* of the family being divided equally among the sons. Ordinarily the father has less power at partition than among the Banyas, and each son is entitled at partition or on the father's death to his full share of all the property, moveable and immoveable, ancestral and acquired.

41. The most highly developed system of tribal custom is that of the Ráins, who are essentially an agricultural tribe, and have been so for many generations. The system of relationship, inheritance, &c., is founded on the simple agnate system still in full force among the Bodlas and Jats, but there are numerous developments not found among those primitive tribes, and the Ráins may be considered to have in many respects made a considerable advance in civilisation, as compared with most of the other tribes of the district. Until very lately, the Ghaggar section of the tribe was strictly endogamous, marriage being allowed only within the section, —*i. e.*, with the daughters of agnates. This may have been owing to their being cut off from other members of the tribe by the difficult country between the Ghaggar and the Satlaj. As yet there are very few instances of marriage outside the section, and the offspring of such marriages have been treated as inferior, and have succeeded to a much smaller share than the pure Ráin offspring: great importance is attached to purity of blood. To this custom of strict endogamy may be traced many of the modifications of old agnatic custom which prevail. So long as marriages take place within the section, alienations of property to a female do not take the property away out of the section; for she marries an agnate and her sons are agnates. We thus find alienations to a female, and to persons related though a female, allowed much more freely than in other tribes. The position of the women is unusually independent. They are not *pardahnashin*, and a married woman has practically almost absolute power in the household in arranging about the milch-cattle, furniture, clothing, &c., and even regarding such important matters as the betrothal and marriage of the children. She is under the control of her husband, but in practice is allowed to manage all these affairs and to control special property received from her own relatives, with little interference on the husband's part. Widows and widowed daughters are often allowed to dispose of the property inherited by them. Daughters and daughters' sons, sisters and sisters' sons (who, it

must be remembered, are also agnates, sometimes near agnates, for it is common for first cousins to marry), are often allowed to succeed by inheritance, gift, or adoption, and (in the case of a widow) especially if she have given up her claim to the property of her husband and returned to her father's house. Sonless widows in all cases succeed to the husband's whole estate, except when she marries her husband's near agnate. In that case her sons by the second husband succeed to the estate of the first husband; failing sons by a near agnate, it goes to all the agnatic heirs of the first husband. The father has unusual power in the disposition of the family property. Formal wills are practically unknown, but the father often interferes, by partition, gift, or adoption, with the natural division of the property, and so long as there is good reason for his interference, the agnatic heirs rarely object. Commonly, as the sons grow up and marry, the father separates them off, giving them each a separate house and an undefined share of the moveable property, putting them each in separate possession of a fair share of the land or of its produce, and reserving a share for himself and for one son (generally the youngest) who remains associated with him. On the father's death, the son who remained associated with the father is left in possession of the father's house and moveables, while the family land is divided equally among the sons, unless for some reasonable cause the father desired one son to have a little more than his share, or a widowed daughter or a daughter's son who lived with him to be given a portion. Adoption is common, sons of near agnates having the preference, and where there are no near agnates, relations through females being often adopted. Similarly, gifts to relatives through females are not uncommon, and where there is reasonable ground for such a gift, objection is rarely made to it.

INAPPLICABILITY OF THE MUHAMMADAN LAW.

42. According to the Panjáb Laws Act, in questions regarding inheritance, marriage, and the other matters which have formed the subject of the present enquiry, the rule of decision is to be (1) any custom applicable to the parties concerned, and (2) the Muhammadan Law in cases where the parties are Muhammadans, except in so far as such law has been altered by legislative enactment, or has been modified by any such custom. It appears from the debate in the Legislative Council on the Panjáb Laws Bill on 26th March 1872, that the intention of the Legislature was to give the

utmost prominence to custom. His Honour the Lieutenant-Governor, in moving an amendment (unanimously agreed to by the Council) to make this intention more plain, said that the object of the amendment was "to provide in simple words, only in such a way that the officers of the Panjáb in administering the law might not mistake, that custom came first, and that Hindú and Muhammadan law only came when custom failed." (His remarks are quoted in Mr. Tupper's Panjáb Customary Law, Vol. I, page 80, seq.) The Legislature thus wished to remove the impression, which otherwise might have grown, that Muhammadan Law is (or ought to be) generally followed by the Muhammadans of the Panjáb, and that cases in which it is not followed are (or ought to be) the exception, due to customs which had grown up out of the Muhammadan Law, and so modified it. Were it not for this clear statement of the intention of the Legislature, the courts of the province, having no written code of customs to consult, and having at hand a written code of Muhammadan Law, might have been apt to take this view of the question, to throw the burden of proof on the party who alleged a custom inconsistent with the Muhammadan Law, and in the absence of such proof to declare the Muhammadan Law applicable, and to decide the case according to that law. That this would have been a mistaken view of the facts, at all events as regards the Sirsa peasants, will appear from the following table showing the points in which the almost universal custom of the Musalmán tribes of the Sirsa District agrees with, and those in which it differs from, the Muhammadan Law.

Muhammadan Law.	Custom of the Sirsa Musalmáns.
INHERITANCE.	
There is no distinction between real and personal, nor between ancestral and acquired property.	There is little distinction between ancestral and acquired property, but the distinction between moveable and immoveable property is most marked.
All the sons, whatever their number, inherit equally.	Ordinarily all the sons inherit equally, and it is only rarely that the inheritance is divided according to the number of mothers.
The share of a daughter is half the share of a son.	The daughter gets no share.
Inheritance may partly ascend lineally and partly descend lineally at the same time.	If there are lineal descendants who are heirs, no part of the inheritance can ascend lineally.

Muhammadan Law.	Custom of the Sirsa Musalmáns.
The son of a person deceased shall not represent such person if he died before his father, but shall be excluded from the inheritance if he have a paternal uncle.	The right of representation prevails to the fullest extent, and an uncle cannot exclude the son of his deceased brother from taking the share of the deceased in inheritance.
Sons and sons' sons have no specific share assigned to them, but take all the property after the legal sharers are satisfied.	If there are sons or sons' sons they take the whole of the property.
Parents, husband, and wife must in all cases get shares.	If there be sons or sons' sons, then parents, husband, and wife get no share.
A brother takes double the share of a sister.	A sister gets no share.
The widow takes an eighth where there are children, and a fourth where there are none.	A widow takes no share when she has sons; and if there are no sons or sons' sons, takes the whole estate for her lifetime.
Where there are no sons, the daughters and sons' daughters take certain shares.	Daughters and sons' daughters get no share. They are excluded by agnates.
Brothers and sisters take no share when there are sons or sons' sons.	Brothers and sisters are excluded by sons or sons' sons.
In default of sons, &c., sisters take certain shares.	Sisters are altogether excluded by the agnates.
Where there is a son, the father and mother take each one sixth.	A son excludes the father and mother from inheritance.
Females and relations through females take shares of different amounts in different circumstances.	The agnates exclude females (except sonless widows) and relations through females.
The numerous and complicated shares in which the inheritance is divided render necessary elaborate rules of distribution, rules of exclusion from and partial surrender of inheritance, rules of the increase, of the return, of vested inheritances, &c., &c.	As the succession devolves on the agnates according to simple and consistent rules, and the right of representation prevails to the fullest extent, no such elaborate rules are required or followed.

Gift.

A gift cannot be implied or conditional, and must be accompanied by delivery of possession.	A gift is ordinarily express and unequivocal, and accompanied by delivery of possession.
A gift by a wife to a husband or by a father to his minor child need not be express and unequi-	Such gifts are unknown.

Muhammadan Law.	Custom of the Sirsa Musalmáns.
A gift on a death-bed is viewed as a legacy.	Death-bed gifts are not viewed differently from other gifts.
A donor may resume his gift.	A gift cannot be revoked.
Wills.	
The payment of legacies to a legal amount precedes the satisfaction of claims of inheritance.	Wills and legacies are unknown.
Marriage.	
Proposal and consent made at the same time and place before witnesses are essential to a contract of marriage.	As in Muhammadan Law.
A freeman may have four wives.	As in Muhammadan Law.
A man may not marry his mother nor his grandmother, &c.	As in Muhammadan Law.
A man may not be married at the same time to two sisters, &c.	As in Muhammadan Law.
Christians, Jews, &c., may be espoused.	A man may not marry any but a Musalmán of certain tribes.
A woman having attained the age of puberty may marry when she pleases, if the match be equal.	A woman must leave her guardian to arrange her marriage for her.
Dower becomes due on the consummation of marriage, on death or divorce.	Dower is practically unknown.
A husband may divorce his wife without any misbehaviour on her part or without assigning any cause.	Divorce is very rare, and a wife can be divorced only for adultery.
A wife may claim separation if her husband's impotency be established.	A wife may in no case claim separation.
Guardians.	
Persons are considered minors until the age of 16, or until puberty.	Persons are considered minors until puberty, whatever be the age.
Guardians are natural and testamentary, near and remote.	These distinctions are not known. The nearest agnates are guardians.
The mother's right of guardianship is forfeited by marrying a stranger, but reverts on her again becoming a widow.	The mother's right of guardianship is forfeited by marrying a stranger, and does not revert on her again becoming a widow.
A guardian may, under certain circumstances, sell the immoveable property of his ward.	A guardian may not sell the immoveable property of his ward.

Muhammadan Law. Custom of the Sirsa Musalmáns.

ADOPTION.

Adoption is almost unknown to the Muhammadan Law.

Adoption is very rarely practised, except among the Rains.

43. It will thus be seen that, except in questions of marriage, which is a semi-religious ceremony, the Muhammadan law and religion have had no effect on the tribal custom of the Sirsa Musalmáns. Indeed, instead of their tribal custom being an after-growth on Muhammadan law, it is much older than the introduction of Muhammadanism into the country, and is founded on a wholly different system of family relationship. In the most important questions, *viz.*, those of inheritance, it would be just as reasonable to decide according to the English law as according to the Muhammadan law, and much more in accordance with the ideas of the people, for their system of inheritance has a closer resemblance to the Aryan English than to the Semitic Arabian system. It seems to have been the intention of the Legislature that in case of dispute the burden of proof should be laid on the party who alleges that the Muhammadan law should be followed, not on the party who wishes the question to be decided according to the custom of his tribe.

44. A curious instance of the difficulties that sometimes arise is given by two decisions of the Chief Court, both dated 30th October 1874, and both referring to the same family of Ráins of Nakaura. In the one case a daughter claimed under Muhammadan law a share in the estate of her father, which had been held by her mother after the death of her brother; the Chief Court held that Muhammadan law did not apply, and that by custom a Ráin widow succeeds only to a life-interest, and on her death the property reverts to her husband's collateral relatives, the succession not devolving on members of her family or on her daughter. In the other case, referring to the same family, a brother claimed a share as residuary legatee under Muhammadan law in property acquired by his brother during their father's lifetime, urging that as his brother had died before their father, the father should have succeeded in preference to the sons, and that he was entitled to a share through his father. In this case the Chief Court held that no custom had been proved against the rule of Muhammadan law that the father succeeds to a share in the presence of sons, and according to Muhammadan law, notwithstanding the pre-

sence of sons of the deceased, decreed half of one-sixth of his estate to his brother.

INAPPLICABILITY OF THE HINDÚ LAW.

45. According to the Panjáb Laws Act, in questions regarding inheritance, &c., in cases where the parties are Hindús, the rule of decision is to be (1) custom, (2) Hindú Law, where there is no custom on the point. It has been held, on grounds somewhat doubtful so far as the Sirsa peasants are concerned, that the Banáras school of Hindú Law is current in the Panjáb. *Primâ facie*, one would hardly expect an elaborate code of law drawn up by Bráhman pandits in Banáras to be consistent with the customs of the simple agricultural population of Sirsa. The different codes of Hindú Law were compiled by learned Bráhmans, men who looked down upon the inferior Hindú tribes as hardly worth their notice, who had little sympathy with tribes other than their own, and probably took little trouble to ascertain their customs and ideas. Indeed, considered as a code of law for the Bráhmans themselves, it would seem as if the compilation were deductive rather than inductive. Seemingly, instead of enquiring what customs were actually followed by the people around him, the learned compiler, starting from a set of axioms largely founded upon religious rules and dogmas, which to him, as a member of the sacerdotal caste, were of the first importance, deduced rules applicable to every imaginable set of circumstances. What wonder if a body of law thus elaborated is found inconsistent with the actual practices of simple peasants, who know nothing of such a written code, who venerate their Bráhmans indeed as the ministers of their religion, but ascribe to them no authority in matters of every-day civil life. That the Hindú Law is not followed by the Hindú tribes of the Sirsa District will appear from the following comparison :—

Hindú Law (Banáras School).	Custom of the Sirsa Hindús.
PROPRIETARY RIGHT.	
Property is of four descriptions, moveable and immoveable, ancestral and acquired.	All the agricultural tribes make practically no distinction between ancestral and acquired property, but draw a sharp distinction between moveable and immoveable property. The commercial classes divide property into ancestral and acquired property.

Hindú Law (Banáras School).	Custom of the Sirsa Hindú.
A father cannot make an unequal distribution of ancestral real property, to hold after his death.	As in Hindú Law.
INHERITANCE.	
All legitimate sons succeed equally to the whole estate of the father.	As in Hindú Law; only very rarely the property is divided among the sons according to the number of mothers.
The right of representation prevails, as far as the great-grandson.	The right of representation prevails all through.
In default of sons, the sons' sons inherit *per stripes*.	As in Hindú law.
The inheritance descends lineally no further than the great-grandson in the male line.	There is no such limit. The inheritance would descend to the son of a great-grandson in the male line.
In default of male agnatic descendants the widow succeeds.	As in Hindú Law.
But if the deceased was living as a member of an undivided family, the widow is entitled to maintenance only.	The widow succeeds, even if her husband was living joint with his brothers.
If there be more than one widow, the property vests in one only.	All the widows take equal shares.
A widow cannot dispose of any of the property except for necessary purposes.	A widow cannot alienate the immoveable property without the consent of the husband's agnates, but she has almost absolute power in the disposal of the moveable property.
In default of the widow, the maiden daughter inherits, next the married daughters.	The daughter is never entitled to inherit, but is excluded by the agnates.
In default of daughters, the daughters' sons inherit.	Daughters' sons are not entitled to inherit; they are excluded by the agnates.
The mother takes before the father.	The father takes before the mother.
The mother takes before the brothers.	The brothers take before the mother.
Brothers of the whole blood exclude brothers of the half blood.	Ordinarily brothers of the half blood take along with brothers of the whole blood.
Associated brothers exclude unassociated brothers.	The associated brother does not exclude the unassociated brother from his share of the land.

Hindú Law (Banáras School).	Custom of the Sirsa Hindús.
The brother's grandson does not succeed.	The right of representation prevails all through to the fullest extent.
Sisters and sisters' sons do not succeed.	As in Hindú Law.
He with whom rests the right of performing obsequies is entitled to preference in the order of succession.	No regard is paid to the right of performing obsequies. The nearest agnates and the sonless widows of agnates succeed.
Strídhan.	
Property given to a married woman at her marriage, and acquired by her in several other ways, is considered as her special property, and subject to peculiar rules of inheritance.	Property given with a married woman at her marriage, or otherwise acquired by her, is merged in her husband's property, and devolves according to the ordinary rules of inheritance as part of his estate.
Partition.	
A son can claim partition of the ancestral estate against the will of the father.	A son cannot claim partition in the lifetime of the father against the father's will.
A father cannot make an unequal distribution of his immoveable property.	A father may, during his lifetime, distribute his immoveable property as he pleases, but on his death the sons are entitled to share it equally.
A father cannot reserve more than two shares of the moveable property.	A father can reserve to himself as many shares as he pleases both of the moveable and immoveable property.
If a son be born after partition, he will be sole heir to the property retained by the father.	A son born after partition is entitled to an equal share of the whole estate with his brothers, and to no more.
A father must at partition give a share to his sonless wives.	A father does not give a separate share to his wife. He is bound only to maintain her properly.
In partition among the sons after the father's death, a childless widow is entitled to a share.	A childless widow often gets a share for her lifetime.
The sisters are entitled to so much as may suffice to defray the expenses of the marriage ceremony.	A sister gets no share. Her brothers are bound to maintain and marry her suitably.
All acquisitions made with the aid of the joint-estate are brought into partition.	As in Hindú Law.

Hindú Law (Banáras School).	Custom of Sirsa Hindús.
Presents received at marriage are not brought into partition.	Presents received at marriage, except jewels and clothes, are brought into partition.

Marriage.

Widows cannot remarry.	Widows do remarry in most tribes.
Polygamy is prohibited except for good cause.	A man often marries a second wife without any particular reason.
If a man marries a second wife, he must give the first wife compensation.	A superseded wife is entitled only to maintenance.
There are eight forms of marriage.	Only two forms of marriage are known,—(1) *byáh*, which resembles the Bráhma and Asura forms; and (2) *Karewa*, which resembles the *Gándharra* form, but is only allowed in the remarriage of widows.
A man may not marry a woman of his own *gol* or his mother's *got*, or descended from his paternal or maternal ancestors within the sixth degree.	Much as in Hindú Law, but many tribes extend the prohibition still farther.

Adoption.

A son is adopted for the funeral cake, water, and solemn rites.	In adopting a son, little regard is paid to religious considerations. He is adopted chiefly that he may cherish the adopter in his or her old age.
A widow cannot adopt without the authority of her husband.	A widow can adopt without the authority of her husband.
The adopter must have no son or son's son.	As in Hindú Law.
The person adopted must not be an only or an eldest son.	An only or an eldest son may be adopted.
Brothers' sons may be passed over.	A brother's son has the first right to be adopted.
An adopted son leaves his natural family, and thenceforth belongs to the family of his adoptive father.	As in Hindú Law.
If a son be born after adoption, the adopted son gets a less share than the natural son.	An adopted son shares equally with a natural son born after adoption.
Adoption cannot take place after tonsure or investiture.	Adoption may take place at any age, even after marriage.
An adopted son succeeds collaterally as well as lineally.	As in Hindú Law.

Hindú Law (Banáras School).	Custom of Sirsa Hindús.
In Orissa a brother sometimes raises up issue to a deceased husband.	This is sometimes allowed in Sirsa.
MINORITY.	
Minority lasts until the age of sixteen.	There is no age fixed. Minority lasts until puberty.
After the father's death, the mother and paternal relations are the guardians of the minor children.	As in Hindú Law.
Females are always under guardianship: until marriage, under the guardianship of their paternal relations; after marriage, under guardianship of the husband and his heirs.	As in Hindú Law.

It appears, then, that, while the same principles underlie the Hindú Law and the practice of the Sirsa Hindús, many of the refinements of the Hindú Law are unknown to them, and many of its precepts are utterly at variance with their customs and ideas. The Sirsa peasant would often, with some reason, feel himself unjustly treated if his claims were decided in accordance with this Hindú Law instead of his own immemorial tribal custom; and may consider it fortunate for him that the Legislature has stated so decidedly that custom comes before the Hindú Law, and has so strongly discouraged the importation of its elaborate rules into the decisions of the courts of the Panjáb, which are thus led to look for their guidance rather to those customs which have grown with the people, and seem to them to coincide with abstract justice, than to the Hindú Law-books, which contain many rules quite unsuited to their simple agricultural life.

As Assistant Settlement Officer of Gurgaon, I attested the tribal custom of that district, and I also served for some time in the Rohtak District; and so far as my observations have gone, I believe that (with the exception of the remarks referring to particular tribes) the summary of tribal custom and the other statements contained in this Introduction apply almost as they stand to the Gurgaon and Rohtak Districts, and probably to the whole of this part of the Panjáb.

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