Conclusion

Customs are the life lines of a society which they have been handed down to posterity from the earlier times and kept alive through collective usage thus, not allowing to pass into oblivion. Custom in a sense is the antecedent of the state-enforced law. Such was the command of the customs on the lives of the people that certain observances over a period of time became a governing force and eventually assumed the form of customary law. Punjab had been ruled by these customary laws since ages and such was their predominance that people of all religions in addition to acknowledging the authority of their religious scriptures and laws gave equal significance to them. The natives of Punjab were adhering to these customs since time immemorial. These customary laws cut across religious and ethnic groups acting as bonds of tradition.

When the British took over the Punjab, they understood the sanctity of the customs in the lives of the people and decided to endorse the same. Custom in the Punjab, according to the administrators, was beyond doubt a ‘living organism’ and it needed free room to develop on healthy lines. “The study of custom in the Punjab is of infinite variety and fascination.” observed Ellis. The other important observation they made was that when custom was removed into the atmosphere of the regular courts the government incurs responsibility for seeing that it does not suffer from the change of air.1 “A custom is a rule of conduct which the governed observe spontaneously and not in pursuance of law set by a political superior. The custom is translated into positive law when it is adopted as such by the Courts of justice and when the judicial decisions fashioned upon it are enforced by the power of the State.” 2

It has been rightly remarked “Custom is king in Hindu Law.”3 According to the Punjab Regulation Act of 1872 (Section 5 of Act IV of 1872) custom in this province was to be the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relation, wills, legacies, gifts, partitions, working of any religious usage or institution, alluvion and dilluvion. In order to be

1 Note On The Administration of Civil Justice during the calendar year 1923, Superintendent Govt. Printing, Punjab, 1924.
valid, custom had to be reasonable, continuous, not against public policy or equity, justice and good conscience and not void. The colonial state made arrangements to codify the law and record the customary practices of the people. In this process of ‘freezing’ the customs, the opinions of the majority and those of influential people were recorded. While those customs followed by minor groups were ‘lost’. During this time the customary laws were wide-ranging and had no clear cut pattern but some concerns were the same, such as betrothal, marriage, guardianship, adoption and succession. The similarities and dissimilarities were neither on the basis of religion, caste or area. The geography or social background did not ascertain the form of custom to be followed. A lot of overlapping and uncertainty prevailed that led to litigation and increased expenditure. Sometimes by the end of the case the property for which dispute existed would disappear.4

During the colonial period custom was going through a change. This change though had not assumed the form of transformation yet the thoughts had broadened and were to some extent, to the advantage of women. The move towards some uniformity had begun but the ideas of the majority prevailed. Minor variations between groups and areas continued to exist.

The custom of betrothal was well established in the province of Punjab. It was a promise to marriage and was usually looked down upon as a contract with the boy’s family. Mainly four kinds of betrothals can be located in the Punjab. These were that of dharm, watta satta, takke and ghar jowatri. Dharm was the form that was pure and only involved the ties of relationship whereas in watta satta one betrothal was exchanged for the other and sometimes more than one betrothal took place. Takke form of betrothal involved payment of money for the girl. Ghar jowatri was observed in the hill area where a would be son in law worked at the house of girl’s father for a time period that they fixed mutually. Mainly it was observed in those tribes who could not pay the bride price. The first three types were observed in almost all the districts, whereas the fourth one was mainly prevalent in the hill districts. With time the takke form of betrothal was gaining ground and people were paying price for the brides in all districts and several groups. Watta satta was also resorted to in almost all the areas and social categories.

The age when the betrothal was made was a diverse one, ranging from infancy to adulthood. The average age of betrothal was however, 10-15 years. Though we find instances where betrothal took place even before the birth and as late as 50 years. The districts where children were betrothed at a very young age were Rohtak, Ambala, Gujranwala and Sirsa. Usually, the well to do families engaged their children at an early age, whereas the poor betrothed their children at a later age. Also, Muslims married their children later than the others. In Muslim dominated districts as Multan, Jhelum, Mianwali and Shahpur, the betrothal was observed at a later age. With the passage of time the age of betrothal witnessed an increase, especially among the Jats and Rajputs. The main reasons were that the parents wanted to utilize the labour of their girls and the parents of boys wanted to collect enough money to pay as bride price. Moreover, widow remarriage was not common among the Rajputs. Hence, the delay in betrothal. Generally the girl was younger to the boy at the time of engagement, though contrary instances were noticed in southeast region of the Punjab. In a case, a girl aged 17 years old, sued that her husband was only 7-8 years old, so she should be released from the marriage tie. The District Judge set aside the nikah.⁵

The consent for the betrothal was given by the guardians of both the boy and girl. The grown-up boy was given the permission to make his own betrothal but the girl, even if adult was never allowed to do so. However, in some districts both of them could not do so. The mother was usually not given the right to make betrothal and in some tribes even her consent was not asked for. The betrothal was considered to be binding and irrevocable. The betrothal was marked by many ceremonies. Initially, the bride’s father sent the barber, lagi as his messenger to bride groom’s place. On the fixed day the gifts were exchanged known as shagan. The formalities took place at the house of the boy in the presence of the assembly of the brotherhood or biradari and finally sweets were distributed. In some tribes prayers were recited by the qazi and Brahmin among Muslims and Hindus respectively. Certain tribes celebrated betrothal with elaborate ceremonies. In some districts, the parties insisted for a written contract whereas in other districts only a verbal promise was considered sufficient. Some ceremonies were common across all the tribes and districts. With time the amount of money sent with shagan was no more Re 1, rather it increased and people

⁵ C.L. Sialkot 1917, 13; Appeal No. 266, 25 July 1915.

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tended to conduct negotiations directly, instead of using the traditional services of a barber or a lagi. People were also curtailing religious rituals. By the early 20th century many Sikhs were solemnizing betrothal with a new ceremony called Anand ceremony.

Though betrothal was regarded as binding, yet the bond could be broken. There were various causes that could lead to the cancellation of the promise to marriage. Some of the causes were physical disability, incurable disease, mental imbalance, immorality, detection of fraud, excommunication by the panchayat, change of religion, bad habits of one party or even a karewa marriage. If the betrothed man became a faqir i.e he renounced the world, then also the betrothal was called off. If the betrothal was by wattu satta and one engagement was called off, the other associated betrothals were also cancelled. The death of the boy did not always cancel the betrothal as sometimes another man in the family married the girl. It was more so in the case where some payment had been accepted by the girl’s side and girl had become their ‘property’. The views were divided on the issue of whether the man could marry another girl before marrying the girl to whom he was first betrothed. Some said that they would cancel the betrothal on such instance but others continued with the relation. In case of annulment of betrothal without any reason, the aggrieved party was entitled for compensation. Generally, if the boy’s family annulled the betrothal neither party could ask for damages. However, if the girl’ side had broken the engagement, they were required to pay the damages. The court looked at betrothal as a contract. Many instances were cited where the parties clashed over the right to betroth as betrothing the girl was a profitable proposition since it involved money.

Marriage was a universal customary institution in the province among all social categories. Muslims considered it as a contract and Hindus called it a religious sacrament. However, as per Punjab customary law the sole purpose of the marriage was the recognition of cohabitation by the brotherhood. Various forms of marriage were prevalent in Punjab. The two main forms were pun, where bride was neither sold nor exchanged and other was karewa or remarriage of widows. Other types included takka where bride price was taken, vatta where marriage involved exchange by a reciprocal betrothal and consequent marriage. Sagotra marriage meant marriage between persons belonging to the same gotra. Har was another form prevalent in hilly districts when woman was made a wife by force. Later by the end of the 20th
century the Anand form of marriage conducted according to Sikh rules of marriage was also becoming popular. It was legalized through the passage of the Anand Marriage Act 1909. The Special Marriage Act of 1872 was also passed mainly at the behest of the Brahmo Samaj whereby marriage was solemnized by simple ceremonies and necessitated a registration.

Marriage was celebrated early and even infant marriage was regarded as a ‘badge of respectability’. Early marriage was more visible in Hindu dominated areas such as the south east Punjab. Muslims usually married their children at a later age. Many tribes such as Khatris could not marry late even if they wanted to as most of the girls were betrothed by that time. Rajputs were the tribe who married their children late. However, the scenario changed in the first quarter of 20th century. The age of the children at time of marriage increased slightly during the colonial times. In fact, the cohabitation took place after the muklawa ceremony in the case of child marriages. The muklawa generally took place after the age of puberty. Nevertheless if the marriage took place at a mature age, the consummation was immediately after marriage. The consent of the guardian for the marriage was very essential. A male could give his consent or even make his own betrothal but a female could never do so. Though she was empowered by the Act XV of 1856 to give her own consent for her remarriage if she was a widow, yet the custom expected her to seek the consent of husband’s relations.

Inter religious and inter caste marriages were not customary among the people of the Punjab. Mostly the Hindus were endogamous. They were required to marry within their own caste but outside the got or clan. However, Muslims preferred to marry in their near relations. Hindus generally forbade four gots while marrying. These were the got of father, mother, paternal grandmother and maternal grandmother. With time the bondage of got loosened a little. Muslims were less strict in prohibition of gots for wedding. In spite of all the restrictions, inter caste and interreligious marriages were prevalent to some extent. Although these were not common, yet were eventually accepted by the society. As we have examples of marriage between a Jat and a Brahmin woman held valid by custom, though by chadar andazi. In addition to this cases have been found where the same man married two real sisters.
Polygamy was prevalent in Punjab but not to any appreciable extent. Though Muslim law permitted it, yet it had not found favor with the people. The number of people who married more than once was rather low. The poor financial condition acted as a restraint. The common cause for second marriage was widowhood and consequent *karewa*. It was prevalent in all the districts and among most tribes. Polyandry was another custom that did not find favor with the people. Mostly common in hill districts, more than one man, usually brothers, shared their wife. However the custom was very rarely practiced in the plains. Though celebration of ceremonies was essential for the marriage to be functional, but many a times the custom accepted the alliance even if both had been cohabiting together for some years. In some cases even the Court validated the relationship if they were living together for a period of time and their children were also not deprived of their property.

Marriage involved a lot of expenses. People spent lavishly on the marriages whether or not they could afford the expenditure. It was a matter of family prestige to squander on the ceremonies. In the later part of the 19th century people had started giving dowry too. The reckless spending on marriages led to increased debts. The Deputy Commissioner tried to persuade people to control the expenses on marriage and he was joined by the social reformers in this initiative. Bride price was another expense where payment was made to the girl’s family in lieu of her hand. Due to shortage of girls, according to government perception, she had to be paid for and it worked as a restraint on the marriages of young men. It became common practice to sell the girl and the Jat tribes were infamous for selling their girls. Even the contemporary literature reflected on the subject and tried to convince the readers to leave the practice. As in Kavi Kehar Singh’s *Buddhe Di Naar* (Old Man’s Woman), the marriageable girl requested her father not to sell her as that was a great sin but marry her meritoriously. *Pun dhi da Karin hathi vechda kyon mul ve Hor aida paap nahi vich granthan likhya.*

Marriage also involved litigation. The courts upheld the marriages by cohabitation and *karewa* marriages and also intercaste marriages. The state was concerned with lower age of marriage. The Hindu Widow’s Remarriage Act, 1856

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6 Anshu Malhotra, “The Emergence of Bazaar Literature”, 310.
and the Child Marriage Restraint Act, 1929 were passed to facilitate women. Here, the State was making the consent of woman necessary for the marriage. However, at the same time the State was being very cautious in its approach. While on one hand the administration was trying to persuade people to give up wasteful expenditure on marriage, on the other hand it did not want to intervene in the internal social affairs of the people. State was restrained in meddling in the customs relating to marriage, but if there was a wave of change the state supported it. Here the noteworthy fact was that the state was not consistent in its position. While in some cases the court was upholding the marriage by cohabitation and in some other cases it was not upheld. When the colonial government had stabilized its position, then it tried to take a stand on some customs. State usually upheld *karewa*, since it was of the view that a woman could not organize cultivation and would incur loss of revenue. *Karewa* kept the ancestral lands together and assumed continuance of cultivation which promised the payment of revenue to the State. There was thus, an ulterior motive in the State’s support to widow remarriage. On the grounds of western logic the State also upheld intercaste and interreligious marriages. As a part of individual choice or freedom of choice as such instances were rather few. They did not imply any major transgression of customary laws.

Marriage could be dissolved by divorce, which was accepted in Islam, though it was not recommended. Hindus did not usually recognize divorce and there was no such custom among them. However, they abandoned or turned out their wives which was practically same as divorce. It was also called *tyag*. Divorce was not a customary practice in Punjab and people restrained from giving divorce in all the communities. Various reasons can be held responsible for divorce as change of religion, immorality of women, disobedience, blasphemy, physical disability, lunacy. The divorce could be verbal or written, but a husband could divorce a wife without giving any reason. The wife could not ask for a divorce. On dissolution of marriage, the wife was entitled for the payment of dower or *mehr*. *Mehr* was the sum of money or property which the wife was entitled to receive from her husband. A wife could rarely claim her dower amount or even the maintenance from her husband. Thus marriage was dissolved in all parts of the region and among all religions, either formally or informally.

Death of the husband also dissolved the marriage tie and a large number of widows were found in Punjab. In Punjab, there existed the customary practice of
remarriage within the husband’s family which was called karewa. This custom helped control the limited inheritance rights of the widow, it also controlled her sexuality, fertility and labour. Jats remarried the widows most commonly by karewa but other high caste Hindus did not recognize the custom. Many Muslim tribes did not permit widow remarriage. Rajputs were the tribe which was against the karewa marriage. The Muslim dominated districts and those of south-east Punjab followed the custom very commonly. The widow was mainly married within the husband’s family so that the land did not go out of the family control. The widow remarriage could not take place according to religious rites. Karewa or chadar andazi was performed on a low key accompanied by minimum ceremonies. These included wearing of red bangles, nose ring or a colored cloth was put on the widow to signify her return to marital existence. These ceremonies varied and in some cases and at few places the ceremonies were given a miss. By the turn of 20th century the karewa marriages had spread and were sometimes celebrated even with distant relatives. With time, the custom of remarriage was becoming more acceptable even among those who had previously not permitted such custom, such as Rajputs and even Brahmins. The colonial state upheld the karewa marriages many a times and many cases were brought to court regarding karewa. In fact, the courts even upheld karewa between father in law and mother in law which was not a customary norm.

Custom also recognized that some kind of guardianship was necessary for each minor in the event of the father’s death. The guardian was appointed till the minor attained majority. Mainly, there were two kinds of guardianship- one was for property and other for that of the person, though both could be combined. Guardianship also involved a betrothal of the girl child. Other important decisions to be taken by the guardian included sale or alienation of the property of the child’s parents, education and upbringing of the child. Generally, the guardianship continued till the child was about 15 years of age, but the girl always remained under guardianship all her life. Sometimes the appointment of the guardian was made before the death of the father, but if the appointment was not made then the guardianship devolved on other near relations. Several social groups recognized the mother as the natural guardian but mostly the guardian was appointed from among relations of the

father’s family. These could include father’s brother, child’s elder brother though at
times maternal uncle could also be appointed. The custom varied in different districts.
No uniformity was observed in the districts regarding appointment of guardian. Yet
we find a clear cut prejudice against women in the customary laws. The mother lost
the right of guardianship on remarriage. In some cases the right was retained provided
she married into her husband’s family. The land could be alienated in the case of
emergency or for the payment of expenses. This included payment of revenue, debts
of the father of the minor, education, performance of obsequies of minor’s parents etc.
However all the tribes had reservations regarding the sale of property of the minor.

The State did not always deal with guardianship in accordance with the
customs. The government enacted the Guardians and Wards Act, 1890. The disputed
cases were decided by the court acting under the Act and not according to the custom.
The court upheld the interest of the minor and also gave the custody to the maternal
family. The court also took a sympathetic stand towards women guardians. We find
no well established custom on the rights of widows, regarding the alienation of the
property. In a case the court appointed the mother as the guardian even after her
remarriage to the outsider which was not the custom. The period of colonial rule thus,
widened the scope of guardianship to include persons not usually appointed by
customs. During this time the State also specified the situations in which the minor’s
property could be alienated and clearly land revenue to the State was one of the
primary reasons for sale by guardian. One positive step was that the courts laid down
that the payment of debt of father would be when ward attained adulthood and not the
concern or decision of the guardian. The State thereby, restricted the authority of the
 guardian to some extent.

Adoption was recognized by the customary law in the region of the Punjab
where there was no son. The practice was more prevalent among Hindus and not all
groups recognized this custom. Adoption was more prevalent in central and eastern
parts of the Punjab. The average age of the adoptee, mostly a son, ranged from less
than one year to 20 years. The adoption practices varied from place to place but were
broadly the same i.e. public announcement was essential in the locality. Widow had
no right to adopt a child, except with the consent of husband’s collaterals or with the
previous written permission of the husband
The adopted son usually lost all rights of inheritance in the estate of his natural father and he succeeded to the estate of his adopted father as his natural son. In some cases the adopted child inherited from both natural as well the adopted father. This was more so when the natural father was left with no male lineal descendant. Mostly he received equal share in the property of his adopted father, yet some exceptions were there. Sometimes the resident son in law or ghar jawai also inherited the property of his father in law, but it was not a widespread custom. Many a times the daughter living with the father along with her husband was only given gifts.

The colonial State accepted the custom of adoption and held that it was absolute and irrevocable. The State also upheld succession of adopted son to the adopted father’s property. Courts in Punjab recognized the adoption of a daughter’s son but it was not always so. The custom of adoption was a practical one and was not always in keeping with the Hindu law. The girl child was seldom adopted and women’s right to adopt was limited. Mostly adopted children were that of relations only and gave the adoptee a complete right of inheritance. Adoption was generally informal and customary, the practice was more prevalent among Hindus and Muslims usually did not recognized adoption. There are instances where an infant had been adopted and in some districts a married man could be adopted. An example was found where a 50 year old bachelor was adopted in Ludhiana District. Sometimes the second adoption was also allowed under specific circumstances. These could be when the first child was disobedient; he could not perform funeral rites of his adopted father, was immoral or had changed his religion. However such cases were very few.

Ceremonies and formalities formed an integral part of the adoption process. Sometimes mantras were read, sweets were distributed and feast was organized. However the essence of the adoption was that the fact of adoption be declared before the assembly of brotherhood. The giving and accepting of a child in adoption was the most essential ceremony. With the changing times, people starting understanding the need of written agreement and the execution of deed also become important in certain districts. The adoption was more formal in the southeast part of Punjab than in other areas.

Adoption was permitted in several situations a man could adopt if he had no male lineal descendant or if they were disqualified to perform exequial rites, generally all males could adopt, whether single, unmarried or widowed. Persons with certain
disabilities could also adopt. The son to be adopted was required to be of the same caste and got. However, many a times daughter’s and sister’s son were also adopted. Sometimes a stranger could also be adopted. The colonial state accepted and upheld the custom of adoption. The State adopted different stands on the ceremonies on the occasion of adoption. Similarly the ruling was given in favour of adoption of sister’s son. However, it is observed that the court was not uniform in its decisions. In some cases sisters or daughters sons were favored and in others they were not. In some cases they validated even the adoption of wife’s brother and in other case brothers daughter’s son was held invalid. Hence, the state remained arbitrary and inconsistent in its approach towards adoption, as in other aspects.

Customary law in Punjab clearly specified rules for succession. Primarily it followed two rules of inheritance – pagwand and chundavand. The pagwand rule of division laid down that the sons, whether by same or different wives, shared equally. The other rule of succession was that of chundavand where wives were the units. The sons of each mother took one share and divided it equally among themselves. Though both systems were followed without any clear cut pattern, the growing trend was towards pagwand, even among those who had earlier followed chundavand. Generally, all sons received equal shares even when mother was of lower caste or of different tribe. Some groups recognized that the sons of ‘inferior’ mothers only received maintenance, but this was not the common norm. Sons of karewa marriage also shared inherited equally. In the same instance at some places eldest son or a particular son received larger share in the property of his father. This was so more in the hill states. Whereas the right of sons to inherit father’s property was well established by custom, women usually did not receive a share of father’s property. Some groups recognized her claim in the absence of brothers and near collaterals. Still this was not the usual practice. Women were however allowed to take decisions with regard to stridhan. Stridhan were the gifts made to a woman on her marriage by her father or relatives or any property bought out of the sale proceeds of such gifts. Though the husband did not have any power to interfere in the disposal of these marriage gifts, yet the husband assumed an absolute control over the property and person of his wife and could alienate or sell it as he wished.

The rules concerning the inheritance by daughters were generally of three types. The first one was concerning the married daughters, the second concerning the
unmarried daughter and the last one pertained to the daughters who had taken vow to celibacy. In some social groups the unmarried daughter succeeded like a son but only till her marriage and if there were no male lineal descendants. However the general rule was that she was only given maintenance. Married daughters never had any right to succession. The daughters who vowed not to get married were sometimes given a share in the property in the absence of male collaterals. By the early 20th century several examples of daughter inheriting from their father are found in the Government records. Widows too could only succeed in the absence of sons or other male descendants. Her inheritance right was also restricted and was conditional to remarriage and retaining her chastity. As sister however, she could not succeed in her brother’s estate but had a right in the movable property according to custom.

Surprisingly though the woman within the family could not inherit, stepson was usually allowed maintenance and in some cases he succeeded too. He could also be given a gift and in some cases inherited both from natural as well as step father. Thus *pichlag*, as the step sons were called, were in some instances better placed than the women of the family. In an instance, a Muslim Jat of tahsil Wazirabad had two step sons and he maintained both of them till they became adults, inspite of the fact that their mother had expired. Similarly the Jhiwar tribe of Gurdaspur tahsil said that a step son born after the second marriage of his mother was entitled to obtain a share equal to that of a son of his step father.

Custom was also clear on the position of ascetics and those who had renounced their family life. While some areas debarred him from retaining property, others gave him property only if he returned. The period in which he could return ranged from 4-12 years in different social groups. Many tribes of Hindus did not permit ascetics to claim their share.

The State was mostly involved in the customs related to succession. Most of the disputes were related to the rules of succession, inheritance of daughter, rights of married daughter with no brother and claim of widows. Most cases were decided in favor of the collaterals according to custom. However, claims of women were also upheld by the court in several instances. The State, in fact, clarified the definition of chastity, which signified cohabitation or bearing a child with another man as unchaste.

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8 C.L. Gujranwala 1914, 46.
9 C.L. Gurdaspur 1893, 2.
It also had to be proven in the court, which was in a way favorable for women. This was in a contrast to the earlier position when mere allegations of unchastity were accepted to be true. Still the attitude of the state was inconsistent and ambivalent as in other aspects of custom.

In addition to these aspects, customary laws also provide some information related to illegitimate children and the perception of society towards them. The offspring of the marriages which had taken place between the parties whose marriage was not permissible on certain grounds such as difference of castes etc. was regarded as illegitimate. Certain tribes such as Sainis, Labanas, Kambohs, Jat Hindus of Phillaur tahsil, however, admitted such offspring as legitimate. In the districts like Gujranwala and Jullundur, if a child was born before 7 months of marriage, it was considered illegitimate. But certain tribes as Sekhu, Dhilloo, Chahal, Dogal, Dhotar, Hanjra Jats of tahsil Gujranwala and Mahtons of Jullundur tahsil said that even if a child was born up to 9 months after marriage it was considered legitimate. Among the Arains of tahsil Sharakpur a child born of conception which had taken place before marriage was considered illegitimate. A child born after 9 months from the death of her husband was also considered illegitimate. But a child who was born within 9 months after her divorce did not inherit. In Nakodar tahsil of Jullundur district no period was laid down for the legitimacy of the child but it was said that if the second husband admitted him to be his son he was considered legitimate. Almost all the tribes except Wiraks and Kharals considered him legitimate and inherited his natural father’s property. (p 60) The offspring of marriages not permissible according to Muhammadan law was illegitimate. In Delhi district no instance of such marriage was known where marriage took place between the parties whose marriage was not permissible. The general opinion was that the offspring of a formally celebrated marriage was legitimate. Even a marriage in a different religion never took place nor could a Muhammadan enter into marriage prohibited by Muhammadan Law. (C.L.Delhi 1911, p 44) Though most said that there were no instances of such kind. Even Hindus did not know such cases. In Ambala the tribes did not admit the possibility of irregular marriages on account of parties within the prohibited degrees or of different castes. They admitted that a mistake in relationship was overlooked and that the children born up to the time the mistake was discovered were considered

10 C.L.Gujranwala, 1914, 60
11 C.L.Jullundur 1918, 54
legitimate. Though Hindus said that a mistake was serious for the legitimacy of the children but Muslims said that the child by any regular marriage was legitimate provided *nikah* had been performed. Later the tribes replied that the children of even irregular union were not regarded illegitimate. In Jullundur district all tribes of Nakodar and Nawanshahar tahsil and Pathans, Sayyad and Sheikhs of Jullundur tahsil state that the child would be considered legitimate if he was born within the 9 months of death of husband or divorce. Attitude of society towards customary norms of marriage had thus, changed by the early 20th century to accept previously invalid relationships.

With regard to inheritance of illegitimate children, in tahsil Sharakpur of Gujranwala district, only Wiraks could inherit. All tribes in Ambala said that illegitimate children did not have any rights of succession. In an instance in tahsil Gujranwala a Wirak Jat had married woman of Arain tribe and their offspring inherited the estates. A Waraich Jat had kept a Machhan woman. Their offspring sued his collateral for his estate. The Chief Court rejected the plea as the marriage was not proved. Illegitimate children did not have any right to inherit the property of their natural father. They did have a right to be maintained, so long as they were minors. In Ambala all tribes admitted that the children were entitled to maintenance generally up to 15 years of age. Custom, therefore, accepted maintenance of illegitimate children.

Various cases cited in the present research question the customs, notice the change in colonial times and also raises new questions. The study also observes the modification of society through the legal system. In the initial stage, after establishing its rule in the Punjab, the colonial government decided not to interfere in the personal matters of the people. However, gradually after consolidating their position, though they made no direct endeavor to bring a change in the state of affairs. Change took place in the new situation of the region under the colonial rule. The introduction of British Law became the agency through which change could be introduced. The

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12 C.L.Ambala 1887.
13 C.L.Ambala 1918.
14 C.L.Jullundur 1918, 54.
15 C.L.Ambala 1887 & 1918.
16 C.L.Gujranwala, 59
17 *Punjab Record*, Civil, No.87 of 1897; C.L.Gujranwala, 59
18 C.L.Delhi 1911, 44
19 C.L.Ambala 1887
process started through the administrative arrangements. This was not a conscious change but a consequence of the administrative arrangements i.e. as a byproduct of this change. These changes initiated by them were later absorbed into the norms of custom and gradually were adapted in the society.

On the basis of information provided through various civil cases brought to the court in the late 19th and early 20th century, it appears that the court was putting its own perspective forward instead of following the customary law blindly. The maximum number of cases brought to the court dealt with the issues of succession and adoption, and a few cases were also related to guardianship and marriage. The chastity of the widow was the main theme related to inheritance. The collaterals tried to prove the widow unchaste to disregard her claim to property. It would be pertinent to note that most of the cases of unchastity were not upheld by the court. A few other cases relating to the claim of the step-sons was also not upheld.

The large number of cases brought to the court were not at all uniformly dealt with. There was no decided policy and the decisions of the court depended on the place and person. Still the government gave some additional space to women and the importance of custom was maintained, though not completely. They tried to be in alignment with the customs of the people. Majority of the cases were decided according to the customs of the people. The customs were also changing with the changing times and the changed outlook of the people. An example from Sirsa district clarifies how the position of customary law had changed. Earlier the decision of the panchayat was readily obeyed, as per the custom but with time people who were not happy with its decisions refused to comply with it and took the case to the civil court.20 The courts were utilized as the location for questioning and modifying custom.

Custom was also challenged by women as they felt that they were not given a fair deal in the customary law and sometimes they were treated as good as chattels only. In the second quarter of the twentieth century women started raising their voice against the customary laws. Mrs. Hamid Ali, in her presidential address to the AIWC held in Lucknow in 1932 demanded a solution for the disabilities of Hindu women, and urged the removal of customary law of the Muslims, particularly in the North -

20 C.L. Sirsa 1882,51
West province, which had denied Muslim women of their Islamic rights. She urged for the implementation of the Shariat law, since the Shariat gave certain rights of inheritance to Muslim women, which the customary laws did not. Consequently, the bells for change had been ringing. Some selective customs had become laws and their flexibility and flow was hampered in the colonial time. The very nature of the customs had been upset under the colonial regime. The patriarchal setup and the administration was opposing each other. Customary laws were selected, modified and adopted during this period, bringing about a change in them. The colonial State did not have any consistent policy towards customs of the Punjab region, since they both upheld and opposed customs at the same time. As a consequence, the State was not able to introduce social change of any appreciable degree through the system of customary law.

Customary laws sometimes created confusion. No proper attempt had been made to test accuracy of some cases pertaining to customary laws. This could be done by comparing it with similar cases in other districts affecting the same class of persons. Many conflicting rulings were passed which added to the misunderstanding. Rattigan remarked in preface to 4th edition that the customary law of the district had reached a stage when it had become for the most part stationary and not much change was expected in it. However the lawmakers of the time agreed that the natural atmosphere of the custom was the tribal court or council of elders, panchayat or jirgah where there was no formal rules of procedure and which modified the custom and its advancements after getting sanction of the public opinion. Punjab also became the most litigious province in India because of lack in the judicial methods of handling customs which were slow, uncertain and expensive. One reason could be that the location of settling disputes on customs had shifted from a body which had basic knowledge of the customs to one before which ‘everything had to be proved.’

The British did however, introduce some uniformity in customary norms by selecting the customs of the majority and connecting them to customary laws, at the cost of several other minor customs. In this sense, a modification was made during the colonial times. The British in fact, froze the earlier fluid nature of customs in the

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23 Note on the Administration, 10
24 IBID, 10
Punjabi society. The improvement and consolidation as stated by Dalhousie was not implemented. In fact, customary law became more complex and confusing with time. The ‘balance’ of the earlier period was also upset with new groups adopting old customs not previously followed by them. They thus, contributed to both the continuity and change of customary law in the region and customs continued to govern the lives of the people both formally and informally as they do today.
Panchayat