PART II

TRIBEWISE PROFILE
CHAPTER IV

THE KINNAURA SCHEDULED TRIBE

Geophysical Setting of the Tribal Pocket:

The study of the physical environment of a region helps in the proper understanding of the living conditions of human settlements in that region. Kinnaur, is a land where high hills, deep valleys and climate predominantly occupy the physical layout. Moreover, the knowledge of physical environment is of great significance in a study related to inaccessible mountainous areas inhabited by primitive societies. The comprehension of diversities and variation in climatic conditions and their influence on human beings is of prime importance in order to understand the nature and level of man environment interactions which ultimately determine the socio-legal set up of the tribal society. The analysis of geophysical factors acquire further significance in area of uncongenial environment, like that of Kinnaur, inhabited by simpler societies where man is largely at the receiving end and has hardly emerged from the realm of necessity.

Kinnaur was formally a part of the princely state of Bushahr. After independence the state of
Bushahr merged with the territory of Himachal Pradesh and the Kinnaur region formed a tehsil of Mahasu district. However, in 1960 it came into being as an independent district along with some part of the former Rampur Tehsil of the Mahasu district. It thus, form the north-easter frontier district of Himachal Pradesh along the international boundary with the Tibet region of the Republic of China.

Kinnaur is surrounded in three directions by Lahaul-Spiti in the north, Garhwal, U.P. in the South and Shimla in the West. In the easterly direction Kinnaur has its boundary with Tibet and forms an international border. The district is, thus situated between 31°-05'-50" and 32°-05'-15" north latitude and between 77°-45'-00" and 79°-00'-35" east longitude. The district is almost equally divided by the main Satluj valley. The river Satluj enters the district from Tibet in the north-east near the village Namgia and leaves it at the Western end at Chaura near Wangtu. There are three more or less parallel mountain ranges namely Zaskar, Great Himalaya and the Dhauladhar. The

1. See map.
general elevation of peaks in these mountain ranges vary between 5180 and 6770 meters and hence are covered with snow all the year round. The district is formed of great masses of mountain spurs and the level grounds are available only along the valleys. High mountain ranges and fast flowing rivers divide the whole district into different valleys namely, Satlu, Hangrang, Ropa, Bhaba, Tidong, Baspa etc. each being isolated from one and other either by a range of mountain or river which geographically, can conveniently, be divided into three divisions—Nichar, Kalpa and Pooh. Climatic conditions of the district also present a varied picture. These varied conditions depend upon the nature of land mass, nature of vegetation and intensity of rainfall. Thus, the three zones, i.e. Nichar, Kalpa and Pooh correspond to distinct climatic conditions.

Difficult mountain ranges and harsh climatic conditions are responsible for thin population in the district. Human habitation is mainly concentrated along the river valleys—where terraced cultivable land is available. These valleys are separated from each other by snow covered mountain ranges or fast flowing rivers difficult to cross. Thus, restricting the free
mixing of people of different valleys with each other and forcing the people to develop their own socio-cultural traits of life. The socio-cultural differences present among the inhabitants of Kinnaur are not only at the inter-ethnic level but also at the intra-ethnic level depending upon the geographical isolation and ecological conditions prevailing at the local level in which the particular group of people live. As such cultural variation may exist, at smaller levels, between the ethnic groups of the same identity living in two different geographical and ecological settings. For example the people living in Pooh area show some differences when compared to the people of some ethnic group at Nichar, but have least differences when compared to those living in the adjoining areas. In other words it can be said that people of different ethnic groups in a particular isolated region develop common socio-cultural traits which are not followed by their counterparts living in other areas. But it cannot be denied that the people living in geographical proximity of a particular area get influenced by the way of life of the inhabitants of that area. Thus the possibility of having common socio-cultural traits between people living in the nearby
region cannot be denied. Since the upper region of the
district i.e. Pooh sub-division is in close proximity
to the Tibet region as compared to the Nichar sub-
Division, we find greater Tibetan influence on the
socio-cultural life of the people in Pooh area. Whereas
Tibetan influence is not found in the Nichar sub-division
which is in fact, influenced by the socio-cultural
life of the main land. The Kalpa sub-division shows
the mixture of Tibetan and hindu influence on the way
of life of the people living therein.

From the above discussion it can safely be
concluded that the geophysical conditions in Kinnaur
district have created a cultural barrier. Accordingly
the district can conveniently be divided into the following
three cultural regions:

i) Upper region influenced by Tibetan culture.

ii) Middle region having a mixture of Tibetan and
hindu influence.

iii) Lower region dominated by Hindu Culture of the
main land.

Incidentally the above cultural division corresponds
to the administrative division of the district into three
sub-divisions, namely Pooh, Kalpa and Nichar.
Kinner in Early Literature:

The inhabitants of Kinnuar are known as Kinnauras. Whether they are the descendants of the Kinners of the ancient time or not, is still a debatable question. However, we come across the name of Kinners along with some other names like Vidyadhars, Apsaras, Yaksas, Raksas, Gandharvas etc. in ancient literature and in the great Hindu epics. Legends and mythology consider Kinners as a distinct race, somewhere between human beings and God. They have been variously described as fabulous beings, half human, half bird with bird's legs and wings, and human head. They have also been described with human body mounted upon the head of horse or with the horse's body and the head of a human being. These have been called kimpurshas, meaning 'what kind,' such creatures are supposed to inhabit a semi celestial region high in the Himalayas where earthly saints who have attained perfection consort with super-human beings. As has been said above that whether or not the present inhabitants of Kinnaur are the descendants of the mythical Kinners, but from the point of view of living in


the high himalayas they can claim to have that aura around them.  

Leaving aside the mythical kinners, it has been shown that the tribes like kinners, kirats, Naças etc. did exist and lived as contemporary inhabiting the areas in the high Himalayas. The region inhabited by Kinner tribe was called Kinner Desh situated between mountains of Satluj and Yamuna. It can, thus, safely be concluded that there did exist a tribe known as Kinner and that they inhabited the area now comprising Kinnaur district in addition to the other areas in the Himalayas. With the passage of time and centuries of change and upheaval the kinners, along with other tribes in the adjoining regions, were gradually pushed towards higher hills and ultimately assimilated with the invaders beyond recognition. This was done in a two pronged attack, one by the Vedic Aryans of the plains going upwards and another by the Khasas, sister branch of Aryans, who penetrated into the region gradually marching through the hills of Khasgir i.e. Kashmir. During this strife

5. Satyaketu Vidyalankar, Bhartiya Sanskriti Aur Uska Itihas, p. 29.
   Budh Prakas, Studies in Indian History and Civilization, pp. 355-56.
and struggle the natives were dominated and swallowed by the powerful invaders and thereby becoming the undisputed masters in the region. Khasas settled themselves to the cultivation of the land in addition to the patent occupation of rearing and raising cattle which practice continues even to day. The native people became their inferiors. This shows that why the low caste people in the region represents the aboriginal character to a great extent as compared to the high caste people. The domination by the Khasas of the native people also accounts for the existence of the high and low caste in the Kinnaura tribal society of to-day, a unique characteristic, not heard of in a tribal community.

Among the Khasas the affairs of the community were carried out with common consent and the village and family deities were the guiding hands. Disputes of all types including marriage and divorce among the families were settled by the village panchayat. An elder of the house was considered a representative of the family deity who spoke for the family in the assembly of the elders of the community. The same practice continues even today among the inhabitants of the Kinnaur region particularly

for the settlement of their disputes of social nature including marriage and divorce etc.

Due to inter-mixing, however, certain customs, manners, and beliefs were evolved and these differed to a great extent from the manners, customs and beliefs of the Aryans from the plains. The social organisation in this mountainous hill region coupled with the topographical features of the areas forced the people to evolve some code of conduct which suited them in the peculiar circumstances. With the passage of time and centuries of isolation from the main land, certain customs and manners have been evolved which regulated the social life of the people all through the years. The observation of the great jurist Paul Vinogradoff in this regards helps to illustrate the point. He observed:

Settlements in a mountainous country naturally get fixed, and a small, secluded, easily defended valley may retain stiff tribal customs for thousands of years.

Kinnaura a Generic Term:

Literal meaning of 'Kinnaura' is the inhabitant of Kinnaur. However, every person residing within the territorial limits of Kinnaur district cannot be termed

as Kinnaura. Kinnaura is in fact the name of a tribe. Most probably the territory derived its name from the tribe itself. In the ancient literature, the abode of the Kinner tribe has been described as 'Kinner Desa' which has now been corrupted and pronounced as Kinnaur. Thus only that person who belongs to the Kinnaura tribe is considered as 'Kinnaura'. According to the demographic figures, Kinnauras are the principal inhabitants of the Kinnaur district though they are scattered in other districts also. The original Kinner Desa is believed to have been far larger than the Kinnaur district of to-day and so is the tribal population in the olden days than at present.

Present Day Status of Kinnaura Tribe:

As has already been pointed out that the people now inhabiting Kinnaur do not belong to the original aboriginal stock. For centuries together people driven by invaders and conquerors from Punjab plains and adjoining sub-mountaineous tracts entered the region and got absorbed here. However, it has been observed during field study that no large scale immigration for permanent settlement in Kinnaur has taken place in the living memory of the inhabitants. Un hospitable climatic conditions and uncongenial natural environment of the region as compared
to the conditions prevailing in the adjoining plains are the factors responsible for this. The following table shows the population growth of Kinnaur district since the beginning of the present century.9

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Males</th>
<th>Females</th>
<th>Decennial Variation</th>
<th>% of decennial variation</th>
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<tbody>
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<td>27232</td>
<td>14252</td>
<td>12980</td>
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<td>14664</td>
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<td>-279</td>
<td>-0.98</td>
</tr>
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<tr>
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<tr>
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</tr>
<tr>
<td>1981</td>
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<td>31598</td>
<td>27949</td>
<td>+9712</td>
<td>+19.49</td>
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</table>


It is clear from the table that there has been a steady growth of population in the Kinnaur district with the exception during the decade 1911-1921. The abnormal increase in the population of the district after 1951 is due to the large scale migration of non-tribal...
population to the area for the developmental activities undertaken by the Government in the region. However, the percentage of decennial variation for 1981 is 19.49 as compared to Himachal Pradesh as a whole which stands at 23.71. This shows that the growth of population in Kinnaur is comparatively less than that of Himachal Pradesh as a whole.

The bulk of the population in Kinnaur is tribal. The following table shows the S.T. and S.C. population of Kinnaur district and their percentage to the total population of the district as compared to the total population of Himachal Pradesh.

The table below shows that 75 per cent of the population in Kinnaur is tribal whereas for Himachal Pradesh the figure stands as 4.61 per cent. It is clear that the district registered a considerable decline in the S.C. population from 19.40 per cent in 1971 to 10.63 per cent in 1981. The decline seems to be technical in nature in the sense that most of the S.C. population in Kinnaur district preferred to declare themselves a tribes rather than a caste. Noticably, they have done so during the 1981 census, hence, the apparent decline in the growth rate of their population.
<table>
<thead>
<tr>
<th>Source: Census Hand Book</th>
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</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Population Total</th>
<th>% of S.T. Population S.T.</th>
<th>% of S.C. Population S.C.</th>
<th>Total Population State District/all District</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>4.09</td>
<td>68.41</td>
<td>1972</td>
<td>76.60</td>
</tr>
<tr>
<td>1981</td>
<td>4.61</td>
<td>74.87</td>
<td></td>
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</table>
As we will see in the following pages that the Kinnaura tribal society of today is an admixture of so many things. They belong to different ethnic groups, they profess different religions, there are differences in certain details of their social life. There is no common headman or tribal chief, yet there exist a Kinnaura tribe. What is that which keeps these tribal folk together? The answer seems to be that there is some link with the prehistoric kinner tribe, having a geographically defined territory i.e. Kinnaur district of Himachal Pradesh, a common tribal name i.e. Kinnaura and there exist an overall similarity and a basic identity in numerous matters of fundamental significance. And above all, to put it in the language of Mr. T.S. Negi: 

Immigrants there might have come to Kinnaur from all four quarter, but each and every one got absorbed into that certain something which has been the Kinnaura society. This society has no doubt been influenced and changed, in some degree, by these immigrations and by the changes of times, but its overall form exists, its soul lives and its genius subsists.

Kinnaura Tribal Society:

The present Kinnaura society is not composed of a single ethnic group. The term Kinnaura is used for different ethnic groups inhabiting Kinnaur. Various

constituents of the Kinnaura society are the Kanet, Badhi, Lohar, and Koli. The Kanets are the dominant group followed by Koli, Badhi and Lohar. Broadly speaking, the Kinnauras are divided into two main divisions one the Kanets who are classified as a scheduled tribe and the other including all remaining ethnic groups is called scheduled caste. About the Castes of Kinnaur, there is a reference in the Ethnography of 'Bushahr' state by Pt. Tikka Ram Joshi, edited by, H.A. Rose, Chief Secretary of Punjab in 1912. It says: 11

Besides the Kanets or Jads the only two castes in Kinnaur are the Chamang and Domang.

Thus the Chamang i.e. Koli who make shoes and weave and the Domang, i.e. Badhi and Lohar who are carpenters and blacksmiths along with the Kanets, in fact, constitute the Kinnaura tribal society.

Though each ethnic group occupies a definite position in the social hierarchy yet it follows by and large some set of rules, norms and beliefs to give it a shape of an integral constituent of the homogeneous society of Kinnauras. Water and cooked food which has been

touched by a lower caste people is not used by Kanets, nor are people of these castes allowed to enter a Kanet's house. It implies that marital relations, as a matter of rule, cannot be established between two persons belonging to a higher caste and a lower caste.

Among the Kanets of Kinnaur there are three grades and each grade is comprising of a numbers of septs i.e. sub castes. Intermarriage within the sept is strictly speaking, not allowed, but inter-sept marriages do take place. That is to say marriage alliances normally are established by the Kanets within their own grade but not belonging to the same sept within the group itself. The division of the Kanets into grades or groups denote their social status. Grade one Kanets are socially superior to grade two and so is the case with the Kanets of grade two as compared to the Kanets of grade three. Thus the girls of Wazas (Grade III) are not taken in marriage by the Kanets of other grades nor do the later give their daughter to Wazas. If any one out of the higher Kanets marry a girl from the lower Kanets he is considered inferior and ex-communicated, though

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the marriage remains valid. Similarly if a girl out of a high Kanet contracts a marriage with a boy belonging to the lower grade that of her, she is considered inferior and ex-communicated. However, the redeeming feature in this kind of restriction is that if there are such marriages in three successive generations in the high grade families the offsprings of that family attain the status of the family belonging to the higher grade in the third generation. It has been observed during the field study that the gradation system among Kanets is denoted by a term locally pronounced as Orung. People belonging to the same Orung, though they may come from different septs can marry among themselves.

Among the scheduled caste Domang i.e. Badhi and Lohar consider themselves superior to chamang i.e. Koli. Domangs do not eat with chamang and do not enter into matrimonial ties with them. However, Badhi and Lohar intermarry with each other.

Kinnuara tribal society is polyandrous patriarchal in nature. Inheritance goes by patriarchy. Joint family system is still in vogue among them. Father, sons, brothers generally live together under the same roof and own property in common. However, there has been developing a tendency among the younger generation
to live separately as has been reflected by the increasing number of partitions of joint family property sought year after year.

In a tribal society dominated by polyandry the lady of the house has always played a significant key role in the family. The women are comparatively laborious and play a vital role in the economy of the family. They in fact lend a helping hand to men in socio-economic pursuits where pooling of resources is necessitated due to the un hospitable geographic and ecological conditions. In such a social setup women forms a pivotal around which all other members of the family move. She tries to please all her Co-husbands, though tactfully, and children. In spite of this they are dependent upon men at all stages and situations in their life for shelter, food, clothing and other necessities of life. Leaving aside all this, a Kinnaura woman is self respecting and in case of disliking in this comparatively free social order she is at liberty not to be tied down to the unliked environment. She thus enjoys a greater freedom in her marital life and can abandon the family if she gets a more suitable husband for her. It is because of this freedom we find frequent cases of divorce among the Kinnaura tribal society.
Religious Traits of Kinnaurus:

Majority of population in Kinnaur district are Hindus followed by Buddhists. Religion-wise description is given in the following table since 1961 to 1981. During 1951 census religion-wise data of the population were not collected. It is clear from the table given below that barring a very small fraction of Sikhs (only 27) there were 91.22 per cent Hindus and 8.70 per cent Buddhists in population of Kinnaur. Although amongst Hindus many were non-tribal who entered the area as government servants or other workers. In 1971, the religious composition of the district underwent interesting and far reaching changes. Alongwith sikhs the other communities who made their appearance were christinas, Muslims and Jains though in small numbers. The more interesting point in this context is that the percentage of Hindu population to the total population went down from 91.22 per cent to 85.25 per cent, whereas the percentage of Budhist population went up from 8.70 per cent to 14.21 per cent. The decennial growth rate for Budhist which stood at 98.51 per cent was much higher in comparison to the decennial growth rate of Hindus which stood at 13.64 per cent. The trend continues in 1981. We find that the percentage of Hindu population to the total population have come down from 91.22 per cent in 1961
<table>
<thead>
<tr>
<th>Year</th>
<th>Total Population</th>
<th>Hindus</th>
<th>Buddhists</th>
<th>Sikhs</th>
<th>Christians</th>
<th>Muslims</th>
<th>Jains</th>
<th>Others</th>
<th>Percentage of the Hindus to the total population</th>
<th>Percentage of decennial growth of Hindus</th>
<th>Percentage of Buddhists to the total population</th>
<th>Percentage of decennial growth of Buddhists</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>4,0980</td>
<td>3,7384</td>
<td>3,569</td>
<td>27</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>91.22</td>
<td>--</td>
<td>8.70</td>
<td>--</td>
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<td>4,2486</td>
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<td>85.25</td>
<td>13.64</td>
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<td>14,426</td>
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<td>73</td>
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<td>5</td>
<td>75.18</td>
<td>5.37</td>
<td>24.22</td>
<td>103.61</td>
</tr>
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</table>
to 75.18 per cent in 1981. On the other hand the percentage of Buddhists population increased from 8.70 per cent in 1961 to 24.22 per cent in 1981. Reason for the tremendous increase in the Buddhists population of the district during 1971 is not far to seek. As has been rightly stated by Mr. T.S. Neçi\textsuperscript{13} a sizable sectio of the Kinnaura population professes budhism of one or the other type, but earlier many of them never disclosed themselves as Buddhists to the government officials fearing descrimination in the matters of appointments in government services. However, the increasing contacts with the outsiders and general awakening and the spread of education persuaded many a people to disclose their correct religious identity.

The impact of religion on social customs, manners and beliefs in a society, particularly a tribal society, cannot be denied. Kinnauras have always considered themselves the inheritors of mythical Kinners. With this aura around them they have been great worshippers. As there is no scientific evidence to support the mythological beliefs, it may be inferred that long time back Kinnauras knew no religion other than their own village deity.

\textsuperscript{13} T.S. Neçi, Scheduled Tribes of Himachal Pradesh - A Profile, (1976), p. 38.
In Kinnaur the original religion, within the living memories of the people, centered around the principal village deity who commanded great respect. Animism has been the matrix. Village deity till recent times had been taken as granted the doctor, an astrologer, an arbitrator, a judge and a chief executive etc. The position of the village deity has not been altered to a great extent even today in respect of its role as a judge. Disputes of social nature including matrimonial disputes are resolved between the parties through the intervention of the village deity.

It has been observed that for a long time in the ancient past the region was characterised by the deity type of religious beliefs. The mention of Hindu Gods, Epics and other religious scriptures in the literature of the Kinnauras, particularly that of lower region, suggests that at a later stage the tract came under the impact of Hinduism. At a still later stage the Lamaism made inroads into the region through the upper part in the close vicinity of Western Tibet. Lamaistic Buddhism slowly and gradually took deeper roots at least in the upper part. As a result of original form of animistic faith and worship is not the sole occupant.

14. Ibid.
of the religious arena any more. Today the village deities and their retinue still go very strong side by side. There go, too, the lamaistic Buddhism and a local version of Hinduism. The religious rites of birth, marriage, and death are performed in accordance with the local versions of Hinduism as interpreted by the local priests who generally are the lamas particularly in the upper and central part of the region. The reason for limited popularity of Hinduism, as strictly followed by Hindus of the plains and the people, in the adjoining areas, appears to be the want of preachers of Hinduism in this inaccessible and unhospitable region. No Brahmin, the preacher of Hinduism, ever settled in this region. On the other hand Lama priests are scattered throughout in the region. Brahmins are not met with beyond Sarahan.

It has been observed that in upper as well as central Kinnaur lamas perform all the religious rites of the people concerning birth, death and marriage. This shows that besides Hinduism of the local type prevailing

15. Ibid., p. 39.


17. Edward Thornton, A Gazetteer of the Territories Under the Government of the East India Company and of the Native States on the Continent of India, p. 211.
in Nichar sub-division, Buddhism of lamaistic type also prevails in a major part of the district. In reality, lamaism in true form rules the scene in Poor and Morang Tehsils while admixture of Buddhism and Hinduism is found in Kalpa Tehsil. Geographical set-up of the region and the cultural isolation of the people of one group with the people of other group have made the religious beliefs of the tribal society different from one and the other group within the region generally and those of the Kinnaura tribal society from the religious beliefs and the practices followed in the Kinnaura tribal society, particularly concerning matrimonial relationships as will be seen, are heavily overlaid with the tenets of Lamaism as practised in neighbouring Tibet and the pre-aryan cults of the aborigins that inhabited this region long back, though moulded by the people suiting to their needs. Such modifications are a welcome step in view of the changed socio-legal requirements of the people in these areas.

From the above discussion it can be inferred that culturally the region is an admixture of indigenous animism, local hill cults and tentic lamaistic faith. The religion of Kinnaura tribal society shows the same mixed origin as their ethnical peculiarities. People
in upper region profess Lamaistic Budhism and those in lower region profess local version of Hinduism while the people in the middle region profess the mixture of Budhism and Hinduism of the upper and lower region.

Polyandrous Society:

Kinnauras are polyandrous people. All the brothers usually share one common wife which makes the polyandry as of fraternal type as distinguished from non-fraternal type where the husbands need not be brothers. In fact the polyandry has been in vogue not only in Kinnaur but in Lahaul-Spiti, Sirmour and the adjoining areas in U.P. and Tibet. Polyandry forms the societal profile in Kinnaur. Though with the spread of education and increasing outside influence due to inter-mixing of the tribal people with the people of main land, polyandry is being replaced by monogamy. However, it has been observed that a major part of the population still practices polyandry. There are many jurists and social scientists like Vinogradoff, Summer and Keller.

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Vestermarck, D.N. Majumdar who regarded the practice of polyandry in a 'society' because of harsh living conditions. There are others also who associated the polyandrous marriages with female infanticide, poverty, sense of family stability and division of labour, protection and support for the wife etc. It is thus clear that the reasons for prevalence of polyandry need not be uniform everywhere. As we will see in Kinnaur this custom has been in vague for a long time because of historical reasons and economic compulsions due to its peculiar geophysical setting.

Historically, the custom of Polyandry has been associated with the heros of Epic Mahabharata, the Pandvas, who are believed to have lived in these remoter

mountains during their exile and had one common wife, 'Draupadi'. This story certainly points out to the fact that polyandry was in existence among the Aryan people. There are many social scientists, like S.C. Sarkar,28 Iravati Karve,29 K.M. Kapadia,30 D.P. Vora31 and Sarva Daman Singh,32 who also attest the existence of polyandry in ancient India. If this was the custom prevailing in ancient past, no wonder the Kinnaura society, which has preserved many of the traits of primitive culture continues to be polyandrous in matrimony. Another factor which contributed towards the continuance of Polyandry among Kinnaura tribal society is that the Khasas who at one time inhabited the Himalayan region from Kashmir to Nepal, including the Kinnaur region, were polyandrous in nature.33 Intermixing of the Khasas with the native people cannot

be denied. As a result of this intermixing, it is possible, that the Kinnauras might have acquired the custom of polyandry which suited most to them in their geophysical setting. In the absence of clear cut evidences historical factors cannot be relied upon but at the same time their importance cannot be ignored in order to ascertain the existence and continuance of polyandry among the Kinnaura tribal society.

The Kinnauras are by and large agriculturists. However, no single economy is sufficient enough to fulfil the requirements of the household because of the peculiar geo-ecological conditions of the area. Besides agriculture Kinnauras tend sheep and goat heard, domesticate some milch cattle, undertake trading activities with the people in the adjoining areas and also works as labourers. Thus beside agriculture which is practically the main occupation of almost all Kinnauras, traditional occupations of different ethnic groups of kinnaura tribal society are followed by them. Additional occupations for Kanet, are tending sheep and goats, domesticating some milch cattle, maintaining apple orchards etc. Other ethnic groups may also have these as their economic pursuits. However, they are specialists of some particular occupations, like
carpentary, ironsmithy or making of shoes etc. In fact the occupational specialization varies from place to place depending upon its ecological settings at local level. All occupation put together make the Kinnauras self-sufficient to run their life. Kinnauras land holdings are usually small that too spread in three different places. Agriculture in these though geo-economic conditions needs many hands to work jointly to get appropriate reward, from the land. A sense of avoidance of fragmentation of land in the larger interest of the household unit is felt by these people. With the fragmentation of land there is a danger of loss of productivity of land due to shortage of manpower and then the land size becomes non-viable for its owner as with the division of land, other property, animals and equipments etc. are also divided. As a result it becomes almost impossible for the concerned members to run their economy smoothly at the household level for want of manpower, animals and tools etc. In order to maintain the household unit united, estate undivided and many helping hands available for joint venture, Kinnauras have sought a solution in polyandry and to give it a shape of a condition the penalties were exacted on partitions by the state. When a set of
brothers divided movable property one half share of the whole was appropriated by the State and the division of immovable property were refused official recognition. Economic factor thus, have played an important role in the prevalence of the practice of polyandry among Kinnaura society.

It can be argued that while other hill people whose geo-economic conditions are not much different from those of the polyandrous tribes, have been living reasonably happily even without this system, why should polyandry be the nucleous of the economy of the Kinnaura tribe? The answer is certain. It is not the 'poverty' which forms the bases of polyandry but the special geo-ecological conditions which prevail in this region forms the bases of polyandry. As has already been said, household economy in Kinnaur needs pooling of manpower and avoidance of fragmentation of land holding, these coupled with geo-ecological setting of the region form the bases of polyandry.

Westermarck, a noted social scientist, listed in his book, The History of Human Marriage, the principal causes conducive to polyandry. He mentioned the disequilibrium in the ratio of the sexes, as one of the causes for

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35. E. Westermarck, The History of Human Marriage, Ch. XXX, p. 194.
the prevalence of polyandry. But the disequilibrium in the male-female ratio cannot be considered as a cause for the practice of polyandry in Kinnaur. The following table shows the male-female ratio in Kinnaur.

<table>
<thead>
<tr>
<th>Year</th>
<th>Males</th>
<th>Females</th>
<th>Females per Thousand of Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>14252</td>
<td>12980</td>
<td>911</td>
</tr>
<tr>
<td>1911</td>
<td>14710</td>
<td>13760</td>
<td>935</td>
</tr>
<tr>
<td>1921</td>
<td>14664</td>
<td>15627</td>
<td>922</td>
</tr>
<tr>
<td>1931</td>
<td>15685</td>
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<td>941</td>
</tr>
<tr>
<td>1941</td>
<td>17400</td>
<td>15838</td>
<td>910</td>
</tr>
<tr>
<td>1951</td>
<td>16654</td>
<td>17821</td>
<td>1070</td>
</tr>
<tr>
<td>1961</td>
<td>20808</td>
<td>20172</td>
<td>969</td>
</tr>
<tr>
<td>1971</td>
<td>26407</td>
<td>23428</td>
<td>887</td>
</tr>
<tr>
<td>1981</td>
<td>31598</td>
<td>27949</td>
<td>885</td>
</tr>
</tbody>
</table>

In fact Kinnaur had always a higher sex ratio than even the national average. In 1951 there were 1070 women for 1000 men. In 1971 and 1981 apparently it look that the region suffered from a large deficiency of females. This deficiency of female population is not real because of the
fact that in 1971 a large male dominated work force entered the region from outside especially the defence and paramilitary forces. Thereby the overall sex ratio in Kinnaur is progressively going down. In the native society, however, sex ratio is still higher than the state and national average. Many of the women because of polyandrous marriages remain unmarried and became Zomas.

Thus it is clear that there is not a single but combination of factors responsible for the practice of polyandry in the Kinnaura tribal society. These can be summarised as follows:

1. Historicity.
2. Geo-ecological conditions.
3. Pooling of resources and manpower.
4. Avoidance of fragmentation of holdings.

Tribal customs can at times be hardly expressed in the exact legal terminology of a civilized society. In the polyandrous family children are all attributed to the eldest brother, but that is a mere euphemism, for if a man dies his brother or brothers succeed in preference to the sons who are as much their own sons as of the deceased. The younger brothers may be said to have limited rights over the property as the marital
and paternal power rest, in the strict sense of ownership, with the eldest brother. However, polyandry among Kinnauras is nothing more than a mere custom of community of wife among brothers who have a community of goods, with a reservation that a member cannot enforce a division of the wives and children for exclusive appropriation against the wishes of the others.

However, during field study, an under current is noticed among the younger generation of the Kinnaura tribal society against the age old custom of polyandry. This change is a welcome step in the improved socio-economic conditions of the people in the light of developmental activities undertaken by the Government and the free mixing of tribal with the non-tribal population due to the improved means of communications and spread of educational activities.

Judicial Administration:

It is not possible to form any idea of the administration of justice of ancient 'Kinner Desa' i.e. Kinnaur region of the Himalayas. The nomadic pastoral people of the region must have gradually settled in the small villages with their local deities. At this stage the disputes among the native people must have been settled with the intervention of the village deity. It seems because in the absence of organised politico-legal system,
it was the village deity who commanded great respect among the people and His words were respected by them in order to avoid future curse of the god. Gradually with the passage of time some people who were physically powerful must have acquired the status of Thakur and in the course of time the most powerful amongst these Thakurs must have emerged as all powerful kings or Rajas. Thus Kamru Thakur after subjugating several Thakurs of the Kinnaur region emerged as a Raja of Bushahr. Thus an autocratic polity came into being. It appears that there has always been a certain amount of independence enjoyed by the people who used to organise themselves without much interference from the Raja. Thus the system of administration was archaic though inexpensive. The village level administration was entrusted to a body comprising a Mukhiya, a char, a Halmandi and a Toknya. Halmandi and Tonkya belonged to the scheduled caste community. Besides this, there used to be a kind of Panchayat consisting of two or three noblemen of the village. The main function of the Panchayat was to collect the land revenue and to settle disputes amongst the people of the village.  

37. Ibid., p. 228.
The judicial administration, thus, was of very elementary stage. There was neither set laws nor a definite procedure to be followed at this stage. Since the members of the Panchayat used to be the old and respectable persons of the village community, they knew the facts of the dispute. Parties were given the personal hearing to put forward their claims and counter claims. After hearing the parties the panchayat decide the dispute then and there to the satisfaction of all concerned. Matrimonial disputes were rare as the matrimonial alliances were generally entered into with the prior consent of the village deity. Once such an alliance was entered into chances of its revocation come to an end. Because the women were dependent on the husbands in the polyandrous society, the chances of divorce were rate. Dispute normally arose when one of the husbands of the polyandrous marriage brings a new wife into the house hold on one pretext or the other. The induction of second wife into the household hurt the feelings and position of the first wife, in which case she normally sought divorce or contend that the husband who had brought the second wife should live in a separate house with his new wife. Such types of disputes were generally settled by the village panchayat pertaining to the matrimony.
Above the village official, there used to be a Daroga, a state official, who would visit the village every year or two to settle the major disputes, if any. This system was functioning under a Sarhaddi Wazir, who was incharge of the frontier and was invested with considerable independent authority. The office of the Sarhaddi Wazir was not hereditary. The ablest man available in the area was appointed as a Sarhaddi Wazir.

Thomas Hutton while describing the position in about 1838 reveals that the Raja had three Wazirs who managed the affairs of their respective territories. These three wazirs were equal in rank and their offices were hereditary. Below them were several inferior officers also called wazirs, whose offices were not hereditary, but who were appointed by the Raja annually. The Sarhaddi Wazir thus formed the part of the administrative machinery at the lower level than the three hereditary wazirs as pointed out by Thomas Hutton.

With the passage of time, these hereditary wazirs consolidated their positions and virtually took the administration of the state in their own hands. This

situation continued till 1887 when Tikka Raghunath Singh took charge of the administration.

Thus by this time, though the apex administrative machinery had been controlled by the hereditary wazirs who were corrupt, yet the administration at the lower level continued as earlier, particularly at the village level. The hereditary wazirs and the official below them were interested in the collection of revenue and settlement of criminal disputes. Social matters and disputes concerning such matters continued to be settled at the village level by the Panchayats, without much interference by the superior officers of the state administration.

The court of Raja was the only court of appeal. Till 1887, as has been mentioned earlier, hereditary wazirs were supreme but after the assumption of power by Tikka Raghunath Singh, he took over all powers of Justice. With the assumption of powers by Tikka Raghunath Singh, though the judicial powers of the hereditary wazirs come to an end, yet this change did not in any way affected the procedure of settlement of disputes concerning social matters including matrimonial disputes. However, the village Panchayats, which were responsible for the collection of land revenue and the settlement of revenue disputes, were abolished by him in 1895. But
local disputes, other than those concerning land revenue, continued to be resolved by the elderly persons of the village with the consent of the village community in accordance with the local customs and traditions. Village god used to play a dominant role in such matters not in any way less than the command of the Raja. Redressal of grievances were sought at the local level because the movement of people from the far flung villages to the capital, at the seat of the Raja, was not an easy job. Geo-ecological conditions prevented the people to move from one place to another for the settlement of their personal disputes. Village deity filled the gap in this matter and the people contended themselves with the type of justice meted out to them by the village deity particularly in their personal matters.

After the death of Tikka Raghunath Singh, Rai Sahib Mangat Ram took over as a manager and all powers were passed to him and lateron to an English manager till the succession of Raja Padam Singh to the throne in 1914 and continued to vast in him till his death. The laws of British India were not applicable in Bushahr State. Only those laws which were suitable to the region were introduced by an executive order from time to time. Thus the Kinnur region continued to follow the old practice
regarding the administration of justice even during the British period. Theocratic system of administration of Justice at the local level continued without any obstacle, internal or external, and stood the test of time to the satisfaction of all concerned.

Though the ancient Panchayats were abolished by Tikka Raghunath Singh in the last decade of the last century, they have now been revived under the H.P. Panchayati Raj Act, 1968. Under this Act several Nyaya Panchayats have been established. They derive their powers from the said Act, suitable to the special local conditions. The term of each Nyaya Panchayat is of three years. These Nyaya Panchayats are empowered to impose a fine not exceeding Rs. 100/-. They cannot sentence any one to imprisonment in any form. In Civil cases except with the agreement of the parties, Nyaya Panchayat cannot impose fine exceeding Rs. 100/-. The gram Sabha is the limit of jurisdiction. The appeal against the Nyaya Panchayat can be made to subdivisional judge or the SDO in criminal or civil cases as the case may be from where the appeal goes to the district judge, session judge and to the High Court.

Though the modern system of administration of justice has been introduced in the region, yet during the course of field investigation it has been revealed that
the old system of administration of justice generally and in personal matters particularly, still enjoys the confidence of the majority of people in the region. The people living in upper zone of the region try to resolve their personal matters including matrimonial disputes at the local level. There appears no case which has been brought to the High Court by the party concerned for its settlement. A solitary case has been decided by the Himachal Pradesh High Court concerning the grant of maintenance to the wife. This case is from Kalpa subdivision i.e. the middle zone. Moreover, the case is not between the two tribal people but between a tribal woman and a non-tribal man. This may be one of the reasons that the matter has been brought before the High Court instead of resolving the same at the local level. Barring such cases of exceptional nature, the writ of the village deity is still respected by the people in the settlement of their disputes concerning social and personal matters.

Migration and Application of Local Customary Law:

As has already been discussed that the Kinnaura tribal community has concentrated itself in the Kinnaur region of Himachal Pradesh. They have been inhabiting this area since time immemorial and have developed certain

customs, rules and beliefs which are peculiar and suitable to them. In their personal matters they are governed by these rules of customary jurisprudence. Since these tribal people are part and parcel of the national polity their interaction and social intercourse with the outside people is inevitable. This may happen in either way. Tribal people may come out of their territorial limit and may mix up with non-tribals. Or non-tribal may go in the tribal area and may develop intimate contacts with the tribal people. In case of Kinnaura tribe the instances of group migrations have not been reported within memorable time. However, cases of migration of individual family may take place. The person who migrates to the tribal area cannot be ipso-facto treated as a member of the tribal community and as such the application of tribal law does not arise. But in certain cases a non-tribal may go to the tribal area on some government job or otherwise and with the passage of time may develop intimate contacts with the local people so much so that he becomes the part and parcel of the tribal community by establishing matrimonial relations in accordance with the local tribal custom. In

such cases the question arises that whether that person can be treated as a member of the tribal community, and also whether such a marriage will be a valid marriage in the eyes of laws. A question to this effect has arisen in one case before the Himachal Pradesh High Court. The facts of this case are that one Rattan Devi belonging to Kinnaura Scheduled tribe was married by one Padam Singh, a non-tribal in accordance with the tribal custom of forcibly taking away a girl as his wife. Rattan Devi and Padam Singh lived as husband and wife for about 10 years and a son was born to them. Later on, the husband was transferred to an other place out side Kinnaur. He left behind his wife and the son and refused to maintain them. The wife ultimately approached the court for getting maintenance for herself and for her son from the husband. The trial court decided in favour of the wife. But in appeal the session court reversed the decision and ultimately the matter came before the High Court. The husband's contention before the court was that his marriage with the petitioner was void under Sec. 5(i) of Hindu Marriage Act, 1955 and, therefore, he is not liable to maintain her. The wife on the other

hand contended that the provisions of Hindu Marriage Act, 1955, do not apply in this case and according to the tribal custom, the marriage is perfectly valid and hence she is entitled for maintenance. The question before the High Court was, can a male governed by the Hindu Marriage Act 1955 and having a wife marry another female not governed by the said Act? The High Court rightly answered in negative. It said:

1) The exemption contained in Sect. 2(2) of Hindu Marriage Act, 1955 will apply only if both the parties to the marriage are members of the scheduled tribe. It is not enough that only one of them is its member.

2) Only those persons can marry who are under no legal disability. If this customary marriage is valid then it would follow that the Act can be easily circumvented by a male governed by the Act by marrying those Hindu females to whom this Act is not applicable.

Thus, it is clear from above that Sec. 2(2). Hindu Marriage Act, 1955, which excludes the operation of the provisions of the Act to the Persons belonging to Scheduled Tribes, is applicable only when both the parties belong to the

43. Ibid., p. 342.
scheduled tribe. It implies that the customary law of the tribal community cannot be availed of by a non-tribal even if the community has accepted the customary marriage between a tribal and a non-tribal.

A view has been expressed that while deciding the above case, social justice has been denied to the tribal wife particularly and to the members of her tribal community generally. It has been urged that our legal system should be able to respond satisfactorily to the situations like the one under discussion. It may be pointed out here that if the non-tribal people are allowed to adopt the tribal customs such type of exploitation would continue. The best course, and safer too, in such a situation would have been in following the practice of not allowing any outsider to adopt the tribal customs particularly in matters of social importance. Tribal customs and beliefs are meant for tribals only. A non-tribal if allowed to adopt these customs, exploitation of the tribal people cannot be stopped. It is suggested that special measures should be adopted in order protect the tribal from social injustice and various other forms

45. Ibid, p. 69.
of exploitations. The State Government may by enacting a law can regulate the establishment of matrimonial relations between a tribal and a non-tribal in case the marriage takes place according to the tribal customs. This can be done by the Government, as has been done in case of land alienations under H.P. Transfer of land (Regulation) Act, 1968 where the prior permission of the Deputy Commissioner is mandatory for alienating the land by a person belonging to the Scheduled tribe to any person not belonging to such tribe.46

Legal Ideas Underlying the Kinnaura Marriage Customs:

The study of customs and traditions of a society renders a deep insight in shaping and development of that society. Different social institutions which form the bases of a society get influenced by the customs and traditions followed by the society. Since marriage institution or the matrimonial alliances is the fundamental basis of social existence of human beings, the customs and manners relating to matrimonial alliances play a significant role in the development of the society. In other words we can say that the customs and traditions are developed by the society keeping in view the need of the society which in fact depends upon various factors

46. Sec. 3(1).
like, geographical setting, ecological conditions, religious traits of the people, caste composition, economic developments etc. A change in these factors is bound to influence the needs of the people and accordingly the rule of law governing the people changes. Since we are here concerned with the marriage customs of Kinnaura tribal society an attempt is made to point out the legal basis of Kinnaura marriage customs.

It has been shown that the Kinnauras have been living in the Kinnaur region of the Himalayas where the geo-ecological conditions are not congenial for the human habitation. It is because of this geographical isolation from the main land that the Kinnauras developed their own way of life which is different from that followed by the people in the mainland. Geo-ecological conditions of the region and the economic compulsion forced the Kinnauras to follow the practice of polyandry. Animistic traits of Hindu and Buddhist religion of the people could not be changed even after the spread of Hinduism in the adjoining areas throughout the centuries. Shastric innovations in marriage ceremonies could not influence these tribal people. Intermixing of natives with outsiders and invaders has considerably moulded the beliefs and manners of the present Kinnaura Society. It
implies that the marriage customs here have not come into being in an isolated way as the figment of some body's imagination. The present marriage customs are residual or modified forms of old practices. Matrimony in Kinnaur is an occasion for marry making. In such a situation matrimonial alliances cannot be anything else than the contracts of convenience and matters of mere bargain as distinguished from essentially sacramental nature of marriage in the adjoining areas.

**Types of Marriage and Their Legal Implications:**

The study of marriage customs of a society renders a deep insight in the socio-legal as well as cultural organisation of that society. Patriarchal society has different impact on the economy than the matriarchal society hence different set of rules come into existence to determine the rights and obligations of the parties to the marriage. In an isolated tribal society the bride price, gifts, dowry and other exchanges on such occasions effect redistribution of wealth and resources and thus by affecting the vital organs of the economy being about changes in the economic status of the families concerned. In spite of all such changes basic fact remains that the institution of marriage continues to be the fundamental basis of social existence.
In simple words marriage can be defined as an union between a man and a woman such that children born to the woman are recognized legitimate off-spring of both parents. Accordingly, marriage is an union between one man and one woman and that it establishes the legitimacy of children. However, a definition only in terms of legitimacy is inadequate as different rights and duties are perceptible in the institution of marriage. The legal and social concomitants of marriage are not and cannot always and everywhere identical hence a definition of marriage could not cover all its forms throughout the history of civilization. It, therefore, must include polyandry, polygyny and group marriage along with monogamy. No kind of marriage is ever prohibited provided that it pleases all those who are concerned with it. It implies that social sanction with corresponding obligations is more important than mere ritual and rites. In view of this one may agree that mere access to another man's wife should not be classed as polyandry. But an alliance between a woman and many men, may be brothers, cannot be distinguished from what may be commonly connoted by marriage in terms of stability, recognition, birth-status and property rights of children in any

society having the sanction of all concerned even if no formal ceremonial rituals have gone through in case of all men. Thus an union between a woman and many men may be termed as marriage if it gives rise certain rights and duties and having the sanction of the society. In the light of this discussion marriage may be defined as an union between two or more persons of opposite sex having the sanction of the society. It may be monogamous or polygamous depending upon the geo-ecological and socio-economic factors prevailing in a particular region. Because of the peculiar geo-physical and socio-economic conditions in the Kinnaur region the matrimonial alliances by and large are polyandrous in nature as has already been discussed.

**Different Forms of Marital Alliances:**

Different forms of marital unions prevailing in Kinnaura tribal society can be classified under four heads. These are:

i) Common arranged marriage.
ii) Love marriage.
iii) Marriage by capture.
iv) Haar marriage.

It is to be noted that because of different dialects spoken in different parts of Kinnaur different forms of marriage have different connotations. Not only this, it has also been observed during field study that some of the marriage rituals though may be quite similar yet have different
names in different dialects. The procedure of entering into the marital alliance is almost the same through the Kinnaura tribal society in the region. Smaller variations, here and there, have been observed during the field study. The reason for such variations seems to be due to the changed local conditions from place to place. However, the essence and spirit remains the same everywhere. In the following lines a brief description of the general procedure for entering into a marital alliance is given.

Common Arranged Marriage:

This is the regular and most accepted form of marriage. Locally it is known as Zanatung or Cholu-kima. In this form betrothal is followed by the marriage proper. The initiative for betrothal is taken by the parents of the boy. After an informal agreement between the parents of the boy and the girl a middleman, locally known as Majoumi, is appointed to get the betrothal confirmed. The number of middlemen may be more than one and he generally belongs to the village of the boy and is appointed from amongst the persons who enjoy good reputation for their straight and honest dealings. On the appointed day, agreed to by the parties, the majoumi go to the house of girl's parents. He takes with him some locally brewed wine butter and some cash amount from the boy's father.
Betrothal talks are initiated by the Majoumi with the girl's parents by offering the wine and butter to them. If the girl's parents accept the wine and butter it signifies that they have agreed to the proposal. Then the wine and butter is distributed amongst the family members after worshiping the family god. The girl's father is offered some cash amount also. The same procedure is also followed at the girl's maternal uncle's house to obtain his consent for the betrothal. In the earlier days this procedure was repeated with all the important relatives of the girl. However, this practice has been abandoned now. When the betrothal is confirmed between the parties through the Majoumi, the consent of the village deity is generally taken. The oracle, locally known as Grokch normally speaks on behalf of the deity. Here also wine, butter and some cash amount is offered to the deity. This completes the betrothal ceremony. In case the girl's parents do not want to enter into the marriage alliance then the offering of wine and butter are not accepted by them. It implies that they are not interested in the boy and as such the talks initiated by the majoumi come to an end.

When the betrothal is confirmed it is up to the convenience of both the parties to fix the marriage date. Marriage ceremonies are normally performed during June or November, i.e. before the winter season starts. Normally it is for the boy's father to get a day fixed by a lama or village deity. After the day is fixed he goes to the house of girl's father to intimate the auspicious day for the relatives on both sides are informed and invited.

On the appointed day for the marriage, the bridegroom gets ready to go to bring the bride. The bridegroom accompanied by near relatives and village musicians along with the lama go in a procession to the village of the bride. It is important to note that a companion always accompanies the groom. Normally this person used to be a friend of the groom whose both parents are alive. When the marriage party leaves the house of the groom the lama performs some Punjan and sprinkles some wine, curds etc. in all directions, thus invoking the blessings of the God. The wine is distributed among the members of the marriage party who now proceed towards the village of the bride.

As soon as the marriage party reaches the house of the bride, Lama is the first to enter the house. He is given a warm reception by the oldestman in the house. After this the groom and his companion enter the house followed
by other members of the marriage party. The marriage party is entertained with wine and delicious food. Meat and wine are the essential items of the menu and in the absence of these preparation, the marriage feast is criticised. Songs and dances continue for the whole night.

Next morning the bride, bedecked with ornaments, gets ready to accompany the groom. Her near relatives and friends present some gifts to her. After serving the gathering with delicious food, bride groom gets ready for his return journey. Bride accompany the groom along with the bridal procession consisting of her father, brothers and other relatives. Generally the bridal procession out number the members of the groom's party. On reaching the groom's village the procession takes rest in village temple for some time. The ladies belonging to the bride's village but married in the groom's village go out to welcome the bride and they also offer wine and other eatables to the guests.

After taking some rest the bridal procession goes to the house of the groom. When this procession reaches the house of the groom the bride is received by her mother-in-law and the other members of the bridal party are received by the elderly persons of the village.
Representative of the village deity or the Lama is also supposed to be there to receive the bridal party in order to ward off evil influences, song and dances are again the chief features of the festivity that ensues and continues throughout the whole night. The main symbolic ritual consists in the tying of a ceremonial turban around the bridegroom's head. In a polyandrous wedding it is usually the eldest brother who goes to fetch the bride unless otherwise directed by the local deity. Polyandry is signified by all the brothers, who are to share the matrimony, being ceremoniously decorated with turbans.

When the festivity is over and before the departure of the bridal party, certain pledges are formally reduced into writing. Bridegroom's father sets aside some piece of land for the bride. Similarly the bride's father agree not to insist for the bride's right over the property in case of divorce. A list of utensils given by the bride's parents is prepared. In case of divorce, these utensils or cost thereof, has to be reimbursed by the bridegrooms father. Middleman stands as witness to all such documents. Before departure, relatives and close friends make gifts in kind or cash to the newly wed. These gifts are normally made on reciprocal bases. A list of
such gifts is generally made and kept by the groom's family so as to reciprocate in future with any other relative or friend. Collection so made becomes the personal property of the bride, if its contributors belong to her side. Collection from the near and dear of the groom's family belongs to the bride groom's father. Generally the farmer fund is called **Udanag** and the latter **Belding**. Within a month, after the marriage, on any day convenient to both the parties, the bride's father or brother comes to take her back to her old home. This is a formal occasion. She is accompanied by a small party including her husband. In a polyandrous marriage any brother, and not necessarily the eldest, plays this role. In this way the ceremonial arranged marriage comes to an end.

As has already been pointed out earlier that there are some variations when it comes to the details of the marriage rites observed in different parts of the district due to changed local conditions. However, there is some deviation in the observation of the marriage rites in some part of the Pooh sub-division i.e. the areas which are along the international border line. In such areas the customs and rites of marriage are more akin to Tibet than to the other part of the sub-division. The marriage in this area is merely contract of convenience.
and matter of bargain, than the result of a preference founded on affection or esteem. Fathers of the boy and the girl propose and conclude the bargain. Marriage engagement takes place when the boy and the girl are of tender age. Marriage ceremony takes place when they attain the marriagable age which is generally 14 for the girl and 16 for the boy. Boys father goes to bride's father and settle the day of marriage and also the amount which, the bridegroom's side has to provide to the bride's family.

In Nichar sub-division of the district, the bridegroom does not go to bring the bride and she comes to the groom's house with the middlemen. In these areas such an induction of the bride into the bridegroom's family is considered good enough to serve all the practical purposes of a marriage. Here the bridegroom receives the bride, and not her mother-in-law as discussed above, at the gate when the bridal procession reaches the groom's house. However, during the field investigation it is found that now in recent times bridegrooms goes to fetch the bride as is the usual practice in other parts of the district.

Where there is no turban ceremony, as discussed above, as a custom to symbolise the union, sipping from the same cup by bride and groom takes the place of this

ceremony. In a polyandrous marriage all the brothers sharing the common wife sip and so does the bride from the same common cup. To signify a polyandrous marriage, particularly in some parts of Pooh sub division holding of the bride's right hand by all the brothers is mentioned as a practice in place of turban ceremony or sipping from the common cup. Validity of this practice which involves the holding of the bride's hand by the bridegrooms is a polyandrous marriage has been questioned by the author. During field survey no mention has been made by any person of this ceremony to signify a polyandrous marriage. It seems that either rarely such a practice might have been followed by some people in the area or there is some misconception regarding the marriage custom.

**Love Marriage:**

As the term implies, love marriage starts with a love affair that develops between a girl and a boy. In such a situation wisdom and decency lie in formalising the romance into a conventional marriage. If the boy and girl find the circumstances favourable i.e. they sense the implied consent of their parents, the boy take away the

girl to his house and thereafter negotiations start between the parents of both sides and when everything is settled the usual marriage takes place as discussed above. The tasks of the parties become difficult when they do anticipate an outright rejection from their parents, which normally is the case in most of such alliances, the boy and the girl elope and hide themselves for some time elsewhere. The couple is located sooner or later. If the parents of the boy approves of the union, they send two emissaries, with a bottle of liquor to the parents of the girl to open the negotiations with her parents or guardians and to patch up things. After persuasion if the girl's parents agree the elopement ends in the normal marriage and rites are performed by both the families. If the girl's parents refuse to boy and the girl are accepted as husband and wife by the boy's parents and are invited to live with boy's parents without any marriage ceremony. In the mean times efforts are continued to pursue the girl's parents to agree. Sooner or later their consent is obtained. During the course of field study instances have been found where the marriages are performed even after 7-8 years of elopement during which time the girl may be having some children. In such cases girl remains in her husband's house.
Love marriages are not the rule but the exception. In the Hagraon Valley along the international border, if the father of the girl do not agree to the proposal, he may bring back the girl wherever she is. Reason for this right of the father over the girl lies in the fact that the father gets the money from the boy's side for consenting to the marriage proposal. Unless this money is paid father of the girl can exercise his authority over the person of the girl.

In a love marriage, as is clear from the above discussion, the consent of the parents of the parties or at least of the girl and the parents of the boy must be there. If the parents of the parties do not agree to the love affair, the status of husband and wife cannot be imputed to the parties and are not considered as husband and wife by the tribal society.

**Marriage by Capture:**

Marriage by capture also known as Raksasa\(^{52}\) marriage or Kshatriya\(^{53}\) marriage has an element of use of force in it and as such it has never been considered a normal

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mode of contracting a marriage. The girl is captured by her would be husband. This happens with or without the consent of the parents of the girl. But some times intimacy exists between the boy and the girl and when the boy finds that the girl's parents do not and will not agree to their union he resort to capture her by force. Generally the girl is whisked away while she is going out to the field or from a fair or from some dancing party. The boy may capture the girl after looking for better opportunity with the help of his friends and carry her to his house. It is important on the part of the girl to struggle and attempt to escape, and if she succeeds she can be proud of it and the boy cannot establish his authority over the girl. Under the custom it is important that the would be husband must touch the girl first while whisking her away. The person who touches her first is considered the husband of the girl only. This practice makes it known to the girl that who is her husband in that group which otherwise would have been difficult to identify.

This mode of marriage, though not the normal way of establishing the matrimonial alliance, is quite often resorted to by the people belonging to the lower strata

54. E. Westermarck, History of Human Marriage, p. 399.
of the Kinnaura society. During the course of field study it has been observed that this method of matrimony is also resorted to in cases where the boy finds that some other family is also interested in the same girl. Fearing that the other boy may not take the lead he resorts to this method of marriage and by capturing the girl becomes her husband. Not only this but also in a case where the parents of the boy and the girl have agreed to have the arranged marriage, the boy finds that some other boy is planning to whisk away the girl, resorted to this method of marriage by capture before the regular marriage takes place.

In the past it was not uncommon to capture a bride without either the consent of the parents or the knowledge of the girl. Marriage by capture is growing rare with social advance and widening application of the Indian Penal Code. However, it continues, till date to be one of the ways of acquiring a spouse among the tribal society. Marriage by capture, where both the parties to the marriage belong to the same tribal community is a recognised custom and the parties so married are considered as

56. Ibid., p. 10.
57. Ibid., p. 10.
husband and wife in the eyes of law. The question of marriage by capture between a tribal girl and a non-tribal boy has come before the Himachal Pradesh High Court in a case relating to Sec. 125 Cr.P.C.\textsuperscript{58} Such a marriage has been declared as null and void by the High Court on the ground that the husband being a non-tribal is to be governed by Hindu Marriage Act, 1955 and not by the tribal custom. The court observed:

The exemption contained in Sec. 2(2) will apply only if both the parties to a marriage are the members of scheduled tribe. It is not enough that only one of them is its member. The reason is that only those persons can marry who have the capacity to marry. In other words they should not be under any legal disability.\textsuperscript{58} In the instant case though the wife had the capacity to marry, but the husband was suffering from legal disability. Being governed by the Act, he was prohibited from entering into any marriage so long as his previous marriage subsisted and the wife was alive. Any other interpretation would indeed lead to disastrous results.

While commenting upon the judgement given by the Himachal Pradesh High Court in the above mentioned case, it has rightly been observed:\textsuperscript{59}

Our legal system should be able to respond satisfactorily to the situations like the one under discussion. Under the Directive Principles of State Policy contained in Art.

\begin{itemize}
\item \textsuperscript{59} A.V. Kelkar, "Maintenance Denied to Tribal Wife," (1984), 2 S.C.C., pp. 66-70.
\end{itemize}
46 of the Constitution, the State is under duty to protect the tribal people from social injustice and exploitation. The State is also under a duty to apply the directive principles in making the law. (Art. 37).

Tribal and non-tribal are part and parcel of the same nation and polity. Their interaction and social intercourse, in the present set up of the society, is inevitable. In this process, the application of different sets of laws and rules governing the tribal and non-tribal may lead to conflict of laws as in the case of Rattan Devi Vs. Padam Singh Kapoor. Such problems may considerably increase as the process of social intercourse between the tribal and non-tribal gets accelerated in view of the policy of the Government to uplift the socio-economic conditions of the tribal people. While resolving such problems of conflict of laws, it is expected that special care is taken to protect the tribal from the various forms of exploitation including social and legal injustices. Moreover, the tribal community must not allow a non-tribal to take any undue advantage of their tribal customs.

Haar Marriage:

This is also called as 'Haari' marriage. A 'Haar' marriage implies the existence of the first marriage. In other words if a married women runs away or elopes with

some other man with the intention to marry the other man, the second marriage is called as 'Haar' marriage. In Haar marriage formal dissolution of the first marriage of the woman is not required. The only condition under the customary law is that the second husband must compensate the first husband in respect of the expenditure incurred by him during his marriage. If the first husband accepts the money, he loses his right over the wife and the person who pays the amount becomes her husband.

'Haar' marriage custom resembles with Reet metric practised by residents of Trans-Giri area of Sirmur district and Dhanti marriage among the Khasas of Garwal region of Uttar Pradesh. Kinnaura customary law recognises divorce and gives great latitude to the parties to determine the marital bond at their pleasure, subject to certain restrictions, Haar marriage has been recognised by the tribal society from the ancient times.

Different modes of marriage and marriage rites described above are common to all people. However, more effulent people prefer to perform the marriage with pomp and show. Economically weaker section of the society

generally try to make it a simple affair and as such the practice of marriage by capture is more widely practised among them. These are indigenous customs locally evolved by the people to meet their cultural needs. It is also clear from above discussion that marriage here is a form of contract without carrying the sanctity of religion. The reason seems to be non-availability of religious guidance from the priestly class of Hindus as no Brahman resides there. However, with the exposer of the tribal to the outside people and the frequent inter-mixing of tribal with the non-tribal, new innovations are seen in respect of the marriage rites among the tribals thus making a change in the style but not the intent.

Polyandry to Poly-Monogamy:

Polyandry finds wide prevalence in Kinnaur tribal community. However, it is fraternal type of polyandry as distinguished from Non-fraternal type. All the brothers of a particular generation usually share one common wife. Tying of 'Paari' by one and the same piece of cloth on the heads of all brothers or sipping from the same cup by the bride and grooms symbolises polyandry marriage. Sometimes an other wife is also brought into the family to be shared in common among all the brothers. When the brothers share several wives in common among them such form of unions are only next to polyandrous form and may
be called as 'Polyandry and Polygyny' form. Often it happens that in a polyandrous union younger husbands find it too difficult to adjust with the common wife who is considerably older as compared to them in age. In such cases either new wives are brought into the family and shared in common unless the younger brothers do not stake their claim over the common wife.  

There is no prohibition against a brother taking a separate wife exclusively for himself. If he does so he can continue to enjoy the common wife also provided the other brothers do not object. Such a brother has the right to separate and set up his own exclusive family. Thus 'Polyandry' gives way to 'polyandry and polygyny' form which in turn gives way to 'poly-monogamy' form of marriage among the Kinnaura tribal society. In 'Poly-monogamy' husbands who have enjoyed polyandrous status, for reasons of dissatisfaction go in for monogamy marriage. Thus it can be conceived as switching over from polyandrous stage to monogamy.

Though polyandry is a recognised custom among Kinnauras and is not looked down upon in their society. Yet this custom is dying its own death. With the changing scene of improving economy, spread of education and

intermixing of tribal with non-tribal, Kinnauras are heading towards monogamy through this transitional phase of 'poly-monogamy.'

**Essentials of a Valid Marriage:**

Having discussed the various types of marriage, we will now proceed to determine the conditions which must be satisfied before a marriage is regarded as valid under the Kinnaura Customary law.

1. **Capacity to Marry:**

   In every society there is an outer circle beyond which marriage is either prohibited or considered improper, and an inner circle within which no marriage is allowed. Kinnauras are no exception to it. A Kinnaura who is of marriagable age can lawfully take a woman as his wife from the Kinnaura community except a woman belonging to the lower classes i.e. 'Chamung' or 'Damung'. A boy or a girl becomes of marriagable age when they attain the age of 15 years. Parties to the marriage, however, must not be within the prohibited degree of relationship. Besides agnetic and cognatic relationship,

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customary law recognises the bar due to affinity i.e. the tie created by marriage between each person of the married pair and the kindred of the other.

2. **Valid Consent:**

Consent of the parties to the marriage, if they are adult, or of their parents or guardians, in case of minor, is necessary for a valid marriage. The consent can be expressed or implied. Even in cases where marriage by capture take place, the consent of the bride or her parents is taken afterwards. If the girl or her parents do not agree to the marriage, she is returned to her parents and is not considered as the wife of the capturer. In cases where consent of the girl or of her parents is not taken proceedings under Sec. 366 I.P.C. can be initiated against the boy and the plea of custom of marriage by capture can not be taken.

3. **Delivery of the Bride:**

Delivery of the bride into the house of the husband constitutes an essential element of Kinnaura marriage. The intention of the parties or their guardian to create a marital union must be manifested by an over act which indicates the transfer of the woman to the possession of the husband. The marital tie itself is constituted by the consent of the parties i.e. by their consent to become
husband and wife, being expressed or manifested. The mode in which it is necessary that this manifestation should take place is that the woman should pass into her husband's possession. A man and a woman are not married in the eyes of law merely because they live together, unless they do so with the intention of marriage. Induction of the girl into the family of the husband leans in favour of the valid marriage and the onus of proving that there was no marriage rests on the party who asserts it.

To sum up it can be said that for a valid marriage the following conditions must be satisfied:

i) Parties must have the capacity i.e.:
   a) Both of them must belong to a Kinnaura community of the same class.
   b) There should be no bar of prohibited degree relationship.

ii) Consent of the parties or of their guardians in case of minors.

iii) The induction of the wife into the family of the husband by actual delivery of the wife.

**Divorce:**

It has been observed above that the law relating to Kinnaura marriage is remarkable in its simplicity. Consent of the parties to the marriage or of their guardians followed by the induction of the bride into the
husband's family form the essence of the marriage tie. No priest or religious ceremony is needed to solemnize the marriage. Just as performance of marriage is a simple affair so is the dissolution of the marriage. Divorce among Kinnaura has been recognised from the very old period. This is evident from the fact that the 'Haar' marriage is recognised in the society. A wife in 'Haar' marriage gets the legal status of wife which is possible only if her first marriage is dissolved. In other words when the second husband compensate the husband of the first marriage, the first marriage stands dissolved without which the wife could not attain the status of wife in the second marriage. This shows the existence of the concept of divorce among the Kinnaura society.

The contract of marriage can be dissolved by mutual consent of the parties to the marriage. But can a wife terminate the marriage at her will and contract a fresh marriage, provided the husband pays the expenses of the marriage to the first husband? Such a right of the wife has been recognised under the Kinnaura customary law. It is unanimously said that a wife can terminate her existing marriage and take another husband, if he will pay the marriage expenses to his predecessor. This right

67. Supra, Haar Marriage, p. 60.
of the woman to determine the marriage, and contract a fresh one on payment of the marriage expenses may appear novel, but is a logical incident to the customary form of Kinnaura marriage. However, a trend is now visible among the new generation not to recognise this right of the wife to terminate the marriage. The second husband is now liable to be prosecuted under sections 497 or 498 I.P.C. (which make adultery and enticing away a married woman criminal offences).

Except in cases of 'Haar,' main reasons for divorce are domestic quarrels. In the wake of any dispute between the husband and wife, the middlemen, generally those who arranged the marriage, are again requested to intervene. In case the husband is not satisfied with his wife, he would divorce her and in each case the settlement terms are different. Similarly if a wife wants divorce she usually initiates it through her parents who in turn approach the middlemen. At first efforts are made to iron out the differences but if these conciliatory moves do not succeed and the parting of ways is regarded as the only unavoidable solution of the position, then a separation is decided with mutual consent. The proceedings are very simple. On an appointed date the parents of both the parties gather at a place. Then
they settle the accounts with the help of middlemen. The utensils ornaments and cash given to the woman at the time of marriage by her parents have to be returned by the husband. In case wife takes the initiative of divorce she has to return the agreed expanses to the husband incurred by him during the time of marriage. Finally a Twig is placed between the couple and they break this twig which symbolises the breaking of the marriage bond. The divorce is complete. Both the parties are now free to take on another companion. No legal or religious sanction is required. However, this symbolic snapping of a twig in token of the severance of matrimony as a ritual, that must originally have formed an essential part of the divorce proceedings, is hardly any longer actually carried out. Nowadays such proceedings are usually conducted through Panchayats, generally the regular ones and at times ad-hoc bodies representing the village elders.

Let it not be understood that when marriages are so easily dissolved the Kinnauras must be having an awful family life, in which the husband does not know what is to turn up next day. The duration of marriage does not depend on custom or law alone, but is regulated by a variety of circumstances in the social and economic life of the people. Marriage is by its very nature a
relation which lasts beyond the mere act of propagation. The presence of the children is a great guarantee for the continuance of the marriage tie, which is strengthened by economic considerations. A dissolution of marriage deprives the woman of a supporter and the man of a household drudge. The economic factors, including the existence of children, operate to keep a man and woman together. Marriage is a social institution which has grown out of human necessities and the social exigencies of the people. It attempts no religious hypnotism of the people, which would reconcile them to present misfortunes in the hope of future bliss. Kinnaura customary law is free from the higher conceptions of Brahmanic theology. Custom does not insist on a marital union being kept up when the parties decide to the contrary. The privileged position of the wife results from the nature of the marital rights in the Kinnaura Customary law and also from the existence of the freer conditions of marital relationship recognised by the Kinnaura society.