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Revisiting Family and Inheritance: Old age endowments among peasant households in early twentieth century Garhwal*

Rashmi Pant**

A dispute over the disposal of the property of one Murli, deceased, a peasant of Rath *patti* in British Garhwal,[1] came up before the Civil Magistrate in 1915. The case was brought by the son and grandson of Murli's brothers, to whom the property should have devolved under the rules of patilineal succession after the death of Murli's only son Rattan Singh. (See Fig. 1) At Murli's death, one share was held by his childless wife, Chuphli, and two shares were held by his other wife, Kutmani and her minor son Rattan Singh. He was considered to be of low status, or *kam asl*, because his mother had been married before and fell in the category of a *dhanti-aurat*, in local terminology. Soon after their bereavement the widows brought a common law husband into the household, locally termed a *tekwa*, to help with ploughing and giving labour service, or *coolie bardaish*, due to the state.[2] A son, Darshanu, was subsequently born to the first wife who became the

* Revised version of the Lecture delivered at the Nehru Memorial Museum and Library, New Delhi, 28 August 2012.

[1] By Garhwal, I mean here the district of British India that, along with the district of Kumaon, formed the Kumaon Division of the United Provinces. The entire division, largely mountainous, was governed under some special administrative and judicial provisions until the beginning of the twentieth century when it was sought to bring it in line with the rest of the United Provinces.

[2] As one witness in this case explained, "When a female loses her husband she keeps a man to plough for her and to inherit her property. That man is called Tekwa and lives as her husband. There was no drumming and c. on the occasion." Files from the Dewani Record Room, Pauri, henceforth PDRR, 583/1915.

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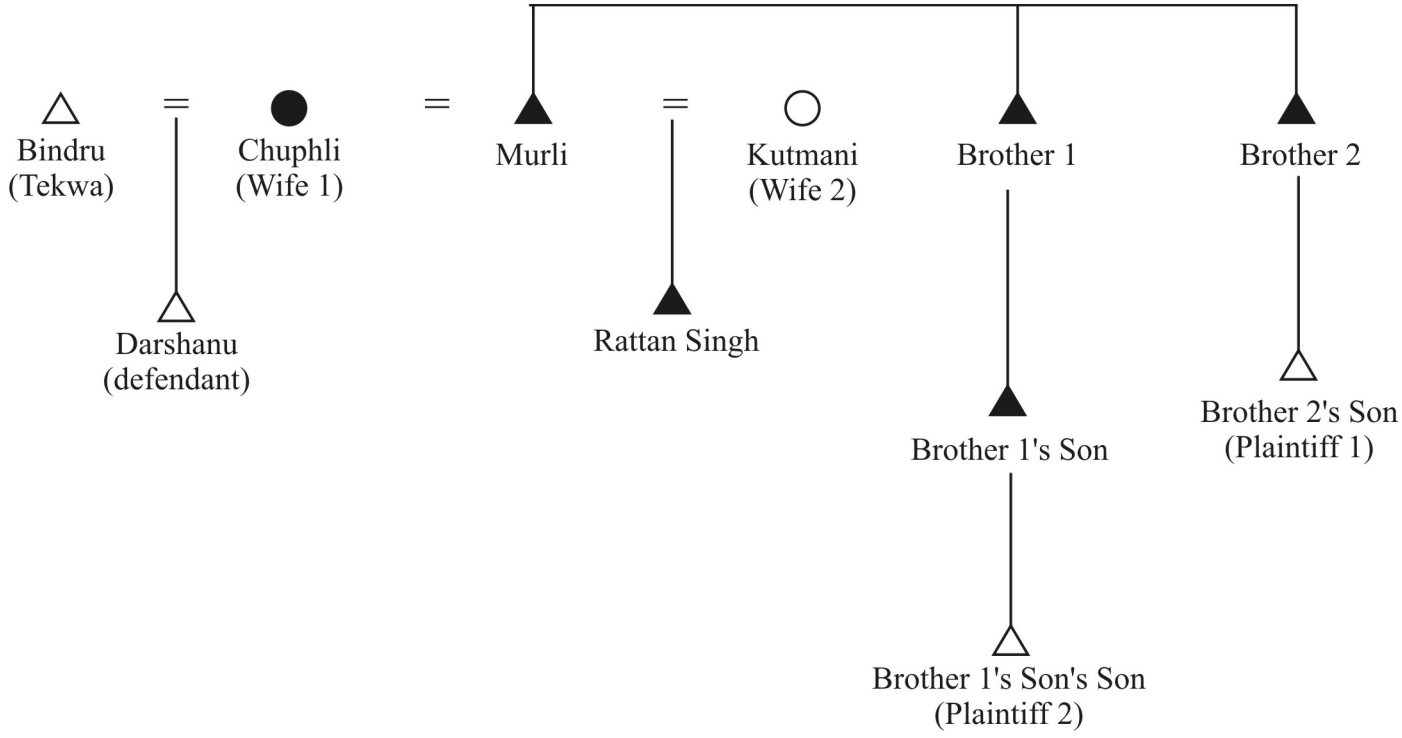
Murli's Household and Lineage



fifth member of the household, in which only Rattan Singh held by patrilineal succession, despite his low birth.

If we pause to reflect, we can see that the household at this juncture, after the death of the male head of the household, consisted primarily of relationships crafted by or through the women of the household. An even more typical type of female-headed household was one with the widowed mother as the head of the household assisted by a daughter and her in-living husband or *ghar jawain*. To appreciate the significance of this phenomenon, I should add that the censuses of 1951 and 1961 suggest that such households might have constituted up to 20% of rural households in some hill districts of Garhwal.

To return to Murli's household; on the death of the only patrilineal heir, Rattan Singh, Darshanu who had no biological relationship with Murli or with Rattan Singh through either parent, applied for mutation of Rattan Singh's property as his "brother" and this was granted by the Revenue Department. All hell broke loose when this was challenged in the Civil Court and the question of the legitimacy of familial relations began to unravel.

Darshanu's claim, presented by his step–mother Kutmani and father Bindru, as his guardians, was based on customary law. They emphasized that Darshanu had lived in the same household as Rattan Singh had been nurtured by him and that it was Darshanu who had performed the funeral rites for him. The plaintiffs' claim to Murli's property was devalued by pointing out that they had neither performed the funeral rites for his son nor ploughed land for his widows.

Judge Prem Lal Sah, the British-Indian magistrate, fulminated against such uses of Custom:

> The custom even if it exists is immoral and opposed to public policy. Hindu Law does not recognize a right of heirship in an illegitimate son by an adulterous intercourse. It was not actually a widow remarriage as no ceremonies were gone through…. On Murli's death Ratanu his son had full ownership of the property and on his death (it) goes to his nearest living relatives and not to the descendants of his step-mother by adulterous

> intercourse with a stranger… Mst. Kutmani takes limited widow's estate and on her death the property will go to her son's heirs…There is no doubt that Mst Kutmani has been unchaste as she kept Bindru as her second husband but this is no bar to her succeeding as an heir to her son…

These clashes in court between patrilineal norms and other modes of property sharing reverberate through the judicial discourse of the early twentieth century. The case of Murli's household illustrates my central argument that in order to ensure its reproduction the members of a peasant household had to often adopt familial strategies that did not conform to the legal and cultural norm of patrilineal succession. It gives us some idea of the diverse choices open to them in the form of customary usages regarding the holding and sharing of property. Native informants tended to represent such unorthodox kinship patterns as characterisitic of certain *pattis* like Rath in British–Garhwal and Rawain in Tehri Garhwal. However the record of civil litigation studied by me in the two *parganas* of Pauri and Chamoli show that these practices were more widespread and claims based on them were put forward from every sub-region.

By taking the household as the site for understanding the family I am questioning the dominant intellectual and juridical tradition of the colonial period which thought of patrilineality as the definitive principle structuring the Indian family. I will argue that women and men could also access property on principle, based on their roles as workers and care-givers in the household. My evidence comes from studying a large number of property transactions among peasants that were disputed in the civil courts in two districts of Garhwal during the sixty years from the mid-1890s up to the mid-1950s.

Part I

This was an important period of transition in the life of the Law in the region. Kumaon Division, which included Garhwal, had been governed till then as a non-Regulation Province, by executive officers of the Revenue Department, and there was a growing concern on the part of its educated elite to bring the region under regular jurisdiction of the Allahabad High Court. This was not only because of the greater

opportunities it would give to educated youth but also because it was an acknowledgement that the region had moved well beyond the frames of "backwardness".

In preparation for introducing a professional judicial system, there were various initiatives to prepare a definitive compendium of local customary practices to guide adjudication. It was felt that the decisions of the Revenue officers had been ad hoc, lacking logical consistency and in the case of Commissioner Ramsay, who had been Commissioner of Kumaun for nearly thirty years, often whimsical. Assistant Commissioner V.A. Stowell prepared a selection of Civil Rulings to this effect in 1913, on the basis of which he drafted the Kumaon Laws Bill in 1915. But the old rulings were found to be contradictory on so many points that he was asked to determine customs more precisely by an extensive field survey and questionnaire method, to prepare a reference work for magistrates:

> the Government instituted this special inquiry so that the customs might be investigated, at a time when they were not in dispute and witnesses not interested in helping this party or the other, and be recorded once and for all to save these poor people from being called upon to produce evidence in each single case.[3]

Due to the interruption of the First World War, the survey was completed only between 1918–1920 under, Mr. Panna Lall, Assistant Commissioner of Almora. The educated, upper class elite received Panna Lall's report with great dismay as its findings threatened to make Kumaon and Garhwal appear socially backward at a time when they were seeking assimilation with the mainstream, both politically and socially.[4] It was largely due to the hostile reaction of the elite, that

[3] Panna Lall, "Authors Note to the 1942 edition", of *Kumaon Local Custom* called *Hindu Customary Law in Kumaon*, pp. x–xi.

[4] The lawyer Tara Datt Gairola made a representation against any codification of Kumaon custom based on Panna Lall's findings saying that, "he thought that an Act embodying as law the customs that are peculiar to Kumaon would be apt to be regarded as a slur on Kumaon and as a definite pronouncement that the Division is hopelessly behind the times". Judicial (Civil) Progs. File 221 /1914 Codification of Kumaon Custom. p. 65.

customary law did not get a statutory status in Kumaon. Moreover, customary law was deemed to apply only to those who could establish that they belonged to the non-elite status group of Khasa castes while those who belonged to a higher status group of immigrant Rajputs and Brahmins were to be adjudicated under Hindu Law.

Sir James Meston, Lt. Governor of the United Provinces said he was dissuaded, "by arguments about the dangers and inadvisability of crystallising customs".[5] Here he was also guided by the views of officials of the United Provinces whose views on custom were quite unlike those of the Punjab bureaucracy of the later nineteenth century, for whom customary law had bee an integral part of representing a pro-peasant regime. In the 1910s UP officials saw customs at best as outdated cultural survivals, whose preservation was not instrumental to public policy. Till the publication of Panna Lall's Report the opinion of the judiciary too had been lukewarm to preserving custom, believing that "within the last 20 years customs have been changing and in almost every case the change has been made in the direction of conformity with Hindu Law".[6] This extensive discussion in official and judicial circles, as well as within the nationalist intelligentsia, left a heightened sensitivity to the question of Custom in its wake.

Due to these developments both within the judicial process as well as outside it, legal discourse for several decades was saturated with discussions on the protocols of validating the genuineness of customs; to whom they could be applied; which ones were to be officially discouraged and so on.

The rigidity of colonial laws on inheritance has been attributed to the fact that colonial jurists and anthropologists interpreted the prescriptive norms of Hindu *sastra* texts as strict and invariant rules, especially the Manusmriti, and texts of the Dayabhaga and Mitakshara schools.

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[5] "Amendments to Kumaon Rules in view of the creation of the Kumaon judgeship", Judicial Civil File 221/1914 A Progs. 36–39 p. 29.

[6] "Codification of Kumaon Custom," Note to Judicial Secretary by Ch. B. Kendall Legal Remembrancer to Govt. 9-8-1920, Judicial Civil Dept., File 221/1914, p. 65.

The colonial interpretation of the Hindu *sastras* has been challenged by Duncan Derret,[7] Robert Lingat[8] and more recently, by Kumkum Roy,[9] who have pointed out that the texts were much more porous, recording and recognizing a range of non-normative practices on the ground; even if they acknowledged these variant forms only in order to mark them as socially degrading practices to discourage elites from adopting them. I find Kumkum Roy's observation on Medatithi's commentary of particular interest that family members who did not conform to the *Manusmriti's* ideal of strict savarna marriage and female chastity, were excluded more strictly from ritual contexts, and certain kinds of commensality, while they were still given access to the household's resources and property.[10] I shall frequently draw upon the work of H.K. Raturi, the Dewan of Tehri-Garwal State, whose official compilation of legal practices in the state shows that a more complex scholarship of the *sastras* was available among indigenous intellectuals of the time. Customary practices was also similarly transformed when they were converted into a justiciable customary law under colonialism.

A number of monographs on customary law in India, show that even in regions where British colonial courts were open to local usages, the rules of patrilineality were valorized over a more variable suite of practices when recording or fixing Custom. Prem Chowdhry's study of eastern Punjab shows how customs like levirate unions, that sustained patriarchal control over widows, were enforced as Custom, while practices which allowed some agency to women were regarded as "immoral", and held to destroy widows' claims on grounds of

[7] M. J. Duncan Derrett, "British administration of Hindu Law", *Comparative Studies in Society and History* 4, 1961, pp.10–52; M. J. D.Derrett, "The History of the judicial framework of the joint Hindu family", *Contributions to Indian Sociology*, no. VI, Dec. 1962, pp.17–47; M.J.D. Derrett, *Religion Law and State in India*, London, 1968; Derrett, *Hindu Law of India: Dhararmashastra*, Leiden, 1973.

[8] Robert Lingat, *The Classical Law of India*, translated by J.D.M. Derrett, Berkeley, 1973.

[9] Kumkum Roy, *The Power of Gender and the Gender of Power, Explorations in Early Indian History,* Delhi, 2010.

[10] Kumkum Roy, "Defining the household, some aspects of prescription and practice in early India", in *The Power of Gender...* 2010.

unchastity.[11] G. Arunima's work on the fate of Nair matrilineality,[12] Veena Poonacha's study of daughter-inheritance in Coorg,[13] and Lucy Carroll's study of Allahabad High Court rulings on customs of widow inheritance add further to a feminist critique of colonial customary law.[14] Veena Oldenberg tracing this process in the Punjab has referred to it as a "masculinisation" of customary usages.[15]

With colonial law, even in its customary form, deliberately shutting out, or discouraging alternative modes of family life how can we recover the varieties of familial experience and explore its possibilities? I have attempted to do this from litigation records where by persistent reiteration, litigants, both men and women give us insights into elided aspects of the history of the peasant family.

Part II

The gift was the most important way of making endowments outside the normative line. All *sastra* writers, including Manu, concede it as a residual possibility, a way of giving property to a son whose mother is *asavarna* or *paunarbhava*, i.e. of low status because she is of a lower caste or a remarried widow. H.K. Raturi concludes that a son of this type can get a share in his father's ancestral property by the wish of the father expressed through an act of endowment.[16] In Tehri-Garhwal the law on adoption allowed succession by "A *dharmaputra* (who) is established by the *maurusidar* in his own lifetime by registered written deed", with the rider that this be done "*kriya karm tatha parvarish ki shart par, Dharmashastra tatha deshachar ke anusar*",

[11] Prem Chowdhry, *Contentious Marriages, Eloping Couples, Gender Caste and Patriarchy in North India*, Delhi, 2007.
[12] G. Arunima, *There Comes Papa. Colonialism and the Transformation of Matriliny in Kerala Malabar c.1850–1940*, New Delhi, 2003.
[13] Veena Poonacha, "Redefining gender relationships: The imprint of the colonial state on the Coorg/Kodava norms of marriage and sexuality", *Contributions to Indian Sociology* n.s.29, 1&2, 1995.
[14] Lucy Carroll, "Law, Custom and statutory social reform: The Hindu Widow's Remarriage Act of 1856", J. Krishnamurthy ed. *Women in Colonial India. Essays on Survival, Work and the State*, pp. 1–26, Delhi, 1989.
[15] Veena Talwar Oldenberg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, New Delhi, 2002.
[16] H.K. Raturi, *Narendra Hindu Law*, Lucknow,1918, p. 640.

(on condition of performing maintenance and last rites according to the Dharmashastras and local custom.)[17]

Raturi remarks of the efficacy of the gift in bypassing the embodied requirements of *varna* and *gotra* required for inheritance.

> It is given on condition that the recipients, daughter and *jawain*, will perform *parvarish, gati kriya* and hence, it is not given to them on the grounds of inheritance, and as such it can be said to be the self-earned property of the daughter and *ghar jawain*. In this situation, the giver and his family do not retain any link with the said property … and after the death of the daughter and son-in-law the property goes to their heirs rather than to the kin of the gift-giver.[18] (translation mine)

By incorporating the notion of reciprocity between the contracting parties the gift deed became a sufficient instrument of establishing kin obligations and made normal Hindu rituals of incorporation into the lineage superfluous. A retired clerk of the Forest Department whose opinion was sought by the judge as being highly credible, underlined the secular and contractual form of adoption in Garhwal,

> Any one who thinks that there is nobody to perform his *kriya karm* after his death can adopt a son. The particular feature of adoption is a registered deed. After the execution of such a deed the adopted son becomes the inheritor of the property irrespective of whether or not the property has been bestowed on the adopted son. *Puja-path* is not a necessary part of an adoption ceremony among us... we consider ourselves high caste Brahmins. For many generations we have been domiciled in Garhwal. We do not know where we originally came from. I do not know what Mitakshara Hindu Law is. Anyone who is adopted as a son and performs the *kriya-karam* of the father becomes entitled to the property

[17] *Tehri Garhwal Bhumi Sambandh Kanoon*, p.7.
[18] Raturi, op. cit., p. 371.

> of the latter. It is also necessary for such inheritance that the adopted son live with the adopter.[19]

In the courts of colonial Garhwal the gift deed took the form of the *bakseesnama.* Unfortunately the colonial record of Local Custom only recognised the right of men, and not women, to gift property. The father was recognised as having an absolute right by custom to alienate any share, including a right to even gift unpartitioned ancestral property. Further, a father could mortgage and sell ancestral land in a joint family without consulting his sons. According to Panna Lall,

> During the lifetime of a man his descendants have no share or claim to the property, ancestral or self-acquired.
>
> Therefore they cannot ask for a partition in his lifetime, and the property in the hands of the father is not liable for the debts of his sons, or sons' issue.
>
> The father can transfer his property (ancestral or self - acquired) *inter-vivos* in any way he likes.[20]

The courts tended to support custom on this point.[21]

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[19] PDRR 13/1946. The adoption deed in this case was completely secular. It merely indicated who the consenting parties were. The adopter describes himself as being 76 years old and names the parents of the adoptee, and identified him as his nephew, a FyBSS. He takes him in his lap (*apni godi mein rakhkar)* and declares him an adopted son, "now you have become my son and accordingly you will perform the duties of a son. I am making this as a registered adoption deed, on 20- 2- 36, and add that your father Gokulanand and your mother Mst Godavari w/o Gokulanand have consented to this adoption".
Also see adoptions in PDRR 285/1913; Files of the Dewani Record Room, Gopeswar, henceforth GDRR 381/1915; PDRR 74/1919; PDRR 13/1946.

[20] Panna Lall , paras. 34, 35 and 36, *Hindu Customary Law in Kumaun*, (hence HCLK), 1942, (new edition of Kumaun Local Custom), p. 5.

[21] GDRR 304/1930 (Civil Appeal 4/1931 and Special Civil Appeal 255/1932). A mother fought for the right of her three minor sons for preserving their share of ancestral property against the father who had alienated it, according to her, for immoral purposes. The Kumaon Custom of father's right to transfer both ancestral and self-acquired property in any way he likes was upheld by the court in the original suit as well as through two appeals.

This as I have argued elsewhere was a misinterpretation of local custom on both counts. Customarily a gift could not ignore the claims of the agnates entirely and nor were women perhaps fully excluded from gift-giving. It is apparent from studying the actual *bakseesnamas* that the father seldom alienated his entire share. Usually only a half share is gifted to a son-in-law or illegitimate son, or adoptee, while half is retained in his own name and which it is presumed will revert to his patrilineal heirs after his death. *Bakseesnamas* from Tehri-Garhwal explicitly record that the reversion must take place.

Although colonial recordings of custom, such as Panna Lall's *Kumaon Local Custom*, denied a widow the right to gift her marital property, she could do so if she secured the consent of the husband's patrilineal heirs. Most of the consent documents presented in court, clearly mention the condition that a portion of land must be retained for the *haqdars* and that those who received the half property that they were forgoing would also take on their obligation of ploughing her land and seeing to her maintenance. The retention of a half-share by the widow is specifically mentioned in sixteen transfers to *ghar-jawain* and one to a daughter's son from the districts of Pauri and Chamoli in British Garhwal, and in cases studied from Tehri-Garhwal State.[22]

The reversionary heirs did not normally renege on these agreements and they usually entered into litigation against the widow only if she attempted to transfer the remainder of her property, which was reserved for them. The fairly large number of such negotiated agreements in the litigation record confirms that there was a degree of social consent for a widow to transfer a part of her marital property

[22] Cases from Pauri PDRR 26/1913, PDRR 15/1914, PDRR 573/1914, PDRR 81/1920, PDRR 102/1926, PDRR 32/1926, PDRR 44/1932. Cases from Chamoli GDRR 561/1915, GDRR 120/1946, GDRR 634/1930; Revenue *misls* from Tehri State, henceforth TRR *misl* 36/1933, TRR *misl* 552/1958, TRR *misl* 244/1936, TRR *misl* 1/94/70/1939, TRR *misl* 172/1939, TRR *misl* 64/1941. In two instances a one-third share was given to the *ghar-jawain*. One case speaks of a two-third share, and one, of an unspecified "part". The DS occurs in PDRR 420/1909. In only five cases was the entire share transferred to the *ghar-jawain*.

in certain contexts, to which she only enjoyed lifetime rights under the law.

The universal obligation on the donees that they would cultivate the holding and perform maintenance services for the aged donor, was expressed in the formula, '*palan parvarish ki shart par*' and also implied responsibility for the funeral rites of the donor. A document that was made directly in favour of the daughter, a yet unwed 11-year-old says:

> I will keep a *ghar-jawain* on you. My food and clothing is your responsibility and my pilgrimage also, after my death, performance of *gat-kriya* by Hindu rites, annual rites, and the marriage of my two other daughters. Accordingly a *bakseesnama* of self-occupied *hissedari* is executed. [23]

A 45 year widow gifting her proprietary land to her daughter and *ghar-jawain,* son in law, declared she was giving her self-occupied land by gift on that day on condition of a life-time's maintenance and other services:

> *baksees kar ke de diya. Tumne jite ji meri palan parvarish va digar khidmat kar dena aur marne par hindu riwaj ke mutabik gat kriya karna va varshik shradha apni haisiyat se kar dena. Tirth yatra ka kharch dena. Tumne kisi kism se meri palan parvarish va digar khidmat nahin ki to tum meri khurd poshi ke jummewar rahoge.... Kabza aaj ki tarikh se tumko de diya aur mere saath rehne se tumhara badastur chala aa raha hai.*[24] (…have given to you by declaring it a gift. You will have to nurture and maintain me, and perform other services, as long as I live, and on my death perform my funeral rites according to Hindu customs and annual mortuary ceremonies according to your status… You must bear the expense of pilgrimages. If you do not perform maintenance and other services for me satisfactorily, you will have to provide maintenance payments in cash. I give you possession from

[23] PDRR 23/1927.
[24] PDRR 206/1946.

today and your rights accure from living in co-residence with me.)

The terms of reciprocity written into the gift deed were often formalized by an agreement deed or *ikrarnama* written and registered by the donee, in which he or she listed the services that he or she accepted to perform. Below is an *ikrarnama* executed by a widowed daughter-in-law who was declared heir to half the property of her sixty-two year old father-in-law:

> *Main apna sasura saas ko palan parvarish likhat deta (sic) hun ki jita palna mora jalna. Agar palan parvaris ma let-lali karun to panch rupiya mahavari ke hisaab se deyoon. Aaj peechey tumney baithi ke khana. Agar koi bat ki let lali karoon to ghair sahi.* (She would "nurture them in life and cremate them in death" and "after this day you will rest and eat" and if she defaulted on maintenance she would be liable for Rs. 5 per month.)[25]

Another *ikrarnama* by a son-in-law promises that he will "give ploughing", provide food and clothing for his mother-in-law and her disabled sons, and will let his wife reside in her mother's house so that she could look after them.[26]

My hypothesis that the gift of land was always subject to two conditions: that it be linked to maintenance of the aged and that it leave a share for satisfying patrilineal claims, is reinforced by my recent discovery of customs related to partitioning in Tehri-Garhwal and in Nepal which are geographically and culturally contiguous to British Garhwal and Kumaon in the west and east. In Nepal, the *jiuni bhag*, is a double share separated from the parental estate, exclusively for the use of the old couple, and which goes to the share of the relative who cares for them in old age. The *jiuni bhag* does not follow the principle of patrilineal succession and is frequently endowed to female relatives, especially daughters and sisters. A parallel custom, the *budhawal*, is noted by Raturi in his compendium of laws for Tehri-

[25] PDRR 15/1914.
[26] GDRR 37/1942 G.

Garhwal, and is said to be a share that an old couple might reserve for their own use at the time of partitioning their land among their sons. The *budhawal* can also be given by the aged couple as they wish regardless of the rules of patrilineal succession, and is usually given to the person who is care-giver to them. After the death of a husband who had partitioned off his old age share it was presumably left to his widow to dispose off as she pleased. According to Raturi, it was also possible for a widow who did not have sons of her own to ask for a separate *budhawal* from the sons of a co-wife. In both these examples then, the widow would have a portion of what was once her marital property to dispose off as she pleased.

I have found that frequently when the patrilineal heirs resisted a compromise with the widow, she took recourse to a new provision under colonial law of "sale for legal necessity", which allowed sale for debt repayment. Under British-Indian law, sale for "legal necessity" was upheld to ensure the prompt payment of land revenue owed to the government, whereas sale of land was forbidden by pre-colonial regimes in the region and continued to be banned in the state of Tehri-Garhwal. I have never found a male donor having to use this form for making endowments as they could freely use both the forms of gift and partition. A sale for debt had the disadvantage that any relative or village resident could demand that he be given the right of first purchase or pre-emption.

Invariably widows cited "loans" taken from the "purchaser", in order to repay a husband's debts, or for performing his death rites, or to feed and clothe themselves, as reasons for "selling" their share in the joint estate. Widow's narrations of "legal necessity" before the court, confirm that the credit-givers were not simply moneylenders but were individuals closely integrated into her household as quasi-kin, usually a *ghar-jawain* or another person on whom she was dependant. Women seem to have used this provision for legal necessity inventively as in a large number of instances a sale for debt followed soon after a gift-deed had been cancelled by the court. Only 12.7 per cent of sales that were made by women in my record of cases were made to non-kin and may have thus represented genuine sales.

Part III

By the end of the nineteenth century, peasant agriculture in the hill districts of Garhwal was primarily organized in fairly small households and dependent for their reproduction on family labor. Within the household the sex-based allocation of labor suggests that there was rarely more than one male per household but usually more than one adult female. Every household vied to send off surplus males into supplemental wage work outside the village, with the British-Indian army becoming a major source of employment from the decade of the First World War.

The structural link between the gift and the reproduction of the critical labour needs of the household is clear from the timing of gift deeds. They were all made at a moment of demographic or economic crisis in small households that primarily depended on household labour:

A distraught postcard written by a peasant trying to set up a maintenance contract with a distant nephew is quite graphic about the difficulties the death of one partner might bring on the household. The writer was recently widowed, afflicted with leprosy, and had two female infants in his care:

> After your *baudi* (aunt*)* died I am in a complete mess (*mero bada phajita honoochh*). The two little girls (*dono chhoti nauni*) are with me. I cannot leave them and go anywhere. I can no longer do *kheti-pati* (cultivation), and have even left off hoeing and weeding. … After reading this letter you must definitely come home. I have no heirs; now you look after us and manage the *kheti-pati*. If you are of my lineage (*angsi*) then you must come home, my circumstances/health are wretched (*mera haal kuchh ni chhana*), I too am keeping ill; the buffalo and cow(s) are dying of hunger. If you say "Bhageli I won't do it" so be it, but now, at this time, you must take leave and come, do not mistrust this offer, take pity.[27]

[27] PDRR 234/1912.

Another old peasant's endowment deed in favour of his 13-year old daughter and her 18-year old husband states:

> My sons have died after birth. In hope of a son I have had six daughters. I have no one to maintain me and my sick wife except you and son-in-law... I offered (my property) to my brother and nephew in return for maintenance but it was not accepted by them. I am too old to look after my *karobar*, my eyes are weak. I give you half my property of 3 Rs. land, two 2-roomed houses with chowk and one gaushala.... My other daughters and *bhai- biradars* (agnates)will not object, and if they do, it will be wrong.[28]

Many such deeds cite death of a partner, old age, debt and the refusal of obligations by patrilineal relatives as reasons for executing a contract of maintenance with another kin.[29]

Women's land transfer deeds also reflect strategies of securing their households. Bringing in an able-bodied man as *ghar-jawain* helped a widow to make up the sex-differentiated balance of labour within her household. For example a widow sought a *ghar-jawain* after she lost her only able-bodied son in 1930, and was left with two mentally and physically disabled sons to look after. She first secured a divorce for her married daughter by paying her relinquishment price or *chhut*, and then arranged for a local schoolteacher to settle with her daughter in uxorilocal residence. The dauther looked after her mother and her brothers while the schoolteacher *ghar-jawain* ploughed and managed his mother-in-law's moneylending business, acting as her *mukhtar* or agent.[30]

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[28] PDRR 26/1913.

[29] GDRR 381/1915; TRR *mis*l no 23/1936; GDRR 128/1918; PDRR 55/67/1945; GDRR 10/1935; TRR *misl* no 244/1936; GDRR 128/1918 ; GDRR 37/1923; PDRR 32/1926.

[30] GDRR CA 37/1942 (G).

In every instance where a *ghar-jawain* relationship failed, invariably the daughter chose to stay back in her parents' home rather than follow her husband. The mother or father usually went on to execute a fresh *ghar-jawain* arrangement with another man. A common law husband, called the *haliya* or ploughman, or a *tekwa* or support, or a sewak pati or service-husband, was another type of arrangement that filled in the need for adult male worker in the widow's household. "*Tekwa dharleen, chela palleen*" says a proverb, namely "appoint a *tekwa* to bring up your children".[31] However their access to the woman's parental or marital properly was more uncertain than a *ghar-jawain,* as no formal deed of gift or sale was usually made with a Tekwa.

Conclusion

Supported by revisionist re-readings of Hindu classical texts, this essay has explored the possibility that a greater variety of familial and inheritance practices may have existed than the dominant legal narrative, influenced by colonial/Orientalist ideas, allows for. Anthropologists in other colonial contexts have destabilized such reified narratives by demonstrating the logic of practice in the actions of historical agents.[32] In Indian anthropology however popular practice has tended to be flattened out into constructing systemic regularities of lineage and kinship, which sit comfortably with an Orientalist paradigm.[33] While some

[31] Cited in L.D. Joshi, *Khas Family Law in the Himalayan Districts of the United Provinces of India*, Government of India Press, Allahabad, 1929 .

[32] Sally Falk Moore, *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880–1980*, Cambridge, 1986. John L. Comaroff, and Simon Roberts, *Rules and Processes: The Cultural Logic of a Dispute*, Chicago, 1981; Martin Chanock, *Law Custom and Social Order. The Colonial Experience in Malawi and Zambia,* Cambridge, 1985.

[33] Louis Dumont, "Marriage in India. The present state of the question, III. North India in Relation to South India," *Contributions to Indian Sociology*, no. IX, Dec. 1966, pp. 90–114; Louis Dumont, *Affinity as a Value: Marriage Alliance in South India with Comparative Essays on Australia*, Chicago, 1983; Thomas R. Trautmann, *Dravidian Kinship*, New Delhi, 1995.

sociologists like Pauline Kolenda,[34] and Sylvia Vatuk[35] show greater sensitivity to questions of agency and the impact of historical events on the evolution of the family, an explicit critique of the structuralist construction of family and lineage in India is yet to be made. I have tried to demonstrate that the historical record does yield evidence of a great variety of both normative discourses and strategic practices in India within what has been largely regarded as a non-negotiable framework of patrilineal rights.

[34] Pauline Kolenda, "Widowhood among 'untouchable' *churhas*", in Akos Ostor, Lina Fruzzetti, and Steve Barnett, eds., *Concepts of Person: Kinship Caste and Marriage in India*, Cambridge Massachusets, 1982, pp. 172–220; Pauline Kolenda, 'Region caste and family structure: A comparative study of the Indian "joint family",' in Milton Singer and Bernard S. Cohn eds., *Structure and Change in Indian Society*, pp. 339–396, Chicago, 1968.

[35] Sylvia Vatuk, '"Family" as a contested concept in early-nineteenth- century Madras,' in Indrani Chatterjee ed., *Unfamiliar Relations*, Delhi, 2004.