

CRIMINAL LAW AND PROCEDURE IN NEPAL A CENTURY AGO: NOTES LEFT BY BRIAN H. HODGSON¹

LEONHARD ADAM²

University of Melbourne, Australia

FOR AN APPRECIATION of the remarkable document reproduced in the article, some introductory observations may be welcome about the personality and scientific methods of its author and about the anthropological, religious, and historical background of Nepal.

BRIAN HOUGHTON HODGSON

Brian Houghton Hodgson, one of the most brilliant figures in the history of Oriental studies, was the only European who had — and made use of — the opportunity of personally observing and recording legal practices in Nepal during the second quarter of the nineteenth century, i.e., before the reforms introduced by Prime Minister Jang Bahadur after his return from England in 1851. These records, however, represent only a small fraction of the enormous wealth of information about the languages, ethnology, and religions of the Himalayan countries and India collected by this great pioneer of Oriental philology and ethnology.

Hodgson was born in 1800 and died in 1894. “Had he died seventy years previously,” wrote Sir William W. Hunter in his biography of Hodgson, “he would have been mourned as the most brilliant young scholar whom the Indian Civil Service has produced. Had he died in middle life, he would have been remembered as the masterly diplomatist who held quiet the kingdom of Nepal and the warlike Himalayan races throughout the disasters of the Afghan war. Had he died at three-score years of age, he would have been honoured as the munificent Englishman who enriched the museums of Europe with his collections, enlarged the old boundaries of more than one science, and opened up a new field of original research.” As he lived up to his ninety-fifth year, he “outlived his contemporaries.”

¹ For kind permission to copy and publish the notes of Mr. Hodgson I am indebted to Dr. Herbert N. Randle, M.A., D.Phil., Librarian of the India Office. I also wish to thank Professor F. W. Thomas (Librarian, India Office, 1903–27, and professor of Sanskrit in the University of Oxford, 1927–37) for his valuable information that there were some unpublished documents among the Hodgson manuscripts. My copies were made in 1935 and checked in 1937.

² Doctor Adam lectures on cultural anthropology in the Department of History, University of Melbourne, and is founder and in charge of an ethnographical museum at the university.

Sir W. Hunter tells us the story of Count Angelo di Gubernatis who, when introduced to Hodgson in 1883, exclaimed: "Surely not the veritable Hodgson, the founder of our Buddhist studies! He, alas, is dead these many years!" Hodgson became a F.R.S., a vice-president of the Royal Asiatic Society, and a member of the Institut de France. In 1889, the University of Oxford conferred on him the honorary degree of D.C.L., when "the Sheldonian rang with welcome to the beautiful white-haired scholar, who seemed to have stepped forth from a bygone world."³

Hodgson's unusual talents may be seen from the dates of his career in the civil service of the East India Company. He was only nineteen when he took up his office as assistant commissioner at Kumaon, and only a year later (1820) we find him as assistant resident in Nepal. He was appointed acting resident in 1829 and resident in 1833, which office he held for nearly eleven years. The observations referred to in this article were made by him during the period from 1826 to 1843. On June 2, 1843, Hodgson was removed by Lord Ellenborough — "unjustly," as a laconic remark in the catalogue of the "Hodgson papers" in the India Office Library says. Actually, Hodgson's political activities in Nepal had been most successful, and it was by his "skilful management" that war was averted at a critical period.⁴ His merits have not only been established by the verdict of history in later years but were already appreciated by his contemporaries in the East India Company.⁵

The fact that Hodgson did not return to his former office was probably to the advantage of his research work and literary production after his retirement at the age of forty-three. In 1845 he went back to India as a private scholar with the view of continuing his researches in the ethnography and zoology of northern India. He settled down in Darjiling, a district which had formerly belonged to Nepal. Here, described by Sir W. Hunter as "The Darjiling Recluse," he spent those happy thirteen years, 1845 to 1858, where he found the leisure to concentrate on research. In particular, his comparative studies of Indian and other languages belong to the period from 1845 onward. He was a prolific writer. The classified catalogue of his published articles and treatises in Hunter's biography (Appendix c, pp. 362 ff.) has not less than sixteen pages. Section 3, entitled "Ethnography and ethnology," contains the titles of twenty-seven papers,

³ Sir William Wilson Hunter, *Life of Brian Houghton Hodgson* (London, 1896), 2.

⁴ Daniel Wright (ed.) in his introduction to *History of Nepal*. Translated from the Parbatia by Munshi Shew Shunker Singh and Pandit Shri Gunanand (Cambridge, 1877), 55.

⁵ Hunter, 237.

most of which appeared in the *Journal of the Asiatic Society of Bengal* (partly reprinted in Hodgson's *Miscellaneous essays*, 1880). The many-sidedness of Hodgson's studies was astonishing indeed, and whenever he had an opportunity of observing something noteworthy he recorded it with painstaking accuracy. For example, among the "Hodgson papers" at the India Office Library (no. 6, fol. 77-81) there is a letter to H. T. Prinsep, dated December 8, 1831, which "transmits some specimens of Nepal paper and encloses an account of the Nepalese method of making the paper".⁶ At the same time he investigated the geography, physiography, and topography as well as the zoology of the country.

All these studies reveal an extraordinary gift of observation. His principal subject, however, was the study of the Indian vernaculars. While the foundations of Sanskrit philology had already been laid before Hodgson's time, little comprehensive work had been done concerning the study of the living Indo-Aryan idioms, the *prakrits*. Moreover, apart from the Indo-Aryan vernaculars, the classification of different linguistic stocks in India and the Himalayan countries, such as the Munda, Dravidian and Tibeto-Burmese groups, had not yet been satisfactorily drawn up. It was in this field of linguistic research that Hodgson made his name immortal in the annals of Oriental studies. A fine tribute to his merits will be found in what we may regard as the nucleus of a future history of Oriental studies in the British Empire, a delightful and beautifully illustrated little book entitled *British Orientalists* by Professor A. J. Arberry.⁷ Hodgson's monographs on a large number of languages and dialects are of lasting value; no less a scholar than Sir George Grierson (1851-1941), the founder of the monumental "Linguistic survey of India," states that they "contain a mass of evidence on the aboriginal languages of India that has never been superseded" and that the hallmarks of Hodgson's works are "the wide extent of area covered, clearness of arrangement, and accuracy of treatment."⁸ However, not content with the mere recording and arranging of linguistic material, Hodgson made comparative philology his favorite study.

The sources used by Hodgson for both his linguistic and ethnological researches were of four different kinds, namely, (1) his own observations; (2) information given by natives; (3) material collected for Hodgson by other European students; and (4) manuscripts. On the linguistic side, he personally recorded the vernaculars in districts visited by him, while

⁶ Hodgson, *Miscellaneous essays relating to Indian subjects* (London: Truebner, 1880), 2: 251-54.

⁷ Published in London by William Collins in 1943.

⁸ Arberry, 33.

he obtained a number of vocabularies of other languages from local residents, such as officers, civil servants, and missionaries, in various parts of India. He was always careful to make full acknowledgments of his sources.

Up to the present day, the legal history of Nepal has not been satisfactorily studied. We have to distinguish between the law of the state of Nepal and the customary laws of the various hill tribes. Hodgson's papers on Nepalese law are confined to the former. The most important articles appeared, originally, in the *Journal of the Royal Asiatic Society* (1834) and were reprinted, in his *Miscellaneous essays* (2:211-50), under the title, "Some account of the systems of law and police as recognized in the state of Nepal." That group of articles, which has attained the rank of a classic, is the only European source on the law of Nepal as it was in the beginning of the nineteenth century. It is exclusively based on information obtained in Kathmandu from Nepalese experts. Hodgson was fortunate to meet a number of native informants who probably had a good command of legal practice, although they held different views on certain details so that some important points are still obscure. The first part of the group of articles consists entirely of "questions" and "answers"; it is a true reproduction in English of Hodgson's conversations with his native informants. This procedure was perfectly correct, in fact, it was the only possible way of ascertaining abstract norms, except that, in addition to the translation, literal recording in the language in which the information was obtained would have been better still from the point of view of modern methods. We shall see that, up to modern times, very ancient Indian law has been preserved in Nepal, and this accounts for the great importance of Hodgson's records.⁹ They are a contribution to comparative jurisprudence, in particular its Orientalistic division, dated some thirty years earlier than Sir Henry Maine's *Ancient law* (1861).

The memoranda reproduced here are particularly valuable because they are a record of what Hodgson saw with his own eyes. It is true that Hodgson used some of these observations for the composition of his above-mentioned articles, and it is probable that he did not intend to publish his notes in the original form in which they are here presented. They were

⁹ Hodgson (*Miscellaneous essays* 2, and "On the administration of justice in Nepal," *Asiatic researches*, 20 [1836]) is the only authority on Nepalese law referred to by Julius Jolly in his outstanding treatise on ancient Indian law and customs in *Grundriss d. Indo-Ar. philologie* . . . vol. 2, no. 8 (1896). The authorized English edition is *Hindu law and custom* by Batakrisna Ghosh (Calcutta: Greater India Society, 1928).

obviously written down on the spot and in a great hurry as the author was watching the executioners doing their horrible job; hence the telegram style, sparsely interrupted by just a few explanations. But some of the "gruesome but interesting details" — as the India Office librarian described them — do not occur in Hodgson's theoretical account, and the notes as a whole are important as documentary evidence of facts.

HISTORICAL BACKGROUND OF NEPAL

Nepal is not a part of India but a sovereign state, "entirely independent as regards its foreign relations and domestic affairs."¹⁰ The country is represented in London by a legation, while there is a British envoy at the court of Nepal in Kathmandu. There are, however, no Nepalese diplomatic or consular representatives in other European countries. The legal basis of the British relations with Nepal is still the treaty of Segauli (1815), concluded after the Gurkha war of 1814–15, but the complete independence of Nepal has since been recognized again by Britain in a treaty of friendship of December 21, 1923.

The present kingdom of Nepal is of relatively recent origin, and its boundaries extend far beyond Nepal proper which is a comparatively small valley, the Terai, in the heart of the country. Gorkha is the name of a town and surrounding district some sixty miles west of Kathmandu. It was a small principality ruled by the Gorkha, or Gurkha, dynasty from the beginning of the fourteenth century onward. The Gurkhas derive their origin from Rajputana whence many Rajputs fled into the mountains during the Mohammedan invasion of northern India.¹¹ They brought with them the warlike spirit of their ancestors and also their orthodox adherence to Hindu religion. From 1736 they began to invade the valley of Nepal, inhabited by a highly cultivated, ethnologically and archaeologically interesting people, the Newars. In 1768 the Gurkhas eventually conquered the valley under their king Prithwi Narain Sah (Prthivi Narayan Sah, or Prithinarayan).

The same year a Nepalese army marched into Tibet and sacked Tashi-lhunpo, one of the holiest monasteries of the Lamaist church, and in 1790, a Gurkha army invaded Tibet again. Tibet, however, was under the suzerainty of China, then on the summit of her power under the great

¹⁰ W. H. J. Wilkinson (British envoy at the Court of Nepal) in *Encyclopedia Britannica* (14th ed. 1937), 16:222.

¹¹ W. B. Northey, *The land of the Gurkhas, or the Himalayan kingdom of Nepal* (Cambridge, 1937), 42. Major Northey's book, the best modern description of the country and its people, is particularly valuable for its good illustrations of Nepalese architecture.

Ch'ien-lung Emperor, so the Nepalese were attacked and eventually defeated by the Chinese who invaded Nepal. According to the peace treaty of 1792 Nepal had to accept Chinese suzerainty and to send "embassies of tribute and dependence" to Peking every five years. Hodgson gives a detailed description of the traditional route of the Nepalese missions to Peking.¹² Over half a century later, Nepal made war upon Tibet again, and this time China was no longer strong enough for a successful intervention, so the Tibeto-Nepalese war of 1854-56 ended with the victory of Nepal. The suzerainty of China over Nepal, however, continued to exist. It is assumed that it came to an end with the downfall of the Manchu dynasty in 1911, and thus it is only from that year onward that the independence of Nepal can be regarded as really complete. Cultural relations between China and Nepal can be traced back to the first half of the seventh century A.D. We know that Nepalese (Newars) Lamaist monks and famous metal workers, used to live — and possibly still live — in Tibet as well as in the monastery of the Changcha Hutuktu, i.e., the Lamaist metropolitan in Peking. These Newars are responsible for some of the finest Buddhist bronzes in the Nepalese style, which is a true reflection of medieval Indian Buddhist sculpture (about 7th to 10th century, A.D.). The relations between the two countries were mutual; up till modern times Chinese missions with presents (books, paper, images, etc.) from the Chinese emperors arrived at Kathmandu from time to time.

Nepal has retained its monarchic form of government up to the present day, but a modification took place in 1846 when Prime Minister Jang Bahadur succeeded in making his office hereditary in his family. The position of the Nepalese prime minister, then, is similar to that of the majordomo of the Merovingian kingdom. As W. H. J. Wilkinson puts it, "theoretically, the Government of Nepal is a despotism, and His Majesty the Maharajadhiraj or King, is paramount," but in practice "all the real power has long been in the hands of His Highness the Maharaja or Prime Minister, who is also supreme commander-in-chief of the army." There exists a council, but only in a consulting capacity; its members are the relatives of the king, the generals, and other high officials. The council "is consulted on all important business"; it is, simultaneously, "a court of appeal for disputed cases from the courts of law."

These observations may suffice as far as the modern history of the country is concerned. If we now turn to the beginnings of Nepal, we find the

¹² *Miscellaneous essays*, 2:167 ff.

oldest available source, the *Svayambhūpurāna*,¹³ is a work based on myths and legends. The obvious purpose of the work is the glorification of Nepal. The central figure of the text is the Bodhisattva Mañjuśrī, the culture-hero of Nepal, who — at least in his Nepalese form — is possibly an apotheosized historic personality. He is supposed to be the creator of Nepal and in particular of the valley which, according to the legend, was originally a lake, and to which he gave the name “Nepal.”¹⁴ The now popular etymological explanation, however, says the name was derived from Ne-muni, the founder of the Gupta dynasty. Actually Nepal is mentioned for the first time in Indian inscriptions dated 230 A.D., whereas the reign of the Gupta dynasty in India began only in 319 A.D. The relations between India and at least the southern border of Nepal are certainly much older, since we know that here was the scene of the beginnings of Buddhism, probably the locality where the Sākya family ruled and where the founder of Buddhism was born. Reference in the text to a “Chinese prince of Nepal, Dharmakar,”¹⁵ recalls the ancient relations between the two countries mentioned above; relations which are not only established in other written sources but are also evident in still existing cultural parallels. The most conspicuous of these is the characteristic style of Newar architecture, which is strongly reminiscent of the so-called “pagoda style” of China, so that Sylvain Lévi considered that the Chinese might have borrowed it from Nepal.

Another type of Nepalese texts which may be described as “historical” in the proper sense of this term, although some of them are linked up with abstracts from the *Svayambhūpurāna*, are known under the name of *vamśāvalis*, meaning “genealogy,” or “pedigree,” or “list of dynasties.” There exist several different *vamśāvalis*, written in the official Aryan vernacular (Khaskura, Gorkhali) which date, roughly speaking, from the middle of the eighteenth century. The best known of the Gorkhali *vamśāvalis* was composed later than 1785 by a certain ascetic who lived in the neighbourhood of Patan; it was translated into English by, or with the help of, two learned Nepalese and was edited by Dr. Daniel Wright under the title, *History of Nepal*.¹⁶ This particular *vamśāvali* has been

¹³ A summary is given by Hodgson in “Classification of the Newars, or aborigines of Nepal proper preceded by the most authoritative legends relative to the origin and early history of the race,” *Journal of the Asiatic Society of Bengal*, 3(1834), 215–21; L. de la Vallée Poussin has translated a section of the fourth chapter in “Manicūdāvadāna, as related in the fourth chapter of the *Svayambhūpurāna*” (*Journal of the Royal Asiatic Society* [1894], 297–319).

¹⁴ Hodgson, “Classification of the Newars,” 217.

¹⁵ *Ibid.*, 219.

¹⁶ See footnote 4 above. A Gorkhali *vamśāvali* is among the manuscripts presented by Hodgson to the India Office Library in 1864.

“mostly derived from the Svayambhupurana” (de la Vallée Poussin, 298). Wright’s *vamśāvali* has it that the present dynasty was preceded by twelve other dynasties, beginning with the Gupta dynasty. The names of the Gupta as well as other dynasties — two of which are described as Rajput — prove that the composer of this list has been anxious to establish an intimate connection with India. The various *vamśāvalis* are anything but ideal historical sources.¹⁷

The Newars, being the oldest-known inhabitants of the Terai and the bearers of a high civilization, have their own chronicles in their native language, Newari, or Gubhajius, which is related to Tibetan but has adopted a good many Sanskrit words. It can be safely said that the Newari *vamśāvalis* are older than the Gorkhali ones, and they seem to be rare; at least, Dr. Bhagvanlal Indrajī was unable to procure a copy in Nepal. However, the manuscripts presented by Hodgson to the India Office Library in 1864 include a section entitled “Newari chronicles,” and here we find, under no. 5, “Chronicles of the kings of Nepal, Newari and Gurkhali”; under no. 7, “History of Nepal according to the Buddhists and to the Brahmans,” with a Persian translation; also “English translations of the *vamśāvalis* in 2 volumes, with some Persian addenda — both by my office people” (i.e. native staff members of the resident’s office).

The Gorkhali as well as the Newari *vamśāvalis* deal with the history — principally the dynasties — of the valley of Nepal, and it is natural that the Newari kings are mentioned in the Gorkhali lists, too. But the *vamśāvalis* have also a long line of rulers belonging to a different nation, the Kirantis. This interesting people, with numerous tribal divisions and subdivisions and a Tibeto-Burmese language with a large number of dialects, inhabited the valley up to the middle of the fourteenth century, when they were expelled by the Newari dynasty of the Malla Rajas. Under later dynasties, the Kirantis gradually lost their independence even in the mountains, and their subjection was completed by the Gorkhali dynasty. In spite of their former role as a political power, the Kirantis had no script of their own.¹⁸ The modern Rai are the descendants of the ancient Kirantis.

The dynasty of the Malla Rajas was the last to rule over the whole Terai before the Gorkhali conquest. Under the last of the eight Malla

¹⁷ Consider the comments of the Indian archaeologist Pandit Bhagvanlal Indrajī, *Twenty-three inscriptions from Nepal... together with some considerations on the chronology of Nepal*. Translated from Gujarātī by Dr. G. Bühler (Bombay: Education Society’s Press, Byculla, 1885), 36 ff. Reprinted from the *Indian antiquary*.

¹⁸ Hodgson gives an outline of their history and descriptions of some of their customs in “On the Kiranti tribe of the central Himalaya” in *Miscellaneous essays*, 1:396–407.

kings, Yaksha Malla (1427–72), the country became divided into four principalities, those of Bhatgaon, Banepa, Kathmandu (the present capital), and Patan (or Lalitapur), but all those local rajas were Mallas. During the reign of the Mallas, cultural activities flourished in the valley of Nepal; first among them were architecture, sculpture, and metalwork in bronze and brass, especially the manufacturing of ritual vessels in chased work, and in openwork, with plastic decoration derived from Brahmanic mythology. This was the period when the ancient towns, Bhatgaon, Patan, and a few others, developed their characteristic architectural style which they largely preserved up to the earthquake of 1933. Major Northey tells us that, as a result of the earthquake, “some at least of the former architectural glory of the country has departed,” but that a substantial part of the damage has since been repaired by the Nepalese government.¹⁹ Architecture and sculpture are closely associated with the history of the Newars who used to adorn the squares of their cities with copper-gilt portrait statues of their kings, who were always represented in a praying attitude.²⁰ The period of the Malla kings was distinguished by an encouragement of Hinduism rather than Buddhism; and it also produced the great figure of a Nepalese lawgiver.

Important contributions to the older history of the country have been made by archaeologists and philologists. The most striking discovery was undoubtedly the opening of the Piprāwā stūpa in the Terai by W. C. Peppé in January 1898. One of the excavated relics, which are now in the British Museum, is a vase of steatite with an inscription scratched round the lid in ancient Brahmi script of a type earlier than that of the Maurya empire as it is known from the monuments erected under the Emperor Asoka (274–237 B.C.). According to the interpretation by Barth, Bühler, Pischel, Rhys Davids, and Vincent A. Smith, the inscription says that “bodily relics of the Blessed Buddha were deposited by his brethren, the Sākyas, with their sisters, sons and wives.” Among the vases and jewels, which were found in a great container carved in sandstone, there were “sundry minute fragments of bone distributed among the vessels.”²¹ Other archaeological research, notably the deciphering of ancient inscriptions,

¹⁹ Northey, 175.

²⁰ For photographs, aside from Northey, see K. Boeck, *Durch Indien ins verschlossene land Nepal* (1903) and *Im banne des Everest* (Leipzig, 1922). For reproduction of other metalwork see my book *Hochasiatische kunst* (Stuttgart, 1923) and my article on Nepalese ritual vessels and censers in *Ostasiatische zeitschrift*, n.s. 13 (1937), 24 ff.

²¹ See Vincent A. Smith on “Kapilavastu” in *Hasting's encyclopedia of religion and ethics* (1914), 7:661.

has been carried out by Bhagvanlal Indrajī (see footnote 17), C. Bendall, and — last, but not least — Sylvain Lévi, the eminent French Sanskritist.²²

ETHNIC, RELIGIOUS AND SOCIAL GROUPS

Anthropologically, the population of Nepal is divided into three groups: (1) the Mongolian stock, represented by the various hill tribes, whose languages belong to the Tibeto-Burmese group; (2) the Newars, the inhabitants of the Terai, whose origin and race is doubtful but, most probably, they, too, are of Mongolian origin; and (3) those who are physically and linguistically Indo-Aryan. These latter are the rulers of the country, and as we have already noted, claim to be of Rajput ancestry. The name of their tribe is Chetri, described by Northey²³ as an “aristocratic race,” “the Gurkhali *pur sang*.” While some distinguished Chetri families are probably the descendants of Kshatriyas, the warrior caste in the social system of their original homeland, it is doubtful whether the Chetris as a whole are identical with the Kshatriyas of India. This question will never be satisfactorily cleared up because, apart from the royal house and some other aristocratic families, the Chetris have intermarried with some of the hill tribes with the result that they show Mongolian features.²⁴ The principal hill tribes are Gurung, Magar, Sunuwar (Sunwar), Rai, Limbu, and Murmi. Most of these peoples are supposed to have immigrated from Tibet, whereas the home of the Limbus was, according to one theory, on the upper Brahmaputra. The various hill tribes have languages of their own, and some of these languages are divided into different local dialects. Nowadays, most tribesmen have a good command of Khas (Nepali) in addition to their tribal vernacular. A minority in Nepal are Tibetans and people from Bhutan. They are called *bhote* (noun) or *bhotiya* (adj.), from *bhot*, i.e., the country of Tibet (*bhotan*, Bhutan).²⁵

We have already mentioned that Nepal was associated with the beginnings of Buddhism. It was from Nepal also that Buddhism was introduced into Tibet in the seventh century, A.D. In about 638 King Sron-bTsan-sGampo of Tibet married Bhrikuti, a daughter of King Amsuvarman of Nepal, whose historical personality is established. A few years later, he

²² Lévi, *Le Nepal, étude historique d'un royaume Hindou (Annales du Musée Guimet, bibliothèque d'études, vols. 17-19)* (Paris, 1905-08), is the standard work on the subject. It also contains valuable notes on customs and usages in modern Nepal.

²³ Northey, 42.

²⁴ Among a large number of Gurkhas I have met only one young man who called himself a Chetri, but his physical features were distinctly Mongolian.

²⁵ Etymological interpretations are quoted from Ralph L. Turner, *A comparative and etymological dictionary of the Nepali language* (London: Kegan Paul, 1931).

married a second wife, the Chinese princess Wen Ch'eng, a member of the T'ang dynasty. At that time Buddhism and Buddhist art were flourishing in China as well as in northern India and also in the valley of Nepal. It was an epoch of cultural contact and mutual influence between China, India, and Central Asia. Both wives of the Tibetan king, "being bigoted Buddhists, speedily effected the conversion of their young husband who was then, according to Tibetan annals, only about sixteen years of age, and who, under their advice, sent to India, Nepal, and China for Buddhist books and teachers."²⁶ There can be no doubt that, for centuries, Buddhism was well established in Nepal, although it is certain that it never reached the hill tribes, with the exception of the Murmis. On the other hand, Hinduism, too, was introduced into Nepal at an early date and thus by no means as late as the Gorkhali conquest. Actually, the association of the country with the beginnings of Buddhism implies that Hinduism — or, more correctly, Brahmanism — was there first.

From the eighth century onward, Mahāyāna Buddhism in Tibet developed its peculiar form as "Lamaism," and this is the form in which we find it throughout the Himalayan countries. Lamaism is not diametrically opposed to Hinduism, and a large proportion of the Hindu pantheon has been incorporated in the hierarchy of supernatural beings surrounding the complicated Lamaist pantheon of Buddhas and Bodhisattvas. And yet, the opposition to Lamaism is remarkably strong among the orthodox Hindus, which is probably due to two reasons: (1) that Buddhism has no caste distinctions,²⁷ and (2) that the principal representatives of Lamaism are the Bhote, the Tibetans, who are hated and despised, so much so that in Nepali (i.e. Khaskura), *bhote* is a synonym for "an impure, unclean fellow" (Turner, 484) — the Tibetans in modern times are not notorious for their cleanliness. Consequently there is no intermarriage between Nepalese Hindu families and those hill tribes who are distinguished by the name of "Gurkhalis," or "Gurkhas" on the one side and Tibetans and Bhutanese on the other; and, apart from marriage, illegitimate intercourse of a Bhote with a Nepalese, even of low caste, is severely punished as a particularly grave form of incest, as we shall shortly see from Hodgson's records. On the other hand, it cannot be said that Buddhism, or Lamaism, is persecuted in Nepal. On the contrary, the present state of Nepal must

²⁶ L. A. Waddell, *The Buddhism of Tibet* (2nd ed., Cambridge, 1934), 20 ff.

²⁷ On the other hand Buddhism does not in principle reject the caste system; see Robert Chalmers, "The Madhura sutta concerning caste," *Journal of the Royal Asiatic Society* (1894), 341-66.

be credited with religious toleration. Even Mohammedans live in the country, and one of Hodgson's informants said that, in civil cases, if a witness happened to be a Moslem, he was sworn on the *Koran*. Waddell (p. 315) mentions the famous Maguta stupa, about two miles to the northeast of Kathmandu as "one of the celebrated places of Lamaist pilgrimage outside Tibet," which is visited by "immense numbers of Tibetans, both Lamas and laity, every winter." The Newars are divided into two groups, one Hindu (the so-called Siva-margas) and the other Buddhist (Buddha-margas).

Neither Buddhism nor Hinduism, however, can be regarded as the original religion of the Newars or the hill tribes. Even the culturally advanced Newars have a primitive past, and there are indications that, in prehistoric times, totemism was part of their belief and ritual.²⁸ The majority of the hill tribes now profess the Hindu faith. As this is the religion of the rulers of Nepal, all Gurkha soldiers describe themselves as Hindus, and so do even Murmis when they are abroad, whereas, in their homeland, they are actually Lamaists and called "Murmi Lamas" by the other tribes. In the remote past, however, they all had a primitive type of religion, and as most of them came from Tibet, it is not impossible that it was related to the ancient religion of Tibet, *bon*, which has been superseded by, or become amalgamated with, Lamaism. Certain food prohibitions — other than those imposed by the Hindu canon — which are prevalent among the Rai and some other Nepalese tribes may perhaps be interpreted as traces of totemism.²⁹ The Limbus joined the Hindu religion only in 1790, when they gave up their old habit of cow eating.³⁰

Nepal has always been a forbidden land for Europeans, and only very few have been privileged to enter the country as guests of the maharaja, as tourists, or on official business. This situation has practically prevented anthropological field work. Even Hodgson was subjected to regulations which prevented him from studying the social life of the hill tribes in their own environment, i.e., their villages, but he never missed an opportunity to collect information about them.³¹ Some of his notes seem to be the

²⁸ L. A. Waddell, "Frog worship among the Newars," *Indian antiquary*, 1893.

²⁹ L. Adam, "Ueber speiseverbote der Rai und einiger anderer staemme von Nepal," *Zeitschrift für vergleichende rechtswissenschaft*, 50 (1935), 165–75, and "The social organization and the customary law of the Nepalese tribes," *American anthropologist*, n.s., 38 (Oct-Dec. 1936), 533–47.

³⁰ Northey, 13.

³¹ Consider his valuable, though incomplete, description of the customs of the Rai tribe, "On the Kiranti tribe of the central Himalaya," in *Miscellaneous essays*, 1:396–407. Trunk no. 1 of the Hodgson collection in the India Office Library contains a manuscript, "Account of the

first record of the tribal organization of the tribes. They are each divided into clans (*thars*), subdivided into kindreds (*gotras*), which are strictly exogamous. The numbers of both *thars* and *gotras* of each tribe vary considerably. Naturally, this social organization was of great importance for the composition of the Gurkha units in the Indian army, hence we are indebted to officers of these units for some detailed publications on the subject,³² based upon information obtained from the Gurkhas in the Indian army. They are our best sources for the social anthropology of the hill tribes.

Only one particular detail concerning the social organization of the hill people must be mentioned here, because it shows the way in which these tribes adapted themselves to the idea of the Hindu caste system. The various tribes are, generally speaking, the inhabitants of certain parts of the country.³³ Actually, there are a good many districts and villages where several tribes are represented. In addition we find, in most of the villages, "Brahmans" — a social group which is not a tribe but a caste — and, on the other hand, menial castes, including tradesmen. In the course of my own investigations among Gurkha soldiers,³⁴ I used to begin my questions by inviting my informants to give an account of their home village and its inhabitants. The men invariably enumerated the castes and tribes represented in their villages according to their social rank; first, of course, the Brahmans, followed (if represented) by the Chetris, next, the Gurungs, Magars, etc., menial castes naturally being placed at the end of the list. Regarding the hill tribes, the order suggested for Magars, Sunwars, Rais, and Limbus was not always the same, but, in general, it could be established that tribes — who, originally, have nothing to do with castes because they are not social but ethnic units — have been incorporated into the Hindu caste system. If we want to know the tribe to which a Gurkha belongs we have to ask him: "What is your caste?"

institutions and customs (*sthithi*) of the Newars, got from Nilgirvanand (one of the judges of the chief metropolitan tribunal in my time)," and trunk no. 2 has three volumes of English notes "on the classification of the people (*thar*), etc.," which has important information about the social organization of the hill tribes (Hunter, 359, 360).

³² See Colonel Eden Vansittart, *Notes on Goorkhas* (Calcutta, 1890). It was revised in 1906, and a third revision by Colonel B. U. Nicolay entitled *Gurkhas* appeared in 1915. An entirely rewritten edition by Major C. John Morris — *Gurkhas: handbook for the Indian Army* — appeared at Delhi in 1933 and has an especially good bibliography. See also the popular and well-illustrated account, *The Gurkhas, their manners, customs, and country* (London, 1928), by W. B. Northey and C. John Morris.

³³ For a map showing the area occupied by the different tribes see Morris' handbook on the *Gurkhas*.

³⁴ See the author's article in the *American anthropologist* (1936), 524, referred to in footnote 29.

As any trade other than farming is assigned to the lower and lowest castes, it follows that the Newars of Nepal, regardless of the excellence of their metalwork, could not attain the relatively elevated rank in the new Gurkha state which was conceded to the much less cultivated hill tribes because they were farmers and fighters. But the Newars are also merchants and bankers, and Major Northey tells us that "the particular Newars who had set themselves up and even so employed in the little kingdom of Gurkha at the time when Prithwi Narain invaded Nepal, were allowed the title of Gurkhali."³⁵ Generally speaking, however, the social status of the former masters of the Terai is comparatively low. They are a separate community of their own, or, as one division is Buddhist, rather two communities.

According to my own informants (all peasants from the hills), there seem to be small numbers of Newars living in many, though not all, of the villages in the mountains. Each village, however, has representatives of the indispensable low castes, namely *kāmi*, blacksmiths, or ironworkers, often called *lohār* because the word *kāmi* implies contempt (Turner, 88); *damāi*, tailors; *sārki*, tanners, shoemakers, cobblers; and the lowest *pore*, sweepers and executioners. Some villages also have a number of *sunārs*, goldsmiths. About the anthropological classification of these *pohoni*, or despicable castes, I have no satisfactory information.

There are also slaves in the proper sense of this term (*kamāra*). It seems that the status of hereditary slaves is an original Nepalese institution and thus not due to Hindu influence. Turner (p. 75) gives an interesting account of the position of these slaves (m. *kamāro*; f. *kamāri*). At least part of them are of Tibetan origin: "A Bhote who is a bondsman, i.e. who has agreed to serve in return for a loan, if he cannot pay the debt, becomes on a government order a slave. His children are slaves and can be bought and sold." Superior castes, including Gurungs and Magars, cannot become slaves, but it is not stated that this cannot happen to a member of one of the lower castes. According to Northey, slavery was abolished by a decree of the maharaja of 1924,³⁶ but Turner tells us that this was only a speech, delivered on November 28, 1924, wherein the then prime minister "appealed to his people to aid him in abolishing the institution of slavery." We may safely assume, then, that, up to the present, slavery is still in existence. The same maharaja has repeatedly proved his spirit of progress; he also prohibited the custom of burning a widow on the funeral pile of her deceased husband (*sati*) by decree of 1920.

³⁵ Northey, *The land of the Gurkhas*, 12. ³⁶ *Ibid.*, 83.

LAW AND CUSTOM

We have already explained that a distinction must be made between the law of the state of Nepal — first, Newari and, subsequently, Gorkhali — and the customary laws of the hill tribes. Two rulers before the Gorkhali conquest distinguished themselves as legislators, namely Jayasthiti Malla (1389–1429) and Rama Sah (1606–33). Nothing is known about the law as it was before Jayasthiti Malla. He is characterized as a “very wise” raja, credited with various law reforms. On the social side, the raja “divided the people into castes and made regulations for them.” On the other hand, the raja “made a rule that Brahmans might follow a profession.” With regard to land tenure, his principal innovation seems to have been the legal possibility of disposing of real property: land, which had previously been *extra commercium*, now became salable and could be mortgaged. It appears that here, too, a social reform was implied for we are told that the raja “made poor wretched people happy by conferring on them lands and houses, according to caste.” Finally, criminal law and practice were reformed in that the raja “imposed fines, according to the degree of the crimes,” whereas “in former reigns criminals were allowed to escape with blows and reprimands.”³⁷ All these reforms were, of course, confined to the territory and people of the Newari kingdom and thus did not affect the customary laws of the neighboring hill tribes. The Newars, however, always had a caste system of their own, since their particular form of Buddhism “admitted the dogma of caste” as Hodgson points out,³⁸ and as they still retain it, and thus not the Hindu caste system proper, the role of Jayasthithi Malla so far seems to be apocryphal. Furthermore, if this ruler were really the zealous propagator of the Hindu faith as we find him described in the *vamśāvalī*, edited by Wright (p. 187), it is surprising that he should have introduced a system of mere fines instead of the draconic capital and other corporal punishments provided in orthodox Brahmanic sources. In any case, the criminal law of the country was certainly not distinguished by leniency in Hodgson’s time, as we shall shortly see.

The other legislator, Rama Sah, is said to have promulgated a code, but I have been unable to ascertain any details about it, not even whether it was a civil or a criminal code or both. It is noteworthy that, as far as I can see, no reference to this code has been made by Hodgson.

After the Gorkhali conquest, we notice a gradual progressive development, beginning with the law reform introduced by an enlightened prime

³⁷ Wright, 187.

³⁸ *Miscellaneous essays*, 2:246.

minister, Maharaja Jang Bahadur (1846–77). After his return from England in 1851, he issued another code, known as the Nepalese *Ain* (Khaskura: *ain* = rule, law), which is still in force. Some of the old legal institutions were abolished, including the blood revenge, which was not infrequently practiced in Hodgson's time. But we must not assume that the *Ain* contains any legal principles copied from a contemporary European legal system. The only European influence so far, which might perhaps be regarded as a result of Jang Bahadur's experience in England, may be the idea that the administration of justice should be centralized in the government of the state; and this principle must be held responsible for the abolition of the blood revenge which, in certain cases, e.g., adultery, had previously been the privilege of the most prominent — though by no means all — of the hill tribes. The *Ain* as a whole is said to be based mainly on the *dharmashastras* of India: Therefore, it cannot be classified as a "modern" codification but, at best, only as a reformulation of the law as it had been under the Newari kings, when it was largely derived from ancient Indian law.

Apart from the reform of Jang Bahadur, legislation under the Gurkha dynasty for a long time retained certain antiquated institutions of the Newari period. This was particularly true of the legal procedure. For example, a characteristic form of evidence in Nepalese courts used to be the ordeal, which is a typically primitive institution of almost universal distribution. Ordeals were practiced in the Newari kingdom, but only seldom, whereas they became frequent under the Gorkhali reign, as has been observed by Dr. Buchanan Hamilton, one of the earliest European visitors.³⁹ In Nepal the ordeal used to be employed in civil cases only and consisted of the so-called "immersion in the Queen's tank." The decisive act of this complicated ceremony was carried out by two slaves, each of whom represented the name of one of the litigants. These slaves entered the deep water, "and at a signal given, both immerse themselves in the water at the same instant." That party whose name was represented by the slave who was able to remain immersed for a longer time than the other was regarded as victorious.⁴⁰ The interpretation was that in such a way the gods Surya, Chandra, Varuna, and Yama, to whom "all inward thoughts are known," have done justice between the parties. This ordeal, called *nyāya*, was still practiced in Hodgson's time. Whether or not it was

³⁹ *An account of the kingdom of Nepal* (Edinburgh, 1819), 103.

⁴⁰ Hodgson, *Miscellaneous essays*, 2:221 ff.

abolished by Maharaja Jang Bahadur I cannot tell, but I think it was. It was unknown to all of my own Nepalese informants.

Both the Newari and the Gorkhali rulers respected the customary laws of the hill tribes as far as these laws were not incompatible with the legislation of the state. Criminal law as well as procedure, both criminal and civil, became a monopoly of the state, and, if the story of Jayasthithi Malla's reforms is so far correct, certain parts of civil law also. The family law, inheritance law, and the law of contracts evolved by the various tribes seem to have been left alone by the government. This meant that, under certain circumstances, the courts of law had — and still have — to consider and apply tribal laws. Hodgson was anxious to get information about the customary laws of the Chetris, Gurungs, Magars, and other tribes, as can be seen from questions LXXVIII ff. in his *Miscellaneous essays* (2:232ff.), but the native experts in Kathmandu could not — or at least did not — always supply full or consistent information. As a matter of fact, the study of the customary laws of the tribes in their own environment is, in my opinion, one of the major contributions to both ethnology and comparative law which we may expect from future scientific field workers in Nepal. Tribal law and custom will have to be studied in their context with the genealogy and history of individual families and with the economic life of the social unit in the hills, the village community.⁴¹

HODGSON'S MEMORANDA OF THE JAIL DELIVERIES AT THE DASAHARA
FESTIVALS, 1826, 1829, 1833, AND 1843

We now come to Hodgson's memoranda. From the style and also from the condition of the original notes in the India Office Library it is obvious that Hodgson personally attended the executions, taking notes on the spot. The "jail deliveries" have been explained by one of Hodgson's informants.⁴² It appears that an accused person was first imprisoned, regardless of the nature of the offense or crime. Thus the prisons soon became overcrowded with people committed for trial. According to the criminal procedure convicted delinquents, also, were invariably sent to prison after their trial to await punishment.⁴³ From time to time, the prisons were emptied, and the convicts were handed over to the executioner. This wholesale settlement of criminal cases took place on the

⁴¹ Consider L. Adam, "Sitte und recht in Nepal," *Zeitschrift für vergleichende rechtswissenschaft*, 49 (1934), 1-269, and Hodgson's manuscript in the India Office Library, "Village system. A questionnaire, with some answers" (Cat. No. Hodgson 12, 480, 11, fol. 125-132).

⁴² *Miscellaneous essays*, 2:229, questions lxviii-lxix. ⁴³ *Ibid.*, 2:223, question xxxiii.

occasion of the *Dasahara* festival, which lasts ten days and is celebrated with a great number of rituals, including sacrifices of animals.⁴⁴

There is no doubt that the Nepalese *Dasahara* is identical with the *Durgā pūjā* of India, especially of Bengal. The short paragraphs about the *Dasahara* in Wright's *History of Nepal* (p. 39) and Turner's *Dictionary* (p. 306) differ in some respects. According to Turner the etymological explanation of the name is (lw. Sanskr. *daśaharā*) "the taker away of the ten," namely, sins: i.e. Ganga (Ganges), and the festival held in honor thereof. However, whereas in Nepal the whole festival is called *Dasahara*, this is, in India, only the name of the tenth day (also called *Vijaya daśamī*) while the festival as a whole is known as *Durgā puṣā*, or *Nava rātri*. If we follow Monier Williams,⁴⁵ it is connected with the autumnal equinox but mythologically interpreted as the commemoration of the victory of the goddess *Durgā* over the buffalo-headed giant *Mahisha*. In Bengal an image of the goddess is worshipped for nine days and then thrown into the water. Wright (p. 39) mentions that in Nepal, no image of *Durgā* is used on this occasion, but at the *Dasahara*, which the present writer was fortunate to attend, a wooden pole, about five feet high over the ground and about six inches thick, painted white, with red designs, was erected as a symbol of the goddess, and sheep were sacrificed in front of it and the heads of the animals placed round the pole.

It is well known, that, in former times, the cult of *Durgā* included human sacrifices; therefore, at first sight, the theory seems to suggest itself that wholesale executions of criminals on the occasion of a *Durgā* festival might be a substitute for those sacrifices. This, however, is not the case, as will be seen from the fact that no religious ceremony and no reference to the festival occurs in the procedure connected with the executions. "The jail-delivery is a mere removal of prisoners from the city into an adjacent village, in order that the city may be fully lustrated and purified at that season. The usage has no special reference to judicial matters; but so many offenders as ought about that time to be heard and dismissed, or executed, are so heard and dealt with."⁴⁶ "When the *dasaharā* approaches [September, October] the *dit'ha* [judge] takes to the *Bhāradār Sabhā* [the council of the ministers] the criminal calendar of those whose offences have been tried, and states the crime of each, the evidence, and the punishment he conceives applicable. The *bhāradāra* [ministers], according to their judgment on the *dit'ha's* report, set down the punishment

⁴⁴ See photographs in my article in *Man* (1934), no. 23. ⁴⁵ *Hinduism* (London, 1877), 183.

⁴⁶ *Miscellaneous essays*, 2:229, answer no. lxviii.

to be inflicted on each offender, and return the list to the *dit'ha*, who makes it over [to] the *arz-beḡī* or sheriff, and he sees execution done accordingly through the medium of the *mahā-nāīkias* [executioners]."⁴⁷

[fol. 74] JAIL DELIVERY OF DASAHERA. 1826 — TOTAL — 55 SOULS.⁴⁸

10 released Of these, 10 were set at liberty as follows;

6 men, confined for small offenses — had been from 6 to 10 months in prison.

4 women — bands⁴⁹ — for seducing girls to vice after 7 months' imprisonment.

— — — — —
Total 10 released.

[6] *capitally punished* Capitally punished (beheaded) Six men as follows:

1st for incest with sister.⁵⁰

2nd for sexual commerce with a Brahmanee, himself of lower caste.

3rd for unlawful commerce with a female — particulars unknown.

4th a Bhotya⁵¹ — for unnatural crime with a cow;⁵²

5th for stealing a gold turban-chain of a Sirdar.

⁴⁷ *Ibid.*, 2, answer no. Lix.

⁴⁸ These memoranda are found in the India Office Library, London. Hodgson manuscript 12, no. 25/4, fol. 74-77 (complete copy) and fol. 28-83 (extracts), followed by notes on the jail delivery of September 1843 in India Office Library Catalogue of European manuscripts, vol. 2, pt. 2, no. 479, 1. Hodgson's old-fashioned phonetic transliteration of Nepalese and Indian names and terms have not been altered. The italicized paragraph headings were marginal notes in the manuscript.

⁴⁹ Bands — apparently *banda* (Hind.) = slave.

⁵⁰ The frequency of various forms of incest is striking. It certainly disproves the theory of a deterrent effect of a rigorous criminal code. We note that Hodgson classified as "incest" only cases of illicit intercourse between relatives, whereas he recorded as just "sexual commerce" those cases where intercourse took place between members of different castes or tribes. It is quite legitimate, however, and terminologically useful to describe both categories as "incest," the former type being the biological, and the latter the sociological, variety. This would be in conformity with the classical definition of the term incest. It is true that D.XXIII.2.1.68 says that "*iure gentium incestum committit qui ex gradu ascendentium vel descendantium uxorem duxerit*," but 1.39,1 eod. gives the wider definition which will include any violations of the Hindu caste system, namely: "*si quis ex his quas moribus prohibemur uxores ducere duxerit, incestum dicitur committere*."

⁵¹ Bhotya, Bhotnee — *bhot* — Tibet; *bhotān* — the country of Bhutan; *bhote*, n., a native of either Tibet or Bhutan; *bhotiya*, adj., but also used as a noun; for correct transliteration and etymology see Turner, 484.

⁵² As has been stated the criminal law practiced in the executions recorded here is ancient Indian law and thus not indigenous in Nepal. The nature of the crimes as well as the respective punishments will easily be identified with institutions of the classical Hindu sources, notably the *smṛtis*, where the lists of sins show the close association between the criminal law and the caste system (comp. Jolly-Ghosh, p. 251). The gravest crimes cause the loss of caste, and sins, or crimes, are therefore arranged according to the possibilities of the criminal recovering his caste easily, with difficulty, or not at all. The most complete list is that given in the *Visnusmṛti*, and the majority of capital punishments recorded by Hodgson may be checked with the classification in that list, in particular, the category of "sins punished by death" (*atipātaka*). According to the *Visnusmṛti*, unnatural crime with a cow would have been one of the "lesser crimes" (*upapātaka*), to be punished with the loss of caste. Perhaps in this particular case, the much more severe capital punishment has been imposed because the delinquent happened to be a Bhote, a Tibetan; but this is not certain.

6th for murdering a Damainee.⁵³ [fol. 74,p.2].

3 *maimed*

1 (Khas)⁵⁴ had his membrum virile cut off for sexual commerce with a Brahmani.

2 & 3. Two (men) hands & nose cut off for aggravated theft.

4 *banished* Turned out of country 4 persons. 2 males and 2 females. Offences unknown.

32 *remanded to jail* Remain 32 who were remanded to jail for further confinement, for various offences.

JAIL DELIVERY OF DASAHAHA. 5TH SEPT., TOTAL 27 SOULS.

4 *capitally punished* 4 executed by decapitation & hanging — males as follows:

1st, a soldier for sexual commerce with a Chamārni⁵⁵ knowing her to be such and against her advice. (In cases where such unlawful commerce with outcaste females results from fraudulent concealment of female her nose cut off and turned out of country — and man scot free.)

2nd, a hill-man for killing a cow by a violent blow.

3rd, a Magar — for sexual commerce with niece. [fol. 75]

4th (was hanged) for incest with mother-in-law — a young wife of dead father. Woman unharmed because she long resisted the seduction — the man a Parbattiah.

6 *maimed* Six mutilated as follows

1st, a Kéta (slave)⁵⁶ — nose cut off for seducing a Kéti (female slave) from his master's house and running away with her.

2nd, Both hands cut off for stealing from a Brahman — was his servant and stole jewels, etc. Ordered for execution but reprieved on disclosing where property might be found.

3rd, one hand cut off — theft.

4th & 5th, dto. dto.

6th, 1st joint of thumb off right hand — for stealing gourds out of a field-garden — a Newar.

3 *banished* Three expelled the country with every circumstance of ignominy — being Religionists and incapable of being put to death — as follows: [fol. 75,p.2]

1st, a Brahman for seducing another Brahman's wife — woman degraded from caste.

2nd dto. for theft.

⁵³ Damai, Damainee — *damāi*, *damāini* (m. & f.) members of the caste of tailors, one of the *pohoni* (despicable) castes.

⁵⁴ Khas — a synonym for Chetri, the most prominent tribe, or caste, after the Brahmins. Khaskura is the name of the language. Turner (p. 117) mentions the following two characteristic phrases: *Khas bawan* — Chetris and Brahmins; *Khas ko mamlo jaso garyo usai ramro* — "A Khas may do anything he likes."

⁵⁵ Chamarni — probably *kamāri*, a female slave.

⁵⁶ Kéta, Kéti — *keto*, *keta*, a slave, boy, servant; f. *keti* slave girl, prostitute, kept woman (Turner, 104).

3rd, a Sunyâsi: for sexual commerce with Chamârni.

5 *Dismissed* Five dismissed as follows:

1st, a boy — 16 years old — stealing a fowl — condemned to lose hand — let off after 7 months imprisonment.

2nd, a Newâr — for mortgaging his house to 2 creditors who both claimed it — compounded after 6 months' kyd.⁵⁷

3rd, Assault and wounding slightly — released after 2 months' imprisonment at request of wounded man.

4th & 5th *carant*.

18th Sept.

9 *Dismissed* 9 dismissed; 3 women and 6 men as follows:

1st woman for falsely accusing a Sirdar of a connexion with a vile caste-female. After 9 months' imprisonment. [fol. 76]

2nd, a Newârni — (Udâ's wife)⁵⁸ for adultery with 2 Newârs during her husband's absence in Bhôt: informed against by her neighbours, and confined 5 months, merely to force a confession. Man first connected with her fined 174 Rupees to Government, second let off.

3rd & 4th, Newârs — adulterers with above woman and punished as above noted, according to usage among Newârs.

5th to 9th *carant*.

JAIL DELIVERY OF DASAHA — 1829. TOTAL PRISONERS — 46 SOULS.

7 *Capitally punished* Decapitated 7 as follows:

1st, for incest with mother-in-law.

2nd, for beating to death a cow with a club.

3rd, for cutting down another man with a kookree⁵⁹ in a dispute.

4th, (a Moormi Bhotiah)⁶⁰ for sexual commerce with a Brahmani. [fol. 76, p. 2]

5th, (Khas) for sexual commerce with his wife's mother.

6th & 7th, males. Crimes unknown.

7 *maimed* Mutilated as follows.

2 had penis cut off for sexual commerce with outcastes as follows:

1st, Magar with a female Sârki

2nd, Bhotiah with a female Damai

3rd and 4th 2 had each one hand cut off for theft.

5th had one ear cut off for theft.

6th & 7th 2 women had nose cut off for adultery —

Total 7.

1 *Whipped and dismissed* one (woman) dismissed with a flogging for petty theft.

Turned out of country — religionists.

⁵⁷ Kÿd — *kaid*, prison.

⁵⁸ Udâ — *udâr*, adj., noble, famous, illustrious (Turner, 48); thus "a nobleman."

⁵⁹ Kookree — *khukri* or *khukuri*, the curved short sword carried by the Gurkha warriors.

⁶⁰ Moormi Bhotiah — not a Bhotiya, i.e., a Tibetan, but a member of the Murmi tribe of Nepal whose religion is Lamaism; hence the identification with a Tibetan.

4 *banished* 4 as follows:

2 Brahams and 2 Gosâens⁶¹ 1 Braham for sexual commerce with maternal aunt; and 2nd for theft. 1 Gosâen, for making a Gosâen of a [fol. 77] boy without leave of parents. 2nd Gosâen for obtaining money under false pretences.

16 *Dismissed*

*Dismissed on occasion of an heir being born to Gaddi:*⁶² On 8th Octr. 5 women and 11 men being a total of 16 — who were in prison for sundry small offences —

11 *Remanded* Remanded to jail eleven souls — 2 women & 9 men.

[sgnd.] B. H. Hodgson

Nepal [the next word illegible]

January 27. 31

[So far the complete copy of the above notes. The following section consists of extracts from Hodgson's mss. L.A.]

15TH OCT. 1833

]fol. 78[Capitally punished:

3 men of low caste for commerce with Brahmanees.

a Magar for commerce with paternal 1st cousin.

Mutilated (hand lipped [obviously slip of the pen for "clipped"])) 3

2 for coining paisa [*paisa* (Hind.), money, currency]

1 " theft.

(nose cut off):

a Kâmi⁶³ for commerce with Bhotnee (pure caste).

Expatriated 3 Brahmanes.

[fol. 80 p. 2] hanged

2 Purbatiyas,⁶⁴ one for murder of child, one for deflowering the daughter of his owner (he a slave)

Right ear cut off

1 Domestic slave of Chourtea [? L. A.] for exciting quarrels between the young heads of the family.

[fol. 81] Mutilated:

a Musalman for sexual com. knowing by & concealing the fact, with a Kâmini . nose cut off.

⁶¹ Gosâen — *gosâi* (f. *gosâini*), name of a subclass of Brahmanes (Turner, 150).

⁶² Gaddi — *gaddi*, cushion, throne (Turner, 134), and thus a symbolic synonym for the ruler of the country, i.e., the king, or rather the prime minister (maharaja).

⁶³ Kami — *kâmi*, f. *kâmini*, the caste of blacksmiths, ironworkers.

⁶⁴ Parbatiya — or *Pahârî*, the language of the mountains. This is a general term for the Indo-Aryan languages spoken in the Himalayan countries south of the dividing range. There are three groups, one of which is Khaskura, or Gorkhali. Compare *Linguistic survey of India*, 9: part 4; briefly, *Encycl. Brit.* (14th ed., 1937), 17:29, article "Pahari language." In Nepal, the term Parbatiya is used to denote the people who speak that language, i.e., all those who also describe themselves as Gurkhas, or Gorkhalis, and thus not the Newars.

a Kamini, the above, for that offence and also for concealing her caste and having commerce with several pure men. Nose cut off.

[fol. 81, p. 2] Mutilated:

a Musalman — Nāth-musician⁶⁵ for commerce with Brahmanee, genitalia cut off.

Moslem woman, for enticing the above woman to above man — nose cut off.

Discharged:

a Newar barber for com. with above woman after com. with Moslem unknowingly, 200 rup. fine & purified by prajaschitt.

a Moslem for lending the above barber the means pecuniary for access to the woman, with 200 rup. fine.

[fol. 82] Capitally:

a Bhoteah male — by cutting down adulterer, adultery not done.⁶⁶

a Magar male for commerce with Khasni widow.⁶⁷

[The following notes from MS. Hodgson 12, no. 479, 1, fol. 1]

JAIL DELIVERY, 1843, SEPT.

5 women expelled to Plains, illicit commerce;

4 men decapitated, repeated conviction of theft;

1 man hanged, patricide;

2 men, hand cut off, theft;

2 men, finger cut off, theft (1st time);

1 woman, murdered her fellow wife, head shaved, face blackened, mounted on buffalo, drummed through city and expelled country (Can't kill woman).

⁶⁵ Nāth — probably derived from *nātya* = dancing, acting (Turner, 339).

⁶⁶ Blood revenge, especially when taken by a husband in a case of adultery, does not seem to have ever been a general custom in Nepal but used to be a special privilege of the most prominent hill tribes, the Parbatiyas, including the Brahmans, Khas (Chetri), Gurung, and Magar, whereas the Newars, Murmis, and even the Rai (Kiranti), let alone the Bhotes, had no such privilege (Hodgson, *Misc. essays*, 2:242). In this case a Tibetan was capitally punished because he had "cut down" another man whom he suspected of adultery, but actually "adultery was not done." Suppose the victim had been killed, the Tibetan, not having the right of blood revenge, would have been guilty of murder or at least (in our own terminology) manslaughter. However, regardless of the privilege, a crime would have been committed in any case, as apparently the judge was satisfied that no adultery had taken place. Blood revenge in cases of adultery used to be a custom in northern, especially northwestern, India. Nor was the custom of cutting off the nose of the guilty wife confined to Nepal; it has been recorded from the Northwest provinces by M. F. Billington (*Women in India* [London, 1895], 123). But the reader will see from fol. 75 and 81 that this horrible punishment was inflicted upon male delinquents also, and, generally speaking, that it was practiced by the administration of justice and thus not only by the private avenger himself.

⁶⁷ Khasni widow — a widow belonging to the Khas, or Chetri, tribe.