

FOREST CO-MANAGEMENT AS IF HISTORY MATTERED

The Case of Western Himalayan Forests in India

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Executive Summary

Kangra district in the western Himalayas has been witness to a succession of institutional arrangements between the people and the state for the management of forests in the last 150 years. This history has serious implications for the sustainability of the current efforts at creating village-level institutions for the co-management of forests.

In the mid-19th century, in exchange for proprietary rights over trees and timber, co-parcenary bodies of cultivators at the village level were formed and ceded the proprietary rights over the soil of the forests along with ownership of all non-timber forest products. Additionally, a one-fourth share in the proceeds from the sale of trees was also granted to this body, in order to secure its interest in timber conservancy. Over the next few decades, as the demand for timber and the need felt for securing control over timber yielding areas grew within the state, the co-parcenary bodies negotiated with the state and successfully extracted large concessions in exchange for ceding their proprietary rights over the soil.

Again, in the 1930s, responding to calls of impending doom due to forest degradation and erosion, the state negotiated with communities for enclosure of forest areas it was finding it impossible to manage. The resultant forest co-operative societies were given the full income from the forests, provided they managed the forests according to simple working plans prepared by forest officers and accepted the enclosure of forest lands.

Till date, in spite of offering varying degrees of incentives to local communities while at the same time trying to restrict local use, the forest department has failed to enforce its agenda of enclosure. The two cases discussed illustrate an ability of the communities to negotiate with the state, something which has been completely ignored, and sometimes negated, in the current efforts at co-management of forests. The cases also point to the futility of offering short term incentives and demonstrate the need to reconstitute the commons, with local institutions as equal partners.

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Introduction

Most analyses of the recent strides towards greater involvement of people in the protection of forests in India in general and Himachal Pradesh in particular tend to be highly ahistorical in nature. The relationship between the local communities and the state, both colonial and post-colonial, on the one hand, and between the local communities and the forests on the other, has a history that can be ignored only at the cost of perspective. For the last two centuries, the state and local communities have made competing and often conflicting claims on the forest estate. The state of the forests today bears the scars of this conflict and reflects the dynamic equilibrium attained by the political engagement of the various actors at the local level.

This engagement, particularly between the local communities and the Forest Department over claims on forests has generated flashes of disequilibrium at regular intervals, followed by renewed attempts at establishing a semblance of *status quo ante*. In the seemingly one-sided contest between the 'people' and the 'state', these instances provide valuable insights into the nature of the conflict on the one hand and an understanding of the political nature of the relationship on the other. Moreover, the nature of this engagement and conflict in Himachal, as demonstrated later, has not been that of confrontation but of negotiation. Insofar as the forests historically have had to bear the brunt of the fallout of this conflict, any attempt to 'regenerate' the forests has to take into account the implications that this historical legacy has on a possible institutional marriage between the Forest Department and the local communities. However, it seems that the only lesson to be learned from history is that nobody ever learns from history.

Himachal Pradesh, a province of India nestled amongst the western Himalayas, is unique in that it has been witness to an overt institutional engagement between the people and the state over the last 150 years. An analysis of this engagement, while highly location-specific and contextual, has much to contribute to the vexing contemporary problem of governance of the forested commons as it points towards a political understanding of the nature of engagement, besides suggesting institutional solutions for the same.

The next section introduces the territory dealt with, in terms of the landscape, aspects of ecology, political history and the property rights therein. The following two sections discuss in detail two specific institutional mechanisms for governing the commons over the last 150 years. The fourth section briefly documents the main features of the ongoing efforts at creating local institutions for the management of the forests. The fifth section discusses the implications of the particular historical experiences discussed earlier for the current efforts.

Western Himalayas

The terrain : The state of Himachal Pradesh possesses rich and varied biological diversity owing to the distinct geology, climate and the physiography of the region. Beginning from the abrupt rise of the Himalayan mountains from the Indo-Gangetic plains, Himachal Pradesh extends to the cold desert of the Indo-Tibetan highlands, with altitude varying from 350 meters to 6,975 meters above sea level. Himachal's most important, and most voluminous, biological resource is its forest wealth. Out of a total area of 55,675 sq. km., administrative forest land covers 37,591 sq. km., which is 67% of the state. Of this, only 12,501 sq. km. has a crown density of 10% and above, including 9,565 sq. km. of dense forests. A significant part of the rest is treeless on account of being above the tree line or in the cold desert (Chhatre et al 1997).

The population of Himachal Pradesh was 5.17 million in 1991, giving a density of 93 persons per sq.km., which varies from 2 persons per sq.km. in Lahaul-Spiti district in the trans-himalayan cold desert in the north-eastern part to 330 persons per sq.km. in Hamirpur district in the south. 91.31% of the population is rural, residing in 16,997 census villages covering 43,781 hamlets. The urban population is concentrated in 59 urban Settlements and towns, with the state capital Shimla leading with a population of 85,000 people. 66.71% of the population is engaged in agriculture as its chief occupation. (DOP 1997)

The people-nature interface in Himachal seen along spatial and temporal dimensions, is possibly as diverse and as abrupt as the Himalayas themselves. Ranging from sub-montane, sub-tropical tracts to moist and dry temperate zones and the cold desert, across cities, towns, villages and vast uninhabited areas, forests are used, abused and conserved by local communities in a bewildering variety of ways. This variety is manifest in the rich diversity of livelihoods and livelihood strategies across the state. Whereas the basic dependence on forests is common, the specific mix of livelihoods and strategies is specific to regions and has evolved over centuries. Being dependent on resources in the public domain, there is a high degree of interdependence between different livelihood strategies. At the same time, complex systems have been evolved to minimize conflict through overlap or over-exploitation, traditionally resulting in a separate niche' for each livelihood strategy in harmony with others. These systems, primarily an integral part of subsistence livelihoods and manifest as customs or traditions, are increasingly becoming irrelevant in the face of codified law and the march of modernity. However, it is these systems, as represented by the customs and traditions, which are the best indicators of the role of forests in livelihoods and the social dimensions and limits of natural resource use.

Political history : The British annexed Kangra, covering the present day districts of Kangra, Kullu and Lahaul-Spiti, in 1846 and established their revenue administration system by 1850. Over the next twenty years, the British consolidated their control over the territory as well as extended their influence over the numerous princely states, the most important being Mandi, Chamba and Bushahar. Shimla, the current administrative capital of Himachal Pradesh, was the summer capital of the Governor-General in Council of the Government of India from 1880s onwards. In addition to radically redefining the land revenue administration of the British territories and the princely states, the colonial period also witnessed an unprecedented re-ordering of the landscape, through the process of demarcation of forests for timber conservancy and the Settlement of rights of the local population in these forests.

The political history of Himachal Pradesh in the post-colonial period can be distinctly divided into two phases, separated by the grant of full statehood in the Indian Union in 1971. After being constituted as a satellite to the Indian Union (*Part C State*) on April 15, 1948, by the integration of 31 princely states, Himachal went through a tumultuous and highly insecure time during the first two decades of its existence. Starting with four districts and an area of 27,169 sq.km., the administrative and political status of Himachal was consolidated gradually through the incessant efforts of its politicians. In 1954, Bilaspur state was integrated with Himachal as a separate district. The States Reorganization Commission in its report in 1956 recommended the merger of Himachal with neighboring Punjab. Recognizing the dangers of such a merger of a hill state with a predominantly plains state, both in terms of political marginalisation and economic exploitation, the political leadership of the state lobbied hard with the central government to prevent such a move. Finally, as a compromise, Himachal Pradesh was constituted as a Union Territory under a Lieutenant Governor and a Territorial Council. In the bargain, Himachal lost the right to a democratically elected government. As the pressure increased, the Territorial Council was elected by universal suffrage in 1962, and in June 1963 democracy was restored when the Council was converted into the Vidhan Sabha (legislative assembly). In November 1966, Punjab was reorganized on a linguistic basis and the hilly areas of Punjab, comprising of Kangra, Kullu, Lahaul-Spiti and Shimla, were merged with Himachal Pradesh, almost doubling its area to 55,673 sq.km. constituting the present day Himachal Pradesh. The first general elections to the full Vidhan Sabha were held in September 1967 with 60 elective seats. Finally, Himachal Pradesh was granted full Statehood on January 25, 1971 (Verma 1995).

The survival and development of Himachal Pradesh as a political entity over the first two decades is a tribute to the tenacity of its political leadership. However, to a large extent, the

ideology and practice of development in the state was guided by this uncertainty regarding its status and the resulting urge of the political leadership to demonstrate their ability in steering their state towards its development goals responsibly. Under the threat of merger with Punjab, development in Himachal was characterized by a heavy emphasis on doing better along the parameters of the established paradigm, without regard to the specificities dictated by a mountainous geography and its peculiar history that dictated otherwise. Therefore, the utilization of the state's natural resources, particularly forests, for the development of the state as a whole, and the consequent centralization of control over these resources at the cost of local livelihoods was not challenged till well after the consolidation of the political status of Himachal Pradesh. After Himachal achieved full statehood in 1971, in the name of development, the government took over the *shamlat* or common lands, whose ownership and control had hitherto been with local communities. This proved to be the final link in the alienation of local communities from their forests, and the disappearance of community ownership of resources from the dominant political discourse (Chhatre et al 1997).

Property rights : It has been asserted that the Indian Forest Act 1878 represents a watershed in the ecological and environmental history of India. Ramachandra Guha has documented the impact of the law on territories in the central Himalayas in terms of the large scale reservation of forests and restrictions on forest use as a result (Guha 1989). Even though the law did result in providing the state with an instrument of greater control over forests, the impact of the law was far from uniform across the country and was often a function of the prevailing land tenure system (Rangarajan 1996, p33). In this sense, Kangra and other territories in Himachal represented a 'zone of anomaly' in the forested estate targeted by the Indian Forest Act 1878, with a peculiar system of land tenure and property.¹ In a deviation from the usual practice in large parts of colonial India, Settlement of property rights over forests in territories of present day Himachal Pradesh was carried out, from the 1880s onwards, under chapter 4 of the Indian Forest Act 1878, pertaining to Protected forests, instead of chapter 2, pertaining to Reserved Forests.² This significant departure ensured that the local communities in Himachal Pradesh secured usufruct rights to all kinds of forest produce during the colonial period.

Himachal Pradesh, thus, is a lonely exception to the Indian rule that local communities have very restricted property rights over forests, owing to extensive reservation of forests and curtailment of use during the colonial period. It is important here to distinguish between property rights defined as the right to benefits from a resource within the framework of an institutional regime that allows such benefits for some and excludes others unambiguously, as against property rights defined as the resource itself. As illustrated by the cases discussed later in the paper, local communities have extensive *de jure* property rights to almost all kinds

of forest produce, rights that were codified during the colonial period and continued thereafter. An average rural household in Himachal Pradesh would have de jure rights, for bonafide personal consumption, to graze livestock, collect fodder, fuelwood, manure, bushes for fencing, timber for agricultural implements and non-timber forest products like fruits, flowers, roots, bark, bamboo and honey³. As if this is not enough, every household in the state is entitled to one full-grown tree every five years for house construction timber, that too at ridiculously low and subsidized prices. In many cases, local people also have the right to sell non-timber forest products, a provision that allows people to reap significant benefits from the exploding industrial demand for plants of medicinal and cosmetic use.

The special case of Kangra : The present day Kangra district of the state has historically served as the guinea pig for the British for fording the uncharted territories of the hills in these parts. The British annexed Punjab in 1846 and Kangra came under direct British administration in 1849. Thereafter, almost every new institutional experiment with forest management in the colonial period was first initiated in Kangra and subsequently modified for other regions based on that experience. The first Revenue Settlement was carried out first in Kangra in 1852. The initial creation of timber reserves was done in Kangra in the late 1860s. The first Forest Settlement in the state, under the newly enacted Indian Forest Act 1878, was carried out in Kangra between 1882-87, before expanding to forests in other territories. The experiment of village Co-operatives for the involvement of people in preventing the further degradation of forests was also located in Kangra in the 1940s. Finally, Kangra district represents all the major forest types found in Himachal Pradesh, from sub-montane sub-tropical low hills and fertile valleys to high altitude temperate forest as well as alpine pastures above the tree line. In this sense, the historical experience of Kangra provides a valuable window to the lessons that are waiting to be learnt from history, if the Forest Department would only care to look.

The Village Co-proprietary Body

Genesis : In all subsequent literature and correspondence among bureaucrats on the subject of property rights in forests in Kangra, G. C. Barnes was directly or indirectly blamed for relinquishing full state ownership over forests in Kangra. In the report of the first Revenue Settlement of Kangra in 1852, Barnes, Deputy Commissioner and Settlement Officer, Kangra district, allegedly admitted that while everything of the nature of arboreal growth in the waste (read 'forests') belonged to the state, the soil was the ownership of the land revenue paying proprietors of the village, held in common. While it is true that Barnes did not assert the full property rights of the state in Kangra forests unambiguously, the Settlement Report itself does not suggest any relinquishing of property rights either.⁴ In the mid-19th century, with land revenue the most important source of revenue and the demand for timber

miniscule compared to the seemingly inexhaustible forest wealth of the country, it was understandable that the first Revenue Settlement paid scant attention to property rights of the state in 'wastes'.⁵ With no large estate holders who could be entrusted with the task of payment of revenue in exchange for property rights in land, Barnes had to rely on the institution of *lambardar* (village headman) for the collection of land revenue. Since the *lambardar* was just one of the villagers and his moral authority could not be relied upon to enforce collection, Barnes made all the cultivators collectively responsible for the payment of revenue through the *lambardar*.⁶ In exchange for this 'service' of saving the British the headache of revenue collection, the adjoining wastes were also handed over to this collective, while securing the right of the state to timber.⁷ Barnes refuted the allegation later that he was responsible for ceding the full property of the state in the wastes and had the legitimate excuse of at least successfully securing the right of the state to timber. This system of joint ownership of the forest estate laid the foundation for the evolution of a village co-proprietary body, comprising of all *khewatdars* or land-owners of the village. This body gained further legitimacy in a few years when the 'General Rules for Forest Conservancy in Kangra' were promulgated in 1859. The rules stipulated that one-fourth share of the gross income from the sale of trees from forests under joint ownership would be given to the village co-proprietary body, stressing the fact that this was not in any way a payment in lieu of the ownership of the soil of the forest but was designed to interest the people generally in forest conservancy.⁸ This one-fourth share came to be known as *haq chuharram*.

The combination of the collective ownership over soil and one-fourth share in gross income from sale of timber for this collective body resulted in a village institution which has, through 140 years and many significant developments, survived in popular imagination. Flashes of assertion, though few and far between, can be still be witnessed throughout present-day Kangra be it for the resumption of the *haq chuharram* or the ownership of *ban muafi* forests, as discussed in the following section.

The journey : In 1863, the state acquired 2547 acres of waste from ten villages in the district for the establishment of tea plantations. In exchange, the state not only provided an equal area of forests to these villagers in alternative sites but also relinquished its ownership of trees in these forests along with all rights to conservancy measures such as closure to grazing, *in perpetuity* (Sharma 1996. p20). The second Revenue Settlement , completed in 1872 by James Lyall, further strengthened the institution by codifying the joint ownership arrangement and converted the body of land-owners in each revenue estate into a co-proprietary body, each *khewatdar* proprietor of his own holding and co-proprietor of the waste in proportion to the land revenue paid. Further, Lyall's most significant contribution was to reduce the size of the co-proprietary body, by making it co-terminus with the

boundaries of the *tika*, the smallest revenue collation unit, instead of the earlier *mauza*, the next higher revenue unit.⁹ The scale and scope of this change can be gauged from the fact that the number increased from 582 *mauza* units (and as many co-proprietary bodies) to 5688 *tika* units in 1872.¹⁰ Out of these, 5512 were 'enclosed' in the sense that the property rights over the forests were not shared with any other *tika* or with the *mauza* as a whole. These were co-proprietary bodies that could be marked out as the first ever co-management institutions for forests in India with state-community partnership, covering 506,067 acres out of the total of 898,504 acres (i.e. 56.3%) of 'unoccupied waste' in Kangra proper¹¹.

Very soon, dissatisfaction with this joint property system led to calls for demarcating some areas, particularly good timber forests, to be culled out and made the full property of the state.¹² To this effect, two officers were deputed and between 1872-75, Roe and Duff demarcated a total of 65 forests in the district, 8477 acres in 21 villages in Nurpur tehsil and 7648 acres in 29 villages in Dehra tehsil¹³. As in the case of the acquisition for the tea planters in 1863, the people leveraged major concessions from the state in exchange for giving over the ownership of the soil over the proposed reserves, such as increase in share from sale of timber to one-third from one-fourth and no forest conservancy measures such as closures without the consent of the villagers, among many others (Sharma 1998).

The Indian Forest Act of 1878 represented a consensus, even though contested and tenuous, within the state apparatus with respect to the treatment of forests in general and property rights over forests in particular (Guha 1990; Rangarajan 1994). There was to be only one owner of the entire waste - the state. Thus, when the first Forest Settlement of Kangra district was carried out in 1884, the Indian Forest Act loomed large over the treatment of forests in the district. All the remaining waste in other parts of the district, whatever its worth, was treated as state property.

However, in Kangra, the co-proprietary body refused to fade away. Official records are full of correspondence regarding the payment of *haq chuharram* and complaints from the people about not getting the full amount or not getting it in time. In the last years of the 19th century, with refinement in the technology to process crude resin from the pine trees into rosin and turpentine and the setting up of the first resin processing plant at Nurpur in district Kangra, the question of *haq chuharram* cropped up again, with the people demanding that *haq chuharram* be extended to income from resin as well. After a prolonged debate within the state apparatus, it was finally decided in 1903 that *haq chuharram* did not apply to resin. Several reasons were forwarded to justify the denial. A forest officer, quoting from the Settlement Report remarked that 'timber' and 'trees' are the words used to define the produce on which the share is to be paid and "resin does certainly not come under either of these heads"¹⁴ while another lamented that community ownership is over "grass and other

forest produce except timber and trees" and "It is manifest that resin is a part of the tree", never realizing the contradiction in their statements. However the overarching consensus was that "this product is not included in any of the conditions or statements of rights of the owners of the soil"¹⁵, on the other. In his reply to a letter from the Conservator of Forests, Punjab, in a curious reading of the Indian Forest Act 1878, Anderson asserted that although the definition of 'forest produce' in the Indian Forest Act 1878 includes resin, the words 'forest produce' "were not used in their technical meaning" and that he, as the Settlement Officer, "only meant to include what they were collecting earlier so that they don't lose out on the income on these produce"¹⁶, conveniently ignoring the fact that he was the person responsible for the Forest Settlement and the preparation of the record of rights, including definitions. Even as late as 1935, the village bodies persisted with their demand for a share in the resin revenues in petitions before the Garbett Commission, set up to look into the problems facing the people due to forest conservancy and suggest remedial measures. In its report, the Garbett Commission said that non-payment was illogical and that the share should be constituted and paid.¹⁷

In 1971, Himachal Pradesh was awarded full statehood of the Indian Union. The new political entity established the principle of eminent domain by declaring all forests to be state property and abolishing all joint property arrangements prevailing in Kangra. Simultaneously, it also unilaterally scrapped the practice of *haq chuharram*.¹⁸

Defining characteristics : The village co-proprietary body held the *ownership* of the forest estate till 1971, albeit jointly with the state and subject to rights of user of third parties such as graziers. As a consequence of this ownership, the body was entitled all non-timber forest growth. Where the government decided to enclose a part of the forest for conservancy (which could never be more than one-third of the total forest estate of the *tika*, called *trihai*) the body was entitled to the entire monies generated from the auction and sale of grass from such enclosures. In addition, 'in order to interest the people generally in forest conservancy', the body received a one-fourth share in the gross proceeds from the sale of timber from the jointly owned forests. In exchange for this share, the co-proprietary body was expected to protect the forests and help the government in conservancy. To be able to do this, the body was obliged to *pay through their own efforts and from their one-fourth share* several village officials, most prominent being the *rakha* or forest guard.¹⁹

The village co-proprietary body, being co-terminus with the *tika*, was spread all over the subdivision (Kangra proper) of the Kangra district. All the villages had a co-proprietary body and every (revenue-paying) land owner was a member of one, 'proprietor of his own land and a co-proprietor in the wastes'. Each landholder received a share in the proceeds from the sale of trees in the forests jointly owned with the state. By the end of the 19th century, barring

the few enclaves of reserved forests, the entire forest estate in Kangra proper was held in common by the landholders at the village level, jointly with the state.

The property rights of all three parties were clearly defined by successive Revenue Settlements and confirmed by the Forest Settlement in 1897. The state was the owner of trees and the soil in the reserved forests with no rights of user admitted. In the rest of the estate, the state was the owner of the trees and the village co-proprietary body was the owner of the soil. The cultivators in the village were co-owners of all forest produce 'not in the nature of arboreal growth' by virtue of the ownership of the co-proprietary body in the soil. The state had the right to closure of forest areas jointly owned for purposes of forest conservancy but that right was limited to closure of not more than one-third of the forest area at any one time. In a few villages, especially the *ban muafis* and during the reservation of forests by buying the ownership of soil from the village body, the state had considerably diluted its claim to trees and closure. Both these property rights were subject to the rights of third parties, the migratory pastoralists, whose rights were also recorded by the Settlements just as meticulously.

Throughout the second half of the 19th century government officials of both the Forest Department and the Revenue Department repeatedly asserted that the institution of joint property was inadvertently admitted during the first Revenue Settlement and that it was a retrograde measure from the perspective of forest conservancy. Every possible measure was undertaken to undermine the institution, particularly through the process of Forest Settlement in the 1880s and later, during delimitation, in the 1910s. However, the institution of joint property persisted in the face of state antagonism and frequently asserted itself whenever its property rights were challenged or new opportunities arose (as in resin).

The Forest Co-operative Societies

In 1940, a special scheme was notified to form Co-operative Societies for the management of forests in Kangra, which were to be entrusted with the task of managing the forests, irrespective of categories and previous classification, for the greater good of the community and the country. The reasons for such a move can be traced back to the Revenue Settlement of 1868 by Lyall and the subsequent processes regarding the management of forest lands in Kangra discussed below. It shall be fruitful to take a peek at this pre-history in order to better comprehend the experience of the forest Co-operatives.

Proprietary rights: During the second Revenue Settlement, Lyall discovered two classes of lands which had not been dealt with in the first Settlement. Both of these were different forms of *kharetar* or hay preserves. The first one was the hay preserve that had been fenced

off by one or a group of proprietors near the village or hamlet and could be clearly distinguished as a separate plot of land. Though situated in the waste, this land was used regularly by the same proprietors year after year and as such could be termed as quasi-private. However, it was closed off only for four months in a year for securing a crop of grass and was open to general grazing for the rest of the year. The other class comprised of hay preserves far from the Settlement, deep in the forest, the use of which was not so clearly linked to individual proprietors. Lyall called the first *gharu kharetar* (home hay preserve) and the latter *ban kharetar* (forest hay preserve)²⁰. He assessed the *gharu kharetar* to land revenue of the proprietor in exchange for a right to closure for grass but maintained the proprietary right of the state to all tree growth.²¹ It came to be known as *dakhil bachh* (i.e. entered in the revenue record as 'assessed'). The *ban kharetars* were included in the common wastes of the village (*shamlat tika*) as *kharij bachh* (i.e. entered in the record but not assessed to revenue) and no specific property rights were delineated. Similarly, several categories of land, such as *behand banjar* (land cultivated once in 7-8 years) had escaped assessment completely during the first Settlement as the proprietors did not wish to increase their tax burden by bringing these to the notice of the Settlement Officer. Lyall recorded all of them and recorded the proprietary right of the state in the trees growing on such lands.

At about the same time, by an executive order, the government relinquished its right to trees growing on cultivated land and private waste in favor of the proprietors²². In the definition of private waste was included the *dakhil bachh* areas assessed by Lyall to revenue.²³ This action, combined with the fact of the joint property in forests, precipitated the single most cause of worry to both the forest and the Revenue Departments in the next 70 years.

By the beginning of the 20th century, the Forest Department was adopting increasingly alarmist positions vis-à-vis the pitiful state of the forests and its likely impact on erosion and consequent destruction in the Punjab plains. Vasant Saberwal has documented in detail the process by which the Forest Department was forced to resort to highly alarmist predictions in the face of resistance from within (i.e. the Revenue Department) and without (the failure to restrict grazing and other local 'burdens' on the forest)(Saberwal 1999). One area of special concern was the allegedly destructive felling of trees on private lands and the inability of the Forest Department to prevent it owing to the indeterminate status of the ownership of such trees. A commission was appointed in 1916 to clarify the situation and rectify matters, with instructions that "all trees on waste land which was recorded at Lyall's Settlement as *dakhil bachh* waste.... should now vest in the owners of the land....".²⁴ In other words, the commission was asked to identify all lands, such as *dakhil bachh*, which had been wastes at the time of Lyall's Settlement and had been acquired by the proprietors later, and to assert the right of the government to the ownership of all trees growing thereon. To further

complicate matters, the commission was asked to ignore *dakhil bachh* areas assessed by Lyall as well as *all such lands which were under four acres in area*. The members of the Commission spent three years verifying whether particular parcels of land shown in 1916 as private waste or *dakhil bachh* (and other similar categories) were shown as such in Lyall's Settlement record prepared in 1865-69. Where the Commission found such lands in Lyall's record, they transferred the ownership of trees to the proprietors. However, in the intervening 50 years a lot of waste had been acquired by cultivators and had been recorded and assessed during later Revenue Settlements as private waste or *dakhil bachh*. Where the Commission found such cases exceeding four acres, they classified it as *ban sarkar malkiyat*, a term intended to convey that though the ownership of the soil was privately held, the trees were government property. In case of *ban kharetars* and similar lands that were being used by the village in common, the commission classified these as *ban sarkar shamilat*, asserting thus that though the soil of these lands was the joint property of the cultivators, the trees belonged to the state.

This classification was resisted by the cultivators who protested that since the trees on *dakhil bachh* areas of 1868 were being treated as private property, they had assumed, following the instructions of 1867, that the same principle covered all subsequent conversion of waste. In four hearings conducted by the Punjab Government Forest Commission in Kangra in 1938, the issue of *ban sarkar malkiyat* and *ban sarkar shamilat* was brought up by people as one of their main grievances. The Commission reports that the people were demanding that the trees even in *ban sarkar shamilat* be handed over to the village co-proprietary body as these were not classified as forests in the Forest Settlement .²⁵

Deteriorating forests : As mentioned earlier, the Forest Department was voicing serious concern about the continuing destruction of forests from the last decade of the 19th century. With the force of the Indian Forest Act behind them, the forest officers of the time raised a war cry for better classification and demarcation of Kangra forests. After a prolonged debate, outside the scope of this paper, it was decided to bring the forests of Kangra under the purview of chapter IV of the Act (pertaining to protected forests, which provided for a much more lenient view of usufruct rights) as against chapter II (pertaining to reserved forests, which was very strict in terms of allowing rights of use). The Forest Settlement carried out in the 1880s and sanctioned in 1897 had succeeded in classifying the forests into two main new categories. Demarcated protected forests, those having greater present or future potential of bearing timber, were constituted with the objective of being permanently maintained as such as against undemarcated protected forests where extension of cultivation was allowed with the permission of the Deputy Commissioner.²⁶ The reserves formed during 1872-75 were classified as 'reserved forests' and the wastes where the state had relinquished its rights to closure (in exchange for the reserves) and to property in trees (as in *ban muafi* and pre-

1868 *dakhil bachh* areas) were left alone as 'unclassed forests'. That the state failed largely in excluding the people from the forests is clear from the figures for different categories of forests even as late as 1937. In 1937, in Kangra, there were 16,482 acres of reserved forests and 146,878 acres of demarcated protected forests as against 400,185 acres of undemarcated protected forests and 113,441 acres of unclassed forests in addition to several thousand acres of *shamilat* land.²⁷

The Forest Department found itself in charge of thousands of small parcels of 'good' forest, surrounded by cultivation or other forms of use by local communities. It was impossible for the department to enforce strict conservancy through supervision alone. Additionally, the village co-proprietary body was responsible for the pay of the *rakhas* (village forest guards). This crippled the job of supervision even more, as the *rakhas* were reluctant to book the very offenders who were paying part of their salary. Driven by strict commercial principles, the department could not increase its strength unless it could show better results. It could not show results till it had complete control over the territory they had to guard. Throughout the early decades of the 20th century, the Forest Department struggled to establish some sort of control over the forest estate in general and the timber tracts in particular. As Saberwal as noted, coupled with the failure to keep the graziers out of the forests, the failure of the Forest Department to enclose timber tracts from local interests forced it to raise the bogey of desertification in order to seek greater control (Saberwal 1999).

The early decades of the century also witnessed intense competition between the Revenue Department, who had held charge of the forests prior to the formation of the Forest Department, and the Forest Department, for control over forest lands. Arguing that the Forest Department's management had led to great hardship on the people, the Revenue Department continued to hold jurisdiction over large parts of the forest estate, allowing the Forest Department only control over timber yielding forests (Saberwal 1999). This situation was slowly turning around, partly owing to the rhetoric of the Forest Department regarding dessication and the need for 'scientific' expertise in management, something the revenue administration could not claim to. However, in 1913, the Deputy Commissioner, Kangra, put forward a proposal for "the transfer to his charge of forest areas of no value to the Forest Department, in order to try the experiment of managing them solely for the benefit, by the consent, and with the assistance of the *zamindars* (cultivators)". Forests of 42 villages were transferred for the purpose. Before this experiment could consolidate or spread, the Forest Department proposed another reclassification of the forest estate, into 'closable' and 'not closable', through a process called 'delimitation'. It was proposed that the forests so enclosed would be handed over to the Forest Department and the remaining would be handed over to the Revenue Department, to be managed for the benefit of the people, with their assistance.

The Walters and Mitchell commission accomplished this task in 1919 and in 1921, 144,857 acres of forests, combining reserved, demarcated protected and some undemarcated protected forests were handed over to the Forest Department, the remaining reverting back to the Revenue Department. However, signaling the growing influence of the Forest Department, the Punjab Legislature in 1924 refused to approve funds for a special forest establishment for the Deputy Commissioner and so the control of the forests was resumed by the Forest Department (Sharma 1996, p47-50).

Genesis : Meanwhile, the rhetoric of the Forest Department regarding the deteriorating state of the forests due to the burden of rights on the one hand and the complaints of the people regarding the hardship caused by forest conservancy on the other, continued to intensify through the 1920s and 30s. After the Revenue Department's efforts at managing forests for the benefit of the people at the turn of the century, the idea of village institutions for managing forests in Kangra first crops up in correspondence between officials in 1932. In letters exchanged between the Deputy Commissioner, Kangra, the Divisional Forest Officer, Kangra and the Deputy Conservator of Forests, Working Plan, Kangra, the idea of forming *panchayats* for management of undemarcated forests was mooted for the first time. The Deputy Commissioner referred to a directive from the Commissioner and Superintendent, Jullunder Division, to explore the possibility and submit a joint proposal with the Divisional Forest Officer.²⁸ However, the idea was torpedoed by the Deputy Conservator of Forests, Working Plan, who argued that in Kangra there existed two principal conditions vis-à-vis forests "a) tracts in which wood and timber supplies are abundant and b) tracts in which such supplies are deficient. In the former no change is called for and in the latter a mere change of agency cannot increase the number of trees available to the rightholders".²⁹ Although precedent for such an experiment already existed in the form of *van panchayats* in Kumaon, extant since 1925, there does not seem to be any evidence of the Kumaon experience influencing the debates in Kangra. The correspondence referred to earlier efforts at involving the people in the management of *guzaras* (commons) in the Murree *tehsil* of Rawalpindi (east) forest division of Punjab, although that experiment did not involve any specific institutional innovation.³⁰

At the Forest Conference held in Madras in 1935, a unanimously adopted resolution, proposed by H.M.Glover, Chief Conservator, Punjab, stated that "the conference is of the opinion that the state of the undemarcated forests is so deplorable that the present policy for their management must be changed. The practicability of forming village forests should be examined, and the government may kindly be asked to appoint a committee to decide what particular steps should be taken in each district of the outer Himalayas."³¹ Subsequently, in

1937 the Punjab Government appointed a Commission of Enquiry under the chairmanship of Sir Colin Garbett, to look into the following questions :

- 1) "What difficulties are experienced by those who live in and near forests as a result of the existing system of forest administration?
- 2) How can these people be best interested in the conservation of the forests?
- 3) How can their co-operation with the Forest Department be encouraged and secured?"³²

The Punjab Government Forest Commission (also known as the Garbett Commission), covering the districts of Attock, Rawalpindi, Jhelum and Kangra, held public hearings in several places all over these districts and solicited views on the questions cited above. For Kangra proper (i.e. Kangra district excluding Kullu sub-division) the commission recommended :

- 1) that a special scheme for management of trees in *shamilat* by local authorities be prepared, and
- 2) that a scheme be prepared grouping all classes of forests into village forests to be managed in the interests of the villagers under government supervision in co-operation with *panchayats*.

In response the Punjab Government, through W.F.G. Le Bailly, Deputy Secretary to Government, Punjab, Development Department, accepted the principles underlying the proposals and ordered the Forest Department to draw up a more detailed scheme conforming with the principles that erosion shall be prevented and the interests of the province as a whole shall be safeguarded.

The journey : In 1939, the Forest Department drew up the Kangra Village Forest Scheme which was sanctioned by the Punjab Government in Feb. 1940. Simultaneously, work started on the constitution of *Co-operative Societies* for the management of forests at the village level, a choice of agency different from the *panchayats* proposed by the Garbett Commission. The Kangra Forest Societies Rules were approved in Sept. 1941 and the first Village Forest Co-operative Society was formally registered in Nov. 1941.³³

The Co-operatives were constituted with two major objectives, viz. a) to arrest and prevent the continuing degradation of forests and halt accelerating erosion through regeneration of forests and b) to aim at the utilization of forest produce to the best advantage of the members. The unit for the formation of a co-operative was pegged at the *mauza* level, with some flexibility, and could be formed if more than three-fourths of the cultivators of the *mauza* agreed to form a co-operative. The entire forest estate of the *mauza*, irrespective of categories and legal classification, as well as any private lands that the proprietors wished to

be included in it, were to be treated as one forest block for the purpose of management. The Rules stipulated that "Such forests shall be managed in accordance with the provisions of the Indian Forest Act 1927 and ... according to working plans drawn up in consultations with the Societies by a forest officer authorized by the government for the purpose and approved by the government." The entrusting of the management of forests to societies was made incumbent on the acceptance of the working plan by members of the society.³⁴

In return for managing the forest estate, the societies were granted the entire income from such forests to the respective societies, after the payment of *haq chuharram* (the one-fourth share from sale of trees) and deducting the expenses for the implementation of the working plan.³⁵ Significantly, the *haq chuharram* was paid to individual proprietors and not to the society pool as all the proprietors may not have been members of the society. After further deductions towards reserved funds (1%), co-operative education fund (5%), building and other miscellaneous cesses, the remaining amount was distributed equally amongst the members. A collective maximum of Rs. 50,000 was sanctioned towards meeting any expenses provided for in the working plan that the societies could not meet out of its own income.

The scheme was sanctioned for a period of five years initially. It was extended, in similar fashion and with minor modifications, till 1973. By 1953, the Co-operative Societies, 72 in number, were managing an area of 58,236 acres, broken up into reserved forests (1590 acres, 2.7%), demarcated protected forests (17,640 acres, 30%), undemarcated protected forests (27,548 acres, 50%), unclassed forests (9,312 acres, 14%) and others.³⁶

Defining characteristics : The forest Co-operative Societies of Kangra had several distinct institutional characteristics. These societies were marked by clear physical boundaries as well as unambiguous identification of members who could use the forest and for what. This was facilitated by following the *mauza* boundaries, within which all the rights of use were limited during successive revenue and Forest Settlements. Wherever any rightholders chose to not join the society, their rights of use were allowed or areas kept outside the forest boundaries for their use, by mutual consent. The boundaries of the forests to be handed over to the society were demarcated and marked during the preparation of the working plan prior to the registration of the society. The member pledged his rights to the society through an agreement signed between him and the society, binding him to the working plan stating that "all rights owned by myself in any property affected by such working plan shall be subordinate to the rights of the society....".³⁷

In addition, the societies had a clear legal status under the existing co-operative law (Punjab Co-operative Societies Act 1912). Moreover, they were largely autonomous of the control of the Forest Department in their day to day functioning, a fact much resented by the Forest

Department. The department was relegated to an advisory role while the societies received financial support directly from the department of Co-operatives. Finally, the institutions had a clear mandate to manage the forests for the benefit of the society and were set up to improve the forest condition, as agreed upon collectively and as reflected in the working plan.

The functioning of the societies was governed by clearly articulated rules and bye-laws, including such matters as membership, election to office, powers of the institution vis-à-vis the forest and the Forest Department as well as distribution of benefits to members. In addition, the societies had collective-choice powers to change the operational rules, limited only by the property rights existing prior to the formation of the society and by the prescriptions of the working plan. The societies also had limited constitutional-choice powers, whereby these could change the bye-laws of the society through a majority vote in a meeting of the general body called for the purpose and attended by at least two-thirds members.

The societies were empowered to appoint its own forest officer and *rakhās* (village forest guards) to monitor the forest and enforce the operational rules. The system of sanctions was clear and graduated, and differentiated between member and non-member as well as rightholder and non-rightholder. In case of conflicts, clear mechanisms were available starting at the local (society) level and going up to local and higher officials of the co-operative department for institutional issues, Forest Department for technical issues and the Revenue Department for administrative issues. In case of conflict with the Forest Department, the Revenue Department, through the office of the *tehsildar* and the Deputy Commissioner, was responsible for resolution.

Fall from grace : In 1955, with the limits of the grant-in-aid of Rs. 50,000 reached, a further Rs 40,000 was sanctioned by the government, exclusively for the expansion of the scheme to new areas. However, the process received a setback in the same year in the form of a note received by the Forest Department from the Chief Minister of Punjab, B.S.Sachar. Sachar raised the issue of the tardy progress of the scheme, having covered less than ten percent of the forest area under its operation in fifteen years, and raised two further questions regarding the operation of the societies. Firstly, Sachar questioned the logic of operating a scheme only for a few villages on the grounds that "government is relinquishing its revenues in favor of these villages only and in this way these particular villages are getting favored treatment." Secondly, he suggested that if the scheme was to continue, that "the management of the forests should be placed in the hands of the *panchayats*", arguing that "the existing Co-operative Societies are not broad based enough. Their membership appears to be confined to proprietors and, in fact, even proprietors need not be represented in full. I

do not see why the profits of natural resources of a village should go to a restricted group of persons and not to the entire village body." In the same note he also raised his objection to the principle of distribution of profits to individuals in the shape of dividends and suggested that the profits be credited to the *panchayats* and be used for works of public utility.³⁸

Till then, the progress on the scheme had been tardy with the number of societies growing very slowly and had touched only 72 in 15 years. This missive from the chief minister of the province precipitated the downward slide of the societies. Another blow came in 1961, when the government cancelled the grant-in-aid to the societies, leaving them to survive on their own incomes, and ordered that no new societies should be formed. Although the number of societies was stagnant since 1953 at 72, this clear direction coupled with cancellation of the grant-in-aid, signaled the withdrawal of political support for the initiative in that form. The final assault on the societies was carried out in 1973, when the 'scheme' was not sanctioned any further on grounds of mismanagement and the Forest Department resumed the lands handed over to the societies for management (Sharma 1996, p73).

Joint Forest Management

Genesis and Journey : Recent developments in India with respect to institutions for the co-management of forests may be traced back to the Social Forestry (Umbrella) Project in the 80s. In this project, for the first time in India (with Kangra in Himachal Pradesh and Kumaon in Uttar Pradesh being notable exceptions), the Forest Department was forced to relinquish its policing role and talk to village communities. A separate cadre of officials was deployed for the task with special re-orientation and training inputs. Although the major focus of the program was diverted towards tree planting on private lands and received the maximum attention both from within and without, it nevertheless did have a component of village fuelwood and fodder plantations through the agency of committees of user-groups. It developed in to an institutional form of village committees for forest protection from the positive experiences of the program in West Bengal in eastern India. The national program of Joint Forest Management emerged in 1990, promulgated through an order of the central government exhorting the state governments to involve the village communities in the protection and management of forests through the agency of Village Forest Protection Committees. By 1993, it had spread to 15 states in the country.

In the process of expansion, the overall framework of the program in general and the structure of the village institution in particular, were borrowed, lock, stock and barrel from the West Bengal experience. It consisted of a general body of the members, taken as a minimum proportion of the total adult population of the village, and an executive committee elected by the general body. The micro plans were prepared for specific forests by

the Forest Department, in consultation with the executive committees. The village institutions, along with all its members, were required to protect the forests and were offered as incentive, access to all 'minor' forest produce (including wood from thinnings during silvicultural operations) and a proportion, usually one-fourth, of the revenue generated from the final harvest of timber.

The Government Order extending the Joint Forest Management program to Himachal was issued in 1993 and a project for its implementation, supported by Department for International Development, United Kingdom, was initiated in selected pilot locations in the districts of Mandi and Kullu in 1994. It had extended to about 70 villages by mid-1998. In August 1998, the HP government announced a scheme, called *Sanjhi Van Yojana* (Joint Forest Scheme), to expand the concept to the rest of the state. By December 1999, more than 400 village institutions had been created across the state under the new scheme.

Defining characteristics : In extending Joint Forest Management to Himachal Pradesh, the state could not offer as incentive full access to non-timber forest products, in the fashion of the rest of the country, as the local people already had full usufruct rights to all forest produce for domestic consumption, including timber for house construction every five years. Therefore, incentives were designed in the form of wage labor through stipulated works in the microplan and offers of village infrastructure such as roads and drinking water tanks, besides the regulation one-fourth share in the revenue from final harvest.

Institutionally, the Forest Department has retained full control over the entire process. The village institutions have no legal status, having been formed under an executive order of the government that could be withdrawn at any time, and have no autonomy over its functioning. While initially, under the DFID-supported Himachal Pradesh Forestry Project, Village Forest Development Committees (VFDCs) were formed, the more recent *Sanjhi Van Yojana* registers the village institutions as Village Forest Development Societies (VFDSs) under the Societies Registration Act. The difference is ephemeral as the forests stay under the control of the department under both. Both the village institutions, whether VFDC or VFDS, are registered with the Divisional Forest Officer, who is vested with the power to dissolve a recalcitrant or dysfunctional committee. The Forest Guard, the lowest forest official in the departmental hierarchy, is the ex-officio secretary of the institution who handles all records and financial matters, including payment to labor employed in the implementation of the microplan.

Membership is open to residents of the village and is not restricted to either landowners or rightholders. In practice, however, only rightholders have been participating in the institution. The microplans, in a large majority of cases, have been prepared and

implemented by forest officials in consultation with the people and consist mainly of plantation activities and village infrastructure works. The village institution has the power to make operational rules, subject to approval by the Divisional Forest Officer. In most cases, these only relate to infringements in plantations or enclosures.

Baggage of History : Co-management for the future

Keeping the people out

From the beginning of tentative forest conservancy in Himachal Pradesh till today, the chosen instrument of the state has been enclosure of forest areas from the exercise of rights by the people. Where it was not possible, it has been to decrease the burden of rights and increase the costs of local forest use, particularly timber. When the first rules were sanctioned in 1853, they had two main components. First was to close off one-third of the area to all local use, called *trihai*, and the other was to prohibit the burning of the forest floor for a better crop of grass in winter in the remaining two-thirds. Needless to say, this was designed to prevent the "destruction of hill forests which was going on owing to the laxity of the system in force."³⁹ In 1859, these rules were modified considerably, providing for a one-fourth share from the sale of trees to the village co-proprietary body as well as requiring the cultivators to "apply to the tehsildar for all timber they might require for building or agricultural purposes, and pay a light fee for it, instead of getting it gratis from the village headman."⁴⁰ In the same year, the *trihais* proposed in 1853 were finally marked and enclosed.

The dissatisfaction with joint ownership surfaced again in 1867 and efforts were made to acquire some forests that were the sole property of the state. By 1875, slightly less than 16,000 acres of forests had been so acquired in Kangra proper and closed to local use. Later, having failed to bring the forests under the chapter 2 (Reserved Forests) of the Indian Forest Act 1878, a new category of demarcated protected forests was created by Anderson during the Forest Settlement to separate forests with good quality timber "to be permanently maintained as forests" and rights of use were sought to be reduced. Anderson also extended the *trihais*, still closed since 1859, to be further extended by 20 years.

Anderson attempted to regulate the use of unclassed forests, which the Forest Department was unable to close due to previous agreements with village communities. Since the ownership of the state was limited to the trees, the rules for unclassed forests went to great lengths to prevent damage to trees. All trees were divided into two classes. First class trees, notified with an impressive list of 62 species, could be felled only with the permission of the Deputy Commissioner. Trees of the second class could be felled with the permission of the *lambardar*, but not if they were required for building purposes of any kind. The definition of

second class trees was "all other trees, including *brushwood* (emphasis mine)". For the graziers having rights in the forests, it was stipulated that trees may be lopped but only to feed kids but not adult goats and sheep.⁴¹

By the early years of the 20th century, the dessication discourse took over the hitherto prevalent excuse of timber conservancy. "From 1901 various officers drew attention from time to time to the increasing depletion of forests caused by the heavily increased number of animals". The result of this was that the "hill sides became bare ; and erosion and landslides followed."⁴² Later, the Garbett Commission noted that "experience has shown that closure is the only satisfactory method of preventing erosion and securing reafforestation" and that what is required is to provide "some inducement to the villagers to give their consent to closures."⁴³

The recommendations of the Commission resulted in the formation of the Kangra Forest Co-operative Societies. In the government order sanctioning the scheme to form Co-operatives, it was emphasized that the working plans "should provide for closures, as the prevention of erosion is an essential object of management."⁴⁴ Almost ten years later, in the procedure laid down for the formation of the societies, it was provided that "preference shall be given to villages with larger and compact areas of unmanaged waste subject to erosion and denudation". In the same document, the procedure for making working plans was proposed as follows :

"On his first visit to the village the working plan officer ... will go round the forest area forming his tentative proposals for closures etc. ... When he is ready with such proposals for all the *tikas* he will call a meeting of the managing committee of the society and get their consent to the proposed arrangement of closures in the form of a resolution. The co-operative staff will act as an intermediary between the working plan officer and the people for difference of opinion keeping in view of the difficulties that generally arise in actual practice for closures."⁴⁵

Out of the 23,550 hectares of forest under the management of the societies, more than 55%, under protection and plantation working circles, was closed off.⁴⁶ Commenting on the "merits and demerits of co-operative forest society as a means of forest management", R.D.Rawal, officer in charge of preparation of the integrated working plan for all societies in 1968, stated that "the Co-operative Societies have been greatly instrumental in winning over the interest of the local people in the all important matter of forest conservancy" and that "The problem of closures against grazing which could not be solved even though many a legislation have been passed in the past has been greatly solved."

Negotiated incentives

In 1855, reacting to the general rules issued for forest conservancy by the Government of India under Indian Council's Act having the force of law, Lyall was forced to remark that "The powers conferred are so sweeping that, if enforced to their full extent, they would reduce the proprietorship of forest lands by individuals or communities to an almost nominal interest."⁴⁷ However, they were not, evidently, enforced to their full extent. The obsession of the forest authorities, whichever department they might belong to, with closures and exclusion of people from forests, and resorting to increasingly shrill and alarmist rhetoric about the state of the forests, may be traced to this failure of the state in Kangra to fully, and in many cases even partially, implement its exclusionary agenda. Throughout the first phase of forest conservancy in Kangra, local communities were successful in gaining major concessions in exchange for enclosures or reduced access. The *trihais* proposed in 1853 could not be enforced till 1859, when a one-fourth share was offered to local communities as incentive. Only three years later, local people were allowed to cut grass freely from these enclosures, which were previously being auctioned to the highest bidder. The frustration of the officials in charge can be gauged from the following extract from the Settlement Report of Kangra :

"...I recommended that in course of Settlement an attempt should be made to get rid of the joint property of the state and village communities in forest lands by an interchange, which would leave a portion of forest the full property of the state, and the rest the full property of the communities. This was tentatively agreed by the government, and I was authorized to commence negotiations. After succeeding in some villages I came to a stop in *talua* Baragaraon. The forests there are extensive, and the communities offered to surrender to the state large blocks if a partial right of pasturage therein was maintained to them, but without such concession they would give little, saying that their herds were their wealth, and that they wanted grass, not timber."

"I asked and obtained permission to make such a concession where it appeared necessary. I next tried *talua* Palam, and was here met by a new difficulty. These villages had formerly had dealings with officers deputed to secure wastelands for tea planters ; they suspected that the land surrendered would ultimately be devoted to that purpose, and demanded a pledge to the contrary. I consulted the Commissioner of the Division, who was entirely opposed to yielding to this new demand, and recommended that these negotiations should be abandoned,..."⁴⁸

Nevertheless, the negotiations were re-opened and more than 'a pledge to the contrary' had to be surrendered. In 1872-75, the local communities had to be granted sufficient incentives

to enable the creation of reserves that were the exclusive property of the state. The incentives were, in the rest of the forests in the village, an increase in the share from the sale of trees to one-third, a share of one-third in grazing dues collected from migratory pastoralists by the state and an undertaking to never enclose the forests without the consent of the villagers (Singh 1998, p147-148; Sharma 1996, p41-46). These were the unclassified forests that covered 113,441 acres or 16.7% of the forest estate in Kangra proper in 1937.

The Forest Settlement in the 1880s proceeded on the principle that no such give and take would take place. However, the decision to settle the rights in the forests under provisions of chapter 4 (Protected Forests) of the Indian Forest Act 1878 crippled any efforts at exclusion or limitation of rights, even in the demarcated protected forests. By 1937, after four decades of demarcation and other such efforts, only 21.7% of the forest estate could be designated as demarcated protected forests. For the rotational closure scheme of 1921, the "sequence in which blocks are taken up for closure is at choice only in cases where the *zamindars* exercising rights in the closure series in question, are unaffected by closures in any other series".⁴⁹ The existence of small and scattered plots of varying degrees of private lands all over the forests were a major impediment to finding such blocks. Consequently, by 1937, only "2.2% of the total forest area under the control of government is (was) closed to grazing."⁵⁰

Deposing before the Garbett Commission, people asked for ownership of trees on *shamilat*, arguing that "if they pay land revenue for *shamilat*, then they must be considered as the complete owners of the *shamilat*, of everything in or on it." Referring to the issue, the Commission stated that "Though government is in charge of the *shamilat* waste, which extends to hundreds and thousands of acres, it is precluded under the Settlement from ordering any closure..." but that "it would be very dangerous to part with the ownership of trees so long as the land underneath them is shown to be undivided *shamilat*...there would certainly result unnecessary and very extensive fellings." The Commission, in this case, recommended that "an effort be made to teach the villagers that whatever profit may accrue from the management of the *shamilat* and the reserves shall be to their benefit, provided only that they agree to management according to simple working plans approved by government which will involve closures where closures are demonstrably necessary."⁵¹ Thus were the closures under the Forest Co-operatives achieved ; by offering village communities the full income from such forests, as against one-fourth till then. Additionally, the Commission also entertained demands for inclusion of resin in the one-fourth share of communities and recommended that 'non-payment is illogical' and should be immediately provided. In the final analysis, full income from resin was provided to the Co-operative Societies and none to the rest of the communities.

Towards institutional solutions

The negotiation between people and the state over enclosures and exercise of rights demonstrates the competing and often conflicting interests of the two parties. The people of Kangra have consistently and successfully resisted and stalled all state efforts at enclosure and exclusion, directly and unequivocally. The following comments from the Garbett Commission report sums up the process :

"In theory the needs of the inhabitants and the protection of the interests of the province are provided by the measures, defined in the Forest Settlements and the working plans, which are revised from time to time and purport to give effect to those Settlements. In practice both the Settlements in general and the individual working plans in particular have broken down in many details.....In spite of the denial they have continued to use the forest, to the profit not of government but of the subordinate officials...Such a state of affairs could not fail to arouse discontent. If control is tightened, the people grumble that they are being deprived..... From 1917 up to the present time there has been a dissatisfaction, increasing with the advance of democratization...."⁵² The annexures to the report record the proceedings at the public hearings conducted by the commission as well as written petitions presented by the people and their organizations, which amply demonstrate the unequivocal claims being put forth by the people.

"By forest, according to custom, is meant all unenclosed land more or less covered with wild-growing trees and bushes." This, Lyall's description of the popular perception of forests in the 1860s, would still hold true for most of Kangra, if not Himachal Pradesh. Putting aside the temptation to undertake a deconstruction of Lyall's statement and the implied value-laden notions of wildness, the fact remains that the Forest Department, then and now, does not like the idea of such a forest and has tried its best to rescue it from being 'covered with wild-growing trees and bushes' by substituting 'useful' trees. Needless to say, these two ideas of forest, representing competing claims, are largely mutually exclusive. The fact is that the nature of these competing claims has only increased in intensity, giving rise to serious conflicts. As predicted by Garbett, democratization has only served to increase the dissatisfaction and decrease the negotiating power of the Forest Department. Twice in the last 150 years, the state has tried to thrust institutional mechanisms for forest management on the communities to further its own agenda. By its own logic and admission it has failed. However, the Forest Department has refused to part with the agenda of enclosures and exclusion as the panacea of all ills affecting the forests, and has actually increased its territorial expanse in the post-colonial period at the expense of the commons. In 1974, with the enactment of Himachal Pradesh Common Lands (vesting and utilization) Act, the state

took over the remaining *shamilat* and other common lands under the garb of better management. Most of these have been planted over with commercial species, attracting discontent and conflict.

Saberwal, in a recent study of the politics of access to natural resources in Himachal Pradesh, states that "Should the governments continue to work with exclusive conservation paradigms, within which local communities continue to be characterized as a part of the problem, with little to offer policy makers, we will always run the risk of politicizing conservation issues" (Saberwal 1999, p215). For incentives, for Himachal Pradesh in general and Kangra in particular, have consistently been turned round by the people to get more incentives. The property of trees handed over to individuals in 1867 backfired with a demand for ownership of all trees on all lands held jointly in 1937. The current bane of the Forest Department - the right to house construction timber at concessional rates - can be directly traced back to the incentives offered in 1859 'to interest the people generally in forest conservancy'. The demands for *haq chuharram* still continue in Kangra so do those for the resumption of the Co-operative Societies as well as for the ownership of trees on *ban sarkar malkiyat*. These are respectively, about seventy to one hundred and fifty year old issues.

The institutional regimes created to manage forests over the last 150 years, with or without the involvement of people, have presumed that complete state control and exclusion of people is paramount for conservancy on the one hand, and that people have to be provided substantive incentives to agree to the above. In combination, these two assumptions have served to subvert the best laid plans of the Forest Department. Now that the department has nothing to offer from the forest itself, the incentives are being designed as 'non-forestry works'. The recent initiatives in Himachal Pradesh, particularly the *Sanjhi Van Yojana*, have outlays of up to 30% of total expenditures on what is termed as 'entry point activities' designed to induce the villagers to agree to the closures, which are a *sine qua non* for all village institutions under Joint Forest Management. The nature of such 'non-forestry incentives' is such that they are not sustainable even over the medium term. Once the wage labor component has been withdrawn, the current village institutions under Joint Forest Management are likely to collapse.⁵³ Even the inducement of a one-fourth share in the final harvest has been reduced to damp squib. A similar arrangement fifteen years ago with social forestry groups at the village level has been forgotten ; the relevant papers untraceable in Forest Department offices. "Such loose and shifty commitments in the schemes are not likely to find favor with local people anymore."⁵⁴

Conclusion : Reconstituting the commons

Given the specific history of Himachal, especially of property rights over forests, there is a need for the Forest Department to abandon the assumption of full state control; an assumption that has resulted in the disappearance of common pool resources from Himachal Pradesh, physically and legally, over the last 150 years. Whatever the statute books might say, the fact remains that forests are common pool resources that require special and sensitive treatment. Till date, the fact that livelihood requirements are being met at all is a mere accident as the management objectives of the Forest Department have never encompassed bulk-use subsistence requirements of local communities, beyond their recognition as rights to be suffered (WGNRM, undated). The state has to accept the fact that the forests cannot be taken out of the common pool, either by restricting the rights of the people or by inducing them to enclose through short-term incentives. The paramount lesson from a survey of the history of forest management in Kangra is that such efforts are not only likely to fail but also create a burden of incentives for the state to bear in future. That the forests of the state require attention is not in doubt. What is questionable is the institutional mechanism adopted for addressing the pressing need and rising scarcity of forest products, a mechanism that has failed in the past. In the long run, the only resource that can be offered as incentive is the forest itself.

Institutional mechanisms for co-management of the forest estate need to go beyond the existing boundaries imposed by the Forest Department upon itself. Short-term financial incentives work only in the short run, leaving a baggage of promises to bear. Obsession with territorial control, and the consequent disappearance of the commons, has happened concurrently with subterfuge and open resistance by the people and politicization of the issue of access to forests. Clearly, in such a situation, sustainable management seems to be the only casualty.

The case of Kangra shows that there is no need for subterfuge from either side. The people have proven themselves to be highly capable of articulating their needs and expectations from the forests. They have also shown great skill at negotiating with the state apparatus, almost forcing the state to negotiate on their terms throughout the last 150 years. It has, visibly, resulted in a no-win situation largely owing to competing and often conflicting interests of the Forest Department. The cases of the Village Co-proprietary Body and the Forest Co-operative Societies demonstrate the need for the Forest Department to radically rethink its philosophy and strategy regarding the future of the forests and its role in managing it.

Glossary

bachh : The total revenue assessment for one revenue unit, assessed as a lumpsum and distributed subsequently over individual proprietors of the unit

ban kharetar : Hay preserves far off from the habitation and for common use as against reserved for individual proprietor by common consent (see *kharetar*, *gharu kharetar*)

ban muafi : Forest lands handed over to communities by the state in exchange for equal area of forest for tea plantations, along with ownership of trees and right to closure

ban sarkar malkiyat : Forest land enclosed by proprietors for personal use such as hay preserves and entered in the revenue records as private waste and assessed to revenue but the ownership of trees belongs to the state

ban sarkar shamilat : Forest land collectively enclosed by proprietors for personal use such as hay preserves and entered in the revenue records as commons (see *shamilat*) but ownership of trees belongs to the state

dakhil bachh : Assessed to revenue and entered in the records. Could be applied to any lands, leading to categories like *ban sarkar shamilat dakhil bachh* meaning *ban sarkar shamilat* lands that have been assessed to revenue

gharu kharetar : Hay preserves reserved by individual proprietor for personal use by common consent as against those far off from the habitation and for common use (see *kharetar*)

haq chuharram : One-fourth share in proceeds from the sale of trees

kharetar : Hay preserve, typically fenced off and closed to grazing for three to four months for grass production

kharij bachh : Not assessed to revenue

khewatdars : Owner of cultivated land and assessed to land revenue

lambardar : Village headman

mauza : Revenue collection unit typically consisting of several villages

shamilat : Common lands

shamlat tika : Common lands of the village as against common lands of the *mauza* as a whole

shamilat deh : Common lands of the *mauza*

taluqa : Revenue unit higher than a *mauza*

tehsildar : Officer in charge of a *tehsil*, a revenue unit higher than a *taluqa*

tika : Village or a group of hamlets

trihai : The system of trifurcating a forest for rotational closure

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¹ For a discussion on 'zones of anomaly' as 'geographic spaces in the terrain targeted by the Permanent Settlement in Bengal where its application was thwarted', see K.Sivaramakrishnan 1999.

² Reserved forests were lands with the highest degree of exclusion. No customary or formal rights were to be allowed nor were new rights to accrue. For protected forests, customary rights were listed generally and allowed to be exercised, with the Forest Department retaining the right to closure and reserving important species of timber. For a detailed discussion on the growth of state forestry in India through such classification, see Guha 1983

³ see General Provisions of Kangra Forest Record of Rights, Forest Settlement Report, Kangra Proper, 1897, (reproduced in Rawal R.D. 1968. Vol. II (Appendices) p114) for an illustration of the variety of rights enjoyed by local communities in Himachal Pradesh

⁴ Barnes, G.C. 1852. Kangra Settlement Report, Himachal Pradesh State Archives (HPSA) Library, Shimla

⁵ "The fact appears to be that at that time conservancy of forests was looked upon as secondary to extension of cultivation, and the latter seemed likely to be promoted by giving the landholders some title to the soil of the forests...". Lyall, James. 1872. Settlement Report of Kangra. p29. HPSA Library, Shimla

⁶ Lyall, James. 1872. Settlement Report of Kangra. p27. HPSA Library, Shimla

⁷ In his Settlement Report, Lyall argues that "it would be hard to prove that Mr. Barnes intended to make the landowners in any sense the proprietors of the wastelands. It might have been argued that the term '*shamilat deh*' slipped in from inadvertence, or that it might be construed to mean common lands in the English sense only, which would not necessarily convey an ownership of the soil." He quotes from correspondence between Commissioner of the cis-Sutlej States No. 196, dated 5 Sept. 1849, to Secretary to Board of Revenue, and reply No. 723, dated 18 Sept. 1849, regarding the status of property rights in wastes. In that correspondence it was suggested that "by including the forests in *mauza* boundaries and 'partially assigning' them to the landholders of the *mauza*, the village officials and the village communities would be induced and compelled to look after the forests and pay the *rakhas* or watchmen. This would do away with the necessity of a forest conservancy establishment receiving pay from Government" Lyall, James. 1872. Settlement Report of Kangra. p29. HPSA Library, Shimla. This correspondence gives credence to the argument that that the institution of the village co-proprietary body was expressly constituted with the object of forest conservancy, in a fashion similar to current efforts of the forest department. However, the Settlement Report of Barnes does not refer to any such objective.

⁸ Lyall, James. 1872. Settlement Report of Kangra. p52 HPSA Library, Shimla

⁹ Lyall, James. 1872. Settlement Report of Kangra. p146 HPSA Library, Shimla

¹⁰ Lyall, James. 1872. Settlement Report of Kangra.. appendix I, HPSA Library, Shimla

¹¹ Lyall, James. 1872. Settlement Report of Kangra p133-134, HPSA Library, Shimla

¹² Lyall, James. 1872. Settlement Report of Kangra p151, HPSA Library, Shimla

¹³ Forest Rules, undated, p 143-147, Basta 20, Serial 305, File 10(40), Kangra DC Records, Himachal Pradesh State Archives, Shimla

¹⁴ G.S.Hart, Deputy Conservator of Forests, Kangra to Deputy Commissioner, Kangra. 4 Oct. 1899. Basta 27, Serial 415, File 10(142), Resin Industry in Kangra District, Himachal Pradesh State Archives, Shimla

¹⁵ C.J.Elliot, Conservator of Forests, Punjab to A.Anderson, Deputy Commissioner, Kangra, 7 Dec. 1899. Basta 27, Serial 415, File 10(142), Resin Industry in Kangra District, Kangra DC Records, Himachal Pradesh State Archives, Shimla

¹⁶ A.Anderson, Commissioner and Superintendent, Jullunder Division, to Senior Secretary to the Financial Commissioner, Punjab, 3 Jan. 1900. . Basta 27, Serial 415, File 10(142), Resin Industry in Kangra District, Himachal Pradesh State Archives, Shimla

¹⁷ Report of the Punjab Government Forest Commission, 1937, p82, Forest Department Library, Mist Chambers, Shimla

¹⁸ Govt. letter no. 11-12/74 (Rev. B), dated 1.12.1976, quoted in Sharma. 1996, p228

¹⁹ General Provisions of Kangra Forest Record of Rights, Forest Settlement Report, Kangra Proper, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p122

²⁰ Lyall, James. 1872. Settlement Report of Kangra. p36. HPSA Library, Shimla

²¹ Lyall, James. 1872. Settlement Report of Kangra. p144. HPSA Library, Shimla

²² Letter from the Secretary to Punjab Government, no. 347, dated 6 June, 1867, quoted in Report of the Punjab Government Forest Commission, 1937, p68, Forest Department Library, Mist Chambers, Shimla

²³ Letter no. 173, dated 25 Nov. 1868 from J.B.Lyall to Commissioner, Jullunder Division, quoted in Lyall, James. 1872. Settlement Report of Kangra. p146. HPSA Library, Shimla

²⁴ quoted in Report of the Punjab Government Forest Commission, 1937, p69, Forest Department Library, Mist Chambers, Shimla

²⁵ Report of the Punjab Government Forest Commission, 1937, Vol. II (Appendices) p39-55, Forest Department Library, Mist Chambers, Shimla

²⁶ Forest Rules, undated, p143-147, Basta 20, Serial 305, File 10(40), Kangra DC Records, Himachal Pradesh State Archives, Shimla

²⁷ Report of the Punjab Government Forest Commission, 1937, Vol. II (Appendices) p89, Forest Department Library, Mist Chambers, Shimla

²⁸ 25 July. 1932, Basta 30, Serial 460, File 10(194), Handing over UPFs to *panchayats*, Kangra DC Records, Himachal Pradesh State Archives, Shimla

²⁹ 23 Aug. 1932, Basta 30, Serial 460, File 10(194), Handing over UPFs to *panchayats*, Kangra DC Records, Himachal Pradesh State Archives, Shimla

³⁰ undated, Note on the improvement of pasture lands in the upper hills of Rawalpindi District, Basta 30, Serial 460, File 10(194), Handing over UPFs to *panchayats*, Kangra DC Records, Himachal Pradesh State Archives, Shimla

³¹ quoted in O.P.Sharma, 'Co-operative Forest Societies in District Kangra : A Critical Appraisal', paper presented at the Workshop on formulation of new community based people oriented afforestation scheme, 27-28 August, 1998, HP Forest Department, Shimla

³² Notification No. 4058-E, 4 Oct, 1937, quoted in Report of the Punjab Government Forest Commission, 1937, p1, Forest Department Library, Mist Chambers, Shimla

³³ Rawal R.D. 1968. Vol. I, p57-61

³⁴ Kangra Forest Co-operative Society Rules, notification no. 2742-Ft, 26 Sept. 1941, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p3

³⁵ Letter no. 568-Ft, 27 Feb. 1940, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p1

³⁶ O.P.Sharma, undated, 'Co-operative Forest Societies in District Kangra : A Critical Appraisal', paper presented at the Workshop on formulation of new community based people oriented afforestation scheme, 27-28 August, 1998, HP Forest Department, Shimla, p21

³⁷ Model bye-laws of the Forest Co-operative Societies, Appendix A, Rawal R.D. 1968. Vol. II (Appendices) p23-42

³⁸ Note dated 1 July, 1955, from B.S.Sachar, Chief Minister, Punjab, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p125-126

³⁹ Lyall, James. 1872. Settlement Report of Kangra. p52. HPSA Library, Shimla

⁴⁰ Lyall, James. 1872. Settlement Report of Kangra. p52. HPSA Library, Shimla

⁴¹ Notification no. 61 dated 26 Jan. 1897, amended by no. 994 dated 11 Jan. 1919. 'Rules for the preservation and disposal of trees belonging to government but growing on lands belonging to private persons', under section 75 (c) of Act VII of 1878, reproduced in HP Forest Manual Vol. I, 1986, Government of HP, Shimla

⁴² Report of the Punjab Government Forest Commission, 1937, p69, Forest Department Library, Mist Chambers, Shimla

⁴³ Report of the Punjab Government Forest Commission, 1937, p75, Forest Department Library, Mist Chambers, Shimla

⁴⁴ Letter no. 568-Ft, 27 Feb. 1940, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p2

⁴⁵ Procedure for the organization of co-operative forest societies in the Kangra district, letter no 1664, dated 17 May, 1949, reproduced in Rawal R.D. 1968. Vol. II (Appendices) p7

⁴⁶ Working circles are units within a forest unit requiring separate management strategies. The plantation working circle and the protection working circle are characterized by complete closure. Other circles also employ varying degrees of closure, depending on the species mix and management strategy.

⁴⁷ Lyall, James. 1872. Settlement Report of Kangra. p52. HPSA Library, Shimla

⁴⁸ Lyall, James. 1872. Settlement Report of Kangra. p151. HPSA Library, Shimla

⁴⁹ quoted in R.Malhotra, 1968, Revised Working Plan for the Kangra Forest Division, HP Forest Department, Shimla, p47

⁵⁰ Report of the Punjab Government Forest Commission, 1937, p67, Forest Department Library, Mist Chambers, Shimla

⁵¹ Report of the Punjab Government Forest Commission, 1937, p75-76, Forest Department Library, Mist Chambers, Shimla

⁵² Report of the Punjab Government Forest Commission, 1937, p11, Forest Department Library, Mist Chambers, Shimla

⁵³ "Consent has been obtained largely through the short term compensation of paid labor and will dissipate once this ceases. The similar mechanisms of Sanjhi Van Yojana in 'entry point activities' are likely to have the same effect." Forestry Project Impact Assessment Report, August 1999, HP Forest Department and British Department for International Development, India, p12

⁵⁴ Mohinder Pal, undated, 'Joint Forest Management - A Weak Proposition', paper presented at the Workshop on formulation of new community based people oriented afforestation scheme, 27-28 August, 1998, HP Forest Department, Shimla