

Paper
ABSTRACT

Land Records as 'Weapons of the Commoners'¹
'Customs in Common'² and Public Policy

Minoti Chakravarty-Kaul
Founder : *Rahat* *for *Raah Shamilat***
[Support for the Way of the Commons]

Suddenly this October(2012), village common lands have been swept into the eye of a storm of protest against land scams and corruption in India. However there is more to it than an upright district officer exposing mis-use of land records by the very custodians who were entrusted with public policy and laying bare the bureaucrat-politician nexus in the partition and privatisation of common lands of villages near Delhi.

Tampering with land records has far reaching consequences on the environment as they are a link between institutional change, public policy and the fate of common property. Common property resources are in the centre of land-use and tenure which determines the ecological relationships of those who share natural resources with serious consequences on human and natural environment

In the first part of the paper we will map out the the evidence from historical records of ecological patterns of land-use in which common property rights were central.

This will reveal how land records minimised uncertainty in the Indian country-side and supported rules which took care of not only cheating and shirking, but also to avoid a "tragedy of the commons". However it depended on the Government of the day honouring customs both in administration and in courts.

Today things have gone awry as can be illustrated in the second part from a sample *region* (northern India); in an *eco-system* (Sutlej-Yamuna inter-riverine area) within it; and in a *cluster of villages* within the eco-system.

Since common lands are more vulnerable to change by fiat and executive order and provide space for corruption, there is reason to believe that land records will have to be guarded against tampering albeit their being tools of public policy. The environment requires enhanced ecological certainty and a greater reliance on contractual commitments of the Government.

305 words

1 With thanks to James Scott's work on *Weapons of the Weak*.
2 Inspired by E.P. Thompson' book *Customs in Common*. .

Land Records as 'Weapons of the Commoners'³
'Customs in Common'⁴ and Public Policy
Of The Waste
1911-2013

Minoti Chakravarty-Kaul
Founder : *Rahat* *for *Raah Shamilat***
[Support for the Way of the Commons]

Sir Henry Sumner Maine, legal adviser to the Viceroy in India 1862-69 observed in his Oxford lectures on the Village Communities in the East and West “ that the history of agriculture, of land-law, and of the relations of classes cannot be thoroughly constructed until the process has been thoroughly deciphered by which the common or waste-land was brought under cultivation ...the Common Mark or waste ... deserves our attention in this place because its interest is not social or political but purely juridical.” (Maine, 1880 : 84-85)

Sir Henry Sumner Maine was a powerful media commentator in his time. How would he have reacted to the newspaper story of October 2012? The story revealed “land-related scams in Haryana (contiguous district to Delhi) as reported by an official”ⁱ – an upright civil servant whose only fault was that among the illegal land deals he exposed there was one made in high places. He was transferred several times for revealing “the politician-bureaucratic nexus in transfer of *panchayat*ⁱⁱ lands to realtor companies, illegal sales/purchase of specific *khasra*ⁱⁱⁱ numbers of village common lands and illegal possession of *panchayat* lands and sale of forest lands”^{iv} No one took the matter to court. How could they for an even more shocking revelation was the misuse of powers by an official who was not authorised to change the records as he did by a law which is still in use in independent India even though enacted during the Colonial rule?!

The fact of the matter is that the juridical position of the 'village commons' and 'the waste' indicates institutional asymmetry between the State and natural resource users like cultivators and transhumant pastoralis who can only establish their rights through 'customs in common'. This is because while nineteenth century laws like the Land Acquisition Act 1894 and the Punjab Land Revenue Act 1887 continue to be on the Statute Book, and gives so much power to the State; the same is not the case for the recorded rights of village communities in the village administration papers. Hence the village communities can scarcely fight back. This is institutional asymmetry further skewed by the passage of the land tenure laws in 1954 which provided for 'open access' to the commons tantamount to free riding. The situation has the makings of a first class institutional crisis in the villages where commoners who may seek protection through their own customary rights which had been recorded by the Punjab Laws Act of 1872 are frustrated by a bureaucrat-political nexus which uses another nineteenth century law to mutate rights for the sale of common lands; or cause a rift among the commoners through public policy as we shall see in the last section of this paper.

To follow the emergence of this juridical situation we need to examine public policy of the waste of Government of India both Imperial and post colonial and its execution through the three arms of governance – the legislative, judiciary and the executive. Court cases fought out in the Chief Court of Punjab provide a window for 1866-1941 whilst the situation after 1947 will be examined from field work in the hinterland of Delhi and in the Siwalik areas of the Himalayas.

3 With thanks to James Scott's work on *Weapons of the Weak*.

4 With inspiration from E.P. Thompson's book *Customs in Common*.

Customary Land-use Records and Rights

&

their importance

for Public Policy of the Waste

1803-1947

History of public policy and the 'wastes in common' in Northern India reveal two aspects of land-use patterns of fallows used in rotation known as *banjar jadid* and *banjar kadim* - the indigenous terms used for the short fallow and long fallow respectively in the records of pre-colonial north India which the British incorporated in the village settlement records. Such categories had been prevalent not only throughout Africa but in Western European countries in medieval times. The rights to these were a combination of scattered in the cultivated and compact in the village waste used for grazing. The sedentary arable community 'protected' the cultivated land by 'continuous use' or customary usage (or what would be prescriptive rights by analogy to legal or statutory rights) in order to exclude outsiders from encroaching. At the same time they had to accommodate the cattle internal to the group and those who were mainly pastoral. They could do this only by communal arrangements of fallows. The pastoral The pastoralist's major asset was cattle which was mobile and hence continuous use of the **same** land was not crucial but rather an informal sphere of user control over 'long runs' across dry tracts, riverine and upland forests were preferred. Hence a pastoralist's requirement was complementary to that of the sedentary agriculturist groups. The pastoralists' seasonal use of the land could be accommodated by transhumant arrangements and a relationship of reciprocity with the use of fallows controlled by the sedentary agriculturist.

Of Boundaries, Maps and Village records – delimiting rights on the waste :

Customs in common over the waste got recognised in the process of British revenue settlements of the waste for cultivation. Anything outside this obviously belonged to the State. In return the community accepted the responsibility of paying revenue jointly. One major customary power given to village communities was their village boundary. These were drawn and mapped as early as 1816 in Delhi. These customs were recorded in the Village Administration Paper or *the wajib-ul-arez*. Thus was recognised agrarian usage – the residential site or *abadi-deh* which was kept compact around which was drawn in red the Lal Dora which limited the entry to the village. The long fallow was uncultivated and rotated over the years while the short fallow fields had scattered strips in which each landholder or *malikan deh* got a few in each field through lots thereby a proportional equality was maintained and after harvest the entire village lands were open for pasture. These periods co-incided with visits from pastoral nomads who would provide labour and whose flocks or herds would graze on the entire village lands and here would be another customary usage observed that of common of shack – again reminiscent of England and other parts of Europe. In return the herds of the village would then be taken up to the riverain on their way to the Siwalik forests. On the way such customary reciprocity was part of the way in which rights to the waste was established and recorded. Thus agrarian usages and customs defined "the rights of the proprietors over the village residential site or *abadi-deh*, those relating to the *mulba* or village expenses, to the sayer income, to the dues of the village officers and village servants, to the cesses paid by the non-proprietors or cultivators,"^v all related to the village itself.

This process internalised the waste for the village as common lands and put an end to their rights on the larger waste and therefore they more or less submitted to the rules and conditions laid down in

the *wajib-ul- arz*. The rights to the individually held land and the common waste were defined. So also were defined the relations of the different groups who comprised the village. "All Mussalman tribes who fifty years ago were living a wholly pastoral life have now settled down to agriculture and their new custom now attaches quite as much importance to these rights in land, new to the tribe, as does the custom of the Sikh Jats and Rains who are agriculturists from time immemorial."^{vi}

Such instruments were bolstered by another class of customs - private law - in what was the *Riwa-j-am* (customs in common) for the district. The customs which regulated succession were important for the village for it settled the manner in which the distribution of property in land took place. Common lands were specifically regulated. The tribal component of the village proprietors or *malikan-deh* were thereby governed by the declared customs of the tribe of the entire district.

Imposition of joint revenue liability created villages where there had been none and so also the customs. The recognition of this class of customs depended on the constitution of the village settled at the time of the revenue arrangements made by the settlement officers at the time of the first regular settlement of the districts. This was aptly put by Tupper "Sweep the villages away and right of this class would be annihilated; create the village afresh and these rights would revive."^{vii}

Thus were villages created. Thereby, the Revenue Settlements which demarcated villages had a very big hand in creating the framework for the development of the customs of the village. In districts like Kangra where the tenures did not resemble the tenure on the plains the creation of hamlets and *tikas* by Barnes and Lyall between 1849 and 1872 led to the emergence of customs related to usages which are of concern in this paper - namely those relating to the use and partition of common lands.

Thus too were customs created. Similarly in the districts which were sparsely populated with scarcely any village communities, like Multan and Sirsa for example, the village common lands were "for the most part a creation of our (British) rule and compared with the districts of Central Punjab, Multan presents(ed) comparatively few cases of village *shamilat*."^{viii} Thus not only were the villages created but so also were the common lands. The usages regulating these created village common lands resembled those prevalent in the more settled tracts. It was but natural that in these circumstances the hold of customary authority over the manner in which the common lands were used was less close. Here also would change more likely to come about quickly than in the older areas where the communal control over the common lands had a long history. The differences between the customary authority of the *malikan-deh* in the village of the old established areas of Punjab, such as Delhi and Karnal, and those in the new areas of "created" villages in the waste, like the canal colonies and in the districts of South West were apparent by a look at the history of the Sirsa and Ferozepur districts.

Sirsa offers perhaps the most extraordinary instance of the development of customs in adaptation to changed conditions, particularly the customs related to the rights in land. The district had been at the time of the first settlement in 1837, mostly inhabited by nomadic pastoralists who used the almost "desert prairie", as long fallow within a system of shifting cultivation with no demarcated wastes as village common lands. The tribes hardly had any notions of succession in terms of transferring land from father to son, "they had only the vague right, or rather custom, of pasturing their herds over large tracts of country."^{ix}

Such customs once recorded were formally incorporated into a system of laws and inducted for use in the disputes brought forward in the courts. The intention was to preserve the status of customs and the source from which they emanated. But the attempt set in motion a process of attrition of customs. This was, first, because the British revenue system which set up the village as the unit of both the rural and social economy had cut across tribal and clan ties; hence the recording of landed rights pertained to the village proprietary body as distinct from the tribe or clan. The recording of

these rights led to the transformation of the unwritten codes of the tribes to the recorded ones in the *wajib-ul-arz* and in the *Riwaj-i-am*. This led to the replacement of the tribal heads as source of customs by the records which became the legal reference points.

Second, the influence of tribal institutions on clans and splinter groups differed from one area to another. Tribes on the western frontier were untouched by modernisation even by the end of the nineteenth century; fire arms were the only modern thing that touched their life. In the south-west plains there were tribes which had sedentarised and also those who still remained nomadic pastoralists in the middle of the nineteenth century. In the Eastern Plains of the Punjab "the tribes though clearly marked"^x had been largely sub-divided into *gots* or clans, and these again were formed into separate communities, therefore even on its own a fragmented settlement became the unit of society. Landed rights even here were a matter of those affecting groups of agnates - the *warisan yak jaddi*. Hence the source of customs became a group of families or even a family rather than a clan or tribe. Further, individuals could make claims in court rather than in the *panchayat* or the brotherhood. Therefore the court became the source of authority and **not** the *PANCHAYAT*.

Third, customs were adopted as a part of the system of law by legislation; and therefore legislation shaped and modified rights to land. Several customs like those regulating pre-emption, land alienation and those related to occupancy tenants were all modified by specific legislation. Therefore Statute became the source of rules and **not** USAGE or CUSTOM.

Part II

The Courts decide 'Customs in Common'

Thus recorded customs became weapons of the commoners no doubt but despite official effort to induct customary law into the legal system of Punjab the process of decline in communal control over common lands continued through the nineteenth century. Several hundred *shamilat-deh* suits fought in the Chief Court of nineteenth century Punjab stand witness.

In the event the Chief Court of the Punjab became a major influence in directing the use of customs in disputes. The evidence brought to Court was obtained from recorded customs, no doubt but customs once arbitrated or adjudicated became precedents; hence a source of custom itself. In time the precedent replaced custom, wherever customs were either non-existent or not recorded. The records and the judiciary became the source of custom and **not** the COMMUNITY.

At the same time the action of the Chief Court in recognising the "will of the majority" in case of *shamilat* disputes reduced the authority of the *malikan-deh* which acted on the presumption of consensus. Thus Boulnois, one of the first judges of the Chief Court had pointed out that the "will of the majority" was recognised "often rather, apparently, on general principles than on accordance with usage, which seems to proceed on the assumption that the community will work together."^{xi} On the other hand the Chief Court refused to allow the voice of the majority to prevail over that of the minority where injury to the latter's interest in the joint land may have been involved.^{xii} However the most important change came about whenever it became impossible to use and manage commonlands on the basis of consensus or became^{xiii} "practically inconsistent with the general wish of the co-sharers" by reason of dispute. The Chief Court increasingly settled these disputes by giving the opportunity to the individual to opt out of the system of joint control over common property resources by allowing partition of the common lands.^{xiv}

Access to the village commons was possible through rights to reside. A new entrant was a potential *sakin-deh* or resident of the village by virtue of which he obtained a qualified right to the use the house-site, the ponds, the pathways and the grazing grounds. He could also become a conduit for other entrants who would like-wise add to the pressure. A tenant could use *banjar kadim* (long fallow) both for arable and for grazing; a *kamin* (member of the service group) could use the *gora-deh* (space for cattle outside the residential site) for work space.

Customarily the *malikan-deh* prevented free-riding by physical means of control over numbers by de-limiting the *abadi-deh*; or by imposition of taxes like the hearth-tax and the poll tax on each male child.^{xv} It also exercised its moral authority to regulate permission given for residence.^{xvi} This it could do as the law suits indicate through the:

- (a) screening of new entrants;^{xvii}
- (b) prevention of new entrants bringing in other new comers;^{xviii}
- (c) ensuring that no new entrant transferred any resource like the house-site or house to any single member of the proprietary body for that would have upset the balance within the decision making body itself, and finally no resident old or new could carry away, sell, gift or transfer by any means either the building material or the house-site and if these did not succeed then^{xix};
- (d) moral suasion was tried to dissuade the co-sharers or *biswadars* (biswa=one twentieth of a bigha so a shareholder was referred to as holder of 1/20) from introducing strangers through sale, gift, adoption or mortgage; and if all these measures failed then;^{xx}
- (e) the community decided to preempt;^{xxi} and if this did not succeed then they asked for partition.

The effectiveness of these customs changed when customs got recorded as we have noted by Punjab Land Revenue Act 1871, in the *wajib-ul-arz*. Hence some customs became universally adopted while others which were peculiarly suited to particular areas were ignored or overlooked as the process of standardisation over time and space took place. According to the new dispensation, which is the disadvantage of recorded customs, clauses in the *wajib-ul-arz* could not change with any evolving circumstance, and when disputes erupted neither the custom, nor the clause in the *wajib-ul-arz* or the authority of the *malikan-deh* was necessarily appropriate.

These restrictions became inadequate as an expanding market economy brought in further inducements to free-riding on the commons and added to the strain on the controlling mechanisms adopted by the *malikan-deh*. Entry of new entrants intensified demand for land both in the arable and in the pasture. While plough cattle were welcome, all other type of stock added to the grazing pressure on the village commons. This trend was accentuated by shrinking access to the regional commons by imposition of State control over land both "waste" and forested. The proprietary body reacted to this kind of pressure by charging grazing fees on cattle other than plough cattle and/or enclosure of pasture for their own cattle leaving a smaller area for open grazing belonging to the others.

If the collectivities were driven against the wall they either went to court or they privatised the commons by partition. Both these lines of action represented internalization of the common waste and intensified the impact on all categories of fallows. As the common lands became privatised, the basis of communal action declined, and communal ties were strained. This was obvious in the highly populated parts of the sub-montane of the Himalayas as in Hoshiarpur where the settlement officers reported as early as 1879-81, that "the ties of the village community appear to be getting looser year by year ... There is great want of corporate action"^{xxii} to protect against the destruction of the hill torrents or *chos* "but in every case the greatest apathy is evinced." As the disputes show, this process was noticeable in some areas specially those near urban areas than others, and more in the later part of the nineteenth century than earlier as we see below. Urban proximity to villages saw tightened control by the *malikan-deh* since general insecurity drove migrants into larger villages. For example in Delhi, as early as 1838-44, Lawrence noticed the "universal practice ... to surround the 'abadee' ... within a ditch and gates, and thus confine within

narrow limits the ground adapted to building purposes".^{xxiii} This measure, Lawrence observed was to avoid the "inconvenience ... imposed on the proprietary communities by the occupation of ground for building purposes by people having commercial pursuits."^{xxiv}

Techniques of exclusion included fiscal measures as in Delhi, Hissar and Karnal in the first half of the nineteenth century, where the *malikan-deh* controlled the entrants by imposing the *chaubacha*^{xxv} whereby the non-proprietary members of the village shared in the revenue burdens by paying four kinds of taxes as explained below. **But more importantly it was a tax on numbers.** In Hissar the *chaubacha* consisted of *ang* (hoof) paid by every head of cattle, every house paid *kudi* or hearth tax, and upon every male head a *pagri* (head dress of the adult male) and a *tagri* (thread worn round the waist of boys). These taxes were adjusted according to the nature of the season. In a bad season the *ghair maliks* (non landholders) had to pay more. Hence it was a summary census-taking and the information provided gave the *malikan-deh* effective control on both inclusion and exclusion.

These measures of village taxation were removed after 1871 by the standardisation of the Lal Dora limits (a red line drawn on the map around the residential site) and the revenue settlements adopted in the Cis-Sutlej. Further, population pressure and increasing mobility of labour made exclusion difficult. Expansion of villages into towns made control over entry by the *malikan-deh* less effective. Formally, however, the *abadi* continued to remain centralized and in common control of the *malikan-deh* throughout the nineteenth century in most parts of the Punjab.^{xxvi} The *abadi* site was distinct from other land in the village. Here the "settlement officer did not attempt to prepare a record" within the red boundary line (Lal Dora) demarcating the *abadi*; and secondly, the houses and their ground site were strictly speaking common property whose possession and occupation was determined by the customary authority of the *malikan-deh*, and required their assent directly or indirectly for use by anyone whether by one of the co-sharers or by non-proprietary members. However, once this permission was given, the occupant acquired a right of user. If this right of user was exercised over a long period it was then not open to the proprietary body or individual claiming it, after a partition, to oust the occupants. This was a subtle difference for the *customary* right became a *prescriptive* one.

Much of this authority depended in reality on firstly, whether the customs were actually recorded in every village; secondly, whether the members of the *malikan-deh* cooperated in any joint action; thirdly, whether the *malikan-deh* could keep track of the movements of those who immigrated and those who left; fourthly, whether the *malikan-deh* could preempt market demand for sites in the *abadi* and finally whether in cases of friction the *malikan-deh* was supported by the British courts to prevent alienation of the *abadi*-site. The evidence (in the following pages) of the process detailed above shows the attenuation of the *malikan-deh's* control over entrants into the village.

The Court and Customs of Common :

Apart from the wide variations in the customs between regions as well as between villages themselves, there could be just any reason for a particular *wajib-ul-arz* being "silent" about certain customs. Hence friction was caused by the uncertainty or absence of records. In fact this was apprehended by Prinsep as early as 1864.^{xxvii} And in fact left the cases wide open for the judiciary to step in and interpret customs, thereby attenuating the authority of the *malikan-deh* to declare and decide. Such situations brought on a debate even within the Punjab Administration as to whether the Civil Courts or the Revenue Courts had jurisdiction to try disputes in the *abadi*. In a suit from Jullunder, the Chief Court made the distinction. It supported the Revenue Court's right to partition the *abadi* since it was common property; while it recognised the authority of the Civil Court to decide an *abadi* dispute **only** if the correctness of the record was contested. This judgment (14 PR 1876) came out clearly in favour of partition of the *abadi* as early as 1876, and that too, was in keeping with section 65, clause 2 of the Punjab Land Revenue Act 1871.^{xxviii}

As opposed to this judgement was the general understanding that the *abadi* was not divisible; it

was recorded as jointly held property, and seldom recorded as held in severalty by sections of the community. For that matter, even as early as 1860 the Financial Commissioner's circular of 1860 had instructed that "the village site is never to be divided."^{xxxix} Yet for all purposes the ground on which each proprietor's house stood practically belonged to him.^{xxx}

This overlap of individual right in the plot and the joint right in the entire *abadi-deh* was not infrequently the incentive for a demand for partition, specially wherever the record of rights just about mentioned the proportional ownership of the *abadi*. This is what happened in a village called Phadana in Lahore district. In 1852 the village was first settled and 142 *ghumaos* of land were declared impartible. At the second settlement in 1864 "a red line was drawn around the village site, called the Lal Dora and it was excluded from the record of rights."^{xxxxi} An entry in the proprietor's column showed "*hasab rasad khewat*" (partition according to the area actually held by an individual). One set of co-sharers wanted their share of 1/3 of the *abadi* made up to them as they claimed they had less. Justice Benton's interpretation was, that it did not follow "in the least from such a record that a portion of the community is at liberty to call for a re-distribution of the area. Of course, the settlement record may contain an agreement for a partition according to the *khewat*, or according to ancestral shares on the demand of a portion at any time, and there is no reason why such an agreement should not be enforced just as it may be enforced for a redistribution of the agricultural land where the *vesh* system was still in force."^{xxxxii} Thus it was that the *abadi* was not like *shamilat banjar kadim*, (long fallow held in common) where a clear cut custom existed about partibility.

However, there **were** parts of the *abadi* like the *gora-deh*, the place which surrounded the *abadi* and used for stalling cattle which could be partitioned if the *malikan-deh* wanted to eject an outsider. In Kanjhawala for instance, between 1880-1910 the *gora-deh* had been partitioned even though *shamilat banjar kadim* or cultivable waste was not. The growing urban market of Delhi led to a great demand for the products of livestock. Since 1881 and 1912 stock increased 12.3%^{xxxxiii} and were mainly held by butchers and menials who had little or no land. Therefore the cluster of villages were particularly alert about newcomers and used the strategy of partition in the *gora-deh* to avoid disputes arising from pressure of entrants.

Abadi-deh disputes clearly indicated that the relationship of the *malikan-deh* and the new entrants were seldom unfriendly to begin with, but tended to become so over time. Natural growth of population from within created demand for new house-sites, so entry of outsiders who could not be ejected without a court case made the new comers unwelcome. This was particularly so when new entrants did not contribute directly to the village economy but instead were only interested in withdrawal from the common property resources, that is, they were free riders.

The Community, Courts, and Free-Riding :

Court decisions sometimes helped to create animosity towards new entrants when they made ejection from the *abadi-deh* impossible by legal decisions. The Chief Court, for example, recognized the right of user in cases where the entrant had been an occupant for long. And if the entrant got support from certain sections of the *malikan-deh* too, then the occupant could not be removed at all, leading the *malikan-deh* to increasingly be frustrated with free-riding of the common property resources of the village by those who had no relation directly with agricultural activity. Their frustration was evident in the cases taken up in appeal to the highest court in the Province.

These suits threw up important issues which also recurred in several disputes. One was the open insertion of the principle of prescriptive rights by long-user as against customary norms of establishing rights; for example, once *kamins* or artisans were recognized as quasi-proprietors of the land, the full proprietors of the land were prevented from turning to their **own** use, perhaps a more profitable use, their **own** property. Second, the introduction of the principle of majority decision making can be seen as against consensus; for example, in 117 PR 1894, in village Phadana in Lahore, the decision of the majority was upheld by the Chief Court when they consented to continue the artisans in possession of a residential site which actually belonged to

one of the *malikan-deh*, who were in this case the objecting minority.

However, the Chief Court did not allow entrants in a village to assert their rights of occupancy in the *abadi-site* until they were able to prove "a good title" by usage. In an 1884 case from the Delhi district, the Chief Court held that two entrants had to prove that they were indeed owners. In the opinion of Justice Plowden in villages "the proprietary right in the *abadi* is as a rule, vested in the proprietary body. The mere material expansion of the village does not destroy that proprietary right."^{xxxiv} The proprietors had been passively allowing sales of sites and that gave the impression that "the ownership of occupied sites no longer resides in the proprietary body but in each particular occupier." But Gangal and Nathan (the two entrants) had to prove that they acquired a "good title" by usage before they were allowed to continue.

In another case, 117 PR 1894, arising in the village Phadana, Lahore district, the acquisition of rights by long user, was supported when a set of proprietors wanted partition of the *abadi* and sought to eject *kamins* from the house-sites occupied by them. The court ruled that it was not feasible for the *malikan-deh* to use the strategy of partition of the *abadi* to eject an entrant once he had settled down.

Even where customs were followed, as in Delhi district, the rights of the *kamins* (village service group) and village artisans depended on several factors: for one, the degree of development of a village into a town determined whether *kamins* and village artisans, who themselves were new entrants at one time, could sell the house sites occupied by them to others. The involvement of the proprietary body in controlling the *abadi* rights of non-proprietary members of the village stemmed from the fact that alienation would allow occupation "by persons in no way connected with the village or the cultivation of the lands of the village."^{xxxv} If a *kamin* or village artisan alienated the land he occupied, as was the case in 20 All. 248 from NWP, "it could lead to several encroachments of the like manner and thereby every single site in the *abadi* of which belonged to the *malikan-deh* solely, might come to be a village, for example, of weavers, who neither paid rent to the *malikan-deh* nor promoted cultivation of the agricultural lands of the village."^{xxxvi}

Custom, Conflict, and the Chief Court :

Urban growth had considerable influence in creating institutional diversity. For example, in Delhi, the settlement of 1872-80 recorded 20 villages which "declared that non- proprietors can sell their houses with the land on which they are built; in 589 villages they may sell the materials (*malba*) but not the site; and in 56 they can dispose of neither. In 13 cases it was found at attestation of the administration paper that the matter was in dispute; in 8 villages no non-proprietary had houses."^{xxxvii} The 20 villages where non-proprietary were said to be entitled to sell the site of houses as well as the materials were in fact a few of the then existing towns like Sonapat, Mehrauli, Faridabad and Bowana. But the rationale of some of the smaller villages having the same custom was difficult to explain, as Maconachie, the settlement officer in Delhi admitted.

Whatever may have been the diversity of customs regarding alienation of house-sites by non-resident proprietors, by and large, the Chief Court's decisions went in favour of the proprietary bodies when the artisans tried to sell their houses or sites occupied by them. In fact, sales of house sites by non-proprietary was not a common occurrence in districts which were dry like Ferozepur. However, in Hoshiarpur there was evidence of sales taking place. The decision taken in Mauza Mohna Kalan in Hoshiarpur, 25 PR 1875, laid down that in an agricultural village, even though there may not have been "a well-established custom" nevertheless a non-proprietary could not sell the house or the site on which it stood without the permission of the proprietors of the village. In this village, a non- proprietary had sold his house to one of the co-proprietary. The other proprietors objected. The Chief Court supported the objecting proprietors on the ground that "the consent of a single proprietor out of a number of joint proprietors does not create a right which otherwise is not vested in the vendor."^{xxxviii} This

judgement, became a precedent for decisions taken in other cases where the *wajib-ul-arz* was "silent"; two are given here to show that the Chief Court insisted on the general proprietary body giving permission before sales could be made by the non-proprietors.

Despite lapses in records of the *wajib-ul-arz*, evidently the *malikan-deh's* assessment of an entrant was important. This depended on the circumstances surrounding a village and the influence of the persons making the sale. In 92 PR 1880, an artisan in village Nathana, Moga tehsil, Ferozepur, could not sell his dwelling house from the *abadi-site*. Justice Brandreth, pointed out that there is "certainly no old custom whereby artisans can sell their houses in this village ... enquiry... seems to prove that the non-proprietors have only lately begun to think they had a right to sell their houses at pleasure, the earliest sale recorded being one 6 months before this sale." ^{xxxix} On the other hand, Justice Barkley pointed out, that proprietors were more willing to allow mortgages where mortgagors like hereditary tenants would continue to stay and the proprietors were willing to allow sales by men of influence like "khatris, banias and brahmins", who had come to be regarded "as full proprietors of their sites and at liberty to dispose of them when other non-proprietary residents would not be so regarded." ^{xl} These exceptions made by the *malikan-deh* can be understood from the statement of the two judges and the background of Moga tehsil in Ferozepur. Moga developed due to the construction of the Sirhind Canal in the 1870s ^{xli}, leading to extensive cultivation in the erstwhile waste lands. As a consequence the price of land rose. Therefore the *malikan-deh* had a preference for those who could provide labour and capital like the hereditary tenant, *khatris* and *banias* would. Exceptions were accordingly made in their favour.

However, as it turned out in reality, the "bania who had acquired his footing in the village by purchase" ^{xlii} was able to "land-grab" by speculation in land and even by pre-emption. Thus the Divisional Judge, Ferozepur, H.A. Rose, observed in 1899 that the law of pre-emption "was intended to preserve the homogeneity of the village community but it became a mere instrument in the hands of the land-grabber." ^{xliii} This happened mostly in tracts which had received canal irrigation which helped to raise the value of the land. Thus in the Hissar district all the pre-emption cases came from the Fatehabad tehsil in 1899 where land-grabbing and rising land values were associated with canal irrigation. ^{xliiv} Thus it was that exception to the rule of custom could be made by the *malikan-deh* too when the *wajib-ul-arz* was "silent". On the other hand, the Chief Court could adhere to a general precedent laid down in 25 PR 1875 and thus in 93 PR 1880, in the village of Bahroki in Sialkot, Justice Brandreth and Rattigan did **not** allow a *kamin*, a weaver by occupation to sell his house to one of the co-proprietors of the village.

Customs had not been recorded elsewhere too and mostly in those districts where population pressure on the *abadi* at the time of the first settlements in the 1860s had been low. Thus it was in Gujarat district, that S.S. Thorburn in 1894, as Commissioner and Superintendent of the Rawalpindi Division pointed out that several appeals were made to him by the *ghair maliks* about the entries regarding ownership of land in the village site noted by Captain Davies in the *wajib-ul-arz* in the earlier settlements. The number of cases where the "ghair maliks, kamins, shopkeepers, money lenders and the like have alienated buildings and sites without any payment to maliks or permission from them, are very numerous in large villages in which bazaars exist." ^{xlv} Again in 1897, the Divisional Judge of Rawalpindi, M.L. Dames noted that uncertainties of customs regarding the entry in the record of rights to the *abadi* led to litigation. According to him, "The general custom on such matters is usually well-known and recognized, and any advantage to individuals which may arise from recognizing special or local customs which are discordant from that generally prevailing, is infinitesimal when compared with the damage and disorganization caused to the community in general by the litigation to which the uncertainty of rights give rise. With such questions may be classed some others in which local customs are allowed to be asserted, such as the right of disposing of sites or houses in villages by, or to, persons who are not members of the village community." ^{xlvi} Such sales tended to lead to pre-emption suits which was one of the ways in which entry into the village could be blocked. This sequence seemed so automatic that one of the Divisional Judges noted in his report in 1899 that a "characteristic of our judiciary" was to always "assume a right of pre-emption to exist" ^{xlvii} and therefore in most cases

"the Courts decree as if they were bound to give a decree: e.g. in the Hissar District there is a Munsiff who grants decrees for the demolition of houses etc. built on *shamilat abadi*. He has, I believe made these suits quite the rage in Hissar from which most of the cases come." The Divisional Judge added, "It is instructive to see how an officer's idiosyncrasies can increase particular kinds of litigation." ^{xlviii}

In conclusion, sale and alienation of *abadi* sites in most of the villages seemed to have developed out of new situations created by increased population and non-agricultural activity in the villages in the proximity of towns, hence the existence of any established customs regarding them was difficult to come by. Therefore such transfer depended on the approval or objection of the proprietary body and more so on the size of the groups either supporting or objecting, a question for decision which came up in suit after suit. In each case the Chief Courts ruling weighed the issue rather than the numerical support the issue received in the village. For example, the Chief Court supported the majority in Rurki, Rohtak District, ^{xlix} which objected to the 7 lambardars of the village contracting *shamilat* for the manufacture of saltpetre. The diversion of *shamilat* was a new situation and obviously the lambardars did not have the authority to take such a decision by custom. Even though the alienation was not permanent and the area of *shamilat* was not reduced, the Chief Court upheld the majority objections.

On the other hand, the Chief Court supported the minority in *mauza* Satrod Khurd, Hissar District where 32 out of 100 owners objected to the sale by auction of the site of a house. Here the Chief Court supported the minority since the intention to alienate appeared to be a permanent one, and that was objectionable as it reduced future options for the community; and therefore although the *malba* or the moveable parts of the house could be sold, the same was disallowed by the Chief Court for the bare site. ¹ Nevertheless, such difference of opinion among the proprietary body got increasingly settled by the device of counting votes which replaced decision taken either by the village *panchayat* or by consensus. If this failed matters were then taken to court -- a process that initiated the decline of village juridical authority.

The process was however uneven as between one district and another, and even within one district the situation differed between one village and another. For example, Jullundur district had the second highest density of **rural** population in the Punjab per square mile in 1881 ^{li} and continued to be high for the next twenty years, a feature generally true of the sub-montane districts. Consequently, the law suits involving the *abadi* seemed to be high in Jullundur. The Divisional Judge of Jullundur, Khan Muhammad Hayat Khan, in his report on the Jullundur Division in 1897 pointed out that the increase of 148 suits over the previous year for possession and recovery of immovable property could be accounted for by "the increased and increasing importance which the villagers attach to building sites there can be no question that building sites and houses along with almost all other things are now more valuable to zamindars than they were before; and the uncertainties of litigation do of course increase the number of such as well as all other suits." ^{lii}

Density of Population in the Sub-Montane Districts of the Cis-Sutlej and Trans-Sutlej

District	1855	1881	1891	1901
Amritsar	437	561	623	643
Jullunder	513	552	634	641
Sialkot	475	524	572	555
Gurdaspur	470	436	500	498
Ambala	374	442	459	434
Ludhiana	383	426	447	464
Hoshiarpur	384	401	450	440
Punjab	141	152	167	178
Population per square mile Source: <u>Punjab Census</u> : 1855, 1881, 1891, 1901.				

The *abadi* disputes in the sub-montane districts of Jullunder, Hoshiarpur and Ambala demonstrate the hardening of the proprietary body's restrictive attitude^{liii} where there was a combination of population pressure, increasing land prices and the cracking up of communal ties.^{liv} In Lahore as early as 1865-69, Leslie Saunders noticed in large villages, where water and pasture were situated far away from the village *abadi*, people built houses in fields far away from the *abadi*.^{lv} Finally, in a dispute which came from Gurdaspur, the Chief Court enabled partition of the *abadi*. Justice Martineau in his judgement, 149 PR 1919, held that while it was proper to exclude portions of the *abadi* occupied by houses of the villagers and portions used for public purposes, there would be no objection to partition of "empty sites unoccupied by any individual and not used by the community for any purpose."^{lvi}

The Community and Preemptive Strategy :

Partition apparently was an inconvenient and rather drastic strategy to keep off free-riders and outsiders from the *abadi* sites. The more immediate options were to either demand the ejection of an "intruder" or to preempt the entry of an outsider. That is how preemption became such an important issue for the community where saleability of plots on the *abadi* site was high in the villages either close to towns or in villages where sales were either attempted or actually made. In various disputes, the proprietary body attempted to restrain the transfer of an *abadi* plot from: (i) one non-agricultural resident to another; (ii) one proprietor to another and (iii) a non-proprietary resident to another. Although they were not all direct entrants to the village, nevertheless any transfer was the beginning of a process by which outsiders could get in. In all of them the identity of the village and that of the community were at issue: first, what **was** the village -- a town, *qasbah* or an agricultural village? second, **who** were the actual proprietors of the *abadi*? The answer to the second one was found when the first question was resolved. In an agricultural village "the proprietary right in the *abadi* is, as a rule, vested in the proprietary body",^{lvii} the mere material expansion of the village did not destroy that proprietary right.

Leadership, Community, and the Commons :

With mounting pressures the proprietary body's control over the process of alienation appeared to depend on the tradition of leadership. To begin with, the species of leadership differed in the various parts of the Punjab. In the areas of long-sedentarised agriculture, the customs of the village had been devised by the ancestors of those very people who resided in them and decided issues of land-use. But in districts where large wastes existed at the time of British entry, as in

Sirsa, Hissar and Ferozepur, the "new" villages demarcated and settled by the colonial administrators tended to adopt the customs of the older villages. However there was a major difference -- while it was possible to adopt "customs" and "usages", nevertheless the species of leadership and village management associated with the village communities in the older settled tracts like Delhi, Gurgaon, Rohtak and Karnal ^{lviii} could not really be replicated. The "created" village communities of Kangra, Sirsa and Jhang may have collected the revenue jointly but the measure of authority and regard which the traditional leaders enjoyed in imposing customary rules and regulations on the *abadi* and the common grazing lands could not have been the same.

On the contrary, remarked J.A.L Montgomery, Commissioner & Superintendent of Rawalpindi Division in his review of the Jhelum district settlement in 1893, "The tendency to withhold payment of *kamiana* and *abkari*, the rapacity of the stronger members of the proprietary body in taking possession of the best bits of village common land to the exclusion of others, and the disputes about *malba* are the signs of the times. These disputes are common where there are no recognised leaders." ^{lix} Similarly the accounts of the village common lands were embezzled to an extent which the leaders in the long established villages either would not or could not do because of the operation of the system of checks and balances operating within the Village Council. ^{lx}

This difference in the quality of leadership between newer and settled districts notwithstanding, there was a process of attenuation at work here too in general. Control by virtue of traditional authority became more difficult in the new situations, for example, in the earlier law suits, if a man mortgaged his holding or even sold it, there was no automatic transference of the share in the *shamilat* which the proprietor also held as a member of the proprietary body. But in later years, as the suit from Sialkot in 1930 shows, it was possible for even the *share* of the *shamilat* to be sold or mortgaged. Abdul Rahman, in a village in Sialkot had mortgaged his plot in the *abadi* to someone who foreclosed it and started to build on it. Another proprietor, Jhanda Ram and others along with him objected to this. According to Jhanda Ram and his co-proprietors, Abdul Rehman's father had "bought a share in the village *shamilat*" (agricultural) ^{lxi} and therefore Abdul Rehman was not a proprietor in the village and could not claim a share in the *abadi* nor could he mortgage it. In other words buying a share in the *shamilat* was possible even though the man was not a proprietor in the village. The sale could not be blocked by the members of the proprietary body, for Abdul Rehman had other land in the village too, so he was "presumed to have a share in the village *abadi* land like other proprietors," under the provision in para 22 of Rattigan's Digest of Customary Law. Hence he had a right to mortgage the *abadi* piece to the mortgagee, and the latter had the right to foreclose and build on it. The case was decided in 1930. Thus sale and mortgage of both share in the agricultural *shamilat* and the *abadi-deh* was not only feasible but also supported by the highest judicial authority -- the Chief Court in the Province.

In conclusion, it appeared that as rural Punjab moved towards extended cultivation in the waste and population moved into newer areas still unpeopled, there was simultaneously a move towards urbanisation as the older centres expanded into *qasbahs* and towns. These trends were well beyond the control of the *malikan-deh* of individual villages. The *abadi* of the villages expanded into the surrounding areas which then became the nucleus of Punjab towns. Amritsar city was the best example of such urbanisation -- a village of a "pure unadulterated bhaiachara tenure", where everybody held the land in severalty and what was not became the property of the Government, as it was in any town.

Conflicts on the Grazing Commons

Control over grazing and rights on the commons was perhaps the most friction-ridden area of collective action because of increasing pressures of expanding cultivation, partition of *shamilat*, diversion from pastoral use and increasing cattle numbers. Disputes between the proprietary bodies and others over grazing rights involved the physical dimension of the grazing fallow, the cultivable waste and the number of cattle. Transaction cost of policing these issues rose and cracks in the mechanism of communal problem-solving showed up as the co-sharers began to resort to

courts for solutions both for disputes among themselves as also for those against other residents of the village. We will then look at the friction over the three issues of cultivation, partition and diversion of the grazing fallows. Disputes between the proprietary bodies and others over grazing rights involved the physical dimension of the grazing fallow, the cultivable waste and the number of cattle. We will now see the situation through the commoners pitted against each other, against the rest of the village residents and against specific right holders like tenants.

Malikan-deh vs Malikan-deh

Cultivation of the long fallows used for grazing was not a new phenomenon. But shortening of the long fallows did become a source of dispute as increasingly the *malikan-deh* through its lambardars or the co-sharers themselves brought it under the plough or what was referred to as *nau tor kiya*. However if the land was to be partitioned the *nau tor* co-sharer could be ejected as in 99 PR 1866. In case the co-sharers continued to occupy the *shamilat* on the presumption that the land would belong to them after partition as a part of their share, the only option for the rest of the co-sharers was to seek partition of the *shamilat*. When co-sharers actually took up more than their share of *khewat* lands this amounted to their having taken a part of the *shamilat* lands in cultivation. In a village in Delhi, a minority of the co-sharers had occupied land more than their share in the common lands. The majority of the co-sharers in the village objected and demanded partition. The Financial Commissioner who decided the case, 12 Rev 1885, supported the majority demand for partition because (a) the *wajib-ul-arz* allowed it; and (b) because the Punjab Land Revenue Act 1871 gave sanction to order partition even if the minority asked for it particularly where "an influential majority of the co-sharers had broken up more than their proper share of the common land and refused to account to the minority." ^{lxii} In this case it was the influential minority which had taken up more than their share.

In another case, 24 PR 1885, from Amritsar, a co-sharer had cultivated more than his share of land in the village which meant that he was also cultivating *shamilat*. The other co-sharers complained that he had occupied superior land in the *shamilat* hence he should not be given more land at partition even though he occupied *shamilat* less than his share.

Malikan-deh vs Sakin-deh in Grazing Disputes

Increasingly the arena of free-riding were the grazing commons in the second half of the nineteenth century thereby sharpening the conflicts between the *malikan-deh* and the *sakin-deh* (entire body of residents). The struggle over the grazing commons could be seen as: First, one of conflicting rights of user between the proprietary body as against those of the non-proprietary; and Second, as a conflict between two classes of use -- that of exclusionary rights of the ownership of the proprietary body to enclose and cultivate the commons as against the user right of the non-proprietary bodies to graze their cattle. The options open to the proprietary bodies were limited, particularly since all the residents of the village were given the right to graze recorded in the *wajib-ul-arz*.

In districts like Hoshiarpur and the other sub-montane areas of the Himalayas, predominantly cattle owning communities had plentiful grazing, judging from the first settlement reports in the 1850s and reports of the movements of cattle from other zones, but the density of population after 1868, combined with favourable conditions for cultivation led to the shortening of the long grazing fallows in the villages. The tenants then demanded that some land be left free from being either partitioned or cultivated for purposes of grazing. In the meantime, the proprietary groups resorted to "enclosure" and reserved grazing for themselves and for conservation of de-forested grazing land. Such action intensified the objections of the cattle owning groups in the villages, both tenants and commercial graziers. These frictions led to the courts. The cases came particularly from Hoshiarpur and the other sub-montane districts where there was double pressure both from the montane and from the plains.

The *Malikan-deh* vs *Maurusi* or Occupancy Tenants:

The user rights in the grazing land were sometimes not only given to cultivators within the village

but also to those who came from outside and the proprietary body had to consider protecting their grazing land by some kind of control either through the imposition of grazing dues or by limiting the area for the grazing of cattle belonging to others.

The village of Bachoi, in the district of Jullundur had limited grazing land (108 PR 1876), but the jungle of the village was used by cultivators who also came from outside. The *wajib-ul-arz* of the village declared that the "cattle of the village, without distinction of proprietors and non-proprietors, shall continue to graze in future in the same manner as they had grazed from old times, no grazing dues shall be collected." ^{lxiii} Dispute arose when the Commissioner limited the grazing of the number of cattle of the non-proprietors to only such number as was "reasonable" with reference to the extent of their holdings in the village; secondly, the proprietors of Bachoi were allowed to set apart waste for the grazing of the cattle of the non-proprietors. This order was appealed against by a *maurusi* (occupancy tenant) cultivator from another village who held only *one* "plough" of land in Bachoi as against 20 to 30 "ploughs" in another village. On the other hand he claimed the grazing rights of **all** his cattle in Bachoi, on the grounds that the jungle of Bachoi was used by the proprietors of the neighbouring villages too. The Chief Court however went part of the way with the Commissioner's orders by limiting the cattle to only those which may be used "in the cultivation in the village" by the tenants; but the "right to graze" as declared by the *wajib-ul-arz* was limited to whatever parts of the waste the proprietors grazed theirs. Thus the number of cattle was limited and the rights of the proprietors to divide or enclose or reserve the waste was left open to be decided in the future.

In 119 PR 1889, this time from Hoshiarpur, brought on a direct confrontation between the occupancy tenants and the proprietors over the **area** of *shamilat* for grazing. The occupancy tenants of this village demanded "a right to graze on the **original** common land of the village, and to cut grass and wood therefrom, the area being 2,586 ghumaos, 1 kanal, 12 marlas." ^{lxiv} But the proprietors had partitioned the common lands in 1871 and this action was initiated by one of the proprietors. The *wajib-ul-arz* pre-dated 1871 and stated that all cattle of the village could graze on the *shamilat* without payment and without distinction. The occupancy tenants could have got some of the land reserved for themselves at the time of partition or even within twelve years but now in 1889 the time for such joint action was over.

Thus shortening of long fallows through cultivation by individuals after partition was feasible but enough cultivable waste for grazing would have to be left for the cattle of the non-proprietors. However, this very act of partition could not be objected to by the occupancy tenants and others. While the proprietary rights were paramount, user rights of the non-proprietors was not ignored and they could sue the proprietors to prevent further interference with what remained open of the original *shamilat* after the partition took place, or possibly to open up some of the enclosed or cultivated land so as to secure to them the proper enjoyment of their grazing right. This was a compromise solution leaving it open for further litigation and that too after the area of grazing had already been reduced!

Occupancy tenants in tehsil Una in Hoshiarpur were more alert to their rights,(than in the case above) as settlement officers in this *tehsil* reported at the time of recording the *wajib-ul-arz* in 1876 and again in 1914. This was indicated by the action of occupancy tenants in the village Samrur Kalan in the same *tehsil*. The area of *shamilat* was large and the proprietors wanted to partition it. The occupancy tenants sued to prevent this and asked for relief: so "that the right of grazing over the whole *shamilat* area, which the plaintiffs (occupancy tenants) in common with all the inhabitants of the village enjoy, be declared intact;... and that the land be kept exempt from partition."^{lxv} The occupancy tenants were setting up a question of title for their right of user and hence it was not just an issue of partition nor a landlord-tenant issue. It concerned the grazing rights of **all** the residents of the village who grazed their cattle versus the exclusionary rights of ownership of the proprietary body.

However, the Chief Court's stand even as late as 1932, ^{lxvi} was that even if the occupancy tenants had a legal right to graze their cattle in the waste land belonging to the proprietors which covered

a large area, they could not prevent the proprietors from cultivating or executing improvements upon these waste lands for all time to come. All they could insist upon was that a sufficient and suitable area be kept for the village cattle, including those belonging to them and other non-proprietors. Further if this was done, the remaining land could be used by the proprietors in the way they liked. This was so in *mauza* Bhagwanpur in Kharar tehsil, district Ambala, where the proprietors had leased the *shamilat* which gave access to the *johad* (pond) used for cattle. The occupancy tenants and others had been using this land as a part of the *banjar* (waste) for grazing. But the Chief Court felt that the area was large, being 274 bighas, and so the occupancy tenants could not prevent the proprietors "from cultivating or executing improvements upon these waste for all time to come." ^{lxvii} In reality, the proprietors had left only vacant portions of the *abadi* for grazing and that was hardly appropriate as pasture for 300 and odd cattle of the village. Even the Chief Court considered these 30 to 40 acres absurd!

The question of sufficiency of grazing resources became the issue in the context of courts supporting the proprietary body's right to partition. This came up sharply in CA 171 of 1928, when in a village in Hoshiarpur, a proprietor brought up an injunction "restraining occupancy tenants from grazing their cattle on the land"^{lxviii} which was the portion of the *shamilat* which fell to his share at partition. Thus the right to partition the common lands was not challenged but that of sufficiency of the area left after the division, was. Yet "no clear issue as to sufficiency or otherwise of the area reserved for grazing purposes was framed, but the parties were apparently fully aware as to what the real contest between them was." ^{lxix}

Increasingly the friction was zeroing in on the question of numbers -- cattle and human beings -- pressing on limited land and causing over-use. The sharpening of the crisis was due to the fact that **two** conflicting rights were being recognised by the courts and the records. On the one hand the proprietary body's right to partition and enclose was recognized while on the other the residents' rights to grazing, wood-lots and facilities like water were as well. Cattle owners whether they were tenants, non-proprietor kamins or shop-keepers, all tended to free-ride. There were ever-increasing numbers grazing on the common lands without having any reciprocal obligation to invest or pay for what they withdrew. In the course of time not only did the numbers within the village swell but there was much infiltration from without. This was apparent from the major number of grazing disputes occurring in Hoshiarpur district where the density of population was one of the highest. The district was also rich in forests, which were used by herds of cattle not always of the village which had those grazing resources. The settlement of the tehsils like Una, in Hoshiarpur, demonstrated that the occupancy tenants were tenacious of their rights of grazing even at the time that the *wajib-ul-arz* was recorded. The following suits will be illustrative.

In Bachoi, Jullundur district, 108 PR 1876, we have seen, that the proprietors were allowed by the Commissioner to "set out a portion of the waste sufficient for grazing that number of cattle, (which they may use in Bachoi) and that the tenants' cattle shall be confined to the land so set out." ^{lxx}

In Mauza Badhera, Hoshiarpur, 100 PR 1881, the proprietary body reserved some *shamilat* amounting to 526 ghumaos out of a total of 5,435 ghumaos of *shamilat*. The occupancy tenants cut grass from the preserve and sold it. The proprietors sued for the value. The proprietors were not flouting the condition of the *wajib-ul-arz* by reserving land as the tenants did not have absolute right to graze on the whole of the uncultivated land of the forest nor was there any condition which restricted the proprietors. The Chief Court held that the tenants were equal to the proprietors in the matter of user in the grazing land but had "nothing resembling a proprietary interest in the land. They did not share in the fees paid by outsiders for grazing. Thus if they did not share the profits from grazing it stood to reason that they could not take the proceeds from the sale of the grass cut from the reserve."^{lxxi} Brandreth quoted suits decided in England (*Arlett v Ellis* 7 B. and C. 369) to show that owners were entitled to enclose grazing land so long as they left sufficient for the tenants' cattle. "The owner has the right to every benefit to be derived from

the soil not inconsistent with the rights of the tenants, and as has been expressly ruled in similar cases in England.^{11xxii}

Thus the days of open grazing were over. Conditions of "*har ek malik aur ghair malik ke maweshi*" (cattle of all proprietors and non-proprietors) shall graze as of old, free of all charge in the *shamilat banjar* as in Rur Mazra, gave rise to situations of free-riding. Proprietors of *shamilat* land in villages at the foot of the Siwaliks increasingly sought to reclaim land and thereby protect their cultivated area from action of the hill torrents.^{11xxiii} The *malikan-deh's* problem was not so much the grazing rights of the residents but the fact that numbers of cattle were not restricted or specified in the *wajib-ul-arz*. In Bachoi village, district Jullundur, there was a tenant in the village who demanded grazing for all his cattle although he had only one plough in the village as against 20 to 30 ploughs in another village. The Commissioner thought it was hardly reasonable that his right "of grazing as a *maurusi* in Bachoi can extend to all the cattle he may possess."^{11xxiv} He therefore laid, "down the number of cattle which they (non-proprietors) may graze in the village as may be reasonable with reference to the extent of their holdings in that village."^{11xxv} The Chief Court supported the Commissioner and declared that according to the *wajib-ul-arz* the tenants could claim only as cultivators of Bachoi, and only in respect of such of their cattle as can be called "cattle of the village of Bachoi."^{11xxvi}

In yet another village in Hoshiarpur, 86 PR 1911, the Chief Court, upheld the need to restrict the number of cattle to those which were used for "domestic and agricultural purposes."^{11xxvii} Justice Rattigan, held that he could not believe "that it was ever intended in such cases that a non-proprietor should have the right to graze any animal he might possess upon the *shamilat* land." Thus sheep and goats which were used for trading purposes did not come under the purview of "*maweshi*" or cattle of the village. According to Rattigan such grazing of commercial cattle clearly infringed on the rights of grazing of the proprietors on the *shamilat*.

No grazing disputes came up to the Chief Court from Delhi, but around 1906-10 when Beadon was settling the district, a large number of disputes about grazing rights and grazing dues surfaced.^{11xxviii} The *malikan-deh* was particularly nervous about free grazing given to menials in the villages who kept herds for the butchers in the city. Gujars too had the tendency to keep more cattle than grazing land in the village to which they belonged.^{11xxix} This could have been because the *malikan-deh's* hold over institutions of communal property were more tight and also because the conventions about grazing were based on traditions of longer standing than elsewhere in the Province. But nothing prepared it from what happened in 1911.

Policing the Commons vs Governing the Commons

The disputes included in this part of the paper indicate the major role played by the Chief Court in interpreting both recorded custom and clauses of legislation enacted by the Government of Punjab. The painstaking deliberations that each of the judgments involved led the Chief Court to obtain a fairly intensive and extensive study of the village economy and usages. In the process the Chief Court also drilled the lower courts into presenting a complete and detailed description of ground conditions. Some of the Justices had served in the general civil administration and they brought a special "researched" perspective to a case. This is evident from the judgments by E. Brandreth, Robert Egerton, J.B. Lyall, C.L. Tupper and others who could take a catholic view of the issues and action involved.

As for the main actors in the rural conflicts -- the *malikan-deh* -- we notice the Chief Court bolstering collective action against outsiders in two important ways -- one, by stressing on the value of communal rights in a non-exclusive resource and two, by supporting the customary ways in which shares to common lands were inalienable. Thus the Punjab Tenancy Act of 1868, with its amendment in 1887, enabled the Chief Court to support joint property rights in common lands by preventing any of the co-sharers from acquiring *shamilat* by claims of occupancy or adverse possession. However it was difficult for the Honourable Justices to step out of their role as upholders of the principles of "equity, justice and good conscience" and therefore they had an

open mind wherever individual rights or those of sub-groups were concerned as in cases of occupancy tenants' rights to share in *shamilat* or the individual malik's right to partition.

Over time there was a discernible shift from issues concerning "persons" to those concerning "things" and "action". For example the environment, free-riding, externalities of individual action and conservation of degraded natural resources like forests and soil increasingly engaged their attention. There was clearly a conscious move on the part of the judiciary to protect not only the rights of grazing of tenants and those of the proprietary body as well but also to recognize the consequence of over-use of the *shamilat*. Thus judgments which incorporated the definition of 'maweshi' to exclude the commercial heads of cattle like sheep and goat, made sense in ecological terms. The following is a sampler: "Besides the benefits of these heads of cattle in terms of manure, heaving water and ploughing land of the village were minimal to the proprietors of the village. Hence while the proprietors bore the burden of over-grazed commons, the benefits of profits from the sale of such cattle went to the traders and shop-keepers who kept them." ^{lxxx}

This enhances the overall impression of a distinct decline in the communal control exercised by the *malikan-deh*. The successful take-over of conflict resolution by the courts attenuated the authority of collective self-governance and obviated the necessity of co-operative problem-solving activities. Although joint action could not be universally set aside by the unilateral action of splinter groups and individuals, increasingly market forces and changes in the general jural environment abetted individual action. The partition of and acquisition of exclusive property ownership in the *shamilat* became a highly desirable norm for even the collectivities themselves. Even where the desire to hold out against these forces prevailed, the sheer number of market transactions overwhelmed the *malikan-deh*'s ability to keep track of all contingencies. Besides, going to court whenever transgression on *shamilat* occurred was not feasible as getting the entire *malikan-deh* impleaded (a technical requirement for a *shamilat* case) in the action required time and money. Hence as we saw in (19 PLR 1936), Mussammat Askaur, a co-sharer could occupy the *shamilat* without any active opposition from the rest of the proprietary body for years together, and with the result that the district judge of Amritsar went on to decide adverse possession for Askaur as a co-sharer occupying the *shamilat*.^{lxxxii} Thus despite the Chief Court's attempt to bolster the controlling authority of the *malikan-deh* on the conveyance of rights in the *shamilat*, there was a steady trend towards sales of land conveying the *shamilat* rights and consequently there was also a move towards privatisation of communal property.

This was accompanied by a trend shift in land-use and in the technology of raising cattle. Shrinkage in grazing led towards cattle which could be stall-fed (like buffaloes) and away from cows. In some districts like Amritsar even ploughing was done by buffaloes! The *malikan-deh* found itself disabled from building up institutions of monitoring and sanctioning to take stock of the new situations as they came up and instead kept a sharp look out for any infringement of the letter of the law. Governing of the Commons was replaced by Policing of the Commons.

The interest of the village community and that of the individual was caught between the cross-fire of conflicts at different levels. Market incentives made uncultivated land more valuable for agriculture as against pastoral activities. A trend which induced on the one hand separatist tendency among the joint-owners of the common village lands. On the other hand it sharpened the perspective of the village collectivities even more towards the commons as a symbol of their shared identity. This has led them to question the very "rule of law" and heightened their exclusionary attitude towards outsiders.

Part III
THE BIG BANG
1911

Even then nothing prepared the village communities in the Delhi region when H.C. Beadon who had finalised the settlement of Delhi's villages in 1910 sent a notice in February 1912 "to every owner

and every occupancy tenants in each village - some 85,000 notices under section 9 of the Act." ^{lxxxii}
This followed the proclamation of King George the V at the Coronation Durbar held on 12th
December 1911 in Delhi the shift of the capital from Calcutta to Delhi. ^{lxxxiii}

The Land Acquisition Act of 1894 was invoked by the Government of the time to acquire the common lands of 89 villages and additionally on the trans Yamuna river. This laid a precedence for the State for that matter any Government to abrogate the sanctity of contract made at the time of settlement by which the Government had laid claim on 'the waste' **outside** of the village, that is the regional commons. This had far reaching consequences, as it created uncertainty in institutions of rights in land and natural resources held in common **within** villages thereby weakening the very source of those restraints inherent in customary norms of village communities and those of transhumant pastoral people. In 1947, the Congress Government enacted the Land Reforms Act - a generic set of institutions to rid the country-side of feudal control over land particularly over the village waste. This created an 'open access' status on the commons of the village assuming that the commons were feudal property uniformly everywhere. And so it transpired that all the States of India, paid scanty attention to the local/regional differences of customs vital to land tenure and land-use patterns.

Part IV
PUBLIC POLICY
&
Customs in Common
1947-2013

Thus yet another stage of juridical change for the 'wastes in common' began in 1947. The village community, particularly in the region of Delhi were aware of what a modern government could do through legislation but even then they were not prepared for what happened subsequent to 1947. While even the British made gestures of "enquiry" before legislating, but after independence it was assumed that a Parliament which was elected, not only necessarily but also sufficiently represented the "silent" majority. Perception of peasant societies and their strong tradition of oral history was obviously not a priority as was evident from the public policy of land reforms that was adopted. Nor was sufficient attention devoted to the institutions of land-use patterns of rotating fallows and scattering of holdings, particularly of land in its uncultivated state or the waste both for cultivation and for pasture within the village and outside it. Hence very little importance was attached to shared resources of both sedentary and transhumant communities. Hence the perception of public policy was so different from that of a historian like Marc Bloch who perceived the scattering of holdings in the French country-side as a feature of historical continuity, and to change such a situation by the Civil Code was based on ignorance of history. Consequently the public policy that emerged in India had serious consequences for the environment of not only the Delhi region but had ripple effect on the eco-systems of seven rivers and the Himalayan country-side beyond.

An even more serious concern was the juridical one - what Sir Henry Sumner Maine had underscored. Contemporary land scams bear this out. In the Delhi region there is asymmetry in the juridical position of the State and the Village Community vis-avis 'The Waste'. The situation has been created by acts of commission. While the Land Acquisition Act of 1894 has been carried down into the 21st century, there is a move to re-invent it and continue the power of the State over common lands with enactments proposed in 2007. The same is not the case with the customary law recorded in the *wajib-ul-arz* or the Village Administration Papers of Delhi's villages recorded in 1880. Already there was a precedence since 1911 when commonlands of 136 villages of Delhi territory could be acquired for 'public purpose' in opposition to the rights of village communities. Now there is no pretence to justify land acquisition for 'Public purpose'. Thenceforward **statutory intervention** without much enquiry has become the tool of public policy.

A few examples will illustrate :

First, the Land Reforms legislation of 1949 at an all-India level sought to remedy injustice in rural areas across the board without differentiating between regions with bizarre results. While feudal lords who were intended to be removed found a loop hole and only succeeded in getting added de-jure strength; Delhi's small land-holders in villages were swamped with the landless evictees from those villages had been acquired. Second, customary law recorded in the village administration papers also went the same way. A part of this was to do with the misconception that 'customary law' bordered the realm of religious laws. Besides village customary rights were assumed to be a collection of feudal rules. Third, land-use patterns of rotating fallows were considered archaic and not retained even for the sake of 'historical continuity' as Marc Bloch was to recommend for France. Statutory consolidation of holdings separated land interest of the individual from the collective land holdings. Hence the village community was associated with backwardness and not credited for collective action. Consequently the commons too were seen as appurtenance of a feudal structure and so to be thrown open to a larger landless class as it was done to the 'mirs' by Stalinist collectivisation in Russia. And finally, the Panchayat Acts of 1954 introduced statutory democracy of the **majority** as the rule for decision-making and replaced **consensus** which had hitherto guided rule-ordering in village communities. This too had bizarre consequences as we shall see below

Public Policy and the Kanjhawala Cluster of the Bisgama Illustrates :

In the event, public policy completely overlooked **human order** as a public good and ignored that **peace** is a commons. (Vincent Ostrom) An example was the policy of poverty eradication in the 1970s through distribution of parts of the common lands among the landless poor - in the then Union Territory of Delhi - which for the first time brought to the fore the whole issue of common lands and customary law on centre stage of the political economy of India! The matter did not go to the court for decision. Instead, in August 1978, the peasants from the cluster of Kanjhawala known as the Bisagama in north-west Delhi staged protests before Parliament House. Events of this kind have occurred and recurred all over India. What led to this specific incident was the partition of the common lands through a majority vote of the village community to enable the Delhi Administration for the Union Territory to distribute 123 acres of the village common land to landless of the village Kanjhawala. This take-over of the waste was the cusp in the juridical moment of the waste in village history and so that of North India. It is also an example of the attenuation of customs in common and so the weakening of the weapons of the weak by State power. Free-riding of the village commons by the Delhi Administration was possible because the bureaucrats gained access to decision making in the village through legislation like the Land Reforms Act and the Delhi Panchayat Raj Act of 1954 and then the Village and Common Lands Act of 1961.

The consequence of such a policy is **disorder** – which then is the real 'tragedy of the commons' which emanated from uncertainty and distrust of public policy in the cluster of 20 villages. First, whereas in the past, (colonial) statutory law^{lxxxiv} had recognised the *malikan-deh* (landholders) of the villages and their communal rights to manage and control access to the commons; in the present, (national) statutory law^{lxxxv} again, has de-recognised this collective authority and created "open access" to the village common lands. Second, the institutions of customary land usages of the village community had been replaced by bureaucratic decisions and the property rights structure that upheld them. Such creation of uncertainty generated suspicion in the minds of all those who had shared the commons and shattered -- **peace**.

Public policy was incapable of policing its own rules, or did not want to. But this was not how the Government of Delhi or the media saw it. The crisis was made out to be one of caste conflict. Even if we assume it was primarily one of caste tension, which it was not, even then, the flare-up was initiated by a rule of the enactments of 1954 which broke down the *nomos* of customary norms of self-governance which had earlier kept order in the rural areas. It broke down the source of authority and authoritative relationships of the erstwhile *malikan-deh* or land-holder *panchayats* and had replaced it by one where all and sundry of the village were included whom the bureaucrat-political nexus could manipulate. Even if the new order represented a more democratic and a more humane

form of structure it was brought into being by positive law which could not make allowances for institutional diversity as customary law could.

The implications of the new village order were the beginnings of privatisation of the commons with serious implications locally and with **disastrous impact on the regional environment**. Far from preventing "free-riding" on the commons, State intervention created a situation of "open access" and has unleashed yet another kind of tragedy on the commons - **corruption**.

GLOSSARY
Kitafuji Paper
June 2013

1. *abadi-deh* : Land set apart for building the village houses. Such land is often entered as the common property of the village.
2. *aug* : Cattle tax as a part of the system of chaubacha wherein heads of cattle were taxed and also later the term was used for tax on cattle.
3. *bania* : Money lender.
4. *bangar* : Upland tract, for example the situation of Kanjhawala cluster is in the bangar tract.
5. *banjar jadid* : Land left uncultivated for less than three years and in some cases less than three seasons; In MacLagan Gorrie's book 'Land management in the Punjab', banjar jadid is "new fallow, not sown for four previous harvests."
6. *banjar kadim* : Land which has not been cultivated over three years or in some cases more than three seasons; Gorrie's definition "old fallow, not sown for eight previous harvests, and all cultivable wastewhether previously ploughed or not."
7. *Bhai bund* : Brotherhood. In 155 PR 1889- A brother, one by lineal affinity or one by community of origin and interest or only by friendship, and association.
8. *Bhumbhai* : Earth brother, or brother related by ownership of land.
9. *biswadar* : A proprietor who owned a *biswa* or share in the village lands. *Biswa* was the measure of the share and was really a twentieth part of the bigha. In some cases like in the tehsil Khushab, district Shahpur, tirni settlement realised from hereditary graziers, described as biswadars.
10. *Chakbat* : Land divided in consolidated holdings.
11. *Chamar* : A low caste, usually a leather workman.
12. *Chaubacha* : A village tax including four kinds of on non-proprietary residents.
13. *chos* : hill torrent.
14. *Deh* : a Persian word (according to Baden Powell not explained), a village with lands belonging to it.
15. *dhana* : field channels leading from the well to the cultivated fields.
16. *dhaul* : ridge between fields.
17. *ghair malik* : a non-proprietor.
18. *ghair maurusi* : A non-hereditary tenant.
19. *ghair majruha* : Uncultivated.
20. *ghair mumkin* : Uncultivable.
21. *gitbad* : The area reserved for miscellaneous activity usually near the abadi, sometimes referred to as the *gora deh*; according to J. Benton "on which the cattle are collected before going to pasture, and other operations are performed."
22. *gora deh* : Common land surrounding the *abadi deh*.
23. *Har* : The village was divided into "hars" or fields having approximately the same quality which were then divided into strips.
24. *Hasab rasad* : (117 PR 1894) share in the shamilat khewat according to the proportion of revenue paid.
25. *Jamabandi* : Revenue records made at the Settlement.
26. *Jirgah* : A court held by the Muslim tribes.
27. *Johad* : A pond.

28. Julaha Weaver.
29. *biswadari* : (PLR of 1907) Entry or cancellation of rights.
30. *Kamin-deh* : Village servants.
31. *khadir* : Low lying usually riverine land.
32. *Khata* : The page in the jamabandi record devoted to the rights of ownership of a revenue payer.
33. *khet-bat* : The land was divided into 'hars' and each of the 'hars' was then divided into strips which allotted by lots to each shareholder.
34. *khewat* : Holding of a revenue payer, given a number.
35. *Lal dora* : a red line drawn around the map of the residential area or abadi. This was instituted by E.A. Prinsep in 1871.
36. *malba* : Accounts of the village miscellaneous income from the common lands, usually kept by the lambardar and managed by the 'malbadar' who was the 'bania'.
37. *maurusi* : Hereditary.
38. *mauza* : (Arabic word) According to Baden Powell in "Indian Village Community" its meaning is derived from Johnson's dictionary from 'waza' with the meaning of founding or 'laying down.' It is widely used in revenue language for village or revenue estate.
39. *Misl haqiyat* : Record of Rights.
40. *nau tor* : Breaking virgin land.
41. *pagri* : Turban.
42. *pana palat* : A tenure in Gurgaon where the whole village land was redistributed block-wise.
43. *posal* : Reserved grazing land.
44. *riwaj-i-am* : Customary law.
45. *sakin deh* : Resident of a village.
46. *shajra nasb* : Genealogical tree.
47. *shamilat* : Common land.
48. *shamilat deh* : Common lands of the village.
49. *tagri* : String tied around the waist of young boys.
50. *tirni* : A grazing due.
51. *wajib-ul-arz* : A village administration paper.

Terms used for Settlements

52 : *Bach* : The division of the total public land or the jumma among the shareholders of the proprietary body or the malikan-deh.

53. *Malba* : The *malba* was a cash contribution collected by the lambardar from the revenue payers with the first instalment at each harvest. The total amount to be collected was distributed over them in the same way as the revenue. In each village a maximum percentage on the Government demand was fixed for this charge. The malba was probably the only item of common income of the village which was found in all. The administration of malba varied. The lambardars collected the maximum allowed and after defraying any expenses kept the balance. This was the subject of dispute in districts like Ludhiana and Jullundur. The lambardars in the Karnal district however were respected on the whole and therefore their handling of the malba accounts did not raise the same kind of reaction as in the other two districts.

54. *Shajra* : The village map.

55. *Shajra Nasb* : The history of the families which comprised the village proprietary body. The genealogy tree was constructed only for the Proprietary body in the Settlements conducted in the seventies after the passage of the Punjab Land Revenue Act of 1871; but in the settlements in the early part of the twentieth century the Shajra was drawn up for the occupancy tenants as well, as in Delhi for example. This is important for it shows that these tenants became as much a part of the landholding community as the proprietary bodies themselves.

57. Village : Village is almost the same as an estate which had been defined by the Land Revenue Act XVII of 1887, as "any area (a) for which a separate record of rights has been made; (b) which has been separately assessed to land revenue, (c) which the Local Government may declare as an estate. In the Punjab according to Douie the "estate" and "village" are merely terms for the same property because "complete partitioning" of estates within a village in the Province was not allowed by Section 110 of the Punjab Land Revenue Act 1887 and thus joint responsibility for revenue payment of an estate remained.

Documents which accompanied a Settlement

1. *Khasra Girdawari* : List of fields showing name of owner and cultivation area, class of land, crops grown, change of ownership or in rent for any harvest, well, canal and other irrigation with details of success and failure.
2. *Jamabandi* : The record of Rights. It has a combined list of sharers and co-proprietors (khewat) and of cultivators and tenants also; in other areas according to Baden Powell the jamabandi records were not so complete a record. A detailed jamabandi record was prepared once in four years with a map corrected upto date.
3. *Dakhil Kharij* : Register of changes by which the Register jamabandi was kept correct.
4. *Shajra* : and the Village maps with the index.
5. The *Wajib-ul-arz* : The village Administration paper.
6. The *Shajra Nasb* : Showed the complete tenure of the village giving the sub-divisions of the village into *tarafs* and *pattis*.

Measurements used in the different Districts

Bigha measure 1 Bigha = 0.20 acres or 4.8 Bighas = 1 acre. This measure was used in the districts of Delhi, Rohtak, Hissar, Ludhiana, Ambala, Karnal, Fazilka and Ferozepur.

Ghumao measure 1 Ghumao = 0.76 acres or 1.82 Ghumaos = 1 acre. This measure was adopted by the districts of Jullundur, Hoshiapur, Amritsar, Ferozepur, except Fazilka.

In the old records the pakka or Shahjahani Bigha = $\frac{5}{8}$ of an acre; the kacha Bigha was $\frac{5}{24}$ of an acre. 20 Biswansi = 1 Biswa ; 20 Biswas = 1 Bigha = $\frac{5}{24}$ of an acre.

- i *The Hindu*, March 17, 2013.
- ii Panchayat lands after 1947 were the common lands of the village community.
- iii Khasra number : every field in the village has a number recorded in the Register or Khasra Khatauni.
- iv From Ashok Khemka to Chief Secretary P.K. Chaudhary. Oct 12, 2012. *The Hindu*. March 17, 2013.
- v . Ibid, para 10.
- vi . Ibid.
- vii . Ibid, para 9.
- viii. Multan Gazeteer, 1923-24, p 326.
- ix . Sirsa SR, 1879-83, p 52.
- x . Rattigan and Roe, Tribal Law, 1895, p15, para 17.
- xi . Boulnois and Rattigan, Notes, 1876, p 179.
- xii . Minority supported in 76 PR 1873; 70 PR 1866; 40 PR 1875; Ibid.
- xiii. Boulnois and Rattigan, Notes, 1876, p 179.
- xiv . 34 PR 1869; 20 PR 1869; 70 PR 1868; 40 PR 1868.
- xv. Hissar Gazeteer, 1915, p. 198.
- xvi. T. Fortescue, Secretary to Government in Territorial Department, 28/4/1820, Punjab Records of the Delhi Residency and Agency, 1911, p. 78.
- xvii. Ibid; see also settlement reports of districts like Ibbteson's report on the Karnal district; also in the several court cases reported in the Punjab Record.
- xviii. See the court cases reported in the Punjab Records.
- xix . Delhi Settlement Report, 1872-80, p. 81.
- xx . See court cases reported in the Punjab Records.
- xxi. Ibid.
- xxii. Hoshiarpur Settlement Report, 1879-81, p. 87.
- xxiii. Selected Reports on Revision of Settlements under Regulation IX of 1833 in the Delhi Territory, 1846, p. 29.
- xxiv. Selected Reports on Revision of Settlements under Regulation IX of 1833 in the Delhi Territory, 1846, p. 29.
- xxv. Hissar Gazeteer 1915, p. 198; see also report of Fortescue, Secretary, Government Territorial Department, Report 1820, Records of the Delhi Residency and Agency, 1807-1857, p. 81; also Karnal Settlement Report, 1872-80.
- xxvi. Jamabandi Records of mauza Kanjhawla and other villages in the cluster as well as the village records of all villages in the Punjab, Minoti Kaul, "Common Lands: the History of an Economic Asset in the Punjab, Haryana, Himachal Pradesh and Delhi," PhD. thesis, Delhi School of Economics, University of Delhi.
- xxvii. Prinsep's letter No. 170, 14/4/1864, Financial Commissioner's Book Circular No. 19, circular No. 32, 11/5/1864.
- xxviii. By section 65, clause 2 of the Punjab Land Revenue Act XXXIII of 1871, a Civil Court cannot take cognisance of claims to partition, by persons who do not contest the correctness of the settlement record.
- xxix. F.C.'s Book Circular Order Vol. II, XLVIII, 1858-60, Circular No. 97, 20/10/1860, p. 402.
- xxx. Delhi Settlement Report, 1872-80, p. 81.
- xxxi. Prinsep's letter No. 170, 14/4/1864, Financial Commissioner's Book Circular No. 32, 11/5/1864.
- xxxii. Justice Benton, 117 Punjab Records 1894. (Henceforth PR).
- xxxiii. Delhi Gazeteer 1912, p. 120. (Henceforth Gaz.)
- xxxiv. 119 PR 1884.
- xxxv. 20 Allahabad 248 quoted in W. H. Rattigan. 1938. A Digest of Civil Law For the Punjab. (Lahore: Lahore Law Publishers) pp. 235, 236.
- xxxvi. Ibid.
- xxxvii. Delhi SR, 1872-80, p. 81.
- xxxviii. Justice Lindsay, 25 PR 1875.
- xxxix. Justice Brandreth, 92 PR 1880.
- xl . Justice Barkley, 92 PR 1880.
- xli . Paul Paustian, Canal Irrigation in the Punjab. (New York: Columbia University Press, 1930) p. 41; also Baden Powell, Land Systems in British India, Vol II, p. 587; also Ferozepur SR, 1889-91.
- xlii. Home Judicial, Proceedings 11 B, Oct. 1900, Punjab Civil Justice Report, 1899, Appendix v.
- xliii. Ibid.
- xliv. Ibid.
- xlv. Revenue and Agriculture, Pros 21 A, July 1894.

- xlvi. Report of the Divisional Judge, Rawalpindi, M.L. Dames, Home Judiciary, Pros. 85-87 B, Oct. 1897, Punjab Civil Justice Report for 1896, Appendix xii.
- xlvii. Report of the Divisional Judge, H.A. Rose, Ferozepur, Home Judicial, Proceedings, 11B, Oct. 1900, Punjab Civil Justice Report for 1899, Appendix, p. v.
- xlviii. Ibid.
- xliv. 30 PR 1879.
- li . 7 PR 1885.
- li . Punjab Census, 1881, Abstract 14; also Punjab Census for 1891 and 1901.
- lii . Report by the Divisional Judge, Jullundur, Khan Muhammad Hayat Khan, Home Judicial Proceedings 85-87 B, Oct 1897; Punjab Civil Justice Report for 1896, Appendix, p. (iii).
- liii . 24 PR 1878.
- liv . Hoshiarpur SR, 1879-84, para 6.
- lv . Lahore SR, 1865-69, p. 67.
- lvi . 149 PR 1919.
- lvii. 119 PR 1884.
- lviii. The Collector of Karnal district spoke with regret of the new arrangements as "it was calculated to destroy the strong and honourable feeling of mutual good-will and attachment which formerly characterised the intercourse of the headmen ... The power they possessed was considerable ... scarcely ever abused," quoted in Gazeteer Karnal District 1918.
- lix . Revenue & Agriculture, Proceedings 23 A , July 1903, para 13.
- lx . Rohtak SR, 1873-79, p. 29.
- lxi . C A 1314 of 1929, PLR 1930.
- lxii. 12 Rev. 1885.
- lxiii. 108 PR 1876.
- lxiv. 119 PR 1889.
- lxv . 144 PR 1907.
- lxvi. PLR 1932, p 942.
- lxvii. Ibid., p. 944.
- lxviii. C.A. 171 of 1928, Vol. XXXVI PLR 1935.
- lxix. Ibid.
- lxx . 108 PR 1876.
- lxxi. 100 PR 1881.
- lxxii. Ibid.
- lxxiii. 95 PR 1914.
- lxxiv. 108 PR 1876.
- lxxv. Ibid.
- lxxvi Ibid.
- lxxvii. 86 PR 1911.
- lxxviii. Delhi SR, 1906-10, p. 20; also Delhi Gaz., 1912, p. 120.
- lxxix. Delhi Gaz. 1912, p. 121.
- lxxx. 108 PR 1876.
- lxxx. C.A. 19 PLR 1936.
- lxxxii. Pros. 121 & 122 A Home Department of Government of India April 1912.
- lxxxiii. Pros 10 A, Home Deptt Government of India Dec 1911.
- lxxxiv. In the Punjab, the Punjab Land Revenue Act of 1871 had recognised the rights of the malikan-deh or the proprietary body of the village as a community to engage in the management of common lands or shamilat-deh of the village.
- lxxxv. The Land Reforms Act of 1949, transferred all the common lands from the control of the malikan-deh and transferred them to the control of the elected body of the village- the Gaon Sabha.