THEORY
AND POLICY ANALYSIS
IN NORTH INDIA
PANJAB UNIVERSITY

Two Centuries on the Commons

The Punjab

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Glossary

Abi	Wet land that is receiving water.
abadi-deh	Land set apart for building the village houses. Such land is often entered as the common property of the village.
abiana	Water rate charged for irrigation.
akhya dhub	The Dhub grass has strong roots and does not get eradicated easily, hence James Todd borrowed this expression from the local terms used by the people in Rajputana to express the meaning of "bapota" or patrimonial property.
adna malik	The definition given in the judgement of Charles Roe gives the legal term used in his judgement 9 P R 1898: ".. In some parts of the country the "adna malik" is little more than a tenant with a right of occupancy. In other parts, the adna maliks are the real proprietors. " In Moga tehsil the adna malik is a pattidar.
Ala lambardar	The chief headman.
Ala malik	In his judgement of 9 PR 1898, Charles Roe the Chief Judge of the Chief Court , "the position of the ala malik varies greatly in different parts of the country. In some they are real proprietors ... in other parts they are merely talukdars receiving a certain percentage of the revenue."
anjan	Anjan and Dhaman are two grasses distinct in appearance and botanically are both called by the names given above. One is Pennise lum Cenchroidus and the other is Cenchrus Montanus Wees. Dhaman was white and downy looking and could be treated as the equivalent of " Clover " and the other one was darker and more compressed. (Land Revenue and Agriculture (Famines) September 1885, Pros 3-4A).
asami	The term was used for a cultivator in the North-West Provinces and was used in Sirsa as well as in Delhi. There was a difference made between asami jadid that is cultivator of a short term or what came to be known as 'maurusi' and asami kadim or hereditary cultivator.
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.
arazi	Area.
Baach	Division of revenue liability.
Bagri	A clan of the Jat tribe (W Coldstream in Land Revenue and Agriculture (Famines) Pros 3-4A Sept. 1885).
Ba mujib kadar apni	
ban maafi	Forest rights.
Bandobust	Revenue Settlement.
bania	Money lender.
bangar	Upland tract, for example the situation of Kanjhawala cluster is in the bangar tract.
ban-banjar	Forest wasteland held in common.
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."
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 waste whether previously ploughed or not."
banjar mumkin	Cultivable waste.
bapota	Ancestral property.
Bar	High level land in the interfluvial tracts, generally arid.
Bara	Cattle troughs.
barani	Land which is watered by rain and not irrigated.
barilla	A spontaneous growth on the waste liked by camels used to produce soda.
bartan	A forest right.

batai	Division of the crop between the cultivator and the landlord or the Government in that capacity.
be-chiraag	Without light, meaning a deserted or uninhabited village.
bela	A strip of land lying on the edge of the river, in most cases thrown up by the river action.
belna	Sugar press.
Bet	Lowlying land usually along rivers in fairly wide stretches.
Bet-Kabzavar	Actual possession.
Bhaiachara	Lands or villages or certain rights held in common property, by a number of families forming a brotherhood. In all such fraternities the Government revenue is mostly paid through one of the number representing the whole.
Bhaiwal	Like a brother.
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.
bhondi	Gift of land given by the village to a kamin for services.
bhindidar	A service tenure of land in the village.
Bhumbhai	A term used for the revenue payer and therefore the legal owner and cultivator again used in the Land Reforms Act.
Bhur.	An unproductive soil consisting of for the most part of 7/10 of sand and the rest of clay.
bila-hissa-shamilat	Without a share in the shamilat.
Bir	Reserved grass or forest area.
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.
Bujharat	Auditing of village accounts.
Burj	Pillar
Butwara	Partition.
Bywastha nuvees	A judicial functionary who interpreted the Hindu Law and was attached to the Adalati or judiciary of the town, for the express purpose of expounding Hindu Law.
Chabutra	A masonary structure usually made outside the house for seating.
Chani	Well irrigated land.
Chakbat	Land divided in consolidated holdings.
Chalisa	Famine of 1783.
Chamar	A low caste, usually a laether workman.
Chamb	A swamp.
Carai mahal	A grazing lease or pasture land; field appropriated to the grazing of cattle.
Chaukidara	dues part of the cesses paid for the policing of the village to the lambardars.
Chaubacha	A village tax including four kinds of on non-proprietary residents.
chaupal	village meeting room.
chan	well.
chos	hill torrent.
chura	a sweeper.
Deh	a Persian word (according to Baden Powell not explained), a village with lands belonging to it.
dhak	a tree growing in Karnal.
dhaman	grass in Hissar and Sirsa described along with anjan, nutritious for cattle of high quality.
dharmsala	a resting place for travellers.
dheri	a part of the land sub-divided.
dheri bandi	land partitioned according to dheris.
dholidar	the donee of land gifted for religious purposes.
dhana	field channels leading from the well to the cultivated fields.
dhaul	ridge between fields.
gaddi	A hill caste, usually a pastoralist.
ghacheri	grazing due.

ghair malik	a non-proprietor.
ghair maurusi	A non-hereditary tenant.
ghair majruha	Uncultivated.
ghair mumkin	Uncultivable.
girdawari	Records of crops grown in villages.
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."
gora deh	Common land surrounding the abadi deh.
got	A clan or subsection of a tribe.
gowar	A fodder crop.
Gujar	A land owning caste but with strong pastoral habits.
Hak bua	(11 PR 1879)
Har	The village was divided into " hars " or fields having approximately the same quality which were then divided into strips.
Hatrakhaidar	(2 PR 1917); usually an influential man who had a say in the court of the ruler and who could therefore intervene on behalf of a revenue payer.
Halsari	A revenue tenure.
haq bakri	A payment to a kamin.
Haq Shufa	The rights of the maliks to take an alien or malik to court. 90. Hasab rasad (117 PR 1894) share in the shamilat khewat according to the proportion of revenue paid.
hissedar	Shareholder.
hissedar kasht	Cultivating share.
Hukkami	Grants of land made by Government officers or zamindars.
Haq-uq-malikan	The rights of the Maliks or the proprietors.
Ijjara	Price, profit especially a lease or farm of land on defined rent or revenue, whether from Government direct or from an intermediate payer of revenue, contract or monopoly.
ilakawar	District-wise.
istemrari grant	Is a jagir and the istemrardar as the Mandal of Karnal was, could not bind the istemrari estate beyond his lifetime.
Iqrarnama	A written agreement.
Jamabandi	Revenue records made at the Settlement.
Jat Mahasabha	Organisation of the Jats.
Jaho	Tree type abundantly growing in the Karnal district.
Jharberi	A bush growing small red berries used for grazing.
Ji ki sajji	"Sajja" means a share. A man contributing labour to the "lana" or an agricultural partnership obtained a share of the produce known as " Ji ki sajji ".
Jirgah	A court held by the Muslim tribes.
Johad	A pond.
Jooree	A fee paid to the ala malik for the permission given to break up new land.
Julaha	Weaver.
Jumla haquq dakhiliwa khariji, mai jumla haquq biswadari :	(PLR of 1907) Entry or cancellation of rights.
Jumma	Revenue of the entire villge or 'mauza'.
Kallar	Saline soil.
Kamin-deh	Village servants.
Kamiyana	Payment for service.
Kamini bagh	Distribution of service charges.
kankar/kunkur	Gravel.
kanungo	Revenue official.

kardar	A Sikh official.
khaad	Manure.
khadir	Low lying usually riverine land.
kadim kirsan	A cultivator of long standing.
kharetar	Reserved grass plot.
kharab jat	A splinter Jat group in the village Rani Khera, mentioned in the field notes of Oscar Lewis.
Khata	The page in the jamabandi record devoted to the rights of ownership of a revenue payer.
khalisa lands	The revenue of which remains the property of Government and which are not made over in jagir or inam to any.
kham	Empty, raw, unripe or unused. As a revenue term it means settlement made with the cultivators direct without the intervention of the third person, the estate being managed by the officers of the Government; also gross revenue of the village.
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.
khewat	Holding of a revenue payer, given a number.
khira	Reserved grass patch usually found in Sirsa and Hissar district.
khirman	The place to keep the harvest.
khudi	A hole made in the ground to tie the looms of the weavers.
khud kasht	Self cultivated.
khula vesh	A system of land division whereby every member was included in the partition which was held once in several years. The land was held in common.
khurli	A cattle trough for feeding the cattle made of mud. It is a structure of a purely temporary character which usually breaks down when it rains. It follows that the erection of this khurli cannot give rise to a claim by adverse possession. User of such sort is neither intended to denote a claim of ownership of the land under it nor understood as denoting ownership.
khus	Root of a grass for making screens for cooling.
Killa	A unit of grant of land which was sub-divided into 25 squares or killas.
kohlu	Oil press.
kooda	Household refuse.
kothas	Buildings.
kudi	Hearth.
kul hakyiat ka	One third of his entire interest in the tisra hissa village.
kumera	Hired labourers.
kura bandi	Denoting a share in the division of land.
Lal dora	A technical name for the limits assigned for theresidential area.
lambardar	It is a distortion of the word 'number', therefore the number given to the leader of a village who collected the revenue associated the man with the name Lambardar.
Lana	Agricultural partnership.
la wald	Without heirs.
lohar	Blacksmith.
mafidar	Holder of revenue free holding.
mahal	"any parcel or parcels of land which may be seperately assessed with the public revenue, the whole property of the persons settled within the mahal being held hypothecated to the Government for the sum assessed upon it." This definition involves (a) separate assessment, (b) where there are more than one person it shows joint responsibility for payment of revenue.
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'.
malguzar	One who pays the 'mal' or revenue.
malikana	A paynent in recognition of the rights of the superior malik, or just in recognition of the proprietor.
malikan-deh	The members of the proprietary body.

malik kabza	In the Jhelum district, Talbot wrote in the settlement report, which was used by Justice Robertson- "he is usually in the same position as a full proprietor in a village, with the exception that he sometimes has to pay malikana to such proprietors and that he has no share in the shamilat land in the village."
malik khudkasht	Proprietor of the land he cultivates.
mauruza makbuza	Land is shamilat, but in the occupancy and possessions of the mortgagers.
maurusi	Hereditary.
mauza	(Arabic word) According to Baden Powell in "Indian Village Community" it's 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.
Milkiyat	araai makbuza
Misl	File.
Misl haqiyat	Record of Rights.
Misr	Brahmin.
Muafi (muafidar)	An assignee of revenue is called a jagirdar or muafidar and he collects his assignment in kind or in cash, but he has no right as such to meddle with the management or cultivation of the soil, in which he obtains no proprietary interest by virtue of the grant.
muqqadam	Leader.
mushtarka	Communal.
na jaish kabiz	Held illegally.
naiabad	Newly settled.
naqdee	Cash revenue.
nau tor	Breaking virgin land.
nazul	King's property.
pagri	Turban.
pahee	Itinerant.
pahi kasht	Roving cultivator.
pala	Kind of grass used for grazing.
pana palat	A tenure in Gurgaon where the whole village land was redistributed block-wise.
pana	A subdivision of a village, each being held by a branch of a family descended from the same common ancestor or strangers settled by them.
pana marna	Means to cast a lot, a relic of the old custom of redistribution of land so common to Aryan communities.
panj guni	(Pashto word) This word was used in the frontier tehsils. It meant shamilat of or belonging to a panchayat.
pattidari	Tenure of a village held on ancestral shares.
pattidari	Tenure of a village when the land is fully mukammal partitioned among the different branches of the families.
pattidari ghair	Tenure of the village when the village was mukammal partly prtitioned and partly held in common.
patwari	Village accoutant.
posal	Reserved grazing land.
puthkhan	A place similar to the gitbad in the Delhi villages, in the Gujranwala tehsil villages where dung cakes were kept.
raj bua	A distributary from a main canal.
Rakh	Usually referred to the reserved and preserved forest land in the hands of the States. A grant of a ' rakh' or grass preserve free of revenue is a jagir within the meaning of section 145 page 543 in Rattigan.
razinama	Deed.
riwaj-i-am	Customary law.
robkar	A Government document.
Sadk kham	An empty road.

sadr malguzar	Chief revenue payer.
sailaba	Land inundated by river action.
sajji	A plant from which soda carbonate was made.
sakin deh	Resident of a village.
sawan bhadon	July - August.
shajra nasb	Family tree.
shamilat	Common land.
shamilat deh	Common lands of the village.
shara	Muslim law.
shastra	Hindu law.
shikast	Revenue language.
sua	Duct.
tafrik	Division.
tagri	String tied around the waist of young boys.
takavi	Government loan.
taluqa	District.
tappa	(Pashto word) : means a clan or a section or corporate body of shareholders.
taraf	Main sub-division of a village.
taraddad hasb	Taking into cultivation according to ones istatdat apni ability to cultivate.
tarraddadkar	Cultivator.
tehsildar	Official heading a sub-division of a district.
tholla	A sub division of a Pana which was one of the main divisions of the village.
tirni	A grazing due.
uprahan johad	A catchment area collecting water.
vesh	A system of redistributing the land of the village which was held in common.
wajib-ul-arz	A village administration paper.
warisan ek jaddi	(10 PR 1893) heirs within the family.
warisee	Inheritance.
zabti	Fixed rent.

Terms used for Settlements

Bach	The division of the total public land or the jumma among the shareholders of the proprietary body or the malikan-deh.
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.
Shajra	The village map.
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.
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.
   Khasra
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 = 5/8 of an acre; the kacha Bigha was 5/24 of an acre. 20 Biswansi = 1 Biswa ; 20 Biswas = 1 Bigha = 5/24 of an acre.

ABBREVIATIONS

Official Positions

AC	Assistant Commissioner.
ASBI	Agricultural Statistics of British India.
CC	Chief Commissioner.
CA	Civil Appeal.
CEHI	Cambridge Economic History of India.
CJR	Civil Justice Report.
Comm	Commissioner.
ConsFors	Conservator of Forests.
CO	Circular orders.
CPR	Common Property Resources.
Deptt	Department.
DC	Deputy Commissioner.
DCS	Deputy Commissioner of a Settlement.
DJ	Divisional Judge.
FC	Financial Commissioner, Punjab.
FCCO	Financial Commissioner's Circular Order.
Fam Rep	Famine Commission Report Punjab Famine Commission.
Govt	Government.
Gaz	District Gazeteer
Gov Gen	Governor General.
Home Jud	Home Department Judicial.
IOL	India Office Library.
J A	Justice of the Chief Court.
LR	Land Revenue.
LRAP	Land Revenue Administration.
PMan Ab	Manual for Arboriculture.
Offg	Officiating.
PAR	Punjab Administration Report.
PBEI	Punjab Board of Economic Inquiry.
PCC	Punjab Civil Code, 1854.
PCL	Punjab Customary Law.
Press List	Press List of Old Records in the Punjab Secretariat.
PL A	Punjab Laws Act, Act IV, 1872.
PLRA	Punjab Land Revenue Act, 1871.
PLR	Punjab Law Reporter.
PR	Punjab Record.
PWD	Public Works Department.
RADP	Report of the Administration of Delhi Province.
Rep	Reports
Rev & Agri	Revenue and Agriculture Department.
Progs.	Proceedings.
Rev J	Revenue Judgement.
Rev Man	Revenue Manual.
RIAR	Riwaj-i-am.
Sett	Settlement.
Sett Man	Settlement Manual.
Secy	Secretary.
SO	Settlement Officer.

Suptdt	Superintendent.
Sel Rep	Selected Report.
SR	Settlement Report.
WUA	Wajib-ul-arz.

Part I

Chapter 1

COMMON LANDS IN HISTORY AND THEORY

This is an historical enquiry into common lands and institutions of communal control in north India from early nineteenth century to almost the end of the present one. The region more or less co-incides with British Punjab — a Province encompassing Delhi until 1912. In this region, common lands evolved and transformed, not as an isolated phenomenon, but as part of two major changes in the system of agriculture in the nineteenth and early twentieth century. The first was a transition from a system utilising cultivable "waste" banjar kadim or long fallow, for grazing, to one of intensive and irrigated land-use for arable, and short fallows for pastoral purposes. The second change was a decline in the joint control exercised by the village proprietary body or malikan deh over resource management in the course of the nineteenth century.

Though the rural commons of north India have been under pressure for the last two centuries, they have not been considered in any depth in the historical literature on India. In the last three decades, however, interest has grown. Partly this reflects the pressures generated by conflict over common lands, especially where these have become acute - as in Kanjhawala in Delhi, in 1978. It is a response, also, to the rapidly growing literature on common property resources, and in particular, the comparative institutional analysis which has emerged out of the writings of the so-called Property Rights School, the New Institutional and Public Choice Schools centred around the Ostroms' Workshop in Political Theory and Policy Analysis in Bloomington and partly as a by-product of the environmental movement. Additionally, the seminal contribution of Ester Boserup has inspired me to examine the linkage between land-use and customary institutions in historical perspective.[1]

These developments have re-inforced the need to establish an agenda for inter-disciplinary research in historical processes. I hope this inquiry will be a step in that direction. Although the central issue in this analysis will be a process of agricultural transformation associated with the historical dissipation of the commons and community control in rural Punjab, the explanation will be in terms of a set of complex factors ranging from legal institutions to political processes and public policy measures associated with the entrenchment of Government power. In doing so I am confronted with a puzzle. How do I explain the survival of common lands and the institutions of communal control in villages like the Kanjhawala cluster in Delhi where all the causative factors for their transformation have operated over the last two centuries? It is significant, here, that communal lands are no longer central to economic decision making but have become symbols of political self-determination. The conflictual situation that has arisen indicates something more than just an erosion of natural resources held in common; it mirrors a growing tension between a traditional framework of institutional order and that imposed by a modern government.

And so we are on to another enquiry into the nature of institutions themselves. It opens up the issue of another tradition in the Punjab that of customary law. This leads us far away from the topic of common lands to the very roots of social arrangements embedded in human ecological systems. That is to say, there is need to look for the origins of economic change in the institutions of property rights, which in turn depend on an even more critical condition : *the spirit of the law*. The foundations of law can be multiple. Herein lies the tension. Custom is rooted in natural ecological systems whereas statute is based on a political system. And even though both are born out of human association, the spirit pervading each does not harmonise with the other.

After a discussion of the general literature, we discuss work on current problems in India and then the historical literature on the Punjab. Finally we outline the scope of this inquiry.

The Theory

The general literature is vast and we have long standing studies of CPR (Common Property Resources) institutions. The Property Rights School has stimulated consciousness of the problems in the wider academic community, but legal historians, lawyers, and rural sociologists have reflected on this issue for a long time. In the nineteenth century, for example, Georg Ludwig Maurer, August von Haxthausen in Germany, Henry Sumner Maine in England, Lavaleye in Belgium, and Fustel de Coulanges in France had led a pan-European debate on the alternatives to private property.[2] Similarly, in the United States William Hammond Hall & Elwood Mead in the nineteenth century, and Ciriacy Wantrup and Vincent Ostrom[3] in the mid-twentieth, among others, have examined collective control over natural resources. It is the work of the Public Choice School in the United States, and those more concerned with institutional analysis as such, which has brought theoretical interest and empirical research to our understanding of the institutions of common property. A complete bibliography of this is available; [4] hence, we have highlighted only those issues of particular relevance to the subject of this inquiry.[5]

The first is the question of the necessity or efficiency of government or, more generally, communal intervention. Adam Smith propounded the theory of the private individual who, intending only his own gain, was [M]led by an invisible hand to promote an end which was no part of his intention ... By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it."[6] As Buchanan has pointed out, the State was to be "stripped of its traditionally established rights to interfere in the workings of the market economy, or stated conversely, individual traders were to be guaranteed rights to negotiate on their own terms."[7]

The assumption that decisions reached individually will in fact be the best decisions for an entire society justified laissez-faire, but not for *all* circumstances or *all* times. A. C. Pigou, writing in 1928, expressed the need for Government intervention "when the inter-relations of the various private persons affected are highly complex."[8] According to him "No 'invisible hand' can be relied on to produce a good arrangement of the whole from a combination of separate treatments of parts."[9] Pigou's analysis suggested a role for Governmental action whenever externalities were involved in the use of resources. Take the case of a factory whose smoke spoiled the housewife's laundry. Since the factory did not bear the cost, it would not take this effect into account in its calculations. Pigou recommended that a suitable tax should be imposed on the factory, thereby forcing the factory owner to include the cost of releasing the smoke in the atmosphere in his reckonings.[10] The existence of externalities therefore appears to imply a need for government intervention.

However the Property Rights School, which includes scholars like H. Demsetz, A. Alchian, D.C. North, E. Furubotn and S. Cheung, "believe they have found a flaw in the Pigovian derivations"[11] and have turned the externalities conclusion around. They claim that there exists an objective benefit-cost analysis which gives answers to the age-old questions of how to choose among alternative property rights. The market, it is argued, can reduce externalities to the "lowest economical level"[12] and further, "a good many externalities exist because "the market was not left alone "to do the work for which it was uniquely qualified."[13] The Property Rights School, in Schmid's words, propounds "the glories of market capitalism and the inefficiencies of any other type of business organisation, government ownership or regulation."[14]

One basic element in this argument derives from Ronald Coase's analysis, which stresses the efficiency of voluntary and freely negotiated agreements between two parties "without the necessity of governmental intervention beyond defining rights and enforcing contracts."[15] In the Pigovian example of the housewife's laundry, Coase would argue that the two parties could arrange a settlement whereby "some reduction in the observed level of smoke damage"[16] would take place which would be efficient in terms of total product value." No governmental remedy may be called for at all and "indeed Coase argued that attempted correction by government might create inefficiency. Such intervention might forestall or distort the negotiations between the affected parties."[17] However, as seen in the former quotation, Coase does admit the possible need for Government to regulate rights and enforce contracts.

A second important element, of great consequence to the Punjab case, is the so-called "free-rider" problem, set forth in Hardin's celebrated article, "The Tragedy of the Commons." To quote: " Picture a pasture open to all .... the rational herdsman concludes that the only sensible course for him to pursue is to add another

animal to his herd. And another; and another ... But this is the conclusion reached by each and every rational herdsman sharing the commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without a limit - in a world that is limited."[18]

Hardin therefore called for a re-definition of property rights. In an article ten years later in 1978, Hardin considered that the only alternatives to the Commons Dilemma are "a private enterprise system" on the one hand or "socialism" on the other. "If," he wrote, "ruin is to be avoided in a crowded world, people must be responsive to a coercive force outside their individual psyches, a 'Leviathan', to use Hobbes' term."[19]

A third important element in our analysis is the role of institutions governing property rights. This has been the major idea of the Property Rights School which the Ostroms have extended. "Institutions are a set of rules, compliance procedures, and moral and behavioural norms designed to constrain the behaviour of individuals."[20]

The Property Rights School agrees that "the wasteful use of a resource should be attributed to the absence of property rights assignments in that good rather than the individual's greed or lack of social responsibility."[21] Thus the absence of property rights assignment will lead to overuse and under-investment in the resource. This is partly because of the free rider problem, "this form of ownership fails to concentrate the cost associated with any person's exercise of his communal right on that person. If a person seeks to maximise the value of his communal rights, he will tend to overhunt and overwork the land because some of the costs of his doing so will be borne by others."[22] This is a re-iteration of the Tragedy of the Commons. Besides, as H.Demsetz wrote in 1967, "with communal rights there is no broker, and the claims of the present generation will be given an uneconomically large weight in determining the intensity with which the land is worked."[23]

It follows that private property assignments would result in, first, a more efficient use and allocation of resources, since the benefits will be reaped and the costs borne by the owners of the resource, who accordingly have an incentive to keep costs low. Secondly, the cost of negotiation and policing in any one transaction would be less since the number of those who would have to come to an agreement would be less. Thirdly, whenever the costs of internalizing the externalities caused by an individual's action are less than the benefits to be reaped, the advantages of private property exceed those of communal property. Admittedly, there are externalities in the use of private property too, as in the factory smoke example. Demsetz gives another example : if a private owner "constructs a dam on his land, he has no direct incentive to take into account the lower water levels produced on his neighbour's land."[24] Yet he contends that even if the externality be the same kind as in communal property, "it is present to a lesser degree. Whereas no one had the incentive to-store water on any land under the communal system, private owners now can take into account directly those benefits and costs to their land that accompany water storage."[25]

The Property Rights School therefore maintains that assigning property rights is a powerful and possibly necessary condition for more efficient allocation of resources; from the individual's point of view the specification of property rights is associated with his search for more utility. This is not so in the case of a communally held resource where, as Demsetz put it, not all costs of a person's activity are borne by himself and therefore he tends to over use while on the other hand since the commonly owned resource is non-transferable therefore an individual "cannot capture for himself the full value of that good,"[26] because the cost of policing any agreement for the controlled use of the good is quite high.

In explaining the choice of property rights systems and the emergence of economic institutions, the Property Rights School lay great weight upon the concept of transaction costs. To cite Coase: "In order to carry out market transactions it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of contract are being observed, and so on."[27]

Transaction costs therefore arise whenever there is lack of information, uncertainty, or costs of policing contracts. If institutions can promote codes of individual behaviour which reduce these costs then, for example, a large part of the losses occurring due to free riding on communally held resources would be eliminated. Institutions which succeed in minimising transaction costs are deemed efficient.

The Property Rights School has been criticized for its narrowness of focus and for its assumption that the market will always be superior to non-market institutions. Of particular interest is Dahlman's analysis of the open field system in medieval England, because it reveals a pattern of land-use and structure of communal ownership of

the "village waste" (the village common) similar to that existing at the time of British entry into the Punjab in the first decade of the nineteenth century. Dahlman set out to contradict the received doctrine that communal ownership and decision making are associated with inefficient or over-utilisation of scarce resources, and to show that the open field system was an efficient adaptation to a particular set of economic problems. Asserting that "collective property rights and decision making can be quite consistent with private wealth maximisation," [28] his study sought to show that the open field system was "a superior solution to the alternative of private ownership and decision making from the standpoint of both joint and individual wealth maximisation."[29] It was an adjustment of land-use to two different activities, livestock and crops. Each farmer tilled strips scattered across the open fields (not enclosed by any physical barriers), while cattle were grazed on the common fields of the whole village. These differing approaches to the organisation of arable and pasturage reflected the fact that although cultivation could be carried out on small plots, cattle needed to range over large areas. If the grazing land had been divided into many units of ownership, each owner would have to secure the agreement of several others to allow his cattle to graze over their lands. Further, movements of cattle over fields would have to be policed to prevent the over-grazing of other people's land. Both these factors would lead to high transaction costs. This problem was bypassed by communal grazing on collectively owned land. Also, no farmer was allowed to withdraw any part of the common land from common use since if he did, "with economies of scale in grazing, the threat of such withdrawal is a threat of imposing a negative externality on his neighbours by any one peasant."[30] Again, the scattering of arable holdings made it impossible for any individual farmer to refuse grazing on the stubble after the harvest or to withdraw from the system, because he would then lose the benefits of grazing on large scale compact grounds. Thus the combination of privately owned strips scattered all over the open field, but used in common after the harvest, together with the system of communally held pastoral land in coherent blocks, made it possible to combine joint and individual wealth maximisation, and was, in Dahlman's view, superior to a system of private ownership alone. The question then arises as to why the system changed. Dahlman cites a combination of factors like "demand, market growth, and technological change" precipitating enclosure at certain times, and slowing it down at others. To the extent that the State legislated to enable such privatisation it can be said that property rights were not endogenously determined by objective cost-benefit calculus alone.

Stephen Sandford also challenges Hardin's hypothesis, or what he terms "the Mainstream" viewpoint, which upholds "a misplaced faith that the private ownership of land is the only answer to the dilemma that the doctrine poses."[31] According to Sandford, "the alleged greater efficiency of private over communal land-ownership was initially based on evidence in fertile northern Europe not in arid tropical rangelands, and in Europe also the social consequences were often dire."[32] He points out that neither in the USA or Australia is it true that "systems of property rights akin to private ownership of land led to a control and stabilisation of livestock numbers at a level which range scientists believe to be right."[33] In other words, private ownership of land, particularly grazing land, is no guarantee that there will not be over-use and under-investment Further, Sandford observes that in practice the alleged benefits stemming from the private ownership of grazing land have usually not occurred in dry rangelands. He cites an example from Angola, where "environmental degradation was worse on private commercial ranches than under the traditional communal system."[34]

Again, others have pointed out that in certain historical situations the pressure on common lands has arisen, not from an increase in cattle numbers, but from a shrinkage of common lands due to factors unconnected with the behaviour of the pastoralists. Thus Sen notes that overgrazing in the Sahel region in Africa may be attributed to a series of influences such as : first, the commercialisation of agriculture, with the sowing of areas with cash crops disturbing the seasonal rhythm of the "relationship between nomadic livestock and the crops";[35] second, the taking over of traditional grazing land for commercial farming; and third, with pastures held communally and animals owned privately, "there is a conflict of economic rationale in the package, which becomes relevant when pasture land gets short in supply. Having additional animals for grazing adds to families[1] incomes and while this might lead to loss of grass cover and erosion, and thus to reduced productivity for the pastoralists as a group, the loss to the individual family from the latter may be a good deal less than its gain from the additional animals. Thus the conflict of the type of the so-called 'prisoner's dilemma' is inherent in the situation."[36] As uncertainty grows the desire to hold more animals for insurance also grows, leading to soil erosion and its attendant problems. Hence Sen concludes there is nothing "foolish" or "short sighted" in the individual act of the

pastoralist. His suggestion is institutional arrangements for controlling herd size. The problem, however, resides not only in the ownership of herds of animals, but in the communal ownership of grazing land which can be converted to arable in the face of food shortages following population growth.

This is turning Hardin's tragedy of the commons the other way round. It is the shrinkage of grazing land through privatisation and cultivation that begins the trend of over-use. Analyses of pastoralist behaviour has seldom taken into account the fact that the pastoralists themselves do not control the-area allocated for grazing.

This is but one aspect- of a general neglect of distributional and social considerations by many writers of the Property Rights School. For instance, Sandford decries Hardin's attitude towards "the destitute pastoral societies" and "the folly of famine relief,"[37] seeing "no evidence to suggest that the destitute were more inefficient managers of livestock rather than more unlucky than the average, or more vulnerable because of circumstances unrelated to managerial ability."[38]

It may be that some Property Rights authors have overlooked these issues, but it should be noted that the Property Rights analysis can incorporate such considerations. If the total product goes up because of more efficient allocation of resources, losers may, in theory at least, be compensated and still leave the others with net gains.

A more pertinent criticism is that they often over-simplify the issues, and pay insufficient attention to the circumstances which in practice constrain the conduct of societies. Elinor Ostrom, argues that many solutions are developed to cope with a range of complex problems and difficulties. "Instead of presuming that optimal, institutional solutions can be designed easily and imposed at low cost by external authorities, I argue that getting the institutions right is a difficult, time-consuming and conflict-invoking process... The pursuit of optimality leads analysts to propound radical reforms ... which destroy previously productive institutions ... New institutional arrangements do not work in the field, as they do in abstract models, unless the models are well specified, empirically valid and the participants in the field setting understand how to make the new rules work."[39]

She does not agree that institutions have necessarily to be either private or public. "'Successful' institutions are rich mixtures of'private-like[1] and 'public-like' institutions defying classification in a sterile dichotomy." Ostrom cites several case studies of traditional institutions which have successfully devised rules to "retain communal property rights as the foundation for important aspects of village economies,"[40] such as Torbel in Switzerland,[41] the villages of Hirano, Nagaike, and Yamanoka in Japan;[42] the Huerta irrigation institutions from Valencia in Spain,[43] and the zaniera institutions of the Philippines.[44] All these institutions have long histories: in the Japanese villages they may be traced to the Tokugawa period, at Torbel and in the Huertas of Valencia to the 15th century. Many of these institutions arose out of circumstances comparable to those existing in the Punjab - the dhars in the Kangra were like the alps or grazing runs of Switzerland, the Japanese grazing CPR rules are similar to those found in the sub-montane villages of Hoshiarpur, while the water rights management of the huertas bears resemblance to the situation in the dry tracts inundated by the Ghaggar in the Sirsa district.

Research : the Commons

Current interest in common property resources in India, and neighbouring countries like Nepal, has arisen from concern for the ecological imbalance between demographic and natural resources both in forested hills and arid desert zones. Legislative intervention in the sub-continent has attempted to re-arrange institutions of land ownership and use with a view to the achievement of what is called "distributive justice". As Elinor Ostrom would have us expect, it has proven a "difficult, time-consuming and conflict-invoking process."[45]

Rita Brara's study highlights the pressure on shrinking grazing resources in some villages of Rajasthan which are a part of the arid zone growing only one crop. Her observations show that desertification, encroachment on the commons, and social tensions arising from allotment of *grazing* lands by the Government are problems which emanate from "the changed demographic context ...as well as the questionable policies pursued by the Government of India in its honest intentions to induce growth with social justice."[46]

N.S. Jodha's[47] work has been fairly extensive, focusing upon some seven major states, also in dry tropical climates, with either ryotwari (a tenure settlement made by the British with individual ryots or cultivators), or some form of individual landlord tenures. Though communal management of grazing resources existed in these regions, there was a significant difference between these areas and the NWP and Punjab, where the village brotherhoods controlled the commons in the nineteenth century. Jodha draws attention to the large scale privatisation of CPRs in

the eighty villages which he has surveyed after the Land Reforms legislation of the 50s, and to the considerable relaxation of both the formal and informal arrangements hitherto regulating the CPRs. Despite noticing the tension caused by the unequal benefits accruing to the village users of CPRs, Jodha maintains that if the decline of CPRs can be halted the poor of the village can be potential gainers.

Madhav Gadgil[48] refers to the colonial exploitation of forests and the destruction of the indigenous institutions of the tribal peoples and other forest dwellers, while Gopal Kadekode and Kanchan Chopra [49] have analysed the ongoing experiments in participatory management of common property resources in the Sukho Majri and neighbouring villages in the Siwaliks. Unfortunately none of these studies has drawn upon detailed historical sources of institutional arrangements for the common lands in any region of the country.

There is, however, Ramchandra Guha's study of Kumaon forests in the colonial period which aims to provide "an ecologically-oriented study of history."[50] The villages of the Kumaon forests had arrangements for *grazing* very similar to those in the Kangra forests, and showed similar local tardiness in the commercial production of tea. But the Kumaon hill village differed in one important respect from that of Kangra district. In Kumaon "Co-operation of a high order was manifest in the fixed boundaries adhered to by every village - boundaries existing from the time of Indian rulers and recognised by Traill in the settlement of 1823."[51] Kangra villages had no such boundaries in pre-British times. If true, this difference had important implications, for the British "wasteland policy" as it evolved in the post railway era of the 1860s, arose from a debate which assumed that conditions in the forests of the Himalayas across Kangra and Kumaon were similar. Guha analyses the impact of "the exogenously induced changes engendered by colonialism and the usurpation of natural resources by the State"[52] which reshaped the societies into whose habitat they intruded. Guha has examined state intervention in the post-colonial period as well in The Unquiet Woods. His conclusion is that peasant movements like Chipko are at one level "actively challenging the ruling-class vision of a homogenizing urban-industrial culture", and at another trying to escape "the tentacles of the commercial economy and the centralizing state."[53]

In neighbouring Nepal, Michael Bruce Wallace similarly attributes soil erosion and the disappearance of forests between 1964-1975 to the breakdown of the communal system of forest management and its replacement by State ownership in 1957. The latter was no substitute for communal property holding, the State in Nepal, for example, being "unprepared to assume the responsibilities of forest ownership."[54] Moreover, the villagers reacted to their loss of traditional rights by abandoning their control too. Since there were no land records^ villagers had a strong incentive to destroy forests and convert them to croplands-. Therefore the nationalized forests in Nepal became *nobody's* responsibility, and increased demand from growing numbers of people and cattle have resulted in over-use and under-investment. The situation had typical free-rider characteristics. Benefits were obtained by anyone who could "clear and cultivate", while the costs were imposed on the forest dwellers as a whole, besides the creation of negative externalities such as floods downstream in India and Bangladesh.

Here we refer to two contemporary situations which are connected with current interest in CPRs and matters considered in this study. First, the Rajasthan Canal has displaced people dependent on uncultivated land and fallows of the arable rain-fed tracts for traditional grazing activity in the entire area through which it is being constructed. Pre-canal land-use has been ignored in favour of cultivation. This is reminiscent of the Punjab Canal Colonies of the late nineteenth century, whose nomadic graziers were transfixed within boundaries laid down by the Canal Officers.

Second, in 1977, in a cluster of villages known as the Bisagama in North West Delhi, the village proprietary body, the erstwhile malikan-deh of pre-independence Punjab, staged a protest against the distribution by the Delhi Administration of parts of the common lands in Kanjhawala among the landless Harijans. Their objection to State interference was on two counts: First, such distribution of common lands meant a conversion of grazing lands to cultivation; and second, such acquisition and distribution meant attenuation of the rights of the village landed body to hold and manage the commons. This double crisis of *land-use* and *land relations* was not a sudden one. It was the culmination of a process of attenuation begun all over Punjab in the last century. The incident also brought into focus the sociological factors involved in the survival of common lands with institutions which had long since broken down elsewhere in the Punjab.

There are three issues involved in these two instances. One, the question of allocation of land between arable and pasture; two, the issue of communal management of the natural resources, and three, that of State intervention in the system of communal management of the common lands.

The Commons in History:

Though secondary literature on the Punjab has not paid specific attention to institutions of common lands in the colonial period, one can build up a fragmentary picture of the developing constraints within which institutions of communal management functioned. Henry Sumner Maine and B.H. Baden Powell cursorily touched upon communal rights over resources while they focused on the official attitude of the British Government towards village communities and property rights in the Punjab. As traditional organizations they were incorporated into the system of fiscal management by the Government and as a consequence underwent various changes which transformed land relations within the community.

Malcolm Darling's classic treatise on rural Punjab in the 1920s describes the break down of the old system of communal management and with it the security of the individual cultivator in the following words: "In Europe, as in India, the old communal life of the village, with its joint cultivation for subsistence rather than profit, its common pasturing and its sharing of mill, bakehouse and wine press, prevented the cultivator from being exploited ... But with its collapse, in the early part of the nineteenth century, the peasant found himself caught between the capitalist farmer on the one side and the shop keeper, half trader half usurer, on the other."[55]

However, Darling saw the scattering of holdings as a major obstacle to improved agriculture and canal irrigation. Consolidation would prove a great boon to a "profoundly litigious people",[56] but he did not associate this with the breakdown of the communal system and rising land values. His analysis of indebtedness makes the connection between population pressure, extension of cultivation, rising land values, alienation of land, and the partition of common lands clearly responsible for the breakdown of the communal system of land management.

Alienation of land from indebted hereditary cultivating proprietors to the trading and money lending castes became the subject of a sharp debate in the Punjab in the 1860s and this is reflected in the rise of an official tradition in the Punjab which sought to protect first the tenants as a class and then the landholders from foreclosure. There was, however, another school of thought within the Punjab Tradition which believed in non-interference in the matter of landed rights. This division among the officers of the Punjab Administration has been the subject of analysis in Norman G. Barrier's article on the Punjab Land Alienation Bill and in Van den Dungen's The Punjab Tradition. Barrier traces the stages by which the Punjab Land Alienation Bill was passed and the tri-angular debates that took place between the Secretary of State, Government of India, and the Punjab Government. Barrier's analysis of peasant indebtedness stresses several contributory factors, of which the most important was the break down of "the traditional checks on alienation outside the community" by the authority of local councils and customary law.[57] English courts helped to replace customary law by case law in matters concerning land rights and debt proceedings. Barrier thus concludes that although the Government could check land transfers to urban moneylenders, alienation continued in a different direction i.e. towards agricultural moneylenders, who grew in both western and eastern Punjab.[58] This inquiry reveals that a large part of this alienation involved shares in common lands which were a part of the property rights of the Punjab landholder and that this was an important contributory cause of the breakdown of the communal control in rural Punjab.

According to Dungen, "At the heart of the Punjab political tradition lay the desire to create and preserve a stable rural base,"[59] placing reliance on the loyalty of the village proprietors. It is also a theme of this study that the colonial state played a major role in the structuring of land relations. Another aspect of land relations which absorbed a certain amount of attention from the Punjab administrator was the tenant's rights to inherit tenancy. A significant right of the cultivating tenant was the use of grazing lands in the village. As this area in the village contracted and the tenant's "access to these lands became restricted if not blocked,"[60] tenants were not equally situated in the Cis-Sutlej, as will be seen in later chapters, and the ramifications of the tenants' grazing rights and the number of cattle he could keep became a matter of contention in the different areas of the Punjab. This has not been discussed in any great detail in the literature, but Neeladri Bhattacharya,examining the logic of tenancy cultivation in central and south-east Punjab, mentions the conflicts between tenants and land-owners over the former's grazing rights.

I have however, pursued this matter in more detail, looking into court cases where conflicts between tenants and members of the proprietary body malikan-deh were fought out. Further I have attempted to analyse land alienation involving the conveyance of shamilat or common land rights attached to the landed property of the malikan deh.

Canal irrigation altered the situation in large parts of Punjab, a development widely discussed in the literature. But I will refer only to those issues of relevance here. Dewey, for example, opines that "the village wastes were reservoirs of land stabilizing village society; and when the village commons ran out - as they ran out in the most densely populated sub-montane and riverain areas - the canal colonies maintained the supply of land awaiting settlement."[61] Again, Himadri Bannerjee's work, which stretches over the half century 1849-1901 and includes all the districts which were ever part of Punjab, highlights the impact of canals and irrigation wells on both the extensive and intensive use of land for cultivation. The change in the pattern of crop and grazing lands was not the only effect of canals. Diversion of water from the upper reaches of a river into canals left little water for the inundation canals in the lower parts of the river. As a consequence "well-to-do peasants and yeoman families were reduced to want."[62] Though referring to cultivation of fodder crops, Bannerjee does not discuss the impact of canals on grazing lands in any detail.

Elizabeth Whitcombe has studied the canals constructed in the doabs (land lying between two rivers) of Northern India, and makes two important points. One, is the profound impact of canals on the land-use pattern in the Punjab, and the consequences for the ecology of the entire regions of the doabs. The second is the effect of canals on the property rights of those who occupied the land through which canals and subsequently railways were constructed. "The main canal already drove its way clean through the tangle of property rights. The real problem arose on the ground when it came to organising the local distribution of the canal water by some system which would be both efficient and equitable. The two aims were, however, quite incompatible."[63] Whitcombe is referring here to the impact of the Western Jumna Canal. The Kanjhawla cluster of villages in North Delhi, which is the starting point of my inquiry, shows the influence of the raibuha system that Whitcombe describes and relates it to the system of distribution that the villages in the cluster devised to share the water rights.

It is a weakness of existing studies of canals and changes in agricultural technology, like Ian Stone's of the Muzaffarnagar district[64] and Himadri Bannerjee's 1981 work on the Punjab, that they have not taken into account the pastoralist. Although going into the history of regional agriculture, they omit reference to a very vital category of the rural economy, Pastoralists as a group, and cattle in particular, were the most profoundly affected by canals and the distribution of land in favour of cultivation.

This lacuna has to some extent been filled by a recent study of the Punjab canal colonies by Imran Ali, which provides insights into the impact on pastoralists indigenous to the doabs. According to him, the semi-nomadic pastoralist known as the Janglis and the riverain cultivators, the Hitharis, were losers as a result of canals. The government had to compensate "the Janglis for the world they had lost, and the Hitharis for the environmental impact of canal irrigation on the riverain lands."[65] This did not mitigate the deleterious impact on pastoralism.

These effects were sufficiently significant for contemporary British officers to note them at considerable length. A.M. Stow for instance, gave attention to the changing pattern of cattle farming consequent upon shifts in the forms of land-use in his book Cattle and Dairy Fanning in the Punjab, as did R.Maclagan Gorrie in his work on Land Management in the Punjab Foothills.[66] Stow had first hand experience in Karnal as a settlement officer, and his analysis of livestock breeding and the conditions affecting grazing grounds in the several districts is perhaps the only account of the area's pasture-land, and the shifts that took place from pastoral to arable and mixed farming in the last decade of the nineteenth century. Stow's description of the floating meadow experiment in Montgomery district, and the replacement of grazing grounds by stall feeding in other districts gives us an insight into the changing patterns of rural occupation resulting from the introduction of canal irrigation and markets developed by railways. Gorrie discusses land management practices in Punjab in the 1930s and in that context his suggestions of land classification according to the vegetation cover, rather than the standard classification adopted by the revenue department, were helpful in estimating the area actually available for grazing in any area. We use his analysis of fallows in our chapter on land-use pattern at the outset of this inquiry. These two studies also describe the effect of reduced grazing commons and fallows on livestock breeding and agriculture.

Searchlight on Village Punjab

There is no overall land-use data for north India and even the recent work of a group of historians from Duke University covers only some parts of British Punjab. [67] The area of common lands in each village was recorded, but the total for a district or for the Province was never separately measured. Hence although we can say there was a shrinkage in the common land area during the colonial period, we are unable to use statistics for uncultivated land, forests or fallows to substantiate our claim. This is true even though we know that all the three categories of land mentioned above were used for grazing and some also were held in common. This is why village studies are very useful, especially those carried out by the Punjab Board of Economic Inquiry under the supervision of administrators like H. Calvert, CM. King (the Financial Commissioner), C.F. Strickland, and others during the 1920s and 1930s.[68] The time frame of most of these case studies is sufficiently long to give valuable information of trends in population, cattle numbers, prices, crop patterns and agricultural practices. Since the basic form of inquiry was in each case more or less the same, a certain degree of comparison is feasible. At the same time, each inquiry related directly to the revenue settlements and agricultural practices actually prevalent within the district. For example, the grazing practices and privately reserved hay-fields (kharetars) were a distinct feature of the hill areas of Kangra, and this was clearly described in the Haripur and Mangarh Taluqa [69] inquiry of 1933. In the same way, the rules observed for partition of common lands according to customary shares were clearly described in the case study of Bairampur in 1922.[70] The impact of canal colonies on *grazing* land and rights to grazing comes through clearly in the investigations of Gajju Chak, Gujranwala district,[71] in 1927; Kala Gaddi Thaman[72], Lyallpur district, in 1932; and the Ghagar Bhana[73] village in Amritsar district in 1928. But the most important information is that regarding the reduction of the cultivable waste, or banjar kadim, and the effect of the introduction of fodder crops on the intensity of crop pattern.

One of the most significant village studies written after independence was Oscar Lewis' work on village Rampur, which is one of the Bisagama villages which is the subject of this inquiry.[74] His field notes (kindly lent to me by Monica Dasgupta) gives us an important clue to cluster formations of rural Punjab. Rampur or Rani Khera is one of the Kanjhawla cluster villages which is evidence of patterns of self-organisation which existed in rural Punjab just as it did among the Dabas Jats of the Bisagama in Delhi. Further evidence can be found in a re-study of the same village by Monica Dasgupta "Rampur Re-visited".[75] Lewis' notes describe the process by which collective decision to partition the common lands of the village was taken by a 100 village Dabas Panchayat meeting in 1915. Given his understanding of rural society, Lewis takes a sceptical view of the statutory panchayat set up in Rampur under the Land Reforms Act of 1954. According to him, "the village panchayat was given a new role to play - to safeguard the interests of the landless tenants in the community, to enforce tenancy legislation and to act as local agent for land reform. But this optimism seems to be misplaced..."[76] Dasgupta almost proves him right in her study of the same village in 1975, for she describes the manner in which the customary relationship between the village proprietary body and the service groups in Rani Khera broke down.[77] Significantly, the communal support system continued to survive. In a later work of 1985 she identifies these very factors, like the rights of residence in the village and access to the common property resources as major explanations for "population retention" in the villages of Delhi.

For historical analysis of village Punjab, one needs to go for Tom G. Kessinger's Vilayatpur (1974). The study [78] provides historical evidence to support Lewis' opinion about the strong control maintained by the village proprietary body over land-use. Kessinger's narrative adds details of increasing tensions in the relationship of the malikan-deh with the service groups or kamins. However, neither Lewis nor Kessinger see in the breakdown of the jajmani relationship a connection to the vanishing commons. This link is however provided by Dasgupta, who coming later in the field, sees both the pull and the push factors operating within the village and their effects on the rights to the common.[79]

This Inquiry:

Three considerations give the study of common lands in nineteenth and early twentieth century Punjab a special historical interest. First, in the past the waste in India both within the boundaries of villages and outside has been treated as simply surplus land available for cultivation, and there is no historical study examining the

allocation in use of the waste or the institutions which managed it. The importance of the process of allocating waste for cultivation in the Punjab is evident from George Blyn's work. According to Blyn, in 1891 Greater Punjab had the largest proportion of unused cultivable land in British India. A large part of this was dry land which could be brought into cultivation only by the construction of irrigation canals. Hence before 1891 and the early 1920s there was a doubling in the irrigated acreage. Most of this expansion was into "cultivable waste" and into forested areas.[80] This makes the question of the allocation of the waste between arable and pastoral use in the Punjab specially important in comparison to the rest of British India. Secondly, the role of the Government before and after independence has been complicated and significant. Although the Property Rights School does assign the State an important role in altering property rights allocation over scarce resources, in the Punjab its influence was much more pervasive and complex than analysed in the general theoretical literature. Thus, the Property Rights School holds that "Property rights are specified, enforced and altered by the state",[81] which can therefore alter property rights assignments over scarce resources and income distribution. In the process, North argues, "Strong convictions about injustice do appear to have over come the free rider problem" and "The political and judicial structure results in legislators and judges making many decisions about property rights (and therefore resource allocation) based on their set of moral and ethical views about the 'public good'."[82] But at the same time he calls for a testable hypothesis to explain "the persistent tendency for states to adopt 'inefficient' property rights in the face of the obvious gains to rulers of having the greater income that would ensue from efficient property rights."[83]

The Colonial Government in the Punjab played a fundamental role, in establishing and altering the constraints within which property rights were established. British land settlements all over the Punjab, both in the hills and on the plains, extended one institution into the Punjab regardless of whether it had pre-existed British entry into the area - "the joint land-lord village communities." This circumstance created a property rights framework within which joint overiordship over the *entire* land of a revenue estate or village was assumed, within which it supported 'individual property' in the arable and joint property in the cultivable waste.

Given the wide variation in the geographical regions in the Punjab, between 1858 and 1912 the differential impact of a uniform property institution introduced by the settlement process caused a change in the manner in which the wastes were maintained both inside the village and outside it. But, in a far more dramatic manner, British investments in canals and railways altered land occupation and land use by enabling shifts in labour and capital hitherto infeasible. Further, the reservation of forests in the Kulu-Kangra valley and the Hazara-Rawalpindi districts affected the character and intensity of land-use in the hills and sub-montane areas with considerable consequence for the ecology of the Province. These trends were altered again after independence, when the State made even greater changes to property rights by legislating land reforms and other measures. In doing so, we are also looking at the reversion of property rights in the light of an ideology : equity with social justice.

Thirdly, institutions of communal control over the waste in the Punjab were highly complex and varied. Hence, the changes brought about by demographic growth, market expansion, and change in techniques of cultivation also diverged widely. Thus while at the outset of the British period there appeared large areas of what the British called "primeval waste", by the end of the colonial period much of this had been appropriated by communities and later privatised by partition. This process of partitioning common lands or cultivable waste within villages eroded the adhesive element in communities of cultivating owners. Though occurring widely, the trend was more visible in some areas more than others. Yet in areas where we would expect the communal control to completely break down, as in the proximity to cities like Delhi, even at independence the common lands were more or less intact. Again in the post independence period the situation changed. Partition of common lands after the Land Reforms Act, 1954, in Delhi, Punjab and elsewhere was no longer possible as the *entire* village community of residents gained control as against the group of land-owners or malikan-deh. And a still newer situation emerged when the State began participating in decision making regarding the communal management of CPRs or Common Property Resources in villages.

I will seek to explain these changes with reference to such factors as demography, technology, market forces, and Government, as well as the tribal and clan influences on land laws and land management.[84]

A Puzzle

In *all* those areas of Punjab which had settled villages prior to British entry, and which combined arable farming with pastoral activities, there were extensive common lands or banjar kadim, held collectively by the malikan-deh or the village proprietary body. There were also other categories of uncultivated lands held in common, such as the abadi-deh or the residential area, the catchment areas or johads, the area around the village site or the gora deh, and the wood lot. The malikan-deh or village proprietary body, had a bundle of rights to these categories of land, of which the principal ones were : the right to hold and to partition, the right to manage, and the right to use. Common lands were central to a system of village management where the private and arable land was generally held in scattered strips, while the residential and pastoral land was arranged in compact holdings.

However the regional variation within Punjab was great. While the above features were characteristic of the region around Delhi, the sub-montane districts of Hoshiarpur and Jullundur, and the riverain areas of Punjab, there were vast areas such as the Western Plains, the South West dry tracts of Hissar, Sirsa and Ferozepur, the hills of Kangra, and the central Doabs, where village common lands did not exist prior to the arrival of the British, or where no sharp distinction was made between the waste near a settlement and the waste further away. These extensive waste areas were called by the British "primeval waste" or "all shamilat"[85] - that is, common to all. Here the lands utilised for arable shifted, and pastoral activity was centred temporarily in the waste around the water-hole.

In all the regions of settled cultivation, as well as those of semi- nomadic pastoral activity, there was both before and after the British entry into the Punjab a degree of dependence on grazing outside the area of settlement. The scrub and hill forests, and the riverine grazing, were all used by even sedentary agriculturists in different seasons and during famines. The administration of these cultivable wastes required a certain degree of managerial skill on the part of those who owned and controlled them, such management depending upon customary rules acquired either by long usage or imitation.

Therefore the changes in the use and status of common lands examined here are: first, the reduction in such areas of cultivable waste *outside* the village as the open "primeval" waste lands of the dry tracts, riverain grazing areas, scrub forests, and hill grazing runs; second, the conversion of village common lands from uncultivated or long fallows used primarily for grazing to short fallows or even annual fallows and multi-cropped land - a process by which land-use was diverted from pastoral activity in compact areas to agri-pastoral activity in fragmented areas; and third, a decline in institutions of communal ownership and management of common lands which the transference of common lands from communal control and joint use to individual property and limited use : a process of privatisation.

The general literature indicates the issues to which a historical study of common lands should be addressed. But the first necessity is to trace the system of property rights and management of communal resources at the commencement of the period, and the changes that took place thereafter. Mapping the institutions of communal control has been very difficult because of wide regional variation, a problem exacerbated by the unevenness of the available data. Although for instance, we have looked at *all* the settlement reports of the thirty odd districts of British Punjab, the fact that these settlements were conducted at different points of time and by officers of varied background and experience renders the quality of the data unequal. We have therefore utilised a variety of additional sources, of which the data from village records is the most important. Unfortunately the statistics for common lands can be compiled only from the records kept in the tehsils for each village, and are in Shikast the revenue language used by the British. An overall compilation being out of the question, our long term analysis is confined to the cluster of villages in North West Delhi known as the Bisagama. A further set of difficulties surrounds the data for the various categories of waste used for grazing in the Province. Statistics covering the whole of Punjab begin in 1867-68, and while grazing land is specifically given for some districts it is not for others. This difference is particularly significant since areas like Hoshiarpur, which hosted cattle from other districts, did not have grazing land shown separately. Long term data for forests, fallows, and cultivable waste is available from the Agricultural Statistics of British Punjab from 1885 onwards, but the area of waste used for grazing lands was included under three categories of land-use : the culturable waste, the unculturable waste, and the forests. However not all these categories of waste were village common lands. Collating information on the

Punjab is not easy and this is corroborated by Malcolm Darling who wrote in 1928 that the exercise was akin to making a wall whose bricks needed straw "and in this case the straw had to be collected from innumerable district gazetteers and official reports, written with little reference to the subject."[86]

Some overall picture may be gained from the record of judicial disputes, especially the report of judgments of the Chief Court of Punjab known as the Punjab Record, available in a continuous series from 1866 till 1947. These help us to construct a provincial picture, in which disputes over common lands emerged in different areas as a consequence of specific pressures making for conflict, pressures which changed in nature over time and space. They provide additionally, evidence of the constraints within which the malikan-deh, functioned in the management and use of common lands.

TheKield:

In keeping with these limitations I have used a three level analysis. Our specific study of events at village level is confined to the Bisagama cluster of villages of Kanjhawla in north-west Delhi for which there is continuous data. In the next level I have concentrated on one of the large inter-riverine areas of the Punjab - the Cis-Sutlej, including part of the Bist Doab. The choice of this eco-region helps to provide a regional background for the study of the Bisagama cluster of villages; and it also allows some general conclusions of conditions prevalent in the other doabs of the Punjab. At the third level I have looked at the entire Province which was Greater Punjab specially wherever information has permitted long term analysis as in the case of court cases decided in the highest court of Punjab.

The Cis-Sutlej is divided into three geo-climatic zones: (1) the plains of Ludhiana, Karnal, Delhi and Gurgaon: (2) the dry tracts of Rohtak, Ferozepur, Hissar and Sirsa; and (3) the sub-montane districts of Hoshiarpur, Gurdaspur, Jullundur and Ambala (parts of this is in the Bist Doab) and the montane district of Kangra. This kind of sub-division is possible for the other doabs of the Punjab, more or less.

The study proceeds in three parts. Part I & II describe regional variations in ecology, grazing patterns etc. and then undertake a detailed analysis of the Colonial Government's revenue administration and wasteland policy in the Punjab from 1803-1911. The British entered Delhi in 1803 and till 1849 loosely controlled the area between the Sutlej and the Jumna. The area was administered by the NWP and hence the settlements in this period were on the lines of the former Province. After 1849 the rest of the Province was annexed and thereby the pattern of settlements were replicated. In 1858 Delhi was attached to Punjab. The settlements were finalised by the Punjab Land Revenue Act of 1871 and this also formalised the rights of the malikan-deh in the common lands. The Punjab was at its greatest size between 1858-1911 except for minor adjustments in the Frontier in 1901. The revenue policy and the wasteland policy were formulated in this period consequent to the construction of canals and railways in the 60s. The Census operations in 1881 gives us the total picture of the Punjab and the regional variation stands out sharply. The impact of the demographic growth and the construction of canals is clearly borne out by the increased cultivation and use of the waste both outside and those inside the village. Along with this the revenue policy also aided the expansion into the cultivable waste and reduction of fallows, so that the Punjab agricultural system moved from extensive use of land to intensive cropping. In the process the waste declined and the pressure on the village common lands built up. At the same time cattle numbers also increased due to the demand from both population growth, increased cultivation and rise in demand for cattle products, particularly from urban expansion.

Part III deals with the introduction of customary law into the legal system as a result of the setting up of the Chief Court in 1866. It also examines the actual disputes involving shamilat or common lands brought up in appeal to the apex Revenue Court and to the Chief Court of Punjab during 1866-1947. These disputes throw light on some of the issues on property rights and transaction costs raised in the general literature.

Disputes have been used as source material by historians but here we have tried to demonstrate their use in analysis of the impact of economic factors like demographic changes, growth of markets and change in technology of agriculture on the institutions of control over common property resources, in a Province as large and varied as British Punjab between 1866-1947. Delhi became a part of British Punjab in 1858 and continued to be so till 1911 when it became the capital of British India. The entire Province was contained between two immense river systems between the Indus and the Ganga Jumna Divide. Within this region the Cis-Sutlej area lying between

the Sutlej and the Jumna was fairly dynamic both physically and culturally. We will take up this region for closer examination for three reasons: (a) it was chronologically controlled by the British in the first part of the nineteenth century and its pattern of settlement was influenced by the officers of the North West Provinces who later took on the governance of Punjab; (b) the pattern of revenue administration in the Cis-Sutlej established the village community with its joint control over common lands and the institution was introduced in the Punjab after its annexation; and (c) common lands survived right till 1947 in Delhi's villages.

Our study begins with Delhi and should have concluded with the story of the Kanjhawla cluster, but does not. Space constraint in this volume prevents us from pursuing the story of the Bisagam after 1911 when Delhi city became the capital of Colonial India. The common lands of over 100 villages contributed to Lutyen's New Delhi and the marginalised communities of these gave way to the phenomenon of an Imperial City. The trend continued into the second half of the twentieth century, therefore the fact that Delhi's villages still retained common lands comes as a shock from the past. The Kanjhawla episode will remain as evidence of self-organised rural communities in Punjab who rightfùly demanded a place in history when they marched on Parliament in 1978 and demanded their customary rights to their commons.

Their history is a substantial evidence for the general pattern we have drawn from the historical documents of the Bisagama. Kanjhawla dates from the time of Akbar and Lewis believes that the Dabas Jats of the cluster are descended from the grandon of Prithvi Raj Chauhan. Even if we lay aside the recorded genealogy there is evidence from two centuries of colonial records in the cluster at the settlements of 1872-80 and 1906-10. The series was completed by the Khasra Girdawri Records at four yearly intervals for the intervening periods between the settlements thus bringing it up to 1984-85.

It needs to be said however that the Kanjhawla story is not an isolated phenomoneon; nor is the historical experience of the Punjab unrelated to other segments of colonial India. If the impression seems to be that of a singular narrative it is entirely because it is beyond the capacity of one individual to take stock of a historical category unaided by similar attempts to inquire into the story of the commons in other parts of the sub-continent.

NOTES

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Part II

Chapter 2

REGIONAL PATTERNS

Rural land-use practices in northern India provide a clue to the institutions of customary property rights inhabitants devised to cope with the dynamic political and geographical hazards besetting them in the nineteenth century. This chapter endeavours to draw upon the limited and scattered historical information available to set up a limited example of an ecological framework. The area lying between the Sutlej and Jumna provides a fairly well-defined geographical tract, and since the Mughals occupied it for a long period before the British took over we have some early observations to draw upon from the records. Also, approximation of the conditions in a well-defined eco-region gives an inkling of conditions prevailing in other doabs of the Punjab, enabling us to identify certain key determinants which can possibly explain a pattern of human order existing in the larger region of northern India at the outset of colonial rule.

Grazing patterns in the Cis-Sutlej, for example, varied in the nineteenth century according to the geography of each locality. Variation was great since the range of climatic differences between the plains and mountains over seasons was both wide and sharp. An overriding feature of the scene was uncertainty 3/4 geographical as well as political. Survival in such a region called for a high degree of flexibility and adaptation amongst users of natural resources. Hence the situation enforced patterns of both nomadic and sedentary use over space and time. A corollary of such patterns was interdependence. Both cultivators and pastoralists had therefore to acquire relatively high levels of knowledge about their relationships to others who shared the resources which were common. Such communication was only possible with active participation of those involved.

This complexity in any one tract, still less its implications for a larger region, could scarcely be appreciated by external observers like the nineteenth century British revenue officers. It explains why there is no single source of information on land-use patterns for the region we know as British Punjab. Nevertheless, we have official descriptions documented in Settlement Reports, Famine Reports, and those found in Inquiries of Royal Commissions, Boards, and individual scientists/officials like Augustus Voelcker and McLagan Gorrie writing in journals like The Indian Forester. These reports at different points of time can be fitted into a stylized picture for the region lying between the Jumna and the Sutlej in the nineteenth century.

The earliest descriptions are provided by the reports of Karnal, Hissar, and the Delhi district land revenue settlements carried out when they were parts of the N.W.P. (North West Provinces present day state of Uttar Pradesh). The contributions are mainly from Fortescue for Delhi and Hissar, (1820),[1] Martins for Delhi (1832),[2] and Gubbins for Karnal(1845).[3] Lawrence's report of 1834 [4] for the Delhi region completes the picture of the Jumna-Sutlej Doab. They tell us about the use of riverain lands as the grazing fallows in Karnal; of the Gujars using the hills in South Delhi and Gurgaon; and of the Nardak in North Kamal where cattle were herded by Rajput pastoralists through forested areas.

The next scene is of two different tracts: For the Manjha or the central parts of the Punjab, the descriptions in the Government Selections (official abstracts of administration reports) of 1851-54,[5] tell us of the movements of cattle across the plains and scrub jungles of Central Punjab. Already the utility of the area for railways was being discussed by the officials, even though Punjab had been annexed only in 1849 and railways had only recently been introduced into the older territories like Bombay in 1853. In the second area, the Kangra hills, Barnes in 1850 [6] clearly writes of the Gujars and Gaddis using the hill-sides as grazing runs, and movement up and down the slopes of the lower hills as well. The picture is supplemented by Lyall in 1865-72.[7]

The collage can be completed by the details of later reports. The Census of 1881 has a full section contributed by the Registrar, Ibbetson, on the colonisation of Sirsa; and to this we can add his comments in the Karnal Land Settlement Report, 1872-80.[8] He traces the cattle movements from the watering holes and drainage lines in the open wastes, to the riverain lands and back to the preserved grass enclosures or birs in upland Karnal.

Finally, the distress movements are clearly reported [9] from the famine-struck areas of the Cis-Sutlej in the 1875-76 period. These are evident from the answers of A.M. Lowis and the other district officials who deposed

before the Famine Commission of 1901.[10] One can discern that the pastoralists were using long distance "waste" during times of distress just as they were periodically occupying them during seasonal cycles.

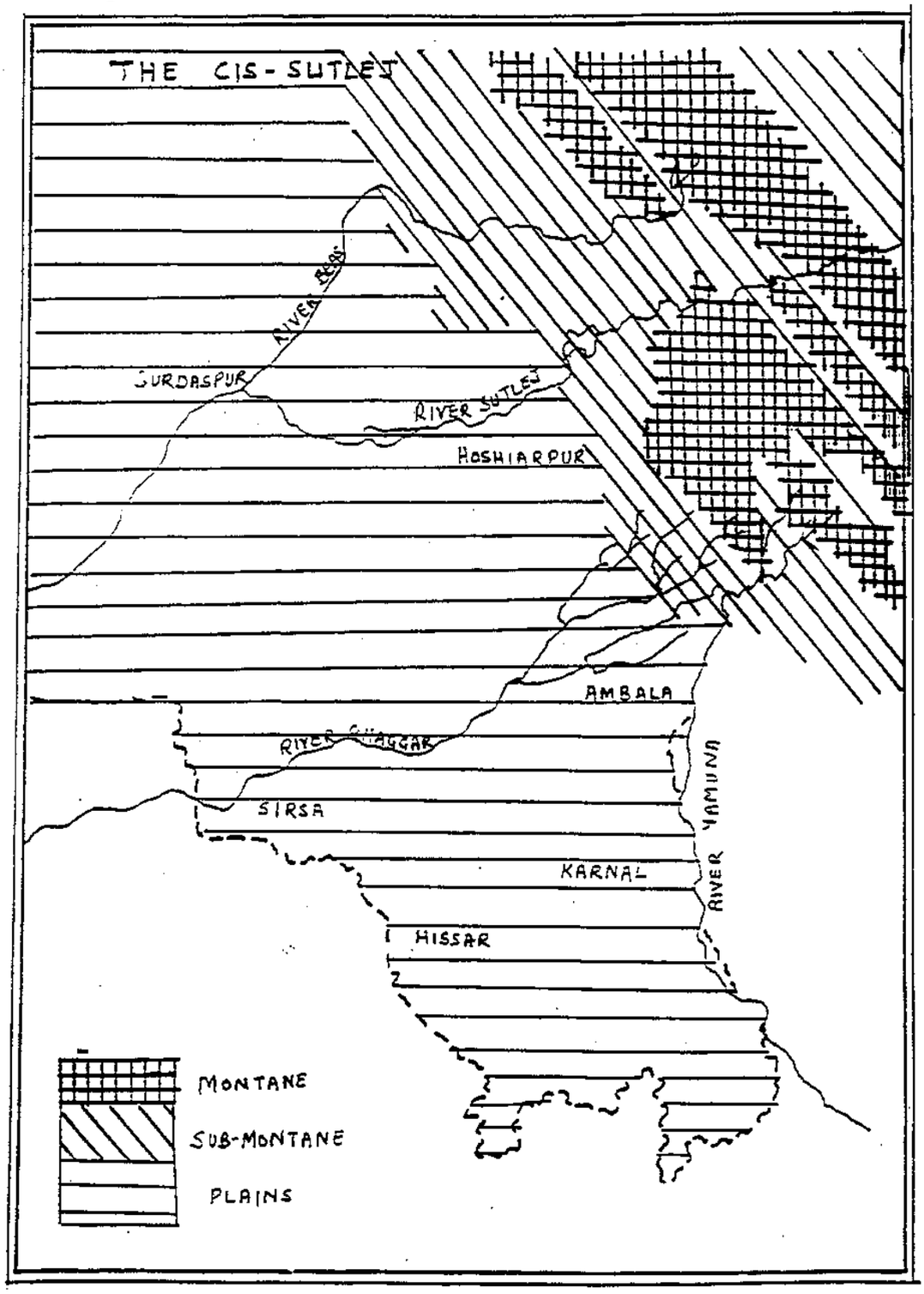
These intricate long range patterns of land-use followed, as it were, the boundaries of flowing rivers. An illustration for the different doabs is provided by the observed patterns of the tract lying between the Beas - Sutlej and the Jumna. The region (see map 1) can be divided into three broad geographical zones. One, the dry southwest plains in the Cis-Sutlej which were bounded in the south by the broken ridges of the Aravalli range which reached out to Delhi; the Thar was the southern limit. Here there was rain-fed agriculture, but with long fallows and shifting cultivation. Two, the fluvial areas which lay between the Sutlej and the Jumna, intersected by several streams and rivers, including the Ghaggar, Saraswati, Chautang, Nye and the Western Jumna Canal, dating from the Mughal times. The rainfall varied from east to west, and accordingly there was rain-fed agriculture supported by wells in the low-lying riverain land or the khadir, and by inundation or flood canals. Three, the montane and sub-montane parts which were bounded by the sharply rising Siwalik hills, through which the rivers Beas, Ghaggar, and Sutlej flowed. In this region there was rain-fed agriculture supported by wells in the sub-montane; there were pastoral areas in the upper regions and lower hills, interspersed with the agricultural tracts.

This entire region was marked by two different agricultural systems. In the first there were settled villages, with a long and continuous history of sedentary agriculture. In the second, nomadic pastoralists carried on a combination of long fallow or shifting agriculture, with pastoral herds always on the move. In the first regime, the villages had rough boundaries within which the village community distributed the arable in scattered strips and held the grazing land or the waste in common. In the second, there were no fixed settlements, and therefore no customary and clear division between the arable and pastoral lands. These two extreme situations of : (a) settled villages with common lands; and (b) neither settled villages nor common lands, existed in all the districts of the region; but the second situation was more prominent in the pastoral areas of the "Dry Tract" of the south-west, and the "Montane Tract" in the north east(see Table 2.1).

The villages in the entire Cis-Sutlej region, whether settled or temporary, used the immediate surroundings of the village for pastoral purposes, and a combination of the short fallow or the stubbles of cultivated fields, supplemented with grass fallows in the village if there were common lands, as in the Delhi region. Fortescue noted in 1820 that there were "waste" and common lands attached to the village as jungle and pasturage.[11] In the two mainly pastoral zones of the region lying on either edges of the central agricultural tract grazing was not limited to any particularly demarcated place and the cattle owners gave the charge of their beasts to graziers who moved with the cattle in large herds or gols across grass, riverain, and forest fallows over varying distances.[12]

Table 2.1 indicates that there was an element of the pastoral in all the agricultural divisions. Movements of pastoralists were essentially of two kinds: (i) regular seasonal movements : during the monsoons, in winter after the autumn harvest or kharif, and in summer after the spring harvest rabi;
(ii) occasional movements during droughts, scarcities, and famines.

Map 1 **The Cis-Sutlej**



Map 2 **Rainfall Contour : Punjab**

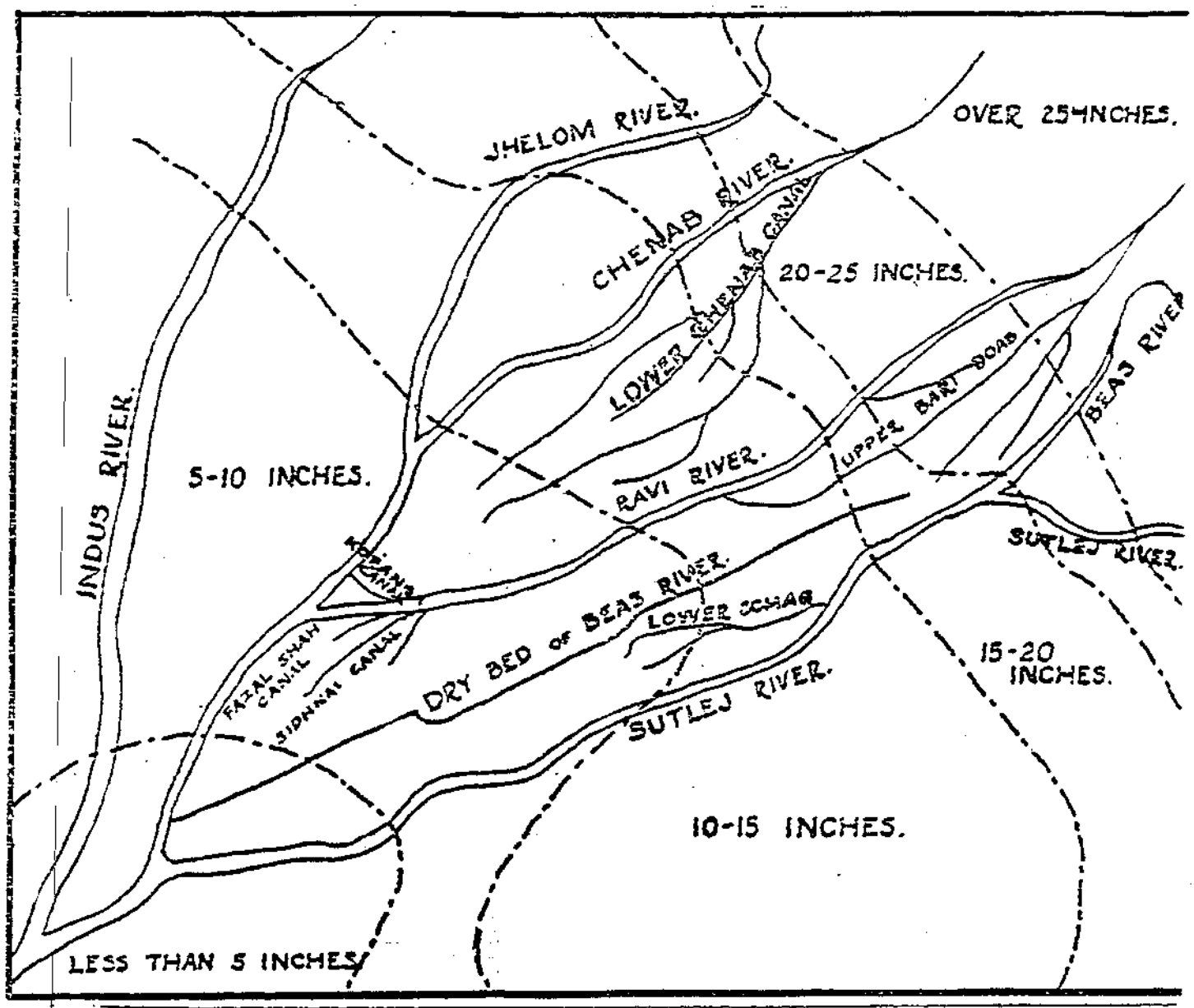


Table 2.1 An Ecological Pattern : The Cis-Sutlej

Zone/Tract	District & Year annexed	Rainfall (inches)	Mainly Cultivation	Mainly Livestock
I DRY	Rohtak (N.A.)	19.5	South	North
	Ferozepur(1835)	19.1 (escheat)	Riverain West	South &
	Hissar (1803)	17.1	Riverain	All over
	Sirsa (1803)	-	Riverain	All over
II DELHI	Ludhiana (1803)	24.7	North	South
	Karnal (1803)	29.1	South	North & West
	Delhi (1803)	26.8	North	South
	Gurgaon (1803)	28.9	South	North
III SUB-MONTANE	Hoshiarpur (1849)	36.1	Plains	Hills
	Gurdaspur(1849)	30.1	Plains	Hills
	Jullundur (1849)	30.4	Plains	Hills
	Ambala N.A.	32.8	Plains	Hills
MONTANE	Kangra (1849)	130.1	Valleys	Hills

Source: Districts at the time of annexation shown in settlement reports.

Seasonal movements

The location of long fallows for grazing determined seasonal movements. These fallows supplemented the grazing resources of village cattle holders, whether there were village common lands for grazing or not. Thus the riverain belas or chambs of the Sutlej, Jumna, and other smaller rivers provided winter pastures for cattle from all the three zones.[13] When the spring or rabi crop was cut, the stubble and grass was left in the waste and on the dhauls and dhanas and the cattle moved back to their original location. During the summer, the cattle were moved to the hills and the duns or valleys,[14] while the monsoons once again caused a return to their initial habitat[15]

This interdependence was based on reciprocity. When, for instance in Karnal district cattle had to be kept away from the fields, it was said that the Jats, occupying the south of the Kaithal Bangar, "often find it necessary when the kharif ploughings are completed to drive their cattle into the villages of their Rajput neighbours for a month or two, paying so much per head. The cattle return when the time for the rabi ploughing has arrived. The Rajputs in their turn in spring often drive their cattle into the villages of their caste brothers in the canal irrigated part of Panipat, and they sometimes even take them across the Jumna into the Muzaffarnagar District".[16] Again when floods occurred in the riverain, the cattle of the low-lying areas were driven to the upland villages - as, for example, in the movement from the Naili villages to the Nardak in the Karnal district.[17]

Interdependence deepened during unseasonal weather cycles and drought. Thus shortfall in rain and summer heat drove the cattle-herders from the water-holes of the Dry Tract in the districts of Sirsa and Hissar to the riverain lands or on to the Siwaliks or Dehra Dun.[18] Famines were a testing time for such inter-regional use of fallows. The natural immunity of the hills from famine made them the surest refuge for graziers from the plains. The famines of 1860-61 saw not only the movement of cattle to the hills, but a reverse movement of grain from the hills of Kangra, Jullundur and the Bari Doab to the plains of Delhi.

The sub-montane forest fallows, the wet lands or chambs, and riverain were the most hard-pressed parts of the region, as they provided supplementary resources like grazing to both the montane region and to the plains. The sub-montane in ordinary times met the pastoral demands of two adjoining regions, and thus the agriculturally rich fluvial area was sandwiched between predominantly pastoral areas.

For settled tribes in times of political trouble, cattle provided the easiest form of wealth to carry, but when the trouble died down the cattle again became subsidiary to cultivation. Similarly, the quality of cattle as transportable wealth meant that areas of severe climate tended to be complemented by pastoral activity. Village communities took root and evolved only when a tribe could settle down in an area. This occurred in the Delhi region, with the Jats and the Gujars both settling down by the beginning of the nineteenth century. The Bhattis,[19] Dogars, and Naipals at that time inhabited the Lakhi jungles of the south-west plains, and the other tribes were spread across the region with large herds of cattle. According to Bayly the Jats, who dominated the Delhi region in the early nineteenth century, "were perhaps not too different from Gujars, Bhattis and similar groups who retained their nomadic style of life as late as 1800."[20] They owed their strength to social inclusiveness - "their capacity to incorporate pioneer peasant castes, miscellaneous military adventurers and groups on the fringes of settled agriculture".[21] Similar accounts of Rajput settlements all over the Cis-Sutlej region suggest that pastoralists practiced sedentary agriculture but continued pastoral activities on a lesser scale. Gujars and Gaddis in the hills as well as the plains, as in south Delhi, continued to move with cattle along riverain and hill slopes right into the twentieth century. These movements, indicating regional patterns in grazing fallows, are best illustrated by the zonal divisions shown in Table 2.1 and maps 1 & 2. The fundamental basis for these divisions were geo-climatic as illustrated by the districts within each zone.

The Dry Zone

This tract, like the Delhi region adjoining it, had two extremes in land use. The first was of settled communities near the banks of the Sutlej and the Ghaggar rivers; the second, Hissar and Sirsa, had large tracts of "waste" where nomadic pastoralists eked out an existence near ponds and hollows.[22] The unstable river systems like the Ghaggar would not support anything but short-fallow rain-fed cultivation. The dryness was healthy for pastoral activity, and Hissar was famous for its cattle.[23] A Cattle Farm had been established in the early nineteenth century to act as a breeding centre for horses for the military.

In the extensive wastes cultivation was centred around ponds or hollows. The intervening waste in a discontinuous system of arable served the function of a long fallow. If fields were cultivated intermittently, the stubble provided the grazing in short fallow. This interchange of fallows continued so long as the grass in the open "waste" and the water in the hollows was available. Once the grass coverage was exhausted, the pastoralist would move.

This system of nomadic pastoralism was disturbed by two events. First, when the British firmly established the boundaries in the district between 1828 and 1838, and second, when they founded sedentary agricultural colonies in the hitherto uncultivated wastelands. These conversions of long-range waste to arable were considered "an encroachment on the customary grazing ground"[24] of the nomads, and generated friction. The reduction of long range waste left only one option sedentarisation, which, as M.B. Rowton argues, is a normal aspect of nomadism.[25]

This process of sedentarisation was hastened by the early colonization of Sirsa by the Revenue Department. But the settled villages continued to be separated by large areas of uncultivated lands, referred to by the British as "waste". Pastoral activity therefore continued to depend on customary inter-regional movements, and the Revenue Department had to formalize some of these arrangements whereby herders and graziers moved to Bhawalpur villages and the grazing grounds of Bikaner.

Table 2.2 Open Grazing Commons : The Dry Zone

Districts	Grazing Wastes	Season
Sirsa	Open "primeval" waste	Post-harvest and Monsoon
Hissar	Khiras*a or grass enclosure	Winter
Rohtak	Riverain fallows of Ghaggar*b Sutlej, Saraswati, Chautang	Winter and Summer
Ferozepur	Forest fallow in Lakhi near Muktsar*c	Famines and Scarcities
	Siwalik, Dehra Dun*d	
	Jhajjar and Bahadurgarh	
	Grazing grounds in Bikaner*e	Winter or scarcity
	Sialkot, Patiala*f, Bhawalpur*g	

Source:
a. J.H. Oliver, D.C. Sirsa, to Comm. & Suptdt. Hissar Div. 102, 14/4/1863, in Sirsa SR. 1900-04,
b. Land Rev. & Agri. (Famines) Progs. 3-4A, Sept. 1885 : 335.
c Sirsa SR 1876: also Man Habib, Atlas of Mughal India plate 4A; also Singh, IESHR 1988 : 319-340.
d. G.M. Ogilvie, D.C. Hissar, to Comm. & Suptdt. Hissar Div. 413, 6/9/1884, Section VI.
e. Land Rev. & Agri. (Famines) Progs. 3-4A, Sept. 1885 : 335.
f. Ibid.
g. Ibid

In districts like Sirsa and Hissar,[26] extensive areas were formerly given over to long distance grazing in contrast to the limited and bounded grazing which emerged subsequent to the British settlements. The grazing pattern in these districts had to follow the line of rainfall and drainage channels. The herders alternated long distance grazing ranges in higher and drier grounds with those in the riverain areas. In these circumstances nomadism was a necessary feature of life.

Pastoral districts like Sirsa, Hissar, and parts of Rohtak and Ferozepur had relied upon grazing lands situated at great distances and which were in the nature of long fallows. These supplemented the grazing on village common lands or shamilat-deh wherever they existed as distinct categories. In these arid areas access to "wasteland" grazing was crucial since the re-generative qualities of grass were minimal, except where land was irrigated.

It was said that in ordinary times the proprietor preferred to send his cattle to villages "inhabited by zamindars of his own tribe or caste, or where he has friends or relatives."[27] Thus the Bagris of the district, that is the Bagri Jats and the Bagri Bishnois living in the west and the south of the Hissar district, "frequently had friends in Bikaner and other parts of Rajputana; and a great many cattle are sent away to those localities when the seasons there have been favourable and pasture is obtainable."[28] Similarly the Fatehabad cattle commonly went to Sirsa, and the cattle from the northern parts of the district went to the Patiala territory. These interchanges in favourable seasons were reciprocated at other times. When there was a fodder famine, proprietors who had large herds and possessed the means sent their animals to distant locations. "The villages on the banks of the Jumna on the east and Sutlej on the west were frequently resorted to; and in some cases the cattle were sent as far as the Siwaliks and Dehra Dun".[29]

In this regime, definite rights in the long fallow or banjar kadim within the villages did not arise. No tract was inhabited for long and no one could call a particular area his own. These features gave that impression of large tracts of unutilised wastelands, so characteristically described by an official towards the end of the nineteenth century "there was very little cultivation, and as the extent of virgin land was so great, it was seldom that the same field was cultivated for any length of time by the same family."[30]

The evolution of definite property rights in the open uncultivated "waste" began with three official measures: (i) colonisation of the waste from the 1820s brought settlers from other districts, restricting the nomadic movements of pastoralists, who had perforce to become sedentary farmers; (ii) villages were prevented from keeping unlimited grazing grounds as part of the settlements; and (iii) the division of the savannah-like plains into grass preserves or khiras with definite rights. Thus with the revenue settlement operations the open range lands described by the settlement officers as "all shamilat primeval waste" were internalised in demarcated villages and became village common lands, shamilat-deh. Here was the first stage of the transformation of open-access land into enclosed village commons, where only the village-proprietary body or malikan-deh had rights in common, these being recorded in the Village Administration Paper or wajib-ul-arz. A movement in the same direction, (discussed in subsequent chapters) was hastened by the expansion of canals in the proximity of Ferozepur, Hissar and Sirsa districts, where there was an expansion of cultivated areas which led to the conversion of the long fallow used for grazing i.e. banjar kadim to short fallow i.e. banjar jadid. This provided incentive, as we shall see, to privatise the commons and therefore a change in the pattern of rights.

The Delhi Tract:

Although this tract was the earliest to come under British influence, placing it in this second position which enables us to move in a graduated way from a description of the plains which were drier areas towards those which had higher precipitation. Of these we choose to examine in greater detail Delhi and Karnal for two reasons. Delhi is an important historical example: its pattern of land-use was replicated by the settlement officers in other districts. The system of village common lands as cultivable fallow (banjar kadim) pre-existed British entry. The pattern was given recognition in the revenue records, and the cultivable fallow was thus allotted within a demarcated boundary of the village. In other districts the British did the same. We concentrate on Karnal for ecological reasons. The records left by Ibbetson, the Registrar of Punjab's first synchronous Census of 1881 $^{3}/_{4}$- provide perhaps the most comprehensive anthropological information of any district in British Punjab; and as a consequence, we have a very detailed picture of the relationship between pastoralists and cultivators $^{3/4}$- particularly since there was a predominantly pastoral section in the north and another mainly agricultural area of the district. We can see the difference in land-use patterns and the positioning of fallows within the villages in the two sectors of Karnal. Once recognised, these distinctions assist us in understanding the differential impact of the re-alignment of the Western Jumna Canal on these patterns. Immediately we have the source of another comparison 3/4 that with the dry tract.

Common lands existed in Delhi prior to British entry, as noted by Fortescue,[31] but Delhi also had large tracts of uncultivated land and uninhabited villages as well. The compact villages with common lands within their boundaries, gave the impression that they had sufficient grazing fallows. This opinion was re-enforced by the fact that some villages had large areas of land kept as long fallows,[32] as is evidenced from the Bisagama jamabandi or revenue records of 1838. However there was evidence to the contrary too. Fortescue noted that in some of the villages in Delhi itself, cultivators left lands fallow to "earn a larger surplus ... from the profits of pasturage and cattle".[33] Such income would not have been forthcoming had there been a plentiful supply of grazing. This was indicated, similarly, in pastoral villages of higher grounds - Panipat Bangar,where "extensive tracts of land uncultivated for the purpose of pasturage"[34] were kept by the proprietors, who were Gujars and Rangars with "large herds of cattle"[35] which yielded profits. Such an arrangement must have been necessitated by shortening of grazing fallow in the village. This fallow pattern was mistakenly regarded by British observers, even by someone like John Lawrence, as typical of pastoral tribes who were lazy or careless.

Though this zone was favourable for agriculture, there were some parts like Tughlakabad in southern Delhi Territory and northern Karnal which had a distinct pastoral element. In these areas villages had to supplement their grazing resources, despite the fact that the long fallow area in their villages was quite large. Long

fallows at sites situated far from their habitation had to be resorted to. Here, then, was an agricultural area taking recourse to transhumance either directly or through professional graziers.

Table 2.3 Grazing Fallows : The Delhi Tract

Districts	Grazing Wastes	Season
DELHI	Common lands in villages	Monsoon
	Rakhiyas or woodlots in 46 villages*a	Monsoon
	Khadir lands of Kohi tract in Ballabhgarh tehsil.*b	Winter
	Hill pasturage*c in Tughlakabad area	Summer
KARNAL	Common lands in villages	Monsoon
	Birs or reserved grass lots in Nardak dhak & jhao jungles	Post-harvest
	in Nardak	Winter
	Riverain jhao jungles in Saraswati and Ghaggar region.	Summer
GURGAON	Common lands in villages	Monsoon
	Hill pasturage	Winter
LUDHIANA	Common lands in villages	Monsoon
	Birs in Samrala, Ludhiana and Jagraon	Winter & Summer

Source: a. Delhi SR. 1872-80 : 81.
b. Delhi Gaz. 1912 : 121.
c. DelhiGaz.1881-84:2.

Since the tract was mainly agricultural, the common lands did not get much support from the forest and grazing fallows *within* the districts. Further there was every possibility of conflict if cattle strayed into those areas where cultivation was carefully carried on. Toleration of cattle was evidently greater in those areas where conditions for cultivation were difficult, making it sensible to combine pastoral activity with slovenly cultivation methods. Evidence from Kamal suggest that cattle had to be taken to long distance grazing tracts every year. There was an annual migration from the high lands in the west of the district to the villages through which flowed the Western Jumna Canal, and to the rich riverain pastures of the Saraswati and the Ghaggar. When these flooded during the monsoons, the cattle were sent as far away as the Nahan Siwaliks or across the Jumna to the hills above Hardwar and Dehra Dun,[36] or they were brought back again to the uplands of Kaithal. Here nomadic movement of cattle gave respite to intensively cultivated tracts.

From the Delhi district cattle were taken less far to the Khadir or riverain of the Jumna, or sometimes to the Ganges Canal tracts.[37] Similarly the Gurgaon people moved out to Bharatpur and Alwar territory. Such movements became critical and more intense during drought, when herders customarily sent their cattle away if they were unable to sell them or did not need them for ploughing or milk. Nomadic movement here ensured, first, the safety of the crop from straying cattle; second, the lives of the cattle themselves in the event of fodder scarcity;

and third, the avoidance of losses from cattle mortality during drought and /or from distress sale of cattle when price of cattle fell

The Nardak : an illustration

These key relationships between cattle rearing and land-use patterns can be illustrated from the evidence in the Nardak tract of Karnal district. Unlike the dry tract previously described, the Nardak had common lands in settled villages even though pastoral elements were quite large. Before the re-alignment of the Western Jumna Canal, the Nardak area of Karnal comprised approximately 150,085 acres with 63 villages. Contiguous to this area were the Kaithal uplands, of about 500 square miles. To the north of this tract lay the flood valleys of the Saraswati and the Umla. Part of this was the Pehowa circle of Ambala. The lower parts of both Pehowa and Kaithal were known as the nailù that is, the low lands, and were open to flooding. This entire territory was a great cattle rearing tract. The village lands in the western part were held in proprietary tenure by the Jats, while in the eastern part, that is the Karnal Nardak, were mainly held by the Rajputs.[38]

There was little scope for well cultivation and even if the Persian wheel, or remit was used, it had to be operated sparingly because it needed too much cattle power: indeed, the effort required to draw water from a depth of 100 feet or more was the major cause of death of "well cattle" in the famines.[39] In these circumstances, even an indifferent rain-fed (barani) cultivation with hedged in grass enclosures (birs) gave better returns than more intensive cultivation with wells. Typically therefore, in the Nardak tract of Karnal there was a large amount of land kept as long fallow pastures or baniar kadim (about 60% of land in villages), and cattle farming formed an important element in the means of subsistence. It was said that in the large Rajput villages that cultivation held an "entirely subsidiary position." [40]

Here the long distance grazing range or open "waste" was an arrangement whereby large herds of cattle could be raised along with the barani cultivation that was feasible. Transaction costs of mixed-farming were reduced by means of reciprocity, sometimes based on social contracts. The Jats, for example, made marriage alliances with the lowland riverain or naili village girls in order to obtain grazing free of charge in the village. In return the naili cattle which had to be driven away during floods sought refuge in the upland villages.[41] These patterns emphasise the importance of relationships of inter-dependent resource-users in building up institutions to reduce the transaction costs of both cultivation and livestock breeding. Nomadic movements in the Nardak had been an institutional arrangement whereby a predominantly pastoral area could supplement its grazing resources on the long fallow, baniar kadim within villages with those available in long distance grazing tracts.

Therefore the impact of canals in this area was significantly greater than in the dry tract. The re-alignment of the Western Jumna Canal in the last part of the 19th century caused the common lands to disappear. A predominantly pastoral area shortened its long fallows in this period and increasingly grew fodder for the large herds of cattle which it still possessed. Canal irrigation also removed the dependance on the services of the nomadic herder.

The Sub-Montane & Montane

The fluvial plains merged into the sub-montane districts of the Lower Siwaliks and then up to the hill district of Kangra, and the non-British territory of Chamba now in Himachal Pradesh. We move up as it were from lower altitudes of the sub-montane to the sub-alpine and alpine areas of the Himalayas. The sub-montane hosted a unique pattern of regional cattle movements because it served as a transit point for transference of herds of different composition from two opposite directions. The tract acted like a buffer, complementing the weather and natural resources of two different regions. When the pasture in the plains below was scorched or flooded the cattle took refuge in the sub-montane; or again if the alpine pastures were frozen, the foot-hill tract became a haven. The synchronisation of these diverse movements with the sub-montane's own pastoral needs required detailed institutional arrangements. Transaction costs would have been prohibitive if individual cultivators or pastoralists had attempted to cope. Worse, there would have been chaos.

It was a singular experience for the British officers to encounter such a semblance of economic order in the midst of so much political turmoil; and this could be attributed to the self-organising skill of both the sedentary and nomadic communities. Early reports from settlement officers like Richard Temple, show banjar kadim to have been well organised categories of common property within recognised boundaries of villages in the sub-montane

region.[42] This fact indicates the positive role of property rights institutions in economic activity, because the sub-montane was even at the time of annexation the most highly cultivated tract.[43] One can explain the orderly pattern of land-use and rights by the logic Dahlman expounds in his study of the open fields in medieval England. Accordingly, the tenurial system in the sub-montane linked a land-use pattern to a land-right pattern. Thus were the long fallows held in common and in compact form; while the short fallows were held individually in scattered strips. This pattern applied pressure on individuals to go along with the collective design. Jointly the community could achieve significant savings in the transaction costs of bargaining and of policing grazing resources from mis-use by outsiders from the plains below and the hills above. Any individual leaving the system would impose externalities on the others, and was liable to sanctions from other members of the village community. The institutions governing the system were crucial to its maintenance. If however, anything changed this balance between the time pattern of land-fallows, or the blend with the pattern of property rights accompanying it, the whole system was likely to break down.

There thus evolved institutions governing communal access and use of grazing long fallows in the open and those in the fallows of cultivated patches in the forests. When individuals could scarcely have been able to regulate the grazing on private fallow land, communal sanctions had greater chances of being effective provided the fallow was kept in common. Preventive institutions were perhaps even more imperative, as some of the grazing fallows were in the nature of open access like the forests, and were shared with others who had different scales of production. Live-stock breeding by nomadic herders had different time requirements, while that which occurred in specialised areas like Hissar and Karnal was likely to have differing scale requirements. Common lands were therefore not a colonial "creation". Joint control over resources like land and forests, was even under the Sikhs in the first half of the nineteenth century, fairly extensive.

Again, anything reducing the authority of communal control or the incentive to remain together would weaken such institutions and the order would be threatened.

The sub-montane had a high density of population in comparison both to contiguous districts and to the Provincial average, (see table 2.4) Pressure upon the land was further increased by the large numbers of cattle, as well as the demands upon grazing from the transhumance originating out of the montane districts of Kangra and Chamba. With the cultivated area not as vulnerable to

Table 2.4 Population Density : Selected Districts, 1855

Districts	Population per square mile
Hoshiarpur	384
Gurdaspur	470
Jullundur	513
Ambala	374
Kangra	79
Punjab Province	141

Source: Punjab Census, 1881, Abstract 14.

failure in rainfall as the other districts of the plains, the area given over to long fallows was relatively smaller. The pressure on land judging by the density of the population was also higher, in comparison to the contiguous districts as also to the Provincial average.

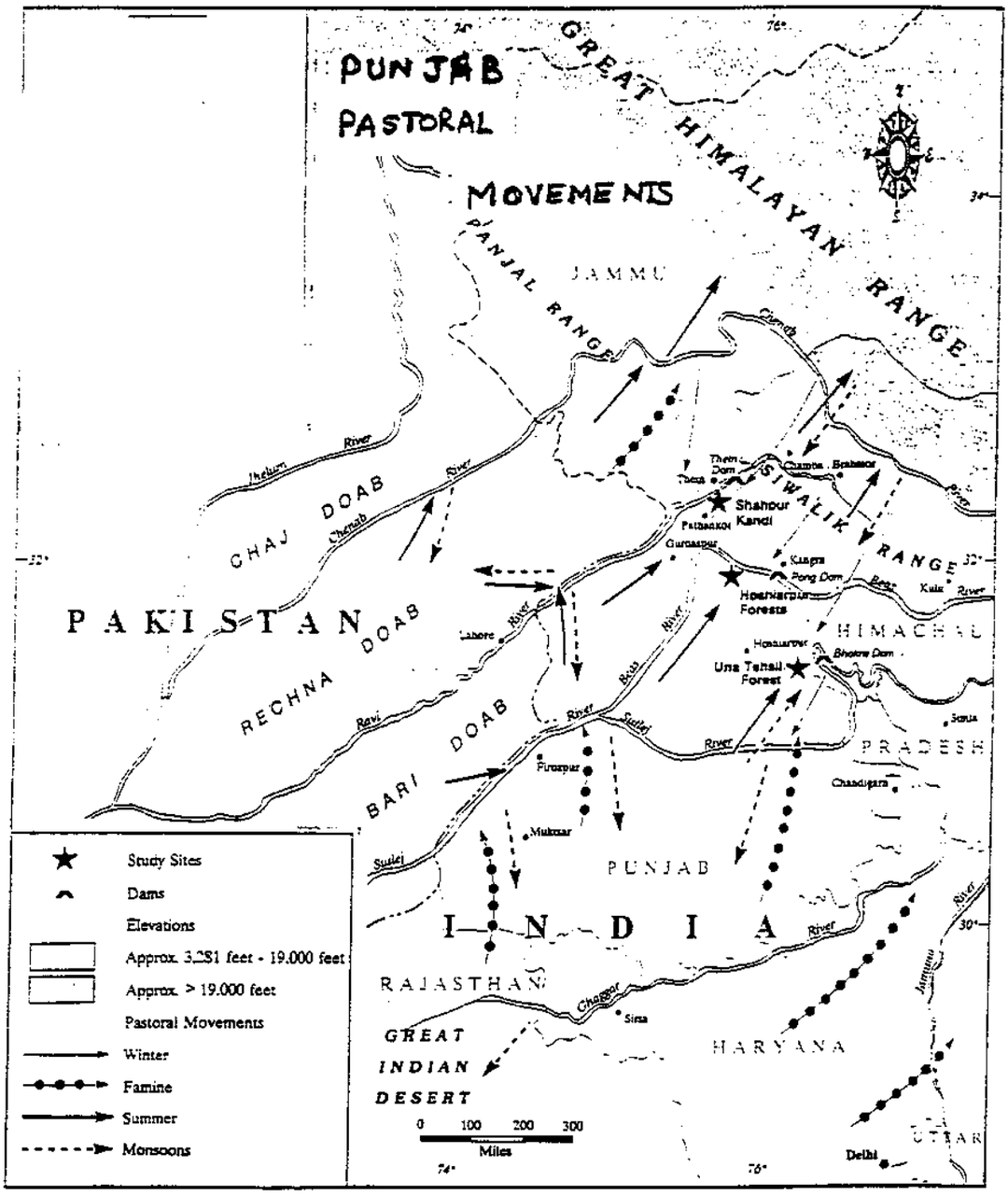
Table 2.5 Grazing Wastes : The Sub-Montane

Districts		Grazing Wastes	Season
Hoshiarpur	1.	Common lands [Grass fallows] in villages and post harvest stubble	Monsoons
Gurdaspur	2.	Banjar plots in Andhar*a circle (Pathankot) and Bharari circle.	Winter
	3.	Grazing chambs of Gurdaspur and Jullundur: Khanuwan Chamb, Magar Mudian Chamb	Winter
	4.	Riverain tracts: Belas*b in the Ravi, Beas, Sutlej, Kurari and Nahar ki Bir in Pathankot	Winter & Summer
	5.	Shamilat Forest Fallows	
		Gurdaspur: 16 village shamilat forest and	Winter
		Hoshiarpur: 17 village shamilat forest*c	Monsoon
	6.	Forest fallows:	
		(a) LowerSiwalik, Hoshiarpur, Jaswan Dun, Sola Singhi Range*d., Mangowal Range, Panjal and Lohara.	Winter
		(b) Gurdaspur: Shahpur Kandi	Winter

Source:
a. Gurdaspur Gaz, 1914 : 102.
b. SibaJagirSR. 1881-82 : 23.
c. Una Tehsil. Hoshiarpur SR, 1914 : 27.
& P.S. Melville, Comm. & Suptdt Trans-Sutlej to D.C. Hoshiarpur, Rev. & Agri (Forests) Progs. 3-5B, Oct. 1887: 3.

The sub-montane had, however, large tracts for grazing in the Siwalik foothills (see table 2.5) which supplemented the resources of (a) the common lands of the villages in the tract; (b) the short and long fallows of the riverain and plains; and (c) the grazing alps (dhars) of the upper ranges of Kangra. The cattle pressure cannot be judged only by numbers in the herds. Much depended on the scale of the herders and the linkage between them and the system of agriculture in the different zones they came from. For example, herders from the plains generally brought larger animals and had linkages with the local cultivators who had their own fallows to depend on. Here the reasons for transhumancing cattle were a combination of distress and the need to synchronise with the agricultural seasons of the plains and follow the rhythm of the rivers. On the other hand, cattle brought down from the alpine ranges came from areas which could not be cultivated on a large scale and were unable to support cattle at all during the winter and rainy season. Such divergent pressures naturally had the potential to generate conflict, but these could be avoided provided the host region had the appropriate institutional arrangements. If anything attenuated this authority, there would tend to be free-riding and disorder. The increasing impact of an external agency unsettled the system, and as pressure on the tract's grazing increased disputes erupted which spilled over into the colonial courts.[44]

Map 3 **Pastoral Movements : Punjab**



The grazing fallows of the sub-montane had two unique characteristics. First, the long fallows were located in forests which in turn were held under common control *3/4* the shamilat-ban. These were cultivated patches, and the grazing on both the crop stubble and grass fallows was shared by the villages with the nomadic Gujars and the Gaddis. We can give three examples : In the Panjal Tappa of Hoshiarpur there were 11 villages [45] with a common forest, (shamilat-ban) grazing area, which the Gaddis used along with the villagers. Again, the Lohara forests of Hoshiarpur[46] had scattered village habitation and the uncultivated forest areas were shared with migrant cattle from as far off as Chamba, Lahul, and the Dhaula Dhar in winter. Apart from transhumance or the periodic movement of cattle, the tract also received distress movements from such distant areas as Hissar and Karnal, the main cattle breeding tracts of the plains.[47] In periods of famine cattle were sent up from the breeding tracts of Karnal and Sirsa, and so also during the dry season when the water holes and grass dried up. Finally, the Shahpur Kandi tract of Gurdaspur virtually "belonged to the zamindars"[48] of 16 villages who held forests in common by long usage of grazing and fallow cultivation.[49] Even where extensive forest areas existed close to the village, there were patches of cultivation scattered throughout the forest.

Second, the riverain long fallows were uniquely managed. Villagers as well as herders from outside used the insecure areas alongside the rivers without dispute, as a result of customary rules of managing land thrown up by alluvion and washed away by diluvion. On the banks of the Sutlej and Beas in the Hoshiarpur district there was a form of collective arrangement known as halsari.[50] Halsari was a tenure governing the entire riverain land of the village. The land was divided into long strips (wands) and distributed according to the hals or ploughs in the village. By this means the risks of diluvion were shared, and the organisation of the common fallow on the riverain was evidently the customary way in which the villages on the banks of Punjab's rivers managed to survive without continuous disputes. Every time the land of a share-holder was washed away, a certain amount was given to him from the shamilat in compensation.[51] And when the river threw up any new land on the bank, it was added to shamilat. Since these areas were not always suitable for cultivation, the village body at first set it aside as fallow for grazing. The region thus had, in comparison with the montane and plain districts, an absolute advantage in both agricultural and pastoral resources, but a relatively greater advantage in agriculture, upon which it continued to concentrate during the colonial period, supporting the pastoral activities of the other two regions. This, however, made it vulnerable to changes in the other two regions, causing a shortening of fallows all round, particularly on the shamilat-deh - or the long fallow kept in common.

In addition to the above trend, the sub-montane district saw a large amount of forest land demarcated between 1848 and 1870-72 and then reserved in 1879 by the Government.[52] Later, in 1910, the Government assumed the management of the common forests, or shamilat-ban in Shahpur Kandi Gurdaspur.[53]

These patterns can be examined in a little more in detail if we take the example of Hoshiarpur. It was a district at once one of the most indebted and prosperous in the Punjab.[54] This explains the attention it drew from the Government, as it not only paid the highest revenue but became from the mid-nineteenth century one of the most litigious of Punjab's districts.[55] It also faced the consequences of denudation of forests and the tremendous problem of hill torrents or chos. The latter produced soil erosion all along the foot hills of the Siwaliks, and the severity of the problem caused the Punjab Government to enact a Chos Act in the early part of the twentieth century.[56] The Montane:

The montane district of Kangra, differed from the sub-montane and plain districts in three major ways during the nineteenth century. Human settlements in the montane, before the village was demarcated by the British, had no residential site or abadl nor did they have a common area for cattle sheds,
(gora-deh). Each hamlet was isolated from the others, the land being held by different castes by a tenurial permit, or pattah, from the Raja. The settlements had no demarcated fallow as the village common land.

In 1850 the extent of uncultivable land was three times greater than the cultivated area in Kangra.[57] The number of cattle was much larger than in the sub-montane.[58] Transhumance was a predominant feature of the entire montane tract. This pattern could be supported only because the various tracts complemented each other both in climatic and grazing resources, and this critically suited the scales of arable and pastoral production which could not be adjusted to each other and to the resources in any one area. For instance Lahul had "excellent summer pasture", but during the freezing winters the Lahulis sent their sheep to the lower hills of Kangra. In turn the Kangra shepherds brought their flocks up to Lahul in summer.[59] (See map 2) Similarly, sheep were taken from Kangra and Chamba to the foothills of the Siwaliks for grazing during the winter months. There was a major

exchange of conveniences here. The folding of sheep in the arable fields of Kangra provided an excellent reason for reciprocity between settled arable farming and nomadic pastoralism.[60]

Table 2.6 Grazing Alps : The Montane

Districts	-	Grazing Wastes	Season
Kangra	1.	Bahan: fallow field in the terraced field or field in valley	Post-harvest
	2.	Kharetars*a: grass preserves in enclosed field on hill-side.	Post hay-cutting season
	3.	Intermediate waste between the different hamlets & settlements.	Summer
	4.	Soanas: exclusive pastures used by Gujars in forests	Spring & Summer
	5.	Dhars*b: grazing runs on hill side for sheep	Spring & Summer
	6.	Forest bartan*c: Hill side valley forest rights.	Spring & Summer

Source: a. Kangra SR, 1864-72 : 43.
b. Ibid: 45.
c. Ibid : 19.

Although rainfall was sufficient, cultivation necessarily occured on a small scale, the size of fields in the hillside being "no bigger than a billiard table." [61] The quantity of grazing required was, however, large, since pastoralists moved together, but they respected each others customary grazing runs. For example, the Gaddis came down from the snowy ranges of the upper Himalayas with their flocks to graze. In the same way, the Gujars with their buffaloes would take up "divisions on a hillside" [62] and each tribe with its herd would respect "mutual boundaries". Since the composition of the Gaddi and Gujar herds were different, the rights of the two sections were compatible and non-intrusive without the need to demarcate "runs". (See Table 2.6)

The cattle of the Kangra montane area, whether owned by sedentary agriculturists of the valley or by the nomadic Gaddi and Gujar pastoralists, used grazing fallow without any explicit demarcation or boundary. These areas were often situated at some distance from the homesteads of the herder, grazier, or cultivator. Nomadic movement of cattle, transhumance, and the resort to long distance wastes in Kangra indicated an adjustment of the inhabitants to the ecology of the tract for both food and fodder.

Here the British policy of demarcating the boundaries of revenue estates, with each of which it made a settlement as revenue estates, mauzas and the simultaneous grant of the intermediate "waste" lying between villages as long fallow, banjar kadim to the village as their village commons, shamilat- deh cut across the long distance grazing runs and thereby internalized the open grazing ranges or "wastes" as the British settlement officers were wont to call them. This caused much pressure on village waste and inconvenience to the nomadic grazier both on the plains and on the hill side. How this actually happened is best understood through the window of documents in the British revenue and judicial departments. We examine these in the rest of this study.

NOTES

Part II

Chapter 2

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Part II

Chapter 3

COLONIAL PERCEPTION AND THE COMMONS

Of Perceptions:

Here is a puzzle. The regional "order" we have just described could be constructed from the imperial records. Why, then, did it elude colonial perceptions? Or did it? A possible answer could be the logistics of a region too heterogeneous, and whose history was far too checkered, to allow a comprehensive overview. Besides, even when colonial administrators perceived the innate capacity of communities to organise and govern themselves, there yet remained the problem of reconciling this fact with the conception of Pax Britannica ? Was the desire to replicate a nineteenth century model of Pax Romana too strong? The experiment in a system of governance in Punjab set apart the north from the rest of the Indian sub-continent, since for the first time a revenue-collecting State created a separate space for itself at ground level but sought to justify its own action with a stamp of legality which impressed them more than anyone else about the "due process of law".

This was not the first instance of an imperial power entrenching itself on common or public land. The history of forests in thirteenth century England and the utmark in Norway, among other Western countries, provide examples of royal "occupation".[1] Consideration of the existing rights to "waste" was part of the settlement operations in the Punjab, but when the Government's own rights were juxtaposed against the private rights of ownership and user in the waste, the power of the State to de-limit rights came into play.

Ironically, this process was noticed by colonial officers themselves. And thus, however much we may devalue their observations, we cannot deny that despite the linguistic and cultural barriers these have helped us to piece together a process of imperial rule where official opinions guided public action. Officers like G.C. Barnes, D.CJ. Ibbetson, E. Prinsep, and C.L.Tupper - among many others - transcended cultural barriers to understand the colonial challenge to imperial rule. Thus it was that revenue perceptions led to an imperial process by which certain terminologies lost their significance as they were translated for purposes of governance. At other times Revenue Officers did recognise the implications of their predecessors' actions, but it was then too late to undo the "misconceptions" of the past.

For example, in the 1850s the significance of long fallows, banjar kadim in an agro-pastoral system could not have been evident simply because of the plenitude of uncultivated land in all the tracts of an eco-system - "the waste," as the colonial terminology implied. And a land-use pattern which combined the short and long fallow not only in one local situation but over far flung areas within a riverine eco-system must have been even less apparent to officials whose mandate was to attract revenue paying subjects to cultivate their inheritance - "the waste". Even then Barnes hesitated to enclose large tracts of uncultivated land for village settlements or for reserved forests in Kangra. Despite the tardiness of official communications, his action did not fail to attract attention of fellow officers. In a totally different terrain like Dera Ghazi Khan, Edmonstone immediately perceived that the recognition of recognizing private property rights in the open access uncultivated land was tantamount to a "revolution" - how much so became apparent when Ibbetson arrived twenty years later to settle Karnal in the 1870s. In another thirty years what became of the "waste" revealed the close connection between land-use patterns and property rights. This time Stow in Karnal saw it. By the 1930s, Gorrie was alive to the situation and unhesitatingly analysed the manner in which the mismatch occurred between the indigenous terms for land fallow, banjar jadid and banjar kadim. and their English translation.

The story in brief:

The patterns of human interaction described earlier, began to shift as the vast unsettled regions of the dry tracts in the Cis-Sutlej were mapped out and settled within revenue boundaries which now separated communities of land-users one from another. Furthermore, distinctions between individuals within each community became

simultaneously sharper. Then, when Lahore became the centre of the Provincial Government after the termination of Sikh rule in 1849, a more systematic rule of property rights was statutorily initiated with the Punjab Land Revenue Act of 1871.

These shifts will be discussed briefly here and then elaborated upon in the next sections. At the beginning, demarcation of village boundaries established new villages on the surplus waste of the old settled villages, or created them in the unoccupied territories of the Cis-Sutlej. This kind of demarcation ran across the long-range use of open access tracts we described in the earlier chapter in predominantly pastoral areas of all the three Zones. Demarcation of settlements affected traditional land-use patterns because first, it cut across the open range grazing fallow used by pastoralists, reducing the area available for grazing outside the villages and disturbing the migration routes of nomadic pastoralists. Secondly, it shortened the long fallow in open ranges by establishing sedentary cultivators on them. Further, it encouraged shortening of the long fallow within the village in order to substitute the limited grazing waste in the village. Finally, it created definite space for public use like roads, railways, canals and forests.

Shifts in land-use in their turn modified property rights. It was the flip side of what Thomason, Lt. Governor of North West Provinces and guiding hand behind the revenue settlements in the North West Provinces, had argued. For Thomason, "limited" state demand for revenue would be the source of valuable *private property in land.* Developing the implication of his argument, when the State divided the open access regional commons, it thereby created valuable *common property* in the waste within villages. Ultimately, the limitation of private rights to the open access commons "created" *public property* - i.e. the Colonial State got valuable rights over the waste at large.

Thus it was that land-use and property rights patterns were inter-locked. Institutions of tenurial settlements in all the three zones of the several doabs caused the pattern and length of fallow to alter, and this in turn modified the composition of property rights. For example, when the village proprietary body, the malikan-deh, bore the liability for tax or revenue payments jointly, they shared the common assets on the same principle. Given this relationship, the pattern of property rights or the tenurial system was open to change (a) whenever cultivable grazing wastes were converted to short fallow cultivation, and (b) when common lands were privatised by partition.

Such a process was initiated by the demarcation of the commons accompanying village revenue settlements, for as a consequence : (a) grazing was restricted to the common lands of the village, (b) long distance grazing in the fallow was diverted, and (c) the nomads were sedentarised in "created" villages in the waste wherever canal irrigation was extended. Subsequently an even more significant transformation took place - when the due process of law took over and the Punjab Land Revenue Act of 1871 formalised and standardised institutions of property rights. With a statutory weapon the revenue department could manipulate the customary institutions which had regulated land-use patterns. A stiffer revenue rate policy for instance, penalised excessive area kept as banjar kadim. i.e long fallow or waste. An additional push in the same direction was provided by official policy to extend cultivation in the waste which thereby pressurised the commons by initiating a movement from the pastoral to an arable use of land. Capping it all was official approval for the partition of village commons. All this did not impact evenly. Nor did the revenue department follow up the policy with equal vigour in the different parts of the vast territory and certainly not at all times. People settled in the newer areas fell in line with the policy moves, while the older established regions continued to follow their customary institutions of both land-use and property rights. In this chapter we will examine the changes in the period before statutory intervention took place.

Confining the Commons

From 1803, when the British first entered Delhi, till 1849, when the rest of Greater Punjab was annexed, there prevailed what is euphemistically called a period of "golden"[2] calm. During this time strategic information was collected concerning the village community and its customary institutions of common property. Fortescue, Metcalfe, and Martin, as mentioned earlier, had already described characteristics of joint action. These impressions were strengthened by the reports of John Lawrence in Delhi in 1844,[3] and of Thomason [4] from Sirsa in 1851-52. Both sets of observations confirmed that a sense of ownership over the waste existed among the cultivating communities within the mauzas. Further, that the wastes at large, were not as they appeared, "howling

wildernesses", even in the Central and Lower Himalayas[5] of Kumaon and Kangra. Similarly, official reports in 1849-52 described vast areas on either side of the Sutlej "overgrown with grass and bushes, scantily threaded with sheep walks and the footprints of cattle", over which the "chief tenants (were) are nomad pastoral tribes who knowing neither law nor property collect herds of cattle stolen from the agricultural districts."[6]

Barnes[1] description more or less serves to describe the situations in both the areas "certain castes...such as the goojurs and the gaddis who cultivate little and keep herds of buffaloes, flocks of sheep....such classes have a claim upon certain beats of the forest which they regard as their warisee (inheritance) subject to the payment of a pasturage toll."[7]

The control of cultivators and pastoralists over land varied, first, with physical conditions, and second, by the differential impact of historical experience. Wherever private means were used to mitigate natural conditions - as, for example, when wells were sunk or inundation canals dug - the cultivators had a fairly strong hold over the village and adjoining waste; but wherever this was impracticable, cultivation was slovenly or replaced/combined with pastoral activities, and there was no great desire on the part of the inhabitants/users to demarcate the waste either between villages or within the village itself. Similarly, wherever policing costs of land-rights were high there was no incentive on the part of the land-users to acquire permanent rights and hence nomadism was a rational survival strategy.

Of Boundaries and Rules :

The Delhi region was settled along the lines of the North West Provinces, according to the Bengal Regulation VII of 1822 in its amended form Regulation IX of 1833.[8] These rules clearly laid out a policy of apportioning waste between one village and another according to what was considered appropriate for pasturage. Any excess could be leased to any person " willing to undertake the cultivation in perpetuity or for such periods as the (Local Government) shall determine."[9]

The rule was that when the amount of waste was comparatively small, each mahal was to have a certain area given over to it in the circumjacent waste as a matter of course. However, if the waste around the estate was extensive, then each mahal received waste equal to 2 to 3 times, the cultivated area. Whatever was left after this demarcation and allocation was to be leased out, or ownership was to be granted for cultivation, or colonised.[10]

Thus the Revenue Survey indicated the outer boundaries of the villages only; [n] and the District maps showed local features, roads, canals and also the area which was divided out into "villages" and Government Reserve Waste Land, Rakh. Thereby was determined "what portion of the large area of circumjacent waste should be allowed to the villages as their common property or shamilat-deh of the village."[12] The focus of the revenue department was on aggregate annual cultivation, rather than on the pattern of fallows. The initial policy was thus a search for greater revenue from more inhabited and cultivated land; and such action was really no different from the preceding Sikh and the Mughal rulers. And as in the past, revenue extraction from pastoralists as in the past too, was a difficult proposition.

The Delhi Region : A Model

The process in the villages of Delhi is well documented and permits comparison with the other regions for which they were a model: The shajras or maps of the villages in the Bisagama cluster of Kanjhawla show that boundaries were already marked out in the 1838 jamabandi misls of the Bundobast that is in the record of rights.[13] Here the Revenue Department accepted the then existing boundaries since a pattern of settled cultivation pre-dated even the Muhgal rale.[14] This was re-iterated in villages with proven existence of a century or more [15] prior to British rale. Even when boundaries were vague the villages generally knew the limits within which the cattle of each community grazed. A sense of common ownership in the village waste[16] was striking. Illustratively, in villages which were be-chiraag - (that is literally without light, meaning uninhabited or temporarily devastated) - the "old" cultivators when they returned went back to the earlier strong internal constitution with customary rights and usages of the land they settled in. These customs determined the relations of the village to other groups, to the Government, and above all, to the rights of members of the proprietary body.[17]

Despite the settled nature of this region, the demarcation of the boundaries of villages continued to be a most important revenue-raising proposition till almost the last decades of the nineteenth century. Gradually other possibilities appeared and official attitude towards the internalised waste underwent a considerable change. Thus,

between 1803 and 1861, there was a degree of leniency shown, and large leases of waste lands were made as independent revenue estates to encourage cultivation. Later this changed. Inducements were given both explicitly and implicitly to encourage cultivation of new land within the villages. Towards this end, revenue charges were kept low on nau tor or the breaking of virgin waste, while the Government granted land for services rendered and grants of taccavi loans for the construction of wells to support cultivation.[18]

This official drive to extend cultivation clearly favoured the Jat, who was reckoned the epitome of a good cultivator since he was also a "regular revenue payer". [19] By contrast the Gujar seemed to have an "unenviable character,"[20] being lazy he left land uncultivated, and failed to "occupy new land"[21] and so "defalcated"[22] revenue. These official stereo-types were long lasting. Gujars and Rajputs were considered bad agriculturists just because they left large amounts of land uncultivated, and inhabited areas where cultivation and where "stealing" cattle was presumably easy. In other words, cattle raising was associated with disorderly and criminal conduct. In this view, the location of the Gujars in the hills of south Delhi [a] and of the Rajputs in the Nardak [24] reflected more the facilities for stealing than for livestock breeding, which required large open ranges and dry climate. Consequently official perception overlooked the importance of keeping large fallows within villages for livestock. Also that professional herders could be co-managing cattle which belonged to other villages may have been initially mistaken for stolen cattle.

Official pre-occupation with cultivated land was so great that it was equated with well-being. Edmonstone, for example, suggested that the "flourishing" state of the bangur or uplands in both the Sonepat and Panipat tehsils of Karnal was linked with the increase in the amount of land under the "plough".[25] Similarly, extension of cultivation in the waste within the demarcated villages was appreciated as in Ludhiana, where Gordon Walker granted reduced revenue rates "in some of the finely cultivated Jat villages"[26] because all the lands in the villages were under cultivation, and there was no fallow land or pasturage. In contrast, in districts like Shahpur, where cattle rearing was done on a large scale, leases of land were carefully watched in 1866, and not allowed to be kept as waste.[27]

Revenue drives of this kind did not always succeed. There continued to be large amounts of waste used for pastoral purposes, and the demarcation of village boundaries did not always lead to the extension of cultivation *within* them. This indicated that in areas where water was deficient both under the ground and on the surface, large areas of fallow were required both for barani or rain-fed cultivation, and for pasture. The opportunity cost in terms of labour and irrigation required for intensive cultivation in dry regions was high relative to livestock breeding. In such areas official policy modified communal control over the use of the regional commons, but could not remove the influence of ecological considerations over land-use pattern.

This is what Gubbins' report of 1845 confirmed. In Karnal, where more than 70% [28] of the land was used for grazing, only 20% of the land was cultivated in the upland areas where irrigation was not available. In 1847 Captain Abbott leased out land in 52 sites[29] in the hope that cultivation would be restored. They remained as they were. Another 64 sites were leased out in the same year, the stipulation being that a certain proportion of the waste had to be broken up, a well or a tank dug, a number of houses built, and a certain number of ploughs located. Failure to achieve these conditions not only led to the forfeiture of the shareholder's, biswadari rights, but also a penalty of three times the jama, or revenue. However conditions in dry areas prevented the fulfilment of even these stipulations, and Government in 1846 had "to rely on the profits of cattle rearing and proceeds of grazing dues, from which a fair income was derivable."[30] 21 new estates were similarly formed out of the excess village waste by Captain Larkins in 1855.[31] But scarcely any reached the expected degree of cultivation because the water level was below 100 feet and capital was scarce.

Despite set backs the "struggle" to deal with the waste continued. Ultimately in 1863, Douie cancelled the leases which had been given for cultivation. Instead he acquired 10,310 acres for the Government, and the rest he gave in ownership and leases. Also, realising the shortage of grazing fallows, he proposed the creation of a reserved grass preserve as common pasture land for the lessees of the village. Thus 7,750 acres of grazing area was to serve as common pasture and a fine was imposed on any one encroaching upon it. The days of extension of cultivation at the expense of grazing lands were over, or so it seemed.[32]

Generally speaking, however, land-use patterns in such older established areas exhibited both continuity and change, depending on the relative strength of the institutions of traditional communities and the force with which the Revenue Department could super-impose itself over them. Often times it was not the power of the

revenue department which induced change but the willingness of the community itself to adjust to circumstances of lower transactions costs accompanying the new dispensation.

Thus it was that communities choosing to have their boundaries "policed" by the revenue department gained a modicum of peace, accepting in return, the diversion of the regional commons to fractionalised use by other sedentary communities. Property rights to the commons could no longer be protected without large transaction costs involving political organisation amongst the diverse users, pastoralists as well as cultivators across the entire region. On the other hand, wherever villagers could muster organisational skill they resisted. For instance, the cluster formations of the Jats like the Chaurasi (84 villages), the Chaubisi (24 villages) and the Bisagama (20 villages) of Kanjhawla could and did continue to collectively decide issues relating to the common lands of their constituents. Here, unlike the rest of Punjab, the common lands remained intact till 1915, and then too partition took place in only one village. In Oscar Lewis' field notes we find mention of a meeting of 100 villages which collectively decided to partition the common lands of Rani Khera, one of the villages of the Bisagama; and that too because of a likely threat to the collective authority of the proprietary body in the village. When pressed, Jats have been known to organise on a larger scale - as M.C. Pradhan's study illustrates.[3]

3

Replicating the model - The Dry Tract:

The Delhi model was replicated in the dry tracts in all the doabs bordering the desert. It was tantamount to reversing the historical sequence of usage and right here. Earlier customary usage was the basis of the pattern of property rights. Now the State created and policed property rights, and this led to a change in the pattern of land-use. The impact was dramatic because the scale and intent of British action was significantly different from those of the Sikhs who also had pursued a policy of setting up new revenue estates.[34]

Illustratively, in Sirsa district, the demarcation of the waste not only created villages, but also sedentarised a nomadic pastoral people with an acquired sense of holding long fallows in common for grazing the common lands. Thus emerged in the vast wastes of the Doabs a "crystallisation of rights which till then had been in a fluid state. "[35]Sirsa was a sparsely populated territory when it was taken over by the British almost at the same time as the annexation of Delhi. There were no defined boundaries or defined rights in the land.[36] The tribes had lived a life almost wholly pastoral, wandering from place to place with their herds of cattle. They had no settled place of abode and no particular areas of land which they could call their own - which they could transfer from one to another or hand down from father to son. Rather they had the "vague" right or rather custom of pasturing their herds over large tracts of country.

A summary settlement was made by J.P. Gubbins in 1829, but the village lands had not yet been clearly defined. The people had not emerged wholly from the pastoral stage. In 1837, Captain Thoresby found some villages surrounded by tracts of waste land sufficient for the maintenance of several large agricultural villages, some having cultivated fields many miles off near some distant pond among other estates, some holding lands belonging to tenantless estates where they cultivated fields or herded cattle. Such lands distant from the village were claimed on the ground of long possession or having been taken into account when summary settlements were made. Captain Thoresby proposed that in defining boundaries only lands near the village should be assigned to it, and that large uninhabited areas should be bounded off as uninhabited estates to be settled at some future date, cultivating possession being maintained.

At the beginning of the nineteenth century there were 35 "settlements" or dehs in Sirsa and portions of Hissar district; by 1868 there were 658 settlements and the area cultivated was about 34% of the total area.[37] Settlement officials did recognize that the tract was a major pastoral area. Therefore in 1863, Hissar villages were allowed to keep "waste" for pasturage equal to one quarter of its total area without having to pay an assessment; and if this was not sufficient waste for the grazing of the village, then the deficiency was made up by permitting some of the cultivated area of the village to be assessment free.[38] Officials considered 25% of village area sufficient for pasture.

The institutional impact of such increased settlements was even greater. According to one official, fifty years of British rule saw not only "every acre of land ... mapped and measured" but "well defined and complicated rights recorded regarding every plot of land - rights of Government, rights of grantees of land revenue, rights of landlord and farmers of villages, rights of tenants of every degree. All Mussalman tribes who fifty years ago were living a wholly pastoral life have now settled down to agriculture and their custom attaches importance to these

rights in land, new to the tribe, as does the custom of the Sikhs, Jats and Rains who were agriculturists from time immemorial."[39]

This was the first stage of the conversion of large tracts from wholly nomadic to sedentary land-use. Accompanying this was the official recognition of the switch-over of the pastoralists from their own "customs" to those which in fact were followed by settled agricultural peoples![40] As we shall see, this happened on even a larger scale in the central plains of Punjab.

Creating the hill commons:

While demarcation of revenue estates in the inter-riverine created theatres of individual and communal use of arable and pasture land, yet another category of land-use was being contemplated in the hills - for public or State use. This would have happened in the dry tracts too, had the railways and canals come in earlier, or had they possessed valuable resources like forests in the hills. Additionally, there existed a tradition of autocratic control in the Kangra hills where the Rajahs had exercised extensive control over the waste. Grazing rights were more in the nature of user rights in forests owned by the potentate. Besides, the terrain fostered isolated and scattered cultivation with little incentive for exercising any form of joint ownership and control over the forest. Resistance by organised communities to the action of the revenue department was therefore absent.

Such a situation, combined with growing demand for setting up tea plantations in the Kumaon hills and Kangra, raised a debate in 1852-53 on the question of State ownership of waste lands. Discussion centred around the taking away of user rights of pastoralists and others of the hills and plains. Settlement officers in Kangra endeavoured to "re-assert the paramount claim of Government to the waste, but the Chief Commissioner refused to acknowledge the principle, and ruled that the waste lands must be held to be the property of the villages, and that no lands could be appropriated without the consent of the zamindars."[41]

The idea of demarcating large tracts of forest in the name of the Government was given up. (see chapter 5) Barnes treated the holders of cultivated land within circuits as co-parcenary bodies, and imposed upon them a joint revenue responsibility to which they were strangers, and to balance this, gave the "created" communities the right to collect certain miscellaneous items, the produce of the waste. The lesser wastes were measured and recorded by the amins, or record writers as the "shamilat deh" of the mauzas. Trained in the NWP, the amins were habituated to treating village waste in this manner. Lyall, the next settlement officer in Kangra, gave two reasons in his report (1865-72) as to why Barnes may have left the question of the lesser wastes indistinct: "Sometimes I think that he was so because he wished to leave the question of the wastes undecided, opining that the old theory of property would not work under our Government: and that time would show that change was necessary. At other times I have thought that he was indistinct, because he knew that his settlement had effected a revolution in the old state of property (a thing which a settlement officer has according to strict regulation, no power to do, though more or less it has constantly been done) and did not care to make the fact appear prominently in his report."[42]

Although the new situation created certainty in private ownership of forests, there was yet uncertainty because of the government's presence. Given the option, the hill people opted for partition of the hill-side forests and in effect out of the customary system described in chapter two. Thus it was that whilst Barnes had clubbed together separate hamlets to form mauzas, or revenue estates, but Lyall, his successor, set about demarcating the boundaries of the hamlets within the mauzas. "The people were eager to sub-divide, as the measure gave them for the first time what they felt to be a solid property in the waste, and moreover did away with the fears that the Government was about to take away the land."[43] In Kangra, consequently, the demarcation of boundaries between mauzas led to the inclusion of the waste within the limits of the mauza. There was much variation in the practice of declaring the ownership of such waste.[44]

Financial expediency once again won the day. If clubbing hamlets and giving them waste in common gave them a feeling of "jointness", then the experiment in Kangra greatly recommended itself to the higher authorities who were anxious to establish joint revenue responsibility.[45] In the process, common lands were created where there were no ties of blood or joint ownership of land. This was a greater "revolution" than was officially acknowledged, because it opened vistas of opportunities for the Government to acquire the vast unreserved and unoccupied forests and scrub lands in the plains of the Punjab. It also created possibilities for "free-riding", which we will consider later.

As this was proceeding, State-property in the waste was announced quietly by the Board of Administration in 1852, some 26 years *before* statutory enactment by the Forest Act of 1878. It was reiterated in circulated instructions to officers,that the Board proposed "after defining the village boundaries and allowing such reasonable extent of land as may suffice for the wants of the communities being included in each area to declare the *lands beyond these boundaries the property of the Government."*[46] (italics mine) Institutions of property rights in the waste were now- a matter of State dispensation. Village communities, Government, and foreign tea-planters all became contenders for the hill commons.

Defining the Community and its Commons

Simultaneously with the division of regional commons between several groups of users both customary and *nuovo,* official opinion in the first three decades of the nineteenth century contributed much towards the construction of an enduring image of village governance which recommended it then, as it does now, to any serious analysis of a "Village Republic". Officials were struck by the antiquity of the village settlements.[47] Their ability to co-manage natural and political calamities was legendary - the latest instance being the famine of 1783 or the terrible Chalisa.[48] Capacity for self government in a frontier province were evidenced by the strength and resilience of customary institutions inherited by succeeding generations.[49]

Curiously enough, even as these early revenue arrangements were being settled with the villages on the basis of the "aggregate jumma"[50] or joint revenue, the Court of Directors of the Company were toying with the idea of introducing the "Ryotwari Settlement" with individual revenue payers in Delhi in 1832! Lack of communications between this frontier site and London is evidenced by the correspondence of W.B.Martin, the Resident and Chief Commissioner in Delhi. He put forth a convincing plea to establish the Village System of joint revenue responsibility. According to Martin, the Government demands took away "so large a proportion of the surplus profits" that" if it were not for the mutual assistance, which under the operation of a village settlement, is afforded by the members of the community to each other, and which their collective responsibility for the payment of the village rent induces in them to render, considerable difficulty would be experienced in realising the assessment."[51]

Martin's recommendation of the village community was supported by Lawrence in 1838. He argued that Government demand was paid more punctually in a village, though heavily assessed, because of their system of "regulating the distribution of aggregate liabilities by a bach (the method of distributing the total revenue among the members of proprietary body) on cultivation, the minute sub-division of land, and the custom of confining the responsibility of each party within the extent of his actual possession."[52]

Common Lands and Tenure :

Along with the institution of the Village system of revenue payments, Martin had also advocated the indigenous system of "village management in which the muqaddams (leaders) were nominated by the members of the village community."[53] The State was therefore set for accepting the "village community" and its system of joint revenue liability. In effect, collective identity became irrevocably associated with the joint interest in the waste and therefore no matter what the recognition accorded to individual property rights, the revenue officials considered *common ownership of the waste* as an essential pre-requisite for the imposition of joint revenue responsibility. This was central to the process of institutional change in the nineteenth century.

Once again, the villages in the Delhi region served as the bench mark. The "aggregate jumma" was distributed on a system of bach or tafrik, that is division, and "the appropriation to each of his quota of the public demand."[54] This was obviously more important to the individual landowners than the amount of gross assessment of the estate, because it decided the share of the proprietor in *all* the land of the village, particularly the village common lands. Over time these shares to the common waste were maintained, even when the actual amount of land held privately by individuals changed.

The various ways in which the bach was carried out may be distinguished according to whether it was based on ancestral shares, customary shares, or "actual possession". If the British settled with the head of the family, the tenure was termed zamindari khalis. If the law of primogeniture was followed, there would be only one zamindar every generation and the tenure would continue to be zamindari wahid. But when several sons inherited

the tenure became zamindari be-ilijmal.[55] The incidence of this tenure was not great in the Delhi region. As Lawrence observed in 1838, there were no substantial landowner with "a lac or two lacs of annual income."[56]

However, if the family which founded a village followed the distribution of the bach and the lands according to the family law of inheritance, then over time each family would hold a patti or figuratively a "leaf", of the family tree. The shamilat lands were definitely recorded as "owned jointly on ancestral shares" [57] in the settlement of 1852. Each share would be ancestral For example, if the sons of the family of a zamindar separated their land according to the family law of inheritance, then each family was a separate patti. Since every family did not have equal number of sons, sooner or later there would be inequality among different land holders *within* the patti.

The bhaiachara village, according to Baden Powell, was one in which land was shared by the families which helped to found the village. Such a definition of the joint village was derived from Benares - the land was held by custom achara of the brotherhood bhaiya.[58] The precise meaning of the term in the Delhi territory varied. Most often it was employed where "no ancestral system of fractional shares was used or, if it had been, had fallen into disuse."[59] But the term was also used for: (a) a village which was established by a "body which joined forces to colonise and settle, they divided the area not by family shares but by the number of ploughs each brought or as much as he could manage etc." The village of Bairampur in the Hoshiarpur district, for example, was held on the plough basis;[60] or,

(b) a village, where although land was in theory held on ancestral shares, these were used only to determine the share of the common waste. For the rest, landholders paid revenue on the actual amount of land cultivated and therefore possessed.[61] Further, in the instances which Gubbins reported in 1845 from the Karnal and Delhi villages: "Below the Panna and Thola, all record of ancestral right appears to be lost, and each holder of cultivated land is supposed to have a right to a proportional quantity of the uncultivated area." These have also been recorded as bhaiachara tenures.[62] Or, (c) a village where there was plenty of waste, and each household could "appropriate and cultivate as much as it needed without pressure on the other members of the community",[63] and each household, "paid a share of the Government demand proportional to the area of the village lands actually cultivated by it from year to year." Thus in both Hissar and Karnal the first settlements conferred separate proprietary rights on each distinct family or household in so much of the village lands as each family or household held in separate cultivating possession, "while this area also measured the interest of each in the common waste land of the village."[64]

These differences between the bhaiachara and the pattidari tenures may not have been sufficiently great in Delhi in 1838 for Lawrence to make the distinction. This may have been, firstly, because the principle of inheritance in land shares *within* a family in both tenure types was ancestral - except that in the bhaiachara tenure the founder families were *not* related to each other and the division may not have been equal between the different families; or/and secondly, as in Karnal, though the land was divided on the basis of ancestral shares, after the passage of time the actual amount of cultivated land held by any one may have been less or more than this initial share, and it was this cultivating possession that formed the basis of the first British settlements of revenue liability. Thus "instead of recording each constituent household of the proprietary body as entitled to a fractional share in the village, and as holding in cultivating possession the land cultivated by its members or by tenants whom they had settled, we recorded and treated it as absolute owner of this and other land occupied by tenants which they had settled, and entered as common property of the village only such land as was either uncultivated, or was held by tenants who had been settled by the village in general or by one of its sub-divisions." In this manner, acknowledged Ibbetson, was the bhaiachara tenure created: "such property in severalty based solely upon actual possession" being "entirely a creation of our own."[65] This recognition of the "cultivating possession" had two effects. First, it changed the character of the internal distribution of shares to one where revenue payment was by "actual possession", which meant a shift from the pattidari to the bhaiachara. (terminology familiar in Delhi). Secondly, it recognised individual property rights within the overall framework of communal property.

Despite this acknowledgement of the individual's "cultivating possession" in the bhaiachara tenure, "the ancestral shares of each household of the land owning community were carefully observed, and regulated the interest of each in the common lands."[66] Ibbetson confirmed that: "wherever we have not interfered by a record to confuse cultivating possession and absolute ownership, the people carefully distinguish the two tenures."[67] This

distinction was important, according to Ibbetson, as the Courts also tended to convert cultivating possession into adverse possession. (See chapter 7)

In essence what separated the two tenure types was that in the bhaiachara villages, there was no such adherence to the idea of "joint ownership in the form of joint tenancy, co-parcenary or tenancy in common" [68] in the village shamilat as there was in the pattidari. The shamilat was apparently that waste which had not been appropriated for cultivation by individual families descended from original settlers and had been kept in common for grazing "so long as it was not appropriated for cultivation." Joint tenure in the common land of the bhaiachara village was thus "fictitiously introduced" in the Regular Settlement of 1852, when shares in the shamilat were declared proportionate to revenue responsibility, hasab rasad khewat.

Nevertheless, the revenue officers found that bhaiachara villages generally acknowledged "that individual owners can occupy shamilat according to their means and ability to cultivate it ba mujib qadr apni"[69]. This meant that at the time of appropriation no attention was paid to the "precise recorded share", but if an occupier went glaringly beyond his share "there would be protests which might probably lead to partition."[70] A proprietor thus could not be ejected till partition.

Several common features stand out in these examples: (i) the banjar kadim was "held" by descendants in ancestral shares, in all the tenures, although actual possession may not have had much to do with the tenure, (ii) the long fallow, banjar kadim, seemed to be open to conversion to short fallow, banjar jadid; (iii) such conversion could become permanent; (iv) this transformation could be prevented only by a collective will to observe customary usages; and (v) in the absence of such consensus the only remedy was the partition of the cultivable waste or shamilat banjar kadim.

"Scattering" and the Commons:

Land-use pattern consisted of an arrangement of fallows over time and space. Variation was determined by first, the location of the village in relationship to the immediate tract and to the eco-region at large; and second, the extent of emphasis on arable as opposed to pastoral use. The arable fallows were arranged by two sets of institutions: khet bat and chak bat.[71]

Khet bat was an institutional device for "scattering", not unlike the open field systems of medieval England, whereby the land of the village was broken into large fields or hars, each being given a name.[72] The har had similar traits of soil, moisture, and vegetation cover. Each of these hars was then divided into "lots" (kura or dheri) according to the number of shareholders. These "lots" were then allocated by a lottery, called panna marna in Karnal,[73] kurabandi in Hoshiarpur,[74] and dheribandi elsewhere. The khet bat method thus ensured that each share consisted of "a few bighas or perhaps a fractional part of one made up of Rubbee or Khureef, of pasturage and firewood land." etc.[75] This assured a degree of equal access to all the varieties of land available in the village and therefore involved a sharing of both risk and uncertainty.

In the second mode of land distribution, namely the chak bat each shareholder received a compact block. The whole land of the village was divided without strip scattering.[76] This was usually done in villages without great variation in physical conditions. The dimension of a share in either case of distribution varied considerably. Thus in the Delhi region shares ranged in the 1820s from 2 to over 200 bighas.[77] The impression that the British acquired about the shares was that each shareholder had a qualified hold over it and "had no power over it hurtful or contrary to the will of his neighbour or the community."[78]

There was a discernible method in this system of scattering which is evident from the revenue maps, (see map 3) The shajras of Kanjhawla in 1838 & 1880 shows cultivated strips to have been clustered around the major common facilities. The johads or ponds in the village were surrounded by tiny plots, and the numbers on the khasras indicate that all shareholders had at least one of these fragments. Similarly, access to common easements like the shar-e-am or pathways had plots arranged at angles, rather than alongside them. Scattered plots were similarly tiny and dense around the residential site, abadl and shamilat grazing land.

Such obvious care in scattering deserves equal respect in analysis. One such hypothesis indicates links to some logic of risk-sharing and collective action. Scattering was an institutional device to provide insurance to individuals against uncertainty provided they co-operated. Therefore it was both a product of and a means to re-inforce collective action. It followed that the higher the element of uncertainty the greater would be the need to scatter and hence the less averse would people be to scattering. Further, the more diverse a resource distribution

was, and the greater the inequality in the incidence of individual risk, the greater was the inducement to bring about collective action. The propensity to act collectively increased if risk could be shared and if access to varied resources could be equalised. Scattering was one such means to equalize. This reduced the element of risk [79] for each shareholder, since he had a fractional share from each quality of har or block of land in the village. Further it was attractive to cultivators when the system allowed equal access to other resources like grazing and water. Hence scattering of the arable went hand in hand with compact grazing and collective management of the field channels of irrigation wells and ponds. *This is what induced keeping the commons at multiple levels.* Further, each shareholder was thereby locked into a system from which he could not opt out without imposing externalities on the others and making every one worse off without making himself better off.

The following examples illustrate. In the riverain or the khadir [80] villages, the "risky" plots were those affected by the action of the river and these were kept as shamilat or common lands.[81] Alternatively, if land was lost by diluvion, the proprietor (sometimes even a tenant) of a "risky plot" was compensated by the village community either "by a gift of village common land"[82] or the "pecuniary loss of having to pay the revenue was borne by the village."[83]

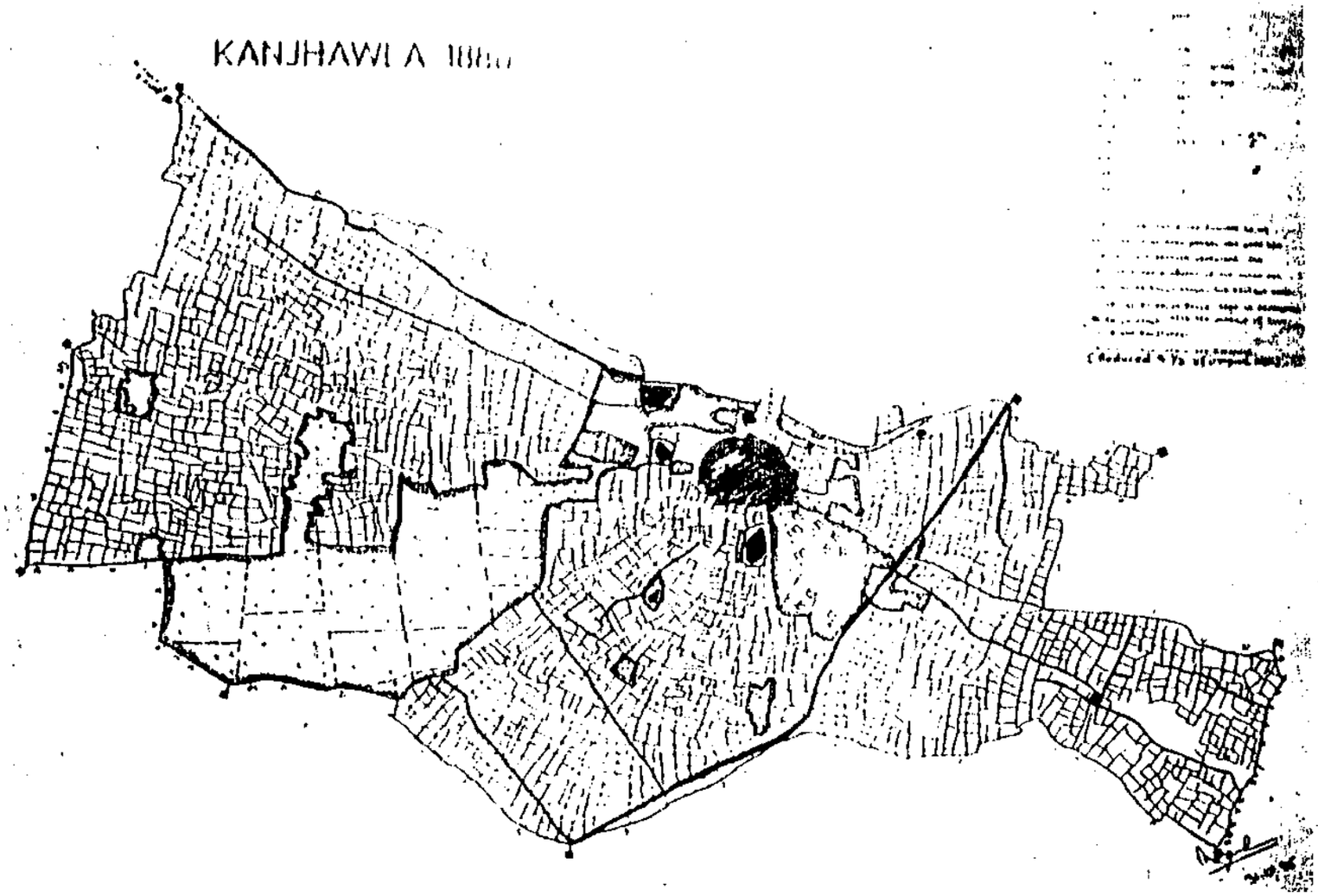
Alternating distribution of scattered strips or Pana Palat was yet another way in which risk was shared.[84] The land in each Pana "were re-distributed every year, or every few years, each holder possessing a different field, with every fresh distribution."[85] Instances like Kaunla, a khadir village, in Delhi territory and Hodal, in the Gurgaon district, were reported.[86] Although there were not many villages in Delhi practising this method of exchanging plots of land, the system seems to have been observed in Gurgaon in at least 8 villages in 1859. It then became obsolete there, but started in 33 new villages, to which were later added some more, so that by the 1871 settlements there were at least 61 villages in the Rewari tehsil of Gurgaon practising it. It was taken up in 12 villages in the Gurgaon tehsil by 1871, of which 9 at least had started it after the regular settlement of 1859.[87] Such land was usually held in common and in turn the whole community or sub-division cultivated the whole land. "No one could mortgage or sell the land while they held a block."[88]

In yet another way scattering, combined with compact grazing, acted to reduce risk when collective responsibility for regular payment of the official land revenue was enforced; and at the same time pressurised individuals to be responsible to collective liability. In cases where an individual failed to pay his revenue share, the community baled him out temporarily. However such an individual was not encouraged to free-ride on the community's collective magnanimity. Collective sanctions were imposed. Another inducement to co-operate existed when the village proprietary body used the privately held cultivated strips as common grazing fallow after the harvest. Once again, there was institutional pressure and inducement given to co-operate; the rule of a similar rotation of crops enabled individuals to open up their fields to the post-harvest practice of "common of shack" all at the same time. In return, herds of nomadic cattle (a very English phrase, which was used by Lyall for instance, denoting the penning of cattle on arable land), provided the manuring of the short fallow feasible.

An additional inducement to collective action was provided when individuals could reduce the incidence of the land tax and joint cess by collectively renting out the common fallow to cultivators from amongst the proprietary group or from the other classes in the village. Theoretically, even though each share was limited to the area inherited, a household was entitled to share in the breaking up of the virgin waste, nau tor within the village. If a household or individual extended cultivation beyond its or his share, it or he had to pay rent to the community of shareholders. In the meantime he could not be ousted until a formal partition was executed of all the uncultivated land in the village. "Anyone cultivating in this way is (was) a tenant of the community."[89] This simultaneously served as an inducement to the land-less kamin groups to continue servicing the community. Needless to say it fended off the predatory revenue collector of the jumma.

Of course such consequences may have worked against the original intention for which it was devised. For example, in Kamal the practice of the biswadar, cultivating common fallow in excess of his share, became so universal that occupation was rarely disturbed, even by the court, so long as he continued to pay the revenue. There were cases where the individual shareholder retained the land even after partition of the commons. Some were so sure of their tenure, that they built wells on the common land at their own cost.[90] In Ludhiana, good land was all cultivated, and the people had hardly any fallow for pasturage, so strong was the incentive to extend cultivation in the waste. This trend ultimately led to shortage of culturable waste in the district.[91]

Map 4 **Scattering : Kanjhawla**



There were also legal problems. While rights in shamilat continued to be based upon ancestral shares, the shareholder and his descendants gained more than their share when they were "at liberty to bring under cultivation so much of the joint (shamilat) waste as their means allowed and to add it to their severalty plot or plots assigned to him or his predecessors" on the lots system.[92]

Additionally, scattering enabled mixing different scales of operations. Thus, besides fiscal solvency, there were several other problems requiring collective solutions. Irrigation was one of them. The system of scattered plots was possible because small-scale cultivation was at no disadvantage given the prevailing forms of agricultural tools and technologies of irrigation utilising wells or rain-water collected in the johad. In a rain deficient region like Punjab, water availability imposed constraints which the small cultivator could only overcome by complying with rules of sharing. Similarly, economies of scale in the joint residential site, or the abadi-deh, in the use of joint municipal services, in the common ponds or johads. and in the common long-fallow or the banjar kadim. were convincing reasons for co-operation. But it was scattering of the strips which enforced it. The following examples amplify.

First, economies in the costs of joint policing and municipal arrangements were considerable in times of political insecurity. This is borne out by Lawrence's description of the ditches and watch towers which were constructed around the abadi to prevent outsiders and especially commercial people from free-riding on the surrounding empty spaces,[93] as the disputes with traders and craftsmen in later chapters show. Even grazing land tended to be kept near the abadi so that the cattle could be jointly supervised. [94] Kessinger's study of Vilayatpur supports this.

Further economies in transaction costs were achieved by joint sharing of the costs of village servants. Collective bargaining kept these costs low, while the provision of residential sites to servants gave the proprietary body a measure of control. Servants were paid by a method of division known as a service cess, kamini bach. Capital was also economised by giving preference to those who contributed their own ploughs. Further, the kamins or village service groups, were a valuable source of "captive" labour in the early part of the century, when labour was scarce and land plentiful.[95] For instance, landowning members of village communities in Karnal formed cultivating partnerships or lana, where the shareholders contributed land, ploughs and their own labour. Village servants, like the Chamars were given full membership of the lana when they contributed labour (ji ka sajia) Such a shareholder was allowed to take a loan (sarir ka karza) on this share and became "bonded" labour till he paid off the debt.[96] At other times, when land was in great demand, these people provided tenants at high rents. Thus, the inconvenience of scattering became more bearable when collective action closed ranks and strengthened bargaining power to decide wages and rents in a closed market.

Likewise municipal arrangements on the abadi were organised with compulsory service procured from the kamins, who were given residential plots and payments from the common heap. Scavenging and the collection of household garbage was an important element of the village economy, as witnessed by the disputes to which it gave occasion and by the fact that the Government had to make rules regarding the village koora required by the Public Works Department).[97] Here again service groups were allowed a certain amount of liberty to collect garbage for use on their fields.

Second, the costs of policing and provisioning water from the johads made collective action imperative. Free-riding over flood water was very attractive and detection difficult in the dry tracts of Sirsa, Hissar, [98] and Ferozepur before the canals came into these areas. In Ferozepur, run off water was trained into specially kept fallow or uprahan johad and there were intricate rules of tilling to prevent any obstruction to this free run off. The water from these johads was led through suas or ducts to the fields. Again special rights to construct these channels belonged to the shareholders of the village. No tenant had the right to dig a new sua without permission from the proprietary body.[99] How important this was to the system can be judged from the disputes and litigation.[100] However, if an occupancy tenant relinquished part of the land he held for the collection of water in a johad, he was allotted "other land in exchange",[101] with the right of occupancy given under section 7 of the Punjab Tenancy Act. Settlement policy endorsed such practices. For example, Brandreth in Muktsar tehsil remarked: "it would be impossible to carry on cultivation without the drainage of the waste lands, and it was in the conviction of the truth of this circumstance that I left in every village a quantity of waste land equal to cultivation altogether unassessed."[102] On a much larger scale, such economies of joint policing of water was evidenced by the

complicated way in which flood water of the river Ghaggar was shared in Sirsa[103] among several villages, and the manner in which hill streams in Dera Ismail Khan were shared and managed in common.[104]

Third, and most important were the economies of grazing in the banjar kadim which could be realised only if the fallows were kept in compact blocks. Length of the fallow was key to the generation of benefits. It was usual therefore to find Gujars, who kept cattle more than the Jats in the Delhi district, allocating less land to cultivation than fallow.[105] Similarly, Rajputs, mainly cattle owners in the Nardak tract of Karnal district, kept as much as 60% of the land as pasture, (see table 3.1) Gujar villages in this area experienced high cattle mortality in the famine of 1869, because they had broken up more land than they could cultivate, thereby reducing the land available for pasture. On the other hand some of the finest cultivated villages in the centre of the Panipat Khadir tract had no grazing space.[106]

Table 3.1 Comparative Land-Use Patterns

	Karnal Nardak	Panipat Khadir
Total No. of Villages	63	74
Total area	152,085 acres	106,588 acres
Cultivated	27%	57.3%
Banjar Kadim	60.8%	29.7%
Barren	9.6%	7.6%
Abadi	2.6%	5.4%

Source: Compiled from Karnal SR, 1872-80

Additionally common lands yielded benefits which offset costs of joint transaction. For instance, in the Sirsa district much land was brought under the plough from the common waste after the Regular Settlement of 1840-41, rent from which was "more than double the land revenue assessment so that the net profit of the proprietors after deducting the demand of the State were in many cases very large."[107] Similarly,, at about the same time the Nardak villages in Karnal charged grazing fees from off the commons from outsiders.[108] Thus it was that the commons yielded rent from tenants cultivating common lands; produce of jungle and natural vegetation; and tax on non-land owning residents.[109] Against this income must be set charges arising out of the common expenses of the village for patwaris, lambardars. peons, harkaras etc., the school and road cess.

These services were substantial and could be expensive too. Getting the community to share the costs, provided additional inducements to co-operation. Once again the rents from tenants on the commons offset these costs. Customarily, the community could appoint and also evict the tenant on the common land, but such communal power was curtailed, as we shall see, by legislative intervention in the form of the Punjab Tenancy Act of 1868. What is more, disputes over occupancy rights on common lands show a significant source of conflict to have arisen from the community seeking to remove tenants from their commons before the tenancy rights ripened into occupancy.

Although tenancy was not limited to non-members of the proprietary body, they did not enjoy such concessions as were, for example, granted to proprietors in Gujrat into "cultivating culturable waste in their exclusive possession pay only half rates upon it."[110] In Ludhiana the proprietor "was liable only for payment of the rate fixed upon that land as waste, at the time of assessment. The proprietor cultivating common lands refunds the other co-sharers of the common, the amount they are bearing for the waste common land."[111]

Communal incomes seemed to rise as the common fallow was shortened. With short fallow becoming scarce, the possibility of enhancing rent on the common long fallow became tempting. Some districts like Ludhiana had almost reached saturation point in cultivation even at the time of the first settlement in 1850-53.[112] In Hoshiarpur there were court disputes regarding enhancement of rents on the commons.[113] Rents however, increased even where much new waste was brought under cultivation, as in the districts of Sirsa [114] and Hissar.

Replication of Communal tenure: Punjab:

The logic of economising transaction costs appealed to the official tax collecting machinery too. The State consequently free-rode on a pre-existing social order. Collecting tax from a self-organised body of cultivators was simple and cheap. This explains why official policy favoured re-iteration of communal tenure in the entire Punjab, even in tracts dissimilar to Delhi. People were thus brought together who were otherwise not related at all. In the settlements in the districts of Hissar and Sirsa, for example, where the settlers were kin, the village was settled with its complement of service groups on the pattern of the Delhi District. But in the Kangra unrelated groups in scattered hamlets were "lumped" together and settled within an area circled off from the others in what was referred to as taluqas. In both tracts the settlements "created" common lands and with it the village community as well.

Property rights patterns were intended to be stereo-typed in Greater Punjab, but in order to do see what actually occurred we need to follow the history of the two districts of Sirsa and Kangra, which were fairly representative of the dry zone and the montane. In Sirsa, apart from the standard procedures,[115] it became imperative for the Settlement Officer in the dry tracts to decide two of the most important issues related to the village commons : namely access to the commons, and the act of withdrawing product from them. In the first round the institutions of communal control were supported.

Access was granted to those "proprietors" recognised by the British as headmen. This could be arbitrary as in some cases the headmen were only representatives of the body of the cultivators and not superior to them. After some discussion the Government passed orders for the dry tracts declaring that from 1852-64 ordinary cultivators would " have no right to break up new land without the permission of those declared proprietors, with whom alone the right of allotting or breaking up the uncultivated prairie was thereafter to rest."[116] Preference was, however, shown to old residents over new comers and resident cultivators over outsiders. In case the cultivators of such land abandoned cultivation, it reverted to the proprietors who had discretion as to its future utilisation. Any profits generated by this cultivation went entirely to the owners.

In certain villages extensive land was still left for grazing after the first regular settlement of 1852-64, but the amount and allotment of village waste was fixed and movement onto the open waste was untenable. The matter was fraught with conflicts since it involved the rights of all those hitherto unrestricted in their movements by the availability of waste. This kind of limitation was particularly irksome because cultivators who had helped in founding the village - for example the occupancy tenants, who numbered 70% of total cultivators in the settlement of 1852-64, accounting for about two- thirds of the land in cultivation[117] - suddenly found themselves faced in a situation of inferiority with regard to use of the waste both outside and inside the village. Some of the disputes arising were decided by the settlement officers, but the proprietary rights conceded were in the nature of gifts rather than of right. In the absence of either rule or law for guidance, disputes taken to the Civil Courts were decided almost as arbitrarily as those by the settlement officers.

Again the revenue payers were supported. To offset the advantages given to the proprietors in the waste, they were also charged grazing fees along with the tenants on the common pasture land. Exemption was given to the plough cattle and a proportion of milch cattle per plough. Since cultivation was in any case assessed for revenue, the grazing land for plough cattle was kept free and thus double taxation avoided. All other cattle were assessed to a grazing fee, arrangements for which varied. In some villages, where uncultivated land was limited, the non-resident and non-cultivator paid the grazing fee, while the resident cultivator shared any contingency fines imposed.[118] At the same time there were villages where no grazing fee was charged.

In the montane district of Kangra there existed at the time of its settlement two "separate properties in the soil"[119]. First and paramount was the right of the State to a certain share in the gross produce; second was the hereditary claim of the cultivator to the rest of the produce. Therefore, argued Barnes, the extensive wastes and forests could be considered the undivided property of the British Government because it had belonged to the king, *but "even here there were subordinate tenures"}*[20]

Village administration papers showed the waste as "common land of the village",[121] as shamilat-deh. The question of proprietary rights in the wastes was decided by the Government in 1863, the Commissioner of the Division, Major Lake, recommending that within the large circuits[122] or mauzas several hamlets should be clearly demarcated. This was necessary, he contended, because the entire waste of the circuits or mauzas was considered

as the common waste, and since the hamlets were set apart from each other it caused a lot of hardship at the time of the sale of land.

In his settlement of 1865-72 Lyall demarcated the hamlets within the mauzas. Where the hamlets were large and compact, each formed by itself a tika; in the opposite case several were clubbed together into one area. Thus each mauza or village or circuit was sub-divided into tikas. Large blocks were demarcated separately under the name of chak shamilat deŭ that is, blocks which were the common property of the village. If several hamlets laid claim to "small blocks of valuable waste ... which they did not care to divide, the wastes were declared the common property of two or more hamlets".[123]

There were in the four parganas of Kangra 5,688 tikas demarcated. But only 5,512 were true hamlets or separate estates and 176 were blocks of waste and forest reserved as common property of the entire circuit or mauza.[124]

The common lands and forests of 607 hamlets were shared by the entire circuit or the mauza.[125] The other hamlets had their own common lands but the forest right of the State continued, as did, so long as the land was not cultivated, the right of pasture belonging by "ancient custom" to neighbouring hamlets.

The Kangra district had 582 mauzas with 898,504 acres of unoccupied waste. Of this, common lands belonging to entire mauzas amounted to 392,437 acres. The rest of the uncultivated area, totalling 506,067 acres, was divided among the tikas or the cluster of hamlets.[126] Apart from this division of the waste among the tikas and hamlets,village proprietors continued with the practice of reserving to themselves patches of grass known as kharetars, similar almost to the khiras of Hissar and the posals of Multan. These were not "owned" in any formal sense of the term, but were more in the nature of user rights in the waste.

Tenures in Kangra were designed to follow the classification used in the plains. Seven percent of the hamlets were owned by several families holding in common or by one man where it constituted a zamindari tenure of the plains. Another 27% of the hamlets were owned by bodies of unrelated individuals holding part on ancestral or customary shares, their right to the undivided commons being proportional to the revenue paid by each landholder of the total revenue. The remaining two-thirds of the hamlets paid according to actual possession or bhaiachara.[127]

The share in the common lands which was so central to tenures in the villages of the plains was defined in the hills on very similar lines: for example, shares in the common lands were given to those who had (i) bought land from the villages which paid revenue, (ii) broken up waste nau tor since the first settlement (existing where such land was excluded from the new rating (bach) of the revenue). Similarly, some landholders were specifically excluded from a share in the shamilat.[128]

The Impact -

A standardisation process was initiated, and the stress on the communal image caused an official reversal of the individualisation of property stimulated elsewhere in British India and the Punjab by the Sikh revenue system earlier. Yet the impact of revenue settlements varied.

In the dry zones, where no barriers to shifting cultivation existed, official intervention ushered in a change in the land-use pattern, in the process leading to a crystallisation of rights which had been in a fluid state earlier. These rights were acquired by a body of cultivators, as against individuals earlier. So also proprietors gained control not only over the land they themselves cultivated, but also over what was *not* cultivated in the village as a whole. However this tenure was at best pseudo-communal. The customary relationships within them could not be recreated, nor could there be established a tradition of reciprocity in transactions with others who complemented the economic and social activities of the village. Hence, lie principle of joint revenue responsibility in the dry tracts deprived a whole body of cultivators of access to a "customary usage" of shifting cultivation in the waste. Non-members of the proprietary body had to pay for both cultivating the long fallow, baniar kadinu and for the use of grazing waste; alternatively they had to obtain permission from the maliks. Neither of the two classes could have built up institutions of communal governance.

In the montane districts tenurial pattern were aligned to those in the plains. But the conditions not being the same, the attitude towards the shamilat was bound to differ. Certain groups may have gained out of it, others did not. This was also true of the mauzas created in a totally different environment - Multan and the Derajat Division of Western Punjab. Here the whole of the cultivated and the whole or greater part of the waste land was

divided into separate ring fence estates, and the only bonds of union" were the common village officers and the mutual liability for the revenue to be paid in some instances on the waste held in common. *The commons could not create a community.*

On the other hand, the settlement policy enabled one class of cultivators - the occupancy tenants - to "share" in the shamilat rights. Though limited, these rights were secured to occupancy tenants on a permanent footing in the village by the Punjab Tenancy Act of 1868,[129] *before* either the land tenure was put on a legal footing by the Punjab Land Revenue Act of 1871,[130] or the effective enforcement of this statute by the Punjab Laws Act of 1872.[131] Both these features emerged in Hissar and Sirsa.

Despite the intention to establish the village community, the British could not ignore a second line of right holders set up by the Sikhs as "revenue paying" cultivators. The British either created or confirmed, depending on the prior situation, a second rung of proprietors - the malik makbuza; that is, owners of land *without* rights to the common.[132] The settlements did not succeed in giving them more than simply a "legal" status. In effect, the malik makbuza [133] could not acquire the superior rights of the proprietary body or a share in the common lands of the village. But the seeds of rift were sown.

In the older established areas communal control over land-use and the village commons continued to be unaffected because of institutional safeguards within self-governing systems of communal control. Kanjhawala is a case in point. The main families here maintained a united front despite lack of blood-ties through their strong tribal control over decision making. Operationally they divided the long fallow among the major groups and reduced day to day friction, thereby minimising costs of transacting among themselves. At the same time they kept up their jointness with symbolic control over the common lands, not only of Kanjhawala, but of the entire Bisagama cluster. Thus the founder family, Udiyan Pana, separated some of the long fallows in its private control as shamilat pana, and from the other three main land owning families the Harshe Pana, which also kept some long fallow in common for their own restricted use. This could have caused disunity and increased the transaction costs of dealing with the Revenue Department and service groups within the village. Hence, the whole cluster opted to keep in common some of the long fallow without partition, this serving as a rallying point for the village - the shamilat deh. Thus they continued on the commons [134] for almost two centuries until a national State intervened in the 1970s.

NOTES

Part II

Chapter 3

1. For Norway see Audun Sandberg, "Entrenchment of State Property Rights to Northern forests, Berries and Pastures," draft of a paper to appear in the series MLOS i NORD-NORGE". For England see, Elizabeth Cox Wright, Common Law in Thirteenth Century Royal Forests, (University of Philadelphia, 1928).
2. M.M. Kaye, The Golden Calm (Exeter : Webb and Bower, 1980).
3- Delhi SR 1846. Sel. Rep. 2, under Regulation IX of 1833, Delhi Territory. (Henceforth Delhi SR 1846)
4. Thomason : "Although land appears to be of small value and so abundant that it might be supposed little the object of desire, there have been numerous petitions presented to me claiming the possession of certain lands or the exercise of certain rights of which the petitioners are debarred", 1851-52, quoted in Sirsa SR. 1833 : 324.
5. Batten's Report in Garhwal SR. 1856-64. : 49.
6. Sel. GOI. Home, 1-5, 1849-50 & 1850-51 : 3.
7. Kangra SR. 1849-52 : 19.
8. Ibid. Also for Section 8 of Regulation VII of 1822.
9. H.S. Maine, Village Communities in the East and West. (London : John Murray, 1881, 4th Edition): 122. (Henceforward, Maine, Village Communities)
10. B.H. Baden Powell, The Land Systems in British India,II (Oxford : Clarendon Press, 1892) : 546 (Henceforward, Baden Powell, Land Systems. II (1892); also_____, Land Revenue and Tenure in British India. (Oxford : Clarendon Press, 1907, 2nd edition) : 58; also_____, A Manual of Jurisprudence for Forest Officers. 1882.
11. Baden Powell, Land Systems II, (1892): 544, foot note.
12. Ibid : 54.
13. Jamabandi Kanjhawala, 1838; also The Secy.Territorial Dept. GOI. Rep. Vaughn, Collector of Delhi, Sett, of Mauzas Palata, Irradatnagar, Kasba Bawana, Kanjhawla and Ladpur, 19/4/1827; Press List, L Delhi Residency and Agency 1800-1857.
14. The history of the villages were recorded in a document written in black ink on cloth called the Shajra Nasb or literally "the map of the fate" of the village. This document records the origins of Kanjhawala from a grant made by Akbar to Kajju Singh, the founder of the village.
15. Fortescue's Rep. 1820: 74, para 13.
16. Rohtak SK 1873-79 : 28; also Ibbetson's description of Karnal says the boundaries of villages zig-zagged even as late as 1880, among the fields and the cattle grazing without any restrictions across the boundaries of the villages, Karnal SR. 1872-80.
17. Fortescue's Rep. 1820 : 75, 129; also Maine, Village Communities : 18.
18. W.B. Martin, Resident and Chief Commissioner, 9/2/1832, to W.H. Macnaughten, Secy, to Gov. Gen. Land Rev. Progs. 2-5 A, March 1832.
19. Delhi SR. 1846 : 18,38.
20. Ibid; also Sel. Public Correspondence NWP. I, 1845 : 39.
21. Ibid.

22. Delhi SR. 1846 : 38.
23. Delhi Gaz. 1881-84 : 74.
24. Karnal SR. 1845 : 39.
25. Delhi SR. 1838 : 8, 36.
26. Ludhiana SR. 1878-83.: 57.
27. Shahpur SR. 1866 : 83.
28. Karnal SR. 1845 : 36.
29. Karnal-Ambala SR. 1891 : 72.
30. Ibid.
31. Ibid: 73.
32. Ibid: 74.
33. M.C. Pradhan, The Political System of the Jats of Northern India (Bombay : OUP, 1966).
34. Sett. Man. 1899:21.
35. SirsaSR. 1882:332.
36. Ibid.
37. Punjab Census. 1881 : 97.
38. Hissar Gaz. 1904 : 261.
39. Sirsa SR. 1882 : 52.
40. Ibid.
41. Kangra SR. 1865-72; also in the introduction Karnal SR. 1872-80 : 1.
42. Kangra SR. 1865-72 : 19.
43. Ibid: 16.
44. Kangra SR. 1865-72 : 29.
45. Edmonstone's letter 2554 of 9/11/1853, Para 12 "It may be encouraging to the local officers to know that in the Simla Hills this revolution has within the last year or two actually effected ... and joint responsibility fully recognised and established." Jhang SR. 1860.
46. Board of Administration's Circular 15, 1852, Rev.Departt. 1849-53, Manual for Arboriculture. 1905 : para 3.
47. Fortescue's Rep. 1820 : 74.
48. "Village Communities seem to last where nothing else lasts..." Charles Metcalfe, 1830, quoted in Rohtak SR, 1873-79 ; 11.
49. "Every sharer has inherited his patrimony in a qualified manner, and has had no power over it hurtful or contrary to the will of his neighbour or the community." Fortescue's Rep. 1820 : 129.
50. Ibid: 74.
51. W.B. Martin, Resident and Chief Commissioner, Delhi, 9/2/1832 to W.H. Macnaughten, Secy to Gov.Gen. Land Rev. Progs. 2-5 A, March 1832.
52. Delhi SR.1846 : 38.
53. W.B. Martin, Resident & Chief Comm., Delhi, 9/2/1832 to W.H. Macnaughten, Secy, to Gov.Gen. Land Rev. Progs. 2-5 A, March 1832 : para 4.
54. Sett. Man. 1899 : 227.
55. Ibid.
56. Delhi SR. 1846 : 66.
57. Ibid.
58. Baden Powell, Land Systems. I, (Delhi: Oriental Publishers, 1974): 146. see also Kessinger, Vilayatpur (1974): 74.
59. Ibid.
60. In Bairampur, dist Hoshiarpur "plough shares" were used to partition the shamilat in 1884 & in 1894-95, PBEI, Survey : Bairampur. 1922.
61. Baden Powell, Land Systems. 1: 146.

62. Karnal SR. 1845 : 44.
63. HissarGaz. 1915 : 198.
64. Ibid.
65. Ibid.
66. Ibid : para 250.
67. Ibid.
68. Ibid.
69. Ibid.
70. Ibid.
71. Lahore SR. 1865-69 : *66;* also Fortescue's Rep. 1820 : 74; Boserup (1965): 77.
72. Jamabandi Records, Misl Haqiyat Mauza Kanjhawla, Bundobast 1880.
73. "Panna Marna means to cast a lot a relic of the old custom of re-distribution of the land so common in the Aryan Communities." Karnal SR. 1872-80 : Chapter VII.
74. P.J. Fagan's note in Hoshiarpur Gaz. 1904 : 169-170.
75. Fortescue's Report. 1820 : 75.
76. Lahore SR. 1865-69 : *66.*
77. One Bigha = *49 1/2* square yards, Fortescue's Report. 1820 : 75.
78. Ibid: 129.
79. Karnal SR. 1872-80 : Ibbetson's Footnote, Chapter VII.
80. Karnal SR. 1845 : 44.
81. "In Hoshiarpur, villages on the Sutlej and the Beas held the land on the mana darya that is immediately adjoining the river bed, in a tenure akin to collective ownership"; Fagan attributed this joint tenure "to frequent changes in the quality and situation of land ensuing in the capricious action of a shifting river." PJ. Fagan, Hoshiarpur Gaz. 1904 : 171; See also about pana palat in Gurgaon SR. 1872-83 : 89; also the system of plot exchange in Gubbins' report of Kaunla village in Delhi, Karnal SR. 1845 : 44.
82. Delhi SR. 1872-80 : 233.
83. Ibid.
84. Gurgaon SR. 1872-83 : 89.
85. Karnal SR. 1845 : 44.
86. The Board of Revenue noted in 1841 "that in the villages of Delhi Proper, ... that some parts of the land are common fields, divided anew among the people year by year, and of which the shape and size are liable to continual changes." Ibbetson added that "wind effervescence and uncertainty of yield was one of the causes of re-distribution", Karnal SR. 1872-80 ; footnote, Chapter VII.
87. Gurgaon SR. 1872-83 : 89.
88. Ibid.
89. Karnal SR. 1872-80 : 97.
90. Ibid: 259.
91. Ludhiana SR. 1853 : 57; also Ludhiana SR. 1884.
92. Hoshiarpur Gaz. 1904 : 170.
93. Delhi SR. 1846 : 29.
94. Delhi SR. 1846 : 29.
95. PBEI, Survey : Giihi. 1925 :16.
96. Karnal SR. 1872-80: 112.
97. Land Revenue CO. B, 27/2/1852, F.C. Circular Orders, I, 1853.
98. Sirsa SR. 1900-04 : 9; Hissar SR. 1912 : 38.
99. Ibid.
100. Ibid.
101. Sirsa SR. 1879-83 : 369.
102. Ferozepur SR. 1876 : 9; also PBEI, Survey : Giihi. 1925 : 16.

103. Ibid: 405.
104. Dera Ismail Khan SR. 1872-79.
105. Delhi SR. 1846 : 18.
106. Karnal SR. 1872-80 : 292.
107. Sirsa SR. 1879-83 : 352.
108. Karnal SR. 1845 : 55.
109. Ludhiana SR. 1853 : 67.
110. Gujrat SR. 1861 : 122.
111. Ludhiana SR. 1853 : 75.
112. Ibid: 57.
113. Hoshiarpur SR. 1879-84 : 24.
114. Sirsa SR. 1879-83 : 352.
115. Professional revenue survey, Sirsa, 1840-41; Regular Settlement, 1852-64 and finally the waste demarcated in 1875-76.
116. Sirsa SR. 1879-83: 331.
117. Ibid: 336.
118. Ibid: 331.
119. Kangra SR. 1849-53 : 18.
120. Ibid : 19.
121. Karnal SR. 1872-80 : 1.
122. Kangra SR. 1865-72 : 215.
123. Ibid.
124. Ibid : 217.
125. Kangra SR. 1872-80 : 217.
126. Ibid.
127. Ibid : 230.
128. Ibid.
129. "The tenant-right controversy which arose from Mr Prinsep's settlements led to the passing of the first Punjab Tenancy Act XXVIII of 1868." Sett. Man. 1899 : 99.
130. E.G. Bayley, Secy to GOI, "The Act has now become law", Home Judicial, Progs. 181 B, April 1872, KW to the Progs.
131. Ibid.
132. Sett. Man. 1899 : 65.
133. "This tenure was known in the Punjab as malik kabza or milkiyat makbuza in (Rawalpindi, Gujrat, Jhelum and Hazara)," Sett. Man. 1899 : 65.
134. Jamabandi. Mauza Kanjhawala, Bundobast 1838-42.

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Part II

Chapter 4

INSTITUTIONS AND THE COMMONS

As official perception was shaping the rights to natural resources in the final frontier of the British Raj, a debate simultaneously emerged over the "state of law" in India. Punjab, where the situation had been in a state of constant flux, came under special scrutiny. The district official there performed both judicial and executive functions, and this gave him considerable power to interpret and amend the indigenous customary institutions of a rural society. Such flexibility and variability between districts could not be long tolerated by a system of indirect rule which sought certainty in uniformity; and so was enacted the formal institution of the Punjab Land Revenue Act in 1871.

This statute enabled the State to modify rights to landed property and served to contradict the initial impetus given to joint communal holdings in multiple resources both within and outside the village. Such alteration also resulted from State investment in public works like railways, roads, and canals requiring land over which there belonged prior customary rights. At the same time formal institutions accelerated up the changes already introduced by revenue settlements. It is to these that we now turn. The process of law finalised the boundaries of both the regional commons and the shamilat-deh; then pushed the frontiers of cultivation towards a shortening of land fallows; and finally, facilitated the partition and privatisation of the village commons.

Formalising Boundaries

The legal powers of the imperial State came into full play when section 27 of the Punjab Land Revenue Act of 1871[1] was amended in 1887 by section 42. Revenue payers were specifically given the "adjoining waste" if it had been so declared in the record of rights *before* November 1, 1871; if not, the Government automatically had a right to the adjoining waste. Additionally the Act continued the provision of Section 8 of Regulation VII of 1822 to the effect that: "if waste had been granted in excess of requirements then the portion may be marked off and separately assessed."[2] Thus the official hesitancy which characterised the take-over of large areas before 1871 became a deliberate policy to preclude the use of extensive waste by the villages adjoining such areas. A timber-seeking Forest Department exacerbated the effect of these measures, declaring forests out of reach for parts or whole of a year, and prohibiting certain uses.[3] Thus long fallows in the forest, and in the extensive wastes and riverain grazing, low-lying river banks, (bets) and marshes, (chhambs) were all cut down in a rough and ready manner. The policy overlooked, thereby, the special requirements of entire regions and of villages which complemented each other.

Increasingly the letter of the law was followed, making any adjustment of boundaries to suit local diversity more and more difficult. Previously boundary disputes were judicable (as in 1869), [4] and appeal against unacceptable boundaries possible, even if court decisions were not always favourable[5] nor prompt. The amended Land Revenue Act XVII of 1887 declared that *"No Civil Court has the jurisdiction to hear any suit regarding the formation of an estate' out of the waste land",*[6] and by section 42 no appeal was allowed if the waste of a village was taken away to establish a new revenue estate or mahal. [7] Nevertheless boundary disputes were not prevented. In predominantly pastoral districts the "open access" grazing runs could not be artificially delimited,[8] while in districts like Lahore the manner in which the wastes were bounded rendered them in reality much larger than was officially recorded. This triggered off another set of disputes.[9]

Legal boundaries did greater damage. They disrupted customary reciprocal arrangements which had internalised rights to the grazing waste on the erstwhile "open access" regional commons. Unless these rights were specifically mentioned and awarded, one village could not graze its animals in that of the other. This pressed hard, since the extent of wasteland included within the boundaries of different villages had no necessary connection with the quality of the land. There were many villages with only small amounts of rich lands, "cultivation of which

depended on the manure obtained from the large herds of cattle, but in the absence of sufficient grazing lands belonging to the village, these must necessarily be fed, as they have been from time immemorial, on grazing lands included within the boundaries of other villages."[10] Such villages were deprived of manure. At the same time, several "breeder" villages were ruined when boundaries caused the long distance grazing runs to be out of bounds. Where the village common lands did not suffice, the herders were forced to give up their avocation. This happened in Muktsar[11] after the settlements. And it occurred again during famines, when major cattle breeding areas like Hissar had to give up cattle-breeding temporarily.[12]

Legal remedies had to be provided by the Government when grazing disputes erupted both before and after 1871 in predominantly pastoral areas like the sub-montane and the arid zones. In Hazara, for example,the Court had to give grazing privileges to non-residents of villages in some of the tehsils. Thus the right to cut grass on the sarrai hill lands by a decree dated 11th October 1858 was given to the residents of another village, Hater, and this clause was inserted in the wajib-ul-arz of village Shadi Ilaqa Khanpur.[13] Other villages in the tehsils of Abbottabad and Manshera were also made to insert clauses in the wajib-ul-arz allowing various user rights to grass, wood, and grazing.

Table 4.1 The Courts and Grazing Customs
Hazara District

Tehsil	Villages in which non-residents have privileges.	Villages to the occupants of which privileges belong.	Description of these privileges.
Haripur	Shadi Ilaqa Khanpur	Hater	The right to cut grass on the sarrai hill land Decree dated 11 Oct. 1858
Abbotta-bad	Gorakki, Bihakki, Nilor & Bhat in Ilaqa KachL	Makkhan	The right to cut grass-decrees dated 28th Oct. 26th Oct 1859.
	Nilor, Gorakki Bhat & Loharian in Ilaqa Kachi	Dobandi	
Abbotta-bad	Khanda Khir, in Ilaqa Sherwan	Hal	Right to graze & cut grass-Decree 14th August 1873.
Abbotta-bad	Gali Bamani, Chitri, Baddan Bandi, Mausur, Khatwal, Maira in Ilaqa Nawashahr	Nawashahr	The right to cut wood Dated 9th Oct. 1860.
	Manshera Timarkhola in ilaqa Bhairkund	Mair Mukkarraf Shah	Right to graze cattle & cut grass except when the rakhs are closed 2nd Sept 1871.

Source: Hazara SR. 1868-74 : 133.

A law applied uniformly to all situations and places frequently caused land-use practices to be at variance with local conditions and much less to responsive to regional contingencies. The area of waste allotted to each village was in proportion to the land actually cultivated, regardless of numbers of cattle possessed. Similarly, the pastoral nomad was expected to settle down to sedentary agriculture - as in Sirsa; while in the Kangra hills they were reduced to dependency upon the long fallows (banjar kadim). the commons of sedentary cultivators of settled villages and the "open access" parts of State forests.

Co-incidentally as the open waste *outside* the village shrunk, the revenue department adopted a more restrictive policy towards the quantity of waste allowed *inside* the revenue estate or mauza. In Sirsa, for example, the early policy had been to grant large quantities of waste to each village as the cattle population was also large. Additionally, fiscal concessions were provided to compensate for shortage of pasture in predominantly cattle breeding districts like Hissar. Here, for instance, the settlement of 1863 had provided for the exemption of a quarter of the *total* area of each village from assessment, to provide pasturage for cattle required for agricultural purposes. Where this was not sufficient waste, the deficiency was made up by allowing a portion of the cultivated area to remain free of assessment. To illustrate : if a village had a total of 100 acres, then 25 acres was assessment-free for pasturage. If, however, the village cultivated 90 acres the area available for pasture was

reduced by 15 acres, and this area was made assessment-free even if cultivated. In effect 25 acres remained assessment-free for pasturage. Clearly an inducement to extend cultivation was provided.

Such fiscal incentives were extended as both cultivated and uncultivated land became more valuable and revenue earnings from cultivated land took precedence over pasture. As a consequence, the settlement of 1895-1902-03 allowed only so much of the waste in Hissar to remain unassessed as was equal to one-fourth of the *cultivation*, and where the waste was less than this area, the difference was *not* made up from cultivation. The rate on waste was raised, especially on excess fallow above a quarter of the cultivated area. A distinction was also made between villages with proportionately larger cultivation and those with large areas kept fallow. Thus if villages "kept the whole or a large portion of the village area"[14] devoted to pasture the assessment on the entire waste area was half net assets or the revenue rate applied to cultivation. In other words, a lower rate was effectively charged on waste in the villages with larger cultivation. This was a means of preventing villages making profits on cattle by keeping large areas of waste for pasturage. In effect, if more land was kept fallow than was officially considered necessary for plough cattle the rate of tax on the fallow was the same as on cultivated land; i.e. the half-net asset principle (explained in the next section) was applied to profits from pastoral use of waste.

Such revenue-seeking strategies ultimately hinged upon the demographic factor. Creation of new villages by itself did not bring an increase in revenue, especially in those areas where population was scarce relative to the land, or when there was low demand for the products of the waste. Large scale expansion was feasible only when population density reached a particular level. Before this happened, however, two developments made the waste "covered with scrub fit for firewood, ... as valuable as cultivated land":[15] one was the demand of the railways for firewood and wooden sleepers; [16] the other was a series of canals built in the last decades of the nineteenth century which extended the scope for cultivated land even further.

Canals, commons and "free riding"

Demarcation of villages reached a climax in the last decade of the nineteenth century. The pressure built up in the Cis-Sutlej with the re-alignment of old canals (Jumna Canal in 1883); construction of new ones (Sirhind Canal 1887) in the last two decades of the nineteenth century; followed by the great canal era of Central Punjab. [17] Both sedentary agriculturists and the pastoralists were forced as a consequence to confine their grazing runs to the common lands of the village, and this meant concentration in all the seasons on the shamilat grazing.[18]

The response to such a situation was a shortening of fallows all round. Jhang cultivated fodder, since irrigation enabled double cropping [19]; Muktsar began to grow more food and cash crops on irrigated land and to keep less cattle; others changed the composition of herds, as in Karnal, Hissar and Ferozepur districts. [20] The trend was more dramatic in Western Punjab, which had been drier and more widely pastoral than the Cis-Sutlej districts. The Chenab Canal Colony (the Jhang and Gugera Branches) commanded 1.5 million acres in the two vast camel breeding tracts of Jhang and Montgomery. Nomadic graziers and Biloch Sawars lived here.[21] These tribes roamed over the land which was now (1895-98) fertilized by the Chenab Canal. Cultivation was extended. Therefore the time was considered ripe by the Punjab Government to give these nomadic graziers "grants of land on service conditions under which the Government would obtain fit camels and fit 'sawars'."[22]

The Government needed camels for the army, and the land grants hence served a strategic purpose.[23] Official attitudes revealed no generosity to the graziers. Thorburn, otherwise sympathetic to the Mussalman debtor in Western Punjab, thought it "unnecessary" to grant "large holdings" since the graziers were only "third rate cultivators".[24] What is more, if they failed to maintain the "stipulated number of camels" even these limited grazing grants were to be withdrawn.[25] Restricted grazing was only part of the grazier's problems. He had to battle with limitations of forage species. In the canal colonies only lana was available, whereas camels required a variety of forage plants in different seasons. This they could obtain only on the open access grazing of the regional commons from which they were excluded once the boundaries of the "canal colonies" were established.

In another area commanded by the Jhang and Bawana Branches of the Chenab Canal in the Rechna Doab, 41 villages wholly and 15 villages partly, with an aggregate of 70,811 acres,[26] were leased to ex-nomads of the Bar. These janglis,"people of the jungle" as they were called in the settlement report, wish for their old ruhnas

or encamping grounds, but were forced to accept the villages allocated to them, as it was the British policy not "to mix them up with settlers from other districts." [27]

Although the nomads found it extremely difficult to adjust to the villages granted to them, it was the colonizing officer's expectation that sooner or later they would adapt to the new circumstances, following the example of the prosperity that cultivation brought to the erstwhile "destitute" immigrants from other parts of Punjab.[28] It was also hoped by the officer that the nomads would abandon their hostility and come to terms with the colonisation officer when they realised immigrant cultivators had come to stay permanently in the canal colonies.[29]

Common lands were apportioned in the canal colony villages. About 20% of the total area of the village was retained for grazing purposes by the orders of the Government. The colonist peasant had however, only user rights to graze cattle in this unallotted common lands. But since the settlers were allowed to exchange their allotted killas (squares) with the unallotted land, all the best land was "gradually appropriated for cultivation whilst that which was inferior as to soil, or difficult to command", became the "common grazing ground of the village."[30] Thus although it was expected that the grazing ground would be low lying and at the tail of village water-courses, on to which surplus water might run, in reality this was found to be impracticable and there never was any surplus water in the colony. [31]

Even, then, where common lands were apportioned, to the villages and were not allowed to be partitioned, as in the above example of the Chenab Canal Colony, only the worst quality land remained for grazing in the canal irrigated area as early as 1897, soon after the colony was set up.[32] Grass cover on the common lands all over the Punjab deteriorated as pressure on them grew; famines exacerbated the situation. [33] Suddenly, too, vegetation types characteristic of open grazing grounds like anian and dhaman disappeared. [34] These were noted by the Famine Reports of the 1880s and investigations of single villages by the Punjab Board of Economic Inquiry in the first three decades of the twentieth century.[35]

Village boundaries could create valuable property by excluding those who had no recorded rights in them, such as the nomad. Such policing of rights within a revenue estate was useful against only private citizens. It did not prevent the Government free-riding. Two examples illustrate this. First, if valuable minerals or kunkur were discovered in the common waste of the village, the Government had a right, by Regulation I of 1824, to temporarily acquire the land and excavate the mineral for road-building. Timber from the waste leased to individuals could likewise be reserved by the Government for the railways,[36] as we shall see in chapter 5. Common forests too could be reserved by the Forest Department.

Secondly, in the face of Government demands the demarcation of villages was not ultimately sacrosanct. For example, in Tucker's Settlement of the Dera Ismail District in 1872-79, almost two million acres of land were given "in property right" to the villages as grazing grounds in the Sind Sagar Doab, where pastoralists and vast herds "picked up a scanty sustenance on the waste." [37] These rights were similar to those given in other districts when the villages were demarcated. However in this district the area was large and the revenue paid for grazing was Rs.24,677 a year.[38] So long as there was no possibility of extending cultivation this was the most the Government could raise from the waste, but when the prospect of building a canal arose, the possibilities of setting up colonies and obtaining revenue on cultivated land became bright. The construction of a canal from the Indus required some 1.5 million acres of land. Although the Government could obtain such land under the Land Acquisition Act of 1894, this would have entailed payment of compensation.[39] Furthermore, the landholders concerned were reluctant to give up pastoral pursuits and concentrate solely upon agriculture.[40]

Such a situation induced "free-riding" by the Government as it sought to re-acquire the common lands of the villages of Sind Sagar Doab, which the settlement operations had demarcated in the Thai waste lands. To this end the Punjab Government introduced a legal fiction, viz, "the will of the majority", to support its acquisition policy. Additionally, it endeavoured to obtain statutory assent from the Government of India in two stages. In late 1897, to prepare the pastoralists for change, the district was placed under a process of re-assessment. [41] Then in 1898 the Government of Punjab drafted a Bill proposing to acquire "by agreement, of waste lands in the Sind Sagar Doab." [42] In clause 8 it was stated that, "in the case of common land i.e. land which is generally known as shamilat deh, shamilat patti or shamilat tarafc the will of a majority of two-thirds of the sharers, having regard to

the value of their shares, shall suffice to validate agreements relating to the whole of such common land."[43] By this measure the Government ensured that its appropriation of the waste would be "effective against a dissenting minority," [44] and pre-empted the authority of the malikan-deh to seek consensus among its members.

Formal Institutions of Land Revenue

Official perception tended to overlook any uses of the land besides arable. Partly this reflected a desire to ensure continuity of food supply, especially pressing in the aftermath of the terrible Punjab famines of the 1860s. But it reflected also, the fact that revenue payments were directly proportional to the area cultivated. Not surprisingly, therefore, there existed an almost official collusion between fiat, fiscal measures, and public works to push forward frontiers of cultivation into the waste, in the process collecting the surplus from agriculture. The commons were a natural target. As canals provided irrigation for extending cultivation, the Punjab Land Revenue Acts of 1871 and 1887 enabled the Revenue Department to collect more in taxes. There was thus initiated a symbiotic process involving, first, shortening of fallows all round, with extension of cultivation into the open access regional commons and a more intensive use of the long fallows held in common within villages; and second, the partition and privatisation of remaining commons, thereby altering the pattern of land rights.

Fiat and Fiscal Policy -

It was declared in the preamble to the First Punjab Land Revenue Act XXXIII of 1871 that "the Government of India is by law entitled to a proportion of the produce of the land of the Punjab to be from time to time fixed by itself."[45] Government assessments had to take into account not gross but the net produce. Land revenue was thus, according to C.L.Tupper in 1882, "not based, as it is in other parts of India upon an ascertained rental," but rather "upon a consolidation of the productive powers of the soil, of the value of gross produce, of the habits and character of the people, the proximity of marts, facilities of communication, the evidence of past assessments, the existence of profits from grazing and the like."[46] By an amendment of 1887, the Revenue Department was permitted to use the half net asset principle and recover the increase in the rental value of the land consequent to the differential impact of canal irrigation on the several kinds of soil.[47]

The "half net asset" standard was difficult to determine across the board for the entire Province, so the question of the Government's share had to be "settled separately for each tract and estate under assessment."[48] By adopting such a procedure the Revenue Department was able to re-assess districts, a major advantage whenever an extension of canal irrigation or a rise in product prices created the possibility of increasing revenue. This happened for most of the dry districts in the last quarter of the nineteenth century. For example, Sirsa [49] district had a large amount of waste in 1852-64, a significant portion of which was subsequently broken up in the villages and rented out to tenants. These tenants paid cash rents which were more than double of the assessment rates; "the net profit of the proprietors was large, and increasing both with the increase of cultivation and with the rise of rents."[50] Consequently profits from rising rents and grazing in the uncultivated land were in many villages much more than "double the land revenue assessment. "[51]

Similarly, during the 1880s the Lower Chenab and Lower Jhelum Canals transformed cultivation in Jhang's erstwhile dry areas. Irrigation made possible multiple cropping and an extension of the cultivated area. The result was a growth in production not simply of food but of fodder crops, partly disguised by the fact that many fodder crops were classified under the heading of "miscellaneous" as the Settlement Commissioner noticed.[52] (see table 4.2) As a share of the total output of matured crops, the value of fodder increased by 21% between 1896 and 1904. [53] These trends reflected the large net income from cattle, estimated at Rs.5.5 lakhs in 1906.[54]

Table 4.2 Changes in Crop Pattern : Jhang
(in acres)

Cropped Area	1896	1904	Change
Total area	326,374	349,505	+ 23,131
Wheat	176,550	161,460	-15,090
Cotton	28,250	12,652	- 15,598
China (Fodder)			+ 8,000
Area under Miscellaneous crops.			+ 18,000

Source: Rev. & Agri. Progs. 20 A, Sept. 1909 : para 4.

In yet another pastoral area - Ferozepur - the crop pattern responded differently to irrigation. Cultivation rose by more than 225,000 acres in the same period and although the increase was not uniform in the tehsils of Moga (22%), Ferozepur (53%) and Zira (43%), nevertheless there was a tendency for fodder crops to be replaced by cotton and stall-feeding of the cattle. Hissar showed a similar pattern.

Tapping the fallows-

Every time there occurred a change in the conditions affecting cultivation, like canal irrigation, there was a move towards the shortening of fallows. This in turn created possibilities for the Government to gain increased revenue by means of the "half-net assets" principle. Colonial revenue expectations thus rose with the decline of the common long fallows.

This connection was not lost upon a Revenue Department keenly conscious of the rising revenue losses from large fallows. The Punjab Government saw the prospect of making the village waste, or shamilat-deru "pay" for its continued existence. Hence the Revenue Department re-examined first the *quantum* of cultivable long fallow allowed in the village as banjar kadim and then the *revenue rate* on the common long fallows itself. As we have seen, the Government increasingly questioned the wisdom of its earlier policy of "liberally"[55] providing waste lands, specially for the plough cattle, in several pastoral districts. Thus, in the Settlement of 1866-67 in Gujrat, Prinsep as Settlement Commissioner had allowed waste amounting to between three and six times the cultivated area in the village. Further, it appeared to the Government that the waste was only lightly taxed, or even exempted from payment of revenue - as in the Hissar district, which raised some of the best cattle in the country.[56] The Government realised that such policies encouraged livestock breeders to take advantage of both large areas of fallow and low rates of assessment on them. In pastoral villages there was a tendency to keep large areas fallow, as for example in the Bar villages of Gujranwala, while in villages where cultivation was more profitable, like Hissar, farmers cultivated the waste fallow but sought a reduction in the assessment on the cultivated land since their grazing fallow had been reduced. Thus the Government's attention turned towards the low rate of assessment on the village waste. In Gujranwala, for example, the assessment had been deemed low, even by the early district settlement officers in 1866-67; by 1889-94 the rates of 9 pies to 1 anna 6 pies per acre [57] seemed diminutive particularly since some of the villages had up to 10,000 acres of waste. Officials reported that profits from livestock were as high as Rs. One lakh and over in the Gujranwala district in 1860, while tirni or the grazing tax fetched only Rs.3,000. Similar comparisons were made even in the pastoral districts of the Cis-Sutlej in 1909. In Karnal, Stow, the settlement officer, calculated the value of clarified butter or ghee, at as much as Rs.4.5 lakhs per annum;[58] in the Naili circle of Karnal, where there were as many cattle as people, the annual profit from livestock was Rs.31,000; while in the Nardak circle the profit from livestock could be as high as Rs. 53,000 per annum.

As against these profits in livestock, the Government felt that assessments on the waste were small,with even the earnings from the leases of grass in the Rakhs and forests seemingly higher. Taking Gujranwala district once again, the Government earned 4 annas 5 pies per acre from the leases of grass, whereas the pasture in the

Gujranwala and Hafizabad tehsils of Gujranwala paid a revenue of 1 to 2 annas per acre; and in the Hafizabad Bar between 0.25 and 1.50 annas per acre. In other revenue circles no assessment was imposed on pasture.[59]

This disparity between the assessment rate on village pasture and that obtained from leases of grass caught the notice of the Financial Commissioner in 1894, who was critical of the low assessment on waste made in Prinsep's settlement of 1866-67. Further this disparity between the Government earnings from leases and the low assessment on the village waste was linked up with the Bar villages keeping "cattle on their own lands in preference to bringing them under cultivation".[60] Indeed even at that time the Settlement Officers argued that the low revenue rates on pasture acted as an incentive for keeping large fallows in the villages, an argument seemingly confirmed by the fact that cultivation in the Bar villages had increased by only 1.5 % between 1847-48 and 1858-59.

In brief, these observations hardened the Government's policy towards village long fallows - first, because now there were positive possibilities for expanding the revenue base consequent to extension of cultivation by canals in Jhang, Ferozepur, Hissar, Sirsa and Karnal in the 1880. The Government was no longer inclined to grant concessions from the revenue on cultivated land for the loss of *grazing*. Secondly, with profits from pastoral grazing wastes being high in certain districts, like Gujranwala,the Government's attention was drawn to those villages keeping large areas as fallow, since the revenue from such grazing fallows was low. Thirdly, profits from the grazing lease on Government waste were higher than the revenue it obtained on the village waste in the Bar, and this naturally prompted the Government to raise the revenue rates on the village waste. And, fourthly, it gave an impetus for the Government to do two things: (a) to set aside more waste for profitable reserved pasture;[66] (b) to acquire waste lands for colonisation thereby expanding government earnings from settled cultivation.

Impact of Institutional Change :

These possibilities encouraged major changes in revenue policy by the Punjab Government. The first step was to revise those district settlements which had terminated with a view to securing some of the increased profits generated by extended cultivation. The second was to re-assess the revenue rates on village waste. These developments were sufficiently important to require a major policy announcement by the Government of India. The Secretary of State emphasised that "the executive authority of the Government of India" enabled of, where necessary,"to control and direct the local Governments."[62] Thus was the question of the re-settlement of the Sirsa and Fazilka tehsils of Hissar and Ferozepur Districts submitted to the Government of India in 1891.

Revenue re-settlement signified changing the conditions under which the government had assessed land revenue from the tax-payers. Therefore this impacted on the common lands directly,since it was a move to revise, among other things, the amount of land that could be kept fallow in a village. By 1884, only the Ferozepur district and parts of Kangra remained to be revised. Ferozepur became a test case. It had been settled in 1849, and within thirty five years of annexation[63] the Punjab Government was recommending an increase in revenue amounting to "more than a lakh of rupees"[64] on the basis of extended cultivation in almost all the tehsils. But the Government of India generally only endorsed such re-settlements as were made for "administrative and financial reasons". For example, in the Shahpur district the Government of India rejected re-settlement on the ground that there were neither "administrative nor financial reasons" for doing so.[65]

Possibilities for resettlement arose again in 1899, as canals became important in the Ferozepur and Sirsa districts. The railways had also opened up markets and helped develop some towns in the district. In 1899 the Revenue Secretary of the Government of Punjab recommended that the Sirsa district be re-settled, under section 49 of the 1887 Punjab Land Revenue Act, anticipating an enhancement in revenue of Rs. 2 lakhs.[66] He based his proposal on the following considerations. First, there had been an increase of cash rents in Sirsa of 50%, while in Fazilka rents in kind had increased from 20% to 25% of the gross produce. Second, canal irrigation led to an extension in cultivation of 37% . Third, prices in Sirsa had risen approximately 15% to 20% more than in Fazilka. Fourth, population had increased over the 1880s from 253,275 to 314,220. Lastly, railways (Rewari-Ferozepur & Southern Punjab Railways) improved conditions and helped fight the famine of 1896-97.[67]

These developments entailed a diversion in land-use from pasture on the regional commons to cultivation of the virgin soils, and a conversion in two stages of property rights from the erstwhile open access regional commons first to communal holdings and then to private holdings. Parallel with these changes were those taking

place within the villages. It was reported in 1899 by CM. King, Deputy Commissioner of Ferozepur,that irrigation from the Sirhind canal in the Rohi circle caused "Lands which were left waste as uncultivated shamilat to serve as catchment areas for rain water" to be "broken up in every village." [68] Apart from this extension into the customary rain catchment ponds or uprahan johads in the Sirsa district, cultivation in the grazing lands all along the canal developed at a rapid pace. This was indicative of an increasing substitution of fodder crops for the grass on the long fallow, which often parched in times of drought - as in 1896-97. These lands proved to be equal in productive capacity to the cultivated lands.[69]

Table 4.3 The Canal Tract: Fazilka

	1885-86		1896-97		
Revenue Circles	Cultivated area (acres)	Cattle area (Numbers)	Cultivated (acres)	Cattle (Numbers)	% increase In culti-vation.
Rohi	343,185	52,269	534,534	85,797	55.7
Utar	62,857	1,174	77,409	11,046	23.0
Hitar	29,596	9,043	33,227	15,320	12.0
Total	435,638	66,486	645,170	112,168	48.0

Source: Rev. & Agri. Progs. 29-30 A, April 1899.

Added, also, was the possibility of double cropping, since inundation canals provided water for the rabi crop as well.[70] With canals now providing transport in an area where "roads were just sand heaps",[71] land prices and rents rose, a trend re-inforced by the railways which helped towns like Abohar to grow and pushed up further the demand for land and rents. [72]

Revenue differentiation impacted on common long fallows not only in canal irrigated tracts. In those areas where well irrigation was important, as in Rohtak, anyone who constructed a well had to pay a higher revenue. Theoretically, the village common land shamilat-deh was held in shares proportionate to the revenue paid (hasb rasad zar-i-khewat), which meant that the man who had well-irrigated land paid a higher share of the total revenue of the village. In that case he also had the right to demand a higher share of the common long fallow or shamilat, [73] and a greater part of the income from the common property of the village. If the shamilat were partitioned, he was entitled to a larger portion, and thus had an incentive to seek the break up of the long fallow held in common. In this manner, the revenue differential on irrigated land encouraged, on the one hand, shortening of the long fallow (banjar kadim), and on the other partition and privatisation of common lands. In other words the natural trend towards a shortening of long fallows as a result of canals was reinforced by a revenue policy differentiating between irrigated and un-irrigated land.

The second institutional change consisted of re-assessment of revenue rates, utilising the existing principle of "half net assets" to tap the increased use of land at both the extensive and intensive margins of cultivation. The Revenue Department made two institutional changes simultaneously. It withdrew its former concessions given for fallow land in the villages, as in Hissar where, at least a fourth of the village land had been assessment-free in the settlement of 1865 for the purpose of maintaining grazing fallows. And it enhanced revenue rates on the long fallow or shamilat. It was able to do this because pastoral districts like Hissar, Sirsa and Jhang tended (a) keep larger fallows even if irrigation was available, as in the Naili tracts of Sirsa and Karnal; and (b) use them when necessary, for cultivating fodder, as in Jhang, rather than growing valuable crops like cotton. In both these circumstances the Government's revenue collection did not increase either with canal irrigation or extended

cultivation in pastoral districts. Hence these loopholes had to be plugged by stiffer rules about concessions on fallow and by an enhancement of rates on the waste.

Despite these moves, the impact of institutional change varied. Rates on the common long fallow (shamilat banjar kadim) were not uniform between districts, even where conditions were similar. Such differences arose because in those districts where much profit was made on cattle, and irrigation made it possible to cultivate large areas, official policy tended *not* to restrict the fallow but to enhance the rate charged on grazing fallows. For example, in the Sirsa district there was significant growth in cultivation with the extension of the Sirhind and Western Jumna Canal,[74] but nevertheless large tracts of waste were also kept for grazing. Thus substantial profits were made in the Rohi circle of Sirsa, from the "sales of surplus cattle which the extensive area of grazing land enables them to breed,"[75] although cultivation in this circle had increased by 87% in 1891 as compared to the pre-canal era. In fact, the waste yielded wild products like the dwarf ber which was so valuable as fodder that sometimes the cultivators were able to pay their revenue from their sale alone.

In another tract, known as Naili, of Sirsa, cattle were bred in large numbers and even in 1899, with all the irrigation, considerable quantities of culturable waste continued to be used for grazing. There was little increase in cultivation; indeed the area under wheat fell by 7%.[76] The area of culturable waste was about 87,774 acres in 1879-83 and remained 87,226 acres in 1899. Assessment on this waste at the time of the settlement of 1879-83 was one anna an acre and therefore after deducting one-third for grazing, the Settlement Revenue was Rs.5,486. In 1899 the Government proposed raising the revenue to 1 anna 2 pies an acre from this culturable waste, so as to fetch Rs.6,360 in the event of a re-settlement of the Sirsa tehsil of the Hissar district.[77]

In the rest of Hissar, however, official policy towards the waste stiffened both as regards the amount of fallow exempted from assessment and the rates on excess waste. In the 1863 settlement,[78] which lasted till 1883, provision of pasturage was, as we have seen, liberal. But in the 1892 settlement the concession on waste was less generous.[79] Besides, the rate on the excess waste was raised in those areas where large wastes were kept as fallows - as in the Naili tract in Hissar.

Table 4.4 Taxing the Waste : Hissar

Rev. Circle	1863 Settlement	1895-1902-03 Settlement
Bagar circle:	1 anna per acre	6 pies per acre
Hariana " :	1 anna per acre	1 anna per acre
Nali " :	1 1/2 anna per acre	2 annas per acre

Source: Hissar SR 1893: Hissar Gaz. 1904.

These rates were applied in 1892 to villages where cultivation had been extended, and villagers depended mainly on arable farming, but "where the whole or a large portion of the village area had been devoted to pasture" and the assessment on the waste was the same as that on the cultivated land - i.e. "half net assets".[80] In other words, the exemption on the waste for plough cattle was to be given only to those villages which had extended their cultivation. Where the land was deliberately kept fallow for pastoral purposes, the profits of livestock were to be treated on the same principle as the product on land used for arable and charged on "half net assets principle".

A similar difference was made in the case of the Bangar and Nardak revenue circles of Karnal. In the Nardak, the Bangar and the Naili lands formed originally a great grazing ground, and cultivation remained of only secondary importance in the Naili in 1911. Cattle increased in this area, almost equalling the human population in 1911. In both the revenue circles much grazing ground was brought under the plough since the settlement of Ibbetson in 1882, the number of cows diminishing while the number of stall-fed buffaloes increased. This was because buffaloes could be bred on stall-feeding. Since more cultivable waste remained in the Nardak than in

Bangar, Stow proposed to assess the waste in the former area but not in the latter.[81] (The rates in the Nardak had been raised by Ibbetson in 1882 above those on the other circles).[82]

By contrast, in districts like Gurgaon, where cultivation had extended to 80% of total area in 1911, "considerable deductions were given from produce estimated of crops cut for fodder and turnips as well as all the miscellaneous crops cut for fodder which was included in the landlord's share of the produce was excluded from the Government demand. When ordinary fodder crops fell short, then oilseeds and pulses were largely sacrificed for fodder."[83] This sympathetic treatment was accorded even to profits derived from the pala and pula bushes. [84] The only apparent reason for all these concessions seems to have been the fact that unculturable waste was only 13% of total area, and the culturable waste even less at 7%, and there was "no great profit derived from the keeping of livestock."[85] Similar policies were followed in other districts like Jhang, Gujranwala.

In all these institutional measures affecting the character of the waste and its use by pastoralists, there was an undeclared intention to "fix" the nomad and convert him to cultivation. One of the ways adopted was to limit his grazing boundary and at the same time induce him to cultivate by differential assessment on the waste. As Davies declared, "It was clearly our policy to foster this good tendency and by developing the inclination to till the soil, induce habits of industry and curb the tendency to rove, which is the bane of the population of these parts. Nothing, it appeared to me, was better calculated to effect this than to keep them within fixed limits."[86]

Politics of the "Waste"

It became increasingly obvious to the Revenue Department that common lands had a singular function within the community of land-owners, and to this may be attributed the change in the wasteland assessment policy. The village commons served as an adhesive, and so long as this was so there was some order in the rural areas and the revenue department was not averse to free-ride this organisation. While it did so the Revenue Department acknowledged the facility of collecting the annual revenue from a group as against individuals. Simultaneously it became clear that the fiscal viability of the community of revenue payers depended very much on the supply of labour from the other groups residing in the village. For example Henry Sumner Maine had acknowledged the role of the occupancy tenant as early as 1870. [87] We also know that a large part of the services expected from the non-proprietary members (ghair maliks) were in return for the use of the grazing commons and residential facilities (abadi), including the water from the wells and ponds, (johads). But in addition, some of the non-proprietors held pieces from the common fields or shamilat for cultivation on rent. Besides, the members of the proprietary body also cultivated some of the common areas. All these circumstances involved an adjustment in the manner in which the revenue liability for the common fallow (banjar kadim) divided among the co-sharers and other members of the village community.

The old system of assessment on shamilat had been to divide liability according to the tenure of the village. Thus the bach, or the apportionment of the joint revenue liability, was tied to the manner in which the common assets were held.[88] This changed. In the settlements that took place after 1871, the assessment on the cultivated common fallow or shamilat was not usually included in the bach, so if any portion was cultivated either by the *co-sharers or by the others as tenants, it was not included in the bach either.* This provided an opportunity for certain elements among the land-holders to strategically "occupy" in a manner tantamount to enclosure, and thereby "free-ride" on the village commons. This was a severe testing of communal institutions.

Of Free-Riding:

In Gujranwala, for example, a powerful man or faction of the village could gain possession of an area of shamilat out of all proportion to his or its share, and continue to enjoy the profits from it, while the whole community paid the revenue on the shamilat. In such a situation there was no remedy open to the others except to demand partition of the shamilat. [89] This in turn led to increased cultivation and a reduction in the available waste for grazing. This happened particularly where there were no "recognised leaders." The disintegration caused by sub-division of the shamilat further reduced the strength of communal ties, since the strong took "possession of the best bits of the village common land to the exclusion of the others," or "withheld the payment of the kamiana and hakbakri to the menials." [90]

In another instance, in Ludhiana, when there was no partition of the commons and where the waste had been consistently cultivated by the same users, these long term users could confuse the issue, and deprive the non-cultivating members of their user rights to the shamilat.[91] To take another case : in Amritsar, co-sharers farming the shamilat held back the cultivation at the time when the assessment was being made so that it was not omitted from the bach. In this manner they profited from a low rate on their cultivated land.[92]

In Rohtak, according to the settlement officers Fanshawe and Purser in 1880, "it was common to exclude the area held by occupancy tenants from the bach." This enabled the proprietors to devise a means by which they could profit from tenant cultivation of the shamilat. The revenue of the village was divided by the cultivated area, excluding the shamilat waste which was utilised by the tenants. This provided an average assessment per acre. This *rate* they then applied to the tenants' holdings, and the rent thus obtained was subtracted from the revenue liability and the net amount divided among the proprietary shareholders. "By this dodge method the occupancy tenants were recorded as paying fixed lump sum rents at a higher rate than at which the owners' revenue fell".[93]

It was evident therefore, that there was a loop-hole which could be manipulated by the co-sharers or malikan-deh. This the Government sought to remedy, both on its own initiative, and in response to the demands of injured co-sharers. In either case there was a substitute of communal institutions. For example, the assessment on shamilat was included in the bach, as in the Delhi settlement of 1906-10. In the Gujranwala District, the assessment of the cultivated common land of the village, or its sub-division, was carefully recorded against the names of the co-sharers if they cultivated it, or against the name of the tenants of the proprietary body if they were the actual farmers. In both cases the revenue liability was to be shared according to possession prior to partition. In this way those co-sharers who were not fanning the shamilat did not have to pay when the land was cultivated by the other co-sharers, but since records were maintained their shares in the commons were protected.[94]

In Ludhiana, the co-sharers wished a record to be kept of the shamilat revenue in the bach, and the distribution of the bach on the principle of shares "irrespective of possession". Thus the rights of all the co-sharers of the village in the shamilat were recorded according to shares. The revenue on the shamilat was also recorded in this manner, and not by possession. Through these means cultivating co-sharers were prevented from being recorded as right-holders to the shamilat they had cultivated. This was an institutional barrier which served to preclude strong men from muscling into the shamilat, while cultivating possession was not permitted to ripen into private ownership. This strategy served as an institutional alternative to partition of the shamilat.[95]

In Amritsar, too, revenue from the shamilat was recorded in the bach and a rate was charged on the cultivated shamilat equal to a quarter of the barani rate, so co-sharers could be assured that records were kept separately for the cultivated shamilat.[96] In Rohtak the Settlement Officer did not exclude the shamilat area from the bach, but found in many cases that "where the revenue has been enhanced the demand on the owner has become greater than the revenue recovered from the tenant."[97] Such administrative procedures may have plugged loopholes in official control, yet they also served to prevent the community from making institutional initiatives.

It thus appears that with the Act of 1871 two related trends were initiated. While the institutions of statute were strengthened, those of customary usage weakened. This happened as formal institutions of law enabled a tremendous saving in transaction costs to the colonial Government. It helped, also, to reduce the costs of fiscal collection by engaging with self-organised communities who had already a system of self-governance, while the revenue base was extended through inducements to increased cultivation. Here irrigation was a major hurdle, and the law made it worthwhile to undertake investments in public works, such as canals and railways, for when the rural response was positive to these moves the Revenue Department was provided with the administrative weapons to mop up the surplus. If, on the other hand, cultivation was restricted by lack of irrigation - as in the dry tracts of the South West and in the West as for example in Shahpur[98] and Muzaffargarh,[99] then the Act enabled the Revenue Department to tap the pastoral resources for additional tax revenue.[100]

Customary usage fell into abeyance. The traditional pattern of land-use were inevitably changed institutional under the impact of increased cultivation. Every time the virgin waste was "broken" up, or there was nau tor, shamilat grazing land or banjarkadim was short fallow and the incidence of cattle on the reduced waste increased, leading to greater intensity in use of even the cultivated land. In brief there was a shortening of fallows all round: from long fallows or banjar kadim to short fallow or banjar iadid: from short fallow to annual fallow, that is ek fasli or

one crop pattern; and from annual fallow to double cropping.[101] The process was accompanied by a change towards fodder crops and cash crops like cotton and sugar cane.

Dividing the Commons

The process of eroding the customary institutions of governance was completed when statute provided incentives to the individual to -request partition of the commons and protected his share in it This effectively undermined the basis of collective action. Overtly the Act of 1871 confirmed the settlement with 33,020 village communities who held 91% of the total area and only 5% with large zamindars;[102] but it classified the tremendous variety [103] of tenures into three standard types, [104] according to the manner in which the bach was distributed among the land holders and "the extent to which the common ownership of the village lands" prevailed.[105] These distinctions were operationally important because the Revenue Department had to deal with the problems arising out of (a) the division of the revenue (bach), (b) the contribution to the common liabilities like the malba, and (c) the distribution of the incomes arising out of the common lands and from the partition of common lands. Where any of the above problems remained unsolved or caused friction, the matter was taken to court. The tenurial distinctions were therefore important to the judiciary as well. [106]

TABLE 4.5 Village Tenures : Punjab, 1876

Property Tenure	Number	Area(acres)
1. Zamindari estates held by individuals or families: {Zamindari Khalis} :	1,695	2,690,995
2. Zamindari estates held by the village community paying in common: {Zamindari mustarka} :	3,392	2,778,920
3. Village communities subject to ancestral or customary shares subject to the laws of inheritance: {Pattidari}	4,088	4,600,559
4. Villages held on the measure of possession: {Bhajachara}:	8,568	15,036,572
5. Village community lands held partly in severally and partly in common: (Mixed Bhajachara & Pattidari}:	16,972	25,861,787

Source: PAR 1876: Appendix, XXII.

The official confirmation of tenure sub-types[107] directed attention to the customary institutions regulating inheritance and the division of common assets and liabilities. Revealed were the numerous variations and combinations of the two principles of ancestry and possession by which communities managed their individual and joint assets. In Gurgaon, for example, it was quite common in imperfect pattidari tenures to have the ancestral shares or biswas,alongside an operational principle like the number of ploughs, determine the way the "common land of the village and of the patti as well as the land owned separately" was distributed in customary shares. It was found in other circumstances that "the common land of the village is held on ancestral shares, while the common land of the patti and the land owned separately is held on customary shares. In the third form possession is the measure of right in the land owned separately, while the common land is (was) held on shares."[108] Similarly, in the bhaiachara tenure, "possession" was the measure of right in the common land as well as in the land owned separately, or the common land was held on equal shares or fixed shares, while the rest was held according to possession. These differences were important, as the mode of tenure would be determined by the extent of land held in common. The pure pattidari and pure bhaiachara tenures had the common lands or shamilat-deh partitioned

completely, although sub-groups might retain some land in common among themselves. Thus, for example, the Delhi district in 1880 had only 29 mukammil pattidari and mukammil bhaiachara estates out of a total of 810, which indicates that communal hold over the shamilat deh was more or less intact.

Table 4.6 Tenurial Institutions

Tenure	The Bach	Modes of Sharing: Shamilat Income	Modes of Sharing: Shamilat Land
1. Zamindari: Khalis	Single	Single	Single
Mushtarkha	Communal on ancestral shares	Ancestral share	Ancestral share
2. Pattidari: Mukammil	Ancestral shares	No shamilat income	Shamilat-deh partitioned
Na-mukammil	Customary or ancestral	Customary or ancestral	Customary or ancestral
3. Bhaiachara: Mukammil	Actual possession	No shamilat income	Shamilat-deh partitioned
Na-mukammil	Actual possession	Ancestral share or actual possession	Ancestral or customary share or actual possession

Source: Compiled from Sett. Man. 1899 : 64.

Besides these small differences, there appeared two distinct trends within tenurial arrangements. One was a natural sequential succession of tenures accompanying the splitting of inheritance which occurred in single estates of zamindari villages which became pattidari and then bhaiachara tenures. The second, though less visible, was more fundamental. As institutions of collective control over the waste loosened there emerged fragmented communal holdings by smaller groups, and ultimately by separate individuals (see table 4.5). The example of the Kanjhawala cluster also illustrates.

Both trends emerged consequent to institutional stimuli from outside and from within. Individual villages responded variously to these. One of the principal ways in which change occurred was when there was an alteration in the mode of distributing the bach, as, for example, when a zamindari estate became a mushtarka or communal one at the death of the founder of the village. If the sons wished to hold land in joint interest, they paid the revenue jointly and shouldered all liabilities. If they wished to separate, then each share was regulated by the law of inheritance, which in the Punjab was either pagvand or chundavand.[109] Pagvand was distribution among all sons or "succession per capita";[110] the word pag being derived from pagri the headgear of the father. Chundavand was according to the number of wives or "succession per stirpes;"[111] the word chunda referring to the woman's headgear.

Significantly, the sub-montane showed signs of rapid break-up. In Hoshiarpur, tribal and family cohesion ceased to be a "matter of necessity" as early as 1879-84. Very few estates it was said "are now held on the communal system, and the number in which land is held and revenue paid according to ancestral shares is yearly decreasing".[112] This was so in Jullundur too, where the description of tenure in 1886 shows clearly that almost all villages were "originally communal and that the bhaiachara stage has been reached through the pattidari."[113] In Gurdaspur "most of the villages were originally founded by single families and have already (1914) passed to the final stage of bhaiachara."[114]

This trend was connected to the sharp rise in population in the sub-montane, an experience shared in those regions where irrigation, both from canal and wells, pushed up the price of land, which was in turn fed by increasing population. The sub-montane and Ferozepur in the dry region are good examples where density of population was significantly above the average of the entire Province.(table 4.7) Despite migration from the sub-montane to the Canal Colonies in 1901 (table 4.7 col. 3), the density of population continued to remain high in the sub-montane tracts.

Table 4.7 Density & Migration of Population : The Punjab and the Canal Colonies in 1901.

District	1881	1891	Migration 1901	1921
	per sq. mile			per sq. mile
Sialkot	524	572	103,390	
Hoshiarpur	401	450	35,099	
Gurdaspur	436	500	43,953	
Ambala	442	459	7,777	
Jullundur	552	634		
Ferozepur	174			256
Canal Colonies	148.2			243.3
PUNJAB	152	167		183

Source: Punjab Census, 1921 : 82, 84. and P. Paustian, Canal Irrigation ... Punjab (1930) : 84.

The example of the sub-montane illustrates how private initiative in well irrigation responded to the market both for land and product. The credit market was also linked to this process. Size of holdings was no deterrent. There were, in one of the tehsils of Hoshiarpur, as many as 960 people to every square mile of cultivation,[115] while in one village 584 owners cultivated 16,000 fields, the mean size of which was one-seventh of an acre in 1928.[116] Land values rose on average five-fold between 1885-1915; in the Nawashahr tehsil the increase was eight times.[117] These areas saw, not canal irrigation but rather the expansion of a conventional source - the well. In Jullundur, for instance, the number of wells increased 42% between the two settlements in the last part of the nineteenth century, and the same was true of Hoshiarpur.[118] Constructing a well was expensive, accounting for as much as Rs.500/-[119] or even Rs.800/-, and the services of the money lender were often required. The latter had no hesitation since the credit worthiness of the land-holder had risen in proportion to land values. Significantly Punjab had, in 1919, only a quarter of peasant proprietors free of debt, and in two districts of the sub-montane the figure was as low as 5%.[120] Indebtedness in the Punjab had risen still further by 1930.[121]

Debt, rising land values, and what Malcolm Darling described as "prosperity" were in turn linked with alienation of privately owned land. Communal tenures responded to alienation of land; and this signalled the dissolution of the commons. Customary institutions of pre-emption broke down in the face of legal backing for individual land alienation and foreclosures. Rising land values made mortgages more attractive to the money lender. Further, the indebtedness of the Punjab peasant heavily encumbered also his share in the village common lands whenever mortgaged land carried a share in the shamilat. Darling's enquiry of 1918-19 estimated gross mortgage debt to be 45% of the Province's total proprietor's debt; a figure which had increased by 1930 to 50%.[122]

Again the incidence of such usufructuary mortgage debts was higher in some districts than others. Usufructuary mortgages enabled the money-lender to acquire the mortgagor's share in the common land.[123] Disputes[124] centring upon shares in the shamilat were again more frequent in Hoshiarpur, just as land suits more commonly emanated from this district during the nineteenth century than from any other. In the Una tehsil of Hoshiarpur, for instance, as many as 73,749 mutations took place in 1914 wherein the share of the shamilat was also "conveyed" along with the transfer of land by sale or foreclosure. Foreclosure led to alienation of land to moneylenders who did not hesitate to demand partition of the shamilat.

Alienation of land inevitably resulted in a *de-facto* inequality in *the actual* possession of different co-sharers, and thus served as an incentive for changing the manner of sharing communal responsibilities and assets. For example, if two co-sharers began by holding land in accordance with their ancestral shares, over time the actual amount in their possession could change if each took different areas of shamilat land for cultivation, or acted differently in other matters like debt, mortgage, sale of portions of land, or gift. On each occasion such action were recorded in the mutations register of the Revenue Department. Consequently the actual amount of cultivated land held by them differed from their recorded shares, and the system of paying revenue by ancestral shares became unsuitable. The Revenue Department thus contributed to the change in tenure. Each time a village was re-assessed and the new demand distributed over holdings, it was found that the actual amount of cultivated land of different qualities in each co-sharer's possession was different from his ancestral or customary shares, and it was the former which provided the basis for calculation for each co-sharer's contribution. An increasing number of estates became bhaiachara. This trend was particularly marked in the vicinity of cities. In fact, the city of Amritsar was itself the perfect example of a village once held in communal shares, the commons then being partitioned on the principle of actual possession so forming a pure bhaiachara tenure.[125]

Irrigation and communications in their turn contributed to change institutions of communal control. Irrigation enabled multi-cropping, so land became too valuable to be kept fallow for long. This desire to shorten fallows pressed on the jointly held long fallows. The demand to privatise them naturally followed, partition being the chief means by which this was accomplished. Such a process can be observed in the break-up of communal waste ownership in tracts like Ludhiana, for example, where in some of the intensively cultivated villages there was as early as 1859, "no fallow land, or no pasturage land, the cattle being fed from die cultivated produce".[126] Of Hoshiarpur it was said that "where all the common land in an estate has been partitioned and broken up for cultivation, as is often the case in the more valuable tracts... the only remaining bond of union between the individual proprietors is their joint responsibility for the land revenue of the estate." Indeed "in a rich and prosperous district like Hoshiarpur ... there is little to retard, but much to stimulate the growing tendency towards severalty."[127]

In such a situation many villages had no common lands worth the name, "the village site and roads." Again in Hoshiarpur, even as early as 1884 in Bairampur village there were only 18.5 acres of shamilat baniar kadim out of a total area of 336 acres.[128] In village of Gijhi, in the Rohtak district, the area kept for grazing fell from 136 acres in 1899-1900 to just 99 acres in 1957-58, when the total area was 1636 acres.[129] During the twentieth century common lands were practically eliminated from some villages. In Bhadas, a village in Gurgaon district, only 4 acres of waste were available for grazing, in 1936.[130] The culturable waste for grazing was only 3 acres in Gajju Chak village, Gujranwala, in 1927,[131] while in Ghaggar Bhana, in the district of Amritsar, grazing waste was just 26 acres in 1928.[132]

Process and Counter-Process

In terms of institutional impact, the partition of the village commons did to collective action what enclosure did to the open field system in medieval England. The formal rule and revenue record of the bach dictated the division of common lands. That is, the partition of the commons proceeded by the principle of ancestral shares or BISWAS where the bach was according to those rules. This was true of the zamindari and pattidari tenures. Where a complete partition took place the tenure became pure or mukammil pattidari. There could be variation here when customary or even plough shares were used in pattidari villages;[133] in which case common lands were partitioned among the different pattis or sub-groups on the same rule. But by and large, the distinction between pattidari and bhaiachara tenures rested upon the fact ancestral shares were used in the former

but not in the latter. The partition that shamilat in the bhaiachara village was then by the principle of hasb rasad raqba khewat or according to the proportion of land revenue paid by the holder of a khewat. Once again, if all the land was partitioned then the tenure was mukammil bhaiachara.

Partition of the shamilat was then an exercise which separated interest in the banjar kadim of the entire village in the first instance, and if carried out further only then was there complete severance of communal interest. Even then not all resources were open to partition. The residential site, the ponds, the wells, irrigation channels, cremation grounds, field-dividers, and the pathways were not generally open to partition; similarly panas and thollas continued to sub-divide the village common lands and hold them common to the families within the sub-groups as in Kanjhawala.

Table 4.8 Tenurial Change : An Eco-Region

Zone I: eg. Sirsa District: (a)	1858-64	1882
Zamindari villages	650	270
Mixed Bhaiachara or Pattidari "	-	380
TOTAL	650	650
Zone II: eg. Delhi District: (b)	1880	1910
Zamindari: landlord villages	26	48
communal	"	70
Pattidari: perfect	"	25
imperfect "	314	271
Bhaiachara: perfect "		4
imperfect "	371	454
TOTAL	810	773
Zone III: eg. Gurdaspur District: (c)	1849-54	1914
Zamindari "	268	89
Pattidari "	1327	1406
Bhaiachara "	632	868
TOTAL	2127	2363

Source: (a) Sirsa SR. 1879-83 : 373, 374.(b) Delhi SR. 1872-80 : 69.(c) Gurdaspur SR. 1849-53 : 144 & 1914.

Even as communities sought to partition their common assets there was a distinct adherence to the *original* shares, which could be either ancestral or customary. This indicated a desire to identify with a symbolic collective image, even though the reality may have been different. Thus in villages where revenue was shared according to the actual amount of land in possession, the division of the incomes from the common lands, or partition of the shares in the shamilat, was on the basis of original shares. For example, in the village of Kung, in Amritsar, the settlement officer in 1856 had drawn up a malguzari tree to ascertain how the "former jumma was

divided and paid by the share-holders, from which the fraction of each man's right was deduced;"[134] And so in this bhaiachara village the wells, the riverain land (open to diluvion and alluvion), and the waste, were treated as the joint ancestral property of the co-sharers; and the recorded shares were shown in the malguzari tree, or what was also known as the Shaira Nasb.[135] This admixture of two principles of sharing - one for the division of the revenue liability, the other for the sharing of the joint assets - indicated that the villages were once held jointly before a separation of interests took place in the case of the cultivated land, whilst the waste, ponds, wells and riverain lands continued to be jointly held. A split occurred between the *de facto* and the *customary or dejure* institutions of village tenure. Such a pattern of partitions occurred in the villages of Jullundur, Gurdaspur, Ludhiana, Sirsa, Karnal, and Delhi, (see table 4.8). The second example is that of the village Bairampur in Hoshiarpur, where the shamilat was divided on the principle of plough shares. Partition occurred twice between 1884 and 1894 with reference to 11 ploughs, which had been the basis of cultivation when the village was founded.[136] This loyalty to original shares is proof that the village was once held on ancestral or customary shares. In another variation, if the village had originally shared revenue responsibility on the basis of actual possession, as in bhaiachara villages like Kanjhawala, then the partition followed same rule.

In Ferozepur, if co-sharers cultivated less than their share in the zamindari village lands in 1855, they continued to pay land revenue according to their original shares, subject to the proviso that they could make up their cultivated area from the common lands whenever they wished and most certainly at the time of the partition of the common lands. Thus the payment of the revenue according to shares assured the co-sharer that the difference between his actual cultivation and the land to which he was entitled could be made up. This usually occurred when the difference between the actual and original shares was small, but it sometimes took place where the difference was large.[137]

This logic of share partition attracted official attention over the years. In 1884, Gordon Walker, the Settlement Officer of Ludhiana, noted : "even though temporarily there may have been a difference in distributing the assessment yet this makes a material difference, for in numbers of villages, although the shares have become obsolete to this extent that they are not used for distributing the assessment, the village common land and the receipts from it are still divided according to them."[138] Again in 1938 it was noticed and commented upon by Geoffrey de Montmorency a former Lt. Governor of Punjab and member of the Land Revenue Committee chaired by Malcolm Darling. "It often happens," he wrote, that when common land "comes under partition owing to irrigation or land shortage or other cause, the method adopted for its division among the proprietors in the village estate - and the law allows the proprietors to choose the method - is in shares bearing relation to the proportion of the land revenue of the estate paid by each proprietor. A small and uneconomic landholder would in such circumstances find himself in a curious position. A kindly Government in reducing or absolving his land revenue obligation would incidentally have injured or extinguished his right to participate in his due share of the common lands. This point is not likely to escape the shrewd Punjab peasant".[139]

Partition of common lands became fairly common after the first settlements of the different districts. In some districts partition therefore came fairly early, as in Sialkot, where Prinsep reported as early as 1863 that "the common lands belonging to whole estates have for the most part been divided during the settlement. That which belongs to sub-divisions remains."[140] An additional impetus came from the settlement operations themselves. In Sirsa, by 1882, the partitions had already become numerous although the villages were settled and established much later than in other districts.[141] In some districts partitions took place more than once.[142]

Settlement operations no doubt stimulated partition, but villages were not unanimously in favour of such action, at least in the initial stages. In Ferozepur, for instance, the lack of rainfall and irrigation facilities led villages to set aside certain portions undivided for catchment areas or uprahan johads. In fact, Brandreth felt compelled in 1855 to allow land equal in extent to the cultivated area to remain fallow for purposes of water storage in Ferozepur. He noted that such a portion "of uncultivated area was always set apart as common land. There are scarcely any instances of division of this common land having subsequently taken place,"[143] though this sometimes occurred when canals were introduced. It was similarly noted in Sirsa that : "The wajib-ul-arz also contained provisions regarding the setting apart of certain areas to serve as catchment areas (uprahan johad) for the village pond. These were of the utmost importance in the days when the village was entirely dependent on the local rainfall."[144]

In Ludhiana cultivation was so extended that there was insufficient land for grazing fallows. The people therefore wanted to reserve certain areas for grazing[145] in 1878-83. Likewise in Karnal, the wajib-ul-arz of the 1842 settlement contained stringent provisions on partition: "forbidding partition, in many cases absolutely, in still more save by unanimous consent, and in almost all the remainder except by consent of the majority." [146] Where pasturage was limited in extent, villagers strongly objected to any relaxation of the rules. Yet even in such cases the community was often "strongly against the disturbance of the owner who has been allowed to go to the expense of breaking up common land."[147] Thus in one village, Ibbetson recorded that a sub-division broke up an amount of common land much greater than its own share, whereas those undertaking a subsequent large sub-division in the same village were careful not to disturb the former, agreeing "of their own accord to accept, in partition of the whole common lands, an area very largely in defect of what they were proportionally entitled to."[148]

But such relationships were not always peaceful. Those who had initially cultivated the common lands were successful in retaining possession, but as grazing land became scarce further encroachments on the common lands by others were not tolerated. [149] When cultivation by members of the proprietary body led to inequality of land holdings, two opposite reactions to the prospect of partition were set in motion. Those who had acquired *more* than their share tended to resist partition of common lands if by that means land would be divided more equally or if those who had less would be compensated; while those who had *less* than their share were likely to favour partition. Sometimes, however, those with less than their share, acquiesced in their continuance of this situation and did not ask for partition of the shamilat as in Mahal Kung in the Tarn Taran tehsil of Amritsar. [150] According to the malguzari tree it was found that one of them, Lehna Singh, had less than his share of the common land but refused to accept more as he was too poor to pay more revenue![151]

There were also communities which forbade partition of common lands, particularly in districts predominantly pastoral, and these had bound themselves by clauses in the wajib-ul-arz to the effect that "the whole or a definite portion of the common land should not be considered liable to partition, but should be kept common property, for the grazing of the cattle of the whole community."[152]

Stipulations of this kind reserving common lands were held by the Revenue and Civil Courts to be harmful to the community, since they prevented owners from dividing the land until all interested parties agreed to partition. Such a condition was considered by the Courts to be "impossible". In his judgement, Egerton, the Financial Commissioner, had observed (in 1 Rev. PR 1873) that "To refuse sanction to the division of any of the waste, is to prevent the people from extending their cultivation in a legitimate way."[153] Further, the Settlement Commissioner in Circular No. 21 of 1880 forbade the insertion of provisions restraining the power of sharers to demand partition when they chose. "The wish to partition should not be made to depend on the majority according to this order rather any co-sharer has the power of insisting on being put in separate possession of the portion of the common land to which he is entitled." [154]

Thus in Shahpur district Wilson, the settlement officer in 1887-94, considered this clause such an obstruction to "the development of desirable cultivation" [155] that legislation was necessary to cut the knot. In Ludhiana, where villages wished to bind themselves by such a clause, it was forbidden in the settlement of 1878-83. Further, those regulations in the wajib-ul-arz preventing partition were according to settlement officers in some districts like Shahpur,[156] Rawalpindi [157] and Karnal [158] in the 1880s, particularly unfair to those farmers who had not been able to extend cultivation earlier when the best portions of grazing land were being brought under the plough.[159] This occurred even in the Canal colonies, where grantees were allowed to exchange their holdings with the waste, and only the poor acreage was ultimately left for the common grazing. [160] Yet on the other hand officials wanted to use section 150 of the Punjab Land Revenue Act of 1887 to prevent "energetic and unscrupulous sharers in the common land" from taking further portions to the exclusion of the weaker neighbours.[161]

But the settlement officers found it "impossible to alter these provisions except by consent of the community," and where pasturage was limited the community refused to change. However, in Karnal Ibbetson, seeing that villagers accepted the right of the individual to cultivate according to his share and yet retain a portion of the cultivated shamilat suggested a clause by which "the Revenue Authorities could, in disregard of any stipulation on the subject, and at the prayer of any single owner, direct partition of the whole cultivated portion of

the common land, and of so much uncultivated land as would suffice to enable each man to receive his full share, with due regard to quality as well as area, and at the same time to leave each in possession of the land he then actually cultivated. Thus, if A, B and C have one, two, three shares respectively in a village and each has broken 100 acres of the common land, these 300 acres, and, neglecting quality, a like uncultivated area would be divided, so as to leave A in undisturbed possession of his cultivation."[162] (see table 4.9)

Table 4.9 "Ibbetson's Clause"

(i) Persons	A	B	C	Total	
(ii) Share in shamilat	One	Two	Three		
(iii) Area of shamilat	100	100	100	300	broken (acres)
(iv) Additional area of shamilat to be divided (acres)				300	
(v) Allocation of (iv) above (acres)	-	100	200	300	
TOTAL AFTER		100	200	300	PARTITION

Thus Ibbetson was able to overcome official dissatisfaction with the clause in the wajib-ul-arz forbidding partition of the commons without collective consent. In other words Ibbetson "inserted" a clause in the wajib-ul-arz tantamount to "village legislation" but which passed muster because it was in keeping with official policy to encourage cultivation. Settlement officers like Ibbetson, felt that "division of common land between the several wards of the village and a further sub-division between individual members of the community of so much land as is cultivated ... is seldom harmful"[163] In fact, Wilson (1873-80) held that "partition of the land greatly improves the position of the proprietors, who can then deal with land allotted to him and with its tenants as he himself pleases without consulting his co-proprietors and can appropriate to himself all its profits and produce."[164]

Even official institutions regulating partition adjusted to changing circumstances. For example, Government opinion favoured expansion of cultivation, particularly in those districts where the cultivation was not extensive even in 1880 - such as Karnal and Sirsa, where it accounted for less than 50% of total area.[165] However, since both districts had large pastoral interests, Ibbetson stressed the importance of the rights of grazing of tenants and other non-proprietor residents of the villages.[166] In some districts partition had been prohibited, as in Sirsa and Ferozepur, where the wajib-ul-arz in 1855 contained provisions regarding the setting aside of certain areas to serve as catchment areas.[167] But after the introduction of canals it was no longer necessary to maintain such large areas of waste, and in most cases it was broken up before the re-settlement of the Sirsa tehsil was undertaken by CM. King in 1900-05. Therefore King found it useless to "keep up an entry stating that the land was never to be broken up."[168] In the same way, villages in the Rohi circle of the Fazilka tehsil of Ferozepur, extended cultivation into the uprahan johad because the Sirhind Canal brought irrigation water.[169] As a result people also started breaking up "their grazing ground rapidly, for they find it better to feed their cattle on fodder chari grown with the help of canal water than to let them gain subsistence by grazing on the parched grass which is all that is available in these shamilat lands."[170]

In the Shahpur district, too, villagers concurred with the settlement officer in 1911-16 to change the clause in the wajib-ul-arz of the settlement of 1887-94. Thus some villages of the district, during the settlement of

1911-16, decided to abandon restrictions against the partition of the shamilat by which they had bound themselves in the previous settlement. Diack, the Financial Commissioner in 1915, argued at the Simla Conference on Codification of Customary Law that people opted out of the clause because "under modern conditions agriculture is more profitable than grazing."[171]

In Karnal as well the re-alignment of the Western Jumna Canal [172] by the end of the nineteenth century, encouraged the partitioning of a large amount of common waste in predominantly pastoral regions in the south of Kaithal and the Nardak circle of Karnal. Elsewhere, as in Panipat, private waste partitions, were given official sanction by A.M. Stow in the settlement of 1904-09. Thus, on the whole, as many as 20,000 partitions were dealt with in this period, of which 1,600 required judicial decisions.[173]

Partition however, led to a reduction in the extent of grazing lands, and this fact initiated a counter movement in favour of reservation of common land. With cattle numbers still large, the provision of grazing remained of considerable importance. In Karnal, for instance, certain tracts within the waste reserves provided by the Government during the 1891 settlement by Douie, been meant exclusively for grazing, yet these benefited only the neighbouring villages. In another tract the prospect of species of cattle becoming extinct with the disappearance of grazing grounds convinced the villages in 1909 of the need to "reserve a certain area as charand which was not to be broken up under the penalty of a fine".[174] A further provision was made that the villagers could restrain individuals from breaking up the jungles by invoking the Punjab Land Revenue Act, and were assured all "assistance from the authorities in this important matter."[175]

Government policy increasingly favoured a flexible system of customary law, specially when clauses in the wajib-ul-arz restricted the extension of cultivation in the common lands. This left the Government free to adjust policy to changed circumstances. As we have seen, official policy encouraged cultivation where canal irrigation was provided and therefore there was approval in those areas for villagers wanting to change the restrictive elements in the wajib-ul-arz. This was so in Ferozepur and Sirsa. The opposite was true in Karnal where official policy became tolerant of the restrictive clause in the wajib-ul-arz. since both Douie in 1891 and Stow in 1909 realized the importance of reserved grazing lands for breeder villages.

Government policy towards partition of common lands was modified in two circumstances and in both cases the concern was for the preservation of trees and arboriculture. Arboriculture in undivided common lands caught the attention of the district officials first in areas like Hoshiarpur where the loss of soil cover seriously eroded the crop carrying capacity of the land;[176] and secondly, where famine had decimated cattle numbers due to lack of trees.[177]

In the case of the Hoshiarpur district, approval was granted by the settlement of 1879-84 to "a clause in the administration paper allowing the appropriation for tree planting of part of the common land of a village."[178] But the insertion varied from district to district, and was contingent on the "free consent" of the villagers. It might, for example, give "the lambardar, with the consent of the majority of the khewatdars, a right to plant at any time trees, in one-tenth of the waste shamilat and to prevent grazing after planting, till the trees are safe from injury."[179] A final enabling step was taken as a result of famine and scarcities of the 1870s when the Deputy Commissioners of Ludhiana and Hoshiarpur urged the Famine Commission to make provision in the W-U-As for undertaking tree plantation. [180] In 1881 the Government allowed entries to be made in the waiib-ul-arz facilitating the setting apart of common village waste for the planting of trees if the land-owners agreed.[181] Further, to encourage land conservation remission on land revenue was given after 1881 to proprietors who planted groves on or near the banks of Chos or hill torrents. [182] Court cases show that even judges in the Chief Court supported the use of common lands for soil conservation - as in a village in Palampur tehsil, Kangra, in 1932.[183] (see chapter 7).

To summarise. In principle the wajib-ul-arz recorded customary practices at each settlement. However, customs changed with circumstances, and the wajib-ul-arz sometimes recorded the villagers' intentions for the future. The Government could also make changes, as in the case of the uprahan johads in Sirsa, for their grazing banjar in Shahpur, and for trees in Hoshiarpur.

Though customary rules and Government policy occasionally hindered privatisation of common lands, they could not prevent it, and between 1880 and 1912 common lands were broken up in large measure. Where institutions of communal control showed tenacity they were grounded in long established traditions. Jat social

formations in Haryana and Delhi are examples. They illustrate that when a village community of proprietors which was homogeneous (i.e. village held by same clan, family or tribe) it could sometimes successfully ward off intrusion by outsiders by preventing alienation of land through social net-working as in the Bisagama and even among clusters in areas where tribal cohesion had broken down. Ultimately, the relative strength of the opposing tendencies decided the outcome. Even where partitions were made by officials at the time of settlement, if the villagers did not want it the common lands stayed intact. For example, the early settlements saw little partition in districts like Ferozepur, Jullundur and Karnal. And even where partitions were made by officials, as in the 1842 Settlement of Karnal, in "most of the cases it was found that the people had never acted upon the partition."[184] During the 1872-80 settlement, as many as 351 applications for partition mostly relating to village common lands were made,[185] Ibbetson allowed most of these partitions yet he had reservations. For he objected, firstly, to the "partition of the whole common lands between the individual members; for it would, if acted upon, deprive the tenants and other non-proprietary residents of their rights of common pasture which they are entitled to enjoy so long as the land is not really needed for cultivation, without conferring any corresponding advantage upon the owners." [186] Secondly, the co-sharer who had sons and oxen "breaks up the land and he who is without does not."[187] When the latter had the ability to cultivate some of the common lands he found that the best lands were not only gone, but the community also by that time had become "disinclined to allow further encroachments upon the pasture land, which is perhaps becoming scanty in extent." [188] The situation led to inequality between the co-sharers, since those who first cultivated the common lands invariably retained their hold and converted *de-facto* occupancy into *de-jure* ownership. Once this happened, the other co-sharers usually tried to remedy the inequality by requesting partition of the common lands.

NOTES

Part II

Chapter 4

1. Section 27, Punjab Land Revenue Act (PLRA) 1871.
2. Regulation VII, 1822 : section 8.
3. Rev. & Agri. Progs. 23 A, July 1903 : para 17.
4. Sel. C.O. of F.C. 3/11/1869, IX, 1869-70 : 67.
5. For common land dispute between Hasanpur and Kurar and the Government as early as 1827, Maconachie says: "wrong was done by our courts", Delhi SR, 1872-80 : footnote, 166.
6. Sel. C.O. of F.C. 3/11/1869, IX, 1869-70 : 67.
7. Section 42 of PLRA 1887.
8. Rev.Man. 1865 : 130.
9. The thakbast method used by the patwaris meant drawing the entire village first and then filling in the cultivated fields and waste plots so there were discrepancies; Lahore SR, 1893 : 68.
10. Kohat SR, 1883 : 93.
11. The Lakki forests near Muktsar was more pastoral than agricultural in pre-British times, Muktsar, SR : 1876.
12. Stow, Cattle & Dairy ... 1910 : 24, 25.
13. Hazara SR, 1868-74 : 133.
14. Hissar Gaz. 1904 : 261.
15. Rev. Man. 1865.
16. Ibid.
17. Collector's Report, Denzil Ibbetson, DC Gujranwala 119, 27/4/1891, Rev. & Agri (LR) Progs. 35-37 A, Nov.1891, also see Chenab Colony SR,1915 : 34.
18. W. Coldstream, Offg. Comm. & Suptdt. Hissar Div. 29/10/184, to Secy to F.C. Punjab, para 7, Land Rev. & Agri. (Famines), Progs. 3-4 A Sept. 1885.
19. Rev. & Agri. Progs. 20 A, Sept. 1909 : para 3.
20. Ferozepur SR, 1910-14 : 8.
21. M.W. Fenton, Rev. Secy. Govt. Punjab, to Secy. GOI, 28/4/1898, Rev. & Agri. Progs. 32-34 A, Aug. 1898 : Appendix A.
22. Ibid.
23. S. S. Thorburn's suggestion to Popham Young, Rev. & Agri. Progs. 32-34 A, Aug. 1898 : Appendix B.
24. Ibid.
25. Ibid.
26. Rev. & Agri. Progs. 56 A, Sept. 1897 : 5 (b) vi.
27. Ibid.
28. Report on the Colonisation of Rakh and Mianwali branches, Chenab Canal, Rev. & Agri. Progs. 59-60 A, Sept. 1897 : 5 (b) vi.
29. Ibid.
30. Rep. Colonisation, Government Waste lands in the Rechna Doab commanded by the Chenab Canal, Rev. & Agri.(Rev) Progs. 59-60, Sept. 1897 : 5 (b) vi.

[31]. Ibid.
[32]. Ibid.
[33]. "As a rule, now the pasture ground of villages has no chance to produce grass; it is grazed down while yet tender; and reserves seem comparatively unknown, at least in the common lands." W. Coldstream, Comm. & Suptdt. Hissar Div. to Senior Secy. F.C. Punjab, Hissar, 29/10/1884, Land Rev. & Agri.(Famine), Progs. 3-4 A, Sept. 1885 : para 7.
[34]. Ibid : 342.
[35]. PBEI, Surveys:Kala Gaddi Thamman, Lyallpur 1932; Suner, Ferozepur, 1936; Gajju Chak, Gujranwala, 1927; Ghaggar Bana, Amritsar, 1928.
[36]. Resolution of the Lt. Gov. Punjab, Revenue Department, No.80, 29/1/1863 in H. Cleghorn, Report on the Forests of the Punjab and the Western Himalaya, Roorkee, 1864.
[37]. M.W. Fenton, Rev. Secy. Gov. Punjab, to Secy. GOI. 4/12/1896, Rev. & Agri. Progs. 56 A, May 1897 : para 5.
[38]. Ibid : para 2.
[39]. Ibid : para 3.
[40]. Ibid : para 5.
[41]. M.W. Fenton, Rev. Secy. to Gov. of Punjab, to Secy. GOI. 30/8/1897, Rev. & Agri, Progs. 44-45 A, Oct. 1897.
[42]. M.W. Fenton, Rev. Secy. Govt. of Punjab, to Secy. GOI, 19/4/1898, Rev. & Agri. Progs. 49A, Dec. 1898 : para 1.
[43]. Ibid.
[44]. Ibid.
[45]. Sett. Man. 1899 : 142.
[46]. C.L. Tupper, Junior Secy. Govt. Punjab, Simla 5/7/1882 to E.C. Buck, Secy. GOI, Rev. & Agri. Progs. 33-34 A, Aug. 1882 : para 9.
[47]. Sett. Man. 1899 : 143.
[48]. Ibid.
[49]. C.L. Tupper, 15/7/1884, offg. Secy. Gov. Punjab, to the Secy. GOI, Home Public, Progs. 18-21 A, Sept. 1884.
[50]. Sirsa SR, 1879-83 : 352.
[51]. Ibid.
[52]. Ibid.
[53]. Ibid : para 3.
[54]. Rev. & Agri. Progs. 20 A, Sept. 1909 : para 4.
[55]. Gujranwala SR, 1866-67 : 42-43.
[56]. Hissar SR, 1875 : 19; also Hissar Gaz.1904 : 261.
[57]. Gujranwala SR, 1866-67 : 42-43; also Gujranwala SR, 1889-94 : 19.
[58]. Karnal SR, 1912 : 38.
[59]. Gujranwala SR, 1889-94 : 19.
[60]. Gujranwala SR, 1866-67 : Appendix, vi.
[61]. LRAR, 1859-60.
[62]. Revenue and Settlements, Rev. & Agri. Progs. 52-64, March 1875 : para 20.
[63]. R.G. Thomson to H.C. Fanshawe, Junior Secy Govt. Punjab, Lahore, 30/5/1884, Rev. & Agri. Progs. 10-12 A, Aug. 1884.
[64]. Ibid.
[65]. Rev. & Agri. Progs. 34-35 A, Aug. 1909 and Progs. 32 A, Nov. 1909.

[66]. M.W. Fenton, Rev. Secy. Govt. Punjab, 19/6/1899 to Secy GOI, Rev. & Agri. Progs. 29-30 A, April 1899.
[67]. Ibid.
[68]. C.M. King, D.C. Ferozepur, to Sett. Comm. Punjab, Rev. & Agri Progs. 29-30A, April 1899; also Sirsa SR, 1900-04 : 9.
[69]. Ibid.
[70]. Ibid.
[71]. P.D. Agnew, D.C. Hissar, 9/7/1898, to Sett. Comm. Punjab, Rev. & Agri. Progs. 29-30 A, April 1899.
[72]. C.M. King, D.C. Fazilka Tehsil, Ferozepur District, to Sett. Comm. Punjab, Rev. & Agri. Progs. 29-30 A, April 1899.
[73]. Rohtak SR, 1905-10 : 42-43.
[74]. Progs. of the Lt. Governor of Punjab, 267, 21/12/1888, Rev. & Agri. Progs. 18-19 A, April 1891.
[75]. Ibid.
[76]. M.W. Fenton, Rev. Secy. Punjab, to Secy. GOI. 19/1/1899, Rev. & Agri. Progs. 29-30 A, April 1899.
[77]. Ibid.
[78]. Hissar SR, 1892 : 16; also Hissar Gaz, 1904 : 261.
[79]. Ibid.
[80]. Hissar Gaz, 1904 : 261; also Hissar SR, 1906-10.
[81]. Karnal SR, 1909 : Appendix A.
[82]. Karnal SR, 1878-82 : Chap I.
[83]. Gurgaon SR, 1903-09 : para 8.
[84]. Rev. & Agri. Progs. 47 A, Aug. 1911.
[85]. Ibid.
[86]. Shahpur SR, 1866 : 82-83.
[87]. H.S. Maine, "An Indian Land Question" The Times, 15/2/1870.
[88]. Gujranwala SR, 1889-1894 : 85.
[89]. Ibid.
[90]. Rev. & Agri. Progs. 23 A, July 1903 : para 111.
[91]. Ludhiana SR, 1908-11 : 15.
[92]. Amritsar SR, 1888-93 : 38.
[93]. Rohtak SR, 1905-10 : 43.
This can be shown with a numerical example:

Revenue on cultivated	Rs.	1,000
Cultivated (acres)		1,000
Shamilat cultivated (acres) by tenants.		+ 250
Average assessment	Re.	1/- per acre
Rent on tenants holding	Rs.	250/- or Rs.1/-per acre
Net Revenue paid by shareholders	Rs.	750/- on 1000 acres
Revenue share per acre	Rs.	3/4

Thus owners' revenue was Rs. 3/4 instead of Re.1/- per acre and tenants paid a fixed rent in lump sum which was Re.1/- per acre or Rs.250/-.
[94]. Gujranwala SR, 1889-94 : 85.
[95]. Ludhiana SR, 1908-11 : 15.
[96]. Amritsar SR, 1888-93 : 38.
[97]. Rohtak SR, 1905-10 : 43.
[98]. Shahpur District 1859-60:
Total Govt. income : Rs. 37,298;

Govt. Rakhs : Rs. 16,589;
Grazing dues : Rs. 4,950 in 1859-60; LRAR,1859-60 : para 359.

[9]9. Muzaffargarh : 1873-80 grazing lands attached to villages was 1,000,308 acres; grazing revenue was Rs.32,644. Muzaffargarh SR, 1904 : 35.

[1]00. Muzaffargarh district; the area of waste in the villages reduced to 920,404 acres, while the revenue increased on the cultivated land : Ibid.

[1]01. Cultivation in Sialkot extended generally at the cost of the grazing grounds, Sialkot SR, 1895 : 36, 40, 42, 44; Kessinger, Vilayatpur,1974 : 119; Jullundur and Gurdaspur saw the area double cropped increase in the 1880s & 1890s, Punj. Census, 1868, Gurdaspur SR, 1892 Statement II; Ibid, 1912 : 3; Zamindars double-cropped by shortening the fallow in Hoshiarpur district, Hoshiarpur SR, 1885; Rev. & Agri. (Rev) Progs. 30-32 A, Aug. 1888.

[1]02. Punjab Fam. Rep. 1880 : 111 & 112.

[1]03. Boserup explained the wide variation in land tenure by the difference in system of land-use in particular regions and "the different ways in which the Europeans have adapted the native systems of land tenure... to the requirements of a colonial economy and to their own ideas of how a proper tenure system ought to be". Boserup (1965) : 77.

[1]04. Sett. Man. 1899 : 64.

[1]05. Gurgaon Gaz.1910 : 175.

[1]06. Rattigan, 1938 : 536; see also 1 Rev. PR 1899.

[1]07. Sett. Man. 1899 : 64.

[1]08. Gurgaon Gaz.1910 : 175.

[1]09. Ellis, 1921 : 42.

[1]10. Ibid.

[1]11. Ibid.

[1]12. Hoshiarpur SR, 1879-81 : 57.

[1]13. Jullundur SR, 1881-86.

[1]14. Gurdaspur Gaz. 1914.

[1]15. Darling, Punjab Peasant (1925), 1977 : 26.

[1]16. Ibid.

[1]17. Ibid : 45.

[1]18. Ibid : 168.

[1]19. PBEI, Survey : Bairampur, 1922.

[1]20. Darling, Punjab Peasant, (1925) : 5.

[1]21. Ibid : 6.

[1]22. Ibid.

[1]23. PBEI inquiry in 26 villages showed 7 cases of shamilat share been mortgaged, 2 by agriculturists to non-agriculturists by order of Court, and 5 by agriculturists to agriculturists, as the mortgagors had sold or mortgaged all their land and left the villages for the Bikanir State; the PBEI, An Inquiry into Mortgages of Agricultural Land in the Kot Kapura, 1925 : Section III.

[1]24. The increase in the Number of suits instituted in the courts in Punjab:

1873	221,855
1878	246,245
1883	260,968

1/4 of this litigation was in the districts of Hoshiarpur, Sialkot, Amritsar and Lahore; Rep. Adm. Civil Justice, 1883, Home Jud. Progs. 84-85 B, Dec. 1884.

[1]25. Amritsar Gaz.1914 : 133, 135.

[1]26. Ludhiana SR, 1859 : 56.

[1]27. Hoshiarpur SR, 1879-84 : para 6.
[1]28. PBEI, Survey : Bairampur, 1922 : 16.
[1]29. PBEI, Survey : Gijhi, 1925 & 1957 : Appendix.
[1]30. PBEI, Survey : Bhadas, 1936 : 155.
[1]31. PBEI, Survey : Gajju Chak, 1927 : 1.
[1]32. PBEI, Survey : Ghaggar Bhana, 1928 : 1.
[1]33. Ibid : 16.
[1]34. Amritsar SR, 1873 : 31, para 82.
[1]35. Amritsar SR, 1873 : 31.
[1]36. PBEI, Survey : Bairampur, 1922 : 39.
[1]37. Ferozepur SR, 1855 : para 22.
[1]38. Ludhiana SR, 1884 : 79.
[1]39. Geoffrey de Montmorency, The Report of the Land Revenue Committee, 1938 : 178.
[1]40. Sialkot SR, 1863 : 104, 105.
[1]41. Sirsa SR, 1879-83 : 336.
[1]42. In Bairampur common lands were partitioned in 1884 and 1894-99. PBEI, Survey :Bairampur, 1922 : 39.
[1]43. Ferozepur SR, 1855 : para 227.
[1]44. C.M. King, D.C. Ferozepur, to Sett. Comm. Punjab, Rev. & Agri. Progs. 29-30 A, April 1899; also Sirsa and Fazilka Tehsil, SR 1900-04 : 9.
[1]45. Ludhiana SR, 1884 : 329.
[1]46. Karnal SR, 1872-80 : para 644.
[1]47. Ibid : also para 259.
[1]48. Ibid.
[1]49. Ibid : para 643.
[1]50. Amritsar Gaz. 1914 : 133.
[1]51. Amritsar SR, 1873 : 31, para 82.
[1]52. Shahpur SR, 1887-94.
[1]53. Egerton in 1 Rev. PR 1873.
[1]54. Ludhiana SR, 1878-83 : 329.
[1]55. Shahpur SR, 1887-94.
[1]56. Ibid.
[1]57. Rawalpindi Gaz. 1904.
[1]58. Karnal SR, 1872-80 : para 644.
[1]59. Ibid : para 643.
[1]60. Report on the Colonisation of Rakh and Mianwali Branches, Chenab Canal, Rev. & Agri. Progs. 59-61 A, Sept. 1897 (b) iv : 5.
[1]61. Ibid.
[1]62. Karnal SR, 1872-80 : para 644.
[1]63. Ibid : para 642.
[1]64. Sirsa SR, 1879-83 : 370.
[1]65. Punjab Census, 1881.
[1]66. Karnal SR, 1872-80 : para 642.
[1]67. D.C. Ferozepur, Sett. Comm. Punjab, Rev. & Agri. Progs. 29-30 A, April 1899; Also, Sirsa & Fazilka SR, 1900-04 : 9.
[1]68. Ibid.
[1]69. From D.C. Ferozepur, Sett. Comm. Punjab, Rev. & Agri. Progs. 29-30 A, April 1899.

[1]70. Ibid.
[1]71. Rep. Conference on the Codification of Customary Law, 1915 : 17.
[1]72. Ibbetson left Karnal in 1879, the Western Jumna Canal was re-aligned in 1884; the Sirsa branch started in 1891 being supplemented by the Nardak Rajbaha in 1898. Karnal Gaz. 1918 : 146.
[1]73. Karnal SR, 1909 : 29.
[1]74. Ibid : 20.
[1]75. Ibid.
[1]76. Circular Orders, 16, 24/6/1881, F.C. Punjab, in the Rev. Dept. 1882.
[1]77. Land Rev. & Agri. (Famines), Progs. 3-4 A, Sept. 1885 : 324.
[1]78. Circular Orders, 16, 24/6/1881, F.C. Punjab, in the Rev. Dept, 1882.
[1]79. Ibid.
[1]80. PAR, 1878-79: paras 4-5; also, Home, Rev. & Agri. (Rev) Progs. 19-21 A, June 1880.
[1]81. Ibid; also Land Rev. & Agri. (Famines), Progs. 3-4A, Sept. 1885.
[1]82. Secy. to F.C. Punjab to Secy. to Govt. Punjab, 6/5/1881 and Punjab Govt. dated 14/6/1881.
[1]83. Civil Appeal 1917 ILR 1932.
[1]84. Karnal SR, 1872-80 : para 641.
[1]85. Ibid : para 642.
[1]86. Ibid : para 643.
[1]87. Ibid.
[1]88. Ibid.

Part II

Chapter 5

CLAIMING THE WASTE

In a fluid political situation official policies adjusted to changing circumstances.[1] This was particularly so when settlement of the waste was dictated by more revenue concerns than by any clear-cut or long range policy. The government laid no formal claim to the waste, and much depended on the revenue officers who were confronted by varying situations at the ground level.

The situation changed once village boundaries were demarcated by the third quarter of the nineteenth century, and there emerged much scope for the colonial Government to reserve wasteland for itself. Even then, this step was not lucrative in terms of revenue where land was not scarce, where it was not irrigated, or where the products of forest land, such as timber, could not find a market. Since management of the waste and forests entailed administrative expenditure,[2] there was no reason to acquire the waste on behalf of the Government. Yet these circumstances were also subject to change. Population growth, railways, and irrigation canals clearly enhanced the demand for the "waste", while spontaneous products like grass, scrub and timber attracted competition from the Military, the Revenue and Forest Departments. Such circumstances induced a change in the pattern of land use, altering the role of fallows both in agricultural and pastoral activity.

Leading up to a Policy:

Soon after the British entered Delhi in 1803, large tracts of waste were transferred to jagirdars like the Mandal family, Begum Samru, and James Skinner. In only one instance did the Government acquire a large tract of land in Hissar in 1813 to make a stud farm, which had been deserted for thirty years after the Chalisa famine of 1783. Apparently it was prepared to "a certain extent, to follow the practice of the native rulers whom it succeeded by planting new settlements in villages which had more waste than they could manage or bring under cultivation within a reasonable period."[3] At the same time it continued the earlier practice of the NWP, where the waste was, in most districts found to be included in the known area within the village boundary and was accordingly conceded to the villages and recorded as the property of the village community, ie as common land.[4] Thus in the earlier stages, little use was made of the provisions of section 8 of Regulation VII of 1822,[5] which allowed settlement officers to settle new estates in the excess village waste. This was equally true of the tract lying across the Beas in the districts of Gurdaspur, Sialkot and Amritsar. This can be explained by two practical consdierations, one that the villages lay in much closer proximity to each other than they did in the far west, and there was consequently not much waste in inter-village areas;[6] in the second place, these were mostly agricultural regions, where the cultivated area was much larger than the waste.[7] Therefore, the Government possessed few fuel and fodder reserves east of the Beas and Sutlej. "Even the low hills of Gurgaon and Delhi were included in the village boundaries, though those of the former might probably have been clothed with valuable forests of dhak."[8]

Even where the Government did take possession of excess waste, as in Karnal and Sirsa, where much unoccupied land was at its disposal, the administration handed the land over to anyone who could bring it under cultivation.[9] For example, as early as 1829 as much as 100 acres were sold to a Mr. Trevelyan outside the city of Delhi itself.[10] In Sirsa and elsewhere, grants for military service or safed poshi were given in the waste.[11]

Following annexation in 1849 several stages can be discerned leading to what could appropriately be termed a policy. In the first instance, there was the entire question of recording property rights itself and within this the necessity of distinguishing between the private and public domains; then there arose the need to clarify the rights of individual as against communal property. At the same time the entire question of demarcating large tracts of waste and forest arose, necessitating claims for Government stewardship. Such was the situation subsequent to

the findings of Barnes in the course of his revenue settlement of the hilly district of Kangra. Although Barnes believed that extensive forests could be considered as the property of the Government, he recognised that there were "subordinate tenures which cannot be overlooked", and consequently hesitated before reserving such lands.[12]

He nevertheless saw the wisdom of closing forests against the phenomena which we today associate with 'free-riding', and noted how effective in this respect had been the policy of the hill Rajas in closing their forest jagirs. Barnes illustrated his opinion by pointing out that in "the Government lands, the people on our accession broke loose, and for the first three years could not be restrained from reckless destruction of the timber."[13] Such a conclusion was unfortunate, if not unfair, for what occurred was far from the general experience. In general Barnes appreciated the institutions of customary usage and self-organised restraint on the part of the nomadic herders using the Himalayan country-side, but in this instance he apparently assumed a situation of opportunistic free-riding and recommended a case for closed forests. It is evident that he either failed to isolate these particular incidents of "reckless felling", or deliberately overlooked the fact that forest-users were *pre-empting* Government appropriation of the forest commons. Barnes' forest settlements, as we see now, created an uncertain property rights situation in the forest commons in Kangra, and this was bound to cause opportunistic felling of trees. Perhaps Barnes also failed to see the negative impact on the people of the Government's own actions when large tracts of valuable deodar forest were purchased by the PWD in 1854 for smelting iron to make instruments for building the Indo-Tibet border road. The production of charcoal for this activity alone entailed the destruction of 2,800 trees annually![14]

Inspite of his pro-forest-closure conclusions, Barnes' settlement of the waste drew critical comment from both within Punjab and without. The Financial Commissioner of Punjab found Barnes' mode of settling the waste marked by "considerable indistinctness". The review noted that Barnes had conceded too much to the land holders by default, for "Barnes says that 'extensive wastes and forests are generally considered the individual property of Government.' From this it would appear as if he reckoned small wastes to belong to the landholders." Then, he created the community by treating "the holders of land within the circuits, as co-parcenary bodies, and imposed upon them a joint responsibility to which they were strangers; and to balance this, gave the community the right to collect certain miscellaneous rent, and the produce of the waste." And finally he created common property. The Settlement Records used the term '"common land of the village' (shamilat deh), sometimes this definition is omitted and then the ownership of the waste is left to be inferred from the interests recorded in it."[15]

Barnes also drew criticism for providing grazing to communities in the land lying between villages — the intermediate waste — at the time of settlement. Such action, according to Cleghora, Conservator of Madras Forests, was "not always in accordance with the principle of forest conservancy." [16] Cleghorn concluded that Barnes' settlement did not "declare the just rights of the Government to forest land. Therefore the Government did what it thought was the best under the circumstances and that was to obtain the best portions by compromise". Cleghorn recommended that "these be demarcated as Government reserves."[17]

Although drawing strong criticism, there was a catalytic dimension to Barnes[1] settlement of Kangra, for it initiated a debate within the Government itself on private versus public property rights in forests and the relative status of legally recorded as against customary rights. The whole issue was complicated by the fact of transhumance in the Kangra hills. Barnes reported that there were "certain castes in the hills such as the 'goojurs' and 'guddis' who cultivate little and keep herds of buffaloes and flocks of sheep and goats. Such classes have a claim upon certain beats of the forest which they regard as their 'warisee' subject to the payment of a pasturage toll."[18]

Such observations were supported by Batten, the Settlement Officer in 1856-64 from the Gurhwal district in the hills of Kumaon. He asserted that "The Central and Lower Himalayas are not howling wildernesses, but have been for ages occupied by an industrious agricultural population. These people are in possession of the tracts."[19] The choice thus lay between the customary user rights to the waste of cattle herders and the overlordship of the Government.

Barnes had not, in fact, set aside much of the inter-village wastes for the Government; but the larger wastes were closed as Rakhs or reserved forests. His major concern was fiscal, that is, to avoid the expenditure neessitated by a forest administration.[20] In support of Barnes, the Government of Punjab announced, what came to be known as Bayley's Rules of 1855, which was later amended by Col. Lake in 1859.[21]

Initially therefore, the Government was not only hesitant but sensitive to the customary rights of forest users. Thus there were several occasions when the local officers sought to re-assert the paramount claim of the Government to the waste; each time the Chief Commissioner refused to acknowledge the principle and ruled that the waste must be held as the property of the villages, and that no land could be appropriated without the consent of the land-owners. [22] This was re-affirmed in 1863 and all of Kangra was settled on Barnes' principles.

A Wasteland Policy

In October 1861 Canning's Wasteland Minute enunciated a policy for the sale of wasteland to Europeans with "capital, skill and enterprise in order to effect improvements in agriculture, communications and commerce of the surrounding areas." [23] Under orders issued by the Government of India, local governments in every province were directed to exclude from the list of lands available those likely to be wanted for public or other special purposes, such as grazing grounds, forest lands or fuel reserves, or the sites of stations or of building lots. This done, all the other waste lands could be sold without reserve.

These rules for the granting of waste land made three major concessions to the prospective lessees. First, "the deed shall convey all rights of forest, pasturage, mines and fisheries and all other property of the Government in the soil"; second, "there shall be no reservation to the Government of any right to take land or material for roads, tanks, canals, works of irrigation, or other public investments"; and third, "there shall be no condition obliging the grantee to cultivate any specific portion of the grant within any specific time."[24]

The policy reflected a pragmatic response to complications which arose whenever the public domain came into contact with the private. At the same time it provided an incentive to people of means to invest in the waste. For example, there was first the question of mineral rights. As early as 1852 there had existed, in Punjab and North West Provinces, an order of the Lt. Governor[25] declaring that "Kunkur found on any estate belongs to the proprietor of the estate. It is a manorial right, included under the head of sayer, as an item in the contract, between the Government and the proprietor, at the time of settlement, every proprietor, has a right to quarry the kunkur himself, and to use and sell it." Once again the policy was reiterated, but after 1861 it was to attract capital from outside.

By these means not only were the terms and conditions rendered more liberal than those granted to indigenous lessees in the Karnal and Ambala districts in the forties, but the whole question of waste ownership was raised in a much wider perspective. These changes in policy were exemplified in the neighbouring NWP, where C.B. Beckett's Gurhwal Settlement Report of 1864 observed that "The real difference between the old Naiabad (New Settlement) lease and fee simple grant of recent years, is that the former created a new 'mahal', productive of future revenue to the State, and of the proprietary right and profit to clearer of the waste, but left the use of the adjacent forest in the same state as before; while the latter necessitates a far more careful preliminary examination than was previously required, of all the existing circumstances of the neighbourhood."[26] Beckett's conclusion was that the Himalayan pergunnahs were occupied and hence were not available for "foreign colonisation".

A perspective such as this influenced J.B. Lyall, who had been appointed to revise Barnes' settlement of the Kangra district. His approach was a conservationist and a conservative one. He came up with something almost akin to a "public trust" concept for the waste. According to him, State property in the waste was different from that in nazul land which had once been private property. He looked upon State property as a trust on behalf of the people of Kulu, since the property had devolved to "us as successors of the Rajahs." [27] Lyall believed that if the people of Kulu were as democratic as the Pathans were, the forests would have belonged to them rather than to the king. Therefore the "Government must look to its origin in exercising it; and if any changes or innovations have to be made for imperial purposes, such as increased supply of timber to the plains or colonisation, some compensating advantage should be secured to the men of the country."[28] However if, continued Lyall, the needs of conservation were especially pressing, the State could ultimately prohibit the "exercise of rights of common in a part of the forest and it has a right to send in herds, droves and flocks to graze in the waste; but it is bound to exercise these rights and that of approvement so as not to unduly stint or disturb the rights of use previously existing."[29]

Thus when Lyall commenced his settlement of the Kangra in the late sixties, the Government had reserved in the waste lands only the right to certain forest timber and grazing fees, and had surrendered to the peasant proprietors the right in the soil together with the miscellaneous entitlements to fees levied from Gujar

herdsmen, quarries etc. Such a settlement of property rights in the waste inevitably created conditions of friction. Conflicts of interests emerged in the Kangra over tea estates. For example, Major-General Cunningham purchased in 1864, for purpose of tea cultivation, some land in the village of Manali in Kangra, in an area where forest grew and on which Government had a claim. The villagers also asserted their rights to grazing.[30] The Commissioner of Jullundur recommended that these claims should be accommodated. Steward, the Conservator of Forests, was asked to give his opinion on whether it was necessary to reserve the forest, disallowing the sale of the land and grazing rights. Presumably acting on his advice, the Lt. Governor agreed to a "compromise between the Government and the zamindars on the one side and Major General Cunningham on the other, of the forest and grazing rights in the land purchased for tea plantation" by [31] General Cunningham who surrendered his ownership rights to the land and was given land valued at Rs.500/-, and a like amount in cash,[32] by way of compensation. Friction was also caused by the P.W.D.[33] activities in road building and the rights of village proprietary bodies to the kunkur.

Although the Government ultimately amended its own rules with regard to kunkur and mineral rights in the shamilat[34] until it did so there was no relaxation in the policy advocated by the Chief Commissioner in the early sixties. The sovereignty of the "khewatdars" in the matter of their waste lands was maintained and "no land could be appropriated without their consent."[35] Similarly in the case of kunkur it was said that even till 1867 the Financial Commissioner, Col. Lake, "would not assert any other claim or right on the part of Government and he considers that if a kunkur quarry be discovered and worked during the period of settlement the Government could only obtain the kunkur as a private individual would do."[36] With this opinion the Lt. Governor of Punjab concurred.

Ecology and the Waste:

The pattern of human settlement did much to shape official perceptions. During the early 1860s, when a policy for the waste was evolving, the area that appeared to lie "unused" was enormous, both in the hills and on the plains of the Province.(see table 5.1) What is more, the area so designated extended over time: in 1859-60 unassigned waste in the Punjab was 8,263,849 acres; in 1868-69 it was 8,331,075 acres; and by 1876 it had risen to 12,056,547 acres.[37]

Table 5.1 The Waste : Punjab

Cultivated	Culturable	Unculturable	(in acres)
20,171,558	17,683,411	27,428,081	—

Source: PAR, 1868-69.

This area was unevenly distributed between the different districts. In 1868-69, in at least half the districts in the Punjab, accounting for nearly 75% of the assessed area, the land uncultivated and kept as waste exceeded that under cultivation. Although 17 of the Punjab's 32 districts had grazing land indicated separately from the culturable waste, the remaining districts did not even have specifically demarcated grazing lands, cattle roaming at will without let or hindrance.[38]

This unevenness can be explained in terms of geo-morphological factors. Western, southern, and south-western areas of Punjab were incapable of supporting intensive land use, that is double cropping and cattle rearing, without: (a) large areas of fallow or grazing wastes for the cattle, and (b) irrigation support for cultivation. In the absence of irrigation, barani (rain-fed) cultivation was practised extensively in some of these districts where large amounts of cattle were also maintained. This was so in Hissar and Ferozepur, where substantial areas of cultivation are recorded in the tables of the Punjab Administration Records. However we cannot deduce that these were areas where crops had actually *matured,* do we know the proportion of food crops devoted to feeding the

cattle. Large areas of cropped acreage were in fact utilised for cattle grazing, and not the production of food crops.[39]

This natural incidence of the "waste" indicated that the drier regions could not support continuous cultivation without irrigation. However, wherever sailaba cultivation, (i.e. inundation by river flood) was feasible, no land could be spared for grazing and cattle perforce grazed periodically on the unspecified waste. This was the situation even in Lahore district, where canal construction had made possible extended areas of cultivation with irrigation.

Population density likewise reflected conditions of land-use. Not only was this lower in the Punjab than in the other Provinces of British India, (see table 5.2) but was unevenly distributed as among its different districts,

Table 5.2 Comparative Density of Population

Province *	Density	Districts,Punjab**	Density (per sq.mile)
Bengal	311	Gujranwala	148
N W P	420	Rawalpindi	92
Madras	170	Montgomery	55
Bombay	156	Jhang	38
Punjab	155.80	Shahpur	64
		Sirsa	51
		Hissar	100

Source:* PAR. 1855-56 : 71.
** Shahpur SR, 1866.
Punjab Census. 1881.

with some, such as Sirsa, Hissar, and some of the western districts, having a human density below the Provincial average (see table 5.2).

Characteristically, therefore, the "frontier" province could support more cattle than humans, and pastoralism thus occupied a significant proportion of its inhabitants.[40] Early efforts to settle waste lands among the village communities undoubtedly succeeded in extending cultivation, "but much of this extension was within the boundaries of the villages",[41] and owed much to de-mobilized soldiers who were as "good with the plough as with the musket."[42] The effort to found new villages, and "get rid of what appeared unprofitable property", led only to the "abandonment of older villages, to the serious loss of land owners, and the jeopardy of the settled revenue."[43] Officials recognised fairly early in the 1860s that human ecology would ultimately determine the pattern of land-use. Cultivation of un-used land, they believed, required changes in infra-structure which naturally favoured pastoral pursuits as against sedentary agriculture.

Although these circumstances *did* change, this reflected, at least initially, not any factors directly concerned with agriculture, but rather the emergence of a new source of demand for items of non-agricultural produce — the output of the officially designated waste lands. Wood was required for the smelting of iron in Kangra and Mandi. Urban growth brought a heavy demand for both domestic and official uses; for instance Simla had 980 houses and consumed as much as 900 maunds per day.[44] Railways, however, were the greatest consumers. The Government of Punjab reserved all "the timber standing on any waste on sale by Government in the Amritsar and Lahore District".[45] But the railways demanded 120,000 maunds yearly for just the 60 miles of lines in the Lahore district, and the supply from the Rakhs in Lahore would not last beyond a year and six months. This arrival of prosperity and the railways gave great value to tracts away from the plains, like the extensive forests of the Kulu valley, and even to the open and sparse areas of Kangra and Hoshiarpur. Kulu valley was expected to supply half the timber required for the development of the Punjab Railway, estimated at around 400,000 cubic feet in 1863-64. Even the Kangra hills were to be tapped for the same purpose.[46] Searches were also undertaken for

additional forest reserves, and it was in one such that Cleghorn came to be appointed to the assignment which led to his expedition through the Himalayas.

Thus the introduction of the railway in 1862 caused officials to reassess the value of the waste, and with this came changes in human ecology.[47] Yet it was not perceived that wastes occupied a positive place in the human eco-system of the pre-colonial era; and more, that they existed not *only* because of the scanty population, but because of the needs of the migratory population which made seasonal use of waste in the manner we discussed earlier.

These blind spots within official policy and action towards the waste caused the migratory movements of pastoral groups to be stalled in most of the districts. The disturbance was deepened further by the demarcation of boundaries of villages in the waste after the first settlements of the 1860s. Large areas of waste however remained unassigned and at the disposal of the Government, over which neighbouring villages had "no prescriptive rights to pre-emption, or to graze".[48]

To conclude. A uniform policy of demarcation, combined with an uneven distribution of population, rendered it convenient for the Government to lay claim to what appeared to be "waste". Land values simultaneously rose, and in 1865 Robert Cust recorded that "grazing land and waste land covered with scrub fit for firewood, was as valuable as cultivated land, and since the new demand for firewood was caused by the Railways, this fact has forced itself still more on public attention."[49] Most significantly, it gave the Government an administrative hold over patterns of land use.

"Capture of the waste" : the Regional Commons

Thus it was that the most dramatic reservations took place during the 1860s in the central and western plains. Grass reserves, wood lots, and railway station parks were all a result of this set up; they were precursors of a whole new department of arboriculture, a response to the ever expanding requirements of both the civil and military administration in the Province.[50] The character of these reservations varied from region to region. In districts which had large unoccupied tracts, like Dera Gazi Khan, as many as 80 Rakhs were reserved in 1869-74, although the district did not have proper forests;[51] and yet again in Muzaffargarh the Government reserved 311,554 acres in 1873-80.[52] However, where the cultivation in an area had already spread and the grazing ground was interspersed with fields, the Rakhs were not in large stretches but in patches. This was so in the settlements of the western districts like Lahore, Gujranwala, and Shahpur during the 1870s.[53] In the riverine areas the wastes were not enclosed with cultivated land, but lay along the river banks with cultivated fields in between, as in Muzaffargarh, for example, these were reserved.[54]

Whether in the large areas of continuous waste, as in the Dera Ismail Khan, or in the lesser discontinuous patches of Lahore, Gujranwala, and Shahpur, the Government cared little to continue the user rights of the neighbouring cultivator or pastoralist. The large jungle areas surrounding the villages of the Thal in the Dera Ismail Khan, in the Trans-Indus, were reserved by the Government even though "it was clearly the property of the Village Community and it was impossible to ignore their claims."[55] In these areas boundaries were set up around the jungle tracts and the peasant proprietors did not possess "rights of any sort, either of grazing or cutting fuel." Something like 60,000 acres were taken as Government Rakhs in 1865.[56] Similarly, the prescriptive rights to grazing of the neighbouring villages in Lahore were ignored.

Even in districts like Jhelum,[57] which had large herds of cattle and required extensive grazing wastes, "blocks of excess waste were cut off from village lands in the early years of British rule."[58] Hence the reservation of areas limited the grazing rights of revenue payers whose estates saw the exclusion of any "excess" waste. This area witnessed large-scale death of livestock in the famines of the 1890s, so that it "became a custom to keep very few cattle", plough cattle being bought before harvest and sold again when ploughing was over.[59] The results such Government reservation of waste had been apprehended as early as 1865 by officials like Lyall.[60] Almost 40 years later J.A.L. Montgomery, Commissioner and Superintendent of the Rawalpindi Division, acknowledged in his review of the settlement of Jhelum district in 1895-1901 "that the manner of separating off these blocks was not always judicious ... There were complaints of bad boundaries and want of access to water springs."[61] He urged, in

response, a policy which did not take "too departmental a view, but as held in trust for the people, and conserved for their benefit".[62] But this did not happen.

In the initial phase of settlement, as in the Jhelum district, an effort was made to leave a certain amount of common land for agricultural communities. Villages in the hills and plains had waste allocated to them three times more extensive than the land under cultivation.[63] Although there were instructions not to make allocations on precise mathematical proportions, in reality these boundaries were most unimaginatively drawn up, frequently failing to satisfy neither Government or villagers. It had been the Government's intention to avoid boundary quarrels in the waste. What occurred was precisely the opposite - as we shall see in the chapter on disputes.

Sale of Waste Lands

With a growing demand for the products of waste lands the Rakh lands yielded income,[64] but sales of these lands also took place on most liberal terms.[65] For example, as many as 1,533 acres in Karnal were given to the Rev. Charles Carleton for a Christian Mission in 1864-68 for Rs.150/- per annum[66], the effect of this transfer being to deprive neighbouring villages of grazing. This was especially serious since Karnal was becoming in any case increasingly short of grazing, with even the cultivated lands of some villages having to be compulsorily kept fallow.

The terms of such sales were modified over the years as the waste became important not only for the products on the surface but also for the minerals below. This necessitated a modification of Canning's Wasteland Minute, under which land grants were made by the legislation of 1863. According to this, blocks of land not less than 3,000 acres were to be sold, the purchaser obtaining plenary rights to all products above and below the surface.[67] This leniency ceased when it was discovered that similar sales of land in the Central Provinces did not provide against loss to government by the sale of lands which may have special value arising out of their timber or mineral resource.[68]

Policy and Institutions of the Grazing Commons

Early in the 19th century, Government activity in the construction of roads began. Canals and railways followed in the 1860s. In the first half of the century, when the amount of unassessed waste seemed to be large, most of these resources were obtained without the Government having to pay. When, for instance, in 1827 the Government built parts of the Grand Trunk Road in the Delhi District, it had taken grazing common land from one of the villages. By way of recompense the Government decreed that the villagers be allowed to graze their cattle on the commons of a neighbouring village, from which no land had been taken. In this case even the Settlement Officer was constrained to add that the Civil Courts did great injustice to the villages of Hasanpur and Kurar, which now jointly had less waste upon which to graze and were not compensated for the loss.[69] (see Chapter on disputes)

Such acquisitions, however, became increasingly costly as population growth and demarcation of villages reduced the availability of waste, and in some cases the Government had to pay for the resources it acquired. Understandably waste lands, whether allocated to the village or sold, were no longer sacrosanct if the Government discovered kunkur beds in the village waste and needed it for any public works. As early as 1864 the Government had circulated special rules enabling Commissioners in Delhi, Ambala, Jullundur, Amritsar and Lahore to purchase the right of digging kunkur where it was required by the Public Works Department.[70] To its consternation, the Punjab Government discovered that even such instructions could not exclude competition from a civil agency as when a private Englishman bought the rights of digging kunkur in the common lands of the village of Kala Bahean in Jullundur district, which the PWD engineer demanded on behalf of the Government. The matter went up to the Chief Court, which recognised that in the new situation the Government would have to pay for what it had earlier obtained for free.[71] (See chapter on disputes)

Realising that it was the effect of these activities that created a market for *all* land, the Government resorted to the ultimate weapon of all rulers - *the power to change the rules of the game.* The Punjab Government was given the authority to impose a more stringent revenue demand, as was evident from the passage of the 1871 Punjab Land Revenue Act. (see Chapter 4)[72] Similarly, it was not long before the Government developed a "legal"

method by which to re-capture rights to the waste which it had earlier bestowed as common property to the community. It was by this means that the Sind Sagar Doab Act enabled the Government to acquire 1.5 million acres of shamilat land in the district of Dera Ismail Khan, without having to pay heavy compensation to the village communities.

There was a visible shift in Government policy by the last quarter of the nineteenth century *away* from settling cultivation on the waste and *towards* creating reserves of forests and grass lands. This co-incided with the increasing capacity of the State to overcome institutional hurdles. From the 1860s to the 1890s railway extension dictated wasteland policy. Although the railways then shifted from charcoal to mined coal, the demand for timber for construction continued as urban demands increased in the twentieth century. At the same time canal construction continued, in an indirect way, to make the reservation of grasslands increasingly important, reaching a climax in the last quarter of the nineteenth century, (see table 5.3)

Table 5.3 Public Works : The Punjab

Year	Railways	Canals	Roads (miles)
1867-68	356	"	— —
1876	530		1,381
1891	2,189	3,813	
1901	3,086	4,644	1,916
1904	3,325	4,744	2,054

Source: PAR. 1867-68; Imperial Gaz. 1908.

Canal irrigation rendered it possible to colonise and sell the waste, and with this the demand for grass preserves increased. In Karnal district, for instance, large areas were acquired by the Government for grass preserves as the grazing lands were increasingly converted to cultivation with irrigation. Douie, as Settlement Officer in 1891, reserved several blocks of waste for grazing in the predominantly pastoral tracts of Kaithal and Pehowa [73]. The Government also set aside 7,750 acres of pasture land as common grazing for villagers who were given grants of agricultural land.[74] Private individuals started *fallowing irrigated land* as some districts lost pastoral land to cultivation! In Karnal tehsil "a strong Jat community abandoned the cultivation of a fully irrigated estate" in 1906.[75] Organised institutions also, like the Presbyterian Mission in Ludhiana, turned a large part of their land in Kaithal to profitable grazing. [76]

The shift in policy is similarly evidenced from the manner in which the Government assigned an increasing proportion of the land at its disposal to forest land, labelling the rest as "unassigned". In 1859-60 forest and waste accounted for 28% of the total land held by the Government; by 1868-69 the proportion taken by forests had increased to 90% of the total land.

Table 5.4 Land at the Disposal of the Government

	1859-60	1868-69 (Acres)
Forest and wastelands	2,312,260	8,317,075
Culturable	5,196,779	
Cultivated	3,596	
Unculturable	751,014	
Land leased & sold		13,305
Total land at the disposal of the Govt.	18,263,649	8,330,075

Source: PAR, 1859-60; 1868-69.

"Unassigned" waste at the disposal of the Government had risen to over 10 million acres by 1876 - amounting to 16% of the Punjab land area, (see table 5.5). In other words, over these ten years the Government withdrew from

Table 5.5 Un-assigned Waste : 1876

	No. of tenures	Acres
Grantees & lessees of Government.	1,584	1,772,342
Purchasers of Government land.	64	17,078
Landholders with redeemed revenue.	63	51,001
Government waste unassigned		10,216,872

Source: PAR. 1876.

holding culturable land and shifted over to forests and waste. The reasons for this were not far to seek. Canals had gone through the erstwhile famine stricken areas of the Cis-Sutlej territories in the 1860-68 period, and as a result cultivation had expanded in all those districts fertilized by the Western Jumna Canal and the Sirhind Canal.[77] This demonstrated to the Government the importance of controlling waste lands, through which canals could be constructed without the need to pay compensation. The situation existed wherever the Government was planning to take up lands, and therefore one of the ways to avoid heavy compensation claims was to keep back land even when there could have been a demand for it.

The increased quantity of reserved land held by the Government in Punjab did not escape the notice of the Secretary of State in 1878-79. In his report the Secretary acknowledged the 16% increase in cultivation over the decade 1868-69 to 1878-79, from 20,168,320 acres to 23,459,840 acres, and noted that this was accompanied by a 5% growth in revenue, from Rs. 1,84,85,483 in 1868-69 to Rs. 1,94,05,583 in 1878-79. More importantly, however, he remarked upon the 10% *decline* in total livestock numbers over the same period, only sheep and goats exhibiting a slight increase.[78] From these two contradictory tendencies he surmised that the decline in livestock in the Punjab could be attributed to the decrease in pasture following the increase in both cultivation and the quantity of reserved areas in the hands of the Government. He deprecated this decline in livestock in his letter of August 1880, which was according to him the "most unsatisfactory feature in the present report".[79]

It was not surprising that note was taken of such a feature, since the trend of declining livestock had started even prior to 1868, when Lyall had been asked to verify the relationship between falling livestock and

increasing reservation of forests in Kangra as a part of his task of re-settling the district. Also, while in the previous reports the reason for the decline had been given as disease and the failure of grass and pasture lands, now the Secretary of State picked on the latter explanation and specially emphasized its importance for cattle as they were "one of the principal elements of prosperity. "[80]

Famines, Fallows and Fallacy,

Admission of the importance of livestock to the economy of Punjab enhanced the consequences of the British wasteland policy, especially in those districts where pastoral farming was significant and the spread of cultivation had caused a decline in the pastoral commons. This was succinctly brought out by the Secretary of State's report, which traced the course of the droughts and famines which had plagued the Cis-Sutlej territories for over ten years. Such an analysis was founded upon the experience of pastoral districts like Karnal, where Ibbetson had observed that the waste was allotted to the villages without thought for the provision of grazing land, and consequently "they have no waste left whereon to graze or cut fire-wood and they naturally clamour to get their wants supplied in the neighbouring Government waste. Whenever, then it is desired to enclose this for planting or other purpose, there is a loud outcry; and this may result some day in great loss."[81] This demonstrates that the waste "enclosed" by the Revenue Department had been previously used as long fallow for grazing, supplementing the village common lands. Further, it indicated that the village waste allocated at the time of the settlement was insufficient for the requirements of a pastoral people who sometimes also cultivated the common lands in long fallow rotations.

There were additional reasons for official anxiety. First, it concerned the administration that its policy of encouraging cultivation did not produce a corresponding growth in revenue, as evidenced from the Secretary of State's statement above. Second, it was an uncomfortable *expose* of the short-sightedness of early policy, which had overlooked the contribution of pastoral pursuits to the viability of a rain-deficient agricultural province. For example, ploughing, manuring, and well cultivation in areas with rainfall of less than 20 inches was critically dependant on the number of cattle, and if the latter declined cultivation could not be sustained and revenue also would decline. Third, the demand for meat by the Commissariat had led to the slaughtering of "heifers and cows"[82] which proved ruinous to the stock. And, lastly, it appeared that such damage could be set right only if the "cultivators attempted to increase their stock with a view to answering the demand." Hence the harmful consequences of a restrictive waste land policy and unimaginative provision of common grazing lands to villages began to dawn upon the Government.

Famines, however, were the most potent criticism of the wasteland policy, a fact exposed by the report of the Famine Commission. Famines occurred in various parts of the Punjab in the ten years (1868-1878) at a time when demarcation of forests and village common lands was taking place and when also cultivation had been extending. Although the number of famines in the Punjab had been less than the all-India figure in the hundred years since the Chalisa of 1783, (9 as against 21),[83] the incidence of all droughts, scarcities, and famines had been concentrated in the Delhi Division, and within this area mostly in districts of Hissar and Gurgaon. *These were the major cattle rearing areas.*[84]

South and South East Punjab became the most vulnerable areas to famine conditions. These agro-pastoral tracts were the first to be moved towards cultivation,[85] yet the arable was critically dependent on the monsoons. Whenever the rains failed, conditions deteriorated. Cattle already weakened by shortage of fodder and grazing found it increasingly difficult to work the lowered level of water in the wells, and since these were the chief source of irrigation, cultivation shrank, and with the grass in the grazing grounds also dried, the situation developed into a famine. This coupling of drought with famine is evident if we group the years thus:[86]

1837: *Drought* in Punjab, Gurgaon and Delhi;
1838: *Intense famine* in Delhi & Hissar Divisions;
1860: *Drought* in Punjab; Gurgaon and Delhi severely hit;
1861: *Famine* in Delhi and Hissar;
1868: *Drought* from Jumna to Indus (Hissar & Karnal particularly);
1869: *Famine* in Delhi and Hissar;

1877: *Drought* in Punjab;
1878: Scarafy in Punjab.

Such a sequential course of events was characteristic of the Delhi Division in the Punjab. At only 11%, the small percent of crops grown under irrigation,[87] meant that any insufficiency of autumn rains caused not only rabi sowing famine, but a shortage of grass, and hence mortality among cattle. This was particularly so in areas where rainfall, even in normal years, was less than 15 inches - as in the western half of Karnal, Hissar, and parts of Delhi.

The Famine Commission was therefore critical of the unthinking extension of cultivation by indiscriminate felling of trees and forests. Such additions to the arable area did not help in times of drought, especially since famines did not mean mortality among men alone, but also of cattle. [88] It proposed, first, the conservation of lands on the margin of cultivation; and second, that "some of the least productive tracts now under the plough might be managed with greater benefit to the community as protected forests for village use than as arable land".[89] The Commission objected to trespass on public forests, and strongly recommended even village communities to "avail themselves of forest produce in a manner consistent with its re-production and not with a license recklessly destructive of the public property."[90] The Famine Commission was thus able to demonstrate that notwithstanding the extension of cultivation in the south and east of Punjab, the region remained more vulnerable to famines than others.

This conflict between extension of cultivation and pasturage increasingly sharpened with the Government tightening user rights in reserved forests and grass preserves. As a result the village grazing commons were subject to a diverse range of pressures. First, extension of cultivation meant a shortening of long fallows, leaving less privately held *grazing within* villages. Second, increased settlement in the open waste by old and new inhabitants meant a reduced area for grazing village and nomadic cattle in the regional commons *surrounding* villages. Third, Government reservation of forests and grass preserves precluded access to this *supplement* to grazing in the village commons. And fourth, restrictions or abrogation of customary user rights in forests shrunk still further the *external* grazing resources.

The process thus initiated was to lead to the enclosure of the once open regional commons. Pressure on the village commons doubled, since first, with the grazing wastes now absorbed in the Government forests, the cattle were forced to graze on the common banjar kadim, throughout the year; and second, there was a shift from extensive to more intensive use of cultivated land. Both long and short fallows contracted, and arable as well as pastoral lands were more intensively used. There consequently resulted a curios situation in which plentiful waste at the provincial level coexisted with scarcity of waste within the village. Although from an aggregate perspective the quantity of waste was more than double that given over to cultivation, individual villages experienced a relative scarcity of grazing land. This is evident from the figures provided in table 5.6 below, as well as from the comments of the Famine Commission in 1880 referring to: "the scattered plots that lie in villages already more or less highly cultivated and densely populated which are used as common lands for grazing the village cattle, and portions of which the present cultivators will generally take up and bring under the plough."[91]

Table 5.6 Land Use: Punjab, 1880

	1868-69	1880	(square miles)
Cultivated	31,513	35,000	
Culturable	25,333	30,000	
Unculturable	45,155	38,000	

Source: PAR, 1868-69; Fam. Rep., 1880.

These trends in land use patterns mirrored an irreversible shift in the pattern of property rights, and in the process created an imbalance between food, fodder and pasturage. On the other hand whether the Government's policy induced conservation of some resources or not, it certainly enabled it to set up an infra-structure of communications which dispersed the benefits of markets to the public at large, favouring urban townships. All this was at the expense of the rural users of waste. While individual villages in the hills and plains lost their former rights in the regional commons, the reduction of the available grazing area seriously eroded the livelihood of the nomadic herders.

Famine influenced yet another change in policy affecting the status of the village commons. As the common long fallows shortened, there was a significant transformation of the pastoral economy. Famine also reinforced the point that commons were better protected under village forests than grassland subject to overgrazing. In the Delhi and Gurgaon districts, which were scantily provided with trees, there was a move during the 1880s to plant groves of trees in the village common lands.[92] Similar measures were promoted for the entire Hissar Division.[93] With grass in open pastures more likely to be burnt by the hot sun, village forests were recommended along with more resilient wild grasses. To offset shortage of common grazing lands storage of fodder was encouraged, with experiments in new forms of stacking and ensilage. The importance of adequate fodder supplies was recognised by the Lt. Governor of Punjab, who wrote in 1885 that: "The preservation, not to say increase of stock, turns mainly on the supply of proper fodder, and a large number die because their owners take no trouble to find food for them." [94] Coldstream, Commissioner of Hissar, gave the example of the Jats and Bishnois of Hissar who kept juar and baira for 4 to 6 years which could see them through drought years. In the village of Kamri, 3 miles from Hissar, 400 bullocks were kept alive from fodder grown on barani land in drought conditions. [95]

This problem of fodder was not peculiar to dry tracts. Irrigated tracts could grow fodder, but since food crops had higher value the amount produced was relatively small and in drought years shortages of fodder could arise. [96] On the other hand rain-fed or barani crops, like juar and bajra, as cultivated in villages like Kamri, did provide sufficient fodder. This meant that villages growing fodder crops, whether in irrigated or un-irrigated tracts, needed to take in not only more land for cultivation but required to multi crop: the situation required, that is to say, not just extensive but also intensive cultivation.

The fragility of the situation created by extension of cultivation at the expense of pasture was further exposed by the recurrence of famine in 1896-97. This time, too, the Famine Commission reported that scarcity was a consequence of failure, not only of food, but of fodder crops. In the Punjab additional pressure arose from the fact that famine periods tended to see a drying up of the common pastures, so that at a time when normal food supplies were diminished the extra demand for fodder crops to supplement the insufficient pasturage was made at the expense of grain-producing crops. [97] *Food crops were reduced at a time of food failure!* Indeed, as the crisis deepened, the barren pasture lands were themselves converted to the production of fodder in an effort to stem the loss of cattle.

Some illustrations from the different districts will elucidate these points. Muktsar, in the district of Ferozepur, was very near to the Lakhi forests and had a strong tradition of cattle rearing in pre-British times. The people used the forests to supplement their open grazing resources, and depended on cattle for their livelihood rather than agriculture. In addition, during famines they resorted to long distance grazing wastes in the river tracts or to Bhawalpur or Bikaner in search of fodder.[98] But with such long range movements becoming, as we have seen, increasingly difficult, there was a tendency away from nomadic pastoralism towards sedentary cultivation. This happened in the district of Karnal, also, where long distance grazing waste had traditionally provided a critical escape from famine. Some graziers drove to the hills of Nahan, others to Jumna or a big jhil in the Terai of the North West Provinces. In drought years the grass did not keep, and over-grazing had, besides, reduced its quality.[99] Even in a predominantly cattle breeding tract like Hissar, the disappearance of such famous grasses as the Dhaman, and shortages of fodder due to famine and scarcity, caused the district to move away from "being a store-house of cattle"... "to rely as best it could on scanty profits from agriculture."[100] Thus during the famine years of 1896-98 & 1901 the peasant proprietors quickly disposed off their cows and young stock at low prices [101] (see table 5.7) In other words famine and shortage of grass forced the Hissar district to rely increasingly upon barani cultivation.

Table 5.7 Cattle Sale and Famine : Hissar

Normal Years	Bulls and Bullocks		Cows	
	Nos. sold	Price (Rupees)	Nos. sold	Price (Rupees)
1894	3,771	150 -100	64	22
1907				
1908	4,735	200 - 70	53	21
1909	6,200	150 - 60	61	27
Famine Years	**Bulls**		**Cows**	
1896	6,800	-	170	-
1899	22,840	77-16	314	8
1901	18,846	113-40	120	15

Source: Stow, Cattle & Dairy..., 1910:24,25.

A Counter Situation:

What was true of the Hissar district held also for the entire Delhi Division, including the Delhi tehsil **where the Kanjhawala cluster was located.** ***But with this difference: that the livestock did not decline here.*** Rainfall in this Division was also low varying between 15 inches to 29 inches a year. Any failure of rains had serious consequences for fodder and grass, contributing to the growing pressure on the village commons. The absence of regional commons and forests was now exacerbated by the growing population in the urban areas. The rising demand for food grains and cattle products pressed on rural resources and sharpened the conflict in rural land use between food and fodder on the one hand, and pasture on the other. The increase in cultivation that took place in the Delhi Division between the two settlements of Maconachie and Beadon, i.e. between 1880 and 1910, left little room for any further extension in arable farming, and the people felt the pinch of stinted grazing land. [102]

Table 5.8 Land - Use : Delhi, 1906-10

Detail	A C R E S			
	Sonepat	Delhi	Ballabgarh	Total
Total Area	2,89,061	2,73,237	2,49,275	8,11,573
Waste	87,771	87,810	91,937	2,67,518
Irrigated	1,22,273	60,186	19,349	2,04,808
Unirrigated	76,017	1,25,241	1,37,989	3,39,247
Total cultivated	1,01,290	1,85,427	1,57,338	5,44,055
Alteration in % cultivated since 1880	+ 7	+ 4	-2.5	+ 3

Source: Delhi SR, 1906-10.

Market forces in Delhi countered the dampening influence of shortages in grazing. Agricultural live stocks, especially of goat and sheep, rose between 1880 and 1910, reflecting the city of Delhi's growing demand for flesh. "The great increase in sheep and goat is remarkable and from the point of view of new arboriculture deplorable, as the main increase is in goats: flocks are a profitable income to the owners who graze them unscrupulously where they choose." [103] Flock owners were mainly butchers of Delhi, Ganaur, Faridabad etc., who handed the animals over to the Gujars and Chamars on a share-profit system, by which the latter retained a proportion of the young.

Table 5.9 Pastoral Stock: Delhi

Detail	Year	Sonepat	Delhi	Ballabgarh	Total(no. Heads)
Plough Cattle:	1880	32,056	24,942	23,613	80,610
	1910	36,683	26,785	21,638	85,104
Other cattle including stock:	1880	77,841	68,913	58,437	205,191
	1910	83,257	72,789	49,381	205,427
Sheep & Goats:	1880	15,552	11,259	27,174	53,985
	1910	32,156	27,859	31,119	91,134

Source: Delhi SR, 1910 : 16.

By this increase two things were implied: first, the village commons bore the major brunt of this animal pressure; second, and more important, it created the conditions for a confrontation between the pastoral flock owners and the malikan-deh, especially over customary rights to the village commons. This was almost bound to occur when the average area of waste per head was only 0.5 an acre (the actual incidence of banjar was 0.36 of an

acre) - a fact not mitigated by the access to grazing on the stubbles of harvested fields or the ready availability of fodder.

Table 5.10 The Waste : Delhi

(acres)

TEHSIL	1881	1891	1900	1909	1910
Sonepat	102,129	93,020	88,710	87,771	
Delhi	97,794	91,865	90,234	87,684	
Ballabgarh	84,965	86,613	92,825	91,927	
District	284,888	271,498	271,769	267,392	266,626

Source: Delhi Gaz. 1912.

The story of Delhi is linked with the Kanjhawla cluster and that will form the subject matter of a later endeavour. We turn to another aspect of waste land policy which during the last quarter of the nineteenth century increasingly brought into prominence the forests. Here, too, policy in both the hills and plains was closely connected with the Governments public works activity on the one hand, and its revenue policy on the other. The first of these concerns was equally true of a national Government after 1947.

The Forest Commons

Just as Barnes' settlement of Kangra triggered off a debate within official circles concerning the entire question of the waste, his settlement of the forests there brought to the fore questions of customary rights in forests and the extent of communal control over resources. Here the community had an extended aspect as nomadic graziers, as both those from the upper alpine regions and from the lower plains, had a joint claim upon forest use. Barnes' was a very cautious forest settlement in the Kangra, particularly because he was aware of the special requirements of the nomadic pastoralist. The Gujars and the Gaddis had their own special dhars or grazing runs in the forests, and each of these groups of herders were informally accommodated within the village agricultural system of the hills before 1852. These arrangements were disturbed by Barnes' demarcation of mauzas and the inclusion of the intermediate waste (lying between hamlets) in the shamilat-deh of the mauza. Though the traditional dhars or grazing runs were recognised, they were partially hampered by Bayley's forest rules of 1855, according to which the Government had rights "merely to the timber. The right of grazing and to the spontaneous products of the forest appertained to the zamindars, subject to restrictions prescribed in the rules. No other waste land was to be interfered with."[104] But, the permission to cultivate portions of these forests, if denuded, could be given only by the Deputy Commissioner, but "such a contingency can hardly arise, as it is the express object of the present rules to prevent the clearance of the forests."[105]

With forests reserved by the Forest Department, the cattle of both the villagers and the nomads had increasingly to rely on alternative sources of grazing, which in turn intensified the pressure upon the "created" common forests of the villages. This situation was exacerbated when, first, in times of calamity herds were brought from the plains as far away as Karnal and Hissar; [106] and second, there occurred an unplanned concentration of village and nomad cattle in the shamilat of the hill villages - as was described in later village inquiries in the Punjab.[107]

Barnes' settlement and Bayley's rules had not completely closed forests in Kangra to either grazing or tree-felling. Although forests had been transferred to the Government in 1849, certain rights remained with the villages in the area. In Pargana Dera the Government had the rights to both the soil and the forests, "but certain rights in common belonging by custom to the men of the surrounding hamlets"[108] were included by Barnes. Similar concessions to custom were made by Barnes in the forests of Santala, Nawan, Saddawan, and Bakarhla.

Mahl Mori had only a small extent of bush and jungle in Government possession. In the Dhaula Dhar range the Government had surrendered its rights in some of the forests where it had given ban mafi, in 1863 to the zamindars, individually as well as jointly, in order to induce them to relinquish certain waste lands "for sale by auction to European tea planters."[109] At such times the Government paid little heed to the fact that such ban mafis, when handed to the zamindars, would cause denudation of hillside forests if the trees were cut by them. Settlement Officers like Montgomery themselves appreciated the double standards which sometimes characterised the reservation policy - as in the Jhelum district, where forests were enclosed during the 1860s in the name of conservation, only to be felled subsequently to provide timber for the railways. Similar action was taken in the forests of Kangra and Kulu.

To these forest reservations, and the consequent shrinkage of *grazing*, was attributed the decline in sheep numbers in Kangra following Barnes' settlement of 1849-52, and Lyall was therefore asked (as we mentioned before) to look into this problem when he began to settle the hill district of Kangra in 1865.[110] Though his mandate had been to examine the restrictions on forest use, he actually carried Barnes' settlement several stages forward. While Barnes had believed that rights in forests were customary and could not be over-looked, he also assumed that the people would draw up rules for themselves and learn to conserve forests. Lyall subscribed to the notion of trusteeship on behalf of the people in the matter of forests, yet nevertheless transferred, during his tenure, a few selected blocks in Kangra to the Forest Department. The trees growing wild or planted by the Government on the common waste of the village were also declared State property, but user-rights were reserved to landholders and others who had customary privileges. On the other hand the State relinquished its claim to "royal trees" situated on cultivated land or private estates. Royal trees were those superior varieties hitherto reserved for the State, no matter where they were located.

Lyall's forest settlements contained two measures designed to preserve timber resources. One was to assign ownership of forest trees to the Government because they were "of much value, and because it was clear at first sight that, if the property in the forests was surrendered altogether to the village communities, it would be impossible to secure forest conservancy."[111] Secondly, the wajib-ul-arz was to contain conservancy rules binding, unless altered by Government. For example: "common waste cannot be divided except with the sanction of Government, nor can it be broken up or enclosed, or transferred without application made at the tehsil, which may be rejected in case there are trees growing on the land, either absolutely or until payment of their value."[112] The Government acceded the right of the community to "collect certain items of miscellaneous rent, the produce of the waste,"[113] but the entitlement to collect grazing fees from the Gaddis was secured by the Government in Lyall's settlement 1865-72, since the shepherds objected to paying the fees to khewatdars whose estates were not co-incident with sheep runs.

In effect, therefore, even prior to the passage of the Forest Act of 1878 the State had acquired a fair amount of control over both the produce of forests and the use of the soil within them. Property rights were significantly altered, and with it was changed the use pattern of forest and grazing resources. In the process the Government gained additional sources of revenue from the nomadic herders, while securing trees for various public works and for profit. The Indian Forest Act 1878 was a legal device sanctioning this unprecedented activity. It was intended to control all the problems associated with de-forestation. A distinction was made between "reserved" and "protected forests", in keeping with Government policy and little to do with the nature of local need. Thus the former being set aside for strict conservancy, while the latter admitted pasture, fuel, and timber rights.

Shamilat Van or village forests did not come under the purview of the Forest Act, but their importance for conservation and use during famines was emphasised by the Famine Commission of 1880.[114] It noted with special concern the mismanagement of these village forests, particularly when they were over-used without replacement. The Indian Forest Act sought to extend forest protection to even private forests, with the owners being allowed to ask the Government to purchase rights in the forests, and all private rights in Government forests were to be defined.[115]

In this situation "it was necessary to have forest settlements and to ascertain what rights exist, whose such rights are, and if they are incompatible with conservancy, how they may be best extinguished."[116] Thus the Government of Punjab sought to reduce pressure on forests in this period by trying to bar people from the existing

forest resources on the one hand, and divert demand for fuel and grazing to newer sources on the other. This it did by extending arboriculture along canals and railway lines during the late 1870s.[117]

Such schemes were no longer un-remunerative as they had been during the time of Barnes. As grazing land was reduced with reservation of forests and grass preserves, there was a steady increase in the demand for fodder and grazing. The price of fodder rose, particularly in bad seasons like 1877-78. The Forest Department showed a surplus over the period 1875-78.[118]

Official activity and interference in the established system of rights on this scale was bound to produce certain negative consequences. Destructive hill torrents emerged from the Siwaliks in the last quarter of the nineteenth century. The Government saw this as an additional reason to take-over trees and the soil on which they grew. In the melee the problem of declining cattle numbers lost, and with it the question of nomadic rights in forest.

De-forestation, however, continued for purposes of colonisation through the nineteenth and into the first decade of the twentieth century.[119] Further, reports from the Hoshiarpur district showed that there was increasing loss of revenue from cultivated land due to the problem of Chos, or hill torrents which destroyed large areas of good arable land.[120] In this context notions of "scientific forestry" came to the aid of more extensive exploitation of forest timber, incidentally supporting anti-erosion afforestation. The Government of India thus came to advocate conservancy not only to ensure "a permanent supply of timber, wood and other forest produce", but to guard against "the evil consequences of denudation".[121]

The Government of Punjab, looking for scapegoats, forgot its earlier concern with the shortage of grazing for pastoral herders, and attributed responsibility for the pressure on the forests to the short sighted policy of granting concessions to villagers in the earlier settlements. "It is curious to remark", said the Punjab Conservator of Forests in 1878, "how effectively the well meant but mistaken motives of officers who object to placing any restraint on the user of forest defeat themselves. The very people who were to be made contented by giving up everything to them, will, in a few years be reduced to want of forest produce, by the direct effect of these concessions." [122] In order to examine these ramifications of forest policy we turn to specific forests ranges in the sub-montane.

Institutions of the Shamilat-Van

Four tracts of forests in Hoshiarpur, in the Sola Singhee and Siwalik ranges, were in Government possession from the time the British took control of these districts. Two, the Panjal and Lohara forests, had been conserved during the Sikh times, and according to P.S. Melvill, Commissioner and Superintendent of the Trans-Sutlej States 1860, were to continue to be so.[123] The forests in the Siwalik range in Kurapur and Brindaban were, he declared, "exclusively the property of the Government" and the "zamindars have no rights of pasturage and they certainly cannot have any claim to a share of the sale proceeds".[124] Although in practice the people did have the "privilege of grazing except in the months Sawan and Bhadon", there was "no right proper of grazing."[125]

Besides forests, the Government had property in valuable trees, and it was the official understanding as of 1869 that "the people have not the right to cut down trees in order to cultivate, i.e. even if the plot on which the trees stood were not demarcated forests".[126] Baden Powell, as officiating Conservator of Forests in 1869, further advocated the Government's right to "regulate this matter wherever valuable trees are standing."[127]

An oversight in the Settlement of 1872 meant there was no restriction on cutting of chil trees in these forests, but this was soon rectified.[128] It was a more serious omission that the rules in the Wajib-ul-arz (1872), although disallowing the cutting down of chil trees, did nothing to "prevent the extension of cultivation or partitioning the waste."[129] It also left to the discretion of the Assistant Collector the right to refuse partition of such common grazing lands.

Forest regulations and reservation in Hoshiarpur district were embodied in agreements in the nature of robkars between the Government and the villages. The customary rights of pastoral graziers were severely affected. Earlier the Rajas had also closed forests, but they had made alternative arrangements with the nomads. Now with mauzas being provided with demarcated common grazing lands, nomadic graziers had to contend with several

mauzas across whose common lands their grazing runs coincided. This created problems so that, as in Kangra, the nomadic herders paid the Government grazing fees instead of the malikan-deh.

Those villages from which no land had been taken for the State Forests "could not exclude from their lands the Gaddis who had hitherto enjoyed the right of grazing there."[130] It was, however, "optional for the others to open their lands or not."[131] The Gaddis paid the Forest Officer and at the end of the season the money was collected and divided "amongst the various villages."[132] Moreover, in spite of the regulations upon grazing in these Government Forests, cultivation did take place. In the bamboo forests 383 acres[133] were cultivated; and by the time Roe settled Hoshiarpur in 1876 "32 of the neighbouring villages possessed rights of grazing" and were purchasing bamboos at favourable rates.[134]

The Shahpur-Kandi Forests

The policy of demarcating forests in the Shahpur Kandi tracts of the Gurdaspur district proved, in the words of Roe, "impossible" because in the forests in 1873 there were numerous areas of cultivation, and "the extent of cultivation as compared with the waste land, was so great that in the great majority of cases little or none of the latter could have been taken by the Government."[135] Even where waste was tolerably extensive there existed "small patches of cultivation which the zamindars would never have given up and even if they did such large sums would have had to be paid for the compensation that the arrangement could scarcely have been favourable for the Government"[136]

Nothing was done in Roe's settlement as demarcation proceeded in the adjoining forests of Nurpur in Kangra and Hoshiarpur. Ultimately, however, demarcation was carried out in the Shahpur Kandi Forest in 1910, where the demarcated part consisted of 2,339 acres and the undemarcated 5,099 acres, made up of "all the common lands of 17 villages in the tract."[137]

Management of these shamilat forests was transferred in 1910 to the "Deputy Commissioner who administered them in the interests of the villages with due regard to the preservation of forests."[138] The surplus income was made over to the right holders or spent on forest management. This approach to the running of the Shahpur Kandi forests was, in Brandis' opinion, in line with the French example of communal forests being managed by Government. In reality this policy never took off.

Forest Rights Elsewhere

Pressure on the forests continued even after the demand from the railways had diminished. The movement of troops caused a rise in the pressure on both fuel and grass. Cavalry regiments quartered in any place could partake of the available grazing, as well as the "khasa grass" pressed by special ensilage from districts like Dera Ismail Khan.[139] Baden Powell described how the Military Engineers cut down extensive tracts of forest in the Dungahalli Range[140] of the Hazara District.

In the Kangra hills, whenever demand for tea plantations arose, as in 1865-72 period, the Government allowed the forests to be cleared, and in those circumstances was not averse to parting with other forest areas as ban mafi to villagers in return for their grazing rights in the one acquired. The result of these activities was a continuation of the problem of the chos. The report on the Hoshiarpur Siwalik by Me A. Novi, Deputy Conservator of forests in 1883, attracted the attention of the Secretary of State, who asked the Government of India for more information from the Punjab Government. Although the Indian Government denied that chos was a problem connected with forests, the Secretary of State's insistence upon the gravity of the situation caused it to instruct the Punjab Government "that no time should be lost in attempting the afforestation of the tract in question."[141] Ultimate blame was apportioned by the Government of India to the Punjab Financial Commissioner for opposing "Forest measures that seem to interfere with the immediate rights of the residents of the locality."[142] But the situation was, in fact, created by the Government's own policy of reserving forests and waste both in the hills and the plains - as a brief review of these policies will show.

Forest Policy and Shamilat Van

The policy of forest reservation persisted fairly vigorously through the century, and extended to the reservation and closure of shamilat forests. When, in 1901, the Indian Forest Act of 1878 was amended, Act V gave the Lt. Governor of Punjab the right to prohibit for 10 years from the date of Notification[143] (which in this case was 1907) certain actions where shamilat van was concerned. These included: (a) the breaking up or clearing of land for cultivation; (b) the pasturing of cattle; (c) the firing or clearing of the vegetation in the shamilat van of 2 mauzas measuring 687 Bighas - 13 biswas.

In addition to these measures, several forests in Kangra, Nurpur, and Palampur Tehsils were closed for approximately ten years.[144] The Government also proceeded to prevent the partition of forests on the hill-sides when they were held in common. In Rawalpindi, for example, the Lt. Governor ruled in 1880 that: "the partition or cultivation of uncultivated hill lands held in common, whether bearing timber & brushwood, or suited to such purposes, is prohibited, except in cases in which the persons desiring the partition or cultivation can show that the operation will leave sufficient provision for the exercise of the privileges granted by the preceding rule."[145]

Despite these measures, the Government's forest policy continued to cater to the needs of extending colonisation and cultivation. "Disforestation" was allowed as late as 1920 for purposes of colonisation, and large areas of forest and grazing land was transferred to the Civil Department in Kangra. This is indicated by the decrease in the area under Government controlled forests, from 9,300 square miles in 1875-76 to just 6,744 square miles in 1917-20.[146] Government forests open to grazing reduced from 5,777 square miles to 5,432 square miles in the same period.

By 1930 forests constituted only 7% of the total area of the Province in the control of the Forest Department. Hill forests accounted for the greater part, but the plains also had about 2,500 square miles of forests, in spite of the fact that in the first two decades of the twentieth century as many as 3,000 square miles were felled to provide land for cultivation. Although the Government increasingly turned its attention to providing irrigated forests, these could not substitute for the extensive forests cleared for cultivation.[147]

The relationship between hill agriculture and forests was much more intimate than in the plains. Here pastoral activities were essential. Firewood from the forests released dung for manure, but the cultivated land was hardly used for growing fodder crops, so dependence on forest grazing was much greater compared to the plains.[148] What is more, de-forestation of hills for cultivation caused immense damage to the soils at the foot of the Kangra Siwaliks and Hazara Galis; the irrigation channels in the plains were constantly open to choking.[149]

Thus by 1927 the Government had come to the conclusion that the forests in Punjab were entirely inadequate for the requirements of the people. W. Mayes, the region's Chief Conservator of Forests, wrote in his Memorandum to the Royal Commission on Agriculture in 1927 that forest conservation in the hills could no longer cope with the increasing human and cattle population. He recommended restrictions on pastoral pursuits till such time as the "people have learnt to breed better stock, to grow fodder crops and cut hay instead of grass and to stall feed where pasture is insufficient." For Mayes the main purpose of forest conservation according to him was for timber supply.[150]

The difference between the conditions of reserved and unclassified forests in Kangra was highlighted in a study conducted by the Punjab Board of Economic Inquiry in the Haripur and Mangarh taluqas in 1933. The taluqas had few cattle, but considerable numbers of sheep and goats. The Gaddis also brought their sheep, with the result that the unreserved forest area of 17,894 acres showed signs of erosion in 1931. The reserved forests in the taluqas were only 5% of the total area of 53,274 acres, and since land owners had only restricted rights to these forests, they were well-preserved.[151]

Reservation of hill forests no doubt helped to preserve them, but this added to the pressure on those areas open to common grazing. This led to a trend in the Haripur and Mangarh taluqas of Kangra, for landowners to reserve hay-fields or kharetars. In these taluqas hay-fields represented 14.1% of the total area in 1931, which was in addition to the banjar kadim and common forests.[152] In the village of Sakri, within these taluqas, the acreage of hay-fields increased from 21 acres in 1871 to 139 in 1913. C.F. Strickland, the Registrar of Co-operative Societies in 1927, suggested that contracts for grazing grounds or enclosures on hill-sides should be given to co-operatives

rather than to individuals. Official policy thereby came, in the twentieth century, to favour enclosure of common forests and management by groups rather than by individuals.[153]

Two Centuries of Change

By enclosing the waste, the Colonial Government initiated what is now termed a "tragedy of the commons". It disrupted a system of property rights which had induced communal systems of reciprocal adjustment in land-use. Governance by statute and law could not substitute for this customary regime. The development of markets for the waste and its products only reinforced these tendencies. Once begun, the break-down of the self-organised system was irreversible. Far from stemming the tide, intervention, direct and indirect, increased after 1947. An elected Indian government was even less constrained than its colonial predecessors. Land Reforms opened access to the commons, and enabled privatisation by those who were not of the malikan-deh. Administrators of the Union Territory of Delhi, for instance, leased portions of the village common lands in the Kanjhawla cluster (the Bisagama) to the landless poor with the leases open to renewal, over time such occupation tended to become permanent. The Government could abrogate communal property rights of the malikan-deh with impunity! A detailed analysis of this will follow in my next book.

In the case of forests Strickland's suggestions for a line of policy was not taken up seriously for at least half a century. In fact, in the flurry of "development" there was much greater concentration on industrial growth and greater intensity of natural resource use. This was reflected in the construction of dams like the Bhakra Nangal, Pong and now Thein, on rivers which descend from the Siwaliks into Punjab. Further boundary changes in the Punjab hills and the setting up of National Parks have all abetted rstrictions in forests in the name of conservation. These have contributed to exacerbating the problems of both the forests and those who depended on them. Recently however change in forest policy resolutions of States in India seem to indicate a return to institutions of community forest management.

NOTES

Part II

Chapter 5

1. Rohtak SR, 1873-79 : 27.
2. Karnal SR, 1872-80 : Introduction.
3. Sett. Man. 1899 : 84.
4. Col. Ramsay, Commissioner, Kumaon's letter, Gurhwal SR, 1856-64 : 47.
5. F.G. Wigley ed. The Bengal Code, I, 1913 : (The Bengal Secretariat Book Depot, 1913) : 206.
6. Average distance between villages in the west was 2 miles and above and in the east was on an average 1 mile, Punjab Census, 1881 : 39.
7. Ibid.
8. Sett. Man. 1899 : 83.
9. See SRs of the Delhi Territory.
10. Press List, Delhi Residency and Agency, 1806-1857 : I, 14/10/1829.
11. Sirsa SR, 1879-83 : 316.
12. H. Cleghorn, Report upon the Punjab and the Western Himalaya (Roorkee, 1864) : 89, 90. (Henceforth Cleghorn, Rep. 1864).
13. Ibid.
14. Ibid.
15. Karnal SR, 1872-80 : 1.
16. Cleghorn, Rep. 1864 : 89.
17. Ibid.
18. Kangra SR, 1849-52 : 19.
19. Gurhwal SR, 1856-64 : 49.
20. Karnal SR, 1872-80 : 1.
21. Cleghorn, Rep. 1864 : 89.
22. Kangra SR, 1865-72 : xii.
23. Regarding the Sale of Waste Lands and Redemption of the Land Revenue, Land Rev. Home Deptt. 17/10/1861. MSS Eur F 78/108 IOL.
24. Ibid.
25. Land Revenue Circular Order, B, 1852 to the Commissioners of Delhi, Meerut etc. 27/2/1852, Sel. C. O. of F.C, Punjab, Rev. Dept. I (1853, 54, 55) : 93.
26. Gurhwal SR, 1856-64 : 78.
27. Kangra SR, 1865-72 : 138.
28. Ibid.
29. Ibid.
30. F.C. Punjab to Secy. Gov. Punjab, 2/1/1865, Press List, XXIV, 327, 1864-68.

[31]. Ibid.
[32]. Ibid.
[33]. The PWD versus the village Kalabahean was one of the first few disputes taken to the Chief Court : 60 PR 1866.
[34]. "Orders were received from the Financial Commissioner to insert a clause in every statement of customs, declaring that income from the sale of kunkur and mineral products had not been counted as a village asset in assessment, that all such products were the property of the Government, that Government officers could dig for kunkur where they pleased, only recompensing the owners for the spoiling of surface arable land, but that when not required by Government, owners could dig for kunkur and other products themselves without paying any royalty." Amritsar SR, 1888-93 : 23, para 50; also Lahore SR, 1893 : 75.
[35]. Kangra SR, 1865-72 : 31.
[36]. F.C. Punjab to Secy. Govt. Punjab, 1/7/1867, Press List, XXIV, 327, 1864-68.
[37]. PAR, 1859-60; 1868-69 & 1876.
[38]. In addition land not appropriated and at the disposal of the Government was increasing. Note by Col. J.W. Outley, I.G.I., Punjab, 16/6/1896, Rev. & Agri (LR) Progs. 44A, Aug. 1896.
[39]. Hissar had the largest barani cultivation in the Punjab followed by Ferozepur. PAR, 1868-69 : (iii) & (iv).
[40]. Rev. Man. 1866 : 129.
[41]. Ibid : 130.
[42]. Ibid.
[43]. Ibid.
[44]. Ibid : 12.
[45]. Resolution : Punjab Rev. Deptt. 80, 29/1/1863, Cleghorn, Rep. 1864.
[46]. Cleghorn, Rep. 1864 : 3.
[47]. Ibid.
[48]. Ibid.
[49]. Rev. Man. 1866 : 130.
[50]. Rev. Man.1866 : 130.
[51]. Dera Ghazi Khan SR, 1869 : Introduction, 1.
[52]. Muzaffargarh SR, 1873-80 : 24.
[53]. Rev. Man.1866 : 130.
[54]. Muzaffargarh SR, 1873-80 : 24.
[55]. Ibid.
[56]. Rev. Man. 1866 : 130.
[57]. Rev. & Agri. Progs. 23 A, July 1903; also J.F. Richards, James R. Hagen & Edward S. Haynes, "Changing Land Use in Bihar, Punjab and Haryana, 1850-1970", MAS, 19, 3 (1985) 699-732 : 720. (Henceforward, Richards et al. Land-Use, 1985)
[58]. Rev. & Agri. Progs. 23 A, July 1903 : para 17.
[59]. Ibid.
[60]. Kangra SR, 1865-73.
[61]. Rev. & Agri. Progs. 23 A, July 1903 : para 17.
[62]. Ibid.
[63]. Jhelum SR, 1874-80 : para 233.
[64]. Ibid : 179.
[65]. Press List, 1864-68, 879.
[66]. Ibid : 687.

[67]. Rev. Man.1866 : 133.
[68]. Lt. Gov. Punjab, Rev. Deptt. 80, 29/1/1863 in Cleghorn, Rep. 1864. Agri. Rev. & Comm. Progs. 43 B, July 22, 1871.
[69]. Delhi SR, 1872-80 : 166 footnote. The 1827 case is not in the court records of Punjab as Delhi was part of the NWP. see also 70 PR 1866.
[70]. Secy. Govt. Punjab to Comm. Delhi, Ambala, Jullundur & Lahore, 14/4/1864, 337-341, Press List, Rev. Sl. 75, 1864-68.
[71]. 70 PR 1866, JPC Anderson, on behalf of PWD vs E Taylor.
[72]. PAR, 1876.
[73]. Karnal & Ambala SR, 1891.
[74]. Ibid.

[75]. Stow, Cattle & Dairy..., 1910 : 20.
[76]. Ibid.
[77]. Punjab Census, 1911.
[78]. Ibid : para 7.
[79]. Secretary of State on Revenue Administration Report, 1878-79, India Office, London, 29/7/1880, Rev. & Agri. Progs. 99 B, Aug 1, 1880 : para 6.
[80]. Ibid.
[81]. Karnal SR, 1872-80.
[82]. Rev. & Agri. Progs. 99 B, Aug 1, 1880.
[83]. Fam. Rep. 1880.
[84]. Ibid.
[85]. First settlements of:
Hissar 1815; Delhi 1817; Karnal 1824; Sirsa 1829; Gurgaon 1837-38; Rohtak 1837-38.
[86]. Fam. Rep. 1880.
[87]. Ibid.
[88]. Ibid : 179.
[89]. Ibid.
[90]. Ibid.
[91]. Fam. Rep. 1880 : 75.
[92]. Rev. & Agri. (Famines), Progs. 3-4 A, Sept. 1885 : 324.
[93]. W. Coldstream, Offg. Comm. & Suptdt. Hissar to Under Secy. to F.C. Punjab, in Rev. & Agri. (Famines), Progs. 3-4 A, Sept. 1885 : 331.
[94]. Ibid : 332.
[95]. Ibid.
[96]. Ibid : 324.
[97]. Fam. Rep. 1896-97 : xxix.
[98]. Ferozepur SR, (Muktsar) 1876.
[99]. Lowis' reply to questions put by Rai Bahadur Shyam Sunder Lall,
Fam. Rep. 1901 : 306.
[100]. Stow, Cattle & Dairy ..., 1910 : 24, 25.
[101]. Ibid.
[102]. Delhi SR, 1906-10 : 9.
[103]. Ibid : 16.

[1]04. Melvill, Comm. & Suptdt. Trans-Sutlej States, to D.C. Hoshiarpur, 1/3/1860, Rev. & Agri (Forests), Progs. 3-5 B, Oct. 1887.
[1]05. Ibid.
[1]06. Rev. & Agri. (Famines) Progs. 3-4 A, Sept. 1885 : 324.
[1]07. PBEI, Survey : Haripur, 1933.
[1]08. Kangra SR, 1865-72 : 73.
[1]09. Ibid : 74.
[1]10. W.M. Young, Offg. Secy. F.C. Punjab to T.H. Thornton, Secy. Govt. Punjab, 7/7/1875, submitting Lyall's settlement of Kangra 1865-72 : xviii.
[1]11. F.C's review of the Kangra SR, 1865-72 : xv.
[1]12. Ibid.
[1]13. Ibid.
[1]14. Fam. Rep. 1880.
[1]15. Ibid.
[1]16. Offg. Secy. GOI to Govt. Punjab, 4/3/1878, Rev. Agri & Comm. GOI, Progs. 1-3A, March 1878 : 113.
[1]17. Ibid.
[1]18. Ibid.
[1]19. PAR, 1919-1920.
[1]20. Hoshiarpur SR, 1885; also Census of India, 1901, XVII, Part I : 62.
[1]21. Offg. Secy. GOI to Secy. Gov. Punjab, 4/3/1878, Rev. Agri. & Comm. GOI. Progs. 1-3 A March 1878.
[1]22. Conservator of Forests, Punjab, to Offg. Secy. Govt. Punjab, 4/12/1876, Rev. Agri & Comm. GOI. Progs. 1-3 A, March 1878.
[1]23. P.S. Melvill, Comm. & Suptdt. Trans-Sutlej States to D.C. Hoshiarpur, 1/3/1860, Rev., & Agri. (Forests) Progs. 3-5B, Oct. 1887.
[1]24. Ibid.
[1]25. Baden Powell, Offg. Conservator of Forests, Punjab to Secy. F.C. Punjab, 27/7/1869, Rev. & Agri. (Forests) Progs. 3-5 B, Oct. 1887.
[1]26. Ibid.
[1]27. Ibid : para 23.
[1]28. Una Tehsil SR, 1914 : 27.
[1]29. Ibid.
[1]30. C.A. Roe, S.O. Hoshiarpur to Comm. & Suptdt. Jalandhar Division, 13/11/1872, Agri. & Rev. (Forests), Progs. 3-5 B, Oct. 1887 : para 18.
[1]31. Ibid : para 19.
[1]32. Ibid.
[1]33. Una Parganah SR, 1876 : para 111.
[1]34. Ibid.
[1]35. Gurdaspur SR, 1873 : 17.
[1]36. Ibid.
[1]37. Gurdaspur SR, 1912.
[1]38. Ibid.
[1]39. Home, Rev. & Agri. Deptt. Progs.11-12 A, Sept-Dec. 1880.
[1]40. Ibid.
[1]41. Demi-official Circular 24 F, Rev. & Agri.(Forests) Progs. 31 A, Dec 1887.
[1]42. Kangra SR, 1865-72 : 138.
[1]43. Secy. of State, India Office, London, to Gov. Gen.in Council, Rev. & Agri. Progs. 61-62 B, April 1884.

[1]44. Ibid : KW to the Progs. 61-62 B, April 1884.
[1]45. Ibid.
[1]46. Punjab Govt. Gaz. 572, 30/6/1907.
[1]47. Ibid, 85.
[1]48. Ibid, 179.
[1]49. PAR 1919-20.
[1]50. W. Mayes, Chief Conservator of Forests, Punjab, Note in the Punjab Memorandum on "The relation of Forestry to Agriculture in the Punjab," Royal Commission on Agriculture in India, VIII, 1927 : 683.(Henceforward, Royal Comm. 1927)
[1]51. PBEI, Survey : Haripur , 1933 : 94.
[1]52. Ibid : 30.
[1]53. C.F. Strickland, Registrar of Co-operative Societies Punjab, Royal Comm. 1927 : 294.

Part III

Chapter 6

ENTER - CUSTOMARY LAW

As the colonising government proceeded to "legalise" public property in wastelands and forests in the Punjab, it stumbled upon communal property rights with non-classical roots. These could not be ignored since they were of pragmatic importance to the revenue officers who had to deal with communities paying revenue jointly. At first the recording of customs and customary usages was incidental to the revenue settlement in the Punjab villages. This is how it had been in the Delhi Territory in the first quarter of the nineteenth century. But with the annexation of Punjab, the Governor General announced in his Despatch of 1849 that he desired to "uphold Native institutions and practices, as far as they are consistent with the distribution of justice to all classes."[1] Such an intention to be effective, required a formalised approach beyond the boundaries of revenue collection. To this end a judiciary with an apex court was formalised in 1866.

Thus came into being the Punjab Laws Act of 1872, by which customary law was inducted into the legal system of the new Province. This was not just a self-conscious reaction against the analytic jurisprudence of the Anglo-Indian Codes, but was inspired by the belief that the customary rules governing civil life and property in Punjab were not rooted in either the Hindu Codes or the Muslim Shara. Consequently, the common lands jointly owned by the entire malikan-deh or village proprietary body were recognised as being governed by the customs declared by them.

Official Perceptions : A Rule of Law

The recognition of communal systems of land management in the Cis-Sutlej, and later in the legal system of Punjab, owed much to Henry Sumner Maine, who in the 1860s saw the village community of proprietors as central to a system of land law. This perception of a communal system of property was elaborated further at two levels : on the ground by Maine's own student Charles Lewis Tupper, and in the Punjab Chief Court, where one of its first judges, Charles Boulnois, drew attention to the fact that "whilst the individual householder may be the supreme head of his own homestead, he is still bound as a member of the community, to conform strictly to all the village rules and usages with regard to rotation of crops, the right of pasturage, the alienation of lands and the liability to share in the village burthens."[2] In other words, to customary usages.

Thus like the Mughals, the British also conceded a certain amount of independence to the village communities to continue their possession and management of their own affairs subject only to the State's right to collect what it considered its dues. Unlike the previous rulers, the British intended to impose an only moderate assessment. This was to be backed up by "adequate enquiry, an exhaustive record of rights, and full protection to non-engaging (mainly cultivating non-proprietors) members of the village community."[3] This was the spirit of the Bengal Regulation VII of 1822, amended in 1833 by Holt Mackenzie, and applied to the Delhi Territory and then to the Punjab. The Settlement Officer was enjoined to pursue its object of "ascertaining and recording the fullest possible information in regard to land tenures, interests and privileges of the various classes of the agricultural community."[4] In addition the officers were to pay special attention to the recording of usages connected with the landed tenures "more specially where several persons may hold interests in the same subject matter of different kinds and degrees."[5]

The initial findings of the Settlement Officers were recorded in the Village Administration Paper, which contained conditions concerning such matters as revenue distribution, cultivation and partition of the shamilat clauses regulating tenancy.[6] This document was the genesis of the Wajib-ul-arz, which was, according to the Regulation, to record "matters which would not necessarily be the subject of judicial awards, and might rather be the subject of village agreement, adjustment, or general usage."[7] Such a record, "though not conclusive evidence," was declared to be "admissible as prima facie proof of all matters relating to village custom."[8] Village records were thus drawn up for the early settlements in Delhi (1817-22), Sirsa (1829), Karnal (1824), and Rohtak (1837-38). It

had the same legal force as the settlement records, "and the provisions could be altered in the same way as entries in the Records, i.e. by agreement, by judicial decision, or according to facts subsequently occurring."[9] The opinion of the settlement officers carried weight as some of them, like George Campbell and John Lawrence, went on to structure policy.[10] Lawrence, the main architect of Colonial Punjab, swayed the Despatch itself. Such influence sometimes worked the other way too. Settlement officers had been known to doctor the village administration papers. In Ludhiana, the settlement papers in 1850 did not really contain "either the customs or the agreements of the people" but expressed rather "what the settlement officers thought to be the proper rules for guidance in the matters concerned!"[11]

Contrary to this experience, the Despatch had hoped that: "With the knowledge now generally prevalent regarding the village co-parcenary bodies there is no apprehension that our officers will not exert themselves to maintain these important bodies in all their integrity... The popular institutions will be improved and consolidated by our measures, and the Native system of accounts and reports may also be adhered to without any radical deviation so that the only material alteration will consist in the introduction of Europeans as supervisors and executive officers."[12]

Punjab, like the other Provinces, witnessed the introduction of substantive civil law, but with a difference. On the one hand a modern system of governance was to be set up; but on the other, it sought to construct its foundation upon "native institutions", i.e, customary law. In the process the Board of Administration, set up in 1849, was dismantled in 1853. Governance of Punjab was to be by a Chief Commissioner, the first occupant of the post being John Lawrence. Robert Montgomery became the first Judicial Commissioner, and his Department was to provide the courts with written law which they could administer.[13] Richard Temple was given the responsibility. In 1854 there came into being the Punjab Civil Code, the first attempt of the colonial government to give "custom the effect of law; and it was the principal object of Lord Lawrence that it should be so".[14] An official wrote that it was "founded on common sense and equity, as little repugnant to the feelings and practices of the people of Punjab, and for the rest no doubt, it fulfilled this intention." [15] It became more than that. The Code was intended to be a manual of reference for settlement officers, but since it was prescribed by the Judicial Commissioner of the Punjab and was backed by the entire Executive Government it came to be "regarded as law."[16]

Then emerged the question of agency. There was a choice between the tribe and the village as the unit of society. On the one hand the Afghan Frontier had hardly advanced "beyond that of joint ownership of the tribe, where the only law recognised is the decision of the Tribal Council (jirgah) and where private wrongs must be redressed by private vengeance and whose ideas of law and custom were primitive while on the other hand in the Eastern Punjab the tribes though clearly marked, have been largely sub-divided into gots and clans and these again into separate communities."[17] In the event, the village rather than the tribe or clan was chosen as the unit of society, or rather for administration. And there was further subdivision: within the village, rights in land were increasingly looked upon as matters affecting groups of agnates - the warisan yak jaddi - rather than the village brotherhood generally. Thus it was that the village proprietary body and its individual members secured a "legal" personality in the revenue settlements, regardless of whether the village was in an area where tribal settlements were the base of strong bonds of union - as in the Afghan Frontier districts; or was in those districts like Kangra and Sirsa where neither villages or such communal cohesion had existed prior to settlement.

In all the districts where the villages could be dated from the first settlement, the customs of the inhabitants would invariably then be those followed by a tribe from which it became a splinter group, or resemble those of neighbouring groups of villages. Each of these village societies had a set of customs and rules which served to maintain their joint character, if for nothing else than the discharge of the joint revenue responsibility which they shouldered. Thus it was that blood ties were replaced by the tie of land rights. That is how common lands became the basis of communal cohesion, because so long as the shamilat-deh remained un-partitioned there was a basis for coherence.

It was incumbent upon the administration to consider customs and the customary law of rural Punjab from two angles - the personal and the communal - and there was a clear distinction between them. There were customs which regulated "the transmission or devolution of private rights, such as inheritance, and those which related to the internal economy or administration of the general affairs of the village community." [18] It seemed to the administration that the laws and customs of inheritance could not, for example, be based on the peculiar wants or

requirements of a particular age, but rather upon a general notion of equity and justice that the nearest kin should succeed to a man's estate. On the other hand, "it was but natural that the local, social and particular kind of influence would be at work,"[19] on those customs which regulated the affairs of the village economy. It appeared that these latter customs had nothing to do with religion; they governed alike the Jats and the Sayads and the Brahmin, for upon their general observance depended the "maintenance of the village political organisation."[20]

The customs of inheritance among the various tribes created complications for the early colonial legal institutions. While it was conceded that the Hindu Law and the Muhammaddan Code did have some influence on tribal custom, to what extent was not clear. For example, early administrators like Robert Montgomery were aware that the Sikh ruler Ranjit Singh had employed Hindu Pandits [21] like Gouri Shanker, a native from Delhi, as bywastha navees, or somewhat akin to a legal rembrancer [22]. But it was not clear to him and others how far the Hindu and Muhammadan Codes were "merged in local custom" and in what places they altogether yielded "to that unwritten code that is engraven in the minds of the people."[23] Besides, it was apparent that there existed a great variety in the "practice of the Sikh sect, the manners of the hill and frontier tribes," all of which claimed consideration."[24] Tupper argued that earlier colonial administration had sought to bypass this bewildering variety. And so the "the Punjab Civil Code rendered minute enquiry into the Muhamaddan and Hindu Law unnecessary, to that extent it was a successful and creditable attempt at simple codification in our early days."[25]

Codifying and Village Customs

Although the announcement came much later the process of codifying actually began in 1855, when the Financial Commissioner sent instructions for the records to be prepared in the various districts. Standardisation thereby began with the list of headings for customs prepared by the patwari in his own hand, with provisions for any additions which the community wished to have adopted in the future. This was authenticated by the signatures of at least three of the lambardars and principal shareholders. The wajib-ul-arz was to be drawn from this paper. If any objection was raised, the malikan-deh and other residents were to discuss and provide substitutes, and then the patwaris were to draw up a supplementary statement embodying these modifications.[26] If any further question arose, it was for the Courts to decide "keeping in view the real object, which is to ascertain the actual and true custom prevailing at the time."[27] Thus the waiib-ul-arz became an important document "in a country, in which it is but lately that the rights in the land have been declared or adjudicated at all."[28]

Such records were unable to capture the variety and details of village custom, as noticed by Edward Prinsep. He wrote to the Financial Commissioner that the records failed to mention trees, sugar presses etc., which may have been exclusive property but were entered as "common to the whole village" so that disputes erupted the moment rights to them were exercised.[29] Rights, he noted, were recorded in insufficient detail, and the judicial officers, being unfamiliar with the customs, were unwilling to exercise their judgment or spend their time upon these disputes.

It was Prinsep's opinion that land had become so valuable "that if the new records did not embrace the registration of property in its minute aspects, a large mass of disputes would still come into courts after the close of the settlements; for the easy decision of which it is feared the Settlement Records would avail but little."[30] He therefore recommended the detailed recording of rights to trees, the use of roads, to johads or "marshy reservoirs", as he called them, rights of irrigation, dams, repair of water courses etc. Accordingly, the Financial Commissioner issued a circular for the information of the officers of the Amritsar Division that even though the revisions of settlement were not imminent, they should familiarize themselves with "the great importance of a minute record of rights", so that litigation be obviated. However the Financial Commissioner's instructions applied only to areas outside the abadi. This was a significant demarcation of jurisdiction between the courts. After 1860, all disputes regarding the abadi or the houses within it, were cognizable only by the Civil Courts. [31]

Prinsep's attempt to understand rural institutions failed to enthuse the Government, not even Maine, who later lamented missing the opportunity to record ancient customs. Curiously, even modern historians with the exception of G.R. Hambly, appear to have overlooked Prinsep's contribution to colonial Punjab. Let us briefly examine these. First, Prinsep tried to rectify the lack of detail in the record of rights in the early Administration

Paper. In 1866 he drew up a Settlement Paper 39, which was a memorandum urging the preparation of a record of lex loci in the sub-divisions of districts. Prinsep directed his Assistant, Lt. P. Nisbet, to translate a specimen of questions and answers on usages in a group of villages in the sub-collectorate of Zufferwal in Gujranwala district. Some of these customs, minute as they were, turned out to be significant and the failure to record them caused conflict, as later chapters show. Nisbet's record reflects the capacity of the village community to govern major economic activities like cultivation of the shamilat and to establish rules regulating the division and usage of common space, sugar-cane presses, dunghills, and even other non-agricultural activities. Unfortunately, this scheme was not taken up seriously. But it was the forerunner of the revised wajib-ul-arz, incorporated into the rules of the Punjab Land Revenue Act of 1871, and a step towards the codification of Tribal and Agricultural customs.[32] Secondly, a letter from Prinsep to the Financial Commissioner, initiated the institution of the Lal Dora, a red line marking the outlines of the abadi on the village map, (a cartographic formality continued till today) and thus delineating the area of jurisdiction of the Civil Court in the village. This matter of jurisdiction was to be "adopted elsewhere like-wise throughout the Province."[33] It also triggered the process of "legal" distinction of villages as distinct from a township; once houses could be constructed outside the Lal Dora of the abadi, the village technically became a "town", as was demonstrated by such cases brought before the Chief Court.[34] (This happened to villages incorporated into the city of New Delhi in 1911, when it became the capital of the country).

A Debate begins

Prinsep's crusade was not entirely in vain. The Chief Court intervened and acted as a major catalytic agent for the codification of customary law. Soon after 1866, when this apex Court was set up,[35] the Bench of two judges, who replaced the Judicial Commissioner of Punjab, did all they could to support the Executive in establishing the legal force of the Punjab Civil Code. It was, however, open to a judge, counsel or indeed any person to question the validity of this body of codes. Such a situation caused great inconvenience, if not embarrassment, to the Chief Court, leading to considerable delay in the dispensation of justice.

Out of this context a portentous debate arose. It began with a conflict between the Executive and Judiciary as to whether Regulation VII of 1822 had ever been introduced into the Punjab as law. In one camp was John Lawrence and Richard Temple, who were of the view that the Regulation was never introduced into the Punjab at all, but served only as a guide to settlement officers.[36] In the other was Edward Prinsep, the Settlement Commissioner, who held that the Regulation was law and in this he was supported by the Chief Court. This controversy had important ramifications for the revenue and the judicial departments. Prinsep had reversed "an immense number of decisions which had been given by the early settlement courts"[37] according to his perception of Regulation VII. Consequently, a large number of court cases from the Amritsar District came back into court because Prinsep had revised the rights of several thousand tenants. In 1867 the Chief Court decided one such case, valued at just Rs.30/- as a result of which 27,000 revisions of settlement were overturned: by this means efforts representing a "great expense to the State and the result of years of labour in the Settlement Department were decided entirely nugatory."[38] The Punjab Government was perturbed, as shown by the comments of Henry Sumner Maine in a letter to The Times on Feb. 15th, 1870. "The old law gave them (settlement officers) a power to revise the Record. I hold myself that the power intended was a power to correct errors of detail, not errors of principle, even supposing them to have been committed; since otherwise I see no escape from the conclusion that subordinate Indian officials can create an agrarian revolution once every 20 or 30 years."[39]

Common land disputes brought another set of problems into court. These were settled by the provisions of Section XXI of the Punjab Civil Code,[40] and the Chief Court found these provisions open to interpretations of various kinds. Reference to the wajib-ul-arz records created further problems since they were incomplete or loosely compiled. For example, in the judgment of 39 PR 1866, clause 8 of Section XXI of the P.C.C. was invoked, which stated that "A non-proprietary resident cannot be ousted from his occupancy; but if he desert his house, the ground site reverts to the proprietors who may then dispose of it. If he desires to sell his house, the proprietors may claim pre-emption."[41]

In this case, a fakeer had been given permission by one of the proprietors to occupy 4 kanals of common land, on which he then built a dharamshala and planted 50 trees. After eight years of such occupation the proprietor wanted to oust him. The first court decreed that the fakeer did not have the right to the permanent

occupancy of the land, and ought not to have planted any trees! The court decreed the return of the land to the proprietors on payment of Rs.32/- to the fakeer. The latter appealed to the Deputy Commissioner, who held it was too late for the proprietors to plead want of consent, and that even if the fakeer had not held the land for 12 years, squatters could not "by village law and the Punjab Civil Code, Section 21, clause 8, be ousted, though they acquire no actual proprietary right, as long as they like to remain they can do so, and when they leave the house reverts to the zamindars."

Justice A.A.Roberts, the last Judicial Commissioner of the Punjab prior to the establishment of the Punjab Chief Court in 1866, pointed out: First, that there was an irregularity, since the tehsildar should have got the whole proprietary body to join in the plaint, not just one proprietor; second, the Deputy Commissioner was wrong to dispose of the case on the basis of Section XXI, clause 8, because the ground of dispute was not a part of the village site, whereas the particular section referred to the abadi. The ground under dispute was bunjur mumkin. Third, the words "occupancy" and "house" gave the impression that the ground under dispute was in the abadi, but in reality it was part of the common bunjur and the mistake was attributed to the faulty expression used. As a consequence of these observations, Roberts remanded the case for fresh decision. For so much time to be taken up by a case of such small value caused great irritation to the apex body of the judiciary, particularly since no decision was ultimately taken!

In another suit of 52 PR. 1866, centred around Section XXI, clause 8, of the Punjab Civil Code, which declared that "any person possessing a share or holding in an estate is entitled to his rateable portion on any perquisites or common accessories which may be attached to the general property." [42] The dispute occurred in a village called Secunderpoor in the Jullundur District, where the Government had acquired common land for public purpose giving compensation of Rs.99-4 annas. One of the proprietors was an erstwhile mafidar and having resumed his mafi he now obtained a share amounting to Rs 71- in the compensation award. The other members of the proprietary body sued to recover this amount from him, on the grounds that the mafidar had not claimed a share in the common lands or in the income accruing from it, during the previous 16 years. The case went before two courts, and finally going to appeal at the Chief Court. In the Deputy Commissioner's court the mafidar was granted the right, since the wajib-ul-arz did not have a clause excluding a mafidar. Next, in the Commissioner's court, the decree of the D.C. was confirmed. It then went up in appeal to the Chief Court. The judge, Charles Boulnois, looked into the whole issue of mafidar rights before taking his decision. In Boulnois' reckoning, this category of right-holder had no intrinsic entitlement to the holding which he had resumed. But their status was not uniform. Many mafidars, according to Boulnois, were turned out altogether, while others were made hereditary cultivators, and still others were made malik kabzas without a share in the profits of the common lands. However there were instances where mafidars shared in the common lands and in the common income derived from them. In this case the waiib-ul-arz did not specifically exclude them, so here theoretically they could share in the common profits. But to do so the mafidars had to prove that in the past they had been sharing in the common profits. This the mafidar in this case was unable to do, for he had not shared in the profits for 16 years. On the other hand, the Punjab Civil Code, held that the mafidars were sustained if they resumed sharing profits within a "reasonable gap" of years.

Boulnois had perforce to take recourse to a *precedent* set by a case decided earlier, as he could neither use the provisions of the Punjab Civil Code, because of its vagueness, nor could he take the waiib-ul-arz as conclusive evidence of the mafidar's rights. Thus once again a suit of small value went through two appeals and required so much of time for research, that although the right involved was valuable it was irritating to the judges who had long pending files![43]

The Punjab Civil Code was ill-equipped to handle such immense variation in ground conditions. It was a result of not only the lacunae in specific legislation, but the absence of the very basis for a system of laws. Further, the waiib-ul-arz, at the time when the Chief Court was established in 1866, was incomplete and unable to support the judiciary. It was as Prinsep had diagnosed. Consequently, the Chief Court found itself swamped with legal suits. [44] Its plea for additional judges received a negative response from the Government of India, which held that the Chief Court was dealing with "petty" cases in terms of the monetary value which did not warrant additional judges on the bench. [45] In 1874 T.H. Thornton, Secretary to the Government of Punjab, attempted to rectify this image of the Chief Court's work when he wrote to the Government of India: "It is true, the average value of suits in

the Punjab is much less than in any other Province, but it must be remembered that a large proportion of suits, as also one-third of the appeals of the Chief Court, are connected with land, and the nominal value assigned is no real criterion of value of the rights involved, some of them must almost be said to be important in the inverse ratio of their money value."[46]

The Chief Court, the Settlement Commissioner, and the Government of India each sought to rectify the situation in their own way. The Judges resorted to *precedents,* and even to English law - as Boulnois did in the case above.[47] Prinsep initiated a record of tribal customs or the Riwaj-i-am. His efforts, were however, thwarted as the then Lt. Governor, Donald McLeod argued that such a record could not be considered absolutely binding on the Courts; and that even if this Code were prepared, it would have to be sanctified by a legal enactment. Moreover, the situation was uncertain as the Legislative Councils were "wanting in popular element."[48] Although, therefore the Government of India commended Prinsep's effort, it did not go beyond suggesting that "a record of rights and custom (be) limited to the record of customs etc. actually recognised and well established.[1,49]

A Statutory Step

The Government of India ultimately resolved the institutional tangle by statute. When specific and precipitate action had to be taken, as for example when the Revenue Department was exercised over the status of tenants, the Punjab Tenancy Bill of 1868 was enacted. Similarly, procedural inconsistencies were ironed out by the passage of the Punjab Land Revenue Act XXXIII of 1871. Finally the Government sought to define the overall position with regard to the State of law by means of the Punjab Laws Act IV of 1872, which was hailed as a "new era" in the history of legislation in the Province.[50] These enactments laid down general outlines, leaving local Governments and the Administration to draft detailed rules subject to approval by the Government of India. An all-India process of standardisation began when similar action was replicated in the Legislatures of the NWR, CP, Sind, and Oudh, thereby obliterating the legal distinction between Regulation and Non-Regulation Provinces.[51]

Consequently, agricultural customs were put on the level of recorded usages by the Punjab Land Revenue Act of 1871. The villages were to be administered by them, and the records could be taken as evidence to settle a dispute. Common lands were thus specifically administered by the wajib-ul-arz.[52] This document was theoretically based on age-old customs declared by the village leaders at the time of settlement. But it was formed into a *standardized* village administration paper, the rules of which overlay the customary usages by which the village community governed itself and its relations with the outside world, prescribing the terms of settlement and the relationship of members of the village proprietary body to (a) the Government; (b) each other and (c) other persons. Although the clauses of the wajib-ul-arz received sanction from Section 16 of the Act, even this was withdrawn by the Amendment of the Act in 1887, which also allowed a change in the waiib-ul-arz at the time of a settlement. *Village governance was no longer to be hosed upon the consensual will of the village community.*

The village document underwent a subtle change. From expressing the will of the people, it became a legal document intended primarily to define interests in land. Over time it acquired a mixed character. "It is," said Tupper in 1873, "partly descriptive of the organic constitution, the internal economy and even the history of the village to which it relates."[53] Further, "it is partly a deed of agreement for the term of settlement between various members of the village community."[54] Subsequently one document, the Misl Haqiyat or Record of Rights, clearly demarcated the community statement from the other records of individual rights and responsibilities. The former, or waiib-ul-arz had one section briefly chronicling the history of the village and that of the families of the malikan-deh known as the Shajra nasb and the other containing rules regulating the management and use of shamilat.

Not just a repository of village customs, the Shajra Nasb effectively recorded also the customs of inheritance actually observed by both Hindus and Muhammaddans in the village. This is important because that it enables us to establish the primacy of customs over textual codes. Shajra means a map, and it literally mapped out the lineages of the families of the proprietary bodies, thereby establishing their shares in the shamilat - both of the deh or village and that in the patti or sub-division. Settlements subsequent to the passage of legislation added occupancy tenants to the village shajra. The shaira reflected any change in the status of a village family. This was particularly so in a homogeneous village like Kanjhawala.[55] Each time a family member died, the change in the land holding was reflected in the shajra. If a family line ended without heirs, that is became la wald, then the share

was transferred to the shamilat of the Pana, thok, or tholla to which the family belonged.[56] The Shajra Nasb of Kanjhawala provides such an instance. But if a village was heterogeneous, Prinsep citing Duryapur as an example, each taraf patti and thok followed different rules.[57]

The most important operative elements of the waiib-ul-arz were, however, the agreements regulating the management of the shamilat and the control of user rights in the commons. These pertained to: (a) the cultivation of the shamilat by members of the proprietary body and by tenants of the village; (b) the rights of the members of the proprietary body and other villagers to graze their cattle; (c) the use of wells and johads; (d) the utlisation of the abadi and the space surrounding the area; and (e) the right to plant and cut trees from the shamilat areas and around the abadi. These customs varied not only between tracts but between villages within the same area, depending on circumstances and the nature of the tribe and tenure. What is more, as these diverse factors changed, so did customs.

From the perspective of the revenue department, the most effective part of the waiib-ul-arz was "the treatment of tenure of the land, with special reference to the degree to which the disintegration of common right into individual right has been or may be affected. It prescribes the mode in which the Government revenue is to be paid."[58] The tenure was determined by the manner in which the rights and liabilities were shared,this in turn depending upon the constitution of the village, which itself reflected the manner of the village's foundation. This was crucial; because the old established villages inevitably had a long history of agreements among themselves, whereas the newer villages set up by the Government either "adopted" the rules, or were fitted into a system of tenure by the nature of the land grants made to the groups. Such differences between old established villages and the newer ones were sharp in those areas where the waste was extensive at the time of the British entry - as for example, in the districts of Sirsa, Hissar, Ferozepur, and Kangra.

In such instances a settlement officer exerted some influence, for much depended on the way in which he understood the constitution of the village - as seen in the instance of Sirsa. This was important as the settlement of tenure, determined the character of customs regulating the distribution of the liabilities and assets of the village on the one hand, and the manner in which the assets such as common lands were held, managed, and partitioned on the other. Once drawn up, this balance sheet offered the "formula" by which the bach or revenue liability was customarily distributed, and so decided the shares of each malikan-deh in any income arising from the common assets.[59]

After 1871 the spirit underlying these arrangements was transformed. The once customary shares in both liabilities and assets became a part of the *contractual* relationships between the village and the Government on the one hand, and among the members of the malikan-deh and others within the village on the other. These relationships based on principles of reciprocity and mutual obligations were, till 1871, recorded in the waiib-ul-arz, acquired a formal and fragile character only *after* the passage of the Punjab Land Revenue Act. Further, since the rules in the waiib-ul-arz were culled from answers to a standardized set of questions, most of the village statements of customs tended to exhibit a similarity in character and content. Thus were eliminated many specific and sometimes operationally significant distinctions between (a) one village and another in the same district, as illustrated by samples of the waiib-ul-arz in the Bisagama cluster; (b) between villages of different districts; and (c) between villages of longer vintage and those settled after the annexation of the area[60].

Notwithstanding these standardising tendencies, marked contrasts due to historical circumstances continued : and these were not always ironed out. For example, it was a more or less universal custom that only co-sharers in a village had a right to the common land of the village, [61] and that tenants could not claim to share either the income from the shamilat or the land held in common by the proprietary body. However, as we know, the settlement recorded the shajra nasb of the occupancy tenants in the villages, as at Kanjahwala. That is how, perhaps, it was established in the Ferozepur district, mainly in the course of disputes coming before the Chief Court between 1868-72, that the wajib-ul-arz of certain villages contained clauses securing to hereditary (maurusi) tenants rights to share both in the income and in the butwara (partition) of the shamilat. Boulnois, one of the first two Judges of the Chief Court, attributed this peculiarity of the Ferozepur district to the "fact, that when labour was scarce, and the land was kept with difficulty under tillage, from want of water, the unsettled state of the country,... the hereditary cultivators of these villages obtained the concession in question from the village proprietors of the old stock."[62]

In spite of these variations, the struggle for conformity was over. The wajib-ul-arz acquired a standard format. As we have seen, the standard questions on customary usage elicited similar answers. Where the queries were inapplicable there resulted a "silent" clause in the wajib-ul-arz. References to the "silent" clause occurred repeatedly in the course of the disputes on shamilat. It opened the way to another system of rules for the judges to probe and interpret.

Finally, the Punjab Laws Act of 1872 ended many uncertainties, and by removing a mass of regulations and orders the British "elected to be governed by customs".[63] Their "passion for definition" was at last fulfilled.[64] The Act laid down in Section 5 that "In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partition, or any religious usage or institution, the rule of decision shall be (1) any custom of any body or class of persons, which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority, (2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment etc..." Section 7: "All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority."[65]

The Act stated that the Punjab had not reached the stage of development represented by the Muhamaddan and Hindu Law. It therefore laid down that the proven custom of the country was to guide the courts when not opposed to morality on specific legal declarations. Thus, the Law declared that so long as not "contrary to justice, equity and good conscience", custom was to supply the first rule of decision.

Similarly, since custom was also not to contravene "express Statute Law", the State retained the power to rescind any custom by law. If, for example, tenants-at-will and occupancy tenants made any improvements on the land, they could claim compensation by the Punjab Tenancy Act of 1868 and could not be refused on the ground that such compensation was contrary to village custom. Thus the Punjab Laws Act provided against enforcing customs which had been declared void by any competent authority. (section 5 & 7)[66]

Doubt and Debate

The experiment with customary law reflected to a degree British association with its own system of Common Laws. Common Law was held to be, in its essence, founded upon custom,[67] developing out of the accumulation of precedents. These precedents were really judgments delivered in courts establishing a custom. However the difference between custom in England and the Punjab was not forgotten. This consciousness was apparent in Tupper's contribution to his compilation on Customary Law in the Punjab. "Custom in English law has of course a technical signification. Amongst other matters it 'must have been used so long that the memory of man runneth not to the contrary, as that if anyone can show the beginning of it is no good custom. Customs that our courts will act upon must be continuous; and (probably) they must be a 'succession of instances from whose constant recurrence a rule is inferred,' but custom 'rivaj' in the native acceptation of the term has a more extended signification. Besides hereditary practices, it includes new rules made to suit new needs, rules spontaneously evolved in a manner most appropriate to the primitive needs of the society in which they appear, by the agency of one of those interesting fictions which have played so large a part in all legal history".[68]

It is not surprising that Boulnois, quoted Disraeli's remarks on the Irish Bill in support of the incorporation of custom as the basis of the Punjab system of law. The emphasis was on the flexibility of customs to adjust to changes. "The moment you legalise a custom you fix its particular character; but the value of the custom is its flexibility and that it adapts itself to all the circumstances of the moment as of the locality. All these qualities are lost the moment you crystallise a custom into legislation. Customs may not be as wise as laws, but they are more popular."[69]

In keeping with its perception of the Punjab, the colonial Government decided that legislation accord with the degree of social progress of the country.[70] Accordingly then since Punjab was a Province of village communities with tribal and clan connections, its legal system should not ignore their customs and usages. Besides, although some classes acknowledged the Hindu and the Mohamaddan Codes, "there is often a doubt to what portion of these codes their observance extends, and with what degree of strictness is carried into practice."[71]

At the same time there was official reluctance to permanently rely upon custom. It was expected that these would be subject to a process of continuous appraisal either at revised settlements or through judicial investigation on the occasion of a dispute. By this process of change, modification, and re-codification the use of custom as a basis for law would be justigfied. It all added up to an opinion that reliance upon customs and customary law was associated with a less developed state of society and was somehow "inferior*[1] to statute and statutory law.

In continuation of this line of reasoning, Tupper had opined in 1872 that it was the Government's responsibility to direct the change in native institutions, and that the Courts and revenue department by themselves could not do so without some direction from the Legislature - as in the manner of the Punjab Laws Bill. To him social development entailed "the break up of primitive groups, *and the disentanglement of individual from corporate rights* whether as regards personal relations or property." (italics mine) But in the Punjab there would not be sufficient enthusiasm for progress unless the tribe, village and clan were maintained. Tupper listed the advantages that would accrue because of "joint agricultural ownership founded on common descent," the last but not the least being contentment among the clans and families and hence a reduced danger of "political contumacy."[72]

A Final Step

Intended by the legislature to be an enabling measure, the Punjab Laws Act of 1872 actually placed the Courts in an "embarrassing" situation since the existing sources of recorded customs - the wajib-ul-arz (prior to 1871) and the Punjab Civil Code of 1854 - were limited in content and scope, and although Prinsep had initiated the compilation of the Riwaj-i-am in Amritsar, Lahore, Sialkot, and Gurdaspur during 1864-67, these did not serve the purpose of the Court.

The Judges of the Chief Court had been highly critical of the Punjab Laws Bill even before it was passed, and argued that Section 5 did not attach sufficient importance to local customs.[73] It made the mistake, according to Boulnois, the Chief Court Judge, of putting "Hindu Law forward as the rule, and custom as the exception, to receive validity only when proved. In the Punjab custom is the rule, and Hindu law is the exception."[74] However even Boulnois' appraisal failed to carry weight, and the objection of the judges were overridden.[75]

Finally Tupper was asked to look into the entire question of Customs and Customary Law. He compiled two series of questions in 1880-81 to serve as the basis for recording evidence on customs. The first series consisted of all those questions concerning the 5th section of the Act, whereby the Riwaj-i-am could be compiled for the entire district, and mostly related to the customs regulating the private conditions of the tribes. The heads of tribes in a district were brought together and the settlement officers put to them the questions from Tupper's schedule, their answers then being compiled. There was a section on customs which specifically referred to common lands. The second series contained questions dealing with agrarian usages. It was this series which concerned the village common lands and formed the evidence in the Village Administration Paper or wajib-ul-arz.

There was some difference of opinion in the Revenue Department with regard to these two series of questions. According to J.B. Lyall, only those questions should have been included which would give "information upon the points regarding which questions may be raised and disputes come into Court." The question of the tenants' right to grass from the common waste, ought then to be removed, for according to Lyall this had never formed the subject of a court dispute. In this, however, subsequent events were to show him to have been mistaken. Tupper, on the other hand, was keen to compile a comprehensive code of agricultural customs "equivalent to a complete account of the agricultural system of the country".

Yet in one respect Lyall's intervention was important, for it served to draw attention to the distinction between the individual and the communal realm. The question relating to the partition of shamilat had been incorporated in the first series, as it concerned the partition of property. Lyall shifted the question into the second series where it rightly belonged, for partition of the shamilat was a matter to be decided, not by the private law of partition, but by the village. "The customs or considerations which govern it" noted Lyall, "rarely have any relation to the tribe or religion to which the proprietors belong; they are generally based upon the tenure of the village, the aspect of the country, or the nature of the surface of the soil."[76]

Two papers on custom eventually emerged out of the series of questions Tupper compiled in 1880, the Riwaj-i-am and the Wajib-ul-arz. The first catalogued the regulations upon private activities of members of the

various tribes in a district, [77] while the second listed customs controlling the agricultural economy of the village. The Government of India expected that these two sets of customs obtained from the tribal and village headmen would impress ideas of self-governance on the minds of the rural populace - "the appointment of the few to represent the many, and the common action for great public purposes of the selected." It was also hoped that this interaction would bring about "the surest promise of success in judicial and executive administration."[78]78

Tupper's three volumes on Customary Law failed to draw an enthusiastic response from the then Lt Governor, Robert Egerton. He felt that any attempt to codify custom would lead to perpetuate tribal organisation and custom, whereas the disintegration of tribal ties and the release of individual energy was what British administration ought to desire.[79] Egerton's view was apparent from his earlier judgment in a shamilat dispute 1 Rev PR 1873.

The question of codifying customs highlighted several strands of opinion. The most important from our perspective were the differing views in official circles concerning the need to preserve tribal organisation. Official policy had come a long way from the days of the Despatch of 1849. While revenue collection continued to be based on joint revenue responsibility, revenue records maintained the recognition given to individual right holders in the land for which revenue was paid. At certain times the judiciary upheld the rights of groups; at others, the rights of those individuals who constituted them. Thus the Punjab Tenancy Act of 1868 gave protection to *a class* of right holders, while the Punjab Land Revenue Act of 1871 and Punjab Laws Act of 1872 served to bolster the rights of individuals - albeit within the framework of customary tribal, clan, or family ties. There therefore emerged, over the course of the nineteenth century, distinct identities of the individual against the group; of the family within the clan; and of the clan within the tribe. Change would ultimately have occurred, but if the movement from the collective to severalty hastened in the last quarter of the nineteenth century, it reflected, no doubt, the influence of both the colonial Revenue and Judicial departments.

For example, following the enactment of 1871, the Revenue department recorded the customs of a district whichever time its settlement fell due, so the compilation of the records was not synchronous. Yet the information regarding the customs was elicited from the same schedule of questions drawn up by Tuppper. Certain changes consequently crept into customs recorded in districts settled later, not necessarily because they were different. Some of the Cis-Sutlej districts like Delhi, Sirsa, and Karnal started settlements in 1872 and therefore the recording of the Riwaj-i-am and the wajib-ul-arz were both taken in hand then. But in the District of Delhi, although Maconachie carried out the schedule of the wajib-ul-arz in great detail, he left the Riwaj-i-am incomplete, remarking that it could "have little official value".[80] It was only during the Third Regular Settlement of the Delhi District, in 1906-10, that the Riwaj-i- am was completed by the then settlement officer, Major H.C.Beadon.

Similar omissions occurred in other districts as well, such as Lahore, where the wajib-ul-arz was not prepared till 1892.[81] The preparation of this document was difficult as the entries were much disputed and required judicial settlement. Though customs had been recorded in 1856, conditions had since changed. For instance, non-proprietors and occupancy tenants were not permitted to sell or mortgage their houses in the abadi or cut down trees, without the consent of the village proprietors. But the Punjab Tenancy Act of 1868 caused a change in the status of classes other than proprietors, and this fact served to generate disputes over the customs controlling the use of common lands. These were ultimately resolved by the Courts asking the co-sharers of joint property to seek division of the common lands. Contributing thus to the individualisation of shares in common property.

In other districts the waiib-ul-arz underwent modification, especially when new clauses were required to cater for the changed demands for resources from uncultivated lands. When, for example, during the late 1880s the Public Works Department found it difficult to obtain kunkur from the village common lands for road building as a matter of right, the Financial Commissioner, making with reference to section 42 of the PLRA 1887, [82] ordered a clause to be inserted in the waiib-ul-arz to the effect that all kunkur and other produce found on the estate was the property of the Government. Customs could be countermanded because the wajib-ul-arz was open to State command.

Winds of Change

The urgency of recording and preserving the native customs and institutions of the Punjab, which Maine had impressed upon the Government during the 1860s, was lost in 1880s and 90s. The Punjab Government was bent upon *conformity* and *certainty* in Customary Law, rather than on flexibility and variety; it was more concerned with change than the need to preserve traditional rules of village communities. Besides, recorded customs became increasingly inadequate as conditions in both agriculture and livestock changed significantly in the last two decades of the nineteenth century. While the increase in population and cattle numbers pushed up the demand for natural resources, supply conditions were disturbed by shifts in the pattern of land-use. Irrigation canals extended cultivation, but they reduced the quantity of waste both outside and within the villages.

At the same time litigation in the Punjab was on the increase, and the expediency of codifying customs was raised in 1906. Thus began the first round of the codification of customary law. There was, however, a difference of opinion. According to the Secretary to the Punjab Government, Wilson, who had considerable experience as a settlement officer during the 1880s, one party, accounting for "most of the lawyers", dwelt upon "the advantage of leaving custom free to develop in accordance with the changing circumstances of the day". The other party, contained most of the officers who approached the subject from the Revenue Officer's point of view, and was therefore "in favour of codification, owing mainly to the uncertainty of the present law which encourages ruinous litigation, false swearing and ill-feeling among the people."[83]

Two proposals were put forward in 1906 by those who felt codification necessary. The first recommended a law incorporating the basic enquiries made by the revenue and judicial officers in the cases which arose in the second half of the nineteenth century and bore upon the feelings and ideas of the land-owning classes. The second proposed a short Act which empowered the "government to promulgate from time to time such rules as it found to be established by general custom."[84]

The first proposal was made by Wilson himself. He contended that much "ruinous litigation" was attributable to the fact that significant weight was attached in judicial cases to recorded customs, "but as they were not even presumed to be true, litigants are at liberty to bring evidence to prove that the code is wrong on some particular point, or that their own branch of the tribe has some special custom different from that recorded in the code". He therefore suggested detailed investigation, tribe by tribe, after which a clear and definite code should be drawn up for each tribe. [85]

Ibbetson, who was officiating Lt. Governor Punjab in 1905, was strongly against " *anything* that would tend to stereotype the customary law of the Punjab, as it exists at the present moment, or to prevent that law from keeping pace with a process of development which I believe to be not only healthy, but inevitable."[86] He agreed with Wilson that the Punjab Laws Act was the Magna Carta on the subject, since its provisions "oblige us to recognise and respect the varying customs of different parts of the province and of different sections of its inhabitants. And this enforced respect is of importance, not because variety is good in itself but because the variations are based upon the varying conditions and sentiments of the people. These changed not only over place but over time."[87] Ibbetson therefore deprecated "any attempt to confine Punjab custom within a cast iron jacket of legislation."[88] At the same time he acknowledged the difficulties of defining a tribe or clan, and the litigation that arose was undoubtedly regrettable, yet excessive litigation was but a part of the problem; what he called the more "subtle evil" was the fact that the "Punjab Chief Court as at present constituted, is engaged in 'manufacturing' customary law."[89]

The Chief Court was however, not deterred by this criticism, as the Registrar's letter dated 11th April, 1906 shows. [90] Ibbetson agreed to the assimilation, as suggested by the Home Department, of the law of civil appeal in the Punjab to that in force elsewhere in all classes of suits, except those involving questions of custom. In such cases, they desired to retain the authority to enter into the facts in second appeals coming before it, in so far as it might be necessary for the determination of the custom involved.[91]

The Secretary of State, John Morley, in a 1907 Despatch commented that by seeking to reserve the widest possible powers in the matter of ascertaining custom, the "Chief Court arrogates to itself a legislative rather than a judicial authority". [92] Morley did not feel that codification of customs by legislation (which the Judges of the Chief Court suggested) would be expedient. He wished "the matter to be further considered before such an undertaking is entered upon."[93]

The first round of discussion upon the need to codify customs had ended by 1907. A second commenced when the Lt. Governor of Punjab, Michael O'Dwyer, called a Conference for the Codification of Customary Law in Simla in 1915.[94] Presiding was the Chief Judge of the Chief Court, Donald Jonhstone. Among the subjects considered were: (i) whether codification of customary law could prove effective in reducing litigation; (ii) what were the subjects to be included; (iii) whether communities were to be given the power to adopt by declaration specific customs, and (iv) whether it was desirable to substitute legislation for custom and Regulation XI of 1825 in regard to alluvion & diluvion.

The conference came to some very important conclusions, which accorded with the experience not only of the revenue officials in the field, but of the members of the judiciary called upon to handle disputes. The conference desired the codification of those customs having to do with the "enjoyment, devolution and alienation of property", considering those relating to all subjects, such as marriage and divorce, beyond its scope.

It was natural for the Conference to take such a stand because land had become very valuable - selling for "as much as 100 times the land revenue."[95] Disputes brought to court were numerous and of a much greater value than those declared for the purposes of registration in courts and appeals to the Chief Court. There was thus every likelihood that a greater number of highly valued suits would qualify for appeal in the Chief Court, necessitating in particular, an increase in the number of judges. Hence the desirability of reducing litigation by codifying customs. The Conference resolved that "the declaration by a large majority of a community as to its wishes regarding the customs which it will follow in the future, irrespective of those followed in the past, should be accepted as having the force of law."[96]

In addition, the Conference also unanimously accepted the suggestion that legislation should replace custom and Regulation XI of 1825 in regard to alluvion and diluvion. The Lt. Governor concurred in this decision. Michael Fenton, the Financial Commissioner, explained that "disputes occasionally arose owing to the existence of customs, declaring for example that land washed up from the river becomes shamilat or that occupancy rights in it are extinguished from the fact that it has been submerged. A statutory provision that land reclaimed from the river should be restored to its original position on the map and replaced in the hands of the original owners or possessors would accord with natural equity and would prevent disputes."[97]

The Conference acted to sum up the operation of customary law as it had been recorded in the wajib-ul-arz and Riwai-i-am. Those present recognised that there was need for customs to be flexible over space and time, for the greater part of litigation in the courts arose because circumstances changed without alteration in recorded customs.

It was significantly observed, however, that as conditions changed in some areas so did the people's attitudes with regard to rights in land and the customs connected to those rights. Diack, the Financial Commissioner, cited the example of the villages of Shahpur district, the people had "abandoned the restriction against the partition of the shamilat in which they bound themselves in the previous settlement. The reason is that under modem conditions agriculture is more profitable than grazing."[98]

The Conference papers also included a letter from the Secretary to the Government of India in 1907, Herbert Risley, to the Government of the Punjab, regarding the codification of tribal custom. Risley believed that the Jats, settling in the Chenab Colony had, within a generation or two, developed their own customs, differing from the customs of the Jat tribe from which they had originally come. There thus arose the possibility that, in the minority of cases which went before the court, its decisions would be at variance with the sentiments of the majority of the tribe. Since, in other words, these Jats in the Chenab Colony could not legislate there would develop a disparity between legislation and customary law which was likely to grow over time.[99]

In Conclusion:

Government's attitude to custom was summarised in the concluding lines of Michael O'Dwyer's speech to the Conference: "The problem before us in the Punjab is unique. Other Provinces in India, have as a rule, the Dharma Shastras and the various commentaries on them for the Hindus and the Shariyat and the Hadis for the Muhamaddans ... Here we have elected to be governed by custom. We have no body of feeling that condemns our tribal customs as a whole as antiquated or unsuitable. No desire for uniformity, no sense of injustice involved in the maintenance of the existing system. Our function is therefore to uphold, not to destroy."[100]

The process of assimilating custom into the legal framework of rural Punjab society occurred at various stages, but the final shape was given by the enactment of the Punjab Laws Act IV 1872. With this Punjab custom, rooted in tradition and in several ways "coincident with popular feelings and necessities", [101] became the law of the province by a single statute.

The documents recording the two classes of customs - namely, those relating to private affairs and agrarian usage respectively - were the Riwaj-i-am for the district and the wajib-ul-arz for the village. The customs regulating succession were important for the village, since they settled the manner in which the distribution of property in land took place. Common lands were specifically regulated. The tribal component of the malikan-deh was thereby regulated by the declared customs of the tribe of the entire district. However the agrarian usages and customs defining "the rights of the proprietors over the village 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," all related to the village itself.[102]

Recognition of this class of customs depended on the constitution of the village established by settlement officers at the time of the first regular settlement of the districts. Hence wherever the village communities did not exist, or there were scattered settlements lacking cohesion, the imposition of joint revenue responsibility on "created" villages or village settlements served to beget these customs. The situation was aptly summed up by Tupper: "Sweep the villages away and right of this class would be annihilated; create the village afresh and these rights would revive."[103]

In effect, not only did the Revenue settlements "create" village communities but they also set up the basis of a legal framework within which they could function. In districts like Kangra, where the tenures did not resemble those on the plains, the creation of hamlets and 'tikas' by Barnes and Lyall between 1849 and 1872 led to the emergence of village communities, and customs regulating the use of common property developed in the process. Similarly, in sparsely populated districts with hardly any village communities, like Multan, there were "comparatively few cases of village shamilat," the village common lands being "for the most part a creation of our (British) rule" [104] It was not merely villages that were created, but common lands as well. Hence the usages which sprang up resembled those prevalent in the more settled tracts. Yet this re-iteration process was possible only up to a point. While the common lands, community, and customary law could be transplanted, the moral authority of the malikan-deh could not be re-created. Hence institutional controls over the governance of common lands were naturally less close in the "created" villages. Consequently change was likely to come about more quickly here than in the older areas, where the institutions of communal control over the common lands by established communities had a long history. The differences between the customary authority of the malikan-deh in the villages of the old established areas of Punjab, such as Delhi and Karnal, and the new areas of "created" villages in the waste, like the canal colonies and the districts of South west, are apparent if we look at the history of the Sirsa and Ferozepur districts.

Sirsa offers perhaps the most extraordinary instance of the development of customs in response to changed conditions, particularly of customs relating to rights in land. At the time of the first settlement in 1837 the district was 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 had hardly any notions of succession in terms of transferring land from father to son, being aware of only a "vague right, or rather custom, of pasturing their herds over large tracts of country."[105]

The regular settlement of the district demarcated the boundaries and internalised the waste as village common lands. This put an end to the villagers' rights to the larger waste, causing them to more or less submit to the rales and conditions laid down in the wajib-ul- arz. Entitlements to the individually held land and common waste were defined, as were the relations of the different groups comprising the village. "All Mussalman tribes" it was said in 1883, "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."[106]

The process of introducing customary law into the legal system thus proceeded in three stages : the first, at the time of revenue settlements and the recording of rights; the second, by legal enactment; the third, in the course of disputes brought to court, as we shall see in the next chapter. Punjab customs were ultimately

incorporated formally into a system of laws. The intention was to preserve the status of customs and the source from which they emanated - the collective community. But these measures themselves intitiated a tendency towards the attrition of customs and attenuation of the authority of indigenous institutions like the panchayat which fell into abeyance. This was, in the first place, because the British revenue system, which set up the village as the unit of both the rural and social economy,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 caused the orally transmitted codes to be displaced by the written documents of the Wajib-ul-arz and the Riwai-i-am, a process naturally leading to a shifting of the point of reference in matters of custom away from, tribal heads and towards "rule by the records".

Second, the influence of tribal institutions on clans and splinter groups differed between areas. Even by the end of the nineteenth century, tribes on the western frontier were, with the exception of fire-arms, untouched by modernisation. In the south-west plains there were tribes which had sedentarised, and others which remained nomadic pastoralists in the middle of the nineteenth century. Tribes in the Eastern Plains of the Punjab, "though clearly marked", [107] had been largely sub-divided into gots or clans, and these again were formed into separate communities, a fragmented settlement therefore becoming the unit of society. Landed rights even here were confined to those affecting groups of agnates - the warisan vak jaddi. Hence the source of customs became a group of families or even a single family, rather than a clan or tribe. Further, individuals in addition to the panchayat or brotherhood, were entitled to make claims in court, and the decisions thus arrived at affected customs.

Third, customs were adopted as part of the system of law, and legislation therefore shaped and modified rights to land. Several customs, like those regulating pre-emption and land alienation and those relating to occupancy tenants, were all modified by specific legislation. The State, and not customary institutions, consequently became the source of rules.

The Chief Court, in particular, became a major influence in directing the use of customs in disputes. Evidence brought before the Court was obtained from recorded customs, and customs once arbitrated or adjudicated became precedents - and hence a source of custom themselves. Over time the precedent tended to displace the custom, especially where customs were not recorded. At the same time, by recognising the "will of the majority" in case of shamilat disputes, the Chief Court 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, 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."[108] 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.[109] However the most important change came about whenever it was rendered impossible to use and manage common lands on the basis of consensus, or became [110] "practically inconsistent with the general wish of the co-sharers" by reason of dispute. The Chief Court increasingly settled these disputes by giving to the individual opportunity to opt out of the system of joint control over common property resources through the partition of the common lands. [111]

This steady weakening of the capacity of customary institutions to govern common lands proceeded in spite of official efforts to incorporate customary law into the legal system of Punjab, a fact clearly illustrated in our section on shamilat disputes.

NOTES

Part III

Chapter 6

1. Dalhousie's Despatch, 1849, reproduced in Charles Lewis Tupper, Punjab Customary Law, I (Calcutta, 1881) : 49 (Henceforward, Dalhousie's Despatch, 1849).
2. Charles Boulnois and William Rattigan, Notes on Customary Law As Admitted in the Courts of Punjab (Lahore : Albert Press, 1876) : XXXII. (Henceforward, Boulnois & Rattigan, Notes (1876).
3. Regulation VII of 1822, Section 9, was amended as Regulation IX of 1833 and settlements in the Cis-Sutlej and the Punjab took place under this Regulation till the Punjab Land Revenue Act was passed in 1871. Sett. Man. 1899 : 10.
4. Ibid.
5. Punjab Civil Code, 1854. This was a printed set of rules known as : Abstract Principles of Law, circulated for the guidance of officers employed in the administration of Civil Justice. (Henceforward, PCC, 1854).
6. Jamabandi, Mauza Kanjhawala, Bundobast 1842.
7. C. Boulnois, Memorandum on Customary Law in the Punjab, 29/11/1872, reproduced in Tupper, Customary Law I (1881) : 148.
8. Ibid.
9. Ibid.
10. Sel. Rec. GOI, Home Deptt. 1-5, 1849-50 and 1850-51.
11. Ludhiana SR, 1878-83 : 329.
12. Dalhousie's Despatch, 1849.
13. Sel. Rec. GOI, Foreign Deptt. VI, 1851-52, 1852-53.
14. Fitzjames Stephen, on the Punjab Laws Bill, in Tupper, Customary Law I (1881) : 126.
15. T.J.C. Plowden, Under Secy. GOI. Home Deptt.Secy.Govt. Punjab, 13/3/1873, in Tupper, Customary Law I (1881) : 150.
16. Sel. Circular Orders, F.C. Punjab, Rev. Deptt. Circular 1, I, 1853, 1854 and 1855.
17. H.A.B. Rattigan and Charles Roe, Tribal Law in the Punjab, (Lahore, 1895) : 19. (Henceforward, Rattigan & Roe, Tribal Law, 1895).
18. Boulnois and Rattigan, Notes, (1876) : XLI.
19. Ibid.
20. Ibid : XXIII.
21. Boulnois' Memorandum on the Punjab Law Bill : Home Jud. Progs. 181 A, April 1872 : 3. (Henceforward, Boulnois' Memorandum, PL, 1872).
22. Boulnois & Rattigan, Notes (1876) : XXI.
23. Boulnois' Memorandum, (1872).
24. Ibid.
25. Tupper, Customary Law I (1881) : 127, 130.
26. Sel. Circular Orders, F.C. Punjab, Rev. Deptt. I, Circular 18, 20/2/1855.
27. Boulnois' Memorandum CL,(1872).
28. Sel. Circular Orders, F.C. Punjab, Rev. Dept. I, Circular 18, 20/2/1855.

[29]. E.A. Prinsep to F.C. 130, 14/4/1864 in Sel.Circular Orders, F.C. Punjab, V, Book Circular 19, Circular 32, 11/5/1864 : 83.
[30]. Ibid : 85.
[31]. Sel. Circular Orders, F.C. Punjab, Book Circular XLVI, 1860 : para 4.
[32]. Nisbet's Settlement Paper 39, Tupper, Customary Law III (1881).
[33]. Sel.Circular Orders, F.C. Punjab, Book Circular XLVI, 1860 : 85.
[34]. 86 PR 1867.
[35]. Punjab Chief Court Act, 17/2/1866, Home Judicial Progs. 41-56 A, Feb 1866.
[36]. Tupper, Customary Law I (1881) : 124.
[37]. Ibid.
[38]. E. Harrison, Offg. Registrar, Chief Court Punjab to T.H. Thornton, Secy. Govt. Punjab, 20/11/1874 in Home
Jud. Progs 10-16 B, Feb. 1875.
[39]. Henry Sumner Maine, "An Indian Land Question," : 10, Column 3, The Times, 10/2/1870.
[40]. PCC, 1854, Section XXI : Canons of Landed Property.
[41]. P C C, 1854 Section XXI, Clause 8 : 62.
[42]. PCC, 1854 Section XXI: para 5.
[43]. T.W. Smyth to Secy. Govt. Punjab, T.H. Thornton, 22/12/1868 requested the appointment of a third judge to relieve the arrears caused by procedural delays and time lost in research into customs which made it difficult to get a Bench of two judges for appeals & the Chief Court had only two judges! Home Jud. Progs. 33-35 A, 30/1/1869.
[44]. E.C. Bayley's Memorandum, Para 2: "In 1866-67 the regular appeals in the Punjab Chief Court were double as many as the Bengal High Court..." Home Jud. Progs. 42-54 A, 24/12/1870.
[45]. Home Jud. Progs. 10-16 A, Feb 1875.
[46]. E. Harrison, Registrar, Chief Court Punjab, to Secy.Govt. Punjab T.H. Thornton, 20/11/1874 : para 19; Home Jud. Progs. 10-16A, Feb. 1875.
[47]. 52 PR 1866 : 75.
[48]. The Secy. GOI. Foreign Deptt. to Secy. Govt. Punjab, 20/6/1866 in Press List of Old Records, Rev. Dept. Punjab Civil Secretariat, XXIV, 1864-68.
[49]. Ibid.
[50]. PAR, 1875-76 : 21.
[51]. Ibid.
[52]. Punjab Land Revenue Act 1871.
[53]. Tupper's Memorandum on the means of ascertaining the customary law of the Punjab, 2/6/1873, in Tupper, Customary Law I (1881) : 158. (Henceforward, Tupper's Memorandum (1873).
[54]. Ibid.
[55]. Shajra Nasb, the Misl Haqiyat, Mauza Kanjhawala, Bundobast 1906-10.
[56]. Ibid.
[57]. Sialkot SR, 1863 : Appendix 22-23.
[58]. Tupper's memorandum (1873) : 158.
[59]. Ibid.
[60]. Sirsa SR, 1883 : 52.
[61]. Boulnois and Rattigan, Notes (1876) : 173.
[62]. Ibid : 178.
[63]. Lt. Gov. Michael O'Dwyer's inaugural speech in the Simla Conference on Codification of Customary Law, Rep. on the Punjab Codification of Customary Law Conference, 1915 : 11.
(Henceforward, Rep. Codification Conf. 1915).

64. PAR, 1875-76 : 21.
65. The Punjab Laws Act IV, 1872, The Encyclopedia of Punjab and Haryana Local Acts, 1825-1969; also PAR, 1875-76 : 21.
66. Boulnois and Rattigan, Notes (1876) : XLIX.
67. Lord Macmillan, Law and Custom, (Edinburgh : Thomas Nelson and Sons, 1949).
68. Tupper, Customary Law I (1881) : 204.
69. Boulnois and Rattigan, Notes : XLVI.
70. Tupper, Customary Law, I (1881 : 5; also "In a civilised town like Calcutta, it is said, you must govern by fixed rules. On the Punjab Frontier such rules are out of place;" Minute by the Hon'ble Mr. Stephen on the Administration of Justice in British India, Home Jud. Progs 181 A, April 1872 : Chapter II, 9.
71. Boulnois' Memorandum on the Punjab Laws Bill, quoting from Robert Montgomery 1854, in Hom. Jud. Progs. 181 A, April 1872 : 3.
72. Tupper, Customary Law I (1881) : 5.
73. T.W. Smyth, Registrar Chief Court, to E.H. Griffith, Offg. Secy. Govt. Punjab, 23/3/1872, Home Jud. Progs. 181 A, April 1872.
74. Boulnois' Memorandum PL, 1872 : 3.
75. "I do not think it is necessary to take any action upon this communication from the Punjab Judges, as the Act has now become law, and their criticism is not important." E.C. Bayley, Secy. GOI. Home Jud. Progs. 181 A, April 1872, KW to the Progs.
76. J.B. Lyall, Sett. Comm. Multan and Derajat Div. to Sett. Secy. F C Punjab, 28/9/1875, Tupper, Customary Law I
(1881) : 174.
77. Punjab Govt. 336, 1/4 29/3/1877, shifted all questions of succession to the Riwaj-i-am, Tupper, Customary Law I (1881) : 211; also, FC Punjab, 2195 S, 2/4/1879, ordered that none of the replies declaratory of tribal customs should be incorporated in the W-U-A.
78. Tupper, Customary Law I (1881) : 214.
79. Rep. Codification Conf.1915 : 15.
80. H.C. Beadon, Customary Law of the Delhi District,XXII, 1911 : PREFACE.
81. Lahore SR, 1893 : 75.
82. Amritsar SR, 1888-1893 : 23.
83. Home Jud. GOI, Progs. 98-100 A, March 1907 : 5.
84. Ibid.
85. Ibid.
86. Ibid : 6.
87. Ibid : 7, para 5.
88. Ibid.
89. Ibid : 7, para 7.
90. Home Jud. GOI, Progs. 198-199 A, Oct. 1906.
91. Ibid.
92. Secretary of State's Despatch, 70, 14/12/1907, Home Jud. GOI, Progs. 95-96 A, April 1908 : para 7.
93. Ibid : para 9.
94. The participants in the conference were those who settled important disputes on the commons: Justices H.A.B. Rattigan, Chevis, and Shadi Lal; F.Cs A.H. Diack and Michael Fenton; District & Sessions Judges L.H. Leslie Jones, (Montgomery) Khan Bahadur Khan Abdul Ghafur Khan, (Mianwali) and T.P. Ellis, (Hoshiarpur); Rep. Codification Conf.1915 : 8.
95. Sir Harold Stuart, Offg. Secy. GOI. to Secy. Govt. Punjab, Home Jud.Deptt. 16/4/1908 in Home Jud. GOI. Progs. 95-96 A, April 1908 : para 4.

96. Rep. Codification Conf, 1915 : 23.
97. Ibid.
98. Ibid : 17.
99. Ibid : 81.
100. Ibid : 11.
101. Tupper's Memorandum, (1873), quotation from Boulnois[1] Memorandum CL, (1872) Tupper, Customary Law I (1881): 159.
102. Ibid : para 10.
103. Ibid : para 9.
104. Multan Gaz. 1923-24 : 326.
105. Sirsa Sit 1879-83 : 52.
106. Ibid.
107. Rattigan and Roe, Tribal Law (1895): 15, para 17.
108. Boulnois and Rattigan, Notes (1876): 179.
109. Ibid. Minority supported in 76 PR 1873: 70 PR 1866: 40 PR 1875.
110. Boulnois & Rattigan, Notes (1876): 179.
111. 34 PR 1869; 20 PR 1869; 70 PR 1868; 40 PR 1868.

Part III

THE EMBATTLED COMMONS

Chapter 7

Inexorably the shamilat in the Punjab, became the subject of legal battles between the malikan-deh which had organised and governed them and those who strove to free ride. The disputes reflected first, growing tension between customary and statutory institutions governing resource use. Second, they indicate the unease within the village over a growing shift towards intrusion of market decisions and individuals from outside. We have examined 146 common land disputes from among approximately 400 shamilat suits settled by the Chief Court from 1866 to 1947. It is possible we may have missed some important ones, but the significance of the evidence lies in the nature of the cases the wealth of information they provide to highlight tension between the two worlds of legal traditions co-existing and the consequent institutional crisis which threatened the Punjab commons.[1]

The shamilat cases were admitted in appeal to both the Chief Court and the Financial Commissioner, but there was a demarcation in the jurisdiction of these two apex bodies. Issues of title or property rights to the shamilat were resolved by the Chief Court while disputes which involved the mode of partition of common lands were decided by the Financial Commissioner. Obviously questions of property rights were of fundamental importance which implied greater legal technicalities. Thus whenever the records were correct and there was no ambiguity in the title to the common lands, it was the Financial Commissioner who dealt with the dispute. In the event the judges of the Chief Court influenced the introduction of customary law in the Punjab. This is indicated by several compilations of customary law which reflect the manner in which several aspects of custom were incorporated into the judgments of the Chief Court of Punjab. The themes of these edited versions of judgments were carefully annotated. For example W.H. Rattigan's Notes on Customary Law, 1876 has a special section on the several shamilat disputes which came up as a consequence of the Punjab Tenancy Act of 1868; similarly, Tribal Law in the Punjab, compiled in 1895, by Charles Roe and H.A.B. Rattigan, highlights the customs of tribes in shamilat disputes; while a third collection, made by T.P. Ellis, Notes on Punjab Custom, in 1921 serves to give a long range view. These contributions are historically significant since these compilers were directly involved with the Punjab experiment in customary law and brought to bear upon the judgments a background of legal and administrative expertise. Ellis, had participated in the deliberations on the Codification of Customary Law in 1915.

Having looked at *all* the shamilat suits given in these compilations we chose those which illustrate the issues of rights and use on the commons of residence (the abadi) and those of grazing fallows (banjar kadim).[2] These disputes substantiate two trend changes over the long period we have described in the earlier chapters. In the first instance, the commons had shrunk by the shortening of the banjar kadim; and were fought over where population growth and density were high as in the sub-montane tracts like Hoshiarpur; then because canal irrigation had extended cultivation and intensified land-use as in Hissar, Ferozepur and Jhang; also since enclosure of public grazing and partition of village commons as in the montane and the sub-montane districts of Kangra and Hoshiarpur reduced grazing fallows and gave incentive to free-riding. In the second instance, the battle for the commons came into court because there was a process of attenuation in the institutions of communal control over them. Such situations arose where the market forces led to infiltration of "outsiders" into village communities arousing animosities and dissension in matters affecting communal control as in Lahore and Karnal; where legislation like the Punjab Tenancy Act of 1868 had supported the rights of a particular category of cultivators - the occupancy tenants, as in Hissar, Hoshiarpur and Lahore; where urban pressure mounted on rural common lands, as in Delhi, Lahore, Ferozepur and Sialkot.[3] These trends can be graphically displayed on the dispute map, the only one of its kind found in the Civil Justice Reports of 1892, which is perhaps fairly representative in terms of relative concentration of disputes over the Punjab in other years as well.

A distinguishing feature of common land litigation was that the malikan-deh as a group was a LITIGANT! The Chief Court admitted a shamilat suit only when the *entire* proprietary body was impleaded as a party. In doing so it recognised the customary prerogative of the malikan-deh to control access and withdrawal from off the commons. Appropriately, we have organised this inquiry around disputes where the proprietary body is ranged against firstly those who were new entrants to the village and secondly, those who were already residents - sakin-deh of the village but ghair maliks or non-proprietors.

Governing the Abadi-Deh

The village residential site became the battle ground because it was the "access" point for acquiring "withdrawal" rights from the common property resources of a village. Every new entrant was a potential sakin-deh or resident of the village by virtue of which he obtained a qualified right to the use of the village commons. He could also become a conduit for other entrants who like-wise added to the pressure. A tenant could use the banjar kadim 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; and everyone, i.e. the sakin-deh could use the house-site, the ponds, the pathways and the grazing grounds.

Customarily the malikan-deh prevented free-riding by physical means of de-limiting the abadi-deh; or by dis-incentives like the hearth-tax and the poll tax on each male child.[4] It also exercised its moral authority to monitor the common of residence - membership to the sakin-deh. [5] The law suits indicate that the malikan-deh could screen new entrants;[6] could prevent them from bringing in other new comers;[7] ensure that no new entrant transferred any resource like the house-site or building material to any one other than the malikan-deh as a group, which precluded transfers to any individual member of the proprietary body; thus not upsetting the balance within the decision making body itself. Finally no resident old or new could carry away, sell, gift or transfer by any means either the building material or the house-site. If these deterrents did not succeed then[8]; moral suasion was tried to dissuade the co-sharers or biswadars from introducing strangers through sale, gift, adoption or mortgage.[9] If policing did not succeed then the community decided to pre-empt.[10] In the event of institutional failure the malikan-deh could opt for partition.

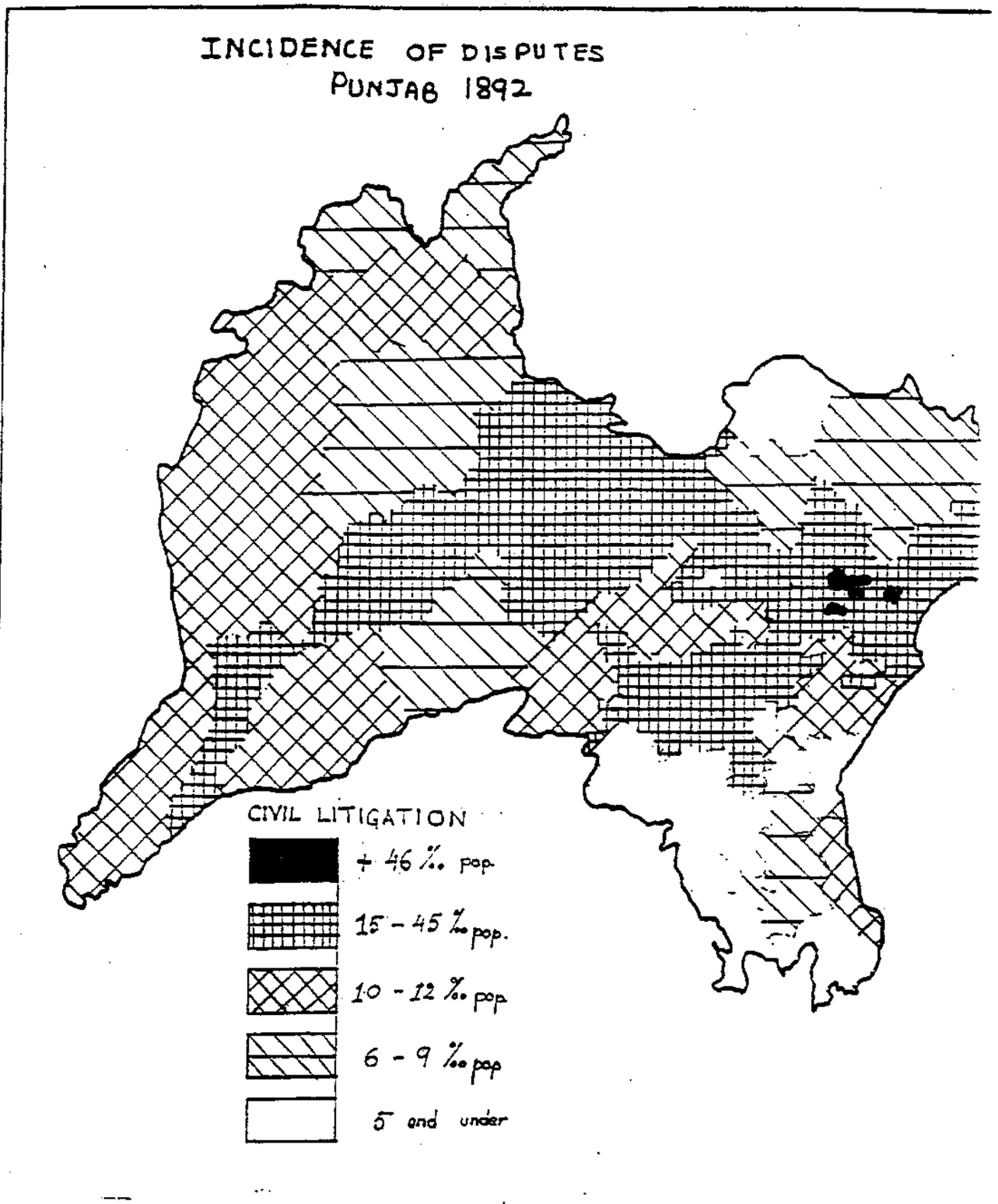
This system of self-governance was modified by several factors dealt with in the preceding section. Here we will examine the contribution of the Judiciary in the same way. We know that the Chief Court supported the adoption of Customary Law. Codification led to some customs becoming universally adopted while others which were peculiarly suited to particular areas were ignored or overlooked as the process of standardisation over time and space took place. This happened because according to the new dispensation clauses in the wajib-ul-arz could not be altered when circumstances changed without official sanction, hence, when disputes erupted, neither the custom, nor the clause in the wajib-ul-arz or the authority of the malikan-deh was necessarily appropriate.

For example, the proprietary body welcomed plough cattle but all other type of stock added to the burden on the commons specially since the area for grazing was shrinking. It reacted to the pressure of new entrants 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. Disputes show that this could not be done unless specified in the record of customs in the village. This triggered a chain reaction. Collectivities, driven against the wall either went to court or partitioned the commons. Such intemalization of the common waste reduced the basis for joint action and weakened communities. In Hoshiarpur, for example, 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" to protect not only against the destruction of the hill torrents or chos "but in every case the greatest apathy is evinced."[11] We can trace this trend through the nineteenth century below.

The Process of Change in Self-Governance

In the first half of the nineteenth century, the malikan-deh offered institutional incentives to new entrants such as equal status or by the bhumbhai [12] (earth brother) treatment, as in the Sirsa, Hissar and Karnal districts. Additionally, incentive was provided to cultivate the common waste in the 1850s in dry districts like Ferozepur and Hissar. Grazing in the common waste was also provided free whenever labour was scarce and the waste plentiful. Control was however tightened by the malikan-deh in areas which were close to cities or where there was general

Map 5 **Incidence of Disputes : Punjab 1892**



Source: Report of the Punjab Administration of Civil Justice for the year 1892.

insecurity which drove migrants into larger villages. In Delhi, Lawrence observed as early as 1838-44, how the proprietary body confined the building grounds by the "universal practice ... to surround the 'abadee' ... within a ditch and gates," and thereby avoiding encroachment on the " ground for building purposes by people having commercial pursuits."[13]

Also in the first part of the nineteenth century, techniques of exclusion included fiscal measures. In Delhi, Hissar and Karnal, the malikan-deh imposed the chaubacha[14] whereby the non-proprietary members of the village paid four kinds of taxes. While this contributed towards the burden of revenue payments of the malikan-deh, 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 had to pay more. Hence it was a summary census-taking providing the malikan-deh with a policing tool.

Such policing was either abolished by statutory measures or frustrated by technicalities of legal interpretation. This happened despite technical control on the abadi continuing with the malikan-deh.[15] The "settlement officer did not attempt to prepare a record" within the red boundary line (Lal Dora) demarcating the abadi and 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. Despite this power, once the malikan-deh gave permission, the occupant acquired a right of user. Occupancy rights frustrated the malikan-deh. 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 *customary* right became a *prescriptive* one. Policing such developments became increasingly frustrating with growing numbers, mobility of labour and internal expansion of villages into towns.

Such a situation was not universal. Much of this authority depended on specific circumstances. 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 pre-empt 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 of the process detailed above shows the attenuation of the malikan-deh's control over entrants into the village.

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, as Prinsep had foreseen as early as 1864, by the uncertainty or absence of records.[16] This is what 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.[17]

As opposed to this judgment was the general understanding that the abadi was not divisible; it was recorded as jointly held property, and seldom recorded as held in severally by sections of the community. For that matter, even as early as 1860 the Financial Commissioner had ordered that "the village site is never to be divided.[18] Yet for all purposes the ground on which each proprietor's house stood practically belonged to him.

This overlap of individual right in the plot and the joint right in the entire ~~abadi-deh~~ provided not infrequently an incentive to demand partition, specially wherever the record of rights 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, and it was excluded from the record of rights."[20] An entry in the proprietor's column showed ~~"hasab rasad khewat"~~ (partition according to the area actually held). 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."[21] 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 maiikan-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 in Delhi led to a great demand for the products of livestock. Since 1881 and 1912 stock increased 12.3% [22] and were mainly held by butchers and menials who had little or no land. Therefore the Bisagama was particularly alert about newcomers and partitioned only the gora-deh. to avoid disputes with squatters.

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 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 highlight issues which were pertinent because they recurred in several disputes. First 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 *awn* use, perhaps a more profitable use, their *own* property. Second, was 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 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."[23] 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 complied with, as in Delhi district, the rights of the kamins 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 proprietary body's concern in policing abadi rights of non-proprietary members stemmed from

the fear that alienation would allow occupation by persons who would have no interest in cultivation as it happened when a kamin or village artisan alienated the land he occupied, in 20 All. 248 from NWP. The alienation it was feared might have led 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."[24]

Customs 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-proprietors had houses."[25] The 20 villages where non-proprietors 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 Sonepat, 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-proprietors 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-proprietor 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- proprietor had sold his house to one of the co-proprietors. 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."[26] This judgement, became a precedent for decisions taken in other cases, two of which are discussed here, where the wajib-ul-arz was "silent", and 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 was however dependent on circumstances accompanying 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." 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." 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[27],leading to extensive cultivation in the erstwhile waste lands and rising land values. Therefore the malikan- deh had a preference for those who could provide labour and capital like the hereditary tenant, khatris and banias. Exceptions were accordingly made in their favour.

Even though the malikan-deh made exceptions in good faith, their fears were justified. In 1899, Justice H. A. Rose observed how the bania was able to "land grab" by speculation in land when once he "acquired his footing in the village by purchase" and that even though the law of pre-emption "was intended to preserve the homogeneity of the village community, it became a mere instrument in the hands of the land-grabber."[28] Once again, this happened as in the Hissar district where all the pre-emption cases came from the Fatehabad tehsil in 1899 where land-grabbing and rising land values were associated with canal irrigation.[29] Now it was the malikan-deh who were "substituting" custom when the wajib-ul-arz was "silent"; and the Chief Court was "creating" one when it adhered to a general precedent laid down as in 25 PR 1875 and 93 PR 1880. In the village of Bahroki in Sialkot,

Justice Brandreth and Rattigan did *not* allow a kamiru a weaver by occupation to sell his house to one of the co-proprietors of the village.

Sometimes absence of recorded customs gave rise to unprecedented situations. In Gujarat district, several appeals were made by the ghair maliks to Thorburn, the Commissioner and Superintendent of the Rawalpindi Division in 1894, about Captain Davies entries in the wajib-ul-arz in the earlier settlements regarding ownership of land in the village site. Thorburn noted, that 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."[30] A similar situation arose in 1897, when M.L. Dames, the Divisional Judge of Rawalpindi 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."[31]

A totally unforseen consequence resulted from such sales. They triggered an increase in the number of pre-emption suits, since that was how entry into the village could be blocked. This sequence seemed so automatic that one of the Divisional Judges, H.A. Rose noted in his report in 1899 that a "characteristic of our judiciary" was to always "assume a right of pre-emption to exist" [32] 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." Rose commented on "how an officer's idiosyncrasies can increase particular kinds of litigation."[33]

In conclusion, sale and alienation of abadi sites in most of the villages seemed to have developed out of new situations for which there were no established customs. Therefore such transfer depended on newer principles for dispute resolution. 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,[34] 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.[35] 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.

This process was however uneven as between one district and another, and even within one district the situation differed between one village and another. 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.[36] On the other hand where there was a combination of population pressure, increasing land prices and the cracking up of communal ties [37] led to a demonstrable hardening of the proprietary body's restrictive attitude. [38] For example, in 1897, Khan Muhammad Hayat Khan, the Divisional Judge of Jullundur noted the increase of 148 suits over the previous year for possession and recovery of immovable property and argued that this was due to "the increased, and increasing importance which the villagers attach to building sites" and that this was because "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,"[39]

It was not long before the Chief Court gave in and enabled partition of the abadi. In a suit from Gurdaspur, Justice Martineau 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."[40]

A Question of Village Identity : Partition of the abadi negated village identity and was an inconvenient solution to keep off free-riders. The more immediate options were to either demand the ejection of an "intruder" or to pre-empt the entry of an outsider. That is how pre-emption became such an important strategy for the community where salability of plots on the abadi site was high. 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 119 PR 1884 the judge held that in an agricultural village "the proprietary right in the abadi is, as a rale, vested in the proprietary body", the mere material expansion of the village did not destroy that proprietary right. Therefore 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) one 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.

*Leadership **and** the Community*

Again the law suits indicate that the proprietary body's control over the process of alienation depended on the tradition of leadership. This varied. 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. Elsewhere, 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. Adoption of customs did not ensure automatic customary authority to the leadership associated with the genre found in clusters like the Bisagama in Delhi and other older settled tracts like Gurgaon, Rohtak and Karnal. [41] 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." [42] 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.[43]

This difference in the quality of leadership between newer and settled districts notwithstanding, there was a process of attenuation at work 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)[44] 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. 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 the abadi of the villages expanded into the surrounding areas which then became the nucleus of qasbahs. Amritsar city was the best example of such urbanisation - a village of a "pure unadulterated bhaiachara tenure", where everybody held

the land in severally; and what was not, became the property of the Government, as it was in any town. These trends were well beyond the control of the malikan-deh of individual villages.

Siege of the Grazing Commons

The Punjab villages were multiple common-property regimes. Hence the war on the commons involved multi-level controls. Thus, when the malikan-deh started to lose control over access to the abadi-deh, it boded ill for control over withdrawal rights in other resources. A considerable amount of tension developed within the village among the malikan-deh themselves and with the different groups of long standing residents or sakin-deh of the village. Consequently disputes erupted over withdrawal rights from common grazing lands and other areas not cultivated, like ponds, and easements like paths, dung heaps, and other communal facilities. These lawsuits challenged the malikan-deh's customary rights to own, use and manage the shamilat-deh, whether they were declared and recorded at the time of the settlements or had been overlooked and became obsolete as circumstances changed.

The law suits challenged the property rights of the malikan-deh. We examine in the first instance their rights to hold, alienate and partition the shamilat-deh. A second set reflects friction over the institutions regulating joint user rights to the shamilat. A third category involved clashes over those institutions by which the malikan-deh attempted to exercise its right to manage the commons.

The Malikan-deh's Right to Hold

A market developed for the lease, sale and mortgage of land in the Punjab from the 1860s. Disputes came up whenever such transaction brought up two important issues: First, could a "share in the shamilat" be *conveyed* when land held in severalty was alienated? Second, could an individual transferee take *physical possession* of a "share of common land" when the shamilat-deh or village commons was still in an undivided state and not partitioned?

There were several judgments on the question of the two rights appended to common lands as joint property and these were: First, that the shamilat was not accessory to land held in severalty, so rights to the shamilat could not be conveyed unless there was agreement among the village proprietary body or it was specifically mentioned in the deed of sale, mortgage, or gift.[45] Secondly, no individual co-proprietor could acquire exclusive title against the joint title of the other co-sharers in the shamilat until it was partitioned, that is shamilat was non-exclusive property till partitioned.[46]

In a village in Ferozepur, the question of a share in the shamilat came up when a piece of land was sold, 65 PR 1889. Justice Rivaz would have allowed the share to be conveyed as he held "common land to be susceptible to physical possession by each co-sharer." But Justice Roe differed. In his judgment of the above case he thought "it quite impossible to hold that the rights in the shamilat are a mere accessory to the rest of the property. These rights are not mere easements necessarily appertaining to the separate property." In his opinion the malik kabza or owner of any land held separately may be "entitled to certain rights or privileges in the shamilat such as grazing his cattle, or cutting wood there, just as occupancy tenants are sometimes so entitled." However, if a share in the shamilat was sold "it would give a proprietor much more than this; it gives him the right to demand an actual partition of the land itself, or a share of the profits as long as the land is undivided." According to Roe the most conclusive proof that a share in the shamilat is "not a mere accessory of the rights in a separate holding is that the former is often expressly reserved when the latter is sold, and indeed it is presumed to be reserved unless its sale is recited in, or may at any rate be inferred from the deed of sale."

In several judgments (including 10 PR 1893, 115 PR 1893 and 113 PR 1901) the Chief Court clearly supported the malikan-deh's right to prevent alienation of the share to the common land. But once any transfer was possible it was a matter of time when newcomers would add pressure both by their own numbers and by the cattle they would bring. This caused a likely situation of uncontrolled use of common lands which led to the demand for partition. Sometimes the sheer presence of outsiders threatened the malikan-deh who would then seek protection by partition, as it was in village Rani Khera in the Bisagama.

We now come to the second feature, viz, that shamilat was a non-exclusive property till partition. However, communal control was so strong that even if partition converted the common lands to exclusive property, but till that actually occurred, individuals could not take decisions regarding shamilat. This is illustrated in 99 PR 1866. One of the khewatdars in a mauza in Amritsar cultivated the shamilat with the consent of the proprietary body and was therefore regarded as a tenant-at-will. Two co-sharers out of twelve brought a suit to eject him. The Chief Court held that a cultivating co-proprietor was a joint owner of the shamilat but he could cultivate the shamilat only as tenant-at-will and hence he could be removed from this position "for purposes of division or other object common to the proprietary body." But the court could recognise the demand for ejection only if it had been made by the *entire proprietary body*, since the shamilat was joint property and did not exclusively belong to the two co-sharers who had filed the suit.

The insistence on joint action both for permission to cultivate and to eject precluded any individual idiosyncrasy and at the same time prevented any single co-sharer from acquiring more than his share in the shamilat in permanency. Further, no member of the malikan-deh could construe "adverse possession" when he cultivated the shamilat even though he may have paid revenue or rent on it like any tenant-at-will of the proprietary body. Settlement officers like Ibbetson recognised this customary protection, and "feared" that the Courts may mistake this *cultivating* possession for *absolute* possession.[47]

Ibbetson's fear was not unfounded. Among several cases one is given here for illustration although chronologically it should have been given later. In a case from Amritsar a district judge did mistake long-term occupation by a co-sharer on shamilat to be one of adverse possession. In 1911 Mussammat Askaur brought a part of the village shamilat into cultivation. She was a hissedar or co-sharer. She continued to cultivate for fifteen years, and once the other co-proprietors had tried to eject her and even appealed for her ejection at the time the shamilat was sought to be partitioned in 1926. The district judge granted her adverse possession because she occupied the land for more than 12 years. The Chief Court however held that Askaur had to prove that she had *exclusive title* (emphasis given by the Punjab Law Reporter) in order to convert her joint possession in the land to exclusive ownership. According to Justice Jai Lal, Askaur had made no overt attempt (like an effort to get mutation in the record of rights) to establish an exclusive title against the joint ownership of the others. Hence declared the Justice, Askaur had exclusive possession and *not* exclusive title. Thus unless and until "a joint holding is partitioned, no sharer can say that he is absolutely the owner of any particular field or fields."[48]

Similarly, to come back to our chronology of disputes, again in Amritsar, 99 PR 1866, it was clear that no single owner or section of the malikan-deh could take adverse action against the decisions of the joint proprietary body. This was re-iterated in 40 PR 1875. where the families of one Pana in Mauza Chatera, Rohtak district could not eject a faqir (a religious recluse) from the shamilat since he was granted the dholi or service tenure in the shamilat by the entire proprietary body. However, in another village in Amritsar, a co-sharer succeeded in maintaining exclusive use and possession of a portion of the shamilat for his own use until partition.[49] But this did not allow anyone to alter the condition of the land by building on it, unless he was permitted by the rules recorded in the settlement. Thus it was that when one of the co-sharers had broken the waste, shamilat nau tor, and another one had ousted him and built a wall, Justice Plowden held, that the first co-sharer could not be disturbed till a partition was sought while the second one could not build a wall which diverted the use of the land until there was express agreement amongst the proprietary body.

A house divided could seek remedy by declaring independence from collective bonds. This is what the malikan-deh increasingly sought by the turn of the century and sought partition of the commons. The problems of such action became evident in disputes over partition. Courts were not averse to allowing privatisation quite early in the century, (see 1 Rev 1873); however, this trend was causing a shortage of grazing in most of the settled districts like Delhi and Hoshiarpur by the 1880s. Possibly this may have been the reason for section 115 of the Punjab Land Revenue Act 1887 which gave the Revenue Officer "power to disallow partition absolutely for good and sufficient cause recorded by him."[50] Thus the wajib-ul-arz of a village in Delhi contained a clause which required the consent of *all* shareholders before partition could take place, and when *one* of them wanted partition, the Revenue Officer refused. Even though the suit was one for partition which was within the jurisdiction of the Revenue Court, it was however the Chief Court which admitted the case, 82 PR 1893, for at issue was a question of title to the shamilat. Justice Plowden decided to allow the partition - even though there was dissent - as a matter of civil right. He argued that without partition the title of any co-sharer to the shamilat was incomplete.

The Malikan-deh and User Rights

Control over withdrawal rights from the commons was perhaps the most friction-ridden area of collective action. Increasing recourse to court by co-sharers in the nineteenth century indicated rising transaction cost of collective policing of user rights. Monitoring and sanctioning became increasingly difficult, as pressures of expanding cultivation, partition of shamilat, diversion from pastoral use and increasing cattle numbers manifested themselves and strained mechanisms of collective control

Malikan-deh vs Malikan-deh : Cultivation of the long fallows was not **a** new phenomenon, but any to attempt to shorten fallows permanently in the second half of the nineteenth century caused disputes. Evidently when the malikan-deh attempted to ripen occupation of nau tor of common waste on the presumption that it was their due share, the only option for the rest of the co-sharers was to seek partition of the shamilat unless the cultivator could be ejected, as in 99 PR 1866. Such disputes started when co-sharers actually took up for cultivation more than their share of the common lands than what their khewat land holdings warranted. For example, a minority of co-sharers in a village in Delhi, occupied common land more than their khewat share. 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/'[51] Here, it was the influential *minority* which had taken up more than their share.

In another **suit,** 24 PR 1885. from Amritsar, a co-sharer had cultivated more than his khewat share of land in the village which could happen only if he had encroached on the 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.

The Malikan-deh and Diversion of Shamilat

Increasing awareness of individual rights in common property resources became evident from disputes over diversion of shamilat where the co-sharers had not been consulted, informed or given a share in shamilat income. In all the 3 cases we have here, disputes occurred because decisions to divert use or income from shamilat had been taken without the consent of the malikan-deh or the major section of the co-sharers. Thus in 30 PR 1879, co-sharers objected to the lambardars giving shamilat land in village Rurki, Rohtak district, for the manufacture of salt-petre. In 110 PR 1876, in a village in Rawalpindi a couple of co-sharers sued another set for a share in the profits from the sale of grass. And in 148 PR 1882, co-sharers in a village in Lahore objected to leasing of land from shamilat by other co-sharers who were coerced by a tehsildar, to pay arrears of revenue. The judgment in 148 PR 1882 did not cancel the lease because such disposition of land did not interfere improperly with the enjoyment of the "co-sharers of the property in the usual manner." The Court obviously favoured individual contracting particularly when the object of the lease was payment of revenue arrears - and that certainly would have been favourable to the revenue department.

Apart from this, the Chief Court supported (in other instances as well) individual action if "no damage done could be proved". That is, an externality had to be proved before objection to the diversion could be sustained. For example, the Chief Court disallowed the construction of a chabutra in 73 PR 1882, because it narrowed down the pathway, a common easement, preventing other co-sharers from using it. Again in 74 PR 1885, a proprietor could not build a cattle trough on shamilat if it obstructed a thoroughfare. These cases became frequent over the years for example - 121 PR 1885. 54 PR 1886, 41 PR 1888.

Most illustrative of this principle was the chos problem in the foothills of the Siwaliks. It took on horrendous proportions as a result of the de-forestation in the watershed in Kangra district and Hoshiarpur forests. In village number 62 of tehsil Palampur,[52] Ram Singh, one of the co-proprietors of the village reclaimed 7 marlas of land from the ghair mumkin khadd (uncultivable ditch) which was common land and built a wail to protect and cultivate it. This land reclaimed was not, according to the trial judge, more than what Ram Singh could claim from his share in the shamilat. The wajib-ul-arz of the village forbade the cultivation of pasture land and resting place of the cattle. According to the Lower Appellate courts if the "other co-sharers also do what the defendant (Ram

Singh) has done, the khadd will disappear or become narrow and water will run on higher ground and may harm valuable lands and houses." The trial Judge, visited the spot and took a different view. He did not find the wall obstructive, it had a passage along way and therefore it did not interfere with the normal course of the channel. Other co-sharers had also cultivated in a similar way. Therefore the legal question was whether Ram Singh had caused substantial and material damage "such as could not be remedied on a partition." According to Justice Hilton, the wall and the reclamation of land did not cause material damage as "appropriating the abadi or the gora deh would injure the interests of the others, and would not be remedied by partition."

Malikan-deh vs Sakin-deh

The most obvious arena of free-riding was the grazing commons. The conflicts between the malikan-deh and the sakin-deh sharpened. These could be seen as: First, one of conflicting rights of user belonging to those of the proprietary body as against those of the non-proprietors; and Second, as conflicts between two classes of use - that of exclusionary enclosure and cultivation of the commons and those of pastoral use by the cattle of non-owners. The options open to the proprietary bodies became limited over time since all the residents of the village were given the right to graze in the wajib-ul-arz.

In districts like Hoshiarpur and the other sub-montane areas, predominantly cattle owning communities came into conflict over 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.

The Malikan-deh vs Maurusi

Grazing disputes involved the physical dimension of the grazing fallow, the cultivable waste and the number of cattle. The village of Bachoi, in the district of Jullundur had limited grazing land, but the jungle of the village was used by graziers who also came from outside. The wajib-ul-arz of the village declared that "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."[53] 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 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 waiib-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.

Another dispute, 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."[54] 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 provided sufficient grazing was left for the cattle belonging to non-proprietors. Occupancy tenants had to accept the paramountcy of the proprietory rights; but 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 recording the wajib-ul-arz noted in 1876 and again in 1914. Occupancy tenants in the village Samur Kalan in the same tehsil sued to prevent the proprietors from partitioning the area of shamilat 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."[55] 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,[56] 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 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."[57] 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 a village in Hoshiarpur in 1928, when a proprietor brought up an injunction "restraining occupancy tenants from grazing their cattle on the land"[58] which was the portion of the shamilat which fell to his share at partition. No clear "issue as to sufficiency or otherwise of the area reserved for grazing purposes was framed, but tie parties were apparently fully aware as to what the real contest between them was."[59]

Increasingly the friction was zeroing in on the question of numbers - cattle and human beings - pressing on limited land and causing over-use. The crisis sharpened because the revenue records and courts recognised two conflicting rights. On the one hand the proprietary body's right to partition and enclose was recognized while on the other the residents' rights as well to grazing, wood-lots and facilities like water were. Cattle owners whether they were tenants, non-proprietor kamins or shop-keepers, all wished to free-ride since they could do so without having any reciprocal obligation to invest or pay for what they withdrew. Such a trend was exacerbated by increasing infiltration from without.

In Bachoi, Jullundur district, 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."[60]

In Mauza Badhera, Hoshiarpur, 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."[61] 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."[62]

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.[63] 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 share in the village as against 20 to 30 such shares 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."[64] 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."[65] 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."[66]

In 1911, the Chief Court upheld the need to restrict the number of cattle in yet another village in Hoshiarpur, to those which were used for "domestic and agricultural purposes."[67] Justice Rattigan 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, yet around 1906-10 when Beadon was settling the district, a large number of disputes over grazing rights and dues surfaced.[68] 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.[69] 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.

The Malikan-deh and Rights to Manage

The status of the Lambardars within the proprietary body changed considerably in the second half of the nineteenth century, since they had to handle several new situations which arose consequent to road building, canal construction, etc. and legislative activity. This affected the management of village accounts of which the renting of the shamilat and the distribution of the miscellaneous income received from the products sold from the shamilat was a major responsibility.

One such situation occurred in 1863 in the village of Kala Bahean, Jullundur district. The village was 14 miles from Jullundur railway station so the village lands were accessible both by road and rail. The lambardars and 17 khewatdars. owners of 390 bighas, paying Rs.500/- sold the kunkur (gravel) rights in the shamilat to a private contractor, Taylor, in November 1863. Early next year in 1864, 25 khewatdars of 271 bighas paying Rs.350/- revenue sold the rights of kunkur to J.P.C. Anderson, Executive Engineer of the PWD. When Anderson started digging kunkur trouble arose as the lambardars feared prosecution by Taylor who had bought the rights earlier. It became a case of the Public Works Department against Taylor with the two groups of malikan-deh facing each other with lambardars in one. More important was a shift in the relationship of the lambardars to the rest of the proprietary body since their influence and authority in the village was in virtue of their connection with the Government, "differing from other khewatdars in being proprietors who are parties in their own names to the contract with the Government for the payment of the jumma."[70]

Additionally, the lambardars were called upon to handle an emerging situation in which kunkur was a new produce in demand and so "not covered by the custom of the village." Boulnois observed that " although the lambardar is customarily in the position of the agency to deal with the products of the common land in this case they are not covered by the custom."[71] And further, he argued the deed of sale to the PWD by the lambardars did not convey the right which the original land holders possessed and the only way in which Anderson could have those rights to the kunkur was by purchasing either the separate holdings in the estate or "their ratable portions in the kunkur in the common lands." But the papers of Kala Bahean recorded that the consent of the proprietors was necessary before the shamilat was divided. Curiously enough the clause in the wajib-ul-arz also declared that if such consent was not available then an appeal would be made to the Collector to appoint amins to divide the lands. This could obviously not have been a custom pre-dating the settlement. Several trends surfaced; first, that a

commercial proposition encouraged individualistic tendencies as opposed to collective action; second, private gain swayed even leaders to connive and collude with the majority group keeping the minority in the dark;
third, such a situation bred fissiporous tendencies not conducive to consensus or to the success of traditional leadership; and naturally this induced the break up of collective action by partition of the common lands which was the only option for the splinter groups to fight collusion of leaders with outsiders.

In yet another village dispute, the lambardars' action in leasing shamilat for manufacture of salt-petre was challenged in 1879. In Rurki, district Rohtak,[72] the lambardars and 7 proprietors had given a contract to one Kashiram for the manufacture of saltpetre, out of the common land. Four proprietors sued to restrain the action. The Commissioner took a vote. 162 objected and 102 were in favour.

If one analyses this result it turns out that contrary to the expectation of Punjab Land Revenue Act 1871, section 6, rule 7, that village headmen would "collect the rents and other income of the common land and account for them to the community," it transpired that, as Justice Plowden observed, "It would be largely straining this rule to construe it as of its own unaided force conferring upon the village headmen authority to manage as they choose the common land of the villages, independently of the proprietors." The terras of the rule were certainly not wide enough to confer upon lambardars the right of exercising at will the powers of the proprietary body regarding the disposal of the common land. In other words neither by rule nor by custom was the lambardar given "the power to make the grant."

Once again the customary authority of the lambardar was challenged when the majority did not support it. While this was expected because it was an important cattle-rearing district; but the fact that 102 were in favour of saltpetre being manufactured showed that some private gain was an emerging incentive.

In yet another case a sale of land from the shamilat in the village Mozang in Lahore - in 1886, by the Ala Lambardars to an Englishman - aroused almost riot conditions. The land had graves on it. The Headman had sold common lands here before but the proprietors did not seem to object. In this case the question of a graveyard perhaps aroused religious sentiments or it could be that earlier sales did not come to light simply because the village was large having as many as 300-400 co-sharers. The complaint of the co-sharers was recognized and at the same time the Judge held that no individual co-sharer could interfere with any specific plot without partition. Once again the lambardars were recognized by the Judge as the agents of the proprietors for certain purposes ... "they are the agents for the collection of rents and other income of the common land. Under clause 5 of the waiib-ul-arz the bringing of common lands under cultivation is also within the scope of their authority, but there is nothing to show that they have any authority, to sell such land on behalf of the proprietors. "[73]

As against judicial opinion about the power of lambardars. there were in some districts like Gurdaspur, Lahore, Gujranwala and Amrtisar where they were creatures of settlement procedures. Prinsep had appointed these ala lambardars, in 1864-67, or Chief Headmen with muafis or revenue free grants from the shamilat-deh. According to Tupper, F.C. Punjab, deciding 1 Rev_1897, from Gurdaspur "these grants were really irregular and made ultra vires, but they have remained in the possession of the ala lambardars as such, and when the muafis. as such, were resumed at recent settlements the ala lambardars have commonly continued to hold on as cultivators." [74] They therefore became tenants of the malikan-deh on the shamilat-deh.

Some important issues were thrown up in the suits where the ala lambardars had taken advantage of their official position for private gain. Thus ala lambardars tried to convert their continuous possession of common lands into rights of occupancy tenancy. Not everyone among the judiciary held the same opinion about this development. For example the Financial Commissioner Rivaz. (1 Rev 1896) differed from the Chief Court and held the ala lambardars to be occupancy tenants under the proprietors. C.L. Tupper was in agreement, because in his opinion ala lambardars were village officers, and if they had held the land continuously for twenty years from the time of Prinsep's Settlement then they were entitled to the rights of occupancy.

Two suits illustrate this position in Lahore and Gurdaspur. Ala lambardars fought for the occupancy rights in the shamilat which had been granted to them in the 1864 Settlement under Prinsep but which had been subsequently resumed and the inam was given in cash. In mauza Aulukh, tehsil Shakargarh, district Gurdaspur, Hira Singh obtained a muafi granted to his father Jamiat Singh in 1864. The grant was made from the shamilat-deh which continued till the partition of the shamilat in 1891-93. Therefore partition caused Hira Singh to be forcibly dispossessed. Tupper drew an important distinction (1 Rev 1897), between the Punjab Tenancy Act of 1868 and the Amendment in 1887; but for the purpose of this case Tupper concluded that by section 10 of the 1887 Act, joint owners of land were refused occupancy rights which was "in accordance with the general custom of the

country."[75] This was in protection of the joint rights in the shamilat which otherwise could pass to those who occupied the shamilat.

Managing Occupancy Rights on the Commons

The right of occupancy in the shamilat was almost universally acknowledged to be a right from which customarily a proprietor was to be precluded. Thereby no single co-sharer could acquire more than his share in the shamilat. It was an institutional safeguard against privatization by any single individual. In (99 PR 1866) the Chief Court argued that a tenant-at-will on the shamilat was placed in that position by the whole malikan-deh; therefore ejection also needed the decision of the entire body. Besides, both the custom and clause 2 of Section IX of Punjab Tenancy Act 1868 laid down that "rights of occupancy could not be acquired in the common land of the village unless there was a clause in the wajib-ul-arz."[76] Therefore a proprietor could not acquire any permanent rights to occupy the shamilat as he was also a joint proprietor of the shamilat.

The rights of occupancy in shamilat were thus open to controversy till the amendment of the Punjab Tenancy Act 1887 removed any ambiguity in the controversial clause. However, as it turned out, in a case 155 PR 1889, i.e., *after* the passage of the Punjab Tenancy Act of 1887, that a clause did exist in the wajib-ul-arz of a village in Amritsar settled in 1852 before the passage of the Punjab Tenancy Act of 1868 giving occupancy right in the shamilat. Wariam Shah was a co-sharer and the land in which he was declared occupancy tenant was shamilat. But in the Amritsar district occupancy tenants were almost ignored in the second settlement of 1865 which took place under Prinsep, hence Wariam Shah was *not* recorded as occupancy tenant. When his widow succeeded him, the other proprietors objected but the Superintendent of Settlements decided the dispute by declaring her a co-parcener and avoided the issue about her occupancy rights. She died in 1884 and the nephew of Wariam Shah took up the tenancy of the portion of shamilat cultivated by their uncle. Proprietors of the Patti objected again and sought to eject them. Finally on an appeal, Justice Roe, declared the nephews as successors to the widow because she "merely kept the rights of the male heirs in suspension." But he signed the judgment with reluctance "as the original grant of occupancy rights to Wariam Shah, a co-sharer cultivating common land, is opposed to the principles followed in both the subsequent Tenancy Acts and the clause in the wajib-ul-arz giving a right of succession to his bhaibundhs is a still greater violation of those principles ... But it is impossible to hold that the entry is not an agreement within the meaning of section 2 of Act XXVIII of 1868, or that it has lost its force by not being repeated at the revised settlement of 1865, or that his nephews are not entitled under it to succeed to Wariam Shah's rights on the death of his widow."[77]

Fending the Maurusi : A curious phenomenon came to court. While the malikan-deh could be prevented from acquiring occupancy rights on the commons, the same was not always true of the maurusi, or occupancy tenants. As shamilat rights became more valuable the malikan-deh clashed with the maurusi or occupancy tenants both over the "right to occupancy" in the shamilat and a "share" in it. The customary relationship of the malikan-deh to occupancy tenants' had been modified first, by the record of rights; second, by section 9, clause 2, of the Punjab Tenancy Act 1868, which said: "And no right of occupancy in the common lands belonging to a pattidari village community shall be acquired under the chapter;"[78] and third, by the construction of canals in the dry districts of Punjab.

For example, the proprietors of Kubur Bucha initially tolerated the maurusi or occupancy tenants because the waste was not so valuable in the Ferozepur district at the time of Settlement and labour was scarce. The maurusi were therefore able to get their shamilat share recorded in the wajib-ul-arz. In 1855, the shamilat was partitioned which gave the occupancy tenants a share. The proprietors did not object since the situation had not changed. But from 1859 circumstances started to alter. First the Western-Jumna Canal system had been remedied by Captain Turnbull in 1859;[79] work was starting on canals from the Sutlej River in 1868;[80] and population density rose from 187 per square mile in 1855 to 200 in 1868.[81] Hence the malikan-deh were no longer willing to be generous. The Revenue Department were hesitant to allow tenants to acquire a share in shamilat as is evidenced by a decree of the Deputy Commissioner in July 1867, which corrected the waiib-ul-arz taking advantage of the Financial Commissioner's letter number 4978 dated 28th November 1865 which alloeed corrections. Henceforward the maurusi were to get no rights over the common land except for pasturage.

The Chief Court however stepped in when such a correction was made in yet another case; where the Commissioner "ordered without the consent of the parties, that the clause relating to the right of the hereditary cultivator to share in the shamilat should be expunged from the wajib-ul-arz". [82] The hereditary cultivator appealed

to the Chief Court and Boulnois held: "the alteration mentioned must be treated as without effect upon the clause in question; as the wajib-ul-arz was the record of admitted agreements or rights founded upon agreements, and could only be set aside so far as the parties themselves rescinded the agreements."[83]

Increasingly tenants' rights to occupancy in the shamilat was contested by the malikan-deh specially after the passage of the Punjab Tenancy Act of 1868. As we have seen disputes brought to the Chief Court led to controversy as to whether Section IX clause 2 applied to the malikan-deh alone or included hereditary cultivators too. The Chief Court ruled out rights of occupancy in the shamilat by the co-sharers within the malikan-deh. In 33 PR 1871, a proprietor's claim to occupancy in shamilat, which went to another co-sharer as his share, was ruled out by Justice Boulnois according to the same section of the Punjab Tenancy Act 1868. Finally, the Punjab Tenancy Act of 1887 rectified the clause by section 10 which said that "Right of occupancy not to be acquired by joint owner in land held in joint ownership ...In the absence of custom to the contrary no one of the several joint owners of land shall acquire a right of occupancy under this chapter in land jointly owned by them." This definitely laid to rest the controversy.

Absentees and Adverse Possession

The tension between customary rights of absentees, occupancy tenants and the newly emerging concepts of adverse possession in the shamilat increasingly forced the malikan-deh to be alert about entries made in the wajib-ul-arz and the action of fellow co-sharers. In the 1850s, co-sharers could not privatize shamilat on their own *hut* their claim to a share in the shamilat was not denied even if they had been absentees from the village, as the settlement and other reports indicate. In 1853 the report on the administration of Punjab, stated "the public voice will admit the title of individuals to their ancestral shares, who have been out of possession from one or two generations. Knowing that our courts will not recognize such claims, a compromise is usually made with the party in possession, who retains a half or a third with reference to his own and the claimant's relative influence in the community."[84]

The situation changed over the years as can be seen from two disputes, 113 PR 1900 and CA 33 PLR 1920, In Mandiala, a village of district Amritsar, two families owned half shares in the patti called Dadan. In 1864, at the time of settlement, one of the absentee families came back to claim their share of the patti. The other family objected. Arbitration enabled the absentee family to regain only 7 ghiunaos of land instead of 19 ghumaos which was their half share. In 1896, the shamilat was to be partitioned. The formerly absentee family, now returned, were denied their half share in the shamilat. They appealed. The Chief Court decreed that the absentees may not have claimed their share in the shamilat earlier but they had asked for their full proprietary rights and got it, albeit only for 7 ghumaos of land instead of the original 19 ghumaos. The most important thing was the full proprietary right in the khewat which gave them the share on 7 ghumaos in the shamilat [85] and *not* on 19 ghumaos.

However, in 1920, from a village in Mianwali a claim for reclamation of shares to the shamilat was brought by absentees, who had returned. In 1881, Sahibzada left the village and died in 1884. His share was taken in possession by the father of Kahan Singh. When Sahibzada's sons Khannu and Jallu returned and claimed their share in 1903, it was dismissed in default; it was again turned down in 1912 when their heirs sued, because in the meanwhile Kahan Singh had obtained "a title to the land by adverse possession." [86] In the appeal, the heirs of Khannu and Jallu sued for a declaration of their rights to die shamilat. Justice Shadi Lal and Martineau concluded that since the father Sahibzada, of Khannu and Jallu had abandoned their whole proprietary holding, therefore it could be assumed that they had abandoned their share in the shamilat. Thus "On the abandonment of their share in the shamilat that share must be declared to have passed into the possession of co-sharers."[87] These two cases indicate not only the tenacity of owners to regain their shares in shamilat, but also that the courts began to accept adverse possession when families absented themselves from the land, contravening village custom!

Adverse Possession : a new category? The Chief Court persisted in recognizing adverse possession even in shamilat provided technicalities were observed like if a co-sharer could prove "by some equivocal declaration or overt act that he denied the title of the other co-sharers and converted his occupation of a jointly held land into exclusive possession."[88] Justice Jai Lal quoted a case (AIR 1925 LH.183) in which an owner proved an overt declaration by trying to get a mutation of the shamilat in his name. Even though the mutation was refused, it was an overt act of declaration which the other co-sharers ignored but this could help the owner to press Ms claim for adverse possession. In other words if a proprietor was allowed to make such a declaration and he got away with it for twelve years, the chances were that he could convert a share of shamilat into an exclusive possession even

without partition. However, in (CA 19 PLR 1936). this did not happen because of a technical gap. Mussamat Askaur a hissedar or shareholder could keep cultivating possession from 1911 to 1935 in a village from Amritsar, but the Chief Court held that she had only made assertions of exclusive possession and that this did not amount to denial of the ***title*** of the other co-sharers. Hence she could not claim an exclusive title for herself. But Askaur had taken possession as co-sharer in 1911 and therefore could not be removed except on partition of the land and that too if she had more than her share. She could not get adverse possession!

Policing the Commons vs Governing the Commons

The disputes included in' this part 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 of 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 judicial 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. "[89]

These law suits enhances the overall impression of a distinct decline in the communal control wielded 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 consider, unsuccessfully, adverse possession for her.[90] 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. 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.

The battles over the banjar-kadim and abadi-deh reflect the essential difference between the explicitly material benefit derived from banjar-kadim and the implicit non-material significance of the residential site - abadi-deh. Such distinction is apparent from the customary rules of both inclusion and exclusion adopted by the village community to govern the commons. An infringement of these rules was construed as a challenge to the authority and economic interest of the malikan-deh. But the external threat was assessed variously in the case of the two resources because the options open for internal solutions were different. The abadi-deh was synonymous to their collective identity even when heterogeneous groups occupied it. There was therefore a tacit understanding that it was never to be partitioned. Further, a partition of the residential site involved municipal complementarities like drains, paths and social gathering points which were impossible to divide. Yet on the other hand collectivities perforce had to admit service groups to complement agricultural activity hence the abadi-deh was an inducement which was used for joint- bargaining for these resources. Once again the conflicts indicate that the village community was aware that once residence was granted to anyone it involved a whole range of rights of easement. Therefore rules of sale, gift, mortgage and partition were more stringent and almost purely of an exclusionary character in comparison to those regulating the village waste.

The uncultivated waste presented a different set of options to the village proprietary body. Compact grazing grounds were necessary for the cattle both belonging to the cultivating and service groups and served as long fallows where a system of crop rotation was necessitated by uneven distribution of soil fertility or topography. This was particularly true of riverain villages. The community's responses in these disputes indicated flexibility to a certain degree, since partition was feasible and again a tacit understanding always existed about the right to partition such land. However here too intrusion of temporary occupants could ripen into permanent rights and monitoring was required.

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. Transaction cost of indigenous governance rose as customary institutions weakened or became less effective to protect the commons. Meanwhile the tools for policing were increasingly provided by legislation and law courts.

NOTES

Part III

Chapter 7

1. The Punjab Records are reported judgments of the Punjab Chief Court.
2. 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, 1990. (Henceforward, Author's thesis)
3. Ibid : for a complete listing of disputes.
4. HissarGaz.1915 : 198.
5. Fortescue's Rep. 1820 : 78.
6. Ibid; also Karnal SR 1872-80 and the PR.
7. SeePRs.
8. Delhi SR, 1872-80 : 81.
9. See the PRs.
10. Ibid.
11. Hoshiarpur SR, 1879-81 : 87.
12. Hissar Gazeteer 1915, p. 199; Karnal Settlement Report, 1872-80.
13. Delhi SR. 1846 : 29.
14. Hissar Gaz.1915 : 198; see also Fortescue's Rep. 1820 : 81; also Karnal SR. 1872-80.
15. Jamabandi Records of mauza Kanjhawla and other villages in the cluster as well as the village records of all villages in the Punjab. Author's thesis.
16. Prinsep's letter 170, 14/4/1864, F.C.'s Book Circular 19, circular 32, 11/5/1864.(Henceforward, Prinsep's Letter 170)
17. By Section 65, a Civil Court could not take cognisance of claims to partition, by persons who did not contest the correctness of the settlement record.
18. FCC0. II, XLVIII, 1858-60, Circular 97, 20/10/1860 : 402.
19. Delhi SR. 1872-80 : 81.
20. Prinsep's letter, 170.
21. 117 PR 1894.
22. Delhi Gaz. 1912 : 120.
23. 119 PR 1884.
24. 20 Allahabad 248. W. H. Rattigan, A Digest of Civil Law For the Punjab (Lahore: Lahore Law Publishers, 1938): 235, 236.
25. Delhi SR. 1872-80 : 81.
26. 25 PR 1875.
27. Paustian, Canal Irrigation ...Punjab (1930): 41; also Baden Powell, Land Systems in British India. II: 587; also Ferozepur SR. 1889-91.
28. Home Jud. Progs. 11 B, Oct. 1900; CJR. 1899 : Appendix v.
29. Ibid.
30. Rev.& Agri. Progs. 21 A, July 1894.
31. Rep.Div.Judge, Rawalpindi, MX. Dames, Home Jud. Progs. 85-87 B, Oct. 1897, CJR. 1896. Appendix xii.
32. Rep. Div. Judge, H.A. Rose, Ferozepur, Home Jud. Progs. 11B, Oct. 1900, CJR-1899 : Appendix, v.
33. Ibid.
34. 30 PR 1879.
35. 7 PR 1885.
36. Lahore SR. 1865-69 : 67.
37. Hoshiarpur SR. 1879-84 : para 6.
38. 24 PR 1878.

39. Home Jud. Progs. 85-87 B, Oct 1897; CJR. 1896 : Appendix,(iii).
40. 149 PR 1919.
41. 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," Karnal Distt. Gaz. 1918.
42. Rev.& Agri. Progs. 23 A, July 1903 : para 13.
43. Rohtak SR. 1873-79 ; 29.
44. CA 1314 of 1929. PLR 1930.
45. In the following judgements the shamilat share was not accessory to land held in severalty: 65 PR 1889, 10PR 1893, 115 PR 1894. 113 PR 1901.
46. In these judgments, shamilat was a non-exclusive property till partitioned: 99 PR 1866, 40 PR 1875, 108 PR 1889, CA 19 PLR 1936.
47. Karnal SR 1872-80 : 97.
48. CA. 19 PLR 1936.
49. 108 PR 1889.
50. 82 PR 1893.
51. 12 Rev. 1885.
52. C.A. 1917 of 1932. PLR 1934.
53. 108 PR 1876.
54. 119 PR 1889.
55. 144 PR 1907.
56. PLR 1932 : 942.
57. Ibid: 944.
58. C.A. 171 of 1928. PLR 1935.
59. Ibid.
60. 108 PR 1876.
61. 100 PR 1881.
62. Ibid.
63. 95 PR 1914.
64. 108 PR 1876.
65. Ibid.
66. Ibid.
67. 86 PR 1911.
68. Delhi SR. 1906-10 : 20; also Delhi Gaz. 1912 : 120.
69. Delhi Gaz. 1912 : 121.
70. 70 PR 1866.
71. Ibid.
72. 30 PR 1879.
73. 191 PR 1889.
74. 1 Rev 1897.
75. Ibid.
76. 49 PR 1874.
77. 155 PR 1889.
78. The Punjab Tenancy Act, 1868. A collection of the Acts passed by the Governor General of India in Council in the year 1868 (Calcutta, 1868).
79. Paustian, Canal Irrigation ...Punjab (1930): 35.
80. Ibid: 41.
81. Punjab Census. 1881.
82. 84 PR 1869.
83. Ibid.
84. Sel.Rec.GOI. Home Deptt. 1-5. 1849-50, 1850-51 : 102.

85. 113 PR 1900.
86. CA. 33 PLR 1920.
87. Ibid.
88. CA. 19 PLR 1936.
89. 108 PR 1876.
90. CA. 19 PLR 1936.

Final Part

Chapter 8

AND SO THE COMMONS

This inquiry has dealt with common lands or the village waste in Punjab, a Province which was exceptional in several ways in colonial India, which made it easy to examine it exclusively. Punjab had the largest acreage of uncultivated but cultivable land in British India in 1860-61; much of this land was communally held and managed. Subsequently the Punjab experienced the second highest increase in area cultivated[1] - a trend which continued till 1947.[2] Such a change was accomplished at the expense of the areas held and used in common both within the villages and outside them. The pattern of transformation was highly uneven, for the factors at work varied. The dry tracts saw a rapid decline with extended canal irrigation; while population increase pressurised the commons in the sub-montane. Surprisingly enough common lands remained intact in the urban shadow of Delhi and in Karnal where one least expected them to survive, for here there were additional factors like urbanisation and market expansion impacting on the commons.

Another distinctive feature of Punjab was that the colonial government had a very large role in the re-allocation of resources like waste lands, thereby altering the property rights in them. The British Government consciously and sub-consciously played out a role (by their own perception) akin to Pax Romana. This is evident from the way it tried to incorporate the indigenous system of customary law into the legal system of the Province, thereby recognizing traditional institutions of control in land ownership and management. It however altered the framework within which these indigenous institutions could function by setting up modem law courts and thereby hastened the process of individualisation in the ownership of land. The role of the State in altering rights in property was much more extensive than analysed in the works of the Property Rights School.

Again, the setting up of an infra-structure of canals, roads and railways enabled an agricultural expansion unparalleled in any other part of South Asia under the British. Accompanying this process was large-scale human engineering in the form of the colonisation of the waste mainly in the western parts of the Province.

In the preceding chapters we tried to trace the evolution of common lands in colonial Punjab and even attempted to weave in the contemporary story of Delhi's experience. We tried to highlight changes in two major aspects of common lands: first, as a resource for a major activity in rural Punjab, the pastoral; and second, as a unit of property over which the control of the village proprietary body was communal.

The first task was to trace the actual changes in the size, use and management of common lands. In summary, these were as follows: First, there was a decline in the uncultivated land in general from 1861 onwards, and with it a shrinkage in the common lands. Second, the reduced areas of open waste outside the villages were increasingly reserved by the Government after the Indian Forest Act of 1878, so less was available for general support to the grazing on the village commons. At the same time there was a tendency on the part of the village proprietary body or the malikan-deh to reserve village common lands or shamilat deh for themselves, leaving less in common for use by other residents. This took place in the montane and the sub-montane districts like Kangra and Hoshiarpur.

Third, there was a steady reduction in the length of the fallows, so that all categories of fallows shortened, including those which were held in common. There was thus a movement towards greater intensity of land use both for arable and pastoral purpose. Irrigation was a prime mover in this direction. Canals and wells were catalysts in the districts of Ferozepur, parts of Karnal, Hissar, Sirsa, Hoshiarpur and Sialkot.

Fourth, wherever common lands continued to exist, the free rider problem on the common lands started to take on destructive proportions in all the zones of the Cis Sutlej. This was particularly noticeable in the sub-montane districts where the problem of chos occurred, and in the common lands of villages in the proximity of cities like Delhi.

Fifth, there was a shift away from mainly pastoral to arable in certain districts as in Ferozepur, Hissar, Sirsa, Jhang and Gujranwala, and as this coincided with increasing population after 1868, there was a consequent shrinkage in area available per head of cattle, and a change in the composition of the herds of cattle reared.

Sixth, as population pressure and cattle numbers increased, the policing of common lands became increasingly difficult, posing a disincentive to investment in conservation and improvements in common forests and grazing lands. This was particularly so in Hoshiarpur and Gurdaspur in the sub-montane and Kangra in the montane. The momentum towards partition and hence privatisation of common lands was hastened in the last quarter of the nineteenth century. Consequently there was a trend towards erosion of the communal system of management of all common property resources. However a counter-process of preserving common lands in districts like Karnal and Delhi was also in evidence.

Corroboration of these changes is provided by the disputes that came into law courts. Shamilat disputes both in the abadi-deh and in banjar kadim tended to be more in districts (i) where population was dense as in the sub-montane districts of Jullundur, Hoshiarpur and in the proximity of urban areas like Delhi; (ii) where communal ties were eroded by land alienation (through land sale or mortgage) and where as a result common lands were partitioned and/or enclosed, once again in the canal irrigated tracts or in the sub-montane; (iii) where canal irrigation had extended cultivation in the waste thus reducing the grazing wastes both outside and within the villages as in Hissar, Ferozepur, Jhang and Karnal; (iv) where cattle pressure was high and increasing because of inter- zonal movements of cattle during certain seasons, droughts and shrinkage of grazing all round, as in the sub-montane, districts of Hoshiarpur and Ambala; and (v) where legislation like the Punjab Tenancy Act of 1868 and its amendment in 1887 had supported the rights of a particular category of cultivators, such as the occupancy tenants in Ferozepur. In some districts, such as Hoshiarpur, several of these factors operated at the same time. Generally, decisions taken by the court enabled disputants among the malikan-deh to take recourse to privatisation of common lands by partition. Privatisation of common lands may have defused the immediate friction but it did not remove the basic problems associated with communal management of non-renewable resources.

There were several factors behind these changes. The first set included increasing population and the growth of markets (partly the consequence of public investment in the railways and irrigation); these are the factors extensively analysed in the general literature. In particular, canals enabled the use of both extensive and intensive methods of cultivation whereby cultivated fodder replaced grass fallows for grazing thus reducing the area available for grazing both inside and outside the village.

The second set of factors relate to government intervention, an area less extensively dealt with in the general literature. Thus, administrative measures, such as land settlements, disrupted the self-organised ecological patterns of land-use and reciprocal arrangements among communities of users. The Government's revenue policy provided incentives to increased cultivation and reduced cultivable waste or banjar kadim within villages. Again, forest and waste land reservation by the Government both for controlled use by pastoralists and for the purpose of obtaining timber for urban use and the railways, reduced the area available for supplementary grazing for both settled villages and the semi-nomadic pastoralists. These explain the reduction in the area of common lands used for pastoral purposes.

The decline in communal control over common lands was brought about by a weakening of the cohesion within the malikan-deh and the attrition in the authority of the leaders i.e. the lambardars over the various categories of users of the common property resources which included the general body, the co-sharers, tenants, service groups and cattle graziers from outside. As we have seen in our chapters 3 and 4, on tenurial settlements, and in chapter 6, the governance of the commons required a certain amount of managerial skill on the part of the head men of the community as they bargained on behalf of the general body of co-sharers with external agents like the Government on the one hand and with the service groups on the other. Such authority depended on the customary rules of the villages which had a history of long standing. However, newer settlements acquired these rules without having likewise a long tradition of communal management. For example, in the district of Gurgaon, where rainfall was scanty, the system of pana palat or periodical exchange of blocks of land of different qualities was maintained by the lambardars to equalize the risks among the several members even after the British settlements had been made in the 80s and the 90s of the nineteenth century. Similarly in the riverain villages of Delhi, Ludhiana, Hoshiarpur and Ferozepur land open to diluvion and alluvion were kept common and managed by the lambardars to minimize and equally distribute the risk among the co- sharers in the malikan-deh. Similarly

the compact holdings kept for grazing enabled the malikan-deh to benefit from the economies of scale in grazing, but at the same time the bargaining and policing of the user rights among the other residents or sakin-deh was maintained by the lambardars. But such authority of the lambardars could not be replicated in the other regions.

This authority of the lambardars and collective action among the malikan-deh declined in different degrees all over the Punjab, more so in areas where the value of land had risen and alienation of land made possible individualisation of rights in land. The protection of common lands from over-use became very difficult in the last quarter of the nineteenth century as the commons shrunk. At the same time the control of the malikan-deh over common lands was weakening because of the juridical and legislative action of the Government. The modern law courts were replacing the indigenous system of dispute settlement on the one hand and on the other, legislation gave protection to certain groups like occupancy tenants; besides the recording of rights ensured the protection of user rights other than those of the malikan- deh. Hence increasingly the malikan-deh found itself hemmed in from all sides. The option to privatise common lands became the most tempting way out. Even the Chief Court seemed to offer partition as the most uncomplicated solution to a dispute.

This enquiry has looked at these trends in two parts (apart from Part I) shifting the focus in each section on different areas of Punjab with a varying time frame necessitated by considerations of data.

Part II deals with overall ecological pattern and trend changes in the Cis-Sutlej in the period 1803 to 1911. These serve as a window to the regional change in North India. Common lands existed in Delhi and areas of settled cultivation at the time of British entry in the Cis-Sutlej in 1803. In the major part of the region wastelands were unbounded where the semi-nomadic pastoralist shared the grazing in the scrub and hill jungle and in the riverain with the cattle of settled agricultural villages. In these vast areas of waste early settlements created revenue estates with demarcated wastes as common lands. This was done by Regulation IX of 1822 and then applied to the rest of Punjab when it was annexed in 1849. At this time the hill districts of Kangra and the sub-montane districts of Gurdaspur and Hoshiarpur were settled. Here the common lands of villages were supplemented by riverain and forested hills, in fact some groups of villages also had shamilat forests. Kangra however had no village communities taking action jointly or controlling common lands. Nomadic pastoralists moved up and down from both the lower valleys and the upper ranges. In order to impose joint revenue responsibility the government demarcated boundaries in the waste for each revenue estate, thereby creating common lands. The process was repeated in the case of the vast dry doabs of western Punjab. Thus between 1849 and the passage of the Punjab Land Revenue Act of 1871, revenue settlement operations had demarcated boundaries in the waste and created new villages where settled cultivation was encouraged. The villagers had perforce to depend on the shamilat of their own demarcated waste as the grazing fallow land in the open outside the villages had been allotted to newly created villages.

The legal boundaries between the waste and the cultivated area bore little relation to the technical properties of the soil or the requirements of the agricultural and village economic systems. Artificial boundaries prevented the villages from resorting to the nearby fallows in the scrub lands, grasslands and forests in normal times, and specially to long distance riverain fallows during droughts. Transhumance and nomadic movements in the hills of Kangra and dry tracts of Sirsa and Hissar were disrupted.

The waste however continued to be large in the 1850s, particularly in the dry districts of the west and the south west, and despite efforts made by the Punjab Government to settle de-mobilized soldiers, the overall labour scarcity prevented the extension of cultivation into the waste. A debate began in the 1850s about forest rights and State ownership of unoccupied waste. Both Barnes in Punjab and Beckett in Garhwal held that the hill forests were not "howling wildernesses" available for use by European planters. However the coming of the railways in the fifties alerted the Government to reserve forests in the hills and in the plains. The prospect of canals in the 1860s in the doabs had a similar effect on the attitude of the Government towards the waste in the plains in Central Punjab. Thus came into being a Wasteland Policy following Canninge's Wasteland Minute of 1861.

The Government's revenue policy towards the waste became restrictive and sharp. A differential revenue rate was imposed on all those villages which kept large areas fallow and those that cultivated to the maximum. Consequently concessions were given to the latter and the former were penalized. Considerations such as these encouraged expanding cultivation. The demarcation of villages and restrictive policy towards the waste was accompanied by the formalisation of the tenurial arrangements by the Punjab Land Revenue Act of 1871. The revenue system formally recognised the corporate control of the malikan-deh over the shamilat, but it also recorded

the user rights of the tenants and service groups, so the corporate bodies found themselves restricted by the conditions which they themselves had declared at the time of recording the wajib-ul-arz or the village administration paper. The Government further strengthened the rules which regulated the rights of the tenants in the common lands by the passage of the Punjab Tenancy Act of 1868, particularly section 9, clause 2.

In practical terms, such extension of the sphere of law in matters regulating revenue arrangements in land were wont to lead to more defined and fixed rights in ownership, control and use of common lands which had been, prior to British rule, flexible usages prescribed by the socially dominant land owning groups. These rights were central to shamilat disputes which came up in the British courts during the colonial period.

Just as the process of demarcation and revenue settlements was taking place the population of Punjab grew between 1855 and 1881 by 24.3% and thereafter the average density of population increased from 152 per square mile to 183 in 1921.[3] In the 1860's the railways started to demand fuel wood which intensified the move to reserve forests as demand from the railways continued till the switch-over in the 1890s to coal. Livestock numbers also increased between 1868 and 1911 by as much as 133%.[4] Cultivation responded to irrigation from canals, and increased by as much as 50% between 1868 and 1921.[5] Such changes put pressure on the waste, and that too unevenly. While Jullundur and Hoshiarpur had almost the highest density of population in the Punjab, the area of waste available in Jullundur Division in 1911 was only 12% of the cultivation; while Lahore Division had 20% of its cultivation as waste and in Delhi it was 21%. Thus about 14 1/2 million horned cattle depended on 18 million acres of grazing in the Punjab in 1911.[6] Of this the Government owned about 5 million acres and 14 1/2 million acres were common lands. The Cis-Sutlej had only 1/5 of Government waste and 1/3 of the common lands. In other words the Cis-Sutlej tract was increasingly moving towards arable farming and in the process losing its common lands.

The impact of these trends was more visible in times of drought and famines and that is why the Famine Commission Reports beginning from 1880 decried what they called "mindless" extension of cultivation without consideration for the grazing needs of cattle which made recovery from famines slow. It also made Famine Commissions realize that dry districts like Hissar, Sirsa and Karnal (the Nardak) depended on long distance external fallows not in the immediate vicinity of the villages. Recourse to such supplementary grazing was becoming increasingly difficult by the end of the nineteenth century and wherever inter-regional cattle movements still continued, as in the Hoshiarpur and Jullundur tracts, problems of over-grazing and soil erosion resulted.[7]

While the supply of areas of waste both outside and within the villages fell, the demand from both man and cattle grew, leading to conflict between the needs and rights of the malikan-deh and those of other residents, particularly the occupancy tenants and the kamins or service groups. Formerly the occupancy tenants had been given rights of user and in some cases, as in Ferozepur, even rights to share the common lands. Under pressure the malikan-deh could either exclude this class and others while holding and enclosing land in common, or dividing up the common lands amongst themselves. Both courses of action led to disputes, especially as the official policy favoured the occupancy tenants.

In some areas, such as Kangra, taluqas like Haripur and Mangarh avoided friction by either reserving hay fields or kharetars for fodder or by shifting some cultivated land over to the growing of hay.[8]

When common lands were opened to unrestricted grazing by rules recorded in the wajib-ul-arz as against customary institutions, the situation developed into a typical Hardinian case of free-riding. Commercial graziers and city butchers all used the rights of the kamins in the common grazing and plied increasing numbers of sheep and goats free of charge. The ecological consequences were even more severe than the social friction. Sirsa district saw the disappearance of valuable grass like Dhaman; saiji and barilla disappeared from Abohar; valuable trees were cut and the forests degenerated into scrub jungles and climax vegetation. The problem of chos or hill torrents was so severe in Hoshiarpur that the Government had to take recourse to legislation for conservation. The symptoms of these pressures were the disputes over the shamilat fought in the Chief Court.

Part III traces the process by which legal institutions brought about change. As we have seen, the British initiated a move to preserve the indigenous institutions in the Punjab. The customs of the malikan-deh by which the common lands were regulated and protected, formed a major part of the record of rights. Accordingly the customs were incorporated in very general terms into the Punjab Civil Code in 1854. But the variety of customs was so great between different regions that a more detailed ground level inquiry into customs was needed, as the Chief Court of Punjab pointed out. Thus under the Punjab Laws Act 1872 the British inducted the customary law

of the land into the legal system. The Chief Court of Punjab set up in 1866, played an important role in this process.

The major impact of this development was that the village communities of Punjab had greater access to an alternate source of arbitration to their jirgas and panchayats. in the Punjab law courts. Events of a similar nature were taking place elsewhere in India but the Punjab stood out because this was an unique experiment in certain respects.

We see the tension between the different arms of a colonial Government - the Executive and the Judiciary. The Punjab Chief Court followed the general aims of policy laid down by the Government. On the one hand it tried to support the malikan-deh against alienees, mortgagees and outside agents from encroaching on common lands or misusing rights granted to them. On the other it gave support to occupancy tenants and kamins as in cases where they claimed rights of long user in common lands. Also, even within the malikan- deh it supported a wider and the relatively less aggressive elements. Thus if the minority but influential group acquired more than their share of shamilat land as in 12 Rev 1885, the Chief Court supported the majority. However if the minority or the individual objected to majority usurpation, as in 76 PR 1873. the Chief Court invariably permitted redressal by allowing partition of shamilat. Overall, it could not halt the pressure of market forces leading to privatisation. Shamilat disputes mirrored the constraints under which the malikan-deh held, controlled and managed common lands from being mis-used, over-used and diverted to other use. Disputes brought to the Chief Court by the malikan-deh itself reflected the value attached to the rights contested by them. In the period immediately after the Chief Court was set up in 1866, the monetary value of some of the common land suits were very small, but the Chief Court took them up because the principle of the rights was important. In quite a few cases the disputes arose because the revenue settlements had not recorded the exact customs of the village in which the dispute took place. The enormous regional variety in the customs gave rise to confusion. For example, occupancy tenants were customarily not sharers in the common lands in nearly all districts, but in the Ferozepur district they were recorded in the 1855 settlement as right holders. The disputes from Ferozepur in the period after the canals came in the 70s, showed occupancy tenants demanding a share in the common lands. This happened because Ferozepur at the time of the first settlement in 1855 was dry and population scarce and the land not valuable, and therefore the malikan-deh gave rights to the waste easily to the occupancy tenants, and with the canals and rise in land values, occupancy tenants demanded a share in the common lands.

Rising numbers of both human users and cattle pressurized the community over time. In the settlements before 1868 the population was thinly spread out in the dry tracts as against the sub-montane. Therefore the abadi disputes where the malikan-deh tried to prevent alienation of the house sites to outsiders came up in Delhi, Jullundur and Hoshiarpur earlier than in Hissar and Ferozepur; again even in the latter such disputes came up in villages nearer towns. The construction of railways and canals in the south west dry tracts opened up markets and promptly Hissar had a spate of disputes connected with the abadi-deh. The same thing happened in the doabs of western Punjab like Jhang, Sialkot etc.

Shamilat disputes involving grazing land came up in all those areas where concentration of cattle was greater and where also irrigation had caused an extension of cultivation. This was apparent in the districts of Hissar, Sirsa, Jhang and Ferozepur in the south western portion of Punjab and in the sub-montane districts of Gurdaspur and Hoshiarpur. Canals caused the most rapid extension of cultivation in Ferozepur and Hissar while well irrigation did the same in the sub-montane districts; disputes involving the shamilat were concentrated in these two areas over the greater part of the nineteenth century.

The value of land rose all over Punjab, especially in some areas. Hoshiarpur saw a very large rise in land values and also alienation of land in the last quarter of the nineteenth century. As the population of the sub-montane pressed much more on the land than elsewhere, the malikan-deh found it difficult to keep outsiders at bay. Hence, the partition of common lands was more rapid here, than elsewhere. Collective action broke down and soil conservation did not take place, as shown by the village studies conducted in the sub-montane and by the disputes connected with the enclosure of grazing lands and partition of common lands in Hoshiarpur.

Urbanisation and reduction in the hold of the malikan-deh becomes evident all over the Punjab where the railways helped migratory movements of labour. Kamins as a group and tenants increasingly developed connections with towns, as a result urban demand for the products of cattle led to commercial grazing on common

lands in the villages near urban areas. This was particularly true of the villages of Delhi in the early part of the twentieth century.

The major trend which is visible from the disputes is the increasing privatisation of common lands through partition particularly of the grazing lands. It was an indication of the growing transaction costs of maintaining common lands in the face of free riding. Customs upholding communal ownership gave way as the 'rule of majority' usually upheld by the Chief Court, struck down the need for consensus among the malikan-deh to carry forward any decision to privatise.

However, even though there was such widespread privatisation of common lands in the Punjab they continued to survive in certain parts of the Province. All the factors which pressurised the malikan-deh to opt for partition and privatise in order to avoid free riding on the commons existed in the region of Delhi, yet, some clusters of villages continued to hold on firmly to the principle of joint management of the shamilat. Both the settlements of 1872-80 and 1906-10 reported the rising land values and cattle increase as well as population growth along with urbanisation but common lands survived till the time of independence. However, after 1947, the common lands started to decline.

In order to investigate the difference in the impact of similar factors before and after independence we have analysed the history of common lands in a cluster of villages known as the Bisagama in the Union Territory of Delhi over one hundred years and incorporated the findings within the other sections of the study. It explains the survival of strong collective action in pockets like that of areas inhabited by Jats - the Dabas. However, even here they are threatened by institutional changes brought about by statutory changes in property rights and land-use in post-independent India.

This study thus supports some of the propositions of the Property Rights School regarding the factors responsible for the alteration of institutions of communal control over common, property resources. But the major difference is in the emphasis on the role of the State. According to the Property Rights School, the State had an important role in changing and specifying the contents of property rights by "using its monopoly power in contractual relationships with the constituents."[9] In the Punjab too, the Colonial Government played a crucial role by changing and specifying property rights through law and the legal system. However there were other very important ways in which the State affected common lands. The revenue and wasteland policies made it possible for the State to acquire large tracts of wastelands while its investments in public works encouraged partition and privatisation by the malikan-deh. Finally, one of the findings in contradiction to the more doctrinaire Property Rights writers, is that common land institutions can be efficient, given certain social factors. A very good example is the Bisagama cluster and similar clusters which existed in the region we have defined as Zone II.

However since the decline in communal control over common lands did occur by partition and privatisation in the colonial period itself, there is need to note first, some of the other ways in which privatisation took place in the colonial period and second, the difference between the pre-1947 and post-1954 situation particularly in those areas where common lands had survived.

Partition of common lands in the colonial period was only amongst the malikan-deh with very few exceptions where occupancy tenants were included as in Ferozepur. Non-proprietors or ghair maliks could be completely excluded. But partition was one of the most important ways by which CPRs declined before 1947. This was not possible after 1954, because the common lands were transferred by the Land Reforms Act to the Gaon Sabha, which consisted of not just the maliks but all other residents.

Pre-1947 partition of common lands was not always complete individualisation that is thoks and thollas divided the shamilat-deh into land common to the smaller group. This was one of the ways policing became easier in the larger villages. Once again this was not feasible after 1954.

Encroachment on common lands was very much in existence in pre-1947 specially by the stronger elements in the village and particularly in districts like Gujranwala, Sialkot etc., where the tradition of communal management and authority exercised by the leaders was absent. This was one of the reasons why disputes involving encroachments were larger from districts like Jhelum, Jhang, Gujranwala etc.

'Encroachments' for commercial purposes were also carried out before 1947 but these were usually with the knowledge of the proprietary body. Wherever there was objection a court case was resorted to. A dispute in Kangra shows that a co-sharer 'encroached' into a khudd in order to build a wall to prevent soil erosion. The khudd was common land and the case came into court. But the Chief Court supported the act of 'encroachment' (a)

because it did not cause damage to anyone and (b) because the revenue policy encouraged soil conservation measures.

Encroachments in water channels was not allowed by anyone, but the moment irrigation canals were made, the johads or ponds were redundant and large scale encroachment and partition of these johads took place. This was one of the reasons why famines found dry districts unprepared in the last years of the nineteenth century.

In the post-1954 period, as we saw in Part IV, common lands have been re-distributed by the Government among certain groups of poor, not belonging to the proprietary body. Encroachments have taken place too. Studies in Rajasthan and elsewhere, made by Jodha, Brara and others show the same trend. Thus the policies of the Government have tilted in favour of the socially deprived groups and in the process common lands have been further removed from control, of any kind.

Now that these traditional institutions have been destroyed they cannot be artificially resuscitated. However the need for communal action remains even as the pressure of population continues. It is possible that new institutions will have to be invented and sustained, perhaps by Government action, perhaps by voluntary agencies. These are areas beyond the scope of the study, but the survey of villages in the Bisagama cluster in 1986 briefly mentioned in the text, suggests that members of the village community ignored in the past will have to be included in these new institutions. Perhaps the most important of these groups is women, and steps are being taken by the Delhi Administration and elsewhere to incorporate them into the management of CPRs.

But the success of these new institutions will depend partly on our understanding of the reasons for the success and the failures of Common Property Resources institutions in the past.

NOTES

Chapter 10

1. Rev. & Agri. Progs. 26 A, Aug. 1894.
2. Imran Ali, (1989) : 9. Also Blyn(1966); Baden Powell, Forest Jurisprudence (Calcutta, 1882) : 30; Ibid : 29.
3. Punjab Census. 1921.
4. PAR. 1868-69 and also J.M. Douie, Fodder Crops in Punjab. (1912): 1.
5. Paustian, Canal Irrigation... Punjab (1930): 79.
6. Stow, Cattle & Dairy (1910): 20.
7. Census India. 1901, XVII, Part I : 62; also Hoshiarpur SR. 1879-84 :18; Jullundur Gaz. 1895-96 : 12; PBEI, Survey : Haripur and Mangarh 1933 : 102.
8. PBEI, Survey : Haripur and Mangarh.1933 : 32.
9. Pejovich, (1972): 316.

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Any study of common property in India has to depend on village level data. Colonial revenue records of Delhi are available in the D.C.'s Record Room of the D.C. at the Tees Hazari Complex and Tehsil Record room in Mehrauli. For each village there are Jamabandi Records for the four major settlements of Delhi - 1838-44, 1864, 1872-1880 and 1910. Records of the current year are kept with the patwaris at the patwarkhanas of main villages. There should be the following documents in each village basta:

1. Misl Bundobast 1842, Mauza Kanjhawla, Naksha, Khasra Paimaish, Pergunnah Shumal (North), ZILLA Delhi Khas.
2. Misl Haqiyat - 1864, Mauza Kanjhawla, Pergunnah Delhi.
3. Misl Haqiyat - 1880: Part I. Khasra - Khatauni records showing ownership field numbers, soil, rabi and kharif crops.

ii) Misl Haqiyat -1880: Part II: Khewat members of the owners and Khatauni number of the cultivators who may be owners or just cultivators.

4. Misl Haqiyat - 1908-10, Mauza Kanjhawla, Pergunnah Shumal (North), Zilla Delhi Khas.
5. Jamabandi Records 1915-49: Jamabandi Mofussil Records 1882-83 to 1924-25 and Four Yearly Records: 1928-29 to 1948-1949.
6. Khasra Girdawari Records 1970-1985.
7. Delhi Dept. of Statistics and Planning, Cattle Census Report -1977, 1981.

The 1842 summary settlement is one volume in two parts. While the first lists crop returns and the description of the soil, the second deals with names of the revenue payers and their respective panas and thollas. A section on the management of trees, common lands and the question of tenants etc. is also available. The 1864 volume is in two parts. The first part contains the khasra-wise break down of the village with the details of crop and soil types. The second part contains the details of ownership, tenancy and mortgage. No mention is made of the rules and regulations of the village administration. The 1880 records are in two volumes one showing the new Khatauni numbers while the second introduced the term Khewat, which was a number that included several Khatauni numbers allotted to the cultivators or the mortgages of the particular owner under whose Khewat number they were included. One hundred and sixty three villagers witnessed the record and seals were embossed by the lambardars. A list of the latter was included with the Settlement Officer's signature. The 1908 followed the earlier one but included all kinds of cultivators, as long as they paid revenue, trees were no longer included, crop returns were separated from the record of rights and so on.

8. Shajra Nasb: The Shajra Nasb is the record of the family tree of the owners in the village land. It was first drawn up in the Settlement of 1872-80, for the Delhi district. It was an important record of the founding of the village, its people and of the land. The male section of the land- owning population was completely recorded, while the females only in the capacity of being owners. The Shajra of 1908-1910 is a part of the Misl Haqiyat, covering a span of twenty years or so and is specially important because it also gives the family tree of the occupancy tenant, who was at the heart of the controversy of property rights in Punjab and the debate over the Tenancy Bill.

9. Maps: There were four village maps for Kanjhawla 1842, 1864. 1880. 1908 and for 1954 and likewise I have for other 19 villages of the Bisagama. These are not all in good condition. They are most valuable for long term analysis and to substantiate several features described in the text, like for example, the fact of scattering. The map of 1954 shows how change came about after the Land Reforms of 1954.

KANJHAWALA BLOCK LEVEL - NANGLOI

10. Delhi Rural Development Authority (DRDA), Records of agricultural labourers below the poverty line 1975-83.
11. DRDA: Records of marginal farmers below poverty line, 1975-83.
12. DRDA: Records of small farmers below poverty line, 1975-83.

PANCHAYAT RECORD ROOM

13. Panchayati Land Records, 1975-83.
14. Land use Records, 1975-83.

VILLAGE LEVEL RECORDS:

15. Patwari Records, 1985.
16. Sample survey of 326 households of cluster of 20 villages, conducted by this researcher in 1986.

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