

Conflicting Policy, Institutional and Legal Framework for Natural Resource Management in the North West Himalayas, India

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Abstract: *People's participation in forest management and development in mountain state of Himachal Pradesh in the northwest, Himalayas India for achieving the goal of poverty alleviation has been advocated to form the basis of Participatory forest management. It is to be achieved by decentralization and devolution of power to village communities through village based micro planning, institution building and converging towards constitutionally supported Panchayati Raj Institutions. The institutional mechanisms, however, are sector oriented with separate Government Departments charged with the responsible for development and management of major natural resources e.g. forests, pastures, land and water. The sector approach to development has hitherto formed the basis of institutional and legal framework. These policies reflect the desire of the Government Departments rather than mirroring the needs of communities. This paper explores the conflicts that exist between developmental and natural resource management policies. Inter se contradictions among the policies framed for natural resources management is also discussed. The policies instead of being complementary each other are found to have conflicting provisions. Development of policy convergence framework is suggested to address the issue of inter and intra policy conflicts. When the scope of these policies is extended beyond the compartmentalized structures of Government Departments, often coherence with other sectors policy is absent. This paper explores the conflicts that exist between Developmental and Resource Management policies. Contradictions among the policies framed for Natural Resources are also discussed. Development of a policy convergence framework is suggested to address the issue of inter and intra policy conflicts.*

The legal provisions, too, are found to contain conflicting and contradictory provisions. Forestry legal framework, amongst all the legal frameworks for the Natural Resources, has the major and significant impact and implications for the management of the Natural Resources. However, the existing Forestry legal framework is a major deterrent to the implementation of Participatory Forest Management in the State. The paper details the conflicts in the Forestry legal framework.

The institutional mechanisms being set up at the community level by different Government Departments also vary in structure and there are considerable conflicts in these structures. Maximum number of village level structures is being set up in the Forest Department under various bilateral donor assisted projects and under state and central Government launched Sanjhi Van Yojna (SVY) and Forest Development Agencies (FDAs) to implement Participatory Forest Management. There are conflicts in the way Village Forest Development Committees and/or societies are being set up. The conflicts in the way these village Institutions are set up in other Departments and in Forest Department are discussed in the present paper.

Keywords: Policies, Conflicts, Institutions, Natural Resource Management, Mountain Development, Legal Framework.

Introduction

Mountains have grandeur, beauty and spiritual aura and importance; they are also repository of natural resources, water, forests, energy, minerals, biological diversity, ancient human cultures, and traditions. It has been now been universally acknowledged that mountains play an important role in regulating the climate and

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meteorological conditions. It is estimated that mountains occupy 20% of earth's landmass, are the source of 50% water and 10% of world's population depends on it (ICIMOD, 1994; FAO, 2000).

The hill areas of India, comprising the Himalayas and Western-Ghats, constitute about 21 percent of the India's geographical area and support nine percent of the total population of the region. The mountains are important not only for the people living there but also for the survival of the societies in the valleys and plains which depend on mountains especially for water resources. The security of the low lands/plains depends upon the ecological security of the mountains and hills. Mountain are fragile eco-systems and have been globally recognized as water towers, sources of hydroelectric energy and mineral wealth, repository of biological diversity, centre of culture and traditional knowledge, tourist attraction, indicators of climate change and above all areas of integrated land use (FAO, 2002).

The public perceptions of mountains have undergone a sea change in the last 30 years or so. Sustainable development of mountain is now considered critical for sustainable development of low lands and impinging heavily on world society as a whole (Mountain Agenda, 2002). The mountains are being increasingly recognized as areas needing integrated watershed based policies, separate planning instruments and the involvement of local communities for sustainable development of the mountains.

Despite the importance of mountains in sustainable development, the specific challenges of development in mountains are rarely reflected in National Policies and instruments (Mountain Agenda, 2002). The policies often lack mountain focus and sectoral development models suitable in plains are advocated to be enforced and implemented in the name of equitable sustainable development. The legal frameworks are fragmented and impact of legal provisions defined for one natural resource often ignore the implications on other natural resources and especially on the user communities of these resources. Policies, legal frameworks and institutional arrangements adopted for mountain development in Himalayas in India too, follow this universal approach.

Consequently, the development in Himalayas lack coherence resulting in overall degradation of environment, deforestation, soil erosion, problems of floods, poverty, out migration, loss of bio-diversity and cultural heritage, vanishing of traditional systems of community management, alienation and deprivation of benefits of mountain people. To end political and economic marginalization of Himalayas and its people, policies, laws, instruments and community based village level institutions with specific mountain focus are needed to be developed both at National and local levels.

The Himalayas

The Himalayas, one of the youngest mountains regions of the world cover a distance of about 2500 kms from east to west, and width ranging 250-300 kilometers. It covers a landmass of 6,50,000 km² spread over, India, China, Nepal, Bhutan, Myanmar and Bangladesh. About 85% of total Himalayan landmass occur in India and occupy 15% of country's geographical area and supports approximately 65 million people. The Himalayas are the source of the perennial river systems of The Indus, The Ganges and The Brahmaputra and their innumerable tributaries, waters of which have drained fertile soils in the plains and have sustained the live support system s(e.g. agriculture) in the vast Indo-Gangetic plains.

For geographical, topographical and anthropogenic reasons, the Himalayan eco-system is extremely fragile ecologically. Large scale human activities in the region, mainly in the past few decades, particularly extensive deforestation, intensive farming on slopes, heavy human and livestock pressure and the adverse impacts of roads and mining have resulted in continual environmental degradation and depletion of life support systems.

Study Area: The Himachal Pradesh

The State of Himachal Pradesh (land of snow) lies in the lap of Northwest Himalayas. It is located between 30°-22'-40" and 30°-12'-40" North (latitudes) and 75°-47'-55" and 79°-04'-20" East (latitudes). The elevation varies from 350 meters to 6975 meters. The state is source of four major rivers of India, The Ravi, The Beas, The Satluj

and The Chenab and forms catchment area of The Ganges and The Yamuna rivers. All these rivers drain into the plains and sustain agriculture there (GoHP 1993). In HP, 67% of geographical area out of 55,673 km² is classified as forests. However, forests occur on only 13082 km² (23.5%), dense forests occur on 9120 km² and open forests on 3962km²(FSI 1999). This small mountainous State was constituted as Shimla and Punjab Hill States after Indian Independence in 1947 by amalgamation of 31 hill states. In 1966, the state was re-organized as Himachal Pradesh by including the hill districts of Punjab. It was granted full statehood in 1971.

Natural Resources as Common Pool and Property Resources

In Mountains, the three most important natural resources are: **Land, Water and Forests**

The *land* is used either as a private property (*individual ownership*) or managed as public property (*government property*). The land as private property is used for agriculture, horticulture and for residential purposes. The land as public property is further used either as a Common Property Resource or as a Common Pool Resource. Village common lands, *Panchayat* lands, Public wastelands are used as a common pool resource for grazing of cattle, construction of village ponds, water harvesting structures, public buildings and establishing community woodlots etc. Forests are also used jointly both by the Government as public property and by communities as a Common Property Resource e.g. maintenance of sacred groves for worshipping. The policies, legal systems set-up and institutions set-up by Government for the management of the public lands used by the communities' impact the management of these natural resources by communities. Land in alpine pastures is primarily used as a common pool resource for grazing and collection of medicinal herbs etc. Fallow lands are also sometimes used as a common property resource for grazing.

The *Water* is primarily used as a Common Property Resource by the Government for generation of hydroelectric power, supply of water for irrigation and drinking purposes and by community as a Common Pool Resource for drinking and washing. Similarly, Forests are used as a Common Property Resource by the Government for conservation of environment and production of forestry goods for the State and as a Common Pool Resource by communities for grazing of cattle, collection of timber, fuel wood, fodder, fruits, leaves, seeds non-timber forest products (medicinal herbs etc. bamboos, grass) recreation, shooting of wildlife for storage of water.

In Himachal Pradesh, 37,033 km² of land is legally classified, as Forests. The forests are thus the single largest land based National Resource. The Policies, Legal framework and institutional framework developed for management of forests directly impacts the communities' dependence on forests. Since the Agriculture and Horticulture in hills is interspersed with forests, forests act as complementary support system to Agriculture and Horticulture.

The policy, legal and institutional framework for Forestry Management in mountains has to address both the public concerns of environment, water availability, and provide livelihoods and sustenance to local communities. In mountains the local communities live in and around forests, the preservation and protection of forests has direct impact on livelihoods and sustenance of communities. Therefore, involvement of communities in management i.e. protection, preservation, conservation and development of forestry resources and also water resources is vital and critical for sustainable development of mountains.

Scope of Present Study

The present study has three sections:

Section A analyses the existing policy framework of Government of India as well as at the State level in the Himalayan State of Himachal Pradesh. The adequacy of different National and State level policies is assessed in terms and framework of seven key principles and nine key issues of sustainable mountain development described in Mountain Agenda (2000), by Swiss Agency for Development Co-operation and United Nations University (2002). Inter-policies and intra-policy conflicts are also discussed. Efforts to develop a multi-sector, multi-disciplinary and multi-stakeholders policy and strategy in Himachal Pradesh are also discussed.

Section B presents analysis of the legal framework for the natural resources in Himachal Pradesh. Since the legal framework for other natural resources except Forests does not exist independently, therefore conflicts in the legal framework for Forestry is discussed from the perspective of its applicability to facilitate community participation.

Section C describes the process of establishing community based village level institutions in Government Departments. The mechanism followed in Forest Department are described in detail as largest number of village institutions have been / and are being set up under various bilateral donor assisted projects and under *Sanjhi Van Yojna (SVY)* which seeks to involve communities in Forest protection and management.

Key Principals for Sustainable Mountain Development

Mountain agenda of SDC & CDE, 2002 have identified following several key principles on which policies for mountain development should be based. The principles are to:

1. Recognize mountain areas as important and specific areas of development;
2. Compensate for environmental services and goods provided to low lands;
3. Diversify into other livelihood options and provides benefits of complementary to communities;
4. Take advantage of local potential for innovation;
5. Preserve cultural change without loss of identify;
6. Conserve of mountain eco-system and early warning functions; and
7. Institutionalize sustainable development of mountain areas.

Key Policy Issues for Sustainable Mountain Development

United Nations University (Jansky, et al. 2002) has identified the following nine key issues that supplement the seven key principles above which need to address in the formulation of policy frameworks for mountains. These key issues are:

1. strengthening of knowledge about the mountain eco-systems;
2. capacity building of mountain communities;
3. maintenance and development of cultural diversity;
4. holistic and inter-disciplinary management strategies for environmental conservation and sustainable development;
5. dissemination of more, realistic and accurate information;
6. attention to urban aspects of mountains;
7. empowerment of local communities especially women;
8. attention to conflicts and resulting destruction of mountain eco-system;
9. promoting integrated watershed development and alternative livelihood opportunities.

Section A

Conflicts in Policy Frameworks

Existing GoI and GoHP Policies for Mountain Development

Policies formulated by Government of India and the State of Himachal Pradesh that impinge upon mountain development are: -

Table 1: Policy Documents

Government of India	Government of Himachal Pradesh
Environment (under development)	Environment
Land Use	--
Forest	Forest
--	Grazing
Water	Water (Draft)
Agriculture	--
--	Eco-tourism

Analysis of adequacy of GoI and GoHP Policies

Tables 2 and 3 present the evaluation of GOI & GoHP policies against key principles and key issues.

Table 2: Evaluation of GOI and GoHP policies in terms

	of Key Principles of Mountain Development						
	Key Principles						
	Recognition	Provisions for	Diversify	Benefits of	Preservation	Conservation	Institutionalization
Principles	of Mountains	Compensation	Into	local	of cultural	of	of sustainable
Policy	as special	environmental	Other	innovation	change	eco-systems	mountain
<input type="checkbox"/>	areas of	goods & services	livelihoods				development
1	2	3	4	5	6	7	8
GOI Policies							
Land Use	X	X	X	X	X	X	X
Agriculture	X	X	Partially	X	Partially	Partially	Partially
Forest	Partially	X	X	Partially	X	√	Partially
Water	√	X	X	X	X	Partially	Marginally
Tourism	X	X	X	X	Partially	X	X
GOHP Policies							
Environment	√	X	Partially	X	X	Partially	Partially
Forest	√	X	X	X	X	√	X
Grazing	√	X	X	X	√	Partially	X
Water	√	X	X	X	X	Partially	X
Eco-Tourism	√	X	Partially	√	X	√	Partially
Note	X	Not addressed	√	addressed	Partially	Partially addressed	

Table 3 Evaluation of GOI and GoHP policies in terms of 'Key Issues' of mountain development

Issues Policy	Key issues for mountain development								
	Knowledge of Eco-systems	Capacity of local communities	Development of Cultural Diversity	Holistic & Inter-disciplinary Management	Dissemination of realistic information	Attention to Urban aspects	Empowerment of local Communities	Attention to conflicts	Watershed Development & livelihood Options
1	2	3	4	5	6	7	8	9	10
GOI Policies									
Land Use	X	X	X	X	Partially	X	X	X	√
Agriculture	X	Partially	X	X	Partially	X	Partially	X	Partially
Forest	X	Partially	X	X	X	X	√	X	√
Water	X	X	X	Partially	Partially	X	X	X	√
GOHP Policies									
Environment	√	Partially	Partially	√	X	X	X	X	√
Forest	X	X	X	X	X	X	X	X	√
Grazing	X	Partially	X	X	X	X	X	X	X
Water	√	X	X	Partially	X	X	X	X	√
Eco-Tourism	X	√	Partially	X	X	X	Partially	X	X
Note	X	Not addressed	√	addressed	Partially	Partially addressed			

The analysis shows that existing policy frameworks have a) strong lowlands (plains) focus and b) sectoral perspective biased in favour of promoting mono-functional resource use. The policies are thus, inadequate in addressing the key issues of sustainable mountain development. Most of the key principles, such as compensation for environmental goods and services, diversification into other livelihood options for mountain communities, encouraging local innovation, preservation of cultural change without loss of identity are either not addressed at all or briefly mentioned in passing. Similarly, key issues like knowledge of eco-systems, development and preservation of cultural diversity, attention to urban aspects attention to conflicts are not at all addressed by the existing policy framework. Therefore, none of these policies are (a) holistic, (b) compatible, (c) complementary, (d) based on fundamental principles and (e) address key issues of mountain development.

The analysis further reveals that there are a number of inter and intra policy conflicts within these policies. These conflicts are summarized and discussed in Tables 4 to 7.

Conflicts and Contradictions in GOI and GoHP Policies

(a) Government of India Policies

i) Inter-policy conflicts

British enunciated the first National Forestry Policy of India in 1894. It sought to provide guidelines for uniformity in management of government forests over the entire country. After India's independence in 1947, the second forest policy was framed in 1952. It laid thrust on increased production of forestry goods (timber), while emphasizing its ecological relevance. The Forest Policy of 1988 after revision of previous policy of 1952 has sought to re-orient the forest management principles by involving communities in protection and management of the forests. (FAO, 1993).

Many provisions of National Forest Policy, 1988 are still in conflict with provisions of Forest Conservation Act, 1980, Indian Wildlife Act, 1972 and with National policies on Water, Agriculture and Land Use (GOI 1988a,b; 2000; 2002). These contradictions are summarized in Table 4.

Table 4 Contradictions in National Forest Policy 1988 with other Policies and Acts

Provision of Forest Policy	Contradiction with Act/Policy	Contradicted by
Minor forest produce should be protected, improved and their production enhanced (section 3.5)	Forest Conservation Act, 1980*	FCA prohibits plantation of horticultural crops, palms, oils and medicinal plants on forest lands without prior permission.
Degraded lands should be made available on lease or on basis of <i>tree patta</i> scheme to individuals and institutions (section 4.2.4)	Forest Conservation Act, 1980*	FCA bans assignment of lease of forest lands to the people or institutions not wholly owned by the government.
Minor forest Produce should be protected improved and their production enhanced (section 3.5)	Wildlife Act, 1972	Rules under Wildlife Act prohibit extractions of specified MFPs (NTFPs) in protected areas.
Area under forests in hills should be two-thirds of the total area (section 4.1)	Land Use Policy	Allocate land for different uses based on land capability, land productivity and national production (agriculture) goals (section 2.4.5)
Massive afforestation of denuded degraded and unproductive lands (section 2.1)	Agricultural Policy	-Un-utilized wastelands are to be put to use for agriculture and afforestation (section 6) -Reclamation of degraded and fallow lands for agriculture (section 7)

*Quoted in Saxena, 1999.

ii) Intra-Policy conflicts:

The intra-policy contradictions are summarized in Table 5.

Table 5 The Intra-Policy Contradictions in Government of India Policies

Policy	Provision of Policy	Contradicted by
Forest Policy, 1988*	Rights & concessions enjoyed by the Tribals should be fully protected (section 4.3.4.3)	Rights & concessions, including grazing, should always remain related to the carrying capacity of forests (section 4.3.4.1)
Forest Policy, 1988*	Domestic requirement of Tribals should be the first charge on forest produce (section 4.3.4.3)	MFP & substitute material should be made available through conventionally located depots at reasonable price (section 4.3.4.3)
Forest Policy, 1988*	Land Laws should be modified to facilitate individuals to undertake tree farming on their own lands (section 4.2.4)	Appropriate regulation should govern the felling of trees on private holding (section 4.3.4.3)
Forest Policy, 1988	Minor Forest Produce provide sustenance to tribal population and to other communities residing in an around forest. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income (section 3.5)	The rights and concessions from forests should primarily be for the bonafide use of communities living within and around forest areas, especially tribals (section 4.3.4.2)

*Quoted in Saxena, 1999.

(b) GoHP Policies

The inter-policy conflicts between GoHP policies on forest, grazing, water, eco-tourism and environment are highlighted in Table 6.

Table 6 Inter Policy Conflicts in Government of Himachal Pradesh Policies

Policy	Provision of Policy	Conflict with Policy	Nature of conflict
GoHP Forest Policy, 1980	Goat grazing-No. of Goats The population of goats has to be reduced ultimately resulting in their elimination in a time bound manner (section 16 (i))	GoHP Grazing Policy	Total elimination of goats not advisable. Number of goats to be reduced in a phased manner and corresponding increase in number of sheep to be allowed. No compulsory decrease in any species not even in no. of goats (Recommendation No 3).
Forest Policy, 1980	Free Grazing Free grazing should be stopped (section 16 (ii))	Grazing policy	Free grazing to continue but with regulations. (Recommendation No 3)
Forest Policy, 1980	Grazing Tax The tax for cattle kept over and above the number considered necessary for the household should be heavily taxed.	Grazing Policy	Grazing tax to be increased nominally for goats and substantially for buffaloes (Recommendation No. 9).
Forest Policy, 1980	Closure of Grazing Areas Forest area available for grazing to be reduced (section 16 (3))	Grazing Policy	Not more than 1/3 rd of grazing area to be closed at a given time. (Recommendation No. 7)
Forest Policy, 1980	Nomadic Grazing Nomadic grazing to be reduced progressively by 10% each year (section 16(5))	Grazing Policy	Number of cattle grazing to be frozen for 5 years starting 1970-71. However, grazing can continue at existing level (Recommendation No.1).
Forest Policy, 1980	Forest management on watershed basis for conservation of water (section 8)	Water Policy	No mention of water conservation by Forest Preservation in hills.
Forest Policy, 1980	Development of Tourism be included in plans for improvement of forest vegetation (section 20)	Eco-Tourism Policy	Involvement of communities in tourism while maintaining State control on development of forest resources through State sponsored societies.
Forest Policy, 1980	A band of devoted officers should be created for protection of wildlife and environment (section 9.1)	Environment Policy	Communities are to be sensitized toward protection of natural habitats and play a role against poaching (section 8.D.1).
Forest Policy, 1980	It should be possible to have 50% geographical area under forest by 2000 AD (section 3)	Environment Policy	The policy prescription of forest area under the National Forest Policy of 66% or of the state policy at 50% seems to be unrealistic.(Section 8.C.4.g)
Forest Policy, 1980	A policy for raising plantations be prepared (section 10)	Environment Policy	The implementation of afforestation programmes leaves much to be desired since tangibility of benefits is not commensurate with the investments made (section 8 C.3).
Forest Policy, 1980	Involve local people in social and farm forestry by providing incentives (section 11.1)	Environment Policy	A reasonable mechanism is also to be developed for vesting the share of produce through appropriate legal measures for involvement of communities in afforestation (section 8.C.3).

ii) Intra-policy conflicts

There are a number of contradictions within the various provisions of GoHP Forest Policy 1980. These contradictions are presented in Table 7.

Table 7 The Contradictions within GoHP Forest Policy, 1980

Provision of Forest Policy	Issue	Contradicted by
It should be possible to have 50% geographical area under forests by 2000 AD (section 3)	Forest Area	Statistical analysis shows that maximum area that can be brought under tree cover is not more than 46%.
A moratorium on commercial felling of green trees is to be imposed (section 4.4)	Control on felling	Green felling under Timber Distribution right (of right holders) can be done (section 6)
Demarcation & settlement of remaining 2/3 rd of un-demarcated & un-classed forest in next 10 years.(Section 5.1)	Demarcation & Settlement	Till 2002, forest settlement of only 3300 km ² area completed.
An extension service in Forest Department to be created to seek active co-operative and participation of local people in afforestation programmes (section 11.2)	Social & Farm Forestry	Participatory Forest Management, process approach to be followed.
Training of forestry personnel emphasized (section 13.1, 13.3)	Capacity Building	No capacity building of communities & people mentioned.
Timely recruitment of forestry staff (section 13.5)	Alternative livelihood options	Exploring livelihood options for people not addressed.
Management of forest watershed basis (section 8)	Traditional systems of Forest Management	The issue not addressed at all.
The forest area available for grazing should be reduced so as to bring more areas under plantations (section 16 (iii))	Interests of Nomadic graziers	A comprehensive legislation for controlling grazing required (section 16).
Wildlife Wing to be strengthened	Bio-diversity Preservation	The issue not addressed at all.
Shooting of big and small game to be banned for 3 years (section 9)	Shooting of big & small game	Crop protection licenses should be allowed where absolute necessary (section 9)
Extension service to be created in the Forest Department (section 11)	Institutional linkage with communities	The issue of establishing community based institutions not addressed.

Discussion of results

The analysis of GOI and GoHP policies presented in Tables 4 to 7 indicates that sectoral policies are not only contradictory but contradictions also exist within themselves. GoI policies are mainly concerned with the development of plain areas and lack coherence and the State policies are poor adaptations of GoHP policies without a mountain focus. GOI forest policy of 1988 addresses the involvement of the communities from State's perspective rather than from people's perspective. The Agriculture and Water Policies hardly mention preservation of mountain ecosystems, especially forests in catchment areas for conservation and production of ground and sub-soil water. The Agriculture Policy does not recognize forests as agriculture production support system. It talks only of on-farmland conservation actions to the exclusion of off-farmland conservation actions. It emphasizes on increasing farmland production and not of increasing production of its support systems (e.g. forest, water for irrigation). Water Policy is driven only by need to supply adequate water for various purposes and overlooks the demand perspective.

The GoHP policies on the other hand are mostly ad hoc in nature and fail to address key mountain development issues and dependence of communities on the natural resources for their sustenance. For example, the Forest Policy 1980 emphasizes exploitation of forests only. The Grazing Policy continues to overlook the disastrous effects of

continued and unabated grazing in pasture lands and forest areas.

The Environment Policy in addition to having contradictions with HP Forest Policy prescribes only sectoral guidelines and actions to be taken in each sector rather than presenting a holistic, integrated and inter-sectoral approach to address environmental concerns in the State. This policy is like addition of blocks of sectoral policies rather than building one big integrated block of development.

The Eco-tourism Policy has no safeguards for environment on which eco-tourism is to depend. Despite the fact that policy's objectives center around community participation in developing and promoting eco-tourism, yet it retains the typical governmental focus and control on all the activities to be done for communities. The role of communities is marginal in providing support services to tourists.

Similarly, the Water Policy does not address issues on management of water services, community participation in preservation of watersheds, encouraging traditional systems of water management and sources, sustainability of water availability by conserving the tree/forest cover and issues like in-situ sub-soil water conservation, (GOI, 2002) Water Policy is still dominated by a supply side approach. As water becomes increasingly scarce, water policy must shift to demand management to ensure equal distribution between rural and urban areas and between agriculture, industry and other uses. The policy must be based on multi-sector and multi-stake holders' approach.

Initiatives taken by the Himachal Pradesh Forest Department

For evolving strategies and to gain knowledge in sustainable development of the mountains and to improve living standards of the people four core areas that need attention have been identified by ICIMOD. These are land and water resources management, sustainable development of rural eco-system, ecological economics and environmental impact analysis, and conservation of biological diversity (ICIMOD 1994). The existing policies address these concerns in these core areas either partially or omit them altogether. For a holistic mountain development, coherence in the policies needs to bring in. This can be achieved by revising existing policies through a multi-sectoral, multi-disciplinary and multi-stakeholder approach.

In addition to above, negotiations and mitigation of conflicting policies for use and management of natural resources are crucial policy aspects and so are control and enforcement mechanisms supervised by various Government Departments and institutions. Creating public awareness and informed decision making based on socio-economic, ecological and scientific data are key factors in policy making that can resolve conflicts and contradictions to develop holistic policies for resource use and management.

Forest Department of Himachal Pradesh, has the prime responsibility to manage and conserve forest resources is now also mandated to seek partnership of local communities in its endeavors. Accordingly, Forest Department has taken upon itself an irreversible reform process wherein people are to become central to forest management with Forest Department acquiring a facilitator's role. This is being done by carrying an independent Forest Sector Review (FSR). This review of the Forest Sector was completed in 2000. The recommendations of FSR are now to become the key vehicle for carrying forward the reform process and developing a holistic, multi-sectoral, multi-disciplinary and multi-stakeholders policy and strategy for inculcating a paradigm shift not only in the Forest Department but also in all other inter-related sectors. The new Forest Policy which will emerge out of this reform process will aim to put in place sustainable development mechanisms in the hills and its people who will play the key role in institutionalizing and owning the development process.

SECTION B

CONFLICTS IN LEGAL FRAMEWORKS

Legal Framework in Himachal Pradesh

In Himachal Pradesh legal framework for management of land and forests has been framed but no legal framework for management of water exists although a water policy has been framed.

The legal framework for the administration of forestlands and resources in Himachal Pradesh dates back to the 19th century when forest settlements were carried out. The legal settlements made at the end of the 19th century and in the first two decades of the 20th still provided the basic legal framework for administering forest resources. This distinguishes the State from many other areas in India in that local people's rights were accepted and formalized rather than weakened or terminated. The State has increasingly tried to regulate public access, principally through the Revenue and Forest Departments. But although there have been many new laws and rules and regulations affecting forest resource use during the past 100 years the users' rights remain unchanged except that the number of people entitled to these rights has increased significantly. The demands made on the forest resources through the honoring of these rights have increased enormously. And the legal environment in which this historical legacy is implemented has become exceedingly complicated.

The legal complexities have further been compounded after issuance of new Forest Policy in 1988, Government of India order on PFM, in 1990, GoHP order on Participatory Forest Management (PFM) in 1993 and subsequent notifications on Sanjhi Van Yojana (SVY) in 2000, 2001 and formulation of PFM Rules in August, 2001 wherein people's charge on use of forests has been accepted and involvement and partnership of people and communities has been sought for protection and management of forests resources.

Acts and Rules framed and notifications issued under such acts that impact on community participation in management of forest resources (*participatory forest management*) are as under:

1) Notification of 1952 and 1963 under Chapter-IV of Indian Forest Act, 1927

Notification No. Ft.29-241-BB/49 of 1952 declared the provisions of Chapter-IV of the Indian Forest Act, 1927 (of protected forests) applicable to all forest lands or wastelands which are the property of Government or over which the Government has proprietary rights, and Notification No. Ft.29-24/BC/49 declared that all trees in these forests should be reserved. By virtue of this notification, all wastelands were declared as protected forests. In practice these notifications simply extended notifications issued in 1896 and 1897 to the whole of the State of Himachal Pradesh.

Notification No. Ft.29-24/BC/4 of 1963 was issued declaring all trees in the forests protected under the 1952 notification to be reserved with effect from 1.1.1964. In August 1964, the Council of Ministers decided to cancel the notification of 1952 and restore the original status of the land (government land classified according to the existing system). It was later decided not to cancel the notification until the work of delineation and demarcation had been completed throughout the state to avoid any adverse effects on the forest (mentioned in a letter from 1968), and the decision was never implemented.

The problem was further debated in 1985 and 1986, and then included in the topics to be considered by a State level committee set up to consider the whole issue of forest surveys, demarcation and settlement.

2) The Himachal Pradesh (Sale of Timber) Act, 1968 (Act No. 18 of 1968)

The Sale of Timber Act was enacted to control the sale of timber and to establish sale depots (see Annex 5). The Rules made under this act in 1969, and the amendments in 1973, 1984, 1985, and 1993, defined the categories of timber covered under this act. The 1984 amendment declared fallen and felled trees and all wood whether cut-up,

fashioned, or hollowed out for any purpose to be timber for the purposes of the act. The 1985 amendment declared sawmills to be timber depots.

The amendments of 1973 and 1984 created problems because people refused to plant fast growing species such as khair, eucalyptus, albizzia, poplar or mulberry on their lands or community lands since under the provisions of the act they were not allowed to trade or sell the wood. The government then relaxed the provisions of the Act through a special notification in January 1993, which exempted and allowed free trade in forest produce obtained from poplar, albizzia, willow, bahunia, eucalyptus, and mulberry. Although this change was too late to affect beneficiaries of the Himachal Pradesh Social Forestry Project, it is important in the present context of community/ participatory forest management.

3) The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (No. 22 of 1971)

This act was enacted in an attempt to deal with the problem of encroachment. The Indian Forest Act, 1878, as adopted and amended by Himachal Pradesh, applies to all the forests in the state, but it contains no provisions for dealing with encroachment. The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act 1971 is thus, the general law under which eviction from forest land is dealt with. Within the Act, a case can be instituted in the Court of a Collector. A notification in 1994 under the act gave DFOs the powers of collectors to serve eviction notices upon encroachers on forest land and enforce eviction.

There are evident difficulties in enforcement and it has been argued that the eviction process of encroachments could be facilitated and speeded up if powers for eviction were granted to forest officials under the Land Acquisition Act of 1894.

4) The Wildlife Protection Act 1972 (Chapter IIIA inserted by Act 44 of 1991 w.e.f. 2.10.1991)

Sections 17-A to 17-H inserted in Wildlife Act in 1991 deal with the collection, of specified plants listed in schedule-VI of the Act. The Act places restrictions on cultivation, collection, possession, sale, purchase, trade and transport of specified plants by people and communities without permission of Chief Wildlife Warden. One such plant grown in Himachal Pradesh and covered under The Wildlife Act 1972, schedule-VI is kuth (*Saussurea Lappa*).

5) The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Act No. 1974) and the Punjab Village Common Lands (Regulation) Act, 1961 (Punjab Act No. 18 of 1961).

Under this act the government took control of all *shamlets*, and common *ghasinis* to supplement the pool of land available for distribution to those with little or no land. Rules and a utilization scheme for lands acquired under this Act were prepared in 1975. A part of the land was to be kept aside for common purposes like grazing to be managed under the Punjab Village Common lands (Regulation) Act 1961. The acquired *shamlat* lands were divided into two categories: allotable and non-allotable. The non-allotable was to be transferred to the Himachal Pradesh Forest Department (HPFD). These non-allotable *shamlat* lands, once "*de jure*" community lands available for the exercise of rights, became "*de facto*" common lands, as the Revenue Department did not transfer the lands to the HPFD. Moreover, no action could be taken to demarcate and classify these lands as forests under the provisions of the Indian Forest Act 1927 as critics saw this as a mechanism for converting community lands into government lands and restricting the right of access by communities.

6) Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978, and Amendment of 1993

These rules were framed under sections 41 and 42 of the Indian Forest Act 1927 to regulate the movement of forest produce by land routes into, from, and within Himachal Pradesh.

Liberals and proponents (NGOs etc) of free trade and Participatory Forest Management see these rules as deterrent to community participation. They advocate liberalization of the rules under this act, to encourage communities to join hands with forestry staff in true spirit of Participatory Forest Management. On the other hand Forest Department argues that any relaxation would encourage unauthorized felling and smuggling by unscrupulous elements.

In 1993, amendments were notified in these rules. Forest produce obtained from six social forestry species, namely; Poplar, Albizzia, Willow, *Bahunia*, Eucalyptus and Mulberry was allowed to be transported without obtaining transit or export permit from Forest Department.

7) Land Preservation Act, 1978 (Act No. 28 of 1978) and Himachal Pradesh Land Preservation Rules, 1983.

This act was aimed at conservation of sub-soil water and prevention's of erosion. The act applies to all privately-owned land and regulates, restricts, or prohibits the clearing of agricultural lands by cutting of trees, and the granting of permits to take any tree, timber, or forest produce for their own use. Through this act, several provision of the Indian Forest Act 1927 were made applicable to forest activities on private lands. District-wise notifications of the act were issued in 1980 and 1981. No notification was issued for Lahaul and Spiti district.

The act allowed owners to fee 50 trees each year without permission, 10 trees with the permission of the Range Officer, or more than 10 trees with the written permission of the Divisional Forest Officer, for bona fide domestic use. In 1981, a subsequent order limited annual felling for domestic use to a maximum of 5 trees with the permission of the Range Officer, or more than 5 trees with the permission of the Divisional Forest Officer. A later order in the same year again changed this to up to three trees without permission, up to 10 trees with written permission of the Range Officer, and more than 10 trees with written permission of the Divisional Forest Officer. If an owner desired to sell the trees standing on his private land, he could fell them in accordance with a 10 year felling programme framed by the Forest Department and with the approval of the State Government. The Divisional Forest Office could allow felling of up to 50 trees, the Conservator of Forests felling of up to 100 trees, the Principal Chief Conservator of Forests felling of upto 200 trees, and the State Government felling of more than 200 trees.

8) The Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act, 1981 (Act No. 6 of 1981)

This act nationalized the tapping of resin from *Chir* pine trees standing in private areas, canalized the trade of resin within and from outside the State through the Himachal Pradesh State Forest Corporation Ltd, and limited distribution to purposes of manufacture and preparation of resin-based products. The Rules formulated under the act described the procedures for tapping chir trees in private areas, for resin sale to the Forest Corporation, and for purchase from outside the State by private manufacturers, and the basis of allotment of resin to manufacturers.

9) The Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 (Act No. 5 of 1982)

This act nationalized trade in all types and kinds of forest produce in its entirety, including sale, purchase, transportation, and price setting. Subsequent amendments enacted in 1984 allowed certain relaxations. Advisory committees were constituted under different notifications for each of the forest divisions under the chairmanship of the Divisional Forest Officer to fix prices.

This act will have a considerable impact on the disposal of forest produce produced through Participatory Forest Management activities and a critical review of it will be needed.

10) The Mandi Minor Forest Produce Exploitation and Export Act, No-VII, 1937 (1997 Vikram Samvat)

This Act and rules made under it in 1956 regulated collection and export Minor Forest Produce (MFP) in erstwhile Mandi State. The Act and rules made under the act are still in vogue. The Act specifies that a license is required for collection and export of medicinal herbs.

11) The Chamba Minor Forest Produce Exploitation and Export Act No-26 of 2003 Samvat (1947 AD)

This Act also specifies that a license is required by a person or persons for collection and export of the herbs. This act is more detailed than the Mandi Minor Forest Produce Act. The rules framed under this Act called, “ The Manufacture of Drugs and their Export Rules, Chamba 1947” notified in 1959. The rule specify that “no persons” shall resort to manufacture of herbs and export of manufactured Forest Produce unless he holds a license for the manufacture of herbs and a permit for export”.

12) Himachal Pradesh Panchayati Raj Act 1994 (No. 4 of 1994)

This act was based on the 73rd amendment of the Constitution of India and was aimed at introducing the *Panchayati Raj System* in the State from April 1995. Schedule II of the act defines the activities that are to be transferred to the district councils (*zila parishads*). They include social and farm forestry, minor forest produce, watershed development, land improvement and soil conservation, fuel, and fodder. There is continuing debate on the scope and extent of the activities to be transferred to the *zila parishads* by the Forest Department, as well as on the transfer of protection responsibilities for existing social forestry plantations. Most of these forestry related activities are the immediate concern of the local communities, and also fall within the scope and mandate of Participatory Forest Management for the sustainable development of forest resources. Agreements need to be reached on the functions of *zila parishads* and the role of village level institutions set up under Participatory Forest Management.

Section 23 of the Act was amended in 2001. The amendment mandates that there will now be seven standing committees in each Panchayat instead of three specified earlier, one each for management of natural resources and development works. These seven standing committees will be Public Works Committee, Health and Family Welfare Advisory Committee, Village Education Committee, Forest Committee, Agriculture Production Committee, Irrigation and Public Health Committee and Food and civil and Consumers Committee. The three committees that were prescribed earlier were Production Committee, Social Justice Committee for Promotion of Education, Economic, Social, Cultural and interests of Scheduled Castes and Scheduled Tribes and backward Classes Committee and Amenities Committee. In fact the earlier prescribed three committees have been split up into seven committees to give more focus to the activities.

13) The Government of India Memorandum of 1990

This memorandum (no 6.21/89-FP) was sent from the Ministry of Environment and Forests on June 1 1990 to the forest secretaries of all states and the union territories and provided guidelines for the “Involvement of Village Communities and Voluntary Agencies in the Regeneration of Degraded Forests” on the equity basis (Participatory Forest Management). It was based on the experience of states such as West Bengal, Gujrat, and Haryana. The memorandum also encouraged Forest Departments to involve NGOs as intermediaries and facilitators. So far, 15 States have issued Government Orders for the implementation of Participatory Forest Management

14) Himachal Pradesh Government Order on Participatory Forest Management, 1993

This order was issued in response to the GOI memorandum of 1990. The draft order provides a framework for initiating Participatory Forest Management in the State.

15) Participatory Forest Management Rules, 2001

The Government of Himachal Pradesh issued revised Participatory Forest Management guidelines on 23.8.2001 through a notification No. Fts II (B) 15-10/87. These rules give the process of formation of Village Forest Development Societies under Participatory Forest Management scheme -Sanjhi Van Yojna 2001, Usufruct sharing regulations, operation of accounts, implementation of activities through microplans etc. These rules form the basis of establishing village level community institutions for initiating Participatory Forest Management process with communities.

16) The Himachal Pradesh Sanjhi Van Yojna 2001

The Government of Himachal Pradesh launched Sanjhi Van Yojna scheme in December 1998. The objective of the scheme was to formalize the HP Government order on Participatory Forest management, 1993. The Government also earmarked budgetary provision for implementation of Participatory Forest Management. In 2001, after deliberating on the experiences of implementation of Sanjhi Van Yojna, necessary changes were incorporated in the scheme. The scheme was revised in August 2001 by issuing a fresh Government Notification No. FFE-C(9)-1/2000 dated 23.8.2001.

17) Grant-in-aid Rules for Village Forest Development Societies under PFM Rules 2001

In 2000, Himachal Pradesh Forest Department notified Grant-in-aid Rules for regulating the flow of funds under Sanjhi Van Yojna to the community based Village Forest Development Societies for execution of micro plan activities. These rules were modified in 2002 and revised rules have been notified through notification No. FFE-B(G)9-6/99 dated 30th October 2002.

Conflicts in Legal Frameworks

Proponents of enacting a strong legal framework however, argue that “coupled with a need to create public awareness, certain legislative measures are also required to preserve and protect the forests and to act as a deterrent to those unscrupulous elements who might be tempted to carry out and abet forest offences.” The Government of Himachal Pradesh has from time to time strengthened the legislation through enactment of various Acts and Rules. These legislative and administrative steps were considered necessary to curb the menace of unauthorized removals and organized timber smuggling.

The legal provisions of control, use, and management of forests and government land are scattered over several Acts, Rules, Settlement Reports, Notifications and Government Orders. Legal instruments have been introduced at different times to deal with the reigning exigencies of the administration. As a result, the law is not a coherent entity, but rather a contradictory body of conflicting objectives, modalities, and provisions. The rules framed under one act sometimes violate the content and spirit of another act, and different instruments can have conflicting provisions on the same issue.

Moreover, several of the legal instructions enacted from time to time are not in conformity with these policy mandates. There is no uniform and comprehensive NTFP regulation and Act. Several provisions of The Himachal Pradesh (Sale of Timber) Act 1968, The HP. Village Common Lands Vesting and Utilization Act 1974 and The Punjab Village Common Lands (Regulation) Act 1961, Forest Produce Transit (Land Rules) Rule 1978, land Preservation Act 1978, HP. Resin & Resin Products (Regulation of Trade) Act 1981, Forest Conservation Act 1980 (changes required at Government of India level), The HP. Forest Produce (Regulation of Trade) Act 1982 etc will

have to amended. Rules made under these Acts will also have to modified, relaxed and brought in conformity with the mandate given to people in Participatory Forest Management.

The existing legal framework of forestry management Acts as a major deterrent to the implementation of the Participatory Forest Management. Non-involvement of people in the social forestry programme led to relaxation of HP. Forest Produce Transit (Land Routes) Rules 1968, in 1993. The present day legal Acts and notifications and rules do not provide any incentives to the communities to go in for Participatory Forest Management. Moreover, Participatory Forest Management is still being implemented under the Government order and/or administrative orders.

The National and State Forest Policies are silent on the issue of granting tenurial rights to communities. They simply exhort people's participation in development of wastelands and Government Forests. The State Government order on Participatory Forest Management also seeks participation of people without imparting any tenurial rights. One scheme during the second phase (1990-1993) of National Social Forestry Project in Himachal Pradesh, one scheme entitled "*Van lagao-Rozi Kamao*" i.e. *plant forests - earn employment* had a provision of allotment of patta on 2 ha of forest or waste *shamlat* lands out of the lands vested in government under HP. Ceiling on Land Holding Act, 1972 and HP. Village Common Lands (Vesting & Utilization) Act, 1974 for afforestation Activities to '*Antodaya*' families (a family whose annual income was less than Rs.3600/- or poor families identified under Integrated Rural Development Programmes with annual income less than Rs. 4800/-) or such families who do have any one from the family in Government employment. This allotment of land, however, did not confer any right on trees raised there on and land will continue to vest with the government through Forest Department.

Let us now examine the conflicts that exist between these legal instruments and their impact on sustainable development of natural resources through community interventions. These conflicts are best discussed in relation to the issues that have direct impact and bearing on the involvement, participation and empowerment of local communities to manage forestry resources in the true spirit of Participatory Forest Management (PFM).

a) Conflicts in legal provisions for felling of trees on Private Lands

The spirit behind PFM is to encourage communities to not only protect and develop forestry resources on public lands but also manage trees on their private lands. However, the existing acts and laws act as strong deterrent to such initiatives by people on their private lands. For felling of trees on private lands (a) permission is required under Land Preservation Act 1978, (b) the trees can felled only according to 10 year felling program, (c) People are required to sell nationalized tree species to HP State Forest Development Corporation only under HP Forest Produce (Regulation of Trade) Act 1982 and rules made thereunder. The process is also cumbersome that it acts as a strong disincentive to common people, (d) Except for six species, namely, poplar, albizzia, willow, bauhinia, eucalyptus and mulberry that were exempted in 1993 by an amendment in the rules, export or transit permit is required for all other species even for export of grass and bamboos as required under HP Forest Products Transit (Land Routes) Rules 1978, (e) the rates paid to the people are invariably non-remunerative as these rates are fixed by the Government under HP Forest Produce (Regulation of Trade) Act 1982 and rules under it, (f) under Supreme Court directions felling of trees from private lands in compact blocks of more than 5 ha and contiguous to adjacent forests cannot be done, (g) felling of khair (*Acacia catechu*) trees on private lands continues to be subject to provisions of Land Preservation Act 1978, HP Forest Produce (Regulation of Trade) Act, 1981 and HP Forest Produce Transit (Land Routes) Rules 1978. The government had also banned export of khair outside the State. This legislative action was considered anti-people and pro-industrialists. In 2001, the Government lifted the ban on export of khair outside the state but imposed royalty payable to the Government for taking khair out of the State. Proponents of PFM see the imposition of royalty and Sales Tax on khair for export out the State in conflict with the fundamental premise of PFM and all these legal provisions in conflict with philosophy of free trade enshrined in PFM. It is argued that instead of providing incentives to encourage free trade of timber from private lands regulations are being imposed except for six specified species in accordance with HP Forest Produce (Regulation of Trade) Act 1982 and, (h) for establishment of timber depots, the communities require permission under HP Forest (Sale of Timber) Act, 1968.

b) Conflicts in legal provisions for Harvesting of Timber from plantations raised under PFM

The Village Forest Development Societies under PFM rules provide that communities are entitled to 75% of sale proceeds of final harvest and 25% of final harvest proceeds will go to Panchayats. But in accordance with existing laws under HP Forest Produce (Regulation of Trade) Act 1982, the communities will be (a) required to sell all the nationalized species (other than those six species exempted under rules) to government owned HP State Forest Corporation Ltd.(b) seek export permit for other species e.g. khair, bamboo under HP Forest Products Transit (Land Routes) Rules 1968. These two Acts are in direct conflict with the principles of free trade under PFM concept and,(c) felling of trees in compact block raised on village common lands adjacent to forests will be subject to decision of 12.12.1996 of Supreme Court and felling on such lands will not be allowed.

c) Conflicts in legal provisions for Grant of Tree Patta.

Under the scheme Van Lagao Rozi Kamao (Grow Forests Earn Employment) initiated under Social Forestry Project in 1990. Tree pattas were required to be given to families who were allotted 2 acres of degraded Forestlands for raising and protecting the plantations. No tree pattas could be awarded because Forest Conservation Act, 1980 prohibits leasing of forestlands to individuals. Consequently, the communities and individuals are unable to harvest the plantations raised by them and the entire issue is entangled in legal formalities. Consequently the communities have been deprived of the promised benefits and returns because of conflicts in legal instruments.

d) Conflicts in legal provisions for Declaration of Wastelands as Protected Forests

In 1952, Government of Himachal Pradesh declared all wastelands which were the property of Government or on which the Government had the proprietary rights as protected forests under provisions of Chapter-IV of Indian Forest Act, 1927. By virtue of this notification, such wastelands could be brought under PFM. But in 1998, because of difficulties faced for diversion of such lands for developmental activities the Government notified that 1952 notifications was not applicable to following three categories of wastelands (a) Gair Mumkin Lands (wastelands not fit afforestation); (b) Chargah Billa Darkhtan (Grazing lands without natural tree growth); and (c) Na-Qabil Charand (Grazing land unfit for afforestation). Deletion of these categories of lands is in direct conflict with provisions of Forest Conservation Act, 1980. Moreover, the rights of communities to use these categories of wastelands are likely to be affected as such lands will not be available to communities under PFM and scope of PFM is going to further shrink as under present PFM guidelines PFM is to be implemented on degraded forests.

e) Conflicts in legal provisions for “Teh Zamin Khudro Darkhtan Malkiat Sarkar”.

“Teh Zamin Khudro Darkhtan Malkiat Sarkar” is an urdu phrase in forest/ land settlement parlance. It means that on private lands recorded as forests, the natural tree growth belongs to the Government. However, in 2001, the Government decided to give the ownership rights of such naturally grown trees to the owners of lands. Such categories of lands exist in Kangra and Hamirpur districts and to some extent in Bilaspur districts in the State. However, felling of such trees will be subject to formulation of working schemes (akin to working plans for forests areas) in accordance with directives of the Supreme Court. The felling of trees on such land will be subject to same conflicting provisions as prescribed under HP Forest Produce (Regulation of Trade) Act, 1982 and HP forest Products Transit (Land Routes) Rules, 1978. These provisions are hardly in tune with the spirit of PFM. In fact, it will be very difficult, if not impossible for the people to be able to fell such naturally grown trees on their lands.

f) Conflicts in legal provisions for Resin Extraction and Sale of Resin

The HP Resin and Resin Products (Regulation of Trade) Act, 1981 regulate resin extraction from trees standing on private lands. Although in 2001, the Government has allowed export of resin extracted from private trees, but has imposed a stiff export fee of Rs. 200/- per quintal making export of resin outside the State non-competitive and

expansive. These measures have not loosened the State control on resin trade and private resin tapers have hardly benefited. Resin provides an alternative livelihood option to communities residing in chair-pine zone in mid hills of the State. Un-remunerative resin tapping is also seen as denial of alternative livelihood options to communities under PFM.

g) Conflicts in legal provisions of Land Preservation Act 1978

Land Preservation Act 1978 is considered as restricting the free trade of timber and *Khair* from private lands. Proponents of PFM consider this Act against the self-righteousness of the communities. The Land Preservation Act vests the control of felling, sale and trade of trees on private lands in the State instead of vesting such controls with the communities in the spirit of empowerment of communities under PFM.

h) Conflicts in legal provisions for Regularization of Encroachments

Forest conservation Act 1980, prohibits regularization of encroachments of Forestlands. Similarly, the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 provides for eviction of encroachments on Forestlands. HP land Revenue Act, deals with encroachments on Government lands in general. Recent pronouncements and decision by the State Government to regularize all encroachments upto 31st December, 2000 is likely to adversely affect the implementation of PFM process because of conflicts in legal status of wastelands as forests. If certain categories of wastelands are taken out of purview of 1952 notification declaring such wastelands as Protected Forests, then as per amendments proposed in The Revenue Act, encroachments on such categories of wastelands now to be treated no longer as Protected Forests will stand eligible for regularization. If this happens, availability of wastelands mostly degraded forests for PFM will considerably reduce thereby affecting the scope of PFM unless PFM activities are extended to well stocked forests also. Any move to regularize encroachments is likely to adversely affect JFM and also create social conflicts within community based institutions for JFM further undermining the PFM success.

i) Conflicts in legal provisions of the Government's decision to return ownership of village common lands.

HP Government has recently decided to transfer the ownership of village commons vested in Government under the Himachal Pradesh Village Common Lands and utilization Act, 1974 to the people. The decision if implemented is likely to disturb the equity established in the use of village commons by communities. The landless are likely to get deprived of the use of village commons. This social in-equity in turn is going to impact the JFM process, which seeks to promote equity in the community and help the poorest. The legal implications of the decision to return the village commons to individuals is to deprive the poorest of their rights, and livelihoods creating more social inequality.

j) Conflicts in legal provisions in HP Panchayati Raj Act 1974.

Amendments made in 2001, by HP government in section 23 of HP Panchayati Raj Act 1994 stipulates that in every Gram Panchayat there shall be seven standing committees for the management of natural resources and for development works. These committees shall be: Public Works Committee for roads; Health and Family Welfare Advisory Committee for Health and Family Welfare activities; Village Education Committee, Forest Committee for forest related works; Agriculture Production Committee; Irrigation and Public Health Committee and Food; Civil Supply and Consumers Committee. The original section 23 stipulated only three committees on Production of Agriculture, Animal Husbandry and Rural Industries, Social Justice Committee for education, protection of scheduled castes and Tribes and Backward classes from being exploited and Amenities Committee to perform functions in respect of education, public health, public works etc. The legal provision of standing committees at Panchayat (Gram Sabha) level is in conflict with the notifications issued for setting up of independent Village Forest Development committee and Watershed Development Associations under Watershed Development Programmes of

Agriculture and Rural Development Departments, User Group Associations for minor irrigation schemes by Agriculture Department, Farmer Interest Groups under Agriculture Technology Management Agency (ATMA) under World Bank assisted project of Agriculture Department, Water User Associations by Irrigations and Public Health Department. There are also conflicting legal provisions for each of these community based organizations that are being set up department-wise. These conflicting provisions have adverse impact on sustainability of development programmes, activities and on the community organizations.

k) Conflicts in legal provisions for Non-Timber Forest Products.

Forest Settlements done in Himachal Pradesh during 19th century (1868 onwards) and during first two decades of 20th century gave people the legal right to extract and collect Non-Timber Forest Products (NTFPs) (called Minor Forest Produce in Forest Settlement reports) including medicinal herbs. People can collect these NTFPs as a matter of right and/or concession and are not required to obtain any permit or license from Forest Department for its extraction and collection. But in Chamba and Mandi, people are still required to obtain collection permits on payment of a fee as per provisions of the Chamba and Mandi are required to obtain collection permits as per provisions of the Chamba and Mandi Minor Forest Acts. In Chamba, under Chamba Minor Forest Produce manufacture of Drugs and Export Rules, 1947, people are also required to obtain licenses for manufacture and export of medicinal herbs, whereas no such regulations are in vogue in other parts of the State.

In contrast, the Wildlife Act (Protection) Act 1972 under its Chapter-III A amended in 1991 prohibits picking, uprooting etc of specified plants mentioned in schedule-VI of the Act inserted while amending the Wildlife (Protection) Act in 1991. The Act even prohibits cultivation of such specified plants in schedule-VI except with prior permission of Chief Wildlife Warden or any other officer authorized by the State Government in this behalf. Further amendments in Wildlife (Protection) Act totally prohibit extraction and collection of NTFPs by right holders in Protected Areas, Wildlife Sanctuaries and National Parks. Out of species specified in schedule-VI of the Act whose extraction and cultivation is prohibited, kuth (*Saussurea lappa*) is found and cultivated in the State. Kuth is cultivated in Lahaul and Spiti, Kinnaur and Pangi area of Chamba district. The Excise and Sales Tax Act, however, considers kuth as an agricultural produce and its export is subject to HP Government General Sales Tax Act 1968 (there is no Sales Tax on trade of kuth) and payment of market fee under the HP Agricultural Produce Markets Act, 1969. The collection, extraction and export of NTFPs which provides substantial livelihoods options to the communities are thus, subject to various conflicting legal provisions.

l) Conflicts in legal provisions for Haq Churam (right from to ¼ th share from sale proceeds)

In the Forest Settlement Report of Kangra Valley of 1896-97 by Anderson, the right of village communities and village servants to receive 1/4th of the gross income from sale of trees from the forests protects by communities with the help of village servants and to be divided among the proprietors (*khewatdars* i.e. cultivators) and the village servants is legally recognized. This right is called 'Haq churam'. This was not a *malikama* (ownership) paid in recognition of their property in the soil but was a voluntary grant made to secure their communities and village servant's interest and co-operation in forest conservancy. The 'Haq churam' was to be divided equally (25% each) to *khewatdars* (cultivators of the village, *Lamberdar* (land revenue collector on behalf of government), *Rekha* (village watchman appointed for protection of forests) and *Patwari* of the village. In 1953, the government decided to stop the payment of 'Haq churam' share to *Patwaris* being Government servants. In 1976, the government decided to withdraw the payment of 'Haq churam' to *khewatdars*, on the ground that co-operation and assistance by them was not forthcoming.

However, in 1981, the Government decided to make payment of 'Haq churam' share to *khewatdars* and *Lamberdars* upto the year 1973-74. One heir of a *lamberdar* appealed in the Court of sub-judge Kangra against the decision of the Government to stop payment of 'Haq churam' share. The Court upheld the appeal and even the High Court observed that there was nothing on record to show that the government as a policy has withdrawn 'Haq

churam'. The Rakhas, however, continue to get their share of 'Haq churam'. There are 450 Lamberdars and 262 Rakhas and in the last 5 years (from 1997-98 to 2001-02) *Rakhas* have been paid Rs 58.24 lakhs as their share of 'Haq churam'.

In context of PFM, the legal provision of payment of '*Haq churam*' to communities is in conflict with the PFM Rules 2001, which stipulate that communities will be entitled to 75% share of final harvest of the forestry assets created under Sanjhi Van Yojna or PFM process. In this case of 'Haq churam' the communities of Kangra district were entitled to a share even in the sale proceeds accruing on harvest of existing natural forests. The communities in other parts of the State are not entitled to such a share from gross sale proceeds on harvest of their forests.

There is also a conflict in the stand of the Government to stop payment to Lamberdars whereas the Courts have upheld the Lamberdars plea that they are entitled to receive their share of 'Haq churam'. The Government is now contemplating to frame a policy to stop payment of 'Haq churam' to Lamberdars as well as to Rakhas.

Discussion

Foregoing analysis of the conflicts and contradictions in legal provisions that have impact on proactive partnership of village communities in sustainable management of natural resources, especially the forests emphasis the need to make the legal framework complement the PFM provisions instead of being a deterrent to implementation of PFM process, bring the communities into the PFM process rather than deter them from it. There is an urgent need to initiate a process to amend these laws and Acts.

SECTION C

CONFLICTS IN INSTITUTIONAL FRAMEWORKS

Institutional Framework of Community Institutions in Himachal Pradesh

Sustainable development of natural resources requires (a) enabling policy framework; (b) support and complementary legal framework and (c) strong and cohesive institutional framework at the Government and community levels.

In Himachal Pradesh, people living in villages are heavily dependent on use of natural resources for their sustenance and livelihoods. The agricultural fields are interspersed amongst forests. Forests adjoining the villages are a source of fuelwood, fodder for cattle, timber for household construction and maintenance, water for drinking and irrigation of fields, small timber for supporting agricultural crops, mining for slates etc. etc.. It is essential that the communities maintain the forests around their villages for continued and sustained supply of these essentialities to sustain their livelihoods. Moreover, it is necessary that communities be involved in the implementation of the development programmes to succeed. People's participation in development programmes in Himachal Pradesh has always been sought to address the issue of poverty. People's involvement has been sought to be achieved through a participatory process so that the people own the development process rather than perceive it as thrust upon them by the Government. Also, the participatory process is advocated so that activities are planned based on actual needs assessed by the people themselves rather than based on the perceived needs of the people and communities by the Government planners and executive Departments. Hitherto, the planning and execution of the developmental models envisage implementation through sectoral policies, legal frameworks and departmental institutions. The Government Departments thus have been planning development programmes that address the mandate of their departments only. For implementation of these plans Government Departments have been seeking people's co-operation, involvement and partnership within the limited confines of their sectoral mandate and in their own style and way. The extent to which different Departments are trying to seek people's involvement and community's participation in their

programmes is dependent on the organizational set up of Departments, the willingness of the staff working in it to seek community support, decentralize and capacity of its staff to proactively interact with communities and take them along.

Accordingly, the methodology and guidelines followed by different Departments to seek community's participation differ in scope and extent and is dependent on the Department's perception and interpretation of community participation and involvement. This is reflected in the way community based institutions and organizations are sought to be set up and managed. In Agriculture, Rural Development, Irrigation and Public Health and Panchayati Raj Departments community participation in natural resource management is seen as people extending co-operation in implementation of Departments' schemes and programmes. Since forests as a natural resource is the most critical source impacting the communities' livelihood and sustenance Forest Department's role is considered vital in seeking people's participation in the management of the natural resources.

In Forest Department PFM is seen as processes of empowerment of communities to sustainable manage the forestry resources and sharing of all the usufructs amongst community members. To institutionalize the PFM process, a separate SVY unit headed by an Additional Principal Chief Conservator of Forests has been created in Forest Department. To what extent this will institutionalize the PFM process in the department's style of working only time will tell. There is, however, no doubt that there is paradigm shift in the thinking of Forest Department towards communities. Most of PFM and participatory management initiatives have their origin in Forest Department and other Departments have followed the suit. In Forest Department most of these initiatives have started under bilateral forestry projects but now PFM is getting slowly institutionalized in Department's style of working. PFM is in no longer a taboo in the Forest Department. This is not to claim that all is well. There are institutional constraints and problems but a willingness to change is perceptible, absent not so long ago, and is visible. This willingness to change and adopt Participatory Management process is not visible in other Departments yet because of lack of institutional capacity to change and willingness to empower the communities.

The community institutions thus, vary vastly in scope, nomenclature, composition, legal status, gender equity, authority, financial autonomy, autonomy to work, control and ownership on natural resources, sharing of benefits, involvement in monitoring, role of the department, etc.

The community institutions being set up by various departments for seeking people's involvement in resource management are now discussed.

Community Institutions by Agriculture Department

The Agriculture Department is setting up four types of community institutions under various projects and schemes of the Government.

Women Farmer Groups, for channeling agricultural development programmes and other support system by mobilizing women farmers through a group approach under Government of India scheme of "Women in Agriculture".

Self help groups, user groups, watershed associations and watershed committee a 4-tier community organization under Macro-Management in Agriculture Programme of Government of India. The institutions are being set up under guidelines issued for Watershed Development programmes by Rural Development Department. The watershed associations are being set-up in those areas where Watershed Development Programme of Rural Development Department is not being implemented.

Water User Associations for implementation of small irrigation schemes (less than 50 ha) under Rural Infrastructure Development Fund (RIDF) financed by National Bank for Agriculture and Rural Development (NABARD).

Farmer Interest Groups under the aegis of Agricultural Technology Management Agency (ATMA) under National Agriculture Technology Programme Project funded by the World Bank. These Farmer Interest groups are

being set up in four districts, i.e. Shimla, Hamirpur, Kangra and Bilaspur.

Community Institutions by Irrigation and Public Health (IPH) Department

The IPH Department is setting up **Water user Associations** for the management of water provided by the Government through larger Irrigation schemes for areas more than 50 ha. The guidelines followed for setting up these Water Users Associations are the same as followed by Agriculture Department for Watershed Associations.

Community Institutions by Rural Development Department

The Rural Development Department of GoHP is the Nodal Department for execution of the Watershed Development Programme of Ministry of Rural Development, Government of India. In this umbrella programme, 4 tier Watershed Associations/committees are being set up under three programmes of Government of India: **Integrated Watershed Development Programme (IWDP)** from 1989, **Drought Prone Area Programme (DPAP)** from 1987 and **Desert Development Programme (DDP)** from 1983. DPAP and DDP programmes are area specific whereas IWDP is being implemented in all the districts of the State with a targeted coverage of 2,61,666 ha. DPAP programme is limited to 5 blocks each of Una ,3 blocks of Bilaspur and 2 blocks of Solan districts with a coverage target of about 90,000 ha and Desert Development Programme in Pooh block of Kinnaur district and in Lahual & Spiti. There are 972 watershed committees formed under these programmes. The annual budgetary provision under these three programmes is more than 70 crores. Each watershed committee has about 25-30 lakhs for execution of watershed development programmes under these three main programmes of Government of India.

Community Institutions in Forest Department

Community based institutions in the form of Village Development Committees in project (VDCs) and Village Forest Development Societies (VFDSs) under Sanjhi Van Yojna are set up in Forest Department. VDCs are being set up in Integrated Watershed Development Project, Kandi financed by World bank, in Indo-German Eco-Development Project, Palampur under aegis of HP Eco-Development Society (HPEDS) Palampur support by GTZ of Germany. So far 128 VDCs under Kandi project have been set up from 1999 till 2002. In Indo-German Changer Project, 214 VDCs have been set up between 1999-2002. The number of VDCs set up between 1991-98 period in Kandi project was 114 and 378 in Changer Project. Under the DFIDI, UK assisted HP Forestry Project, 153 Village Forest Development Committees (now being converted into societies) were formed between 1994-2000. Under Sanjhi Van Yojna, 364 VFDS have been formed between December 1998 and 2002. In all in the Forest Department 859 Village Development Committees and Societies have been formed. In addition, three Forest Development Agencies in Sundernagar, Palampur and Salooni, Churah in Chamba district under National Afforestation programme of Ministry of Environment & Forests (MOEF), Government of India have been formed in the last two years. These FDAs are a federation of number of VFDS and funded directly by MOEF, GoI. In Great National Himalayan National Park, Kullu community participation has been sought through organizing women savings and credit groups. 92 such women help groups have been organized so far. These self help groups are now being confederated into 11 ward level societies under PFM rules 2001 of Forest Department by enlarging the scope of these women groups and co-opting male members of the ward. These Women Groups were organized during 1999 under Conservation of Bio-diversity Component of the World Bank assisted Project FREEP (Forestry Research and Education and Extension Project of Indian Council of Forestry Research & Education, Dehradun).

Community Institutions under Gram Panchayats

73rd amendment of the constitution of India mandates a 3-tier governance system in the states by introducing Panchayati Raj institutions for local administration and developmental activities at village level. The Panchayats at village level are to be strengthened to become 3rd tier of governance at village level for self governance by village communities through their own elected representatives. The H.P. Panchayati Raj Act, 1994 was promulgated to consolidate Panchayats by entrusting developmental and protection functions in villages to the Panchayats. Schedule-

II of the Panchayati Raj Act provides the functions that are to be transferred to Panchayats. With a view to consolidate community participation the amendments made in the Act in 2001 envisage constitutions of seven standing committees by election amongst the members of the Panchayat. For decentralization and devolution of powers to the elected representatives, these standing committees are to replace the various executive committees of forest, watershed, health, education water user association, agriculture committees formed by different Departments for bringing the activities of these of departmental committees under Panchayats.

Informal and formal community institutions

All kinds of user groups, such as Self Help Groups and user groups formed under Watershed Development programmes of Rural Development and Agriculture departments, Women Farmer and Farmer Interest Groups in Agriculture Department, Women Saving and Credit Groups in Forest Department which have been formed but are not legal entities are all informal community institutions. In addition, there are other informal communities institutions such as Mahila Mandals, Yuvak Mandals, Youth Clubs etc.

Watershed Associations in Agriculture and Rural Development Departments, Water User Associations in Agriculture and IPH Departments, Village Forest Development Societies, Ward Forest Development Societies, Forest Development Agency are formal community institutions as these institutions are legal entities being registered under the Registration of Societies Act, 1860.

Village Development committees or Village Forest Development Committees of Forest Department though are formal community institutions but without legal sanctity. The Panchayats on the other hand are both legal and constitutional community institutions.

Conflicts in Community Institutions

Within a village a number of community institutions both informal and formal exist. The objectives as well as mechanisms of constituting these institutions by different Departments are so vastly different and conflicting that communities who are to be beneficiary members of these institutions are a confused lot. Consequently, the real target groups, the poorest people of the villages hardly get due representation in such institutions. Most of these institutions are formed to implement a scheme or a programme or a project. So long as the finances flow into these institutions they remain viable. Once the funding stops, they wither away and become defunct. At present none of these community institutions are self-sustainable.

Four type conflicts are discernible in community institutions set up by the Government Departments. These are

1. conflicts between formal and informal institutions;
2. conflicts within different institutions set up by different Departments;
3. conflicts within different institutions set up by a Department;
4. conflicts within the institutions itself.

Conflicts between Formal and Informal institutions

Self help groups, user groups, women farmer groups or women credit and saving groups being informal in nature, the decisions taken by such groups may be rescinded by the formal association or committee or society. Such groups are normally formed for the benefit of the poor and unprivileged people of the village. There are well-defined programmes or activities for these under privileged groups in operational plans prepared under watershed development programme. The role of women farmer groups of Agriculture Department is limited to extension activities. Similarly, the women credit and saving groups formed in Great National Himalayan Park are supported by NGO (SAHARA). Their income generating activities are also limited. These informal groups are also in direct conflict with the Panchayats and committees set up under the Panchayats. There are conflicts between user groups

and Water Association or Water Users Association on equitable distribution of water. In Forest Department, the conflict between user groups and VFDC is on equitable distribution of grass, right to grazing and right to collection of Non-timber Forest Products etc.

Conflicts between Community Institutions of Different Departments

Community institutions set up by each Government Department have different objectives often in conflict with each other. In Agriculture Department, the Water Associations' focus is on providing water for irrigation. The Government Department is to ensure availability of water resource to the village. Similarly, in Rural Development Department the focus of Watershed Association is on watershed development. In IPH Department, the focus of Water Users Association is on distribution of water from bigger irrigation schemes. In Forest Department, the focus of Village Forest Development Committee or Society is on afforestation on common lands, protection of forests from fire etc. One set of village institution has grass production programme and other set of village institution may have a afforestation programme for the same piece of village common land. Since the objectives of different Departments are competing rather than complementary, conflicts over implementation of schemes are common. One community institution is favour of closure of an area for afforestation, the community institution of other Department is opposed to closure and proposes to use the land for construction of a school. Conflicts are also seen in usage of water, construction of water harvesting structures, closure of areas especially wastelands and common lands, use of entry point activities to elicit people's co-operation.

Conflicts within Different Institution set-up by a Department

The conflicts of this nature are more common in Forest Department. In Forest Department communities' institutions at village level are set up under bilateral projects and under Sanjhi Van Yojna. The project staff mostly does the micro-planning process in projects and the project staff also does implementation of almost 70% activities. The focus of project institutions is to secure subsidies from the Project .The community institutions under project and SVY are in conflict over use of resources land for afforestation. More finances available in project areas, more training is given to the members, exposure visits are done than in other community institutions set up under the Departmental schemes.

Conflicts within the Community Institutions itself

The different committees set up under a Panchayat are often in disagreement and in conflict with other over use of resources and finances for a particular set of activities. Forest committee is in conflict with road committee over construction of a road or a path; Agriculture Production Committee is in conflict with Forest Committee.

In Water Associations of Agriculture and Rural Development Departments, conflicts between user groups, self-help groups and official members are common. Conflicts normally are on extent of finances that should be allocated for agriculture, horticulture and forestry activities.

In village Forest Development committees' conflicts are on sharing of forest produce. And over collection of non-timber Forest Products, cutting of trees, for Timber Distribution, allocation of duties to members for protection of forests from fires, setting forests on fire for grass. The conflict is also seen in allocation of field works amongst members. The executive committee lends to favour more elite and vocal groups and their sympathisers. The affected groups create hurdles and make complaints. The marginal and non-vocal groups are sidelined in decisions that favour more elite individuals and groups. The elite treat and consider village institution as a platform for their political ambitions. There are conflicts also as regards share of payments and usufructs to be made to the members.

Inter Community Institutions Conflicts

The Government department follows different set of guidelines for seeking involvement of communities for Participatory Management of natural resources. The words people, communities, participation, involvement joint

and co-operation are often used interchangeably. Differences, contradictions and conflicts in the processes and guidelines followed for setting up village level community institutions in different Government Departments are discussed below: -

1. **Nomenclature:** Nomenclature of community institutions is derived generally from the name of the programme or scheme of the Department. In Watershed Programmes community institution or village committees is called watershed committee or watershed association. In Forest Department village committee is termed Village Development Committee or Society. Under FDA, the village level committee is called Joint Forest Management Committee (JFMC). In Kandi and Changer projects, the nomenclature used is Village Development Committee. Under Panchayati Raj system, committee institution is the Panchayat or Gram Sabha. Each department also tends to create its own community institution, which it feels should owe allegiance and loyalty to that Department.
2. **Composition:** Each department defines, according to its convenience, who should be members of the community institution. For Watershed Associations of Agriculture and Rural Development Departments, all the adult members of the designated watershed area are to be the members of the Watershed Association. In Irrigation and Public Health Department, all water users i.e. cultivators who may opt to become members will be the members of the Water Users Association. In Forest Department, one male and one female member of each household of the village are to be the members of the Village Forest Development Society. At ward level, all voters of the ward are proposed to be the members of the ward level committee. In FDA, all adult members of the village subject to their willingness will be member of Joint Forest Management Committee. In a Panchayat, all voters in the Panchayat jurisdiction will be members of the Gram Sabha (Village Committee). In Kandi Project of Forest Department VDCs are formed on micro-watershed bases. Since the unit of area of operation of watershed, village and Panchayat may not be same, some community institutions are big as compared to others. The numbers of members may also vary considerably, being as low as 10 members (as in Mandi) to as high as 1500 members (as in Kullu Forest Division).
3. **Initiating Dialogue with the Committees:** Some Departments e.g. Forest Department uses front line staff—forest guards and deputy rangers and or specially constituted teams comprising of DFO and or ACF, Range Officer, Deputy Rangers and Forest Guards, to start a dialogue with the communities for organizing them into a committee or society for the purposes and mandate defined by the Department. Other Departments, such as Agriculture Department or Rural Development Department or Projects in Forest Department use the services of extension workers or facilitators or coordinators or group coordinators or even NGOs with the permission of government as in the case of watershed programmes of Rural Development Department. The Changer Project uses a team comprising of Project Assistant (Forest Guard), Extension Assistant and a Community Mobilizer (contact employees) to initiate dialogue with communities. The Kandi project uses a team comprising of Project staff and women organizers to start meetings with the communities. These individuals can be either Departmental employees or persons contracted by the Department or the project. They can be either male or female. Females, however, are preferred for this activity. Other Departments such as Agriculture or Rural Development Department, Irrigation and Public Health Department require a written request from specified percentage of people of the area of operation of the scheme or programme for constituting a committee of the desirous people. In UK assisted HP Forestry Project specially formed teams called Joint Forest Management and Planning Support Team (JFPMST) were constituted to approach communities.
4. **Time Taken to Constitute the Committee or Society:** Time taken to formally constitute the watershed or village ward committee varies considerably depending on the intensity of interaction with the communities. In Agriculture, Rural Development and IPH Departments, village committee or association is constituted in the first meeting called by the Departmental functionaries. In Forest Department regular meetings, need based situational analysis, conflict resolution and PRA exercises are done firstly. The idea of forming a committee or society is floated after a couple of meetings. In forestry projects, the process is still more

intensive. In Indo-German Eco-Development Changer Project, Palampur the process of formation of the village committee may take somewhere between three to six months. If the villagers give their consent, further process of micro- planning is initiated otherwise the project withdraws from the village.

5. **Membership subscription:** In Watershed Associations membership fee is between Rs. 20/- to Rs. 50/-. For informal groups, there is, however, no membership fee. But in Women Savings and Credit Groups organized in Great Himachal National Park, Kullu each woman contributes one rupee per day to the groups' fund. In Forest Department, under SVY there is no membership fee payable by the members of the VFDC or VFDS. In Changer Project of Forest Department, membership fee of Rs. 10/- has been prescribed. In Kandi project of Forest Department, membership fee of Rs. 20/- to Rs. 100/- is taken from the members.
6. **Executive Committee:** In Watershed Associations, watershed committee performs the functions of Executive Committee and comprises of 17-18 members drawn from Self Help Groups (4 Nos.), User Groups (2 Nos.), Mahila Mandals (2 Nos.), Gram Panchayat (2 Nos.), Watershed Development Team (1 No), General members from Watershed Association (4-5 Nos.), Experts from selected Departments (2 Nos.). An eligible criterion has been prescribed. For nomination to watershed committees for the members from various categories. In Forest Department, VFDS Executive Committee is to comprise of 10-11 members, from general house of village (4 Nos.), Forest Guard of Forest Department (1 No), Ward Panch(1 No), President or executive member of Mahila Mandal (1No), Representatives from other village level committees/societies of other Departments, Self Help Groups, User Groups (4 Nos.). In Changer Project, the executive committee comprises of 9-12 members (50% women) and executive committee in Kandi Project has 12 member (50% women).
7. **Representation of Women in Executive Committee:** There is no mention of executive women representation in Watershed and Water Users Associations. In VFDS executive committees one women is to be co-member secretary and 33% of total strength of executive committee is reserved for women and preferably 50% members of the executive committee should be women. In Panchayats there is no executive committee. Instead there are seven committees headed by President or Vice-President of the Panchayat. Both in Kandi and Changer Projects executive committee is to have 50% women as executive members. The post of Vice-President is reserved for women in VDCs formed under Kandi Project. In FDA, executive bodies are to include minimum of 7 women from fifteen nominees from the JFMCs.
8. **Status of Member Secretary or General Secretary:** Watershed Secretary is prescribed to be employed in Watershed Association. He is the whole time paid employee of the Association. The Chairman of the Watershed Association has all the powers. In Water User Associations of IPH Department, one of the water users is elected as Secretary of the Association. In Forest Department under new PFM rule 2001, forest guard is longer the ex-officio-member secretary of the VFDS. The General House may elect any other suitable persons as Member Secretary of the Society. A woman co-member of the executive committee is to assist the General Secretary. In Changer and Kandi projects, Member Secretary can be any body from the general house. In Forest Development Agencies of Forest Department, Divisional Forest Officer is to be the Member Secretary of FDA executive body and Conservator of Forests of the area is to be the President. Deputy Ranger/Block Officer of the forest block is to be the ex-officio-Member Secretary of the Joint Forest Management Committee at the village level.
9. **Term of the Executive committee :** Term of the watershed committee is to be co-terminus with the terms of watershed operational plan which will be 5 years. In case of Forest Department, term of executive committee of VFDS is to be co-terminus with tenure of the Panchayat. If Panchayat is dissolved earlier than 5 years, the executive committee will also stand dissolved. In Changer and Kandi projects the terms of the executive committee is one year. The term of the executive body of FDAs is also to be five years equivalent to term of the FDA.
10. **Powers of the Executive Committee:** only the executive committee of VFDS in Forest Department has

the legal powers of a 'Forest Officer' in the jurisdiction of VFDC. In Watershed Associations all the powers are vested in chairman of the watershed committee.

11. **Micro Planning:** The Watershed Programme in the shape of project document for 5 years is to be submitted by Rural Development Department. Annual plans are prepared in consultation with user groups and members of Watershed Development Team. In case of VFDS of Forest Department micro plan are prepared either in consultation or by the communities themselves for a period of five years. In Changer and Kandi projects, micro planning is done for 3 years only.
12. **Micro planning process:** In VFDS, micro planning is done through PRA, situational and need analysis. In Watershed Programme, the Government functionaries prepare the annual plans and the watershed committee in consultation with user groups The Watershed Association has no direct role in preparation of project or annual action plans.
13. **Implementation of activities:** In VFDS, 100% micro plan activities are to be implemented through its members. In Kandi and Changer projects, the VFDCs executive 30% of the micro plan activities and remaining 70% micro plan activities are still executed by the project staff. In Kandi project now, in 10% of VFDCs, 100% activities are to be done through VDCs. In FDA's of Forest Department, execution of activities is still through departmental mode. In Watershed Associations, the activities are to be executed by watershed committee.
14. **Method of Funding:** Under SVY, the funds are to be released to VFDSs as grants-in-aid in accordance with grants-in-aid Rules 2002. In Changer Project works upto Rs. 50,000/- are given to VFDCs for execution and the funds are released to VDC in three installments of 30% (or Rs. 10000/- which ever less), 50% and 20% (funds are released in two equal installments if the cost of total work is less than Rs. 15,000/) on submission of proof of completion of works at each stage and verified by social audit group of the VDC. In Kandi project, the funds are released to VDCs at various stages of the completion of works after verification of work done by project staff. The works are given to VDC in accordance with work fix rules of World Bank Procurement Procedure. For this, VDC are required to enter into a MOU with the project. In Watershed Associations, project funds of work component are deposited in watershed account of watershed committee. The works are allotted by watershed committee to the members of the committee and payments are released by its Secretary to the persons to whom execution of works are awarded. The works are normally got executed on contract basis from the members.
15. **Memorandum of Understanding (MoU) with Government:** Watershed Associations through watershed committees give an affidavit to Project Implementation Agency. VFDS or VDC till now do not sign any MoU with Forest Department for observance of the stipulations and guidelines of PFM rules. In Kandi Project, the VDCs are required to sign a MoU with project authorities to be able to receive project finances and award of works.
16. **Usufruct Sharing:** No usufruct sharing mechanism are defined in Watershed Associations of Agriculture or Rural Development. Sales proceeds of intermediate usufruct rights are to be deposited in watershed development fund. In Forest Department the PFM rules, 2002 specify sharing of intermediate and final harvest with the communities. 90% of the usufructs are to be shared by the VFDS and remaining 10% by the Panchayats. The VDCs in Kandi and Changer projects do not specify sharing of usufructs but sharing of usufructs by VDCs is done in accordance with PFM rules 2000. Further, distribution of usufructs amongst members of VDC or VFDS is done by the VDC or VFDS by making its own by -laws.
17. **Self-Help Groups or User Groups Linkage:** In Watershed Associations both self-help groups and user groups of marginalized groups are formed. In VFDS, the user groups are not formed. In Kandi project, self-help groups of women for income generating activities are formed. In Changer Project, user groups are formed wherever water-harvesting structures are constructed.

18. **Legal Status:** Watershed Associations formed by Agriculture and Rural Development Departments, VFDS and FDAs formed in Forest Department, Water User Associations formed in IPH Department are required to be got registered as societies registered under section 3 of the Registration of the Societies Act, 1860. User groups, Self-Help Groups, Mahila Mandals are un-registered groups.
19. **Entry Point Activities:** Operational plans of Watershed Associations under watershed development programme and micro plans of FDAs provide Entry Point Activities to be done to win the trust and confidence of the people. Micro plans of VFDS in Forest Department and of VDCs in Kandi and Changer projects provide carrying out of income generating activities for poorest and marginal members of the society/committee.
20. **Institutional Monitoring:** for monitoring of watershed programmes monitoring cell at the State level and monitoring committee under District Collectors at district level are formed. A departmental level monitoring committee does the monitoring of Water Users Association in IPH Department. Monitoring of VFDS under SVY in Forest Department is done at the Additional Principal Chief Conservator of Forests level. The monitoring of Changer and Kandi Projects are done by monitoring and evolution cells of the project and by the donors through annual review missions. The Secretary Environment & Forests, Government of India will monitor FDAs under Forest Department at the national level and the Chief Secretary of the State at State level.
21. **Contribution by Communities:** Under SVY of Forest Department the VFDS are required to make a contribution of 15% of the annual outlay under approved microplan. In case of plantations, this contribution can be in the form of sharamdan (sweat labour) and deducted from the bills of payments. In watershed programmes Watershed Association individual beneficiaries are required to make contribution in the shape of labour/material and the same are deposited in watershed development fund. In Kandi project the beneficiaries share for implementation of activities on their private lands varies from component to component, being 70% in case of construction of cattle stalls. Beneficiary or VDC share is not taken for activities done on community lands.
22. **Special Programmes:** The Kandi project has recently developed special tribal action plan targeted at nomadic graziers coming to Kandi area. Nomadic graziers will be co-opted as members of VDCs in whose jurisdiction they graze their animals.
23. **Post Project Sustainability:** The operational plans in watershed programmes, micro plans in VFDS, VDC in projects and FDAs do not contain any interaction with the communities once the operational plan or micro plan cycle is completed and there is no funds flow to village communities thereafter.

Discussion

Above detailed analysis of the community institutions' formation shows that community institutions formed as Association or Committee or Society or User Groups or Self help groups or Mahila Mandals have a life span coinciding with the life of the programme, scheme or project. There are more differences, contradictions and conflicts in these institutions. Sustainability and continuity of these institutions beyond scheme or project cycle is not taken into account while constituting such institutions. How long these institutions will continue after scheme or project is over, is any body's guess? Going by the past experiences in Forest Department where 58 VDCs were set-up during 1980's in Indo German Dhauladhar Farm Forestry Project, Palampur and more than 4000 VDCs were set-up in World Bank Social Forestry Project and 1993, 114 VDCs were set-up in between 1994-99 period in Phase-I of Kandi Project and 378 VDS were set-up in Changer Project Phase-I no body is sure how long the present Committees or Societies or Associations will survive in future. Where are all these community institutions that were set up during 1980's and early 1990's? More than 99% of these institutions vanished within a year of close of the project ,so the million dollar question is—**Are the community institutions being set-up now sustainable ?**

The above analysis also shows that there is multiplicity of village level institutions being set-up. Except for Watershed Associations that are being set-up by the Agriculture and Rural Development Department which have mutually exclusive areas (zone of operations), all other institutions formal or informal being set-up by different Departments are overlapping in nature. Each community institution is set-up for a specified focused objective rather than for an all round integrated development of watershed or the area although the premise of setting up community institution is integrated development.

The multiplicity of overlapping community institutions has confused most of the communities more than before and has led to more and more conflicts that need to be resolved. More complex the structure of the institution, more are the contradictions and conflicts. The lesson is - *keep the institution formation simple and let communities evolve their own institutions.*

Conclusion

Present policies and legal framework and community institution building mechanisms are not conducive for sustainable management of natural resources. The professed convergence of strategies for integrated development is missing. The communities are confused and unable to decide. There is no sustainability in the community institutions being set-up in large numbers by different Government departments. A large number of conflicts exist within policies, legal frameworks and community institutions. What is required is an enabling policy framework, a supportive and complementary legal framework and a simple mechanism to set-up a cohesive and umbrella community institution at each village level. Such a community institution should be uniform and be empowered to take decisions for the developmental route it needs to follow. The Government Departments need to be more proactive in decentralizing their authority and activities to such a community institution. Instead of setting up new community institutions, there is a need to strengthen the one community institution. Till it is understood and done, sustainable community institutions capable of sustainable management of their natural resources will remain an elusive dream.

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