

**GOVERNING MORALS:  
STATE, MARRIAGE AND HOUSEHOLD AMONGST  
THE GADDIS OF NORTH INDIA**

**Kriti Kapila**

**London School of Economics and Political Science  
University of London**

**PhD**

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## **Abstract**

This thesis is an anthropological study of legal governance and its impact on kinship relations amongst a migratory pastoralist community in north India. The research is based on fieldwork and archival sources and is concerned with understanding the contest between 'customary' and legal norms in the constitution of public moralities amongst the Gaddis of Himachal Pradesh.

The research examines on changing conjugal practices amongst the Gaddis in the context of wider changes in their political economy and in relation to the colonial codification of customary law in colonial Punjab and the Hindu Marriage Succession Acts of 1955-56. The thesis investigates changes in the patterns of inheritance in the context of increased sedentarisation, combined with state legislation and intervention. It examines the move from polygamous to monogamous marriage, and changes in everyday sexual moralities and notions of legitimacy. Analysing marriage and succession related litigation undertaken by Gaddis over the last hundred years, the thesis maps the discursive constitution of the 'customary' and its negotiation in the juridical sphere. The ethnography of local level bureaucracy and its regime of certification demonstrates that dominant legal ideals of conjugal and property relations are effected not merely by legislation, but also through certain state enumerative and documentary practices, such as registration and certification.

The research explores how knowledge of 'native' rules and behaviour necessitated the use of anthropological expertise, the culmination of which was the recording of every single tribe's 'customary law' in the region. It investigates the conditions under which the colonial state solicited anthropological expertise, and how the discipline extended its expertise into the realm of state. The colonial state's entanglement in knowledge and human interests is compared with the contemporary state's reformist legal discourse of rights and equality to chart the trajectory of the changing object of governance from subject to citizen.

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## Selected Glossary

In the transliteration of Gaddi and Hindustani preference has been given to the sound of the words rather than to the rules of Sanskrit orthography. As a result, the final 'a' has been omitted from a number of words. The English plural 's' is often added to Hindustani and Gaddi words to aid the flow of the text. The glossary contains the words that appear several times in the main body of the text and for these, diacritical marks are given. Words used infrequently are translated as they arise, and in some cases this translation is repeated in subsequent chapters to aid the reader.

Angrej	British, English
Bakrã	goat
Baññà-saññà	sister-exchange alliance
Buzurg	elders, ancestors
Chaubã	ceremony observed after four years of someone's death
Chunóàvanó	per stirpes system of inheritance
Dham	feast
Dhan	flock; lit. wealth
Gotra	clan
Ghomtu	peripatetic
Jaidad	wealth, property
Jhanjharà	secondary union
Jirgàh	tribal council
Kachahari	complex of state offices in a town
Kismat-nàmà	form of will
Koram	(coll.) panchayat session
Lumbardàr	village revenue functionary
Mahilà Mandal	lit. circle of women; women's body on district councils.

Munóãã	bride service
Pagvanó	per capita system of inheritance
Panch	member of the village council
Panchayàt	elected village council
Paññu	large hand-woven woollen shawl
Pañwàrà	village accountant
Pradhàn	head
Puhàl	herding assistant
Riwàz-i-àm	manual of customary law for a district.
Sarkàr	government, state
Shajra-i-nasl	pedigree (genealogy)
Shamlàt	commons
Streedhan	women's wealth
æp-pradhàn	deputy head
Wajib-ul-Arz	first colonial documentation of customary usage of land in a village
Zilà Parishad	district council

## **List of Abbreviations**

CrPC	Criminal Procedure Code
DRR	District Record Room, Dharamshala
Eur. MSS	European Manuscript Section
Go.	Goshwara
HMA	Hindu Marriage Act, 1955
HSA	Hindu Succession Act, 1956
IRDP	Integrated Rural Development Programme
MLA	Member of the Legislative Assembly
MP	Member of Parliament
Mst.	Musammat
NAI	National Archives of India
OBC	Other Backward Castes
OIOC	Oriental and India Office Collections
PCCLCR	Punjab Codification of Customary Law Conference Report
PR	Punjab Reporter
PSA	Punjab State Archives
SR	Settlement Report

## Map of Himachal Pradesh



## Chapter I

### INTRODUCTION: GOVERNING MORALS

*“The state is, then, in every sense of the term, a triumph of concealment”*  
(Abrams, 1988:77)

This thesis is an anthropological study of the impact of the state on the everyday domestic lives of the Gaddis of North India. It sets out to examine the legal governance of the Gaddi family over the last hundred years. Its primary aim is to investigate changing ideas of the household and conjugality amongst these pastoralist people in relation to legislation on marriage and inheritance undertaken by the colonial and the postcolonial state in India. It examines the legal state through its diverse practices ranging from legislation to litigation, and studies the multiplicity of practices through which the everyday authority and legitimacy of the state is established.

The research studies the impact of the Indian state on the Gaddis in the context of wider changes in their political economy. It investigates how the state is perceived and understood, in its incarnation as ‘the welfare state’, as a series of benefit opportunities. The thesis thus examines how a ‘modernising’, developmentalist agenda of the state intersects with local ideas about identity, livelihoods and aspirations. The focus of the thesis, however, is on the domestic and on changing ideas about forms of domestic citizenship. It seeks to understand the processes by which the ideals of a ‘modern’ family, as distinct from previous family and household forms, and of ‘modern’ conjugal relations, becomes over a period of time an object of aspiration for the Gaddis. Thus, the focus is on the role played by the state in the making of the domestic modern.

The thesis studies changes in conjugal practices in relation to the codification of relational proximity in law. It argues that codification of filial relations successively produced reduced versions of the household. This does not mean that the ultimate result was a nuclearised Hindu household. On the contrary, while it can be argued that such an entity was created to a certain extent through the colonial codification of ‘relational proximity’, understood in the idiom of agnation, it can also be demonstrated that postcolonial legislation has reconfigured

the Gaddi household in ways that cannot be understood simply as the forward march towards the nuclear family (see chapters Five and Six).

This introduction sets out the different theoretical frameworks and debates in anthropology that form the background to this thesis, and have inspired the formulation of its empirical questions. It also provides information on my fieldwork experience and on methodology, as well as discussing the comparative ethnographic literature relevant to the thesis, and providing background on the history, ethnography and sociology of the region.

**The Ethnography of the State**

“It is a tiresomely standard procedure in political analysis to investigate (relations) between the state and society. What this really means, or what this exercise will yield cognitively cannot be clear unless we know what exactly goes into these two concepts, and how their conceptual boundary is established” (Kaviraj, 1997: 225).

Kaviraj’s point is that concepts such as ‘state’ and ‘society’ have histories, and that these histories are bound up with the history of Western modernity. No analyst should then use them without careful consideration of what they might mean in other times and other places. The vocabulary of modern social science uses three interconnected ideas: ‘the self-defining individual as the maker of choices, including the elective formation of his own identity’; society as a group of self-selecting individuals with shared interests; and the state as the entity which establishes a ‘monopoly of violence’ over individuals and groups (Kaviraj, 1997:226). Kaviraj questions whether, given the closeness of fit between these concepts and their historical origins, we can ever deploy them in any other sense (Kaviraj, 1997: 227). Kaviraj’s plea for a reflective and critical use of social science terms and concepts is well taken, and it finds resonances in anthropology with the work of many scholars who have been concerned to deconstruct the taken for granted pre-theoretical assumptions that underpin key concepts (cf. Gupta and Ferguson, 1997; Fabian, 1983;). However, in the context of a discussion about the relationship between the state and society, and whether the relation between them is an appropriate subject of anthropological enquiry, Kaviraj’s concerns find an interesting connection with those of Marilyn Strathern.

Strathern asks whether it is absurd to “imagine people having no society” (Strathern, 1988: 3). Her direct concern is with whether we can understand other people’s forms of sociality in terms of the Western notion of society. Like Kaviraj, she sees this term as having social and historical roots. However, Strathern’s larger point is not that we should abandon the term, but that we should acknowledge the origins and interests from which it comes. The impetus of anthropological study “derives from Western ways of creating the world” and “We cannot expect to find justification for *that* in the worlds that everyone creates” (Strathern, 1988: 4). Strathern wants to know how Melanesians construct ideas of sociality and relatedness, but she recognises only too clearly that anthropologists have no option other than to use what Kaviraj terms ‘the descriptive language of modern social science’ (Kaviraj, 1997: 226). There can be no comparative project without deploying such terms, but:

“It becomes important that we approach all .. action through an appreciation of the culture of Western social science and its endorsement of certain interests in the description of social life. That affords a vantage from which it will be possible to imagine the kinds of interests that may be at stake as far as Melanesians are concerned” (Strathern, 1988:4).

Strathern is arguing here that it is by acknowledging our own interests that we gain some understanding of and purchase on the interests of others. It is with this proposition in mind, that I have approached the study of the impact of the Indian state on Gaddi society. Both the state in its ‘Indian’ form and society in its ‘Gaddi’ form have histories. Those histories do not, however, reflect a single origin or set of origins, but have been built up as a palimpsest over time. Kaviraj, among others, has discussed the history of the Indian state, and the ways in which the ‘traditional’ state differed from the colonial and how that in turn differs from the postcolonial state (Kaviraj, 1997). Gaddi society, and the way it is and has been imagined by Gaddis and others, have been influenced by many of the same forces that drove the project of state building and the project of modernity that gave it legitimacy. In examining Gaddi notions of identity and how they are bound up with livelihoods, kinship and conjugality, the thesis demonstrates how the Gaddi ‘project of modernity’ has taken shape. In order to be able to provide a sound analysis of that process it has proved necessary to use data from the colonial and postcolonial periods, and to combine ethnography with archive work. As I discuss below, this is a project that would not be possible without history and anthropology. It is in attempting to demonstrate the ways that both the ‘state’ and ‘society’ have a history in the

context of any analysis of the impact of the Indian state on Gaddi society that I have found it essential to try and unpack the ‘interests’ that inform the formation of both. The result, quite unsurprisingly, is that their histories are intertwined, and it is this process, and the demonstration of its empirical reality, that forms the basis for this thesis.

In the Preface to *African Political Systems*, A.R. Radcliffe-Brown proposed that the idea of the state should be eliminated from social analysis (Radcliffe-Brown 1940; cf. Abrams, 1988). However, anthropologists have since that time continually engaged themselves in the study of the state, finding that it has become an ever more salient factor in ethnographic analyses. Gailey has attributed this to the connections between developments in social theory and the broader political context in which social scientists work (Gailey, 1985: 65).<sup>1</sup> There is some merit in this point, but it is notable that even those anthropologists who are currently engaged in the analysis of the ‘global’ and the *transnational* (cf. Appadurai, 1996; 1998; Gupta and Ferguson, 1997; Marcus, 1998; 1999) retain the state as a central part of their conceptual and analytical repertoire. It is not just that the state remains an empirical reality for millions of people across the globe, but that the very notion of the global or the transnational presuppose a relation of parts to the whole that reinscribes the state as a category of social science analysis. The state whether studied directly through its institutions or indirectly through its impact on communities and societies is now a central feature of anthropological concern and enquiry, and will remain so for the foreseeable future.

Abrams argued in his review of the state that “we should abandon the state as a material object of study whether concrete or abstract while continuing to take the *idea* of the state extremely seriously” (Abrams, 1988: 75). What Abrams is proposing here is the study of the state in its ideological form, as the misrepresentation of capitalist societies. It is clear from his discussion that Abrams believes that we should treat the state as a social fact, but not as a thing. The salient factor in analysis for Abrams is the exercise in legitimacy that is the state itself. Abrams famously noted that there were/are some inherent difficulties in studying the state, chief among which is the problem of the concealment of its forms of power and subjection behind the mask of legitimacy (Abrams, 1988: 77).<sup>2</sup> This thesis argues that

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<sup>1</sup> Keeping those political events that have impacted mid-late twentieth century America at the centre of her analysis, Gailey (1985) analyses the shifts in the nature of the state in anthropology in relation to the perceived crisis of the state and capitalism in Western Europe and in the United States.

<sup>2</sup> Abrams undertakes a review of Marxist theories of the state and concludes that the idea and the ideology of the state should continue to form the basis of inquiry, as opposed to its institutions. Mitchell (1991) contests this



nowhere is this concealment more evident than in the state's intervention in the domestic sphere. It is interesting in this regard to note that Abrams does acknowledge that the state is an exercise in moral regulation, as well as an exercise in legitimacy (Abrams, 1988: 77). In the context of the Indian state 'concealment' has been about the manner in which the state has become bound up with and has also appropriated the project of modernity (or what has been termed as 'modernisation' by certain anthropologists). In the context of India, this project of modernity has served over the last 150 years, in different ways, as the source of the source of the state's legitimacy (cf. Kaviraj, 1997).

Gupta (1995) in his influential article argued that it was the ubiquity, rather than just the concealment of the state, combined with the methodological requirements of participant observation in anthropology that made for the greatest difficulty in studying the state (Gupta, 1995: 375). He proposed that it was only really possible to study the state ethnographically by disaggregating its presumed unity, by recognising that the boundaries between state and society are blurred.<sup>3</sup> In their recent review, Fuller and Harriss (2000) take on board Gupta's notion of the blurring of boundaries between the state and society. Drawing on Mitchell's review of the concept of the state in contemporary political theory (Mitchell, 1991), they outline approaches to the study of the state in India, and discuss contemporary ethnographic studies of the impact of the state at the local level. They reaffirm Gupta's point that the state is not a unitary actor because it consists of multiple agencies and powers that cannot be completely disassociated from the society itself. But, as they point out, although the boundaries between the state and society maybe 'blurred or porous or contextually shifting', they are nonetheless perceived as boundaries and acted upon as such by local actors (Fuller and Harriss, 2000: 22-24). They go on to argue, following Kaviraj (1997), that in its bureaucratic procedures the everyday state has become so familiar that the representation of the state as a modernist institution has itself become blurred by routinisation. The state is thus no longer simply a 'modern' institution imposing itself upon a 'traditional' society through the 'monopoly of violence', but is part of everyday interactions for ordinary people. Consequently, they argue- in contrast to the standard resistance position in anthropology (cf. Scott, 1985; 1990; 1998; Ortner, 1995, et al)- that ordinary citizens in India are not so much

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proposition by arguing that the state should be studied in its material practices, and that ideology or ideas per se cannot be separated analytically from material practices.

<sup>3</sup> In this article Gupta examines the discursive constitution of the state by unravelling the narratives of corruption surrounding lower level bureaucracy (1995: 375-404).

resisting the state but making the best use of it that they can (Fuller and Harriss, 2000: 25-26). The result of this, as Fuller and Harriss suggest, is that despite Radcliffe-Brown's admonishments, anthropologists are paradoxically well-equipped to study the 'everyday' state.

This thesis in its study of the everyday state in India focuses on the legal (and the legalistic) state, an area that has remained relatively neglected by anthropologists of South Asia.<sup>4</sup> It looks at legislation as one of the mechanisms of state control and as a process by which the state deploys its modernist project. It argues that the project of modernity undertaken by the state is made necessarily most effective in its micro presence, that is in the way the state operates on the ground and interacts with its citizens through such processes as registration, documentation and benefits. It is through these embodied forms of legality rather than directly through legislation per se that the state achieves its goals and aims. It is for this reason that the thesis focuses on how these processes have developed for Gaddi society and the impact they have had on everyday practices and understandings. While scholars of South Asia, notably Cohn (1987; 1996), Dirks (2001) and Appadurai (1993a), have analysed the documentary impulse of the *colonial* state, their works have focused, following Foucault (1991), on the demographic (re)writing of Indian society, the research presented here develops the argument in a new direction. In taking their analyses forward, this thesis looks at the *everyday* documentation that the contemporary state engages in through its local level state institutions, rather than state documentation surrounding periodic tabulation like census, etc., and argues that these documentary practices are the mechanisms through which the state makes itself visible to its citizens, and administers the law of the land.

Thus, this thesis explores a terrain between the analyses of scholars like Cohn, Dirks and Appadurai who focus strictly on state processes of periodic description and enumeration for the purposes of governance and administration, and those contemporary ethnographers, such as Tarlo (2000), Das (1995) and Bear (2001), who are engaged in the analysis of how categories imposed by the state restrict and control people's access to resources. In contrast to both these approaches, this thesis takes as its central focus the sociological effects of overlaps between legal formulation, ethnographic description and governmental practices in relation to domestic citizenship. More specifically, it examines the relationship between

governmental documentary practices and the production of specific forms of conjugality in Gaddi society. The thesis investigates the role played by the legal formulation of marriage in proscribing differing moralities of conjugal and filial relations. In codifying family and household structures from the vantage point of property and inheritance, the modern state enforces a particular ideal of domestic life, i.e. monogamous conjugality, primacy of blood relations over other forms of relatedness, and economic loyalty to the filial unit. Critical to this codification was the role played by anthropology in facilitating a shift in the register of knowledge of Indian society, from text based Indology to a more practical knowledge of the empirical. As Kaviraj has noted the colonial state involved an “unprecedented enterprise of mapping and counting through censuses and surveys” (Kaviraj, 1997: 231). The result of this was the introduction of a new kind of world made up of unfamiliar definitions of the ‘individual’, ‘property’ and ‘society’. In effect what was introduced was a “new ontology of the social world”, a new way of being with enormous consequences for political action (Kaviraj, 1997: 231). I argue in chapter four that anthropology as an emerging discipline with strong links to the administration provided not only a way of deploying certain categories of understanding to suit the colonial state’s project of governance, but also helped to create those categories through its practical deployment in the field by administrators. It is these new ways of being for the Gaddis and their link to categories of governance issues that form the central concern of this thesis.

The thesis thus examines and compares the colonial and the contemporary state in India in ordering and reordering the domestic lives of Gaddis. Using both ethnographic and archival material, the research investigates the impact and the extent of the ‘scribal’ state – processes of registration, description and enumeration – as it is embodied in local level state institutions in relation to the shifts produced in Gaddi domestic arrangements from the last quarter of the nineteenth century to the present day. It draws on the work of Dirks (2001) to develop the analysis of the role of anthropology in informing state intervention. Dirks proposes that an anthropologisation of Indian society became necessary to shift the register of rule from conquest to governance (Dirks, 2001: 149).<sup>5</sup> While the specific fixing of caste categories,

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<sup>4</sup> Historians of modern India have recently written about the legal domain, notably Singha (1998), Chatterjee (1999), Chandra (1998), Anderson and Guha (1998).

<sup>5</sup> Dirks (2001) is engaged in the history of caste in India and attributes the present version of the caste system as resulting from colonial intervention and more importantly colonial categorisation and classification., wherein the ethnographic enterprise of the colonial state is a central concern. Susan Bayly (1999) has taken a less ‘constructionist’ view of the history of the caste system. She argues that “caste has been for many centuries a real and active part of Indian life, and not just a self-serving orientalist fiction” (S. Bayly, 1999: 3). Bayly’s main

which is the major concern of Dirks's work, is not the concern of this thesis, the engagement with Dirks's work centres around the entanglement of the state with the discipline of anthropology. Specifically, the thesis investigates the ways in which anthropology provided the colonial state with a language of description, axes of observation and categories of enumeration. While Dirks explores the manner in which aspects of tradition were criminalized in southern India (eg. hookswinging), this thesis is concerned with the manner in which everyday domestic practices were purported to be 'civilised'.

As Gupta has noted "Studying the state ethnographically involves both the analysis of the everyday practices of local bureaucracies and the discursive construction of the state in public culture" (Gupta, 1995: 375). Both these approaches are important and are important within this thesis. However, one of the major contributions of the ethnographic research presented here is that it focuses on everyday encounters with local level state institutions in the form of local courts and panchayats. These are 'state institutions' in rather different ways (see chapter three), but what is surprising is the relative neglect of these institutions and their impact on people's everyday lives by anthropologists in the context of India. With the exception of Bailey's (1969) study of dispute resolution and panchayats conducted in the 1950s, and Gupta's (1995) own work, there is very little ethnographic data on the day-to-day workings of local level state institutions and how they engage with people's lives (cf Fuller and Benei 2000). This thesis attempts such an analysis in order to be able to demonstrate empirically the nature of the state as it is experienced and lived for the Gaddis.

### **The Scribal State**

As outlined above, one of the central concerns of the thesis is to highlight the different orders of 'writing' (registration, description, enumeration) that the state undertakes in local level state institutions and their significance in the daily lives of the Gaddi. Ethnographic imagination and inscription were essential to the colonial state in the compilation of customary law in colonial Punjab. As Mamdani has noted for Africa, the first step in this process is to understand what was meant by 'customary', and what kinds of citizens were those individuals to whom this term applied (Mamdani, 1996: 111). As Mamdani has argued the codification of customary law in Africa was not about guaranteeing rights, but about

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contention is that caste was not a category invented by the colonial state, but was a significant feature of Indian

enforcing custom. The paradox of the situation was that the colonial state constructed itself as the ‘custodian of custom’ and in so doing not only created the category of the customary, but brought into being a domain of powers and rights that had not existed in that form prior to state intervention, but yet were conceived of, for some purposes, as being outside state authority:

“..customary law consolidated the noncustomary power of chiefs in the colonial administration. It did so in two ways .. For the first time, the reach of the Native Authority and the customary law it dispensed came to be all-embracing. Previously autonomous social domains like the household, age sets, and gender associations .. now fell within the scope of chiefly power. At the same time – and this is the second breach with the precolonial period- any challenge to chiefly power would now have to reckon with a wider systemic response. The Native Authority was backed up by the armed might of the modern state at the center” (Mamdani, 1996:110).

Mamdani’s point for Africa is that the category native was actually a racial category serving the purposes of governance, and not as has sometimes been suggested a descriptive term applied to persons whose lives had been *historically* governed by the customary law in question (Mamdani, 1996: 111). In the context of India, this matter of the creation of the customary hinged more directly on the notion of ‘tradition’. As Chatterjee notes the characterisation of India as in a state of “anarchy, lawlessness, and arbitrary despotism” prior to colonial rule was linked to the ideological justification for the project, as was the definition of Indian social customs as “degenerate and barbaric” (Chatterjee, 1993: 117-118). The evidence for this characterisation was a long list of atrocities visited on Indian women by religion and custom, that is by ‘tradition’. The result was that alongside its project of governance, the colonial state constructed for itself a civilising mission (Chatterjee, 1993: 118). This mission was explicitly defined in contrast to tradition, as in the case of the abolition of *satidaha* (immolation of widows). As Mani (1989) has shown in relation to *satidaha*, this tradition was itself the creation of a colonial discourse. This division between the state and tradition has continued to underpin the postcolonial Indian state’s project of modernity.

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social life, even if its character was different, in the pre-colonial period.

In opposing colonial rule, nationalist discourse thus took up the question of tradition. Chatterjee has argued that it was on the basis of a dichotomy between ‘home’ and ‘world’ that nationalist discourse was able both to argue for modernity in the external material world, and for tradition within the domestic domain (Chatterjee, 1993: 120-121). This gave rise to new understandings about men’s and women’s roles as citizens within the modern world of the nation.

“the social order connecting the home and the world in which nationalists placed the new woman was contrasted not only with that of modern Western society; it was explicitly distinguished from the patriarchy of indigenous tradition, the same tradition that had been put in the dock by colonial interrogators. Sure enough, nationalism adopted several elements from tradition as marks of its native cultural identity, but this was now a “classicized” tradition – reformed, reconstructed, fortified against charges of barbarism and irrationality” (Chatterjee, 1993: 127).

Thus, in the Punjab, the codification and compilation of customary law was, as in the case of Africa, aimed not at limiting the power of the colonial state, but at enabling it. The point of codification was, as Mamdani suggests, not about guaranteeing rights, but about enforcing customs. However, what differentiates the Indian case is that far from reinforcing a general category of the native, the codification of custom was aimed at sorting out, enumerating and clarifying ‘fuzzy communities’ (Kaviraj, 1992). The aim of colonial codification of the customary was thus modernisation through differentiation. However, as in Africa, the domestic became emblematically and practically associated with custom and/or ‘tradition’. The result was a process of construction of custom and tradition that had not existed before the colonial state, but also the construction of a realm of the domestic understood as tradition that remained, for some purposes, outside the purview of the state. The consequence was not, however, as Chatterjee has noted, stasis, but a process of change that allowed individuals and communities to link the state’s project of modernity with reform of the domestic sphere.

This thesis explores this process in relation to the domestic sphere in Kangra, and further expands and further develops Dirks’s (2001) analysis of the ethnographic enterprise of the colonial state in India. It demonstrates that ethnological surveys were not merely aimed at the enumeration or indeed the invention of caste because this was not the focus of concern in the

Punjab.<sup>6</sup> In contrast, state intervention was, in part, an exercise in writing aimed at accruing and acquiring legitimacy by simultaneously codifying customary law – something that was seen as necessary as a means of extending control over marriage, inheritance, and matters of moral concern, such as infanticide – and then reclassifying the domestic domain thus created as sovereign, as ideally outside state control, precisely because it was confined to the customary. The tension that resulted from the simultaneous creation of the domestic as customary, and the customary as something separate from the state forms the main concern of Chapter Four.

The introduction of processes of registration, via Act VI of 1886 and Act XVI of 1908 was critical to the construction of the bureaucratic edifice of the colonial state. It is more in such cumulative exercises that the process of writing becomes a tool for everyday governance, in that it produces and enforces regularities. James Scott (1998; 2002) has highlighted the manner in which state practices are designed to make the human and physical landscape legible for the purposes of effective governance. This thesis builds on these insights and uncovers the effects of state efforts at making its citizens legible in daily lives. Importantly, it brings out the differences between the colonial and the postcolonial state in India in relation to the effects of writing, not least being the extent to which classificatory categories produced by the state are used by the citizens to maximise their benefit opportunities. It also explains the way in which state power and its convention of writing become synonymous with each other so that an institution like the *panchayat*, even in its effort to distance itself from the local administration, emulates and replicates the recording and writing culture of state bureaucracy (see Chapter three).

### **The Domestic State**

Historical analyses of the south Asian domestic domain have centred around two issues. One strand focuses on the emergence of modern gendered subjectivities (cf. Chakrabarty, 1994; 2000a; 2000b; Chatterjee, 1993; Chowdhry, 1994; Sarkar, 1997; Chandra 1998). On the other hand, works like those of Singha (1998) and Chatterjee (1999) analyse the contingency of the public/private split, and the dependency of the political on domestic arrangements. Indrani Chatterjee (1999) examines the reinterpretation of kinship and affinity by the imperial British state. Her concern is with the manner in which slave members of the ruling household of the

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<sup>6</sup> The enumeration of caste was of little significance in the case of Punjab because “tribe” and not “caste” was [ ]

Nizamat of Murshidabad were rendered as non-kin, and the emergence of a particular understanding of kinship categories in consequence. Her monograph analyses the presence of the domestic (or the harem) in the political, and the diverse distinctions it brings about in the status of various kinds of women subjects as a consequence of colonial interventions surrounding slavery. Singha (1998) on the other hand, describes “the defining of the domain of domestic authority” in relation to emergent juridical order under early Company rule. This effectively defined the domestic as a domain outside interventions by magistrates, and yet it allowed men to use the law to extend their control over the activities and the labour of their wives and children. At the same time, it redefined the man as the head of the family with responsibility for the maintenance of women and children and thus put the ‘interior of the household’ outside the domain of the state (Singha, 1998: 124-126).

This feature of the divide between the public and the private is part of a well-recognised process of increasing state control and intervention and is indeed an important part of the definition of the state and its powers (cf. Pateman 1988; Habermas 1989; and see above). Donzelot has analysed the rise of a universal model of the family in France as arising out of its systematic policing during the *ancien regime* and not just as a result of an inherent attractiveness of the bourgeois ideal (Donzelot, 1997: 6). During this period the family became directly inserted into the political sphere and became therefore both a subject and object of government. This was made possible because the family was “[s]et directly within social relations of dependence,<sup>7</sup> it was integrally affected by the system of obligations, honours, favours, and disfavours that actuated social relations in general” (Donzelot, 1997: 48). This direct intervention entangled the state and the family in a web of taxation and protection and recognition. In post-revolutionary France however, this mutually beneficial relationship became inadequate and for the state mechanisms of control to be completely effective it had to be ensured that “its juridical rigidity or imposition of state norms [did] not freeze the aspirations... the interplay of internal and external pressures and pulls [ ] make of it a locus of possible and imagined transformations” (1997: 94). Chapters Four and Five of this thesis examine the making of the boundaries of the domestic in colonial north India through governmental practices and investigate the mechanisms through which apparently ‘nuclearised’ households based on stricter forms of agnatic reckoning emerged. In contrast to

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the universal fact of rural life in the Punjab” (Bayly 1999: 139).



other commentators, and in keeping with arguments made by Macfarlane (1986) for England, and Uberoi (1993) for south Asia, this thesis argues that the Gaddi household was never in consonance with either the imagined and codified joint Hindu family of pre-1956, or with the nuclearised family that emerged in India in the second half of the twentieth century.

In order to advance this argument, this thesis draws on the work of William Reddy (1997), who explores the nature of the transformations that took place in the emotions within and outside the domestic world in post-revolutionary France, in order to understand the nature of the changes in conjugal relations amongst the Gaddis. Reddy postulates that a new ideal of conjugality emerged in western Europe (and France in particular) as a consequence of the changes that occurred in the rules regarding what needed to be concealed and what could be revealed with regard to intimate relations. He has termed this the 'game of appearances' (Reddy, 1997: 113-114). This game was all about the relationship between honour and shame, and about distancing the affairs of the conjugal couple from the purview of those deemed external to it, thereby giving rise to a new ideal of privacy in marriage. One of the most significant factors that enabled this change, and one which had direct consequences for people's understandings of affective relations, was the dissociation of honour from marriage (Reddy, 1997: Chap 4). Reddy examines local level state institutions, primarily courts, and shows how "...the male fear of shame and male desire for honors played in the day-to-day practice of the institutions under examination" (Reddy, 1997: 228). Reddy shows how gender became a salient feature in the definition of the emerging public sphere because of the way women were seen as in the grip of emotion, but "men's search for honor was a civilized, rational, impersonal kind of endeavour" (Reddy, 1997: 228). The domestic was once again defined in contradistinction to the public sphere as being emblematic of modern life, but this distinction itself had consequences for people's understanding of conjugal and intimate relations.

In many ways, Reddy can be seen broadly in concurrence with Giddens (1992), in terms of his understanding of the nature of the experience of modernity in western societies. One of the most profound changes Giddens believes modernity brings about in the domestic and private worlds (admittedly themselves a product of modernity), is the disconnection achieved

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<sup>7</sup> By these social relations of dependence, Donzelot means both internal and external to the family. That is to say, there was an inscribing of accountability in wives and children to the man who was deemed as head of the family. In turn, the position of the man in the wider networks determined the family's status (1997: Chap.3).

between sexuality, conjugality and romantic love (Giddens, 1992: 58). This thesis refines these insights by investigating the shifts in notions of intimacy and conjugal sexuality in non-western societies, and further refines our understanding of these processes by examining a non-elite group in Indian society. Chapter Six of the thesis argues and demonstrates that modernity in fact has had quite the opposite effect on Gaddi practices of conjugality, since over the last 150 years marriage has slowly become the only domain in which sexuality and conjugal love may reside. The chapter in particular and the thesis in general argues that even in South Asian societies, the effects of modernity on domestic arrangements and filial relations are by no means homogenous. The *bhadralok* women of colonial Bengal experienced an entirely different modernity than their counterpoints on the northern and southern faces of the Dhauladhars (cf. Chatterjee, 1993; Chakrabarty, 1994; 2000a)

This thesis thus investigates the homogenising effects of codification and legislation and its attendant moral orders. It argues that the modernity of the domestic is different to that experienced in the west, or indeed by upper-caste households in India. In doing so, it nuances the study of relatedness in south Asia. Parry (2001) and Trawick (1992) have paved the way for an anthropological inquiry into affective maps within south Asian kinship studies, and domesticity has otherwise been studied in the context of nationalism (cf. Chatterjee 1993; Chakrabarty 1994; Hancock 2001). But these analyses have mainly been concerned with bourgeois domesticity, where change is seen in relation to access to women's education and other such factors. This thesis argues that these insights are limited for understanding the experience of domestic modernity in non-elite contexts. While the historical analyses of Chowdhry (1994), Agarwal (1994) and the authors of the essays compiled in Uberoi (1997) highlight the manner in which modern law worked to dis-inherit women of their erstwhile rights in certain communities in India, this thesis investigates the repercussions of such a withdrawal *both* historically as well as ethnographically. It takes further the insight provide by Raheja and Gold (1994) that women find performative spaces to challenge male ideologies of kinship, but shifts the lens away from the perils of upper-caste women to focus on non-upper-caste contexts, where aspiring to upper-caste values is understood as part of what it means to be modern.

## **The Legal State**

In a recent review of the developments within legal anthropology, Sally Falk Moore has underlined that the historiography of this sub-discipline is often a reflection of the state of the

state in anthropology (S. Moore 2001). She elaborates to say that the genesis of most debates in legal anthropology, especially in recent years, have surrounded the centrality of the state in defining the normative repertoire in society, even and especially when they are concerned with the issue of legal pluralism (S. Moore 2001).<sup>8</sup> She reiterates that despite other sources of legal authority and the empowerment of sub-national and supra-national entities, the state remains a key power within which legal subjects can be most fruitfully understood. She asserts that “the construction of national governments is not a process that can be divorced from transnational matters” (S. Moore 2001:107).

The ethnographic study of the legal domain remains a largely underdeveloped area in south Asian scholarship. Competing normative orders in South Asia have usually been studied in the context of the contest between personal and statutory law. Here, anthropological discussions of the case of Shah Bano (cf. Das, 1995; Kapur, 1996) come to mind.<sup>9</sup> Recently, Erin Moore (1993; 1998) has analysed the patriarchal jurisprudence in Meo *panchayats*.<sup>10</sup> Baxi (1986) sets out to uncover the ideological bases of the developments in Indian law so as to move Indian legal history from its traditional concerns. According to him, “legal history is typically conceived of in India as a history of growth of judicature, and that too at the level of normative law minutiae, having no redeeming social significance” (Baxi, 1986: 20). Nevertheless, Baxi’s concept of law remains tied up with the written law. Chapter Three demonstrates that written law, albeit important, is only a tiny part of the gamut of processes that make up the juridical state. This thesis is in keeping with the recent insights made available from discussions on legal pluralism but it advances them by not only looking at diverse sources of legal authority, but also diverse points at which ideas of legality are disseminated. It also brings a new dimension to the anthropology of law in south Asia, by undertaking a detailed ethnography of a court setting, and its significance in the everyday life of people, especially in relation to other available avenues of justice.

It has been said of bourgeois law that its fundamental contradiction lies in the fact that on the one hand it posits everyone as equal in front of it, and on the other it gives them the “right” to differ and to demand that law uphold that right (Collier, Maurer and Suarez-Navaz, 1995: 11).

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<sup>8</sup> See also Fuller (1994) for the relationship between legal pluralism and legal thought.

<sup>9</sup> See Peletz (1993) for an analysis of the contest between Islamic law, customary law and state law in postcolonial Malaysia. There is a host of work on the invention of custom during colonialism in different parts of Africa. See Chanock (1985), Moore (1986) and Snyder (1981).

The thesis therefore expands anthropological perspectives on the constitutive features of citizenship, i.e. by exploring the myriad ways in which citizenship is understood by Gaddis themselves. Throughout this thesis, it is made clear that Gaddi understandings of citizenship are critically based on a set of notions about what is 'legal'. These notions of legality play a constitutive role in self-understandings and the definition of the community at the local level. What is at issue in the thesis is the way in which legal codification constructs various ideas about the person and about kinship relations. These ideas subsequently and necessarily become part of people's self-understandings and the definition of community. In contemporary anthropological thinking 'persons' and 'things' are thought of as mutually constitutive and thus property and its relationship to inheritance become a key part in understanding kinship relations (cf. Strathern, 1999; Pottage, 2001).

The thesis examines afresh the underlying assumptions of the manner in which law sanctions particular forms of personhood and erasure of others. Chatterjee (1999), Chowdhry (1994), Agarwal (1994), and Chandra (1998) have brought to our attention the effects of legal codification on gender relations in south Asia. Others have demonstrated the manner in which colonial ideas of criminality were critical to the emergence of new socialities (cf. Singha 1998; Yang 1985). Bhattacharya (1995; 1996) has shown the significance of colonial policies in the making of 'settled' populations in Punjab. This thesis draws from these insights to uncover the fact that though codification of inheritance was meant as an ordering of the relation between persons and their things, in fact it achieved a reordering of relations between persons (cf. Strathern 1999). Chapters Four and Five are concerned with extensively examining the kinds of legal persons that emerged out of a reordering of the household in colonial and postcolonial law.

## **Part II: Regional Concerns**

### **Humans in Geography**

Prior to its incorporation into British India in 1846, Kangra was primarily ruled by Katoch Rajput kings. The king was the absolute owner of land and all cultivators tilled their share of

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<sup>10</sup> Moore (1993; 1998) studied caste panchayats of the Meos. These panchayats are not the same as the official

the king's grant (Cf. Barnes, 1855; Baker, 2000). Land relations were organised differently to those in the Punjab plains, in that the village was not the co-parcenary right-holder in property. There were distinct claims to cultivation of land which were inheritable but not alienable and there was a marked absence of common property or *shamlat* lands (Baker, 2000: 54). The hamlets were not bounded cohesive units and habitation was strewn in a random manner across the landscape. This was seen to be in contrast with the rural Punjab of the plains. The initial conclusion drawn by the colonial administrators was that there was an absence of a village community in the hills (Lyall, 1874; Singh, 1998: 256; Baker, 2000: 48; Chakravarty-Kaul, 1996: 213).

The Settlement process brought about vast changes to the social landscape. One of the significant changes to the political economy that was effected by the regime of revenue extraction was the increase in land under agriculture. The mountainous terrain meant that agricultural holdings were small and limited. Very often, agriculturists too engaged in non-agricultural activities like pastoralism and trade for additional income (Singh, 1998: 17). The second Settlement reported that there was as much as a twenty per cent increase in the area under cultivation in the district. This was due to the fact that large parts of the erstwhile uncultivated land, or 'wasteland' as it was termed in the process of settlement, was categorised as *shamlat*, or commons, for which the village had collective revenue responsibility and collective share in produce and income.

(Area, in Acres)	Area from Survey Books	extracted Revenue permanent measurement	Area under Difference
Cultivated	418,644	539,179	+90,535
Uncultivated	1,320,108	1,195,561	-124,544
Total	1,768,752	1,731,713	-34,009

(Source: Lyall, J. B. 1874: 51)

Similarly, settlement of the forest areas in the district also brought along with it a greater enumeration of revenue responsibility. Pastoralist communities like the Gaddi and the Gujjar

in the pre-colonial era acquired grazing rights in pastures as *warisis* or grants from the Kangra and Chamba kings. These pastoral rights in various grazing runs (or the summer *dhars* and the winter *bans*) came in the form of *pattas* or deeds, which sanctioned individual and inheritable rights, but were valid only so long as the herder was capable of using the pasture optimally (Bhattacharya, 1995; Saberwal, 1999). While the initial revenue settlements by Barnes and Lyall of 1850's and 1874 respectively left them untouched on account of their seemingly complex nature, in Kangra the Forest Settlement of 1897 and the Final Settlement of 1919 necessitated the recording of these rights (cf. Saberwal 1999: Chap 3). The result was that, as in the case of the reclassification of land 'ownership' from rights in cultivation to alienable property, access to grazing runs was transformed into permanent inheritable rights of individual families. As a result of this, in present day Kangra, only a tiny fraction of herder families have recognised 'customary' pastoral rights, and a majority of herding takes place on rented runs. Herders were now also required to pay *tirni* tax, or tax levied per head of flock, the rates of which were different for animals which were part of a pastoral flock and those that were penned domestically. Together, the revenue input generated by the pastoralist communities was by no means insignificant. Peter Phillimore (1982) has argued that the colonial regime did not bring about a significant increase in the levels of taxation levied on the Gaddis as compared to pre-colonial times (Phillimore, 1982: 180). This is true in absolute terms, since the actual tax burden on individual families changed relatively little. However, colonial taxation regimes implied a very different kind of relationship between individuals, households and the state. Amongst other things, as Dirks (1992) has pointed out, colonialism marked a significant shift in the relationship between the sovereign and the subject. It is to these changes that one now turns.

The settled landscape of Kangra required more than its mere enumeration to be governed. There were two direct outcomes of the settlement that framed the future administration. The first was the creation of the missing link of the village community in the hilly regions of colonial Punjab and the second was the juridico-legal framework which legitimated state authority. Enumeration, bureaucracy and law were the new referents within which pastoral communities paid numerically similar taxes, but these were referents which transformed their subject status as recipients of the king's gifts to individual holders of grazing permits.

As pointed out earlier, habitation in the Kangra hills was not necessarily clustered around single points, but was scant and scattered. Quite apart from the difficulties faced by the new

regime in measuring and fixing revenue returns in cash,<sup>11</sup> the apparatus to conduct its new daily business had to be erected as well. As Barnes reports, one of the first things he did in order to carry out the Summary Settlement was to divide the district into administrative rings, appointing a Patwari at each of the village level circle. “The first thing I did was to constitute an efficient agency...I took care that he [Patwari] was a resident of the neighbourhood, not obnoxious to the people, though I did not make the appointment entirely dependent on their selections.” (Barnes, 1855: 48). New roles like those of headman, *kardar*, *lumberdar*, *chaudhri*, *kanungo* were foisted upon the socio-political landscape, bringing with it significant changes in the structure of local authority and people’s relationship with it. As noted earlier, the territorial demarcation of villages created hitherto non-existent categories, like wastelands and commons (cf. Chakravarty-Kaul, 1996), and different hierarchies between the bureaucracy and its ‘publics’. Erstwhile usufruct rights in these lands were now recorded in the land and revenue settlements as individual property rights, and these shares in the commons were permanently tied to the then revenue return of each owner-rightholder (Singh, 1998: 65).<sup>12</sup> Thus, communities where they had previously existed were redefined in new territorial terms, and in some cases were created where none had previously existed.

The administrative grid that was required to execute these new forms of governance was put in place over the years. Today, the *patwari* is a central figure in the daily life of a village, and in it wields unparalleled power.<sup>13</sup> Those non-bureaucratic functionaries that were created by the colonial regime in order to instil the sense of community in dispersed habitations, like the *lumberdar*, failed to take on the imagined role of the village headman in terms of being the source of moral authority and leadership. “Mr. Barnes introduced uniformity and appointed lambardars and patwaris in the way he has described. These lambardars regard themselves and are regarded in their villages, rather as officers of the government than as representatives of other proprietors.” (Lyall, 1874: 19). While they were crucial to the colonial regime in that they constituted the coterie of influential men (the *kardars*, the *safed-poshes* and the

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<sup>11</sup> Barnes, G. C. 1855: 52 “ In Parganah Kangra, the rents had always been in kind. Every field was assessed, and has been assessed for centuries, at a fixed value in corn. The people had never paid in money, and their feelings from long prescription and usage, were entirely in favour of grain payment. They had never been accustomed to dispose of their produce or to convert it into money, and yet our system eschewed collecting in kind and required that the revenue should be liquidated in cash. In this Parganah, the Summary Settlement was not only a revision of assessment but an entire reversal of ancient and time-honoured custom”

<sup>12</sup> Saberwal (1999) analyses the repercussions of the tussle between the Forest Department and the Revenue Department over the sharing of both revenue and authority resulting from the settlement and demarcation of forests in colonial Kangra.

<sup>13</sup> See Gupta (1995). A central figure in Gupta’s ethnography of local level bureaucracy is the corrupt *patwari*.

*chaudhries*), who were informational links between the regime and its subject populations, at the same time, they remained just that, i.e. prime informants. These men usually came from influential and/or large land owning families, but despite all the patronage extended to them by the colonial state, they failed to rally a moral community around them. Their significance lay in the bureaucratic function that they performed, i.e. in the revenue they collected for the state.

While the category ‘agricultural tribe’ came into being as a consequence of the Settlements in Punjab<sup>14</sup>, the real regulatory effect of this was not seen until the Punjab Land Alienation Act was passed in 1900. As agriculture spread and populations became tied to land in a more static manner than was ever prevalent in the pre-colonial times, the value of land increased too (cf. Bhattacharya 1985; 1992; 1995; van den Dungen, 1972). As the nature of rights in land too had changed, this commodification of land, made even more acute with the spread of irrigation, was coterminous with the parallel development of increased rural indebtedness. The Punjab Land Alienation Act was brought to stem transfer of land held as mortgage by agriculturists to moneylenders, as well as to curb the excessive litigation in the province around this matter.<sup>15</sup> The Act, in other words, defined and limited access to land, by making ownership of agricultural land by non-agricultural tribes illegal. It also restricted the acquisition of land in any other place except the village in which the person derived the status as an ‘agriculturist’ (van den Dungen, 1972: 268).<sup>16</sup> Thus, the colonial state encouraged agriculture for the rural populations, for not only was it a source of revenue, but by linking it to respectability in governance, it also put into play the evolutionist hierarchy of professions.

For the Gaddis, the increased availability of agricultural land in colonial Punjab provided the impetus to move from the Chamba state to the southern slopes of the Dhauladhars in Kangra district. In popular memory the past is often associated with the ownership of very large herds by the Gaddis. The availability of new pastures in Kangra, along with the possibility to buy small pieces of cultivable land made the passage Kangra ever more attractive. This was so because it also coincided with a shrinking of pasturage in Chamba.

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<sup>14</sup> The birth of this category and its effects on Punjabi sociality are discussed in a Chapter Four. Therein I discuss significance of this status for the codification of ‘customary law’ of a tribe.

<sup>15</sup> cf. Annual Reports on the Administration of Civil Justice, Government of Punjab, various years.



## Ethnographic legacies

There are two broad areas of concern in this section: one is the anthropological literature on pastoralism, and the second are the ethnographic studies of the region. Pastoralist societies have remained at the periphery of south Asian anthropological scholarship. Recent attention to these societies has resulted from a surge in studies in environmental history and the political ecology of the subcontinent (cf. Agrawal, 1999; Saberwal, 1999; Singh, 1998; Bhattacharya, 1995). Outside the rubric of environmental histories, ethnographies such as of the Bakkerwal by Rao (1998) and of the Raika by Shrivastava (1997) have examined the child-rearing practices and renunciatory religious practices respectively, but have not taken into account the bearing of pastoralist livelihoods of Bakkerwals and the Raikas on these practices adequately in their analyses. Chapter Two of the thesis examines the centrality of pastoralism in Gaddi life, and demonstrates how this centrality is maintained through a rhetoric of authenticity in the light of shifting affinities.

There is a long tradition in anthropological literature of viewing pastoralist societies as representative of egalitarianism (cf. Barth 1959; Salzman 1992; Khazanov 1984; Johnson 1969; Galaty and Salzman 1981, etc.). I follow Asad's (1979) view that this largely sprang from conflating the economic with the political and that egalitarianism is a false trope for the study of pastoralist societies. Chapter Two highlights the internal differentiations amongst Gaddis and seeks to demonstrate the fallacy of conceptualising or assuming all pastoralist societies as egalitarian. It makes evident that there are distinct markers through which difference and hierarchy is produced and observed amongst Gaddis, wealth being not the least of them. Apart from distinctions of class, with increased Hinduisation (qua Rajputisation) difference has now also assumed the language of ritual purity. In keeping these issues at the forefront of the analysis of how Gaddis make sense of their practice of pastoralism (whether continued or abandoned), the thesis brings a necessary corrective to the prevalent assumption in scholarship that all Gaddis are pastoralists (cf. Saberwal, 1999; Philimore, 1982). There is therefore a need to look afresh at pastoralism in the changing South Asian world, as has been recently done in the case of Mongolia (Humphrey and Sneath, 1999). Chapter Two attempts to look into these issues, outside the rubric of 'ecology' and 'indigenous knowledge', and

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<sup>16</sup> van den Dungen examines the history of colonial policy in Punjab on transfer of land from agriculturist to trader castes. Rebutting the Cambridge school and Guha's and Stokes' thesis that the root of colonial policy lay in European ideas, he avers that the local social influences had a more determining effect on the civil servants.

specifically in the contradictory context where on the one hand pastoralism as a profession is becoming increasingly less popular for most, yet remains a thriving profession for a handful.

The most influential of the ethnographies of the region remains Parry's seminal monograph on the Rajputs of Kangra (Parry 1979). Parry studied patterns of alliance that are constitutive of Rajput kinship and ultimately of the ideology of ritual hierarchy. Phillimore (1982) combined insights from Parry (1979) to study alliance amongst Gaddi pastoralists in the Kangra valley to conclude that isogamy and not hypergamy was the adopted rule of marriage amongst them. He attributes this to the withering of internal caste differentiation (Phillimore, 1982: 318). Phillimore locates the Gaddis as lesser Rajputs of Kangra (Phillimore, 1982: 33), or as a group who have "failed to integrate with the wider Rajput network" (Phillimore, 1982: 408). While the focus of Phillimore's thesis is an ethnographic study of the marriage and kinship systems of the Gaddis in relation to the caste system and its ideology of hierarchy, this thesis is concerned with the manner in which ideologies of intimacy, conjugality and everyday public comportment have been impinged upon by discourses of the nation and governmental forays. This thesis then is not a study of alliance patterns but of conjugal relations, not about kinship structures, but of changing ideas of relational proximity, in as much as they have been ordered and reordered by state processes of legislation and juridical authorisation.

### **PART III : Putting Meghla on the Map (Methodology)**

This thesis is based on fieldwork conducted between April 1999 and August 2000 in a village I have called Meghla located on the southern face of the Dhauladhars, five kilometres north of the teshsil of Palampur in the Kangra district of Himachal Pradesh in north India. The choice of the particular village depended on the concentration of Gaddi population and its proximity to Palampur township, where the subdivisional court was located. While Palampur is located in the Palam valley, Meghla was spread across the foothills. Meghla comprised five different hamlets which were located on varying heights of the mountains. The total number of

households in Meghla was 582, of which 382 were Gaddi households.<sup>17</sup> The second and third most predominant group were Rajputs and Soods, 57 and 44 households respectively. The total population of the village was approximately 3000. Almost all Gaddi households were nuclear, in that they comprised a couple and their children, and the average household size was 5 members.<sup>18</sup> I did an initial survey of the 382 Gaddi households. Half of the Gaddi households in the village were engaged in pastoralism in some form or another. I used the Gram Panchayat Household Register to initially identify Gaddi households in Meghla. The Gram Panchayat enumerated households in terms of size, caste, and occupation. My survey was primarily aimed at getting a more detailed picture of household composition, and occupational affiliation so as to enable an understanding of the difference between herding and non-herding Gaddi families. The survey therefore included composition of the household and age sets in addition to occupation and sub-caste groups. These Gaddi households were not equally spread between the five hamlets. They were most concentrated in the highest hamlet (*tika*) (67 of 70 households), and the smallest number in the lowest hamlet, which was the closest to the main road connecting the village to Palampur town, where total Gaddi households were 28 out of a total of 164.

Researching the nature of domesticity required a comprehensive understanding of relatedness. I collected over 35 genealogies and conducted in-depth interviews. In addition, I also regularly visited another village called Kandi that lay across the gorge from Meghla. This too was a predominantly Gaddi village, though my interaction here was restricted to families related to those in Meghla. As will be evident from the following chapters, this thesis is based on ethnographic data collected through detailed interviews with a cross-section of Gaddis living in the village. These included herders and non-herders, old men and young men, married and unmarried women, young and old women, working and unemployed men, herders and their assistants. However, the most difficult group to get hold of was the herders, as they were away from the village for a large part of the year. Interviews with them and their assistants could only be carried out during the two short periods of the year of two weeks each in autumn and spring when they were present in the village.

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<sup>17</sup> Of these 382 Gaddi households, 40 were entered separately as Sipi households. Chapter Two clarifies these distinctions.

<sup>18</sup> The definition of households as nuclear is sometimes complicated by the fact that other pastoralist members of the household are absent for large parts of the year. In some cases it might be a matter of interpretation as to

I also attended political meetings held by rival Gaddi associations regularly. The first association called the Kangra Gaddi Union was an established association and had long been associated with lobbying with the provincial government on various issues related to Gaddis and have representatives on the Himachal Tribal Advisory Council, a state run welfare body. The Kangra Gaddi Union had several members in Meghla and an office in Palampur town, where meetings were convened on a regular basis. During my fieldwork, I was apprised of the emergence of a rival association, which did not have a formal name, but was referred to as the Navee Mahapanchayat (lit. New Grand Council). Meetings of this faction were mostly a highly secretive affair initially, as they were aimed at poaching members away from the old Union. The Union was loosely affiliated to the Congress Party, and the new association was rumoured to be sponsored by the Bharatiya Janata Party (BJP). The meetings of the new association were almost always held at night, which made it difficult for women to participate in them. The Kangra Gaddi Union on the other hand, being a seasoned political outfit, held small to medium size rallies, where representatives gave speeches on the issues of economy and politics that impinged on their pastoralist livelihoods. The Navee Mahapanchayat on the other hand discussed in addition to these, organisational issues, as well as social issues facing the community (i.e. “increased inter-caste marriages”, “education of women”, etc.).

In addition to participating in the daily life of the village, I regularly attended the village *panchayat* sessions. These were convened twice a month and they dealt with a range of administrative functions. Apart from the office bearers (the head, the deputy head, the secretary) there were twelve ‘ward’ members of which 9 were Gaddis. There were two women members, one representing the state-run *Mahila Mandal*,<sup>19</sup> and the other the representative from the ‘reserved’ women’s ward.<sup>20</sup> I had hoped to see alternate dispute resolution at these sessions, or indeed at any other time (as the panchayat can be convened to handle a dispute at any moment seen as appropriate by the *pradhan*, especially in the case of an emergency). As Chapter Three discusses, there was not a single instance during my fieldwork when the *panchayat* heard a dispute.

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whether a nuclear household is in fact nuclear in the strict sense or merely a part household with significant members almost permanently absent.

<sup>19</sup> Lit. ‘circle of women’. This was an elected body that represented women-related developmental issues at the district level councils, i.e. in the *zila parishads*.

<sup>20</sup> In the Panchayat elections that took place in November 2000 the Gaddi *pradhan* (head) was replaced by a Rajput woman. This is how the elections were perceived and recounted, i.e. in terms of caste affiliations and not in terms of party politics. However, Gaddi representatives in the village have traditionally been affiliated to the Congress, whereas in 2000 the BJP candidates won the posts of the *pradhan* and the *up-pradhan* (deputy).

A significant part of my ethnographic fieldwork was conducted at the Subdivisional Magistrates's court at Palampur. This is an entry level court of the Indian state judicial system. This subdivisional court was established in 1991. In 2000, the Palampur Bar had 80 registered members, of which only two were women, and of whom only one practised on a regular basis at Palampur. There were two courts in the complex and I mainly attended the one presided over by the Sub-Judge (Class I) because cases under Section 125 of the Criminal Procedure Code (CrPC), those relating to maintenance claims in marriage disputes, fell outside the jurisdiction of the other (lower) court. In addition to observing court proceedings, I also conducted in-depth interviews with the Judge, the Assistant District Attorney, and other functionaries in the court. The court employed 26 functionaries, excluding the Judges and the Assistant District Attorneys. Besides conducting in-depth interviews with a range of functionaries (stenos, copyists, summons clerks, superintendent, reader, etc.). I interviewed litigants, witnesses and others attending the court. Outside of court proceedings, I mainly followed cases related to marital disputes. This entailed interviews with litigants and their lawyers and witnesses. As much as possible I interviewed both disputing parties involved in a case. I followed every single case under Section 125 CrPC registered and heard at the Palampur sub divisional court between April 1999 and July 2000. In the course of these fifteen months, there were nearly a dozen cases of this kind that I was able to follow through the entire period. In addition to interviews and observation of court proceedings I also read case files of recently adjudicated cases filed at the Palampur courts under the Hindu Marriage Act kept in the Subdivisional Record Room.

In the last three months of my fieldwork I also attended cases at the Kangra District Courts at Dharamshala, and especially those that were being fought by litigants simultaneously at Palampur and Dharamshala (See Chapter Three for details). A vital part of the thesis is based on research conducted in the Kangra District Record Room at Dharamshala where I was able to study judicial case material dating to back 1904 (See Appendix II). From 1904 to 1991, 807 civil cases had been filed by the inhabitants of Meghla. Of these only 108 have been 'kept' or preserved, and most of them belong to the period after 1956. These surviving case files are 'live' records, in that they are/can be submitted in court as proof of point of law or other legal claims by litigants through their lawyers. Nevertheless, the Record Room maintains a detailed register of all cases ever filed in every village of each of the four tehsils in the district. Each civil case file contained a copy of the charges framed in the case, a record of the court

proceedings, copies of summons sent, witness depositions, other evidence, and the judgement. In the event that the case had gone for appeal, the case file included a copy of the appeal case as well. Urdu and English were the languages of the court in cases filed in the first half of the twentieth century, after which Hindi came to substitute for Urdu. Usually judgements were and are written in English. Most depositions on the other hand were/are in Urdu/Hindi. I taught myself to read Urdu so as to be able read these and other documents.

The primary focus of this thesis is understanding the shifts in the nature of relatedness within the conjugal unit and the household. I take the cue from Cohn (1987) when he says, “[m]any anthropologists who have turned to history have seen it as a means of escaping the assumptions of an unchanging, timeless, native culture, and have thereby uncovered events which led to the reformulation of structures” (Cohn, 1987: 73). The relationship between history and anthropology is a complementary one (cf. Cohn, 1987; Comaroff and Comaroff, 1992; Gow, 2001; S. Bayly, 1999). This impetus to historicise comes mainly from ethnographic research (Gow, 2001: 20), because it is people themselves who narrated their experiences in terms of change. In addition to documenting narratives of remembered pasts from different age groups, I carried out detailed archival research that entailed studying official documents and correspondence kept at the National Archives of India, New Delhi, the Himachal State Archives at Shimla, Nehru Memorial Museum and Library, as well as the Archives of the Royal Anthropological Institute, London. The records were chosen with a view to study and gauge public and official debates on the interventions made by the state on issues of conjugality, sexuality and kinship relations. These included official correspondence, proceedings of the government and pamphlets produced in the wake of the Hindu Code Bill in the late 1940’s to early 1950’s. The Royal Anthropological Institute Archives provided original material relating to the mutual involvement of anthropology in matters of governance in the colonies. Here I read proceedings and other correspondence particularly in relation to India and to the issue of customary law.

## **Thesis Plan**

Chapter Two examines Gaddi concepts of identity and self-representation. In this chapter the main concern is to explore the place of pastoralism and how their relationship to a traditional occupation is configured in relation to changes that are taking place at the national or indeed the global level. It further investigates the role of state categories in the making of

understandings of Gaddiness and their relationship with other communities. The chapter is therefore about ideas of citizenship that extend beyond spectacular events like elections and political participation but are rather more mundane

Chapters Three and Four examine the legal state. These two chapters are concerned with the working of different orders of legality in contemporary and colonial north India. Chapter Three investigates the working of the local court and the village panchayat, and explains the preferred status of one over the other. In this chapter the focus is to understand how and how often a public arena is used to resolve domestic disputes. Chapter Four details the making of the separation between domestic and public in north India through a codification of customary law.

Chapters Five and Six analyse the impact of these different orders of legality on the domestic arrangements of Kangra Gaddis. Chapter Five adumbrates the changes in the constitution of the household in relation to governmental interventions. Chapter Six analyses the shifts effected by successive legal codification of marriage on practices and expectations of conjugality amongst Gaddis.

## Chapter II

### BORN WITH MOVING FEET: PASTORALISM AS CITIZEN'S LABOUR

*"Chhoti sarkar vadda dam banaya  
pehlan tha paharh, hun medaan banaya"*<sup>1</sup>

Pastoralist societies in India have remained at the periphery of scholarly inquiry for various reasons, not least because of the preoccupation with solving the Riddle of the Sphinx called Caste. The marginality of pastoralism as an area of academic interest in South Asian studies has also stemmed from the fact that the peasant and the dalit have remained as the representative subalterns of the subcontinent. The main concern of this chapter is to explore the place of pastoralism in Gaddi everyday life. The aim is to understand the centrality of their livelihood in shaping their ideas of themselves and their relationship to others. In the course of this analysis, I endeavour to show that their relations are not egalitarian, as has sometimes been claimed for pastoralists, but are organised increasingly in the language of inequality and hierarchy.<sup>2</sup>

Gaddi ideas of themselves and their relationships to others are critically mediated by what Akhil Gupta has termed "discourses of the nation" and "discourses of development" (Gupta, 1999: 6, 11, 41). However, in contrast to Gupta's (1999) analysis of agricultural populations, my focus is not on the nature of transformations in Gaddi political economy. Rather, I examine the nature of transformations in the

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<sup>1</sup> "The government is small, it makes big dams. Where there were mountains, now there are plains." Popular contemporary Gaddi song.

<sup>2</sup> Pastoralism as an analytical category in anthropology has traditionally been equated with egalitarian societies. This is largely because pastoralism is a dominant profession in either vast stretches of the African continent or the Central and West Asia. As a result, pastoralist societies were seen as versions of segmentary lineages typical of acephalous societies as were seen to exist in these regions. However, Talal Asad (1979) questioned whether nomadic-pastoralist societies are in any way more egalitarian and homogenous than sedentary societies as portrayed in anthropological literature. According to Asad, and also Tapper (1979), this misjudgement has arisen because of a conflating of the political and the economic. The subsistence economy of these societies and their political stability are cast in terms of a pre-modern idiom and hence seen necessarily as signifying equality, or egalitarianism. While Asad had in mind Barth's studies of Swat Pathans in Baluchistan in particular, the same can be said of Salzman's work on the Baluchis of Pakistan, to name two well-known ethnographies of pastoralist societies of the region. It is not surprising therefore that an early ethnographic writings about Gaddis, like the work of William Newell, force an Africanist analysis, an influence of his training in Oxford under Evans-Pritchard evident in his opening paragraph, "I wish to describe [the unilineal descent system] arrangement ... not because it is unique but because *although it is common in Africa, it has never been described in Asia*" (Newell, 1962:13. Emphasis added).



ideas of Gaddi identity that arise from and are bound up with their relation to pastoralism, and with their relationship to others. These latter relationships are themselves changing in response to transformations in the political economy at the national, and indeed, the global level. My objective is to understand why pastoralism is thought to be a form of authentic labour that defines the Gaddi sense of identity, and yet at the same time is recognised as incompatible with the developmental agenda of the nation-state. In doing so, I highlight the varied ways in which the state exists in the everyday world of its citizens, but also importantly, how the citizenry makes selective use of categories embedded in these national discourses to influence the state agenda from time to time in order to increase its own benefit opportunities.

This chapter will also show that the Gaddis are an internally differentiated society. This internal differentiation does not stem solely from the hierarchical positions of the different status groups, but more importantly in present times, from the lack of access to pastoralism as a mode of production and a way of life. This chapter is thus an analysis of what Gaddis view as authentic labour, and of how what is defined as authentic labour shifts with changes in livelihood strategies and benefit opportunities.

### **Born With Moving Feet: Living By Static Categories**

Kuldeep Singh looked at me quizzically. He ran a small tea stall in the *panchayat* complex and I was there to attend the fortnightly *panchayat* meeting. It seemed as if what I had just said was either out of place, or smacked of total ignorance. In our conversation comprising the usual course of questions and answers that characterised early fieldwork days, I had casually asked whether he found that it was unusual for a Gaddi to be running a tea-stall. In his reply that was accompanied by the aforementioned quizzical look, he in turn asked me whether or why *I* found it odd. “*Didi*, go and attend the session and after the *korum*<sup>3</sup> is over, I will explain to you why a *ghomtu*<sup>4</sup> people today run tea-stalls.” he said, in a bit theatrically. I could not wait to hear a story about Gaddi pastoralism that was not set in perfect tense. Or was it?

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<sup>3</sup> Local parlance for the session of the *panchayat*.

<sup>4</sup> Gaddi for peripatetic. From the Hindustani verb *ghoomna* or to wander, roam. To connote mobile, nomad people.

By the time I emerged from the *panchayat* session, there was a small group of men huddled in conversation at Kuldeep Singh's tea-stall. Some of them had stopped by on their way back from work while others had joined in after winding up their business at the *panchayat korum*.<sup>5</sup> It was a late summer afternoon and the ubiquitous activity at tea-stalls across the subcontinent, in its present incarnation in a herder village on the southern slopes of the Dhauladhars, was beginning to take the shape of a mild argument. I was appraised without delay that they had been debating over the latest steps taken by the government in the region. As usual, there was speculation over whether the provincial government would grant the status of a Scheduled Tribe (ST) to Gaddis living in Kangra district in the imminent future, especially now that their local MP had become a cabinet minister in the union government and the provincial *panchayat* elections were but a few months away.<sup>6</sup> Ringu Ram began detailing the situation didactically, largely for my benefit. Outlining a rough-and-ready history of the post-Independence Kangra, he insisted to his mates that it was virtually impossible for the government to grant them (ST) status because it would necessitate at least one additional constituency in the provincial legislature being declared as 'Reserved,' a condition neither the ruling political party nor indeed the opposition parties would be willing to concede.<sup>7</sup> Sensing that not all his customers belonged to similar political persuasions or indeed were all Gaddis, Kuldeep Singh intervened so as to avoid a party political argument. He deflected the conversation by giving the assembled tea-sippers the less controversial task of educating the newly-arrived anthropologist about 'the ways of the local people'.

"We are *ghomtus*", said Milap, "a people born with moving feet". He was referring to the inseparability in popular perception of Gaddis and their 'traditional occupation'. In the Gaddi mind, to be Gaddi is to be a herder. To be Gaddi is also to be on the

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<sup>5</sup> The bus that connected Meghla to Palampur and beyond, stopped at the lower edge of the village. While some people walked all the way from town (a distance of 5 km), others walked from the bus-stop. Men usually stopped on their way at a favourite tea-stall to catch their breath and the local news. Women on the other hand, rarely did so, and instead stopped by at an acquaintance's place for the same, if at all.

<sup>6</sup> The Gaddis were granted scheduled tribe status in 2002. See Chapter 7.

<sup>7</sup> As per the Indian Constitution, electoral constituencies (whether federal, state, or local) must reflect the proportion of population that is Scheduled Caste or Scheduled Tribe. Therefore, according the status of ST to the Gaddis would necessitate carving out a 'Reserved' constituency in the state (provincial) legislature.

move for most part of the year, at least for the men. This tradition has been well documented.

“The only shepherds in Kangra Proper [...] are to be found among the Gaddis...The other landholders keep no flocks, [...] for the conditions of sheep-farming suit the Gaddi only. Snow and frost in the high ranges, and heavy rain and heat in the low, make it impossible to carry on sheep-farming on a tolerably large scale with success in any one part of the country. The only way is to change ground with the season, spending the winter in the forests in the low hills, retreating the spring before the heat up the sides of snowy range (sic), and crossing and getting behind it to avoid the heavy rains in the summer” (Lyll, 1875: 83).

“Ours is a new village”, explained Surinder. “I can trace the presence of my family in Meghla to only three generations. My father’s father came here from Bharmaur, worked with his then prospective father-in-law, and eventually settled down here after he got married. My father’s mother’s brother went to Bharmaur because he married my father’s father’s sister.<sup>8</sup> Of course, there are families here that can go back further in time, but most Gaddi families have settled in Meghla on a permanent basis only about a hundred years ago at the very earliest.” This then was the story of Gaddi migration from the more severe northern face of the Dhauladhars to the sunnier, warmer, more moderate southern face, and importantly to avail of better pasturage for their herds and new agricultural holdings for themselves.

Prior to this permanence of dwelling, the southern slopes were used as winter homes by Bharmauri Gaddis.<sup>9</sup> Early official documentation of this passage of the Gaddis from Bharmaur to Kangra, whether seasonal or permanent, spoke in the clinical baritone of officialese, According to Barnes,

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<sup>8</sup> *Batta-Satta*, or sometimes referred to as *atta-satta*, was a common system of isogamous alliances amongst the Gaddis, where one set of opposite sex siblings were exchanged in marriage. This is however on the decline now. In Meghla, no such alliance was arranged amongst the Gaddis in the period 1995- 2000, even though it was seen as an ideal arrangement. Most people however referred to its ubiquitous presence in the past. See Chapter Six of this thesis for a more detailed discussion.

<sup>9</sup> Bharmaur is the mythical homeland of the Gaddis, the centre of the Gadderan belt in the middle Himalayas, and one which is dotted with shrines sacred in their cosmology. See Kaushal (2001).

“The Gudis are the most remarkable race in the hills. [...]They are a semi-pastoral, semi-agricultural race. The greater part of their wealth consists of flocks of sheep and goats, which they feed half the year (the winter months) in the valleys of Kangra, and for the other half drive across the Range to the territories of Chamba...” (Barnes, 1855: 42)

Popular memory however, recorded things slightly differently.

“ My great grandfather Gantha, was one of three brothers. Hatthu was a trader, Bhandu tilled land, and my great grandfather was a herder. The one who tilled land could not come with my ancestor to settle in Kangra as he was incorporated in *mundai* (bridservice) in Bharmaur. Gantha decided to come across in search of land and labour as Hatthu and he decided to work towards the release of their brother.... Gantha’s sole surviving son was my father’s father... I do not know what happened to Hatthu. My father used to visit his kin in Bharmaur when he was alive, but he died when I was only sixteen, and since by then we had enough land and other responsibilities in Kangra, so we stopped going to Bharmaur in the summer on a regular basis... No, I do not know whether or not Bhandu was eventually released from his *mundai*...”

This was Rattan Chand’s account of the migration of his *buzurg*, or ancestors. Similarly, if Surinder’s *buzurg* had adopted Kangra as their new home as a consequence of the conditions of bride-service, then Ringu’s story echoed familiar reasons for his family’s migration to the southern face of the mountains.

“Earlier, we Gaddis had to pay taxes on both sides. To the Raja of Chamba, and to the Angrej sarkar (or, British government). The *Shajra-i-nasl* (or, official genealogy) that my great-grandfather (FFF) brought with him from Chamba, tells you that he had two other brothers who stayed back in Bharmaur.<sup>10</sup> Their descendants must have inherited all the land in Bharmaur. My great-grandfather got land here from the angrej...In any case, what will

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<sup>10</sup> *Shajra-i-nasl* made in the *waziriat* of Chamba were essential evidence to prove that one was Gaddi, and therefore entitled to claim ‘customary rights’ in pasturage in Kangra and other British-governed forest land.

one do with that land which lies waste for half of the year...I have rarely gone to Bharmaur myself...When I was a child, my family used to still go there for weddings and other occasions, but I have not been able to keep active contact...Moreover, Bharmaur is still quite *backward*, and I don't think we Kangra Gaddis can survive the hardship of Bharmauri life any more..."

Kuldeep Singh's wife came from Bharmaur and, for this reason, he was perhaps one of the few in Meghla who had active links with Bharmaur. He told me that his father's father came from Bharmaur, having left behind a wife and two children, and got married to his grand-mother here in Meghla. His father occasionally went to Bharmaur to till the land in summer, but eventually gave up his claims on that land with time. Now, Kuldeep goes to Bharmaur at least once a year. But the status of the Gaddi son-in-law has changed tremendously during this time and Bharmaur is no longer a place where prospective sons-in-law came from, but is now only remembered as their ancestral and mythical homeland.

Thus, narratives of mobility and migration are one of the important ways of constituting Gaddiness in Meghla. These narratives at once provide the grid that anchors both their internal world-view, i.e. the manner in which Gaddis relate to internal differentiation, and their relationship to a world that is constituted as external. These narratives, while transmitting an ideal past, remain a powerful way of contesting the present. By the end of my fieldwork, substituting the names of Ghantha, Hatthu, Bhandu and Rattan Chand, I could virtually predict the narratives of different families' histories of migration. The theme of the three brothers, their specified occupations, and the recalling of the time of bride-service showed up with almost uninterrupted regularity.

The three brothers in the abstracted story signify the choices of professions available to the Gaddis, and in some ways affirm pastoralism as the only profession that allows the Gaddi to flourish in Kangra. Thus, agriculture is represented as a profession that binds a Gaddi down because if the father-in-law was a herder and a landholder, the prospective groom was required to perform bride-service in the form of agricultural labour. Trading is seen as dangerous because it leads to a 'disappearance' (i.e. the brother no one hears of, or loses track of). Pastoralism, on the other hand, is valorised

as the only profession that allows prosperity and opens up new opportunities. The abandonment of the traditional homeland is seen as being compensated for by the availability of new land that can be tilled all year round, and by further benefits like freedom from the burden of dual taxation.<sup>11</sup>

Narratives of mobility and migration were one among a myriad of ways the authenticity of pastoralist livelihood was constituted among the Gaddis in Meghla. Ritual iconography was another way of reminding people of the centrality of this livelihood. Ritual paintings usually decorated the walls of the front room of Gaddi homes. When I first saw these drawings, they seemed like abstract line drawings and stylistically resembled early cave paintings, if anything. It was only later that I learnt that typically they were a depiction of a small herd and three human figures, something that was by no means evident to the untrained eye. In some ways this was to reiterate that while Gaddis may have moved away from their homeland, they had not abandoned the profession of their ancestors. Movement is not only related to historical migration and relocation in Gaddi life. Their pastoralist livelihood, even if not pursued by all today, remains a key organising principle in their cosmology.

Those Gaddis who are today engaged in other occupations keep their connections with pastoralism alive in everyday life by associating with the hardship of the pastoralist existence experienced by their kin, their neighbours, and the community in general. Conversations about wool prices, recent disease outbreaks in their animals, and of course the constitutional status of the Kangra Gaddis are often ways of asserting this association. All Gaddi songs are woven around the themes of herding, migration, and/or separation. Lyrics dwelling on Gaddi attire, customs and mannerism are crucial in sustaining images of self-representation. Ritual practices like birth, marriage and death ceremonies, iconography, commensal taboos, etc. are used to mark boundaries with neighbouring communities, some of whom may practice herding on their own.<sup>12</sup> Today, adherence to the ancestral profession is seen to mark a

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<sup>11</sup> Under British rule, Gaddis with homes both in Kangra and Chamba were subject to a double tax levy for both households and therefore suffered a double tax burden, whereas those Gaddis who resided permanently in Kangra only paid a single tax levy.

<sup>12</sup> Though in Meghla all herders were Gaddi, Saberwal (1999) brings to attention the generic use of the term Gaddi by the state to denote all herding families. In Bara Bangahal, a region twenty kilometres east of Meghla, Kanet families were documented as Gaddis on account of their herding profession. I asked various Gaddi families in Meghla whether they would consider a marriage alliance with those

‘real’ or ‘pure’ Gaddi from an ‘impure’ one. In the following passages, I will explore how this idea of authentic labour is used amongst the Gaddis to mark internal differentiation. Not all Gaddis in Meghla today are pastoralists. At least half of the households today earn their livelihood from professions other than herding. In addition to the internal caste divisions based on the replication of the wider caste system, professional affiliation (or disaffiliation) to pastoralism forms at once another axis of internal division among the Gaddis.

The annual migration is a crucial constituent of the Gaddi world-view. In this migration, herders accompanied by their helpers, *puhals*, move with their flock across a vast mountainous territory, the path of which is carefully determined by exchange relations within the community and largely as a factor of state-controlled access to forestland in the province. Having spent much of the spring season in their villages in Kangra, herders begin to leave for the cold desert in the trans-Himalayan valley of Lahaul and Spiti in a bid to avoid the monsoons that usually descend on the Kangra valley by late June. By early May, most herders in Meghla set off with their animals, first towards Chamba, before crossing over to Lahaul-Spiti. Most of the rainy season is spent in these dry valleys. By the time the rains wane in the western Himalayas, herders begin to make their way back. Only this time their journey takes them from Chamba to the alpine pastures of the Kulu region. This has to be timed perfectly, i.e. after the rains but before snowfall begins, for it is in this period that there is optimum forage for the animals. In Kulu, the animals graze for a couple of days in the pastures above the tree line and later for a few weeks in the lower meadows. I was often told that the meat of the animals sold by the Gaddis is of better quality and taste than the more readily available and cheaper Rajasthani meat, largely due to the variety of forage their animals are exposed to, especially that of alpine pastures. By late October the herders start winding their way homewards. Staying briefly in their native villages in the festive season of November, they then move towards the Punjab foothills to pen their animals in the fields, providing manure for the winter crop, returning to Kangra before the rising temperatures dry up grass and shrubland in the plains. It is now early

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Kanets who were herders, they all replied in the negative, consonant with what was recorded in the *Riwaj-I-am* compiled in the late-nineteenth century (O’Brien and Morris, 1900: 5). The Kanets of Bara Bangahal who were registered as Gaddis may possibly have acquired this status through marriage alliances in order to avail themselves of ‘customary rights’ available to Gaddis for pasturage (cf. Saberwal, 1999).

spring in the hills. Their herding activities do not come to a halt once they return to their native village. During their stay in the village they continue to take their animals for grazing, only this time it is in the nearby hill-tops or other village commons. Herders also combine the domestic animals with their flock, as women who are usually responsible for this activity focus their attention on the fields, because this is also the time of harvest.

While the first two migrations (i.e. from the plains to the hills and from Bharmaur to Kangra) are of common memory to all Gaddis in Meghla, the third one (i.e. the annual one that revolves around active herding) is not available in experience to everyone. It is the access to this migration that is now being used to mark an authenticity or purity by those Gaddis who herd, in relation to those who have moved out of professional pastoralism. The English word “pure” was often prefixed by herder families in their self-description.<sup>13</sup> The significance of this perceived authenticity can be gauged from the part it plays in arranging marriage alliances. Rattan Chand, who owns one of the largest flocks in the area, explained that when he arranged the marriage of his two sons an equivalence of wealth was the first criterion for him. According to him, it was obvious that amongst Gaddis this equivalence was more likely to be found in herder families than others. Education and employment of the prospective groom mattered too, but in his opinion these were secondary considerations, and were more as if they were a compensation for the lack of a large flock.

Non-herding families were cognisant of this marker of purity and in some ways agreed with it. Jalandhari was in her mid-thirties and came from a family of herders in a nearby village. Her husband Milap however worked as a carpenter on daily wage. In the partition of filial property, Milap inherited the larger part of land, whereas his younger brother Om got the animals. The house was divided between the two brothers, as were the trees on the land. Jalandhari’s marriage was arranged when Milap’s father was still alive. According to her, had her natal family realised the way ancestral property was going to be divided between Milap and his brother, it was quite likely that they would not have been married to each other, because “what other way

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<sup>13</sup> “*Flock-waleh* Gaddi” and “Pure Gaddi” were used interchangeably by everyone to designate pastoralist Gaddis. Some Gaddis associated this ‘purity’ with the fact that pastoralist migration took the herders to all the holy shrines significant for Gaddis, especially those in the remote parts of Chamba, eg. Mani Mahesh, the holiest of the Gaddi shrines.



does a Gaddi make and mark wealth except by his animals!”. Her observation can be affirmed by a general survey of the patterns of alliance, recent as well as old (see chapter six). It reveals a familiar story: herder families make alliances with other herder families. O’Brien and Morris had made a similar observation over a hundred years ago with regard to marriage alliances amongst the Gaddis:

“39. No prohibition; as regards locality, there is no prohibition if hill Gaddis are concerned, but otherwise there is; for instance Dharamsala Gaddis will not marry with Gaddis from Hoshiarpur. None on religious differences. Difference in *occupation* is a bar to marriage” (O’Brien and Morris, 1900: 15, emphasis added).

An equivalence of class, as Rattan Chand had explained, is today increasingly being cast in a rhetoric of authenticity, that is seen as emanating from an attachment to the right form of labour. There are variable degrees to which this form of right labour is available or even recognised in practice. As will be shown, there is a whole spectrum of access to pastoralism, one which is calibrated on the basis of ownership of flock and herd size. When mapped on to the internal caste-like divisions amongst Gaddis, it becomes apparent that this rhetoric of authentic labour is in fact a political strategy on the part of the Gaddi elite to consolidate its own gains.

The other side of this signified authenticity of labour is the decreasing attractiveness of herding as a livelihood choice. While there are equal number of herding and non-herding Gaddi households in Meghla, it is only a tiny minority that owns a sizeable flock. The majority of herders own anywhere between fifty and a hundred animals in a variable mix of sheep and goats. A few own up to two hundred animals, and only a handful own upwards of that. They assume the status of Big Men by virtue of the size of their herd, and may either hold formal office. They become influential political leaders within the Gaddi community or in the village more generally. For example, Rattan Chand is the village *lambardar*, a hereditary title of revenue functionary of colonial vintage. The younger generation belonging to big herding families do not consider pastoralism as a given livelihood choice. This is because access to education has thrown open other professional options. While herders who are in their sixties and seventies today may have first accompanied a trail in early adolescence, their sons or

grandsons start off much later, if at all. This shift has also been informed by the fact that three generations ago, people married at a much earlier age, and initiation into full-time herding was also an integral part of the bride-service a man provided to his father-in-law. If there was no agricultural labour required, a prospective groom would be expected to become his father-in-law's *puhal* (herding assistant).

Apart from the access to formal education, the increasing availability of contract labour in recent years is another factor that has allowed the younger generation to delay their initiation into herding. Contract labour is hired on a more routine basis than in previous times, and is sometimes seen as a preferable option. If the smaller herder may have served as a *puhal* (assistant) to a bigger herder in the past in order to gain a livelihood, nowadays casual and migrant labour, sometimes from as far away as Nepal and Bihar, offer the same service. Nevertheless, it usually becomes imperative for at least one male member of the younger generation to eventually adopt herding sooner or later, if only to keep the family enterprise from liquidation. Rajiv Kapur is the younger brother of the late Triloki Nath Kapur, one of the more prominent Gaddi leaders of recent times. The Kapur family is politically influential and an affluent Gaddi family in the Kangra region. While Triloki was alive, Rajiv, then in his early twenties, used to look after their thousand plus herd. "I never once did the entire six month cycle uninterrupted, but I made sure that I accompanied our *puhals* for a few weeks and then took a break to go home. My elder brother joined us for short periods at least two-three times a year, between his various political commitments. It was important for the *puhals* to know that we brothers could turn up any time." Since Triloki's death four years ago, Rajiv has shifted his concerns and now concentrates on capitalising on the political legacy of his late brother. In the last two years he has joined the family herd only at the critical phases of the grazing cycle. His presence is required for each of the major transactions that take place along the grazing route, i.e. wool shearing, slaughtering, and penning. Rajiv moves between his pastoralist obligations and his non-pastoralist commitments (politics, agriculture, a minor timber business). Despite the fact that he spends more time away from the herd than with it, he prefers to consider himself primarily as a herder, perhaps for reasons of political exigency, even though he increasingly uses his jeep to travel to the herd!

“I don’t think he (Rajiv) is a real herder. He is just a businessman, whose business deals with animals”, said Mahender, Rattan Chand’s younger brother’s son, and the unwitting nominee from his generation to take over the mantle of herding in his family. He is in his early twenties, and so far not married. “My father’s brother’s sons go to college and are not interested in this tough life. It reminds them of our backwardness. As a full-time herder, you need to do things in a particular way, be it the clothes you wear, the food you eat for most part of the year, and also the company you keep. The longer you put off your first season of herding, the more difficult it is for you to take to it, because your body and mind have become accustomed to a different rhythm as well as needs.” His criticism of Rajiv may arise from a history of rivalry between the two families’, nevertheless, once again it is spoken in the language of authenticity. For to be a Gaddi is to be a herder; to be a herder is to accompany the flock *on foot* twelve months of the year.

The rhetoric of the imminent threat of disappearance of pastoralism in the western Himalayan region (if not the entire sub-continent) may on the face of it sound plausible. Statistics too apparently corroborate the claim of this rhetoric. This process of contraction in pastoralism as a way of life is aided by a long-term governmental view on the practice of pastoralism as being detrimental to the environment which has consistently discouraged the expansion of pastoralism in the region.<sup>14</sup> This rhetoric is misleading in many ways, not least because the returns from herding continue to be attractive, especially to the big herder. Were there much truth in the decreasing returns from pastoralism over the years, the bigger herders would have been the first to disband their flock, as it is they who would have incurred the heaviest losses. The reality is that over the years, the number of herders may have decreased but individual flock size has increased.<sup>15</sup> In my interaction with a wide cross-section of pastoralist families in Meghla, it was invariably the smaller herder who spoke of the non-viability of pastoralism in the present day. Whenever a big herder complained about the hardships of his livelihood, it was more by way of talking about the

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<sup>14</sup> Saberwal (1999) has demonstrated that the alarmist discourse on the impact of grazing on the ecology of the Western Himalayas was completely erroneous, and that species diversity is only conserved with the passage of sheep and goats through the various tracts of the mountain ranges.

<sup>15</sup> This is also in contradistinction to what Barth (1964) observed among the Basseri of Iran. He asserted that “the rate of income decrease[d] with increased capital” (Barth 1964: 71, 75-77). His analysis showed that a flock size of 400 or upwards became unfeasible and had to be divided or then necessitated the hiring of a shepherd, leading to lesser control or supervision of the flock.

decrease in state support that came in the form of subsidies. Thus, ‘authentic’ pastoralists understood in indigenous terms are by no means a homogeneous group. There are significant differences in attitudes between big herders and smaller-scale herders. While small-scale herders remain proud of their livelihood – not least because of the sense of machismo associated with the hardship of migratory pastoralism – many are also sceptical as to whether future generations would continue to herd. This is in contrast to the more successful and larger scale herders who remain committed to the ongoing viability of the pastoralist way of life. While herders of all kinds consider themselves as practitioners of an authentic form of labour that defines their sense of identity, others involved with the practicalities of herding are seen quite differently. Shepherds or *puhals* (herding assistants), whose labour on the face of it is exactly the same as the herders’ are not considered ‘pure’ or ‘real’ pastoralists just because of their involvement with the pastoralist way of life. Instead, they are gauged by their socio-economic status, as we will discuss later.

In other words, the rhetoric of authentic labour is used systematically to maintain a hegemonic class position by the Gaddi elite.<sup>16</sup> Male members of large flock-owning families have an interest in pursuing pastoralism, given the wealth at stake, and within the extended household they have the privilege about making a choice. But for most other Gaddis herding has become less attractive over the years. Disassociation from the profession comes from a variety of reasons, some of which are immediately connected to the insularity of big herding. Most of the non-herder families have moved away from pastoralism less than two generations ago. It is common for all male members of the younger generation of a medium-small herder family to pursue other professions, but it is also relatively rare to come across a family that cannot trace a herder in their family three generations ago. Moreover, association or affinity with pastoralism is also maintained through affinal links. Recalled memories of earlier times reveal these links to be more than a mere associative link. Male labour being in short supply, alliance assumed the character of bride-service, and prospective sons-in-law were initially hired as shepherds,<sup>17</sup> a practice locally known as *mundai*, deriving

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<sup>16</sup> This is despite the general perception of the decreasing importance of herding in the national economy.

<sup>17</sup> Here I follow the official and local distinction made between a shepherd and a herder. The latter is one who is also owner of a flock, whereas the former is hired or employed for looking after the herd. The *panchayat* census of Meghla records them differently as *Gadariya* (lit. shepherd) and *Bhed Palak*

from *mundu*, the word for ‘boy’ in Gaddi language. However, present-day generations do not follow the practice of bride-service (see chapter Four).

Milap worked as a daily wage carpenter at the village “*ara-machine*”, or a workshop where timber is processed into planks for the purpose of commercial sale. Work was erratic, and the rainy season especially posed great hardship for him and his family that consisted of a wife and three school-going children. This was the fourth profession he had adopted in the last twenty years, having previously worked as a cook at a local hotel, a mason, and a construction-site labourer. His wife’s well to-do herder family had regularly offered Milap the opportunity to herd for them. His continual refusal came from a pride that marked this break from a bride-service society. He reasoned to me that herding had never attracted him, the hardship of that life was too much for him to endure. For one, he could not imagine not seeing his wife and children for months on end.<sup>18</sup> But even more critical than that was the fact that as a daily wage worker, he was his own man, as he put it. Even if he were to have worked for someone other than his wife’s natal family as a herder, he would have been at their service. According to him, his employer at the *ara-machine* controlled his life only for the hours that he was at work, whereas as a shepherd there would have been no distinction between work and leisure time because herding is a twenty-four hour job.

Milap’s father had worked as a career soldier in the army, and while the family did own a small flock, his father only rarely went on the migratory cycle. Milap’s reluctance towards herding may well be a learnt one as he had never been exposed to the pressure of accompanying a herd as a young man. Reacting to the relative affluence of his father’s brother’s sons, all of whom are medium-sized herders, he said, “of course, I realise that I can never build a house like the one Suraj and Rajinder (his FBS) have built. Moreover, their wives always seem happy and congenial because it seems they have so little to worry about. But when you consider that Suraj

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(lit. Sheep keeper). The former outnumber the latter in Meghla, something that was a general trend I was told, across Himachal Pradesh. Of the 382 Gaddi families in Meghla, no less than 238 were classified as Shepherds. However, if one excluded minor herders who usually combine their flock for the grazing cycle every year, the number of herders as opposed to shepherds would come down significantly.

<sup>18</sup> This common complaint would usually be followed by a counter-interrogative directed at me, ‘How and why do you do it?’

is rarely here in Meghla, (and I am sure he has women in other places), then the fact that he can often buy jewellery for Pavna (Suraj's wife) and new clothes for his children every year, I don't feel that bad. At least, I am home with my family all year round."<sup>19</sup> Such reasoning is not merely exemplary of a rise of a particular idea of domesticity and family life and expectations from it, but more importantly, it is also constituted in opposition to what is perceived as a 'previous' and a 'primitive' way of life. Ideas of 'primitive' modes of domesticity are explored in detail in chapter Six.

While education and the opportunities that are perceived to be brought about as a result of it, have obviously played a significant role in these shifts of ideals and values, that is only partially the story. There is also no doubt that the national (state, constitutional) rhetoric of rights and equality has informed the language in which the dissociation with pastoralism is couched. There is an equation made by people between education and opportunity, which when aided by the constitutional rhetoric of rights and equality, makes an ellipsis over class. That is to say, it veils over the fact that access to education has signified different things in the life of a big herder family and that of second-generation non-herder Gaddis. Rattan Chand's son for instance, can educate himself up to a higher degree and therefore potentially and practically avail himself of better job opportunities. In addition, he has an assured external income from the family's herding and other business. Someone like Milap's circumstances on the other hand, allowed him to study only up to matriculation and is compelled to seek employment soon after. The economy of daily wage labour does not allow for a switch back to pastoralism. That is to say, once a family leaves herding, it becomes very difficult for the next generation to go back to pastoralism because of the expenses involved in raising a flock from scratch.

Despite having internalised important breaks with the real and imagined past, people's connections with pastoralism have not been severed in an absolute way even for those who do not herd. Milap and Jalandhari's eldest son Kushal is twelve and goes to the village school and has a significant knowledge of the annual cycle of pastoralist migration. He said that he had picked up a lot about herding from the general

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<sup>19</sup> At this point, Jalandhari hastened to add that apart from the rumours of dalliances, Suraj also regularly beat up his wife in a drunken state, on the odd occasion he was home, and that Pavna on her part was romantically involved with her youngest *devar* (husband's younger brother), the unmarried Vinod.

conversation of the elders and also from accompanying his mother on her *bakri duty*. *Bakri duty* is the colloquial term for the rota of grazing responsibilities of domestic sheep and goats. As per this system, women of a hamlet take turns to graze the domestic animals belonging to a group of households in the village commons. This grazing cycle typically lasts the whole day. Kushal always accompanies his mother on her day of *bakri duty*, since it gives him a day off from school and as he said, 'it is a good training for future'. There was no evidence of children in the village playing herder in their games, as Rao (1998) seems to suggest for Bakkarwal children's familiarity with the ways of their elders. Therefore, stories, songs, *bakri duty* and conversations with elders were the resources by which children learnt about the various facets of herding. Herding was not particularly his preferred future, Kushal said. He wanted to become a "big man", and since the family does not own any animals, he would need to be rich to have a reasonable flock. He was certain that he did not want to become a *puhal* because being a *puhal* in today's time no longer signified apprenticeship, but instead connoted subordinate status.

Non-herder Gaddis are also not an undifferentiated group of 'impure' or less-than-real Gaddis. There are other markers that allow an accumulation of symbolic capital, which non-herder Gaddis deploy to counter this rhetoric of authenticity. A significant number of non-herding families send their sons into the Indian army. It is for the purpose of army recruitment that the sub-caste of Rajputs may have gained significance in the past, as subaltern recruitment during the colonial period was largely on the basis of caste affiliation. Servicemen are today amongst the more affluent of the Gaddis and this relative affluence allows them to assert a degree of status in the community, even though they are not involved in pastoralism as a way of life.

At the same time, not all who herd accrue authenticity. *Puhals*, who herd along with their masters, are evidence of the elitism of this discourse of authenticity. How do *puhals* conceptualise their place in the grazier's universe? Ganga Nath is a *puhal* for Ved Ram, a seasoned herder in his seventies. He manages to go back to his native Nepal once a year, which means that he accompanies Ved Ram back to Meghla at least once a year. During these domestic visits, Ganga Nath assumes the role of the handy-man, which may include varied responsibilities from agricultural labour to tailoring new winter gear. Typically, Ved Ram employs two-three *puhals* for his two

hundred animals, which he jointly herds with his younger brother Daya Ram. On the migratory trail, Ganga Nath's duties range from herding the agile goats back into group during the day,<sup>20</sup> to cooking dinner for all at night. It is also his duty to keep an eye on the animals at night, safeguarding them against theft or wandering away. Apart from this, *puhals* also carry the heavier things like tents, grain and cooking vessels of the group. For Ganga Nath, there is little historical depth to his relationship with either Ved Ram or even pastoralism. Ved Ram is his employer for the moment, the provider of his wages. His deference to Ved Ram stems solely from this fact. Ved Ram's other *puhal* Purshottam Chand, in his early twenties, has been working as a *puhal* for three years for Ved Ram on a regular basis. His father was a small herder himself, but six years ago gave up herding to concentrate on agriculture. Purshottam chose to be a *puhal* over engaging in wage labour in or around Meghla because he eventually wants to own his own flock, no matter how small to begin with, in the coming years and looks upon these years as valuable training. This training includes getting knowledge about routes, pasturage, suitable and unsuitable forage for different animals, guarding against theft or pilferage of the flock, negotiating with functionaries of the Forest Department of the government along the way, dealing with hazards brought about by disease, difficulties faced as a consequence of the growth of tourism in the region, etc. Unlike his father, Purshottam is convinced about the returns from even small herding. The relationship between Purshottam and Ved Ram is different also because Purshottam considers himself not as a wage employee but as an apprentice. On the other hand, it is precisely this contractual nature of the relationship that makes Ved Ram more at ease in dealing with Ganga Nath.

As my research was concerned with the study of their domestic relations, I did not accompany herders from Meghla on their migratory cycle. Therefore, it is only possible for me to reconstruct the relationship between a herder and his *puhal(s)* on the basis of what I observed in the village and their narration of it. There is a distinction that can be mapped around the Gaddi/non-Gaddi divide. While big herders like Rajiv Kapur and Rattan Chand, are vitally dependent on their *puhals* for carrying out mundane responsibilities, moderate sized herders like Ved Ram look upon their

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<sup>20</sup> Goats are more agile than the sheep and tend to wander away quickly from the herd. A Gaddi herd typically comprises of marginally more goats than sheep, and invariably includes a couple of sheep dogs.



Gaddi *puhals* with circumspection. This is because they are always liable to become independent herders themselves, and use their contacts and resources that they have carefully nurtured over the years.<sup>21</sup> Thus, herders often point out social distinctions in terms of internal caste differentiation, especially in relation to *puhals*. Ved Ram expressed his relationship with Purshottam in terms of the social distance that Khatri Gaddis routinely observe with Sipis, a group at the bottom of the Gaddi hierarchy. For one, Purshottam never cooked for Ved Ram and the rest on the trail. Ganga Nath on the other hand, was met with the usual secular distance an employer observes with his subordinate, i.e. without invoking his ritual status in any generalised way.

Thus, internal relations amongst the Gaddis are variegated. Far from corresponding to the received models of egalitarian pastoralist societies, they bear rather more resemblance to those of neighbouring communities.<sup>22</sup> This might not be surprising, but what is more important is that a secular, caste-like, concept of livelihood is being presented as ‘authentic’ by the elite. The effect has been to bring about a form of caste-like status distinction in practice – often expressed in ritual terms – which succeeds in part in countering the emerging image of pastoralism as a ‘non-modern’ or ‘primitive’ way of life. This is in keeping with the growing caste-like social practices amongst the Gaddis – an ambiguity that unfurls in all its contradictions when it comes to Gaddi relations with other communities. The following section examines these contradictory pulls within contemporary Gaddi society in Kangra.

## We the people

“I think the name of the Raja of Lahore was Rungjeb [for Aurungzeb], or perhaps it was Akbar...No, I think it was Rungjeb...I was told that he used to eat his meals only after he had overseen the removal of a hundred *janeo* [sacred thread] every day...I don’t know if this really happened, but my *bujurg* said that their *bujurg* fled to the hills to escape this atrocity...We

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<sup>21</sup>For example, wool traders, slaughter houses, landowners in the Punjab plains in whose fields herders pen their animals for manure in the winter season, etc.

<sup>22</sup> Parry’s monograph on the Kangra Rajputs reveals that internal divisions within the Rajputs rest on carefully observed hierarchies of ritual purity (Parry 1979). See Philimore (1982) for a description of the ‘internal caste system’ among the Gaddis.

Gaddis were mostly Khatris from Lahore, and as the saying goes, ‘*ujjadya Lahore, basaya Bharmaur*’ [‘The uprooting of Lahore led to the inhabiting of Bharmaur’]...We were not the only ones who ran to the hills. Those who call themselves Ranas today, were basically Rajputs from Rajasthan...I don’t know for sure, this is what I was told by my ancestors...This is what is written in the books too.”<sup>23</sup>

Indeed it is. But this was not all that is written. For instance, there is no memory of Gaddis being more of an occupational group rather than a caste or a tribe. Colonial ethnography and census figures record the presence of Muslim Gaddis in the plains around present day Haryana and Delhi in the late-nineteenth and early-twentieth century. These Gaddis were pastoralists too, and were recorded as a sub-category of the wider Ahir group (cf. Rose, 1919). However, the journey from Bharmaur to Kangra was not the only story of migration Gaddis recount. Ironically, when asked the more removed question of *who* the Gaddis were and where they came from, their answers became bereft of the animated tone that usually accompanied the narration of their migration to Kangra. I was told that they were devout Hindus from Lahore, who had fled to the hills a few centuries ago in the wake of the Muslim rule in the plains. This tale of little variation was usually suffixed with ‘evidence’ of their Cis-Sutlej origins. “For instance, a large number of us are ‘*khatris*’, and many Gaddi *khatris* are Kapurs, one of the three high *gotras* (clans) amongst the Lahore *khatris*! And these Bhat Gaddis, a number of them are Bhardwaj!”, citing a Punjabi Brahmin *gotra* in this instance. Why did they choose to migrate to the hills and how did they become herders, clearly not the easiest or the most obvious of choices? This is the point where the conversation tended to wander off into speculative directions. Their ancestors chose to migrate to the hills because it was the only region in the vicinity that was not under Muslim rule in the sixteenth and seventeenth centuries, it was reasoned. *Khatris* were originally a trader caste in the Majha region of Punjab, or the region across the Doab on the western side of the Sutlej river, who had gained significant ritual status by the nineteenth century as a result of increasing education and affluence.<sup>24</sup> Gaddis

<sup>23</sup> Interview with Rattan Chand.

<sup>24</sup> During the first comprehensive census that took place in 1881, *khatris* petitioned the government to correct the mistake of the earlier census which had wrongly classified them as ‘*Vaishyas*’ as a consequence of the predominance of trade pursuits amongst them. They went on to successfully claim a ‘Kshatriya’ status for themselves in the census of that and the following decades. Today, most *khatris*

on the other hand, were recorded in early colonial documents as an important constituent of the trade with the Central Asian regions, carrying out these activities on behalf of both the Chamba rulers and the colonial government. Thus, in the Gaddi mythical triumvirate, trade being the occupation of one of the three brothers, is not entirely a coincidence. If the southerly migration from Chamba reiterated the morality of right labour making authentic people, then the memory of another migration undertaken by the Gaddis further back in time reveals the relationship the people constituted with the wider world. The centrality of migration, movement and mobility in the self-perception, or even the memory of origin amongst the Gaddis is no doubt a way of valorising their pastoralist livelihoods. However, that this myth of origin is also one of migration and not of creation is a pointer to the manner in which Gaddis locate themselves in the caste-based mainstream society. In other words, this flight from Lahore to the hills is used strategically to keep themselves from being placed at a disadvantage in the caste hierarchy, a strategy that is used to date, especially in the context of negotiating with the state, as will be shown later.

In this section I look at the manner in which Gaddis in Meghla constitute their distinctiveness in relation to others. Stories, songs and other expressive traditions work towards a coherent internal set of ideas as to who the Gaddis are. They are important vectors of self-representation within the society and across generations. In this part of the chapter I focus on how these forms of self-representation are used in relationships with outsiders, be it non-Gaddi neighbours in the village, or non-Gaddi herders in the region, or indeed the state at large. I begin by examining the ways in which Gaddis interact with two groups in particular: the Bhat Brahmins and the Gujars. I have chosen to analyse these two sets of relationships in particular because the former play a central role in constituting Gaddi sociological distinctiveness, while the latter are critical to their understanding of their professional uniqueness.

Bhat, Bhat Brahmin, Bhat Gaddi are the various ways in which Gaddis refer to the group of people who have long been associated as their neighbouring community, whether in local memory or in record. Despite a shared history of multiple migrations across the same territories, Bhats are non-pastoralists. In one version of the internal

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in Punjab consider their caste as a corrupted version of the term '*kshatriya*' and therefore hold no memory of their *vaishya* status (See also Malhotra, 2002).

caste hierarchy of the Gaddis, Bhats are designated as the Brahmins amongst the Gaddis. In another variant, Bhats are those Gaddis who broke away from the pastoralist ways and adopted reading and writing (i.e. brahmanic pursuits). Bhat narratives of origin too overlap these Gaddi versions. Official records point differently to concurrence and divergence from these dominant versions. The Bhats were a scattered group of people, who often served as genealogists and bards to other caste groups in the region (Ibbetson 1914: 95). Moreover, Bhats and Gaddis trace mythical homelands to the same Bharmaur region. In some versions of the Bhat tales of origin, the name 'Bhat' comes from the Bhattiyat tehsil of Chamba district, a region contiguous with Bharmaur.

On the face of it, Gujars do not appear central to the Gaddi self-image, perhaps because they are seen as completely different. In the mountains Gujars are buffalo herders who travel from the northern parts of Kashmir and Jammu valley.<sup>25</sup> Gaddis negotiate pasturage with Gujars on a regular basis. Kangra Gaddis encounter Gujar herders first in Chamba in late summer and later in the alpine pastures of Kulu region in the autumn. Apart from the tussle over pasturage, there is a deeper reason for this marking of distance and territory. Gujar pastoralism rests on the sale of milk and milk products that are derived from their herds of buffaloes. Gujars in the hills are Muslim and eat beef. Thus, for the Hindu Gaddis, the Gujars are associated with 'polluting activities', and this extends in somewhat contradictory terms to the Gujar practice of selling their buffaloes for slaughter to leather-workers.<sup>26</sup>

This religious difference in the present day does not allow for any commonality of engagement, whether in the present or in a remembered past. Even though they herd different animals, Gujars are seen by the Gaddis as rivals in pasturage, in so far as the passage of their cattle destroys some of the foliage that is eaten by the sheep and goats. Therefore, one of the things a Gaddi herder keeps in mind on the migratory trail

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<sup>25</sup> Gujars in the plains were amongst the criminal tribes classified in the colonial regime. However official records made scrupulous distinctions between the social practices of the Gujars of the plains and those of the hills. "They are mild and inoffensive in manner, and in these hills are not distinguished by the bad pre-eminence which attaches to their race in the plains." (Barnes 1855: 43). See also Lyall (1874: 37- 40); Ibbetson, (1914); Garbett, (1938). See S. Bayly (1999: Chap 3) for a discussion of the pastoralist 'castes' of the plains in the colonial period.

<sup>26</sup> In late nineteenth century writings on historical migrations in the region, Gujars are said to have come from Gujarat region of the Punjab province. They were seen to have dispersed from that region to as varied territories as Jammu and Kashmir region to the eastern Rajasthan and western UP.

is to time his arrival in the alpine pastures in Kulu before the Gujars arrive there with their buffaloes. The two communities have often in the past negotiated with the state in solidarity with each other. Both these groups were at the receiving end of the conservation policies of the colonial state, i.e. both were constantly being told to reduce their flock size because conventional wisdom dictated that grazing was leading to environmental degradation. However both Gaddis and Gujars were also a remunerative section of the population, as they paid a sizeable revenue to the colonial government on per head of animal. While the Gaddis paid two to four annas per goat and sheep respectively, the Gujars paid as much as eight annas to one rupee per head of cattle (Lyall, 1874: 37-38). Moreover, both communities had to constantly negotiate for more access to forest areas once the colonial state had demarcated and therefore restricted access to Reserved Forests. Gaddis and Gujars, for example, had petitioned the Garbett Commission on Forests set up by the Punjab government for a review of the Forest Settlement conducted by Anderson in 1881 (Garbett, 1938: 97-99). They both had similar issues to present to the state, i.e. lessening of the tax-levy on their flock, and opening more areas for pasturage. Despite such close association of profession and resources, Gaddis constitute the Gujars in a 'back-to-back relationship', to use Sudipta Kaviraj's useful phrase for analogous situations (cf. Kaviraj, 1992). In contemporary references, Gaddis frame their relationship with Gujars in the context of their growing affiliation to mainstream Hinduism, which often translates into passive Hindutva aggression. Because of their religion and the fact that Gujars come from the Kashmir region, they are met with suspicion and are unjustifiably seen as spies or worse as agents of Pakistan's intelligence agency, the ISI.<sup>27</sup> The absence of the Gujars in everyday Gaddi conversations and discourse is further emphasised by the absence of any exchange relationships between the two groups.

By comparison, references to the Bhats colonise the everyday world of the Gaddis in both significant and mundane ways. The Bhats serve as a reference point for the Gaddis for a range of ritual and material practices of social distinction. Social practices of the Gaddis have little in common with their non-pastoralist counterparts.

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<sup>27</sup> This rhetoric reached a crescendo during the time of the Kargil incursions in the summer of 2000. Even the ordinary Kashmiri inhabitants of Palampur and surrounding areas (mainly fruit sellers), met with the same volley of accusations in a newly communalised atmosphere in the wake of the Kargil stand-off.

For example there is very little similarity in the wedding rituals of Rajput Gaddis and Kangra Rajputs, but there are only minor differences between a Bhat wedding and a Gaddi wedding. Today, their ritual and secular distinctions have become a source of political rancour. In the late eighties, in the wake of Mandal politics, the Bhats successfully lobbied to be categorised as a marginal Brahmin *caste* in Himachal Pradesh, and by virtue of that they were accorded the status of Other Backward Caste. As a “tribe”, Gaddis were not entitled to this state benefit. An erstwhile mild social rivalry has since assumed sharper political and social tenor. Many Gaddis see this particular articulation of political aspiration as a definitive severing, if not an complete denial of any common origins by the Bhats. While they may not have ever intermarried (cf. Newell, 1964), nevertheless these events have only made for worsened neighbourly relations. If the Bhats have asserted their independence from the Gaddis through a state mechanism, then Gaddis today go out of their way to explain that Bhats are ‘essentially’ Gaddis, even if of the so-called “reading-writing kind”.

This mutual disenchantment runs deeper than embittered exchanges undertaken in tea-shops. The gradual distancing from each other is also aided by the geography of habitation. About a quarter of the population in Meghla today are Bhat. There were only eight Brahmin households in Meghla during the time of my fieldwork, leaving aside the Bhat households, and no household was categorised as ‘Gaddi-Brahmin’. Most Bhat households in Meghla are clustered together in one hamlet (suitably called Bhatarka) on the highest part of the village. In neighbouring Kandi, clustered in groups of threes or fours, Bhat households are scattered across the village. In both villages however, relationships of reciprocal exchange between particular Gaddi and Bhat households continue to date. These include reciprocal gift exchange on various ritual occasions like births, wedding, death, *chaubai* (a ceremony observed every four years following the death of a person), etc. One of the more obvious ways this distancing can be discerned is the stricter observance of commensal rules between the two groups today.

At traditional feasts, or *dhams*, the order of being served indicates both relational proximity and ritual hierarchy. At Gaddi feasts, Bhats are usually meant to be served after kin and other Gaddi guests have eaten. Gaddis on the other hand, may be served

along with kin and other Bhats at Bhat *dhamas*. In practice, until recently, Bhats were served according to affective proximity rather than ritual rules. In the last ten years approximately, Gaddis in Meghla have made it a point not only to follow these rules more stringently at ritual occasions, but importantly also in mundane interaction, something which was earlier reserved for only for Sipis and Halis.<sup>28</sup> This has not gone unnoticed by Bhat households in the village. For Bhats, the OBC status has not meant an isolated position of privilege with regard to positive discrimination by the state because it has allowed for a forging of solidarity with other dalit groups in the area. For instance, like other dalit groups in the region, Bhats have adopted a local protest strategy centred around discriminatory commensal practices, and they will only participate in ceremonial feasts on a strictly reciprocal and symmetrical basis.<sup>29</sup>

Gaddis in Kangra have long lobbied for status of a ‘Scheduled Tribe’, a demand that has been at the centre of their political agenda for nearly thirty years now.<sup>30</sup> At the same time, they have increasingly displayed a heightened *caste* behaviour, i.e. an obsession with ritual purity in everyday practices.<sup>31</sup> This is further evident in the active refusal on the part of the Gaddi leadership to acquire an OBC status for the community, because it is seen to mean a disadvantaging integration into the wider caste hierarchy. The desired status of a Scheduled Tribe on the other hand is seen to preserve their perceived uniqueness, along with allowing for a continuity with their Bharmauri origins and kin. The language and the rhetoric of state processes are opportunistically deployed by its citizens, not only to negotiate with the state (something that is reflected by Gaddi and Bhat demands for positive discrimination),

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<sup>28</sup> Lower caste groups in the region.

<sup>29</sup> This ‘movement’ asserts that ‘you shall serve unto others when and what is served unto you’. Working across a cross-section of dalit castes in the Kangra valley, the movement calls for a boycott of feasts at upper-caste households. It also imposes a fine of Rs. 500 on those who acquiesce to upper-casteist practices that is to be distributed amongst fellow caste-members in the congregation present at the same feast. While I did not come across an actual imposition of fines during my fieldwork, boycotts were observed in some way or the other, especially of Rajput household feasts. Bhats did not boycott Gaddi weddings, but used an allegiance to this dalit ideology as a rhetorical device to make uncomfortable noises on these occasions.

<sup>30</sup> The Gaddis were granted scheduled tribe status in late 2002 which provides for a series of enhanced rights and privileges under the state.

<sup>31</sup> The Vedic turn in Gaddi society can also be seen from the changes in names across generations. Three-four generations ago, Gaddi names were more descriptive (i.e. someone selling corals was called ‘Mogu’, after the vernacular ‘moonga’ for coral. Ravan too was a very common name, alluding to their Shaivite traditions. However, today, there is no way of telling a Gaddi apart from the rest of the population by looking at (cf. Ibbetson, 1914) their names, as most names are common Hindu names. See James Scott et al’s discussion of the relationship between permanent family surnames and the production of legal identities under the state (Scott et al, 2002).

but also amongst themselves in their everyday life (i.e. whether one is ST or OBC). Livestock and livelihood are the cornerstones of their self-perception, but equally defining of their self-image today is their beleaguered constitutional status.

The relationship between Gaddis and Bhats is significant also because a similar or equivalent constitutional status acquired either by other *dalit* groups in the region, or even their own present or erstwhile kin in Bharmaur, does not evoke a similar emotional response.<sup>32</sup> “We don’t grudge our own brothers what they have. Our problem with Bhats has to do with their dishonesty”, said Kuldeep Singh. He was launching a new district-wide campaign to demand a ST status, as part of the promotional programme for the newly floated Kangra Gaddi Association. Characteristically, he dithered about what he considered as the main differences between OBC and ST status. There were no ‘real benefits’ of one over the other, he told me. By this he means that occasions of positive discrimination were the same in both instances. Why would you want to declare yourself as a backward caste, he wondered aloud? “The Bhats acted in haste, lobbied for whatever came their way first. No self-respecting Gaddi wants to be declared an OBC,” he asserted. His claim was however not entirely true.

Some Gaddi families in Meghla (especially some of the economically disadvantaged) in fact wished that their leaders were not fastidious about the issue, and did not see any “real” difference between the two. “If one is deriving benefit from a state welfare scheme like the IRDP,<sup>33</sup> how different is that from availing free education as an OBC or an ST,” asks Bhugga. He earned his livelihood from hiring the eight mules he owned to various construction sites around the village. Rajjo Devi, his neighbour, rebutted his claim because she thought families like hers and Bhugga’s, who were IRDP beneficiaries, were conspicuous in the village as the poorest, whereas one Bhat family was indistinguishable from the other as they all enjoyed the same status of OBC and derived equal benefits. When I put these counter-arguments to Gaddi

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<sup>32</sup> Gaddis of Chamba district are classified as Scheduled Tribe. This status was however not extended to Gaddis in Kangra, when the hill districts of Punjab were reorganised and merged with Himachal Pradesh in 1966. In a sense, Kangra Gaddis carried over the non-tribal status they had in the province in Punjab. (The provinces of Punjab and Haryana have no listed domiciled Scheduled Tribes)

<sup>33</sup> Or, Integrated Rural Development Programme, a state welfare scheme meant for those who are officially recognised as living below the poverty line. The scheme is executed through the village



leaders like Kuldeep Singh and Rajiv Kapur, they were both categorical in thinking that an OBC status would make Gaddis inferior to other local caste groups like Rajputs and Soods. Moreover, an ST status would only confirm their unity with their original homeland, the land of their ancestors, i.e. Bharmaur. Dirks has recently reiterated the well-known argument that the rise of the Right in India in recent times is an outcome of the Mandal politics in the early 1990s (Dirks, 2001: 275-296). However in the case of the tussle between Gaddis and Bhats, the contradictions are not fully resolved. On the one hand, there is an increased Hinduisation of the Gaddis, as exemplified in their relationship with the Gujars, or indeed their high-casteist posturing vis-a-vis the Bhats. On the other hand, Gaddis insist that they remain a 'tribe', in so far as state classification is concerned.

This demonstrates the way the caste/tribe dichotomy has been internalised, and at the same time, is deployed quite strategically to negotiate with state authorities for increasing benefit opportunities. There is ambiguity over the desire to acquire ST status amongst the Gaddis. For many, it is associated with a certain 'primitiveness' from the past, a lack of modernity, especially when dealing with what are seen as customary practices that stand in conflict with present dominant norms, like polygamy and polyandry, or in making a judgement on the status of their traditional occupation. However, the category 'tribe' can connote different things on different occasions, and is therefore a selectively desirable status (see above). It is desirable from one point of view precisely because it keeps them from becoming incorporated into the wider caste hierarchy in Kangra, and losing the position of relative autonomy that they enjoy by virtue of being a recognisable 'tribe' at the local level, whether or not scheduled in the Indian Constitution. The state is seen as the source of ultimate adjudication of social status, and therefore something that must be kept at the fore in all negotiations. It is also exemplary of the manner in which ideas of citizenship are elaborated in practice. It is precisely a modernist, reformist idea of the national citizen that Gaddis affirm in their dissociation from a perceived primitive past. At the same time, as citizens they invoke the paternal role that the state has adopted for itself and negotiate with it in order to improve their life-chances by reasserting their right to ST status. In some ways, this relationship to the state on an everyday level is different from the

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Panchayat, and among other things, includes a 'certificate' quite like the 'SC/ST' status, which enables availing of a monthly cash payment, etc.

kind described by Akhil Gupta (1995) in his ethnography of Alipur, in that the citizen's relationship to the state in that context is understood in terms of what Gupta, following Amartya Sen, has called 'entitlements'. This gives rise to a confrontational relation to the state when pushed to its logical extreme. What I wish to highlight here, and throughout the rest of the thesis is the other side of that relationship. The Gaddi everyday relationship to the state is certainly 'extractive', in that they have a strong sense of what can and should be derived from the state. But, their sense of identity comes less from confrontation with the state than from a process of negotiation, compromise and strategy. They see themselves as abiding by the state agenda in order to derive benefits and to influence and shape that agenda as much as is possible at the local and regional level.<sup>34</sup>

Because pastoralism as a livelihood appears to be on the margins of the national (and international) economy, it is also less attractive, even as an idea of enterprise, to the younger generation of Gaddis. This is despite the fact that the returns from it are higher than they are from wage labour or modest-scale agriculture, livelihoods that have gained ascendancy in the past couple of decades among the Gaddis. Gaddis perceive a marginalisation of pastoralism in the national economy because for one, the state has removed the subsidies it earlier provided on wool purchase prices. While cognisant of the international trade regimes that initiate such policies of the Indian state, Gaddis take it as a sign of the place of pastoralism in the hierarchy of professions, at least in the way it is practised today. Leaving aside the handful of big herder households, most Gaddis look upon other professions in their bid to counter the force of the idea of being 'backward' that they have internalised over time. During the colonial period, pastoralists in the region were amongst the revenue paying sections of the population, and as such they were eminent category of rural subjects.

This can be seen from the fact that most Gaddi-dominated villages had at least one Gaddi *lambardar*, a hereditary position of a village-level revenue official nominated by the colonial administration in the first instance. With independence, the status of Gaddis changed from revenue-paying subjects to subsidy-availing citizens. Even in

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<sup>34</sup>This is especially so in the case of their negotiations with the various agencies of the state in terms of wool prices in the present day, and historically with regard to pasturage rights, access to village commons, etc. See Garbett Commission Report (1938) for Gaddi negotiation on pasturage and share in forest and commons produce.

these changed circumstances, Gaddis perceived their professional contribution to be of some significance, because the government was willing to support them through subsidies on the purchase price of wool. However, since the mid-nineties, the removal of subsidy quickened the process of weaning away from the traditional occupation for most small to moderate scale Gaddis. Certainly, for those men who still had to make a choice about their profession, herding seemed less and less attractive, and even becoming a migrant labour force in towns and cities far and near seems a less risky option. If the better equipped end up in the army and other government jobs, then the less resourceful do varied jobs, often on daily wage.

“Why should a Gaddi’s life be a ‘backward’ life?”, asks Kuldeep Singh. Having worked for twenty years or so in the army, his present tea-stall business is only a temporary measure, he says. With his savings he plans to raise a moderate sized herd, fully aware as he is of the returns from pastoralism. However, he is also equally aware of the ‘backward’ image associated with it. “Most of the youngsters do not want to go on the trail because it is not in consonance with what they see on television or read in books. But who says that we Gaddis need to herd only in our traditional attire? Today, there is rain-proof gear available in the market. Why can’t we adopt that? And why must technology not benefit the herder? The government should give us grants to buy mobile phones so that we can be in better touch with health facilities along the route. In fact, the whole veterinary system of the state should be reorganised to include mobile units on call from the herders, so that we can minimise losses due to disease or accident. We may not be like the ranchers of New Zealand in terms of the ease with which they engage in animal husbandry. But we can at least reduce some of the hardships of our *ghomtu* lives”.

Underlying this diatribe is the shared perception, echoed in Mahender’s observation of why his college going cousin does not wish to become a herder, and reflected also in Kushal’s inability to associate the status of a “Big Man” with a pastoralist livelihood, is the idea that pastoralism is a marginal occupation. However, this is as much an articulation of the transformations in the global economy at the local level as it is the effect of a political, social and economic modernity brought about by the developmental state. If historically the community has never resisted state policies in the form of actively taking up arms or other modes of protest, but has negotiated with

the state with varying degrees of success to secure its own interests, then today too Gaddis remain largely within and in consonance with the 'discourse of the nation-state', to use Gupta's (1999) phrase. To be modern may not imply being a pastoralist. But to be a pastoralist and to be modern, will soon imply being equipped with symbols of modernity, be it a new attire or more technology. Kuldeep Singh is not alone in harbouring this utopian image of futuristic pastoralism. Meanwhile, while that remains a pipe dream, young Gaddi men learn how to drive taxis and buses in nearby towns (the more educated enrol for computer courses), while women of their households till the land in the village. As Gupta has written, "...to be a national subject in an "underdeveloped country"- for example, to be a citizen of India - is to occupy an overdetermined subject position interpellated by discourses of the nation and the discourses of development to which that nation is subjected" (Gupta, 1999: 41).

This section has dealt with the Gaddi ideas of themselves as seen in their relationship with other communities. I have used the instances of their relationship with Bhats to study the ways in which Gaddis mark their social distinction. Their relationship to Gujars highlights the fact that they see themselves as unique within the practices of pastoralism. I have then taken up their relationship to the state in order to understand the impetus of the elite's rhetoric of authentic labour as a consequence of the modern state practices and how it impinges on their self-representation.

## **Conclusion**

This chapter has focused on the different images of pastoralism in contemporary Gaddi society. On the one hand, the pastoralist way of life centrally defines their imagined and remembered past. On the other, its actual place in their lives today is more heterogeneous, as is the meaning of the shared past it represents. I show the variegated repertoire of the pastoralist past and present for contemporary Gaddis, whether or not they are active herders. If for herder families, the connections with pastoralism and a particular rendition of the past are a given, it is not the case that a move away from pastoralism has necessarily meant a loss of tradition from the point of view of the non-herders. By looking at the connections at the periphery of pastoralism, i.e. kin relations, expressive traditions like songs and stories, and the

manner in which the annual migratory cycle is mimicked in the daily grazing of domestic animals, it is possible to see some of the ways in which a 'Gaddi way of life' is kept up by those who no longer have an access to it.

The chapter has outlined the manner in which Gaddi identity is bound up with their relationship to their neighbours and is also informed by their relationship to the state and to discourses of citizenship. I have shown that the decline in pastoralism is related not only to the availability of other livelihood opportunities, but is also connected to its perceived marginality in discourses of the national economy and nation-building. It is the categories bestowed by the state that at times provide the language with which to address historical differences with other groups. For example, the post-Mandal politics of Reservation has triggered the current stand-off between Gaddis and Bhats. In the case of the Gujars, it is the Gaddis' apparent acceptance of the nation-wide campaign of the Hindu Right that allows for an unverified suspicion to fester between the two groups. More importantly, contemporary Gaddi identity is tied up with the developmental agenda of the nation-state. This is seen amongst other things in the way that the removal of the subsidies earlier enjoyed by Gaddi herders has precipitated the consolidation of anxieties about 'backwardness', marginality and the growing irrelevance of herding in the national and global economy. It also explains the Gaddis' continuing efforts to influence the state agenda not just to increase their benefit opportunities, but also to engage in the much more important and ongoing process of defining themselves as citizens.

### Chapter III

## THINGS OF THE STATE AND THE STATE OF THINGS

*“..Melancholy though it may be, the truth remains, that it is no more possible to make men wise by legislation than it is to make them moral..”*

(A. Williams, Registrar of the Chief Court, Punjab, 1890)<sup>1</sup>

The previous chapter discussed the manner in which ‘discourses of the nation’ and ‘discourses of development’ (Gupta, 1999) shape local practices and self-perception of a community. This chapter studies two local institutions as a way of locating the ways in which these discourses are articulated by the state and its citizens. The chapter sets out to highlight some of the conflicting pulls of these two discourses, or at least when seen from the perspective of institutional articulation and popular expectations.

The post colonial Indian state premised its legitimacy on political sovereignty and economic development. This legitimacy was carefully posited in opposition to the nationalist conception of the illegitimacy of colonial rule (Chatterjee, 1993: 203). Through the analysis of the working of two institutions this chapter discusses the everyday articulation of this sovereignty and the oscillation that is inherent in the relationship of the state to tradition and modernity. This chapter attempts to understand the uneasy relationship between the metaphor of the family as tradition (Saberwal, 1986) and the metaphor of development which serves as a locus for the state project of modernity (Ludden, 1992; Chatterjee, 1993; Inden, 1995), and how they often come into conflict with each other in popular perceptions and expectations.

In seeking state institutions over others, people assert their citizenship in terms of what Akhil Gupta following Amartya Sen has called ‘entitlements’ (Gupta 1995; see Chapter Two). I look at the working of a local court and village panchayat as examples of an explicit encounter with the state. I examine the manner in which the state and its citizens discursively constitute each other through a series of mechanisms, both inside and

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<sup>1</sup> Despatch from the Registrar, Chief Court, Punjab, to the Chief Secretary to the Government of Punjab, dated Lahore, July 25, 1890. NAI/ Home/ Judicial A Proceedings/ 1891/ no. 59.

outside these institutions. My objective is to uncover some of the processes and instruments by which the state makes itself visible to its citizens. I compare the court with its 'customary' counterpart, the panchayat, in order to understand the negotiation between customary and legal norms as well as to describe the triumph of bureaucracy over other styles of organisation. I also look at the role of state documentary practices in enforcing legalities in everyday life.

### **Courting Justice**

This section deals with a comparative reading of two institutions: the local court and the village panchayat. The two institutions have often been cast at the opposite ends of the continuum of juridical authority in India, by scholars as well as administrators. The panchayats, along with the courts, constitute important landmarks on the map of legal pluralism in India. My intention to study them in comparison is in order to understand the sources of their differential legitimate authority. While courts are at the very centre of the state administrative apparatus, panchayats stand in a peculiar relationship to the state. Even in post-independence India, they are perceived to be a variant on the Indological theme of the village republic. They are not part of the administrative machinery, in that they receive funding from the elected representative of the area, i.e. the Member of the Legislative Assembly (MLA), as opposed to the district magistrate.<sup>2</sup> Yet, as this chapter shows, they are indeed crucial to the day-to-day governance at the village level and provide the necessary links between the district administration and the state, especially with regard to managing the 'paper trail' of the state. The tension between the metaphors of family and of development can best be seen in the importance panchayats accord to their 'traditional' juridical role in relation to other new agendas. I describe typical diurnal rhythms of the two institutions to show their complementarity in making the state visible to its citizens in their everyday lives.

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<sup>2</sup>Since the passing of the Himachal Panchayati Raj Act, 1994, each MLA has at his disposal a variable amount between Rs. 150, 000- 200,000 per year to disburse to the panchayats in his constituency. The Panchayats have to requisition money for individual projects, for which they write to the District Commissioner, who requisitions it from the MLA. In addition to these funds, the Panchayat collects and uses a house tax (Rs. 7-10 per house), and the amount collected is matched by an equal grant from the *Zila Parishad*. The *Zila Parishad* can be independently asked for a grant, and in 1999, the Meghla Gram Panchayat received around Rs. 20,000 from the *Zila Parishad*. In any event, the critical shift that has taken place is that elected representatives of any order are independent of the administration in the disbursement of funds.

## A Day in the Life of a Local Court

It is 9:30 in the morning and people are already milling about the court house.<sup>3</sup> To most of the passers-by, the court appears like any of the other government offices in the vicinity, i.e. slightly grander than most other buildings around, and not particularly inviting in prospect.<sup>4</sup> The officious atmosphere belies the fact that this is only an entry-level court. At this hour of the morning, most functionaries have still to arrive. There is at least half an hour before the judge announces his appearance but the air is already one that is usually to be found in and around government offices in India- an unstable yet staid mix of despondency and anxiety.

The first of the minor functionaries makes his appearance. He is the peon attached to the judge's office, and his first job of the day is to put up a sheet of paper announcing the schedule of cases in each of the two courts for the day. Some of the lawyers who have arrived by now, walk lazily up to the wall on which the schedule has been pasted, while others remain busy counselling clients. Meanwhile, tea is ordered from the on-site tea stall. More and more black coats can be seen hovering around prospective clientele. In the quiet din composed of notes-exchanging and tea-sipping by litigants, their accompanists, the court functionaries and the lawyers, a new day at the sub-divisional court in Palampur is inaugurated.

The Superintendent has taken his place in Court no. 1. His main job is to record evidence in criminal cases. This usually entails working as a scribe for the Assistant District Attorney, who stands for most of the first half of the day in this left-hand corner of the room asking a series of questions to a series of accused. The Superintendent's job is to render these spoken words into a written record, a vital component of a case file. The court peon, who since pasting the schedule on the wall, has filled various glasses of water on different tables and dusted the Judge's dais, now makes his way to the Superintendent's desk. Gathering the name of the first person who is to make a witness

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<sup>3</sup> The Palampur court was an entry level court. It therefore had limited jurisdiction, and was not even capable of hearing divorce cases, for which litigants had to go up to the District Court in Dharamshala. The courts on an average heard a total of 25 cases every day, of which nearly a fifth were marriage related. Petty crime, excise violation, and rent and other property related disputes were the most typical cases to come up for hearing.

<sup>4</sup> Government offices in Indian towns tend to be spatially contiguous with each other. The centre of the town is marked by a hub of buildings that used to collectively constitute the *kachahari* in the colonial period. The offices in the compound would include the police station, the court, the revenue



deposition this morning, he strides purposefully outside the court room. The mild din of fifteen minutes ago has grown to a level that can only be reckoned by the hush the sight of the peon walking from the Superintendent's desk brings. "*Uttam Chand! State versus Sant Kumar*", he shouts almost unintelligibly, standing amidst the fifty odd people who are waiting there. If he wants, or if he is worked upon, the peon can make this announcement as softly or as loudly as he wants, and most of the time he is aware of the importance of the clarity of his announcement. If he merely mumbles the names, there is every chance that the witness may miss making his deposition, ultimately affecting the outcome of the case.<sup>5</sup> But Uttam Chand has recognised his name and cutting through the gathering throng, makes his way to the desk to deposit his testimony. The din is resumed.

Meanwhile, the Reader has taken his place on the right hand corner of the room. Some of the clerical work in the court can now get underway. This includes registration of new cases and updating ledgers of the court on the progress made in various cases. Most of the junior bar that is present in the room by now will now make way serially to the Reader, in order to acquire dates for forthcoming hearings, depositing papers that may have been demanded by the judge on a previous occasion, and other activities that constitute what is known as 'servicing a case'. Some of the chairs in the Court no.1 are beginning to be filled by litigants. Most of them, however are going to be taken up by lawyers or rather their coats and their files, duly placed on the furniture by their respective *munshis*, or assistants. The front row is implicitly reserved for the senior members of the Palampur Bar, who usually arrive only once the Judge does.<sup>6</sup> A young lawyer in his mid-twenties, two months into practising, walks up to the Reader with long brown envelopes, each containing cases in their infancy. He is an understudy of a

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collectorate, etc.. Present day urban planning conforms to this design more or less even if there is no physical wall enclosing these buildings within a compound.

<sup>5</sup> Akhil Gupta (personal communication). This person has significantly more influence in higher courts. Through my fieldwork I did not come across any instance of inordinate attention coming his way, only a cursory bid at acquaintanceship that people made in order to ensure he did shout out their names loud enough.

<sup>6</sup> As said in Chapter One, there are eighty registered members. However, only half of them practice on a regular basis. Lawyers in the Palampur Bar tended to be mostly upper caste men (Rajputs, Brahmins and Soods). In consonance with their counterparts across the country quite a few had political aspirations, and some of them were already actively involved. Three practising lawyers were *pradhans* of their respective panchayats. Political affiliation oscillated between the Congress and the BJP. There was one active member of the state unit of the Communist Party of India, and another who had served as the President of the Himachal Pradesh University Student Union as a member of the Student Federation of India, the student wing of the Communist Party (Marxist).

senior lawyer and today his day has begun with the registration of prospective cases with the Reader. A few minutes later, he is back with the group of fellow junior lawyers occupying the latter rows of chairs and resumes discussing the latest cricket scores. In a pattern that appears random to the untrained eye, the movements of peons, junior lawyers, witnesses, litigants, clerks, water jugs, files and registers signal that the working day has slowly begun.

It is now 10:30. The Superintendent has since been joined by the Assistant District Attorney. The recording of testimonies and cross-examination of criminal cases continues in this left-hand corner of the court room. In the right-hand corner, the Reader has entered a few more cases in his register, updated the files for the cases listed for the forenoon sessions and has made other notings in his register. The peon enters from outside and commands everyone to rise in deference to the Judge, who makes his way through a door behind the dais and takes his position in this rather austere room devoid of all insignia, emblems and other embellishments, apart from a plaque of the state motto which reads "*Satyameva Jayate*" or "Truth Always Prevails". A man in his late thirties, Vaidya is a member of the provincial judicial bureaucracy. His first few minutes in the court are taken up by greetings and gossip mostly with senior members of the Palampur Bar who are by now ensconced in the front row. It is not until nearly eleven o'clock that the peon is asked to go out to call out the litigants of the first case in front of the judge today. Two old men, accompanied by their respective lawyers make their way in. Three minutes later they are dispensed with. Another set of litigants and lawyers make their way to the dais. The judge and the lawyers make entries in their respective diaries regarding the date for the next hearing. The case has been 'serviced' for this hearing. There are twenty five cases listed for the day in each court. Most of them will be dealt with a similar brevity by either the Judge or the Reader. Some of them will be met with relatively more attention by either the Superintendent or the Judge.

Only four of the twenty-four cases that are meant to be heard today are actually slated for judgement. The next case is that of Malhi Devi vs. Jagdish Chand. While Jagdish Chand is a frail old man, Malhi Devi is a Dalit woman. She is contesting the usurpation of her land by Jagdish Chand. Jagdish has difficulty keeping to the requirements of the court. He either speaks either too little or too imprecisely. Time and again the judge

nags him on this. Time and again his failure to be precise evokes laughter amongst the front rows. The judge gets impatient and he reprimands the lawyers for not “preparing” their clients properly. The testimonies continue in their undramatic way. Jagdish’s witness will soon be declared as an interested witness, predicts a lawyer in an effort to train my eye. The witness is a false one, she tells me. He has claimed that he is related to Malhi Devi. Jagdish and his witness ‘look’ like old Brahmins and clearly Malhi Devi does not, I am told. Sure enough, within the next few minutes, Jagdish’s witness is declared as an ‘interested party’ (i.e. someone who benefits from particular outcomes of the case) and entries are made in various diaries recording the date for the next hearing. The Judge gets up from his chair to take a tea break.

He returns twenty minutes later. The next case before him is that of Deoldi Devi and Harnam Singh, who have been involved in a legal tangle for two years now.<sup>7</sup> The mother is bitter that her son does not look after her and she is demanding legal redress. The son in turn finds her demand of a stipendary maintenance outrageous in the wake of the fact that she has sole rights over her late husband’s (i.e. his father’s) house. Theirs is one of the four cases slated for judgement that day. They have both been heard for the last time. Vaidya thinks that it is inadmissible that a son does not look after his widowed mother.

“A widow of seventy years cannot personally look after the property and she could not get any benefit out of the said property. On the top of it [sic], the relationship of both the parties are [sic] strained and the property have [sic] been inherited by the respondent, then it cannot be believed that the respondent has allowed the petitioner to remain in possession of the landed property and enjoy its benefits. Since the petitioner is residing in the house of her late husband, this fact is not sufficient to dis-entitled [sic] her from getting any maintenance from her son”.<sup>8</sup>

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<sup>7</sup> Case no. 153-IV/ 97: Palampur Sub Division Record Room.

<sup>8</sup>Case no. 153-IV/97: 15. Palampur Sub Division Record Room.

In court he pronounces that Harnam should provide for the food, clothing, medicine and shelter to his mother, in addition to Rs. 350/- per month under section 125 of the CrPC.<sup>9</sup> Harnam and Deoldi leave without further ado and the next set of litigants are ushered in. A policeman who is being questioned by the Assistant District Attorney to the right has caught the Judge's eye. He is not wearing his uniform cap. Vaidya ticks him off for not respecting the due authority of either the court or of the police uniform. The police constable tenders an apology, which Vaidya accepts but not before he has sermonised those sitting in court on the gravity of the policeman's omission. That done, business is resumed.

These two interventions of the judge once again highlight the conflicting nature of the relationship of the Indian state with tradition and modernity. On the one hand he upholds the ideal of the undivided family in judging the case between Harnam and Deoldi, at the same time he is well aware that his position is not merely that of an adjudicating patriarch. The police constable is his subordinate. Moreover, the authority of the state as represented in the court cannot be undermined by its functionary. Meanwhile, outside the court room, the bustle has only increased with time. Most visitors sit alone and despondent, waiting either for their hearing or for their lawyers to get free from other engagements. In one corner sit a group of women who are regulars at the court and are generally known as 'excise cases'. These are women who have been charged with illicit brewing of liquor. They seem to be the calmest around, familiar as they are with the whole drill of a day at the court. Today they have been joined by Pranto Devi, for whom it is the first time at the court. Like them, she looks distinct from other women litigants in her confident comportment. Like other 'excise cases', she too brews country liquor, an unlicensed activity, and had recently started serving it at her small snack stall located at the outskirts of Palampur that caters to daily wage labourers. She is not terribly nervous, she tells me. This is because she is aware that this is merely procedural and a matter of time before she can resume work at her snack stall.<sup>10</sup> One of

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<sup>9</sup> While section 125 of the CrPC is usually used to plea for maintenance by aggrieved spouses in marital disputes, it is now increasingly being used by dependent parents to gain (monetary and other) care from their children.

<sup>10</sup> During my eighteen months of fieldwork, I found that almost all the accused in cases involving illicit brewing of country liquor were women. This was because they usually ran small outfits and were often vulnerable women (widows, single mothers, or indeed Dalits), whereas bigger country brewing was owned by men, who thus had the resources to look after their interests better. On the other hand, once identified and caught by the local police, these women tended to become frequent fixtures. If the big

the other women sitting there tells me that she is fighting her fifth 'excise case' and there is nothing that Pranto should really worry about. Having been regulars at the court, they have forged minor friendships and alliances amongst themselves. They resume their gossip and knitting as Pranto is welcomed into their fold. She will from now on, not only have a fixed place to sit and wait at subsequent hearings, but will also not have to bring her teenage son along for company.

The tea-stall is doing good business. A police van arrives bringing some accused from the lock-up. Some of the younger lawyers immediately spring into action, circling around their prospective clients. Today is not the best of days. These accused are charged with relatively minor offences, not quite like the day when a bus-load of young men accused in three rape cases arrived at the court. The court room had gone nearly empty as nearly each of the forty lawyers practising regularly at the Palampur courts scrambled for a fat client. The kin of some of those accused of rape have come from far and nearby villages with food. Some of them have already been approached by lawyers prior to their arrival at the court. Most family members are convinced that the accused are innocent and that they have been framed in these cases as a consequence of local rivalries. A few are however more despondent. Embarrassed by the fact that they have to defend a family member who has been accused of a despicable act in their opinion, they are keen to look for solace elsewhere. "Bad company" is the easiest available explanation at a time when all else seems to fail. The lawyers do not seem to be of much help in times like this. Their constant wishing away of the guilt of the accused helps some fortify themselves for the trying times ahead, but in the case of a few others, it only reinforces a perceived failure of upbringing. This is as busy as the day at the courts is going to get. The peon comes looking for two of the junior lawyers, David Peter and Rajni Katoch (the sole woman member of the Palampur Bar) and finds them at the tea-stall, gossiping with colleagues. He tells them that the judge wants to see them in his chamber.

Court I is now manned once again only by the Reader and the Superintendent. Vaidya has listened to all the cases he needed to for the first session and he is now back in his chamber. He uses this time to catch up on other administrative matters that need

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(male) brewers had the resources to keep the police at bay on a more permanent basis (i.e. through some form of regular fees), women brewers dealt with this problem on an as-is- when-is basis.

attention, like forthcoming visits and events. The Assistant District Attorney and the Chairman of the Palampur Association join him for tea before they break for lunch. The three discuss in no real order of significance, the metier of new lawyers, gossip relating to District and the High Court, cricket scores, the impending Kargil conflict, etc. Rajni and David make their way to his office. They are introduced to a couple who have been standing diffidently in a corner, listening to the three men all this while. Their names suggest that they are Chaudhries (of birth – cultivator caste) and they have come to the court to seek a judicial annulment of their marriage. As in most cases of this kind, the woman complains that she is mentally and physically tortured by her husband, especially when he is under the influence of alcohol. The man rebuts that his wife does not give his parents due respect, and that she has invented the account of his violence. Vaidya is required to exhaust the possibility of reconciliation before the case can be formally registered in the court and has called Rajni and David in for this purpose.<sup>11</sup> The couple leave the room with the two lawyers and make their way to the lounge known as the Bar Room.

The Bar Room is used by lawyers mainly for watching television during and after court hours and sometimes for such like counselling sessions. Once it is clear that Rajni and David are there to talk the couple through their problems, the cricket match that is being watched abandoned, the television turned off. All of a sudden, the rather large room becomes empty. David begins by telling the two that they can be as forthright as they want as they are not standing in front of any judge. He especially reassures the woman that since she is not in her husband's house, she does not have to fear the wrath of her husband. The momentousness of their decision is beginning to take its toll on them and both the man and the woman are by now close to tears, as their pre-teen daughter watches on. The woman basically repeats what she has already said to the judge. She says that her husband's family has never forgiven her for giving birth to a daughter and have never treated the little girl with much love or affection. The husband and wife counter each other's arguments for the next forty minutes. The woman is quite sure that there is no going back for her. Her husband however is not inclined to let go of the

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<sup>11</sup> A judge is required to do so either himself or via lawyers. This is evidence again that the nature of the judge's job moves between traditional and rational authority. The requirement of counselling the couple into a reconciliation reflects the force of tradition in the state's conception of conjugality. At the same time, the possibility of divorce and/or other recourses to judicial redress reveals the rational, modernising face of the state.

marriage, or of the child. He tells the lawyers that the village panchayat too has heard the case and has been unable to forge a reconciliation. As in most cases that are brought before it, the panchayat recommended that they seek official legal redress to their situation. The woman shows us a copy of the petition-like letter that she had written to the judge, based on which the couple have been summoned to the court. In a manner similar to the panchayats, the two lawyers (as well as the judge) make little effort to actually ‘counsel’ the couple. They confer and conclude that the couple is beyond reconciliation. The man and the woman are told to come back after lunch so that they can apprise Vaidya of the situation and proceed from there. By now, it is quite clear that while the woman is going to file a case for divorce, the man is going to contest it. What the two do not know as of now is that they are going to end up fighting three cases.<sup>12</sup> Rajni and David are not going to tell them this until after they have been officially solicited for their professional services.

Everything slows down from lunch time onwards. The crowds thin and the pace of activity becomes even slower. The tea-stall has only a few customers left. The big hall on the first floor of the building, where lawyers have desks and cupboards allocated to them, also looks deserted. A few typists sit in the far end of the hall, finishing off the last affidavits before breaking for lunch.

The numbers begin to trickle in once again after two p.m. but the lull is distinct. The judge rarely makes an appearance in Court I post-lunch. He uses the afternoon sessions to dictate the judgement in cases that have been decided. In Court II, the lower judge may show up in case of pressure to meet deadlines, especially in the month of March.<sup>13</sup> As usual, the afternoon courts are manned by the Reader and the Superintendent and most of the work that is done is “routine”. This usually consists of people making payment of traffic fines, policemen making a deposition of evidence in “excise cases”, women collecting maintenance money from their estranged husbands, etc.

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<sup>12</sup> This is because the Palampur court is an entry level court in the Indian judicial system and has limited jurisdiction. The hierarchy in the state judicial system in the ascending order is: Sub-divisional courts, District courts, provincial High Courts and the federal Supreme Court. Divorce is not within the jurisdiction of a sub divisional court.

<sup>13</sup> Litigation in Indian courts is usually a protracted affair, sometimes taking as much as fifteen years before any decision is reached. Of late, the courts are set targets of the number of cases they must

Rajni and David are back from their lunch break. They go to Vaidya's office and tell him that the couple that he had referred for reconciliation are destined for litigation. Vaidya is cynical. He often chides litigants for not being able to solve their problems outside the court. "You are only making the lawyers richer and bringing yourself agony in the process", he says to the couple as he has said to others on numerous occasions.<sup>14</sup> The conversation soon takes on a more general tenor, in which the 'new Indian woman' comes under scrutiny. Rajni is visibly irritated that the woman is not willing to give her husband another chance. It is not without reason, for she is a Katoch Rajput, and is therefore less inclined to take a sympathetic view of challenging male authority by women. She echoes the general sentiment often heard from members of the legal profession in Palampur that women misuse section 125 of the CrPC, according to which a husband must provide maintenance for his estranged wife until such time that she remarries. The general drift of such a conversation is that women of the younger generation have forgotten how to 'adjust' in their agnatic homes and they use the courts as a means to establish their misconceived sense of independence. Throughout this long exchange, there is not even a passing mention of rising dowry demands and the ensuing violence. Vaidya asks the woman one last time if she believes her marriage is hopeless, and if she is aware of the hardships that await her as a divorced young woman. The woman is in tears, but at the same time resolute in her decision, and wants the court and the judge to help her with this. Her husband is in turn outraged that she is walking out of the marriage, but is not contrite about his behaviour. Vaidya concedes that the couple are in an irredeemable situation.

Once Rajni and David leave Vaidya's office, they are approached by the couple to act as their respective counsellors. David is now fighting the case for Jyoti Bala, the wife and Rajni has been delegated by her 'senior' to take up Chand Ram's case. However, as mentioned earlier, they cannot fight for divorce in this court but David and Rajni are not keen to lose prospective clients. Chand and Jyoti too will be put in the same position as the others in similar cases usually face. Instead of fighting one consolidated case of divorce at the District court in the nearby town of Dharamshala, their case will be fragmented into three cases. Jyoti will file for divorce at Dharamshala and will be

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decade each year, and March being at the end of the administrative year, there is great pressure at that time to catch up with the year's lag.

<sup>14</sup> See Conley and O'Barr (1990) for the a discussion of the different dispositions of judges.



represented there by Rajni's senior lawyer. In the meanwhile, she will also file a separate case for maintenance at the Palampur courts. Chand will in turn file a case for the restitution of his conjugal rights under section 9 of the Hindu Marriage Act. They are both told that this is the most expedient way of getting things underway. The incentive is that while a divorce case may take anything up to five years to get decided, the other cases may take only half as long. To both Chand and Jyoti the escalated cost of fighting more than one case seems worthwhile once a reasonable likelihood of an interim resolution in the near future is presented to them. After making arrangements for the next session with their respective counsels, Chand and Jyoti leave for their respective abodes. In the coming days or perhaps years, trips to the court-house in Palampur will form a regular feature of their daily lives.

By four o'clock the court is nearly deserted. The minor functionaries are busy getting the files ready for the next day. The office assistant has just finished typing a couple of judgements Vaidya has dictated to him an hour or so ago. The lawyers involved in those cases send their *munshis* to him to get hold of their respective copies. He leaves the other two for next morning and begins to get the schedule of the next day's cases ready. The office peon needs that list so that he can then get the relevant files from the court record room and keep them ready for the morning session. That done, they can drink their last cup of tea for the day and leave for home. By four-thirty, the only room inhabited is the Bar Room where some of the young lawyers are watching the last hour of the cricket match.

It is worth noting that on the 31<sup>st</sup> of May 2001, there were 900 cases still pending judgement at the Palampur courts, the oldest of them dating to 1993 and another 200 criminal cases that had yet to go through the process of registration.<sup>15</sup> Those related to section 125 of the CrPC were most likely to end up in a Lok Adalat, or literally People's Court, which was a means of meting out cheap and quick justice and which most litigants sought to avoid. In any event, those fighting their cases under the Legal Aid Scheme were most likely to end up getting heard and adjudged in a Lok Adalat. Most Legal Aid cases were related to maintenance claims.

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<sup>15</sup> Interview with Judge Vaidya on 12<sup>th</sup> June 2001.

### A day in the life of a Panchayat

Unlike the Palampur court, the Meghla Gram Panchayat does not convene daily but only twice a month. Even then, each of its sessions, called '*koram*',<sup>16</sup> in local parlance, struggles to last a full day. These sessions take place in a dedicated room in the village school, a building that also houses the government-run dispensary and veterinary clinic. Though the board outside the room announces that every meeting is to begin at 10 a.m. and end at 5 p.m., the schedule is rarely adhered to. By the time the first of the members and office bearers arrive, there are usually a couple of villagers waiting for them. No real business can however get underway until the secretary of the panchayat and either the head (*pradhan*) or the deputy head (*up-pradhan*) have arrived. As soon as this quorum is met, the frenetic activity of filling in or updating registers, handing forms, writing letters of recommendation, discharging certificates, etc. commences, to be punctuated only by rounds of tea. Chain Ram has come in to get an authentication of his son's name that needs to go into the land records. Is it 'Sandeep Kumar' or 'Surinder Kumar', or was it registered as 'Simphu Kumar', the name by which he is generally known? Registers are turned inside out. It transpires that he had not registered his son's birth with the panchayat and therefore the panchayat cannot issue a certificate for the correct name. He will now have to use the name in which the child is registered at school. The *up-pradhan* writes him a letter of recommendation for the school to issue Chain Ram the necessary certificate. Chain Ram, though visibly frustrated, is much obliged.

Today, the secretary is accompanied by his colleague in the Block Development Office,<sup>17</sup> i.e. the Block Medical Officer, who is making a visit to Meghla in connection with the next round of the polio vaccination programme run by the state Health Department. His job is to ensure that those children in the village who have so far not been immunised against polio are <sup>in</sup>oculated at the Meghla dispensary on the date scheduled for the nation-wide vaccination campaign. He solicits the assistance of the *pradhan* in this, and seeks his permission to address the motley crowd gathered outside the room to explain to them how the pulse polio programme works. After ten minutes, those who have heard him now know something about UNICEF and its medical

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<sup>16</sup> The term *koram* is derived from the requirement of a *quorum* comprised of members and office bearers of a Panchayat before a session can formally begin.

<sup>17</sup> A block is a group of villages constituting a unit of state welfare administration.

assistance to developing countries, in addition to the criticality of vaccination on the exact same day for every non-immunised child across the country.

One of the several listening to the Block Medical Officer is Simro Devi, who has come in with her application for timber. Like other householders in the village, she is entitled to the timber of one pine tree every five years for household repair and other domestic use. In a province where forest produce is regulated by the state, it is the panchayats that maintain this record of timber allotment. Once her claim is ascertained as valid, Simro is issued a certificate, which she needs to produce to get the wood from the local timber depot. Two young women have also been waiting, if a bit edgily for a while. They have come to seek advice on a loan application and want to know the state welfare scheme within which they or their claim for a loan to buy two sheep can best fall. The secretary of the panchayat gives a long speech, listing a series of welfare schemes the government runs that may be applicable, but at the end states unambiguously that presently the government has stopped giving loans to individuals under any of its schemes, and instead gives loans to groups of minimum fifteen people. The women look dejected. It was obviously going to be difficult to get thirteen others in the village to agree to buy sheep at the same time! They mumble something about the futility of the panchayat and leave.

Like the courts, the panchayat too is located in a complex of other government offices and institutions, and along the main artery of the village. But unlike the courts, there is a discrepancy between the role people in the village expect it to be performing and the role the panchayat imagines itself to be fulfilling. Popular imagination and official discourse imagine the panchayat in the role of the head of the family that is the village. The panchayat members perceive themselves in place of the state, in lieu of the district administration, which cannot and does not reach the people. They do not perceive themselves as a support team of the district administration, but as a challenge to it, in that they reach where the district administration does not want to and perhaps cannot reach. Development is the crux of their self-image and see themselves as its 'true' agents in the village, stated unambiguously in the brief title of the statute governing

such bodies.<sup>18</sup> The state in the form of the district administrative apparatus is seen by them as a check on their influence. However, the day-to-day running of the panchayat is carefully patterned after a state administrative office, despite the fact that the former works to undermine the importance of the latter, at least in popular perceptions.

Members of a panchayat are elected every six years. However, the secretary of the panchayat is a state functionary and he is the liaison between the panchayat and the district administration. In sharp contrast to the other two office bearers, i.e. the *pradhan* and the *up-pradhan*, whose tenor of involvement is party political, the secretary's demeanour is bureaucratic. While the other panchayat members talk of their work in terms of 'development', 'growth', 'welfare', the secretary in turn explains his functions in terms of 'government welfare schemes and policies', 'annual budgets', etc. Clearly, in this context, dispute settlement, which was once the main activity of the panchayat, is now a peripheral concern.

Colonial administrators codified the filial metaphor in recognising panchayats as a "council of patriarchs", as adjudicators of disputes, and as the head of the family that is the village.<sup>19</sup> But, in post independent India, the revival of the panchayat system was aimed at *political* decentralisation (Khilnani, 1997: 79). It is not without reason that the colonial government saw the panchayats as quasi-judicial bodies and the post-colonial state as agents of development. In both cases this institution was imagined in terms of the self-image of the state. For the colonial Indian state, legal governance formed the very core of its authority.<sup>20</sup> The question was how to mark a discontinuity with the preceding forms of legal authority, which explained the ambivalence of the colonial state with regard to the revival of panchayats in the late nineteenth and early twentieth centuries.<sup>21</sup> The postcolonial Indian state on the other hand has hinged itself on the twin metaphors of democracy and development and therefore its ambivalence is centred around whether or not to forge a relationship of discontinuity with the panchayat as the

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<sup>18</sup> "An Act to consolidate, amend and replace the law relating to Panchayats with a view to ensure (sic) effective involvement of the Panchayati Raj Institutions in the *local administration and development activities*." (emphasis added). The Himachal Pradesh Panchayati Raj Act, 1994.

<sup>19</sup> "... [T]he panchayat and arbitrators were... recognised as *patriarchal* tribunals for the settlement of disputes in native fashion..." Memorandum by Justice Thornton, Punjab Chief Court, dated 2<sup>nd</sup> April, 1879 NAI/ Home/ Judicial/ A Proceedings/ October 1901/ no. 5. p. 86. (emphasis added).

<sup>20</sup> NAI/ Home/ Judicial/ A Proceedings/ October 1901/ no. 5/ p. 88.

<sup>21</sup> NAI/ Home/ Judicial/ A Proceedings/ October 1901/ no. 5/ p. 88.

most fundamental unit of civil society.<sup>22</sup> The discrepancy between self-perceptions and popular expectations remains unresolved because while there is a popular persistence of the colonial view of the *panchayat* as the head of the village 'family', its new role as a body concerned with 'development' in some ways seems to be at odds with this perception.

Most people in Meghla are of the opinion that their *panchayat* is yet another reproduction of system of interests and domination. While there is a clear set of expectations from it, at the same time there is an articulate realisation that the *panchayat* is like the '*sarkar*' (or 'government'), in that it serves only a few people who matter. In so far as dispute resolution is concerned, they perceive an element of attachment and association to specific local interests and therefore prefer not to seek its aegis. The anonymity of the local magistrate's court is seen as its neutrality whereas the interests of the *panchayat* and its members appear far too recognisable and identifiable for a perception of the carriage of impartial justice. What is also clear to most people in Meghla is that while the *panchayat* performs certain critical functions, its authority is not altogether inescapable. Most look upon it largely for what it can do for them, i.e. handling necessary papers and registers. Herein lie the limits to its authority, limits which are defined by the distance it is set from the state. The following section adumbrates on the manner in which state authority is cognised and at times subverted in Meghla. It takes up the relationship between the official judiciary and the *panchayats* in order to understand the oscillation of the postcolonial Indian state with regard to tradition and modernity.

### **Problem into Case into Problem**

Disputes are handled in a range of ways in Meghla.<sup>23</sup> The first recourse is almost always domestic, especially in the case of family disputes, where there is great emphasis on secrecy. In fact, some of the gravest disputes get resolved or remain within the

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<sup>22</sup> Post independence, Panchayats were unsuccessfully revived in India, in the 1950's. In 1994, the Panchayati Raj Act was passed in an effort to formalise decentralised democracy.

<sup>23</sup> On different modes of dispute settlement in India see Hayden (1999); Cohn (1987).

household and rarely ever enter the public domain.<sup>24</sup> Disputes that refuse resolution through familial or informal mediation are sometimes taken to the village council. The council rarely takes its own initiative in doing so and even when it is approached, it may or may not agree to take on the case.<sup>25</sup> The most common excuse offered by the council members is that the dispute is beyond resolution at their level and should therefore be taken to a court. The real reasons may well have to do with safeguarding their electoral interests and avoiding the risk of alienating prospective voters. Therefore, dispute settlement is not seen by the office bearers as a high priority function of the panchayat. For example, between 1998 and early 2000, the Meghla Gram Panchayat did not entertain even a single dispute case. Villagers were convinced that this had largely to do with the fact that the province-wide *panchayat* elections were to be held in November 2000.

At the same time, the option of going to the local magistrate's court is rarely exercised. For not only is such litigation expensive and long drawn out in terms of time, but it does not always result in a definitive resolution. Shiv Pal Singh had served as a panchayat *pradhan* for eighteen years. During his tenure, he strongly dissuaded disputing parties from going to court because of the expensive and time-consuming nature of litigation, and because, according to him, state law often ran contrary to 'customary norms'. So, when Deb Raj came to him complaining that his wife Chhailo Devi had 'run away' and was now living with Onkar, Shiv Pal thought it was best if the dispute was reconciled through popular justice. Chhailo Devi disputed Deb Raj's claim that she had done him wrong, saying that a Gaddi woman could move in and set up hearth with another man if she wanted to. Shiv Pal said that since he himself was a Rajput, he could not adjudicate on this matter with adequate legitimate authority even though he 'knew' that what Chhailo had done was perfectly possible within 'traditional' Gaddi values. He therefore called a meeting of the elders of the Gaddi community in the village and asked them to decide the matter. The discussions went on for several days, but ultimately no one could fault Chhailo for having violated *Gaddi* norms. Deb Raj was adamant about the *illegality* of her actions. Whilst she was still married to him the *law* of the land forbade

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<sup>24</sup> Upper-caste households were less likely to bring certain kinds of disputes to a forum like the Panchayat, or even a court. Chapter Six discusses the manner in which different markers of upper caste behaviour, including an impression of marital stability has made way in Gaddi contemporary society.

her to cohabit with another man. However, the elders in the village were able to convince Deb Raj not to press legal charges against her. They argued that a judicial restoration of his conjugal rights would only result in a short term gain for him because it was clear that her affections had shifted. Shiv Pal narrated this incident with pride to me, pointing out that had the matter gone to court the outcome would have been exactly the opposite. The law would have seen Chhailo as an erring party and Deb Raj's conjugal rights would indeed have been duly restored in the formal sense. Allowing the matter to be settled in the village meant that not only did the process not cost a penny but also that the decision was more judicious (in that it clarified the wife's position on the question of emotional loyalty) than that which the court would have achieved.

However, decisions made by the panchayat are not enforceable whereas decisions of a judicial court are seen to be ultimately binding.<sup>26</sup> Decisions reached on the basis of informal intervention, outside the judicial apparatus of the state, can only discipline by consensus and not by force. It is in the differential punitive capacities of the two institutions that the source (or lack of) of their efficacy and authority lies. Had Deb Raj not been convinced of the wisdom of the congregation, there was little that could have stopped him from filing a case. On the other hand, Chhailo would have found it virtually impossible to argue convincingly in any court in India that because she enjoyed customary sanction what she had done was not illegal. What would have mattered was that her actions fell outside the statutory definition of marital behaviour and as in all such cases of conflict between 'custom' and statute, the latter would have prevailed.

At the present times panchayats often fail to resolve small-scale disputes, but in earlier periods the tensions between the panchayat and the official judiciary were of a more enduring kind. Panchayats were regarded by the colonial administration as the customary tribunal for dispute resolution. Within colonial Punjab, the debate on the place of traditional methods of dispute resolution in the new juridical order was central

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<sup>25</sup> William Reddy (1997) explains this distancing of 'outsiders' from dabbling in others' 'internal' matters as a critical to the constitution of the public sphere in post-revolutionary France, especially in the context of the emergence of the privacy in domesticity and conjugality.

<sup>26</sup> Clearly, it is the case that court rulings can be ignored or circumvented, and it might well have been the case that even if the court had ordered it, Chhailo may not have gone back to Deb Raj. Nevertheless, a court ruling in his favour would have allowed Deb Raj to legitimately insist (if not harass) that Chhailo return to her marital home.

to governmental concerns. After 1849, when Punjab came under colonial rule and the system of judicial governance began to take root, there was great ambivalence over the future role of the panchayat system. The panchayats were summarily made illegal in 1849 with the adoption of the all-India Civil Procedure Code. Soon after, with the courts being either inundated with cases in regions like the Doab or being completely unsolicited in regions like the North West Frontier Province, the system was sought to be resuscitated.<sup>27</sup>

In Kangra district for instance, ‘betrothal councils’ arbitrated on marital disputes.<sup>28</sup> In 1853, responding to the reasons mentioned above, the Punjab government decided to restore to the panchayats their adjudicating authority, albeit hesitatingly. Thirteen years later, in 1866, these orders were revoked because of a growing impression within the administration that these councils were corrupt and capricious, and that people anyway sought the courts to get a final verdict.<sup>29</sup> There was much official debate on how to make panchayat decisions enforceable. At one stage, the abrogation of the law of appeal was mooted.<sup>30</sup> However, by the early twentieth century, the colonial government was convinced that the way to close the gap between ‘custom’ and law lay not in the resurrection of the traditional *method*, but in the legal recognition of customary *rule*.<sup>31</sup> Instead of sharing juridical authority with traditional village authority, the colonial government sought to amass it further by incorporating the customary into the legal. Thus, based on intensive ethnographic effort during and after the Settlement, the Punjab Customary Law was compiled in 1886 by C L Tupper (Tupper, 1881). The compiled customary law was never finally passed as a Code.<sup>32</sup> The courts were where the final juridical authority was sought to be located, a feature that continues in postcolonial legal governance.

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<sup>27</sup> NAI/ Home/ Judicial/ A Proceedings/ October 1901/ no. 5, In fact, it was the popularity of the jirga councils of the Pathans in the North West Frontier Province that proved to be the greatest source of anxiety for the colonial government, as their popularity kept people in the region to “remain outside the fold of law”.

<sup>28</sup> NAI/ Home/ Judicial/ A Proceedings/ 25 March 1871/no. 40

<sup>29</sup> NAI/ Home/ Public/ A Proceedings/ September 1879/ nos. 150- 152.

<sup>30</sup> Proceedings of the Lieutenant -Governor Punjab, no. 2810, dated 23<sup>rd</sup> July 1873. NAI/ Home/ Judicial/ B Proceedings/ December 1873/ no. 243.

<sup>31</sup> See Mamdani (1996) for a discussion of the same in the African context.

<sup>32</sup> The codification of custom into law is dealt with in detail in the following chapter.



Although the state judicial system is vested with the power of ultimate adjudication, going to court may not always remove conflict in all its finality. Ashok Kumar and his four brothers jointly owned some agricultural land in Meghla. He had served in the army for fifteen years and now worked as a watchman at the village school. In 1982, the five brothers realised that the piece of land which was the furthest away from their house, and which was also the piece of land where they sowed their crop of paddy and wheat, had been usurped by an outsider.<sup>33</sup> On investigation, they discovered that the particular piece of land had been sold twice over without their knowledge and with the complicity of the village revenue official or the *patwari*. Ashok Kumar decided that since he had documentary proof to show that the land belonged to the family, they would anyway go ahead and sow the paddy crop. The family went on to prepare the field but were prevented from planting the saplings by the 'new owner', who came with a few henchmen to ensure he got his way. None of the brothers could read or write, so they went to the panchayat *pradhan* to seek a resolution of the situation. The then *pradhan* told them that this was a complicated matter, well beyond the jurisdiction of the panchayat and that it could finally only be decided by the court. The idea of litigation did not go down equally well with all the brothers for a variety of reasons and in the end Ashok Kumar had to file a legal case all by himself. The case was decided in his favour in 1987. In 1992, he was faced with the same situation as the same person once again claimed ownership over the said piece of land. Ashok filed yet another case and once again won the case in 1998. Despite his string of legal victories, Ashok has not been able to sow his land even once since 1982. The claimant, who is a rich contractor from a nearby town, sends his henchmen every season threatening Ashok and his family. Ashok has all the necessary documents to prove his ownership, which is why he has been repeatedly able to win his case. But it is also clear that the contractor has been able to circumvent the authority of the document by working on the revenue official and it is perhaps a matter of a few years before he can 'legally' transfer the land in his name (cf. Gupta, 1995). He has already made several less than generous, but nevertheless attractive monetary offers to Ashok in lieu of the land, but has been rejected each time. Ashok obviously cannot afford endless litigation and it would not be surprising if, before long, he either gives up or gives in.

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<sup>33</sup> Meghla being in the mountains, agricultural land owned by one person is rarely contiguous and is often scattered in and around the village.

This case can be seen as a typical experience of 'lawlessness', 'corruption' or an instance of what has sometimes been called the crisis of governability. It shows the power of the written document (i.e. the land records), but importantly also shows that there is enough room for manipulation of the document. In fact, this crisis in governability does not limit the power of the written, but instead only furthers it. Ultimately, Ashok may have to yield to the powerful thugs when they have either 'procured' a false record, or managed to manipulate the record in the village revenue records by securing the favour from the *patwari* (village revenue official). The following section takes up the question of state documentary practices and their place in everyday life.

### **Rats into Paper**

When the office peon shouts Uttam Chand's name as the day's first witness to make a deposition in front of the court officials, he sets into motion a whole series of things. It is not only people who travel to the court house every day to make it function. A good part of the life of the court, like any other administrative office in India, is made by the circulation or at least movement of a vast number of slips of paper, ledgers, registers, files and the like. In this section my objective is to examine the manner in which these 'things' of the state are integral to the constitution of a regime of certificates. In another chapter I show how these state documentary practices play a role in changing the idea of the household and subsequently the practice of conjugality amongst the Gaddis. In this section I aim to explore the moment of convergence and further dissemination of these objects.

It is not without significance that the court admits only selective documents as evidence. The court as a state institution is a point of collection and collation of a number of these 'objects', and in granting them recognition, it is also critical in imparting them their power. It is with a view to examine the different orders of legality that are encountered in everyday life, or legal pluralism in Teubner's (1992) sense, that I focus on the production and circulation of these bits and pieces of paper.

The witnesses examined by the court convert their version of an event into a testimony and thereby render it as 'material' or evidence on the basis of which the judge will make

his/her judgement.<sup>34</sup> These statements enjoy a legal status and once Uttam Chand's verbal statement is recorded in the written word by the Superintendent, it becomes part of the official document, or the case file.<sup>35</sup> Other documents in a case file include the versions of the case by the plaintiff and the respondent, the framed charges as admitted by the court, copies of summons, a rough record of the hearings mostly by way of the judge's notes, documentary evidence (like title deeds, medical certificates, birth, marriage or death certificates), the judgement and finally the certificate of decision issued by the court, or the 'decree'. Each of these has the status of 'evidence' either at the moment of inclusion or later by the virtue of inclusion. A case is classified as either 'criminal' or 'civil' and in the year of its registration and its decision, is counted in the statistics compiled by the court, which are annually added at the district, provincial and federal level.

There are other legalities that are enforced through these small bits of powerful paper. As a herder, a Gaddi man is required to carry on him a 'permit' that allows him access to state reserve forests. This permit is proof of the fact that his family or he, or indeed the person who has rented the grazing run for that period, is entitled to take his animals on that piece of state-owned pasturage. This system was codified and finalised in the late nineteenth century, and one of the significant outcomes of this codification of 'customary rights' in grazing runs was that not only did it freeze the number of households who had these rights, but also froze the category of person who could avail of them. The colonial state equated herding in the western Himalaya with Gaddis. Thus Kanets living in the Bangahal region of Kangra district were all classified as Gaddis, simply from the fact of their herding profession (Saberwal, 1999). While there was no confusion on the ground as to whether the Kanets remained Kanets or they had indeed transformed into Gaddis solely from the fact of governmental classification, at the same time there was a corresponding rigidity in the fact that the maintenance of this transformation was absolutely essential in record, so as to avail of pasturage. To date, in Himachal Pradesh, no other community apart from that classified in the colonial period

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<sup>34</sup> See also Amin, (1987; 1997) for a discussion on this transformation of witness deposition into narratives of an event in the context of Chauri Chaura.

<sup>35</sup> The testimonies are greatly informed by the questions asked. The questions are framed in such a manner so that the answers given can only be either a 'Yes' or a 'No'. Thus the narrative obtained is a highly stilted string of truth-claims. "Yes, it is true that I am X's brother. No, it is not true that we often fight. Yes, it is true that she married my brother. Yes, it is true that we have been living in this village for x number of years..." Etc.

as ‘traditional herder’ can apply for grazing rights, if and when new runs are opened.<sup>36</sup> Thus, permits not just invest a person with rights, they are also critical in circumscribing the rights of those who do not possess them.

A bureaucratic regime therefore is not made effective simply through its functionaries or their offices. It is put into motion through these instruments of power, like certificates and affidavits, all of which receive their ultimate recognition from other governmental offices and institutions, like the court or even a Forest Guard. It is in this institution that they also assume their greatest potency in their recognition as ‘admissible evidence’ or valid legal proof. This challenges the view held by legal scholars like Upendra Baxi that people in India are far removed from the process of law (Baxi, 1986). Baxi comes to this conclusion because he operates with a highly literate notion of the law and its enforcement. While he is right in pointing out that the letter of the law or legislation is far removed from everyday life, he is wrong in concluding that because the majority of people do not ever litigate their practical encounter with the judicial system remains peripheral. Ideas of legality are mediated through these micro instruments like registration, permits and certification, and in doing so, the idea of what constitutes a legally viable citizen is practically encountered with regularity, achieving in the end what has been termed ‘constitutional patriotism’ (Habermas, 1998). Akhil Gupta’s ethnography of Alipur has highlighted this micro presence of the “translocal state” by showing how the state is discursively constituted in the everyday lives of the people through the discourse on corruption.<sup>37</sup> While he focuses on public culture and the representations of the state bureaucratic apparatus in the mass media and in the way corruption is understood as an infringement of entitlements, I focus on the manner in which the state makes itself visible through these enforced legalities.

Seen in this context, it becomes apparent that it is not without reason that the Panchayat, though not a state body, imagines itself in terms of the development metaphor rather than in terms of the metaphor of the family. A majority of its obligations is constituted by providing a base for the bureaucratic edifice of the Indian state. The Meghla panchayat for instance, is required to maintain registers of births, deaths and marriages.

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<sup>36</sup> The last time the government leased new grazing runs was in 1966 when forests in Nurpur tehsil were reclassified as Unreserved Forests.

<sup>37</sup> See also Tarlo (2000) for a study of the state and corruption in contemporary India.

In addition, it also maintains a register of households in the village. These registers are quite separate from the other records that need to be assiduously maintained for various state welfare schemes. Scholars of south Asia have adumbrated on the statistical impulse of the colonial state.<sup>38</sup> In the case of the compulsory registration of births, deaths and marriages, the impetus was more varied than a mere statistical impulse. Act VI of 1886, which made registration of Births, Deaths and Marriages mandatory in colonial Punjab was initially aimed at the control of infanticide.<sup>39</sup> However, in contemporary times, these registers serve an altogether different function. For example, almost all births take place outside a hospital and in that situation the Birth register of the Panchayat becomes the sole source of an authentic birth certificate. Birth certificates are needed for admission into schools, as proof of age, of domicile, and as in the case mentioned earlier, as proof of name. Similarly, the register of Death plays a crucial role at various times ranging from the devolution of property to getting access to timber in a state where access to forest produce is regulated by the state.<sup>40</sup> The Marriage register too becomes a source of final proof of marital status.

These registers also play a more covert role than mere statistical compilation. By making registration compulsory, there is at once a deployment of surveillance and without a sinister appearance. Present day Marriage registers for instance, have no more than one column against the name of spouse, as opposed to earlier times, when polygyny was legally recognised as valid under respective customary laws. It is possible, and true, that now as before, people do not report secondary unions. That is not the point. The point of deploying regularity lies in the fact that a marriage must be reported by *anyone* in the knowledge within a stipulated time frame. The Family register likewise, by the nature of information elicited and tabulated, ensures an adherence to what the state deems fit for its citizens by way of households. There is no place for instance, to account for concubinage, in the 'family' register.

Once regularities are collected, their tabulation inspires classifications of various orders of certified status: caste, class, tribe, etc., each bringing about different political economies. As has been discussed in greater detail in the previous chapter, Gaddis

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<sup>38</sup> Cohn (1987); Appadurai (1993); see also Hacking (1991).

<sup>39</sup> HPSA/ Bundle no. 20/Sr. No. 825/ DC Kangra/ Head 20/ File 17, 1<sup>st</sup> part/ Year 1854.

living in the neighbouring Chamba district are classified as a Scheduled Tribe and by virtue of this classification enjoy constitutionally guaranteed positive discrimination. Gaddis living in Kangra district did not get a similar constitutional status after independence because of a play of factors, all related to classification. Kangra was a part of Punjab until 1966, whereas Chamba was a minor native state during the colonial period. This meant that the populations were differently assessed and catalogued in these two regions in the colonial period. Gaddis in the Kangra region were documented among the 'agricultural tribes' during the Settlement. This allowed them access to specific rights in the village commons and in the forests of the area (Saberwal, 1999; Singh, 1998). More importantly, by virtue of being landowners and graziers in state controlled forest reserves, Gaddis were logged amongst the tax paying sections of the population, which is one of the reasons for them never having been counted as the colonial category of 'Criminal Tribe' despite being a peripatetic people. As discussed in the previous chapter, there is a split in Gaddi politics over constitutional status. All Gaddi organisations in Kangra have been demanding a parity of status with their Chamba kin since independence. In the early 1990's, with the acceptance of the Mandal Commission Report, the political demands of the Kangra Gaddis took a new turn. Instead of demanding a tribal status, a section of the Gaddis, who were called Bhat Gaddis, chose to present themselves not as Gaddis but as a minor Brahmin caste and successfully lobbied for acquisition of the status of 'Other Backward Caste'(OBC). Prima facie, the shift in demand may not appear radical in that it inherently remains a demand for positive discrimination, as was discussed in the previous chapter. On the other hand, if one looks at it in terms of the registers of classification, Bhat Gaddis in demanding a status as OBC have now positioned themselves within a more mainstream Hindu identity, which the demand of a Scheduled Tribe status actively resisted. Even prior to the tussle with constitutional classification, Gaddis articulated their distance from mainstream Hinduism. Colonial court records are replete with assertions that Gaddi customs are distinct from Hindu practices in arguing to be governed by customary law, as opposed to the Hindu civil code, the implications of which are more fully discussed in the following chapter. Thus, the certificate of state classification that is carried on one's person has a direct impact on the choice of livelihood and the making of particular demographies. A Gaddi man born and brought up in Bharmaur in Chamba

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<sup>40</sup> Villagers in Kangra district are entitled to one pine tree per four years after the death of a family member for various ritual purposes.

district in the early part of the twentieth century ended up in a significantly different position than his cousin in Kangra, not least because the life chances afforded to them by structures outside of family and kinship were entirely different. Importantly, people are not passive recipients of these categories. They actively seek to maximise benefit opportunity continuously as an entitlement that comes with their status as a national citizens.

Bruno Latour (1985; 1994) has highlighted the role played by graphic representation in the circulation of scientific information. Just as the recording of scientific data obscures the activities of Latour's laboratory rats, events in the daily lives of people in Meghla are flattened out into their graphic form as entries into various registers, which then assume a life of their own. The making of 'populations' is one part of the story (Foucault, 1991). These flattened out bodies and events make for several orders of the state. From an entry in the file, to a file itself. From a certificate to record and from a record to statistics to classification. (At another level, the serial of compilation moves from certificate to file, file to record, record to archive, archive to academy.)

The colonial state passed laws to enforce uniform registration. The impact of this has been far greater than the mere facilitation of census enumeration. A closer look shows not just the various points through which order is created and held together, but also ways by which practices get regulated. In a different context, it has been argued that bureaucracies are keen to gloss over irregularities so as to make things appear less uncertain (Das, 1995: 137–174). It has also been argued that files and records reveal hidden truths that the state at times is keen to hide and that the relationship of these files and records to reality is always open to manipulation (Tarlo, 2000: 69). In observing the paper trail of the state, my attempt has been to understand a facet of governmental rationality that presents itself as documentary impulse, and its bearing on everyday life of people. Thus, bits of paper pass on their power to those who handle them. The functionary who issues them derives his/her authority from the fact that s/he alone can do so. The person who receives them is empowered by the legality accrued through the certificate. However, equally important is the fact that the lack of these bits of paper make for obstacles in everyday life, and it is this that makes for the use-value of an institution like the panchayat.

## **Conclusion**

According to Akhil Gupta, the difficulty in studying the state in an ethnographic context comes largely from its translocality (Gupta 1995). This however does not mean that the state is distant or removed from everyday life of its citizens. Keeping in mind that the state acts as a monopoly of legitimate authority (Weber, 1946; Mitchell, 1991; Bendix, 1992), this chapter has dwelled on the manner in which this authority is communicated to and perceived by the citizens in everyday life. In the particular case of the postcolonial Indian state, there is ambivalence with regard to the premises of that authority; that is the question of whether it is based on tradition or modernity. Often, this ambivalence is highlighted in the shifting metaphors the state deploys in the way it makes itself visible to its citizens and the forms in which it is imagined by the citizens themselves.

Citizens too oscillate between sets of expectations that they may have of the state. The cognisance of citizenship may not be articulated directly in everyday life, i.e. outside the spectacular events of elections and political rallies, but instead it is communicated more mundanely through what citizens perceive as their rights qua citizens. Seeking justice at a state adjudicating body may not necessarily be the most obvious or even desirable option for most people, but nevertheless it is sought as a right, or even an entitlement. The official judicial apparatus may be seen by most people as less than ideal, but at the same time it is also seen by them as the most rational and effective of available options. The aim of the chapter has been to show some of the complexities that underlie such decisions.

I have demonstrated the shift in the relationship between the state and its citizens, from a metaphor based on that of the family and tradition to one based on development and modernity. This is most easily seen in the way in which an institution like the panchayat has changed its role in village life, as well as the way the local court has grown in importance. Thus, this chapter has ethnographically explored the relationship between the state and governmental rationality, that is the day-to-day practice of governance as a 'conduct of conduct' (Gordon, 1991; Foucault, 1991). The fiscal and jural legibility of populations that the state seeks to achieve through its several registers is one half of the



story. The other half is authored by its citizens who use these categories to maximise their benefit opportunities in their everyday life as well as registering their 'constitutional patriotism' in subscribing to the notion of the power of the legal state.

The next chapter will take up the more specific instance of legal governance and the explores the conditions in which the enforcement of law became a critical component of the art of government in colonial and postcolonial north India. The subsequent chapters take up the impact of particular forms of legal governance on Gaddi domestic lives.

## Chapter IV

### RULES OF THE DOMESTIC: CUSTOM AND LEGAL GOVERNANCE IN NORTH INDIA

*“Ethnography, which examines the religious, cultural and industrial conditions of the people, has more practical uses. At the present time it is incumbent upon us to preach, in season and out of season, that the information which it is competent to supply is the true basis of administration and social reform.”*

William Crooke, 1910<sup>1</sup>

The previous chapter showed how the state is experienced and made visible to people in everyday life. This chapter turns its attention to the specificities of legal governance in quotidian domestic life in north India. It does so by mapping the historical emergence of what was seen to be ‘customary’ as it was coterminous with the making of the domestic in north India. The chapter discusses the various conditions that underpinned the governmental need to carve out a separate code to govern “matters relating to inheritance, special property of females, marriage, divorce and adultery, adoption, wills, legacies, gifts and partition”, i.e. “all matters of ordinary occurrence”<sup>2</sup> in British Punjab. The codification of customary law was historically an articulation of the state’s recognition that the domestic affairs of the people should both be codified, and yet remain a sovereign domain in which the state should not intervene. This was recognised equally by the state and the nationalists in the early twentieth century (cf. Chatterjee, 1993).

The aim of the chapter is thus to highlight the consequences of the tension inherent in the codification of the customary. This tension was the consequence of the fact that as the state codified custom it simultaneously created a sphere outside itself that while customary and domestic was also ideally considered sovereign, and thus paradoxically

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<sup>1</sup> Address to the Anthropological Section of the British Association for the Advancement of Science, Sheffield, 1910. H.H. Risley Papers, MSS Eur. E. 295/20. OIOC.

<sup>2</sup> Note by HD Watson, Under Secretary to the Government, on the development of Customary Law in the Punjab, dated 26<sup>th</sup> February, 1898. The Punjab Codification of Customary Law Conference Report (henceforth PCCLCR). Appendix I, p. 52.

outside the jurisdiction of the state.<sup>3</sup> This tension persists in the present as the oscillation between what is deemed 'tradition' and what is perceived as 'modern' in relation to the domestic affairs and 'matters of ordinary occurrence' by both the state and citizens.

In order to understand and codify what is customary, the state had to make use of the discipline of anthropology and its forms of knowledge. Anthropology's emphasis on the ethnographic represented a shift away from a textual to a more practical knowledge of Indian society. The chapter examines the ways in which anthropological and governmental practices coincided in colonial Punjab in ways that brought about a particular transformation of sociality in the region. In conclusion, the chapter takes up contestations to codified custom in two areas: the validity or authenticity of custom itself, and, in the context of the second half of the twentieth century, the overlaps between customary and statutory Hindu law.

### **An Early Anthropological Practice**

"It is an error to believe that textualised, learned orientalism ever acted widely or deeply on society, unless its intentions ran with the grain of indigenous ideas or particular bureaucratic requirements or panics. Few officials knew or cared about orientalist ideas even in a vulgarised form. The British [], did not invent caste or construct religious identities *ex nihilo*. What they did was to provide conditions, practical and ideological, which allowed people to reproduce these forms of power and division. British regulation and economic conditions then projected these taxonomies into wider arenas. Change resulted from an unequal dialogue between Britons and Indians." (C. Bayly 1996: 168)

This section explores why the colonial state sought to solicit anthropological expertise and how the discipline was thus able to extend its expertise into the domain of the

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<sup>3</sup> It is important to note here that the British colonial government had a number of reasons for wishing to legislate on matters of the domestic, including the problem of female infanticide. They also had military recruitment objectives and a variety of reasons for wanting to extend government control over certain sections of populations. However, the point here is that these motives and objectives did not

state. In colonial Punjab, it became possible for the administrators qua anthropologists to move in as timely experts because the state posed questions of social order in terms that were at the core of anthropological concerns of the period. This section however is not about the already well documented history of British anthropology,<sup>4</sup> rather it concerns itself with the colonial state in India in its entanglement with knowledge and human interests. I argue that the role of anthropological knowledge and ethnographic categories were critical in the particular transcription of the empirical to the written, as was evident in the compilation of customary laws in colonial Punjab.

“Bureaucratic requirements and panics”, to borrow Bayly’s (1996) phrase, in colonial Punjab stemmed from a host of factors. The underlying assertion of the colonial government was to extend its legitimacy through a rule of law. Not least was the growing administrative realisation that there was little coincidence between textual and the empirical realities, especially in relation to governmental understanding of the rules by which people in the region organised their everyday life. This necessitated a new expertise, a new kind of knowledge with the help of which governance was to be rendered more effective. One of the important distinguishing characteristics of this exercise was that fact of writing down of observations. Anthropology contributed vastly to this particular aspect, in that it provided ethnographic categories and axes along which observation could be made intelligible. According to Pinney, metropolitan anthropology in the last quarter of the nineteenth century was engaged in establishing “through the study of physical characteristics, the connections between the ‘great families of mankind’” (Pinney, 1991: 253). But, in the colony, its practitioners were mostly administrators, whose engagement with the discipline sprang from the premise that it was imperative that they recover and transcribe Indian ‘traditions’ lest these tradition should disappear (Dirks, 2001: 106). This did not, of course, mean that they were not also motivated by the practical questions of governance and control. Developments in the discipline in the colony were closely followed and watched by a wide range of people beyond the colonial administrative corps. In other words, metropolitan anthropology and colonial ethnographic forays

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always add up to a coherent whole or single policy, but rather to an interlocking set of policy outcomes that allowed for local level negotiation and reinterpretation (see Chapters Five and Six).

<sup>4</sup> Stocking (1991); Asad (1973); Goody (1995); Kucklick (1992); Dirks (2001); Pels and Salemink (1999); Raheja, (1996).

shared a close and remarkably reciprocal relationship in the late-nineteenth/early twentieth century.

The administrative engagements with ethnography coincided with the shift that Dirks and others have described as the expansion of “colonial governmentality”(Dirks, 2001: Chap 6). This was a process through which the colonial state wrested the civilising mission away from the church in order to justify itself both at home and in the colony in the age of high imperial rule. This move required an anthropologisation of colonial knowledge to move the register of rule from conquest or battle to that of governance (Dirks, 2001: 149). In Punjab, this was most evident in the efforts surrounding the understanding of the nature of ‘custom’, which types of custom were desirable or could be considered “developed”- as the administration’s evolutionist prisms often perceived it – and which were, by contrast, in their “infancy”, and should be thought of as undesirable or contrary to principles of natural justice, and therefore quashed. The connections between nineteenth century evolutionist ideas, the invention of custom and the practice of anthropology are well documented (Cf. Banaji, 1970; Asad, 1972; Kuper, 1988; Stocking, 1987, 1991; Goody, 1995; Pels and Salemink, 1999; Dirks, 2001; etc.), but my objective here is to describe the specific ways in which the practice of anthropologically contingent legal governance led to a particular constitution of the domestic space in colonial Punjab. This laid the foundations for the recent changes that have taken place in the way family life is organised, experienced and thought about in contemporary Gaddi society, and which I discuss in chapter six.

“The Punjab is unique in one particular respect [...]. The primary rule of Civil Judicature as to all the important personal relations and as to rights of property in land amongst the rural classes (who form the bulk of the population) is Customary Law, and not, as elsewhere in India, the Hindu and the Muhammadan Laws, which here are of secondary importance, though these also have to be administered...”<sup>5</sup> This particular understanding of the law had come out of the Settlement process that followed the annexation in 1849 and was marked by the collection of vast quantities

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<sup>5</sup> Memorandum by Sir Meredith Plowden, Senior Judge of the Chief Court of the Punjab to the Chief Secretary to the Government of Punjab. Letter no. 1334, dated Lahore, 24<sup>th</sup> October, 1893. NAI/Home/Judicial/ A Proceedings/ March 1895/ no. 385.

of information. It was also in this initial phase that it became quite evident that administrative insights 'available from the administrative experience in the rest of the colony were not particularly applicable to the groups that made up Punjabi society. This was demonstrated by the fact that "after the close of settlement operations proper, the [Settlement Officer] (or his assistants) had two chores to dispose of. The SO was supposed to compile a new *district gazetteer* and *code of customary law*" (Dewey 1991:22).<sup>6</sup> This was in sharp contrast to the norms proposed and upheld for the rest of the colonial India. Two decades earlier, in his famous minute on the administration of justice in British India, Fitzgerald Stephen had emphasised unambiguously that "it must, as long as it lasts, be a system administered by foreigners, cast in a mould singularly different from that in which the subjects are cast..."<sup>7</sup> (cf. Stokes, 1959: Chap 4). Clearly, Punjab was seen as an anomaly, wherein legal governance was not possible outside of local rules. The primary task that lay ahead for the administration consisted in the understanding of a rural population, the bulk of whom did not live by any book or text, so to speak.

One consequence of this was that it entailed a building of a new constituency of native informants, such as village headmen and tribal chiefs who could advise on 'local rules'. For Bhattacharya, this signified two things: one, the decommissioning of the Brahmin as the favoured native informant for the British, and secondly, the dissipation of the authority of classical (Indological) texts (Bhattacharya 1996). But, it is important to note that this did not leave the administration acting in a vacuum. In Punjab, the dislodged text and its Brahmin guardian-interpreters were almost immediately replaced by a new form of text that came with its own guardian-interpreters. The authority that the Shastras and the Sharia enjoyed within the legal apparatus in the rest of India, in Punjab came to reside in C.L. Tupper's *Punjab Customary Law* (1881), a text that soon inspired a series of commentaries and companion volumes. Later in this chapter, I examine the nature of its textual authority in the discussion on the question of formal codification of custom. However, it is important to stress here that even though the Brahmin and the classical were rendered secondary in the juridico-legal sphere in Punjab, contra Bhattacharya, this did not

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<sup>6</sup> Emphasis original

<sup>7</sup> Minute by F. Stephen on the Administration of Justice in British India. NAI/Home/ Judicial/ A Proceedings/March 1872/ no. 364. p. 219. Emphasis added.

result in or imply a non-text based governance. Writing and recording were essential to the colonial state, and wherever erstwhile texts seemed inadequate, the state replaced them with new ones. Nineteenth century Punjab administration was a testimony to the reign of the written, given the range of texts that it produced – from land records to reports, manuals, and gazetteers.<sup>8</sup> It was in this endeavour to write down the empirical that the contribution of anthropology was most significant.

Anthropological enterprise in colonial north India took a quasi professional turn at the behest of a cohort of administrators. As a consequence of having become an indispensable part of the governmental armour, anthropological practice in India went through its own process of regularisation and standardisation in order for it to be more widely applicable. In February 1885, the Home Department proposed a conference on castes and occupations between Ibbetson, Risley and Nesfield, all of whom had more than a strong interest in matters anthropological.<sup>9</sup> The Government of India stated that the three officers should draw up and submit to the GOI, a scheme to put the mode of collecting and recording information for the Punjab, Bengal and North West Provinces on a uniform footing.<sup>10</sup> It was the proceedings of this Conference on the Ethnography of Northern India held at Lahore in March 1885 that yielded the standardised questionnaires that were used as the prescribed axes of data-collection by future ethnographic surveys, census reports, caste monographs and even some latter-day settlement reports and gazetteers.<sup>11</sup> The British Association of Advancement of Science recommended to the colonial government that ethnological surveys should be carried out simultaneously with the census operations.<sup>12</sup> Recognising the timely importance of these investigations, the Government of India (henceforth GOI) on its part accepted the recommendations while finding it difficult to carry out the two operations of the census and the ethnographic surveys simultaneously. The result was that a separate body for the Ethnographic Survey of India was mooted, for which separate personnel and funds were to be allocated.

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<sup>8</sup> See Saumarez-Smith (1995) on the calligraphic state in north India

<sup>9</sup> Telegram dated 9<sup>th</sup> February 1885. PSA/ Punjab Government Home Dept./ B Proceedings./ April 1885/ 446 – 53.

<sup>10</sup> Telegram dated 17<sup>th</sup> March 1885. PSA/ Punjab Government Home Dept./ B Proceedings./ April 1885/ 446 – 53.

<sup>11</sup> NAI/ Home/Public/A Proceedings./November 1901/122

<sup>12</sup> NAI/ Home/ Public/ A Proceedings/ November 1901/ 122

The Resolutions adopted at this conference and subsequently forming part of a Home Department Resolution of May 1901 were circulated well beyond the traditional domain of the colonial bureaucracy. The recipients included various Anthropological /Ethnological Societies and Institutes (London, Berlin, Leiden, Helsingfors, Amsterdam, St. Petersburg, Vienna, Smithsonian, Batavia, Brussels, Florence, etc.), universities (London, Cambridge, Oxford, Edinburgh, Dublin), and museums (Oxford, Berlin, Gottingen, Paris, Leiden). Individual recipients ranged from Francis Galton, J. G. Frazer, A. C. Haddon, and E. B. Tylor to the director of Statistics in Rome, L. Bodio, the US Director of Census, W. I. Hirriam, and Dr. D. J. Kollman, a professor of Anatomy based in Basel.<sup>13</sup> This connection between the metropole and the colonial government in relation to anthropology was to remain strong in the next two decades, which Clive Dewey has called the ‘golden age of the settlement literature’ in Punjab (Dewey, 1991). At least until the death of Herbert Risley in 1912, state interest in Anthropology continued to be highly productive, and resulted in various ethnographic categorisations of social groups which, by extension, made them governmentally intelligible. Risley’s death however, signalled a slowing down in the active interest in anthropology on the part of the colonial state, not least because it also coincided with that moment in British Anthropology where the binary of “practical” and “pure” Anthropology assumed increasingly irreconcilable positions. However, by then ethnographic surveys, caste and tribe monographs authored by civil servants had become part of the administrative routine.

In 1908, Herbert H. Risley, then Officer on Special Duty in the Home Department of the Government of India, received a letter from Prof. William Ridgeway, President of the Royal Anthropological Institute of Great Britain and Ireland, enclosing a memorial with over 250 signatures by the Institute before the government pressing for a greater practical use of anthropology.<sup>14</sup> Its signatories included the vice-chancellors of Oxford, Cambridge, Sheffield and Birmingham universities, senior civil servants, legal luminaries and academics. One of the recommendations mooted in the memorial was the training of probationers of the Indian Civil Service in the discipline, to which Ridgeway claimed that Lord Crewe at the India Office in London was quite

<sup>13</sup> Home Department Resolution no. 3219- 3232, dated. 23<sup>rd</sup> May, 1901, regarding Ethnographic Survey in India. NAI/ Home/ Public/ A Proceedings/. November 1901/ 124.

<sup>14</sup> Demi Official, dated 2<sup>nd</sup> August 1908. NAI/ Home- Public/ A Proceedings/ January 1909/ no. 290.



sympathetic.<sup>15</sup> Risley, in his notes to the same endorsed the cause. Taking stock of the ethnographic surveys undertaken in the United Provinces and Bengal, he wrote that the existing glossaries of tribes and sects required updating and revision. He further noted that glossaries were handy material for any officer in the field.

“..However, they call for a previous knowledge of the terms....knowledge of this kind (of principles of caste, Aryan theory, Indian system of marriage, modern ethnology) will only be acquired, as grammar of a language is best learnt-- in England. This has been recognised by the Police Commission and the Government of India in 1903- 04 when it recommended that the “rudiments of Indian Ethnography” should form part of the training prescribed for police officers...What was prescribed to the police is now equally applicable to the civilians...A knowledge of the natives is an essential condition of efficiency and there have been many complaints of late years that the civilians of the present day are “out of touch” with the people and know less about them than the officials of an earlier generation...”<sup>16</sup>

He recommended the annual grant of £100 requested by Ridgeway so as to ensure “adequate attention was given to the Indian affairs.. while disproportionate stress has been laid on the usages of South Sea Islanders and moribund Australian tribes...”<sup>17</sup>

Risley’s was not an isolated enthusiasm. In another instance, the Finance Department of the Government of India highlighted the need for anthropological expertise to the British Cabinet, including in the area of trade and commerce.<sup>18</sup> Citing success stories of the Germans in their trade with China and Japan as a result of their investment in subjects like anthropometry, the draft memorial proposed setting up of a central body along the line of the Royal Geographical Society to collect data on ethnology, institutions, arts, religion and law of all the races of the British empire, data that were to be made available for the use of government officials, civil service probationers,

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<sup>15</sup> Ibid. NAI/ Home- Public/ A Proceedings/ January 1909/ no. 290. pg. 2

<sup>16</sup> Ibid. NAI/ Home- Public/ A Proceedings/ January 1909/ no. 290. p. 2

<sup>17</sup> Ibid. NAI/ Home- Public/ A Proceedings/ January 1909/ no. 290 p. 2

<sup>18</sup> Despatch no. 353, Dated 17<sup>th</sup> December 1908, Finance Department, Government of India, to the Secretary of State for India. NAI/ Home- Public /A Proceedings/ January 1909/ no. 290.

manufacturers, traders, settlers, scientific travellers and missionaries.<sup>19</sup> The knowledge of the local ways was thus gaining importance. Only a few years previously, the training programme of the Indian Civil Service had been revised, removing subjects like Roman Law from the list of examination subjects, replacing them by Indian Contract Act, Hindu and Mohammadan Law and the Civil Procedure Code.<sup>20</sup>

Two years later, in 1910, William Crooke put forth a much stronger case for the professionalisation of anthropological inquiries in India.<sup>21</sup> In an address to the Anthropological Section of the British Association for the Advancement of Science at Sheffield in the same year, he remarked that “the scientific side of anthropology [was] in danger of being submerged by a flood of amateurism”.<sup>22</sup> Similar voices were being increasingly heard on the status of anthropology at the time, and more and more practitioners were beginning to question the nature of the discipline’s core, a concern that eventuated in Malinowski’s beacon call for a “pure anthropology” at the end of the decade (cf. Feuchtwang, 1973:71-100). However, Crooke was voicing the thoughts of those not-so-pure practitioners, i.e. the colonial civil servants whose official duties threw them into the ‘field’ ever so often. Unlike the solution suggested later by professionals, notably Malinowski, to disengage the academic from the administrative, Crooke echoed the appeal of those desirous of the establishment of an Imperial Bureau for Anthropology mentioned earlier. He reiterated the need to enhance the training of junior civil servants with a specialist module in Anthropology, so that they could be made aware of

“the obvious risk of letting loose the half amateur among savage or semi-savage peoples. [They] may see a totem in every hedge or expect to meet a corn spirit on every threshing floor. [They] may usurp the functions of the armchair anthropologist,

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<sup>19</sup> Ibid. NAI/ Home- Public /A Proceedings/ January 1909/ no. 290. pg. 14

<sup>20</sup> Letter from Government of India to the Secretary of State for India, no. 42, dated Simla, 4th July, 1907. NAI/ Home (Examinations)/A Proceedings/ July 1907/ no.42

<sup>21</sup> H. H. Risley Papers, MSS Eur. E. 295 /20; OIOC. Crooke was a civil servant who had worked in various capacities in the United Provinces and was Risley’s most ardent critic. For a discussion of his work, see Raheja (1996).

<sup>22</sup> H. H. Risley Papers, MSS Eur. E. 295 /116; OIOC.

by adding to [their] business, which is the collection of facts, an attempt to explain their scientific relations".<sup>23</sup>

At the same time, Crooke was convinced that the project of ethnological surveys should be entrusted to a more specialised personnel. He cited the case of governments like those of the U.S.A. and Canada, for example, which had already paid heed to this need, and had reaped benefits in their experience in the Philippines. Knowledge of native customs in his opinion was crucial in the ability to stall protest and revolts because it would afford policy-making a better acquaintance with native sentiment.<sup>24</sup> For Crooke, Anthropology was after all "the true basis for administration and social reform".

### **Empire of Information**

Legal governance, and in particular the codification of customary law, had been a source of much administrative anxiety in the province. There was a twin tension that gave fillip to this. For one, the province was the most litigious in colonial India<sup>25</sup>. At the same time, the trans-Indus districts showed unrelenting lack of enthusiasm for the state justice system, preferring to adjudicate through tribal *jirgahs* (councils). In addition, unlike most other parts of British India, administrators and legal experts found that there was little incidence of Muhammadan or Hindu Law in popular practice. The codification of customary laws was explicitly aimed at addressing both these issues. On the one hand it was aimed at bringing about a decrease in the volume of litigation in the Cis-Sutlej areas that had seen a spurt in agriculture and by extension the price of agricultural land. On the other, it sought to effectively bring those people within the ambit of law whom the broader religious and civil codes had so far failed to either attract or govern. The prime target of these interventions were the various peripatetic as well as settled peoples of the north-west, notably the Pathans and the Biluchis. It was their lack of enthusiasm for the state legal system that stood in marked contrast to the intensive litigation in the Cis-Sutlej districts. The dissolution of the village councils in the mid nineteenth century in Punjab was, partly an attempt to

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<sup>23</sup> H. H. Risley Papers, MSS Eur. E. 295 /116; OIOC. p. 117

<sup>24</sup> H. H. Risley Papers, MSS Eur. E. 295 /116; OIOC. p. 123

<sup>25</sup> *Report on the Moral and Material Progress and Condition of India, 1906; Punjab Administration of Civil Justice Reports*. Various years.

undermine the influence of the *Jirgahs* and other similar local institutions (for example, the numerous betrothal councils in Kangra district). This does not mean that the British colonial authorities did not also attempt to make use of these bodies where they could, for example, in relation to the control of marriage among the Mians (cf. Parry, 1979).

It was against this background that the provincial government launched the enterprise of compiling manuals of customary law for each district. Settlement of property had been the first and the most significant intervention made by the British after annexation. Aimed at generating a regularity with regard to revenue extraction, it entailed an exhaustive process of land registration and the fixing of revenue.<sup>26</sup> A series of Settlement Reports on the various districts of the province with encyclopaedic entries on a range of subjects was one of the significant outcomes of this project. These reports were both a statistical and a descriptive compilation of “the parliament of things” to borrow Bruno Latour’s phrase, that to the district Settlement officers, represented Punjab (Latour, 1993). Of course, these reports followed a prescribed format, and one of the crucial things that distinguished these reports was the careful, if formulaic recording of ‘tribal customs’. The absence of Muhammadan and/or Hindu legal referents in the way land and domestic relations were regulated, had necessitated a special legal administration of the province.

The Settlement literature was to become the basic primer, the first text of governance in the years to come. *Wajib ul arz*, or the first documentation of registration of land in the imperial revenue register, was recognised as the first authoritative source of information on custom. Under the Punjab Revenue Act of 1872, the presumptive force of these documents was noted as unambiguous, whereas a similar status could not be and was not accorded to the *Riwaz i Am*.<sup>27</sup> The journey of the *Wajib ul Arz*, culminating in a particular jural knowledge of the peoples of colonial Punjab, can at the same time be read as the journey of the increasing reinterpretation of documentation, that is of the increasing interdependence between the written and the empirical and the oral. However, land registration was not simply a codification of property rights and ownership. The process of Settlement was seen to be a

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<sup>26</sup> For a detailed history of land registration in Punjab, see Saumarez-Smith (1996).

<sup>27</sup> Memorandum by R. E. Egerton. *PCL*; 1881: 176.

comprehensive exercise that recorded in the written form the curious society of the province. Punjab was imagined by the British as confederation of village societies (cf. Inden, 1990).

The Tribal Record of Customs in the Settlement Reports was part of the ethnographic exercise that accompanied the registration of land. Later Gazetteers borrowing heavily from the Settlement Reports described the different peoples, flora, fauna, mineral, industrial and agricultural resources, fairs and festivals, etc. of their districts. This ethnographic exercise envisaged a transcription of Punjab sociality into an anthropologically intelligible script from the village records and oral information provided by selected rural gentry. Each 'tribe' in every district, in turn, was described in the fashion of the early anthropological writings, i.e. in terms of their racial physiognomy, appearance, originary tales, occupations, commensal practices and taboos, attire, kinship structures, etc. There was a rendering of the physical world into the written in terms of categories that had more to do with colonial metropolitan imaginations than local practices necessarily. The record of tribal customs included in these Settlement Reports was a standardised series of question-answer schedules. There was a flurry of writing on the curious ways and customs of the peoples of the province, resulting in many a volume (cf. Roe and Rattigan, 1895).<sup>28</sup> In 1881, Charles Tupper put together this material from the Settlement Reports and other sources into three volumes entitled '*Punjab Customary Law*'.

The publication of the Tupper volumes represented a critical moment in the legal history of the colonial state (Bhattacharya, 1996: 20-51). Bhattacharya (1996) has argued, as noted above, that the codification of customary law dislodged the Brahmin as the interpreter of Indian society for the British and accorded that same position to the village or the tribal chief. In other words, it meant the move from textual to practical authority as the source of custom (cf. Bhattacharya, 1996: 30; Gilmartin, 1988: Chap 1). In another way, it also meant a shift in the register of inscription, i.e. into that of ethnography-anthropology from one of Orientalism-Indology. The move was aimed at rendering the systems of local authority legible and intelligible for the

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<sup>28</sup> These customs were not necessarily completely unfamiliar, there was something about the Kangra system of social advancement through marriage and an obsession with minute gradations of status that would probably have seemed more than familiar to many British administrators and observers.

imperial mind. There were two levels at which this was done. On the one hand, every last person and thing was enumerated and typologised, and on the other, the larger entities that provided the classificatory grid for the micro enumeration, (e.g. 'tribe', 'clan', 'forest', 'commons', etc.) became both the language and the objects of regulation and governance. Anthropological expertise was sought at home in the colony (training of civil servants in ethnographic terminology) as well as from professionals in Britain. Ethnographic surveys that were to become *de rigueur* in the age of the census were in a sense prefigured by the Settlement processes.

Over time, there was not only an increased specification of property rights but also an increased uniformity with which right-holders were identified (Saumarez-Smith, 1996: 76). The category 'agricultural tribe' emerged in a crystallised form through this process of registration and was to become critical in subsequent governmental policies. For one, customs of only those tribes or castes identified as 'agricultural' were recorded in the settlement reports and subsequent manuals of customary law. The reason given was that the inheritance and succession practices of these 'tribes' had to be collected for the purpose of regulating land rights and therefore land alienation. The government reasoned that this was done to keep the moneylenders from usurping land from debtors, a source of much litigation (cf. Van den Duneon, 1974; Bhattacharya, 1984). According to Saumarez-Smith (1996), the picture of land-rights and tenure that emerged was deeply influenced and therefore in some sense also a replication of the Indological reading of the *jajmani* system.<sup>29</sup>

The unit of identification remained the invented 'agricultural tribe' even in Punjab's hill districts, like Kangra, where the patterns of tenure and rights were different from that of the plains. The vast areas of forest cover were also settled in the image of the commons adjunct to agricultural land in the plains. The grazing rights of the pastoralists became tied to their status as land owners and therefore for example, while Gaddis as a community were recognised as an agricultural tribe in Kangra district, only a tiny minority's 'customary rights' to the forest pastures got recorded in

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<sup>29</sup> But see, Fuller (1989: 39) where he makes the argument that *jajmani* system did not emerge until much later and was never a unitary system.

the Forest Settlement of 1891 (cf. Bhattacharya, 1995).<sup>30</sup> It is for this reason that in subsequent censuses and in later works, like that of William Newell's ethnography of the 1950's, Gaddis are classified as agriculturists who *also own flocks*. (cf. Newell, 1954).

The status of an agricultural tribe allowed a legal recognition of Gaddi 'customs'. The process of collecting the necessary information had become standardised post the Home Department Resolution passed in May 1901 regarding the Ethnographic Survey of India mentioned above. In 1900, a monograph entitled '*The Kangra Gaddis*', based on interviews with two village headmen from Dharamsala sub-division of Kangra district, was published (cf. O'Brien and Morris, 1900). The format followed the one recommended at the Conference on the Ethnography of Northern India, held at Lahore in March 1885 (O'Brien and Morris, 1900: 1). The information recorded herein was in the form of answers to questions prescribed at the 1885 Conference, which however are not presented to the reader. In case there was a difference of opinion between the two informants, the two responses are noted separately. In an answer to question 50, Bakshi, the headman of Dharamshala village, is recorded as having said "No prohibition against a woman having more than one husband." Mustadi's response to the same question is, "Polyandry is not practised." To a subsequent question too, their differing opinions are recorded.

"51. Bakshi: If the husband has any brother, the woman can select him if she chooses.

Mustadi: Polyandry is not customary" (O'Brien and Morris, 1900:15)<sup>31</sup>

The monograph served as an important reference point when the *Riwaz i Am*, or the Manual of Customs for Kangra was compiled. It was co-authored by Edward O'Brien, who had earlier served as the Settlement Officer of the district and had authored the *Glossary of Multani Language* in 1881 apart from the Assessment Reports of the various *talukas* (subdivisions) of the district (Dewey, 1991: 97).

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<sup>30</sup> For a detailed analysis of the effects of the codification of grazing rights as per the Forest Settlement in Punjab on the Gaddis, see Saberwal (1999). On the Settlement of common property rights in colonial Punjab, see Chakravorty-Kaul (1997).

<sup>31</sup> However, both are in agreement in their next response where they concur that it was not necessary for all husbands to be brothers, showing that polyandry did indeed exist among the Gaddis at that time.

*Customary Law of the Kangra District*, published nearly twenty years later, however allowed for no room for recording any divergence of opinion (cf. Middleton, 1919). Based on ethnographic monographs and ethnological observations collected during the Settlement period, this manual was meant to serve as a guide for the legal profession to ascertain the veracity of claims to the 'customary'. By the time information had percolated through various registers, or forms of recording and inscription it acquired a desired shape and form. For instance, in the *Kangra Customary Law* the practice of polyandry did not constitute the basis of even a single question and hence no 'rule' governing it was therefore recorded.<sup>32</sup> This shows that these manuals were as informed by the customary practices of the dominant community of the region (in this case, the Rajputs), as the preceding and subsequent Hindu Laws were by upper caste values. The result was that certain practices were put out of bounds of legal recognition and respectability. While the colonial state recognised the existence of polygamous men, a practice it associated with the region's dominant communities and by that token 'customary', the same could not be said of the marginal practice of polyandry. In such a scenario, the existence and the validity of 'custom' had to be proven and reclaimed in the courts. And this could only have further marginalised the prevalence of polyandry in practising communities.

### **Custom into Law**

In August 1915, Sir Michael O'Dwyer, the then Lieutenant Governor of Punjab, invited provincial administrators and legal luminaries to discuss yet again the issue of codification of customary law in the Punjab.<sup>33</sup> The Conference was in a sense an appraisal of how the courts and the government had coped with the diversity of legal norms in Punjab since its colonisation. Charles Tupper, whose treatise on customary law was to acquire quasi-canonical status, introduced his three volumes on the Punjab customary law with a classification of the legal history of the province (Tupper, 1881). According to him, the first phase was marked by the passing of the Punjab Civil Code in 1854. The Civil Code became the basis of adjudication on public and domestic matters. The second phase was marked by collection and collation of "Tribal

<sup>32</sup> Berreman, (1972) argues for Jaunsar Bawar that a form of disguised polyandry existed where the HyB had rights of privileged access to his eBW. British colonial officials must have been well aware that Rajput hypergamy in Kangra disguised a form of polyandry at the bottom of the ladder.

<sup>33</sup> Home-Judicial/ no. 2475 S, dated Simla, 19<sup>th</sup> August, 1915. In *PCCLCR* 1915: 6-8.



Records of Custom” during Settlement. This was followed by passing of the Punjab Laws Act and the Punjab Revenue Act in 1871-71, both of which overwrote the erstwhile juridical primacy of the Punjab Civil Code.

By the early twentieth century, the Final Reports of Settlement of most districts along with the Manuals on customary law were in place. But, the high levels of litigation remained unabated. By now a new stage of investigation had been added to the process of civil litigation. In almost all cases relating to what had been delineated as customary, it first had to be ascertained whether or not they really fell under that jurisdiction. At the top of the series of questions a judge usually listed as those that guided his judgement, or those that were outstanding in a case, was usually whether or not the parties were “governed by custom”. Despite its ubiquitous and almost inevitable presence, the judge had to comprehensively demonstrate how he came upon the decision as to whether the said litigants were governed by custom or by the Civil Code.

This elaborate demonstration was key to the outcome of the case in each instance, because what was considered as legal and lawful differed from custom to custom and between customary and statutory law. In addition, the fact of being governed by custom was always open to disputation. While the Punjab Land Alienation Act of 1900 had enlisted the names of the ‘agricultural tribes’ of the province and prior to that the agriculturists amongst the rural population had been identified in various records, there was always room for manoeuvre. Litigants could always take the recourse of opting out, that is to say that in the specific instance of their family, they did not follow their group’s customary practices. As will be highlighted subsequently, this ‘opting out’ became a key refrain in legal thinking and indeed legal disputes. Even as late as the early 1950’s, courts went through the time-consuming process of verification of jurisdiction. This was also to do with the fact that people not only contested the specificity of the custom but also more fundamentally, moved themselves opportunistically between ‘custom’ and ‘law’, as it were. Courts were thus further inundated, now also with cases where litigants claimed the authenticity or the legality of practices contrary to what had been written or recorded.

Civil Appeal no. 207 of 1953 of the Kangra district court exemplifies how some of the above conditions played out in a legal context.<sup>34</sup> In the original suit for declaration of property, the lower judge (Senior Session Judge, in this case), had held that a widow had no right to gift her husband's property to anyone.<sup>35</sup> His judgement rested on an assumption that both parties being Gaddis, they were governed by the same customary law. The original suit was filed by the male collaterals of one Damodar, against his widow's adopted son Bhura, who had been a recipient of the gift of the said property. The widow Dalo, and her adopted son Bhura had been able to convince the lower judge that the property in question was not ancestral, i.e. it was *acquired* by Damodar during his lifetime. Therefore, she as his widow had *inherited* it after his death, and did not merely have a lifelong interest in it. The point of adoption faltered on two counts. One, that under Gaddi custom, a widow did not enjoy the right to adopt a child. Secondly, even per Hindu law this adoption could not be held valid because it had taken place after the death of Damodar. The only condition under which such an adoption could have been deemed valid would have been if Dalo and Bhura could have provided evidence or witnesses testifying to oral instructions left by Damodar with regard to this adoption, which they could not do. Hence, the property reverted back to Damodar's collaterals.

In 1953, Bhura filed an appeal case against Chokas and other collaterals of Damodar's.<sup>36</sup> Bhura claimed that Chokas and others had failed to prove two things in the original suit: the fact that they were collaterals of Damodar and whether they followed custom. The latter charge stemmed from the fact that Chokas and others were from Chamba, and as there was no proof that they followed Gaddi custom in Chamba it could not be presumed they followed custom in Kangra. The District Judge did not take to this line of reasoning favourably. He noted that

“the parties are Gaddis and they migrated from Chamba. It is a different thing that it was a state at [the] time (of their migration). It is a fact that the Gaddis used to come [across] to Kangra during the winter season and go back [in the

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<sup>34</sup> Civil Appeal no. 207 of 1953. Bhura vs. Chokas and others; Goshwara no. 708; 8/P. District Record Room, Dharamshala.

<sup>35</sup> Suit 75 of 1951. Chokas, Dunian and Rattan vs. Bhura and Mst. Dalo. Goshwara no. 708; 8/P; District Record Room, Dharamshala.

<sup>36</sup> Suit 75 of 1951. Chokas, Dunian and Rattan vs. Bhura and Mst. Dalo. Goshwara no. 708; 8/P; DRR

summer] to Chamba [S]tate. So this means that they [lived] at both places. Questions 36 and 45 of the Kangra Customary Law clearly state that Gaddis follow custom of Kangra district. Besides this they follow agriculture and jhanjharara (secondary union) is permissible between(sic) them. There are lambardars (village revenue functionary) from them (sic) and they have a share in the shamlat (commons) and follow chundavand (per stirpes) rule of succession. There is nothing to rebut this evidence. The mere fact that these Gaddis also rear goats and sheep does not mean that they are not agriculturists. All what (sic) it means is that they do this work also. So all this shows is that the parties being Gaddis they follow custom in matters of succession, alienation, etc.”<sup>37</sup>

The judgement therefore relied on two major premises of governance by customary law. The first was the question of who constituted the valid subjects of customary law. In colonial Punjab, there was an inextricable link between the practice of agriculture and the governance by custom. Pastoralists like Gaddis had been categorised as agriculturists on the basis of their ownership and cultivation of land in Kangra, a condition that not only entitled them to a share in the village commons and by extension, customary rights in grazing runs, but also made for a legal recognition of their distinct domestic practices. The fact that the judge mentioned that Gaddis contributed lambardars signified a further two things. One that at least some of them were rather large landowners, and two, the community's relations with the administration were mutually beneficial.<sup>38</sup> The second was the question of territoriality, i.e. the spatial jurisdiction of custom. Administrators and jurists had both been much exercised by the question of how to identify the distinctiveness and range of custom, i.e. whether it varied across territory or whether it varied across groups. After much debate, district wide manuals were compiled, for it was reasoned that different people in a region had more similarities with each other than with their own across a large distance. Thus, according to this, Gaddis living in Kangra had more in common with practices of domestic organisation generally followed in Kangra than

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<sup>37</sup> Judgement of the District Judge, dated Hoshiarpur, 14 June 1954. Suit 75 of 1951. Chokas, Dunian and Rattan vs. Bhura and Mst. Dalo. Goshwara no. 708; 8/P; DRR.

<sup>38</sup> Lambardari in the hills was a title and office invented and foisted during the colonial period. Since it was constituted as a hereditary title along the patterns of the imagined village headman, it was meant to be a forum of liaison between the administration and the village.

they had with their kin in Chamba. Moreover, throughout the colonial period Chamba remained a princely state and Gaddis from Chamba were therefore outside the territorial jurisdiction of the colonial state.

It was this latter factor that became crucial in the second point of Bhura's appeal, i.e. whether or not Chokas and others were collaterals of Damodar. Collating pedigree tables from the Chamba state with revenue records from Kangra, the defendants' lawyer was able to convince the judge that Chokas and others were indeed Damodar's collaterals. This further testified to the claim of the defendants that they indeed were all ruled by the same law, even if they moved between Kangra and Chamba and had first started coming to Kangra years after Damodar had permanently established his residence there. Relying on the status and conditions of widowhood of Kangra Rajputs, the customary law of the district however could not distinguish between the conditions of widowhood among different caste groups. Since widow remarriage was common among the Gaddis, custom relating to widowhood was difficult to apply with clarity.

Since most litigation was around land, and the codification of the *Riwaj i ams* was primarily aimed at controlling the movement of property between proprietors, a vast number of cases revolved around contesting the customary basis of alienation or inheritance. As an example of a typical case, one Kanhu Ram of Hissar district, appealed at the Chief Court of Punjab against a previous ruling of the district court claiming right to a half share in ancestral property.<sup>39</sup> He claimed that his 'tribe', the Acharjis of Hissar, followed the *Chundavand* method of inheritance where the share between half-brothers was allocated per stirpes and not per head, as in the case of the *Pagvand* method, and as claimed by the defendants. They had claimed and convinced the Extra Assistant Commissioner that the partition of property took place by a writing called the *Kismat Nama* (a form of will). The lower court had been unable to ascertain beyond doubt whether the Acharjis indeed followed the *Chundavand* method. Its findings were upheld by the Commissioner's court, citing a quote from Tupper's volume that *Chundavand* was an "unjust practice" "used merely for survival" and was "dying out". The Chief Court too in turn, found that the question of

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<sup>39</sup> Kanhu Ram vs. Devshai and Others. Case no. 1024 of 1882; *Punjab Record, Volume XIX*; 1884, no. 81; 219-222

custom had not been disposed of satisfactorily by the Commissioner and ordered a fresh inquiry into the ascertaining of the claimed custom. After an extensive examination of large number of witnesses and judgements in similar cases, the Chief Court ruled on the 26<sup>th</sup> of February 1884 that while it would grant the appellant's (plaintiff) claim that *some* Acharjis of Hissar did indeed follow *Chundavand*, the appeal could not however be held as the partition had been executed according to a *Kismat Nama*, or a will.

A case like this revealed the nature of the evidentiary process that governed a claim to custom. Tupper's volumes were based on the Settlement literature. He had clearly stated that they were to be used as a reference guide and not as code. The Courts used them mostly as the primary proof of custom, and relied on them for adjudication. However, in later years, with case law taking root, previous judgements began serving as precedents and as verified proofs. The compilation of district-based manuals of customary law in the second decade of twentieth century used Settlement Reports and court decisions. These manuals were used qua code in Punjab right until 1956 when the Hindu Marriage Act and the Hindu Succession Act overrode their juridical authority.

Litigants not only questioned the accuracy of the recorded custom, as in the one cited above, they also contested governance by customary law per se. In an inheritance suit that came for appeal in the Chief Court in 1882, the appellant, one Abnashi Ram challenged the customary law governing the Khattris of Lahore district because it did not differentiate between "associated" and "non associated" relations in matters of inheritance,<sup>40</sup> whereas such a proviso existed in Hindu law. As in all such matters, the Court ordered a fresh inquiry into the veracity of custom that involved an officer of a rank not less than that of an Extra Assistant Commissioner to go and conduct ethnographic research. Based on these findings, the judges ruled that while historically the particular family was said to have adopted rule by custom, it could not be proved that their custom overrode Hindu law which gave preference to the associated brothers over the disassociated brothers in regard to succession. It therefore

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<sup>40</sup> Hindu law of the time made a distinction between collaterals who maintained active kin relations and/or live in proximity with each other (i.e. associated) and those who did not (non associated).

upheld the appeal and restored the 'wrongly' alienated property back to the appellant.<sup>41</sup>

The plurality of the sources of juridical authority continued to be used opportunistically by litigants. However, every time a case came up for appeal from the lower courts, the validity and veracity of the particular custom had to be and was verified afresh. Legal discourse and official documentary practices were part of the larger liberal discourse that effected important shifts over time. A survey of litigation from the late-nineteenth to the mid- twentieth century in the province points to the manner in which these governmental practices of documentation had successively brought about a new legal consciousness couched in the language of rights. If the earlier cases were hallmarked by errors arising out of ignorance of the necessary official procedures (e.g. unregistered adoptions, unofficial wills, etc.), then later claims became better educated with the language of rights. For example, in a case filed in the Kangra District Court in Dharmashala, a daughter was successful in defending her rights in the property of her deceased father against acquisition by her father's male collaterals.<sup>42</sup> The common ancestor between the plaintiff Harya, and the defendant Mehro went back five generations, and therefore within Hindu law, the plaintiff had challenged a sale of land deemed ancestral, by Shukri, widow of the last male heir. The court had then to, among other issues, verify: a) whether according to Gaddi custom, a father could gift his ancestral and/or self-acquired property to his daughter in the absence of a male heir, and b) whether there was a Gaddi custom by which Shukri had a primary right on the land as opposed to five degrees removed male collaterals. The defendants successfully argued the case on both counts and the plea was thus rejected. The decision of the court was based on the evidence collected in the form of witness depositions, documents of the *patwari's* register, Village Mutation Records, etc. The judgement delivered on the 6<sup>th</sup> of April 1946 also cited the *All India Recorder 1935 Lahore 985* wherein it was stated that the customary rights of the direct female descendants amongst the Gaddis preceded those of male collaterals in the case of acquired property.

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<sup>41</sup> Abnashi Ram vs. Mul Chand. Case no. 1155 of 1881. *Punjab Record, Volume XIX*; 1884, no. 44. 163- 165.

<sup>42</sup> Suit 111 of 1944. Harya and others vs. Musammats Shukri and Mehro. Goshwara no. 716. 8/P. DRR.

However, in 1952, Shukri's step-daughter, Mehro filed a suit against her.<sup>43</sup> In her plea, Mehro alleged that Shukri had no right to gift away property inherited from her husband and successfully proved more land to be non-ancestral than was decreed in the previous case, thereby claiming her 'rightful' ownership of the same. By now, judgements relied increasingly on precedence as proof. The judge in this case cited no less than eight cases from various Law Reporters, apart from citations from Rattigan's Digest and the 1868 Settlement Records. Customary law had been able to preserve the inheritance rights of female descendants amongst the Gaddis, even if selectively. On the other hand, land ownership rights had become so standardised as a result of uniform practices of documentation that a judgement like the above which rested heavily on what was 'customary', could afford to appear amnesiac about the fact that 'traditionally', in Kangra district, no distinction was made between ancestral and acquired property, a fact noted in one of the more popular text-books on customary law at the time (Roe and Rattigan, 1895: 69).

It is important to note that the writing down of customary law in manuals and texts was only one of the several ways in which things of 'ordinary occurrence', or the domestic lives of the rural populations of Punjab became codified in law. As the instances cited above indicate, coeval to this was also the development of the due process of law, which in this case meant the consolidation of case law. Because the Tupper volumes, or indeed the various district manuals of customary law, never enjoyed absolute authority, most of the ossification of custom actually took place as a result of the massive litigation around transfers, attempted and thwarted, of land. The impetus for this litigation may seem to have arisen from the appreciating value of land as a result of canal irrigation in the plains of Punjab and an increase in population over the whole region (cf. van den Dungen, 1972; Bhattacharya, 1985). The consequences of this had a distinct impact on domestic arrangements. Irregularities in non-commercial land transfers were mostly understood as irregularities arising out of the formation of the household or family involved. The adoption of sons by widows, the age of at which a person could be adopted and become a part of another household, the definition of close kin and distant kin, the relational proximity of daughters as compared to that of sons, and so on became points of legal establishment

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<sup>43</sup> Suit no. 416 of 1952. Mst. Mehro vs. Mst Shukri and 2 others. 8/P Mauza Meghla Records, Goshwara no. 716.

and contestation, in so far as they were seen as occasions of (potentially) debatable transfers of property. Thus, the very thing that was purported to be avoided by having a rule of custom, i.e. that domestic lives were sovereign and should fall outside the domain of governmental intervention, was contradicted in the instance of the creation of custom. In the course of time, kinship relations became more strictly observed and regulated in colonial Punjab (cf. Chowdhry, 1994; Malhotra, 2002).

### **Subjects of Governance**

The dangers of codification were not entirely lost on the colonial administration. In the first decade of the twentieth century, the demand for codifying customary law had reached a crescendo. But opposition to codification had loud and loyal supporters too. One of the foremost opponents of the codification process was none other than Herbert Risley, who was then the Secretary (Home) to the Government of India. In a letter to the Punjab Government, he wrote:

‘I venture to think that the sooner the [...]question (of codification) is taken up the better. You cannot go on manufacturing customary law indefinitely; the process of manufacture is demoralising to everyone concerned and encourages speculative litigation..’<sup>44</sup>

Risley represented a more general scepticism that dogged the question of codification. At the very heart of the issue was the question of what was to be understood by ‘custom’ and thus how the relationship between custom and legislation was to be interpreted. Risley and others feared that any codification might lead to “arresting the development of custom” which would over time only increase the gap between legal and actual custom. Ibbetson, who had earlier compiled the most comprehensive census ethnography on the Punjab<sup>45</sup>, echoed similar misgivings. His concern was that giving supremacy to customary law might hinder the progress of individualism that

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<sup>44</sup> Note by H. H. Risley, dated Calcutta, 10<sup>th</sup> August, 1906. NAI/ Home (Judicial)/ A Proceedings/ February 1907/ no. 59- 60.

<sup>45</sup> Ibbetson, Denzil 1883 *Report on the Census of Punjab taken on the 17<sup>th</sup> February 1881*, vol. I; Lahore: Superintendent of the Central Gaol Press.



was needed to take the province and the people to the next step in the evolutionary ladder.

“ At the present moment, the Punjab is in the opening stage of an enormous agricultural development; it is [ ...]on the brink, of a similar industrial development; while that individualism, which contact with our ideas and subjection to our system of government seem inevitably to engender, is steadily making way even among the village population ”<sup>46</sup>

According to Ibbetson, codification would not only lead to a greater fixity of regulation but would also reverse governmental efforts to make people move away from their tribal councils and ‘local law-ways’ and become individual subjects.<sup>47</sup> By the time the Punjab Codification of Customary Law Conference was convened in 1915, this had become a legal issue. One of the questions on the agenda was to decide the means by which a person could as an individual choose to be governed by the Civil Code Procedure and not by the customary law of her/his community.<sup>48</sup> The process of weaning people away from their primordial associations and loyalties and towards casting themselves as ‘individuals’ was already in motion. The impetus also came as a response to various indigenous reform movements that highlighted the oppressive nature of a caste society. In fact, at the 1915 Conference on Customary Law, organisers were quick to point out that the idea of ‘contracting-out’ was raised under the influence of a recent series of articles published by Sir Sankaran Nair, a luminary of the Madras judiciary.<sup>49</sup> Importantly, while an individual could dissociate herself/himself from the “trammels of the old customs”, entire *gots* (clans), tribes, castes enjoyed no such options.<sup>50</sup> This process of making *individual* legal subjects can be seen to continue in the postcolonial state where the option of the Civil Code exists in addition to religion based Personal Laws. Thus, not only was the purported

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<sup>46</sup> Note by Denzil Ibbetson, dated Calcutta, 21<sup>st</sup> September, 1906. NAI/ Home (Judicial)/ A Proceedings/ February 1907/ no. 59-60

<sup>47</sup> Note by Denzil Ibbetson, dated Calcutta, 21<sup>st</sup> September, 1906. Pg. 7 “ Now our rule forbids these people to legislate for themselves; our courts have power if appealed to, to override the decisions of tribal or village councils which follow the general sense of the community;...it is always difficult to define a tribe or a clan; sub divisions of greater or less importance are extra ordinarily numerous; and it is always open to the individual who desires in any particular case to depart from the tribal custom” NAI/ Home (Judicial)/ A Proceedings/ February 1907/ no. 59-60

<sup>48</sup> PCCLCR “..4. Whether it is desirable to give individuals, by legislation, the power of renouncing custom, in regard to the alienations inter vivos or by will- a) by means of registered declarations; b) by means of contracts between themselves...” (1915: 8)

<sup>49</sup> PCCLCR (1915): 16

<sup>50</sup> PCCLCR (1915): 16

non-interference in the domestic domain never a reality, but also the intervention that did take place actually altered the nature of sociality at both domestic and public levels.

This also had repercussions for popular protest. The whole idea of governance by customary law was premised on the desired separation of the public from the domestic. As demonstrated above, this separation was not only false but was never really maintained. In many ways, protests against colonial policies and interventions too operated within this public-domestic binary. While the infringement of access to means of livelihood became obvious areas of protest, the same could not be said about the regulation of domestic life. For example, Gaddis continually protested and petitioned against the denial of pasture and grazing rights throughout the late nineteenth and a good part of the twentieth century.<sup>51</sup> Closure of village commons became subjects for protest. In Meghla, the village where I did my field work, Gaddis protested against the closure of a part of the village commons, ultimately setting fire to the denotified area when all else failed.<sup>52</sup> They claimed that they had 'customary' access to graze their cattle and get fuelwood from the commons. In 1908, eleven Gaddis from Meghla officially petitioned the district administration to renotify the enclosure. They finally gained rights to the same some thirty years later after much negotiation over the revenue shares.<sup>53</sup>

However, the process of official identification by caste/tribe (i.e. terms borrowed from anthropological discourse) simultaneously implied a hierarchy of civilisational status. So, while public wrongs by the state became obvious targets of insurgency, the same could not be said about the historically subtle and slow reorganisation of domestic life. The idea that domestic life should and could be 'modern' was an aspiration that took shape over time, and took root only slowly and at an uneven pace. It is for this reason that the younger generation of Gaddis today look upon the polygamous conjugal practices of their great-grandparents as relics of the past, and their own law-abiding monogamous conjugality as signposts of their journey of 'progress' from their

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<sup>51</sup> See the Garbett Commission Report 1938 for a record of such petitions made by the Gaddis to the government.

<sup>52</sup> 22<sup>nd</sup> August 1907. HPSA/Basta no. 29/ Serial no. 433/ DC Kangra Correspondence/ Head 10/ File 159.

‘primitive’, ‘tribal’ past to a modern future (See Chapter Six). It is as if these secular forays of the state into the domestic are seen as legitimate and rightful of its role as a patriarch. It is for the same reasons therefore, that there are still relatively few popular critiques of or protests against the contemporary state’s population policies. The same evidence could not be guaranteed were the state to levy heavy taxes or make other direct infringements on the means of livelihood of its citizens.

Significantly, the process of making individual legal subjects, that is subjects who had legal rights beyond those guaranteed by their social group, and sometimes in contravention of them, reached a culmination in the codification of all-India statutes on Hindu marriage and succession. Originally, the Hindu Marriage Act and the Hindu Succession Act were meant to be part of a separate and unitary code, and were proposed to the newly constituted Parliament as the Hindu Code Bill. This was part of the legal reform that was seen as a key milestone in the process of nation-making in postcolonial India. The Code however was heavily opposed and on grounds that were not altogether new. B.R. Ambedkar was the chief architect of the Hindu Code Bill, and he was deeply committed to the idea of bringing about what he considered as much needed social reform within Hindu society through the process of constitutional guarantees of freedom and equality.<sup>54</sup> However, his proposed Bill was hotly debated and politically contested and eventually had to be passed in fragmentary versions, notably the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956, and not before his resignation as the Union Law Minister in 1951 (Uberoi, 2002: 15).

One of the foremost issues of contention was the new legal rights that were to be guaranteed to Hindu women. It was perceived to be a threat to a tradition that was seen to have continued uninterrupted since time immemorial. In fact, it can be argued that just as the reliance on classical or Indological texts for the codification of law in colonial times was in some ways a denial of the presence or the influence of Islam on Hindu society (cf. Inden, 1990), similarly the popular persistence of the myth of the

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<sup>53</sup> 22<sup>nd</sup> August 1907. HPSA/Basta no. 29/ Serial no. 433/ DC Kangra Correspondence/ Head 10/ File 159

<sup>54</sup> The Bill emerged out of the recommendations of the Rau Committee Report set up in 1941 to review the Women’s Rights to Property Act of 1937, a controversial statute in its own days. For further discussion see Uberoi (2002).

Hindu joint family obscures the degree to which popular custom in Punjab rarely confined to this ideal. However, the threat to supposedly traditional family forms was keenly felt.

“The Hindu Code Bill is a Vismriti – absolute forgetfulness. It is a new Veda. There are four Vedas, the Sam Veda, Rig Veda, the Yajur Veda and Atharva Veda. I think the new Veda should be called Dr. Am Veda and this is the fifth Veda in utter defiance and disregard of all the four Vedas which it supersedes.”<sup>55</sup>

The author of these words was a Muslim Member of Parliament, who felt compelled to make a monumental speech lasting a little over ten hours to the House after the Bill was introduced in the Parliament with a view to limiting the damage envisaged in the bill to the moral fibre of Indian society. Among the several issues that worried him was the manner in which this proposed Bill was going to alter the emotional relations between a brother and a sister once she became a rightholder in her natal family’s property (Naziruddin, 1949: 21).<sup>56</sup>

The Hindu Mahasabha proselytised its opinions and positioned itself so as to appear to speak on behalf of the entire Hindu population in India, whose traditions and foundations were being seriously compromised in the Hindu Bill. One of its senior leaders, N. C. Chatterjee in his address to a party meeting held in Delhi on December 5, 1954, elaborated the concerns of the Mahasabha with regard to the Bill, which are captured succinctly in the following statement:

“For centuries, Hindu ‘marriage’ is a religious act and the marital bond is considered pure and permanent...The proposed Hindu Marriage Act is no

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<sup>55</sup> Ahmad Naziruddin, in a speech made in the Indian Parliament on March 01, 1949. (Naziruddin 1949: 91)

<sup>56</sup> See similar pamphlets on the issue of the Hindu Code Bill, eg. Vedantirtha, Jogendranath 1954 *Opinion of the Bangiya Brahman Sabha on the Proposed Hindu Succession Act*; Calcutta: Sri Sakti Press. And Borchetiya, Sarbeshwar 1950 *Protest Against the Government of India – Bill on the Hindu Marriage and Their Inheritance Rights*; Jorhat: Darpan Press.

more than an announcement letter (*ghoshna patra*) or a licence for sexual relations...”<sup>57</sup>

Chatterjee was of the opinion that giving married women property rights was a revolutionary change, but one that was certain to destroy families and family life. It was ironic that advocates of the Hindu Right (as the Mahasabha can be broadly described) championed the cause of ‘custom’ and the ‘customary’ in the face of legal reform. In contrast, the liberal political position was assumed by the Indian National Congress.<sup>58</sup> The women’s wing of the Congress Party took it upon themselves to disseminate this point of view after the Acts had been passed because in their (political) opinion, “the Hindu Marriage Act [was] aimed at bringing about a better and a more harmonious relationship between the husband and the wife based on a rational understanding of their mutual rights and obligations.”<sup>59</sup>

But even this codification was partial and selective and itself made for a new understanding of what was and is the ‘customary’. Uberoi (2002) has highlighted the north Indian bias immanent in the aspects of Hindu Law that came to be codified under the Hindu Marriage Act (henceforth HMA 1955) and the Hindu Succession Act (henceforth HSA 1956). Examining the differences between Dravidian and north Indian marriage rules, Uberoi points out that under the HSA and HMA Dravidian kinship practices have been legally subsumed under “allowable custom”, whereas the preferential system of cross-cousin marriage in Southern India technically falls under the “prohibited degrees of relations” between whom marriage cannot legally take place under Hindu law. This analysis raises the question of why this bias has never been questioned either through litigation or through political public debate (Uberoi, 2002: 21-22).

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<sup>57</sup> Chatterjee, NC 1954 *Hindu Sanskriti Par Aaghaat: Hindu Code Ka Vishleshan*; Delhi. (Lit. *A Blow on Hindu Civilisation: An Analysis of the Hindu Code*)

<sup>58</sup> It must be taken into account that the Congress was not a unified voice over the proposed amendments to the Marriage and Succession laws. Some of these stringent criticisms were instrumental in effecting the fragmentation of the Code Bill and the subsequent resignation of BR Ambedkar from his Ministerial position. For more details see Uberoi (2002).

<sup>59</sup> Speech by Ms. Mukul Mukherjee, in charge of the Women’s Department of the Indian National Congress. In Indian National Congress 1956 *The Hindu Marriage Act: Passed by Parliament on May 5, 1955, (A Summary)*; New Delhi: INC Publications Department.

What initial discussion around the Code Bill and the two subsequent Acts really signifies is a debate about the version of domesticity promulgated in the proposed law(s), but what is pertinent to this discussion is the manner in which tradition and 'custom' begin to occupy differing positions in colonial and post colonial India. If one accepts the argument put forth by Partha Chatterjee that the discourse of nationalism produced the idea of a sovereign domesticity that was held in opposition to the colonised public (Chatterjee, 1993: 121), in independent India, the religious right have spoken in a similar language, that is as guardians of the sovereignty of the domestic against the authority of governance. This is also evident from the manner in which women have been seen to be the repositories and therefore vehicles of national virtues, as it were. Chakrabarty's analysis of the responses and interventions made against middle class Bengali widows in the nineteenth century uncovers similar assumptions, that is that women and domesticity are critical tropes for the negotiation of what is deemed sovereign and national (Chakrabarty 2000a: chap 5). While for Chatterjee, the constitution of a sovereign domesticity is integral to and indicative of nation and nationalism, the reformative reformulations of the status of widows in colonial Bengal are pointers to the birth of a new kind of subject for Chakrabarty.

## **Conclusion**

In conclusion, this chapter has tried to demonstrate that the process of inscription of Punjab society became the point at which the interests of the administration and of the academy coincided. While supporters of anthropology tried to extend its expertise to the colonial state in a somewhat vain attempt to gain ascendance within the academy in terms of funds and influence/relevance, the colonial state used this available expertise both within its cadres and outside to consolidate its access to every aspect of native life articulated through metropolitan categories or certainly translated through them. This process of translation, which was simultaneously a process of inscription, became embroiled in a series of debates about what was 'traditional' and what was 'modern'. To a significant extent, the 'customary' became the 'domestic' in colonial India and has remained so in the postcolonial state.

The remaining two chapters of the thesis will take up the question of how this national project unfolds at the level of the local. In examining the shifts within Gaddi

household and conjugal relations, I will make clear the relationship between custom and law as it is negotiated in contemporary everyday life.

## Chapter V

### MAKING RELATIONS PROPER: LAWS OF A MODERN GADDI HOUSEHOLD

*“Could a father alienate his whole inheritance, though male issues were alive? If not all, how much? The Banuchis at first unanimously declared that he could give away all to whomsoever he chose, such being the Shara rule. Asked for examples of exercise of such power, not one was forthcoming. Had anyone so alienated half his land? No cases known. As with the Banuchis, so with the Isakhels and others. Thus reasoning from a series of negatives the people were driven to admit that their first replies were erroneous; and we had to record our answers to the effect that no custom on the point existed, but that all were of opinion that, on disputes arising, if such and such a rule were adopted, an equitable custom would grow up. Here and there I shaped public opinion on most questions in the direction in which I myself and others of longer experience thought equitable.”*

S. S. Thorburn 1877 *Settlement Report, Bannu District*.<sup>1</sup>

*“At the interface of law and agrarian practice we find custom.”*

Thompson (1991: 97)

This chapter takes its cue from Thorburn’s musings in 1877 and charts the repercussions of their administrative resolutions on the domestic arrangements of the Gaddis over the period from the last century up to the present day. Thus, this chapter investigates the place of the legal codification of property rights in the making of the modern household in Gaddi society. It focuses on how kinship and relational proximity were codified, and at times changed, through legislation; and examines the impact of codification on contemporary ideals of household structures, as well as popular concepts of legitimate and illegitimate offspring. The main aim of the analysis is to understand the manner in which relations of intimacy were and are bound up with property and wealth.

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<sup>1</sup> Quoted in Roe and Rattigan (1895: 18)



Marilyn Strathern has conceptualised property as the relation between persons and things (Strathern, 1999). Recent literature on kinship has reinvigorated anthropological inquiry in questions pertaining to property relations (cf. Hann, 1998). The anthropological analysis of property goes back to Morgan, Marx, Engels and Maïne. It refers to the things in which people have rights and also to the rights themselves. Such rights always entail relationships because they are connected to responsibilities. Individuals may also have rights in each other. This does not mean however that all rights are individualised because many are attached to the family, the community or the state. It is usually the case that collective notions of rights as well as individual ones are involved in inheritance and thus in the rights kin have in each other. Such rights always have implications for marriage, household composition and the family (cf. Goody, 1962; 1976; 1990). Recent analyses of property in anthropology have focused on models of reproduction and their relationship to the creation of personal and collective identities (eg. Strathern, 1999). Marilyn Strathern extends forms of property to include ‘dispositional control’ or in other words, rights in other people and non-commodity rights in one’s own body (Strathern, 1999, esp. Chaps 7 and 8). Her point is that rights in property may take several forms, and that some individuals can ‘own’ property without having rights over its disposal. Property in all these conceptualisations in anthropology is about the relationship between persons, things, economy, law and power.

In this chapter I aim to examine the manner in which the state codifies the relations between things and how this codification re-codifies the relations between persons. My purpose in doing so is to explore the different regimes that govern each of these orders, as well as the different orders of relational persons that are constituted as an effect of this. I juxtapose the relational order arising out of the state regulation of persons and things with the different order that derives from the movement of things between people that lie outside the bounds of legislative control. This chapter thus explores the role of the state in recasting a new order of the household through its redefinition of parents and children, and the presumed and prescribed outcome of their relationships. The chapter also examines the transactions of people and things that lie outside state control. These transactions, often between women, are readily characterised as “emotion-driven”, as gifts arising out of sentiment. This provides a different picture of the boundaries of property and the power derived from ownership

because it examines how women create relationships with others when they have property over which they have ‘dispositional control’.

In the first section I look at the manner in which codifying rights in things codifies the relations they (ought to) engender. This section also explores the codification of household in the wake of the settlement of property relations at the outset of colonial rule. It examines the relational order that is codified in terms of access to differing degrees of ownership, i.e. through inheritance and rights in property.<sup>2</sup> In the second section I examine how within this legally constituted household, the state remains somewhat marginal in an everyday sense. I discuss the role of women’s property, and how and why its role in constructing relations between people is quite different from the legislative impact of the state on inheritance and property transfer.

## Relations in Law

“I was entrusted with the revision of the Settlement in my own district [Kangra], and in 1848 I broke ground by laying down the boundaries...Village limits had never been definitely fixed; but the measure was at once understood and undertaken by the people. The hill-sides clothed with forest and underwood, where the cattle of the vicinity had grazed for thousands of years without thought of jurisdiction, were now allotted by the contiguous villages with the greatest unanimity”<sup>3</sup>

These were the impressions of G. C. Barnes, who carried out the first comprehensive Settlement in Kangra district. *Hadbusts*, or outline maps, were one of the first steps in altering the received geography of Kangra’s landscape. In the changed scenario, which slowly unfurled over a period of fifty years, there was an interlocking of

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<sup>2</sup> A great deal has been written in Anthropology on property and ownership (cf. Hann, 1998 for an overview). Here, I follow Herskovits (1965), “Whatever the absolute criteria of property may be set up, *the ultimate determinant of what is property and what is not is to be sought in the attitude of the group from whose culture a given instance of ownership is taken.*” (quoted in Hann, 1998: 34. Emphasis original.)

revenue, community and territory. At the same time, the articulated category was that of the right-holder, the property-owning and revenue-paying individual. The focus of this section is the manner in which legislation on land and ownership in colonial and postcolonial Punjab was responsible for restructuring the domestic world of the Kangra Gaddis. It is through the language of ownership and inheritance, i.e. of proprietors and heirs, that the governmental idea of the household emerged in colonial law. The liberal language of rights and equality has sought to reorder relational proximity in postcolonial legislation. However, what is common to both contexts is the discourse on legitimate relations. This section looks at property related legislations enacted by the colonial and the postcolonial state with a view to examining the changing orders of relatedness amongst the Kangra Gaddis.

The transformation of land and landscape into property was the first step, in a series of several, that ordered current popular concepts of family and household. The Punjab Land Alienation Act of 1900 can be read as an outcome of political anxiety on part of the colonial state, as has been argued by van den Dungen (1972) and Bhattacharya (1985).<sup>4</sup> However, the effects of this Act, along with others on land and revenue, were far reaching and had a direct impact on the way heirs and therefore children were conceptualised. As has been argued in the previous chapter, matters relating to family and household were ordained as the domain of custom, and were not legislated upon in a general way by the colonial government in Punjab.<sup>5</sup> However, while it consolidated certain sociological categories like the agricultural tribe, even the effects of a general law like the Land Alienation Act were ultimately played out in the household.

The Act accorded a clear presumptive force to sons in matters of alienation. While patriliney was a general rule of kinship organisation in the region even before the passing of this Act, its fuzzy empirical presence gradually gave way to a stricter agnatic mentalité over the course of the next fifty years of legal governance. This was achieved through a series of legal interventions, each of which was strongly rooted in

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<sup>3</sup> Barnes, 1855, 1874 SR: 46. See Ronsbo (1997) for the significance of the enumeration of land in processes of state formation. For a discussion on the Settlement of land in Punjab, see Saumarez Smith (1996). For Kangra, see Baker (2000); Singh (1998).

<sup>4</sup>Both authors read it in the context of the potential rural disaffection stemming from growing agricultural indebtedness in nineteenth century Punjab.

the agnatic theory of descent. Legal governmentality rendered the making of non-agnates as heirs more difficult. This was amply evident in the procedural stringency with which courts treated matters of adoption and wills, and the systematic marginalisation of non-agnatic descendants through family legislation. Before we discuss this, I explain the different categories of legal heirs with respect to different kinds of property codified in colonial and postcolonial law.

Colonial law classified rights according to ancestral and acquired property. Ancestral property was understood as deriving from the patrilineage where any two heirs could be seen to have an ancestor in common, and was to be managed by strict rules of devolution as well as alienation. Rights in ancestral property were very clearly defined and involved intersecting rights for individuals within the various segments of the lineage. The result was that disposal of such property was rare and difficult for any single individual to execute. Property acquired by a person during his lifetime, defined as acquired property, was categorised as non-ancestral and therefore implied a different set of interests and rights. In essence, rights in acquired property were absolute whereas they were qualified in the case of ancestral property because rights of disposal were circumscribed. Ancestral and acquired property thus defined relationships between members of descent groups and households in different ways, and individuals who had rights in acquired property did not necessarily have the same rights in ancestral property (Asad, 1961: 62). A widow, for instance, had no rights in ancestral property but did enjoy significant rights in the acquired property. She did not necessarily 'inherit' any acquired property but had a life long interest in it. This meant that while she could derive maintenance from it, she did not have the power to alienate or gift that property away and after her death, the property was 'restored' to the male successors of her late husband. Similarly, daughters too had a legal claim only in their father's acquired property. In consequence, the law codified a singular male descent line in relations to claims to ownership of ancestral family property. However, there were significant differences in the degree to which each group within Punjab could be seen to sanction to claims to ancestral property, all of which were duly recorded in the several manuals on customary law.

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<sup>5</sup> For the making of 'tradition' as a sovereign domain, see Chatterjee, 1993, discussion in Chapter one.

If the classification of property into ancestral and acquired consolidated patrilineality, then the agnatic bias of property laws was made even stronger by the way local systems of inheritance became hierarchised. As explained earlier, there were two systems of inheritance prevalent in Kangra at the time of Settlement of 1856 and 1874 and the compiling of the Manual of Kangra Customary Law in 1919: the *Pagvand* system and the *Chundavand* system (see chapter Four). The *Pagvand* system gave primacy to the male heirs and over time the fact that it assumed a presumptive force in the courts, provided for only a marginal existence, if not a de facto exclusion, of the wife-mother by omitting her from the legal register of property. In contrast, the *Chundavand* system conceptualised rights in terms of uterine heirs. The impact of legal codification on this latter system was to consistently redefine it as merely ‘family tradition’ as opposed to ‘tribal custom’. The result was that over time legal codification had the effect of making the *Chundavand* system less sociologically significant. From court records, it is evident that the claim that the *Chundavand* system was indeed a particular family’s tradition, had to be proved to a court each time a dispute concerning it arose.<sup>6</sup> It thus led to the eventual demise of the system with time.

These governmental regulations also effected the consolidation of a particular concept of ‘legitimate children’. There were several categories of children who though not a product of the conjugal unit were nonetheless an integral part of the conjugal household amongst the Kangra Gaddis. These were children from previous marriages of a woman (*dahejar* or *pichhlag*),<sup>7</sup> children born to a widow within four years of her husband’s death (*chaukandu*)<sup>8</sup>, and adopted children (*dharamputar*)<sup>9</sup>. All these categories of children in custom enjoyed rights in succession. With the ascent of monogamous conjugality, the rights of these categories of children virtually vanished because the rights of children were increasingly defined by their agnatic proximity.

In present times, the legal understanding of the concept of legitimate offspring is codified in Section 16 of the Hindu Marriage Act (HMA). According to it,

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<sup>6</sup> The process of verification was an elaborate one that entailed an ethnographic investigation ordered by the judge and executed by minimally an Assistant District Commissioner. A record to the same in the relevant manual of customary law was not taken as adequate evidence.

<sup>7</sup> literally meaning one received in dowry, or one trailing from behind respectively

<sup>8</sup> or one born within the four walls, i.e. an honourable secret

“notwithstanding that marriage is null and void, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.”<sup>10</sup> The Hindu Succession Act (HSA) however, qualifies this legitimate status only to sons. “By virtue of section 16 of the Hindu Marriage Act, 1955 an illegitimate *son* has been conferred the status of a legitimate son and he has also a right of survivorship.”<sup>11</sup> (emphasis added). At another place the Act clarifies that “...“related” means related by legitimate kinship: [p]rovided that illegitimate children shall be deemed to be related to their mothers and to one and another, and their legitimate descendants shall be deemed to be related to them, and to one another...”.<sup>12</sup> Seen in conjunction with the schedule of heirs enclosed in the HSA (See Appendix I), it becomes apparent that latter day *dahejars* and *pichhlags* do not form a part of the legal household because despite the fact that they were not technically ‘illegitimate’, as children of a previous marriage, they were progressively excluded from the legal definition of household membership. While a male child born out of legally sanctioned union is vested with rights of succession in his father’s property, a female child has no such entitlement. This is a significant dilution of the rhetoric of gender equality immanent in the postcolonial Hindu family law (cf. Agarwal 1994; Uberoi 1996). While customary law in colonial Punjab had recognised and codified their rights, the postcolonial statutes affecting the household were even less tolerant of ‘non-agnatic’ children (see below).

As Asad (1961) has pointed out, consequent to the establishment of a separate and professional judiciary in 1884, colonial concerns seemed to have been more in the interpretation of custom as a body of rules and with the establishment of precedent, and only secondarily with the settlement of dispute (Asad 1961: 111). It was therefore no surprise that one of the legal fictions, wills, too became a subject of much governmental and legal scrutiny as well as source of much litigation in relation to the establishment of legal heirship. While the agnatic line for inheritance was broken each time property passed on to an ‘outsider’ by the instrument of will, nevertheless, such ‘events’ were being increasingly regulated. Certainly when any dispute arising from wills reached the courts, little ambiguity was tolerated with regard to the definition of

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<sup>9</sup> or a rightful son

<sup>10</sup> Hindu Marriage Act, 1955

<sup>11</sup> Hindu Succession Act, 1956

the agnatic line. On the contrary, any irregular transfers of land, even within the extended clan were duly restored to the rightful heir as codified in the recorded custom. Suit no. 472 of 1933, Kangra district court is one such example.<sup>13</sup>

The suit for possession of land was filed by Dulkhoo, alias Harnam Singh, a minor, through his father Lachhman Singh against the male collaterals of his deceased aunt's (FZ) late husband (see Diagram 1 in Appendix III). The plaintiffs asserted that Mst. Raino had willed her property that had belonged to Kahan, her late husband, to her nephew (BS), Dulkhoo. The said land originally belonged to Mst. Likho, the mother of Bhagawati, Kahan's other wife. Bhagwati had received it as a gift from her mother, Likho and Kahan had later 'inherited' it following Bhagwati's death. The defendants on the other hand, were sons of Mst. Rupan, grand-daughter of Kesaria, Likho's husband's, (Kewal's) brother.

As is apparent, this was a case of a tussle between the relative weights of different qualified claims to ownership. Therefore, it brings into focus what the jurisprudence of the day thought was 'natural' in its principles of justice. By the first quarter of the twentieth century, courts most usually presumed conjugal status in cases where a man and a woman had been living together qua couple for a reasonable duration of time. This is demonstrated in this case, where the court struck down allegations made by the defendants that Raino was not a legal wife of Kahan, after hearing sufficient testimony to prove the validity of Raino's association with Kahan. However, what was much less easy to establish in legal terms was the validity of the will. There were two different issues at stake here. One was whether or not Raino was legally competent to make the will, and the second was whether the given will itself was competently produced. One Sawan Chand was produced as a witness by the plaintiffs who declared in court that while he had indeed written the particular will, he was not a licensed or recognised deed writer or even a petition writer.<sup>14</sup> Moreover, the Revenue Assistant in charge of Meghla deposed that the will had not been registered, and since it was not even written by an authorised deed writer, it may well have been forged. Thus, the will itself was not seen as a validly produced document.

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<sup>12</sup> Hindu Succession Act, 1956

<sup>13</sup> Goshwara no. 532, 8/P, Kangra District Record Room (DRR), Dharamsala.

However, Raino's status as Kahan's wife had endowed her with certain rights in the disputed property, which could be upheld were the property deemed acquired rather than ancestral. Since it was clearly 'acquired' by Kahan during his lifetime, this should mean that his widow Raino was entitled to will it to anyone. But in the absence of a valid will, and of a direct heir (i.e. a child born to Kahan through Raino or Bhagwati), the property was ultimately deemed as belonging rightfully to the defendants (i.e. male collaterals of the original male owner of the property) and was therefore reverted to them by the court. What is of significance here is that even in a case where there were no agnatic links that could be traced to a single line of descent, Kahan remained the focal point on which the case hinged, even though he was never the direct owner of the property, and though the property had been claimed and passed down through female relations. However, it is clear that had he fathered a child with Raino (and even in the absence of a child with Bhagwati), it would have automatically negated the claim of Kewal's collaterals to the given land. Thus, patrilineal descent was constituted and recognised as the primary and the paramount valid and incontrovertible claim in matters of inheritance. Inheritance or succession was the idiom through which the state codified kinship relations. In general, the effect of legal codification was that the courts repeatedly restored to women what was thought to be their (claims to) honour (i.e. valid spouse in the eye of the law) and men their (claims to) property (i.e. valid and presumptive entitlement to ancestral wealth).

Equally stringent were measures regulating the other legal fiction, i.e. adoption. A variety of laws were of special importance in this regard. Customs surrounding adoption usually did not entail an accompanying ritual or ceremony. In fact, in a majority of cases, all that was required or done was a pronouncement in the presence of the *biradari* (brotherhood) declaring the adoption, as various manuals on customary law suggest. However, the new legal order required more than a mere oral statement of the adoption. Among other things, it was required that adoption be accompanied by the ritual of the new state, i.e. a written documentation of the event. At the 1915 conference on the codification of customary law in Punjab, the issue

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<sup>14</sup> Professional petition writers and deed writers during that period were crucial scribes in the colonial era. For more on this, see C. Bayly (1996).



warranted much discussion.<sup>15</sup> Representatives of the colonial administration were insistent that even if an adoption had taken place outside the context of Hindu law, it still should be followed by a compulsory registration. Dissenting voices (mostly of Indian representatives) demurred, arguing that such a thing “went too far in the face of custom. Custom recognised as completely valid a declaration for adoption made in the presence of the assembled brotherhood.”<sup>16</sup> This particular aspect of adoption was true also of Gaddis, who did not observe any special ceremony with regard to adoption beyond that of taking the *dharamputar* (or the adopted child) in the lap. The Gaddi adoption ‘ceremony’ involved no more than calling a few neighbours and making a declaration to that effect. Any documentation necessary was undertaken only later and the status of the child within the household did not depend on the form of ceremony observed (O’Brien and Morris 1900: 18).

Case 1514 of 1881 the Chief Court at Lahore evidences the fact that the ritual of the state (i.e. registration, documentation) assumed far greater importance than social or customary rituals associated with adoption.<sup>17</sup> Kharak Singh filed an appeal against the previous judgement that invalidated the adoption that he had made of his brother’s son’s son. In the original suit, Rupa Singh had petitioned the court on the grounds that Kharak Singh had conducted the adoption without any accompanying ceremonies that were norm for Dudwal Jats of Amritsar (the group to which both Kharak Singh and Rupa Singh belonged). In the judgement, it was noted that even though it had been noted down in the *Riwaj-i-am* of the district that an adoption would not be valid unless it was carried out formally with due rites and ceremonies, this was not binding as the general principle in Punjab was that no ceremony was actually necessary. Moreover, the judge noted that the adoptive person fulfilled all the criteria of a valid adoption (i.e. under 12 years of age, not the sister’s son), and that the adoption was duly registered with local authorities.

Due to the vexed nature of the process, adoptions and claims to adoption were a source of great deal of litigation. While an unmarried couple were deemed in court to have the status of a conjugal unit with relative ease even in the absence of adequate or

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<sup>15</sup> PCCLCR; 1915: 20-21

<sup>16</sup> PCCLCR; 1915: 21

<sup>17</sup> *Punjab Record*, Vol. XVIII; 1883: 96.

sufficient documentation, at the same time it was virtually impossible to plead for the status of an adopted child in the absence of either valid witnesses or written evidence. Nonetheless, in the case of adoption the rights of men were better protected than those of women. Nowhere was this more evident than in disputes surrounding competing claims of rights and ownership between widows and adopted sons, where the latter most usually were successful in pressing their claims. This is in stark contrast to cases where adopted sons came into conflict with male collateral heirs, where they had to provide evidence of the legality of the adoption, but even when such evidence was forthcoming their claims were less likely to succeed.

In one such typical case, Charan Dass, a Khatri Gaddi from Bir, filed a case against Maina, the widow of his uncle, and later adoptive father (Parmar), demanding that the property be reverted to him.<sup>18</sup> While there was a dispute about whether Parmar had in fact willed his property to Charan Dass (his nephew/son), all the same there was little hesitation on the part of the district court in granting the plea, saying that “even though the adoption was informal and not registered, it was authentic and reasonable because Parmar may have feared that after his death his property may be squandered by his wife, daughters and sons-in-law and therefore may as well be looked after by someone whom he [Parmar] may have seen doing so in his life-time.”<sup>19</sup> The Chief Court upheld the sagacity of the decision of the lower court when Mst. Maina filed an appeal in the following year. It would have been impossible to hold the same claim of transfer had Maina willed this property to Charan Dass, or indeed had she adopted him. The issue here is that the law did not deem women to have the same powers to make asset transfers, and what was in question was their degree of ‘dispositional control’. The decisions of the courts thus not only strengthened the agnatic bias of the governmental discourse on family and kinship, but also effectively rendered women as marginal in the register of property ownership. The postcolonial statutes sought to reverse some of patriarchal biases inherent in colonial law, but as we will see later, these new laws were not entirely successful either.

From the above discussion it is clear that the way a proper household was imagined in governmental discourse was indeed quite specific. Agnation defined the primary

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<sup>18</sup>Suit no. 39 of 1901, Charan Dass vs. Musammat Maina; Goshwara no. 47, 1/P; DRR

<sup>19</sup> Goshwara no. 47, 1/P; DRR.

boundaries of the household and 'blood' was the crucial substance that allowed for and defined the process of boundary creation and maintenance between units. The manner in which the substance of agnation, 'blood' was seen to be shared or passed on from one generation to the next was strictly codified both in colonial and in postcolonial legislation (see below). Over time, the Gaddi household became a reduced and a pared down version of itself, as more and more people became educated into a particular ideal of filial loyalties. The practical consolidation of this household ideal took hold and filial emotion was constrained by these laws and reinterpreted in the idiom of 'blood'. If in earlier times, services to a person during her or his life-time may have eventuated in a share of their property, such transfers were getting more and more informed by the language of contractual reimbursements in the new legal definition of the family.<sup>20</sup>

In 1879, one widow Buta lost her appeal against the validity of the adoption of her grandchildren made by her late husband, Sulakhana.<sup>21</sup> Sulakhna and Buta had three daughters but no sons, had adopted a son of each of their daughters and had raised them from their early childhood in their house. However, in the absence of the right documentation notifying the same, the widow lost the land to forty eight male collaterals of her husband (up to six degrees of separation), even though it was stated that according to the custom of the Mahatams of Hoshiarpur district (the caste group of Sulakhana and Buta), daughters' sons as a class had a right of inheritance superior to collaterals as nearly related as the fifth generation. It was noted that had "[Buta] also died while these daughters' sons were children, they would have been sent back to their parents and would have no claim on the land, and we are obliged to look at what rights they had existing at the death of Sulakhna, and not the feeling aroused in their favour by their long possession as *managers* for the widow" (emphasis added). Thus, it was presumed by the court that this widow's relationship to her (grand)children were best seen as contractual as opposed to filial.

The agnatic family became gradually more rigidly defined in a legal framework that vested the male head alone the ability to make transfers (whether by sale, gift or will)

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<sup>20</sup> See Rybczynski (1986) for an account of the changing nature and architecture of domesticity in the West.

<sup>21</sup> Case no. 951 of 1879; Buta and others vs. Amar Singh and 47 others. *PR XVI 1881*: 55.

outside of blood ties. This was simultaneous to a reworking of the role of the householder as one whose primary loyalty lay first and foremost to his monogamous conjugal household. Juridical discourse thus discouraged 'emotional' gifting away of wealth and assets to those who were legally constituted as 'outsiders', by making all such acts regulated by strict laws and by framing these laws in the language of rights and claims.<sup>22</sup> For Gaddis, these changes were reflected most significantly in the manner in which they effected a shift from being a bride-service society to a dowry giving one. This was one of the most remarkable changes that took place in Gaddi household structure. If at the end of the nineteenth century, Gaddi men were becoming tied to the land in Kangra, not just for better pastoral prospects but also amongst other factors, as a result of bride-service (see the discussion on *mundai*, Chapters Two and Six), then a hundred years later, the household picture that emerges of the Kangra Gaddis bears little to no trace of this history (see below).

While the colonial authorities based their administration on law, the postcolonial Indian state sought to make important breaks with that law, not least of which was the diluting of the legitimacy of custom in the eyes of law. A uniform law was to govern all those considered Hindus on an all-India basis. This was the most significant juridico-administrative departure effected by postcolonial state on the family. Thus in one stroke, any entitlement to difference within Hindu kinship practices was made invalid in juridical terms, even though in principle certain non-Hindu practices were permitted to continue as part of a customary tradition.<sup>23</sup> As discussed in the previous chapter, there was in some ways continuity in the manner in which postcolonial government sought legitimacy by bringing about social change in society through reformist law and nothing exemplified this better than the Hindu Marriage Act (HMA) of 1955 and the Hindu Succession Act (HSA) of 1956. The anthropology of the family in these laws, however, remained rooted in agnatic understandings of kinship relations. Only relational proximity was recodified, and in the first instance, hierarchised according to the degree of agnatic blood associated with a kin. So, while the same father and mother begot 'full-blood' then the same father but different

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<sup>22</sup> This ascendance of the family as the primary referent of a person's life has to be read in the context of the rise of individualism that the colonial government actively pursued (as discussed more fully in chapter Four).

mother begot at least 'half blood'. On the other hand, relations between those born of the same mother but different fathers were seen to be separated not by degree (i.e. half or full), but by kind, and were classified as relations of 'uterine blood'. In the schedule of rightful heirs enclosed in the Hindu Succession Act, it is made clear that "references to a brother or sister do not include references to a brother or sister by uterine blood", but no such or similar injunction is made against 'half-blood' siblings.

These new family laws brought a re-education of relational proximity. Family ties were reordered and the primary entitlement to ancestral wealth that was presumed for male collaterals was dismantled as a result of the promulgation of the HSA. Collaterals were replaced by direct descendants in matters of inheritance, even though this according of equal principal status to female members of the household raised much hue and cry (see chapter Four). The Hindu Succession Act can be and was read as an enactment on the legal nuclearisation of the joint Hindu family. Members of the Indian Parliament decried the potential shifts it was going to bring about in the traditional emotional bonds between brothers and sisters once this law was going to female siblings partial and potential heirs to their natal property. As the latter part of the chapter shows, gender parity that was sought to be brought about by these laws in matters of property ownership remains unachieved. However, what the HSA did consolidate were the diffuse boundaries of the household further by making the conjugal family the dominant unit, wherein affective interaction was sought to be reordered as an effect of the legal discourse on equality, rights and responsibility.

The effects of the legal governance of filial ties and kin relations can be gauged from several indicators. There were 382 Gaddi households in Meghla in 1999-2000. The average size of the household was 5.<sup>24</sup> Most households in Meghla were registered/entered as nuclear. What is of significance here was the total absence of any adopted children in contemporary Meghla. This highlights the fact that people no longer need to adopt a male child in order to have a direct legitimate heir to their property, as long as they have any children at all. The present laws of adoption in India made the adoption of male children extremely difficult, if not altogether

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<sup>23</sup> See Uberoi (2002) for an elaboration on the north Indian bias of the postcolonial legislation on Hindu family and how the HSA and the HMA repositioned Dravidian kinship practices as within the realm of the customary, and as an exception to the prevailing law of the land.

impossible in keeping with its avowal of bringing about social reform through policy and legislation. So, household no. 19 of tika Bohal consisted of Vinod Kumar, 12, Saroj Devi, 14, and Onkar Singh, 10. They were children of the late Purshottam Chand and his wife, and remained unadopted by their kin, who nevertheless looked after them on a day-to-day basis.

Official as well as popular narratives on these far-reaching legal interventions highlight their achievement in bringing about gender equality within the household by giving female members (wife, mother, daughter of the male head) equal claims on property. This is not an erroneous reading, but one that is nevertheless incomplete. Guaranteeing gender equality has been an important constituent of the official rhetoric in postcolonial India and this has largely based itself on social reform initiated through so-called 'progressive' legislation (Dhagamwar, 1992; Kapur, 1996; Uberoi, 1996). In the case of the Gaddis legislation, as discussed earlier, informed the manner in which the *Chundavand* system gave way to the *Pagvand* system of inheritance (i.e. from per stirpes to per capita). This change was accompanied over time by the demise of polygamous households as a result of further legislation. The rise of the practice of dowry was a consequence of these and other changes in the last twenty-five years that are related to the increasing Hindu-isation of Gaddi marriage and conjugal practices.<sup>25</sup> Thus, overall the new postcolonial family and marriage laws only served to weaken Gaddi gender equality and failed to strengthen the position of women, contrary to official expectations.

### Proper Relations

The focus of this section will be Gaddi understandings of wealth, property and filial relations. In the previous section I discussed how the legal discourse on succession and the recodification of kin proximity has brought about significant changes in relations between Gaddi people with respect to things. That is to say, successive legislation on succession has resulted in a reordering of the relations between Gaddis,

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<sup>24</sup> Source: Meghla Gram Panchayat Household Census. See Chapter One for methodology.

<sup>25</sup> The development of the practice of dowry amongst Gaddis must also be seen in relation to the fact that dowry is popularly constituted as the daughter's share in her father's property that the new law has now legally stipulated. (cf. Agarwal, 1994; Sharma, 1980). For a discussion of dowry, its disappearance, and the rights of women in property, see Goody in Hann (1998).

not least of all in the change from a bride-service society to a dowry giving one. However, not all everyday relations amongst the Gaddis are circumscribed entirely by legalistic underpinnings. In this section my objective is to bring to the fore these limits of legal discourse. In contemporary Gaddi society dowry is popularly construed as the devolving of a share of the father's wealth to the daughter. However, since this share does not include land or other assets, like flocks for example, it becomes important to look at the things women 'own', in order to understand how women make relations through transfers.

The popular perception of the Gaddis held by others is that they are one of the wealthier communities of the region. The wealth or property for a herding people comprises of a variety of 'things'. Wealth amongst the Gaddis is constituted of flock, domestic animals, rights of pasturage, cash, land, silver and other valuable objects, and children. These are the elements of a Gaddis's *jaidad*, or ancestral wealth. Not all are equal in value, and not all are or were held simultaneously necessarily. What also distinguishes the property of a Gaddi from a non-pastoralist neighbour is that not all property is spatially contiguous or even proximate. Until fifty years ago, most Kangra Gaddis cultivated lands on either side of the Dhauladhars, depending upon the season. Even today, some Gaddi families in Kangra retain land in Bharmaur, even if they never work on it. Along with non-contiguous agricultural property, their annual cycle of labour is marked by migration across a vast territory, parts of which was now individually held and demarcated thus. These grazing pastures too are far removed from their dwellings in either Chamba or Kangra.

Apart from immovable property, i.e. land and rights of pasturage, a significant element of Gaddi wealth is the nature and size of their herd. Sheep and goats are differently valued but are held in a mix. Besides the flock, a herder's family usually owns a few goats and/or sheep domestically. Many Gaddi households also have a *khaddi* or a loom, which is used by women for weaving woollen blankets and shawls called *pattus*. Some of these find their way to the market and are much prized for their quality of wool and weave. Along with the sale of wool and meat during the annual pastoral cycle, *pattu* weaving brings in crucial additional income. Weaving is purely a woman's activity amongst Gaddis and the presence of a loom in the house is also seen as a marker of wealth. This is so because only those Gaddis who have a sizeable herd

can afford to keep aside part of the sheared wool for their domestic use and/or have a loom installed at home. Of late, many Gaddi political leaders have been advocating a greater use of the loom. Giving the example of the commercial success of the weaving skills of the people of Kashmir and Kulu, Gaddi leaders exhort the need for developing weaving to the level of a cottage industry so as to combat the loss of income from the recent drop in wool prices and the decreasing popularity of herding amongst the younger generation in general.<sup>26</sup>

The reputation as well as the self-image of the Gaddis is that they are a generous lot. There are local sayings testifying to this. 'Ask a Gaddi for his cap and he offers you his coat'. If on the one level it alludes to their magnanimity, the same saying on different occasion is also used by the Gaddis to illustrate their self-perceived "lack of street-smartness".<sup>27</sup> This lack of street-smartness in this context can be seen to refer to a lack of knowledge of relative exchange values, or at least a disregard for them. However, at another level, there is abundant display of a shrewd sense of the economic across the strata in the community. For one, there is a great deal of knowledge as to the place of pastoralism in the world political economy. GATT, wool subsidies, and even New Zealand sheep ranchers are not an uncommon part of the herders' vocabulary. In the village, every single item is inscribed with ownership and possession of resources is jealously guarded. The category of petty disputes which is meant to be handled almost entirely by the local panchayat is largely constituted of perceived infringements of these possessions.<sup>28</sup> For instance, every tree in the village has a distinct owner and even its leaves can only be used by the owner as fodder for its domestic animals. It is not uncommon to come across squabbles arising out of transgressions of ownership even among members of an erstwhile single household. A tree may have belonged jointly to a family at a point in time but once the household has been partitioned between brothers, it leads to a partition of access to every resource within the household. If relations are not the best between the members of the partitioned household, a good use is made of the language of ownership to cement the boundaries. Sisters-in-law may often break into a shouting match in case one of

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<sup>26</sup> *Gaddi Mahapanchayat Smarika 1997.*

<sup>27</sup> More by way of explicating their 'innocent' (*bhola-bhala*) nature.

<sup>28</sup> As discussed in chapter Three, disputes of this kind are meant to be handled by the panchayat. But in the light of the changed self-perception of the role of the panchayats at the local level, they are rarely



them wrongly takes a few twigs for the hearth from the other's tree, or leaves to feed her own goat. On the other hand, despite a partition of property between the brothers, if relations remain cordial, the language of ownership assumes the gesture of sharing and cooperation. It is action that makes manifest social relations, as Strathern has pointed out (Strathern 1999: 16). Women in particular make use of such non-codified actions to make affective relations beyond those prescribed within kinship (see below).

Buglo is a woman in her forties and a mother of four. It was the day her eldest daughter Anu was getting married. The house had a characteristic festive, yet hectic air about it, bursting as it was with kin and neighbours. On the ground floor, some men-folk were busy arranging things in the courtyard for the evening, while others were catching up with their kin and mates they had not seen in a while. Children of different ages ran about from room to room, their shrill voices colliding with the melodious singing of the women on the first floor. The festivities of the preceding days were reaching a crescendo in many ways. It was early afternoon and it was now time to start dressing up for the evening's ceremonies. By the by, the mundane attire of *salwar-kameez* (loose trousers worn with a long shirt) was beginning to give way to the more elaborate *luancharee* (long skirt).<sup>29</sup> The transformation of appearances was immense, and as per Gaddi ritual, the only unanointed person left in the room was the bride herself. The singing was picking up volume. Suddenly, Anu's mother Buglo, emerged from the kitchen, dressed in a most stunning *luancharee*, carrying what looked like a reasonably heavy sack. She sat in the middle of the room, with all seven meters of her skirt's chintz flared around her, and then in one single gesture, emptied the contents of the sack. With some jingle-jangle, a few kilos of silver jewellery made its way to the freshly painted mud floor. She then picked up one piece at a time, allocating it a place as she went along: her own body, for her younger daughters, something even for her non-Gaddi sister-in-law, so that she 'looked' adequately Gaddi. At the end there was a tiny pile left, composed mainly of a few silver bangles,

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involved in dispute resolution. Members of the panchayat often referred to petty disputes as 'women's disputes' ("*jananiyan de jhagde*") and therefore not worthy of intervention.

<sup>29</sup> This traditional dress of Gaddi women, which is made of several meters of cloth, over the years, has been replaced by the *salwar-kameez* for everyday use, and is now worn mostly on ceremonial occasions only. Some older Gaddi women continue to wear it on an everyday basis.

earrings and small hair ornaments. This was Anu's share of her mother's gift, Buglo's alienated wealth to her daughter on the day of her wedding.

At first the whole process of distribution looked entirely spontaneous and in keeping with excess that usually marks weddings. For this was something which remained out of the purview of rigid rules, and seemed to be governed mostly by emotional and material extravagance. "My sister-in-law (yBW) looks excluded without her '*chirhi*' (an ornate piece of jewellery worn on the forehead by Gaddi women), so why don't I give her my spare one?" Or, "Do you think my younger one will look nice in these earrings or should I give them to her older sister?.. And this necklace I must keep for myself, well at least till my daughter-in-law arrives.." Here was Buglo making seemingly arbitrary decisions on how she was going to devolve her goods.

Objects and ownership thus play an important role in mediating or communicating affective or relational proximity amongst the Gaddis. As this illustration indicates, there are moments of alienating ownership that are not governed by rules set forth either by law or by ritual obligations. If one reads Buglo's giving away a piece of her jewellery to her brother's wife as an emotional excess usual at occasions like weddings, then one must also consider other everyday transactions of things between people which do not fall into either the domain of ritual or legal enforcement. It is possible to treat Buglo's transaction with her sister-in-law under the rubric of gift, but what one is concerned with here is the question of *ownership*, which invests power in a person to make transactions, whatever the nature of that transaction may be.

While the law is quite clear about certain types of ownership and its rightful devolution, there are categories of proprietors and property that remain at the margins of legal discourse. It is not as if legislation has not touched upon 'women's property'. In fact, *streedhan* (lit. women's wealth) has been codified as an important part of many laws, from the Hindu Succession Act to the Dowry Prohibition Act of 1961.<sup>30</sup> According to the HSA and the Anti Dowry Act, whatever is 'gifted' to the woman by her natal family at the time of the wedding (and registered officially thus), forms her *streedhan* over which she has absolute ownership. As said earlier, this is also by way

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<sup>30</sup> The Dowry Prohibition Act, 1961 reiterates that "dowry is to be for the benefit of wife or her heirs".

of a readjustment of alienation of natal property to a woman, whereas the empirical reality may tell us quite another story, i.e. that either *streedhan* is never really registered, and therefore contested claims by a woman can never have a legal viability, or/and that *streedhan* is never really an actual equal share in the natal property.<sup>31</sup>

In legal terms, the property belonging absolutely to a woman devolves differently from a male proprietor. That is to say, the order of heirs is different in the case of women (see Appendix I). While the Hindu Succession Act has played an important role in correcting the gender imbalance in property rights, it is by no means a gender-blind law. It does conceive of men and women as different legal subjects having different legal capacities in terms of how they hold, inherit and devolve their wealth. This has largely to do with both the descriptive and prescriptive ideals of the Hindu household enshrined in it. The HSA does make a qualification that while daughters have an equal right in their father's property, they do not have a right to claim a partition to an ancestral dwelling house which may be part of their father's property, while the sons do enjoy such a right. In addition, a daughter is also entitled to "a right of residence in that dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow."<sup>32</sup> It was not until 2000 that an equal share in ancestral property for women was even considered.

Thus in Meghla today, there are relatively few Gaddi women who are absolute owners of immovable property in the form of land or flock. Agricultural land is entered in the records as either property of their husband or of their son(s). The house they live in is also not regarded as their property and always belongs to a male affine or agnate. Unmarried Gaddi women have little by way of ownership. The objects they bring into their affinal homes as dowry (*streedhan*) are rarely seen by them as their personal wealth. However, Gaddi women who are married usually consider jewellery and domestic animals as their property. Jewellery is a significant part of a Gaddi woman's property. This is one category of valued and valuable objects that passes singularly

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<sup>31</sup> The present (15<sup>th</sup>) Law Commission of India recommended that Hindu women be given equal share in ancestral property. According to Justice Leila Seth, member of the Commission, this change would bring about not only equality before law but importantly, will also discourage the practice of dowry since "the girl will be the equal inheritor of her ancestral property, the in-laws may not insist on dowry." (*Indian Express*, May 12, 2000).

through females: from mother to daughter, from mother-in-law to daughter-in-law. Women have almost unquestioned power in matters of alienation of these items of wealth. This is also one of the resources at their disposal for creating links between them and other individuals and for redefining relationships that are not based solely on kin ties. In this sense these transfers have the power to make certain kinds of persons (cf. Strathern, 1999). Unlike laws and rules governing the movement of immovable property, the movement of jewellery remains at the periphery of regulation. Even if the law actually makes the registration of *streedhan* mandatory at the time of marriage, this regulation is hardly ever observed. Jewellery is an important constituent and a marker of wealth for the Gaddis but it is not an enumerated and registered property in legal documents. Therefore, rancour over its non-egalitarian or objectionable devolution can at best make for bad filial relations but hardly ever becomes a subject of a legal suit. Since its use is solely by women, women deploy transfers of jewellery to make and mark proximity with their kin. Affective relations are forged, strengthened or articulated through the transfers women make. Within the conjugal unit too, jewellery plays an important role. A wife may or may not agree to pawn her silver for cash or give it as security to seek a loan of money, depending on the character of her conjugal bond with her husband. On the other hand, it was also used more unquestioningly to secure money for their children's education or any other form of betterment. Ownership of things that women considered absolute thus played a critical role in the everyday affective lives of Kangra Gaddis.

Domestic animals too are associated primarily with women. There are two sets of animals in a herding household: those that are considered domestic and others that are a part of the family *jaidad* (wealth), or flock. When referring to the pastoral flock, women invariably use the collective possessive pronoun ('our goats', 'our sheep'), but always use the singular possessive for the domestic animals ('my goat', 'my cow'). Men too use the collective possessive for their flock. The flock animals are seen as a joint resource, quite like land, and therefore are seen to belong to the family because it is not male members alone who derive benefit or livelihood from them. If these animals are passed down, they are devolved from the mother-in-law to the daughter-in-law. However, while women may use the possessive in relation to domestic

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<sup>32</sup> Section 23, Hindu Succession Act, 1956.

animals, most domestic goats and cows technically do not belong to them. For instance, the loan taken to buy them may well be in the name of their husband, but there is little ambiguity about to whom the goats belong. A great deal of that ambiguity is dispelled by the fact that it is women who look after them. Men almost never attend to domestic animals, except for occasionally taking them to the veterinary clinic. Women are also responsible for the grazing needs of the domestic animals (see chapter Two). While women work the fields as well, especially in households where men still actively herd or are employed outside, even so a similar sense of entitlement does not necessarily follow. One of the reasons could be that land is seen as attached to a family and that there is awareness as to who ultimately has the power to alienate landed property. Domestic animals on the other hand are not a perennial resource and rarely survive their owner.

Ownership of flock animals is a wholly male affair. Therefore women never own any flock. Landed property and cash savings are secondary markers of the Gaddi wealth in some ways. Even today, a Gaddi's wealth is gauged by the size of his flock. *Dhan*, the indigenous term for flock, literally means wealth. The Hindu Succession Act does not specify the elements of property. Flock animals are inherited like land, in that daughters and wives derive no share of them in actual practice. Rattan Chand, now in his late sixties, has served as a *lumbardar* of Meghla village since the age of sixteen. *Lumbardari* being a hereditary title, he assumed the position upon the death of his father. One of the reasons that his family was chosen for the job by the colonial administration would have been the economic status, as there was no indigenous system of local Big Men at that time. His family today owns one of the largest flocks in the village. Rattan Chand alone owns around 750 head of sheep and goats and along with the his two surviving brothers, the flock size runs over two thousand in number. Due to his responsibilities as a *lumbardar*, he does not accompany his *dhan*, and has entrusted his brothers to herd his flock. His brothers' sons are not interested in pursuing herding and have said that they will actively seek employment in the army or elsewhere on completion of their education. Rattan Chand's own son Mahender, however, has accompanied his uncle on several occasions for stretches of the grazing cycle. He is no enthusiast of the profession but will take it up in case none of his male cousins are willing to do so in the future.

Rattan Chand's brothers have partitioned their agricultural holdings but continue to herd the flock jointly. In the event that Mahender becomes the only one in his family from the next generation to take up herding, his father's brothers will entrust him with their flock. As in the case of land, Rattan Chand's brothers told me, it is more profitable to have a larger holding than to fragment it. Keeping the arrangement of the previous generation, in return for taking up their herding responsibilities Mahender's cousins will work Mahender's fields and other business in his absence. So, while the brothers keep separate agricultural fields, their flock are herded jointly. Rattan Chand's brother told me that it was possible to herd the flock jointly and not do the same with land because herding was more like running a business and it is easier to demarcate the boundaries of interest. Agriculture, he said, had a direct connection with the hearth and since the brothers ran separate kitchens, it was only wise to partition the land as well. What Rattan Chand was indicating was the different manner in which men and women deploy ownership and property relations in the context of making relations. While men use supra-household strategies of accumulation for maximising wealth, and use kinship networks to that end, women use jewellery and other items of wealth that they own to make or strengthen relations that cut across kinship boundaries or other obligations. This is consonant with the supra-household accumulation strategies and the understanding of property ownership and inheritance codified in the HSA, as concepts of joint family property and ancestral property show. On the other hand, the state remains marginal in the context of women's property because these transfers must by definition lie outside the area of legal codification of property.

This section has concerned itself with the manner in which property and affective relations are inextricably linked. Property endows the owner with powers to make kin ties weaker or stronger. While concepts of proper filial relations are heavily mediated by the legal discourse on the property, at the same time, within these legally defined relations there is space within which people make transactions that have little to do with the rules defined by legal or ritual obligations. The authority of the state is still supreme in some ways, as it alone sanctions actions which are non-negotiable in matters of dispute. Sugari Devi, an eighty two year old Gaddi woman, left a will with the Meghla Panchayat that all her belongings should go to Chand Ram, the second of her three sons, as he was the only one of the three to have looked after her during her

last days. She also willed that the sum of five hundred rupees lying in her savings account be used for her mortuary rituals and any remainder be donated to the local temple.<sup>33</sup> Filing the will with the local Panchayat made it a quasi-legal document and therefore spelt out the emotional intention of Sugari Devi with a certain degree of non-negotiability. This example is illustrative of the two issues that have been at the centre of the preceding discussion. First, Sugari Devi used the devolution of her belongings to communicate her ire against two of her sons, or vice versa, an extra affection for the son who looked after her. Secondly, she vested faith in the ultimate authority of the written document, and the monopoly enjoyed by the state in this respect. Even if the will was false or made under duress, as the wife of Chand Ram's younger brother alleged, such a allegation needed to be fought within similar legal procedures, and needed to be supported with valid evidence and witnesses. Since the other two brothers could not produce any evidence, documentary or otherwise, of their suspicions, Chand Ram gained control over his mother's belongings, including the house in which she lived. The use of such official mechanisms by people in their everyday domestic lives is taken up in more detail in the following chapter in the discussion on the breakdown of marriage ties in contemporary Gaddi society.

## **Conclusion**

This chapter has concerned itself with the reordering of the relational proximity by successive legislative interventions on the part of the state. Heirship was the idiom used by the state to codify kin relations. That is to say, household and kin relations were imagined in terms of partial and potential heirs to ancestral wealth. This codified the relations between people in relation to things in a specific manner, one that was reshaped once again by the postcolonial state. What remains common between colonial and postcolonial legal discourse on relational proximity is the centrality of inheritance and succession that defines the boundaries of a household. It becomes apparent that in so far as the state has critically shaped ideas of legitimate categories of heirs and inheritors, it has also remained marginal to some relations of intimacy, as evidenced by the way Gaddi women use things to make kin relations.

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<sup>33</sup> Entry dated 28<sup>th</sup> September 1997, Nyaya Register of the Meghla Gram Panchayat.

The new boundaries of the household became increasingly organised around the conjugal unit. The centrality of the conjugal unit as codified in the Hindu Succession Act of 1956 has meant change in the ideals of conjugality as well. The following chapter examines the nature of change in Gaddi conjugal practices as a consequence of the fundamental changes brought about in understandings of marital relationships through successive legislation, including the Hindu Marriage Act of 1955.



## Chapter VI

### IMPERMANENT IDEALS AND MOBILE AFFECTIONS: CONJUGATING MARRIAGE IN MEGHLA

*“Continual cohabitation may suffice to infer the existence of a marriage, but cohabitation, though good evidence of marriage, is not marriage itself”*  
(Ellis, 1917: 269)

Kinship studies within south Asian anthropology have been largely dominated by investigations of systems of alliance, and relatively little has been done by way of understanding the conjugal unit. Even the study of the family has to a large extent been informed by Indological ideas of the joint family (cf. Uberoi, 1993; 1998). The result is that conjugality and sexuality remain areas of relative scholarly neglect. It appears as though South Asian kinship studies have been trapped within a narrative leading to the ceremony of marriage, a narrative which is forced to its point of closure at the moment of alliance, at the point where women and men begin “living happily ever after”<sup>1</sup>.

This chapter discusses shifts in local and legal understandings of marriage, conjugality and sexuality amongst the Gaddi over the last 150 years.<sup>2</sup> Giddens (1992: 10, 58)) proposes in his analysis of the transformation of intimacy that with modernity, sexuality, conjugality and romantic love become progressively disconnected from each other. The material presented here suggests that what is happening amongst the Gaddis is in fact the opposite. The trajectory of Gaddi marriage and conjugal practices over the last 150 years has resulted in a situation

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<sup>1</sup> There are notable exceptions to this, see in particular Trawick (1992); Ahearn (2001); Chatterjee (1999); Parry (2001). Debates on the ‘emergence’ of a public sphere in India as the product of colonial modernity have had the effect, until recently, of directing attention away from an analysis of the domestic world and its relation to both state and the public sphere (cf. Guha, 1987; Chakrabarty, 1994; Singha, 1998; Nair and John, 1998; Parry, 2001). Chakrabarty (1994), for example, focuses on the emergence of a bourgeois domestic sphere in nineteenth century colonial Bengal and on the connection between an emerging print culture, a nascent nationalism and the fashioning of a middle class.

<sup>2</sup> Ethnographies of the region include Newell (1963); Parry (1979); Phillimore (1982). These ethnographies take as their major focus the way in which alliances are worked out at different levels of the regional caste hierarchy in Kangra. Of these, Newell’s and Phillimore’s studies are of the Gaddi per se, whereas Parry’s ethnography investigates kinship patterns of the Rajputs in Kangra valley. For a fuller discussion of this material, see chapter One.

where marriage has become the only legitimate point where sexuality and romantic love can reside. This chapter deals with the restructuring of Gaddi conjugality that has taken place in the last century in the wake of certain governmental practices and a changed political economy. It combines ethnographic observation with written records to study the relationship between the juridical and the everyday. It focuses on the contest between 'custom' and 'law', and between the various sources of state law, in order to make sense of the ways in which modern legal subjectivities are different from their pre-modern counterparts. Following Raheja's and Gold's (1994) insight that women in rural India find performative spaces within which to challenge male kinship ideology, the chapter explores how modern ideas and practices of marriage are more bounded versions of earlier forms, but nonetheless leave room for renegotiation and reinterpretation. Such negotiations and interpretations are set within changing ideas of caste and class, but what is clearly seen, as Kendall (1996) suggests for Korean marriage, is the contest between legal legibility and the social recognition of marriage.<sup>3</sup> Nonetheless, the chapter argues that through the convergence of sexuality and romantic love in marriage, conjugality has become over time a more salient and therefore more potent concept.

The first section of the chapter outlines certain state practices which have framed Gaddi practices of conjugality over time. The second section discusses the everyday achievement of normative regularities around conjugality and the question of sexuality in Meghla. The analysis focuses on the relationship between legality, conjugality and sexuality to demonstrate how legal understandings of conjugality frame contemporary ideas about sexual morality in Gaddi society. The final section takes up the question of divorce to bring out the contest between 'custom' and 'law' and between the various sources of state law in order to make sense of the ways in which the state has constructed modern legal subjectivities.

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<sup>3</sup> Laurel Kendall (1996) discusses the contest between legal legibility and social recognition in the context of transformation of marriage rituals in Korea.

## Domestic Government

### What is marriage?

In April 1879, the Secretary of State for India noticed a statement in the selections from the Vernacular Newspapers published in Upper India that “slave trade prevails in Kangra district of the Punjab and that not only are women publicly bought and sold but there is an office of the deeds of sale.”<sup>4</sup> He sought clarification and the then Governor of Punjab replies quoting the report from the relevant assistant district commissioner:

“[T]he sale of married women is an ancient and universal custom in the district. Morals are extremely loose here, and the standard of civilisation so low that it is to be feared that the infidelity of wives is the rule rather than the exception. When a man finds that the affections of his wife are transferred to another, he thinks the best he can do is to give her up to him at once and get rid of her; and as the conjugal affection is not deep here, he is ready enough to do this on receiving compensation for what she has cost him one way or the other. This consists of the original fee (usual in all parts of India) paid at the time of the betrothal, the expenses occurred in the marriage ceremony and perhaps her maintenance since marriage. To prevent disputes, registers for many years past, been kept up in charge of the village headmen for the purpose of recording such transactions...although the actual transfer is not recognised in the courts and cannot form the subject of a suit. The custom of the sale of the wives is very much to be deplored, but it is difficult to see what remedy there is for it so long as the standard of morality remains what it is and wives are so unfaithful. It is perhaps necessary that such simple means of divorce should exist, for it is practically a divorce that takes place, and so long as the facts exist, it is best to regulate and recognise them. The custom has one redeeming feature.. and it is that no wife is ever sold without her consent.

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<sup>4</sup> NAI/Home/Public/ B Proceedings/May 1879/No. 21 ·

Whatever maybe thought of the morality of the custom, it cannot be considered slave trade.”<sup>5</sup>

The Punjab Governor further adds:

“[T]he custom (although much to be deplored) .. cannot usefully form the subject of repressive measures on the part of the government. Any such measure would probably have the result of enhancing instead of mitigating, the evil, inasmuch as the people would be driven to conduct such transfers surreptitiously [....]It may be hoped that in the process of time, the custom will, with the growth of a higher standard of morality, die a natural death.”<sup>6</sup>

While the above correspondence does not specify any particular community, it will not be erroneous to speculate that similar conditions existed amongst the Gaddis in the late nineteenth century. Middleton’s volume on the customary law in the district (Middleton, 1919: Vol XXVIII), and even prior to that, an ethnographic monograph on the Gaddis prepared by settlement officers in the district discuss the practice of multiple unions by Gaddi men and women with regard to its legal implications (O’Brien and Morris, 1900).<sup>7</sup> If one were to side step the issue of slavery and bring out the picture of kinship embedded in the official discourse in the above quotes, it is clear that the sentiments of the report of the district commissioner from a century ago find resonance in contemporary discourses among the Gaddis of Meghla which express moral outrage about impermanent and multiple conjugal units (see section two below). The outrage is as much directed at women who do not have bounded loyalties and have unstable affections as it is at the impermanence of their domestic

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<sup>5</sup> NAI/Home/Public/A Proceedings/September 1879/No.151. Indrani Chatterjee (1998) has elaborated on the significance of the colonial policy on slavery in India in fashioning dominant understandings of kinship in India, some of which survive even today in the study of kinship in South Asia. There are useful insights on typologising and homogenising the concepts of household and kinship categories in Chatterjee’s work that are relevant here even though the colonial gloss on the practices of slavery is not the concern of my research. In the above quote, the colonial government’s anxiety over the prevalence of slavery reportedly misrecognised by the press also serves as a good instance of the moralising impulse of the state. It also highlights the fact that there was a different ordering of the kinship universe prior to “the growth of a higher standard of morality” amongst some of the people of the Kangra region. See Mamdani (1996: 109- 137) for a discussion of the contradictions in the colonial authorities’ moralistic denunciations of polygamy and bride-price in Africa while bringing about a rule of customary and common law that treated women as ‘perpetual minors’.

<sup>6</sup> NAI/Home/Public/A Proceedings/September 1879/No. 150

<sup>7</sup> See also Lyall (1874).

arrangements. It is interesting that neither the colonial Punjab Governor nor the people in Meghla today mention the similarly mobile affections of men. A hundred and twenty five years later, it would appear that the Gaddis are slowly but surely on their way to 'civilisation' as envisaged by colonial officials in the late nineteenth century.

The suggestion made by the Punjab Governor, in the above quote, not to take any strong action against the prevalent mode of divorce, howsoever antipathetic to the sensibilities of the administration, was in keeping with the colonial state's ostensible policy of not interfering in the domestic affairs of its subjects. However, this disclaimer is far from true both for the colonial and the post colonial state. The domestic lives of citizens are in crucial ways informed by the intimate presence of the state. The state constitutes the domestic or the private sphere as that which it has handed over to its citizens. What the evidence available over time shows is the incompleteness of this delegation, while supporting the proposition that domestic and intimate relations are ultimately negotiated in relation to state norms.

Legally, Gaddi domestic arrangements today are governed by the Hindu Marriage Act of 1956, which is unambiguous about the rule of single sexual partners in a marriage. Prior to 1956, Kangra Gaddis, like other agricultural tribes in colonial Punjab were governed by the Customary Law, which was compiled as a consequence of extensive investigation and documentation by the colonial government into local customs (See Chapter Four). In the English version of the *Rivaz-i-Am* (or Record of Customs)<sup>8</sup> of Kangra, it is apparent that it was not uncommon for Gaddis to have more than one spouse. In fact, this was recognised and codified as a customary practice, and therefore enjoyed legal legitimacy up until 1956. This is further evident in the litigation history of the area. My research on the cases from early to the middle of the twentieth century reveal that conflict seldom arose from the fact of multiple marital arrangements. Instead, it usually arose at the moment of the division of spoils either inter-generationally or across uterine households.

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<sup>8</sup> The customary laws of various districts in British Punjab were originally compiled in the vernacular as part of the Settlement Ethnography and were later translated into English. The volume on Kangra by Middleton dating as late as 1919, served as a manual for local jurisprudence.

The practice of multiple conjugality amongst the Gaddis was different from other similar arrangements in the area. The most common pattern in the region was the practice of polygamy and widow remarriage. While the first was common amongst practically every community (cf. Middleton, 1919), the prevalence of the latter was seen to operate as an important marker of caste hierarchy.<sup>9</sup> However, both Gaddi men and women could both set up multiple households up until the Succession Act of 1956. While it was common for a man to have a polygamous unit, there is only a fractional evidence of the existence of polyandry. While polygamy survives in record and in memory, polyandry is apparently completely absent in contemporary memory and exists only marginally in written record (cf. Middleton, 1919; O'Brien and Morris, 1900).<sup>10</sup> Gaddi women nevertheless were free to move out of a conjugal unit and establish a different one with another man. This involved the second husband making a compensation to the first spouse, as the Assistant District Commissioner notes above. Remarriage amongst Gaddi women, as amongst many other castes, therefore went well beyond widow remarriage. In the past, Gaddi men could and did cohabit with more than one spouse in the same house and did not have to set up physically discrete households with different wives. For women it always meant domestic instability and impermanence.

Prior to the promulgation of the Hindu Marriage Act, several types of marriage existed. There was also a ceremonial hierarchy between marriages, where the first marriage was ritually a more elaborate affair. Subsequent marriages were known as *jhanjharara* and were marked by a simple gift of the nose-ring to the bride followed by an abbreviated traditional feast (or *dham*).<sup>11</sup> However, this ritual hierarchy did not translate into an unequal status of different marital units. Wives and offspring belonging to different units enjoyed equal access or rights to property and other resources in the patrilineage.<sup>12</sup> The term for widow remarriage was '*rakhewa*', hence implying that it was a separate and distinct form of marriage, even if the ceremony was identical in both cases, i.e. the gift of the nose-ring followed by a short feast. The

<sup>9</sup> Amongst the Rajputs, prevalence or absence of widow remarriage served as a dividing line for internal ritual hierarchy Middleton (1919); Parry (1979); Philimore (1982).

<sup>10</sup> As discussed in chapter Four, a disguised version of polyandry was accepted throughout much of the caste hierarchy in the form of the privileged sexual access of a man to his younger brother's wife (eBW) (cf. Berreman, 1972).

<sup>11</sup> Therefore the indigenous term for these was '*balu*' marriage or literally, 'nose-ring' marriage.

Gaddis also practised *jaharphuki* marriage or solemnising the union by going around a fire made of lit brushwood four times. This was the preferred ceremony for marriages of mutual consent or ‘love marriages’<sup>13</sup> While ‘love marriages’ amongst the Gaddis were a recorded and codified phenomenon in law (Middleton 1919:32), there is limited elaboration of this in the literature outside of the ‘narrative of ceremony’. In its customary usage, ‘love marriages’ for the Gaddis appeared simply to mean a case where two consenting adults had married outside their caste.<sup>14</sup>

### Recording the household

While, polygynous households were not unique to Gaddis in Kangra in the late nineteenth and early twentieth century, and cut across the caste hierarchy, a predominantly pastoral political economy may have contributed to the mobility of Gaddi households. In the nineteenth/early twentieth century when the customary practices of the people of British Punjab were being documented, a far greater number of Gaddi men practised pastoralism and only a few followed a sedentary agriculturist livelihood. In Kangra, beginning with the Summary Settlement of 1856, the First Settlement in 1875, along with other state documentary practices like registration and the census, the ‘house’ began to assume a fixed legal character. It became an identifiable physical structure from the government record of it to its actual physical location. This isomorphism became true not just for the physical structure of the house but also for its inhabitants. The passing of the Registration of Births, Deaths and Marriages Act of 1886 also made it mandatory for every single panchayat in the province to keep a Register of Marriages where all marriages in the village were logged, and people were required to register their marriages with the relevant local authority. These records assumed importance over time as they began to serve as evidence in property claims and as proof of lineage.

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<sup>12</sup>Most Gaddis followed the *Chundavand*, or the per stirpes inheritance system (see chapters four and five).

<sup>13</sup> According to Middleton (1919: 32), this form of marriage was confined to Gaddis and Kanets but was increasingly adopted by other communities in the area.

<sup>14</sup> Newell’s (1963) account of inter-caste marriages between Gaddis and Brahmins has to be reassessed in light of the ways in which these two groups categorise themselves today. If one reads Newell’s ethnography closely, it emerges that what he calls inter-caste marriage is in fact a form of sanctioned alliances between Gaddis and Bhats – the latter are regarded as the Brahmins of the Gaddi internal caste hierarchy - and therefore does not strictly qualify as an inter-caste marriage.

Due to an increased availability of agricultural land and grazing pastures in Kangra district, Gaddis increasingly began to settle down on the southern slope of the Dhauladhar mountain range, moving away from their Gadgeran homeland (see Chapter One). This sedentarisation in turn brought about certain changes in Gaddi ideas of a household. A pastoralist lifestyle involves having houses at various places along the grazing route. Some of these are inhabited for longer periods than others during a grazing cycle. The ones in the alpine reaches are usually used for shorter periods and are mostly camping huts or rain shelters. However, some herders have houses in villages or hamlets other than their own. Even today and even in a populous village like Meghla, it is not unusual to see houses lying vacant for most part of the year and which are inhabited only between March and May when the herders reach Kangra at the end of their winter camp in the plains and before they begin climbing up for the alpine pastures. Similarly, above Kandi lies a village that is exclusively used by the itinerant shepherds for a few weeks in the spring and autumn months and remains empty for the rest of the year.

The twin processes of fixing of the house through state documentary practices and a move away from a migratory pastoralism to agriculture and other occupations, are complementary conditions that enable a more effective deployment of the legally prescribed mode of conjugality. However, this effectiveness is never complete, and a tension exists, as the following case exemplifies, between legal legibility and the social recognition of marriage.

### **Sex is not everything**

In 1952, one Agya Ram filed a suit for restoration of his conjugal rights against Jagdeshri Devi who disputed the fact of her marriage to him.<sup>15</sup> He claimed that they had been married in August 1951 in the village temple of Syunta, in Chamba district. She was a resident of Meghla and he used to visit the village in connection with his work as a contractor. He claimed that they had fallen in love and she compelled him to take her away to Chamba so that they could live as man and wife. He asserted that he did so with the knowledge of her family. He said that as per the then prevalent tradition, Jagdeshri's family received the necessary compensation of gold, silver and cash in lieu of their daughter before the brief wedding ceremony was performed. He



claimed that Jagdeshri's brother Himal Chand was a witness to the wedding. Agya Ram accused Jagdeshri's family for taking her away from him and preventing her from living with her husband. Jagdeshri, who was not yet sixteen years old at the time of the decision, contested his version. She claimed that Agya had duped her into going with him to Chamba, and that they never married. On the contrary, she insisted, she had been abducted and that "[Agya Ram] performed sexual acts with [her] by force".<sup>16</sup> Agya's case was dismissed because the evidence was not considered robust. He could not produce any documentary or other evidence that could convince the court that the wedding had indeed taken place. A witness deposition by Jagdeshri's brother disclaiming that he was either present at the alleged wedding or was ever a witness to it, proved to be critical in the absence of any other judgement. Deciding the case against Agya Ram, the sub-judge allowed Jagdeshri to continue living with her parents in Meghla.

Agya Ram contested this decision and filed a suit of appeal in 1953, which was summarily dismissed for a similar lack of sufficient evidence.<sup>17</sup> He filed a second appeal the following year at the appellate court at Hoshiarpur. This time he buttressed his case with a range of evidence, including a studio photograph of the couple taken en route to Chamba, a testimony by the photographer who ran the photo-studio, and 'love letters' written by Jagdeshri to Agya. The District Judge found the evidence compelling in favour of Agya Ram and restoring his conjugal rights, decreed that Jagdeshri's family should duly send their daughter to her marital home.

Jagdeshri Devi contested this decision in 1955 in the District Court in Hoshiarpur. The new judge gave prominence to Jagdeshri's brother Himal's testimony along with other corroborating depositions vis-a-vis the documentary evidence produced by Agya, and decided the case in her favour. The case finally reached the Punjab High Court when Agya filed an appeal in 1956. The High Court decided the case against him in July 1958 on the principle that

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<sup>15</sup> Suit 279 of 1952. Agya Ram vs. Jagdeshri Devi; Goshwara no. 707, 8/P. Dharamshala Record Room

<sup>16</sup> Testimony of defence witness no. 2, June 02, 1953.

<sup>17</sup> Original Suit 279 of 1952 Agia Ram vs. Mst. Jagdeshri Devi. Goshwara no. 704, 8/P; DRR.

“the finding that the plaintiff (Agya Ram) and the defendant (Jagdesbri Devi) were never married with (sic) each other is a pure finding of fact and cannot be assailed in the second appeal . [...] the learned counsel for the appellant urges that the finding is based on misreading of the documentary evidence and is therefore vitiated by law. He has taken me through the entire documentary evidence but I have not been able to locate any misreading of the same. In my opinion the learned District Judge has taken (sic) correct view of the documentary evidence and has properly construed the documents [...] I would therefore dismiss the second appeal with costs”.

The contest between the legal legibility and the social recognition of marriage underpinned every stage of litigation in this case.<sup>18</sup> Did the marriage take place? What does it take for a marriage to be seen to have taken place? There are many issues that fracture the coherence of the case. Significant among them are Jagdesbri's age and the presence of Agya's first wife, to whom he continued to remain married through the course of the litigation. Despite the promulgation of the Hindu Marriage Act and the Hindu Succession Act in this period, Agya's polygamous intentions did not beget any juridical attention. Jagdesbri's minority on the other hand, provided the prism through which the decisions were refracted, the reasons for which were several.

The first of these was the fact that there was already a law in place on the Child Marriages Restraint Act of 1929. The law was invoked to decide whether or not Jagdesbri had been kidnapped by Agya, as she alleged, instead of wilfully having eloped with him, as he claimed. In case it was the former, the marriage, even if it had taken place was void because it was reasoned that '*patiara*' marriages (or marriage by kidnap) in Himachal Pradesh were illegal.<sup>19</sup> However in case it was the latter, i.e. had she eloped with him, then her minority was not an issue as long as Agya Ram could prove that he had the consent of her parents or guardians. This is what he may have had in mind when he claimed that one of her brothers was a key witness at the wedding ceremony, and that he, Agya, had transacted all the necessary exchanges

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<sup>18</sup> See Laura Kendall (1996) on this contest in the context of transformed marriage rituals in Korea.

<sup>19</sup> Original Suit 279 of 1952 Agia Ram vs. Mst. Jagdesbri Devi. Goshwara no. 704, 8/P; DRR.

constitutive of a betrothal and marriage with Jagdishri's brother. The legal bearing of minority therefore was also a shifting one. The proof of minority had to be counter-argued through a disproof of the fact of marriage. Age itself was not an issue because the subject of Jagdishri's minority was presented in terms of consent whose agency moved between the minor person and their parent/guardian.<sup>20</sup>

What came under juridical censure in this case was the inability of Agya to produce evidence for the event of marriage. When he subsequently did, and managed to convince the second district judge, the question of Jagdishri's minority became secondary. Her father's consistent statement about his disapproval of the match or their marriage had little import once the judge was convinced that the marriage had indeed taken place. As he noted,

“As such the marriage cannot be held to be illegal only because the (sic) defendant no. 1 (Jagdishri) left the house of her parents without their consent. In this connection, I may note that the defendants were able to satisfactorily establish on the record that defendant no. 1 was less than 18 years. [...] As already stated above I do not think however that the fact of defendant no. 1 being less than 18 years of age at that time is at all material. The only thing material is that she entered into marriage out of her own free will, which I find established in this case as a matter of fact.”<sup>21</sup>

What is notable about this case, and in contrast to contemporary material discussed below, is that the focus of concern is not the fact of multiple unions, nor pre-marital sexuality and morality, but the question of consent. What this case points to is the fact that for the Gaddis, conjugality was not primarily about exclusive sexuality, and that loyalty to the conjugal unit was mapped along criteria other than sexuality.<sup>22</sup> My

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<sup>20</sup> This was, in some ways, a different view of sexuality from the one that framed later laws, i.e. one that did not deny sexual activity prior to the legal age of consent at the very outset (see chapter four).

<sup>21</sup> Judgement of the Senior Sub Judge, Kangra at Dharamsala, 20<sup>th</sup> August 1954.

<sup>22</sup> If one looks at this in contradistinction to other contemporary or comparative notions on pre-marital sexuality, certain important factors become apparent. William Reddy has written about changes that took place in French ideas of conjugality in postrevolutionary France. His study of the divorce and separation cases that came before the ‘majesterial’ court in Paris show us that the important shift that took place with modernity in French domestic life was the disconnection achieved between marriage and honour. (Reddy 1993, 1997). In other words, that male honour in public life could no longer be impugned directly by the sexual infidelity of wives and thus divorce became possible. While the

research reveals that litigation related to marriage revolved mostly around maltreatment on part of the husband. Husbands on their part sought dissolution of a marriage on the grounds of the inability of the wife to bear a child or better still a son. Gaddis hardly ever sought - and do not now seek - annulment of marriage on the basis of adultery. This may have largely to do with the fact that a husband's adultery was never a sufficient legal ground for divorce (whereas a wife's infidelity was and is adequate legal basis). Maltreatment of the wife by the husband and infertility on the part of the wife are the reasons which form the basis of most marital litigation at the present time – as they did in the past – but from time to time the adulterous liaisons of spouses (usually a 'second marriage' of the husband and a wife's illicit affair) have begun to form the subjects for divorce in contemporary Gaddi society. The above case not only shows what conjugal expectations were like in the past, but allows us to analyse the manner in which they have been changing over time. It also provides evidence for the claim that conjugality has become a salient feature of Gaddi life and a focus of moral attention, one which now houses a different order of affective life. The conjugal unit is no longer the space simply for the provision of material care and productive relations, but is also a space that is informed by sexual fidelity, at least in principle and as an operating expectation of it.

## **Conjugating marriage in contemporary Meghla**

### **Multiple unions**

In October 1999, a new vegetable shop opened close to where I lived in Meghla. The woman who ran it was a newcomer in the village. Phulo Devi, whose arrival was to become a topic of conversation amongst her neighbours (or at least with me), had very recently moved to Meghla to live with Jogi Ram and had come from the neighbouring district of Kulu. Also, she had brought along her infant child from her previous husband. She was no young bride and nor did she make any pretensions to it. She was not Jogi's first or only surviving wife, although his first wife did not live with him.

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experience of modernity in the context of conjugality in early nineteenth century France and colonial and postcolonial north India is clearly somewhat different what the comparison demonstrates is the way shifting ideas about sexuality have an impact on understandings of conjugality and the permanence of marriage.

A few months later, Phulo left Meghla and went back to her native Kulu. It was widely believed that she had gone back to her erstwhile husband. Her disappearance evoked a mixed response amongst her neighbours. Some young mothers were all too pleased that they had seen it coming, because they believed that women who were “of unstable persuasion” could not nurture a household. Their older neighbours and kin seemed less perturbed and more matter of fact about it. Phulo’s re-appearance a few weeks later however, took most by surprise. In the eyes of some, it confirmed the couple’s ‘love’ for each other. But, the reactions to Phulo Devi’s movement back and forth from the village highlighted the ways in which Gaddis today are divided over the issue of multiple marital or quasi marital unions. While many of the older generation appeared to be relatively comfortable with the notion, although aware of the fact that within the Gaddi self-image this practice was something widely thought of as archaic and ‘backward’, the younger generation seemed distinctly more normative. They perceived a clear sense of moral transgression in such unions. What Phulo had done was not the way of doing things, *not anymore at least*.<sup>23</sup>

This moral outrage was explained in different terms. For young women who were married and were in their twenties and thirties, some of whom were themselves in abusive marital situations, Phulo was neither an ideal wife nor a good mother. By this they meant that she was not singularly devoted to any one man and chose not to provide her child with a stable home. According to them she was obviously inviting trouble, as she was going to be perceived by other men in the locality as someone who was of easy virtue and no man was ever going to treat her well. This view was in keeping with the norm of risk averse sexual behaviour that I observed that women of this age group typically portrayed. The element of surprise that was apparently associated with Phulo’s reappearance was perhaps to do with the momentary instability it caused in these young women’s schema of how women like Phulo were assumed to act. In other words, they are seen as acting in a way that prevents men from expressing their ‘devotion’ or commitment to wife and marriage.

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<sup>23</sup> It was not as if Phulo and Jogi’s life monopolised popular attention or was the sole focus of local gossip at its various critical moments. On the contrary, for some people it seemed to occupy an ordinary, unmarked space, and for others in the village was even a subject of indifference. At first, I rationalised this indifference on account that perhaps it was not an atypical thing to happen. It was only later that I realised that this indifference was indeed selective.

The older generation seemed to have less difficulty with Phulo's unstable conjugality. This for me was intriguing given that they are the parents of a generation that now firmly disapproves of multiple unions. What had intervened in the transmission of these ideas of a household and marriage? Bhumi Devi is a woman in her sixties and the second of her late husband's two wives. Like all married Gaddi women, she wears a necklace of beads with a flat silver tablet strung in it. This piece of jewellery is among the several that is given to the bride by the groom's family during the wedding ceremony. The silver signifies the conjugal unit. The tablet in Bhumi Devi's necklace has three embossed figures, one representing her husband and the others his two other wives. Her only surviving child, a daughter said that she would not consider cohabiting with another spouse of her husband. Like most others of her generation, she cannot clearly articulate the reason. "Those were different times, and it was common then.", was her response, one that I had heard repeated to me with regularity in Meghla. This response reflects some of the other changes that have taken place amongst the Gaddis in recent years. Whereas Bhumi's husband was a herder from Bharmaur who had settled down in Kangra about forty years ago, her son-in-law is a tailor who runs a small shop in Dharamshala. While Bhumi Devi herself is illiterate, her daughter is educated up to primary school level. For Bhumi Devi, Phulo's story evoked little surprise or attention. For her daughter on the other hand, Phulo was someone she could neither envy nor emulate, for "Phulo ought really to have decided whether she wanted to be with her previous husband in Kulu or with Jogi here in Meghla. More importantly, women from good decent families like hers conduct their lives differently", she insisted.

Men of a similar age group and socio-economic background on the other hand, were reticent in making a comment of either approval or disapproval. It was generally explained away as a condition of a certain class, and therefore not something that concerned them directly. As they were meant, in their own eyes and in the eyes of many of the villagers, to be the official guardians of the moral well-being of the village, I asked some of the panchayat members what they thought of such liaisons. Even they seemed reluctant to give a categorical opinion on such matters. Their first response was that as long as Jogi's first wife did not come to them with a complaint or go to the court seeking redress, they as *panches* (members of the panchayat) were in

no position to either intervene or comment. Gaddi members of the panchayat agreed that while multiple unions are in principle possible amongst them on a moral level because their ancestors had followed this way of life as recently as two generations ago, today the situation is different. Given the high cost of living and the fear of a spouse going to court, this option is not worth the potential trouble. They also believe that in the present day scenario, those who exercise this option are either poor or illiterate or both. and certainly not people from “good families”. Thus, there is a judgement of class, status and degree of ‘modernity’ that governs and frames the act of single marriages amongst Gaddis in present day Kangra.

Village condemnation was more overt in the case of Roopa Devi. In January 2000 she eloped after ten years of marriage from her conjugal home in Meghla for three days, with her lover, who was a truck driver from a neighbouring town. Her husband Mahato Ram seemed angry and bitter. His initial instinct was to lodge a complaint in the local police station, but his friends and kin dissuaded him from doing so. They told him that there was little he was going to achieve by it except accrue paperwork with the local police and make endless rounds to the local court. Instead, he should wait, for she would soon be back, because she had left behind her two children.

Roopa’s elopement assumed a certain degree of scandal and spectacle that Phulo’s momentary abandoning of Jogi never did. Mahato was no ‘ideal husband’. He frequently beat her, and Roopa had often garnered support from neighbours (usually kin) against his wife-beating.<sup>24</sup> When recounting Roopa’s elopement, people tended to position it either within a narrative of rationalisation (i.e. Mahato’s beatings drove her away) or then within one of outrage (i.e. she should not have left him, no matter what). The *up-pradhan* of the village panchayat, told me that Roopa had tried to solicit the intervention of the panchayat in getting her husband to stop beating her. But the panchayat had hesitated and had only informally counselled Mahato against it. However, a week later, when upon her return to Meghla Roopa was greeted with a severe chastisement by her husband, she found no sympathy amongst neighbours, kin

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<sup>24</sup> Wife-beating occurred mostly at night, and mostly under the influence of alcohol. Scenes of domestic violence that had taken place in full public glare were almost concertedly forgotten the morning after, and were rarely picked up in conversation, especially with either of the people concerned.

and other villagers. A wife ought not to stray, and in case she did, well, she deserved the beating.

Roopa's case demonstrates the changing ideas surrounding so-called 'love marriages' and the bourgeois ideal of romantic love. While 'love marriages' amongst the Gaddis were a recorded and codified phenomenon in law (cf. Middleton 1919), there is limited elaboration of what this actually entailed. In its customary usage, 'love marriages' for the Gaddis apparently simply meant a case where two consenting adults had married outside their castes, as noted above.<sup>25</sup> In contemporary Meghla most Gaddi matches are ideally arranged isogamously, i.e. Khatri Gaddis marry Khatri Gaddis, etc. But, this rule did not seem to apply to marriage with non-Gaddis. Looked at overall, however, any flexibility that may have continued to exist for the Kangra Gaddis in arranging marriage alliances is fast coming under censure from within the community. Phillimore (1982: 318) reports that while the upper end of the Gaddi internal hierarchy replicates the pattern of hypergamous alliances prevalent amongst the high castes of region, there is a tendency observed towards isogamy when the caste group is less advantageously placed in the group hierarchy. This is in keeping with the general principles of how exchange of women work lower down in the hierarchy. He explains the practice of isogamy on the basis of a lack of internal differentiation leading to a prevalence of *batta-satta* marriages where one set of opposite sex siblings is married to another. He reports that in his sample village during his period of fieldwork in the 1970s as many as forty seven per cent of all marriages were *batta-satta*. However, he also notes that about fifty per cent of marriages overall were actually based on *dan-pun* or the unequal exchange where the wife takers and the wife givers exist in a hierarchical relationship. His account of the patterns of Gaddi alliance hold true for Meghla, but in Meghla one can see a marked shift overall towards *dan-pun* marriages, and a virtual disappearance of *batta-satta* alliances. What this demonstrates is an ongoing process of 'Hinduisation' of marriage practices, where the Gaddi are becoming more like their Rajput neighbours, and an increasing emphasis on hierarchical marriage patterns connected with the shift to dowry from brideprice (see chapters Two and Five). The result is a stricter control of

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<sup>25</sup> See footnote 19. Chapter Two of this thesis has detailed the complex of the relationship between Bhats and Gaddis in more detail.



marriage alliance and a decreasing incidence of 'love marriages', accompanied by an increasing disapproval of them.<sup>26</sup>

One of the issues on top of the agenda of the newly formed Kangra based Gaddi association is to stem the rise of inter-caste marriages amongst the Gaddis, i.e. marriage with non-Gaddis. One of its leaders told me that the urban and well-off Gaddis were increasingly marrying outside the community with women of commensurable 'status' and this was soon going "to create a surplus of unmarried women in the community". His fears of an imminent crisis may be an exaggeration, yet his diatribe against inter-caste marriages can potentially assume serious consequences in wiping out the elasticity of norms that has so far existed in the acceptance of 'love marriages'. This is especially so since he spoke on behalf of a community organisation which was considering introducing punitive measures such as 'social excommunication' for those who violate the prescribed code of conduct. The efficaciousness of such measures may be questionable, but what is significant is the fact that a certain 'purity' is systematically being articulated and insisted upon by certain community leaders. Chapter Two has discussed in detail how this rhetoric of purity is in tandem with the experience of other, perhaps bigger insecurities by the Gaddis. Community leaders were also quick to point out the difference between 'arranged love marriages', i.e. those alliances that were arranged outside the group for reasons of socio-economic parity, and 'love-marriages' that were a culmination of an emotional involvement between two individuals. While the community association came down very strongly on the former, they seemed less stringent on the latter. This seems to show, as we should expect, that the definition of love marriage is itself changing as ideas of marriage and conjugality change.

### **Sharing and caring**

In contemporary Meghla, marriage means several things in Meghla. Sexuality is only one aspect of marriage; care and contribution to the conjugal unit are also defining features of how marriages are conceived of and lived. *Shaadi* (marriage) means

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<sup>26</sup> While recognising the specificities of the Gaddi situation, the general pattern observed is not a surprising one. Increasing marriage restrictions, adherence to brahmanical codes or values, and a concern with the relationship between alliance, purity and status has been observed by S. Bayly (1999) in earlier periods for other parts of India. S. Bayly (1999: Chap 2) pays particular attention to the way

companionship (*saath*), says Milap. He and his wife Jalandhari have three children: two sons aged twelve and seven respectively, and a daughter aged ten. If Milap's life revolves around providing for his family, then Jalandhari's life pivots around making that family into a cohesive unit. Milap's brother Om lives with his wife and two children on the first floor of the same house, and much of what Jalandhari does is indirectly informed by the explicit comparison she draws between her family and that of her brother-in-law. Her house is cleaner, her children better managed and higher achieving, and her 'conjugal bliss' more enduring, at least as she imagines the public eye, than those of her kin.<sup>27</sup> Companionship, Milap explains is not only that of the spouse, but also of children. It ties people with the past and the future at the same time. This is because Jalandhari and he can become *buzurg* (old, but also in the sense of ancestors) to their future generations. Children are the most critical aspect of family, conjugality. A spouse provides you with that possibility, along with providing love and affection. He makes a distinction for my benefit between *pyaar* and *muhabbat*, where the former connotes love in its broadest sense, and the latter in the romantic sense. Echoing popular notions, he elaborates that the former is the more enduring one, whereas the latter is more ephemeral. Many elopements end in tragedy because those liaisons fail to transform *muhabbat* into *pyaar*, he says.

Milap has been married to Jalandhari for thirteen years. While parenthood is crucial to their idea of conjugality, it does not consume the relationship entirely. Their daily life is marked by a constant struggle to provide for the family and to make ends meet, and this frames the context of their marriage. The vagaries of daily wage take their toll on the emotional well-being of the couple. However, unlike other men in the village in similar economic or other circumstances, Milap has never raised his hand at Jalandhari,<sup>28</sup> nor have they shouted at each other loud enough for their neighbours to hear. They are quietly proud of their reputation of harmonious conjugality, even if it is sometimes construed as selfishness by others, a trait that does not enjoy any positive

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herding groups in the Gangetic plain became engaged in similar processes as they settled down and became agriculturists.

<sup>27</sup> Such intragenerational fraternal rivalry is not uncommon in the village, especially because the prevalence of a joint family is not usual. Conjugal units become nuclear within a relatively short period however they do live in close proximity of each other and hence continue to serve as a reference point for each other, as well as function as a joint family if and when it was required. Even if children were looked after in a communal manner, they always tended to return to their respective homes at mealtimes.

connotation among the Gaddis. Jalandhari and Milap look upon their economic difficulties as something that have to be surmounted together, and “fighting with each other does not help at all”.

Of course there are issues that they have not been able to resolve. One of them is the refusal on Milap’s part to herd his father-in-law’s flock.<sup>29</sup> When they faced a severe financial crisis the previous year, Jalandhari took up the job of domestic help at a local schoolteacher’s house. Her salary was significantly more than Milap’s, and, more importantly, hers was steady assured income as opposed to his variable daily wage. Milap resented the fact that she was willing to work as domestic help. Even though they told everyone around that her work involved only looking after the children of the house, it made him look like less of a man, in that he could not provide for his family. “Gaddis do not work as domestic help in other people’s households”, he asserted. Also, he did not think that working as domestic help was “befitting for a person like his wife”. Jalandhari on the other hand was convinced of the sagacity of her decision. She said that all she knew was that she had three school going children, and that they had to be provided for, not only for now but also in the future. While it was clear that the economic loyalty of the conjugal couple to their household was firmly in place, its agency was not. A few months later, Milap sounded less bitter and more reconciled to Jalandhari’s employment. In some ways it was expected that Milap should publicly show his unease with her job so as to conform to popular expectations of the masculine role in a marriage, and also to confirm their version of conjugal harmony that they had worked so hard to create. He said that he believed that “Jalandhari was a *true* companion”, in the sense that she shared his burden of raising a family in every way she could, even though he found it difficult to acknowledge this in the company of his male peers.

What did they Milap and Jalandhari think of Phulo and Jogi? Or for that matter anyone else like them? Evoking the *pyaar/muhabbat* dichotomy that neatly delineated their affective worlds, both of them were categorical in their disapproval. The vehemence of tone perhaps had to do with my having asked them. In their daily lives,

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<sup>28</sup> Wife-beating is not uncommon but does not enjoy popular sanction. Therefore a husband who does not beat his wife (even under the influence of alcohol) is seen as ideal.

<sup>29</sup> The significance of herding arrangements are discussed in detail in chapter Two.

they gossiped every now and then about events like elopements and heartbreaks, with other villagers, between themselves, and with me, usually when the children were out playing or gone to school. However, it was the 'dalliance' of Milap's cousin's (FyBeS) wife, Pavna, with her husband's younger brother that seemed to assume a more significant place in their conversations than Phulo's peripatetic marriage. Pavna's dalliance was seen as an 'excess'. It did not take anything away from the contemporary ideal of Gaddi marriage and the importance of conjugality. It was an excess that could have happened (and did happen) anywhere. In some ways, it was a comprehensible relationship, one sanctioned in tradition. There are numerous Gaddi songs that make references to such liaisons, and some of them are wholly devoted to celebrating the playfulness of a woman's relationship with her husband's younger brother.<sup>30</sup>

### **Pre-marital behaviour and sexuality**

Ideas of conjugality, household and marriage and their relationship to sexuality have clearly undergone much change in Meghla and this can clearly be seen in relation to ideas about pre-marital sexual behaviour and comportment.

One winter afternoon we were sitting in Simro's kitchen. Simro is in her mid forties. She had just returned home from collecting firewood from the nearby *khudd* (low lying grassland or village common near the river bed). Also present was Bidya, Simro's daughter, who was around eighteen years old and Sushma, seventeen, Bidya's father's younger brother's daughter. Bidya had finished high school a year ago and now stayed at home looking after the domestic chores, and picking up what her mother thought were useful skills for a future housewife. Simro's working day started with milking the cow and the two household goats. The goat milk was kept for domestic consumption, whereas most of the cow's milk was sold. Her husband Chokas Ram was employed in the Block Development Office in Panchrukhi. Simro's day was mostly spent in working on the family fields, except for the days of her *bakri duty*, the rota by which women in the hamlet manage the grazing responsibility of domestic goats. "Bidya is a good daughter. She has been a source of great help. I could never have managed without her", she said to me. I had once asked her if she felt that she may have 'deprived' Bidya of further education given that quite a few of

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<sup>30</sup> It is the most common of all 'joking relationships' in north India.

Bidya's peers in the village went to college. "The family was actively looking for a groom for Bidya", she told me, and "what would a few more years of education teach her that would be of use ultimately. It would be better if she stayed at home and picked up skills that were useful instead, like sewing, for example". Bidya for her part agreed with her mother. Simro was quite sure that while she relied on Bidya's labour in the house, it was a short-term measure.

In Meghla, men make social visits either very early in the morning or late in the evening, whereas women call on each other during the afternoons. Therefore, it was quite odd to hear a man's voice calling out for Chokas Ram in the middle of the afternoon. Simro leaned out of her kitchen window and saw someone she did not recognise. When he gave her the name of an acquaintance, she became visibly animated. Sushma and Bidya were quickly packed off and were asked not to return till they were called back. The two girls exchanged meaningful glances, giggled and ran out of the house. It was obvious that someone had come with a proposal for Bidya. Simro led the two young men to the kitchen, which was situated on the first floor of the house. I would have expected her to entertain the visitors in the front room on the ground floor, as the kitchen was usually reserved for those with whom one shared close filial and/or affective ties. Moreover, the front room of the house was also in some ways the presentational room, where one kept valued and valuable possessions. Simro later explained that she had done this to prevent children peeping in at the windows and gathering at the front door.

Simro's half-eaten lunch had been quickly tidied away and replaced by tea simmering on the kerosene stove. It was not usual, but Rupinder, the groom to-be, had come himself with the proposal. He was accompanied by an older relative who worked in the army with Chokas Ram's younger brother, Nek Ram. It seemed to me that this was not entirely a surprise visit, rather an expected and perhaps awaited one. Despite all her attempts Simro could not prevent the motley of curious children from gathering outside her house. One of them was handed twenty rupees and asked to run and get a couple of packet of biscuits from the tea-stall a little distance away. (The children now stayed on in the hope of getting a biscuit each.) Another child was despatched to ask her sister-in-law Daya, Nek Ram's wife and Sushma's mother, to come over. She was keen to serve her visitors the traditional salt tea, but the prospective groom preferred it

sweet. While adding extra helpings of milk and sugar and even some green cardamom to the boiling brew, she made small inquiries of Rupinder. We gathered that he was an only child, his father was still based in Patiala (in Punjab) where he worked, and his mother had died when he was three. The older relative piped in to say that Rupinder's household badly needs a woman's presence and that Bidya would make an ideal *laarhi* (wife) for him.

It did not matter whether or not Simro knew these facts about Rupinder and his family prior to this conversation. Her inquisitive questioning was more by way of asserting a certain degree of authority. If there was anything that was apparent to the anthropologist as outsider, it was the balance of power in this situation. It belied dominant notions of the superiority of wife-takers that are taken as given in Brahminical understandings of India. Simro made small talk with her visitors, and continued her inventory of questions with them, even if she already knew the answers: what Rupinder did (he was doing a 'computer course' in Dharamshala), whether he lived alone in the village (no, with his father's sister), how many animals does the family have (about 70 goats and 40 sheep and a cow at home; the animals were herded by her father's sister's son), what kind of a Gaddi was he if he didn't like salt tea (no response, just tame laughter). All through this conversation, Rupinder rarely looked Simro in the eye. I was to see more evidence of this joking relationship at the time of the wedding ceremony.<sup>31</sup> After tea and biscuits, the prospective groom and his older relative left for their natal village. Before they left, Rupinder tried to catch a glimpse of Bidya, but he was to be disappointed. The small group of five-six children that had been waiting patiently and well past their treat of the solitary biscuit, gazed at the visitors with a strange mix of awe and admiration. As soon as Rupinder and his relative stepped out of the house, they ran next door to inform Bidya and Sushma that the visitors had left.

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<sup>31</sup> After the evening ceremonies and the wedding feast are over, the groom is taken inside the bride's house, where he spends the rest of the night. But before he can enter the house, his mother-in-law stands in the doorway and pushes him back. A contest of strength is feigned between the two where she tries her best to physically stop him from entering the house and he in turn fights back and after three attempts the groom is eventually allowed in, in case he has failed to do so before that. The groom and his mother-in-law then commemorate their new found bond with sharing alcohol that has been brewed especially for the wedding.

Simro was smiling broadly. "I hope Bidya's father agrees. He seemed nice". Upon arrival, Bidya displayed a slight irritation. "How can anyone walk up like this? Was he not embarrassed? He could have just sent his *chacha* (father's younger brother)", she says, her tone a touch falsetto. However, her displayed irritation seemed to have had no bearing on the decision-making of her parents. Chokas was only too delighted at the proposal. Having sent a word in confirmation, he soon consulted a priest in the Meghla temple for an auspicious wedding day. It transpired that the wedding could take place either within the following six weeks or then in a year's time. Rupinder's *phuphi* (FZ) came to the village with a bag of walnuts and some sweets to say that Rupinder wished to get married at the earliest possible time, to which everyone agreed. And so, Bidya's wedding was fixed five weeks from that day.

Away from the frenzy of preparations that marked the period between then and the actual wedding<sup>32</sup>, Rupinder made a visit to Meghla again, this time to ask Chokas and Simro if he could meet Bidya. He invited Bidya to a cafe in Palampur town, which she promptly declined. "How can I go and see a stranger?", she said in that same irritated tone. But she was to be married to him in a month's time, I remarked. Surely calling one's fiancé a stranger was a bit harsh and perhaps out of place, I said to her. Her mother came to her defence that Bidya was a 'shy' and a good' girl. While Simro and Chokas on their part saw nothing wrong with Bidya meeting Rupinder in a cafe in town preferably accompanied by someone, they were by no means going to force or even persuade their daughter to change her mind, being quietly proud as they were of her decision.

Even if this time round Rupinder's mission to meet his bride-to-be had been effectively thwarted, he did not give up. He made another visit to Meghla a few days later, accompanied by a friend and sought a meeting with Bidya in her own house. At the meeting Sushma, Daya, Simro and Bidya's two younger siblings were also present, as were the usual cohort of children in the courtyard. The two exchanged pleasantries, asked and answered questions through others and amidst a lot of giggling

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<sup>32</sup> Among the more notable changes in the marriage practices of the Gaddis in recent times is the shift from bride-service to dowry. Wedding preparations now include assembling items of dowry seen as essential, i.e. kitchenware, blankets, and clothes. Depending on the economic capability, furniture, bicycles, sewing machines, and white goods like television sets, refrigerator, etc. are beginning to

from the younger audience. Tea having been drunk, and biscuits and sweetmeats having been eaten, there was little pretext for Rupinder and his friend to stay on. Resigning himself to see Bidya next only as a bride on their wedding day, Rupinder left.

Bidya explained to me that she did not think a 'courtship' was necessary. "I know what is expected of me once I am married, and that is what is important. This *milna-milana*<sup>33</sup> is perhaps necessary and useful for only 'love-marriages'. What if I had met him in a cafe in Palampur, in full view of everyone, and for some reason our match did not work out? I am scared of that happening", she said. Sushma concurred with her cousin. Sushma was enrolled in an undergraduate degree in the local college. She too did not approve much of the dating culture that was fast becoming a part of college life. "Most of the time, these girls have no idea what damage (*nuksan*) they are doing to themselves. There is a small group of young men who serially date fellow women students. While some women are naive enough to believe that these men mean their marriage proposals, there are others who quite consciously play along. I have friends in college who are involved in impossible relationships (i.e. with people outside their community or caste). There is little hope that any these relationships will ever end in marriage. On the contrary, they will probably threaten prospects of a good alliance, if one's reputation is sullied". This anxiety over reputations and the final goal of a courtship being marriage was reinforced by how Rupinder made sense of Bidya's actions. Even though Rupinder had been quite keen to meet his bride-to-be, Bidya's extra cautious behaviour was seen by him as signifying 'good character' and charm.

### Caste and class

Anu is eighteen and she is unique in that she is the only girl in her village Kandi (a village on the other side of the gorge from Meghla) who has been allowed by her parents to study beyond high school<sup>34</sup>. She is also one of the office-bearers of the Gaddi Student Association at her college. Articulate, aware and confident, she prizes her unique status in the village where she is held up as an example for younger girls in

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feature in Gaddi dowries. However, I was told on several occasions that no one *demand*s specific things, and certainly no cash is ever transacted.

<sup>33</sup> lit. 'meeting-being met' or frequent interaction



the village to follow. It was surprising therefore when her father told me that they had found a groom for her and that she was going to be married within a couple of months, and that too in the middle of her end of the year exams. He cited a number of reasons for this haste. She was the oldest of the four children. They were a prestigious family amongst the local Gaddis and they had found a good and an equal match for their daughter. In addition, the groom's father had assured them that their family would continue to support Anu's education for as long as she liked.<sup>35</sup>

Anu on her part did not object either to the marriage or its timing. Well before her marriage had been arranged, she had echoed Bidya's and Sushma's disapproval of pre-marital romantic entanglements that many of her colleagues in college were involved in. Once her own marriage was fixed, she too refused to go out or even talk to her husband-to-be alone. Her mother and aunts were pictures of confidence. I was sometimes witness to her mother's complaints about her daughters' incorporation into an upper-caste way of doing things. "They behave like those Brahmin, Rajput or Sood girls, coy, unassertive and all...", Buglo had often remarked.

Anu's inherent conformity to wider social expectations in a sense is tied in well with her maternal family's political and social vanguardism and is perhaps its logical outcome. The political ambitions of the family were in tandem with their aim to occupy a more visible space socially. At times it meant making their women less visible. Buglo's youngest brother had famously eloped with a Brahmin woman from Palampur town, an event that became the subject of a few local songs. This was recounted with a fair deal of pride to assert that Gaddis in general are accepting of outsiders.<sup>36</sup> Buglo's eldest brother's widow on the other hand, lived a life less like a Gaddi widow, and more like a Rajput widow. Even after five years of the passing

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<sup>34</sup> Whereas most of north India shows a bias against female education, this region and Himachal Pradesh in general, girls are schooled equally with their brothers. The difference however comes in at the point of higher education.

<sup>35</sup> Anu's father, Pritam Kapur, was an ex-serviceman who now worked in a government office in the nearby town of Dharamshala. When he talked of the family's reputable status, it was derived to a very large extent from his wife's natal family. Anu's mother's family was one of the most reputed Gaddi families in the Kangra region. Apart from flock and land wealth, their reputation had a lot to do with the fact that Anu's mother's eldest brother had been one of the foremost Gaddi Union leaders in recent memory. His sudden and early death was always talked about by most in quasi conspiratorial ways that alluded to the power of sorcery as well as to political spite.

<sup>36</sup> The wife's family did not accept her marriage, and even after eight years of their marriage, she remains 'disowned' by her natal family.

away of her husband, and still in her early thirties, she had not remarried, or even considered remarriage. She lived with her late husband's family where her position oscillated between a matriarch-to-be and an appendage that constantly reminded the family that their son was no more.

This exemplifies the curious tension that exists in the formulation of Gaddi politics in Kangra today. On the one hand the issue of difference is politically translated into the demand for an ST status (see chapter Two). On the other, there is an appropriation of upper caste markers that range from a change of dress to a more gendered household milieu. Any other way of living is articulated in terms of a remembered past, one that is seen as necessarily incompatible with their goals for the future. Therefore, for young Gaddi men and women of marriageable age, Phulo certainly appears neither as a role model nor in an enviable position. I heard with unfailing regularity that it was illegal to be married to more than one person and immoral to cohabit with more than one. Phulo's and Jogi's 'wanton' ways are explained by their illiteracy and their poverty by most villagers. In this way education and wealth serve as important disciplines of the nation, that not only produce citizens as legal subjects, but also alters their life-cycle rhythms. Phulo and Jogi remain objects of passive resentment at best because their perceived social and economic insignificance keeps them marginal and therefore the structure of their conjugality is not seen as threatening to the prevalent norms. I asked some of the panchayat members what they thought of such liaisons. Gaddi members of the panchayat agreed that while such practices were morally possible amongst their ancestors as recently as two generations ago, that today given the high cost of living and the fear of a spouse going to court, it not worth the potential trouble. They also believed that in the present day, those who exercised this option were either poor or illiterate or both and certainly not people from 'good families'. Thus, there was a judgement of class, status and civilisation that could be seen to govern the act of single marriages amongst Gaddis in present day Kangra.

The local panchayat is usually the body whose arbitration is solicited in situations when either individuals or a collective feel that certain moral boundaries have been transgressed. For various reasons, the panchayat is always reluctant to step into domestic matters. However, Meghla Gram Panchayat on occasion has taken stringent measures when it has felt that the situation threatens not a domestic arrangement, but

the social milieu of the village. Even though its punitive powers are restricted in the juridical sense, in principle it is meant to be a significant force in keeping order in the village. In October 1997, Kanta Devi's affair with Sonki Ram, both Gaddis, became a subject of local concern. At that time Sonki was a man in his early twenties. His family owned modest agricultural holdings in Meghla. He had passed high school and had done irregular wage labour from time to time. She was already married to one Tulsi Ram of Bharmat, a neighbouring village. At the time of my fieldwork, neither was resident in Meghla. The panchayat's case-records state that after repeated warnings to Sonki and Kanta to stop their affair had failed, some villagers caught them "red-handed" and the panchayat was thus forced to make an intervention. The panchayat elicited a promise from Kanta Devi that she would never be seen in Meghla again and both Sonki and Kanta gave a public and written undertaking that they would never meet again. If they did they would have to accept any form of punishment that was deemed suitable by the community and/or the panchayat.<sup>37</sup> Sonki later found a job in Jammu and left Meghla.

Compared to the apparent indifference expressed in relation to the Phulo and Jogi case, it becomes clear that not everyone's actions are seen as capable of exerting an influence on the public sphere of morality. Phulo and Jogi are marginal to Meghla's dominant moral universe as they are not perceived as significant in relations of exchange. Sonki's family owns a small piece of land and they also live among a cluster of houses in the middle of the most populous of the Meghla hamlets. They are Khatri Gaddis who have extensive kin and other exchange relations in the village. These include material exchanges that take place at births, weddings, deaths, and other dates in the ritual calendars. The fact that Jogi lives alone in Meghla, and is involved in the wider exchange relations of the village only in a very limited way is relevant to the way people not only view, but react to, his ability to remain within dominant norms and practices.

## **Divorce**

In present day Meghla, there are few reported or contested cases of divorce. The majority of marital dissolutions come about as a result of the wife either walking out

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<sup>37</sup> Gram Panchayat Meghla, Nyaya Register, entry for 8 October, 1997.

of her conjugal home and returning to her natal family or being left there by her husband. This is not to say that divorce cases are a rarity in the local court at Palampur. On the contrary, a fourth of the twenty five odd cases each of the two judges hears everyday at the Palampur subdivisional court, are related to marital breakdowns. Most of the litigants in such cases do not come from upper caste or privileged backgrounds. The most common reasons offered by men seeking divorce are infertility of the wife, whereas women usually seek divorce on the grounds of the husband's alcoholism and/or physical violence.

The constraints imposed by the state apparatus along with changes in the political economy have had significant impact on the Gaddi domestic order. However, the contradictory pulls of modern state law in India must also be noted.<sup>38</sup> On the one hand it prescribes a carefully delineated picture of Hindu conjugality and on the other hand it authorises a break with it. This is in contradiction to the Hindu ideal of lifelong marriage. This is not to say that annulment of marriages did not exist prior to the Act of 1956. The dissolution of marriages prior to the Act was, however, governed by custom and was hardly ever called so. Even Middleton's volume on Kangra's customary law does not call it divorce. Question 20 (Middleton, 1919: 27) of the above Manual asks:

“Upon what grounds may a woman be divorced or expelled?...”

The answer given is:

“There is no divorce among Hindus...”

Earlier (Middleton, 1919: 18), to another question, the answer given is as follows:

“[A]ll tribes say that they do not divorce women but can expel them...”

Badamo had been married for four years, until one day she came back with her two year old daughter to her natal home in Meghla that comprised of her widowed mother and her younger brother. His employment record was erratic, but the family had sufficient land and were not in any real hardship. Badamo was determined not to go back to her husband Anil, who worked as a taxi driver. She complained of familiar woes of alcohol induced wife-beating, and his inability to provide for either her or their daughter, as most of his income was spent on alcohol. Moreover, the child was

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<sup>38</sup> The liberal turn away from both text and practice as a source of law and the ascendance of legal individuality is dealt with in detail in chapter Four.

sickly and was at that time undergoing treatment at the government hospital at Palampur.

Anil did not make a single visit to Meghla to reconcile their differences. Instead, his father along with his sister and her husband and came to Meghla to persuade Badamo to act more reasonably and return to her conjugal home. Despite all attempts to the contrary, Badamo filed a case for maintenance at Palampur sub divisional court, and another one for divorce at the district court at Dharamshala. She told me that this was the only way she was going to enforce Anil to look after their daughter and her. She won her plea for maintenance within eight months of its filing. She was also successful in getting the court to direct Anil to make the payment to the court from where she would collect the decided sum of Rs. 500 every month because she insisted that she could not rely on Anil to send her money by post or in person. Badamo's modus operandi was not a norm in Meghla, where most instances of marital dispute were decided domestically, locally, informally or in extreme case, by the local panchayat. If the nature of marriage has changed over time, so has the nature of its breakdown. In the past, and under customary law, the dissolution of a Gaddi marriage was signified through setting up of a separate household by either party. In case a woman set up another household, her new husband would pay the previous husband in compensation what he had paid for her betrothal plus her maintenance over time. The setting up of another household by a man was seen as additional to his existing domestic unit, and not as breaking away from it. Divorce was thus a rare occurrence.

In more recent times, marital disputes have rarely led to complete and a formal breakdown. Therefore, initially, Badamo faced much difficulty in explaining her decisions to her peers, neighbours, or even her mother and brother. She knew that the one way to reduce the growing resentment at her natal home was to become employed and financially solvent. After much effort in networking with local big men and women, she managed to get a temporary job as an assistant at the government-run veterinary clinic in the village. At least now she felt her family could not resent her presence as she was no longer a dependent on them. Her relationship with others too normalised with time. The initial uproar gave way to slow and steady advice as to how to get her life back on course, as it were. This ranged from suggestions for acquiring new vocational skills to quasi-proposals for remarriage. Her neighbours and

kin, and acquaintances like Jalandhari and Milap were generally sympathetic in their disposition towards Badamo. In their opinion it was unfortunate that a condition like divorce was creeping in amongst the Gaddis. They may have felt that perhaps Badamo had acted in some haste and should have allowed herself and her husband more time for negotiation before taking such an extreme step. Knowing how hard it was going to be, they reckoned that she must have really been suffering and therefore was justified in moving the courts for a final decision.

It is interesting to note the similarity in what people in Meghla had to say for their neighbour's divorce and how lawyers practising in the Palampur courts reasoned the rising incidence of divorce. Both couched it in terms of the lack of 'adjustment' made by women in their marital homes. In some ways it is aimed as a critique of the manner in which young women are able to constitute themselves- howsoever erratically, selectively or incompletely- as national citizens, ones endowed with rights they can and do exercise. The critique of a man's inadequacies in a marriage stems from different sources. In some ways there is little shift in what constitutes a failure on the part of a husband. His gravest failing remains his inability to provide for his family, more so when he siphons his resources for purely personal pleasure as opposed to familial well-being (eg. spending all his money on alcohol or gambling). The complaints about wife-beating come second. This may be compounded by making additional dowry demands. Marital expectations from a husband therefore are concerned with meeting the material, moral and emotional well-being of his family. A wife's failings are to do with her failing to transform the conjugal unit to a filial unit. In this respect her failings are her inability to produce children or then her inability to extend adequate or necessary emotion towards her marital family. The increasing recourse to the state legal system in resolving marital disputes can be understood as an exercise of making a rightful use of what is seen as a final and impartial authority.

My concern in discussing divorce in this chapter is to understand the ideology of permanence that governs canonical Hindu conjugality. The relative instability of marriage at the lower end of the social strata, going by the class make-up of divorce litigants, can be seen as merely a replication of a 'customary' instability. However, I would like to argue that even though the pattern may appear to be one of repetition, in fact the increasing recourse to legal marital dissolution has a different import. In

going to court there is an invocation of the discourse of rights and justice and hence citizenship, which places the litigants within the state ideal of conjugality. That their marriages have come to the point of dissolution articulates legal individuality and takes them out of the context of the community. In distinction, conjugal instability in a not too recent past may have signified a *collective* condition or a 'customary practice.

## Conclusion

In the past having more than one wife came dressed in the language of honour and prestige. Today it is not as if honour and prestige no longer operate as lived categories; only their markers are couched in different discourses. In the present these articulations of honour and prestige cannot reside outside of the definition of a citizen and are therefore linked, howsoever tenuously, to the allegiance to the written law which the public presence and acknowledgement of having more than one wife is seen to necessarily compromise.<sup>39</sup> For Gaddi women, these changes have resulted in an "education of their desire"<sup>40</sup>.

Raheja and Gold (1994) have argued that women in rural India find performative spaces within which they challenge male kinship ideology. This may be in the form of songs or story-telling genres which explicitly articulate a woman's sexual desire, both within the conjugal relationship and outside of it. Most Gaddi songs I came across usually narrated romantic legends or expressed sentiments entailed in long periods of waiting but rarely explicated on the erotic. However, much bantering took place amongst women that alluded to this other life, one outside of the formulaic prescription. Even though matters like 'adulterous' liaisons were out of bounds of

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<sup>39</sup> This argument does not hold true for urban middle and affluent classes who mark their nation-building precisely by positioning themselves above the law.

<sup>40</sup> To borrow Stoler's evocative phrase (Stoler, 1995). See also Ballhatchet (1980). It is interesting to note that colonial Settlement ethnography portrays Gaddi women as "chaste" and "beautiful" in distinction to the portrayal of women of similar social strata. An extreme case of control of Gaddi women's sexuality is of the phenomenon of '*sadhins*' discussed by Philimore (1982). *Sadhins*, or female ascetics, according to Philimore are the only Gaddi women who have a right in patrimony, which they beget by forgoing their sexual lives and living a life of renunciation. They are numerically insignificant (I came across none in Meghla). He contrasts their presence to the popular representation on '*dayans*' or witches who are associated with uncontrolled sexuality.

public knowledge, it was not as if women had completely internalised the legal, state or kinship ideology of marriage. While Raheja and Gold (1994) corroborate the above, what they do not bring to the fore is that this subversive behaviour is typically segregated amongst upper caste women or women from affluent families where the dominance of brahmanical ideals is the strongest. Women like Phulo are not cast or caught within a bourgeois moral order and hence do not have to respond to the fears of sanctions resulting in their exclusion from it. Domestic and public spaces thus become more gendered the higher one moved up in Gaddis' and Meghla's caste and class hierarchy.

The ideal of permanence that reflects the conjugal practices of most upper caste households was clearly not demonstrated either by Raheja's and Gold's informants in their subversive songs or by nineteenth-century natives of Kangra district whose mobile affections misled the official trail of surveillance, even if momentarily so (Raheja and Gold, 1994). The tussle between customary practices and their legal formulations has resulted in a similar erosion of sexual autonomy for women in other parts of India. Poonacha (1996) describes how with the development of a stronger connection between property and lineal descent, the emphasis on women's sexual purity in colonial Coorg resulted in their gradual confinement to the house. Carroll (1983) uncovers the manner in which an ostensibly reformist piece of legislation like the Hindu Widows' Remarriage Act of 1856 in fact shrank the space that widows of most castes enjoyed as far as property rights and sexuality were concerned. Chowdhary (1996) makes a similar claim in her examination of the enforcement of *karewa* or levirate marriages in parts of colonial Punjab (now in Haryana).

In the past, Gaddi men could and did cohabit with more than one spouse in the same house and did not have to set up physically discrete households with different wives. For women it always meant an effecting of domestic instability and impermanence. Contemporary domestic lives in Meghla are significantly different from the picture that one gets from these records as well as from memory. Today, a tiny minority lives outside of what corresponds to the official prescriptions for a household. There are numerous practices that ensure that the domestic picture of Meghla appears in consonance with dominant norms.



Over time marriage has become the only legitimate source for an entire complex of emotions (Luhmann, 1986).<sup>41</sup> Expression of emotion around issues of sexuality and desire outside the realm of conjugality have been pushed into domains away from the public eye. Women's and men's songs, confidential conversations between couples, mates and friends, or gossip are occasions on which sexual relations and romantic love that have transpired outside the boundaries of conjugality are articulated. Thus, contrary to Giddens' (1992) analysis of the transformation of intimacy, for the Gaddis, modernity has only served to cement the links between sexuality, conjugality and romantic love. This domestication of sexuality has also brought about other changes in Gaddi society. On the one hand premarital sexuality has been pushed out of the public domain, and on the other hand a more layered consensus seems to have developed on the meaning of the 'age of consent' and the expression of sexuality. While women of marriageable age must behave in a most careful manner in public, and new housewives and mothers must proclaim their singularity of commitment to the conjugal unit, Gaddi women who have been married for longer and are mothers of teenage or older children are in some ways less fettered by these constraints. Thus, Anu's mother Buglo can disparage her daughter's coyness because she is no longer required to act as an idealised version of a Gaddi woman. These performative manifestations of renegotiation and reinterpretation can also be discerned in the differential attitudes to the mobility and visibility of unmarried daughters, and daughters-in-law, dalliances of older and married women and the romantic liaisons of unmarried women. The ideals of permanence of conjugal relations in Meghla are therefore also more variable than they might first seem to appear. If the state has influenced in disciplining the wanton ways of its citizenry, the citizenry on its part has succeeded in negotiating a more complex version of the binary between duty and desire.

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<sup>41</sup> Luhmann argues that for early modern Europe "the freedom to choose someone to love applies to the extra-marital relationships of the *married* persons [...] Freedom thus began with marriage. [...] [T]his meant above all the elision of an important proof of love, namely the willingness to marry." (1986:50 Emphasis original)

## Chapter VII

### IN CONCLUSION: STATE, MARRIAGE, HOUSEHOLDS AND GADDIS

*“For, when it comes to the state, one never doubts enough.”*  
(Bourdieu, 1999: 54)

In June 2002, in a decision made by the Central Government, the Gaddis of Kangra district were granted the status of a Scheduled Tribe, subject to a Constitutional amendment through an act of Parliament.<sup>1</sup> This is the first time that the Indian government has responded to Gaddi demands and put in train the process of passing such an act in their favour.<sup>2</sup> According to newspaper reports, a massive rally was held in Dharamshala to celebrate this achievement, and rival political parties vied for the credit of having successfully brought pressure to bear on the Government.

This success is evidence, as argued in chapter two, that the Gaddis of Kangra are well aware of their entitlements as citizens and seek to maximise their benefit opportunities, but that they do so, as they have done in the past, through negotiation and not confrontation with the state. Chapter Two provides the background to the successful granting of Scheduled Tribe status and demonstrates this was a major achievement on two counts: one in terms of the material benefits derived from this status (i.e. access to job reservation, free education, state welfare schemes for Scheduled Tribes, enhanced representation in the provincial assembly and parliament, etc. ), but secondly in terms of the social capital the Gaddis of Kangra stand to gain as a consequence of this. In securing this status for themselves, the Gaddis in Kangra have ensured that they will remain insulated from certain aspects of hinduisation; that they will be able to resist, to a certain extent, further potential incorporation into the local caste hierarchy from a position of weakness. In other words, the Gaddis have succeeded in retaining their social distinctiveness in the context of local understandings of Kangra sociality, and will not be counted as ‘lesser Rajputs’ or ‘lesser Khatris’ or be equated in status with any group in the local caste hierarchy, including Ranas, Kanets, Kolis, or indeed any other ‘caste’ group in

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<sup>1</sup> ‘Controversy over Gaddi status’. *The Tribune*. June 15, 2002.

<sup>2</sup> The same status was to be conferred to Gujars resident in Kangra, bringing an end to the discrepancy of status between the two districts of Chamba and Kangra that arose as a result of the reorganisation of Punjab in 1966, when hill districts of Punjab were merged with Himachal Pradesh.

the region. This outcome shows the significance of the constitutional classification in maintaining Gaddi identity politics. It also brings to the fore the different ways in which the anthropologically derived hierarchy implicit in the caste/tribe binary has been reinterpreted in contemporary identity politics in India (cf. S. Bayly, 1999).

As chapter two has discussed in detail, in so far as state classification becomes a feature of individual identity and is carried on one's person, it has a bearing on one's everyday life. For example, as a consequence of this ruling people in Meghla whose spouses come from Bharmaur will have the same constitutional status as their spouses for the first time. The people of Bharmaur have been classed as a Scheduled Tribe since 1952, but under the Indian constitution one cannot change one's classification simply by marriage.<sup>3</sup> This has been of real significance in the past for Kangra Gaddis, and one likely consequence is that the reluctance of Gaddi families to marry their daughters in Kangra will now be reduced because the state is acting as a guarantor of similarity of status.

More than anything else this political victory on the part of Gaddis shows us the myriad ways in which the notion of the citizen is forged through interaction with the state. Chapter Two examined the manner in which the nature of interaction with the state impinged on Gaddi images of themselves and how this articulated itself in their relationship with other communities. It also highlighted the extent to which choices of livelihood and notions of the past are bound up with 'discourses of the nation'. In the narratives of their mythical and historical pasts the Gaddis can be seen to project onto their remembered pasts values that they perceive critical for their future. Thus, pastoralism is valorised in these narratives, as it is in other expressive traditions such as songs, painting, etc. This valorisation becomes necessary as the position of pastoralism in the national and the global economy is threatened. This threat encompasses not just their livelihood, but by extension their social distinctiveness also. It is in a bid to protect themselves from being incorporated into regional caste hierarchies that they have solicited the state to guarantee the status of a Scheduled Tribe. Their campaign is aimed on the one hand at fostering and maintaining a certain social insularity, and on the other

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<sup>3</sup> According to article 342 of the Indian Constitution, "The guiding principle is that no person who was not a Scheduled Tribes by birth will be deemed to be a member of Scheduled Tribe merely because he or she has married a person belonging to a Scheduled Tribe. Similarly a person who is a member of a schedule tribe would continue to be a member of that scheduled Tribe, even after his or her marriage with a person who does not belong to a Scheduled Tribe."

at improving their life chances in a context where for the majority of Gaddis economic circumstances have worsened over the years.

However, the contradictions of the Scheduled Tribe Status are not lost on the Gaddis themselves. Whilst, as discussed above, the status is clearly seen as bringing in benefit opportunities, it is also viewed in a more ambiguous and contradictory light as acting as a reminder of a particular past, one which has already been redefined by the Gaddis themselves as both 'primitive' and 'traditional'. This previously primitive way of life is linked for the Gaddis to a particular understanding of domestic life and intimate relations, that is to a specific form of conjugality and household relations that are seen as incompatible with present day ideals and aspirations (see chapter Six). While, there is clear recognition of the ambiguity and contradiction inherent in the demand for Scheduled Tribe status, there is seldom any literal connection drawn, by individual Gaddis, between the status of Scheduled Tribe and a possible attribution of 'tribalness' to their contemporary way of life. Thus as perfect moderns, Gaddis draw a distinction between their public and their domestic citizenship, between what Chatterjee has called the 'home' and the 'world' (Chatterjee, 1993; see chapter One). There is a further contradiction, however, because while the Gaddis are seeking to resist hinduisation, that is incorporation into local hierarchical classifications, through the demand for Scheduled Tribe status, they are amongst themselves becoming increasingly preoccupied with ritual distinctions of status. They are reframing their domestic and conjugal lives, as discussed in chapters two and six, in terms of a 'hindu' notion of family, household and conjugal relations. Like all true moderns, they are increasingly preoccupied with a certain kind of respectability (see chapter One).

The Gaddi success over the battle for Scheduled Tribe status provides a clear example of the impossibility of separating state and society as argued in chapter one. Timothy Mitchell proposes, in his influential article, that "We should abandon the idea of the state as a freestanding entity [...] located apart from and opposed to another entity called [...] society. We must nevertheless take seriously the distinction between state and society [...] The state cannot be dismissed as an abstraction or ideological construct and passed over in favor of more real, material realities (Mitchell, 1991: 95). Mitchell's argument is thus that state and society are both separate and not separate. What is required, as this thesis has demonstrated, is bifocal vision, a way of shifting perspective back and forth from the moments of their apparent distinctiveness, to those of their mutual construction. The oscillation between these

two positions is in fact the empirical reality of governance for the Gaddis, the very experience of becoming modern in the context of the Indian state both colonial and postcolonial.

As Foucault has argued what governance is about is “the continual definition and redefinition of what is within the competence of the state and what is not, the public versus the private, and so on” (Foucault, 1991: 103). The interdependence of the public and domestic lives of the Gaddis and their governance constituted the focus of Chapter Three. The ethnography of the local court and the village council afforded an understanding of the everyday state; in other words, the impact of local level state institutions on the everyday lives of the Gaddis. Chapter Three showed through its analysis of legal cases and the description of the functioning of the court, how the concept of the ‘rights-bearing citizen’ plays out in local contexts. The authority of the state is mediated through multiple practices, some overt and others concealed. It makes clear that defining the citizen as a bearer of certain rights (through constitutional guarantees) is, as discussed in chapter One, one way of circumscribing possible ways of being. It is in this sense that the state is an exercise in moral regulation, as well as an exercise in legitimacy, as Abrams has argued (Abrams, 1988: 77).

Chapter Three also demonstrates another form of state regulatory behaviour through its attempts to make populations legible. The argument further develops the debate on the ‘statistical impulse’ of the Indian state (cf. Appadurai, 1993a; Cohn, 1987). The analysis presented in the chapter shows how governance was made more effective through practical and embodied legalities like registration and certification, rather than merely by legislation. The objective in analysing the shifts in the relationship between the state and the panchayats was to bring into focus what the state imagines as its source of legitimacy, and therefore its authority. An authority that it is reluctant to share with other bodies. Even though the panchayats play a crucial part in managing the ‘paper trail’ of the state – those very processes of registration, description and certification that make the state a practical reality in the lives of ordinary Gaddis – they remain at the periphery of power and authority in some senses. While they are the first unit of the democratic polity at the village level, and are thus part of the state, they are also seen both by the government and by local villagers as distinct from the state. This provides another example of the shifting boundaries between state and society, of the ongoing redefinition in practical everyday terms of what is inside and outside the state. While the state may encompass the panchayat from one perspective, from yet another the panchayat embodies the state at the local level, and gives it material reality (cf. Mitchell,

1991). This is nicely captured by Bourdieu in his discussion of the state and writing: “Who certifies the validity of the certificate? It is the one who signs the credential giving licence to certify. But who then certifies this? We are carried through an infinite regression at the end of which “one has to stop” and where one could .. choose to give the name of “state” to the last (or to the first link) in the long chain of official acts of consecration” (Bourdieu, 1999: 66).

Chapter Four dealt with the question of the centrality of writing in governance and the tenuous separation in colonial and postcolonial state policy between the public and the private, the home and the world. The chapter showed that, for Punjab, the distinction between the domestic and the public hinged for the colonial state on the notion of the customary. The codification of customary law simultaneously created a domain of the domestic and yet defined it as ideally outside the purview of the state because it was part of the customary. This contradiction underpinned the codification of customary law in colonial Punjab and allowed individuals and communities to link the state’s project of modernity with reform of the domestic sphere. Once again, we are able to see at work the continual process of definition and redefinition as to what is within the competence of the state and what is not (cf. Foucault, 1991).

Chapter Four also demonstrated how the discipline of anthropology provided the colonial state with a descriptive language and a set of analytical categories which were to play a critical role in the shift from a textual to a practical understanding of the colony. Through these means, what Kaviraj (1997: 321) terms a ‘new ontology of the social world’, a new way of being, was introduced. The ultimate consequences of this new way of being for political action can be seen in the Kangra Gaddi’s successful campaign to be granted Scheduled Tribe status. The chapter compared the colonial codification of customary law with the legislation of the Hindu Marriage Act and the Hindu Succession Act enacted by the postcolonial Indian state. Public outcry around the time of the passing of these two Acts in 1955-6 demonstrated the degree to which the domestic had been internalised by people as outside the realm of state interference, but also importantly the extent to which the state perceived law as a legitimate medium of ‘social reform’. The chapter further described the manner in which people oscillate between ‘custom’ or ‘law’, or between Hindu law and civil law in post-independence India, as a means to maximise the benefit opportunities that could be guaranteed by state authorisation.

The impact of the state on the domestic lives of its citizens can be seen in the legal redefinition of certain forms of relatedness. Chapter Four demonstrates how the process of writing (i.e. the compilation and codification of customary law) resulted in the disappearance of polyandry among Gaddi women. Chapter Five maps the changes brought about in the Gaddi household and uncovers the relationship between state understandings of the principles of kinship through notions of relational proximity and the changing nature of Gaddi ideas of kinship. It argues that by imagining the household from the vantage point of its property and its succession, the law reordered familial relations. While both the colonial state and the postcolonial state imagined the household in terms of prospective heirs, they differed in their understanding of the principles of relatedness, and of how these should be inscribed in legislation. While the colonial codification of customary law in Punjab rested on the principle of agnation, postcolonial Hindu law was reconfigured to give genealogical proximity prominence. The (re)ordering of the domestic world of the Gaddis is perhaps best represented in the disappearance of certain types of relatedness in the course of the last one hundred years, ranging from different orders of offspring to second and/or secondary unions. Chapter Five investigates the changed relations between persons as a result of the changes in inheritance and property, that is in the codified relation between persons and things. The chapter demonstrates that while the state can be seen as critical in governing these relations, there were - and are - occasions where the limits of the state become apparent. This is most evident in the relations made by Gaddi women through transfers of female wealth that operate outside the boundaries of formal kinship relations and household structures. Chapter Five demonstrates empirically how certain kinds of legal person emerge in consequence of the reordering of the household in colonial and postcolonial law, and because of the way certain categories of person are seen as having specific kinds of relations to things (inheritance and property). These new forms of legal person are gender coded.

Chapter Six argues that critical to the changes in relational proximity envisaged by the state or brought about as a consequence of state regulation of other practices (like infanticide, for example), was the centrality ascribed to the conjugal unit, which in turn was conceptualised in a particular form. Chapter Six examines the shifts in conjugal expectations both ethnographically and through an analysis of the reasons cited for marital breakdown in divorce litigation. The chapter demonstrates that unlike the West, and indeed upper-caste/upper-class India, modernity has given a particular emotional stress to Gaddi conjugality

by making it the only point where sexuality and romantic love can reside or indeed be expressed. While bourgeois models of conjugality prescribed and upheld by the state may have bettered the conjugal conditions of women in upper caste households, they have brought about an education of desire in the case of Gaddi women. On the one hand it has made marital stability an object of cultural aspiration, and on the other it has also meant that in present times, Gaddi women have to solicit the state to authorise certain kinds of actions (e.g. marital breakdown). The chapter argues that these are interlinked with other disciplines of the nation, such as education.

What kind of modern legal person has been constituted and imagined through the successive interventions of the colonial and postcolonial Indian? The codification of kinship has had profound implications for the Gaddis and is part of a larger set of changes, as this thesis has shown, that links forms of domestic citizenship to identities, livelihoods and aspirations. Uday Mehta writing on the connections between liberalism and empire argued that ‘progress’, ‘civilisation’ and ‘consent’ were the cornerstones of the liberal justification of the empire (Mehta, 1999: chap 3).

“The unit of analysis for accessing backwardness and progress is plainly some understanding of the achievements of a community or collectivity. Within this orientation individual lives, their pains and joys, the meanings they attach to particular things and events, in short, the integrity of their life forms, are completely read out of the civilisation or collectivity of which they are deemed to be a part and standing within a preestablished scale.” (Mehta, 1999: 82)

This is because, Mehta argues, “for liberals, the empire aligns the plural vagaries of history under a singular conception of progress” (Mehta, 1999: 111). The continuities between the liberal thinking that informed colonial governance of the domestic and the one that influenced postcolonial legislation cannot be more evident. Both remain entangled in a particular project of domestic modernity. Both enumerated and re-calibrated the kin-network, even as they were based on different principles. In borrowing what Marilyn Strathern has termed, in her analysis of Melanesian kinship networks, ‘measureable’ (Strathern, 1999: 124; cf. Pottage, 2001;), it is evident that through the codification of conjugal and kin relations colonial and postcolonial law sought to regulate kinship networks among the Gaddis by understanding them through a specific form of measurement. Strathern (1999) argues that Melanesian kin



networks are measureable because the relations between persons and their ownership of things are legible and clear to everyone, be it marriage payments, compensations, “human and non human traffic of spouses, land and wealth” (Strathern, 1999: 124). It is precisely in a bid to regulate this traffic for the purposes of governance that the colonial and postcolonial Indian states have sought to produce a specific kind of legal person.

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William Ridgeway Correspondence

## **Appendix I**

### **SCHEDULE OF HEIRS (OF HINDU MEN) AS IN THE HINDU SUCCESSION ACT, 1956.**

#### **Class I**

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a predeceased son of a predeceased son; widow of a pre-deceased son of a pre-deceased son.

#### **Class II**

- I. Father
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister
- III. (1) Daughter's son's son, (2) Daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter
- V. Father's father; father's mother
- VI. Father's widow; brother's widow
- VII. Father's brother; father's sister
- VIII. Mother's father; mother's mother
- IX. Mother's brother; mother's sister

*Explanation:* In this Schedule, references to a brother or sister do not include references to brother by uterine blood.

XX

### **Section 15. General Rules of Succession in the case of female Hindus**

- (1) The property of a female Hindu dying interstate shall devolve according to rules set out in Section 16-
  - a. firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and husband;
  - b. secondly, upon the heirs of the husband;
  - c. thirdly, upon the mother and father;
  - d. fourthly, upon the heirs of the father; and
  - e. lastly, upon the heirs of the mother

(2) Notwithstanding anything contained in sub-section (1), -

- a. any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father, and
- b. any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

## Appendix II

### SUMMARY OF SELECTED CASES, KANGRA DISTRICT RECORD ROOM, DHARAMSHALA.

All civil cases in the Kangra District Record Room are archived according to administrative units (Mauzas). Each case is allocated a serial number known as Goshwara (henceforth Go.). Only a selection of the actual cases survive at the present time (See chapter 3). Below is a summary of surviving civil cases from Mauza Meghla and family law related cases from Mauza Bir. Cases already discussed in the text are entered as a single line.

#### **8/P (Mauza Meghla)**

##### Go. no. 144: Rijhu vs. Sidhoo

Filed: 21. 06. 1925

Decision: 13. 12. 1928

Plaintiff complains that defendants have built a house on the boundaries of the land that belongs to him.

Plea granted.

##### Go. no. 283: Mst .Deolti vs. Pawandi

Widow demands access to her husband's ancestral property, claiming that her husband was the last male collateral. Denied. Appeals go as far as the Chief Court.

Dismissed at every stage.

##### Go. no. 306. Ujhal, etc. vs. Mst. Panon

Filed: 30. 04. 1903

Decided: 14. 10. 1903

Male collaterals file a suit to recover land from the widow claiming unlawful transfer, saying she was not a lawfully wedded wife and therefore right of succession still open.

Suit dismissed.

##### Go. no. 387: Tajiduddin vs. Mst. Mubarik Beghum

Filed: 07. 06. 1924

Decision: 06. 09. 1927

Male collaterals challenge the ownership of a tea-estate by a Rajput Bhatti widow who has remarried. Defendant claims that dower is permanent.

Judgement in favour of the plaintiff.

##### Go. no. 447: Surya vs. Dhari

Filed: 26. 07. 1931

Decision: 24. 03. 1932

Claim to land made by two sets of collaterals. No evidence produced to verify claims except a hand-written pedigree table.



Suit dismissed.

Go. no. 532: Dulkhoo vs. Hoshier Singh

Filed: 01. 08. 1933

Decision: 25. 03. 1935

(See chapter 5)

Go. no. 543: Mst. Sandhi vs. Mst. Partapo

Filed: 06. 03. 1944

Decision: 21. 12. 1944

Plaintiff claims ownership of land held currently by defendant. Asserts that the last male holder of that land was a fourth degree collateral of her late husband. The last male holder's widow had orally made a gift of the said land to the defendant. Since they are governed by custom, widow has no rights to gift the land in suit. Defendants prove land to be acquired property.

Suit dismissed.

Go. no. 610: Mst. Jai Devi vs. Rumi

Filed: 19. 05. 1939

Decision: 11. 10. 1939

Suit to declare that the plaintiff is not a wife of the defendant. Defendant claims that under Hindu law he cannot release her from the marriage tie, whereas the plaintiff argues that they as Gaddis ruled by custom, and annulment is permissible. Plaintiffs fail to produce record of marriage compensations returned to the defendant.

Suit dismissed.

Go. no. 635: Peondi vs. Mst. Daulto

Filed: 02. 03. 1934

Decision: 25. 07. 1935

Suit filed by male collaterals against the widow, claiming she is a mere stranger and not a companion of the deceased. Challenge her sale of part of their ancestral land. Land proven acquired by the late husband of the defendant.

Suit dismissed.

Go. no. 651: Mst. Dei vs. Dhaj

Filed: 11. 02. 1943

Decision: 13. 05. 1943

Widow contesting the gift of land made by her late husband to his nephew (defendant), claiming that the gift was conditional, and in lieu of services rendered, and since the defendant has stopped providing the services, land should revert to the plaintiff. Gift seen as absolute, and because a widow cannot challenge an alienation made by her deceased husband.

Suit dismissed.

Go. no. 663: Harya, etc. vs. Mst. Shukri  
(see chapter 4)

Go. no. 668: Joban Lal vs. Mst. Manglam

Filed: 17. 02. 1945

Decision: 18.02.1947

Suit filed by male collaterals (by six degrees) of a man against his widow contesting her sale of the land. Plaintiffs plead that they are governed by custom, under which a widow not competent to make a sale of 'inherited' land.

Granted.

Go. no. 707: Mst. Jagdeshwari Devi vs. Agya Ram

Filed: 14.08.1952

Decision: 20.08.1954

Original Suit no. 279 of 1952: Agya Ram vs. Smt. Jagdeshwari Devi for the restitution of conjugal rights.

(See chapter 6)

Go. no. 708: Bhura vs. Chokas and others

Filed: 09.03.1951

Decision: 31.07.1953

Appeal no. 207 of 1953- Decision 14.06. 1954

Suit filed against the male collaterals of deceased by his widow's adopted son. Plaintiff assumed she has the right to gift her husband's property to him. Property proved as ancestral.

Plea dismissed. (See chapter 5)

Go. no. 716: Mst. Mehro vs. Mst. Shukri

Filed: 01.08.1952

Decision: 21. 12. 1954

(See chapters 4 and 5)

Go. no. 729: Smt. Janaki vs. Mohan

Filed: 03. 12. 1955

Decision: 23. 08. 1956

Suit for restitution of husband's (Mohan) conjugal rights over Jankai. Janaki alleges that no marriage ever took place. Judge upholds her claims. Dismissed.

Go. no. 766: Smt. Heema Devi vs. Punnu

Filed: 15.02. 1966

Decision 22.11. 1966

Suit for divorce under section 13 of the Hindu Marriage Act of 1955. Marriage solemnised on 29. 04. 1953. Both admit caste as 'Harijan'. No children. The respondent contracted *jhanjharara* marriage with a Smt. Kesri and now live together as man and wife, and have three children from this marriage.

Divorce granted on grounds of bigamy, as admitted by the respondent.

Go. no. 773: Suti Devi vs. Jai Lal

Filed: 02. 11. 1966

Decision: 14. 06. 1967

Suit for judicial separation on the grounds of maltreatment of wife by husband.

Granted.

Go. no. 780: Mahlo Devi. Vs. Nandu

Filed: 05. 12. 1967

Decision: 03.10.1968

Caste 'Gaddi'. Suit for judicial separation. Respondent residing in a village in Rajasthan and has sent no money for maintenance for some time. Panchayat convened for reconciliation, but did not meet with any success. No children.

Granted in default.

Go. no. 785: Piar Singh vs. Kesri Devi

Filed: 30. 10. 1969

Decision: 10. 12. 69

Suit for restitution of conjugal rights. Wife's parents forcibly keeping respondent at her natal home.

Granted.

Go. no. 812: Sh. Moti Ram vs. Chand Ram and others.

Filed: 25. 07. 1974

Decision: 24. 06. 1975

Suit for declaration. Dispute about a passage over which ownership claimed. Defendants prove that the passage is ancient (20 years) and has been used by the village for several years as common property.

Claim of private ownership dismissed.

Go. no 870: Kapil Kumar and Smt. Rama Devi vs. General Public

Filed: 03. 07. 1989

Decision: 26. 03. 1990

Suit under section 372 of the Indian Succession Act for granting assets of deceased mother to the son and daughter.

Granted.

## **1/P (Mauza Bir)**

### Go. no. 37: Kaplu vs. Mst. Baintro

Filed: 06. 08. 1906

Decision: 23. 08. 1906

Restitution of conjugal rights.

Granted.

### Go. no. 41: Bhogal vs. Gulabo

Filed: 15. 08. 1906

Decision: 04. 09. 1906

Custody of wife, and restitution of conjugal rights.

Granted.

### Go. no. 47: Charn Dass vs. Mst. Maina

Filed: 21. 05. 1901

Decision: 15. 05. 1902

Dispute over whether or not man willed his property to an adopted son or to his widow.

Suit decided in plaintiff's favour. (See chapter 5)

### Go. no. 104: Zahri vs. Mst. Sunto

Filed: 11. 04. 1929

Decision: 18. 11. 1929

Plaintiff claims ownership of land wrongfully passed on to the defendant upon the death of her husband. Documents prove otherwise.

Suit dismissed with costs.

### Go. no. 440: Sukh Dial Singh vs. Birbal and Goliya

Filed: 22. 01. 1933

Decision: 06. 10. 1934

Claim for possession of land. Land mortgaged by the defendants to the plaintiff and since the contract of mortgage had not been honoured, the land in suit should be alienated to the plaintiff.

Granted.

### Go. no. 472: Mian Sham Paul vs. Mian Param Paul and Mst. Jamwal

Filed: 07. 04. 1936

Decision: 10. 05. 1937

Son wants to gain two-thirds of his mother's share of land that she received upon the death of her husband, claiming a widow can only have rights of maintenance.

Suit dismissed.

Go. no. 509: Rukmangat Lal vs. Nihal Chand

Filed: 14. 07. 1938

Decision: 05. 02. 1940

Dispute between brothers over division of family property.

Decided in favour of the plaintiff.

Go. no. 530: Dayal vs. Amar Nath

Filed: 03. 04. 1943

Decision: 15. 11. 1943

Dispute over mortgaged property.

Plaintiff's (moneylender) suit dismissed.

Go. no. 534: Mst. Manshan vs. Lala Barar Singh

Filed: 02. 11. 1937

Decision: 18. 08. 1938

Paternity suit. Mother dubbed as an immoral woman who is not even an exclusive and permanent concubine of the defendant. Therefore no presumption of paternity arises. Cannot be said that the children are the defendant's illegitimate children because the liaison between the plaintiff and the defendant was merely an occasional adulterous liaison.

Dismissed.

Go. no. 699: R. N. Paul vs. Gram Panchayat, Bir

Filed: 13. 01. 1983

Decision: 06. 01. 1984

Plaintiff wants permanent injunction against the defendant from raising a Panchayat House on his land.

Compromise reached.

Go. no. 710: Lakhu Ram vs. Sado and others

Filed: 25. 09. 1981

Decision: 31. 10. 1985

Suit for declaration of passage of land on plaintiff's property as private.

Plea dismissed.

Go. no. 712: Milap Singh vs. Kesho Ramesh

Filed: 06. 08. 1988

Decided: 31. 07. 1990

Suit for declaration of land in dispute.

Decided in favour of the plaintiff.

### Appendix III

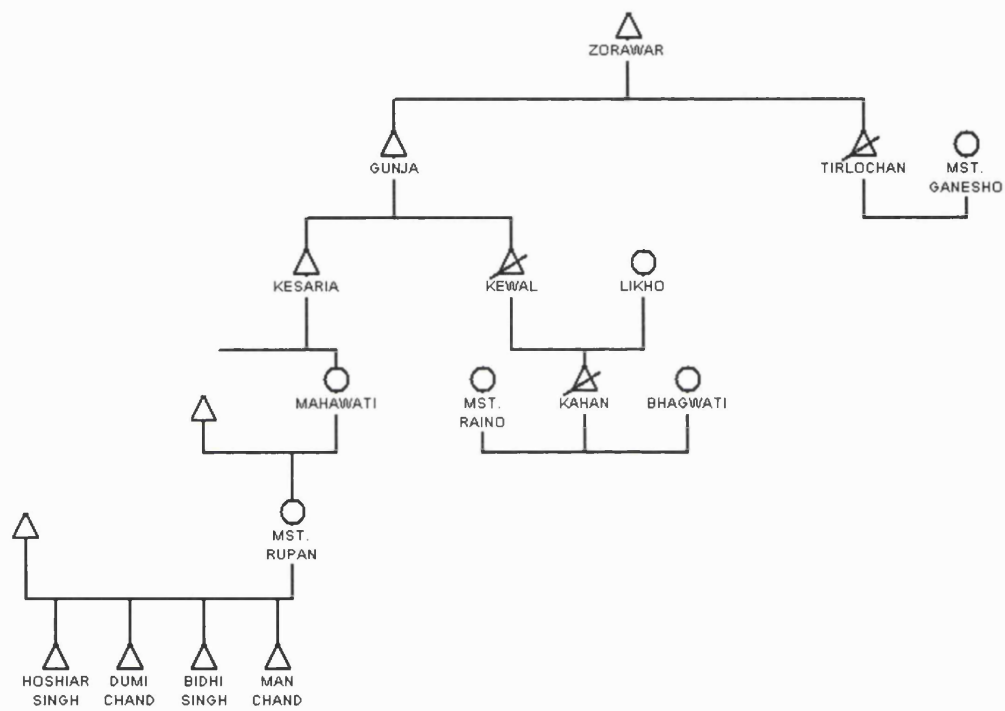


Diagram 1