

# 3 Forest Policy and Legislative Framework

The institutional framework for the management of forest lands and resources stems from the rights and concessions granted to local people under various forest settlements. For effective management of forest lands and resources several acts, laws, rules, and executive orders have been issued by the GoHP. This has made the institutional and legal environment extremely complex and complicated.

The complex and at times contradictory legal set of rules has significantly impaired the capacity of the DFFC to manage the forest resources effectively. A strong need has been expressed to simplify the entire set of laws and rules which make up the legal environment.

The legislative framework is itself based on the forest policies enunciated by the governments of the country and the state at different times. The development of forest policy is summarised below.

## 3.1 Forest Policy

The first indication of a policy for forest management in the hills was a memorandum issued in 1855 by the Governor General of India, Lord Dalhousie. Under the memorandum, the forests of Chamba and Bushahr States were leased to the Punjab Government. The policy of leasing forests for management was replaced with the **Forest Policy of 1894**. This policy aimed at consolidating the efforts initiated between the 1850s and the 1880s to introduce forest management on scientific lines. The 1894 policy laid the framework for forest

management and working plans and remained in force until 1952.

After independence, forestry management and control was brought under the guidelines and policies laid down by the Government of India. The Forest Policy of 1894 was amended in 1952 to suit the changed economic and political conditions of independent India. The **Forest Policy of 1952** became the sole guide for forest management in the Indian states.

In **1980** the State of Himachal Pradesh enunciated a **State Forest Policy** under paragraph 34 of the National Forest Policy of 1952. HP is one of the few states in India to have its own Forest Policy. The policy was formulated to take into account the special situation of forestry, with its key role in the economy of the state as a whole as well as in that of local people, and to boost forest conservation and forestry development. The policy covered all facets of forestry in the State. The salient features are summarised below.

- Forest policy to become **an integral part of land management policy**
- Transfer of all areas acquired by the government under the Land Ceiling Act 1972 and Village Common Land (Vesting and Utilisation) Act 1974 that bears forest crops or has the potential to be brought under forest to the Forest Department within a year
- Crash afforestation programme to increase the area of the state under (fully stocked) forest cover to 60 per cent; as a minimum to achieve at least 50 per cent by 2000 AD

- All types of felling to be done according to a Working Plan; and a moratorium on commercial felling for the next four years
- Demarcation of all undemarcated and unclassed forests and completion of settlements within 10 years
- Rationalisation of Timber Distribution rights for bonafide domestic use
- Stoppage of alienation of forest land for agriculture in the shape of *Nautors*
- Preparation of a Master Plan for the management of watersheds
- Strengthening of the Wildlife Wing
- Forestry Programme to be oriented to encourage people's participation
- Fuel saving devices to be encouraged
- Strengthening of Indian Forest Act to stop unauthorised removals and transport of timber
- Stoppage of all subsidies at the cost of forest revenue
- Incidence of forest grazing to be checked by formulating a programme for pasture improvement
- Nationalisation of the sale of trees from private lands
- Encouragement of eco-tourism
- Setting up an effective Monitoring and Evaluation Unit within the Forest Department
- Creation of facilities for carrying out applied forestry research.

The Government of India revised the 1952 **Forest Policy in 1988** in order to evolve a new strategy for forest conservation throughout the country.

It is now more than 18 years since the State Forest Policy was enunciated. Although the policy guidelines contained in the State Forest Policy are still valid, there is a need to re-orient the policy in the light of the new National Forest Policy of 1988, of the guidelines and orders issued for the introduction of Participatory Forest Management by the Government of India in 1990 and the Government of Himachal Pradesh in 1993, and of the new *Panchayati Raj Act* under the 73rd amendment of the Constitution. The new state forest policy needs to take a holistic view of forestry issues and problems.

### 3.1.1 Grazing Policy

Almost the entire forest floor is subject to heavy grazing. Most of the population of grazing animals grazes for varying periods in the forest without any restrictions resulting in destruction of natural regeneration. Even plantations are grazed recklessly. Alpine pastures are also indiscriminately grazed by nomadic grazers. The pastures are a valuable source of medicinal herbs and shrubs, and these are becoming rarer as a result of both overgrazing and excessive extraction by villagers. No satisfactory solution to the grazing problem has yet been found. Efforts towards pasture management and propagation of medicinal herbs are on a miniscule scale and have yet to show any tangible results.

The Government of Himachal Pradesh constituted a Grazing Advisory Committee in 1968. This Committee submitted its report in 1970 and made several recommendations. These included freezing the number of animals, controls on migratory and nomadic herds and flocks, registration and enumeration of flocks, fixing of routes to be followed by nomadic herds, levy of a uniform grazing fee, closure of not less than 1/3rd of the grazing area allotted to a particular grazer at a given time, levy of a tax on goats and buffaloes, and reduction of the excess number of these animals in a phased manner. Despite these recommendations, the population of grazing animals increased from 4.2 million in 1966 to 5.2 million in 1987.

The situation in Shimla circle is no better than in other parts of the state. A viable strategy needs to be found to tackle the grazing problem. The first step should be to carry out a comprehensive study of the various aspects of the problem. Introduction of JFPM in a judicious manner may help to ease the problem.

### 3.2 The Legislative Framework

The institutional framework for the administration of forest lands and resources in Himachal Pradesh dates back to the 19th century when forest settlements were carried out. The legal settlements made at the end of the 19th century and in the first two decades of the 20th still provide the basic

institutional framework for administering forest resources. This distinguishes the state from many other areas in India in that local people's rights were accepted and formalised rather than weakened or terminated. The State has increasingly tried to regulate public access, principally through the Revenue and Forest Departments. But although there have been many new laws and rules and regulations affecting forest resource use during the past 100 years the users' rights remain unchanged, except that the number of people holding them has increased significantly. The demands made on the forest resources through the honouring of these rights have increased enormously. And the institutional and legal environment in which this historical legacy is implemented has become exceedingly complicated.

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

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

Under the forest laws, there are numerous rules regulating harvesting, transit, and marketing of

forest produce. This is also true of mining in forest lands. Court judgements have recently put some restrictions on these activities in response to public cause litigation from environmental and ecological protection pressure groups. However, given the land classification problems (in Himachal Pradesh) the matter cannot be handled unless amendments are brought about in the forest and other related laws of the land.

### **3.2.1 Time Line of Legal Framework**

The major activities, acts, rules, settlement reports, notifications, and government orders related to forests are listed in order of appearance below, and selected and additional ones described and discussed in more detail after the list. The laws, acts, and rules related to forest lands now in force in HP are listed in Annex 2.

- 1855 The Chief Commissioner of the Punjab, Sir John Lawrence, drew up a set of rules for the conservation of forests in hill districts.
- 1859 The Deputy Commissioner of Kangra, Mr. Bailey, prepared rules that forbade the felling of trees without prior permission of the Deputy Commissioner. Inferior trees could be felled for bonafide use with the permission of the village headman. Major Lake, the Commissioner of the Trans-Sutlej States submitted the rules and suggested they be adopted with some modifications in other areas. Ancient and traditional rights like grazing and collection of dry wood and leaves were allowed to continue, but one third of each forest was to be closed entirely for three years in rotation
- 1878 Indian Forest Act 1878 enacted
- 1886 The Superintendent of the Shimla Hills issued a letter to rulers of the surrounding states requesting them to introduce Forest Conservation in their respective states.
- 1890 The rulers of Nahan declared the sal forests of the area to be reserved and introduced a permit system (revenue) for transit of timber

1894	First Forest Policy enunciated		(a) of IFA issued declaring all trees in protected forests under the notification of 25th February, 1952, to be reserved with effect from 1st January 1964
1896	Notifications issued in respect of forests in Kullu and Lahaul and Spiti declaring categories of forest as Classes I,II, III. Forest settlement for Kullu by Alexander Anderson.	1964	On 21st August 1964, the Council of Ministers decided to cancel the notification of 1952 and restore the original status of the land. This decision has not been implemented and the notification is still in force.
1897	Notifications No. 57 and 58, dated 26th January, 1897 (amended in 1919), issued for Kangra District (now Una and Kangra districts), Declared Demarcated Protected Forests and trees in Demarcated Forests to belong to the government.	1965	The Himachal Pradesh Forest Settlement Act
1904	Shimla Forest Conservation rules introduced by the Government of Punjab under the policy laid down in 1894. Forest Settlements for Mandi, Kinnaur, Solan, Rohru	1966	Punjab Re-organisation Act. Hill areas of Punjab (Kangra, Hamirpur, Una, Kullu, Shimla, Solan, Lahaul and Spiti) incorporated into Himachal Pradesh
1921	Introduction of <i>Nautor</i> Rules and Settlement of Transit Rules, relaxing the conditions in the earlier Acts	1968	Indian Forest (Himachal Pradesh Amendment) Act Himachal Pradesh Forest Settlement Rules 1968
1927	Indian Forest Act XVI, 1927, enacted and rules made applicable to the princely states that later became Himachal Pradesh		Himachal Pradesh Forest (Sale of Timber) Act 1968
1937	Mandi Minor Forest Produce Exploitation and Export Act (Act No VII of Samvat 1997)	1969	The Himachal Pradesh <i>Nautor</i> Rules Himachal Pradesh Forest (Sale of Timber) Rules 1969
1943	Chamba Minor Forest Exploitation and Export Act (Act 26 of Samvat 2003)	1971	Himachal Pradesh acquired full statehood Himachal Pradesh <i>Gram Panchayat</i> Rules
1947	Chamba Minor Forest Produce Manufacture of Drug and Export Rules 1947		The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act (No. 22 of 1971)
1952	Notifications No. Ft.29-241-BB/49 and Ft. 29-24/BC/49 issued for the areas in old Himachal Pradesh under section 29 of the Indian Forest Act (XVI of 1927). By virtue of this notification, all wastelands were declared as protected forests.	1972	Wildlife Protection Act Himachal Pradesh Tenancy and Land Reform Act Himachal Pradesh Ceiling on Land Holdings' Act
1953	Himachal Pradesh Abolition of Big Landed Estates Land Reform Act	1974	Village Common Land Vesting and Utilisation Act
1954	Himachal Pradesh Private Forest Act promulgated to exercise rights over private forests Bilaspur State merged into Himachal Pradesh	1975	Village Common Land Vesting and Utilisation Rules and Scheme
1963	Himachal Pradesh Land Acquisition Act Notification No. Ft. 29-24/BC/49 dated 13th November, 1963 under section 30	1976	National Commission on Agriculture Report 42nd amendment to the Indian Constitution: "State to endeavour to protect and improve the environment and to safeguard the forests and wildlife"
		1976	Forestry transferred from State to Concurrent List in the Constitution of India

- 1978 Himachal Pradesh Land Preservation Act  
Himachal Pradesh Forest Products Transit (Land Routes) Rules, 1978
- 1980 Forest Conservation Act of 1980 (first central government act after forestry moved on to the concurrent list)
- 1981 The Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act (Act No 6 of 1981)
- 1982 The Himachal Pradesh Forest Produce (Regulation of Trade) Act (Act No. 5 of 1982)
- 1985 National Wastelands Development Board set up
- 1986 The Environment (Protection) Act
- 1988 Forest Conservation Act amended  
The Forest Policy
- 1990 GOI issued a memorandum, calling for the involvement of village communities and voluntary agencies in the regeneration of degraded forest lands
- 1991 The Indian Forest (Himachal Pradesh Second Amendment) Act
- 1992 National Conservation Strategy and Policy Statement on Environment and Development issued by MoEF
- 1993 Amendment to Himachal Pradesh Forest Products' Transit (Land Routes) Rules 1978  
Himachal Pradesh Government Order on Participatory Forest Management
- 1994 Himachal Pradesh *Panchayati Raj* Act (Act 4 of 1994)
- 1995 Amendment to Section-52 A of the Indian Forest Act 1927  
Grant of powers to Divisional Forest Officers to evict encroachments on forest lands under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act 1971  
Draft Himachal Pradesh Forest Bill

Notifications Relating to the Employment of Rakhas as Forest Officers (1900-1946)

In Kangra district, societies and villages appointed *rakhas* (village watchmen) and others to protect and conserve forest resources and paid them in cash or kind. The Government of

Punjab through several notifications declared the *rakhas* and others to be forest officers under the provisions of the Indian Forest Act 1878 and 1927. *Rakhas* still exist in Kangra district.

Minor Forest Produce Exploitation and Export Acts of Mandi (1937) and Chamba (1943)

These acts, enacted by the erstwhile princely States of Chamba and Mandi, are the only legislation that govern the exploitation and export of minor forest products, now called non-timber forest products (NTFPs), in the state. The exploitation and export of NTFPs in all parts of the state are managed under the provisions of these two acts. Rules were framed under the Chamba Act in 1947. The provisions of these two acts are now woefully inadequate to deal with the issue of NTFPs, and comprehensive legislation is required.

Notification Relating to the Definition of 'Right Holder' 1948

The Punjab Government defined a right holder to be a person to whom right has been admitted in the record of rights of any forest (see Annex 2).

Notifications of 1952 and 1963

These are discussed in more detail in Section 2.2.3. Notification No. Ft. 29-241-BB/49 of 1952 declared the provisions of Chapter IV of the Indian Forest Act of 1927 (of protected forests) applicable to all forest lands or wastelands which are the property of Government or over which the Government has proprietary rights, and Notification No. Ft. 29-24/BC/49 declared that all trees in these forests should be reserved. By virtue of this notification, all wastelands were declared as protected forests. In practice these notifications simply extended notifications issued in 1896 and 1897 to the whole of the State of Himachal Pradesh.

Notification No. Ft.29-24/BC/4 of 1963 was issued declaring all trees in the forests protected under the 1952 notification to be reserved with effect from 1.1.1964.

In August 1964 the Council of Ministers decided to cancel the notification of 1952 and restore the original status of the land (government land classified according to the existing system). It was later decided not to cancel the notification until the work of delineation and demarcation had been completed throughout the state to avoid any adverse effects on the forest (mentioned in a letter from 1968), and the decision was never implemented.

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

#### Himachal Pradesh Private Forest Act, 1954 (Act No-6 of 1955) and Rules of 1956

This Act regulated the management of Kuthlehar Forest, the only private forest in the State. In 1995 the Government nationalised the Kuthlehar Private Forest after a protracted legal battle via notification No. VAN (A)4-3/91-Vol.II, Dated 10.3.1995 (Annex 3).

#### The India Forest (Himachal Pradesh Amendment) Act, 1968

The enactment of this act not only repealed the earlier Indian Forest (Punjab Amendment) Acts of 1954, 1962, and 1966 so far as these applied to the areas merged in Himachal Pradesh, but also declared Class I and Class II forests under the repealed amendments to be Reserved and Protected Forests under the Indian Forest Act 1927 (see Annex 4).

Following this amendment, the same nomenclature (Reserved Forest, Demarcated Protected Forest, and Undemarcated Protected Forest) had to be used for all the forests of the State:

#### The Himachal Pradesh *Nautor* Rules, 1968

*Nautor* is the name given to the breaking up of government wasteland and Class III land (Undemarcated Protected Forest) for cultivation and construction of houses, cattle sheds, and water mills. In 1968, realising the problems of *ad*

*hoc* allotment of *Nautor* in all types of lands by the revenue authorities, the government passed the Himachal Pradesh *Nautor* Land Rules limiting grants of *Nautor* by the State Government to areas in Demarcated Forests and wasteland, except in exceptional circumstances, and defining the procedures to be used.

The practice of granting *Nautor* rights gradually ceased following the passing of the Forest (Conservation) Act 1980 and the amendment of 1987.

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

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

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

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

This act was enacted in an attempt to deal with the problem of encroachment. The Indian Forest

Act, 1878, as adopted and amended by Himachal Pradesh, applies to all the forests in the state, but it contains no provisions for dealing with encroachment. The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act 1971 is thus the general law under which eviction from forest land is dealt with. Within the Act, a case can be instituted in the Court of a Collector. A notification under the act gave DFOs the powers of collectors to serve eviction notices upon encroachers on forest land and enforce eviction (Annex 6).

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

The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Act 19 of 1973), and the Himachal Pradesh Tenancy and Land Reform Act, 1972 (Act No. 8 of 1972)

These acts and the rules made thereunder, together with the Himachal Pradesh Utilisation of Surplus Area Scheme of 1974, provided for the transfer of lands from large owners to landless agricultural labourers. Under the acts, people without land or with less than 5 *bighas* were able to acquire land up to a maximum of 5 *bighas*. However, the land available from the large landowners for this transfer was insufficient to meet the needs of the landless.

The Wildlife (Protection) Act, 1972

This act provides the legal framework for the conservation of fauna and biodiversity.

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

Under this act the government took control of all *shamlats*, and common *ghasinis* to supplement the pool of land available for distribution to those with little or no land. Rules and a utilisation scheme for lands acquired under this Act were

prepared in 1975. A part of the land was to be kept aside for common purposes like grazing to be managed under the Punjab Village Common lands (Regulation) Act 1961. The acquired *shamlat* lands were divided into two categories: allottable and non-allotable. The non-allotable were to be transferred to the DFFC. These non-allotable *shamlat* lands, once “*de jure*” community lands available for the exercise of rights, became “*de facto*” common lands, as the Revenue Department did not transfer the lands to the DFFC. Moreover, no action could be taken to demarcate and classify these lands as forests under the provisions of the Indian Forest Act 1927 as critics saw this as a mechanism for converting community lands into government lands and restricting the right of access by communities.

Himachal Pradesh State Forest Corporation Ltd, 1974

The Himachal Pradesh State Forest Corporation Ltd (HPSFC) came into existence on 25th March 1974 and started functioning from 1st April 1974. It is a wholly government owned company registered under the Companies Act, 1955. The main objectives for the creation of this corporation were to ensure that harvesting of forests, marking of timber, and processing of resin was carried out according to sound scientific principles, and to eliminate contractor agencies.

The main activities transferred to the Forest Corporation were as follow.

- Control of the R and T Factories in Nahan and Bilaspur and two timber extraction divisions at Kullu and Sawra (transferred to HPSFC from April 1974)
- Resin extraction (from 1975-76)
- Resin extraction from private woods (after 1981 when all resin work was nationalised by the GoHP)
- Forest working (nationalisation started 1975, completed end of 1982)
- Timber extraction and marketing from private areas (from 1982)
- Fibre board production (through a subsidiary company established at Baijnath)

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

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

Liberals and proponents of free trade and participatory forest management see these rules as a deterrent to community participation. They advocate liberalisation of the rules to encourage communities to join hands with forestry staff in a true spirit of participatory forest management. The Forest Department argues that relaxation would encourage unauthorised felling and smuggling.

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

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

The act allowed owners to fell 5 trees each year without permission, 10 trees with the permission of the Range Officer, or more than 10 trees with the written permission of the Divisional Forest Officer, for bonafide domestic use. In 1981, a subsequent order limited annual felling for domestic use to a maximum of 5 trees with the permission of the Range Officer, or more than 5 trees with the permission of the Divisional Forest Officer. A later order in the same year again changed this to up to three trees without permission, up to 10 trees with written permission of the Range Officer, and more than 10 trees with written permission of the Divisional Forest Officer. If an owner desired to sell the trees standing on his private land, he could fell them

in accordance with a 10-year felling programme framed by the Forest Department and with the approval of the State Government. The Divisional Forest Officer could allow felling of up to 50 trees, the Conservator of Forests felling of up to 100 trees, the Principal Chief Conservator of Forests felling of up to 200 trees, and the State Government felling of more than 200 trees.

In 1983, the State Government issued The Himachal Pradesh Land Preservation Rules 1983 describing the procedure to be followed for implementation of Land Preservation Act 1978.

Proponents of Participatory Forest Management want substantial relaxation of the conditions with regard to felling of trees grown by communities on community and private lands.

### Forest Conservation Act, 1980 (No. 69 of 1980)

The Forest Conservation Act 1980 promulgated by the Government of India replaced the Forest Conservation Ordinance 1980, and this was intended to check deforestation. Under the act it became necessary to obtain prior approval of the Government of India for de-reservation of Reserved Forests or the use of forest lands for non-forest purposes. The Rules made under the act provided for the constitution of an advisory committee under the chairmanship of the Inspector General of Forests to advise the Central Government with regard to the granting or otherwise of proposals for the diversion of forest land for developmental activities of the State Governments. The State Governments were required to submit their proposals on a prescribed proforma with cogent reasons and alternatives.

This act has been the cause of disagreement between the State Governments and the Government of India. Whereas the State Governments want unlimited powers to divert forest lands for non forestry purposes, the Central Government is willing to allow only very limited concessions and relaxation. The extent to which this act will have an impact on the implementation of participatory forest management programmes has yet to be assessed.

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

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

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

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

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

The Environment (Protection) Act of 1986

This act was aimed at promoting protection and improvement of the human environment in accord with the decisions made at the United Nations Conference on the Human Environment held at Stockholm in June 1972. This Act deals with issues related to environmental pollution. Implementation of the act is monitored at government level by the Central Pollution Control Board under the Ministry of Environment and Forest, and at state level by the State Pollution Control Boards.

The Forest Policy of 1988

The principle that the people have first charge on the use of forest resources was formally recognised in 1988 with the adoption of the new National Forest Policy. The new policy replaced the idea that the main role of forests was commercial with the principal aim of ensuring environmental stability and maintenance of ecological balance. It stated that the domestic requirements of tribal and other poor people living within and near forests for fuelwood, fodder, minor forest produce, and construction timber should be the first charge on forest produce, and that these requirements should not be sacrificed to meet the needs of forest-based industries.

The Government of India Memorandum of 1990

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

The Indian Forest (Himachal Pradesh Second Amendment) Act, 1991

In 1991, Himachal Pradesh made amendments in certain sections of the Indian Forest Act of 1927 as applicable to the state. In particular, one amendment gave the state more power to deal effectively with forest offences. It gave magisterial powers to the Divisional Forest Officers to seize and confiscate property and vehicles used in forest offences after conducting enquiries under the law (Annex VII).

### The Himachal Pradesh Kulehar (Acquisition of Management) Act, 1992 (No. 19 of 1992)

This act nationalised the only private forest in the State, the Kulehar Forest in Una district. In 1995, a State Government notification authorised the Forest Department to take over possession of the Kulehar forests and undertake their management (Annex 3).

### Himachal Pradesh Government Order on Participatory Forest Management, 1993

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

### Himachal Pradesh Panchayati Raj Act, 1994 (No. 4 Of 1994)

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

### Draft Himachal Pradesh Forest Bill, 1995

Responding to the need to simplify the web of legal instructions, the Forest Department prepared

a Draft Forest Bill, which is in fact a new Forest Act for the State. This act incorporates the provisions of the Indian Forest Act 1927 and other relevant Acts to make a coherent forest legislation. The act is still in the draft stage.

### **3.3 Some Key Issues**

Some of the key issues involved in the policy and legislation framework, and their impact on the promotion of community-based Participatory Forest Management in the state are summarised below.

- **Key institutions and individuals involved in the process of policy making**

The policies for forest management and administration are made at Government of India level in the Ministry of Environment and Forests under the technical guidance of the Inspector General of Forests. The Forest Administrative Department at government level and the Forest Department (Principal Chief Conservator of Forests assisted by Conservator Planning) are responsible for forest planning and other legislative instruments at the state level.

- **Is forest policy centrally and federally evolved and administered or is it decentralised?**

Forest policy is developed at both the central and state levels. The responsibility for administration and management of forest lands lies with the State. The *Panchayati Raj Act* mandates some forestry functions and activities to be decentralised to district level but this has not yet been done in Himachal Pradesh.

- **Compatibility of existing forest policy and acts related to land use, industry, infrastructure and other needs – major conflicts and impact on implementation.**

Although the State Forest policy of 1980 is in conformity with the National Forest Policy of 1952 and 1988 and the Government of India's Memorandum of 1990, several of the

legal instructions enacted from time to time do not conform with these policy mandates and there is no uniform or comprehensive regulation of NTFPs. Several provisions of the Himachal Pradesh (Sale of Timber) Act 1968, the Himachal Pradesh Village Common Lands Vesting and Utilisation Act 1974, the Punjab Village Common Lands (Regulation) Act 1961, the Forest Produce Transit (Land Rules) Rule 1978, the Land Preservation Act 1978, the Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act 1981, the Forest Conservation Act 1980 (changes required at Government of India level), and the Himachal Pradesh Forest Produce (Regulation of Trade) Act 1982 will have to be amended. Rules made under these Acts will also have to be modified, relaxed, and/or brought into conformity with the mandate given to people under Participatory Forest Management.

- **Extent to which existing policy and acts provide space to community forestry. Is it enshrined as a legal imperative within these instruments or is it through government and administrative orders?**

The existing legal framework for forestry management is a major deterrent to the implementation of Participatory Forest Management. The lack of involvement of people in the social forestry programme led to the relaxation of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules 1968 in 1993. The present legislation does not provide any incentives to communities to support Participatory Forest Management. Participatory Forest Management is still being implemented under government and/or administrative orders.

- **Has the policy to promote community-based forestry been implemented?**

People's participation in forest management was sought in the 1980s under two externally aided projects: the Indo-German Dhauladhar Project (1980-1988) and the

World Bank aided National Social Farm Forestry Project (1985-1993). The Indo-German Dhauladhar Project did have a positive impact on forest lands and increased the availability of fodder and grass to local communities. However, the impact was short-lived and gains were not sustained in the post-project period. The Himachal Pradesh Social Forestry Project failed to motivate community participation in the first phase, but succeeded to a limited extent in gaining people's involvement in some plantation programmes on community lands in the second phase (1990-1993).

Participatory Forest Management was initiated in the state in Kullu and Mandi districts under three externally aided projects: the Integrated Watershed Development Kandi (Hills) Project (1990-1997, extended to 2000) with assistance from the World Bank; the Indo-German Changer Project in Palampur with assistance from the Gesellschaft fuer Technische Zusammenarbeit (GTZ); and the Himachal Pradesh Forestry Project with assistance from the Department for International Development (DFID-UK). Although the Himachal Government order on Participatory Forest Management applies to the whole of the state, its impact is still limited to project areas.

- **Who are the main stakeholders in initiating changes in policy?**

In Himachal Pradesh, the donor agencies (World Bank, GTZ, and Overseas Development Administration (ODA, now DFID-UK)) have been instrumental in initiating policy on Participatory Forest Management. In particular, during the preparation of the Himachal Pradesh Forestry Project, ODA insisted on the issuance of a State Government Order on Participatory Forest Management. The main stakeholders in these projects are the Forest Department functionaries, especially grass roots' level staff like Forest Guards and Deputy Rangers, and the people whose subsistence is dependent on forests near their homes.

- **Does the Forest Policy mention mountain specifics or does it include the whole country regardless of terrain?**

The National Forest Policy of 1952 laid down the norm that 60 per cent of mountainous areas should be under forest, compared to 33 per cent for the entire country. The revised Forest Policy 1988 reiterated that two-thirds of the area in hills and mountainous regions should be maintained under forest or tree cover to prevent erosion and land degradation and ensure the stability of the fragile ecosystem.

The State Forest Policy of 1980 stated that to achieve the above goal, all land taken over by the government under the Land Ceiling Act 1980, together with that for use for common purposes taken over under the Village Common Land (Vesting and Utilisation) Act 1974, bearing forest crops or having a potential for being brought under tree cover should be surveyed, demarcated, and notified under the Indian Forest Act of 1927 as Reserved Forest and transferred to the Forest Department within a year. A programme to increase the area under plantation and to increase the density of forest cover in areas already notified as forests over the next 20 years should be formulated. According to the estimates, it would be possible to have 50 per cent of the geographical area under forest by the year 2000 AD.

- **What are the implications of policy changes on forestry professionals and institutions? What approaches are being used to make the transition from custodial forest management to participatory forest management?**

The implementation of Participatory Forest Management requires a major attitudinal change in the outlook of forestry staff at all levels. The Forest Guards and Deputy Rangers, who are the interface between the Forest Department and the people need to change their 'protection' oriented outlook to one of 'participation'.

Under the Himachal Pradesh Forestry Project, DFID is supporting a programme to promote attitudinal change with various components: strengthening the infrastructure of Forest Guard training schools and developing a Participatory Forest Management oriented curriculum; holding workshops in the field for Forest Department staff and local people; posting specially trained officers to approach people; carrying out a series of special studies; and developing a new process for the preparation of working plans and site-specific needs-based micro-plans together with the people affected. Activities in the other two projects are project specific rather than focussing on overall attitudinal change.

- **What are the benefit-sharing arrangements for forest produce in the state?**

People (right holders) throughout the state already enjoy the benefit of rights and concessions granted under various forest settlements. These include free access to forests for grazing of cattle and grass cutting, and collection of such things as fuelwood, NTFPs, stones, and leaves. In addition to these rights and concessions, the Government Order of 1993 provided for the transfer of the entire usufruct proceeds from the final harvest of forest produce obtained as a result of Participatory Management, with 25 per cent of the net sale proceeds given to the Village Forest Development Committees (VFDCs) for village development works.

- **Is the policy clear on granting security of tenure to local communities?**

The National and State Forest Policies are silent on the issue of granting tenurial rights to communities, they simply exhort people's participation in the development of wastelands and government forests. The State Government order on Participatory Forest Management also seeks participation of people without imparting any tenurial rights. One scheme during the second phase of the

National Social Forestry Project (1990-1993) entitled “*Van lagao-Rosi Kamao*” (plant forests - earn employment) had provision for the allotment of *patta* on 2 ha of forest or waste *shamlat* land to ‘*antodaya*’ families (a family whose annual income is less than Rs. 3,600 or poor families identified under Integrated Rural Development Programmes with an annual income of less than Rs. 4,800) or families with no members in government

employment. This allotment was from the lands vested in the government under the Himachal Pradesh Ceiling on Land Holdings Act, 1972, and the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974 for afforestation activities. However, the allotment did not confer any right on the trees raised and the land remained the property of the government through the Forest Department.