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(Chapitre 14)

## **Trials, Witnesses, and Local Stakes in a District Court of Himachal Pradesh\***

*Daniela Berti*

India has developed a well-established secular democracy, with a strongly independent justice, a free press, and a growing economic and political liberalism that has integrated the effects of globalization, of consumerism, of social justice, and of international and human rights. On the other hand, this democracy has been superimposed upon a society that remains largely based on local servitudes of religion, gender, age, and caste status, and on territorial, kinship, and feudal allegiances – all highly coercive mechanisms through which authority was, and still is, exercised, especially at rural level. This is not to say that today a ‘modern’ state coexists with ‘traditional’ forms of authority – since even at rural level, local society participates in a context of modernization and globalization. However, the kind of relationships or of economic and political activity that people may have at a local level may sometimes enter into conflict with the kind of commitment taken by the Indian state both at national and at international level.

In this chapter I shall study how this tension between the state and local society takes shape and is elaborated at a judicial level, within the urban- and State-centred context of a District Court of Justice. The study will be based on an ethnographic observation of a judicial case in a Session Court of Mandi, a small town in Himachal Pradesh in the Indian Himalayas. The analysis of the court’s interactions, as well as of the multiple discourses engaged in by the protagonists of the case outside the courtroom, will throw light on the different ways in which the court system of justice, owing to its specific judicial procedures and its legal interpretation

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of facts, is constantly confronted with, and sometimes hindered by, village-based forms of local belonging.

The notion of ‘belonging’ that will emerge here is not merely a shared ‘emotional connection’, a ‘sense of experience’, or an ‘attachment to a place’ – which is commonly associated to the closely related notion of ‘identity’ (Polletta and Jaspers 2001; Lovell 1998). It will rather be considered as a factor or a condition likely to produce various, and sometimes opposite, outcomes. This is indeed the sense closest to the way people themselves make use of the term to interpret their own behaviour when faced with the rule of law. In some of the cases observed in the court, for example, the fact that the accused belonged to the same place as the witnesses was presented as involving multiple implications – ranging from family affection to village solidarity to common economic or political interests – that were all likely to go in his favour during the trial. In other cases, by contrast, the local dynamics of conflicts – village factionalism, family enmities, local political or economic rivalries – were presented by the accused as the very reason why his co-villagers had fabricated a case against him (Cohn 1987).

The detailed study of court interactions will show how proceedings themselves – i.e. the techniques provided for ascertaining facts – are far from ignoring the issue of belonging. This is shown, for example, by the sentences which the judge or the prosecutor dictate in English to the court typist on behalf of the witness, whenever they think that he is not telling the truth: “It is incorrect that I am deposing falsely for the relationships I have with the accused.” How closely the witness and the accused are related to each other is indeed the very first question asked of them on recording their statement: “Do you know the accused?” or “Do you belong to the same village?” By contrast, if the witness is not related to the accused (i.e. they are neither from the same village nor family and are in no way bound to each other) the witness is called, in the judicial language, an ‘independent witness’ – and their statement is seen as having more value in supporting the judge’s decision.

Moreover, in civil cases, one of the reasons that may induce a villager to appeal to the court rather than to the village council (*panchayat*) is that they consider the judge to be neutral, and that his judgment will not be influenced by the person’s belonging to a caste, a political party, a village faction, or a religious group.<sup>1</sup> The neutrality of the court is such a

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<sup>1</sup> I am not referring here to legislation that deliberately and consciously takes into account some forms of ‘belonging’. One example of this is the issue of personal law in civil matters (for example, for Muslims or other minorities). In the same way, a certain number of Acts that have been enacted since Independence concern some specific categories of individuals who are considered by the State to need protection because they belong to

basic rule that a judge cannot stay in the same court for more than three years. He usually gets transferred much earlier than that, precisely with the aim of avoiding what Engel (1978: 136) calls the kind of ‘local entanglement’ that would interfere with his decisions in court cases.<sup>2</sup>

In this context of a sought-after neutrality, I shall focus my analysis on court proceedings to see how the court manages (or fails) to deal with the discrepant dynamic of ‘local belonging’. A study of lower-court judges fits well with this kind of perspective, since unlike the higher judiciary they have close interactions with ordinary people and are directly concerned with the meticulous recording of facts. Looking into a court’s proceedings and verbal exchanges will also allow an understanding of the articulation between ‘ordinary talk’ and court talk about the same facts (Drew and Atkinson 1979). In other words, it will cast light on how facts that occurred in a village context, made up of rivalries and loyalties, are represented to fit into a code section, to be discussed within the grid of court proceedings, and to be judged on the grounds of other well-established and codified judicial records.

### **The Court Justice Complex**

The District Court of Mandi is situated at the heart of the town, in a little square just adjacent to the seventeenth-century royal palace. On the north side of the square is the Court Complex, and on the west the Police and the Prosecutor’s buildings. The place is quite an enclosed space, communicating with the remainder of the town through some narrow roads and passages, one of which goes directly into the courtyard of the present habitation-cum-hotel of the king. The court buildings are known by the name of ‘Emerson House’, and were built in 1914 as the secretariat for the resident commissioner. Emerson, a British administrator, had been appointed as the guardian of the last king, Jovinder Sen, who was a minor when he inherited the throne. Emerson initially, and the raja Jovinder Sen later on (when he became of age) used to sit in on one of these courtrooms, which is today a Revenue Court, with the Deputy Commissioner also sitting there on some occasions.

The old complex includes at present one Session Court (the higher level), one Additional Session Court, and two or three other courts of lower levels. But, adjacent to these older courts, a new part of the complex is under construction that will include other courts that are at present temporarily located in various other parts of the town. The court complex is one

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some ‘underprivileged’ groups such as women or members of the scheduled castes. These Acts, however, simply give the legal context within which the judge is supposed to formulate a neutral decision.

<sup>2</sup> This does not mean that Judges are complete outsiders to the locality. For example, if a Session Judge (just one step below High Court Judge) cannot be appointed in his district of origin, he cannot be transferred to a Court outside his own State. Only in the High Court does the judge not need to belong to the State where the Court is situated.

of the most bustling and crowded areas of town. Early in the morning, lawyers sit there with their assistants and trainees to speak with their clients, to inform them of the formalities required, to discuss their cases, and to prepare witnesses. This is a point of contact between villagers, who are immediately recognizable by their peasant appearance, and lawyers who have a more 'urban look', even though they themselves may also sometimes be from the countryside. It is a place which is relatively free of caste hierarchy and religious differences (Morrison 2005: 145ff.) but not of territorial ties, with a lawyer often being chosen from the same area to which the client belongs. As Galanter and others have extensively shown, "lawyers serve as links or middlemen between official centres and rural places, disseminating official norms, rephrasing local concerns in acceptable legal garb, playing important roles in devising new organization forms for forwarding local interests" (Galanter 1992: 27).

More specific to the court are those functionaries employed by the government to help the judge in his day-to-day work: the 'readers', the typists, the stenographers, the peons, etc. These people do not all have as many local connections as lawyers do, although they somehow represent the court's memory. Unlike judges, who are always being transferred, most of these employees go on holding the same job in the same court for long periods, and are sometimes the only link between a newly incoming judge and the cases that may have begun to be tried under his predecessor.

By 10 o'clock in the morning, people start arriving at the courtroom, to check that their names are on the list of the day's hearings and to sit outside the court, waiting to be called. Here ordinary people from the town or the countryside mix not only with lawyers coming and going – checking the list for whether their case has been scheduled or deferred – but also with a number of policemen, who have been summoned by the court as witnesses for the criminal cases they have recorded and investigated. Inside the court, the readers along with other employees prepare the day's files for the judge, checking that everything is in order. Once the judge has entered the court the day begins with the comings and goings of lawyers, who ask the judge to defer a hearing of their client or to sign a document. Then the cases begin with hearings of witnesses, regrouped together for each case so far as possible.

During my fieldwork, although I occasionally visited other courts within the complex, I concentrated my research on the Session Court. For one month I attended the court every day, with the aim of studying the interactions between the various principal actors in a trial – the judge, the prosecutor, the lawyers – and of analysing how they proceed, how they try to

extract facts from witnesses, how the witnesses reply, and how this reply is put into written form, and filed into what ultimately becomes the official version of the trial.

The Session Judge appointed to that Court during my stay was Judge A.D., a smart, self-confident man in his fifties who, after practising law for 22 years, was directly appointed Session Judge. Judge A.D. showed great interest in my research and gave me his consent to sit near the bench during the trials, right next to the witness bar and the typist.<sup>3</sup> This privileged position allowed me to follow interactions in a way that would have been impossible had I been seated in a public seat. In fact, during the trial, in front of the judge at the bench, stand the prosecutor and the defence lawyer, followed by all their assistants. This kind of disposition tends to form a closed circle of people, with all the main actors close to each other, so that between them interactions can sometimes take place in a very hushed manner.<sup>4</sup>

Among the various trials that I followed during my fieldwork in the Mandi Session Court, I have chosen a criminal case registered against a villager under Section 20 of the *Narcotic Drugs and Psychotropic Substances Act*, which concerns 'Punishment for contravention in relation to cannabis plant and cannabis', for which the term of imprisonment is no less than ten years.

Whilst setting the case in a wider cultural context at regional level, I will concentrate my analyses on what happens inside the courtroom. Indeed, it is by in-depth observation of trials that it is possible to observe village dynamics at work and to see how they are expressed through the very techniques used in court proceedings.

### **Growing Cannabis in Fields**

My analysis of the case will deal with a form of village corporatism that took place inside the courtroom and that is linked to the enforcement of a legal Act issued by Parliament in 1985, concerning the criminalization of drugs. The practice of growing cannabis plants was indeed officially authorized throughout the colonial period, when it was a source of income for some

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<sup>3</sup> The condition was that I had to cover my head to show respect to the Court – and the judge was particularly strict with regard to this.

<sup>4</sup> In this respect it should be said that in Indian Courts there is no jury– the jury system being abolished in Courts of law in 1960. The absence of a jury does greatly influence the way the trial is performed, in the sense that it lessens the importance of "performing a show", of "staging a drama", which may impress or emotionally affect the jury's opinion. In Indian trials, by contrast, even for very serious cases with a sentence of more than 10 years imprisonment, the judge is completely on his own in deciding all the cases that are tried in his Court (although the case can be referred for appeal to the higher Courts). All the interactions are thus concentrated around the judge and are not always likely to be heard by the attendance.

people. It started to be criminalized by the State from the 1960s onwards, and the effective implementation of this process of criminalization has taken more than twenty years.

Before going into the case it is to be noted that in Himachal Pradesh, as in many other parts of India, substances such as cannabis (and opium) are used by villagers for a number of things. As far as Himachal Pradesh is concerned, Charles (2001: 17), in a study financed by the UNESCO Management of Social Transformation Programme, points out what she calls the 'socio-cultural' and 'functional' uses of cannabis and other psychotropic plants in the region. The fact is, for example, that these products are used by villagers to perform religious ceremonies (like Shivaratri), to prepare medicine, to produce local shoes, bags, and ropes and even to make a certain number of local dishes. The author analyses how, since the spread of the Western 'hippie culture' in some areas of Himachal Pradesh in the 1960s, these substances have been completely misused and have led to a national and international traffic. Notwithstanding these developments, the author insists in her conclusion on the inadequacy of the *Narcotic Drugs and Psychotropic Substances Act* in the Indian context and defends the need to legalize the cultivation of cannabis for religious and cultural uses.

Charles's analysis of the local context of cannabis cultivation well reflects the discourse of Himachali villagers, who also defend the legalization of cannabis on the grounds of its traditional and multiform local use. Newspaper articles show the form this discourse takes among villagers. For example in 2004, after the destruction by the 'Narcotics Control Bureau' of cannabis plants in over 10 *bighas*<sup>5</sup> near Malana, one of the biggest areas for cannabis production, an article in *The Tribune* reported:

Villagers have described the operation as a direct attack on their only source of livelihood ... "Cannabis has been grown here since time immemorial", said Mr Daulat Ram, Vice-president, Malana *panchayat*. "The *bhog* [food offerings] for *devta* [god] is made from the seeds of cannabis, and *charas* [hand-made hashish] has been used here for medicine over the ages" villagers said. ... Villagers held a meeting today to work out their future strategy ... Villagers rued that they had nothing to fall back on as the government had given them nothing over the years despite promises ... On cannabis cultivation, villagers said the demand for *charas* picked up after foreigners started coming to the valley in the nineties. "They told us that cannabis could change our destiny as *charas* could fetch a good price in the market" they said. "It sells for Rs 50,000 per kg" they said (*The Tribune*, 1 Oct. 2004).

Another article also appeared in *The Tribune*, significantly entitled 'Where deity tells them [villagers] to grow cannabis':

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<sup>5</sup> 2.5 bighas = one acre.

To avoid the Narcotics Drugs Psychotropic Substances Act, the villagers have started cultivating the cannabis crop, pleading that they use its seed for dishes and its shells for ropes. “Unless Jamlu god tells us to grow other crops, we will grow only cannabis.”

It is not only villagers who hold this discourse, as the following article shows:

**Doctors call for change of law on cannabis.**

Doctors in India have called on the government to review the 10-year-old law that bans cannabis, on the grounds that it is not a public health problem and that it has medicinal uses. ... ‘Cannabis has been used in India for centuries. It is an important ingredient in many traditional herbal medicines and in some parts of the country it is socially acceptable for both men and women to consume cannabis during festive occasions’ ... ‘Placing cannabis in the category of the more dangerous and addictive drugs was a historical error’ (*BMJ*, 17 August 1996).

As a matter of fact, considerations of this kind were not deployed at all as an argument inside the court, where narcotic cases are considered as extremely serious cases, and are likely to be very severely punished. However, it is by taking into account this cultural context that I am going to present the case and the interactions that took place inside the court.

**Court Interactions and Local Belonging**

In 2003, a narcotics team from Chandigarh, a town in the neighbouring state of Punjab, made a raid on an isolated high-altitude area of Mandi district and discovered some cannabis plants in a field. The team was from the Narcotic Control Bureau, an Investigation Agency set up by the Indian Government in 1986 in order to stamp out illicit trafficking and thus apply the international commitments undertaken by India since 1961 to join in fighting against *Narcotic Drugs and Psychotropic Substances*.<sup>6</sup>

After ascertaining the identity of the owner of the fields in which the cannabis plants had been found, the Chandigarh team left local police the task of opening a case against this person, who was temporarily arrested and then released on bail some weeks later. When the trial began, the man was still living in his village, although he did have to appear in court for the hearings.

The registration of the case by the police – the FIR (First Information Report) – is dated 2003; but the trial began in November 2006 in the Court of Judge A.D. The discussion of the case will be based on the analyses of the interactions I collected inside the courtroom as

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<sup>6</sup> The Narcotic Control Bureau has ‘Zonal Units’ spread over the various major towns of the country, which act as bases from which they launch occasional raids into the areas that they know to be most affected by narcotics activities. During these raids the unit team works in cooperation with the local police. In this respect, it is worth underlining that, without the intervention of the Chandigarh team, local policemen, during their day-to-day patrols on the mountainside, would never take the initiative to register a FIR (First Information Report) in a case of cannabis cultivation.



well as of the conversations I had with the various principal actors, especially with the lawyer, the accused and the judge. I will support my observations by making reference to other similar cases registered at the same period on which judgments were pronounced in the same court during my fieldwork.

During the hearings the accused, a villager in his fifties, was asked to stand on one side of the courtroom, and nobody put any questions to him save to confirm if his name was well and truly the one given in the police report submitted to the court.

During the first days of the trial the witnesses to be heard were all prosecutor witnesses. The first prosecution witness, named in the file as PW-1, was the *patwari*, the revenue officer who was in charge of the area where the cannabis plants had been found.

In Mandi, as elsewhere in other districts of Himachal Pradesh, the *patwari* is not always considered by villagers to be a ‘local’ in the strict sense of the term. In fact, according to the rule, a *patwari* should not be made responsible for the records of villages within ten miles of his birthplace (Smith 1952: 46). Although he may have chosen to live in one of the villages under his jurisdiction – where he is provided with a house by the government – he himself does not originate from these villages. The common perception villagers have of a *patwari* is indeed of ‘a government person’ or, especially in this context, of ‘someone who goes along with the court system’. In fact, it is more complicated, since villagers constantly try to curry favour with the *patwari* in revenue matters. In the press numerous articles may be found about *patwari* involved in cases of corruption. In consequence, the line that a *patwari* decides to adopt when a villager is heard by the court depends on his own personality and his disposition to enter into negotiations with the villagers.

During the ‘examination in chief’ the *patwari* replied to the questions put to him by the prosecutor and occasionally by the judge. According to the procedure followed in the court, the interactions were in Hindi and in a question–answer form. The replies were then immediately translated by the judge into English and put into the first-person form. This dictation was recorded both by the typist in English and by the stenographer in Hindi, with the English version being officially approved and signed at the end by both the witness and the judge.

In the English version of the record the *patwari*’s statement is reported as follows:

On 27-10-2003 I along with the Pradhan [village president] and police officials were inspecting the lands in M.D. [name of place] so as to ascertain the cultivation of Cannabis ... At a distance of 100–150 m, on the higher side, cannabis plants were found to be those of accused. The police collected the leaves of the plants in his presence and put them in a parcel ... My signature was also obtained by the police along with that of Pradhan (Mandi, Court record).

The *patwari* therefore supported the prosecutor's case, by stating that: he went to the field along with the village *pradhan* and the police; they saw the cannabis plants in a field, which he identified as the field of the accused.

However, during cross-examination two main points emerged to the prosecutor's disadvantage:

(1) that in the revenue record, the land where the cannabis had been found was registered not as belonging to one person but to several co-owners – which makes it impossible from a legal point of view to accuse only one person and not the others; and

(2) that no demarcation had been made there by the police in order to ascertain whether, if not *de jure* then *de facto*, the accused was in possession of the field.

The problem of demarcating joint land systematically occurs in all such cases and proves to be one of the main obstacles for the prosecutor in proving his cases. According to the *Himachal Pradesh Land Records Manual* (Ch. 10.2), which is commonly quoted in these cases, land may prove to be joint property for the Revenue Office but to be divided on paper by the co-owners on the basis of a mutual agreement<sup>7</sup>. The acknowledgement of this 'customary demarcation' may be legally certified only by the *kanungo* and the *tehsildar*, who are high-ranking revenue officials.<sup>8</sup>

Although there are very clear rules on this matter, in point of fact, when the police go to the fields for inspection, the only revenue officer who happens to be with them is the *patwari*, who, being a low-ranking officer, is not legally competent to carry out land demarcation. In most cases of cannabis cultivation, the police proceed with the destruction of the cannabis plants without first asking the *kanungo* or *tehsildar* to carry out land demarcation, as the law requires.

This quite common blunder on the part of the local police in investigation proceedings was interpreted differently by the judge and by the defence lawyer. Judge A.D. explained it by

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<sup>7</sup> As noted in a village-based study on the Himachal Mountain Ecosystem: "in the past, the transfer of land from one generation to the next was mediated by the formation of joint-households which prevented the immediate division of land into small plots ... [however] some consultants pointed out that it was possible to divide the land on paper but still own land as a joint family".

(Cf. [http://www.umanitoba.ca/institutes/natural\\_resources/mountain/book/2/index.html](http://www.umanitoba.ca/institutes/natural_resources/mountain/book/2/index.html).)

<sup>8</sup> The *tehsildar* is both a revenue officer responsible for the collection of revenue, and a second-class magistrate responsible for the collection of testimonies for court cases. He often serves as a witness, and can pass judgment himself up to a penalty of six months.

referring to the police's lack of training owing to the shortage of government funds. By contrast, the defence lawyer explicitly attributed the mistake to a 'double bind' experienced by the policemen, who are "duty bound and locally bound ... who do a State job but who are also locals". According to him, police shortages are not to be interpreted as such, but as part of a system that allows the local police – especially when working with the Chandigarh narcotics team – to do its duty by registering a FIR whilst also, in return for some compensation, helping villagers to evade the court judgment. This kind of investigative blunder on the part of the local police would indeed be a way of ensuring that the court "will be hampered during the trial".<sup>9</sup> He explained that, for example, whenever the police found cannabis on joint land, instead of registering the FIR for all the co-sharers, they did it just for one of them (while taking money from the others). In that way – he added – "the case will be registered but the court will be prevented from convicting the accused".

Apart from the difficulties encountered by the prosecutor through deficiencies in the police investigation, another serious obstacle faced the court on the second day of the trial, when it was the turn of the villagers to give evidence. Fourteen witnesses belonging to the same village as the accused, including the village *pradhan*, were called to the bar in their role as prosecution witnesses (who were supposed to support the prosecutor's case). At the time of investigations, and on the police's request, they had jointly signed an affidavit (a deposition under oath) where it was stated that the field where the cannabis had been found was the accused's customary possession, and that the accused personally cultivated cannabis in his field.

I will report the first of these fourteen witness statements in order to show how, although the affidavit was there on file, the situation now worsened further as far as the prosecutor's case was concerned. It needs to be pointed out that, on the second day of the trial, the prosecutor was, as a result of exceptional circumstances, out of town to attend a wedding, and the judge, with the defence lawyer's consent, exceptionally played two roles: that of prosecutor and that of judge.

In his role as judge, A.D began to ask the witness to give his oath by pronouncing the formula: "What I will say I will say the truth, on behalf of *dharma*". Then the examination in

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<sup>9</sup> It is worth pointing out here that it is a different matter for the Narcotics Team from Chandigarh, which has no ties with the locality and the people in this area. For example, the policeman who registered the case was posted to the same area as the accused lived in, which is also the area he himself belonged to. What people explained to me is that, whenever corruption is involved, the case will not even reach the court, but a so-called 'compromise' will be found, in the sense that the police will accept some money for not registering the case..

chief began, and the witness replied to the questions that the judge put to him in Hindi, and stated that field no. 424 (where cannabis was said to have been found) was jointly owned not only by the accused but by 15 co-sharers including himself, and that he had neither sown nor seen any cannabis plants in that field.

The judge proceeded to dictate the English translation of the witness's replies to the typist, by putting them in the first person and in the form of a statement.<sup>10</sup>

Stated that I know accused present in the court. He is from my village. The *khasra* ['field'] No 424 is in possession of all the co-sharers and I am also co-sharer in that. N.S. [the accused] has not sown cannabis on *khasra* No. 424.

Immediately after recording the two statements in English, without even changing his tone of voice or expression, the Judge continued to dictate the following objection in English:

At this stage Learned Public Prosecutor [in fact, himself] has stated that witness is trying to suppress the truth. As such prayer is made to cross examine the witness, which is considered and allowed.

For the witness, who did not speak English, nothing had changed in his interaction with the judge. But the fact that he was going to be cross-examined<sup>11</sup> meant that he had to reply, from now on, to so-called 'leading questions', i.e. to questions that are not open (as in the examination-in-chief), but to which the answer can only be 'yes' or 'no'. By putting these leading questions to the witness, the judge (as prosecutor) – again in Hindi – was now trying to draw from him facts or contradictions that would support the prosecutor's case.

However, even cross-examination did not produce better results for the prosecutor's case. The witness not only explicitly denied that the accused had sown cannabis, but also maintained that neither the police nor the *patwari* had ever visited the place, and that, consequently, not a single cannabis plant had ever been destroyed in the field. He even denied that his own statement had been recorded by the police – which was again contested by the judge, who went on to dictate to the typist, again in English: "see the reference of the affidavit which is included in the file".

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<sup>10</sup> In fact, during the trial, those who were authorized to ask questions (the judge, the prosecutor and the lawyer) put them in Hindi (most of the time the witness knows only Hindi). Then, when the witness replies, his reply is simultaneously translated into English. The judge is not the only one authorized to translate. The prosecutor and the defence can do this, too. In some cases, especially during the cross-examination, there may be some tension regarding who shall be the first to dictate the translation to the typist, so as to formulate the sentence in the most convenient way possible for his/her side.

<sup>11</sup> Cross-examination is usually requested by the adverse party's lawyer; but in this case the witness was deemed to have changed his testimony in favour of the opposition.

The judge, who was quite familiar with cases of this kind, concluded the cross-examination by asking the witness, in a rather resigned and sceptical tone of voice: “Are you trying to save the accused?”. On the witness’s replying “No sir!”, he again dictated to the typist: “It is incorrect that I [the witness] am deposing falsely because of my relations with the accused.”

After two more witnesses had been heard, the Judge was now certain: all the villagers who had been called to the court as ‘prosecution witnesses’ had turned ‘hostile’ – they were now in favour of the accused.

The judge, visibly disappointed, after realizing that all the witnesses belonged to the same village, and that some of them were relatives of the accused, clearly announced that, for the time being, he did not want to hear all these hostile witnesses and listen to the same version all day long. Determined not to waste his own time, he then instructed the typist to simply make as many copies of the first statement as there were villagers scheduled for hearings, and to ask everybody to sign his/her copy and send them all home. The only exception to this quite unusual procedure was reserved for the village *pradhan* – the only one not to be a co-owner. He was not a direct relative of the accused and in the version given by the *patwari* (and which was to be confirmed afterwards by the police) he was said to have gone with the police and *patwari* to the fields. His hearing, however, did not produce any new results. The *pradhan*, who looked very much at ease in coping with the Judge,<sup>12</sup> not only confirmed the villagers’ version, but he too, skilfully gave the Judge a rather detailed account of the day the police arrived, introducing a lot of contradictions with the account given in the police report. He also told the Judge, in a convincing manner, that he had already passed regulations some time before at his *panchayat* meeting, whereby preventing villagers from cultivating cannabis, but none of them had actually been doing this anyway. Here are some passages from his statement translated from Hindi:

*Pradhan*, to the judge: “Look, Maharaja, I have been *pradhan* for twenty years and nothing like this has happened during that period. ... I have not seen anybody sowing this. *Nibhar charas* (wild *charas*) can be found everywhere in our area. It is not sown; it can be found everywhere!”<sup>13</sup>

Judge, smiling ironically: “Yes, it can be found in *Gram Panchayat* also!”.

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<sup>12</sup> He was indeed quite familiar with court proceedings and he told me that he had been summoned by the court to stand as witness a hundred times.

<sup>13</sup> By saying this, the *pradhan* was implicitly accusing the police of having collected the cannabis sample from the forest and government land, implying that it was thus wild cannabis.

At the Judge's comment everyone started laughing, including the accused. This kind of reaction happened quite commonly in the Court of Judge A.D., whose remarkable sense of humour always created a very convivial atmosphere in the court.

As for the *pradhan*, he continued his statement undisturbed.

Once I was doing forest work and met a man who asked me: "How much money do you get from this work?" I replied: "I get almost one and a half lakh of rupees." The man then asked me: "What is this all about? Start a *bhang* [cannabis] business then! I will fill your bed with money!" I swear to God, Sir, that I said neither that I wanted that bed nor that I would do such business ... I swear it! I said: "No, no. I do not want to."

Notwithstanding the *pradhan's* performance, the Judge, without even asking him anything, dictated in English to the typist who was recording the statement: "At this stage learned PP [Public Prosecutor] has stated that witness is trying to suppress the truth, as such, prayer (*sic*) is made to cross-examine the witness, which is considered and allowed."

However, during the cross-examination the *pradhan* introduced some more contradictions with both the *patwari* and the police versions, which ended in weakening the prosecutor's case even further. First, contrary to what the *patwari* had stated just before, he denied being with him and the local police when they reached the place. He averred that he had reached the fields before the *patwari*, along with the Narcotics Team, and that no cannabis plants were found there. Then he also denied that the police had recorded any witnesses' statements on the field and even that there had been any destruction of cannabis by the police – there being no cannabis there to destroy.

The judge concluded the cross-examination by dictating: "It is incorrect to suggest that I am deposing falsely in order to save the accused as a member of my *panchayat*." This is quite a common form of judicial astuteness that consists in pronouncing, on behalf of the witness, a standardized formula whose effect is often to affirm the very contrary of what is being denied!

The next day, other villagers came to the court in their role as prosecution witnesses.<sup>14</sup> Some of these were also heard, but the result was again the same: all of them were defined as 'hostile' by the judge. They all gave the same monothematic set of replies in favour of the accused, so that the defence lawyer saw no need to cross-examine them, since they had all already supported his case. In fact, the only point on which the defence lawyer wanted the

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<sup>14</sup> The witnesses who can be heard as the prosecution witnesses are those who have been registered by the police. In fact, in the common law system the court has no inquisitorial power.

witnesses to give confirmation was whether cannabis plants were growing wild everywhere in the area “by the side of road and streams and on government land”.

Indeed it was important for him that this point should figure prominently in the typewritten version of the evidence, as he wanted to use it to build his defence during the ‘arguments’:<sup>15</sup> according to him the police had completely invented the case without ever going to the fields, by collecting the cannabis samples from somewhere in the forest and getting people to sign the affidavit.

In order to support this theory, the lawyer intended to throw light during the arguments on another ‘error’ committed by the police, who, instead of making the witnesses each sign their own affidavit separately, as required by law, made them sign a ‘joint affidavit’ with the signatures of fourteen people.

Regarding the other points of his defence, everything that the prosecution witnesses had stated was quite sufficient for him. There was no need for him to call other witnesses, with the attendant risks of providing the prosecutor with the opportunity of cross-examining them and of allowing some contradictions in their testimony to emerge in his favour.

### **Village Practice and Legal Evidence**

The defence lawyer explicitly told me that, although Judge A.D. was a very severe judge –one who condemned the maximum number of people to the maximum number of years – he was almost certain that in the case of his client he would be forced to acquit him. It was not because the facts were non-existent, but because the evidence collected in the courtroom was all in his favour. Of course, he knew that the accused was cultivating cannabis plants. “We also do it in our village” – he told me – “it is not sown for commercial purposes or for making *charas*. It is sown for our domestic use.” According to him, this also explained why very simple men and women, some of whom had never been in a court, could lie so easily before the judge.

Villagers do not consider cannabis cultivation as wrongdoing (*pap*, fault). So why will these people be sent to prison? They know that, if they tell the truth, their people will be sent to prison. So that is why they help him. They help him pure of heart (*shuddh atman se*), not with the intention of carrying on their cultivation. They say that we have been sowing it for thousands of years. It is written in the record books!.

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<sup>15</sup> This is a specific phase of the trial, the date of which is fixed once the evidence is over. During the arguments, the defence and the prosecutor (or the lawyers of both parties in civil cases) will defend their respective case before the judge by exposing all the contradictions that have emerged in the evidence from the opposing side, and by using earlier records on similar cases to support their defence.

Thus from the defence lawyer's point of view the witnesses did not "turn hostile", as was stated by the judge. According to him, they had always been hostile, since they had never supported the prosecution's case. Although their signatures well and truly figured on the affidavit, he claimed that they had been forced by the police to sign it, which was what now led them to lie to the court:

I asked them: "Because of fear of the police you have signed this?" They said yes! The police are sometimes like that, they have to write their report and they have to complete their case. But in remote areas how do you manage to find people and get them to sign? The police never say what it really is. They just say that you have to sign it. It's nothing, just a formality.

The unanimity with which the villagers had given their statement inside the courtroom had been partly prepared by the defence lawyer, who, in his role of bridging the gap between the state judiciary and rural culture, had earlier discussed this with some of them in order to suggest to them the best line of conduct to take. However, such a manifestation of village solidarity in a case of this kind proves to be a well-established endogenous pattern of reaction, which is frequently reported in newspapers, as is shown by the following example:

Acting on the secret inputs, the NCB monitored the smugglers for six months and succeeded in nabbing them red-handed ... as soon as the smugglers got the hint that they had been trapped, they managed to raise four barricades by villagers on the Mandi-Khaneti road to thwart the operation against them. "The villagers came out from the hillsides, throwing boulders and stones on us, but we managed to take along the two kingpins in the wee hours of the morning and reached Mandi at 4 am" added the Police Inspector (*The Tribune*, 26 July 2005).

In June 2007, i.e. seven months after the beginning of the trial, the judge pronounced his judgment, and the accused was acquitted. In his judgment the judge underlined, on the one hand, the oversights in the police investigation (not proving that there was a land demarcation; not counting the cannabis plants and other such things); and on the other hand, the fact that neither the village president nor the village co-owners had supported the prosecution case.

The judge's conclusions were almost identical to other judgments he had previously passed about cannabis cultivation where, in these other cases too, the field of cannabis was joint property, and neither the *kanungo* nor the *tehsildar* had been called upon to proceed with land demarcation. In these other cases, too, none of the villagers summoned to court as prosecution witnesses had supported the prosecution case during the trial.



In his judgment the judge supported his decision not only by referring to the testimonies of the witnesses, who were all in favour of the accused, but by referring to “the ratio of the law”. He quoted a case of appeal before the Supreme Court:

... The observations made by the Hon’ble Apex Court which are relevant in the context of the present case as under: ‘In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant ... it is not enough that few plants were found in the property of the accused. ... If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation’ (State of Himachal Pradesh *versus* Shri Chandermani).

The judge concluded in writing that in the present case as well there was no satisfactory oral or documentary evidence to show that the accused had sown cannabis seeds over the land in his possession. With jointly-owned land and with no demarcation made by a competent official – concluded the judge in the order – the case of the prosecution “had fallen like a house of cards” (ibid.).

## **Conclusion**

This case shows the different discourses that the state and local society hold about the practice of growing cannabis in the area. The many commitments made by India over the last decades at national and international level in the field of narcotics control have led to an increase in the criminalization of a formerly widespread practice still culturally approved by some villagers, who foreground its ‘cultural’ or ‘ancestral’ value. As we have seen, the discourse about the ‘traditional’ value of cannabis in the region has to be taken as corresponding to only one side of the picture. Indeed, cannabis cultivation is now under the control of national and international dealers, who even encourage villagers to plant cannabis in fields previously reserved for ordinary crops. The domestic and traditional use of cannabis may well thus persist, but when a villager cultivates cannabis today it is also, first and foremost, to respond to a market demand. Villagers are also developing certain strategies in order to foil police raids, such as sowing cannabis on forest land instead of on private land, so that nobody can be punished (*The Tribune*, 12 Dec. 2005). Although strategies of this kind, which maintain a ‘façade of behavioural conformity’, may partly be compared to an “everyday resistance to the State” (Scott 1985),<sup>16</sup> it should also be noticed that people who are involved in cannabis trafficking fairly overlap class (as well as caste) distinctions. Poor villagers are often incited by relatively rich people, including resident foreigners, to cultivate cannabis. And local people

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<sup>16</sup> I would like to thank Niraja Gopal Jayal very much for making this point, and for the very stimulating comments she made in discussing my paper during the Delhi workshop in 2007.

who are close to the state apparatus, such as lawyers or other governmental officers, are indirectly involved to help villagers in their efforts to escape state legislation. Moreover, this hidden or ‘soft’ resistance to the state legal apparatus may, in the case of a crisis, even turn into a direct confrontation with the state’s efforts to implement legality, as in the case cited above from the newspapers about villagers’ making barricades or throwing stones at the Narcotics Team in order to prevent fugitives’ getting captured (*The Tribune*, 1 Oct. 2004).

As a matter of fact, the economic stakes behind cannabis cultivation *lead to* a form of corporatism among people sharing territorial and parental bonds. In the case presented here, this corporatism was partly the direct consequence of the rules regulating landed property. These rules, by establishing the collective responsibility of the co-sharers of the land, had indeed the implicit effect of binding them to help the accused and unanimously to keep to the same version in front of the judge.

According to the defence lawyer, these rules have been utilized in favour of the co-sharers by the local police, who deliberately introduced some errors during their investigations – such as registering the case against only one of the co-sharers – so as to hinder the proceedings at the moment of trial. In fact these errors were probably less deliberate than the lawyers thought, and were also probably due to a lack of training and to an absence of coordination among the police officers. However, the fact that the local police, owing to the multiple bonds they have with the villagers, are open to bargaining with villagers, is quite a widespread discourse among the local population. According to this discourse, whenever a so-called ‘compromise’ is found the case will not even reach the court, i.e. it will even not be registered.<sup>17</sup> By contrast, once the Chandigarh Narcotics Team has discovered a cannabis field, the local police are obliged to pursue the investigations. In the example discussed here, for example, the accused told me that he had even proposed 10,000 Rupees to the police officer posted to the headquarters of his local area, in whose hands the Narcotics Team had left the case. But the police officer replied to him that, since the Narcotics Team had been involved in the operation, the case was not under his control, and that he could not do anything for him. By contrast with the Narcotics Team, the position of local policemen is indeed quite ambiguous. As the lawyer noted, their dual role as state employees and members of the locality leads them frequently to shift between what may be defined, using Conley and O’Barr’s expressions (1998), as ‘rule-oriented’ and ‘relation-

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<sup>17</sup> See also Chaudhary (1999: 151) for the Pakistani context.

oriented' spheres of authority – on the one hand, their duty to enforce state legislation and, on the other hand, the multiple entanglements they have with villagers.

A similar opposition between state role and local commitment also comes to light by comparing the position of the land officer (*patwari*) and the village president (*pradhan*). In their cases this opposition is also intrinsically linked to the way they are officially appointed into their respective roles. The first, nominated by the State, is less likely to break the law and take the villagers' side, unless he is offered some form of compensation. The second, democratically elected, feels obliged to enter into some form of complicity with his villagers and to tell lies before the judge.

Another aspect the case highlights is the way in which the opposition between state and local society takes shape at a legal and judicial level, within a context where this interaction has to follow specific procedures and forms of reasoning. Indeed, the case illustrates the disparity between the knowledge that everybody seems to have about the facts and the legal impossibility of demonstrating them. In other words, it shows how the villagers and the court correspond to two "alternative modes of thought" (Fuller 1994: 15) within their local social context: one based on social links, loyalties, or economic interests, and the other based and relying on legal codes and judicial proceedings. This disparity appears to be evident inside the court, with the judge constantly blaming the witnesses for suppressing the truth, or refusing to waste his time by collecting their testimonies.<sup>18</sup> In spite of his efforts to prevent villagers' corporatism from affecting the trial proceedings, the court appeared to be powerless to neutralize the effect of it on its final decision. The case shows indeed, more generally, how legal processes are not 'above' the people but are embedded in the social context, and how this social context may influence the trial's outcome.

In the case discussed here, the accused's local entanglements emerged in the in-court and out-of-court version of the case as involving multiple connotations – family relations and cannabis connections for the co-sharers, economic benefits for of the police, political alliances for the *pradhan*. However, other cases could have been taken to show how these local entanglements were presented by the accused as the very reason for being involved in a false case. In one instance, a man accused of rape claimed that the case was entirely fabricated by

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<sup>18</sup> In this regard, Judge Anoussamy (2001: 77) notes that "especially in criminal cases, the elements of the file which are of legal value force him [the Judge] to pass an order acquitting the accused, in contradiction with the impression he may have obtained during the trial. The Judge, as if to excuse himself for the decision he has been obliged to take, doesn't omit to point out the lapses in preliminary investigation." Judge A.D. also told me how he spent sleepless nights after writing up judgments for cases where the legal evidence compelled him to acquit the accused in spite of his being convinced of their guilt.

his fellow villagers, who blamed him for cultivating some woodland for his personal use. In another case, a man involved in a case of theft saw the accusations as being exclusively due to a long-standing political opposition between two factions within the village. Unlike the cannabis case discussed here, where the villagers' corporatism made the judge powerless, in the cases just mentioned villagers' rivalry and economic competition was presented as being a source of enmity in the face of which the accused felt helpless. Although the claim of a 'conspiracy' may be part of the defence strategy, some lawsuits tried in court as criminal cases may eventually prove to stem from politically or economically based village tensions, showing the extent to which the court, by the use of its specific procedures and in spite of its efforts towards neutrality, may provide an arena for expressing the various outcomes of local belonging.

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