CONTAMINATED LEGACIES
A Critical Review of Himachal Pradesh's Municipal Solid Waste Crisis and the Emerging Judicial Response

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The North Western Himalayan State of Himachal Pradesh falls in the bottom five states with the least per capita production of waste per day and yet, solid waste pollution has assumed crisis proportions as one of the most visible environmental issues here, as found in the large urban centres and metropolitan cities of the country. For the last few years, the Shimla High Court, apart from the National Green Tribunal ('NGT'), has rigorously monitored waste management compliance and other related environmental matters in Himachal with regular summoning of officials and detailed directives. However, a close perusal of the court proceedings points to a fragmented urban governance and environment regulatory regime which is an issue across the country. Further, what is of even greater concern is the technocratic judicial overreach and solutionism on the one hand and the non-redressed procedural lapses and environmental injustices, on the other. This article brings forth the impacts and responses of marginalised inhabitants situated in peri-urban sites of municipal waste disposal where land use contestations have evidently emerged and yet been sidelined in the dominant solid waste discourse. The article specifically critiques, from a political ecology lens, the judiciary's de-prioritisation as well as de-politicisation of the fundamental resource contestations in Himachal Pradesh and around spaces of waste disposal.

I. Introduction

Himachal Pradesh falls in the bottom five states in India with the least per capita production of solid waste per day (below 50 gms/day).[1] The North

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Western Himalayan State is also the least urbanised in the country, with only 10.03% of its residents living in towns and cities, that too in much lower spatial densities compared to other urban areas.[2] A predominantly nature and land-dependent rural economy evidently generates more organic materials (not characterised as 'waste') compared to the toxic non-biodegradable waste of the urban.[3] In such economies, even in peri-urban ones, as studies from the country and Global South indicate,[4] decentralised household-level resource reuse of organic waste in the farm is common. Yet today, solid waste pollution has assumed 'crisis' proportions as an environmental issue in mountain States like Himachal, as well as in the large urban centres and metropolitan cities of the country.[5] The large-scale open dumping and burning of growing mounds of plastics along hill slopes and riversides (contaminating forests and rivers) are amongst the most spotlighted and visibilised impacts.[6] As seen across the country, here too, the environmental and public health implications of the mounting 'garbage problem' have attracted the ire of urban middle-class citizenry, media and more so, the courts.[7]

The Indian judiciary has been at the forefront of "environmental activism",[8] especially on the issue of solid waste management ('SWM'). Courts are seen to be playing a pivotal role, which began with the framing of the first Municipal Solid Wastes ('MSW') Rules in 2000, born out of a public interest litigation ('PIL') at the Supreme Court of India.[9] Over the past decade, the Swachh Bharat Abhiyan[10] and Smart Cities Mission of the Central Government have simultaneously

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to mountain communities on environmental crises and conflicts. She would like to acknowledge Astha Rath and Garima Thakur for providing research support for this journal piece.

1 Central Pollution Control Board, Delhi, 'Annual Report 2020-21 on Implementation of Solid Waste Management Rules, 2016' (2022) 296-297, 435 <https://cpcb.nic.in/uploads/MSW/MSW_AnnualReport_2020-21.pdf> accessed 24 November 2024.

2 Ridima Sharma, Sakshi Tanwar and Safder Rizvi, 'Growth of Urbanization in Himachal Pradesh: A Statistical Analysis' (2018) 7 IJET 39, 40.

3 Hassan Taghipour and others, 'Characterizing and Quantifying Solid Waste of Rural Communities' (2016) 18 J Mater Cycles Waste Manag 790.

4 Pascale Hofmann, 'Wasted Waste — Disappearing Reuse at the Peri-Urban Interface' (2013) 31 Environmental Science & Policy 13.

5 Aman Thakur and others, 'Solid Waste Management in Indian Himalayan Region: Current Scenario, Resource Recovery, and Way Forward for Sustainable Development' (2021) 9 Frontiers in Energy Research 1.

6 Björn Alfthan and others, 'Waste Management Outlook for Mountain Regions' (2016) Waste Management and Research <http://www.grida.no/publications/157> accessed 24 November 2024.

7 Vinay Gidwani, 'The Work of Waste: Inside India's Infra-Economy' (2015) 40 Transactions of the Institute of British Geographers 575.

8 S Kumar and others, 'Environmental Rule of Law — First Global Report' (2019), <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf> accessed 24 November 2024.

9 Neha Goel Tripathi, 'Proactive Role of Judiciary for Improving Solid Waste Management in India' (2020) 19 HUDCO-Shelter 40.

10 Ministry of Housing and Urban Affairs, Government of India, *Swachh Bharat Mission Urban* <https://sbmurban.org/> accessed 24 November 2024.

propelled corporate-led 'Integrated Solid Waste Management' ('ISWM')[11] as a significant strategy of urban governance policies and functions. This includes detailed guidelines for segregation, collection, and disposal followed by modern technology-led composting, recycling, incineration, and/or sanitary landfilling, all considered as responsibilities of urban local bodies under the law.[12] The judiciary (High Courts and the National Green Tribunal) have also been pushing the urban machinery towards evolving systems for waste management in accordance with these policies. For the last few years, the Shimla High Court (apart from the National Green Tribunal ('NGT'))[13] has been rigorously monitoring waste management compliance and other related environmental matters in Himachal with regular summoning of officials and detailed directives for delays in putting in place the necessary waste handling infrastructures.[14]

The issue of 'illegal and unscientific dumping' waste was prevalent in a 2021 CAG Audit report, according to which, 'joint physical inspections and compliance audits of 16 ULBs had shown that 2.28 lakh MT of waste was lying at these dump sites. Most of these were located near water bodies, or highways and habitations on 'government land'.[15] A closer examination of the disputes and objections placed before the High Court underlines that fundamental to the waste problem are contestations over open dumping on the one hand, and the siting and transfer of land for centralised waste disposal, on the other. A High Court instituted committee submitted to the court that,

> "*…out of the 61 ULBs in the state, 8 ULBs have no adequate site available for setting up the waste processing facility. In 12 Urban Local*

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[11] Integrated Command and Control Centre, Ministry of Housing and Urban Affairs, Government of India, *Water Sanitation and Hygiene (WASH)* <https://iccc.smartcities.gov.in/iccc/sector/use-case/7bfc85cod74ff05806e0b5a0fa0c1df1> accessed 24 November 2024.

[12] CPHEEO, *Municipal Solid Waste Management Manual Part II* (2016) Ministry of Urban Development 1, <http://cpheeo.gov.in/upload/uploadfiles/files/Part2.pdf> accessed 24 November 2024.

[13] Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues NGT (2018); OA 278 NGT 1 (2022); Compliance/Status Report on behalf of Respondent & Executive officer Municipal Council Manali, M.A. No. 79/2023 in Original Application No. 758/2022 NGT, 00 18; NGT, 18.04.2024 OA 606/2018 1 (2024).

[14] Anand Bodh, 'NGT Summons Himachal Pradesh Officials over Municipal Waste Disposal amid Environmental Concerns' *The Times of India* (Shimla, 5 November 2023) <https://timesofindia.indiatimes.com/city/shimla/ngt-summons-himachal-pradesh-officials-over-municipal-waste-disposal-amid-environmental-concerns/articleshow/104988785.cms> accessed 24 November 2024; Deven Khanna, 'High Court of Himachal Pradesh Orders Stringent Implementation of Solid Waste Management Laws' *Law Umbrella* (2023) <https://lawumbrella.org/2023/11/26/high-court-of-himachal-pradesh-orders-stringent-implementation-of-solid-waste-management-laws/> accessed 24 November 2024.

[15] Himachal Pradesh & CAG, SWM Performance Audit, (2021), 41-43 <https://cag.gov.in/uploads/download_audit_report/2021/Report%2520No.%25202%25200f%25202021_N-PSUs%25202018-19_English-061164670ed24b6.45465549.pdf> accessed 24 November 2024.

> *Bodies, site for waste processing facility is available with Urban Local Bodies/ Department of Urban Development, however processing facility has not been set up due to local agitation, forest clearance, geographical issues etc*".[16]

In the court's responses in the form of orders, as well as the responses of the ULBs and the minutes of committee meetings, however, we find little attempt to address these challenges around land and siting in view of the procedures and guidelines under various regulatory laws. Rather, the 'identification' and 'transfer of land' including getting the 'NOCs' from the affected village councils are framed as infrastructural hurdles that need prompt target-oriented administrative action.

Research and activism in the field of environmental justice,[17] political ecology,[18] and critical geography have highlighted the diverse contours of the conflicts around waste disposal siting.[19] The key contentions are around land use change and connected impacts on place-based socio-ecological relationships, the core-periphery or urban-rural power imbalances in the transfer of environmental costs to marginalised populations as well as the reproduction of embedded caste and class inequities and injustices. Further, critical legal studies have problematised the judicialisation of urban environmental governance, wherein courts also bring their inherent elite bias in deciding what gains priority in matters like 'waste pollution', which assume crisis proportions while structural and environmental injustices entrenched in state and market policies are relegated to the sidelines.[20] In the following section of this paper, the author applies these frameworks to understand the 'non-availability' of land for waste disposal as a land use or ecological distribution conflict in the mountain state of Himachal. The third section highlights the dynamics in different peri-urban sites of municipal waste disposal, where these ecological distributions have emerged with a focus on a dispute raised by a Gujjar

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[16] *Suleman v. Union of India*, Himachal Pradesh High Court, CWP No. 2369 of 2018 ('*Suleman v. Union of India* 1'); *Suleman v. Union of India* CWP No. 2369 of 2018 a/w CWP No.1074 of 2019, CWPIL No. 32 & 42 of 2021, CWP No.3334 of 2021 and CWPIL No. 4 of 2022 and CWP No.3511 of 2022, Himachal Pradesh High Court (26 December 2022).

[17] Robert D Bullard, 'Environmental Justice: It's More Than Waste Facility Siting' (1996) 28 Social Science Quarterly 51.

[18] Joan Martinez-Alier, 'Social Metabolism, Ecological Distribution Conflicts, and Languages of Valuation' (2009) 20 Capitalism Nature Socialism 58.

[19] Moses Mosonsieyiri Kansanga and others, 'Of Waste Facility Siting and Relational Geographies of Place: Peri-Urban Landfills, Community Resistance and the Politics of Land Control in Ghana' (2020) 96 Land Use Policy 104674 <https://doi.org/10.1016/j.landusepol.2020.104674> accesed 24 November 2024.

[20] Anuj Bhuwania, 'The Case that Felled a City: Examining the Politics of Indian Public Interest Litigation through One Case' (2018) 17 South Asia Multidisciplinary Academic Journal; Manoj Mate, 'The Rise of Judicial Governance in the Supreme of Court of India' (2015) 33 Boston University Internationl Law Journal 169; Asif Mehmood & Joshua J. Cousins, 'Judicialising Urban Political Ecologies: Post-Politics and Environmental Governance in South Asia' (2022) 54 Antipode 1944.

family in Baddi, which led to the *Suleman v. Union of India* case in the Himachal High Court. In the discussion, the author questions the non-redressal of basic procedural rights and constitutional injustices in court cases and critiques judicial solutionism promoting techno-managerial centralised interventions while condoning or even contributing to the state and market-led excesses of accumulation by dispossession and contamination.[21]

II. Solid Waste as an Environmental Conflict in a Himalayan Commodity Frontier

Altitudinal and topographical variations are the defining characteristics of mountains. In the Himalayas, the geological complexity and ecological diversity have historically impacted livelihood and cultural practices, which, in turn, have defined the natural environment. Agro-pastoralism, trade, and forestry-based mountain economies were integral to ever-evolving socio-ecological connections. The emerging patterns of land use were, in the colonial and post-independence periods, superimposed with a legal land classification under the State's revenue and forest governance. In Himachal Pradesh, only 10% of the total geographical area came under private ownership for agricultural and habitation purposes, while nearly a 2/3rd. was classified as 'forest land' under the jurisdiction of the forest department.[22] These lands comprise not just trees but also the non-forested commons - grasslands, pastures, and riverside floodplains. Even today, livestock rearers and pastoralists, including Gaddis, Gujjars, landless Dalits, and marginal landholders, depend on the crucial ecosystem services from these lands. This also indicates that the revenue department is left with a fraction of the land for commercial purposes while the 'forest lands' which form the 'commons', become a contested landscape with competing interests and claims.

State-led modernisation and neoliberal development agendas have led to sociocultural shifts and disrupted mountain metabolisms,[23] giving impetus to resource commodification and thus dispossession of diverse customary uses, as seen across the Himalayan frontiers.[24] Himachal Pradesh, for instance, witnessed

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[21] Federico Demaria, *The Political Ecology of Informal Waste Recyclers in India: Circular Economy, Green Jobs, and Poverty* (OUP 2023).

[22] Government of Himachal Pradesh, Policy on Development of Eco-Tourism in Himachal Pradesh, Forest Manual Volume-I (2015), 761 <https://hpforest.gov.in/storage/files/4/pdf/Forest%20Manual%20%20Volume%20I.pdf> accessed 24 November 2024.

[23] Marta Dinarès, 'Urban Metabolism: A Review of Recent Literature on the Subject — (Metabolisme Urbà: Una Revisió De La Literatura Recent Sobre El Tema)' (2014) 60 Doc. d'Anàlisi Geogràfica 551; Martinez-Alier (n 18). (Refers to the 'flow of energy and materials in a socio-economic system').

[24] Rune Bennike, 'Frontier Commodification: Governing Land, Labour and Leisure in Darjeeling, India' (2017) 40 South Asia Journal of South Asian Studies 256. (Shimla, Dalhousie, and many other parts of Himachal are, like Darjeeling typical examples of hill stations — summer escapes of the imperial rulers — which then got converted into tourist zones with their colonial heritage

a rapid drop in the contribution of the primary sector to the state's economy from 35% in 1990-91 to 13.4% in 2021-22.[25] The last two decades have seen the emergence of commercial urbanised hotspots with rising incomes from cash cropping, burgeoning tourism, and associated infrastructures in the hills of Shimla, Manali, Dalhousie, and Dharamsala.[26] Industrial townships have taken root in the *terai* or foothills of Baddi-Barotiwala-Nalagarh, Parwanoo, and Paonta Sahib.[27] Spatio-temporal analysis of Himachal's urbanisation post-independence indicates that the emergence of towns and cities in the state has largely been the result of administrative exigencies starting from colonial times, industrial settlement,[28] and now infrastructure expansion for tourism.[29] These developments, specifically the rapid rise in the tourist footfall from around 520,000 in 2001 to 9.7 million in 2008 to 15 million last year, can be seen as a key driver of solid waste pollution.[30] The seasonal fluctuation in the volumes and composition of waste in the tourist hotspots like Manali and Shimla is another indicator of the same.[31]

Incomes from cash cropping and the provision of robust welfare services, however, have led to affluence and mobility across the board, blurring the rural-urban binary in many areas.[32] With the adoption of market-based lifestyles, the over-all consumption of non-biodegradable material has risen. However, social metabolism of mountain towns and their peripheries is distinct from even

intact. The British brought, for the first time, a system of commodification and codification of resources to the hills which were, till the arrival of the empire, inaccessible regions as there were no motorable roads. In the abstract, the author says, "Darjeeling is part of a wide array of frontier places that are increasingly incorporated into the circuits of global capitalism").

25 Economic & Statistics Department, Government of Himachal Pradesh, 'District Good Governance Index 2022', 4 (2022) <https://himachalservices.nic.in/economics/pdf/DGGI_2022.pdf> accessed 24 November 2024.

26 GBPI-NIHE, 'Environmental Assessment of Tourism in the Indian Himalayan Region' 1 (2022) <http://www.indiaenvironmentportal.org.in/files/file/tourism-environmental-assessment-Himalayan-region-report-NGT-June2022.pdf> accessed 24 November 2024; Rohit Negi, Kesang Thakur & Syed Shoaib Ali, 'Contoured Urbanism: People, Property and Infrastructures in the Indian Himalayas' (2016) 1 Urbanisation 134 ; Sharma, Tanwar and Rizvi (n 2).

27 Himdhara Environment Research and Action Collective, *People's Public Hearing on Industrial Pollution in BBN* (2014) <https://www.himdhara.org/wp-content/uploads/2017/11/BBN-PH-Report-5th-June-2014.pdf> accessed 24 November 2024.

28 Sharma, Tanwar, and Rizvi (n 2).

29 Jagdish C Kuniyal, Arun P Jain and Ardhendu S Shannigrahi, 'Environmental Impacts of Tourism in Kullu-Manali Complex in North Western Himalaya, India. Part 1: The Adverse Impacts' (2003) 1 International Journal of Fieldwork Studies.

30 GBPI-NIHE (n 26); Department of Tourism, Himachal Pradesh, Tourist Arrivals — Annual 2008 to 2022 (2022) <https://himachaltourism.gov.in/wp-content/uploads/2023/03/Tourist-Statistics.pdf> accessed 24 November 2024 .

31 Suresh Sharma, 'In Himachal Pradesh, Lockdown keeps out 3,000 tonnes of "Tourist Trash"' *The Times of India* (Shimla, 6 June 2022) <https://timesofindia.indiatimes.com/city/shimla/in-himachal-lockdown-keeps-out-3k-tonnes-of-tourist-trash/articleshow/76225480.cms> accessed 24 November 2024.

32 Negi, Thakur, and Ali (n 26).

peri-urban (outer edges of the city)[33] or rural regions of the plains and flatlands. So, in the hills, while there may have been alienation from the commons owing to emerging urban dependence, these still are the sources of ecosystem services like water or fuel in the peri-urban interface. Here, plastic trash is a problem dealt with by household level burning (though recognised as toxic) while biodegradable waste still finds its way into the vegetable patch.

The total municipal waste generated today from the state is at 375 tonnes per day ('TPD').[34] In the last two decades, many regions of Himachal have seen varied 'ecological distribution conflicts'[35] as an outcome of these extractive and consumptive development trajectories.[36] While protective legislations have ensured land sale-purchase and forest diversion to 'developmental' works were regulated to avoid land speculation and massive deforestation, multi-layered environmental or ecological distribution conflicts were emerging in the process of state policy-making around development and natural resource management, and the contradictions therein.[37]

Take, for instance, the case of grazing lands appearing in the legal records as 'shamlaat' (Panchayat commons), 'gair mumkin charagah' (uncultivable pasture lands), 'charagah bill darakhtan' (pastures/scrubs bereft of trees) which are all classified as 'forests'. The Himachal government, through a notification in 1952, had categorised these 'waste lands' in the state as 'forest land' under state forest department ownership.[38] Post 1980, these along with protected and reserved forests could be diverted for 'non-forest' purposes only through a tedious process of central government permissions under the Forest Conservation Act 1980 ('FCA 1980').[39] The entire forest clearance process under the FCA 1980 for the diversion of forest land is ridden with contradictions. While large development and infrastructure projects are unquestionable and pushed by the State and Centre, cases of village welfare works have remained pending for years.[40] Many of these lands are

[33] Ashish Prabhakar, 'Power in the Periphery: Waste Conflict and Resistance in Periurban Kerala' 4 (2022) <https://metropolitics.org/Power-in-the-Periphery-Waste-Conflict-and-Resistance-in-Periurban-Kerala.html> accesed 24 November 2024.

[34] NGT, OA 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues (18 April 2024) ¶3.

[35] *See* Martinez-Alier (n 18).

[36] EJAtlas, Environmental Justice Atlas, Environmental Justice in Himachal Pradesh, India (2015) <https://www.cevreadaleti.org/featured/himachal_pradesh> accessed 24 November 2024.

[37] Hemant K Gupta and A K Gulati, 'Conflicting Policy, Institutional and Legal Framework for Natural Resource Management in the North West Himalayas, India, 1 <https://ecoinsee.org/conference/conf_papers/conf_paper_121.pdf> accessed 24 November 2024.

[38] Forest Department, Government of Himachal Pradesh, Notification No. Ft. 29-241-BB/49 (Shimla, 25 February 1952) in Forest Manual Volume-I (Acts & Rules) 109 <https://hpforest.gov.in/storage/files/4/pdf/Forest%20Manual%20%20Volume%20I.pdf> accessed 24 November 2024.

[39] Forest (Conservation) Act 1980, §2.

[40] Himdhara Environment Research and Action Collective, *Missing the Forest for the Trees*, Report (2019).

also under cultivation or habitational occupations of right-holders, mostly landless Dalits and tribals, characterised as 'encroachment' in courts with the imminent threat of eviction.[41] A combination of state and central forest conservation laws, including judicial fiats,[42] have made land a contentious subject in Himachal Pradesh on several fronts.[43] Additionally, the question of local consent during forest diversion gets compromised in development policies including urban expansion, while community use is adversely impacted, restricted, and monitored.[44]

Providing legal forest land tenure to communities, the Scheduled Tribes and Other Forest Dwelling (Recognition of Forest Rights) Act 2006 ('FRA')[45] recognises both community and individual bona fide customary use (§3(1)) as well as governance rights (§5) on all types of forest land (§2(d)). A number of village councils or gram sabhas have invoked the FRA provisions to deny consent for forest land transfer for waste dumping and siting of disposal facilities either to protect their grazing lands or because of the pollution hazards.[46] Given that many of the 'wastelands' (about 20% of the total geographical area)[47] are also potential lands for other developmental activities as well as for carrying out plantations, even the forest department is restrictive about diversion.[48]

While these contradictions remain unaddressed, the climate crisis and extreme as well as slow onset of events turning into disasters have further compounded resource conflicts as holdings are lost to floods and landslides and the issue of land availability for rehabilitation looms large.[49] The 'apocalyptic' framings of Himalayan disasters and climatic concerns in the media call for imme-

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41 IANS, 'Himachal Pradesh High Court Seeks Report on Encroachments on Govt Lands' The Hans India (Shimla, 28 July 2021) <https://www.thehansindia.com/news/national/himachal-pradesh-high-court-seeks-report-on-encroachments-on-govt-lands-698545> accessed 24 November 2024.

42 Naveen Thayyil, 'Judicial Fiats and Contemporary Enclosures' (2009) 7 Conservation and Society 268.

43 Sanjay Upadhyay, 'Legal Issues arising out of the 1952 Notification — Waste Land or Forest Land – The Implications on Development Projects in Himachal Pradesh for the Government of Himachal Pradesh Prepared by Environics for NLTA' (2006) <https://environicsindia.in/wp-content/uploads/2016/03/ThematicPaperIVNLTAHP.pdf> accessed 24 November 2024.

44 Sumit Mahar and Asher, Manshi, 'A Silent Betrayal — Frontline' *Frontline Magazine* (2019) <https://frontline.thehindu.com/social-issues/article29506771.ece> accessed 24 November 2024.

45 Scheduled Tribes and Other Traditional Forest Dwelling (Recognition of Forest Rights) Act 2006, §1.

46 Id., §2(g).

47 G P Obi Reddy, 'Degraded and Wastelands of India, Status and Spatial Distribution' (2010) Indian Council of Agricultural Research, New Delhi.

48 Ishan Kukreti, 'Himachal Pradesh's Decision to Put Wasteland in Land Bank Undermines FRA' Down to Earth (21 November 2018) <https://www.downtoearth.org.in/news/forests/himachal-pradesh-s-decision-to-put-wasteland-in-land-bank-undermines-fra-62205> accessed 24 November 2024.

49 Himdhara Collective, 'आपदा त्रस्त हिमाचल में पुनर्वास का सवाल | Question of Rehabilitation in Disaster Affected Himachal' (YouTube, 5 September 2023) <https://www.youtube.com/watch?v=X82E3Za-ICkA&t=37s> accessed 24 November 2024.

diate and often short-term solutions to complex environmental questions with political legacies. Thus, the present-day 'ecological distribution conflicts' in the Himalayan 'commodity frontier'[50] are multi-dimensional in both material and discursive realities. The problem of waste is one such conflict replete with questions of who is responsible for waste pollution, whose land and livelihood bears the costs of the contamination caused by the processes of handling and management and where 'waste disposal' fits into the priorities of land use regimes amidst existing socio-ecological crises in the Himalayan landscape.

III. Environmental Injustice and The 'Wasted' Commons

The industrial cluster of Baddi, Barotiwala, and Nalagarh in the Solan district of the state became home to close to 5,000, mostly pharma, plastic, and aromatic manufacturing units post the central subsidy package granted in 2003.[51] The rising levels of toxicity in the air, water, and soil of these areas are produced through industrial processes generating hazardous substances to which, municipal solid waste from the urban sprawl is only an additional challenge. For the last eight years, Suleman and nearly thirty members of his joint family, of the Gujjar pastoral tribe, have been living in front of an ever-expanding sea of rubbish emanating unbearable stench. "Our traditional route of migratory seasonal grazing extended from Rampur in Shimla District to neighbouring Punjab, but in the year 2000, we settled in Kenduwal", informs Suleman. His family bought 3 bighas 2 biswa (.0302 ha) of land from three different owners on the banks of the Sirsa. Industrial expansion was on the cards in this area which was then an agricultural belt. The opportunity to sell milk and ghee at profitable rates was what led to Suleman's family moving to Kenduwal. Before the Baddi Barotiwala Nalagarh Development Authority ('BBNDA')[52] earmarked 2.42 ha. in Kenduwal for disposal of MSW, the land on the banks of the Sirsa river was open for grazing and helped sustain Suleman's buffaloes and cattle in the village.[53] In 2015, the Ministry of Environment, Forests and Climate Change ('MoEF & CC') accorded an environmental clearance for the setting up of a forty TPD 'Integrated Municipal Solid Waste Management ('ISWM')' facility to cater to two major urban settlements, Baddi Municipal Council, Nalagarh Council, and 41 other Gram Panchayats.[54] The ISWM project involved collection, transportation, segregation, processing, composting, and recycling of waste. The project was permitted

[50] *See* Martinez-Alier (n 18).

[51] Himdhara Environment Research and Action Collective (n 27).

[52] Baddi Barotiwal Nalagarh Development Authority, 'About Us' <https://bbnda.hp.gov.in/AboutUs.aspx> accessed 24 November 2024.

[53] Ministry of Environment, Forests & Climate Change, Notification No. F.No.10-32/2012-IA.III (13 August 2015) <https://bbnda.hp.gov.in/EC_13Aug2015.pdf> accessed 24 November 2024.

[54] Id.

to be sited there despite the proximity to habitation and the Sirsa river.[55] A common effluent treatment plant for industrial liquid waste from polluting factories in the region was also located adjacent to this proposed site. The issue of proximity to the river was raised by members of the Expert Appraisal Committee of the Environment Ministry at the time of clearance and the site was shifted 100 metres off the riverside towards the Gujjar settlement, but still on the floodplain. However, the project's Environment Impact Assessment did not identify this as an affected settlement or assess the potential health and livelihood impacts on the livestock-rearing family and the need for their rehabilitation.[56]

Over the next three years, as per records of the BBNDA, 'about 500 MT of waste was already dumped on the site',[57] without as much as a trace of a disposal facility. The severe foul smell became a public nuisance for surrounding villages but it was Suleman and his family who mainly bore the brunt since the path they used for commuting got blocked by the dumping ground. A compliance monitoring report of the MoEF & CC Regional Office dated 25 April 2017 put on record violations of nearly all the environment clearance conditions along with the fact that "no significant work [was found] undertaken yet".[58] The project site was found being used as a landfill without obtaining Consent to Establish and without adequate environment protection measures. The report recommended suspension of the dumping until consent was obtained from the regional Pollution Control Board but the recommendations of the report were not adhered to and the MC Baddi continued the open dumping of waste in the area.[59]

During the monsoons of 2018, when the river was in spate, it breached through the dump. On grounds of the faulty siting of the solid waste dumping site and the adverse environmental impacts, Suleman approached the Shimla High Court asking for relief for relocating the dumping site.[60] The petitioner in the case had also prayed for compensation for the severe loss and inconvenience caused to him and his family as a result of the dumping. While the court ordered an immediate halt on the dumping until full compliance, the authorities kept disposing the garbage here while also attempting to bury the dump in mud and soil.[61] At the same time, the BBNDA alleged in court the following,

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55 M/s. Ramky Enviro Engineers. Ltd, 'Environmental Impact Assessment Report ISWM, Baddi', (2012), <https://hppcb.nic.in/BBNDA.pdf.> accessed 24 November 2024.

56 ibid.

57 Minutes of Pre-Bid Meeting under the Chairmanship of Shri K. C. Chaman, CEO BBNDA, 23 February 2018.

58 Bhawna Singh, Compliance Monitoring Report, ISWM Kenduwal, Baddi (2017), Ministry of Environment, Forest and Climate Change (The author obtained the Report through RTI in 2018).

59 ibid.

60 *Suleman v. Union of India* 1 (n 16).

61 Application filed by interveners in the case in the order of vide order of the day in CMP No.4182/2022, 28.

> *"As per the demarcation report submitted by the Revenue authorities on dated 05/11/2018 the petitioner has no land on his name. The land is in the name of Shakina who is mother of the petitioner and she has encroached 1 bigha 19 hiswas of the laud chunk, allotted by the Govt. of HP for the Municipal Solid Waste Management Project. The intention of the petitioner appears to grab the land earmarked for the Municipal Solid Waste Management Plant by raising various allegations. That is why he has filed petition in the High Court in order to divert the attention of Govt. from his encroached land".*[62]

The BBNDA, in November 2018, had accorded the contract for setting up the ISWM at Kenduwal to a firm named JBR technologies, Ludhiana[63] and later sent a notice to Suleman to vacate the Shamlaat land earmarked for the ISWM project within one week, alleging that he was an 'encroacher'. The authorities tried to mislead the court as they did not mention that an additional 3.2 bigha of land was in possession of Suleman's family in his mother's name. Suleman, citing the provisions (§3(1) and §4(5)) of the Forest Rights Act 2006, had responded to BBNDA's notice, stating that he was the rightful claimant as a member of the Scheduled Tribe community, to the additional 1.02 bigha of Shamlaat land where he had set up his cattle shed. Further, no consent being taken from him for the diversion of the said land in his occupation was a matter that remained unaddressed and he was coerced and intimidated to give up the land under the cattle shed. The court then permitted the petitioner to approach the Deputy Commissioner in Solan with a request for relocation of his habitation and allotment of land,[64] while the BBNDA was asked to show compliance before dumping further waste.

In the absence of legally binding orders on rehabilitation and the impact of the continued dumping on the petitioner, the process of identification of land for rehabilitation was carried out by the administration in a half-hearted manner with poor follow-up. No suitable rehabilitation site could be identified in the industrial area where most land, not already in use, has been leased out for commercial purposes. Suleman refused to accept one identified piece which was prone to flood inundation in the monsoons.[65] "*Hum logon ko kaun basana chahta hai – aaj kal to panchayat wale bhi nahin dena chahte jameen (Who will accept people like*

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[62] Affidavit filed by the BBNDA in court on 26 November 2018, 7, Point 9. The same was filed again on 20 June 2019. (The author received the soft copy of the document through her lawyer).

[63] JBR Technologies Ltd., 'About JBR' <https://jbrtechnologies.org/about-jbr/> accessed 24 November 2024.

[64] *Suleman v. Union of India*, CWP 2369 of 2018, Point 4, Himachal Pradesh High Court (21 November 2019). <https://highcourt.hp.gov.in/viewojpdf/view.php?path=2018&nc=null&fname=200100023692018_12.pdf&smflag=N> accessed 24 November 2024.

[65] Letter No. Acctts. (LFA) CWP No. 2369/2018- 1108, from the Office of the Deputy Commissioner, Solan District, Himachal Pradesh to The Advocate General, State of Himachal Pradesh, dated 18 December 2019.

us – these days panchayats do not want to give us land)", Suleman apprehends given his minority status and the treatment he has received within the course of his struggle. "Even powerful representatives of the Panchayat who made a noise about the foul odour from the plant in the initial years, settled for petty contracts, and withdrew from extending support to the court case", he adds.[66]

In December 2019, the High Court (along the lines of the NGT)[67] ordered for the setting up of a State-level committee to monitor compliance with the SWMR 2016 in the entire Himachal Pradesh[68] and later in 2022 went on to club a series of SW matters pending in front of the court.[69] From here on the High Court focused on the compliance of SWMR's implementation – a task that was already undertaken by the NGT - while the petitioner Suleman and his family continued to await relief in the form of rehabilitation.

Today, Kenduwal has a waste facility with a shed without walls, noisy trommel machines,[70] conveyor belts, and dumpers tipping mixed waste from more areas than part of the original project plan. Mounds of legacy waste[71] have piled up extending beyond the boundary of the plant. Leachate (i.e. water that has percolated through a solid) flows out from the unmanaged and untreated garbage heaps on which Suleman's cattle are perched, munching away at the junk. The absence of proper entry and exit continues to hinder the right of way for Suleman's family and there is still no official impact assessment of the waste facility on them.[72] In 2023, the High Court finally ordered a site inspection to be carried out to check compliance with the EC conditions of the ISWM. The Site inspection team identified nine non-compliances. To the violation of the condition of regular compliance monitoring by the Himachal Pradesh Pollution Control Board and the MoEF&CC, the court committee recommended 'self-monitoring' by JBR technologies.[73] JBR Technologies in 2021 had submitted

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66 Manshi Asher, *Independent Fact Finding Report*, Himdhara Collective (2023).

67 The NGT in the matter of Compliance of Solid Waste (Management) Rules 2016, in OA No 606 of 2018 has passed dated 31 August 2019 constituting an Apex Monitoring Committee, Regional Monitoring Committees and State Level Committees to oversee the implementation of the SWM Rules 2016. The GoFIP has constituted District Level Special Task Force for the Implementation of the SWM Rules 2016 and a monthly meeting to monitor the implementation of the same has been ordered.

68 *Suleman v. Union of India*, CWP No. 2369/2018, para (iii), Himachal Pradesh High Court (16 December 2019).

69 *Suleman v. Union of India* (26 December 2022) (n 16).

70 A trommel is a rotating circular mesh drum that can sort materials based on their size. It is used in waste management plants.

71 Solid Waste (SW) that has been collected and kept for years on some barren land or landfill for long periods of time.

72 Asher (n 65).

73 Status report of Joint Committee based on site inspection dated 19 October and 9 November 2023, Point 32, 11-12, placed in Court in *Suleman v. Union of India* CWP 2369/2018.

a proposal to the MoEF&CC to enhance the capacity of the existing facility to 150 TPD (about 3.5 times the existing capacity).[74]

In *Suleman v. Union of India*, the court prioritised making the 'illegal' ISWM compliant and functional, whereas the original prayer was for relocation of the landfill site and compensation to the petitioner, on the grounds of procedural lapses and violations of siting guidelines and compliance conditions under the Environment Protection Act, 1972 and Solid Waste Management Rules 2016 among others. Further, expansion of the plant will only mean further distress for the petitioner, an issue that warranted immediate judicial action but has been set aside in the quest for efficient solid waste management.

IV. Judicial Solutionism – Does it Work?

Before the MSW (Management and Handling) Rules, 2000 and SWMR, 2016 based on which the the Himachal Pradesh MSW Management Strategy and Action Plans were formulated – centralised solid waste processing was not a strategy and neither an issue of concern in this largely rural state. In the 1990s, the number of ULBs was less than half of the total today.[75] As tourism and urban growth gained momentum, two pieces of state legislations that attempted to address solid waste included the Himachal Pradesh Municipal Corporation Act, 1994[76] and the Himachal Pradesh Non-biodegradable Garbage (Control) Act, 1995.[77] It is under the second statute that the state government passed a series of notifications and orders starting in 1998 prohibiting the use and disposal of polythene, and single-use plastic by consumers, traders, and retailers in the state. The ban on storing, supplying, and selling plastic-packed items on traders, retailers, and vendors in the State could not be enforced since the Supreme Court imposed a stay on the said notification in SLP No. 1152/2014 filed by Industrial Associations.[78] While the new laws may be lauded for making SWM more robust, with institutional, consumer, and producer accountability provisions, on the ground, the ULBs remain incapacitated in handling the problem. In the official affidavits and responses filed before the NGT and the High Court (*Suleman v. Union of India and others*), there is a claim of 90% waste processing.[79] According

[74] Integrated Municipal Solid Waste Management Project by M/s J.B.R. Environment Technologies (Baddi) Private Limited, Brief Summary of Project, 2 <https://environmentclearance.nic.in/auth/FORM_A_PDF.aspx?cat_id=IA/HP/MIS/222625/2021&pid=found> accessed 24 November 2024.

[75] Urban Development Department, 'Population, Area and Constitution of Urban Local Bodies' 11 (2020) <https://ud.hp.gov.in/sites/default/files/POPULATION 2011/DATE OF FORMATION AREA population 61 ULBs.pdf> accessed 24 November 2024.

[76] Himachal Pradesh Municipal Corporation Act 1994.

[77] Himachal Pradesh Non-biodegradable Garbage (Control) Act 1995.

[78] Response on behalf of HPSPCB in OA no. 475 of 2024, National Green Tribunal, In the Matter of News Item Titled "Mountains of Plastic Are Choking the Himalayan States" Appearing in The Hindu Dated 4 March 2024, Point 3, Points (i) to (vi).

[79] *See* NGT (n 13).

to the same status report filed before the NGT, the "legacy waste yet to be remediated at 10 sites now stands at 85,545 MT".[80] It is unclear, however, how this legacy waste has been 'handled' amidst several disputes around disposal which the affidavits of authorities and objections raised in the court revealed. In fact, in the audit conducted in 2019, about five years ago, nearly 80% of the ULBs had no processing of biodegradable waste and processing of non-biodegradable waste was being done in only one. How 'processing' targets have been achieved in such a short time span needs examination, especially when land for disposal and processing remains a challenge.

The difficulty of obtaining land for setting up waste disposal sites at the cluster level was found in over 20 ULBs, mostly due to forest clearance and objections raised by the gram sabhas through the Forest Rights Committees ('FRCs'). In January 2019, the High Court expressed "anguish that disposal units had not been set up in any of the clusters except Baddi".[81] This comment of course overlooked the spate of violations occurring in the Baddi unit illustrated above. In the same order, the court observed, on FRCs withholding NOCs, "we have not been shown any provision as to why FRC permission is required". The court went on to observe that many of the sites did not require any "felling of trees" on the forest land involved and that it was "lack of persuasion by the District Administration" that was the problem in forest land diversion for sanitary landfills/disposal facilities. These comments of the court overlooked the provisions of the FRA 2006 under which village general bodies had customary rights over all types of forest land. Specifically, in the case of Kullu, where Panchayats were refusing to provide NOCs for land transfer, the court went on to state the problem presented by the MC Kullu as "vague and evasive" and declared that the Pradhans would have to be summoned to court for refusal.[82] While the court's concern about Panchayat residents taking responsibility for the waste was valid, the procedural aspects needed to be upheld.

The problem of Kullu Municipal Corporation failing to locate a dumping site needs to be seen in the context of NGT and Supreme Court orders in a separate case whereby the waste incinerator plant at Pirdi was ordered to be shut down in January 2019 following years of protest and finally a court case by the local panchayats and Forest Rights Committees.[83] The Pirdi disposal site too was on the banks of river Beas in Kullu since 1991. The waste incinerator there burnt biomedical waste from the neighbouring areas of Mandi, Bilaspur, and Kullu, in addition to the 18.74 metric tonnes of solid waste generated from nearby places. The residents of Panchayats, in the vicinity of the dumping site, were anxious

[80] NGT, Order dated 18 April 2024 (n 13), 3, Point 3(B).
[81] *State of H.P. v. Hari Chand* 2020 SCC OnLine HP 2515, ¶ 2.
[82] ibid., ¶ 4 – 8.
[83] *Sunita Thakur, Pradhan, Bageshwari Mahila Mandal, Sudher* v. *State of H.P.* 2019 SCC OnLine NGT 1387.

about health risks and environmental pollution and had also complained about the foul smell emanating from the garbage. In the absence of an alternative site, the Kullu MC started sending the waste to Manali MC.[84]

The opening of the Rohtang tunnel has exposed new areas of the trans-Himalayan Lahaul valley to tourists and the waste from there too was being sent to Manali. This led to the Manali MC throwing up its hands in helplessness. In May 2024, the Manali (MC) wrote to all neighbouring municipal bodies (Kullu, Bhuntar, and Banjar) including local panchayats and hoteliers falling under the purview of the Tourism Development Council ('TDC') and the Manali Hoteliers Association ('MHA') that it would not accept garbage from them to be disposed of with the Refuse Derived Fuel ('RDF') plant at Rangri in Manali after June 2024.[85] It is speculated that the plant has no capacity to handle the waste amounting to 50 TPD and it is able to process less than half the amount it received, and complaints of legacy waste and leachate flowing into the Beas River where the plant is located has led to fines for the MC running into lakhs.[86] Several efforts at moving away the Rangri dumping site from the river had failed after local panchayats outside the council area refused to grant land.[87]

To circumvent the land non-availability issue, the government of Himachal Pradesh's Urban Development Department revised its Solid Waste Management Policy in 2019.

> *"The strategy and action plan documents (2015, 2017) prepared by the Department envisaged setting up of cluster-wise waste processing plants. However, the revised strategy document (2019) moved away from the cluster- approach stating that land parcels were not available, and instead envisaged setting up of biodegradable waste processing facilities at ULB-level without specifying whether land was identified/ available. No mention of non- biodegradable waste processing facilities was made".*[88]

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[84] Himdhara Environment Research and Action Collective, Courts Order Administration to Find Alternative Garbage Site in Kullu | Kullu, Himachal Pradesh (2019) Land Conflict Watch, <https://www.landconflictwatch.org/conflicts/courts-order-administration-to-find-alternative-garbage-site-in-kullu> accessed 24 November 2024.

[85] Abhinav Vashisht, 'Won't accept Kullu, Bhuntar & Banjar's garbage after June 21, says Manali MC' *The Tribune India* (Kullu, 6 May 2024) <https://www.tribuneindia.com/news/himachal/wont-accept-kullu-bhuntar-banjars-garbage-after-june-21-says-manali-mc-618437> accessed 24 November 2024.

[86] Bhawani Negi, 'NGT seeks reply of Himachal Pradesh's principal secy of urban development in Beas pollution case' *The Statesman* (2 February 2024) <4 November 2024; Rohit Mullick, 'NGT Imposes Rs. 4.6 Crore Fine on Manali MC for Waste Management' *The Times of India* (6 June 2024) <https://timesofindia.indiatimes.com/city/shimla/ngt-imposes-rs-46-crore-fine-on-manali-mc-for-waste-mismanagement/articleshow/110750982.cms> accessed 24 November, 2024.

[87] Kesang Thakur, 'Behind Façade of Clean Mountain Towns, Kullu and Manali Struggle to Manage Waste' The Wire (24 June 2019) <https://thewire.in/environment/behind-facade-of-clean-mountain-towns-kullu-and-manali-struggle-to-manage-waste> accessed 24 November 2024.

[88] Comptroller and Auditor General, Himachal Pradesh, Report No. 2 of 2021, SWM Performance Audit, (2021), 30- Point 2.2.5.1 (iii).

The revised strategy document (2019), as per the CAG compliance audit of 2021, made no mention of sanitary landfills either. "This was a matter of concern as in the absence of sanitary landfills, waste would continue to be dumped unscientifically at open dump sites in all ULBs", as the audit had detailed for many ULBs.[89]

As the CAG had observed, the issue of unscientific and illegal dumping on riversides and forest lands by ULBs emerged as a central concern in the *Suleman v. Union of India* case in 2022-23.[90] While the court prohibited this in its orders and the State Pollution Control Board went on an overdrive issuing Show Cause notices for such dumping, the ULBs remain clueless on how to handle the waste. In its latest orders in March 2024, which have been hailed as a landmark[91] - the court has turned its attention to lend its weight entirely to implementation measures proposed by its committee with a focus on Extended Producer Responsibility and Plastic Waste Management.

V. Discussion and Conclusion

> *"The need of capitalist development of something 'outside of itself' is strictly material. It requires continuously opening up 'territories', or else the expansion to new 'commodity frontiers' in search of 'lower costs of input' (i.e. dispossession) and 'lower costs of output' (i.e. contamination). Therefore, the circuits of capital accumulation are inherently associated with the socio-metabolic reconfigurations, and consequently foster conditions of social and environmental degradation that, eventually, lead to conflict as an attempt to visualize the injustice and revert it".*[92]

The process of wasting of the landscape is an intrinsic part of extractivist development regimes which Demaria refers to as accumulation by dispossession and contamination.[93] In a state like Himachal, the extensive mega infrastructure building (dams, highways, transmission lines, cement, pharma-based industries) has involved tunnelling, river bed mining, slope excavation, and erosion generating millions of tons of muck and debris year after year. Referred to as 'inert

[89] ibid 30, Point 2.2.5.1 (iv).

[90] *Suleman v. Union of India*, CWP No. 2369 of 2018 along with *Subhash Chand v. State of H.P.* CWP No.1074 of 2019, *Court on its Own Motion v. State of H.P.* CWPIL No. 32 & 42 of 2021, *Saligram Attri v. Union of India* CWP No.3334 of 2021 and *Vijay Kumar v. State of H.P.* CWPIL No. 4 of 2022, Himachal Pradesh High Court (6 April 2023).

[91] *Suleman* v. *Union of India*, Himachal Pradesh High Court (23 March 2024) <https://highcourt.hp.gov.in/viewojpdf/view.php?path=2018&nc=&fname=200100023692018_53.pdf&smflag=N> accessed 24 November 2024.

[92] Demaria (n 21), 168.

[93] ibid.

waste'[94] in the solid waste parlance, this 'overburdening' of the land then takes the form of disastrous landslides and associated flash floods which in turn cause large-scale property damage and land losses. The volume of Municipal Solid Waste and its pollution in this Himalayan landscape pales in comparison but is a blemish nevertheless - produced by the same processes (practices of commercial tourism, for instance) that demand that the scenic beauty of the mountains remains palatable or pristine.

Municipal solid waste has become central amongst the resource conflicts in peri-urban spaces across the country and the Global South. These spaces, on the one hand, end up bearing the environmental burdens of urban expansion and on the other, remain side-lined in processes of top-down urban planning and governance.[95] In the case of mountain regions, these conflicts are playing out in the commons in the urban and peri-urban zones of tourism and industrial centres. Here, commons are typically pastures and riversides that form a substantial part of the landscape and mountain ecosystems. The case studies of conflicts around waste disposal facilities presented indicate that questions of land use, access, availability, and land rights are closely connected with the socio-ecological setting. These conflicts are not just in the arena of waste management but point to the historical State failures in addressing the land use issue in peri-urban areas from the perspective of material and ecological flows and importantly, also focusing on legal tenures and governance of common lands which provide crucial services to diverse local communities. The inherent class-caste biases in the court's exclusionary 'elite environmentalism' which also legitimises certain encroachments while rendering others illegal, have been sufficiently deconstructed in the works of critical geographers and political ecologists.[96] Here, we see its evidence in the case from Baddi, in the illegal siting of a waste disposal facility and also in the court's dismissive approach to the consent of gram sabhas under the FRA as a hurdle for making land available to waste facilities. The Himachal High Court's strict and controversial orders on evictions also overlooking the FRA's provisions in another set of cases further confirm this bias.[97]

Resource management policies and laws implemented in the Himalayas are often copy-pasted from the national context. As documented in the case of agriculture, forest and water conservation programs, the reckless overlooking of

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[94] Thakur and others (n 5) 10. (The author describes 'Inert waste' as a type of waste that is considered to be non-hazardous and will not undergo physical, chemical, or biological change. It typically includes materials such as bricks, concrete, stones, and soil. Inert waste is typically produced during construction, demolition, and excavation activities).

[95] Prabhakar (n 33); Hofmann (n 4).

[96] Thayyil (n 42).

[97] 'Himachal Pradesh Government to Review Encroachments on Forest Land and Address Policy Challenges' Asian News International News (February 6 2025) <aninews.in/news/national/general-news/himachal-pradesh-government-to-review-encroachments-on-forest-land-and-address-policy-challenges20250206234203/> accessed March 30, 2025.

interlinkages between these resources as livelihood base and mountain-specific energy flow regimes has added to governance difficulties. More importantly, people and their needs remain out of the picture, and thus analysis of contradictions that emerge as a result of top-down institutional and legal measures remains forgone.[98] In Himachal's SWM approach, an example is the adoption of the cluster approach (as in the plains), which failed precisely due to the non-availability of land and lesser turnout of developers given the time and cost implications in mountain geographies.[99]

Despite the number and extent of disputes over disposal on river sides and village 'wastelands' (commons), a perusal of the court proceedings reveals that these are the least discussed concerns within the judicial realm. Affidavits filed by ULBs do not address the land issues in depth, barring their mention as an administrative hurdle which was slowly sidelined. That dumping of waste in the rivers is illegal and must be banned, attracting punitive action, is clear in the eyes of the law, but why enforcement of this has been unachievable calls for judicial and larger reflection. Additionally, the analysis of the ground conditions and the authorities' recorded claims on the collection, segregation, and treatment seem unsubstantiated, raising doubts about the veracity of the information produced, as also raised by the HPSPCB in inspections conducted from time to time. The non-suitability of landfilling because of the gradient, lack of space for onsite composting, slow composting in higher altitude sites due to lower temperatures,[100] the conditions and challenges of the people dependent on the informal waste economy,[101] are issues in the domain of waste and social metabolism,[102] that are brushed aside, like the criticality of commons providing ecosystem and livelihood services.

Solid waste matters often hinge on the 'polluter pays' principle and the application of absolute liability which demand accountability through fines and imposing mitigation measures but the impact of this seems to be more curative with little preventive impact and virtually no focus on the 'environmental injustices' involved.[103] An example here could be the Pollution Control Boards exer-

[98] Gupta and Gulati (n 37).

[99] Comptroller Auditor General, Himachal Pradesh (n 82). (The strategy and action plan documents (2015, 2017) prepared by the Urban Development Department envisaged setting up of cluster-wise waste processing units and sanitary landfills (to cover multiple ULBs — a more centralised approach of managing waste).

[100] Alfthan and others (n 6).

[101] Gidwani (n 7).

[102] Martinez-Alier (n 18).

[103] Lovleen Bhullar, 'The Polluter Pays Principle: Scope and Limits of Judicial Decisions' in Shibani Ghosh (ed), Indian Environmental Law: *Key Concepts and Principles* (Orient BlackSwan, 2019) 164. ("In the context of environmental pollution, liability rules can perform a curative or preventive function. The curative function is performed when the polluter is held responsible for environmental damage and for payment of compensation to victims. Liability rules perform a preventive function when the probability of damages incentivises measures to reduce or preempt environmental damage").

cising the preventive and precautionary powers by refusing to grant NOCs or cancelling permissions granted to defaulting units as against levying fines or repeat show cause notices which end up regularising the illegalities. The court has often discounted the complicity and inefficiency of authorities like the Pollution Control Board which is levying the fines. Legal researchers have highlighted the need to locate the prevention, precautionary and polluter pays principles in relation to one another. While plastic prohibition is a debated issue, courts have rightly invoked the precautionary principle to ban toxic substances given the environmental harm they could cause. Raising the tensions created by the conceptualisation of environmental harm, Dhar and Gupta argue for coherent environmental governance and progressive policymaking through 'environmental rule of law' through a more complex and layered understanding of these legal principles.[104]

Judicial proactivity in SWM, found not just in the recent orders of Shimla High Court but since the drafting of the Municipal Waste Rules in 2000, has been driven by propagating and promoting market-based solutions – be it Extended Producer Responsibility[105] or Waste to Energy/ Refuse Derived Fuel.[106] Despite their contentious nature and dismal results, as illustrated in the failure of Manali's RDF unit in Section IV above or in general the problems with EPR across the mountain States, these techno-fixes dominate the centralised solid waste management discourse, often seen as panaceas.[107] Kaveri Gill in her recent work examining 'an era of pervasive judicial activism in the sphere of solid waste management in India' concludes that an overriding influence of the 'meta-narrative of the environment' together with State negligence and inaction have led to 'judicial trespass into the territory of the legislature and the executive' and pushed for 'standardized technocratic solution' of WTE despite its limited efficacy in the Indian context.[108]

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[104] Preeta Dhar and Parul Gupta, 'Prevention, Precaution, and Polluter Pays Principles', (2024) *Oxford Handbook of Environmental and Natural Resources Law in India* 217, s 11.2.2.

[105] Demaria (n 21), 47. (The author describes 'Extended Producer Responsibility' as a strategy designed to promote the integration of environmental costs associated with goods throughout their life cycles into the market price of the products. EPR may take the form of a reuse, buy-back, or recycling program. EPR aims to create financial incentives to encourage manufacturers to design environmentally friendly products by holding producers responsible for the costs of managing their products at end of life. This is based on the idea that producers (usually brand owners) have the greatest control over product design and marketing, and that therefore they have the greatest ability and responsibility to reduce toxicity and waste).

[106] Thakur and others (n 5), 10. (Waste to Energy is a process of generating energy out of waste. The author describes 'Refuse-derived fuel' as an alternative fuel consisting mainly of combustible components of waste materials such as textiles, non-recyclable plastics, labels, cardboard, paper, and rubber).

[107] Roshan Rai and Priyadarshinee Shreshtha, 'The Himalayan Cleanup: Six Years of Demanding Producer Responsibility for Mountain Trash' *Down to Earth* (2024) <https://www.downtoearth.org.in/waste/whose-trash-is-it-anyway-six-years-of-demanding-extended-producer-responsibility-in-the-himalayas> accessed 24 November 2024.

[108] Kaveri Gill, 'Courts and Solid Waste Management in Urban Areas' in Philippe Cullet (ed), *The Oxford Handbook* of *Environmental and Natural Resources Law in India* 825 (OUP 2024).

The pressure from the court to set timelines for a prescribed model of solid waste management, even as the law and judiciary stand unequipped to address the political and structural challenges and the inter-disciplinary contours of the subject, deserves to be problematised. Examining the struggles around garbage in Campania, Italy from an environment justice perspective, Armeiro and D'Alisa talk about how a state of 'waste emergency' has "'effectively silenced opposition, enabled the illegal disposal of toxic waste to continue' and allowed the market, technology, and scientific expertise to dictate solutions to the crisis".[109] Mehmood and Cousins, in their work on the judicialisation of urban environment governance, highlight how courts as institutions 'enable and constrain different forms of social and political actions', especially in the context of waste management in India.[110] They critique this judicialisation calling it a process of 'political bonsaification', implying that politics is artificially dwarfed by confining it to legal and technocratic forums.[111]

A counter to this depoliticisation of the waste question would, for instance, in the case of a State like Himachal, necessarily mean tackling the historical land use conflicts through a democratic and participatory process. This would also entail the removal of contradictions and confusions in land records, and implementing laws like the Forest Rights Act 2006 which strengthens the tenurial rights of marginalised and forest land dependent communities in rural and peri-urban areas.[112] From urban governance mechanisms to developmental policy priorities – a transformative systemic approach that weaves in socio-ecological concerns has been suggested.[113] This paper takes a critical look at 'solid waste management', as pushed by judicial and policy apparatus, bringing in dimensions of ecological conflicts and argues for a place-based and a people-based approach to 'municipal waste' taking into account present-day land use contestations and diverse resource metabolisms in the mountains. It appeals for the redressal of historical socio-environmental injustices in the exercise of environment jurisprudence while making space for a democratic dialogue as against top-down solutionism which renders invisible complexities and conflicts.

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[109] Marco Armiero & Giacomo D'Alisa, 'Rights of Resistance: The Garbage Struggles for Environmental Justice in Campania, Italy' (2012) 23 Capitalism Nature Socialism. 52.

[110] Mehmood and Cousins (n 20).

[111] ibid.

[112] 'A Brief Note on Forest Evictions and the Implementation of the Forest Rights Act (FRA) in Himachal Pradesh' Himdhara Environment Research and Action Collective (February 5 2025) <www.himdhara.org/2025/02/05/forest-evictions-fra-hp/> accessed March 30, 2025.

[113] Tikendar Panwar, 'More Municipal Corporations in Himachal Pradesh is Not a Smart Idea' *Deccan Herald* (November 1 2024) <https://www.deccanherald.com/opinion/more-municipal-corporations-in-himachal-pradesh-is-not-a-smart-idea-3258450> accessed 24 November, 2024.