

# COMMUNITY RIGHTS AND STATUTORY LAWS: POLITICS OF FOREST USE IN UTTRAKHAND HIMALAYAS

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Forests are all gone now. There used to be thick growth of Sal and Oak when I came to this village as a young bride. I am seventy years now. In fifty years I have seen everything change. I see more guards and officials now rather than trees. The government is there not to improve our condition but to win elections. (Rukmini Devi, Bhansali village, Nainital)

In many parts of Uttranchal, the newly created hill state of India, one finds numerous accounts like Rukmini Devi's. For the rural *pahari*<sup>1</sup> community the formation of this new political entity is yet to make a substantive difference to their everyday lives and to the state of forests around them. In fact many of them enumerate incidences of conflict that the villagers have had with the state while asserting their customary claim on forest resources. Few lament that, once a composite entity, the forest is now being fragmented and has been demarcated into diverse property regime types such as reserved and village (*panchayat*) forests. The existence of multiple property regimes and conflicting rules and regulations has made the relationship between the people, state and forest a contested domain.

Given the above context, the present paper aims to highlight the dominance of statutory laws over local self-governing institutions and how community space is

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<sup>1</sup> The term *pahari* implies hill people.

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constricted in the name of participatory governance. It argues that, while for both national government and international donor agencies democratic decentralization has become a major concern, in implementing their programs at the field level they tend to treat communities as mere beneficiaries rather than as active partners. It also highlights the fact that the introduction of New Joint Forest Management in 1996 has overridden the customary claims of communities on forests practiced over decades. Further, it shows how boundaries and fences have become sites of anxiety, creating artificial enclaves and plots, and in the process excluding communities from their rightful access to resources. The present paper, which is based on extensive field research in the Nainital district of Uttranchal, draws its insights from in-depth interviews with local residents.

### The Field

Uttranchal was formed in 2001. Historically the area has been witness to a series of social movements. The famous *chipko* movement spearheaded by the women of the region is one the finest examples of environmental movements in India. Administratively the region has thirteen districts.

Agriculture is the predominant economic activity and three quarters of the land holdings belong to sub-marginal or marginal categories of farmers, with an average of 0.37 hectare of land each. Land distribution is relatively equal, cases of land holdings of over 2 hectares being rare, and landlessness low. The area's agropastoral economy is still predominantly subsistence-based, with about 50% of rural households, including the rural elite, having a high dependence on village commons and forest lands. Moreover, the level of urbanization is extremely low in most districts, thus ruling out significant industrial or service activity, and hence a large portion of the population is dependent on forests for economic sustenance. Lack of employment has led to a high male out-migration in search of employment, which makes the women left behind effectively managers of the rural household economy

Forests constitute a significant portion of the landuse map of Uttranchal, covering 60% of the total geographical area. It is the fourth most forested state in India. Forests are a source of livelihood for rural residents and provide resources such as fodder, fuel, green manure, and construction timber which are critical to the household economy. In their absence, effective household incomes would decline substantially. In such a context, the process of determining how forests can be

collectively and appropriately managed is vitally important. It may be mentioned here that forest in Uttranchal is managed by different administrative agencies, with three different categories of forest land for this purpose:

Forests under the Forest Department;  
*Panchayati* or Community Forests under *Van Panchayats* (Forest Councils); and  
Forests under the Revenue Department.

Of the total forest area two-thirds are under the jurisdiction of the Forest Department. Of the 34,000 sq km, 30,000 sq km (88%) are under the jurisdiction of government and only 4,000 sq km (12%) are managed by *Van Panchayats* or the forest councils.

In Uttranchal, though there exist different property regimes like state, common and private, such distinctions are primarily on paper and Gururani argues that they are quite ambiguous in everyday practice as there may be overlapping of property types (Gururani 2000: 172). However the local residents can clearly identify different forest types in the region under study, which, apart from their local knowledge of the landscape, is also the result of the strong enforcement of boundary rules and regulations by the forest department to demarcate *reserved forests* from community as well as *civil/soyam* lands which are under the revenue department. *Van Panchayats* have however their own set of working rules concerning forest use.<sup>2</sup> They may vary depending upon the local conditions and requirements and as these rules are collectively evolved, they are binding on all members of the village/villages sharing<sup>3</sup> a forest patch. It is thus apparent that there exist more than one set of rules and codes of property. It is interesting to note that despite having codified and elaborate rules defined through statutory laws for *reserved forests*, there are numerous instances of ‘rule violation’ as villagers tend not only to access but also to extract non-timber forest products like fuel and fodder from government-owned forest lands. In fact in their collective memories the collection of fuel and fodder are their customary rights, and this co-existence of plural laws creates conditions and relations that permit use, access and

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<sup>2</sup> In the area under study one can identify four sets of working rules, which can be classified under use, monitor, sanction and arbitration.

<sup>3</sup> A village forest may be shared by one or more villages depending upon the proximity to each other and the area of forest demarcated as *panchayati* forest.

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abstraction of products from the forest in the region. Apart from statutory laws defining governance of forests there are also “deeply embedded cultural, historical and economic claims that allows rules and codes of property to be redefined and reinterpreted outside their narrow legal confines” (Gururani 2000).

### *Van Panchayats*

*Van Panchayats* or Forest Councils are considered unique examples of the decentralized governance of natural resources in Uttaranchal. They were an outcome of conflicts and compromises that followed the settlements and reservations of forests in the hills in the first part of the last century. The first government-approved *Van Panchayat* was formed in 1931. According to recent estimates (2001), there are about 6777 *Van Panchayats* in Uttaranchal. These *Van Panchayats* manage a forest area of about four thousand square kilometers forming about 12% of the total forest area of the state. It may be observed that *Van Panchayats* are present only in the hill-districts. Haridwar and Udham Singh Nagar districts located in the foothills and *Terai* region do not have any *Van Panchayats*.

It may be mentioned here that community forest managed in accordance with the *Van Panchayat Act* is a hybrid of state ownership and community responsibility. In managing and controlling community forest use Forest Councils are guided by rules laid down by the Revenue Department and by the technical advice of the Forest Department. In contrast to civil forests, community forests or *Panchayati* forests as they are popularly known are not ‘open’ forests. As has already been mentioned, access to and use of forests are guided by a set of working rules meticulously designed and implemented by the communities. Four identifiable sets of working rules exist relating to Use, Monitoring, Sanctions and Arbitration. Though only notionally or nominally owned by the communities, community forests are in a very real sense common property with an identifiable user group, have finite subtractive benefits and are susceptible to degradation when used beyond a sustainable limit. However what is more important is that the local users consider them as their collective property and in a real sense they are not actually divisible. These forests are nevertheless not completely immune from misuse, and their condition varies from poor to very good.

The Forest Council Act prescribes how *Panchayats* can be formed and imposes duties on village *Panchayats*. The objective is to protect the forest areas and ensure that forest products are being distributed among the entitled holders in an equitable

manner. Kumaun Panchayat Forest Rules enacted under section 28(2) of the Indian Forest Act 1927 provide broad guidelines for the supervision and management of forests under the control of *Van Panchayats*. These Forest Council rules lay down the broad parameters of management practices to be followed by the *Van Panchayats*.

The main functions of *Van Panchayats* are as follows:

- (a) To develop and protect forests by preventing indiscriminate felling of trees and to fell only those which are marked by the Forest Department and are useful from the point of view of silviculture.
- (b) To ensure that there is no encroachment on *Van Panchayati* land, and that no rules enacted under the Kumaon and Sodic Land Act of 1948 are violated and that no land is encroached upon for agricultural purposes without prior permission.
- (c) To construct and fix boundary pillars and to maintain them (Forest Rules 18(c)).
- (d) To carry out the directives of the Sub-Divisional Magistrate in developing and protecting forests (Forest Rules 18(a)).
- (e) To distribute its produce amongst entitled holders in an equitable manner (Forest Rules 18 (e)).
- (f) To close 20% of the area of the forest for grazing every year.

They have the following punitive powers:

- (a) To levy fines up to Rs. 50 with the prior approval of the Deputy Commissioner (later revised to Rs. 500).
- (b) To seize intruding cattle and impound them under the Cattle Trespass Act of 1871.
- (c) To forfeit the weapons of the offender.

They have the following administrative and financial powers:

- (a) To sell grass, fallen twigs and stone slates to local people.
- (b) To auction trees up to the value of Rs.5000 with the approval of the District Magistrate and Divisional Forest Officer. Auctioning of trees above Rs. 5000 is done by the Forest Department.
- (c) To distribute the income realized from resin, timber and fees. This is to be distributed as follows:

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- (i) *zilla parishad* is given 20% for creating and maintaining infrastructure;
- (ii) *gaon sabha* is given 40% for local development schemes if approved by the Block Development Committee;
- (iii) the remainder is to be ploughed back by the Forest Department for maintenance and development of *Panchayat* rules.

The villagers feel that, through the Act, the bureaucracy exercises excessive control over Forest *Panchayats*. Bureaucrats on the other hand believe that, in the absence of central control, villagers would clear fell the entire forest (Personal Communication 2002). Nonetheless on analyzing the rules it becomes quite clear that they, while making the *Panchayats* responsible for proper management of the forests, deny them the necessary powers, which seem rather to be vested in the revenue and forest officials. For instance in section 17 of the 1976 Act it is stated that, before a watchman or any other paid staff is employed by the *Panchayat*, previous approval of the Deputy Commissioner (DC) is necessary. An offence involving a sum of Rs. 50/- can be compounded only with the previous approval of the DC. Similarly permission is required if seized property (stolen timber, etc.) is proposed to be sold. Administrative control over the *Panchayat* thus still lies with the DC, and technical control has been given to the Forest Department.

### Traditional Institutions and Contemporary Challenges

As has been mentioned above, the formal legal rules that have taken prominence in recent years have eroded the element of trust and cooperation among villagers in the use of land and access to forest resources. In this context the most significant effect is the manner in which the institution of the *Van Panchayat* has been affected. The importance and effectiveness of institutions like *Van Panchayats* lay in the fact that the 'social boundaries' which they evolved and constructed, and consequently the working rules that they devised to ensure optimal, efficient use of resources, were primarily through people's involvement and general consent. This gave these institutions a certain amount of credibility and legitimacy. However over the years there has been a steady decline of the democratic and participatory space which these village level institutions provide to their members. Unfortunately the Forest Department's tendency to monitor the functioning of these institutions through generalized rules and regulations in the name of 'participatory governance' has crippled these institutions, reducing them and the communities to the level of mere implementers or at best non-official managers

with no substantial powers. The introduction of Joint Forest Management in the region in 1997 can be interpreted as an initiative which tends to create artificial boundaries by “crafting administrative communities for better governance, self sufficiency and cost-management” (Agrawal 2001).

Though the *Van Panchayats* managed to survive these multiple obstacles and challenges to their authority in many villages, they have been faced with two additional crises in the last few years which may have long term implications i.e. they may either weaken them or bring about their demise as relatively democratic and self-governing forest management institutions. Ironically, these new threats are primarily new initiatives that are being promoted in the name of ‘participatory governance’ or ‘state-people partnership’ in managing natural resources. The rapid formation of new *Van Panchayats* under the direction of the Revenue Department; and the introduction of ‘Village Forest Joint Management’ by the Forest Department are two such initiatives and Sarin points out that in reality they are basically an attempt to transfer more authority to the state at the expense of communities.

#### *New Van Panchayats*

Until recently *Van Panchayats* were primarily local initiatives, created out of genuine concern of the people to protect their forest, which culturally is their provider and protector. However a recent spurt in the creation of *Van Panchayats*, coinciding with the inflow of vast funds in the state for JFM (Joint Forest Management) activity has created new sets of complexity for these self-governing institutions. There has been an increase in the demarcation of remaining civil lands as village forests. For example, in Nainital district there were only 61 *Van Panchayats* at the time of independence, but this number had increased to 495 by 1999 (Sarin 2001). The formation of these institutions, which was need-based and demand-driven, has been converted into a supply-driven one. Instead of the villagers collectively applying for a village forest, the administration has imposed its decisions, irrespective of whether *Panchayats* are required or not. It also ignores other issues such as ongoing boundary disputes, and existing community management arrangements.

Earlier, a *Van Panchayat* could cover more than two or more revenue villages. With the coming of new policy which requires a separate *Van Panchayat* for every revenue village internal cohesion, cooperation and trust among users has been

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disrupted. Moreover some multi-village *Van Panchayats* have been re-organized in an abrupt and authoritative manner without consulting the local villagers, disrupting thereby the internal social adjustments and exacerbating intra- and inter-village conflicts. Traditionally, villagers had developed an effective multi-village governance system that was both democratic and equitable. Reorganization of *Van Panchayats* has in fact destroyed the traditional culture of resource sharing. According to earlier practices *Van Panchayats* were formed taking into consideration a number of factors and one of them was the topography and the forest cover, particularly in those cases where the institution was shared by multiple villages. The present abrupt division of forest councils allowed neither the forest area nor the species composition to be evenly distributed among the villages, and unequal distribution has resulted. Some are now left with small forest patches with only Chir pine, while others have all the fodder bearing areas, which again has created bitterness among villages and encouraged conflict rather than catalysing cooperation. The changes have also failed to address any of the major problems plaguing the existing *Van Panchayats* – the lack of effective and easily accessible dispute resolution mechanisms, inter-village inequity in the availability of forest areas, the erosion of *Panchayat* authority, and the limited control over forest-based livelihoods and income. The rapid and abrupt formation of *Van Panchayats*, rather than expanding space for local forest management, seems to have reduced it further. According to a study carried out by the Rural Litigation and Entitlement *Kendra* (RLEK) in Uttranchal, the recent increase in government interference has resulted in *Van Panchayats* losing their original character. The interference by the forest department into the functioning of *Van Panchayats* is "fast eroding the spirit of forest conservation by the local communities". It is too early to predict the effects that state-driven *Van Panchayat* formation might have on local livelihoods, social relations and forest management practices. The process of their formation, however, gives reason for concern.

*Village Forest Joint Management (VFJM)*

VFJM, which was introduced by the Forest Department in Uttranchal in 1997, is not only problematic but also paradoxical as it strengthens state control rather than expanding democratic space, by curtailing people's traditional rights. Unlike Joint Forest Management (JFM) in other states which enables villagers to participate in the management of forest lands under the Forest Department's jurisdiction, in Uttranchal the VFJM Rules enable the department to become the dominant partner in the management of *Van Panchayats* and civil forest lands. Moreover the land

being brought under VFJM falls under the jurisdiction of *Van Panchayats* or the Revenue department and not of the Forest Department. The land is managed in collaboration with *Gram Sabhas*, the democratic institutions of local self-government at the lowest level.

According to VFJM Rules, Village Forest Committees (VFCs) may be formed where there are no *Van Panchayats* and there is an effort to link VFJM with local self-government through *Gram Sabhas*. VFCs are expected to be representative of key local interests, with one seat each designated for women, scheduled castes/tribes, backward castes, and for persons with a particular interest in forests. The head of the *Gram Sabha* is the President of the VFC and the forest guards are its member secretary, the two also jointly holding the committee's account. As *Gram Sabhas* in the hills cover more than one village, it is possible that neither the president nor the secretary of the VFC may be a resident of the village whose forest management institution they head. Whereas linking community forest management institutions with those of local government is highly desirable, the order for constituting VFC is a top down, mechanical prescription. It says nothing about strengthening participatory governance by the *Gram Sabhas* and forest committees or their respective roles and responsibilities within the local governance structure.

While 'communities' have come to occupy center stage in most of the discourse on development and participation, they in fact tend to become targets or victims of development projects, whether it is the construction of dams, the creation of parks and protected areas or projects like *JFMs*. It may be pointed out that creation of VFCs emphasizing participatory governance of forests was not an outcome of any demand of the people in this hill state but was one of the conditionalities of the World Bank's \$65m loan given to the Uttar Pradesh Forestry Project for the period 1998-2002 (Sarin 2001). As a necessary fallout of agreements between the State Government and the World Bank, *JFM* received priority in the region, which in fact accounted for 30% of the total budget. Ironically enough the Bank's appraisal documents do not state any substantive reason for promoting *JFM* and neither does it specify any process to ensure participation of different stakeholders in *VJFM*. In the absence of any knowledge, experience and mechanism available to the Bank to motivate 'participation', the responsibility for framing them rests with the Forest Department with no history or experience of working with *Van Panchayats* or knowledge of how to facilitate 'participatory governance'. Experienced and long standing *Van Panchayats* with an adequate institutional history along with other Non-Governmental/ Civil Society Organizations working in the same sector would have the best alternative but they are distinctively conspicuous by their absence.

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*Van Panchayats* and other community institutions are treated as the objects of attention, rather than active participants in redefining their future destiny. The World Bank project simply assumes the desirability of importing the standard JFM model from other states into Uttaranchal, with all its shortcomings, instead of exporting a strengthened *Van Panchayats* framework to them. In fact most of the Non governmental organizations functioning in this newly formed state demand that Uttaranchal government should not accept World Bank liabilities taken by the UP government in the name of JFM, Eco-Development and Watershed management.

Though it is too early to see the impacts of VJFM on forest based livelihoods and forest quality, the content of the VFJM Rules suggests a loss of democratic space for local villagers. Despite claims to empower local forest users, the rules do much to achieve the opposite, by instituting control over decision-making and thus creating dependence with no control over forest resources. This fact becomes all the more conspicuous if one looks at the formation of Committees and selection of villages to be brought under VFJM. Prioritization and selection of villages for VFJM is done by the Forest Department in accordance with several selection criteria, making it a supply, rather than a demand driven process. 'Spearhead teams' communicate with and develop microplans for selected villages. These teams consist of one ACF; one ranger or deputy ranger; one forester or forest guard; and two NGO 'social motivators'. Experienced *Van Panchayat* leaders with decades of experience of community forest management have no role as facilitators and technical advisors. Instead they are being motivated to protect forests. The agreement to be signed by the participating villagers refers to them as beneficiaries rather than as equal partners. The discourse, vocabulary and the content of the policy, being highly patronizing, encourages hierarchy among stakeholders and managers and thereby reduces the community forests to mere administrative zones (Gururani 2000).

Given the circumstances there is a great apprehension that the taking over of forest management by the Forest Department and its intrusion into the functioning of the *Van Panchayats* will fast erode the spirit of forest conservation by the local communities. It represents another example of the total disregard by the State of traditional, community-run systems of natural resource management in the region.

## Conclusion

This paper therefore argues that the mere implementation of policies is not sufficient to ensure a truly democratic participatory space. The process has to be need based and evolved rather than being imposed and given. Though democratic decentralization is frequently initiated as a precondition to participatory development, such participation will be merely passive if the decentralization process fails to consider the ecological, social, cultural and institutional specificities of a given society. Further participatory governance can have democratic relevance only if ‘communities’ are brought to the centre stage of decision-making. It will then become necessary to recognize, accept and treat communities as relevant actors rather than mere recipients in using, managing and governing resources. At the same time it is important to understand what are the implications of bringing the community back into the development discourse.

*Van Panchayats*, despite being an excellent example of state-people partnership which has been relatively successful in managing forest resources in the region, are facing challenges from unrealistic and target-driven policies which are likely to affect its democratic functioning. There is a need to replicate such institutions in other areas rather than interfering with those which already exist. Moreover, Non-Governmental Organizations need to play more active roles in keeping these institutions alive by bringing the communities to the centre stage of decision-making. In order to strengthen such community-oriented institutions, it is necessary to identify such similar institutions and undertake comparative studies on them so that any anomalies which may be found can be removed.

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