

Van Panchayats – A Time Tested Institutional Mechanism that can be used for Implementing the Community Forest Rights Component of the Forest Rights Act, 2006

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Introduction

The Van Panchayat system in mountain districts of Uttarakhand is a unique system of community led forest management system that recognizes traditional and customary rights of forest dwelling communities. These Panchayats have been playing vital roles in afforestation, controlling forest fires, preventing encroachment and poaching. While the list of responsibility of these Panchayats has widened in the last 3-4 decades, their rights and power have been curtailed significantly. It has adversely affected the ability of these village level institutions to support rural livelihood and conserve forests.

The promulgation of the Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act, or FRA for short) makes the Van Panchayats a time-tested institutional mechanism for the Community Forest Rights (CFR) component of the FRA. The Forest Rights Act, 2006 distinguish between community rights over forest and Community Forest Resource Rights.

Section 2 (a) “community forest resource” means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access. These two types of forest rights of forest dwelling tribe and communities are further explained in the following matrix.

Community Rights	Forest Resource Rights
<ol style="list-style-type: none"> 1. Community rights such as nistar, (See Section 3(1)(b) 2. Rights over minor forest produce, if any: (See Section 3(1)(c) of the Act) 3. Community rights (a) Uses or entitlements (fish, water bodies), if any: (b) Grazing, if any (c) Traditional resource access for nomadic and pastoralist, if any: (See Section 3(1)(g) of the Act) 4. Community tenures of habitat and habitation for primitive tribal groups (PTGs) and pre-agricultural communities, if any: (See Section 3(1)(e) of the Act) 5. Right to access biodiversity, intellectual property and traditional knowledge, if any: (See Section 3(1)(k) of the Act) 6. Other traditional right, if any: (See Section 3(1)(l) of the Act) 	<ol style="list-style-type: none"> 1. Rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use (see Section 3(1)(i) of the Act)

These Rights gives access to forests to forest dwelling communities to exercise their traditional rights mentioned in the first row.	This particular right provided by the FRA, 2006 gives ownership right to the community and empowers them to protect, regenerate, conserve or manage the forest assigned to them independent of the Forest Department.
These rights can be claimed using Form-B attached with FR Rules, 2012	These Rights can be claimed using Form-C, attached with FR Rules, 2012
A forest dwelling community or tribe can claim both community rights and forest resource rights using form B and C	

The Community Forest Resource Right provided through Section 3(1)(i) of the Act provide for ownership and autonomy to the community through Gram Sabha to manage, protect and regenerate the forest.

According to the section 3(1)(i) and section 5 of the Act the Gram Sabha along with committee constituted for protection of wildlife forest and biodiversity under FRA Rules, 2012 is the authority to conserve, protect and regenerate the forest recognized under the section 3(1)(i).

Further as per the FR Rule 4(1)(e), this authority has full authority to modify micro plan, working plan or management plan of the forest department.

Community Forest Rights and Community Forest Resource (CFRe) Rights which include the right to protect, conserve, regenerate, and manage forest resources are the most empowering provision of FRA. Many activists have termed the recognition of these rights under the FRA as a historic opportunity to implement the largest ever land reform. However, the performance of FRA has also been disappointing on these rights, and as per the data, they are still lagging behind with around 50% approval rate.

Through Van Panchayats villagers have been traditionally accessing all community and forest resource rights mentioned in above matrix. However, over the years, the dilutions in the VP rules have reduced community rights and their autonomy to manage VP forests. Community rights under FRA attempt to legally recognizes all such forest rights and Community Forest Resource Rights reinstate community's ownership and autonomy to plan and manage their forests.

The Van Panchayat system can be, with suitable modifications, recognized as an institutional mechanism to implement and vest above two types of rights under the FRA. This paper is an attempt to discuss the relevance of Van Panchayats in that light. This paper examines the statutory status, vesting of rights, management system and rights for collection of minor forest produce in the Van Panchayat Rules under the Indian Forest Act. It then suggests using such provisions under the FRA, in particular, Section 3 and 5 of the FRA. If necessary, the relevant provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA) can also be used as common lands in Fifth Schedule Areas are meant to be covered by the governance provisions of the PESA and by the Fifth Schedule itself; and several State laws exist with similar provisions.

As per the report of Ministry of Tribal Affairs, as of January 2020, tribal communities across the country had filed around 4.25 million claims to acquire ownership and use rights to forest land. However, only 1.9 million claims, which is around 46%, had been approved. The report also shows that the highest number of claims has been rejected at the level of the Gram Sabha or DLC. The top five performing states are Odisha, Tripura, Kerala, Jharkhand and Andhra Pradesh with around 60% approval, and the bottom 5 performing states are Goa, Bihar, Uttarakhand, Karnataka and Himachal Pradesh with around 2-5% approval.

FRA 2006, Total Claims Received, Distributed and Rejected as of 31.1.2020

State	No. of Claims Received Up to 31.1.2020			No. of Titles Distributed Up to 31.1.2020			No. of Claims Rejected	Percent of Titles distributed
	Individual	Community	Total	Individual	Community	Total		
AP	1,77,446	4,062	1,81,508	96,675	1,374	98,049	75,927	54.02%
Assam	1,48,965	6,046	1,55,011	57,325	1,477	58,802	NA/NR	37.93%
Bihar	8,022	NA/NR	8,022	121	NA/NR	121	4,215	1.51%
Chhattisgarh	8,58,682	31,558	8,90,240	4,01,251	21,967	4,23,218	4,61,590	47.54%
Goa	9,758	378	10,136	17	8	25	47	0.25%
Gujarat	1,82,869	7,187	1,90,056	90,188	3,516	93,704	62,256	49.30%
HP	2,466	234	2,700	129	35	164	NA/NR	6.07%
Jharkhand	1,07,032	3,724	1,10,756	59,866	2,104	61,970	28,107	55.95%
Karnataka	2,75,446	5,903	2,81,349	14,667	1,406	16,073	1,80,956	5.71%
Kerala	43,237	1,012	44,249	26,256	174	26,430	12,073	59.73%
MP	5,85,239	42,182	6,27,421	2,29,027	27,970	2,56,997	3,59,216	40.96%
Maharashtra	3,62,679	12,037	3,74,716	1,65,032	7,084	1,72,116	45,525	45.93%
Odisha	6,20,785	14,106	6,34,891	4,37,184	6,577	4,43,761	1,48,762	69.90%
Rajasthan	74,414	1,441	75,855	38,007	103	38,110	36,229	50.24%

TN	32,983	1,005	33,988	6,111	276	6,387	11,742	18.79%
Telangana	1,83,252	3,427	1,86,679	93,639	721	94,360	83,757	50.55%
Tripura	2,00,358	277	2,00,635	1,27,931	55	1,27,986	68,622	63.79%
UP	92,520	1,124	93,644	17,712	843	18,555	74,945	19.81%
Uttarakhand	3,574	3,091	6,665	144	1	145	6,510	2.18%
WB	1,31,962	10,119	1,42,081	44,444	686	45,130	96,587	31.76%
Total	41,01,689	1,48,913	42,50,602	19,05,726	76,377	19,82,103	17,57,136	46.63%

Source: MoTA Monthly Update on Status of Implementation of FRA 2006, January 2020

The Van Panchayat System – How it Evolved and How it Declined

The Van Panchayat system of community led management of forest in Uttarakhand has a glorious history. The British government from 1877 to 1910 gradually took over the control of local forest by promulgating forest laws, policies and regulations. Eventually, it restricted people from using forest and forest products. It directly affected the subsistence rural economy of the mountain region of today's Uttarakhand. The authoritative attitude of the then government instigated local people to revolt against the government and its policies related to the forest and forest products.

The people's revolt intensified in 1916 and continued up until 1921, when the colonial government decided to constitute a grievance committee to resolve the issue. Based on the recommendations of the grievance committee, the then government agreed to hand over forest in the close proximity of any village to its residents.

For the management of such forest the 'Kumaun Panchayat Forest Rules' were issued in 1931 under the Article-6 of the Scheduled Districts Act, 1874¹. These landmark set of rules provided autonomy to villagers to manage forest in and around their villages. The 1931 rules recognized social, cultural, economic, recreational, ecological and habitation stakes of rural mountain communities on forest. The system continued even after Independence before these rules were amended in 1976.

In 1976 the state government notified new rules for Van Panchayat under the section 28 of the Indian Forest Act, 1927 as village forest. This change in rules empowered the state Forest Department to set terms and conditions on which Van Panchayat can function. It meant that the state Forest Department took over all power pertaining to planning, management and conservation of Van Panchayat forests.

¹ KumaunPnacyati Forest Rules, 1931:

http://www.himalprakriti.org/Our_Content_Files/VanPanchayats/Kumaon%20Panchayat%20Forest%20Rules%201931%20small.pdf

Successive amendments in 2001 and 2005 further reduced the power of villagers to manage, conserve and share benefits and access forest products and services. These amendments moved from the protection of traditional rights (nistar) approach of forest management as envisaged in 1931 to custodial management of these precious common property resources, even though the state Forest Department had neither the personnel nor the priority to manage Van Panchayat forests. The current Panchayati forest rules focuses on maximising human alienation by minimising traditional community forest rights.

Van Panchayats were initially created under the District Scheduled Act in 1931. However, in 1976 Van Panchayats rules were issued under the section 28 of Indian Forest Act, 1927. This section of the act provides for creation of Village Forest fully controlled by the State Forest Department.

Section 28. Formation of village-forests.

- (1) *The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.*
- (2) *The State Government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.*
- (3) *All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.*

The subsection 2 of the section 28 of the Indian Forest Act, 1927 provides for constitution of village forest on reserve forest. The state Forest Department has power to issue rules for management of such forest. The department also has power to cancel rights and entitlements granted to the community under this provision.

The post 1976 statutory status of Van Panchayat effectively takes away the tenure, management and resource distribution autonomy vested in Van Panchayat through the Van Panchayat Rules, 1931. The migration of Van Panchayat rules from the District Schedule Act to the Indian Forest Act, 1927 in 1976 undermined the historical people's struggle and purpose of these

panchayats. Moreover, the state Forest Department exercised its power of forming village forests using Section 28 of the India Forest Act was a sleight of hand. We must remember, Van Panchayats were formed on revenue forest, whereas the state Forest Department can create village forest under section 28 of the Indian Forest Act only on the forest legally categorized as reserve forest.

According to the Forest Statistics published by the State Forest Department of Uttarakhand in 2019, of the total 7350.85 Sq Km forest under Van Panchayat only 139.65 Sq. Km is Reserve Forest. The share of civil and soyam (revenue) forest under the control of Van Panchayat is as high as 4961.851 Sq Km. While the new Van Panchayat rules issued under Indian Forest Act for the management of reserved forest can be understood, its application in Van Panchayats constituted on revenue forest land goes beyond jurisdiction of the Indian Forest Act and also violates provisions of the Forest Rights Act, 2006.

Type of Forest under the Management Control of Van Panchayats	
Civil and Soyam Forest	4,961.851 Sq Km
Reserved Forests which are completely recorded in Van Panchayats	2,248.34 Sq Km
Reserve Forest	139.65 Sq Km
Total Forest (13.41% of total forest)	7350.85 Sq Km

Rights and Entitlements under the Old, Current and Proposed Systems

In this section and the next two, we will compare and contrast the provisions under The Van Panchayat Rules, 1931 (the old system), the 2005 Rules under the Indian Forest Act (the current system) and the possibilities if Van Panchayats became the institutional mechanism for CFRs under the Forest Rights Act, 2006 (the proposed system).

The Van Panchayat Rules, 1931 were an open ended guideline in terms of recognizing rights and entitlements of forest dwelling mountain communities. In fact, claimant community was authorised for demarcating boundary of Panchayati forest and deciding on list of entitlements of dependent people. The Deputy Commissioner of the district had responsibility to suitably document

those entitlements in the final agreement between the Van Panchayat and the government. It was kept open ended to incorporate specific local requirements and type of forests on which community wanted to form the Panchayat.

However, the successive amendments to the Van Panchayat rules in 1976, 2001 and 2005 withdrew the power of community to demarcate forest boundary and specify their rights and entitlements. The current Van Panchayat rules do recognize traditional forest rights such as collection for fuel, fodder and grazing, but the community can only exercise them as per micro plan approved by the Forest Department. It means rural community is required to adjust their traditional forest rights and entitlement as per demand of the Forest Department.

Moreover, traditional entitlements pertaining to village industry and commercial benefits of the local community are further restricted. Under the current rules, Van Panchayat cannot collect and sell minor forest produces without the permission of the Forest Department. A forest official can only permit collection of minor forest produce if ecological requirements are met as per the micro plan of the Van Panchayat. Effectively the Van Panchayat Rules 2005² took away all rights and entitlements vested in Van Panchayats in 1931.

The Van Panchayat rules of 1931 did not specify rights and concession awarded to the villagers. It provided full autonomy to villagers to determine their rights and concessions based on their traditions and occupational requirements. On the other hand the Forest Rights Act, is much more detailed piece of legislation that specify each and every right/entitlement along with eligibility of individual/community to claim them. Yet, both of these policy documents respect people's symbiotic dependence on forests and their ability to manage forest. While rights of people over forest under the Van Panchayat system are well documented and formally availed by villagers for decades, these rights have to be recognized under various sub sections of Section-3 of the Forest Rights Act, 2006. The current set of Van Panchayat rules issued in 2005, which originated in the 1976 questionable takeover of Van Panchayats by the Forest Department has curtailed many rights and entitlements of mountain villagers in Uttarakhand. Moreover, the entire management control has shifted from Van Panchayat to the forest department.

Rights and Entitlements Vested Under Different Laws			
	Van Panchayat Rule, 1931(Old System)	Van Panchayat Rule, 2005 (Current System)	Forest Rights Act, 2006 (Proposed System)
The Idea	The idea of Van Panchayat was to recognize and formalize the traditional system of forest management.	Rule 12 It is obligatory on the part of Van Panchayat to develop micro plan for management of forest as per guidelines issued by the state Forest Department through Composite Plan	Sec. 3(1) (i) Rights to protect, regenerate or conserve or manage any community forest resource
Basic Rights	Rule 5: Villagers were entitled to specify the purpose for which Van Panchayat was required in an application to the deputy commissioner.	Rule 18 (b) All customary rights such as fuel, fodder, lopping trees etc will govern through micro plan approved by the forest department.	Sec. 3(1) (b) Community rights such as nistar, by whatever name called.
Commercial Rights	Rule 12 (c) Van Panchayat were entitled to sell forest products including late and stones except resin	Rule 18 (a) No forest produced can be accessed by villagers unless ecological requirement of the area are met. Rule 18 (d) Van Panchayat has no right to own, collect and sale any forest produces without approval of the Forest Department.	Sec. 3(1) (c) Traditional Ownership, access to collect, use, and dispose of minor forest produce
Rights of Nomads, Pastoralists and PVTGs	Rule 5: Villagers were free to specify their requirements from the forest.	Rule 18 (b) All customary rights such as fuel, fodder, lopping trees etc will govern through micro plan approved by the forest department.	Sec. 3(1) (d) Entitlements such as fish and other products of water bodies, grazing access for nomad and pastoralists.
Intellectual Property and Traditional Knowledge Rights	Rule 5: Villagers were free to specify their requirements from the forest	No provision for such communities	Sec. 3(1) (k) FRA provides for access to biodiversity, intellectual property and traditional knowledge



Governance of Village Forests under the Old, Current and Proposed Systems

Governance of forest resources has been a controversial issue right from the time when British government formed the Forest Department in the 18th century. India has seen hundreds of localized struggle during British raj on the ownership and governance issues of forest resources. The people's revolt in Uttarakhand in early 20th century was one among them. However, the issue remained controversial even after the Independence.

A study conducted by Prabhakar and Somanathan (1998) observed that the density of oak forest is 15.6 per cent higher in Panchayati forest of Uttarakhand compared to forest in the control of forest department. However the density of pine tree was lower in the Panchayati forest³. The oak forest is ecologically beneficial and crucial for the subsistence rural economy in the mountains of Uttarakhand.

More contemporary studies on Van Panchayats in Uttarakhand found that imposition of rules by the Forest Department on these institutions adversely affected their ability to protect and manage forest in their control (Balooni et al, 2007, Nagahama, 2016). Another study on deforestation in Uttarakhand region by E. Somanathan (1991) argued that degradation of forest ecology in the region can be effectively handled by ensuring their traditional forest rights.

Earlier Van Panchayat were autonomous in terms of planning, regulating community rights, fixing user fee, fines on violation, preparing sub-rules, appointing required human resources, extraction of minor forest produces, sale and disposal of MFP (excluding resins), management and application of Panchayat's income. Before 1976, the Van Panchayats were ideal system of common property resources (CPRs) governance as per Elinor Ostrom's eight principles of managing CPRs⁴. The most important among those principles are rule making power to community members and acceptance of such rules by outside authorities.

Agrawal (1995) found the restrictions imposed on Van Panchayats to draft its own rule had adversely affected performance of these institutions in Kumaun region of the state. A recent study report published by FAO and FILAC based on forest governance data from Latin America and Caribbean found that the forest under the control of indigenous people are more protected than forest under control of government agencies⁵.

The amendments to Van Panchayat rules in 1976 followed by in 2001 and 2005 ignore globally acknowledged management principles of common property resources such as Van Panchayats. Current rules do not allow members of Van Panchayats to develop plan and sub-plan of their own. In fact, even after dictating plan of management to Van Panchayats, their routine decisions need to be approved by forest officials.

The Forest Department develops composite plan for Van Panchayat and based on this plan, Van Panchayats are required to develop their micro plan and annual action plan in consultation with local forest officials. The extraction of forest produces is highly regulated and controlled by forest officials. Not only this, the forest guard is ex officio member secretary of the Van Panchayat management committee. Expecting Van Panchayats to protect forest and manage resources sustainably and equitably under such restrictions is unrealistic.

The Van Panchayat under new rules has no power to take decision about conservation and management of the forest. Every decision requires approval from the forest official. This system further discourages forest dwellers to use their traditional ecological knowledge to conserve forests. However, the Forest Rights Act, 2006 provides a system where right holders as a group can control planning and management of forest resources.

Community forest rights recognized under the FRA are managed by a committee constituted by Gram Sabha. This committee has autonomy within the system of Panchayati Raj, under the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), to develop conservation plan and management of forest resources without interference of any authority including forest and revenue officials. The governance system provided by current Van Panchayat Rules and those proposed Forest Rights Act are completely opposite of one another. If we want to encourage the involvement of community in the management of forest, the provisions under the Forest Rights Act give a better starting point.

Responsible agency under different laws			
	Van Panchayat Rule, 1931 (Old System)	Van Panchayat Rule, 2005 (Current System)	Forest Rights Act, 2006 (Proposed System)
Responsible agency	The Van Panchayat had power to regulate rights, concession and extraction of forest produces	Rule 13: On the direction of the Forest Department, the Van Panchayat Committee facilitate regulation of forest rights and concessions.	Rule 4 (1) (e) The responsibility of management of forest including regulating forest rights, conservation and extracting forest produces lies with a committee constituted by Gram Panchayat under this Act.

Management Plan	Rule 8 Van Panchayat sign an agreement with deputy commissioner for management and conservation of the forest. Terms of agreement depends on the requirement of people and condition of the forest.	Rule-12: The micro plan developed for Van Panchayat are developed based on composite plan of the forest department. The micro plan needs to be approved by the forest department.	Rule 4 (1) (f): The Committee constituted by the Gram Sabha needs to prepare conservation and management plan of the common forest.
Integration with working plan of the Forest Department	No provision for integrating with the management plan of the forest department.	Rule 11, 12, 13. Van Panchayat has no power to develop any plan/ sub plan with any approval of forest department. Nothing can be planned beyond provisions of the composite plan of the forest department.	Rule 4 (1) (f): The committee will seek suggestions from sub divisional level committee while finalizing is plan. However, these suggestions are not binding on the Gram Sabha. Forest Department has to integrate this plan in their working/management plan.

Use of Village Forests under the Old, Current and Proposed Systems

The contribution of the primary sector in the Gross State Domestic Product (GSDP) in Uttarakhand is nearly 11%. This sector includes occupations such as agriculture, dairy, fishing and forestry. However, mountain districts are heavily dependent on the primary sector for the livelihood. The contribution of primary sector in domestic product in mountain district varies from 16% in Pauri Garhwal to 31% in Uttarkashi district (Migration Commission, 2018).

The socio-economic and caste census (SECC), 2011 data suggests that nearly 50% people of mountain districts were dependent on occupations such as agriculture, forestry and dairy⁶. A sample survey conducted in 2018 by the State Migration Commission reveals that nothing much has changed in the livelihood pattern. It found that nearly 46% population of Uttarakhand is dependent on primary sector occupations. For many mountain districts of the state, this dependence on primary sector occupations is higher than the 50% of their total population (Migration commission, 2018). These occupations cannot be imagined without forest and forest products in mountain districts.

The NSSO report on use of common property resources in 1998 had found that

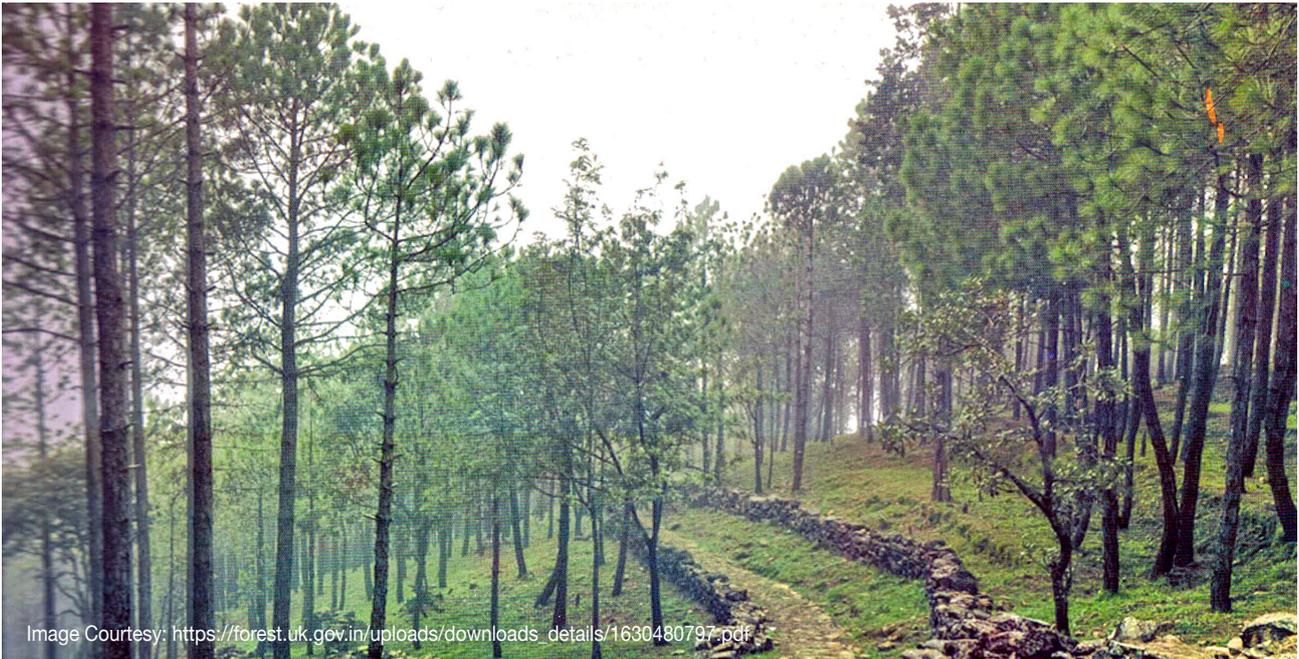
55% household from the western Himalayan zone of Uttar Pradesh (currently mountain region of Uttarakhand) reported accessing common forest for grazing. The report also found high dependence of people from this region on forest for fodder, fuel, thatching material and cattle bedding. This is more than two decade old data, but certainly, the dependence of people on forest has not change significantly as census and other report (mentioned above) reveals that still more than 50% people are dependent on forest based occupations such as agriculture, livestock and dairy.

The Van Panchayat Rules 1931 recognized the role of forest in the subsistence economy of the region. However, the current rules of Van Panchayats ignore this basic bridge between forest and forest dwelling mountain communities. These rules attempt to protect forest by minimizing rights of right holders. Ignoring or discarding social, cultural and economic relationship of people with forest is actually ignoring reality. If the government wants community to participate in forest conservation, it will have to respect and recognize their relation with the forest.

The Van Panchayat Rules, 2005 ignored the basis of subsistence economy in the mountain region of the state. The primary objective of the Van Panchayat Rules became to protect forest by curtailing rights of forest dwellers. Traditional rights of community such as fuel, fodder and grazing, became a second priority for the Van Panchayat. Moreover, these rules discourage exploitation of minor forest produces even for cottage industries and bona fide use. If at all, any Van Panchayat manages to extract forest products for commercial purpose, the income is further strictly regulated by the forest department. These rules not only restrict people from accessing their traditional forest rights but also create hindrances in development and progress of mountain cottage industries.

The restriction on traditional rights of forest dwellers and interference in the management of community forest goes against the provisions of the Forest Rights Act, 2006. The Act not only recognizes community nistar rights but also gives full autonomy to community to collect and dispose forest produces. As per the law, no any agency can regulate the income of the community from sale and value addition of the minor forest produces. In fact, the rules issued under the Act makes it mandatory to the state government to keep transportation and sale of MFPs by community out of transit rules and royalty charged.

Extraction and Disposal of Minor Forest Produce		
Van Panchayat Rule, 1931 (Old System)	Van Panchayat Rule, 2005 (Current System)	Forest Rights Act, 2006 (Proposed System)
<p>Rule 12 (c) Van Panchayat were entitled to sell forest products including latex and stones except resin</p> <p>Rule 12 (C) (1) Extraction and sale of resins was reserved for the forest department</p>	<p>Rule 18 (d) Van Panchayat cannot sell forest produces without appraisal from the forest department.</p>	<p>Rule 2 (1) (d) “disposal of minor forest produce” under clause (c) of sub-section (1) of Section 3 shall include right to sell as well as individual or collective processing, storage, value addition, transportation within and outside forest area through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood;</p>
Management of Income from MFPs		
Van Panchayat Rule, 1931 (Old System)	Van Panchayat Rule, 2005 (Current System)	Forest Rights Act, 2006 (Proposed System)
<p>Rule 12 (C) (1) Income from sale of resins used to shared between Van Panchayat and the forest department</p> <p>Rule 18: All income will be credit in the Panchayat fund in the custody of Sarpanch. And shall be applied primarily for the conservation of the forest</p>	<p>Rule 30 (1) (b): Forest department charges 10% of the sale amount from Van Panchayat as administrative cost.</p> <p>Rule 30 (1) (a): In case of resins the Forest Department take actual cost and overhead from the Van Panchayats.</p> <p>Rule 30 (2) The income of Van Panchayat needs to be distributed as follows: 30% to the Gram Sabha, 40% for forest conservation and 30% for general utility projects.</p>	<p>Rule 4 (1) (g) A committee formed by the Gram Sabha for the management and conservation of community forest is sole owner of any income from sale or minor forest produces. The committee is also empowered to decide on application of the income.</p>



Why Village Forests Are Important for Mountain Livelihoods to be Viable?

People in the mountain district of Uttarakhand have been accessing forest and forest products for their lives and livelihood for generations. The Van Panchayat Rule issued in 1931 was an attempt to regulate and institutionalize such forest rights of the mountain communities in this region. However, successive amendments to this system not only curtailed rights of community but also reduced their authority to govern forest. Denying management rights and economic benefit to the forest dwelling communities through Van Panchayats in the time of Forest Rights Act, 2006 goes against the idea of community led forest conservation. The law incentivises community to protect and conserve forest in their control.

The distress outmigration from mountain district of Uttarakhand is a serious demographic and developmental issue. The lack of livelihood options in mountains and absence of basic infrastructure are major factors responsible for this distress migration. According to a survey conducted by the State Migration Commission in 2018 as many as 11.12% (8.3% permanently and 3.8% seasonally) population has migrated in last ten years from these districts. The survey also found that 734 villages depopulated due to migration in Uttarakhand from 2011 to 2018.

According to the estimate of State Migration Commission nearly half of the mountain population is in distressed due to unavailability of livelihood option.

The deterioration of conventional livelihood system (mainly agriculture and livestock) and insignificant growth of secondary and tertiary level enterprises have aggravated the livelihood distress in the last few decades. The deterioration of occupations related to agriculture and livestock is evident from land use data and animal husbandry statistics.

The land use data available on the website of Union Ministry of Agriculture the fallow land in mountain districts of the state has increased from 0.88 lakh hectare in 2010-11 to 1.29 lakh hectare in 2018-19⁷. Similarly the livestock population in Uttarakhand has recorded fall of 14% in 2019 compared to 2014⁸. Therefore, the degradation of natural resources on which subsistence economy is based and shrinking rights of people over forest must be seen in the context of this mass migration.

District wise main reasons for migration from gram Panchayats (in%)								
District	Lack of live-li-hood/ Eploy-ment	Lack of health services	Lack of educa-tional services	Lack of basic in-frastruc-ture	Decline in agri-culture produc-tivity	Wild animal destroy in gagri culture	Influ-enced by family members	Other
Mountain Districts								
Rudraprayag	52.9	8.64	15.67	4.43	4.27	5.11	3.26	5.7
Tehri	52.43	7.84	18.24	3.07	6.17	4.26	2.47	5.5
Uttarkashi	41.77	6.04	17.44	2.29	7.14	4.04	2.1	19.17
Chamoli	49.3	10.83	19.73	4.93	4.73	3.09	2.51	4.87
Pauri	52.58	11.26	15.78	3.03	5.35	6.27	2.53	3.21
Champawat	54.9	6.67	10.24	5.46	6.31	6.65	4.3	5.46
Pithoragarh	42.81	10.13	19.52	4.97	4.66	4.08	2.36	11.48
Almora	47.78	8.61	11.75	3.81	8.37	10.99	2.68	6.02
Bageshwar	41.39	9.09	14.49	4.32	2.18	3.42	1.45	23.65
Plain and Semi Plan Districts								
Haridwar	76.6	1.62	2.73	0.05	0.64	0.82	1.69	15.85
Dehradun	56.13	6.33	12.5	1.2	2.08	1.65	1.4	18.7
U.S. Nagar	65.63	4.27	3.52	0.6	0.38	2.6	5.4	17.6
Nainital	53.7	7.79	10.37	4.96	4.94	6.38	2.1	9.76
Uttarakhand - Total	50.16	8.83	15.21	3.74	5.44	5.61	2.52	8.48

7 <http://aps.dac.gov.in/LUS/Public/Reports.aspx>

8 <http://www.indiaenvironmentportal.org.in/files/file/Basic-Animal-Husbandry-Statistics-2019.pdf>

While there are number of factors behind degradation of natural resources in the region, one among them is shrinking people's rights over forest produces. The restoration of Van Panchayat system under the FRA can help in supporting rural livelihoods. While the traditional nistar rights are important for subsistence economy, they have huge potential to be utilized for secondary and tertiary level enterprises.

Conclusion and Recommendations

The Van Panchayat system is one among several mechanisms developed during pre and post- Independence period in this country to acknowledge the role of the forest in the subsistence economy. This system also acknowledges the vital role of traditional knowledge and strength of community in protection and conservation of forest. However, successive policy level changes have ignored the very purpose of these institutions. These changes have also ignored the effectiveness of communities to protect and conserve forest.

Today, more than 12,000 Van Panchayats are nothing more than executors of decisions taken by the state Forest Department. The current system of Van Panchayats denies the local people their due rights over forest produce and authority to govern their own forest. The denial of rights of forest dwelling communities even after 14 years of the promulgation of the FRA is does not undo the "historical injustice" to the forest dwelling communities which was mentioned in the preamble of the FRA.

The continuation of the Van Panchayat system in the current rules is untenable because of the following reasons:

- Current Van Panchayat rules are issued under the sub section 2 of section 28 of the Indian Forest Act, 1927. The state government has authority to issue rules under this section only for village forest constituted on the reserve forest. However, Van Panchayats are largely constituted on the revenue forest. The application of the Indian Forest Act to constitute village forest (in the name of Van Panchayat) on revenue forest is beyond the jurisdiction of the said law.
- Rights and entitlements of mountain communities including the right to govern common forest vested in Van Panchayat are well documented and practiced by the communities for many decades. Therefore, under the Section-3 of the Forest Rights Act, 2006 all privileges enjoyed by Van Panchayats under the Kumaun Panchayati Forest Rule, 1931 till 1976 qualifies to be restored.

Instead, Van Panchayats should be recognized as institutional mechanisms to provide Community Rights (under section 3(1)(b), 3(1)(c), 2(1)(g), 3(1)(e), 3(1)(k), and 3(1)(l)) and Community Forest Resource Rights (under section 3(1)(i)) of the Forest Rights Act, 2006. For this Van Panchayats can be reconstituted under section-5 of the Forest Right Act and Rule 4(3)(e) of the FR Rules, 2012 as committee under Gram Sabha for protection of wildlife, forest and biodiversity. This is because:

- Under the Forest Rights Act, 2006, forest dwelling communities enjoy full autonomy without any interference of forest and revenue departments to develop management and conservation plans of the community forest. Therefore, Van Panchayats also qualify to be autonomous institutions as they were from 1931 to 1976. The Section 3(1)(i) of FRA provide for recognizing and reinstating such rights and power.
- Once the rights of forest dwelling communities are recognized and a village institution for conservation and management of common forest is created, the Forest Rights Act, 2006 allows villagers to extract, dispose, and sell forest produce in a sustainable manner. Van Panchayats were anyway enjoying these rights till 1976. Restoration of Van Panchayats under the Forest Rights Act can further help these institutions to govern extraction and sale of forest produce from the common forest.

One cannot deny the contribution of Van Panchayats in protecting and conserving forests in the mountain districts of Uttarakhand. Restoration of Van Panchayats can mobilize entire mountain communities to contribute to the regeneration of forests.

We recommend that Uttarakhand be treated a s pilot state for this idea and the Uttarakhand Panchayati Rules, 2005 be amended as per guidelines issued by the Union Ministry of Tribal Affairs for the constitution of CFRMC and management and conservation of community forest resources.

Once the program works in Uttarakhand, it may be extended to all the mountain states in Phase II and then to all states in Phase III. We realise each phase may be five to 10 years long, but such changes any way happen at a generational time scale.

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