

**UTTARAKHAND VAN PANCHAYAT
AN
OVERVIEW
AND
PERSPECTIVE**

Rahul Choudhary

Chetana Andolan

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*An
Overview
And
Perspective*

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Uttarakhand Van Panchayat *An Overview and Perspective*

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PREFACE

Generally, market fundamentalism and reduction of the state are considered to be the chief characteristics of the totalitarian orthodoxy of neoliberalism, behind which the nation-states throughout the world today have lined themselves. However, we think this to be an exaggerated judgment. In fact targeting neoliberalism in this manner ultimately reduces the neoliberal regime of accumulation to a mere ideology, not recognising it as a concrete stage in the development of capitalism. In our opinion, neoliberalism should be taken more as a continuity, expansion and intensification of capitalist relations. "The commodity-form [market exchange] of the product of labour is the economic cell-form" or building block of capitalism. The apologists of neoliberalism only assert this fact in the crudest manner.

Nevertheless, under the neoliberal regime this "cell-form" has realised its hitherto fullest potential. Capitalism under this regime is determined to cross all hurdles in its expansion that existed as pre-capitalist legacies or as non-capitalist spaces that were created during the course of class struggle and the successful labour's resistance to 'class'-ification. It is in this regard, David Harvey's definition of neoliberalism as accumulation by dispossession through which class power of the capitalists is restored becomes relevant. He sees the "main substantive achievement of neoliberalization" in redistribution rather than the generation of wealth and income. The primitive accumulation process which gave birth to capitalism is once again intensified in this postmodern stage of capitalism -

"the commodification and privatisation of land and the forceful expulsion of peasant populations...; conversion of various forms of property rights (common, collective, state, etc.) into exclusive private property rights...; suppression of rights to the commons; commodification of labour power and the suppression of alternative (indigenous) forms of production and consumption; colonial, neo-colonial, and imperial processes of appropriation of assets (including natural resources); monetization of exchange and taxation, particularly of land; the slave trade (which continues particularly in the sex industry); and usury, the national debt and, most devastating of all, the use of the credit system as a radical means of accumulation by dispossession."

And in this "the state, with its monopoly of violence and definitions of legality, plays a crucial role in both backing and promoting these processes." This brings us to the second aspect of the neoliberal orthodoxy - the reduction of the state. The neoliberal guru, Milton Friedman, himself said:

"The existence of a free market does not of course eliminate the need for government. On the contrary, government is essential both as a forum for determining the "rules of the game" and "as an umpire to interpret and enforce the rules decided on."

Further, "These then are the basic roles of government in a free society: to provide a means whereby we can modify the rules, to mediate differences among us on the meaning of the rules, and to enforce compliance with the rules on the part of those few who would otherwise not play the game."

The role of government is definitely minimised under neoliberalism. It is minimised "to do something that the market cannot do for itself". This "something" is obviously determined by the needs of the market and capital. So the legal changes amenable to the neoliberal needs of capital are still needed, and we need the State to effect those changes. And most importantly, to regiment "those few who would otherwise not play the game", the State with its coercive apparatus is evidently needed.

Economist Prabhat Patnaik rightly recognises that there is a mismatch in bargaining strength between the capitalists and the state organ engaged in negotiating with them, which intensifies "the competitive struggle among the aspirants for investment... This can have only one possible result, which is to raise the scale of social 'bribes' for capitalists' investment. This increase in the scale of social "bribes" is an important feature of neo-liberalism." Even legal and institutional changes to attract investment need to be viewed as social bribery. Special Economic Zones are definitely so. Then why cannot Uttarakhand Van Panchayat rules, which define and delimit people's rights to forest resources, be viewed similarly?

The Uttarakhand Van Panchayat rules summarised and critiqued in this booklet need to be understood ultimately as part of the larger political economic processes going on in the region and in the country. Uttarakhand was formed in the period when the Indian State and economy had already immersed themselves in neoliberal fundamentalism. Hence the political intermediaries did not have much choice but to ready themselves for "the competitive struggle among the aspirants for investment". Uttarakhand which has immense natural resources can only offer these to be exploited along with the immense cheap labour within and around the region. The present booklet seeks to show how the Panchayat system with its noble mission to establish local self-government can be easily utilised to expropriate the community and become a vehicle of accumulation by dispossession.

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CHAPTER - 1

VAN PANCHAYAT

AN INTRODUCTION AND BRIEF BACKGROUND

Van Panchayat is a forest area which is managed and controlled together by government and the local communities. The area in the Van Panchayat includes civil as well as forest land. Van Panchayat is a managing body constituted for utilization and protection of forest and natural resources. The term Van Panchayat can be defined in legal terms as an area which has been constituted as per the rules as Van Panchayat. The rules also say that the Van Panchayat has same meaning as of village-forest given in section 28 of the Indian Forest Act, 1927. That means the Van Panchayat can also be created in Reserve Forest area, however provisions of the Indian Forest Act will be applicable in such area as far as it is not inconsistent with rule. The Van Panchayat rules 2005 are applicable in whole of Uttarakhand.

The Van Panchayat is a form of Local Self Governance by village or group of villages managing forest in supervision and control of forest department. The Van Panchayat is a democratically elected body to meet the requirements of the area for which the Panchayat is constituted.

BRIEF BACKGROUND TO VAN PANCHAYAT RULES 2005

The events which led to creation of Van Panchayat are summarized as follows:

Proclamation of 1807

By this proclamation the rights of the individuals in felling of teak by private individuals was prohibited. (Stebbing, 1923 page 70)

Trail Bhumi Bandobast: 1820-1822

Sir G W Trail was the Commissioner of Kumaon from 1816 to 1836. It was during his term that the first demarcation of boundaries was done. The bhumi bandobast started from Chandkot district in Garhwal. This bandobast is also known as paudh bandobast. In the bandobast, village boundaries were demarcated wherein the rights of the villagers pertaining to haq, hakook, fodder, fuel, timber, source of water and agriculture were clearly established.

VAN PANCHAYAT: AN INTRODUCTION AND BRIEF BACKGROUND

Commissioner Remje 1826

He slowly started declaring the other forest as protected forest and keeping the old sanction applicable.

Batton Bandobast: 1842-1846

Sir J H Batton, Commissioner of Kumaon (1848-1856) started this bandobast. In this bandobast the habitation area and property rights were identified. Khasra plan and records of villages were prepared.

Imperial Forest Department

In 1864 the Imperial Forest Department was created to consolidate state control on public forests and to put forestry operation on scientific footing. Deitrich Brandis, a German expert was appointed as the first Inspector General of Forests.

Indian Forests Act 1865

Most of the prime forest was being destroyed by Government contractor to fulfill the demand due to phenomenal growth of Railways from 1850 onwards. But the government only wanted to restrict the traditional rights of the Communities. To create its monopoly over the forest area the Government introduced Indian Forest Act in the year 1864. By this Act the communities right over forest was taken away by the government and almost all the forest were declared as reserved forest or protected forest. This Act led to unrest among people as their rights were curtailed which they were enjoying for centuries.

Forest Act 1878

More forest was brought under the control of State Forest Department by passing of Forest Act 1878. Forests were classified as 'reserved forest' and 'protected forest'-the difference between the both was on the basis of degree of control exercised by the Government. Especially valuable areas were declared as 'reserved' because of their vital role in the national economy. Only well defined and limited private rights were recognized.

VAN PANCHAYAT: AN INTRODUCTION AND BRIEF BACKGROUND

Forests Grievances Committee 1921

Due to protests against the Government and these legislations, under the chairmanship of P Wyandham, commissioner of Kumaon division, a Forest Grievance Committee was constituted. This committee found that the restrictions on the communities has led to unrest and recommended for formation of Village Forest Committees.

Van Panchayat Rules, 1931

The Van Panchayat rules 1931 was introduced in the Kumaon Division only, which was under the British Administration. Under 1931 rules of Van Panchayat, two or more resident of a particular village can propose to Deputy Commissioner for formation of Van Panchayat. After the formation of Van Panchayat the Deputy Collector had to ask the villagers for election of at least three and maximum nine members of the Van Panchayat. In this rule there is less interference from the forest department and the Administration. The Funds of the Panchayati Van can also be utilized for other purposes of public benefit if the balance left from the developmental work of Panchayati Forest.

In Tehri Garhwal there was no Van Panchayat earlier as this was a Princely state. Van Panchayat Rules notified to provide the framework for community based forest management.

Post Independence Amendments to Van Panchayat Rules

Van Panchayat rules are modified in the years 1976 and 2001 and 2005. Earlier the Van Panchayat was mostly regulated through the Collector, was after successive changes has given in the hand of Forest Department.

Forests Grievances Committee 1921

Due to protests against the Government and their subsequent rejection of the recommendations of the Grievances Committee of 1921, the Government constituted a Grievances Committee. This committee found that the restrictions on the community had led to unrest and recommended the formation of Village Forest Committees.

Van Panchayat Rules, 1931

The Van Panchayat rules 1931 was introduced in the Panchayat system only after the British Administration. Under 1931 rules of Van Panchayat, two or more residents of a particular village can propose to the Panchayat for formation of Van Panchayat. After the formation of Van Panchayat the Deputy Collector had to ask the village for clearance in case of forest and maintain some members of the Van Panchayat in the village. The Panchayat from the forest department and the village. The Panchayat of the Panchayat Van can also be called for other purposes. The Panchayat is the balance between the developmental work of Panchayat and the forest department.

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Post Independence Amendments to Van Panchayat Rules

The Panchayat rules were modified in the year 1951 and 1961. Under the Panchayat rules, the Panchayat was formed by the Panchayat and the Panchayat. The Panchayat is the balance between the developmental work of Panchayat and the forest department.

CHAPTER - 2

PROVISIONS OF VAN PANCHAYAT RULES 2005

2.1 FORMATION OF VAN PANCHAYAT

Proposal

The Paragna Magistrate can initiate the process of formation of Van Panchayat upon the proposal from minimum one fifth adult of the village, or a concerned Gram Panchayat has passed a resolution for formation of Van Panchayat.

As per rule 3 the land which is proposed to be a Van Panchayat must be:

- Within the boundary of the revenue village
- Reserve Forest bordering the revenue village
- Protected Forest bordering the revenue forest
- Forest belonging to government bordering the revenue village

But no such area can be declared as Van Panchayat if, half or more than half of the villagers, boundary of which villages falling under the proposed area, object to the proposal.

Notices and hearing on objection

After the proposal is received by the Magistrate, he will serve the notice to the concerned villages or will make arrangements for widely publicizing the proposal, or will affix the notice at conspicuous place. The rule also provides about the content of the notice. It provides that the notice should contain the location, boundary as stated in the application / proposal. It shall also contain the date before which any objection or claim can be submitted in respect of the proposal of Van Panchayat. It should also contain the date on which such claims and objections will be heard.

The Magistrate on the date fixed or on any subsequent date will hear the submissions on the issue of claims, objections. He can either accept or reject

PROVISIONS OF VAN PANCHAYAT RULES 2005

partly or completely the proposal or he can put some terms on which the proposal can be accepted. However proposal for Van Panchayat cannot be accepted in respect of Reserved Forest without the permission of State Government. Any person who is aggrieved by the decision of the Pargana Magistrate can appeal within 30 days of the order to the Collector.

Formation of Aam Shabha (General Assembly)

After the demarcation of the Van Panchayat, the Magistrate shall call upon adult villagers of the village at some convenient place and this will be called Aam Shabha. This Aam Shabha will work as Self Help Group. The Self Help Group will be the group of individuals who are interested on collective management and development of forest and are dependent on forest produce. Only one member of a family will be included in this group.

Prabandhan Samiti (Management Committee)

The Aam Shabha will also constitute a Management Committee for the Van Panchayat. For constitution of the Management Committee a Notice is also served on the concerned Patwari and Concerned Pradhan of Gram Shabha. The composition of the members of the Management Committee will be in following manner:

- The Management Committee will consist of nine members
- Only one member of a family is eligible to be elected as a member of the Management Committee
- Four seats of the Committee are reserved for women, out of which one is for Scheduled Cast or Scheduled Tribes
- Of remaining five seats, one seat will be reserved for male member of Schedule Cast or Schedule Tribes

Election of Sarpanch

After formation of the Management Committee, the members will elect Sarpanch by majority vote. The following persons will not be eligible to be elected as Sarpanch:

- ♦ Any Government Servant
- ♦ Any person working with Local Administration, Panchayati Raj, Management Committee
- ♦ Any person who has not paid the dues to the Village Forest, Panchayati Van
- ♦ Any person who has been proved guilty of offences related to moral degradation
- ♦ Any person against whom any case is pending with respect to Forest Act or Wildlife Act.
- ♦ Any person who has been elected as Sarpanch for consecutive period of two years

Appeal against election of members

Any person living in the concerned village, or a right holder aggrieved by the selection of any member and any member not satisfied with selection of Sarpanch, can submit the application before Pargana Magistrate within 30 days of such selection. The Pargana Magistrate will dispose of the application within 30 days of filing.

Further the order of the Pargana Magistrate can be challenged within 30 days before Collector and he will dispose of the Appeal within 30 days.

2.2 MANAGEMENT OF VAN PANCHAYAT

Management of the van panchayat is guided by the 'Composite Management Plan', 'Microplan' and 'Annual Implementation Plan' as provided in rule 11, 12 and 13 of the Van Panchayat rules.

PROVISIONS OF VAN PANCHAYAT RULES 2005

Composite Management Plan (CMP)

The Composite Management Plan (CMP) is made for five years by the Prabhagiya Vanadhihari for all the Van Panchayat of forest village falling in its area. The CMP is basis of the Microplan for each Van Panchayat and contains planning and detail about all the Van Panchayat. After the preparation of CMP it is submitted to the concerned Van Sanrakshk. The Van Sanrakshk has to give its approval with or without amendment in CMP within 60 days.

Microplan

Microplan is prepared for individual Van Panchayat for the period of five years as per the instructions given in the CMP. The Microplan is prepared with the help of Van Daroga or Van Rakshak. While preparing the Microplan the needs and requirements of right holder and ecological balance is taken into consideration. It is important to note that micro plan is put before the general meeting of the self help group for approval.

Annual Implementation Plan

Annual Implementation Plan is made for one year on the basis of approved Microplan. This plan is prepared by Management Committee with Van Daroga and the plan is to be approved by Van Kshtradhikari.

After the approval of Annual Implementation Plan the Management Committee starts functioning.

2.3 MANAGEMENT COMMITTEE (FUNCTIONING & TERMS OF SARPANCH & MEMBERS)

Term in the office

The term of the Sarpanch and members of the Management Committee of Van Panchayat is for five years. Any vacancy in the committee will be filled as per the procedure given in the rules for appointment of new member or Sarpanch. The Pargana Magistrate will start the preparation for constituting the new Management Committee, six months prior to the completion of term of the office of the existing Management Committee. If due to any reason the new Management Committee is not constituted prior to the completion of the term

of the existing Management Committee, then the Collector has power to extend the term of the office of existing Management Committee for six months.

2.4 FUNCTIONING OF THE MANAGEMENT COMMITTEE

Meeting of Committee

The Management Committee of the Van Panchayat has to meet once in every month on the date fixed. The proceedings of the meeting will be recorded in the register in Hindi and copy of same will be given to Van Kshatradhikari. However emergency meeting can be called on one day notice. All the decisions of the Management Committee will be taken by majority vote of present members. Up Van Rajik, Van Daroga and Van Rakshak can also participate/present in the meeting, however they don't have right to vote in the meeting.

The Sarpanch will have the duty to call for general meeting in the form of Aam Shabha in the month of April and October. In this meeting he will inform & discuss with everybody about the development, expenses and revenue of the village forest

Removal of Sarpanch & Members

The Sarpanch of the Management Committee can be removed by moving no confidence proposal after prior notice to the Pargana Magistrate by at least one third members of the Committee and approved by majority vote of at least two third members.

If the majority of the members think it necessary to remove any of its members, then the Sarpanch will give the information to the Pargana Magistrate. The Pargana Magistrate will send his nominated officer to the village to know the intention of the person who are eligible voters and will act accordingly. If the member is removed then new member will be elected for the remaining period.

The villagers through Aam Sabha (Adult member of the village Panchayat) can also remove sarpanch or any of the members.

2.5 USE OF FOREST PRODUCE

The Van Panchayat or the Forest Village can use forest produce to the extent mentioned in the Microplan. The rights holder are not allowed to practice their traditional rights like collecting fallen trees, fuel, cutting of branches of trees, cutting of grass and will be guided only through Microplan. The Management Committee can pass a proposal for use of forest produce for domestic use by right holders or local village industries.

The Management Committee can also propose for selling of the forest produce.

2.6 DUTIES OF THE MANAGEMENT COMMITTEE

The Management Committee will have following duties in their area.

- To make Microplan for five years and Annual Implementation Plan for Forest Village/Van Panchayat for a years and present it before Prbhagiya Vanadhihari through Van Khestradhihari for approval.
- To protect trees from damage and use only those trees which the Forest Department has marked.
- To ensure that there is not any encroachment on forest village/Van Panchayat land.
- To put boundary pillars and walls and protect them.
- To follow and execute the orders and directions from the forest department for protection of the forest.
- To use the forest produce for best advantage to right holders and keeping in view of sustainable management principal.
- To protect trees from illicit felling, fire, lopping or any other damage
- To ensure that catchments area of the water sources are well covered with trees.
- To control forest fire and promote natural regeneration.

- To ensure conservation/protection of wildlife.

2.7 RIGHTS OF THE MANAGEMENT COMMITTEE

The status of the Management Committee will be of Forest Officer and have following rights:

- To compound forest offence of upto rupees 500.00
- To institute and defend suits arising under this Van Panchayat rule
- To regulate grazing and entry in the village forest.
- To prevent trespassing by cattle according to Cattle Trespass Act, 1871
- To stop all right to person whom Management Committee consider responsible for damage to van panchayat due to fire or who violates the orders of the Management Committee.
- To seize all tools and weapons used for committing forest offence in forest village/van panchayat area.
- To sell the forest produce locally, without doing any harm to forest.
- To extract and sell resin in accordance with Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act 1976
- To enter into an agreement with Self Help Groups or group in the form of forest users or with any individual for proper management, conservation, protection and development after getting approval from Aam Sabha.

2.8 POWER TO MAKE BY LAWS

The Management Committee can make by laws for following purposes:

- For distribution of forest produce among right holders
- For regulating grazing.
- For cutting of grass and collection of woods for fuel.

PROVISIONS OF VAN PANCHAYAT RULES 2005

- ♦ To levy fees to meet its administrative expenses
- ♦ For any other purposes in consistence of Van Panchayat rules.

The by laws will be applicable only after it has got consent of the Aam Shabha and approved by the concerned forest officer

2.9 ANNUAL REPORTING

Reporting to Prabhagiya Vanadhihari

The Management Committee is required to give every year annual report of work done to Parbhagiya Vanadhihari, prior to 15 April of every year who in turn will submit report of his area to Collector. The report will be prepared by Up Van Rajik or Van Daroga and will contain following information:

- ♦ Detail of use of Panchayati Van Fund
- ♦ Detail of demand and recovery
- ♦ Detail of income and expenditure
- ♦ Detail of felling, forest development, regeneration etc.
- ♦ It is specifically required to be stated that, which works stated in Microplan has been done and what steps taken for completing that work.

Presentation of work before villagers:

The Management is required to make a presentation to open house of villagers every year of the work done.

2.10 FOREST VILLAGE FUND

Source of fund

A Van Panchayat fund will be created for every Management Committee. Income received from following sources will be deposited in that fund;

- ♦ Income received from selling of forest produce
- ♦ Government aid.

- ♦ Revenue received from any other sources.
- ♦ Money lying with the Collector unspent

Management of fund

Management Committee will manage the fund of the village forest under the direction of Prabhagiya Vanadhihari.

The Sarpanch will open the account in the name of Management Committee and will be operated by Sarpanch.

Determination, Distribution and Utilization of net profit from forest produce:

The Van Panchayat Rule provides for distribution of net profit received from resin and other forest produce in following manner:

- a) The forest department will take actual expenditure incurred on extracting resin and such overhead expenditure, which are determined by state government from time to time.
- b) The forest department shall take ten percent of the amount on which the other forest produce are sold for the purpose of administrative expense.

Utilization of forest village fund:

The distribution of Forest Village fund will be done in following manner:

- ♦ 30% of the fund will be given to Gram Panchayat for developmental work of public use
- ♦ 40% will be spent on conservation and development of village forest
- ♦ 30% of the fund on projects of local use

However proposal of expense will be approved in annual meeting.

Distribution and use of income from Plant, Maintain and Earn scheme

- ♦ 15% of income from forest produce to Gram Panchayat
- ♦ 15% of income from Forest Produce will be kept in Forest Fund for developmental work of Forest Village

PROVISIONS OF VAN PANCHAYAT RULES 2005

- 70% will be distributed within members of group or as stated in agreement

If there are more than one revenue village in any Van Panchayat, the amount will be distributed in equal proportion of 15% each.

Budget and Accounts of the Management Committee

The annual budget shall be submitted by the 31st December of the preceding year and the Panchayat Van Vikas Adhikari shall accord his sanction by the following 31st March.

A proper account of all income and expenditure of the Panchayati Forest Fund shall be maintained by the Sarpanch.

The audit of the accounts of every Forest Panchayat shall be done under the orders of the Chief Audit Officer to Government Co-operative Societies and Panchayat, Uttaranchal at such intervals and in such manner as the State Government may direct.

2.11 INSPECTION OF WORKING OF MANAGEMENT COMMITTEE

The Management Committee is subject to Inspection at different level and by authorities. Other than officials, Member of Parliament and Legislative Assembly can also inspect the working of Management Committee. New rule also provides for formation of Pramarsdhatri for scrutiny of work of Management Committee.

Inspection by Officials

The Collector, Pargana Magistrate, Prabhagiya Van Adhikari, Up Prabhagiya Van Adhikari and Van Kshtradhikari will have to inspect the working of the Village Forest and Management Committee and also assess their work time to time.

Inspection by MP, MLAs and President Zila Panchayat

The rule empowers the Member of Parliament and State Legislative Assembly and also the President of Zila Panchayat to inspect the working of Panchayati Van falling in the area they are representing.

Formation of Prammarshdatri

The Van Panchayat provides for formation of Prammarshdatri at three levels for the purposes of assessing the work of the management Committee and to give direction. The Prammarshdatri Committee is created at local, District and State level.

Kshtriya Prammarshdatri:

Kshtriya Prammarshdatri Committee will have total 13 members. This Committee will be formed only when Village Forest and Management has been formed in more than half of the village of the area.

District Prammarshdatri:

A District Forest Village Prammarshdatri Committee will be formed in the district where Village Forest/Van Panchayat and Management Committee have been formed as per the Van Panchayat rules. There will be four members in the Committee and will held meeting at least twice in a year.

State level Prammarshdatri:

For assessing the works of Forest Village Management and for deciding policies a State Prammarshdatri Committee will be formed. This Committee will meet at least once a year.

Duties of Prammarshdatri Committee:

The Van Panchayat rules provide specific duties to State Prammarshdatri Committee as follows:

- ♦ Assessing the work of Management Committee
- ♦ Issue directions to improve the status of the Village Forest
- ♦ To help the Management Committee to get funds from different sources
- ♦ To help the Management Committee to fulfill its duty.

Formation of Gramsabha

The Van Panchayat is provided for formation of Gramsabha. The purpose of forming the Gramsabha is to manage the affairs of the village. The Gramsabha is formed by the people of the village. The Gramsabha is the basic unit of the Panchayati Raj system.

Krishna Gramsabha

Krishna Gramsabha is a village Panchayat. It is formed by the people of the village. The purpose of forming the Gramsabha is to manage the affairs of the village. The Gramsabha is the basic unit of the Panchayati Raj system.

Other Gramsabhas

Other Gramsabhas are formed by the people of the village. The purpose of forming the Gramsabha is to manage the affairs of the village. The Gramsabha is the basic unit of the Panchayati Raj system.

Van Panchayat

Van Panchayat is a village Panchayat. It is formed by the people of the village. The purpose of forming the Gramsabha is to manage the affairs of the village. The Gramsabha is the basic unit of the Panchayati Raj system.

Formation of Gramsabha

The Van Panchayat is provided for formation of Gramsabha. The purpose of forming the Gramsabha is to manage the affairs of the village. The Gramsabha is the basic unit of the Panchayati Raj system.

- To help the Management Committee to manage the affairs of the village.
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CHAPTER - 3

AN OVERVIEW OF VAN PANCHAYAT RULES

Rights of the communities on the forest exist from the pre colonial times when there was no formal government. The British were the first to separate the agricultural land from forest land. In the year 1823 Commissioner Trail started demarcation of village boundaries and was called Great Measurement or Bhumi Bandobast. This was the first step towards appropriation of rights of the communities by the state.

Before going into details, first question is why the need for Van Panchayat was felt. Whether it was for the communities or for the Government? Everybody will agree on this that the formation of Van Panchayat was not for the communities but to facilitate the expropriation process of the Government of forest. As seen, when all the rights of the communities were snatched away and unrest developed in them, the government just to control the protest came out with the Van Panchayat rules. The rules of Van Panchayat starting from 1931 were only to facilitate the need of the Government. In almost whole of the Uttarakhand the livelihood of the people depends on Forest. When the British Government realized the potential of the forests of Uttarakhand, they declared all forest of Uttarakhand as State Property.

The recent development in the Van Panchayat rules form 1976 to more recently 2005, more restrictions were imposed and the management of the Van Panchayat is de facto of the Forest Department. The Van Panchayat rules 1976 was made applicable to Nainital, Almora, Pithoragarh, Garhwal, Chamoli, Uttarkashi, Tehri and Chakrata area of Dehradun. This rule introduced that at least one third of the villagers must propose for the formation of the Van Panchayat. Further there were lots of rights to the Van Panchayat which were stated in these rules, however most of them were subject to approval of Commissioner, Deputy Commissioner.

PROBLEMS WITH THE VAN PANCHAYAT RULES 2005

The Van Panchayat rules of 2005 is in continuation of the government's intention to control the forest and Van Panchayat for its own use and usurping the rights of the villagers, right holders' and communities dependent on the forest and forest produce.

Control

The Van Panchayat involves control, interference and coordination from Civil Administrative Department, Forest Department and Local Gram Panchayat. While Civil Administration department look after administration of the Van Panchayat, Forest Department is responsible for overall technical and management of the Van Panchayat. The overlapping powers are some time confusing for the villagers and the members of the Van Panchayat. There are not much staff with any of the department to timely dispose off the request of the Van Panchayat. The Van Panchayat has overlapping powers with the Gram Panchayat, which also led to conflict of interest.

Formation

Proposal: The process of formation of the Van Panchayat is in itself a confused one, and never implemented in true sense. The process starts with proposal from the one fifth adult of the village. But in reality no one knows how the Van Panchayat has been formed in the area. The one fifth of adult member can propose to make Van Panchayat but if the villagers have to oppose the formation of Van Panchayat then it should be fifty percent or more resident of the area. That means even if 49% oppose to the proposal then also the Van Panchayat can be formed.

Demarcation: The process of demarcation of area is not clear. The proposal for formation of Van Panchayat comes from the villagers, but what is the basis for demarcation. There are very much chances of conflict of interest between two villages sharing the boundary of the Van Panchayat. There is a provision of including protected forest and reserve forest in the Van Panchayat, but it seldom happens that a reserve forest land has been included in the Van Panchayat. The rules provide for issuing of notice and giving wide publicity to any application received for formation of Van Panchayat. Through this notice the magistrate will also invite objection, if any, to the formation of Van

Panchayat. But none of the area where Van Panchayat is formed ever receive any such notice. The government on their own, without any consultation of the villagers forms a Van Panchayat.

The Van Panchayat Rules 2005 has ignored and has not properly covered the issue of demarcation of the Van Panchayat area. From the past experience it is known that maximum disputes related to Van Panchayat are of demarcation of area and the Pargana Magistrate is seldom able to solve the disputes.

Further the Forest Department not allows inclusion of the Reserve Forest area in the Van Panchayat.

Period of Appeal: The period within which Appeal related to boundary of Van Panchayat as per rule 5(b) against the order given by Pargana Magistrate under rule 5(a) can be filed is only 30 days from the date of order. In Uttarakhand which is a hilly area with difficult terrain and villages are located in remote area, 30 days time is too less for filing of Appeal. Even otherwise filing of Appeal within 30 days is unjustified as many a times the order of the Pargana Magistrate is not communicated on time to the concerned villagers. The villagers after receiving the order may need sufficient time understand and discuss the order of the Pargana Magistrate within themselves. Further, if time span is so important then the Collector has not been given fixed time frame to dispose of the Appeal.

Now after formation of the Van Panchayat the villagers cannot exploit the civil forest also without the interference from the Forest Department. The issue of conservation raised by the government for inclusion of civil land is a myth because the communities who are dependant on the forest were protecting the forest for centuries. It is the economic exploitation of the forest that led to its indiscriminate destruction. The government realized the economic potential of the forest and started exploiting the area and started interference in the communities' resource rights.

The moot question is that, there are so many restriction and regulations on the resource right of the communities in the shield of conservation and environment, however hectares of forest land is destroyed just for mining and other so called developmental projects.

AN OVERVIEW OF VAN PANCHAYAT RULES

Management

The management of the Panchayati Van is not left on the Van Panchayat but there is multi tier system which controls the functioning and management.

Composite Management Plan:

The Composite Management Plan (CMP) prepared by Prabhagiya Vanadhihari of the area is the main document for the Van Panchayat. However the CMP is prepared in complete isolation from the villagers, Van Panchayat and right holders. The Forest Department prepares the CMP without considering resource rights of the people. Further the CMP is also the basis for the Microplan which is made for individual Van Panchayat. At every stage of the preparation of Management Plan, the approval of Forest Department is necessary. It is interesting to note here that prior to 2001 in 1976 the interference was not much from the Forest Department, but it was Commissioner and Deputy Commissioner who used to be the main approval authority. The working plan used to be prepared by Van Panchayat as per rule 11 of the Van Panchayat rules 1976. However rule 21 also provides for working plan and Van Panchayat has to follow that working plan.

Microplan:

The Van Panchayat Rule 2005 provides that the Microplan will have to get approval from the Aam Sabha of Self Helping Groups. It is never followed in reality. Rule 12 provides for preparation of Microplan by Management Committee with the help of concerned Upajik, Van Daroga or Van Rakshak. But in reality it is forest department who always prepares the Microplan in isolation from the requirement of the community. Further there is no provision in the Van Panchayat rules about giving copies of the Microplan to villagers and receiving their comments on it. The process of taking approval from Aam Sabha without any consultation process is meaningless.

Annual Implementation Plan:

The Annual Implementation Plan is prepared by the Management Committee of Van Panchayat with the help of Forest Department. However this plan also has to be approved by the Van Kshtradhikari.

Forest produce not defined:

The Van Panchayat Rules has not defined anywhere the meaning of 'Forest Produce'. Rule 18(a) talks about use of 'Forest Produce' as per the Microplan but when the meaning of 'Forest Produce' is not defined then the Forest Department is at liberty to define the term as per their convenience. However the term 'Forest Produce' is defined in section 2(4) of the Indian Forest Act, 1927 and various Court rulings have defined the term time to time. But it is not possible for the villagers to keep on looking at different legislations and Court rulings to know that what really the 'Forest Produce' means.

Democratic power to make by laws is subdued:

The Van Panchayat Rules in rule 21 gives the Management Committee, power to make by laws for different purposes. The by laws will be applicable only after it has got consent of the Aam Shabha and approved by the concerned forest officer. This is clearly interference in the democratic functioning of the Van Panchayat. Once the Aam Shabha has approved the by laws then why it has to get approval from the Forest Department.

Participation of Forest Department in Meetings:

The forest department has also power to participate in the meetings of Van Panchayat. This clearly is interference in the democratic functioning of the Van Panchayat.

Power to prohibit rescind, modify or confirm the execution of resolution, direction or order of Management Committee:

The Prabhangiya Van Adhikari, an official from Forest Department has a power under rule 49 of the Van Panchayat rules 2005 to prohibit, rescind, modify or confirm the execution of resolution, direction or order passed by Management Committee or by any of its officers, if in his opinion such resolution, direction or order is of a nature as to cause obstruction, annoyance or injury to public or public interest or is against the provisions of these rules. Now this is an unlimited power with no check and balance is given to the Forest Department. The rules also not provide any provision for challenging the decision of the Forest Department.

AN OVERVIEW OF VAN PANCHAYAT RULES

Distribution of funds:

While the Van Panchayat has been given lot of responsibilities, they have been given very limited power to utilize the fund. Most of the funds of the Van Panchayat remain unutilized due to difficult procedure of getting approval. The Management Committee even some times doesn't know how much fund is there with the Van Panchayat account.

No protection from so called developmental projects:

The problem is that the Van Panchayat land is also not safe from the so called developmental work and can be diverted for other purposes. The government can allow mining or setting up of any industry in the Van Panchayat area. Then the villagers who have been protecting their forest will be destroyed and there will be no way to compensate them for that.

At the end there are very less administrative powers given to the Van Panchayat, whereas has been made responsible for its management.

The interference from the forest department and the government has made the people insecure and skeptical about forming the Van Panchayat. The Van Panchayat formed in neighbouring villages does not inspire the others to give proposal for forming the Van Panchayat.

THE 73RD AMENDMENT IN CONSTITUTION & VAN PANCHAYAT:

The creation of Van Panchayat in Uttarakhand has created a parallel institution of governance at village level with the Panchayat constituted under Article 243 B of the constitution.

The 73rd amendment to the Constitution amended Part IX and the principal of self government based on democratic principal at Gram Panchayat level and above was introduced. It was introduced to strengthen the Panchayat system by giving it constitutional base. Article 243 G of the Constitution speaks about Powers, Authority and responsibility of Panchayat. The Article states that:

"Subject to the provisions of this Constitution, the Legislature of State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at appropriate level, subject to such conditions as may be specified therein, with respect to-

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters in the Eleventh Schedule

The Eleventh Schedule of Constitution lists at item 6 Social forestry and farm forestry, at item 7 Minor Forest Produce, at item 12 Fuel and fodder. The management of these is in direct conflict of the Van Panchayat. When one institution is in place, then creating another institution at the same level creates the conflicts of interest. The Panchayats created by Constitution can also safeguard and preserve community resources. The creation of different body then Gram Panchayat only seems to be for having government's and Forest Department's full control over it. Where as the Van Panchayat gets their fund from collection of different kind of fees, fine etc., the Gram Panchayat depends on Government Fund.

VAN PANCHAYAT AN EXAMPLE OF COLLECTIVE OWNERSHIP:

The Van Panchayat rules might have many provisions which makes states directly appropriator of all the natural resources through legal ways, still it is an institution which practices the concept of collective ownerships. The area is collectively owned by the village community and the community has a right over its resources. However the government does not want to give complete power and right over the resources to the communities. The Van Panchayat rules in present way are clearly a tool in the hands of ruler to expropriate the revenue earned, community resources and social ownership in the name of Van Panchayat. It was held in *State of Karnataka vs. Ranganatha Reddy* (1977(4)SCC471) by nine Judges Bench of Supreme Court that one of the principal aims of socialism is the distribution of material

resources of the community in such a way as to subserve the common good. Michale Lowy has said socialism would mean above all social appropriation of these productive capacities, putting them in the service of workers.

IMPACT ON VAN PANCHAYAT OF SUPREME COURT ORDER:

Since 1996 Supreme Court has passed several orders and direction regarding forest area of different parts of the country. In T. N . Godavarman Thirumulpad vs. Union of India by order dated 12.12.1996 Supreme Court enlarged the scope and meaning of word "Forest" and Forest Conservation Act, 1980. It was held by the Apex Court that the provisions of Forest Conservation Act, 1980 must apply to all forests irrespective of the nature of ownership or any classification. It was further held by the Court that:

"The "forest" must be understood according to its dictionary meaning. This description covers all statutorily 'recognized' forests, whether designated as reserved, protected or otherwise for purpose of section 2(1) of Forest Conservation Act. The term 'forest land', occurring in section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of its ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matter connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

The Supreme Court in the same order further passed an order to the effect that prior approval of Central Government is required for any non-forest activity within the area of any 'forest'. Felling of trees was completely banned except in accordance with the Working Plan approved by Central Government.

The implication of Supreme Court order is that Forest Conservation Act, 1980 will be applicable on the Van Panchayat area irrespective of fact whether the area included in the Van Panchayat is Reserve Forest or not, and cannot be used for non forest purposes. The Forest Department or Van Panchayat cannot undertake any non forest activity without prior approval of the Central Government.

However by order dated 23.01.1998 in T. N . Godavarman Thirumulpad vs. Union of India, Supreme Court allowed rights and concession to the resident of Uttarakhand in respect of forest produce meant for bonafide personal use by local population in the regions which are located 1000 meters or more above the sea level.

It is a well-known fact that the Van Panchoay Rules are a set of rules that govern the conduct of the Van Panchoay. The rules are designed to ensure that the Van Panchoay is conducted in a fair and equitable manner. The rules are designed to ensure that the Van Panchoay is conducted in a fair and equitable manner. The rules are designed to ensure that the Van Panchoay is conducted in a fair and equitable manner.

CHAPTER - 4

GOVERNMENT'S RESISTANCE TO COMMUNITIES' RESOURCE RIGHTS

Initially, involving communities in forestry was never a mandate of the independent Indian Government. The Forest Policy of 1952 did not recognize the claims of the local community on the forestland. For the first time in 1988, the Ministry of Environment & Forest recognized the needs of tribals living in forest area and the development of forest in consonance with the communities' involvement and needs. The Indian Forest Policy of 1988 states that "Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest." This forest policy further put stress on developing Forest Villages and undertaking integrated area development programs to meet the needs of the tribal economy in and around the forest areas.

Coming to the Van Panchayat, the rights of the communities on the forest produce are duly recognized by the legislatures, but ample control has been put in the hands of the Forest Department. Where at one place the rule of Van Panchayat talks about democratically elected members of the Management Committee, on the other the power to frame programs are vested with the Forest Department. Whatever little powers are there with the Panchayat, they are hardly exercisable. We can safely conclude from the case studies of some areas in Uttarakhand that the Forest Department is virtually running the Van Panchayat. The communities, ignorant of the provisions of the Van Panchayat rules and unaware of the danger of the encroachment of civil syome forest by the Forest Department through these rules, are left to fight their lone battle.

Many villages of Tehri and Uttarkashi of Uttarakhand are new to the Van Panchayat system, unlike in Kumaon and some other parts of Uttarakhand, where the system was instituted in the colonial times. Rather than meeting the requirements of the villagers and Van Panchayat, the newly created Van Panchayat is more restrictive and denies the traditional rights of the villagers. The Department is only including the civil syome land in the Van Panchayat and extending their empire out of the protected area. Contrary to the spirit of

the Van Panchayat Rule, the Forest Department is protecting their stand strongly of not including any Reserve Forest or Protected Forest in the Van Panchayat. The Van Panchayat is never created or formed depending on the needs and requirements of a particular village, but on the mere fact that how much land are there, which are not under the Forest Department.

During the visit by Chetna Andolan in Sunar Gaon of Tehri district the Sarpanch of that village revealed that during the meeting with the Forest Department, the Department clearly stated to him that no area of the Reserve Forest would be included in the Van Panchayat. The problem is, there are lots of villages that have only 1 to 2 hectare of Civil Land and if they are denied the area under the Forest Department then Van Panchayat is left with nothing but a farce. Every now and then the Forest Department accuse the villagers of encroaching upon the Forest Department land and even at the time of formation of Van Panchayat they mark certain land as an encroachment, which the villagers are using traditionally. In Chani Village, the Sarpanch informed the Chetna Andolan team that the Forest Department is saying that the cowshed of the village Chani is on the encroached land.

If we move further, the residents of the area don't know that Van Panchayat can also participate in the process of framing of Microplan. The Microplan made in isolation of the villagers contain wrong, baseless and misleading information, which make any further work on its basis useless and counter-productive. Bhatgaon is one of the farthest villages of the Tehri District, where the majority villagers are poor. The microplan prepared for the Van Panchayat of the village states that the village came into existence only 30-40 years back and there are 108 families in the village, out of which only 13 are poor, in spite of the fact which microplan itself recognises that the 90 percent of the agricultural land is unirrigated. The villagers including the Sarpanch were not aware of the contents of the microplan, which were highly shocking to them. This statement in the microplan makes the entire village a recent 'encroachment'. When the Sarpanch and other villagers protested against the microplan, the Forest Department threatened the villagers that "we have taken the signatures of all the villagers on the microplan and if you will protest then you all will have to go to jail".

Another village Koti has similar experience with the facts stated in the microplan. However the history of the village was given correctly in the microplan, but strange figures have been given regarding fodder for the cattle. The microplan says that the village has total of 855 livestock. As per the calculation given in the microplan buffalo consumes a half kg of fodder per day, a goat and a horse consume total of 10 kg of grass in a month. This kind of information in the microplan certainly has been given by the Forest Department without consulting the villagers and using their own prudence. When the microplan itself is faulty, then how can one expect proper implementation of the Van Panchayat rules even in its present form.

Traditionally, the Uttarakhand and especially the Tehri district conserve their forest, as for them it is their source of livelihood and they are dependent on forest for day-to-day existence. Before the government's penetration on the rights of forestland there was no restriction on the villagers of utilizing the produce. After the enactment of the Indian Forest Act, the concept of reserve forest and protected area came into existence, which restricted the rights of the villagers of complete enjoyment of the Forest Rights, which existed traditionally. The Van Panchayat rule was introduced to demarcate forestland for the use of the villagers. It is explicit that for enjoying the forest rights there has to be forest on which the state does not exercise its absolute rights. But in Uttarakhand for most of the villages specifically in the Tehri District, it is true that they have only one or one and half hectare of civil syome land. Chama, and Navan villages have only $\frac{1}{2}$ to $2\frac{1}{2}$ hectare of land and Van Panchayat has been declared for that land only. In some villages bizarre situation exist where Van Panchayat has been formed without any forest. Like in Lasyal, Bhethi, Amarsar, Panana, Dhar among other villages have not even civil syome forest, but the Van Panchayat has been formed. How these villages are going to meet their requirements without becoming trespasser and attracting penalty in the terms of the Forest Department?

The need of the time is to demand a change in the Van Panchayat Rules, and the Reserve Forest land must be brought under the purview of the Van Panchayat. Otherwise the rules are going to be useless and will be judged as another legal device to expropriate the rural population.

CHAPTER - 5

USE OF VAN PANCHAYAT RULES

The Van Panchayat Rules in its existing form may have lots of infirmities but to get optimum out of it we will have to use the existing rule and intervene at various levels. The Van Panchayat rules combined with the Right to Information Act can have impacts which can make the Van Panchayat function in better way.

The pro active role can be played by the villagers and the activist right from the beginning of formation of the Van Panchayat.

How the Van Panchayat is formed?

The Van Panchayat is formed upon the proposal from minimum of one fifth adult of the village, or a concerned gram panchayat has passed a resolution for formation of van panchayat.

After receiving the proposal the Paragana magistrate can initiate the process of formation of van panchayat

Which kind of forest can be included in the Van Panchayat?

As per rule 3 the land which is proposed to be a van panchayat must be:

- Within the boundary of the revenue village
- Reserve Forest bordering the revenue village
- Protected Forest bordering the revenue forest
- Forest belonging to government bordering the revenue village

Whether the villagers will be informed if any proposal received for formation of Van Panchayat?

If proposal for formation of Van Panchayat is received from any village, then as per rule 4 of the Van Panchayat rules it is duty of the Paragana Magistrate to give wide publicity of the proposal. For the purpose of giving wide publicity to the proposal Paragana Magistrate is required to send Notice to all

the concerned villages and shall announce about this by beating of drum. The notice of the said proposal shall also be required to be pasted at public place in the concerned Villages.

What will be the information containing in the Notice?

The Notice will contain the following information:

- About the location and boundary of the area for which application for creation of Van Panchayat is received.
- About the date till when the objections and claim against the Proposal can be sent
- About the date when hearing on the claims and objections will take place.

The villagers can object to Pargana Magistrate if proper notice is not given.

Whether objections can be raised against the formation of Van Panchayat?

If half or more than half of the villagers, boundary of which villages is falling under the proposed area, object to the proposal then that area cannot be declared as Van Panchayat.

Any villagers from that area can send his or her suggestion for or against the formation of Van Panchayat. If the villagers are of opinion that certain area where they have traditional rights or other wise should have been included in the Van Panchayat, they can send their suggestion about the same to Pargana Magistrate. It is imperative that the villagers should participate in the process of demarcation of the boundary of Van Panchayat and clarify their status in respect of Van Panchayat.

Who will hear the objections?

The Paragana Magistrate will hear the claims and objections regarding the proposal for formation of the Van Panchayat received.

Whether appeal can be filed against Order of Paragana Magistrate?

Appeal against the order of the Paragana magistrate can be filed before Collector within 30 days.

How the villagers can participate if proposal for Van Panchayat is accepted?

It is duty of the Paragana Magistrate to ask the villagers of above 18 years of age to assemble at some convenient place, and such assembled people will be called Aam Shabha. There the selection the members of the Van Panchayat and sarpanch will be done through majority vote. The villagers can elect the person of their choice for member of the Van Panchayat. The villagers can also file an Application against the election of any member before Paragana Magistrate within 30 days. And after that if he is not satisfied with the decisions of the Paragana Magistrate then he can file Appeal before Collector within 30 days from the order of the Paragana Magistrate.

Whether villagers can participate in the processes of preparation of Micro Plan?

The Microplan is prepared by Management committee of the concerned Van Panchayat. Villagers are not directly involved, but the Microplan will have to get approval from Aam Shabha of Self Help Groups, prior to its presentation before concerned Up Prabhagiya Van Kshatradhikari. Thus villagers have last say in the finality of the Micro Plan.

How villagers can intervene in the process of approval of Microplan?

Though there is no provision in the Van Panchayat Rules about giving copies of the Microplan to villagers and receiving comments thereafter, but when the Villagers are informed about the meeting for approving the Microplan, then the villagers can ask from Management Committee to give the copy of Microplan and raise their concerns and objections about the Microplan. The Management Committee will have to give notice to the villagers informing them that the Microplan is ready and any villagers can inspect the micro plan,

otherwise the approval of the Microplan from Aam Shabha will be futile. If the villagers have not received the copies and no time is given to comment on same, then they should not approve the Microplan and also inform the concerned officials about the same.

Whether villagers can participate in preparation of Annual Implementation Plan?

The rules do not provide any thing about participation of villagers in preparation of Annual Implementation Plan. But the Annual Implementation Plan is based on Microplan, so the villagers should see that Microplan is prepared as per their requirement.

Whether villagers can inspect the proceedings of the Management Committee Meeting?

The Management Committee has to meet once in every month and the proceedings of the meeting will be recorded in a register. The villagers can ask for the proceeding register and can also ask for copy of same under Right to Information Act.

Whether villagers can know about the revenue of the Van Panchayat?

The Sarpanch has a duty to call meeting of Aam Sabha twice in a year, preferably in April and October. He will inform the villagers about the development, work and revenue of the Van Panchayat.

Whether villagers can remove the Sarpanch and members of the Management Committee?

The Aam Sabha of the village can move no confidence proposal against Sarpanch or members of the Management Committee.

Whether the villagers can access the Account book of the Van Panchayat?

The villagers can ask for the Account book of the Van Panchayat through Right to Information Act and can do the actual assessment of the income received and the work done. If any irregularities are found in the accounts book immediately ask for the certified copy of the account book under the Right to Information Act and bring the fact of irregularities into the notice of Prabhagiya Vanadhihari or Collector.

What are the rights in respect to Forest produce?

The scope and meaning of the word 'forest' has been enlarged by Supreme Court's order dated 12.12.1996 in T. N . Godavarman Thirumulpad vs. Union of India. It was held by the Supreme Court that "forest" must be understood according to its dictionary meaning. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matter connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This resulted in practical difficulty in collection of Forest Produce by villagers of Uttarakhand and other parts of country.

By order dated 4.03.1997 in Godavarman case, Supreme Court clarified that the Order dated 12.12.1996 is not applicable to minor forest produce, including bamboos etc. Thereafter by order dated 23.01.1998 Supreme Court further clarified that local resident of Uttarakhand shall be permitted to avail the rights and concession in respect of forest produce meant for bona fide personal use of local population in the regions which are located 1000 meters or more above sea level. However Supreme Court also directed that care shall be taken to ensure that grant of rights to local populous of the hill areas does not adversely effect forest conservation in Uttarakhand area.

Further in order dated 18.08.2002 in Godavarman case Supreme Court clarified that order of prohibition on cutting of trees does not apply to bamboos including cane other then in National Parks and Sanctuaries.

What is Forest Produce?

When we talk of Forest Produce, it is important to define what we mean by "forest produce". The term Forest Produce is defined in Section 2(4) of the Indian Forest Act, 1927. Courts have also interpreted the term forest produce in different manner, depending upon the facts and circumstances. As per section 2(4) of the Indian Forest Act, 1927 "forest produce" is:

2. Interpretation clause. -In this Act, unless there is anything repugnant in the subject or context-

(4) "forest-produce" includes-

- (a) the following whether found in, or brought from, a forest or not, that is to say timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and
- (b) the following when found in, or brought from a forest, that is to say-
 - (i) trees and leaves, flowers and fruits, and all other parts or produce not herein before mentioned, of trees,
 - (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
 - (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
 - (iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);

Courts in different matters defined what can be or cannot be forest produce

Whether 'kattha' or 'catechu' is a forest produce?

The High Court of Allahabad has held that factory made kattha, which is catechu, is a forest produce within the meaning of the definition of the word 'forest produce' as defined under Section 2(4) of the Indian Forest Act.

(M/S. Indian Wood Products Co. Ltd. vs State of U.P. and another, AIR 1999, Allahabad, 222.)

Whether Fish can be termed as Forest Produce?

In this regard it was held by the High Court that Fish cannot be forest produce. Under Section 2 of the Forest Act, the fish has not been included in the definition of "forest produce" though wild animals have been so included. In view of clauses 36 and 37 of Section 2 of the Wild Life (Protection) Act, the fish is not wild animal but wild life. It is, therefore, abundantly clear that the fish can not be included in the forest produce in the Forest Act.

(Sheikh Tausif vs State of M.P. 2002 Cr, L. J., 1581.)

Whether dung dropping from the cattle grazed in the forest area is forest produce?

The High Court of Madhya Pradesh has held that the dung droppings from cattle grazed in forest area is not forest produce. It has been settled that the dung dropping from the cattle grazed in the forest area licenced for the purpose, is not covered within the definition of forest produce. The grazing cattle are domestic animals that are not naturally found in the forest and as such the dung excreted by the cattle grazed in the forest area under licence, cannot form part of produce of animal, found in or brought from forest. Also the dung did not assuming the character of surface soil as mentioned in the definition because the two expressions "all other parts of produce of animal and the surface soil, found in or brought from the forest" refers to natural occurrence in the forest. So dung in this situation not included within the meaning of 'forest produce'.

(Barkat and others vs State of M.P AIR 1987 M.P. 162)

Whether chiraunji or gond is forest produce?

On bare perusal of clauses (b) and (c) of sub-Section (4) to Section 2, it will be evident that if the trees, leaves, flowers, fruits and all other parts are produce when found in or brought from a forest then only it is included within the definition of 'forest produce'. In the instant case there being nothing on the record to suggest that the Chiraunji or Gond, in question, seized from the premises of petitioners were found in or brought from a forest, even as per clauses (b) and (c) of sub-Section (4) to Section 2 of the Indian Forest Act 1927, seized materials can not be held to be 'forest produce'.

(Sanjay Lodha vs State of Jharkhand and Others, A.I.R. 2003, Jharkhand, 64.)

Whether bamboo carpet is a forest produce?

The Supreme Court while considering as to whether bamboo mat is a forest produce or not has held that bamboo mat is not a forest produce in the eye of law.

(Suresh Lohiya vs State of Maharashtra, 1996 A.I.R., SCW, 4111)

It is held by Bombay High Court that bamboo mat prepared from bamboo is not a forest produce under Section 2(4) of the Indian Forest Act 1927. The Court held that the expression 'forest produce' does not take within its fold an article or thing which is totally different from forest produce, having a distinct character.

(Mahadeo and Others vs State of Maharashtra and Others, A.I.R. 2001, Bombay, 434.)

Whether articles prepared from the bamboo chips are forest produce?

The High Court has held that articles prepared from the bamboo chips are not forest produce. A careful look at the various clauses of the definition of forest produce makes it clear that it takes within its fold all that is produced by nature but does not include man made products such as topplas, palas, supdas, etc., made from bamboo chips. True it is that if bamboo as a whole is forest produce, every part thereof including chips would fall within that definition but once the chips cease to be a 'produce' of nature and get merged into a 'product' brought about by human labour and if the product so made is commercially new and distinct, known to the business community as a totally different commodity having a distinct character, such an article or product ceases to be a forest produce. Therefore, bamboo being a tree would certainly fall within Cl. (b) of the definition of 'forest produce', but topplas, supdas, and palas made out of bamboo chips would not fall within the definition of forest produce.

(Fatesang Gimba Vasava and others vs State of Gujarat and Others, AIR, 1987, Gujarat, 9.)

CHAPTER - 6

COMPARATIVE CHART OF THE VAN PANCHAYAT RULES, 1976, 2001 AND 2005

Subject	Van Panchayat Rules, 1976	Van Panchayat Rules, 2001	Van Panchayat Rules, 2005
Extent of rules in terms of area	Rule 1 (2) This rule was applicable in Nainital, Almora, Pithoragarh, Garhwal, Chamoli, Uttarkashi and Tehri districts and Chakrata tehsil in Dehradun district and any other area as notified by State Government from time to time.	Rule 1 (II) This rule was applicable in Almora, Bageshwar, Champawat, Pithoragarh, Chamoli, Rudrapryag, Uttarkashi, Tehri, Pauri Garhwal districts and Nainital tehsil in Nainital district and hilly regions of Dehradun and Chakrata tehsil and any other area as notified by the State Government from time to time.	Rule 1(b) This rule is applicable in whole of Uttarakhand.
Proposal for Van Panchayat	Rule 5 One third of adult resident of village must propose for formation of Van Panchayat. If one third of resident object then Van Panchayat cannot be formed	Rule 3 One fifth adult resident of village must propose for formation of Van Panchayat. If one third or more of resident object then Van Panchayat cannot be formed	Rule 3 One fifth adult resident of village must propose for formation of Van Panchayat. The concerned magistrate will take any step in this respect only with satisfaction of Forest Department. If half or more of resident object then Van Panchayat cannot be formed.

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Notice of Formation of Van Panchayat	<p>Rule 6</p> <p>The Magistrate will serve the notice to the concerned villages or will make arrangements for widely publicizing the proposal, or will affix the notice at conspicuous place. The notice will include the date and time for till when the objections can be filed.</p>	<p>Rule 4</p> <p>The Pargana Magistrate will serve the notice to the concerned villages or will make arrangements for widely publicizing the proposal, or will affix the notice at conspicuous place. The notice will include the date and time for till when the objection can be filed. The copy of notice will be necessarily served on Prabhagiye Vanadhihari and Van Kshtradhikari</p>	<p>Rule 4</p> <p>The Pargana Magistrate will serve the notice to the concerned villages or will make arrangements for widely publicizing the proposal, or will affix the notice at conspicuous place. The notice will include the date and time for till when the objections and claim will be heard.</p>
Formation of Van Panchayat	<p>Rule 9</p> <p>Deputy Commissioner shall call upon the residents, who are above the age of 21 years, at a convenient place and time to constitute a Van Panchayat. The people will elect 5 to 9 members from amongst themselves. The elected members will elect a Sarpanch from amongst themselves. Sarpanch will be responsible for the proper management of the forest. Any person who is a government servant or official of any</p>	<p>Rule 7</p> <p>Pargana Magistrate shall ask the residents of the village at a convenient place and time to constitute a Van Panchayat. Notice of this will also be issued to the patwari and the pradhan of the village. There will be 9 members in a Van Panchayat. 4 seats are reserved for women of which one is for SC / ST. Of the remaining 5 seats one seat is reserved for a male belonging to SC / ST category. If there is no SC / ST in the village then the seats</p>	<p>Rule 7</p> <p>The Pargana Magistrate shall call upon adult villagers of the villager at some convenient place and this will be called Aam Shabha. This Aam Shabha will work as Self Help Group. Only one member of a family will be included in this group. The Aam Shabha will also constitute a Management Committee for the Van Panchayat. For constitution of the Management Committee a Notice is also served on the concerned Patwari</p>

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	<p>local body or any person who has dues to pay to Van Panchayat or any person who is proved guilty of moral turpitude, is debarred from becoming a member or Sarpanch.</p> <p>A Sarpanch cannot be elected as Sarpanch for three consecutive terms.</p>	<p>will be treated as unreserved.</p> <p>Elected members will elect a Sarpanch from amongst themselves.</p> <p>A Sarpanch cannot be elected as Sarpanch for two consecutive terms.</p> <p>If in any Van Panchayat the seat for SCs/STs or women are left vacant, then the Van Panchayat can pass a resolution and get the seats filled from amongst the persons belonging to that category residing in the village.</p>	<p>and Concerned Pradhan of Gram Shabha. The composition of the members of the Management Committee will be such as the Management Committee will be consisted of nine members, only one member of a family is eligible to be elected as a member of the Management Committee</p> <p>Four seat of the Committee are reserved for women, out of which one is for Scheduled Cast or Scheduled Tribes</p> <p>Of remaining five seats, one seat will be reserved for male member of Schedule Cast or Schedule Tribes.</p> <p>After formation of the Management Committee, the members will elect Sarpanch by majority vote. A Sarpanch can not be elected as Sarpanch for two consecutive terms</p>
Management of Panchayati Forest	<p>Rule 11</p> <p>After the formation of a Van Panchayat the Deputy Commissioner will ask the Van Panchayat for a Draft Working Plan</p>	<p>Rule 11</p> <p>Panchayat Van Vikas Adhikari shall prepare a Composite Management Plan for five years for all Van Panchayat falling in its area.</p>	<p>Rule 11</p> <p>Prabhagiya Van Adhikari shall prepare a Composite Management Plan for five years for all Van Panchayat falling in its area.</p>

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	for the management of forest and forward it to the Commissioner for his approval.		
Microplan		<p>Rule 12</p> <p>The Van Panchayat has to prepare a Microplan based on principles given in the Composite Management Plan and protection of the Panchayati forest for a period of five years with assistance of the Sahayak Panchayat Van Vikas Adhikari. The microplan has to be passed by a general meeting of all right holders before being finally approved by the Panchayat Van Vikas Adhikari. It shall be the duty of the Van Panchayat to follow the microplan strictly.</p>	<p>Rule 12</p> <p>The Van Panchayat has to prepare a Microplan based on principles given in the Composite Management Plan and protection of the Panchayati forest for a period of five years with assistance of the Uprajik/Van Daroga or Van Rakshak. The Microplan has to be passed by a Aam Shabha before being finally approved by the Panchayat Van Vikas Adhikari. It shall be the duty of the Van Panchayat to follow the microplan strictly.</p>
Annual Implementation Plan		<p>Rule 13 and 14</p> <p>Annual Implementation Plan is made for one year on the basis of approved Microplan. This plan is prepared by Management Committee with Panchayat Van Vid and the plan is to be approved by Sahayak Panchayat Van Vikas Adhikari.</p>	<p>Rule 13 and 14</p> <p>Annual Implementation Plan is made for one year on the basis of approved Microplan. This plan is prepared by Management Committee with Van Daroga and the plan is to be approved by Van Kshtradhikari. After this the Management.</p>

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		After this the Management Committee starts functioning and its work	Committee starts functioning and its work
Nomination of Member by Deputy Commissioner	Rule 12 Deputy Commissioner can, if he thinks necessary, nominate a person living in that village as a member of the Van Panchayat. If there is no representation of SCs/STs in the Van Panchayat, then the person nominated should be from SC/ST category.	Not Applicable	Not Applicable
Informing about the constitution of Van Panchayat	Rule 13 After the constitution of the Van Panchayat, the Deputy Commissioner shall inform the Conservator and Divisional Forest Officer.	Not Applicable	Not Applicable
Term of Van Panchayat / Management Committee members	Rule 14 The term of members of Van Panchayat will be 5 years. If any seat becomes vacant during the term of the Van Panchayat, then the Van Panchayat has the power to fill it. If a seat becomes vacant due to removal of any member, then the Van Panchayat do not have the power	Rule 15 The term of members of Van Panchayat and Sarpanch will be of five years. Any vacant seat will be filled by following the process given in rule 7 to 9. The Pargana Magistrate shall have to initiate the process of election of panchayat six months prior to end of term of existing	Rule 15 The term of members of Management Committee and Sarpanch will be of five years. Any vacant seat will be filled by following the process given in rule 7 to 9. The Pargana Magistrate shall have to initiate the process of election for formation of Management

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	to fill this seat. The State Government has the power to extend the term of any or all the Van Panchayats.	Panchayat. If due to some unavoidable circumstances the term of Panchayat comes to end and its not possible to conduct election, then the Collector will have power to extend the term of Panchayat for six months and will ensure the election in this period..	Committee six months prior to end of term of existing Panchayat. If due to some unavoidable circumstances the term of Management Committee comes to end and its not possible to conduct election, then the Collector will have power to extend the term of Panchayat for six months and will ensure the election in this period
Meeting and Proceedings of Van Panchayat/ Management Committee		Rule 16 The Van panchayat has to meet once in every month on the date fixed. The proceedings of the meeting will be recorded in the register in Hindi and copy of same will be given to Sahayak Panchayat Van Vikas Adhikari. However emergency meeting can be called on one day notice. All the decision of the Van Panchayat will be taken by majority vote of present members. Patwari, Van Panchayat Nirikshak, Gram Vikas Adhikari, Panchayat Van up Van Rajik, can also participate/present in the meeting, however	Rule 16 The Management Committee has to meet once in every month on the date fixed. The proceedings of the meeting will be recorded in the register in Hindi and copy of same will be given to Van Kshatradhikari. However emergency meeting can be called on one day notice. All the decision of the Management Committee will be taken by majority vote of present members. Up Van Rajik, Van Daroga and Van Rakshak can also participate/present in the meeting, however they don't have right

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		they don't have right to vote in the meeting. The Sarpanch will have the duty to call for general meeting in the month of December or January. In this meeting he will inform & discuss with everybody about the development, expenses and revenue of the village forest	to vote in the meeting. The Sarpanch will have the duty to call for general meeting in the form of Aam Shabha in the month of April and October. In this meeting he will inform & discuss with everybody about the development, expenses and revenue of the village forest
Removal of a member by Van Panchayat and Removal of Sarpanch - No-confidence motion	Rule 15 and 28 If the majority of Van Panchayat members feel it necessary to remove a member, then the Sarpanch brings it to the notice of Deputy Commissioner. Then the Deputy Commissioner will visit the village and take the views of persons having voting rights and work accordingly. If the member is removed then the Deputy Commissioner shall ask the voters to elect a new member for the remaining Period. Van Panchayat Sarpanch can be removed by Deputy Commissioner if a no-confidence resolution is placed by one-third members of the Van	Rule 17 If the majority of Van Panchayat members feel it necessary to remove a member, then the Sarpanch brings it to the notice of SDM. The SDM shall visit the village and take the views of persons having voting rights and work accordingly. If the member is removed then the Deputy Commissioner shall ask the voters to elect a new member for the remaining period. Van Panchayat Sarpanch can be removed by Sub-Divisional Magistrate if a no-confidence resolution is placed by one-third members of the Van Panchayat and is passed by two-third	Rule 17 The Sarpanch of the Management Committee can be removed by moving no confidence motion after prior notice to the Pargana Magistrate by at least one third members of the Committee and approved by majority vote of at least two third members. If the majority of the members think it necessary to remove any of its member, then the sarpanch will give the information to the Pargana Magistrate. The Pargana magistrate will send his nominated officer to the village to know the intention of the person eligible voters and will act accordingly. If the member is removed

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	Panchayat and is passed by two-third majority in Van Panchayat.	majority in Van Panchayat.	then new member will be elected for the remaining period. The villagers through. Aam Sabha (Adult member of the village panchayat) can also remove sarpanch or any of the members.
Duties of Van Panchayat/Management Committee	<p>Rule 18</p> <p>It will be the duty of each Van Panchayat to carry out the following:</p> <p>(a) To prevent any harm to trees and permit cutting of only those trees earmarked by the Commissioner on the recommendation of the forest department for common use.</p> <p>(b) To prevent any kind of encroachment and not to permit agriculture on forest land.</p> <p>(c) To build boundary pillars and protect them.</p> <p>(d) To protect and improve the forest and abide by the instructions of the Deputy Commissioner. The instructions shall be issued in consultation with the Conservator and Divisional Forest Officer.</p> <p>(e) To close atleast 20 % of the forest for</p>	<p>Rule 19</p> <p>The duties of Forest Panchayat shall be:</p> <p>(a) To prepare a five year Microplan and Annual Implementation Plan for the Panchayat Forest.</p> <p>(b) To protect the trees from damage and to use only those trees, which have been marked silviculturally for felling officially.</p> <p>(c) To ensure no Panchayati Forest area is encroached upon.</p> <p>(d) To build boundary pillars and protect them.</p> <p>(e) To abide by the directions and execute orders passed by the Panchayat Van Vikas Adhikari regarding conservation and improvement of forests.</p> <p>(f) To utilise the forest to the best advantage of the right holders, keeping in view sustainable</p>	<p>Rule 19</p> <p>The duties of Management Committee shall be:</p> <p>(a) To prepare a five year Microplan and Annual Implementation Plan for the Panchayat Forest.</p> <p>(b) To protect the trees from damage and to use only those trees, which have been marked silviculturally for felling officially.</p> <p>(c) To ensure no Panchayati Forest area is encroached upon.</p> <p>(d) To build boundary pillars and protect them.</p> <p>(e) To abide by the directions and execute orders passed by the Prabhagiya Van Adhikari regarding conservation and improvement of forests.</p> <p>(f) To use the forest to the best advantage of the right holders, keeping in view</p>

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	<p>grazing until permission is granted by the nominated member of the Commissioner.</p> <p>(f) To prevent illegal cutting of trees, trimming and any other kind of harm to trees and protect the forest from fire.</p>	<p>management principles.</p> <p>(g) To ensure catchment areas of water sources are well wooded.</p> <p>(h) To promote natural regeneration through appropriate management.</p> <p>(i) To ensure preservation of wildlife.</p>	<p>sustainable management principles.</p> <p>(g) To ensure catchment areas of water sources are well wooded.</p> <p>(h) To promote natural regeneration through appropriate management.</p> <p>(i) To ensure protection of wildlife.</p>
Powers of Van Panchayat	<p>Rule 19</p> <p>The status of Van Panchayat will be equivalent to a Forest Officer and have the following powers:</p> <p>(a) Can charge a fine upto Rs. 50/- from the defaulters and upto Rs. 500/- depending upon the seriousness of the offence, for which prior approval has to be taken from the Deputy Commissioner.</p> <p>(b) Without harming the forest, local sale of forest produce. For this prior permission has to be taken from the forest officer. The Van Panchayat can permit the right holders to take fodder and fuel wood for their domestic consumption and charge fee for the same. If the Van Panchayat feels that some of the forest</p>	<p>Rule 20</p> <p>The status of the Van Panchayat shall be of a forest officer having following powers in its jurisdiction:</p> <p>(a) To compound forest offence committed for a sum of money upto Rs. 500/- for each offence depending upon the nature of the offence.</p> <p>Provided that if the offender is prepared to compound the case, the Forest Panchayat shall realize the full market value of the property involved in the offence, as assessed by an officer, not below the rank of a Panchayat Van Vikas Adhikari, at the prescribed Scheduled rate in addition to the compensation referred to in this rule.</p>	<p>Rule 20</p> <p>The status of the Van Panchayat shall be of a forest officer having following powers in its jurisdiction:</p> <p>(a) To compound forest offence committed for a sum of money upto Rs. 500/- for each offence depending upon the nature of the offence. Provided that if the offender is prepared to compound the case, the Committee shall realize the full market value of the property involved in the offence, as assessed by an officer, not below the rank of a Prbhagiya Van Adhikari/ Van Sanraksak, at the prescribed Scheduled rate in addition to the compensation referred to in this rule.</p> <p>(b) To institute and defend suits and</p>

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<p>produce can be commercially exploited, then Van Panchayat has to give an application to the Commissioner who will forward it along with his comments and suggestions to the Divisional Forest Officer, who in turn recommend it along with his comments and recommendations to the Conservator Forest for decision making. On receiving the directions, the Divisional Forest Officer will identify the trees and other produce for use. Van Panchayat can sell the fallen fuel wood and grass provided this does not violate its duties. Van Panchayat can sell slate and stones to the villagers for their domestic use. Van Panchayat can lease some part of the forest for commercial use provided the area is not more than 100 sq. yds. and is on the periphery of the forest. Prior permission for this has to be taken from the Deputy Commissioner</p>	<p>(b) To institute and defend suits and proceedings in respect of claims arising under these rules. (c) To regulate grazing and admission of the cattle into the Panchayati Forest. (d) To impound cattle, trespassing into the Panchayati Forest as provided in the Cattle Trespass Act, 1871. (e) To exclude, from any or all privileges in the Panchayati Forest, any person, whom the Forest Panchayat may for sufficient grounds considers to be responsible for any fire or damage to the Panchayati Forest area or who does not obey order issued by the Forest Panchayat in exercise of the powers conferred on it. (f) To seize all tools or weapons used in committing forest offences within the area of Forest Panchayat.. (g) To sell the forest produce locally, without doing any harm to forest. (h) To extract and sell resin in</p>	<p>proceedings in respect of claims arising under these rules. (c) To regulate grazing and admission of the cattle into the Panchayati Forest. (d) To impound cattle, trespassing into the Panchayati Forest, in accordance with the Cattle Trespass Act, 1871. (e) To exclude, from any or all privileges in the Panchayati Forest, any person, whom the Forest Panchayat may for sufficient grounds considers to be responsible for any fire or damage to the Panchayati Forest area or who does not obey order issued by the Forest Panchayat in exercise of the powers conferred on it. (f) To seize all tools or weapons used in committing forest offences within the area of Forest Panchayat.. (g) To sell the forest produce locally, without doing any harm to forest. (h) To extract and sell resin in accordance with the provisions of the</p>
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	<p>(c) To regulate grazing in the forest area.</p> <p>(d) To seize special provisions given to the villagers if anyone is found guilty of harming the forest or does not abide by the rules of the Van Panchayat.</p> <p>(e) Use the powers as granted by the State Government from time to time.</p> <p>(f) To seize the tools or weapons from the defaulters. Power to act under sub-rule (f) and (h) is also vested with the Sarpanch. Appeal can be made to the Deputy Commissioner within three days from the date of orders of the Sarpanch.</p> <p>(g) Under special circumstances, Sarpanch can sell a tree to the right holders for their necessary household needs.</p> <p>For this sale, (1) it should be passed in the resolution or more than 50 % of the members give their consent in writing and (2) Sarpanch should identify the tree and mark it properly.</p> <p>2. To extract and sell resin from chir tree, special permission</p>	<p>accordance with the provisions of the Uttar Pradesh Resin and other Forest Produce (Regulation of Trade Act, 1976).</p>	<p>Uttar Pradesh Resin and other Forest — Produce (Regulation of Trade Act, 1976).</p> <p>(i) To enter into an agreement with Self Help Groups or group in the form of forest users or with any individual for proper management, conservation, protection and development after getting approval from Aam Sabha</p>

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	has to be taken from the State Government and approval from the conservator forest. The Van Panchayat is not allowed to extract resin after the last date mentioned in the permission under any pretext.		
Power to make by laws	Rule 20 Van Panchayat can make by laws concerning the distribution of forest produce amongst the right holders, grazing, collection of grass and fuel wood, to meet the administrative expenses charge fee and make other by laws within the provisions of 1976 Rules. The by laws made by the Van Panchayat shall be applicable only after the approval from the Commissioner.	Rule 21 The Forest Panchayat may frame by laws for the distribution of forest produce among persons entitled thereof, for regulating grazing, cutting of grass and collection of fuel, to levy fee to meet its administrative expenditure and for any other purpose consistent with these rules. The by laws shall come into force after they have been approved by the Panchayat Van Vikas Adhikari.	Rule 21 The Management Committee can make by laws for the distribution of forest produce among persons right holders, for regulating grazing, cutting of grass and collection of fuel, to levy fee to meet its administrative expenditure and for any other purpose consistent with these rules. The by laws shall come into force after they have been approved by Aam Shabha and thereafter Prabhagiya Van Adhikari
Plan for management of Forest	Rule 21 (Working Plan) It is mandatory for the forest department to prepare a working plan for the panchayati forest after consultation with the Van Panchayat and considering the	Rule 11 The Composite Management Plan (CMP) plan is made for five years by the Divisional Forest Officer (Prabhagiya Vanadhikari) for all the Van Panchayat of forest village falling in its area	Rule 11 The Composite Management Plan (CMP) plan is made for five years by the Divisional Forest Officer (Prabhagiya Vanadhikari) for all the Van Panchayat of forest village falling in its area

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	<p>villagers expectations of the villagers and bear the cost of preparation of the plan. Conservator will prepare the working plan. Chief Conservator will approve the working plan before its implementation. After the approval from the Chief Conservator, it shall be mandatory for the Van Panchayat to abide by it and cannot divert from it before the approval of the Chief Conservator.</p>	<p>Rule 12 (Microplan) Microplan is prepared for individual Van Panchayat for the period of five years as per the instruction provided in the CMP. The Microplan is prepared in consultation with Sahayak Van Vikas Adhikari. Micro plan is put before the general meeting of the self help group for approval</p> <p>Rule 13 Annual Implementation Plan is made for one year on the basis of approved Microplan. This plan is prepared by Van Panchayat with the help of Panchayat Van Vid and the plan is to be approved by Van Sahayak Van Vikas Adhikarii</p>	<p>Rule 12 (Microplan) Microplan is prepared for individual Van Panchayat for the period of five years as per the instruction provided in the CMP. The Microplan is prepared Van Daroga or Van Rakshak. Micro plan is put before the general meeting of of the self help group for approval</p> <p>Rule 13 Annual Implementation Plan is made for one year on the basis of approved Microplan. This plan is prepared by Management Committee with Van Daroga and the plan is to be approved by Van Kshtradhikari</p>
Auction	<p>Rule 22 After consulting the Conservator and the DFO, the Deputy Commissioner can order for auction of forest produce, provided (1) the valuation of the forest produce to be auctioned will be done by the Van Panchayat and verified by the DFO.</p>		

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	<p>(2) If the value of the forest produce to be auctioned is less than Rs. 5000/- then the auction will be done under the supervision of the Sarpanch of the Van Panchayat.</p> <p>(3) If the value of the forest produce is more than Rs. 5000/- then DFO will supervise the proceedings.</p>		
Panchayati Forest Fund	<p>Rule 23 Forest Department will take actual expense and overheads incurred on extracting resin. Forest Department to deduct 10 percent from all gross revenues of the van panchayat as its share to meet administrative expenses.</p> <p>Net income from commercial sale and auctions to be deposited in a Panchayat Forest Fund, managed by the Deputy Commissioner.</p> <p>Twenty percent of the net income allocated to Zila Parishad to meet development costs.</p> <p>Forty percent of the net income allocated to the Forest</p>	<p>Rule 28 A Panchayati Forest Fund shall be created for every Forest Panchayat and the income from the following sources shall be deposited in it:</p> <ul style="list-style-type: none"> (a) the sale of proceeds of forest produce (b) government grants (c) any other source of revenue (d) money being the share of Van Panchayat lying unutilised with the collectors. <p>Rule 29 The Panchayati Forest Fund shall be managed by the Forest Panchayat under the overall control of the Panchayat Van Vikas Adhikari.</p> 	<p>Rule 28 A Van Panchayat fund will be created for every Management Committee. Income received from following sources will be deposited in that;</p> <ul style="list-style-type: none"> • Income received from sell of forest produce • Government aid. • Revenue received from any other sources. • Money lying with the Collector unspent <p>Rule 29 The Village Forest Fund shall be managed by the Management Committee under the overall direction of the Prabhagiya Van Adhikari.</p> <p>The account shall be operated by the Sarpanch. All the</p>

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	<p>Department to maintain and develop panchayat forests. Remaining 40 percent of net income allocated to panchayat-to be spent on works of public utility as approved by the Deputy Commissioner.</p>	<p>The account shall be operated by the Sarpanch. All the withdrawals shall be by cheque which shall be countersigned by the Secretary of the Forest Panchayat.</p> <p>Rule 30 The net income from the sale of resin and other forest produce shall be determined as follows: The Forest Department shall take all actual expenditure incurred in resin tapping and such overhead as may be determined from time to time by the State Government. As regards the other forest produce, the Forest Department shall charge ten percent of sale proceeds as administrative expenditure. Distribution and utilisation of Panchayati Fund shall be done in the following manner: (a) twenty percent to Zilla Panchayat for implementation to development projects of public utility. (b) utilisation of balance eighty percent of amount shall be done for</p>	<p>withdrawals shall be by cheque which shall be countersigned by the Secretary of the Forest Panchayat.</p> <p>Rule 30 The Van Panchayat Rule provides for distribution of net profit received from resin and other forest produce in following manner: a) The forest department will take actual expenditure incurred on extracting resin and such overhead expenditure, which are determined by state government from time to time. b) The forest department shall take ten percent of the amount on which the other forest produce are sold for the purpose of administrative expense. The distribution of Forest Village fund will be done in following manner: • 30% of the fund will be given to Gram Panchayat for developmental work of public use • 40% will be spent on conservation and development of village forest</p>
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		<p>implementation to development purposes .</p> <p>(c) not less than fifty percent of the amount shall be incurred for maintenance and development of Panchayati Forest.</p> <p>(d) not more than fifty percent of the amount shall be incurred on implementation of projects of local utility by Forest Panchayat.</p>	<p>• 30% of the fund on projects of local use</p> <p>However proposal of expense will be approved in annual meeting</p>
Annual Budget, Account and Audit		<p>Rule 31</p> <p>The annual budget shall be submitted by the 31st December of the preceding year and the Panchayat Van Vikas Adhikari shall accord his sanction by the following 31st March.</p> <p>Rule 33</p> <p>A proper account of all income and expenditure of the Panchayati Forest Fund shall be maintained by the Sarpanch.</p> <p>Rule 34</p> <p>The audit of the accounts of every Forest Panchayat shall be done under the orders of the Chief Audit Officer to Government Co-</p>	<p>These rules remained same as 2001.</p>

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		operative Societies and Panchayat, Uttaranchal at such intervals and in such manner as the State Government may direct.	
Administration of Panchayats and Assets	<p>Rule 26</p> <p>The management of Panchayati forest assets shall rest with the Van Panchayat under the control of Deputy Commissioner or any officer appointed by him.</p> <p>Proper accounts shall be maintained for all income and expenditure of the Van Panchayat and be closed every month. The same have to be reviewed and passed in the next month's meeting of the Van Panchayat.</p>		
Duties of the Sarpanch	<p>Rule 27</p> <p>The Sarpanch shall be responsible for the overall functioning of the Van Panchayat, which include calling and presiding meetings, directing and managing the establishment, works and accounts.</p> <p>The financial powers of the Sarpanch are limited to fifty rupees only.</p>	<p>Rule 25</p> <p>The Sarpanch shall be responsible for the overall functioning of the Van Panchayat, which include calling and presiding meetings, directing and managing the establishment, works and accounts.</p> <p>The Sarpanch will have the power to incur expenditure upto one thousand rupees and to draw an advance upto this</p>	These rules remained same as 2001

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		limit from Panchayati Forest Fund in anticipation of sanction of the Forest Panchayat for performing his duties under these rules.	
Inspection of Van Panchayats' Functioning by Officers	Rule 33 Forest officers are required to inspect a Van Panchayat during its tenure at least once in three years to assess its functioning. Their report has to be submitted to the Conservator who in turn would file a report to the Chief Conservator with copies to the concerned Commissioner and Deputy Commissioner. In addition to these different forest officials are required to inspect Van Panchayats in their jurisdiction as per standards specified in the rule.	Rule 24 The Forest Panchayat shall submit to the Panchayat Van Vikas Adhikari before 15th day of April each year, an annual report of the working during the previous financial year, who will submit a compiled report of his region to the collector.	Rule 24 The rule remained same except the Management Committee has to submit its report to Prabhagiya Van Adhikari which is prepared by Up Van Rajik or Van Daroga.
Removal of members or Sarpanch of Van Panchayat	Rule 40 Deputy Commissioner can remove a member or Sarpanch of Van Panchayat if an enquiry is being conducted or is to be conducted against him.	Rule 39 The Collector on his own or on receipt of complaint may, after enquiry made by him or through an officer not below the rank of Sub-Divisional Magistrate, remove such member or	Rule 39 Rule 39 remain same as 2001

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Removal of Member or Sarpanch by Deputy Commissioner	Rule 42 A deputy commissioner can remove a member or Sarpanch under the provisions of this rule. However, a show cause notice is mandatory and also an appeal against the order can be made (within 30 days of the order) to the commissioner.	Sarpanch of a Forest Panchayat.	
Suspending, Superseding, or Dissolving a Van Panchayat	Rule 43 A deputy commissioner can suspend, supersede or dissolve a Van Panchayat if he considers it to be misusing power, incompetent or undesirable in public interest. Further he can appoint an officer (Panchayat Inspector, any local Revenue Officer or a Patwari) for the management of forest till the constitution of the new Van Panchayat.	Rule 43 The Collector may suspend, supersede or dissolve any Forest Panchayat if in his opinion such Forest Panchayat abuses its position or is found negligent in the discharge of duties imposed upon it under these rules or if its continuance is not considered desirable in public interest.	Rule 43 Rule 43 remain same as 2001
Power to overrule a resolution, directive or order passed by the Van Panchayat/Management Committee	Rule 43 A Deputy Commissioner can refute, send back for reconsideration or confirm a resolution, directive or an order passed by a Van Panchayat.	Rule 49 The Panchayat Van Vikas Adhikari may by order in writing prohibit rescind, modify or confirm the execution of resolution, direction or order passed by Forest Panchayat or by any of its officers	Rule 49 Rule 49 remain same as 2001 the power is given to Prabhagiye Van Adhikari.

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		if in his opinion such resolution, direction or order is of a nature as to cause obstruction, annoyance or injury to public or public interest or is against the provisions of these rules.	
Reconstitution of Forest Panchayat		Rule 46 It shall be obligatory on the part of the Collector to reconstitute new Forest Panchayat within a period of six months from the date of suppression or dissolution of a Forest Panchayat.	Rule 46 Rule 46 remain same.
Constitution of Zilla Panchayat Van Pramash Datri Samiti		Rule 52 to 54 In every Janpad where Village forest has been constituted, a Zilla Panchayat Van Pramash Datri Samiti will be constituted for assessment, issue direction to improve status of Panchayati Van, help to get fund to Van Panchayat from different sources and to help Van Panchayat to do its duties.	Rule 52 to 57 These rules provide for formation of Kshtriya Pramash Datri Samiti, Zila Pramash Datri Samiti and State level Pramash Datri Samiti. The Zila Pramash Datri Samiti and Kshtriya Pramash Samiti will have following duties to assessment of work of management Committee, issue direction to improve status of Panchayati Van, help to get fund to Van Panchayat from different sources and to help Van Panchayat to do its duties.

APPENDIX A

UTTARAKHAND – IT'S FOREST DISTRIBUTION

The State of Uttarakhand forms part of the Central Himalayas. It is combined with forests, rivers, deep valleys, glaciers, alpine meadows and high peaks. It touches Tibet in the north, Himachal Pradesh in the west and northwest, Gangetic plains of Uttar Pradesh in the south and Nepal in the east. Starting from the foothills in the south it extends to the snow clad mountains in the north.

The State is spread over 53,483 sq. Km of land, which is 1.67 percent of the country's total area. The population of the State, according to the 2001 Census, was 8.49 million, of which 4.33 million were males and 4.16 million females. The total number of inhabited villages, including forest villages, is 15,761.

The density of population in Uttarakhand is 159 persons per sq. Km. However, the spread of population is fairly uneven. For instance the districts of Haridwar and Dehradun together account for roughly 32% of the State's population whereas district Champawat accounts for only 2.65%.

The recorded forest area in Uttarakhand is 64.8% even though the vegetation cover is only 43.5 percent. More important, over 5411 hectares of forest areas have a canopy density of less than 40 percent. The Annual Plan 2007-2008 of Uttarakhand Government states that "Our vision is to not only to maintain and increase this forest cover to the desired levels but also to develop a harmonious and eco-friendly relationship between the people and forests." Government's intention on papers is inclusion of communities in sustainable exploitation of the forest, but not seems to be executed, specially in Garhwal area.

The Land use pattern of the Uttarakhand clearly reflects that more than 60% of the area is Forest and after that the land is mostly used for cultivation. Agriculture is main source of income for the people and their dependence on forest produce is also very much. The land area used for cultivation is only near about 13% of total land of Uttarakhand.

Land use pattern in Uttarakhand: 2002-2003

S.n.	Category	Area in Hectares	% of Reported Area
1	Total reported area	56,71,704	100.00
2	Forest	34,67,918	61.15
3	Barren & Unculturable land	3,12,470	5.51
4	Land put under non-agricultural uses	1,52,145	2.68
5	Culturable Waste	3,86,456	6.81
6	Permanent pastures and other grazing land	2,29,322	4.04
7	Land under misc. tree crops and groves etc.	2,52,189	4.45
8	Current Fallows	41,048	0.72
9	Other fallows	71,367	1.26
10	Net area sown	7,58,789	13.38

Source: Annual Plan 2007-2008 of Uttarakhand Government

The Van Panchayat form 12% of the total forest area of the Uttarakhand. The number of Van Panchayat formed till dated is approx 6777 in Uttarakhand covering approximately around 4047 sq km area as per Forest Department record of the year 2000. Whereas Almora & Bageshwar has maximum percentage i.e. 30.5 % of Van Panchayat Forest area, Haridwar and Tehri Garhwal has minimum percentage of area under the Van Panchayat. Garhwal has more than double forest area from Kumaon but the area in Kumaon managed by Van Panchayats is 80% more than that in Garhwal. Almost two thirds of the forest area under Van Panchayats is located in the Kumaon Region.

Distribution of Forest Area in Uttarakhand (figures in Sq Km)

Districts	Forest Under Forest Department	Forest Under Revenue Department	Panchayati Forest under Van Panchayats	Other forests	Total forest Area	Total Geographical Area of District	Area to Total Geographic Area	Panchayati Forest to total forest area
Fouri Garhwal	2393.80	1450.87	651.53	10.94	4507.14	5440	82.9	14.15
Chamoli and Rudra Prayag	3639.13	946.47	678.02	6.78	5210.40	9125	57.1	13.9
Uttarkashi	6800.41	70.09	77.80	0.00	6948.30	8016	86.7	1.1
Tehri Garhwal	2781.16	1261.36	16.38	0.00	4058.90	4421	91.8	0.4
Dehradun	1512.94	417.72	98.28	247.95	2276.89	3088	73.7	4.3
Haridwar	375.19	0.00		0.00	375.19	2360	15.9	0.00
Almora & Deopwar	1471.97	1211.24	1204.75	24.30	3912.26	5365	73.2	30.5
Pithoragarh & Champawat	1377.98	831.47	1092.98	0.00	3302.43	8856	37.3	33.1
Nainital	2625.07	112.83	286.84	2.16	3026.90	6794	59.4	7.1
Udham Singh Nagar	1011.11	0.00		0.00	1011.11			
Total	23989	6335	4047	291	34662	53485	64.8	11.7

Source: Forest Department, Uttaranchal, 2000

The above figures clearly establish the fact that though in the Kumaon division of Uttarakhand has more percentage of forest land under Van Panchayat Garhwal has maximum forest area is under the control of Forest Department.

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Rahul Choudhary is a Public Interest Environment and Human Rights Lawyer, Practicing in the Supreme Court of India, High Courts, National Environment Appellate Authority and other judicial forums. He has been raising the issues of Community Resource Rights, Tribal rights, Environmental Democracy (Participation of Communities in Environmental decision making process. He has been assisting the project affect person, Environmental and Human Rights NGOs, Communities through litigation, investigation, information dissemination and training programs. He is also Co- Author of "The Citizen's Guide for Participating in Environmental Decision Making".

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