Community Based Conservation in South Asia
A Series of Case Studies and Theme Papers

Across the world, a powerful new trend in the conservation and management of natural resources is where local communities are empowered to manage their surrounds. This could be a self-initiated process by the community, or triggered by an NGO, government agency, or donor. It could be exclusively handled by the community, or be some form of collaborative or joint management with outside agencies and individuals. The motivation could be biodiversity conservation, livelihood security, water harvesting, or others. But whatever the origin and nature and motivation behind the initiative, the trend towards community based conservation and management is clear.

South Asia is fast emerging as a pioneer in this new trend. Communities are digging deep into their past and reviving powerful traditions of communal decision-making, as also adjusting to new circumstances and challenges. NGOs and government agencies and donors are learning that working "with" rather than "against" or even "for" communities, is a much surer way of achieving goals. At hundreds of sites across the region, community based strategies are reviving and protecting natural ecosystems, reviving threatened wildlife populations, and achieving higher levels of livelihood security. But there are also challenges: gender and class/caste inequities within communities, powerful commercial and industrial forces undermining conservation. On the positive side, each of the region's countries is revamping its planning and policy framework, to facilitate community based conservation (CBC).

This series of case studies and theme papers documents a number of CBC sites or themes in the region. This attempt follows a broad overview of the status of CBC in South Asia, which has been published in early 2000 by Kalpavriksh and IIED as *Where Communities Care: Community Based Conservation of Wildlife and Ecosystems in South Asia*. Each study describes the initiative in detail, and analyses it to learn lessons for the future and for other sites in the region. The case studies and the theme papers are given in the inside back cover.

Customs and Conservation:
Cases of Traditional and Modern Law in India and Nepal

Ruchi Pant

Community Based Conservation in South Asia: No. 7

Kalpavriksh
&
International Institute of Environment and Development

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Kalpavriksh
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A traditional dapo notice in the Apatani area of Arunachal Pradesh, India (Photo: Ajay Rastogi)

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Credits

Author
Ruchi Pant, formerly ATREE Eastern Himalaya Programme, Bagdogra, India

Series Editors
Ashish Kothari and Neema Pathak, Kalpavriksh, Pune, India

About the Study
This theme paper is part of a regional and global process of understanding and documenting community based conservation of natural resources, in particular biodiversity. The global project, called Evaluating Eden, was sponsored and coordinated by the *International Institute of Environment and Development*, London. The South Asian Regional Review of Community Involvement in Conservation, which was part of this global project, was coordinated by a group of individuals associated with the environmental action group *Kalpavriksh*: Ashish Kothari, Neema Pathak, and Farhad Vania.

About the Author
The author was till early 2002 currently the Director of the Eastern Himalaya Programme of the Ashoka Trust for Research in Ecology and the Environment (ATREE), located at Bagdogra, District Darjeeling, West Bengal. Prior to this, she has worked on assignments related to legal/policy issues in biodiversity conservation with a focus on customary laws and community rules in areas predominantly inhabited by ethnic communities. Her work has been supported by the WWF-Nepal Programme and the Centre for Environmental Law (WWF-India). She has also done a Policy Gap Analysis in Transboundary Cooperation in Biodiversity Conservation in the Eastern Himalayan Ecoregion. The author has worked as a Researcher and In-charge of the Environmental Law Cell of the Public Interest Legal Support and Research Centre (PILSARC), in New Delhi.

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Kalpavriksh, Aptmt. 5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411004, India. Tel/fax: 91-20-5654239; Email: kvriksh@vsnl.com

International Institute of Environment and Development, 3 Endsleigh Street, London WC1H 0DD, United Kingdom. Tel: 44-171-3882117; Fax: 44-171-3882826; Email: mailbox@iied.org

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Preface and Acknowledgements

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Ruchi Pant
May 2001

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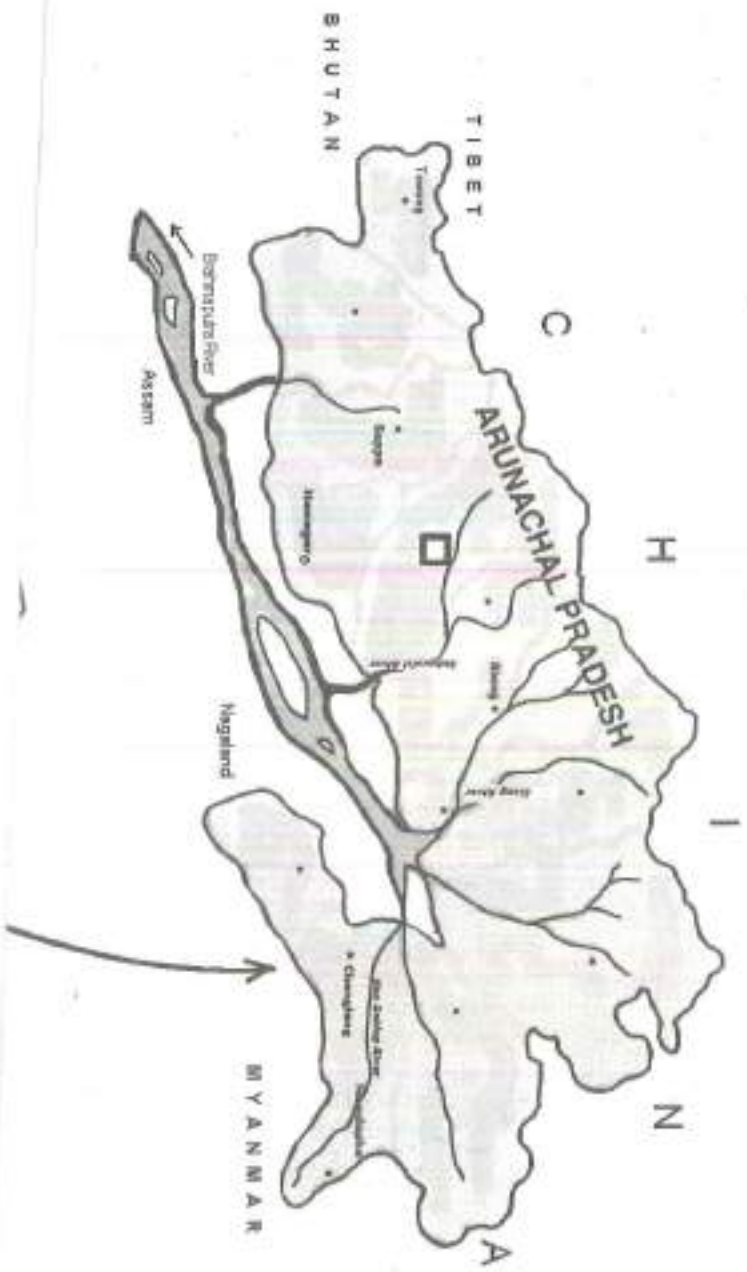
Abbreviations

ACA	:	Annapurna Conservation Area
ACAP	:	Annapurna Conservation Area Project
BZMR	:	Buffer Zone Management Regulation
CA	:	Conservation Area
CAMC	:	Conservation Area Management Committee
CAMR	:	Conservation Area Management Regulation
CDC	:	Conservation and Development Committee
DFO	:	District Forest Officer (in Nepal) Divisional Forest Officer (in India)
DM	:	District Magistrate
FMC	:	Forest Management Committee
FUG	:	Forest Users Group
IIED	:	International Institute for Environment and Development
LO	:	Liaison Officer
NPWC	:	National Park and Wildlife Conservation
OP	:	Operational Plan

Glossary

Birta	State lands granted in the past to the priests, military personnel and the nobility.
Barahathan	Sacred protected areas within the village boundaries.
Banapal	Traditional system of soil management wherein resource extraction is prohibited for a period of 5-6 years for nature regeneration purposes.
Chauri	Yak herders in the Khumbu region
Guthi	Lands with temples and charitable institutions
Goshwari forest	Forest managed jointly under the management of two or more villages.
Gauchar	Pasture for cattle grazing
Gampa	Traditional village institution in Manang district.
Iha- Khang	Sherpa's community chapel
Jafati	Landlordism
Jara furi	Grassroots
Khet	Wet cultivable land
Kharchari	Grazing fee paid by outside herders to *Limbu* herders for using the grazing lands under their management in the Kipat system.
Kipat	An old type of communal land ownership prevalent among the *Limbu* and *Rai* communities for use as pastures.
Manapathi	Measure for weighing grain.
Nawa	Guards
Patta	Title deed
Raikar	State landlord
Raiti-duniya	Common public
Rajpatra	Official gazette
Rithi-Tithi	Customs
Rani Ban	Literally means 'the queen's forest', these were areas kept closed for certain periods for regeneration purposes.
Shingi nawa	Practice of appointing forest guards prevalent among the *Sherpas*.


INDIA
APATANI VALLEY



Summary

An analysis of conservation-related statutory legislation in Nepal and India reveals several points of difference between statutory and customary law, as well as areas of complementarity.

The main laws relevant in **Nepal** are:

- Forest Act 1993 and Forest Rules 1995 including community forestry
- National Park and Wildlife Conservation Act 1973 and the Himalayan National Park Regulation 1980
- National Park and Wildlife Conservation Act 1973 with third amendment in 1989 incorporating the concept of Conservation Areas, and the Conservation Area Management Regulation 1996
- National Park and Wildlife Conservation Act 1973 with the fourth amendment in 1993 incorporating the concept of Buffer Zone Management and the Buffer Zone Management Regulation 1996

The laws and policies in **India** are:

- Indian Forest Act 1927
- Forest Conservation Act 1980
- Forest Policy of 1952 and 1988
- Joint Forest Management Circular
- Wild Life (Protection) Act 1972
- Panchayat (Extension to Scheduled Areas) Act 1996
- Arunachal Pradesh State Laws (Assam Forest Regulation; Assam Frontier (Administration of Justice) Regulation 1945; and Arunachal Pradesh (Protection of Customary Laws and Social Practices) Bill 1994)

Customary laws are still strong in many parts of India and Nepal, such as Arunachal Pradesh in India, and Annapurna in Nepal. In many cases, where they have eroded or declined in importance, recent community-based conservation (CBC) or community-based wildlife management (CWM) initiatives have attempted to either

revive them or evolve new community rules. However, there is not much recognition of these rules at official levels.

Customary law scores over statutory law in many ways: speedier (sometimes almost instant) justice; greater accessibility to local people; more transparent as the mechanisms are immediately visible; cheaper; and more sensitive to the ability of offenders to pay penalties (thus, smaller penalties for the poor).

However, there are disadvantages too. For instance, the lack of any other forum of redress in a customary dispute-resolution system makes it difficult for even genuinely aggrieved parties to get justice. In today's times, of course, they can approach the formal judiciary if their own customary ones let them down, but this is not always logistically possible. Secondly, given the serious inequities that often pervade local communities (see Chapter 10), customary law can also be a means by which the dominant sections hold on to their power. Also, many statutory laws are often (but not necessarily) more progressive when it comes to fundamental human rights.

Detailed analysis of the above listed laws and instances reveals that existing conservation legislation is weak in local-level conflict resolution in both countries. Such resolution is still often effectively dealt with by customary modes, though in modern contexts this too frequently fails. At several sites, it is clear that rules and regulations evolved through a community process are difficult to administer beyond a point unless these have the sanction of the state, especially if violators happen to be members of neighbouring communities who do not recognise these rules and regulations.

The critical question then is: how can customary and statutory law be combined such that the positive elements are mutually strengthened, while avoiding a process of undermining each other?

The following measures are needed to make customary and statutory law complementary:

1. Customary and community laws need to be given official encouragement, including through their recognition in statutory law.

2. Provisions concerning neutral conflict-resolution mechanisms need to be incorporated into laws relating to natural resources.
3. Education about the law is required at all levels; about statutory laws at the community level, and about customary law at the level of official authorities. It is suggested that the Law Departments should engage in extension work to popularise law, while NGOs and others should document customary and community laws and make them available to the authorities.
4. State policy and law-making exercise needs to be made much more participatory, opening them up to members of the public.
5. Judgments emanating from courts at all levels in both India and Nepal require further studies to determine how customary law has been dealt with by them, and how they have tried to relate customary law with statutory law.

1. Introduction

All societies whether developed or developing are governed by rules and regulations. Behaviour of people residing in a particular area is bound by certain laws and customs. The urban society is largely governed by codified and state rules framed by a legislative body. On the other hand, rural and indigenous societies are governed by a larger matrix of laws. These are the customary laws, statutory laws, moral laws and religious laws. The latter two can be considered to be sub-sets of customary laws. The rural and indigenous societies fall in the category of semi- autonomous societies since for the purposes of governance, they generate their own rules and regulations and at the same time are also subjected to the laws made by the State and Central law making bodies[1]. Semi-autonomous societies have the means to induce compliance and coerce conformity (through indigenous institutions) to the rules made by them. It is also observed that statutory laws are often thrust upon the ongoing social arrangements in the field where binding obligations already exist and most often the statutory laws are inconsistent with these ongoing arrangements. Hence, these statutory laws fail to meet the objective with which these are legislated and in addition, face a lot of resentment at the local level by the people when these come in conflict with the ongoing arrangements. This was clearly documented in the case of Annapurna Conservation Area Project in Nepal (discussed later).

A plethora of documentary evidence and considerable personal experience shows that community based conservation is gaining success in such semi-autonomous societies where the society is able to induce compliance from its members. Community initiatives in conservation are more prominent in areas inhabited by rural and indigenous people. It is very simple to link the two. The rural and indigenous societies are still intrinsically linked to the natural resource base for fulfillment of their basic requirements such as food, fuel, fodder, shelter, medicines, clothing, etc. The urban society has distanced itself from this resource base and hence is not immediately affected by the depletion thereof.

1 This includes law made by the judges, i.e. judicial decisions or court orders.

Technological advances and monetised economy have been able to find them alternatives and substitutes, or bring natural resources from far away places 'invisible' to urban citizens, to fulfill their needs.

The unabated destruction and exploitation of the forest resources has endangered the life support system of rural/indigenous society. Nationalisation of forests and the steady growth in our consumption and population are major causes for this situation, whether in India or Nepal. Nationalisation of forests deprived communities especially forest dwellers of their means of livelihood and habitation. In order to create reserved forests and other protected areas, these dwellers were pushed away from the forests. The rights of the people in such areas were curtailed without giving them alternatives for meeting their survival needs. Besides meeting the colonial needs of the British rulers in India, the forests began to be exploited by the people devoid of any other options. As the people had lost the motivation to protect the forests, the exploitation of resources was no longer sustainable. The colonisers had no interest in conservation. They introduced the scientific management of forests by setting up a forest department, the primary objective of which was certainly not 'conservation'.

Community initiatives in conservation often began with the primary purpose of dealing with the crisis situation. When nothing was left to meet the requirements of the local people, they had no other alternative but to start conservation and regeneration of the forests in their vicinity, by curtailing their needs and imposing regulation on their extraction.

The stability and sustainability of such efforts, to a great extent is dependent on the legislative support it gets. Barring the forest and wildlife legislation in Nepal, laws in no other South Asian countries have till recently given recognition to community based conservation. These independent countries continue to follow the laws with a colonial tinge, meaning that these countries[2] are still following either laws enacted by their colonisers

2 India, Pakistan and Bangladesh are still following the forest law enacted by the British in the early 20th century, when these countries together as a part of India were under British rule.

or laws that are not people-friendly. In some cases the laws promote concepts in conservation that are not suitable for these countries[3].

What surpasses all comprehension is the fact that the governments are not amending such obsolete laws! This is reflective of the mindset of the bureaucracy[4], which continues to hold on to old models of conservation. It is here that governments try to flaunt their bare minimum efforts in the form of formulation of progressive policies[5] and proclamation of administrative orders[6], which have very little enforcement value[7]. If the governments are convinced about the success of the participatory or community based models of conservation, what keeps them from recommending amendments to the old laws reconciling these models therein? The National Forest Policy of India, which for the first time acknowledged the role of local communities in conservation, is now over a decade old. Yet the government has not heeded the provisions[8] therein.

3 The wildlife legislation, may it be for India, Pakistan, Bangladesh, Sri Lanka or Bhutan, has made provisions for creation of sanctuaries, nature reserves, national parks, strict nature reserves etc, which are all based on the western models of protection. Nepal is the only exception that has made allowance for the declaration of Conservation Areas, which is a more participatory form of conservation. More recently in 1997, in India, the amendment proposed to the Wild Life (Protection) Act 1972, has also recommended two new categories of 'conservation reserves' and 'community reserves'.

4 Although the bureaucracy is not the law-making agency in any of these countries, yet it plays a major role in drafting the Bill (the premature stage of the Act or the law).

5 For instance the Indian Forest Policy of 1988.

6 JFM Resolutions in India.

7 Policies and administrative orders in the normal course are not enforceable in the court of law implying that any violation of these cannot be challenged in the court of law.

8 Provision 4.15 of the National Forest Policy of India says, "Appropriate legislation should be undertaken, supported by adequate infrastructure, at the Centre and State levels in order to implement the Policy effectively".

The forest and wildlife legislation in the South Asian countries except in Nepal[9], has not only disregarded the rights of local communities to the resources in forests and other habitats; but has also overlooked the effectively managed resources in areas inhabited by these communities. These laws normally consider the rights of local people only to the extent that these are regarded in the process of abrogation of the right. The wildlife law in India provides for continuation of rights but doesn't give any specific grounds under which these rights will be considered and retained, thus leaving room for estrangement of people on an *ad hoc* basis.

Realisation regarding peoples' role in conservation has dawned in the recent years, yet the bureaucratic will to part with its monopolistic authority over the resources is lacking. A notable exception to this is the Panchayat (Extension to Scheduled Areas) Act 1996, though its potentially powerful decentralisation provisions are being diluted in actual implementation at state levels (see Section 4.2.6).

The fact that community based conservation has been going on for years and has started to gain success in more recent times, does not necessarily reflect the efficacy of the forest legislation. The credit for this goes to the lack of or poor enforcement often due to paucity of humanpower at the disposal of the forest

9 The Forest Act of 1993 in Nepal has acknowledged the importance of community based conservation and hence has incorporated a new category of forest namely Community forests. The process of handing over of national forests to the community has begun and by 1996, 362551 ha of forest land had been handed over to nearly 5000 community forestry user groups. The National Park and Wildlife Conservation Act has incorporated a new category of protected area namely the Conservation Area which seeks community participation in conservation of wildlife. More Details later in this paper. For an annotated listing of relevant laws and policies in all countries of South Asia, see Kalpavriksh and IIED. 2000. *Source Book on Community-Based Conservation in South Asia: People, Policies and Publications*. Kalpavriksh, Pune/New Delhi, and International Institute of Environment and Development, London.

departments[10]. There are of course many instances where government officials have shown genuine interest in such community initiatives and have supported them, or even initiated them, but these remain exceptions to the general trend.

10 Gilmour, Don, and Fisher, Bob. 1991. *Villagers, Forests, and Foresters: The Philosophy, Process and Practice of Community Forestry in Nepal*. Kathmandu: Sahyogi Press. Pp.

2. Statutory Law versus Customary Law

Definition and creation

Statutory law refers to a body of law created by acts of legislature[11] in contrast to the constitutional law and the judge made law[12]. In India and Nepal, the Executive body too, under its subordinate legislative power[13] is authorised to formulate rules and regulations under the prevailing statutory laws. These rules and regulations have a force of law and are enforceable in the court of justice, which means any violations of the rules can be brought to the notice of courts.

Unlike statutory law, a formal law making body does not enact customary law. A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates to is what we refer to as customary law. It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Customary laws emerge and evolve from transactions and acceptance from within the community members. Community rules are norms that have evolved and emanated from usage and to a large extent from customs.

11 Since India follows federal form of governance, the Parliament enacts law at the Central level and the State Legislative Assemblies at the state level; Nepal follows the Unitary system where there is no division of authority between the centre and the sub-centre or regional level – only the Parliament legislates on all subjects.

12 Definition of 'statutory law' according to Black's Law Dictionary, Sixth Edition

13 "The Legislature may lay down the form of the legislation and leave it to a subordinate agency or an executive authority, the power of making rules and regulations for filling in the details to carry out the purposes of the legislation. Legislative power so exercised by an administrative or other subordinate law-making body under statutory authority is known as subordinate legislation" (Basu, Durga Das. 1988. *Constitutional Law of India*. Fifth Edition, New Delhi p. 275.)

Form – codified/oral

A statute is a written enactment of a legislative body and thus codified in nature.

Customary law is rarely found in codified form. This unwritten law serves as the code of conduct in a traditional society, which governs the behaviour, conduct and all other aspects of such a society. Customary law is the expression of the positive will of the people, handed over by one generation to the succeeding generation through the social mechanism of cultural transmission.

It is only in more recent times that communities making an attempt to revive some of their customary rules and regulations relating to resource management, or innovate on such rules and regulations, have started to write these down.

Extent and application

Statutory law is uniform in nature and extends to those parts of the country or states as mentioned in the extent clause of the law. Section 1 of each Central statute normally contains the extent clause, which mentions the names of the states within the country to which it will be extended. For example, the Wild Life (Protection) Act 1972 of India in Section 1, the extent clause, states that it extends to the whole of India, except the State of Jammu and Kashmir.

In addition, certain provisions of a statute could be exempted from application to certain states and district autonomous councils. For instance, all provisions of the Indian Penal Code, Criminal Procedure Code, Code of Civil Procedures have not been extended to the north eastern states of India. The Wild Life (Protection) Act 1972 specifically protects the hunting rights of the tribes of Andaman and Nicobar Islands.

Unlike statutory law, the extent and application of customary laws of a society are restricted to a smaller field and are more region-specific. The operative context of customary law is localised, territorial and applicable to a kinship based society. It is not uniform in nature and differs from community to community depend-

ing on their values, culture and social practice vis-à-vis the resource.

Amendment

To bring about an amendment in the statutory law is a long drawn process. A draft bill has to be prepared; the government or non-government bodies both can do this. In both the cases, the bill has to be tabled in the Parliament by a Member of Parliament. The bill once passed by both the houses finally needs the assent of the President (for amending the central law in India)/Governor (for amending a state legislation in India)/His Majesty the King (for amending laws in Nepal). This process can take many years before the law is changed to suit the requirements of a bygone period. The process of amendment is initiated only when the necessity is felt but the time consumed could affect conservation efforts.

On the other hand, customary law is flexible in nature and evolves over a period of time as per the requirements and the changing needs of the community. There is no necessary formal procedure for changing the customary law. The decisions of the traditional institutions documented by the author have found these to be in harmony with the changing needs of conservation in Arunachal Pradesh; these decisions serve as precedents and also as the amended law, keeping in mind the situation and circumstances. The flexible nature of customary law helps the institution to take into consideration any unforeseen aspects that have emerged in a particular dispute.

The lengthy procedure of amendment of any law can jeopardise the necessity for which it is being proposed. This has been felt in the case of the Indian Forest Act 1927. The need to amend the said act has been felt for decades, after Independence and especially now, with the shift in the focus of the Indian Forest Policy in 1988 and with the inception of the concept of Joint Forest Management.

Some cases of exceptional speedy amendments have come to light. This depends on the political will and the pressure on the government. In two instances, it has been observed that a strong pressure from the industrial lobby influences and expedites the

amendments; often such amendments are neither environment, nor people friendly. In Nepal, in 1999, the stringent provisions of the Environment Impact Assessment regulation were watered down at the insistence of the industry[14]. Similarly, the Government of India has, under tremendous pressure from the industry, diluted its Coastal Regulation Zone norms, which were notified in 1991 to protect the coasts and coastal waters and strictly limit developmental activities along the shores[15].

Enforceability

Statutory law is enforceable in the court of law, which means that formal courts or judicial authorities take cognisance of violation of this law. Whereas customary law has found limited recognition by the formal judicial bodies. Contravention of the customary law is challenged in the traditional tribal courts. Some state level formal institutions, such as district administration, in Arunachal Pradesh[16], Meghalaya[17], Nagaland[18] and Manipur[19] do give cognisance to customary laws in deciding matters. But in the formal judicial system, if in a matter there is an element of inconsistency between the statutory and customary law, the statutory provisions are upheld.

This subject requires further research to ascertain how higher level formal courts have dealt with such matters.

Acceptance and forum shopping

Customary law gains strength with acceptance from the community members whereas statutory law exists whether people

14 Personal communication with Chief of the Environmental Law Division, IUCN, Nepal. May 1999.

15 Down to Earth, March 31, 1999, p18.

16 Vide Assam Frontier (Administration of Justice) Regulation 1945.

17 Garo Autonomous District (Social Customs and Usage) Act 1958.

18 Article 371 A and the Nagaland Village Councils Act, 1978

19 Manipur Hill Areas District Council Act 1971.

recognise it or not. In semi-autonomous societies, people are, often, not aware of the statutory laws till they have committed a violation, whereas people are well aware of the customary laws and respect these. In legally pluralistic areas, the violator sometimes has a choice. If a violator feels that he will get away with a lenient punishment if he evokes the statutory law in the formal courts, he could approach it. But experience in Arunachal Pradesh has shown that such a person then ceases to be a welcome member of the community. He is not ostracised but looked upon in a different light. In the normal course, a formal judicial body will not directly accept a petition from such a violator if he has not approached the traditional judicial body in his region. This has also been observed in the case of Annapurna Conservation Area.

Customary law remains effective only till such time that the collective aims, ideals and interests of the group remain intact. Once individualist interests start superceding the interests of the community, customary law loses its eminence and efficacy.

Appeals

A decision, on a violation of statutory laws enforced in the formal courts, can be taken on appeal to a higher court. The interpretation of the statutory law is liable to differ depending on the counsel pleading the case. Whereas, there is no appeal from the decision of a traditional authority. The decision of the traditional judicial system is not challenged and is accepted by all and respected.

Hence the final settlement of disputes through application of statutory laws takes a long time. Customary laws of the community are known by all and do not have different interpretations. And as there is no system of appeals under the traditional judiciary, the final settlement is speedy.

Application

Statutory law is uniformly applicable to all members of the society, whereas customary law of a particular society may not be applicable to all. In tribal areas especially as witnessed in Arunachal Pradesh, customary laws differ from tribe to tribe. In case of an inter-tribal dispute or a dispute concerning a tribal and a non-tribal, the same set of customary laws may not be applicable. Such disputes may not even be settled according to tribal customary laws and may have to be taken to the formal judicial system in the state to be dealt with through application of statutory laws.

In addition, the severity of the punishment/penalty also varies from case to case depending on the ability of the violator to pay.

Supremacy of Statutory law over Customary law

The Constitution of India provides for the supremacy of the constitutional law. This implies that if any law[20] is inconsistent or in derogation of the fundamental rights conferred by the Constitution, these laws whether statutory or customary shall be considered void in so far as they are inconsistent with the provisions of Part III of the Constitutions that deals with fundamental rights.

The box given below shows the order of supremacy of the different laws and policies. The Constitution of India has recognised customary law to have the force of law under Article 13 thereof. Customary law should be at the same fitting with the statutory law, but this is seldom observed. The customary law is subservient to the statutory law, which is subordinate to the Constitutional law. This is the ranking followed in case of any inconsistency in these three legal regimes.

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20 Law in Article 13 includes "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law but does not include administrative orders having no statutory sanctions" (Basu, Durga Das. 1988. *Constitutional Law of India* , Fifth Edition, New Delhi p. 14, 19)

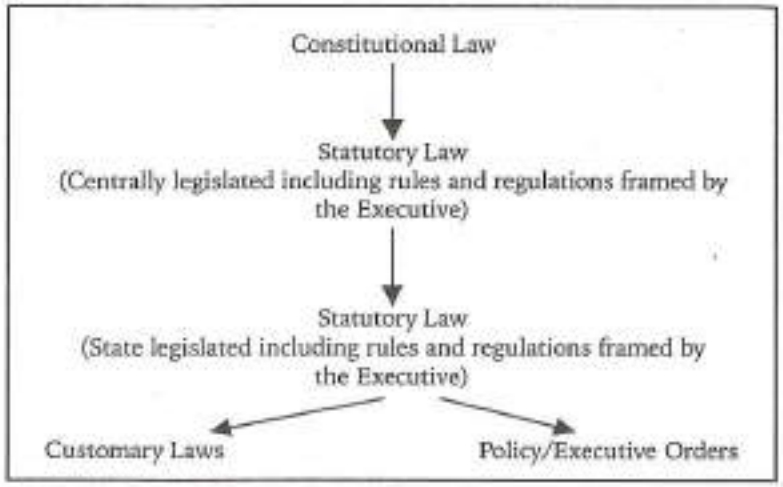


Figure 1: Supremacy of laws and policies

Box 1: Customary, traditional or indigenous rules/laws

Of late there has been some debate on the use of different terms to mean customary law. In many places, it has been observed that what is referred to as customary or traditional law is actually a set of rules only a generation old (e.g. in the case studies of Bhaonta and Jardhar, under the IIED project[21]), hence the use of term indigenous laws or rules has been suggested[22]. In this paper, the author has also clubbed community framed rules under the same category, although some of the rules framed by protection/conservation committees are not even a generation old.

21 See Shresth, S., with Shridhar Devidas.2001. *Forest Revival and Traditional Water Harvesting: Community based Conservation at Bhaonta-Kolyala,Rajasthan, India* and Suryanarayanan, J. and Malhotra, P with Semwal, R. and Nautiyal, S. 1999. *Regenarating Forests, Traditional Irrigation and Agro-biodiversity: Community-Based Conservation in Jardhargaon, Uttar Pradesh, India*. Case studies for the South Asian Regional Review of Community Involvement in Conservation, sponsored by IIED. Kalpavriksh, New Delhi and IIED, London.

22 Dubois, Olivier. 1997. Rights and Wrongs of Rights to Land and Forest Resources in sub-Saharan Africa. Bridging the gap between customary and formal rules. Forest Participation Series No. 10. International Institute for Environment and Development, London, p. 14.

It is noticed that sometimes these rules are derived from customary practices that had been done away with. In a new phase of revival of some of these practices the Sherpas in Sagarmatha National Park in Nepal are being innovative. See Box # 5 for the example on the *Shingi Nawa* practice of keeping forest guards in the Sagarmatha National Park area by the original inhabitants of the region, the Sherpas. Along with the restoration of this practice, an attempt was also made to revive the customary laws governing resource management but these rules were not recognised by the Park authorities, and which has been looked upon as a reason for the resultant poor management of the resource in the area. Whereas in the Annapurna Conservation Area where Conservation Area Management Committees have framed their own rules for the management of the area and were hitherto recognised by the park authorities, such efforts have shown success.

3. Nepal

Nepal and India both share a similar history, as far as forest management is concerned. Prior to the nationalisation of forests in both the countries, forest management was largely in the hands of the people/communities dependent on the resources found in the forests.

In this section, an attempt has been made to describe briefly some of the forest management practices specific to certain communities or regions in Nepal; the customary rules and regulations associated with these practices; the evolution of the statutory laws in the field of forest and wildlife and to assess the extent and efficacy of statutory recognistion given to community based resource management/ conservation practices in Nepal.

It will be an uphill task to mention all the practices, and laws and rules regulating resource use in this paper, as these systems are diverse and community-specific. But an effort is being made to touch upon some of these practices prevalent in the old times and still in practice; and others that have been adapted in accordance with the changing needs and times. Although there is no comprehensive record or documentation of all traditional and indigenous practices in forest management and rules and regulation governing these, piecemeal accounts reflecting varied opinions[23] have come to light.

23 Janardhan B. Khatri-Chhetri, an Economist who did a case study of Indigenous Management of Forest Resources in Jomosom village in Mustang District (the study was done prior to it becoming a part of the Annapurna Conservation Area) concludes that the indigenous management system is ineffective and unfeasible in the context of rising pressure on forest resources because of the slow regenerative capacity of forest resources due to unfavourable climatic conditions, relatively small forest cover, increasing demand for fuelwood due to tourism and other off-farm activities, and the fragile nature of the study area (situated at an altitude of 8,895 feet above the sea level).

3.1 Indigenous practices in conservation and community framed rules governing resource management

It has been documented that the Gurkhali rulers of Nepal in the late eighteenth century showed little interest in forest management. The land use policy for the hills promoted conversion of forests into farm lands as agricultural produce was taxable and would bring revenue to the state[24]. King Ram Shah (1606-36) of the Gorkha region in the western hill regions of Nepal did frame some indigenous codes for protection of trees in the vicinity of water bodies and along the roads; and he encouraged maintenance of grazing lands (See Box #2)[25].

Box 2: Relevant codes of the time of King Ram Shah (1606-36)

12th Code: Maintain *gauchar* (pastures for cattle grazing). Without such a facility Brahmins will suffer hardship in maintaining cows and ultimately the King has to bear sin. So maintain *gauchar* in every village considering the convenience in their prevailing exit and entry routes.

13th Code: Maintain trees along paths. This is because the poor people suffering hardships will get tired after work, porters will be tired with loads, and others too could relax in the shade of trees. So maintain trees along trails and fine rupees five to whosoever cuts such trees.

14th Code: Maintain trees around water springs. In the absence of trees, water will not last all through the year and the spring will run dry. If forests are cleared on a massive scale, there will be landslides.

24 Bajracharya, D. 1983. Deforestation in the food/fuel context, historical and political perspective from Nepal. *Mountain Research and Development* 3(3): 227-240.

25 Gautam, K.H. 1993. Evolving Forest Legislation: Strengthening or Weakening Indigenous Forest Management in *Indigenous Management of Natural Resources in Nepal*. Winrock International, Kathmandu, Nepal, Pp. 304-5.

> Landslides will flood that could wash away even *khet* (cultivable land). Household works cannot be sustained without forests. Fine rupees five whosoever cuts trees around water sources.

Around the mid- nineteenth century, massive deforestation took place as forest resources were largely being used to fuel the metallurgical industry for manufacture of arms[25].

It is difficult to ascertain the starting point of indigenous forest management in Nepal but several such practices have come to fore in the recent years. Forest management was mainly the prerogative of local communities, largely farmers. Some studies have documented these practices or systems of forest management encountered in different districts of Nepal.

Indigenous forest management practices:

A practice of keeping aside a patch of forest as *Rani Ban* (queen's forest) was quite common in the rural communities in most parts of Nepal. The practice was to keep such forest areas closed for a certain period of time during the year for regeneration purposes. Forest utilisation was allowed for the rest of the period based on rules and regulations framed by the community. The neighbouring villages honoured the declaration of *Rani Ban* by one village. The code of conduct associated with the setting aside of *Rani Ban* was respected by all and any breach was followed with a punishment[27]. No fees had to be paid for collecting produce from the forest for the fulfillment of the needs of the local people. But it was customary

26 Gilmour, D.A., Fisher, R.J. 1991 *Villagers, Forests and Foresters: The Philosophy, Process and Practice of community Forestry in Nepal*. Sahyogi Press, Kathmandu, Nepal.

27 Belbase, N., Regmi., D.B. 1998. Comparative Analysis of Decentralisation and Community Forestry Legislation. Paper presented at Widening Horizons: Regional Workshop on Role of Local Elected Institutions in Community Forestry Management in the Hindu Kush Himalayas, ICIMOD, Kathmandu, Nepal, p. 1.

to make a gift to the functionaries governing the management of the forest[28].

The *Shingi nawa* (forest guardian) system operated in the Khumbu region inhabited by the Sherpa community for over three centuries. This is a traditional system of controlling use of forest resources and supervising grazing in specified pastures while practising transhumance. The *nawas* (guards) selected by the community in rotation, were given the authority to enforce communal rules. This system was very effective prior to the nationalisation of the forests and the establishment of the Sagarmatha National Park in the region[29].

The *Kipat* system prevalent in Eastern Nepal is a traditional system of pasture management among the Rai and Limbu communities. It is a system of communal land management, where the community members have usufruct rights to use the land and pastures but no power to sell it. When the Kanchenjunga area was formally integrated into Nepal in 1774 A.D., the *Kirat* clan chiefs' traditional rights were recognised with the stipulation that they accept the sovereignty of Nepal kingdom. The current use of pastures in this region is still influenced by the *Kipat* system. Local herders have free access to the grazing lands under this system but shepherds from other parts have to pay a fee called *kharchari* . The money collected is spent on trail rehabilitation. Timing of herd movement is decided by the local *chauri* (yak herders)[30]. Thus we see that use of high pastures in the Kanchenjunga area is regulated by community norms even to date.

The *Jara Juri* Trust based in Kathmandu, Nepal has found and publicised from all over the country cases of skillful management of natural resources by local people's own effort. In twelve years of

28 Mahat, T.B.S., Griffin, D.M. and Shephered, K.B. 1986. "Human Impact on Some Forests of the Middle Hills of Nepal: Forestry in the Context of the Traditional Resources of the State". *Mountain Research and Development* Pp. 223-232.

29 Sherpa, Mingma N. 1995. Restoring Shingi nawa system in Sagarmatha National Park, WWF-Nepal Program, Kathmandu, Nepal.

30 Uprety, L.P. 1994 Social, Cultural and Economic Conditions of the Proposed Kanchenjunga Conservation Area. WWF- Nepal Program, Report Series # 5, Kathmandu, Nepal.

establishment the Trust has identified about three dozen cases of local management initiatives scattered over Nepal[31].Gautam[32] has highlighted the legislation documented in the Chapter "On Cutting Trees" in the Civil Code of 1854, which included some provisions relating to forest management (See Box #3).

Box 3: The Civil Code of 1854 and Indigenous Forest Management

The clauses relating to forest management in the chapter on Cutting Trees in the code:

"Any person who cuts trees in areas where this has been prohibited through royal or other orders, or in *guthi*[33], *birta*[34] lands, shall be punished with a fine at the rate of Rs. 4,3,2,1 per tree depending on whether the tree is *abal, doyam, sim or chahar*. The timber shall be restored to the owner."

This provision showed that various practices were established through orders and that ownership could be either individual or on a group basis.

The Legal Code of 1854 was amended in 1918 to legalise local management initiated in the hill regions. Clause 5 on management of communal forests was as follows:

When any person reports that he has raised a forest on a particular land under *raikar* or *jafati*[35] tenure in consultation with the villagers, but that the forest has remained unprotected because of the absence of an official order granting him authority to raise a forest in specified areas other than those owned or cultivated by another person, and in

31 Panday, K. 1997. *Jara Juri: Going to the Roots*. Jara Juri Trust, Lalitpur, Nepal, p. xv.

32 Gautam, K.H. 1987. Beyond the Technical Horizon. In *A Compendium of Invited and Contributed Papers. Conference, Australia-New Zealand Institute of Forestry*, ed. J.C. Allen and A.G.D. White. University of Canterbury, Christchurch.

33 Lands used for temples and charity.

34 State land grants to priests, military personnel, and the nobility.

case the inhabitants of the adjoining area are found to have expressed their consent in writing, a *banpale-sanad-rukka*, granting the applicant authority to raise a forest on such land and mentioning the particulars contained in such, document shall be issued.

Clause 5 was amended in 1935 and included in Clause 7. Clause 7 was amended in 1948 and reads as follows:

In case any person reports that he has raised a forest on particular land under *raikar* or *jafati* tenure in consultation with the villagers, but that the forest has remained unprotected because of the absence of an official order, an official order granting him authority shall be issued to raise a forest in specified areas other than those owned or cultivated by another person; or a *gaunda goswara* or forest authority felt the necessity of protection of any forest; and in case the inhabitants of the adjoining area are found to have expressed their (majority) consent in writing, and the forest is found to be protected, a *banasanad-rukka* in the name of *chaitaidar* (raiser or caretaker of the resource), instructing any local *raiti-duniya* (common folk) to consult the *chaitaidar if the raiti-duniya* needs timber and vice-versa, in other words the *chitaidar* has to consult the *raiti-duniya* whenever he needs timber.

The order issued under this provision clearly recognises the user groups, and delegates decision-making authority regarding all aspects of forest management to the users. This was not only documented but also implemented in the hill regions. This kind of forest management initiated by local people still exists and has been documented in many studies[36].

35 State landlordism.

36 Gautam, K.H. 1991 Indigenous Forest Management Systems in the Hills of Nepal. M.Sc. Thesis. Australian National University; Acharya, Harihar P. 1990. Process of Forest and Pasture Management in a Jirel Community of Highland Nepal. Ph.D. dissertation. Department of Anthropology, Cornell University, Ithaca, New York; Baral, J.C. 1991. *Indigenous Forestry Activities in Accham District of Far Western Hills of Nepal*. Community Forest Development Project Field Document no. 15. HMG/UNDP/FAO/CFDP, Kathmandu; Baral, J.C., and P. Lamsal 1991. *Indigenous Systems of Forest Management: A Potential Asset for Implementing Community Forestry Programmes in the Hills of Nepal (with special reference to Palpa District)*. Community Forest Development Project Field Document no. 17. HMG/UNDP/FAO/CFDP, Kathmandu.

Some record is found in the inscriptions of the *Chhangu Narayan* Temple in Kathmandu of the time of King Shiva Dev, a Lichhavi King of 4th century AD, which allowed people to cut upto 40 trees to make charcoal and also to use these for the construction of dwellings but prohibited them to cut trees for selling purposes. Another inscription of the same period found in *Satungal* (name of a place), Kathmandu, states that a Royal order was sent to the people of *Pheranga Kotta* (name of a place) not to prevent people (of other areas) from collecting non-wood forest produce[37].

More recent illustrations of community initiatives in conservation in Nepal are discussed under the topics of community forestry and conservation areas. The example of Annapurna Conservation Area is one of the recent cases of success in community based conservation (discussed later in section 3.2.3).

3.2 Reconciliation of Customary and Statutory Laws in community based conservation in Nepal

After having looked at some of the indigenous practices in forest management, it will be appropriate to review the reconciliatory process, if any, in statutory laws in relation to customary law in natural resource management. To what extent has the formal law recognised or internalised traditional practices and community initiatives in resource management? Is this process more effective in conservation? Has giving more legal recognition to community based conservation helped?

Nepal is one country in the South Asian region, which is hailed for its progressive laws in the field of resource conservation in general and involving community participation in particular. Let us assess some of these laws in the following discussion:

3.2.1 Forest Act 2040 (1993)[38] and Forest Regulation 2051 (1995)

37 Tiwari, K.B. 1989 *Nepalko Ban Byabasthako Aitihasik Simhabalokan* (A Historical Overview of Forest Management in Nepal), Abarta Press, Kathmandu, p 29.

38 The years mentioned in the sub-headings follow the Hindu calendar; the year given in the brackets (only in the sub-heading) follows the Gregorian calendar. In the text, the year along with the Act is according to the Gregorian calender.

3.2.2 National Park and Wildlife Conservation Act, 2029 (1973) and the Himalaya National Park Regulation 1980

3.2.3 National Parks and Wildlife Conservation Act, 2029 (1973) with third amendment in 1989[39] to include the category of conservation area; Conservation Area Regulation 2053 (1996)

3.2.4 National Park and Wildlife Conservation Act, 1973 and the Fourth Amendment in 2049 (1993) to include the category of Buffer zone; Buffer Zone Regulation 2052 (1996)

3.2.1 Forest Act 2040 (1993) and Forest Regulation 2051 (1995)

Although Nepal has always been an independent nation, donor countries[40] and their experts have guided much of its policies and legislative actions. Between the 1920s and 1940s, the *Rana* government was being advised by British foresters to cater to the Indian demand for sal (*Shorea Robusta*) at low prices. In 1942 they established the Forest Department. The British forestry advisors also advocated nationalisation of forest.

Nepal has, now, taken a full circle in its forest laws. From the state of forest being under the management of people to the state of nationalisation of private forests in 1957 and more recently from 1993 the handing over of national forests to the community has brought the management of the forests back to the community.

The **Private Forest Nationalisation Act 1957** abolished private ownership of forests. It gave no recognition to the indigenous practices in forest management. Moreover it was based on the assumption that the Department of Forests alone was capable of

39 Third Amendment, *Nepal Rajapatra*, vol. 39 No. 33 (Extraordinary) Aswin 11, 2046 (September 27, 1989)

40 Many developed countries are giving foreign aid to forestry projects in Nepal. Some of these countries are the UK, Australia, Denmark, Switzerland, Finland, etc.

assuming effective control over the forests. The enactment of this Act led to widespread conversion of forest into farm land and a corresponding loss of interest in forest protection[41]. Since the Act did not offer anything to the soon-to-be-deprived land-owners, many deforested their holdings so that their belongings would not be nationalised. Although applicable to entire Nepal, this Act only affected areas that were accessible; the remote areas continued to be managed as these were being managed prior to the enactment of this legislation. Gilmour and Fisher highlight that adverse forest management laws and policies emanating from the state cannot completely undermine traditional systems, especially when enforcement is lacking[42]. If left alone or given better support and encouraged by central authorities, these traditional forest practices can provide the foundation for protection and wise utilisation[43].

The Panchayat system was introduced in Nepal in 1959. The Panchayat system was a hierarchical arrangement of non-partisan councils that extended from village to the national level. The **1961 Forest Act** sought to transfer rights over reserved forests to village Panchayats calling these village forests; but the ownership was retained by the government. The law authorised the Village Panchayat to hear cases where fine would not exceed rupees one hundred. But the power to frame rules regarding the administration and management of Village Panchayat Forests vested in the government[44]. The Forest Act of 1961 which was modeled on the

41 Joshi, A.L. 1991. "Nationalisation of Forest in Nepal: Why Was It Needed?" *The Nepal Journal of Forestry*, vol. VII, No. 1 (Oct. 1991), pp. 13-15.

42 Gilmour, Don and Bob Fisher.1991, *Villagers, Forests and Foresters: The Philosophy, Process and Practice of Community Forestry in Nepal*, Kathmandu, Sahyogi Press, p. 12.

43 See also, Joshi, A.L. 1993. "Effects on Administration of Changed Forest Policies in Nepal," Policy and Legislation in Community Forestry, proceedings of a workshop, Jan. 27-29, 1993. RECOFTC, Bangkok, p. 106.

44 Gautam, K.H. 1993. Evolving Forest Legislation: Strengthening or Weakening Indigenous Forest Management in *Indigenous Management of Natural Resources in Nepal*. Winrock International, Kathmandu, Nepal, p. 304-5.

Indian Forest Act of 1927, dealt *inter alia* with the declaration and demarcation of the government forest, forest offences, transport, export and import of timber and other forest products. The Act further prohibited felling of trees, herding and grazing etc., thereby depriving people of their traditional usufruct rights[45].

The **Forest Preservation (Special Arrangement) Act 1967** extended government control to Panchayat-protected forests and strengthened the Forest Department's enforcement role.

By mid-1970s, the Forest Department of Nepal had started realising that it was physically impossible for it to protect the forests without the support of the local people/communities. By late-1970s, the government began to establish a participatory system of local level planning. To facilitate matters, **decentralisation laws** were passed to create a legal framework that local groups needed to manage their resources. A new division – Community Forestry Development Division was established within the Department of Forest. The **1976 National Forestry Plan** for the first time officially recognised the role played by the local communities in managing forests, following which a spate of legislation[46] came into being which went a long way in mitigating the effects of the 1957, forest nationalisation law.

The growing consciousness amongst the forest bureaucracy regarding their inadequacies in meeting the objectives of forest resource management coupled with the success stories of community initiatives in conservation coming to light, and with some push from foreign donor agencies, HMG Nepal decided to amend the forest law to make space for community forestry. The **Forest Act of 1993** brought in the provisions to bring in the present concept of Community Forestry (See box #4).

45 Section 2(a) read with Section 27.

46 Leasehold Forestry Rules, the Panchayat Forest Rules, and the Panchayat Protected Forest Rules – all enacted in 1978.

Box 4: Community Forestry in Nepal

The 1993 forest legislation provides for the declaration of seven categories of forests:

- National forest means all forest excluding the private forest within the Kingdom of Nepal;
- Community forests that are entrusted to user groups for management and sustained utilisation;
- Leasehold forests on land that has been leased by central or local authorities to individuals or groups;
- Government-managed forests in which production forest units are managed by a centralised government system;
- Private forests where the owner of the private forests may develop, conserve and manage the forest;
- Religious forests belonging to religious institutions; and
- Protected forests such as gazetted parks.

In all these categories land continues to be under government ownership, though in the case of community, religious and leasehold forests, the trees come under the ownership of the user groups, religious institutions and the lessee respectively.

Under Community Forests, National Forest is handed over in the form of Community Forests to the community after the formation and registration of Forest Users' Group (FUGs). Community Forestry User Groups are entitled to develop, conserve, use and manage the forest and sell and distribute the forest products independently by fixing their prices according to the Work Plan prepared for the purpose with the assistance of the District Forest Officer (DFO). The User Groups are to be registered with the DFO. This gives the FUGs a legal identity and autonomy in action. The Act gives priority to community forestry. Section 30 of the Act stipulates that "any part of the National Forest suitable to hand over as Community Forest shall not be handed over as Leasehold Forest."

The success of the Community Forestry model has been observed in Nepal and has been recognised world over. The Department of Forests has impressive statistics with regards to forests handed over to the community. Nepal's forest area is 5.5 million hectare, out of which 0.36 million hectares had been brought under community forestry till May 1996.

Although it is one of the few legislation in South Asia that explicitly recognises communities role in conservation, yet it has its weaknesses.

- *Lack of confidence of the FUGs in the law as the ownership is retained by the government*

  The Forest Act of 1993 implies that community forestry rights continue to emanate from the state, which in turn hands it over to a users' group. The forest law only allows for usufruct rights but does not transfer the ownership of the forest. This provides only partial security to the users. The Act has a provision[47] whereby, a forest handed over to the Community can be taken back if the User Group cannot operate its functions in accordance with the work plan. Or if the users do not comply with the terms and conditions laid down in the Work Plan, the DFO can cancel the registration of such a FUG. And in appeal to this decision of the DFO, the FUG can only go upto the Regional Forest Director, whose decision in this respect would be final[48]. This shows two flaws in the system: first that any forest which is not private, falls in the category of the National Forest and in spite of having been handed over to community, there is always a chance of the forest being taken back. Thus exposing the forest so conserved by the community to the prohibitions applicable to the National Forest; and abridging even the usufruct rights that were given to the users when the forest was a community forest.

- *Absence of a neutral conflict resolution mechanism*

  The second weakness of the law stems from the fact that the employee of the forest department has the final word on any conflicting situations, rather than a third party. There is a need for an independent legal channel for the redress of grievances or conflicts that arise among the resource-users themselves or between the government and the members of the FUG. This channel has to be other than the forest bureaucracy, which often is a party to the conflict. One suggestion offered in the

47 Section 27 of Forest Act 1993.

48 Section 27(2) of Forest Act, 1993.

last section of the paper is that of appointment of an Arbitrator, a neutral party with the consent of both the parties. Provisions to this effect of appointment of an Arbitrator should be inserted in the law.

- *Explicit recognition to indigenous practices in management missing from the law*

  Government interventions by way of enactment of progressive statutory law without due respect for existing practices can bring negative results. Recognition should be accorded to the existing local practices, institutions and organisation structures, which includes cultural norms and values[49].

  The new Forest Act places emphasis on the formation of user groups as new community organisations rather than recognising existing user groups formed prior to the coming in force of the new forest legislation. This tends to impose new and uniform social organisations where diverse social formations already exist[50]. The recognition of existing user groups is not explicitly mentioned in the legislation but instances have come to light where forest officers, who have given due recognition to existing institutions and reinforced this by registering the same as a forest user group (FUG) under the new legislation, has helped in effective management and no conflicts on account of the formation of user group and identification of users have been encountered[51].

49 Chhetri, Ram. 1993. "Indigenous Systems of Forest Management in the Far Western Hills of Nepal" in *Indigenous Management of Natural Resources in Nepal*, Winrock International, Kathmandu, Nepal, p. 340. See also Gill, Gerald J. 1993 "Indigenous Systems in Agriculture and Natural Resource Management: The Policy Dimension" in *Indigenous Management of Natural Resources in Nepal*, Winrock International, Kathmandu, Nepal, p. 4.

50 Fisher, R.J. 1991 *Studying Indigenous Forest Management Systems in Nepal: Towards a More Systematic Approach*. EAPI Working Paper No 30. EAPI, East West Centre, Honolulu.

51 Supra note 50, p. 334.

- *Evident disregard to the community rules*

  A good example of side tracking the customary or community rules in the Act are actually mentioned in the Regulation formulated in 1995 under the Forest Act. Rule No. 29(2) clearly stipulates that... (t)he DFO shall hand over the forest area coming under the approved work plan to the Users' Group as a Community Forest after having a bond signed to the effect that it will comply with the conditions prescribed by His Majesty's Government. So far His Majesty's Government has not prescribed any conditions that pose impediments to the development of community forestry. Yet the trend in the other recent Regulation has not been too favourable towards community based conservation (Please see the sub-sections on Conservation Area Management Regulation and Buffer Zone Management Regulation).

- *Work plan to be approved by the DFO*

  Moreover, the Rule also reflects that the Work Plan has to be approved by the DFO. The Act and the Regulation both use the word "assistance", that the Work Plan shall be made by the FUG with the "technical and other assistance" from the DFO. Now is this assistance in the form of merely writing the Plan as the users are normally illiterate, or is the assistance in the form of suggesting different management practices to the users? This is not clear from the Act or the Regulation. Often in trying to achieve a pre-determined target, the DFO hardly has any time to sit with the FUGs and discuss different options of management so normally he ends up using the cookbook[52] approach to developing the Work Plan, which means that they use the same format of Work Plan without being area-specific in their approach.

- *Lack of knowledge in community*

  Most often, as the community is unaware of the provisions of the Forest Law, they are not in a position to assert their rights

52 Personal Communication with Camile Richard, former Peace Corp volunteer who has spent many years in the Annapurna Conservation Area studying community forestry in different parts thereof, prior to its declaration as a Conservation Area.

under the law. They may even be unaware of the fact that the Work Plan is to be written and drafted by them; they may not be in the knowledge of what all information is to be included in the Work Plan. They may inadvertently violate the law, as it is not congruous to the rules drafted by them.

The preceding discussion shows that although the concept of community forestry has been recognised by the formal statutory law, yet the customary and indigenous forms of practices and laws were not explicitly internalised in the statute, which leads to conflicting situations. Had the traditional systems of forest management and the traditional user committees been recognised by the law, it may have given impetus to the long term sustainability of community forestry.

3.2.2 The National Park and Wildlife Conservation Act, 1973 and the Himalayan National Parks Regulation, 1980

The National Park and Wildlife Conservation Act, in its earlier incarnation, i.e., before the third and fourth amendments, reflected the western notion of conservation, viz., conservation by alienation of people from such areas declared as protected.

The Himalayan National Park Regulation, 1980 can be classified as the first ever statutory attempt to give recognition to a regional- specificity. With the surfacing of problems after the declaration of three national parks, especially after the declaration of the Sagarmatha National Park in 1976, there was considerable resentment by the Sherpa community in the Khumbu region in connection with the abrogation of their rights in the newly formed Sagarmatha National Park (Refer to Box # 5).

A team[53] set up to examine the feasibility of conferment of a national park status to the Everest area recommended that the main villages in the proposed Sagarmatha National Park area be

53 This team came from New Zealand in 1974 to assess the possibility of New Zealand aid for a national park. The team was led by the late P.H.C.Lucas (former Chair of IUCN's Commission on National Parks and Protected Areas).

legally excluded from the park while demarcating the park boundary, thereby allowing the Sherpas to remain in their homelands and retain control over their settlement areas including fields and paddy. The government did heed to the suggestion but they decided to regulate the usufruct rights of the people inhabiting the villages. The regulation imposed on them included a total ban on tree cutting, and collection of dead wood required official authorisation. Timber had to be purchased from outside the park and the carriage and porter charges were considerable. Permissions for collection of deadwood were not easy to obtain and led to tensions.

The promulgation of the Himalayan National Park Regulation in 1980 relaxed some of these prohibitions. Rule 24 of the said Regulation allowed for local inhabitants to get timber on the basis of a permit system for the purposes of house construction or for repairs thereof. Extraction of timber was allowed only from the area mentioned in the permit and nowhere else. Rule 27 provided the local inhabitants to graze their livestock and to have cowsheds in areas identified by the Warden for the purpose. The restrictions on collection of dead wood were dropped.

Peoples' rights were finally given due statutory recognition to gain their confidence and support in conservation. Though this helped to an extent yet it achieved only partial success. People were still not satisfied. Local people had to pay a royalty on the tree cut by them. Under Rule 18, they were allowed right of way only on certain pre-identified routes. And finally management of the park was still not in their hands. The local people were not involved in developing the management plan. Although the effort of the first warden in restoring the traditional practice of forest management (*shingi nawa* system), gained accolades, people lost faith in the park authorities as the *shingi nawa* system even after many years of functioning did not get a statutory recognition (see Box # 5).

Box 5: Reviving *Shingi Nawa* System in Sagarmatha National Park[54]

Shingi nawa is a traditional system of resource management among the Sherpa community inhabiting the Sagarmatha National Park area in East Nepal. A *shingi nawa* (forest guard) is appointed each year on a rotational basis. In each village four guards were selected by the community, who had the power to enforce community rules. Their duties included not only controlling the use of forest resources but also supervising grazing in specified pastures and moving cattle from summer grazing areas to villages and back (transhumance). The guards, who were farmers themselves, took their jobs very seriously and were highly respected. They had the right to fine people who committed serious offences, such as the felling of many trees. These fines, collected at community meetings, were in the form of both local beer and cash. The money and any confiscated items, such as *khukri* and *dhokos* (instruments used in firewood cutting) were used for community development works, such as trail improvement or repair work of a *Iha Khang* (community chapel). The system was effective for forest management in protected areas and controlled grazing areas. Regulations applied to everybody in the community and were successfully enforced.

During community meetings, the village elders and guards supplied details about the boundaries of protected areas and wood collection zones and dates for agricultural activities such as harvesting, hay making, leaf litter collection, and moving of livestock. All communities were expected to conform to these rules, which were of vital importance to all users of the common resources. All forests and grazing land belonged to the government, except for the cultivated land owned by individual households. Traditionally, the Sherpas were yak-herders and cultivated seasonal crops such as potatoes, barley and buckwheat.

The successful ascent of Mt. Everest by Tenzing Norgay (a Sherpa) and Sir Edmund Hillary (a New Zealander), in 1953, started attracting hoards of trekkers and mountaineers to this place and thus posing a threat to its natural resources. Sherpas became apprehensive on hearing about the government's intention to declare the region as a national park as many sherpas had served as guides to foreign tourists to Royal Chitwan and Rara National Parks which had been declared so in 1973. Management rules in these parks were being enforced strictly. Local people had been moved. People felt they would not be allowed to cut firewood once the place is declared a national park, so massive felling started taking place prior to its declaration as a park in 1976. In this process, the *shingi nawas* lost their earlier control over these resources.

The new park rules undermined older and stricter local customs. Certain sacred forest areas that were once protected under the old system, were no longer spared by the neighbouring villages. The strong sense of communal forest ownership, with its traditional *shingi nawa* system, became powerless in the face of the armed guards and government regulations.

The restoring of the *shingi nawa* system became the first task of the Sherpa warden in 1980. With support from local leaders and relatives, an unofficial *shingi nawa* system was initiated in one village in August 1980. Four guards were appointed and were authorised to confiscate axes and exact fines for illegal wood collection in protected forests. They were also to inform the park staff if a significant number of trees had been cut down. The *shingi nawas* received a monthly honorarium to compensate them for their time and as an incentive. By 1995, this revived system spread to 8 villages and there were *25 shingi nawas*. Although the *shingi nawas* continue to be involved in the park management, they have not been accorded a legal status and their earlier community rules not recognised by the authorities. There is some difference between the old and the new *shingi nawa* system. The government does not take village management seriously and intervenes whenever possible. Until it adds a clause to the NPWC Act granting legal authority to village forest management and allowing the *shingi nawas* to function independently, local people will continue to regard the new institution as an outside agency and refuse to cooperate.

54 Adapted from: Restoring Shingi Nawa System in Sagarmatha National Park, by Mingma Norbu Sherpa, WWF–Nepal Program, Kathmandu, Nepal.

3.2.3 Third Amendment in 1989 to the National Park and Wildlife Conservation Act, 1973; and the Conservation Area Management Regulation 1996

The third amendment to the National Park and Wildlife Conservation Act (NPWC), 1973, in 1989 heralded a new era in the field of protection of flora and fauna in Nepal. This legislation for the first time formally acknowledged the role of local communities in resource conservation and wildlife management, thus replacing the notion of strict protection by that of conservation

entailing sustainable utilisation of the resources by the community.

The third amendment to the NPWC Act allowed His Majesty's Government, by way of notification in the *Nepal Rajpatra* (official gazette) to declare 'conservation areas'[55] and to entrust the management of any conservation area for the period prescribed in the notification, to any institution established with the objective of conservation of nature and natural wealth[56].

3.2.3.1 Annapurna Conservation Area

The Annapurna region[57] in Western Nepal was the first attempt of the government to declare a Conservation Area and the management of this conservation area was handed over to a non-government organisation called King Mahendra Trust for Nature Conservation. One of the most popular trekkers' destination in South Asia – the Annapurna Himal region, features the world's deepest valley, the Kali Gandaki, between the Dhaulagiri and Annapurna ranges, containing fossil ammonites dating to the valley's geologic origins in the Tethys Sea, 60 million years ago. It stretches from tropical lowlands and lush temperate rhododendron forests in the south to a dry sub-alpine steppe environment on the north side of the range; extending from less than 1000m to 8091m in altitude. An average of 25,000 tourists (trekkers) visit Annapurna region each year. The area surrounding the Annapurna mountain range in Western Nepal has long been recognised both nationally and internationally for its rich and varied flora and fauna. Though tourism and developmental activities along with an increasing local population have placed increasing stress on the environment and resources of this area more recently.

55 Vide Section 3 of National Park and Wildlife Conservation Act, 1973.

56 Vide section 16B of the National Park and Wildlife Conservation Act, 1973.

57 Krishna, K.C., Basnet, Kedar and Poudel, K.P. 2002. *People's Empowerment Amidst the Peaks: Community Based Conservation at Annapurna Conservation Area, Nepal.* Case study for South Asian Regional Review of Community Involvement in Conservation, sponsored by the International Institute of Environment and Development under its *Evaluating Eden* Project. Kalpavriksh, New Delhi and IIED, London.

In the spring of 1985, His Majesty King Birendra of Nepal issued directives to the King Mahendra Trust for Nature Conservation (KMTNC) to investigate protected status for the Annapurna region. These directives and subsequent guidelines from KMTNC, stressed the overall goal of a new concept of protected area which would promote conservation alongside the harmonious development of tourism, administered by as small a bureaucratic unit as possible, relying on local participation, self-sustained through entry and user fees. KMTNC is a leading non-governmental organisation in Nepal working in the field of conservation of natural resources and cultural heritage and improving the well-being of the population; established through a statutory effort, King Mahendra Trust for Nature Conservation Act, 1982 and headed by the late King's brother, His Royal Highness Prince Gyanendra, who is now the King.

Financial and technical support came forth from the World Wildlife Fund-USA to do a planning study of the region. The suggestions from this feasibility and planning study were incorporated in an Operation Plan prepared by the Annapurna Conservation Study Project. These were approved by the KMTNC in mid-1986 and formed the basis of the Annapurna Conservation Area Project Approach. Prince Gyanendra officially announced the establishment of the ACAP during the 25th Anniversary of World Wildlife Fund – International at Assisi, Italy in September 1986.

The management of the Annapurna Himal region as a protected area was decided to be launched in two phases. Stage I would encompass an area of 800 sq.km. of the south side of the range, which was to be developed in the first five years. The extension of the development and management to another 2600 sq.km. was proposed in the second stage after five years in 1993 wherein the entire Annapurna Himal range would be covered.

Table 3.1: Declaration of Annapurna Conservation Area and promulgation of Conservation Area Management Regulation

Year	Event
1986 (Jan)	Preparation of the Operation Plan (OP); activities such as hunting, collection of dry wood, fodder, leaf litter, bamboo, timber, medicinal plants, grazing, trekking, reforestation, and maintenance of hot springs etc. was regulated by the OP; traditional rights were not to be restricted.
1986 (Sept.)	KMTNC launched the Annapurna Project
1986(Dec)	Opening office in Ghandruk and ACAP introduced to 800 sq. km of the south side of the Annapurna range
1987	Conservation area approach received cabinet support
1989	National Park and Wildlife Conservation Act 1973 was amended to introduce the concept of Conservation Area.
1992	Annapurna region was officially gazetted as a 'conservation area' and its management was officially handed over to KMTNC for a period of ten years; also in the same year KMTNC prepared a draft model regulation for the management of ACA.
1993	The rest of Annapurna range (another 2600 sq.km.) was included in ACAP.
1996	Conservation Area Management Regulations promulgated.

From Table 3.1 we notice that the management of Annapurna Conservation Area (ACA) was unofficially handed over to KMTNC in 1986. KMTNC started a new project called Annapurna Conservation Area Project (ACAP) for the management of ACA and the headquarters were located in Ghandruk[58], a village located on the most popular trail to the Annapurna Base Camp.

From 1986 till 1996, when the Conservation Area Management Regulation was promulgated for the management of Conservation Areas, ACA was being managed as per the guidelines set

58 As Ghandruk's natural resources had been severely affected due to the impact of trekking, KMTNC decided to start their work from this village and located their headquarters here. Later on the headquarters were moved from Ghandruk to Pokhara.

by the Operational Plan developed by ACAP in 1986. Since Conservation Area was a new experiment in the field of protected areas, the existing rules and regulations under the National Parks and Wildlife Conservation Act could not be extended to this area. Although the rules under the newly promulgated Conservation Area Management Regulation are yet to be fully enforced, conflicting situations have already started arising in the field.

In connection with the management of the Annapurna Conservation area, the Operational Plan had envisaged that Panchayat Nature Conservation Committees (PNCC)[59] should be established in order to execute most of the management plan policies and to implement conservation and development activities in the conservation area. These committees were to comprise mainly of 15 villagers, with the authority and responsibility to oversee the protection of wildlife and forest resources according to the Conservation Area Regulation.[60]

3.2.3.2 Digressions in the Conservation Area Management Regulation from the Operation Plan

1. It is surprising that this Operational Plan prepared by a non-government organisation has on the one hand suggested formation of committees at the local level armed with the power to execute management policies, capture and fine persons breaking the Conservation Area Regulation, yet on the other hand, it is silent about empowering the committee to frame its own rules and regulations regarding management of the resources. Rather it refers to a Regulation that will be imposed

59 The Operation Plan came into being when Nepal was under the Panchayat rule, hence the Operational Plan envisaged empowering the lowest unit by formation of the Panchayat Nature Conservation Committees. With the restoration of democracy in the country, these committees came to be known as Conservation and Development Committees. This term was again substituted by the term Conservation Area Management Committee once the CAMR came into effect in 1996.

60 Sherpa, Mingma, B. Coburn and C.P. Gurung. 1986. Annapurna Conservation Area, Nepal: Operational Plan, The King Mahendra Trust for Nature Conservation. pp. x. Report.

upon the community; only the authority to implement it shall be delegated[61]. But by default, as the Conservation Area Regulations came into being and into force much later, the community got the long deserved opportunity to frame its own rules and regulations for the management of the region. The committees also received help from external forces, such as ACAP staff and researchers- both national and international, in framing of these rules.

A perusal of the rules framed and the way in which two committees in two different parts of ACA dealt with violations will corroborate that provisions relating to conservation and sustainable utilisation are well entrenched in the rules drafted by them (see annexure 1 and 2). These rules differ from committee to committee depending upon the resource availability, culture and customs of the region[62]. These rules have hitherto been quite effective and successful in managing the resources and settling disputes, if any thereupon. Violators of the rules are punished and a fine is levied. Settlement is quick with no delays in the procedures. The elders in the village, normally a part of the committee (though age and gender is no bar), prefer to settle the disputes or violations if any, at the village level itself. The informal arrangement followed hitherto was that the dispute was first attempted to be resolved by the Conservation Area Management committee (CAMC). If the matter were not resolved at this level, at times, it would go to the VDC or else, to the ACAP office. But with the enforcement of the formal Conservation Area Management Regulation, this power now vests in the Liaison Officer (LO). All matters of violation from the Conservation Area Management Regulation now come to the LO (See section 4.2.4).

61 Even the draft regulation prepared by KMTNC in 1992 under rule 12(a) avers that the Committees will have to function within the purview of the prevailing National Park and Wildlife Conservation Act 1973.

62 There are 55 Village Development Council (VDCs) and one Conservation Area Management Committee for each of these VDCs. There are some similarities and some differences in the rules framed by different committees.

2. The Operation Plan suggests that conservation area will follow a multiple land-use concept of protected area management, relying to a significant degree on local participation in management and development. The management zones indicated in the OP are Wilderness Zone, Special Management Zone, Protected Forest/ Seasonal Grazing Zone, Intensive Use Zone and Biotic/ Anthropological Zone. The different zones are hitherto managed in accordance with the Management Plan policies set out in the Operational Plan for ACA[63]. These policies serve as guidelines for the management of the different zones. Unfortunately the Plan has no legal status and moreover, now with the enforcement of the Conservation Area Management Regulation 1996, it is the provisions of the latter that shall prevail. This Regulation has not given any recognition to the zonal system of management as followed under the OP. There are no formal rules in the Regulation that give legal standing to the guidelines suggested in the OP.

For example the Manang district, which was included in the ACA in the second phase in 1993, has been placed under the Biotic/Anthropological zone, thus implying very little outside influence and negligible impact of tourism as it is a restricted area[64]. The OP suggests that hunting pressure is negligible in Manang and Mustang districts owing to their religious beliefs. A study by Richard et al in Summer 1993 revealed that the traditional practices of forest management, the indigenous institutions and the prevailing rules and regulations in the Nar Phu valley in Manang district are still strong and respected (Box # 6).

63 Supra note 61.

64 Foreigners are not permitted to visit this district.

Box 6: Traditional institution (*Gampa*) in Manang[65]

Manang is a sparsely populated district. The traditional village council called the *gampa*, is composed of seven members, of which the four senior members function as the advisory and policy making board. The council membership rotates among the households on a yearly basis. This council is responsible for determining and enforcing most social norms and rules. This body differs from the eleven member Village Development Council (VDC)[66], which is the politically elected body of decision-makers. The council *inter alia* is responsible for settling disputes among villagers. This council deals with all decisions pertaining to natural resources management such as determining dates and movements of livestock herds to different pastures, selection of harvest time for fodder, setting dates for ploughing, planting, weeding, and harvesting of agricultural crops, setting fines for various infractions, etc. The village migrates to cooler climes in summers, the councils also in consultation with the priest (*lama*) sets the date for the movement of the village. 50% of the fines collected go to the *gampa* council fund and the other 50% goes to the VDC. Till the spring of 1993, the *gampa* was also responsible for the levying of royalty fees charged to Phu residents for the cutting of Nar forest timber, when the District Forest Office formed a Forest Management Committee that took over the responsibility. In Nar, each clan has a right to graze their cattle in any of the pastures but they could build cow-sheds only in their clan pastures.

The introduction of elected committees such as the VDC, Forest Users Groups (FUGs), Water Users Groups and Conservation and Development Committees (CDCs) are weakening the authority of the traditional institution *gampa*.

The regulation is uniformly applicable to the whole region without giving due notice to the multiple land-uses followed by the OP. This shows how a good and effective policy guideline or a set of rules prepared at the regional level, when enacted

65 Richard, Camille, Som Ale, Wendy King and K.M. Shrestha. 1993. "Land Use Practices in Nar Village in Manang District: A Needs Assessment for the Annapurna Conservation Area Project" Report submitted to the King Mahendra Trust for Nature Conservation, Kathmandu, Nepal.

66 VDC is the local level political unit after democracy was restored in Nepal in 1990. Prior to which the Panchayats were the local level units.

into a statute at the Centre, metamorphosise into a rigid and uniform piece of legislation bypassing the regional specificities.

3. **Hunting:** When it comes to the issue of hunting, the OP very clearly makes provisions for traditional hunting which in the region was referred to as communal hunting and not individual hunting, to what many had resorted to in the recent past. For this purpose, the Plan had set a clause to say that with the consensus of the PNCC (more recently CAMC), the Conservation Officer may forbid hunting entirely within the regions of his authority. The NPWC Act 1973 and the NPWC Rules 1974 allow for hunting with a licence. The management plan policy suggested that the Conservation Officer be empowered to issue these licences. Although the licence system had existed even earlier but it was not being enforced. The change that this policy envisaged was that whereas the fines collected earlier on account of violation of the hunting rules went to the Government Treasury, they could now stay with the PNCC. Hunting was found to be forbidden (by religion) in Mustang district and uncommon in Manang district. Hunting in the districts of Kaski, Lamjung and Myagdi are restricted through licences. With the extension of conservation education in the region, people have agreed to do away with hunting and this is reflected in the community rules framed by different Conservation Area Management Committees (Annexures 1 and 2). Not only do the bye-laws prohibit hunting of all species of birds and other animals, as opposed to the statutory law that allows hunting of some species through licences, the punishments for killing or hunting of different species in the community framed rules is stiffer than the punishments offered in the NPWC Act, 1973.

4. **Forests:** With the acute shortage of firewood and fodder mounting in the region, local people have started to realise the need to conserve. For this purpose people are undertaking various measures. Some groups have tried to revive old practices of forest management while others have made an attempt to frame stiff regulations regarding extraction of resources from the forests. Bajracharya and Gurung have documented several such local initiatives in resource

conservation[67]. Some of the local resource management practices presently being followed in the Southern Annapurna region have been documented from two VDCs, Lwang and Rivan, which were brought under protection in the second stage of ACAP (Box #7).

Box 7: Revival of Traditional Practices in the Annapurna region for forest regeneration

Among the Brahmin and the Chhetris, who formed the minority group in the region, the practice of **farm tree management** was common. Even though the forests were in close proximity to their village, given their sound traditional agro-forestry systems, the pressure on natural forest was minimal. People planted indigenous species in their farms to supplement their fodder and fuelwood needs. The selection of species for plantation along the gullies and spring sources was done on the merit of root behaviour and canopy structure so as to enhance soil and water conservation. This practice is still widespread.

Agro-forestry is not so well developed among the Gurungs, a dominant ethnic community, as they were pastoralists and followed the **transhumance system** utilising a large catchment of resource spread over various altitudinal zones. On account of various reasons, pressure on the community pastures in the higher elevations has increased tremendously resulting in poor regeneration of grasses and other vegetation. A trend of general deterioration and limited access to good pastures has rendered this system unsustainable in most of the areas. Some people are now trying to reduce the number of livestock.

Banpala is yet another traditional system of forest management wherein specified degraded forest areas are designated as '*banpala*' by the villagers implying complete prohibition on resource extraction for a period of 5-6 years, thus allowing for natural regeneration. A forest guard who usually hails from an artisan caste is appointed[68] and is paid on a yearly basis in the *mana-pathi* system of paying in kind.

67 Bajracharya, S.B., Dibya Gurung. 1997. Locals, the Unrecognised Experts on the Conservation of the Natural Resources: A case study from the Southern Annapurna Region of Nepal. Unpublished report, ACAP, Pokhara, Nepal

68 Lower caste groups such as Kami, Damai, Sarki.

A traditional practice that still exists is associated with the setting aside of sacred areas called ***Barahathan*** within the village boundaries. These areas are considered to be the abode of the local god, Barah. It is believed that removal of trees from such sacred areas would annoy the god. A committee is in charge of this grove. It is forbidden to remove any product from these groves except for fallen trees that can only be used for community purposes. Local people allow only the Trans-Himalayan migrating sheep to graze in the *barahathans* for the following two reasons: the herders perform animal sacrifice and pray for the well being of the villages and the forests and secondly the animals provide manure to the grove.

One practice of governance over natural resources adapted by some villages in Southern Annapurna belt is based on the past ***mukhiyali*** system prevalent in Mustang district in the northern parts. Under the revived system, forest boundaries are redefined and informally demarcated according to the traditional practice based on community rights. The ***goshwari*** forest was one such practice where a forest was jointly held and used by a number of villages. Rules and regulations were laid down and fuelwood, fodder, bamboos were allowed to be harvested only in specified seasons. Fuelwood collection was allowed in winter season and bamboo was allowed to be harvested twice a year. Restrictions were placed on grazing especially near the water sources. This system had worked well as far as people of the area are concerned but when it comes to restricting the outsiders such as traders and wildlife hunters, the rules are not adhered to. More recently some have come to the fore from *goshwari* forests in the region[69].

The first forest management committee (FMC) in ACAP was established in Ghandruk to deal with decisions regarding the exploitation of their forests. The local people elected the FMC and the committee framed its own rules and regulations for the management of the forest[70]. In the past, traditional forest

69 Krishna, K.C., Basnet, Kedar and Poudel, K.P. 1999. *People's Empowerment Amidst the Peaks: Community Based Conservation at Annapurna Conservation Area, Nepal*. Case study for South Asian Regional Review of Community Involvement in Conservation, sponsored by the International Institute of Environment and Development under its *Evaluating Eden* Project. Kalpavriksh, New Delhi and IIED, London.

70 Annapurna Conservation Area Project. Three Year Retrospective Progress Report March 1986 to December 1989. Edited by Devendra S. Rana, Pp. 21

management practices had existed in the form of *rithi-tithi* (customs), whereby all land and forest was owned and controlled communally and resources distributed in accordance with family requirements[71]. People grazed their cattle on a rotational basis, and collected fodder and firewood in a systematic manner by delineating forest use zones. The decline of natural resources has also been mirrored by a decline in the traditional cultural values. The *nogar* groups, a traditional form of voluntary labour exchange or the *rodi*, a form of night clubs where young boys and girls gather, are not to be found any more. The influx of western culture and ideas has influenced youth to such an extent that traditions are now being considered as signs of backwardness[72]. To what extent has the Forest Management Committee adopted the principles of traditional forest management practices and how many of the earlier regulations have been incorporated in the rules framed by the new committees is not easy to gauge. Adaptations have been made in the rules to suit the needs of the times.

3.2.3.2 Conservation Area Management Regulations vis-à-vis the model regulation drafted by KMTNC

In 1996, His Majesty's Government of Nepal framed rules for the management of Conservation Areas (CAs). By December 1998, the HMG had accorded conservation area status to four regions in the Himalayan belt. First was the Annapurna handed over to the KMTNC; followed by the Makalu-Barun to The Mountain Institute (in collaboration with the wildlife authorities) in 1991; Kanchenjunga to WWF in 1998 and the Manaslu Conservation area to the KMTNC in December 1998. The rules formulated under the Conservation Area Management Regulation in 1996 are uniformly applied to all these CAs. The main feature of this regulation is empowering the institution to which the management of the CA has been handed over. It also provides for constitution of Conservation Area Management Committees at the VDC level for effective operation of the management programme in the

71 *Ibid*, pp. 12.

72 *Ibid*.

conservation area and constitution of sub-committees; management as per the work plan to be formulated by the committees and approved by the Chief of the Institution; financial management; appointment of a liaison officer by the Department of National Park and Wildlife Conservation for establishing contact between the Institution and His Majesty's Government. The Liaison Officer has been empowered to hear cases of violations of the Act.

The Conservation Area Management Regulation came into being only in 1996. From 1986 until 1996, in the absence of a statutory regulation, ACA was largely being managed in accordance with the Operational Plan. This ACAP Operational Plan prepared after due legal consultations, had recommended the legislation of a Conservation Area Act and promulgation of a set of new Regulations thereunder, as against the amendment of the NPWC Act 1973[73] and the rules made thereunder. The Operation Plan reflects an opinion that the concept of Conservation Area would become sub-servient to the provisions of the National Park and Wildlife Conservation Act 1973 if this new concept continued to be governed by the NPWC Act. The OP explicitly suggests the enactment of a law establishing the recognised authority of the Conservation Area administration and management.

In the meantime, the KMTNC drafted a model Regulation for management of ACA and submitted it to HMG in 1992. The Regulation that finally came into being in 1996 was an altered form of the model regulation submitted by ACAP. Two main differences are troubling the local communities:

1. Usurpation of the power to hear cases from the committee to an employee of the Department, the Liaison Officer, a third class gazetted officer. As per the KMTNC drafted model regulation this power was vested in the Chief and the Conservation Officer of ACAP. It had also made a provision for cases with a fine of upto Nepali Rupees 2500 (1US$ = 65NR in 1998-9), to be heard by the Conservation Area Management Committees.
2. The change in the authority for managing the money collected. As per the model regulation drafted by KMTNC, the CDCs (CAMCs after 1996) could retain in their account the entire

73 Operation Plan, pp. 41.

amount collected by them through fines and fees. But the Conservation Area Management Regulation (CAMR) provides for the amount to be deposited with the institution, ACAP in this instance and thereafter a minimum of 30 percent would be allotted to the Committees for developmental and conservation activities in accordance with the management work plan developed and approved by the institution. If the CAMR is to be followed, this leads to twice the work. First the CAMCs collect fines and fees; deposit the entire amount (including amounts raised through other sources) with ACAP and then ACAP provides the committees with the amount required by it for the different programmes and administrative expenditures to be incurred pursuant to the approved management work plan.

In the latter instance the local people are very annoyed and the general feeling is that money raised by the CAMCs is being utilised in paying the salaries of ACAP staff. ACAP has realised this and understands the implications of this resentment on conservation. The Board of KMTNC is discussing the matter with the government. In the meantime, a clarification has been brought out by KMTNC that if any CAMC raises funds over and above the expected figure for the year, it can always approach the ACAP with a revised budget for expenditure for the year[74]. Though this will certainly not minimise the work.

The former deviation in the Regulation with respect to the appointment of a LO will move the burden of handling violations from the CAMCs to the LO. This will exert a lot of pressure on the LO as there are 55 VDCs in ACA. Whereas earlier each CAMC was hearing and disposing off cases arising in their VDCs, now the LO has to try all the cases. Normally each CAMC decides 10-13 cases every year. The Head Office of ACAP is located in Pokhara but the LO is based in Kathmandu. He visits Pokhara about once a month when several cases have been lined up. The LO does not give any recognition to the rules framed by the committees; he believes in

74 Personal communication with the Director, Mountain Programme, KMTNC, 27th May 1999.

the supremacy of the CAMR and the NPWC Act[75]. It is worth noting that the LO is employed as the legal officer with the Department of National Parks and Wildlife Conservation also.

The decision of the CAMCs is not legally binding. Any one can challenge the decisions. Even fines collected by the CAMCs are in the form of donations. The receipt given to the violator shows donation received[76]. But very few local people are aware of these factual details. Else the appellate court would be flooded with appeals from the decisions of CAMCs. With the enforcement of the new Regulation, all cases coming to the LO have to be filed in the Appelate Court either by the LO or a government lawyer. Minor cases can be dealt with by the LO himself.

When the violations were being dealt by the CAMCs, the fine money was going to their account but now the fine goes to the Government Treasury.

Gradually as these changes are being felt by the local people, their faith in ACAP is wavering[77]. If these digressions are not sorted out soon, it will take a heavy toll on community based conservation, especially at a time when there are very few successful efforts of this kind.

A strange thing has come to the fore in the draft regulation of KMTNC. Rule 12 suggests that while dispensing their duties the CDCs (after 1996, CAMCs) should follow provisions of the prevailing forest and wildlife related laws. This is contrary to the guidelines of the OP, which had recommended that a new set of rules and regulations should be framed for the governance of Conservation Areas and provisions of existing legislation should not be extended to such areas.

75 Personal communication with the Liaison Officer, June 1998.

76 Supra note 75.

77 Personal meeting with villagers in Simpani VDC has revealed their grievance over the new CAMR 1996. The villagers are disgruntled to the extent that they are threatening non-cooperation in ACAP activities. September 1998.

Conflicts arising in the field as a result of CAMR

The main area of conflict in the field is arising as a result of demarcation of forests. As ACAP followed VDC boundaries to demarcate forests for conservation purposes, conflicting situations started arising as traditionally villages, in some cases, were using forests jointly. Usage of forests was decided on the basis of proximity to the villagers.

Some conflicting situations from different parts of ACA:

1. A conflict from Mustang region. Before the inclusion of the region in ACAP, Chemang (a village in Tukche VDC) and Chhero (a village in Marpha VDC) were sharing a common forest under the traditional *goshwari* system of forest management. They had jointly developed regulations for the management of the forest. Earlier the *mukhiya* of the joint committee used to issue permit for felling a tree, whereas now with the forest having gone to the Tukche VDC, CAMC of that VDC could only issue permits. People from Chhero village could not access the resources. Six persons from Chhero village, in contravention to the rules of the new CAMC (of Chemang village) felled a few timber trees. Chemang people took the case of violation to the Appellate court and the guilty were fined 60,000 NC each. In this case, the Appellate court (a formal institution) did not recognise the customary usage of the *goshwari* forest while deciding the matter.

   This kind of conflict has arisen in some other parts of ACAP also, where the *goshwari* system of forest management is still prevalent.

2. In Simpani VDC, when the ACA boundary was being demarcated, the forest of Ward #9 became a part of ACA, wheras the settlement got left out. Earlier these forests were under the management of Forest User Group. With the inclusion in ACA, access of Ward # 9 to their community forests was denied. They approached ACAP. The matter was resolved by including their settlement within the boundary of ACA.

3. In Simpani VDC, forest management has been decentralised to the ward[78] level. People residing in a ward are responsible for the forests in that ward. This way of assigning forests has resulted in certain wards with no forest stretches under their jurisdiction. These wards are dependent on the forests of other wards or VDCs. There is an age-old practice whereby people not having access to certain resources like dried fallen twigs for firewood and green grass for fodder, can collect these from any forest whether in their VDC or not. This rule has been incorporated in the rules of the CAMC. But now with resource consciousness dawning on people, some wards have started charging a fee. People from Simpani village had been going to Gun pokhari village in the neighbouring VDC to collect grass and firewood. But now the Forest Users Group in Gun pokhari village has started charging a fee.

4. In Ghandruk and Simpani VDC, some cases have come to light where the CAMCs have taken over the management of the forest from the wards in case of a boundary conflict.

78 Ward is the lowest administrative level; nine wards make up one VDC.

Conflict Resolution Process in Simpani VDC

The CAMC makes the rule; the ward committees follow these rules. If any violation takes place, the ward committee first resolves the matter. If the ward committee does not resolve the matter, then the matter comes to the CAMC. So far no case has reached the LO or ACAP. There is always a possibility that one does not abide by the decision of the committee and approach the Chief District Officer, who also has quasi-judicial powers. But so far no such incident has taken place. People normally abide by the decisions of the committees; hence there is no provision for appeals in the rules drafted by the community.

The 1996 Regulation is in contradiction with the principle of self-governance and decentralisation. Once the authority passes from the CAMCs to the LO, committee members feel that the number of violations will increase, as the power of the CAMCs will be curtailed.

An appraisal of cases dealt with by the LO in the ACA so far shows that cases relating to poaching of musk deer, barking deer, and leopard, and illegal extraction of high valued medicinal plants and timber go to him, whereas a perusal of cases dealt with by the

CAMCs shows that normally violations relating to hunting of other animals, and illegal felling and illicit extraction of other forest resources (of relatively less value) go to the committees. It is also evident on perusing the cases that the number of poaching incidents is on the rise now after the authority for trying violations has moved from the CAMCs to the LO.

KMTNC is of the opinion that at the end of the ten-year period, they would recommend that the management of ACA should be handed over to the CAMCs and not to any other institution[79].

3.2.4 Fourth Amendment in 1993 to the National Park and Wildlife Conservation Act of 1973; and the Buffer Zone Management Regulation, 1996

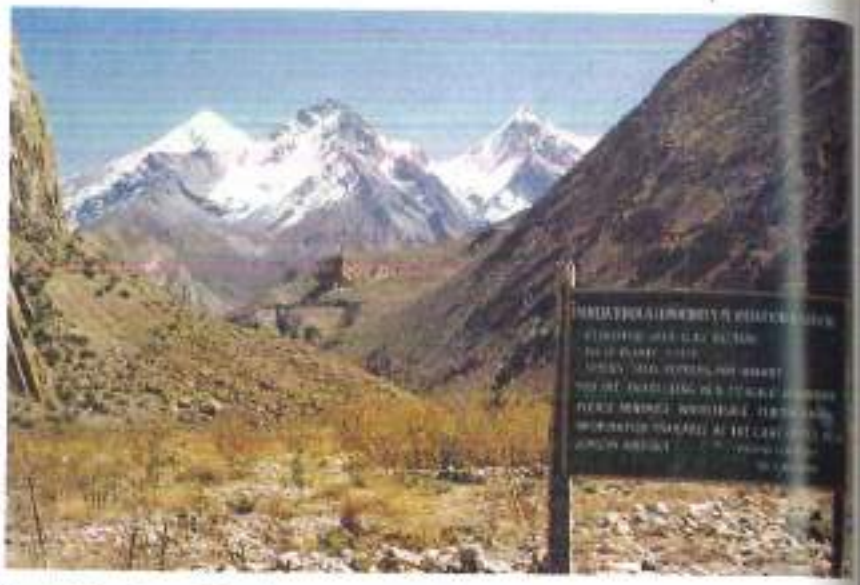
Although the Buffer Zone Management Regulation (BZMR), 1996, along with the Fourth amendment to the National Parks and Wildlife Conservation Act, 1973, is being looked upon as a measure to improve the people-parks conflict situation in protected areas, it will take some time to shows results.

Buffer Zone is an area at the outer periphery of a Park or Reserve declared to be so, with a view to provide the local inhabitants facilities to use forest produce. The Act assigns the Warden the responsibility to manage and conserve such areas. The Act also provides for 30-50% of the income of the Parks or Reserves to be spent for the developmental activities in the Buffer zones. The Act provides for formal declaration of areas as Buffer Zones to attract the provisions and benefits of buffer zones. The provisions of the Act do not come into operation automatically.

79 Supra note 75.

Trans-Himalayan region in the Annapurna Conservation Area, Nepal
(Photo: Ajay Rastogi)

Village level committee discussion, Annapurna Conservation Area, Nepal
(Photo: K.C. Krishna)



Regulations framed by the community in Annapurna Conservation Area, Nepal (Photo: Ajay Rastogi)

A notice outside the open court of King Ram Shah of the Gorkha Stage, Nepal (circa 1605-1636 A.D.), with rules for the protection of trees, forests, springs and ponds (Photo: Ajay Rastogi)

Paddy and pisciculture among the Apatanis of Arunachal Pradesh, India (Photo: Ajay Rastogi)

Village forest protection committee meeting, Kailadevi Sanctuary, Rajasthan, India (Photo: Ashish Kothari)

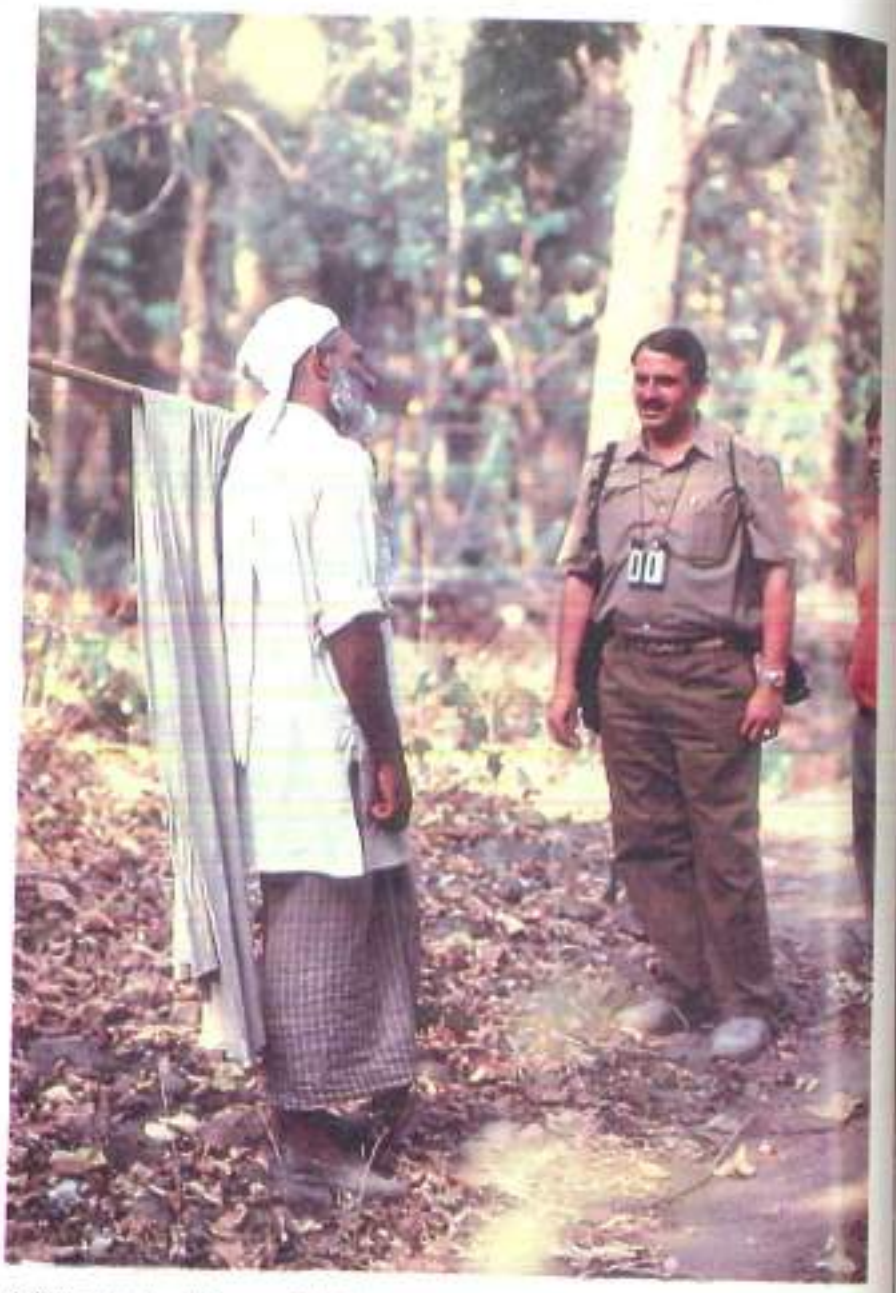
Dead and decaying sacred trees, are used only for community welfare purposes, amongst the Apatanis of Arunachal Pradesh (Photo: Ajay Rastogi)

Sarhul festival of Santhals, with rituals around the useful sal (*Shorea robusta*) tree (Photo: Ajay Rastogi)

Gram sabha (village assembly) meeting discussing customary forest rule violations in Bhaonta, Rajasthan, India (Photo: Ashish Kothari)

Gram sabha (village assembly) meeting at Mendha (Lekha) village, Maharashtra, India, a settlement that practices tribal self-rule with its own regulations regarding the forests, land, water and socio-economic affairs
(Photo: Vivek Gour-Broome)

Government official discussing rules with the village-initiated Forest Protection Committee of Jardhargaon, Uttaranchal, India (Photo: Ashish Kothari)



Gujjar nomad and forest official in Corbett Tiger Reserve, India: bridges are needed between customary and statutory laws, for effective conservation (Photo: Ashish Kothari)

Table 3.2: Formally declared Buffer Zones in Nepal

National Parks and Year of Declaration	Declaration of Buffer Zones
1. Royal Chitwan National Park (1973)	1996
2. Royal Bardia National Park (1976)	1996
3. Shey Phuksundo National Park (1984)	1998
4. Lang tang National Park (1976)	1998
5. Makalu Barun National Park	1998

People living in such areas are not aware of the provisions of this Regulation in the Act, nor has the government made any attempt to take the law to the people. A few non- government organisations (NGOs) have taken on the responsibility to spread awareness in such regions amongst the villagers, regarding the concept of Buffer Zone Management and what it entails. These NGOs are not satisfied with the progress of government's initiatives and work in this field. Another major drawback of statutory laws is that they are only resorted to when the community has violated any provision. It should be the duty of the Warden to explain to people what the concept means and then in consultation with the people prepare the rules and regulations for the management of such areas. Similar to other laws in Nepal, this law too does not have space for customary/indigenous or community rules and laws.

The BZMR is a creative piece of work. Rule 8 of the BZMR provides that the warden may form necessary users' committees in coordination with the local authorities to assist community development and balanced utilisation of forest resources, and the conservation of the other elements such as wildlife, natural environment and natural resources, biodiversity and forests. The use of the term 'may' implies that formation of user committees is not fundamental to the creation of 'buffer zones'. Furthermore, if we try to analyse Rule 5, it brings out that the warden plays the cardinal role in this Regulation and single handedly prepares the Buffer Zone Management plan, for community development,

conservation and balanced utilisation of the buffer zone, and submits it to the Department of NPWC. According to Rule 5(3), the Director General shall submit the management work plan with necessary amendments to the Ministry for approval. Most interestingly and importantly, this process is followed by the formation of user committees and the preparation of the micro-level work plan. This is again a depiction of the top-down approach. This shows that the work plan developed at the micro-level (supposedly by the user committees with assistance from the warden) shall reflect provisions of the Buffer Zone Management Work Plan (BZMWP) and not the other way round. Earlier experiences in Nepal both in the conservation areas and community forestry areas have revealed that only plans prepared with local participation can be well received and accepted at the micro-level. In this case the main work plan for the management of Buffer Zone is prepared without any inputs from local people and they are asked to draw up micro-level plans later based on the Buffer Zone Management Work Plan.

This amendment to the NPWC Act, 1973, is ambiguous on the subject of money raised as income by the National Park, a Reserve or a Conservation Zone. Although it is being made to sound as if 30-50% of the money would be transferred to the user committee, this is not what the law says. Section 25 A avers that 30-50% of the income of the National Park, Reserve or a Conservation Area may be expended by making coordination with the local body for community development of the local people. Rule 26(6) mentions in connection with the amount to be expended on community development in buffer zones that this would be done from the amount remaining after deducting the compensation, if any, to be paid where the land building of any inhabitant within the Buffer Zone gets destroyed due to floods and slide within the natural boundaries of National Park, Reserve, and resultantly the inhabitant becomes homeless.

The law does not say that the amount will be transferred to the Committee Fund. It says that the amount may be expended by making coordination with the local body. Now the term 'local body' has also not been defined. Is it the user committee, the Village Development Committee (VDC) or the Warden? The BZMR in section 26(3) talks of a committee to determine the distribution

of the amount to the different units received for community development. Further, the NPWC Act uses the term 'may', which means the amount may or may not be expended and what amount may be expended is also not fixed. Section 26 deals with the allocation of the expenses for community development. Subsection (1) of this section mentions that the Ministry will prescribe the percentage of amount to be expended for the community development of local people from among the amount earned by the national parks, reserves or conservation areas.

The BZMR is no different from the Forest Act of 1993 and has the same inherent flaws. The BZMR seeks to have user committees formed for the management of Buffer Zones; these user committees shall be registered with the warden in place of the DFO; the rest of the functions of the Warden are exactly the same as that the DFO – the preparation of the Work Plan by the Committee, to be approved by the Warden, who has the power to amend the Work Plan submitted by the Committee and inform this to the user committee. The Warden has the power to dissolve the user committees; the person assigned by the Warden shall do the audits of the user committee. The Warden seems to be omnipotent. In such a power equation, where does the role of community fit in? Where is the scope for allowing people to frame their own rules and regulations when the Act clearly mentions all the prohibitions and restrictions? Any community initiative in conservation needs more autonomy and a more balanced power equation with the Department. These kinds of laws and regulations clearly reflect reluctance on the part of the forest bureaucracy to part with their dominance over the forests.

The BZMR and the NPWC Act both lay down a list of activities that are prohibited in the buffer zone. Both stipulate punishments for violations to their provisions. In such a setting, there is no room for recognition of community or committee framed rules relating to management of the resources.

There is no mention of resolving conflicting situations that may arise as a result of overlapping of the operation of the Forest Act and the Buffer Zone Regulation. BZMR being a new regulation, there is a possibility that there may already exist a community forest or another kind of forest in areas that can be potentially be declared as buffer zones as well. The rules governing activities

permitted and prohibited under the two regulations differ. The latter statute is silent on this account as to how to deal with such complexities, which cannot be wished away and are beginning to arise in some of the Buffer Zones.

Although the BZMR does not provide for transfer of ownership of land falling in the buffer zone, the NPWC Act after its fourth amendment under section 3A (2) states that His Majesty's Government may alienate, transfer ownership or alter the boundaries of a buffer zone. And this is despite the fact that the same Section in sub-section B mentions that in the course of the management and preservation of buffer zone, land ownership of the local people in such zone shall remain unaffected.

The efficacy of this Regulation may come to light in some time as this concept and its implementation in Nepal is still in its nascent stages. But surely non-government organisations working in this field have felt the vast difference between the legal provisions and the real situation in the field[80].

80 Personal communication with employees of Federation of Community Forestry Users of Nepal, May 1999.

4. India

India, like Nepal, has had a long history of community involvement in the management of forest, water sources, waterbodies and grazing lands. Rural and indigenous communities in India have always been heavily dependent on forests for most of their daily requirements such as firewood, fodder, house building material, medicines, and edibles. This intrinsic relationship has made it mandatory for them to manage the resources well to ensure regular supply thereof. In 1865, the process of nationalisation of forest by the colonial British government debarred people from using the forests. All forest became government property and peoples' rights over the forest resources were curtailed.

The alienation of people from the forests had an adverse affect on the resources in the years to follow. Neither the British government nor the Indian government in the post-independence period had enough manpower to guard the fenced off forests. Moreover, none of these governments made alternate arrangement for the sustenance of such communities; this led to the uncontrolled extraction of resources from the forests. The resource need of these forest dependent communities did not cease. When the communities started to face a resource crunch, the local people realised the need to protect and regenerate the degraded forests. Many examples of community initiatives in regeneration of forests are coming to light from different parts of India. Some of these have been documented under the Evaluating Eden Project of IIED[81].

The British introduced a notion of property, which was alien to the ethos and culture of indigenous communities. Resources related to land – forests, rivers, streams etc. were normally under the management of the community; the community was the custodian of the resources therein[82]. But the British introduced a

81 For details see Kothari, A., Pathak, N., and Vania, F. 2000. *Where Communities Care: Community Based Wildlife and Ecosystem Management in South Asia*. Kalpavriksh, Pune/Delhi and International Institute of Environment and Development, London.

82 Krishnan, B.J. 1998 Legal and Policy Issues in Community Based Conservation. In Kothari, A. Pathak, N., Anuradha, R.V. and Taneja, B. (eds.) 1998. Communities and Conservation: Natural Resource

concept of absolute rights over land and the resources therein, which was vested in a body or an individual.

4.1 Indigenous practices in conservation and community framed rules governing resource management

In India, community based conservation efforts can be classified into two:

1. In areas where forests were nationalised
2. Areas where forests were never nationalised

4.1.1 In areas where forests were nationalised

The period that followed the nationalisation of forests, during the British rule and in the post-independence period, saw a mass destruction of the forest resources. Communities sans other alternate means of eking a livelihood continued to be dependent on the resources in the government forests. Once it became a question of survival, many communities had to initiate conservation efforts and in the process tried to revive and restore some of the earlier known resource management practices, or create new ones. To regulate the management of these resources, some form of institution and rules had to be worked out. In some cases an attempt was made to restore the old customary rules and norms that had the sanction of the community. These were normally in the form of self-imposed rules as these communities were oblivious to the existence, if any, of any formal laws empowering them to conserve and manage these resources. There was no government authority available at the local level to guide them or restrain them from initiating conservation efforts. Hence, paucity of manpower with the forest department actually acted as a boon to these communities.

A perusal of the Evaluating Eden Project studies in India[83] show that communities which had started facing a crisis situation vis-à-

Management in South and Central Asia. Sage Publications and UNESCO, New Delhi.

83 Supra note 82.

vis natural resources, took initiatives to regenerate their forests. Since these communities made an attempt to frame rules and regulations for the management of the forest resources at the time when another legal regime (though dormant) was prevailing in the field, these areas can very well be referred to as semi-autonomous societies.

This gave the communities an opportunity to bind themselves to self-imposed codes of conduct. The nature of these codes and the severity of the penalties varied from place to place in accordance with the resource availability. Some such rules framed at the community level included the following: prohibition on carrying an axe into the forest; ban on tree-felling; fuelwood collection allowed only from dead and dry sources and strictly for personal use; permission to use timber depending upon the availability and in accordance with the quota fixed by the protection committee; regulated grazing with access to designatedareas. Hunting for specified species is permissible under a regulatory framework enforced by the protection committees in a few cases while it is mostly restricted throughout the country. Violations attract penalties and punishments (both financial and social); repeated violations call for stiffer punishments; often in such communities religious beliefs are strong so violations are less.

In some communities these initiatives are self-initiated whereas in other cases the communities have been enabled and guided by non-governmental individuals and organisations. Here the efforts of Tarun Bharat Sangh, a non governmental organisation working in the Alwar district in Rajasthan, are worth a mention. In this case, the initiative was taken by the community; technical support in building *johars* (earthen check dams) for rejuvenating their streams and recharging ground water was provided by the Tarun Bharat Sangh. Management of one resource led to the regeneration of forests and conservation of wildlife followed. In many villages, *gram sabhas* were formed as a platform to address issues of common concern, mainly forest protection. Rules were framed for the management of resources and for maintaining self-restraint. It was imperative that the enforcement of rules and compliance thereto was adhered to as the natural resources were in a highly degraded state. During the early days of enforcement of the rules, the incidence of offences was high and violators refused to pay

fines. But the good thing about traditional and local institutions is that they are able to invoke compliance. In this case social pressures and persuasion helped. Tarun Bharat Sangh is also making attempts to revive the traditional practice of conflict resolution in the region. This practice is known as *thain*, named after the assembling place where matters are discussed and resolved. Tarun Bharat Sangh is of the opinion that conflicts can be best resolved at the local level, when discussed and decided in village assemblies. This enables compliance with the decision as it has the consent of a larger group. Justice, in the true sense, can only be administered under the local system. This will strengthen the confidence of the community and help it to become self-sufficient. A recent case decided by a *thain* is discussed later in the section on tribal council cases (see Section 5.2).

The community-framed regulations do not have a legal status implying that these cannot be enforced by the formal judiciary. If a member of the community or an outsider abides by these rules and accepts the punishment for any violation, well and good. But the decision of such courts or institutions that have invoked community rules in their dispute settlement, can be challenged as these entities normally are not recognised by the formal law. The absence of a legal status to these regulations and institutions sometimes acts as a hindrance in community based conservation. In Mendha (Maharashtra) and Bhoanta (Rajasthan), it has been observed that people from neighbouring villages fail to recognise the community-framed rules and regulations. The community framing the rules is quite helpless in the matter. In Bhoanta, villagers from neighbouring villages of Bawanwas and Kharata have been constantly disregarding and violating the rules laid down by the *gram sabha*. As no government agency has legitimised these regulations imposed by the *gram sabha* of Bhaonta and Koylala, the neighbouring villages refuse to acknowledge the boundaries of the forest protected and the regulations therein[84].

The communities taking the initiative to protect a certain patch of forest, in such cases have been very considerate towards the requirements of the villagers from neighbouring areas, as earlier these forests had nearly turned into open access areas and in some cases there had also been some former traditional arrangements of access to the resources.

84 Supra note 21

If the forest official is sensitive and has a favourable leaning towards peoples' role in management of the forest, he or she could help. But this situation could lead to building patronage and resultant dependence, sometimes even corruption. In some cases, offenders from neighbouring villages prefer to bribe the forest department officials rather than obey the rules. As has been the experience in Mendha, the community is protecting officially declared Reserved Forests, hence if the support of Forest Department is not available, the situation becomes difficult to handle.

We observe that despite the erosion of customary laws in the past, given a chance these could be revitalized as these are well-entrenched in the culture of such communities. But unless given the due support, the efficacy of these may not last long.

There are yet other areas in India, where forests were nationalised, but due to the remoteness and inaccessibility, the states have not enforced the statutory law completely. In such places too customary laws and traditional institutions have survived to manage their own forest resources. Among the highlanders of North Sikkim, the community residing in Lachung still follows its traditional grazing system, which is managed by the community organisation called the *pipon*. *Pipon* is the headman and he has two messengers *gyapons* to help him. They make the announcements about the meetings. The community assembly called the *dzumkha*, composed of heads of all households, meets in a public hall called the *Mong-Khyim* and once a year the *dzumkha* elects two *pipons*. The *pipon* is responsible for all social and development work in the village. All important decisions relating to grazing and cultivation, seasonal movement of the community and distribution of government aid are taken by the *pipon* in the village assembly. *Pipons* formulate rules and decide the dates and allot space for livestock grazing to control the pastures from being overgrazed. All community members are bound by the orders of the *pipons*. Villagers also elect the *gen-me*, a body of respected elders who assist the *pipon* in settling disputes within the community. At a time when resource mismanagement is the biggest problem in India, the *pipon* system offers a good example of proper utilisation of limited natural resources[85] (see also Box # 8).

85 Rai, S.C. and Sundriyal, R.C. 1996 *Pipon System: A Traditional Conservation Practice in North Sikkim*. Hima-Paryavaran, 7(2) and 8(1): 16-17.

Box 8: A wildlife related dispute decided by the *Pipon* (North Sikkim)

In case of any dispute, the disputants approach the *pipon* with a scarf and a rupee note. Once the case is accepted, another meeting is called where both the parties bring some food and *chhang* the local liquor. Once the matter is decided this food is served to the gathering to celebrate and the guilty party pays a fine (in money).

1. The Wild Life (Protection) Act, 1972 was extended to the state of Sikkim in 1976. In a combing operation in 1977, the Forest Officials caught three musk deer poachers. They were sent to jail for two months. These poachers were from Lachung. When they returned back, the *Dzumkha* met and passed a Resolution that any one found involved in such cases in future will be socially boycotted. Although there is no prohibition on killing of musk deers in the traditional laws of the Lepcha community residing in Lachung, the *pipons* and the *dzumkha* understood the importance when the forest officials explained to them. The *dzumkha* also warned the three persons who had been convicted by the Forest Department that in case the act was repealed they would be ostracized. There is not a worse punishment for the people of Lachung than social boycott. No case of poaching have been reported from the region ever since.

2. More recently, the government officials have started interacting with the *pipons* to discuss the villagers' problems, etc. In March 1998, a case of encroachment by the Army in the forest area was brought to the notice of the forest and other departments. It was a case of violation of the Forest (Conservation) Act 1980. The Army had razed down the natural embankment around a sacred lake to make access to the lake easier by vehicles. Also they had a *Gurudwara* (a sikh temple) constructed there. This being a non-forest activity required the Central government permission, which wasn'ttaken. Moreover, it hurt the local sentiments as the local people believe that the lake is named after their *guru*, Guru Padmasambhava and not Guru Nanak. The Army has changed the name of the lake to Nanak *jheel* (lake). The Chief Secretary took up the matter and consulted the *pipon* in this matter[86].

86 Personal Communication with DFO, Wildlife, Sikkim Forest Department, March 1998.

4.1.2 Areas where forests were not nationalised in India

The second kind of conservation efforts, which have not been documented in great detail, are related to regions within India, where forests were exempted from being nationalised during the British rule. North-eastern India happens to be one such region, where indigenous practices in forest management have hitherto continued unhindered in most parts (Box # 9). This is not to romanticise the tribal culture in North-east India vis-à-vis natural resource management and to show that there has been no destruction of natural resources, as there are parts of Meghalaya and Nagaland that are completely stripped of all forests. And it also cannot be generalised that conservation is ingrained in the culture of tribal people, unless detailed research and documentation in this field is carried out which proves this hypothesis correct. Yet, observations made by the author in Arunachal Pradesh reveals that communities such as Apatanis and Monpas, which have limited resources under their jurisdiction, have shown strict adherence to social and religious norms to safeguard their scarce resources. In addition, each community in Arunachal Pradesh has beliefs and social practices wherein there are opportunities for conservation.

Box 9: North East India: forests and governance

The North east region[87] is one of the tribal dominated belts of India. In pursuance with the policy of non-interference with the tribal ways of life, the Assam Frontier Tract Regulation (Regulation 2) of 1880 provided for 'removal of certain frontier tracts', inhabited by tribes from the operation of rules and laws in force in the state of Assam, so that tracts under tribal occupation could be administered by simpler rules in consonance with their indigenous customs and norms. Following this Regulation, forests were not nationalised in this region. Subsequently the tribal areas in Assam were declared as 'backward areas' in 1921 and as 'excluded areas' in 1935 under the Government of India Acts 1919 and 1935 respectively. The Assam Frontier (Administration of Justice) Regulation, 1945, which provided for adjudication of

87 Except Manipur and Tripura, the territories of all the other tribal areas of the North Eastern region, during the British period, were included within the Province of Assam.

majority of disputes and cases in such areas in accordance with the prevailing traditional codes and customs of the tribes, further reinforced government's intent of giving due respect and recognition to customary laws and social practices. This regulation also recognised the age-old authority of village councils and the village headman as these institutions helped contribute to the continuance of indigenous legal systems[88].

After Independence, when the Constitution was being framed, a sub committee was formed to give inputs relating to the tribal areas of North east India. This committee recommended that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained and the hill people should have full powers of administering their own social laws, codifying or modifying them. These suggestions were incorporated in the Sixth Schedule of the Constitution and Article 244(2) declared that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas of Assam.

Some areas were declared as Autonomous Districts and each such district could have a District Autonomous Council with legislative powers to legislate on various subject matters including community owned forests. Arunachal Pradesh, Nagaland and Manipur are not governed by the Sixth Schedule. There are other laws enacted for these states that give special recognition to the customary laws and to the authority of tribal village councils in adjudication.

Till the commencement of the Constitution in 1950, the Governor General (after Independence- the Governor of India) had the power to bar any or part of any provincial or national law from application to this area. Thereafter, the provisions of Part B of the Sixth Schedule of the Constitution came into force in AP, removing this protection. Thus implying that the Central laws enacted after 1950 would apply to these areas as they do to the rest of India, subject to the extent clause mentioned in the law.

In 1972, when Arunachal became a Union Territory, it ceased to be a tribal area within the state of Assam, and thus provisions of the Sixth Schedule also ceased to apply.

States having derived their power from the Constitution have enacted state legislation to give strength and recognition to customs and customary laws.

88 A Study of Administration of Justice Among the Tribes and Races of North-Eastern Region. Directed by J.N. Das. 1990 Law Research Institute. Guwahati High Court, Assam.

The following section shows how forests in the state of Arunachal Pradesh under the ownership of communities have been managed through usage, customs, beliefs and practices over the years. Based on these practices and customs, the village level institutions have been settling disputes that have arisen in the society over management of the forest resources.

4.1.3 Arunachal Pradesh

A biologically[89] and culturally rich state of North east India, Arunachal Pradesh nestles in the Eastern Himalayan belt within India. The Eastern Himalayan region has been identified as one of the thirteen global hotspots which owes its biological diversity to its location at the tri-junction of the Paleoarctic, Indo-Chinese and Indo-Malayan biogeographic realms. It shares international boundaries with Bhutan on the west, China in the north east and Myanmar in the south east.

Besides harbouring a rich diversity of flora and fauna, the state also boasts of being home to myriad tribal communities. Encompassing an area of 83,743 sq.km., its population density is very low, with population of 8,64,558 (1991 census) of which 63 % is indigenous or listed as Schedule Tribes as per the Presidential Order of 1956. The 25 major and over 110 sub-tribes of AP live in close association with nature and a majority of these are directly dependent on the forest resources, eking sustenance and livelihood therefrom.

Cadastral surveys have not taken place in the state and a land revenue system has not been introduced. No land records nor

89 The state is endowed with over 5000 plant species, 85 mammals, over 500 birds and a number of butterflies, insects and reptiles. Twenty five species of the mammals found here are listed as endangered in Schedule I of the Wild Life Protection Act. The 500 bird species that inhabit the state include some like the endangered white-winged wood duck, Sclaters monal, Temmincks tragopan, Blacknecked crane (migratory), Bengal florican and the endemic Mishmi wren. The state harbours 10 species of pheasants. The forests of AP vary from the tropical, sub-tropical, pine, temperate to the high altitude alpine pastures and harbour a wide range of floral species. Out of the 1000 species of orchids found in the country, 500 are found in the state.

records of rights are maintained by the state. Yet the elder persons in the tribes are aware of the traditional boundaries which are demarcated by natural features like rivers, hills, rivulets, hillocks, etc. A large part of the land (including forests) is believed to be under the control of communities.

4.1.3.1 Unclassed State Forests

The forest considered to be under community ownership in Arunachal is what is referred to as Unclassed State Forest. Although there is no clear definition for this type of forest, the forest department considers all forest in the state, which doesn't fall in the category of either reserved forest, anchal forest reserve, village forest reserve, wildlife sanctuary, or national park as Unclassed. The distinct pattern of ownership of land including forest land, observed in the state varies from tribe to tribe. Certain tribes like the Adi and Apatani follow three types of ownership on the lands/forests: community/tribe, clan, and family/individual. The Nishi tribe, till recently, only recognised community ownership over lands. The land use pattern differs in these forests.

Table 4.1: Resource use pattern in the Unclassed State Forest among the Apatani tribals

Ownership Type	Resource use pattern
Individual/family	Kitchen garden Bamboo-pine groves
Clan	Granary sites Burial ground Hunting ground Wood for house construction Religious sites and sacred areas
Community/village	Burial grounds Grazing grounds Community hunting before festivals

Source: Compiled from 'A Himalayan Tribe: From Cattle to Cash by Christoph von Furer Haimendorf, 1980.

The total area under forest in Arunachal is 51,540 sq.km.; of which 36,210 sq.km. (nearly 70%) is under unclassed state forests. Only 19% of the total forest area or 11% of the total geographical area of Arunachal is under the category of reserved forests. The declaration of many of the reserved forests has been questioned and challenged in the high court (conflicts relating to this matter have been dealt later in this section).

The forests under community ownership are managed as per their indigenous practices. Some traditional beliefs and practices of the Apatani tribals that depict aspects of conservation are mentioned here.

4.1.3.2 Traditional Beliefs and Practices in the Apatani Community

The customary practices that have the sanction of the society also serve the function of conflict prevention in the society. There is an adage among the Apatani tribesmen that reinforces this belief. It says that it is better to forego a strip of land (measuring a span of a hand) if under conflicting ownership, rather than wasting time and wealth over it.

Some of the social practices commanding control in the Apatani society are:

Dapo: This term has been interpreted differently at different times depending upon the need of the community. This practice began as a peace treaty at the time of the earlier settlement of the Apatanis in the Plateau. As the Apatanis were surrounded (geographically) by the hostile Nishi tribesmen, Apatanis wanted to keep the inter-village and inter-tribal disputes to a minimum. The Apatanis are of the belief that formal treaties of friendship between the villages formed a fundamental part of their political system and assured peace[90]. This treaty still holds the same meaning today, except that an element of warning has been added to it ever since they have

90 Furer-Haimendorf, Christoph von, 1980. A Himalayan Tribe: From Cattle to Cash. University of California Press, Berkeley, California. Pp. 41, 82.

started experiencing a natural resource crunch[91]. In any forest land, irrespective of the ownership, if there is a likelihood of a dispute arising, a structure depicting a *dapo* is erected at the boundary of such areas to reinforce the message. Usually three poles of bamboo about 3-4 feet long are erected in a vertical criss-cross manner. These days the literate in the community have started writing a note on a wooden plaque affixed at the centre of the structure. This is a note of warning that mentions the punishment and fines a violation would attract.

Buning: Another practice followed in this community which has helped diffuse inter and intra-village tensions is the practice of making *bunings* or ceremonial friends. The concept of *buning* started ages ago and continues to exist even today. A *buning* relationship can be entered into and can be inherited from one's father. *Bunings* are made after a long period of friendship and the relationship is given a formal status by inviting *bunings* over to feast at the time of the *Mloko* festival. The relation is considered severed if a *buning* is not invited to a feast. A buning has to represent his friend in his own clan and village. Bunings were normally from other clans and tribes. The purpose of entering into such kinship ties was to bridge the gap in the social network.

Ordeals: Some of the dispute settlement mechanisms in the past, which have continued till recent times, especially in the remote areas, include the system of oaths and ordeals. This also acted as a dispute prevention mechanism as the ordeals were severe. If the village authorities were unable to resolve any disputes by negotiations and mediation, the practice of ordeals was resorted to.

Taboos and religious controls: The tribal society maintains several taboos associated with felling of certain tree species and animals. Each tribe follow a certain set of taboos. There is hardly any documentation of these. The local people have a strong belief in taboo as they still worship the forces of nature and believe in supernatural powers. These taboos can form the basis of much conservation in the region, and if found effective should be recognised by the

91 Personal communication with the village elders of Hang village in Apatani plateau during the author's field work in 1985.

highest judicial body. These taboos need to be urgently documented.

Elements of nature were either worshipped or used in the worship process. Certain tree species were considered sacred while some fruits, flowers and animals held a special position in their rituals and festivals. Hence, controlled utilisation of these species was important to the community, which led to the conservation of these species. For instance in the Mloko festival, which is celebrated by rotation by a group of villages together, required a paw of a monkey (species not clear) and a monkey skull. Representatives of all the villages used to go for this annual hunt and only hunt one monkey a year from one community forest. This ensured the availability of the monkey for the coming years.

The tiger *Panthera tigris tigris* holds a significant position among the Adi and some other tribes of Arunachal. They consider the tiger to be their elder brother and never kill one. Accidental killing of a tiger is followed by a year long arduous penance. Similar taboos are associated to some trees. It is considered that if a person fells a tree which is regarded as the abode of a deity, death will befall upon one of his or her family members.

The sacred sentiment that people hold towards certain species of plants is also due to the site where these are planted. Some such plants are regarded as abodes of deities. Sometimes a species is protected for its great value to the society. For instance the *sal* tree (*Shorea robusta*) holds a cardinal position in the social and economic life of a Santhal tribe of eastern India. The leaves, fruits, flowers, bark and twigs of this tree have different uses for the Santhals of Bihar; hence they preserve the species in a sacred grove called the *sarna*. This area is protected to the extent that even a fallen leaf is not picked. Similarly the Apatanis and Nishis too protect some trees. The Apatanis normally consider the ancient pine trees planted by their ancestors and forefathers as sacred. Even decaying trees of these species are not felled for private and commercial use. Instances have come to light where fallen sacred trees have been used for the purposes of community welfare, e.g. planks are used as walks to cover marshy and muddy patches on dirt tracks during rains. Apatanis use flowers of the plum tree (*thakum*) in rituals and hence the tree is considered sacred. During festival times and religious periods, people are restricted from entering

the forests for cutting firewood or extraction of other resources. People are not even allowed to visit their fields during such periods. When special ceremonies are held at home, the members of the family are not allowed to leave the premises of the house for upto a period of seven days. The period of abstinence from going to the forests during the Mloko festival is known as *anyodo* and violation of this norm is considered a taboo.

Performance of private rites are common in the villages and these take place quite often as a part of ceremonies such as weddings or funerals, or reasons as common as an illness in the family, commencement of a house building, a fire in the village or a personal crisis. The Apatanis perform a seasonal rite in July/August in the name of *Yapun*, god of thunder. The performance of this rite is believed to ward off the danger of damaging the crop from hailstorms. No villager is allowed to go beyond the cultivated areas, i.e., to the forests during the ten days following the performance of these rites. Breach of these rules could lead to hailstorms damaging the crops. These rites and restrictions are followed till date.

Over the years, the state is witnessing tremendous changes. The tribal society has not been immune to cultural as well as religious invasions[92]. The weakening of the social and moral values[93] has allowed for the setting in of the process of degradation of the

92 By changing their religion, people are forced to drop their earlier beliefs. Certain practices where the community used to work together for the preparation of the fields before the sowing, are no longer attended by the Christian turned tribals as they have to attend Church on Sundays. This used to be an occasion when people could get over their earlier grudges from the previous agricultural season; disputes were kept under control. Certain trees were once considered sacred; after turning to Christianity these people have been made to believe that these are mere superstitions. Ceremonial prohibitions of felling trees are losing their value.

93 Some of the factors leading to this breakdown are modern education, effect of modernisation, improvement in road transport & means of communication, commercialisation of forest resources, monetised economy, mass movement of people from the remote areas to areas closer to roads and plains. For more details see Pant, R. 1996. Legal Appraisal of Unclassed State Forests: A Case study from Arunachal Pradesh in North east India, Centre for Environmental Law, WWF-India, New Delhi.

natural resources over the past few years. Not only has the nature of disputes arising over forest resources changed, the number of disputes has also increased manifold. In the midst of this transformation, authority of village institutions has been affected. But the author has also documented cases relating to forest management that show the wisdom of these institutions and their ability to cope with the changing situations. The two decisions of the village council in a Nishi village show the understanding of the people about their forest and environment (Box # 10).

Box 10: Decisions of the *Nyel* (Village Council)

In a case of over-extraction of cane from a community forest, the *Nyel*, the village council of the Nishi community, adjudicated that an individual can extract cane from the community forest only for personal use and not for commercial purposes. Similarly in another incident in another Nishi village, a person was raising a mustard plantation in a degraded community forest. The *Nyel* decided that no one would start a plantation in a community forest area. The forest should be allowed to regenerate and grow into a mixed forest. Monocropping is not good for the health of the forest.

The decision of the *Nyel* is comparable to the provisions of the two statutory laws – Wild Life (Protection) Act 1972 and the Forest (Conservation) Act 1980. The former allows members of scheduled tribes to extract or pluck certain species from the forest in their district for personal *bona fide* use and not for sale. In the second case, the Forest (Conservation) Act does not permit raising of a plantation in a forest area without the permission of the central government as a plantation is considered to be a non-forest activity.

4.1.3.3 Institutions in Conflict Resolution

There is a diverse range of institutions available in the North eastern states of India for settling disputes or violations of forest rules and regulations. Arunachal Pradesh is a step ahead in this uniqueness related to adjudicating bodies. Judiciary is not a separate entity in Arunachal. In the formal sector, the State Administration also performs the role of the judiciary. The Deputy Commissioner is the highest judicial authority in the formal sector at the state

level. There is no high court in the state nor is there any bench thereof. For any violation of fundamental rights or for preferring an appeal from the decision of the Deputy Commissioner, one has to approach the High Court of Assam in Guwahati.

Besides this formal institution dispensing justice in the state, there are traditional tribal village councils that have existed in the state for ages. These village councils perform judicial and administrative functions within their jurisdiction, viz. their village. Their judicial authority is formally recognised under the Assam Frontier (Administration of Justice) Regulation of 1945, which authorises the village authority to settle all civil matters and some criminal matters of non-heinous nature according to the customary laws.

In addition, there is the Forest Department and its officials who have been invested with the powers of a Civil Court[94]. A forest officer may be empowered by the State Government to compound offences[95].

4.1.3.4 Process

Any violation of the customary law first goes to the village council. The nomenclature and structure of the council differs from tribe to tribe[96] but the basic concept of justice is the same in most of the tribes. In most cases, violations and disputes are settled at this level. If this does not happen and if the dissatisfied party wants to approach the Deputy Commissioner (DC), the DC decides the matter with the help of the Political Interpreter who helps the DC in interpreting the customary laws and their social practices. If the disputants approach the DC directly, he normally sends them back to the village institution. Sometimes the DC calls the members of the village council and in their presence decides the case or in many cases, the DC asks the village council to decide the matter in his presence. These cases are usually settled outside the formal courts and a written note of the final decision is sent to the DC's office. Many such cases in the field of forest management are

94 Vide section 72 of the Indian Forest Act 1927.

95 Vide section 68 of the Indian Forest Act 1927.

96 For example, Kebangs of the Adis, Buliangs of the Apatanis, Nyels of the Nishis, Bango of Hill Miris.

documented[97]. In cases where the guilty is aware that the punishment is more severe under the customary law, he decides to go to a different forum and approaches the DC directly.

In the recent times, most of the violations related to forestry in Arunachal are connected with encroachment. People consider the creation of reserve forests on Unclassed State Forests as an encroachment on their land by the Forest Department. On the other hand, the Forest Department alleges that people, by not moving out of the reserve forests, are encroaching upon government property; also in some cases people have cleared some government plantations in reserved forests to reside there. In two instances where eviction orders were slapped on these villages, the villagers filed two separate public interest litigations in the Guwahati High Court and the judge sympathised with the people. He ordered a stay and issued a show cause notice to the Forest Department as to why should the people not reside there. Basically the area belongs to the Nishi community. The government declaration of reserved forests has been quite faulty in the state, people have no idea when their forests were turned into reserved forests. But with such eviction orders coming their way, they are realising the fact.

In another instance, a person challenged the forest department's creation of a reserved forest over his clan land. He has alleged that the due legal procedure was not adopted. This was also filed in the Guwahati High Court as a public interest litigation.

The increase in the number of cases that reach the High Court in the past few years probably shows the drawback in the traditional system to deal with cases against a non-tribal or a government authority. After all, the village authorities are limited in their functional jurisdiction. Instances have come to light where the government authorities including Army and ITBP have acquired land including forest for the purposes of setting up township and office structures, but paid minimal and in some instances no compensation to the tribal/community. Such cases are difficult to deal with under the traditional judicial system.

Many of the social and religious values, which have *de facto* also assisted in natural resource conservation so far, are eroding in

97 Pant, R. 1996. Legal Appraisal of Unclassed State Forests in Arunachal Pradesh. CEL, WWF-India.

the present days. The weakening value system is taking its toll on the resources as well as on the social set up in the society. Although the dispute settlement authority continues to remain with the village councils and the *gaon buras* (village elders), some plaintiffs have started approaching the formal judicial bodies for settlement of disputes. This practice is being observed largely amongst the village elites. Some people look upon this as a status symbol to take a matter outside the state[98] resolution.

Also, since there are a number of institutions that deal with disputes and violations of the rules, people can "shop" for the forum they would like to take their plaints to: the forest department, the Deputy Commissioner's (DCs) office, the traditional village councils or the High Court. Quite often a guilty person prefers to approach the formal judiciary when he knows that he will get a severe punishment if tried by the traditional village council.

Law, justice and jurisprudence were terms superimposed by the British on the indigenous terms like *rita, dharma, and nyaya;* thus surrendering the traditional system of social control at the hands of the British. With the result the *dharma* and *nyaya*, which were responsibilities of the community, were amputated from the collective whole of the society and became the onus of the individual[99]. Yet there were areas where the British did not impose their system of jurisprudence. It is in these areas that the importance and utility of the indigenous systems of social control can be gauged.

4.2 Recognition of Customary Law within the Statutory Law

Now let us review some of the laws that have implications on conservation in India. And see to what extent, if any, do these statutory laws reconcile with the indigenous practices of resource management and the customary laws governing these practices.

98 The High Court for Arunachal state is in Assam (Guwahati High Court).

99 Roy, Shibani and Rizvi, S.H.M. 1990. *Tribal Customary Laws of North-east India*. D.K. Publishers Distribution (P) Ltd., N. Delhi.

4.2.1 Indian Forest Act 1927

The first Forest Act legislated for India was during the British reign in 1865. This enactment was responsible for notifying all land covered with trees, brushwood, or jungle as government forest, but this act didn't affect the existing rights of individuals or communities[100]. The colonial government, however, found the provisions in the Act inadequate as the continuance of customary rights obstructed the imposition of total state control over forests. After a series of amendments in 1878, 1890, 1901, 1918 and 1919 to this enactment, the final version of the Act was created in 1927 which to date *de jure* governs the management of Indian forests. This law further abridged peoples' rights over the forest and denied them access to utilise the resources that they had been using for generations.

At the time of enactment of this legislation, a major debate took place regarding the recognition – restriction of peoples' rights over the forest but finally what emerged as the law was not in favour of the people, nor did it have anything to do with protection of the forest resources or conservation. The objective behind this law was predominantly economic; forests were looked upon as large reserves of timber, a raw material for the industry and hence a revenue earner. The only provisions that could be associated with conservation were on prohibitions of hunting.

Although provisions exist in the Forest Act under the category of village forests[101], whereby management of the area could be assigned to village communities, these are only gaps in the prevailing legal regime that NGOs and people supporting community based conservation hope to use, to accord some amount of legal recognition to the efforts of communities involved in conservation. But the specific intent of the bureaucracy or the legislators to give recognition to community based conservation is not reflected

100 Sarkar, S. 1998. Participatory Forest Management- Vol I, IGNOU, New Delhi.

101 Krishnan, B.J. 1998. Legal and Policy Issues in Community Based Conservation. In Kothari, A., Pathak, N., Anuradha, R.V. and Taneja, B. (eds.). Communities and Conservation: Natural Resource Management in South and Central Asia. Sage Publications and UNESCO, New Delhi.

in the implementation of the law, since this provision has hardly ever been used in India.

The government has declared a number of biosphere reserves in the country in the last fifteen years. To date there is no law governing the management of such areas. What could be the reason for such indifference on the part of the forest bureaucracy? The concept of biosphere reserves is based on the constitution of different zones such as the core zone, buffer zone, restoration zone and cultural zone under which there is a tremendous scope for strengthening customary law and customary practices in natural resources management. Somewhat similar to this is the novel approach of declaring cultural landscape heritage sites under the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), 1972. Although India is a party to this Convention, it has made no attempt to give a legal status to this new approach.

The existing forest law makes an explicit mention of provisions relating to extinction and commutation of rights in declaring reserved forests (sections 9 and 16 respectively). However, it confers upon the Forest Settlement Officer the power to allow rights to graze, to forest produce and the rights to reside therein.

Forest Villages[102] in District Darjeeling of West Bengal and in many other states of India are exceptional cases. Forest Villages are situated inside Reserved Forests and in some instances even inside Wildlife Sanctuaries. In District Darjeeling, the people living in these villages are not necessarily local people. These people are from outside the region, whom the forest department had employed, in some cases nearly 100 years ago, for forest operations. Earlier these communities had no rights upon the forests, though *de facto* they had access to the resources of the forests in the area they inhabited. Earlier these villagers were temporarily accommodated near those parts of the reserved forest that had to

102 The forest villages are under the complete jurisdiction of the forest department; even developmental activities such as opening of schools, setting up primary health care centres, electrification of villages, water-provision, irrigation, etc. are the responsibility of the forest department. Although in many parts of the country the forest villages have been converted into revenue villages, this is yet to happen in district Darjeeling.

be operated upon. According to the agreement, each family was allotted a piece of land for cultivation, till such time they are located there. Once operations and plantation work was over, the village used to move to a new location inside the forest. The 1996 Supreme Court order related to banning of felling in forests has had a tremendous effect on the working of the forest and now that there is hardly any work for the people, these settlements have become nearly permanent (For further details of the case within which this order was passed, see Section 5.1). JFM has been extended to these villages and Forest Protection Committees have been formed here over the past four to six years. The FPC members are not aware of their rights and responsibilities. They are merely acting as forest guards in the absence of sufficient forest department employees to man the forests. Resentment has begun to rise in these villages, as they are not getting any returns under the JFM scheme introduced in the region. The credit for creating this situation goes to the JFM Resolution passed for the region which clearly mentions that people will have to protect the forest/ plantation/ wildlife for at least five years to be eligible for sharing any usufruct under this programme[103].

Besides, there is very little room for the committee to frame its own rules when the Resolution directs them to work under the purview of the Indian Forest Act and the Wildlife (Protection) Act. Failure to comply with the provisions of these laws, or rules made thereunder, may entail cancellation of individual membership and/ or dissolution of the FPC. There is hardly any scope left for recognition of customary rights and laws in such a situation.

All government reports and also some reports generated by the NGOs suggest biotic/anthropogenic pressure as a major threat to protection and frame this as the basis of ousting people from their habitation in the forest areas. These reports fail to segregate the local communities from outsiders who come to plunder the forests such as the timber mafia, the wildlife poachers, the tourists, the migrants, casual and tea garden labour, and the more distant but equally destructive actors such as urban consumers of wood products.

103 The JFM Resolution for North Bengal is a bit different from the other resolutions as it does not allow sharing of usufructs till 5 years of protection work has been put in by the Forest Protection Committee members.

4.2.2 Forest (Conservation) Act, 1980 with the amendment in 1988

The Forest (Conservation) Act is the first legislative action nearly half a century after the enactment of the Indian Forest Act in the field of forestry and this, for the first time focuses on conservation aspects . In view of the states dereserving forests on a massive scale for non-forestry purposes, it became imperative for the centre to intervene. The states were not only dereserving to make space for the industry but some of the states were also legalising encroachments on forests and allotting forest land for resettlement of people displaced from several developmental projects.

But this law also has not made any difference to the people. There is nothing in the law that helps peoples' initiatives in conservation. It merely centralises power to permit non-forest activities within forest areas; power which was earlier with the states has now been transferred to the centre. In a way it is only creating problems, at least for a state where large parts of forests are with the people. Now in order to construct even a small shop or a hut (which are both non-forest activities) in their unclassed state forest, a tribal from Arunachal will have to apply to the Central Ministry of Environment and Forests.

In addition, the Forest (Conservation) Amendment Act 1988 considers cultivation of tea, coffee, spices, rubber, oil bearing plants, horticulture crops and medicinal plants as non-forest use. Now this is in contradiction with the Tribal Sub-Plan strategy that envisages beneficiary oriented programmes including horticulture, oil seeds, tea, coffee, sericulture, etc., for economic upliftment of the tribal families. Thus we see that the provisions of the Forest (Conservation) Act are not in harmony with the provisions of the Tribal Sub-Plan. In October 1989, the Ministry of Environment and Forest issued guidelines mentioning that planting of fruit bearing, oil bearing and medicinal plants will not be construed as non forest use if the species are indigenous to the area in question. But this does not solve much problems as guidelines are mere administrative orders and do not have the force of law[104].

104 Oberoi, C.P. 1993. Are we sincere towards Tribals? In *Tribal Laws and Modern Legal System*. Himalayan Publishers, Patna, pp. 122.

4.2.3 The **1952 Forest Policy** for the first time acknowledged the ecological aspect of the forest. It also acknowledged the claim of the village communities over forests but had the following to say about their interface:

> "Village communities in the neighbourhood of a forest will naturally make use of its products for the satisfaction of their domestic and agricultural needs. Such use, however, should in no event be permitted at the cost of national interests. The accident of a village being situated close to forest does not prejudice the right of the country as a whole to receive benefits of a national asset."

The policy has mentioned the need to establish tree-lands and small woods for grazing and firewood.

Although the **Forest Policy of 1988** has been hailed for its explicit recognition to peoples' need and future role in conservation, it has not made any reference to peoples' past knowledge and their traditional practices in forest management. In section 4.3.3.2 of the policy, it merely suggests that the holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forest.

While comparing the provisions in the Forest Policy of 1988 with the Forest (Conservation) Act, 1980 including the amendments made in 1988, the following contradiction comes to light: while the Act under section 2(iii) restricts leasing of the forest land to the people or non-governmental institutions para 4.2.4 of the Policy recommends making degraded lands available on lease or on basis of a tree patta scheme to individuals and institutions.

4.2.4 JFM Circular and State Resolutions

In June 1990, the Ministry of Environment and Forest brought out a circular setting out a new policy on forest management involving village communities and voluntary agencies in the regeneration of degraded forest land. This has been termed as Joint Forest Management (JFM), which is a process of reafforestation/regeneration of degraded forests through a partnership between foresters and forest communities by establishing ecological and economic benefits for the community and the larger society. Over the years JFM

has gained momentum and has been hailed as a successful model in resource management. So far 27 States of India have adopted Resolutions to implement JFM. However the programme has been fraught with several problems and hurdles.

A major drawback for instance in the state of Arunachal Pradesh is the fact that JFM has been extended to hitherto community managed forests (unclassed state forests) which are being governed by their own customary rules and regulations. The State Resolution avers the extension of JFM to Unclassed State Forests, yet in the past five years, JFM has been introduced in merely small pockets of USFs, more in the form of Centrally Sponsored Schemes (CSS). Traditionally communities here have had complete access to the forest resources except to the timber resources in USFs for which they had to get timber permits from the forest department. With the introduction of JFM, community members are entitled to only 25% of the resources; 25% goes to the development fund and 50% goes to the forest department. This is not acceptable to the local people and they perceive this as a move of the department to bring USFs under government control[105].

Similarly in the state of Sikkim, instead of introducing JFM to the degraded reserved forests, the state JFM Resolution extends JFM to Gaucharan and Khasmahal forests (where resources are largely under community management). The State Forest Department is not very convinced about the success of JFM in the state. The Centre is trying to push JFM to all the states without giving any consideration to local and ongoing initiatives in different states in forest resource management. This direction from the Centre comes with a rider that if JFM is not introduced, the states will not be eligible for funds under the Centrally Sponsored Schemes[106]. This is also now a thrust in the World Bank aided state forestry projects underway in several states.

Yet some states such as Nagaland have not acceded to the Centre's demands. The provisions of Forest (Conservation) Act 1980 do not apply to all forests in Nagaland. Nagaland legislature

105 Pant, R. 1998. *Joint Forest Management Vis-à-vis Conservation Laws of Arunachal Pradesh*. Arunachal Forest News Vol. 16 No. (1 & 2).

106 Personal Communication with the Conservator of Forest, Department of Forest, Sikkim, 5 March, 1998.

has limited the applicability only to Reserve forests or government controlled forests. Private village forests are governed by their own customary laws and rules and regulations framed by the community. These forests are not regulated under the Forest (Conservation) Act[107].

More recently, grievances have been voiced by many forest protection committees (FPCs) in Uttaranchal on account of extension of JFM to the forest managed by the Van Panchayats now for over 7 decades[108]. The government by introducing JFM to areas being managed by the Van Panchayats have created more havoc than enabling or enhancing existing community efforts in forest resource management. Besides, the JFM guidelines completely disregard the indigenous practices which include traditional boundaries and community framed rules in the management of forest resources.

The new JFM Guidelines issued by the Ministry of Environment and Forests in February 2000 have tried to plug some gaps but this is not sufficient. Firstly, it is still in the form of an Executive Order, which is not enforceable in the court of law. Secondly, although it does make provision for recognition of self-initiated groups in resource management, it does not make any specific mention to recognition of indigenous practices and community framed rules in resource management.

From the experiences of community initiatives at Bhoanta-Kolyala (Rajasthan) and Mendha (Maharashtra), it is clear that due to the lack of legal status to Forest Protection Committees, people from neighbouring villages and other outsiders do not heed to the rules and regulations framed by the FPC or the gram sabha

107 The State of Nagaland enjoys a special status under Article 371A of the Constitution, which avers that no act of Parliament in respect of (i) religious or social practices of Nagas, (ii) Naga Customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga Customary law, (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

108 Sarin, M. 2001. From Right Holders to Beneficiaries? Community Forest Management, Van Panchayats and Village Forest Joint Management in Uttarakhand. Draft paper for discussion.

members. There is no mention in the JFM Resolutions of committee framing its own rules and regulations for the protection of forests. The status of community rules and customary laws vis-à-vis JFM areas depends entirely upon the serving forest officer. Till such time JFM is given a legal standing, rules formulated by the forest protection committee cannot command the respect of the neighbouring villages. The FPCs will remain at the mercy of the forest department and will always wonder whether the next officer will be as good or as bad as the previous one.

Multiple-use zones can be created under the JFM approach of forest management to keep all the stakeholders happy. New categories of forests may have to be developed keeping in mind the state of forests in different parts of the country; and the various stakes and demands of people and industry on these forests as a resource. Management strategies can be reworked; community or individual's efforts in resource management could be given due recognition in a new law.

4.2.5 Wild Life (Protection) Act 1972

Wildlife is an intrinsic part of forests and other natural ecosystems. The Wild Life (Protection) Act was enacted by the Indian Parliament in 1972. This Act provides for the protection of wild animals and birds by enlisting these on schedules of Protected Species and by protecting their habitat by creation of protected areas such as sanctuaries, national parks, game reserves (omitted by 1991 amendment) and closed areas. These protected areas are accorded different degrees of protection based on the permission and prohibition of activities in the areas. Unfortunately, governments failed to recognise the habitats of wildlife as also the habitat of the forest dwellers.

Once again similar in nature to the Forest Act, this Act is enacted on the premise that forest dwelling communities are an obstruction in attaining the objectives of conservation and protection, hence their rights need to be abridged. The Wild Life (Protection) Act deals only with protection minus the perspective of regulated or sustainable use, so there is little scope for recognition of traditional practices and community initiatives in conservation.

There are two sections that allow tribal people some concessions but these too are incomplete:

> The proviso to Section 17A allows members of Scheduled Tribes to pick, collect or possess a specified plant in the district they reside in, for *bona fide* personal use. The said section otherwise prohibits this to all other citizens of India.
>
> Section 65 deals with rights of Scheduled Tribes to be protected. This section only exempts the application of the provisions of this Act to the hunting rights of the Scheduled Tribes of Nicobar Islands. This concession could be extended to other tribes as well.

The Act could give similar recognition to rights of other tribes of north east India too by inserting another provision similar to Section 17A, wherein it could allow members of Scheduled Tribes to hunt or collect scheduled faunal species from within the district they reside in for their *bona fide* personal use. This has been discussed in the preceding section that indigenous people have their own rules and regulations governing sustainable harvest of the animals, as they need some of these for performance of rites and rituals. Hunting is not merely a sport. The situation becomes complicated with changes being brought into the traditional tribal societies with the educated doing more harm to their environment. They are the ones with the rifles and vehicles and some of them do look upon hunting as a sport. But that is where the flexibility in customary laws and the adaptability of the traditional institutions play an advantageous role[109]. Examples and experiences may differ from place to place; there is no doubt that times are changing and some checks and balances need to be added to the customary laws.

The proviso to Section 17A also happens to be incomplete as it only recognises the Scheduled Tribes for the application of the proviso and has ignored many other communities, which are not scheduled, but may be dependent on forest areas for survival.

The procedure adopted by the Wild Life (Protection) Act for curtailment of rights of people in the protected areas is pretty much similar to that laid down in the Indian Forest Act. It could have

109 Please see the decision of the *dzumkha* of North Sikkim in a related matter in the previous sub-section.

acknowledged the communities' efforts in meeting the objectives of conservation and could have given due recognition to these efforts[110].

4.2.6 The 73rd Amendment to the Constitution Act and The Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996

The 73rd Amendment to the Constitution of India afforded the long awaited strength to Article 40 of the Constitution which envisage organisation of Village Panchayats as institutions of self-governance. This amendment empowers the 'gram sabha', a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of village panchayat[111], to perform such functions as the Legislature of the State. The State Legislature may empower the Panchayats to enable them to function as institutions of self-government. These Panchayats shall be empowered by the State to implement schemes for economic development and social justice including matters such as land improvement, land consolidation, soil conservation, fisheries, social and farm forestry and minor forest produce.

Each state is supposed to enact its Panchayat legislation incorporating these provisions. The provisions of this amendment are not applicable to certain scheduled and tribal areas such as the States of Nagaland, Meghalaya, Mizoram, Hill Areas of Manipur, Hill areas of District Darjeeling, etc. and the schedule V states of Bihar, Orissa, Gujarat, Himachal Pradesh, Madhya Pradesh, etc.

110 The proposed amendments to the said Act have recommended a new category of protected area for this purpose of giving recognition to traditional practices and community involvement in conservation, namely the community reserves. However, existing protected areas cannot be converted to this new category, so its applicability is limited.

111 Panchayat means an institution of self government constituted for rural areas at three levels: village, intermediate and district.

The Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996

This is the first law that gives genuine form to the structure of self-governance in the tribal areas. It is a salutary legislation enacted at the Centre for extending the provisions of 73rd Amendment to Scheduled Areas (i.e. predominantly tribal areas listed under a schedule in the Indian Constitution). The provision of this Act provides substance to the structures of self-governance created by the 73rd and 74th amendment to the Constitution.

The Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 was a result of the recommendations of the Bhuria Committee, which comprised Members of Parliament and experts, who recommended an alternate system of governance for the scheduled areas built on the foundations of traditional institutions. The said Act allows for the extension of the provisions of Part IX of the Constitution to the scheduled areas but with certain exceptions and modifications.

This Act for the first time in legislative history has explicitly recognised community as the basic unit of self-governance. According to Section 4 (b) of the Act, "a village shall ordinarily consist of a habitation or a group of habitations, or a hamlet or a group of hamlet, comprising a community and managing its affairs in accordance with traditions and customs". This shows that community has received the formal status of the Gram Sabha. The community at the village level in the tribal areas is a functioning collectivity comprising persons living in a face to face setting like a habitation, a hamlet or a village. This collectivity has sustained the community life all through the years. It is an irony that the Indian Constitution has treated an individual as the basic unit of self governance, with no reference to the role of the community therein. Under this new approach, the individual tribal will enjoy dual privileges: one as the citizen of India under the Constitution and secondly as a member of the community with the authority to manage its own affairs. It is for the first time that the Centre has enacted an Act which directs the state legislature to legislate a Panchayat law which is not in disagreement with the customary law, social and religious practices and traditional management practices of community resources.

One shortcoming of the this Act is that it only provides for new laws being in tune with the provisions of the new Panchayat Act. The Act does not say whether this aspect is retrospective. There are several old laws that are not in tune with the customary laws and social practices of the scheduled areas. The law does not mention what will be its status as against the prevailing laws in different field, which are not in harmony with the new Act as extended to scheduled areas. For instance, the provisions of the Wild Life (Protection) Act, 1972 are not always in harmony with the provisions of this Act. The difference is very basic, WPA works on the basis of creation of PAs by disregarding the rights and traditional practices of the local communities, whereas the basis of the new Act is the explicit recognition of the communities, their role in resource management; dispute settlement, and the protection of their customs and traditions.

This Act is a central law, but it is not applicable to the state of Arunachal, which is predominantly inhabited by tribal population. This law clearly recognises the role of customary laws, social practices and village councils in natural resource management but it has been extended only to areas declared as 'scheduled areas' under the Fifth Schedule so far. The Fifth Schedule includes scheduled areas falling in the States of Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, and Orissa. Efforts are now on to extend the Panchayat Act to the Sixth Schedule areas as well. The states of North-east are governed by Sixth Schedule and include the States of Assam, Meghalaya, Tripura and Mizoram. Although the North eastern States of Arunachal, Nagaland and Manipur do not fall under the Sixth Schedules, some provision should be made to extend the said Act to these States as these are inhabited mainly by Scheduled Tribes.

4.2.7 State laws in the North-east that recognise customary laws and traditional/ village institutions

- *The Assam Frontier (Administration of Justice) Regulation, 1845*

  Besides the traditional village council, a village body called the Village Authority is created under the provisions of this regulation. The members of this Authority are appointed by the Deputy Commissioner of the district. The members of may or may not be members of the traditional village council. The Village Authority exercises limited powers in matters of village administration while the traditional village council has enormous power under the tribal customary laws.

- *Garo Autonomous District (Social Customs and Usage) Act, 1958*

  This regulation has provided for the recognition of customary laws and social practices of the people of the region.

- *Tripura Tribal Areas Autonomous District Council Act, 1979*

  The government of Tripura promulgated the Tripura Tribal Areas Autonomous District Council Act for providing self-government for the tribals in their area in the sphere of land allotment for jhum cultivation and administration of justice.

- *Manipur (Village Authorities in Hill Areas) Act, 1956 and the Manipur Hill Areas District Council Act 1971.*

  The latter allows the council to act as adviser to state government for legislation in respect of customary laws.

- *The Lushai Hills Autonomous District (Administration of Justice) Rules, 1953.*

  The customary laws and administration of justice in the Lushai area of the State of Mizoram is governed by this regulation.

A critical appraisal of these Indian statutory laws having a bearing upon community based conservation, makes it very apparent that apart from the Panchayat (Extension to Scheduled Areas) Act and some state laws, the other laws or even policies to a great extent, neither give due recognition to community involvement in conservation, nor to customary law.

5. Customary Law and Practices in Judicial Processes

5.1 Formal Institutions

Formal institutionshere refer to the two main judicial bodies created by the Indian Constitution: the Supreme Court at the Centre and the High Court at the State level, for the administration of justice[112]. In this section, two Indian Supreme Court cases, and the cases decided by the LO at ACAP, Nepal, are cited to illustrate the manner in which the highest judicial body in India has completely disregarded the traditional and customary practices in resource management. The court has without due application of mind delivered orders which have had major repercussion (some yet to be visibly felt) at the national level. The orders in these cases reflect an oversight on the part of the judiciary in recognising the communities' role in conservation. Customary laws and community rules governing such efforts and traditional practices in different parts of the country have been absolutely ignored.

(1) T.N. Godavarman vs. Union of India

This case has had far reaching implications on the forests of the entire country. The first interim order of the Supreme Court on 12th December 1996 granted a blanket ban on felling of timber in

112 Although the District Magistrates (DM) or any another magistrate of the first class are also empowered by the state governments to summarily try under the Code of Criminal Procedure 1898, any forest offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both, the author has not included any case of this level in this report due to insufficient information. Though it has come to light that in some states, DMs do recognise customary rights and laws while deciding matters relating to resource use. In addition, the Forest Act empowers a forest official to compound offences and accept compensation for any forest offence other than an offence specified in Section 62 and 63. Such cases too have been left out of the purview of this study.

all forests and directed the application of the Forest (Conservation) Act, 1980, to all forests irrespective of ownership or classification. In some areas, the Court issued a ban on felling of any tree. The Court even issued a ban on the movement of cut trees and movement of timber from the northeastern states of India. Functioning of all saw and veneer mills was halted in some parts of Arunachal. Implementation of such an order in the state of Arunachal is nearly impossible considering the vast stretches of remote forests in the State and the limited resources at the disposal of the Forest Department for the implementation and monitoring of the order. The enforcement of provisions of the Forest Conservation Act, which this order seeks to reinforce, is a difficult task in a state such as Arunachal Pradesh, as the liberal definition accorded to forests by the Court, would practically cover 80% of the state. Seeking permission from the Central Government for the diversion of every bit of forest land for non-forestry purpose would flood the office of the Ministry at the Centre with applications.

There is no doubt about the fact that legal felling in most forests of the country has been stopped with the application of the Forest Conservation Act and the reinforcement thereof. But this has had little affect on arresting illegal felling. Rather illegal felling has increased in many areas as this SC order has rendered many forest villagers and workers jobless. People have found new and ingenious ways of felling and transporting timber despite the court order. However, the order has been very effective in stemming illegal felling of timber species in the forests of Arunachal Pradesh. But this has given rise to a new trend of illegal extraction of highly valuable medicinal plants in huge quantities from the state.

The court in the entire judicial process has overlooked instances where local people have succeeded in resource management through the revival of traditional/ customary forest management practices. The court has completely ignored the fact that at the micro level in many parts of the country, communities have either framed new rules or adapted earlier ones for protection and regeneration of natural resources. SC has undermined the authority and efficacy of the traditional institutions in resource management. The Court in its order could have delegated the authority of

monitoring the implementation of this order to the traditional and peoples' institutions, which are the most decentralised agencies in the state.

In the same case in February 2000, the Supreme Court has banned the removal of dead, dying, diseased and wind-fallen trees and grasses from national parks and sanctuaries across the country. This order came in the wake of the directives issued by the governments of UP and Karnataka in 1999 allowing large scale commercial operations of removal of dead, dying, diseased and wind fallen trees, drift wood and grasses through their Forest Development Corporations, from areas notified as sanctuaries and national parks. The order was passed in response to an Interlocutory application (IA) filed by a lawyers group in Delhi. It is already reported to be having severe impacts on the livelihoods and survival of forest-dwellers, and is another example of ignoring existing and potential community institutions to manage such resources.

(2) Centre for Environmental Law (WWF-India) vs. Union of India, W.P. (C) No. 337 of 1995

This petition filed by WWF-India in 1995, prayed that the Collectors be directed to discharge their statutory duties as entrusted under Sections 19-25 of the Wildlife (Protection) Act, 1972, which included enquiring into and determining the existence, nature and extent of the rights of any persons in or over the land comprised within the limits of sanctuaries/national parks. The collector is to issue proclamations and dispose of their claims as expeditiously as possible. The Supreme Court, in its order dated 25th August, 1995 directed the state governments to complete the legal formalities. In another order, however, dated 22nd August, 1997, the Court directed the state governments to complete the procedures for settlement of rights within a year's time. A similar order was passed on 10th May, 1996, for the state of Madhya Pradesh, in Pradip Krishen Vs. Union of India, W.P. (C) 262 of 1995, giving the state government directives for the completion of the procedure of settlement of rights and to initiate action in this behalf within a period of six months.

It was a good opportunity for the Judiciary to give a more practical and meaningful verdict at a time when the concept of

community based conservation is gaining momentum. When the administration has been in slumber, the Judiciary in its active role as the saviour of the rights of people and wildlife, could have been more innovative and could have given due recognition to peoples' and communities' efforts in conservation in and around protected areas. Instead it again delegated the work to the centralised institutions that have failed to fulfill their duties.

Even other formal institutions did not look upon this as a break that had empowered them to take independent decisions in areas under their jurisdiction. At least forest officials or collectors in areas where communities have shown success in resource management could have recognised these efforts of local people and if the officials were convinced they could have while determining rights, allowed the rights gained by the people to continue in areas which are well conserved and managed. The administration could have excluded such areas from the jurisdiction of forest department and could have allowed communities to continue to manage the resources governed by their customary laws, or if this was not felt to be feasible, it could have helped to create innovative joint management institutions. This could have been a good opportunity to document and review the prevailing customary laws of the country.

Instead the concerned officials deeply entrenched in their conventional perspective, could not look beyond this newly gained authority. The collectors took this assignment as a burden and the process employed, in many parts of the country, was that of summary dismissal of claims if any. There are some exceptional cases, the collector of Jamva Ramgarh Sanctuary in Rajasthan, for instance, has admitted most rights over revenue lands within the sanctuary. In Sikkim, it was noticed that the proclamation was merely announced in a English daily. How does the administration expect rural including tribal folk to even get to know of these announcements[113].

In slightly more aware communities, these orders created a wave of panic. It is reported that on the pretext of these orders, the government officials were harassing the local communities and

113 Personal Communication with a senior forest official of the Sikkim Forest Department in March 1998.

reading the orders as a byword for arbitrary displacement and curtailment of customary rights to access and use the produce of the forest, on which depend their lives and livelihood.

Following two fact-finding investigations to Sitanadi Sanctuary (MP) and Rajiv Gandhi (Nagarhole) National Park (Karnataka), a fresh writ petition[114] was filed in the Supreme Court by some NGOs, praying that

a. the tribal and other forest dwelling communities have the right to continue to reside in their traditional habitats within the forest areas, if they so desired, notwithstanding the provisions of the Wild Life (Protection) Act, 1972 and other provisions of law,

b. the right to minor forest produce for *bona fide* use including sale at local markets be guaranteed,

c. access to their religious and cultural sites within the forest be retained,

d. to restrain the government from forcibly evicting the people from their ancestral home in the forests and interfering with their rights to minor forest produce,

e. to direct the government to creatively involve the tribal and other forest dwelling communities and concerned NGOs in the management, conservation, preservation of forests, wildlife and biological diversity,

f. to determine the rights of the forest dwelling communities under Chapter IV of the Wild Life (Protection) Act, 1972, in consultation with gram sabhas, keeping in view customary rights and traditional usage.

(3) Cases being dealt with by the Liaison Officer (LO) in ACAP

A perusal of the cases decided by the Liaison Officer (appointed as per the statute) for the Annapurna Conservation Area also shows a complete disregard to the rules framed by the different Conservation Area Management Committees. All the 16 cases decided upon by the LO so far in the past two years have been violations of

114 W.P. (C) 672 of 1998

the law governing the management of National Parks. The number of cases will increase manifold in the times to come as the authority of the CAMCs declines. Presently, in spite of the Conservation Area Management Regulation (CAMR) being in force, the CAMCs are still deciding most of the cases at their level and not sending these to the LO. The LO has to depend on two Ranger-level field staff (Government employees) for compounding matters and bringing to his notice. Hitherto the CAMR has not been effectively enforced due to paucity of field staff, hence the number of cases reaching the LO is less. The author has recorded a minimum of eight to ten violations per year from three VDCs, adjudged upon by the CAMCs. There are 55 VDCs in the ACA. Hence about 550 cases are to be decided each year by the LO. One should also note that this is only a part time assignment for the LO. He visits Pokhara, the Headquarters of ACAP, only once a month. This would place a heavy burden on the LO. Besides, this involves more expenses and time because it takes anywhere between 1 to 20 day(s) to trek from different parts of ACA to Pokhara. The only airport in the ACA is at Jomosom in the Mustang region of ACA and the flights are very uncertain due to the weather conditions. At times, the flight doesn't take off in several days and the Range Officer has to wait long to bring the culprit to Pokhara. Moreover, the money that was raised through fines and which was going to the fund of the CAMC now goes to the government exchequer and not to the community for developmental work. A case documented under the ACAP case study shows that the villagers were not satisfied by the decision of the LO in dealing with a violation and felt that the punishment was not stiff enough. The Committee would have taken a sterner action in this case.

5.2 Traditional Institutions

Now let us look at some decisions taken by the traditional/people's institutions and the process involved therein.

(1) Thain case[115] from Rajasthan, India

The *thain* system of administering justice has been described earlier. A case that had been languishing in the formal court of justice for many years and was not being settled, was finally brought to a *thain* and decided within a few days. The facts in this case were that a group of people from Kithala village had encroached upon the *gauchar* (grazing land) of the village and had changed its land-use by starting cultivation activity thereupon. This led to a tussle between two groups. The other group from the same village took the former group to court. When the matter was getting unnecessarily prolonged and there was no decision in the matter, then there was a realisation to bring the case to the traditional system of conflict resolution. The case was brought to the *thain* on 8th February 1996. About 250 people got together to know the verdict. The *panch* decreed that the grazing land is a village common land and any encroachment upon such a land would be unjust and unfair to the larger community. The *panch* ordered removal of the encroachment and a written agreement be submitted to the court. The community members gathered at the village assembly were able to persuade the encroachers to sign the agreement and submit it to the court. Three days later, on 11th February, the erring group took the necessary action to withdraw its control over the area under conflict.

(2) Nishi Case from Arunachal, India

Similar examples of speedy redress have been documented in Arunachal Pradesh. In the Nishi dominated Chulu village in Lower Subansiri district, the village headman had constituted a Village Volunteer Force to monitor the illegal activities in the community forest. A contractor from Posa village who had been violating the rules relating to the extraction of forest had been warned earlier. The Village Volunteer Force had cleared a strip of 5 meters width to demarcate the forest area. The same contractor sent his labour on 13th July, 1995 to harvest cane from this part of Unclassed

115 Singh, Rajendra. 1997 'Thain' Customary Dispute Resolution Institution. Unpublished manuscript.

State Forest. The committee protecting the forest beat up the labourers mercilessly and seized the tools as well as the cane.

After due investigations, the first sitting of the *Nyel*, the traditional council of the Nishi tribe, took place on 6th August. As the victims were seriously injured and were still in the hospital, they couldn't attend the sitting. Hence another date was fixed for 8th September for the next sitting.

The arbiter was from a third village called Peni and an official from the Police Department was also present. In the matter, it was decided that the medical bills shall be borne by the contractor and after a payment of a certain amount of fine, the contactor was allowed to keep the harvested cane. But another warning was given. The case was decided and misdeed forgiven.

(3) Case from Jardhargaon, Tehri Garhwal, India[116]

In this case that occurred in a village called Jardhargaon in Tehri Garhwal district of Uttaranchal, India, some members of the society violated the customary grass-cutting rules. On 27th November 1998, the *bandh van* (closed forest) was declared open and as per the practice, one section of the grass area was opened for cutting. According to the rule, villagers are to first cut all the grass from one section, only after that they will be allowed to cut grass from the other sections.

Some people living in the lower region in *Nagni* started cutting grass from the section that was to be opened only the next day. The *thekedar* (literally, 'contractor', but in this case, guard) of the Pani Panchayat stopped them, as the portion of the grass area that had been opened the previous day had not been exhausted completely. These people went and complained to the *pradhan* (village head). The *pradhan* issued a circular to the effect that the grass area will remain closed till such time that the dispute is resolved.

116 Suryanarayan, J. and Malhotra, P. with Semwal, R. and Nautiyal, S. 1999 *Regenerating Forests, Traditional Irrigation and Agro-biodiversity: Community Based Conservation in Jardhargaon, Uttar Pradesh, India*. Case study for the South Asian Regional Review of Community Involvement in Conservation, sponsored by the IIED. Kalpavriksh, New Delhi and IIED, London.

This circular was given to the *thekedar* only towards late evening. Hence it was not possible for him to inform the entire village regarding the closure of grass-cutting area. The next day people from far off hamlets of the village, arrived at the grass area at 2 P.M. and were turned away by the *thekedar*. These people were extremely annoyed at this and went to meet the *pradhan*. It was decided that the issue would be taken up at a meeting scheduled for 29th November.

This issue was discussed for two days in the village – some blaming the *pradhan* while others blamed the *thekedar*. On the day of the meeting, when the issue was taken up for discussion, the *pradhan's* husband apologised for having issued the circular on behalf of the *pradhan*. A heated discussion took place with everybody venting their feelings. The *thekedar* was asked to present his version. After around half an hour's spirited discussion, it was decided that the *bandh van* would be opened the next day and that the people should not have been put to such inconvenience by keeping the *bandh van* closed for a day. This opportunity was also taken to reiterate the regulation of one headload of grass per person per family.

Under the 'grass-cutting regulation', a portion of the forest beyond the pine forest is closed from August to December to allow the grass to regenerate during the monsoons. When it opens in December, one member from each family is allowed to cut one head-load of grass per day.

6. Traditional Village Institutions vis-a-vis Formal/ Modern Institutions

6.1 Strengths of the traditional system

1. The procedure under the formal judicial system is normally complex and time consuming. Justice is delayed, thus depriving the aggrieved party of timely reprieve. Justice is speedy in local and traditional courts. Some examples have been included in the previous section.
2. In traditional institutions, there is no system of appeal from the decision thereof. The decision is final and acceptable to the community and is binding. Supernatural powers are considered to be the only court of appeal and this is resorted to with the help of oaths and ordeals, which are too severe. In the case of the formal judicial system, there are several appellate levels and the order of any of these levels can be challenged further at the higher level, which prolongs justice.
3. The rural including tribal communities are unaware of the different statutory forums available for redress of their problems. Whatever little exposure these communities have had to the modern system of judiciary is usually not very amenable, hence these people prefer not to go to the formal sector.
4. Justice in the tribal society is based on the concept of restitution that brings relief whereas in the formal courts the litigation is normally adversarial in nature and relief is not guaranteed to the aggrieved party. The case normally depends on the strength of the party and the lawyer. It is not necessary that justice shall be meted out and the truly aggrieved party may win.
5. Under the traditional system of justice, an accused remains an honourable member of the society once he or she has been punished and there is no stigma attached. Whereas in the modern system, even after being punished the accused is not able to get reformed or rehabilitated due to the stigma society attaches to his or her crime or violation.

6. Court expenses can turn out to be very expensive for the litigant which includes the lawyer's fee, court fee, travelling expenses etc; whereas the village institutions are situated at a more accessible distance and do not involve any court or advocacy fee. Sometimes the disputing parties have to bring some ceremonial gifts to the mediators and often the triumphant party offers a feast to the community if it is a major dispute.
7. Examples given in the previous section highlight that matters decided by the modern judiciary do not recognise customary rules and regulations, even for states where the state laws recognise some of these, as witnessed in Arunachal.
8. People prefer to go to traditional institutions for resolution of conflicts; one reason being that the penalty is many a times set according to the paying capacity of the violator; or else at times need not be paid immediately or can be deferred to a later date.

6.2 Constraints of the traditional system

1. In states like Arunachal, Nagaland, Manipur, Tripura etc, where several tribes and sub-tribes reside, the customary laws and social norms differ from tribe to tribe, in such a case many times, the tribal or village institutions are not in a position to deal with the case.
2. When it comes to a dispute between a tribal and a non-tribal (could include a government department as well), the village councils often cannot decide matters. There have been some instances where the village council did adjudicate and the decision was agreeable to both the parties. But such decisions could go in appeal by any one of the parties.
3. The educated and the elite populace (in rural areas) are also aware that the rules and regulations framed by the community are not enforceable and can be challenged in the formal judicial set up. They take advantage of this weakness.
4. The decision of the village council is not always without prejudice. Persons having larger and stronger clans or those hailing from a well-to-do or politically powerful family could at times be in a better position to influence the decision of the council.

5. The efficacy of the customary laws depends upon conscience and reverence. With the spread of "education" and new ideas, the reverence to the customary laws is declining. In the recent times, people have found ways and means to circumvent these restrictions, which is affecting sustainable forest or resource harvest. With the advent of hand saw-mills[117], extraction of timber on days other than those of restrictions, has increased. Also, the locals have started employing non-tribal labour[118] to do the extraction on days when this activity is restricted for the tribals.
6. Growing social individualism in the community is a reason for the traditional system being less effective. With the monetisation of economy and the forest resources, greed and the trend for easy money is leading to individualism in the society. People want to sidestep the customs and not face the village councils in cases of violations of the customary laws.
7. Village authorities do not keep any written records of the decisions taken. The trend of maintaining records is very recent.

117 This itself sounds like a primitive technology, but it is still very common in Arunachal.

118 Labour from Nepal and the Indian states of Bihar and Assam is available in the region now.

7. Conclusion and Challenges: Bridging the Gap

Enough justification has been developed in the previous sections for the need for innovative statutory laws that incorporate customary laws or give due recognition to the customs of region rather than issuance of blanket laws, rules and judgment. Some steps to do this are outlined below:

1. In respect of laws such as the Forest law, the Conservation Area Management Regulation, and Buffer Zone Regulation of Nepal, and the JFM resolution in India (not a law), provisions concerning neutral conflict resolution mechanisms need to be built in. All dispute and violations of the law for instance in the Annapurna Conservation Area, are to go to the Liaison Officer, who is an employee of the Department of National Parks and Wildlife Conservation, and does not recognise the community laws while adjudicating matters. Provisions should be made for arbitration in cases of disputes and a neutral party should be appointed in consultation with the two parties. In Nepal the Arbitration Act 1981 makes such a provision but its application is confined to contracts and agreements on trade, commerce and industries[119]. These provisions can be applied in developing agreements and contracts in the field of community forestry and JFM.
2. On the one hand, there is a need for information on statutory laws to be provided at the micro-level, maybe through an extension scheme of the Ministry of Law, as the people at this level are ignorant about their rights and responsibilities. Not only should they be aware but should participate in the process of law making.

   And going a step forward, would be what Prof. Upendra Baxi has to say about the process of law-making:

119 The Arbitration Act 1981 of Nepal allows for this. Section 5 of the Arbitration Act provides that arbitrators are to be appointed according to the procedures laid down in an agreement if it is stipulated therein. If no arbitrator could be appointed by following the principles laid down in an agreement or if the agreement does not lay down any such procedures, any of the party thereto may file an application in the District Court for the appointment of arbitrators.

> "Social action groups concerned with forest law and administration must continue to protest the mode of policy and law-making. That mode must, as a matter of principle, involve participation by affected groups. The issue transcends forest legislation and reaches out to the vital principle of public participation in law-making. Without such participation, there is no hope for the transformation of the colonial nature of the Indian Legal System."

On the other hand it is also important to sensitise the larger society, the policy and law makers, the decision makers, the judges about the presence and prevalence of the micro-level law, the community and the customary law.

3. In the course of the paper, we have observed the wisdom of the traditional institutions in adapting to the changed requirements of the society. There is a great potential in the community-based organisations, hence it is recommended that these be strengthened. Wisdom of traditional village institutions should not be undermined. New laws[120] have been enacted for this purpose but on a close scrutiny of these Acts and also the salutary forest legislation of Nepal , one realises that the law does not empower the community based organisation to formulate its own rules and implement these. In India, some states do not have Panchayats. For instance, the Panchayat (Extension to Scheduled Areas) Act 1996 is not applicable to Arunachal Pradesh; nor has Arunachal Pradesh enacted the Panchayat Act for the State as per the 73rd Amendment of the Constitution. In such a situation, strengthening traditional and existing village based institutions could help.
4. The greatest challenge is to restrain oneself from entering or encroaching upon the resources of others. It has been observed in some places that people are protecting their forests but they

120 Nepal has enacted the Decentralisation Act 1983 to surrender resource management to local communities. It promoted the users' group concept and reinforced government's willingness to devolve authority to the local level. This was followed by the enactment of a series of legislation handing over power and responsibility to local people. Some of these laws are: the Village Development Committee Act, 1992, the Municipality Act, 1992, the District Development Committee Act, 1992 and the Local Self-Governance Act, 1998.

send their livestock for grazing to other forests. This will, ultimately merely shift the problem and not solve it. This is one thing that has come up in most of the studies[121]: either overtly or covertly villagers often restrain from violating rules in forests protected by themselves but they cannot resist encroaching upon others' forests, which often leads to inter-village disputes. Most of the case studies in the Evaluating Eden Project reveal some tension with the neighbouring villagers who do not abide by the rules[122]. The main reason for this is lack of official recognition.

The Forest Protection Committees or many self-initiated forest protection committees have no official legal recognition. Many a times, this forfeits the efforts of the protection committees, as neighbouring villages do not recognise the authority of such protection committees[123].

There are two aspects to this: lack of recognition to the authority of village based organisations and lack of acknowledging their rules, regulations, customary laws etc., if any. If the government agencies do not give recognition to the community rules, the people from neighbouring villages get an excuse to disregard or disobey the rules framed by the community protecting an area. The forest protection committee finds it difficult to apprehend violators from outside, especially if they do not receive support from the Forest Department. The outside villagers look upon the FD as the final

121 See Christopher, K. 1997. Dalma Wildlife Sanctuary: Prospects for Joint Management. In Kothari, A., Vania, F., Das, P., Christopher, K., and Jha, S. 1997. *Building Bridges for Conservation: Towards Joint Protected Area Management in India.* Indian Institute of Public Administration, New Delhi; and Supra note 21.

122 See Kothari, A., Pathak, N., and Vania, F. 2000. *Where Communities Care: Community Based Wildlife and Ecosystem Management in South Asia.* Kalpavriksh, Pune/Delhi, and International Institute of Environment and Development, London.

123 Supra note 21. See also Pathak, N. with Gour-Broome, Vivek.1999. *Tribal Self-rule and Natural Resource Management: Community Based Conservation in Mendha (Lekha), Maharastra, India.* Case study for the South Asian Regional Review of Community Involvement in Conservation, sponsored by IIED. Kalpavriksh, New Delhi and IIED, London.

authority in the matter. In a matter of this nature in Bhaonta recently, the villagers from neighbouring villages were disregarding the boundaries of the forest and the forest protection rules. The Bhaonta villagers now want to frame a court case against the violators. But in such cases where neither the institution nor its rules and regulations have any legal status, we can very well discern the formal courts' outlook on the matter.

Sometimes people from the same community also get influenced by the outside forces and start disregarding their own rules. In the larger social matrix, they realise that the force of their own regulations is weak and shaky, as these have no official sanction from the government authorities.

So long as the rule-making power of the people/community is not formally recognised, community initiatives in conservation will not be effective in the long run. Communities will continue to be at the mercy of powerful sections of their own or neighbouring communities, or of forest and other government officials.

It is recommended that a study be commissioned to find out if cases have reached the Supreme Court in appeal where these were tried by the lower courts on the basis of the customary laws. If such cases exist, it needs to be seen how the Court has dealt with the issue of customary law. Which law prevails especially if the case relates to recognition of customary law in natural resource management?

5. A major point that has emerged in the case studies is that of ignorance of the law at both the levels. The community is not aware of the statutory laws till such time that a violation has taken place; on the other hand the authorities are either not aware or refuse to recognise the existence of customary legal dynamics at the micro-level. To alleviate the former it is suggested that the Law Departments, like many other sectoral departments should engage in extension work to popularise law. In order to command greater compliance of the law, it has to be made user-friendly. On the other hand documentation of customary and community laws need to take place and NGOs, research and academic institutions can facilitate taking the customary laws to the authorities. Formal training institutes

of forestry, wildlife, law, and related subjects, should build in aspects of and sensitivity towards customary laws, into their curricula and teaching methods.

The bureaucracy can also play the role of the intermediary here. Public debates should take place to make the people aware of the provisions of the bills drafted before introduction in the legislatures. Public debates have started taking place before enactment of a law on subject matters of social significance such as forest and biodiversity. The Biodiversity Bill has been debated in India though in a cursorily fashion nationwide. Unfortunately, people who will be most affected by the enactment of these laws, often get left out of this process.

6. All the studies under the Evaluating Eden Project stress upon community approach in conservation. As long as the community feelings and sentiments prevail, adherence to community framed rules will remain but once individualistic interests supercede, community bindings, institutions, rules and regulations will all collapse. The success of the community-based organisations and community framed rules depends upon the compliance it can command from the members of the community. Such collective feelings and actions are weakening in many places, but are also being revived, or created in new forms, in many communities. The recognition and strengthening of such customary laws and practices, will be a major step towards such revival of community feeling and control.

Annexure 1

Annapurna Conservation Area Project

Bye-laws of Simpani Conservation Area Management Committee

1. If deemed necessary the committees may form sub-committees in each ward village or hamlet to cover all users.
2. Each sub-committee may appoint a forest guard from their own funds.
3. Each subcommittee to meet the green grass fodder and firewood necessity may allow collection as per the traditional practices.
4. The sub -committee may issue license for timber according to the following rates:
   a) Sal (*Shorea robusta*) Nepali Rupees 100.00/cu.ft.
   b) *Michelia champaca* Nepali Rupees 75.00/cu.ft.
   c) All Others Nepali Rupees 5.00/cu.ft.
5. If anyone fells timber without a license, timber will be seized and a fine will be imposed depending on the amount felled.
6. Penalty will be imposed on the basis of the frequency of the violation.
7. For the construction of a new house, the committee may allow 30 Cu.ft. to 60 Cu. ft. of timber depending on the house size.
8. For house- repairs, timber between 20-40 Cu.ft. would be issued depending on the condition of the house.
9. For construction of a storehouse and shed 20- 50 Cu.ft.of timber would be provided depending on the size.
10. If anyone wants more than the above-mentioned amounts, timber would be provided at the His Majesty's Government rates.
11. One family may get a license only once in four years for the above mentioned.
12. Licenses would be issued between the months of September-April and not between May and August.

13. The validity of license is only one month, which means that timber would have to be felled and removed before the end of the month.
14. In case of a natural disaster and need for construction of a new house , the persons may fell timber free of cost.
15. If the tree happens to be in private land, then no license is required but committee will have to be informed.
16. For firewood cutting, the sub-committees have to inform the CAMC, and the former can impose a charge and retain it in their fund.
17. For purposes of making charcoal, dried wood or stumps can be used, but if they sell charcoal, then fine of Rs. 100-500 would be imposed.
18. For making agricultural implements used by farmers, wood can be made available by the Sub- committee.
19. People could use dried twigs, firewood and grass (fodder) in accordance with their traditional/customary usage.
20. Trade in medicinal plants is prohibited. Anyone, who violates this rule, has to pay Nepali Rupees 500-2000 and the product will be confiscated.
21. In connection with the fines collected by the sub-committees, provision is made to retain 100% of this amount by the sub-committees; but if the CAMC also helps in deciding the matter, the amount collected through fine will go to the CAMC fund.
22. Any stone quarrying work in Simpani V.D.C would require the permission of CAMC; if anyone violates this, then a fine of Nepali Rupees 200- 500 will be imposed.
23. No one can start fire in community forest, cliffs and thatch land; if anyone does so, committee shall impose a fine depending on the loss (minimum Nepali Rupees 200).
24. Out of total amount raised through issuance of licenses, 80% shall be retained by the sub-committee and 20% will be deposited in the CAMC fund.
25. One has to submit the application for timber permit to CAMC with the recommendation of ward representative or sub-committee by mentioning place of tree cutting, species of trees, quantity of timber and purpose.

26. If timber is required for any HMG activities for Simpani V.D.C, then the license will be issued free of cost; but if the wood is required for works in other V.D.C, then the HMG rates will be charged.
27. People will not be allowed to pursue slash and burn cultivation; if someone does so, depending on the area damaged, a minimum of Nepali Rupees 200 will be charged as fine.
28. In case a conflict arises on account of a patch of forest being shared by two groups, the management of the forest will be taken over by the CAMC and will be declared as protected (no utilisation of resources).
29. Poison, explosives and electric current cannot be applied for catching fish; anyone found doing so will be imposed a fine of Nepali Rupees 500-2000 and the implements shall be seized.
30. Within this VDC, for a period of 4 years, hunting of birds and animals is completely prohibited. If one does so, the following fines shall be imposed.

a)	Ghoral	1500
b)	Deer	1500
c)	Hare	500
d)	Kalij	200
e)	Jungle fowl	100
f)	Dove	100

31. Besides the above mentioned birds and animals, if any other animal species is hunted, Rs. 500-Rs. 1000 fine will be imposed; for birds 200-500 shall be imposed.
32. If anyone hunts a completely protected species, and this comes to the notice of CAMC, the matter shall be taken to HMG.
33. Reward: If anyone does unlawful collection or hunting of the above, and one reports with evidence and informs –30% reward of fine shall be awarded to the informant.
34. If anyone allows grazing in afforested and forest area, fine of Rupees 5 per plant destroyed – rest on damage.

35. Each consumer has to use the resources from their wards; but under certain circumstances, according to the needs, the applicant will apply to the ward sub-committees for issuance of license for timber.

(Note: Some wards in Simpani VDC do not have forests; so they have to approach other Wards' forests to meet their timber needs).

Annexure 2

Annapurna Conservation Area Project

Bye-laws of Lwang Ghalel Conservation Area Management Committee

1. **Categorization and Fixation of tariff:**

   CAMC has fixed the following tariff for the timber found in the area, on the basis of the quality and species.

Category 'A'
i) Champ (*Michelia champaca*)
ii) Walnut (*Juglens regia*)

Category 'B'
i) Aaroopti (*Prunus napaulensis*)
ii) Kaulo (*Persea spp.*)
iii) Chilaunay (*Schima wallichii*)
iv) Katus (*Castonopsis indica*)
v) Jhanu (*Eurya acuminata*)
vi) Dabdabay (*Symplocos ramosisima*)

Category 'C'
i) Utis (*Alnus nepalensis*)
ii) Rackchan (*Daphniphyllum himalayanensis*)
iii) Mauwa (*Engelhardia spicata*)
iv) Lakuri (*Fraximus floribunda*)
v) And others.

- For Category 'A' trees, the CAMC will issue permits only for fallen and dead trees; Nepali Rupees 40/- will be charged per cubic feet.
- For category 'B', Nepali Rupees 30/- per cubic feet.
- For category 'C', Nepali Rupees 20/- per cubic feet.

2. **Prohibition of wood cutting without permit**

i) Felling and cutting of trees without the permit issued by the CAMC is strictly prohibited.

ii) If the above rule is violated the offender will be fined on the basis of the tariff that has been offended by the CAMC.

3. **Prohibition on felling standing category 'A' species:**

'A' species i) A fine of Nepali Rupees 1000/- to 2000/- will be charged to any person felling or damaging the category. His/her tools and the timber felled will also be confiscated.

4. **Provision of timber for house construction :**

i) The sub-CAMC can issue permit of *nigalo* (bamboo) after demarcation of area, time and quantity.

ii) Person interested in category 'A' species of timber can receive a permit for maximum 60 cubic feet.

5. **Delegation of Authority to sub-CAMC:**

The CAMC can delegate the following authority to the sub-CAMC.

i) The sub-CAMC can issue permit of *nigalo* (bamboo) after demarcation of area, time and quantity.

ii) Sub-CAMC can decide upon the time, quantity and area in their respective wards for the collection of fuel wood every year. While taking the decision, care must be taken by the respective committee to avoid negative impact as far as possible. However the sub-CAMC has to inform the CAMC as well as the ACAP after the decision has been made.

iii) Management of respective committees' forest and the natural resources is under the sub-CAMC.

iv) The sub- CAMCs have to forward the application to the CAMC, on matters that have to be discussed/decided by the CAMC and applications on the development activities (on the basis of the priority).

6. **Prohibition to collect herb:**

i) Collection of all types of herb from forest is prohibited.

ii) Anyone found digging out and collecting herb illegally against the norms of the CAMC will be fined Nepali Rupees 10,000/- and the herb will be confiscated by the ACAP.

iii) The confiscated products and the tools used to collect the herb will be submitted to the ACAP.

iv) With the approval of the CAMC and the ACAP the confiscated herb can be used for scientific research purposes.

7. **Prohibition of bamboo shoots collection:**

i) Collection of bamboo shoots without the permission of the CAMC is illegal.

ii) Illegal collection of bamboo shoots can be fined up to Nepali Rupees 500/-.

8. **Bamboo Collection:**

i) Permits for bamboo collection and cutting will be issued and decided by the CAMC. The villagers can only cut bamboo during the specified time.

ii) A tax of Nepali Rupees 5/- per load has to be paid.

iii) The transfer and transport of any natural resources that has been legalized by the CAMC has to have a permit from the CAMC, which is checked by the CAMC guard at the main entry/exit point of the VDC.

iv) Export of bamboo shoots and bamboo products outside their VDC is prohibited and can be fined up to Nepali Rupees 500/-.

9. **For transfer and transport of timber:**

All people of the VDC are allowed to transport the timber outside of their VDC provided it was harvested 5 years ago. The concerned person has to obtain the permission of the CAMC and the ACAP office and the application for the

permission has to be made during the monthly CAMC meetings.

i) Only 50% of the total tax is levied on such timber. Before the approval is made, the ACAP technical staff and the CAMC members have to examine the timber.

10. Permit for extraction of stones:

i) The extraction of stones from the community land has to be approved by the CAMC. CAMC has the authority to stop the extraction if it is harmful and may have negative impact on the area.

ii) While extracting the stones the concerned person has to seek guidance of the CAMC, so that the extraction does not have much negative impact on the natural environmental.

iii) Illegal extraction of stones without the permission of the CAMC is strictly prohibited. Any person violating the rules is fined a sum of NRs 1000/-.

iv) NRs. 2/- per piece is charged for the stones (slates) used for roofing purposes.

11. Prohibition of hunting:

i) Hunting of all wild animals in the area is prohibited.

ii) Action will be taken against any person violating the rules. The punishment is as follows:

- The weapons, hunted animals and its products will be confiscated and submitted to the ACAP office.
- NRs 25000/- will be fined for killing/injuring the leopards, musk deer, and bear.
- NRs 6000/- for killing/injuring Himalayan Thar (*Hemitragus jemlahicus*), Ghoral (*Nemorhaedus goral*).
- NRs 4000/- for killing /injuring deer and hares.
- NRs 2000/- 5000/- for other wild animals.
- NRs 25,000/- for killing/injuring Danfe (*Lophophorus impejanus*), Monal (*Tragopan satyra*), Cheer pheasant (*Catreus wallichi*) and other species.
- NRs 1000/- to 5000/- for killing other wild birds.

12. Prohibition of fishing:

i) Large scale fishing by damming the river is strictly prohibited.

ii) Fishing by using traditional methods like net fishing and rod fishing is allowed with the permission of the CAMC.

iii) Fishing using any dangerous methods like electric rods, poisons and blasting is strictly prohibited.

iv) A fine of NR 2000/- is charged for fishing by using such illegal and dangerous devices.

13. Prohibition of carrying hunting weapons to the forests:

i) Carrying of hunting weapons like guns, pistols, bow and arrow, animal traps while entering the forest is strictly prohibited.

ii) Persons caught or seen hunting with such weapons will be charged a fine of NRs 2000/- to 7000/-.

14. Prohibition of encroachment of the community forest and damage caused to the forest and its products:

i) Encroachment of the community forest for any purposes and damage to its products are strictly prohibited.

ii) If any one is found violating the above rule, the concerned sub-CAMC has to immediately request the CAMC for necessary action and investigation. The fine will be made according to the damage done by the offender.

iii) If the community land is encroached and claimed as private land then a fine of NRs 1000/- will be charged.

15. Rewards:

Any person acting as a watcher and providing the CAMCs with the information on the illegal activities (concerned with the natural resources) in the area will be rewarded. 20% of the total fine charged to the offender will be given to the informer.

16. Regular meetings:

i) Regular monthly meetings on every 13th of the Nepali month will be held at the VDC hall at Lumre.

ii) The chairperson is authorized to call for emergency meetings when necessary.

17. Rights to revise the Bye-laws:

In order to execute the duties effectively and smoothly, the CAMC has the right to revise, add and change the bye-laws according to the time and situation.

18. Co-ordination:

Any outside agency has to consult and inform the CAMC while implementing any project and planning for the VDC.

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Contact: Kalpavriksh, Apt. 5 Shree Datta Krupa,
908 Deccan Gymkhana, Pune 411 004, India.
Tel/Fax: 91-20-5654239; Email: kvriksh@vsnl.com