

THE BAKKARWAL OF JAMMU AND KASHMIR:
NEGOTIATING THE COMMONS
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Scholarship on the commons has evolved to be nothing less than the Hydra of the academy. The scope of the ‘traditional’ commons, such as land, forests, grasslands, wetlands, groundwater and air, has swelled to include ‘contemporary’ commons, such as the knowledge commons, digital commons, urban commons, spiritual commons, cultural commons, and health and education commons, and there is also the idea of the new and old commons. The study of the commons has thus moved to exploring the multiple, shifting and contested geographies of the commons that are not ‘out there’, but are socially constructed through a myriad contestations, remonstrations and negotiations. This process of commons creation, or ‘commoning’, which shapes socio-spatial structures and dynamics, becomes an emergent, generative dynamic in processes of regional identity-building, place-making and much else.

In a recent book exploring the history and contemporary state of the commons in the UK, Standing (2019: 60) expounds on the significance of the commons in our lives: “A thriving commons — not just encompassing natural environment and its uses and resources, but our public services and amenities, our social and justice systems, and our cultural and intellectual life — is just as vital for a good society today as access to the commons was in the medieval times.”

For Wall (2014) the idea of the commons refers to an ecological space developed through the cultural foundations of an economic system. It is derived not simply through the market rationality of cost and benefit, but also consisting of culturally embedded social obligations that go beyond the formalist framework of material improvement. It is also a management practice which should be evaluated neither from the perspective of a ‘tragedy’ of mismanagement and greed nor as a remedy for our social and ecological problems. Rather, Wall is of the view that the commons should be understood as a particular form of property ownership wherein rights in property are the route to understanding sustainability, and where the notion of sustainability is understood culturally, and culture as something ‘innately political’ (2014: 70). Wall notes, ‘We might conclude that culture, in its diverse manifestations from religion to apparently scientific discourse, is to some extent a product of conflict and the different desires of different social groups.’

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Following on from Wall, this paper tries to understand the commons as a process of claims-making (and unmaking) in the context of the pastoral nomadic Gujjar and Bakkarwal of Kashmir, India.

The dramatic changes that took place in Jammu and Kashmir on 5 August 2019 were pushed through with the sine qua non that they will ensure the progress and development of the minorities; thus far marginalized groups such as women, dalits, tribals and nomads, will stand to gain significantly from the shift. However, the de-operationalization of Article 370, which removed the separate constitution of the erstwhile state and merged it fully with India as a so-called union territory on August 5, has left most people, including the tribal communities in Jammu and Kashmir, bewildered.

Gujjar and Bakkarwal

The Gujjar and their sub-group, the Bakkarwal, both semi-nomadic and nomadic pastoral tribes, claim historical invisibility and disadvantage when it comes to being counted as state citizens. The communities themselves claim to constitute about 20% of Jammu and Kashmir's population, whereas the 2011 Census pegs their numbers at 11.5%. As the apparatus of the state functions through stationary outposts such as the hamlet, cluster, village and town, census officials do not trek up to mountain pastures and other commons to count the Bakkarwal, who migrate as entire families to high mountain pastures above the tree-line every summer. Additionally, the census in Jammu and Kashmir is invariably conducted in the summer months, when most of the nomads are in the highlands and thus are not counted. Ironically, this is irrespective of the fact that the government runs 'mobile schools' that, at least on paper, operate in these pastures throughout the summer with a travelling teacher issued with a school tent and other minimum paraphernalia.

The Gujjar and Bakkarwal of Jammu and Kashmir only started to receive the benefits of reservation in the early 1990s. The government of India extended job and educational reservation to the Gujjar and Bakkarwal in 1991, since when a trickle of the educated from the community have elbowed their way into government jobs and state politics.

Some people in Jammu and Kashmir are of the opinion that it is the Gujjar, Bakkarwal and other tribals who stand to gain most significantly by the shift in the region's status. However, the intangible benefits that revolve around power, politics and identity will be contingent upon the level of maturity of governance and politics in this new union territory and its evolution in the near future.

Apart from about 47,000 Gaddis in Doda District, who are all Hindus, all the tribals in Jammu and Kashmir are Muslims. The Bakkarwal herd goats and sheep, while the Gujjar raise cows and buffaloes and are spread across almost every district in Jammu and Kashmir, with a sizeable presence

in Rajouri and Poonch Districts, and large numbers in parts of Reasi and Doda Districts and some parts of the Kashmir Valley.

The thirty-odd years of strife and turmoil in Jammu and Kashmir have pushed many nomads to settle down. Many found themselves caught between the excesses of the military on the one hand and the brutality of the separatists on the other. Yet, a large number continue to remain nomadic. They continue to practice nomadic pastoralism because, given their low educational qualifications and absence of landed property, they accrue the highest economic and social returns only in their current way of life. Sedentarization also implies a certain estrangement from their wider clan members, a move towards assimilation to majority populations and a dilution of their sense of self and identity. While this gives rise to novel relations and new formations, hyphenated identities and even a certain sense of continuity, it must nevertheless be acknowledged that most of those who sedentarize do not do so entirely willingly, also feeling alienated from the majority populations in both Jammu and Kashmir.

The Bakkarwal are seen as ‘brutish, dirty and dim-witted’ by the majority in the Valley, and the term ‘Gujjar’ is a loaded and frequently used swear word. Additionally, most Gujjar and Bakkarwal are seen as being against the ideology of *azadi* or freedom from India, which has further alienated them from the separatist Kashmiris in the Valley. On the other hand, in the last few years, they have increasingly been othered as Muslims by the Hindu Dogris of Jammu, with whom they earlier shared a warmer relationship. The Kathua rape case is symptomatic of the deteriorating relationship with the Hindus in the Jammu region.² The Gujjar and Bakkarwal have thus had little option but to sit on the fence and remain voiceless spectators of the changing events in Jammu and Kashmir.

The cyber commons and social media that have been so adroitly accessed and managed by the Kashmiri population in the Valley remain out of reach to the Gujjar and Bakkarwal owing to a tacit gagging order. They are told that if they make a wrong move they will face the same fate as was meted out to the Kashmiri Pandits in the 1990s.³ In the years and decades when the Gujjar and Bakkarwal were tormented and tortured in the strife in Kashmir, their issues were seldom mentioned by

² See, for example, ‘Neither Jammu, nor Kashmir: Bakkarwals who’ve come into focus after the Kathua rape case need to be given citizenship’. Anita Sharma, *Firstpost*, 10 June 2019. See: <https://www.firstpost.com/india/neither-jammu-nor-kashmir-bakarwals-who-ve-come-into-focus-after-the-kathua-rape-case-need-to-be-given-citizenship-4431193.html>, accessed 15 July 2020.

³ Rumoured to be the biggest internal migration of Indians since India’s independence and Partition, the mass exodus of Kashmiri Pandits from the Kashmir Valley was prompted by the brutal torture, murder, rape and terror inflicted on Kashmiri Pandits by the majority in the Valley. 95% of the Pandits are reported to have fled the Valley in and around 1990 after separatist militancy increased (Pandita 2017). For a critically acclaimed first-person account written by journalist Rahul Pandita, who was fourteen years old when his family became refugees in Jammu, see *Our Moon Has Blood Clots* (Pandita 2017). Pandita left with his family soon after an iron rod was pierced through Bhushan Lal Raina’s skull before ‘they drag him out, strip him and nail him to a tree’ (2017: 72). Hundreds of Pandits were ‘picked up selectively and put to death’ (2017: 72). Pandita laments that neither the Indian state nor the otherwise influential and vociferous intellectual class did anything to help the Pandits or give voice to their plight, as they were afraid of being branded unsecular.

the local or national media. Newspapers, radio and television, labelled as the ‘old’ media, has long been known to ‘privilege powerful and institutionalized actors, exclude smaller institutions and civil society and essentially circumvent public debate’, while the internet has become a ‘new’ significant medium (Gerhards and Schäfer 2010: 3, Habermas 1989). For the Gujjar and Bakkarwal, however, self-censorship was the outcome, as in these contexts the cyber commons too are intertwined in historically specific cultural and political formulations. Indeed, on further exploration, Gerhards and Schäfer (2010) reveal that in fact ‘search engines might actually silence societal debate by giving more space to established actors and institutions, to experts and to expert evaluations and views, thereby replicating pre-existing power structures online (ibid.: 14). Additionally, there is a need to perceive how the subjective intentionality that has been identified as foundational of a public sphere is enfeebled in an atmosphere of fear, signalling the boundaries of the cyber public sphere. Whether Jammu and Kashmir’s dissolution as a state of the Indian union and its reconfiguration as a union territory will increase the precarity the Gujjar and Bakkarwal currently face remains to be seen.

The landmark agrarian reforms in Jammu and Kashmir, starting from the 1950s and continued later in the 1970s, known as the state’s Land to the Tillers Act, indeed changed the lives of landless agricultural labourers in Kashmir, and few Kashmiri farmers are now landless. Kaw writes, ‘The land reforms registered a landmark in Kashmir history. The hitherto feudal order was eliminated in all its forms and manifestations. Land was transferred to the actual tillers along with a host of rights and titles of a permanent nature. The rights so conferred restored confidence and promoted love for the land among the peasantry’ (Kaw 2008: 232). The lands on which nomads have been grazing their cattle were never regularized in their name, and they continue to access state land for their needs.

In 2018 the State Administrative Council (SAC), headed by Governor Satya Pal Malik, also repealed the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act 2001, popularly known as the Roshni Act. This was a setback to the Gujjar and Bakkarwal, as the Act had vested the ownership of land in its occupants. The scrapping of the Act has triggered anxiety among the Gujjar and Bakarwal, the state’s largest landless community. The Roshni Act offered them the hope of owning the lands they had lived on and used as pasture for generations. However, not many members of these poor communities could pay for the land or had the political influence and muscle to speed up the allocation process. Most were not even aware of the requisite procedures, and large parts of their former grazing lands have now been occupied by others. It is said that a big chunk of grazing land was handed out to offices, NGOs, universities and other institutions.

The forces of conflict, insecurity and resource degradation operate in mutually reinforcing ways. In this larger scenario of violence, mistrust and insecurity, the Gujjar and Bakkarwal have been pushing for implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition

of Forest Rights) Act 2006 (or FRA) in the state. Although the bill was tabled in 2018 under the government of Mehbooba Mufti (PDP) and the BJP, the law was not passed. That is, it was not extended to Jammu and Kashmir, as Article 370 specifies that central laws first have to be ratified by the state assembly.

Now the silver lining in this dark picture is that the removal of the state's constitution paves the way for the FRA to be implemented in what is now a union territory. The Act was a measure to safeguard the particularly marginalized class of forest-dwellers, tribals and nomads and to address their predicament relating to access to the environmental commons with their right to life and livelihood.

The urgency for the law to be passed in Jammu and Kashmir was reinforced by the rape and brutal murder of Asifa, a Bakkarwal girl, as the Hindu Dogra men involved in the crime were believed to have been trying to expel the Bakkarwal from the forest area where they lived every winter. This was an area to which they had not only customary claims but also individual property in the village, as well as de facto rights to the village and the forest commons.

Following this incident, a suspicion was created to the effect that a certain demographic change was being manoeuvred by the PDP government through the expansion and sedentarization of the Muslim Bakkarwal into the forest areas of the Jammu region, a view that is at variance with the fairly harmonious co-existence of Hindu and Muslim groups in the region for decades.

The Gujjar and Bakkarwal now have to contend with the fact that they will also be competing with tribals from all across India for jobs from the reservation quota, while earlier they only had to compete with tribals from within the state. Far more daunting to them, however, is the fear that their migratory routes and pastures might be usurped by competing private interests that might inundate the Valley, now that access to citizens from across India is no longer barred.

There is ample evidence in the literature to show that when development beckons it is first and foremost land from the commons that is parcelled out for the creation of new infrastructure. This has already been in evidence in Jammu and Kashmir, where the Gujjar and Bakkarwal are being uprooted and sometimes violently evicted to pave the way for the new institutions that are emerging in the region. Around 1,200 *kanal*⁴ of grazing land has been given to Jammu University by Mendhar administrative district. In the Rajouri region, around 800 *kanal* of land has been put aside for Baba Ghulam Shah Badshah University. At least 253 nomadic families have been asked to move out of large tracts of land in Vijaypur for the establishment of the proposed All India Institute of Medical Sciences. The commons that the Gujjar and Bakkarwal rely on for their livelihoods are gradually

⁴ In the survey system, one *kanal* is equal to 0.0505857 ha.

being privatized and turned into commodities, with the meaning of property itself emerging as a contested terrain. Grasslands are ‘deemed unowned and unownable on the one hand’ and to be private property backed up by powerful players with legal documentation on the other (Wily 2013, describing the comparable case of the Kuchi and Hazara in Afghanistan).

How can the Bakkarwal lay claim to their customary commons when the fundamental underlying prerequisite for a commons even existing, which is the community, is itself being pushed into a downward spiral? There is a growing recognition that conflict will intensify in the future as low-intensity warfare, not between but within nations, will be driven by issues of unequal access to resources, especially land (Moran and Ostrom 2005); many nomads are selling off their animals, settling down wherever they can and becoming a scattered, disembodied people. Moreover, what strategies can the Bakkarwal employ when the exclusivity that is built into the very understanding of the land and water commons is at stake and in danger of being thrown wide open?

The FRA and the issue of nomads

Since its successful tabling and passage, the Forest Rights Act has seen a variety of political applications across states in India. In many cases it has indeed been successful in securing the livelihoods of those who are reliant on the forests. This is particularly so in light of the eviction of traditional ‘forest dwellers’ when their forms of livelihood are classified as ‘encroachments’ on forest land marked out as reserved forest or forest sanctuaries. A community’s access to the benefits accruing from this act is mediated by two possible categories of inclusion within it: ‘Scheduled Tribe’ and ‘Other Forest Dweller’.

Inclusion under the category of ‘Scheduled Tribe’ allows the community a degree of autonomy over the process of deciding what acts might constitute ‘encroachments’ on forest land and what might be seen as maintaining or ‘preserving’ the balance of ecology in the forest. This autonomy is itself based on guarantees afforded by the Sixth Schedule of the Indian Constitution, Article 244, Part X, on ‘autonomous areas or tribal areas’. Inclusion under the ‘Other Forest Dweller’ category, on the other hand, requires the setting up of a *gram sabha*.

A *gram sabha* is a village assembly bringing together all the adult members of the village in states having no *panchayats*, *padas*, *tolas* or other traditional village institutions or elected village committees. It allows full and unrestricted participation by women (Forest Rights Act, 2006).

The term ‘nomadic’ appears five times in the Act, always as a description of a mode of economy or subsistence specific to the group. For example, the second section of the Act, which discusses the kinds of forest-based livelihood activities it is looking to secure, places nomadic activities among

‘other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities’ However, the difficulties faced by the Gujjar and Bakkarwal have largely concerned how the Act should be interpreted and how the community should best be represented. Inclusion under the category of ‘Other Forest Dweller’ creates the risk that the Bakkarwal might be represented by members of villages with whom their relationships have been eroded to a greater or a lesser degree. Even assuming that the *gram sabha* will itself be constituted entirely from within the community, the Act provides that any arbitration necessitated by an issue remaining unresolved by the *gram sabha* will pass to higher levels of administration at the district and state levels.

On the other hand, the community is also recognized as a Scheduled Tribe (ST), thus making it possible for it to access the Act under this category as well. And, while this may allow a greater degree of autonomy in possible arbitrations, for the community the ST category has no specific provision guaranteeing access to the routes the Bakkarwal have to take to reach even their final pastures, even though they are defined as the community’s resources under this Act.

In fact, it would seem that the security of the Bakkarwal economy is being rendered quite difficult because the function of mobility that is crucial to it is not protected. This also leads us to a recurrent contradiction in writing about nomads, which often argues for the preservation of nomadic forms of subsistence by increasing the freedom granted by the state to allow them to continue to practice their traditional ways of life. The legal measures that might be envisaged as allowing some form of stability to return to the lives of Kashmir’s nomads would require a far more elaborate consideration of how legislation on common resources is organized. Nonetheless, for the Bakkarwal, mobility is a necessary condition for the perpetuation of their form of existence.

The Maldhari Case

There are lessons to be learned from the experiences and successes of other pastoralists. The Maldhari (pastoralists) of the Banni grassland in the Kachchh region of Gujarat are the first pastoralist group in India to have successfully filed for Community Forest Rights (CFR) under the Forest Rights Act. The area they claimed for CFR is the 2500 square kilometres of the Banni grassland. Once one of Asia’s largest grasslands, Banni has been used and managed by the Maldhari for over five hundred years. During his rule, the Maharao of Kachchh permitted grazing and declared the pastureland to be a protected grassland. The Maldhari’s dependence on the pastures has been community based, with no individual ownership and no physical boundaries within the grassland area. The Maldhari live in about 54 villages in Banni and share its resources (Sahjeevan FRA report, unpublished).

The Banni grassland, a common property resource, is characterized by the Maldhari's traditional use and governance of it as a site of livestock-rearing, which maintains ecosystem wetland diversity in flora and fauna. The strategic efforts of the Banni Breeders' Association, facilitated and supported by Sahjeevan,⁵ a Kachchh-based organization, could lead to community rights being acknowledged over the area. Once recognized formally as a CFR area, the Banni grassland would be the largest such CFR area in India (ibid.). Currently, there are about seven thousand families, largely pastoralists, settled in Banni.

CFR claims from Banni have been approved by the sub-district Level Committee (SDLC). Forty-eight community claim files have been submitted and are currently with the District Level Committee level. In January 2016, representatives of the Banni Pashu Uchherak Maldhari Sangathan (BPUMS) or the Banni Breeders' Association and Sahjeevan met with the then Chief Minister of Gujarat to discuss moving the FRA process forward in Banni. This was an encouraging and positive meeting in which the Chief Minister recognized the issue and called for the recognition of CFR rights as well (ibid.).

However, even in Banni not all *panchayats* have agreed to be a part of the CFR claim, so there will remain a small number of people within Banni that will operate outside the community rights arrangements. This could potentially hinder the smooth management and use of the communal land (ibid.).

This indicates that similar claims-making may be highly unfeasible for the Gujjar and Bakkarwal of Jammu and Kashmir. There are three key factors that worked in favour of the Maldhari of the Banni that are simply absent in the case of the Gujjar and Bakkarwal. First and perhaps most significantly, the Banni grassland is a contiguous territory, a solid chunk of land much like a big village or a cluster of villages, all mostly inhabited by Maldhari pastoralists, whereas the Gujjar and Bakkarwal and their migratory routes and pastures are scattered and snake all across the geography of Jammu and Kashmir. Second, the *gram panchayats* in the Banni are either the Maldhari's own or the Maldhari, being the majority community, enjoy substantial representation in the village *panchayats* of the Banni. This is not the case for the Gujjars (the more sedentary of the two communities), who are often a minority in their villages, while most of the nomadic Bakkarwal do not live in villages at all but in tents in forest areas and pastures on land owned by the state. Third, the Maldhari are a well-

⁵ 'Since the last 25 years, Sahjeevan has been inspiring and supporting marginalised communities to revive their traditional ecological knowledge systems, engage with relevant technologies and scientific methods to conserve their ecological resources, and strengthen their livelihoods. Based in Kachchh, the organization has influenced local governance institutions, communities and the region as a whole to conserve biodiversity, regenerate traditional water systems based on local geo-hydrological solutions, revitalise pastoralism, promote indigenous livestock breeding practices, and strengthen resilience through rain-fed agriculture.' See <https://www.sahjeevan.org/index.html>

organized, well-consolidated group with robust institutions and links with other enabling organizations such as Sahjeevan. The Gujjar and Bakkarwal are so far not that well organized.

The youth leaders among the Gujjar and Bakkarwal want to map and secure their migratory corridors along with the summer and winter pastures and to claim land in forest villages through the Act. They have already made a list of over a dozen of the most important migratory routes in the region, from the Pir Panjals to the Himalayas. However, these have bottlenecks and stretches which have now become roads and settlements where the nomads compete for space and passage with vehicular traffic and harassment from the traffic police. Every year there are incidents where scores of the Bakkarwal's goats and sheep are killed by speeding trucks. They feel that making claims through the FRA would ensure both greater rights of passage through forests, roads, bridges and even the dreaded Jawahar tunnel, and the hope of compensation in the event of such accidents.

The Question of a Mobile Legal Subjectivity

All things considered, the larger point here is that a qualitative shift seems to be taking place where the survival of the nomadic Gujjar and Bakkarwal is increasingly contingent on turning their so far de facto rights into de jure rights. Does this imply that de jure claims in fragmented spaces will make rigid what has up to now been a much more pliable and organic process?

In *Shifting Landscapes*, Brara (2006) notes how, in her field in Rajasthan,

De facto grazing lands came to be recorded as 'culturable and unoccupied' state lands that were governed by a completely different set of rules from what were applicable to *de jure* pastures.... The allocation of 'culturable and unoccupied' government lands that were used as pastures were opened up for private agricultural purposes in 1957. This policy measure continues as one of the major planks of land reform. Since the type of land available for agricultural allotment...were increasing, the de facto grazing lands correspondingly kept shrinking.

Such lands, she adds, were gradually privatized, thus reducing the total area available for pasturage (ibid.: 36) and signalling a 'move towards a "politonality" whereby land should belong either to individuals or the state, as multiple, layered, simultaneous and partial uses of the land could not be captured in a bureaucratic record' (ibid.: 140).

She further cautions us that legislation that 'declares the state to be owner of all lands within a demarcated territory often remains an imagined state effect.' As enclosing such vast territories has always had its limits, here too their slow and steady breaching is giving rise to territorial claims to the commons by villagers, although in a context of uncertainty (ibid.: 252). The Gujjar and Bakkarwal have continued to access migratory routes and pastures, and to an extent this process has so far been supported by the state. This has not been a straightforward task, but it has been buttressed by their

sizeable numbers and some political wrangling whereby the state's bureaucracy has had to allow for their seasonal movements. Individual pastures are then accessed either through customary claims or by bribing and cajoling the forest guards and other petty state officials. Such manoeuvrings have also been written about in the context of Rajasthan and other areas in the work by P.S. Kavoori (1999), Sudha Vasani (2002) and others.

Traditional forms of pasturage also change along with those who use them. Does this imply that assertions of a social territoriality will increasingly have to be made from more stationary or sedentary outposts even for those who remain nomadic, or does the potential for acknowledging mobile legal subjectivities exist within the state? The establishment of mobile schools, discussed earlier, surely indicates that a *de jure* idea of mobility is equally present even within the sedentary bias of the state.

We understand with Kroeber and Kluckhohn (1952] 1963: 181) and others that culture systems are products of action and the 'conditioning elements of further action', while Clifford and Marcus (1986) among others, have shown that culture is not so much a set of established beliefs, rituals and dogmas, but rather what emerges from shared questions and claims. The construction and preservation of a commons through a process of claims-making can be understood in this light.

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