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Community Property Rights:

Re-Establishing them for a Secure Future for Small-Scale Fisheries

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"If we had anything of our own worth speaking about, it was an awareness of the community's rights and the place of the individual in it"

Fisherman elder of the Temple Committee that once decided matters about sea tenure, gear restrictions and seasonal closures among other things.

1. INTRODUCTION

The need, as well as the urge, to move towards a sustainable and socially beneficial utilisation of fishery resources is now being felt world-wide. In the developing countries, and more particularly in the populous Asia-Pacific tropics, fishery resources constitute a major component of the real natural wealth of these nations. Long before the conception of the nation state, getting the most from this gift of nature for the greatest social good was always a priority in this part of the world. Coastal communities in this region have over the centuries evolved a variety of forms of collective relationships between fishery resources and themselves. These had served two ends. First, they helped the coastal communities to establish "rights" relationships with other communities who acknowledged their claims to the fishery resources. Second, it provided them the basis for a convivial life for themselves.

I contend in this paper that both these aspects have foundered as a result of the erosion of the property rights held by these coastal communities. This has been primarily a consequence of the enthusiasm of the nation state to "develop" these communities using the development paradigm of the West. A revival of the initial conditions, is neither totally feasible nor conducive. But equally inappropriate are the current efforts to mobilise opinion for consideration of individual private property rights to fishery resources. They are being touted as the panacea for setting out on the voyage towards sustainable coastal fisheries development and management.

In this paper I attempt to question this approach and urge for a re-discovery and re-establishment of the fundamental foundations of what we call a "community property right" in fisheries. Examining the steps being made in the maritime State of Kerala, India, to strive towards this goal provides a case study to examine the feasibility of the approach.

2. UNDERSTANDING PROPERTY RIGHTS

Property rights are the sanctioned relationships between human beings in their utilisation of resources. They provide a good example of an institution which Douglas North (1990) defines as "humanly devised constraints that shape interactions" and provide "a structure to everyday life". Human beings interact with natural resources and the environment through a variety of property rights that are embedded in particular ecological, social, political, cultural and economic contexts. The primary economic function of property rights, in the words of Demsetz (1967), "is that of guiding incentives to achieve a greater internalisation of externalities". In this process, management and governance of the resource attain direction and purpose.

By property I refer not to the thing, or object of our interest, (in this case the sea or fishery resources) but primarily to a secure claim to a future stream of benefits arising from it. By rights I imply the capacity of the claimants to the property to call upon “the others” without such claims, to acknowledge their duty to honour the claim. Such duty may be incorporated in written law or unwritten custom. One can therefore envision a property right regime to be composed of a triadic relationship involving (a) the benefit stream from the resource, (b) the claimant with rights and (c), the others who dutifully honour the rights of the claimants. Over time, socially sanctioned mechanisms - rules, regulations, norms, laws - gradually surround the triad to ensure the sustenance of the relationships. What needs to be stressed again is that property rights have more to do with relationships between people than claims over things or resources. There is no need for material proof of this (*i.e.* documents). It can be a social contract based on custom and trust. However, if this triad cannot be completed - usually because of the lack of “the other” - we then have a situation of “open-access”. In an open-access regime there exists only *privilege of access and possession* but no property rights.

Basically therefore, one can talk about a spectrum of property right regimes for fishery resources: a “no property right” (NPR), or open-access regime, with only the privilege of possession; a state property right (SPR) regime; a private property right (PPR) regime and a common property right (CPR) regime. State property and private property right regimes are well defined and need no further elaboration here. These are the regimes with the greatest social sanction and accompanied by the most elaborate legal framework that specifies the rights and duties of each regime. There is little confusion about what they entail. However, in the oft-quoted popular literature on fishery resource management, the greatest source of confusion is with regard to the lack of distinction between the common property right regimes and open-access or no property-right regimes. Take for example the world-famous piece by biologist Garret Hardin (1968) entitled “Tragedy of the Commons,” which is so often quoted in fisheries literature. It should rightly have been titled “Tragedy of Open Access” since the triadic structure of relationships necessary to establish property rights did not exist in the pasture described by him. Common property is basically private property of a group of co-owners who have both rights and duties with respect to the use rates and the management of the resource claimed by them. Baland and Platteau (1996) highlight a useful distinction between an unregulated common property right regime which tends towards open-access and a regulated common property right regime, which is akin to the private property of a group of co-owners.

3. DEFINING COMMUNITY PROPERTY RIGHTS

The issue of property rights over natural resources is of particular importance in Third World countries where many millions of people, often organised in small, location-specific and occupation-specific communities, depend directly on natural resources for their day-to-day survival. Such communities have been referred to by Dasman (1988) as “ecosystem people/communities” highlighting their close relationship with nature and a deep socially embedded “connectedness” to it. This makes it necessary to view these communities differently. They are to be seen not merely as individuals who form groups, but as groups of people who, through discrete and evolving interactions, have formed exclusive and overlapping linkages, both within themselves and between themselves and other groups, to form larger “communities”. Indeed, many nation states in the Asia-Pacific tropics can also be viewed as the grouping-together of such communities within certain defined geographic borders.

In this paper I wish to introduce the concept of a *community property right (COPR) regime* (see Kurien 1998a). One approach could be to treat this as a special case of the common property right regime. However, I follow a different tack. The reason for doing so is twofold:

i. There is a need to shift from viewing individuals working together *as individuals* to viewing individuals working together *as a group*. The latter work together in a context where their actions and choices are contextualised in the natural societal milieu to which they belong by virtue of inter-generational occupational and associational or geographic identity. They stay together because of a network of mutual obligations, responsibilities and duties.

ii. I wish to distinguish property which is merely claimed by a group, from property that has been in history and tradition held in trusteeship and stewardship by a group, which has related to it for their survival and livelihood and through this interaction has evolved advantageously into a coherent “ecosystem community”.

Such a community property right in coastal fisheries by definition requires co-owners to engage in consultation and participation to seek common approval of certain actions that they may thereafter mutually agree to undertake individually. These would include, among other things, decisions on the nature and the quantum of capital to be invested in the harvesting activity in a particular area; the norms regarding the extent and the timing of the effort to be expended in this activity; and the manner in which the output is to be disposed of. Consequently, a community property right does not usurp the crucial role played by individuals. It only circumscribes it within the confines of collective norms. There is nothing unusual about this in ecosystem communities of the Asia-Pacific tropics. Since the basic motivation is pursuit of a good and decent livelihood the participants tend to have a longer time-horizon as regards their relationship to the resource and a keener ecosystem-perspective towards it.

Given the highly complex nature of fishery resources in the tropics, this combination of individual enterprise, under a rubric of community norms, helps to take advantage of the skill variations (innate human capital differences) among fishermen. It also acts as a great motivator of benign competition in coastal fishing. Yet it keeps in check the ills of unbridled freedom, which lead to excessive “capital stuffing” (the bane of even the ITQ systems which assign PPRs to fishermen). This certainly puts a cap on excessive private accumulation possibilities. However, the benefits in terms of equity of opportunity, and freedom to modulate effort in keeping with the highly diverse fishery resource in tropical waters, result in optimising the social accumulation of wealth from the coastal fishery.

4. EXISTENCE OF TRADITIONAL COMMUNITY PROPERTY RIGHTS

Social scientists who have studied ecosystem communities in coastal fisheries in the Asia-Pacific tropics will wholeheartedly endorse the existence of traditional community rights among them in a variety of forms. The recent compendium of Ruddle (1994) is most useful in this regard. It provides a broad-brush treatment of the evidence of rights in traditional community-based systems of fishery management from 21 countries varying in size and complexity from sub-continental India to the islands of Kiribati. Even this effort highlights how little we yet know about the institutional arrangements and the structure of rights as perceived, defined, delimited and defended by small-scale fishing communities of the region. The moot point, therefore, is that the triad of rights existed. Fishing communities made claims over coastal resources and the rest of society honoured these claims. There is therefore no need to produce written records as proof to establish their effective operation. Moreover, the earlier meticulous analysis of scholars like Johannes (1978) leave little doubt that all the resource rights and management measures propagated in the West today have nearly all existed in the Asia-Pacific tropics long before they were conceived in the temperate water fisheries.

It is my understanding that the basic foundation of these traditional community property rights focussed on four aspects:

- i. ecological processes, which relate to the stock of fishery resources in the context of the wider ocean ecosystem and the means of accumulating and sharing information on this
- ii. institutional and deterrent measures to ensure compliance with community regulations and protection of the resource against intruders
- iii. arrangements for sharing and redistribution measures to ensure that none of the members are driven to a state of deprivation, which would motivate them to over-exploit the resource
- iv. arrangements for sharing and redistribution measures to ensure that more of the members are driven to a state of deprivation that would motivate them to over-exploit the resource.

We need to draw special attention to the implicit entitlements that individual participants enjoyed in a COPR. These help to compensate for the inadequately functioning markets in credit, social security, insurance and employment. These entitlements in turn were at the basis of a complex set of rights and duties that fostered long-term personal relationships of trust between members of the group. This was the basis of moral norms that prevented free-riding and linked individuals together in a bond of assurance and cooperation. These factors, in fact, enhanced efficiency within the operation of these rights.

5. HOW TRADITIONAL COMMUNITY PROPERTY RIGHTS GOT ERODED

The post-World War II intervention of the nation state in bringing about fisheries development through the aegis of technological change and market expansion created a situation where these community rights to resources became highly insecure. The first casualty of this was the destruction of the informal mechanisms of co-operation and trust. These were further jeopardized when the traditional regulatory norms surrounding the COPRs were undermined and the social prestige of those who enforced them was belittled. This created an institutional vacuum. Into this entered a flood of new private (business) interests with an eye for making profits from the resource flows.

In the coastal fisheries of most developing Asian countries these community property rights were replaced, not by any form of State-regulated common property rights, but rather by a *de facto* unregulated common property context - an open-access or no property-rights (NPR) situation. Such an open-access resource, linked to a global market with unsatiable demands for the protein of the sea, created the ideal menu for resource depletion and ecosystem degradation. Undoubtedly this process was hastened by liberal State subsidies to promote capital intensive and environmentally over-efficient harvesting technologies that were inappropriate to the resource configuration of the tropical waters. [For an excellent case study in the Indian context of the gamut of issues raised here see Bavinck (in press)].

6. WHY PRIVATE PROPERTY RIGHTS ARE INAPPROPRIATE

It is against this backdrop that the present global propagation of private rights in fisheries needs to be viewed. First, it is being propagated in a manner that gives the mistaken impression that the concept of rights to the sea and its resource is alien to developing societies. Second, as with the earlier attempts at technology transfer in fisheries, individual PPRs are being promoted without reference to the history or current practice on these matters in the developing nations.

The global advocates of the individual Private Property Rights (PPR) claim to be promoting that arrangement in the light of what they observe to be the weaknesses of Common Property Rights (CPR). This is a false comparison. What they are really comparing is the idealised, textbook version of PPR with the anarchy which prevails in a No Property Rights (NPR) situation. Not only is this position

scientifically illegitimate, it is also doing gross disservice by giving a bad name to the numerous elaborate traditional rights arrangements which existed in coastal fisheries in Asia and Pacific that were by no stretch of imagination NPR situations. Moreover, the efforts to propagate PPRs in fisheries have certain unstated assumptions that are difficult to obtain in the 'real world' of either developed or developing countries. These include *inter alia* an unambiguous definition of PPRs; the existence of perfect and competitive conditions for all markets; and no costs for enforcement of the PPR. Added to this there are certain context-specific factors about the countries where PPRs in fisheries have been implemented, which are not present in the developing countries and also unlikely to ever be obtained in the near future (see Appendix 1). These objective factors, though they are never explicitly mentioned, become barriers to the moves for implementation of PPRs in the developing world in general and the Asia-Pacific tropics in particular. These moves are therefore motivated more by blind ideological convictions and less by their being socio-economically and technically appropriate to the fishery context.

7. REDISCOVERING COMMUNITY PROPERTY RIGHTS

In many developing countries in the Asia-Pacific tropics, the crisis of fishery resource degradation and depletion has been creating social upheavals that make the administrative and political authorities anxious for long-term solutions. This is also coupled with a few important considerations and conclusions reached over the last five decades of conventional fisheries development and management.

- i. Fishing communities still continue to be among the economically weaker sections in most of these countries. Despite this, many of them represent culturally, ethnically or socially strategic segments of the society. Discontent among them, if ignored, can be politically inexpedient.
- ii. The earlier "large-scale technology fix" approach to fisheries development cannot proceed much further. The physically separated and dispersed nature of the productive coastal waters (*e.g.* India, Indonesia, Philippines, *etc.*) combined with the innate characteristics of tropical fish species make large-scale, centralised harvesting inappropriate and uneconomical.
- iii. There is a growing realisation that fostering sustainable development of the small-scale fishery - which is still the backbone of the fish economy - lies in first defining clearly the distributional objectives which are sought. Thereafter the technology and organisational structures can be tuned in accord with that requirement.
- iv. For economic and socio-cultural considerations the importance of maintaining a viable, decentralised settlement pattern has been accorded a priority to prevent large-scale migration of fisher-people to urban settlements. This is also in keeping with the growing socio-political pressure for decentralisation of governance.
- v. There is an unresolved dilemma between, on the one hand, promoting coastal fisheries as a major foreign exchange earner, and on the other, stressing its role as a provider of inexpensive fish for avid domestic consumers.
- vi. In the context of globalisation, the inevitability and usefulness of markets has been acknowledged. However, the unbridled functioning of markets has been perceived to be inimical to the long-term interests of resource conservation.
- vii. The centralised law-and-order approach to fisheries management, which has been tried in many big and small countries in the region, has reached its limit. It has proved inappropriate and expensive.

The need to evolve cost-effective, and more stakeholder-participative monitoring and enforcement machinery, merits priority of action.

viii. There is a last opportunity for revival of the scaffolding of numerous community institutional arrangements which remain embedded as social capital in the fishing communities.

These perspectives taken together, point unequivocally to the need for a major structural change in the fishing economies of these countries. The need of the hour is for an institutional transition that will restore the primacy of property rights to coastal fishery resources giving central place to those who depend on it as their main means of livelihood. I therefore argue that a secure future for small-scale fishing communities in the Asia-Pacific tropics will require a re-discovery and a re-establishment of community property rights to coastal fisheries. The foundations will remain the same as those of the traditional community property rights mentioned earlier. The superstructure will necessarily have to be modified to take the new socio-economic and political realities into consideration. This superstructure will not *emerge autonomously*. It must be *consciously crafted* in the context of a triadic network where the community is the anchor that provides stability, the market acts as an oar to provide momentum and the State is the rudder to give direction (see Kurien 1998b). How this is being attempted in Kerala State, India is illustrated below.

8. KERALA STATE: SHOWING THE WAY

8.1 Antecedents

Kerala State in South India has a coastline of 600 km along the Arabian Sea. It is home to an 800 000-strong fishing community scattered across 220 coastal villages. Out of them 170 000 are active fishermen netting annually about 600 000t of fish. Kerala has been a pioneer in many aspects of fisheries development and management in India. Today, Kerala is making the first strides in moving towards community property rights for coastal resources. This realisation, however, comes after over four decades of the “business as usual” approach to fisheries development and management. This included, *inter alia*, an international fisheries aid project; transfer of temperate-water harvesting technologies with liberal subsidies in the name of making fishing more “efficient”; linking up with the export market; State-initiated cooperatives; and zoning regulations. This piece-meal approach did not lead to either sustainable management of the fishery resources or to enhanced socio-economic welfare of the fishing communities.

Kerala needs to regain its prominence on the fishery map of India. The need to define rights and do this in the context of a community-market-state framework is the ethos of the moment. This has the enthusiastic support of the unions and associations of the small-scale fishworkers, NGOs, community leaders, the planners and many political parties.

8.2 Community

The participants of the small-scale fishery in Kerala have always been rooted in the community. The autonomy of the individual and the household or family are circumscribed by the welter of both traditions (history) and aspirations (future) provided by the community. Based on the hierarchy of the caste-system, their occupation puts them very much at the bottom of the social ladder. In the past this was the main cementing force. It has acted as a barrier for entry of other people and capital into the fishery. These initial conditions have changed rapidly. Improved technology, and enhanced market demand and the State created open access to the fishery which has broken this isolation. Clearly, the new community cannot be defined along the lines of caste and creed, which have been the major criteria of the past. The consensus is that change can be brought about with an ‘aquarian’ reform.

Community property rights should devolve to the local-level community that resides in a defined coastal settlement. Its core should consist of all who, irrespective of caste or creed, are willing to labour at sea - working owners and workers. It is this new core group that will provide the anchoring role for the community.

At an operational level these community property rights in Kerala should be organised at the level of the lowest constitutionally-valid administrative unit of governance. This is at the village level and is a feature common to many Asia-Pacific nations. In Kerala it is called the *panchayat*. The organisational concept of the *panchayat* "Matsya Bhavan" (Fish House) will bring together under one roof the various arms of the State that deal with fisheries and fishworkers issues. To start with, in each *panchayat*, the seaward littoral zone contiguous to the land boundary out to a distance of 2km, will be community property. This necklace-like structure of community regimes along the coast will be coordinated at the larger level of the district *panchayat* which is 'coterminous' to a larger natural ecosystem and therefrom to the level of the State (Government of Kerala 1997)

8.3 Market

Markets are not new institutions for small-scale fishing communities in Kerala, or for that matter anywhere; in fact between State and markets, it is the role of the State that is newer in these communities. Exchange, and consequently the compulsions of the market, enter into small-scale fishing communities even at a low level of development of the productive forces. In Kerala State, there has been, and continues to be, a vibrant domestic market for all species of fish and a strong export market for some selected varieties. The market is like a paddle providing momentum to the economy. Initially, the market facilitates the expansion of economic opportunities for the community as a whole. However, with the emergence of the specialised role of the trader and the development of a buyers' market, the leverage of the producer is greatly diminished. A credit market develops and its consequent interlocking with the output-market results in greater dependency on intermediaries. In the context of Kerala State, it was the opening of the post-World War II export markets (USA, Japan and Europe), which provided the motive force for excessive exploitation of the open-access fishery. Market forces, therefore, can never be wished away in the development of any form of property rights in a fishery. The issue is, the extent to which market forces will be permitted free play.

8.4 State

Proponents of private property rights in fisheries tend to picture the State in a bad light. Our vision here is of a State that invigorates rather than steam-rolls; a State that bolsters capability rather than stifles initiative; a State that defines the broad contours of economic action rather than strait-jacket it. The transition of the coastal waters from an open-access realm to one of community property rights can materialise only if the State plays the role of rudder, giving direction for the voyage into the future. The legislative support for aquarian reforms fall within this purview. As a first component legislation is being drafted permitting ownership of coastal fishing crafts only to those willing to work at sea. This measure will ensure limited entry of sorts. It will remove the phenomenon of absentee capitalists (this is the bane of small-scale fisheries in many other countries too). The result will be an immediate reduction in excess capacity.

The second component of the aquarian reform package gives the State a regulatory role to ensure that markets are modulated to become friendly to communities rather than *vice versa*. There is the proposed legislation to give the right of deciding the mode and the floor-price of the first sales transaction of fish to the members of the fishing community. This is an all-important measure to de-link the output market from its most exploitative link with the credit market. This is the only way that

the enhanced physical productivity gains from establishing community property rights will translate into tangible economic gains. It will also be a good insurance against “collective overfishing”.

A third measure is the desirability of greater social control over the export of fish and fishery products. This will be an important step to ensure that resources within the community property regime are not subjected to excessive market pressure from investors in the export processing sector.

Another important function of the State will lie in coordination of community rights, their monitoring and enforcement. This will be arranged by a co-management contract between State machinery and the *district panchayats*. This will be an attempt to institutionalise cooperation between State and user-community by using their comparative strengths at different levels in a complementary way.

8.5 Barriers to implementation

The barriers to implementation of community property rights and co-management of the fishery resources will be numerous. Trying to alter the *status quo* of open-access is always difficult because of the vested interest of the stakeholders. In Kerala, the opposition to change will come from several quarters. Prime among them will be the non-working owners of fishing boats (mainly the fleet of small shrimp-trawlers) and the big shrimp-export firms since they have been the main beneficiaries of the four decades of State-initiated open-access to the coastal waters. Then come merchants. Any attempt to tamper with their hitherto-unchallenged rights to set prices and regulate their unbridled freedom to exercise non-price control over fishworkers rarely go unopposed. Firms that have benefited from the unregulated demand for boats, engines and nets will resent the curtailment of their business. Political parties used to distributing largesse to the fishery sector will support this restricted access proposal only if they are convinced that the costs of not doing so outweigh the benefits of the *status quo*. The Department of Fisheries officials are likely to be unenthusiastic about the proposal at the outset because decentralisation will imply more work for them at the beginning. Fishery scientists will feel challenged by the decentralised community rights since it will call for more accuracy in their work and greater risk of being proven to be wrong. In the ultimate analysis, the struggle against such opposition and initial lack of support can be overcome only by the firm resolve of the fishworkers to stand united in the face of it. In this mission they have support from empathetic social activists and a progressive group of political parties in power.

9. CONCLUSION

Re-establishing property rights over coastal fishery resources is the most important need of the hour to ensure a secure future for small-scale fishing communities in the Asia-Pacific tropics. In many countries in this region, small-scale fishing communities have asserted their claims regarding this. On balance, a review of over two decades of these initiatives indicates that the response to these moves, from the State and other stake-holders in the fishery, have been mixed. Happily, there is a growing recognition and greater appreciation of the close interaction between rights to a resource and its successful management and governance. In many countries the positive experiences from agriculture and forestry are spilling over into the fishery. This will provide an important impetus for coming to terms with the assertions and aspirations of small-scale fishworkers on this matter. For the numerous reasons enumerated in this paper the attempt to propagate the appropriateness of private property rights in forms such as individual transferable quotas needs to be viewed with considerable circumspection. The death-knell for open-access to coastal fisheries needs to be rung. A robust framework of community property rights must occupy its place. These are more appropriate to the Asia-Pacific tropics from the socio-cultural, techno-ecological and political economy perspectives.

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Appendix 1:
Characteristic features in developed countries where
private property rights in fisheries have been implemented

(Note that these are not applicable in the context of developing countries in the Asia-Pacific Tropics)

- Westerners had totally colonised these large resource-rich countries/continents (*e.g.* Australia, Canada, South Africa, New Zealand, USA, Iceland) more often than not trampling over the values and property right regimes of the existing indigenous communities (all the above except Iceland) with respect to the sea and its resources. The coastal fisheries were then turned into an open-access realm.
- The threats of stock collapse are real and have been experienced in recent history
- Democratic traditions exist and the institutional arrangements of formal market economy are well established
- The economy is labour-scarce and capital-abundant
- The overall levels of economic development are high
- The levels of social development (literacy, basic quality of life, social security measures, *etc*) are high and widespread and those engaged in fisheries are not a deprived section of the society.
- The numbers of persons involved in the fishery are relatively small - usually in the 100s, on occasions in the 1000s and very rarely in the 10,000s
- The preoccupation is with restricting the overall entry of capital and labour without giving any consideration for priority rights to those who actually labour at sea.
- Single-species fishery is possible and the biological information on the resource is well communicated to government and industry, and such research and information is an essential input in the political decision-making process of management
- The need to maintain a decentralised settlement pattern is not a socio-economic or political compulsion, but centralisation is seen to be advantageous.
- The organisational arrangements for basic, proper and honest monitoring of fish landings and the governance structures for this exist.
- The adverse interlocking of factor markets is non-existent; investment funds and credit are easily available.
- The choice of fish-export versus domestic-consumption is not a major concern for the internal food-security of the country.