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The Saga of Fish workers in Kerala: Critical Environmental Law Perspective

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ABSTRACT

The Kerala waters are home to a significant number of fishermen with fishing as their mainstay and above that an 'emotion'. These depths shelter more than 21,000 species of fishes. While post-independence era subjected them to constant threat of modernization by the Government of India, the Liberalization, Globalization, Privatization (LPG) regime worsened their problems. Not only threats from the domestic factors but also from the international commercial competition in fisheries segment enhanced their conflicts. Their roman-fleuve began with the 1953 INP (Indo-Norwegian project) that was introduced to improvise the infrastructure for higher efficient fishing as a global commercial activity. While this was just a trailer in their story, the real show began post 1960s. With a surge in demand of prawns and other global market orientations, the pressure came on the traditional practices followed in the fishing segment. The fishermen still continue to bring about their interest as are suppressed by the entrepreneurial model of development in the privatized institutional framework.

Like most other stories of struggle the impact is not singular. The saga of these fishermen narrated in this research piece aims to highlight environmental impacts as a direct consequence of the policies and laws enacted by those in power. Also, the researcher goes on to understand the standpoint epistemology of the Apex Court of the country in anticipating and understanding the particular trigger event in light of the environmental aspects, not just physical environment (Impact on Ecosystem, Biodiversity, Chemical cycles) but also socio-political environment.

The mechanization of the traditional fishing practices is negatively impacting the ecological system. Also, when the researcher digs to bring forth the environmental crisis of the fishing world, she also tries to highlight the facets of impact on the coastal regulations and the interaction of socio-political environment on the physical environment. The lens of critical environmental law is used to indicate the void between the legislative and judicial response and the social expectations.

Keywords: *Commercialisation Of Fisheries; Environmental Struggle; Socio-Environmental Impact; Mechanisation Of Fisheries; Individual And Collective Action.*

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“Critical environmental law contextualizes itself in the intersection between politics, economics and the law, situating thus itself within the wider ecology of social relations, subjectivity and sustainability needs.”

-Andreas Philippopoulos-Mihalopoulos

I. KERALA: THE LAND OF GODS

This story of struggle is set up in Kerala the land of Gods, which is home to more than 21000 species of marine creatures. Located in the South west region of the country, Kerala’s 580km long coastline offers livelihood to more than half of state’s population dependent on fishing and incidental activities. With approximately 1-crore sub-urban population at stake, the post-independence period witnessed the need to mitigate the global surge in demand of prawns.

India’s quest for the proliferating aquaculture and fishing, post the independence has converted the Kerala coastal region a battleground; a battle fought between the fishermen who are the spine of the Kerala’s GDP figures and the government driven by not just governance and public concerns on socio-economic but environmental and political parameters.

The immense growth of the fishing industry across the globe directly affected Indian economy, in particular Kerala’s economy. The increase in the number of people depending on fisheries for their livelihood, declining production and the stagnation in the total income generated from fisheries, severely affected fishing laborers with drastic reduction in their per capita earnings.² The fisheries sector in India and Kerala, though performing well, faces serious challenges such as socio-economic conflicts, low income to the common fishermen, low catch per unit effort, over exploitation of marine resources, unsustainable harvesting and also susceptibility to hazards related to climate change.³

The inshore resource potential within the Exclusive Economic Zone is presently exploited up to 75 percent, leaving scope for marginal improvement in overall fish production from the inshore sea. However, fisheries development has not been uniform in all the states of the Indian union. Kerala, aided and abetted by the Indo-Norwegian Project and the state government, took an early lead in the development of mechanized fishing, particularly shrimp trawling. Karnataka Province, north of Kerala, forged ahead in the introduction of purse seiners. In 1975, there were 2,105 mechanized boats in Kerala; this number increased to 3,038 and 2,005,

² R. Sathiadas & G. Venkataraman, *Impact of Mechanised Fishing on the Socio-Economic Conditions of the Fishermen of Sakthikulangara-Neendakara, Kerala*, 29 MARINE FISHERIES INFORMATION SERVICE 1-19 (1981).

³ Sarada Devi et al., *Vulnerability Assessment of Fishing Communities in Kerala, Towards the Impact of Climate Change-With Special Reference to Cherai*, 2 SRIWIJAYA INT’L J. OF DYNAMIC ECO. AND BUS. 177-92 (2018).

respectively, in 1980.⁴

The trends show that although overall fish production in India is rising, the marine fish production has been declining over the years as marine fisheries are passing through a critical phase due to the present rate of biodiversity loss and fishing practices throughout the world.⁵

Before mechanized techniques for fishing and related activities were incorporated, the traditional fishermen for the most part need to remain shore-wards during storm seasons. Be that as it may, presently the motorization conquers this natural phenomenon. Mechanization implies the topographical expansion of fish waters, more noteworthy security what's more, new ability to defeat the deterrents of rainstorm breakers. The chief advantage of mechanization was within a shorter time one could go further out from the land than in the normal traditional Canoes and in that way reached in the newer fishing areas very easily. It could diminish the quantity of group individuals that serves to increment the benefits per person employed. Speedboats together with present day angling gears expands the amount of catch and increment the wellbeing and security of those involved in fishing.

II. DECONSTRUCTING THE ECONOMIC DEVELOPMENT MODEL

The fisherfolk movement against mechanized fishing in Kerala depicts the struggle of the marginalized artisanal fishing community for their right and control over their traditional livelihood resources.⁶ This story of fishermen is not merely a struggle for protection of environment but also a stark contrast of breaking the superior-inferior binary in the society. A story cannot always be described with a coin; it has aspects to be observed with a variety of lenses. The post-independence economic model weighed heavily with the quantitative values but somewhere failed to acknowledge the social systems that shall be affected. This portion therefore, aims to demystify each layer of the struggle in three phases:

Phase I: 1953-1960

Phase II: 1960-1987

Phase III: 1991-2018

The above taxonomy has been drawn on the basis if the significant economic events that took

⁴ Thomas Kucherry & Achary Thankappan, *Fishing for Resources: Indian Fisheries in Dange*, CULTURAL SURVIVAL (1989).

⁵ Rajalakshmi Mohanty, *Review on Fishery in Kerala Perspective*, MUNICH PERSONAL ARCHIVE 3 (2013). <https://mpr.ub.uni-muenchen.de/id/eprint/44285>

⁶ A. Gregory and G. Placid, *Fishermen's struggle against mechanized fishing in Kerala* (2000). <https://www.ids.ac.uk/ids/civsoc/>. See also R. Sathiadas et. al, *Impact of environmental threats on marine fishery resources of coastal Kerala: an economic assessment*, SUSTAIN FISH (2000)

place in contrast with the social aspects of the development and for convenience of analysis and understanding.

(A) Phase I: From pre-independence to post independence

Pre-independence, fishing was seen as a traditional activity pursued for domestic purposes. Moving towards a proliferated model of international trade, the independent government of India planned modernization of the fishing activity down south. The coming up of Kerala as the first democratically elected communist party led governance model however, wanted to bring in mechanized fishing industry. After 1957, need to increase the productivity and make it a profit generating activity, the Kerala government took over to bring in training for the fishermen in Quillon. The Indo-Norwegian Project was launched to enhance the fishing production to cater to the global fish produce demand.

Norwegians were not only in the field of advancement of fishing techniques and modernization but also in community development and in establishing a health center that changed the lives of fishermen in Neendakara.⁷ As opined by K. Ravinath, retired Deputy Director of INP, Kerala, it indeed changed the lives of fishermen, although, not positively.

This transition from traditional techniques-based fishing activity to a capital-intensive and labor-saving industry had a strong impact on the fishermen who once dominated the industry. The impact of this transition extends beyond just economics. The social and environmental distress caused has not been well catered to. Resultantly, the aperture between the people and their social increases beyond a simple legislative framework of repair.

This period kick-started and highlighted the need for a well thought and firm policy decisions that not only caters to the interests of big giants but also the prominent leader of the local systems. Initial years of independence brought in turmoil for the legislations as the quick decisions had large impact that came as surprise to the economy. With reference to Kerala fishing industry, the need for a coherent legislation was required to safeguard them from the natural as well as foreign commercial threats. The law making thus, needs to be carefully thought of before being implemented. "The lacunae of valid statistical and economic data have not only made planning unrealistic in these areas but also rendered appraisal of the performance of fishery development projects quite difficult."⁸ The end of this phase witnessed the Indo-Norwegian Project for mechanization of fishing sector. Thereby, making fishing one of the

⁷ The Hindu, KOCHI, APRIL 01, 2016 16:16 IST

⁸ S. Krishnakumar, *Strategy and Action Programme for a Massive Thrust in Fisheries Development and Fishermen Welfare in Kerala State*, Government of Kerala, Trivandrum (1980).

most essential part of country's GDP. With the initial phase of development of this project, large scale fishing activity was encouraged. Gradually, it was realized that the fishermen and roles were subsequently to reduce with the automation of the fishing techniques, thereby acknowledging the fact that the Government did all this to bring in the omnivores⁹, their share of economic resources in the region.

(B) Phase II

The structural changes introduced to INP in 1963 unveiled the new garbs of economic development. The vocabulary of protest by now wasn't just theologically ruled but also was enhanced with the social and other economic grounds of discrimination. The reason I have used 'discrimination' is to carefully put through the kind of discrepancies the consequences of the policies launched under the veil of economic prosperity had brought in.

The economic model throughout the growth in this period was dominated by the political will of the ruling party. Kerala's transformative experience from phase I to II crystallized and structured the collective action towards to problem in issue.

By this time, the fishermen could unveil that the garb of economic development had hindered their livelihood and also the marine sustainability. The collective action groups started proliferating their commercial interest along with the marine environment concerns.

The modern fishing techniques that were being used by the mechanised fishing vessels significantly impact marine ecology. Let's understand how:

1. The purse seine nets were created to not only enhance the fish produce but also to decrease the time taken in capturing the marine produce. In the inshore areas, the purse seine nets impact the sea bed of the ocean thereby withering away the seabed soil. These types of nets make the by-catch vulnerable. Depending on the fishery, purse seines may catch vulnerable species; purse seining targeting tuna has been particularly associated with notable by-catch of mammals and sharks.¹⁰
2. The modern fishing mechanisms work with the assumption that human intervention in the in-shore fishing waters must be minimal and hence the policy initiatives ignore the risk and rate of

“More often than not, the agents of resource-intensification are given preferential treatment by

⁹ Large corporations are being referred to as omnivores as they are not only parasitic in terms of resources and revenue share but also mystify the balance in the marine ecology.

¹⁰ See generally Definition of Purse Seine https://www.sustainweb.org/goodcatch/purse_seines/##targetText=Environmental%20summary,with%20damage%20to%20marine%20habitat.&targetText=Discards%20%2D%20purse%20seining%20can%20be,of%20juvenile%20commercial%20fish%20species.

the state, through the grant of generous long leases over mineral or fish stocks, for example, or the provision of raw material at an enormously subsidized price. With the injustice so compounded, local communities at the receiving end of this process have Bio-recourse except direct action, resisting both the state and outside exploiters through a variety of protest techniques. These struggles might perhaps-be seen as the manifestation of a new kind of class conflict. Where traditional' class conflicts were fought in the cultivated field or in the factory, these new struggles are waged over gifts of nature such as forests and water, gifts that are coveted by all but increasingly monopolized by a few.”¹¹

1. From Individual to Collective action

The struggle is not merely a person led struggle. It is a story of environmental protection that has been fought across years. The initial years of INP made activists like Thomas Kucherry take up stand for fellow fishermen’s rights. Following which collective action groups were formed. *Kerala Swathanthra Malsya Thozhilali Federation (KSMTF)* was set up at state level to represent the interest of fishermen at policy level.

The standpoint episteme of each individual in Kerala has never killed the spirit of the struggle for conservation and protection of marine resources. Priyesh has in last 8 months collected 13 tonnes of waste from the Indian waters alone.¹²

2. Fishing Cooperative societies

The fishing cooperative societies in India can be traced back to 1913. However, in Kerala the cooperative societies came in as a savior to the interests of the poor and traditional fishermen of the state. Post 1960’s, the collective action groups were being formulated under various categories of fishermen. The Fishermen cooperative societies not only shield the fishermen interests but also aim to incentivize the commercial activity. However, since these are cooperative groups established at ground level, they face a variety of challenges:

- a. Infrastructure
- b. Lack of government support
- c. Financial crunch
- d. Inactive workforce

Kerala Fishworkers Welfare Society Act, 1980 was a result of the collective efforts of the

¹¹ RAMCHANDRA GUHA & J. MARTINEZ-ALIER, *Environmentalism of the poor* in VARIETIES OF ENVIRONMENTALISM: ESSAYS NORTH & SOUTH 5 (1996).

¹² Haritha John, SAVING HIS KADALAMMA: A KERALA FISHERMAN’S LONE CRUSADE TO CLEAN UP THE SEA, THE NEWS MINUTE (September 26, 2019 18:30IST).

various organizations and cooperative societies involved. This legislation aimed to secure a fund that shall ensure that those who cause the harm pay for it too. Although maximization of welfare of fishworkers as legislators proposed was in effect led by the judicial organ of the country. Supreme Court in a variety of its ruling upheld the constitutional validity of the Act and also clarified the role of those at the commercially viable end. The court observed that the said Act is welfare legislation and such statutes should be given the most liberal construction possible keeping in mind its purpose.¹³ Looking at the definition of ‘dealers’ in the Act, the apex court was of the opinion that exporters had no reason to escape from their responsibility of contributing to the fund and that definition was wholesome enough to encompass processors and exporters.

While in *Koluthara Exports Ltd. v. State of Kerala*¹⁴, the Act was challenged on grounds of legislative competence. Apex Court distinguishes ratio in *Fancy Food* and held Section 4(2) of the Kerala Fishworkers Welfare Fund Act, 1980 as unconstitutional and held that merely because the situation demands, the State Legislature cannot be permitted to legislate on a subject which otherwise it cannot. Interestingly, the Court did not comment upon the issue of legislative competence and issue of constitutional validity, to imply that in cases concerning environmental law, a comprehensive and holistic account of reasoning is usually not the necessary.

This is not to just reiterate the need to ply inter-disciplinary methodologies, formulate ecological legal regimes, delineate the theoretical movement between ecocentrism and anthropocentrism. These are all important issues that to a certain extent feed into existing environmental legal thinking,¹⁵ although more often than most by appearing briefly in the first couple of paragraphs of socially contextualized writings on environmental law and then calmly forgotten.¹⁶ At the heart of environmental law, there lies a self-destructive movement that possesses potential to cause a great deal of violence against the environment itself.

(C) Phase III

Kerala’s transformative experience has led us to evaluate the grounds of the modernity their governance model guarantees. Kerala’s system of education, healthcare, transport is stipulated as the ‘model’ for other Indian states. The education facilities have not sufficiently reached the

¹³ Regional Executive, Kerala Fishermen's Welfare Fund Board v. M/s. Fancy Food and another etc., AIR 1995 SC 1620.

¹⁴ AIR 2002 SC 973.

¹⁵ Andreas Philippopoulos-Mihalopoulos, *Looking for the Space between Law and Ecology* in LAW AND ECOLOGY: NEW ENVIRONMENTAL FOUNDATIONS 1-17 (Andreas Philippopoulos-Mihalopoulos ED. 2011).

¹⁶ *Id.* at 5.

fishing population of the state which is now counted as a hurdle to proliferate alternate employment opportunities to the unemployed section of the rural population who have been displaced due to the mechanized nature of the fishing industry. This phase is embarked by the liberalization, privatization and globalization regime. The economy was in a bad shape and hence, exploitation of economic resources was considered to be one of the successful ways to cater to country's economic needs.

1. 1991-2018

“It is the judge who infuses life blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society”.

- Justice P N Bhagawati

i. State of Kerala v. Joseph Antony¹⁷

Coastal Regulation Zone Notification was published in 1991 that restricted the small-scale traditional fishermen with 10km area of the inshore territorial waters. Joseph Antony being one the prominent activist who was born in a priest family but spent later of his life serving the fishermen's interest fought the case. The decision highlights the inside outside perspectives of the story and also the judicial episteme. The State Government relied on a number of committees formed under the chairmanship of executive members working for the government. The Supreme Court however, rejected these Committee reports to thereby highlight that the notification is merely a garb to promoting ecological and societal concerns. In fact, the justification that monitoring of fishermen's boats which are not mechanized is not feasible beyond 10 kms simply indicates that the Government is trying escape its social responsibilities towards the semi-urban fishing population of the state.

While questioning the intelligible differentia, the Court also pointed out the need to justify the boundaries on the basis of local conditions. Even when maps were drawn, 'they could not speak for themselves' but needed to be interpreted according to local understandings and practices.¹⁸

ii. CRZ Notification 2018

The notification published in December 2018 states that the No Development Zone which was earlier made 50m. in 2011 is further reduced to 20m. from the coastal line. The clear implication drawn is that the boundary is being used as an instrument of oppression and barring

¹⁷ AIR 1961 Ker 28.

¹⁸ Nicholas Blomley, *Making Private Property: Enclosure, Common Right and the Work of Hedges*, 18(1) RURAL HISTORY 5, 1-21 (2007).

the fishermen from their right to marine waters.

The question now arises is that is coastal area the commons for private tourism and entertainment at the stake of livelihoods of thousands of fish dependent people?

The coastal line and sea waters are resources held by the state in public trust for the public. Thus, the use of these resources must be for the benefit of the commons and not specifically for a particular section of the society.¹⁹ Hence, the allocation of resources must not be divided in the superior-inferior/ rich poor binary.

It must be thus kept in mind that common property not so common for commons any more, is taken over by the commercial interest who in turn cater to the political interests of the legislators. Even when maps were drawn, 'they could not speak for themselves' but needed to be interpreted according to local understandings and practices.²⁰

It seems the MoEFCC is seeking legitimacy for the changes to the CRZ Notification using the report of the Shailesh Nayak Committee, which itself is a result of a one-sided process.²¹ However, the stringent changes that the Ministry is trying to slip through, will make the original Notification even weaker than what the committee suggested. For instance, the Shailesh Nayak committee suggested a differential NDZ width of 50 meters and 200 metres based on the population density of coastal areas but the draft MCRZ Notification proposes an NDZ of 50 metres in all CRZ III areas regardless of the population density.

Achieving sustainable environments involves broad, general prescriptions for attaining ecologically sustainable resource use and requires involvement of governments, academic and private sectors, nongovernmental organizations (NGOs), and local communities.²²

Mutual operation of institutions and individual actors in the society with the assumption of abundance of resources in the modern economic development model gives rise to various social dilemmas. The policy decisions must thus conquer these social dilemmas to bring maximum social welfare to the commons of the state. The integrated efforts by different players in the society can never be exclusively rated but has always complimented to improvement graph.

¹⁹ The CPR-Namati Environment Justice Program, Crucial aspects of proposed Marine Coastal Regulatory Zone Notification revealed, PART IV, SERIES ON 'COASTAL REGULATION' (April 28, 2017). <https://cprindia.org/news/6132>

²⁰ *Ibid.* at 11.

²¹ *Supra* n. 17.

²² Colin Crance & Dianne Drape, *Socially Cooperative Choices: An Approach to Achieving Resource Sustainability in the Coastal Zone*, ENVIRONMENTAL MANAGEMENT (1996).

III. CONCLUSION

“We are currently witnessing that environmental law is rapidly losing a battle of self-definition, of indeed identity formation amidst threats of, first, politico-economic co-optation and, second, epistemic fragmentation.”

- Andreas Philippopoulos-Mihalopoulos²³

Fisheries development has not been uniform in all the states of the Indian union. Kerala, aided and abetted by the Indo-Norwegian Project and the state government, took an early lead in the development of mechanized fishing, particularly shrimp trawling. The lead however pulled them back towards environmental degradation along with fishermen’s struggle for reviving their share in the resources that are not economic but natural. Thus, we must first begin to acknowledge that marine resources are not economic but natural. These natural resources must be preserved with the assumption that we are rational individuals who owe their lives to the nature and hence shall pledge to protect them. Over-exploitation of natural resources by the omnivores in the economy in the wake of increasing competition is playing around with our future.

The saga of fishermen in Kerala can be narrated on different tangents. The narration of the story by an environmentalist will try to ignore the challenges government has to face while implementing major policy changes. Keeping in mind fishermen’s perspectives will highlight the need for emphasizing the social aspects of development. We have observed the need to incorporate social considerations i.e., qualitative measures to ensure a sound motivated policy decision.

The goal of ecologically sustainable use of economic resources in itself is a paradox created on the false assumption that resources have intrinsic economic value. Deconstructing the economic development model in Kerala clearly highlights that the foundational premise that development is economically driven and thereby measured on quantitative parameters is a political garb.

The trawl net fishing ban was an immediate consequence of the protestant behavior of the fishing community. The removal of ban within a few months is indicative of commercial and political priorities of the lawmakers.

The judicial episteme can be understood through a variety of judgments given by the Apex Court of the country. Although, it cannot be simply asserted that Supreme Court is the protector

²³ *Supra* n. 13 at 14.

of environment interests, it can be deduced that it has acted as a pacifier in the tussle between commercial interest catered by the governmental policies and the societal interest including that of small-scale traditional fishermen. The Supreme Court ruling against the governmental decision of restricting the fishing boundaries²⁴ for local and small-scale fishermen simply adds another list of excuses that the lawmakers adopt to uplift the commercial interests of these big corporate giants over the socio-environmental preservation.

Moving towards new critical environmental law era with ethical orientation that can endure disciplinary fragmentation and political co-option, law and ecology must be tuned to meet the social expectations. This research stands at the intersection of multitude of the impacts. The physical impact on the marine ecological balance that uncontrolled usage of mechanized techniques has left is unprecedented and uncalled for. It must be seen as an alarm in light of the degrading earth conditions.

²⁴ CRZ notification 2011