

# **Nationalisation, property rights and the dilemmas of Coastal commons management in Kerala**

**Rosewine Joy**

Wish to acknowledge the support & funding for this workshop from IDRC

## **Abstract**

Across world resource management is experiencing an approach towards top to down; i.e. incorporating more communitarian arrangements in policy and decision making. However; in India and Kerala since 1980, has experimented a series of aquarian reforms and policies for marine resource management which is bottom to top approach. The new inland fisheries policy of 2010 is the last nail to the coffin .These reforms tend to disregard the institutional needs of natural resource management in general and common property resource management in particular. Nationalisation of water bodies and the creation of modern forms of private property for fishing combined with exposure of local markets to global requirements led to overriding of resource. This have caused continuous decline in resources and undermined possibilities for collective action in the region.Traditional fishermen here have no legal say even though the gear/access rights were with them all overriding rights rest with the governments.This has lead to degeneration of property rights; insecure livelihoods and resource degradation. This article reviews the incentives and constrain faced by traditional fisherman in the wake of the policy reforms for common property resources management. How the communities bargain and adapt to institutional reforms for livelihood security. As well we envisage alternative directions for policy intervention for resource sustainability.

*Keywords: Policy, Institutions, common property, community.*

## **Introduction**

In developing countries fisheries play an important role in local and national economies where they provide food, income and employment for large section of the population. However the framework within which they operate is often complex and vulnerable to failure. The absence of clearly defined property rights, and lack of policies which suites new resource management needs ,the tradeoffs between national and local needs and the impact of rising pressures on the economy has contributed to the failure of common property resource management in these countries.

In the earlier phase of globalisation the "traditional" small-scale fishery units were only tied to the global market through their output. The new globalisation extended its economic and technological tentacles to the very realm of production, modulating the technology used by the small-scale fishery for harvesting.

Kerala is India's most well-known fishery state. The coastal waters have been known for their high primary productivity. Kerala a major fish consuming and fish exporting state.

The recent development policies on the use of estuarine resources in the State of Kerala mostly misallocate resources from traditional uses to industrial enterprises. Since these decisions are based mainly on techno-economic information with least considerations for ecological sustainability and local livelihoods, local communities resist such government policies. Unfortunately, these communities left to them are unable to suggest alternate resource sharing arrangements due to lack of capital and skills.

## **Methodology and conceptual framework**

### **Methodology**

The research was primarily guided by the critical insights that fishers shared about the dynamics of developments and livelihoods of fishing communities in the wake of these policy reforms .Participatory Rural Appraisal method (PRA) and associated techniques were therefore the most appropriate methods for this research. The research methodology which commensurate participation of rural communities and

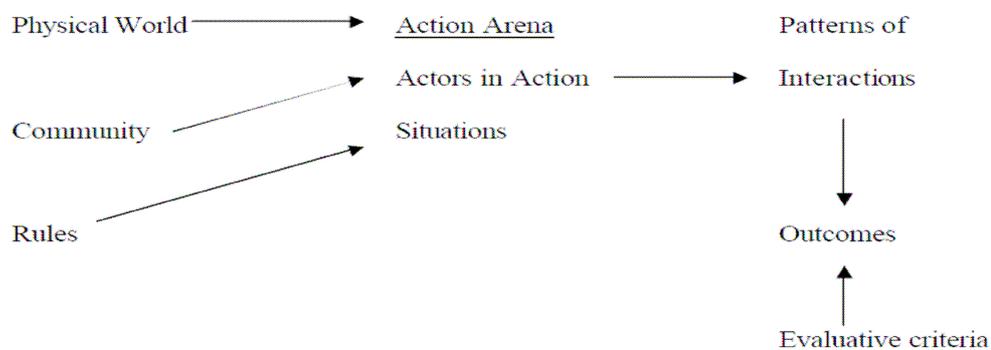
researchers in defining the research priorities are used. The methods like participatory observation, semi structured interviews, key informant interviews were used.

## Framework

The framework used for study is the IAD framework developed by Elinor Ostrom and other scholars associated with the Workshop in Political Theory and Policy Analysis at Indiana University

In IAD framework the focus is on individual decision making over some course of action. Policy processes and outcomes are assumed to be affected, to some degree, by four types of variables external to individuals: (1) attributes of the physical world, (2) attributes of the community within which actors are embedded, (3) rules that create incentives and constraints for certain actions, and (4) interactions with other individuals (see Ostrom, et al. 1994).

*Figure 1: The IAD Framework*



*Ostrom, et al. 1994*

## Study area

Tropical estuaries and wetlands are known for their biological diversity and considered to be one of the most productive yet complex ecosystems of the world (**Bailey and Pomeroy 1996; Holling 2002**). These systems offer a diversified

portfolio of natural resources and deliver many useful ecological services to society. In Kerala, estuaries and brackish water wetland ecosystems were believed to be economically insignificant and hence left to the domain of local inhabitants with no systematic efforts to develop it.

The Cochin estuary, where the research was conducted, is a 242,600 ha brackish water ecosystem with a treasure of biodiversity that supports multitude of livelihoods through a vibrant inshore small-scale fishery (Thomson, 2003). The inshore fishery produces over 42,000 metric tonnes of fish per year, representing over 150 different species.

### **Characteristics and features of policies from an institutional arrangement perspective**

In India policies for fishery management is primarily distinguished based on boundary demarcated for state and central interventions, the centre handles deep sea and the states deal with coastal fishing. Governments have tried to conserve fish population by resorting to command and control methods. Institutional arrangement for same is evaluated based on Institutional arrangement put forth by Ostrom (1992,1992b) ) for affective natural resource managements

- Member and access rule
- Resource boundary rule
- Appropriation (withdrawing) and provision rule
- Collective choice rule
- Monitoring and sanction rules
- Recognition of rights to organize by external agents
- “Nested Enterprises” multiple layers of nested enterprises
- Market condition for the resources

## 1. THE KERALA INLAND FISHERY BILL,2010

The Kerala inland Fishery Bill ,2010 is defined as “to codify and amend the law relating to inland fisheries in the state of Kerala and to provide for the development, management ,conservation,propagation,protection,exploitation and disposal etc of inland fish and fisheries in the state and for the promotion of social fisheries and to regulate and control the activities relating to fishery in aquaculture areas and for matters connected therewith or incidental thereto”

Though bill talks about development and management and to promote social fisheries, the institution's build on same is way different and primarily focus on command and control model. The following examples give an idea about the Command and control methods

- The development and management of fishery related activity or allied activity is vested with the Government
- The responsibility of giving technical advice to local self government institutions in the fisheries related matters is vested with officers of Department of fisheries authorized by the government in this behalf
- Government could restrict fishing in any area for a period of 1 year or less by notifying same in a Gazette
- Conservation policies to a great extend focus on dictating periods and time of fishing, imposing bans, specifying size of nets and kind of gear.
- Government has the sole ownership in granting license as well as suspend or cancel registration for the use of fishing vessel or free net or fixed gear
- Government has the power to restrict the number of fishing vessels in public water bodies as well as have the power to restrict the entrance of extra ordinary varieties of fish which may cause any damage to existing fishery wealth.
- Fish to be government wealth-any fish caught/collected/harvested/cultured through filtration in contravention of any of the provisions of this Act or any

rule or order made there under, whether fish is having life or dead shall be deemed to be wealth of the government

- The punishment for any offence under this Act would be imprisonment for a term which may extend to 1 year or a fine which may extend to ten thousand rupees . A second or subsequent offence will invite a imprisonment term of not less than 6 months.
- The monitoring and enforcing authority of the act lies with the government and government assigned officials ,also no suit prosecution or other legal proceedings shall lie against the government /officer for anything which is done in good faith

## **2. THE KERALA CONSERVATION OF PADDY LAND AND WETLAND ACT, 2008**

The Kerala conservation of Paddy land and wetland act 2008 could be defined as “An Act to conserve the paddy land and wetland and to restrict the conversion or reclamation thereof, in order to promote growth in the agricultural sector and to sustain the ecological system, in the State of Kerala”

- The policy is to a great extent confined to the does and don't of government officials like collector, agricultural officer, local committee, court etc. To a great extent is feeble on institutions and institution building.
- The provision of the act prohibition on conversion or reclamation of paddy land except in accordance with the act. For the reclamation of paddy land, for public purpose or for construction of residential building for the owner of the paddy land, provided that the Committee shall not recommend for filling of paddy land of more than ten cents in a Panchayath or five cents in a Municipality / Corporation, as the case may be, for the construction of residential building for the owner of the paddy land
- Government also act as an advisor to the farmers while there is no platform for knowledge base of farmers benefiting the farming community

- Local level monitoring committee is constituted at Panchayath and Municipality level but the farmer participation is limited to 3 members.
- No Local Authority shall grant any license or permit under the said Act for carrying out any activity or construction in a paddy land or a wetland converted or reclaimed in contravention of the provisions of this Act.
- Access to a an uncultivated paddy land /wet land could be given by the owner of the land or the government (Panchayath) to a new farmer if existing owner doesn't not cultivate for the year.
- The penalty for the violation of the Act is punishable with imprisonment for a term which may extend to two years but shall not be less than six months and with fine which may extend to one lakh rupees but shall not be less than fifty thousand rupees.

**3. DRAFT REGULATORY FRAMEWORK FOR WETLANDS  
CONSERVATION FOR COMMENTS, MINISTRY OF ENVIRONMENT  
AND FORESTRY, MAY 24, 2010**

India has a varied terrain and climate that supports a rich diversity of inland and coastal wetland habitats. Wetlands constitute 18.4% of the country's area of which 70% are under paddy cultivation. Research shows 1/3 of countries wet lands have already been wiped out or severely damaged due to below biotic and abiotic threats like habitat destruction and encroachments through drainage and landfill, over-exploitation of fish resources, discharge of waste water and industrial effluents, uncontrolled siltation and weed infestation, ill-effects of fertilizers and pesticides, other such anthropogenic pressures.

In pursuance of the policy resolution above draft is created a to formulate a structure for regulatory framework for the conservation of wetlands. These rules once in force will be called the Wetlands (Conservation and Management) Rules, 2009. Charecteristics of policy from an institutional perspective are

Though the policy envisages wet land protection by conserving wetlands from non wet-land use, reclamation of wetlands, new industrial uses, solid waste dumping and discharge of untreated waste this policy will be developed as a national inventory of

such wetlands and will be introducing a new legally enforceable regulatory mechanism for same. This will make all state level and Union territory level Acts nullified. Only category “C” wetlands come under state / union territory jurisdiction. B category though in state jurisdiction need central approval for any action. This could reduce participation of local level stake holders in decision making.

Prior approvals of the concerned regulatory authority are required for the notified wetlands

- Withdrawal of water, impoundment, diversion, interruption of sources carried within the natural carrying capacity of the wetland ecosystem and essential for the sustenance of local communities
- Harvesting of living and non-living resources; grazing to the level that the basic nature and character of the biotic community is not adversely affected;
- Treated effluent discharges from industries, cities or towns, human settlements and agricultural fields falling within the limits prescribed by the Central Pollution Control Board or the State Pollution Control Committee, as the case may be.
- Plying of motorized boat, if it is not detrimental to the nature and character of the biotic community
- Dredging only if the wetland is impacted by siltation
- Construction of boat jetties
- Activities which interfere with the normal run-off and related ecological processes up to 200 meters as per the definition of wetland
- Facilities required for temporary use such as pontoon bridges and approach road.
- Fisheries within the carrying capacity of the wetland;
- Any other activity to be identified by the regulatory authorities constituted in accordance with these rules, which may have adverse impact on the wetlands.

The central wetland regulatory authority which is constituted with members from various ministries as official members and non official member's nominated by

Ministry of Environment and Forests will have following powers :

- Grant of clearances for permissible activities in the wetlands within their respective jurisdictions
- Exercise regulatory functions
- Determine the zone of influence of the wetlands
- Issue broad guidelines for compliance by the State Governments

The appraisal authorities has the provision in categorizing wetlands , accepting /rejecting proposals on wetland usage and give technical advice on related areas

The Act majorly focuses on constitution of authorities at various government levels, their powers and responsibilities .Same is silent on livelihoods of stake holders.

-There is no clarity on institutional arrangements for stakeholders on access, withdrawal, harvest or monitoring mentioned.

-There is no mention on sanctions and control mechanisms in case of encroachment /misuse though the policy is to avoid same.

- There is no mention on kind of punishment's which would be imposed in case of misusage of wetland.

-The stake holder participation is limited to 2 , that too only in district level appraisal committee .The tenure for such representation is considered as rotational and limited to two years for 1 person.

### **Critical evaluation of policy from an Institutional perspective**

The major objective of creating a resource management policy would be sustainability of resources and livelihood protection of stakeholders. The above said three policies are defined on those line too . However there is huge gap on the aspire and reality . The focus of these policies centers around bringing more government control over resources and giving commands on appropriation to stake holders . The policies completely disregard the existing traditional communitarian arrangements which would have been created for sustainability of resources and livelihood security . This is evident as these Acts explain more on the roles and

responsibilities of government officials and their constitution of committees for execution of Act rather than the policies for strengthening institutional arrangement which will ensure resource sustainability and ensure livelihoods.

We could find the stake holder's of these common properties like fishers and farmers hardly have any role in resource management while we implement these policies .They are mere takers of these policies , there is no platform for expressing their concerns as their participation is limited or towards zero in these committees which control and commends the resources.

Now the question is will these act as an incentive for traditional fishermen/farmers to depend on government machinery for livelihood protection .Does these change of personals of government machinery will help to ensure sustainability of resources. I strongly believe its "no". It's a kind of division of interest on same resource pool happening out here. While communities have to depend on these resources for livelihood the government is viewing same from a revenue perspective through private participation. Taking control over common property resources itself could be the first step towards same .Logically without community participation; management & maintenance of these resources will be costly due to special characteristics of common property and associated high transaction cost . This may end up in collapsing the control mechanisms introduced by government and end up leaving the resources in the hands of non commoner's.

These policies don't contribute to the idea good governance. The good governance principles like Participation (the involvement of resource users in decisions that affect their livelihoods), Accountability (the ability of the parties affected by a decision to demand and receive an explanation), Transparency (openness of decision-making), Legitimacy (the acceptance by users of the authority of rule-makers) is not followed in these policies

If we evaluate these policies, from the institutional stand point majorly they centres around access and appropriation but without much focus on collective action and monitoring and sanction. Even if they are minimally touched, the government machinery doesn't have the infrastructure to implement same. Hence though Access

institutions are there, which has limited concern on livelihoods of stake holders, implementation of same would not be successful.

Though commoner's have low percapita income compared to rest, the major asset of the commoner's is their abundant of knowledge on the resources, resource appropriation, resource characteristics and resource management. By removing the community from common property resources management we are discarding centuries old best practises

### **Response of communities**

Meanwhile communities didn't stop as onlookers, as an adaptation strategy they have created their own informal management systems to adapt to new policy changes and secure livelihoods. Theses informal management systems are more focused on livelihoods of communities while have less regard for sustainable resource management. The survival of these informal systems depends heavily on the support of political parties who have specific agenda for themself. This makes the scenario more complex. Though through this informal arrangement the fisher's are farmers negate the access to the common property resources, high transaction cost on managing this informal system make it a small term resolution. Sooner or later this could collapse.

Another issue in informal systems is different community groups failed to create cross scale institutions between themselves, this leads to conflicts within community

To a great extend the community is also aware that they will be losing the bargain if policies are not revised with livelihood consideration. The new generation commoners who are comparatively more literate than their older generation is slowly migrating out of their traditional jobs of fishing and farming. In a way the rate of decline in commoner's would be higher than decline in common property resources in coming days if effective measures are not adopted.

The alternative directions for policy intervention for resource sustainability could be allocate rights to stakeholders. Traditional fishing communities should be given the right to fishing. Management of fisheries should be entirely in the hand of the

communities, with governments serving only as technical advisors, if needed by the communities. There are already many informal community management that are in place in many parts of India which could be studied and the framework could be used for policy application.

The communities should be given the authority to decide on access rights and withdrawals as well as monitoring should be held as community responsibility. The government could give expert advice on sustainable use of resources when there is new market interventions, new technology and resource issues occur. This will help commoners to cope-up with new world requirements of trade and practice at the same time ensures sustainable resource management and livelihood security.

## **Conclusion**

The policies should be created and implemented considering the livelihoods of communities and forming rules and regulations with their participation which will help us reduce transaction cost of monitoring and sanction. The best custodian for these resources would be the users of this resource as they will be more incentivized to protect same and have a sustainable use of resources. A hassle free resource management will help to bring confidence among commoner's to consider traditional occupation as a viable livelihood option.

## **References**

Ostrom, Elinor. 1999. "Institutional Rational Choice: An Assessment of the IAD Framework". Paul Sabatier, ed. *Theories of the Policy Process*. Boulder, CO: Westview Press.

Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

Ostrom, Elinor, Roy Gardner, and James Walker. 1994. *Rules, Games, and Common Pool Resources*. Ann Arbor: The University of Michigan Press.

Ostrom Elinor....(et.al),2002,The Drama of the commons,Washington DC, National Academic Press

Ostrom Elinor, Low S Bobbi, Costanza Roberts, Wilson James, 2001, Institutions Ecosystems and Sustainability; USA, Lewis publishers.

Berkes .F, R.Mohan, P.M.Conney, R.Pollnac, R.Pomeroy, 2001, Managing Small Scale Fisheries –Alternative Directions and Methods, Ottawa: IDRC

Berkes .F. 2002,Cross scale Linkages : Some promising Institutional and their Dynamics, The Drama of the Commons ,Washington DC,Academy Press

Lobe Kenton; Governance in a small scale fishery ,Local response and External pressures in Kerala India, Master Thesis, University of Manitoba 2002

Tomas M. Koontz, 2003 , An Introduction to the Institutional Analysis and Development (IAD) Framework for Forest Management Research, Paper prepared for “First Nations and Sustainable Forestry: Institutional Conditions for Success,” workshop, University of British Columbia Faculty of Forestry, Vancouver, B.C

The Kerala conservation of paddy land and wetland act, 2008, Government of Kerala, Law department

Draft Regulatory Framework for Wetlands Conservation for Comments, 2010, Government of India, Ministry of Environment and Forestry

The Kerala inland fishery Bill, 2010; Twelfth Kerala legislative Assembly, Bill no :305