

Unrecognized Tenure

The absence of tenure security threatens the traditional livelihoods of the fixed bag-net fishworkers in India's eastern state of West Bengal

Conflicts over use of natural resources are common in coastal areas globally. Fluid environmental frontiers, historical marginalization of fisher communities, and overlapping tenure systems coded in formal law or customary institutions make governance of coastal and marine resources complex. In the midst of such conflicts, fishworkers in small-scale fisheries (SSF) find themselves situated at the bottom of the ladder of development in terms of priorities, despite their useful contribution towards securing livelihoods of coastal communities and ensuring nutritional security of the global population at large.

In India, on the one hand, the absence of formally recognized tenure rights of small-scale fishworkers alienates them from the resources that form the basis of their social and cultural well-being. On the other hand, weak governance structures threaten the ecological sustainability of the resources which are claimed and contested by various user groups, including government institutions, civil society, private enterprises, marine fishing communities and the general public at large. In this article, we assess the implications of marine tenure systems on small-scale fishworkers practising fixed bag-net fishing (*behundi jal*) in the eastern Indian state of West Bengal.

Tenure in the international context

Concerns around the sustainability of marine fisheries have led to an increasing focus on the rights to use, access, manage and alienate marine resources. Broadly bundled together as 'tenure rights', these rights raise important questions around the social ties and institutions that govern such

resources. Understanding tenure systems requires an assessment of four broad aspects: the resource itself; those who possess rights to the resources; the rules and norms; and the authorities governing and managing the resources. A tenure system thus determines who can use which resources, and the duration and conditions governing such use.

SSF communities are widely acknowledged to be critical actors for ensuring sustainable and equitable utilization of coastal and marine resources. The environmental stewardship of SSF has found cognizance in international instruments such as the

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FAO's Code of Conduct for Responsible Fisheries (CCRF) and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty (the SSF Guidelines). They prescribe that "small-scale fishing communities should have secure, equitable and socio-culturally appropriate tenure rights to fishery resources, fishing areas and adjacent land and forests" for their social and cultural well-being.

Within the broader rubric of tenure rights, customary tenure has been highlighted as a key component of tenure security for SSF. Defined as the norms regulating rights to resources that are enforced and managed by community institutions and non-State authorities, customary tenure is distinguished by its flexibility,

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dynamism and sensitivity to place and local moral economies. Critically, given colonial legacies and State interventions in fisheries, customary tenure interacts, and overlaps, with the formal legal system, and rarely functions entirely independently of the latter. In the fisheries context, this means that customary tenure relies on, and is impacted by, the formal legal system. In the next section we examine the formal legal system impacting customary tenure in coastal and marine contexts in India.

The legal setting

Coastal and marine fisheries in India are governed by a patchwork quilt of laws, rules and policies. At the constitutional level, in addition to the general environmental provisions, responsibility for coastal and marine fisheries is shared between the state and central governments. The former has the responsibility for tenure and fisheries within territorial waters and the latter beyond territorial waters. At the national level, the Government of

in relation to dwelling houses, boat-building and fishing activities. Equally significantly, the CRZ notification requires the creation of Coastal Zone Management Plans and local-level Coastal Zone Management Maps that must recognize and demarcate the fishing villages and common properties of the fisher communities as well as their fishing zones in the water bodies.

Taken together, it is arguable that the CRZ recognizes the presence of fishing communities and their traditional usage of coastal and marine resources. It is undeniable, however, that the CRZ grants no explicit protection to systems of customary tenure of SSF in India. When combined with increasing pressures on coastal land and marine space, efforts by governmental and private actors to enclose coastal areas for tourism and other activities, and poor governance overall, it is clear that tenure security for SSF faces grave threats.

In addition to the CRZ Notification 2019, the West Bengal Marine Fishing Regulation Act (WBMFRA), 1993, is the overarching state enactment for marine fisheries. While the WBMFRA does not explicitly reference customary tenure, it does, however, contain special protections for SSF. These include a heightened governmental responsibility for protecting SSF and creating special fishing zones for fishers using non-mechanized boats.

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India has issued the Coastal Regulation Zone (CRZ) Notification, 2019, under Section 3 of the Environment (Protection) Act, 1986. First issued in 1991, and then in 2011 and 2019, the CRZ notification has the stated mandate of conserving and protecting coastal and marine areas in addition to ensuring the livelihood security of fishers and other coastal communities.

The CRZ notifications have been extensively critiqued for their managerial approach towards the coast and a lack of focus on ensuring the rights and security of marine fishers. However, it is significant that while the notifications do not confer rights, they do recognize traditional rights of SSF. The notification makes several references to traditional rights and customary uses of fishing communities

Customary tenure and *behundi jal*

Customary marine tenure systems can be observed among the marine fishing communities of Purba Medinipur and South 24 Parganas in West Bengal, where production of dried fish follows an elaborate array of institutional arrangements from pre-harvest to post-harvest activities. Every year from the month of September until March, the marine fishing community from native and neighbouring villages of the two coastal districts come together to constitute social organizations known as *khoti*.

Fishing practices in each *khoti* are pursued following a set of rules and norms that uphold the principles of equity and collective action. That is to say, access to fishing grounds, and



With depleting fish catch and dramatic environmental change, a traditional way of life is under threat. Fishing practices in each *khoti* are pursued following a set of rules and norms that uphold the principles of equity and collective action

space on land for building living spaces and fish drying is distributed equitably among the fishing households in the *khoti* before the start of a fishing season. *Khotis* are usually responsible for determining who is permitted to join the community institution and for resolving disputes among their members.

The *khoti* is a gendered space. Fish work in the *khoti* is undertaken by family units where division of labour is based on gender roles. The men usually go fishing in groups of two or three on wooden motorized boats within the territorial zone until the limits of the fishing grounds of the *khoti*. After the fish is landed from the boats, the work of the women fish driers and sorters commences. They spread out the fish on the beach on top of nets which are laid out in front of the encampment of the *khoti*.

Once the fish is dried under the sun, the women carefully sort the fish, based on species and quality. The finer quality of the fish goes for human consumption whereas the second-grade quality goes for the fishmeal and fish oil (FMFO) industry, both bought and transported by the merchant or

dadondar. The women work either under the family units or, in some cases, as wage labourers in the *khoti* for a daily wage of INR 200-300, depending on the availability of work.

The fishing grounds are mapped and demarcated at the start of the season, where every fishing household is eligible for a stretch of the sea to stake their bag nets or *behundi jal* on bamboo poles. Fishing is based on lunar cycles. The fixed *behundi* nets, staked on poles, are lifted during the low tide to harvest the fish catch and automatically floats back on the water during the high tide. The technology of operating *behundi* nets, with their mesh size ranging between 10 mm to 24 mm, targets fish species such as small brown shrimp (*Metapenaeus monoceros*), ribbon fish (*Trachipteridae*), barramundi (*Lates calcarifer*), Indian anchovy (*Stolephorus indicus*), Bombay duck (*Harpadon nehereus*), golden spotted anchovies (*Coilia dussumieri*), hair-fin anchovy (*Setipina taty*), Indian white-prawn (*Penaeus indicus*), kuruma prawn (*P. japonicus*) and paste shrimp (*Acetes indicus*). However, over the years, the mesh size of the bag-nets has become smaller due to high demand from the

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FMFO industry. This reduces scrap value from fishing effort, albeit at the cost of long-term sustainability of the marine ecosystem and available fish resources.

Threats to marine tenure

The tenure needs of the fishworkers in a *khoti* spans from the water to the land. However, in the absence of formal

and governance systems recognize the customary tenure systems practised by small-scale fishers. These systems are unwritten but they have widespread acceptance from the community members.

Recognition of customary tenure systems would imply that the State recognizes that small-scale fishers have a preferential right to access, use, manage and conserve coastal resources. It would grant them protection from State and non-State actors seeking to displace them, and would ensure that their traditional fishing practices and ways of life can be sustained and passed on to future generations.

Moreover, it is important to emphasize that customary tenure systems usually have a strong interest in preserving and stewarding the resources upon which livelihoods depend. Recognizing and supporting systems of customary tenure, which already have robust rules in place for maintaining healthy ecosystems, is critical to ensure the resilience of marine fisheries. Insecure tenure for small-scale fishworkers, who have traditionally protected the coasts and marine resources for their subsistence and livelihood, not only threatens their well-being but also brings forth newer challenges in an uncertain era of global environmental change.

recognition of their tenure rights, the viability of their social organization and traditional practice is subject to multiple threats.

Small-scale fishers lack formal land rights in coastal areas and, as a result, they have faced consistent threats of displacement from infrastructural projects for promotion of coastal tourism, national defence, trade and commerce and other developmental initiatives. For example, the unlawful development of hotels in violation of CRZ rules along the Mandarmani coast has displaced fishing communities.

The proposed development of a marine drive road, the Tajpur deep-sea port in Ramnagar, and a missile launching platform in Junput have been promoted on the grounds of enhanced connectivity, increased economic activity and national security, respectively. However, the cost of such developments is almost always borne by the small-scale fishers who find themselves increasingly erased from the Bengal coast.

Conclusion

Small-scale fishers rely on both land and sea for their customary rights and livelihoods. By practising ecologically sensitive and sustainable modes of fishing, they are custodians of the fragile coastal and marine resources that are critical to both the environmental health and food security of the entire nation. In order to ensure that they are allowed to thrive in coastal spaces, it is imperative that our legal

For more

A Review of Governance and Tenure in Inland Capture Fisheries and Aquaculture Systems of India

<https://www.fao.org/3/cb8615en/cb8615en.pdf>

Report on National Training of Trainers (TOT) Workshop on the SSF Guidelines (Marine Fisheries) October 13-15, 2022, Asha Nivas Social Service Centre, Chennai, India

https://www.icsf.net/wp-content/uploads/2023/01/930.ICSF_Marine_TOT_Report_2022.pdf

Profits and Perils of Farming Fish: Case Studies of Shrimp and Carp Aquaculture in West Bengal

https://www.icsf.net/wp-content/uploads/2022/12/930.ICSF228_West_Bengal_Santanu_Chacraverti.pdf

Social Development and Sustainable Fisheries: West Bengal

https://www.icsf.net/wp-content/uploads/2023/06/930.ICSF243_Social_Development_West_Bengal_India.pdf

Making Small-scale Artisanal Fishing Zones Work!: Research study on the tenure rights of the most vulnerable and marginalized fishers in Srikakulam, Visakhapatnam and East Godavari districts of Andhra Pradesh

https://www.icsf.net/wp-content/uploads/2022/10/930.ICSF223_Andhra_Pradesh_Tenure_Right.pdf