



# Navigating customary law and state fishing legislation to create effective fisheries governance in India



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## ABSTRACT

When customary legal systems exist alongside state regulations, individuals can choose between these different frameworks to support their claims to resources. Research suggests that such framework switching to maximize self-interest weakens and challenges resource management. Multiple legal systems are at work in India's fisheries and this study examines how they work to govern conflict over purse-seine fishing in the Sindhudurg district of Maharashtra State. Through participant observations, interviews and state fishing law reviews, this study finds evidence of strong customary legal systems, operating through local cultural practices, to protect common property rights, equitable access, ethical and ecological concerns. In contrast, state legislation appears weak because it addresses issues of local concern, such as equitable access, at a slow pace and over such a large scale as to be absent. Consequently, multiple legal systems in these fisheries do not create a management challenge that follows a predictable path towards resource degradation. Instead informal, customary rules applied alongside formal state legislation interact in complex ways that create opportunities for effective co-management.

## 1. Introduction

This study draws on literature on legal pluralism to examine the effect of multiple overlapping legal systems on natural resource use. Legal pluralism refers to the co-occurrence, overlap and co-existence of multiple legal orders. This branch of research does not presume a naturalized, exclusive association between law and nation-state, instead understanding law more broadly, given that societies may be ordered by a number of different normative frameworks (Benda-Beckmann, 2002). These multiple legal orders then facilitate a variety of strategies that individuals use and draw upon to claim or access resources [24]. Marine fisheries are a realm where there is abundant evidence of multiple legal practices (e.g [28,2,5,19]). There appears to be a high linkage between livelihoods filled with ecological, social or political uncertainties, such as marine fishing, and legal pluralism because multiple legal systems allow people the flexibility to adapt to changing conditions [25]. Yet much of the research on the implications of legal pluralism for fisheries governance suggests that after a period of struggle, primitive customary law declines in the face of modern state interventions (e.g [19]). Even in cases when the state includes rather than overwhelms customary law, a power struggle ensues between groups who use different customs to choose one customary legal system over another [13]. Apropos such situations, Griffiths [13] identifies

legal pluralism as a source of conflict. This paper specifically addresses a conflict that has developed due to the use of purse-seines in the fisheries of Sindhudurg district, Maharashtra State, India, to examine whether legal pluralism, in this context, facilitates adaptive fisheries management and in what ways customary laws coexist and interact with state fishing law.

The literature about customary law in Indian fisheries reveals three broad themes. First, that customary law is generally associated with small-scale, artisanal or traditional fishing (e.g [2,28]). However, recent research has begun to re-envision this association by studying larger scale fisheries, such as trawl fisheries, and finding evidence of emergent customary law (e.g [27]). This paper builds on the idea of customary law as emergent by examining customary rules to govern the use of the purse seine—a recently introduced fishing technology in Sindhudurg district. Second, community rules, where present, are better enforced within a community than state regulations. Compliance with local rules was achieved through cultural rituals, such as association with temples [28], association with caste [17], kinship ties and spatial location [3], occupational homogeneity [32], values of social justice and ecological sustainability [1,16]. However, these rules appear to breakdown outside these small, closely knit communities. For instance, the *kadakkodi* system only exists in association with particular temples and is absent among the predominantly Catholic fishing society

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Fig. 1. Location of Maharashtra State in India and the study area—Sindhudurg district in Maharashtra State.

in southern Kerala [28]. Small-scale fishing communities may not be able to continually bear enforcement costs for customary laws over larger scales (e.g [5]). Novak and Axelrod [27] find that compliance with community rules rather than district legislation occurs when communities are homogenous in terms of caste and fishing gear use.

Third, that emergent and modern customary law finds innovative ways of working with or within state legal practices. Both caste based [27] and non-caste based [29] trawl boat owners associations in Tamil Nadu have worked with state authorities to create effective fishing rules aimed at restricting new entrants and further expansion of the fishery.

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