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**RIGHT TO FISH AND RIGHT OF FISH: A JUXTAPOSITION
CEMENTED BY REGULATION AND POLICIES**- Nadia Amin¹**Abstract**

Fish, a living creature of the ecosystem, critical for a healthy aquatic and marine ecosystem of biodiversity are sentient beings who can feel pain. Biologists, over years, based on substantial evidence, are of the view that fish do indeed experience pain just like birds and mammals. The principle of Sustainable development, evolving out of International Environmental Conferences of state parties, as a concept, being based on the mutual development of socio-economic and environmental aspects of biodiversity, it is therefore necessary to look into the state of a 'fish' in the context of 'Right to Fish' and 'Right of Fish'. 'Right to Fish' can be understood in the light of socio-economic justice; interdependency of 'socio-economic right to fish' on the 'socio-environmental right to fish'; whereas 'Right of Fish' can be taken into consideration from the underlying 'vision' of national legal frameworks in promoting sustainable fisheries, as well as in the light of sustainable fisheries being antithesis to sustainable consumption and biologically unsustainable fishing. The objective of the paper is to analyze the various contexts and thereby intend to facilitate a reason, based on just, fair and reasonable grounds for recognition of the legal right of fish, on par with other living creatures whose dignity has been protected in the context of being an animal under national legislations. For the purpose of assigning fish dignity under 'Right to Life' in accordance with Article 21 of the constitution, clarity of the term 'animal' through an interpretation based on social, scientific, economic as well as legal is necessary. The research paper is therefore a work on the various aspects as referred which are

¹ LL.M. Student (I.E.L) 2nd Semester at Amity Law School, Noida

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crucial for ascertaining the legal position of a life which has been designated as 'stock' to be harvested in tons.

The scope of the paper is global because it aims to understand the state of fish, in consideration of its utilization from a global perspective. Further the scope of the paper is progressive because it intends to provide a suggestion enhancing the dignity of fish without violating the mutually supportive principle of socio-economic and environmental development.

Keywords: Right to Fish, Right of Fish, Sustainable Consumption, Biologically unsustainable fishing, Sustainable Development Goals, Socio-economic justice, socio-environmental right.

Introduction

Every form of life forming the biodiversity is unique and deserves recognition irrespective of their worth to human beings. However, human beings being the most rational organisms of all the living organisms of biological diversity, have considered themselves capable of utilizing the resources including the living and natural resources. Such self accorded right of utilization over the years being carried out in an unsustainable manner led to depletion of natural as well as living resources both on land and in water, particularly fishery resources. It is a well known fact that competition for resources that are scarce, invites conflicts among people dependent on such resources, whereas conservation of resources brings about justice through maintenance of peace and socio-economic security. Natural as well as living resources being finite, with the special feature of renewability among living resources, concerns relating to conservation of such living resources in the seas and oceans although began around 1000 of years ago, yet the first intergovernmental conference on the law of the seas began in the year 1930 in Hague, followed by different international conferences on human environment as well as human environment and development, along with the adoption of the final convention on the law of the seas in the year 1982 ascertaining the right of States with respect to marine specific activities including fishing rights. Fisheries being a representative sample of the natural ecosystem, safeguarding of such an ecosystem through conservation and sustainable use of the biological diversity, along with ensuring fair and equitable sharing of benefits arising out of such genetic resources is crucial for

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socio-economic and environmental development in facilitating the 'right to fish'. Whereas a slight deviation in the safeguarding mechanism is critical in facilitating the 'right of fish'.

An effort to define and interpret 'Fish' from socio-economic and environmental perspectives.

With an attempt to define fish from a social perspective, 'Macmillan English Dictionary For Advanced Learners', defines 'fish', as an animal that lives in water and swims. It breathes by using its gills and moves by using its tail and fins. It further defines 'animal' as a living creature that is not human; and 'animal rights' as a belief that animals should be treated well by people and not killed or used for scientific experiments.. Hence, based on the literal meaning, a fish is basically considered globally as an 'animal' by common people having reasonable consciousness.

The scientific definition of the term 'fish' cannot be limited to a strict definition based on their appearance, hence for the purpose of scientific inclusion of fish in the category of animal needs to be relied upon the findings of fish biologists and academicians with respect to their nature. According to an article "Diving Deeper: Why We Should Care More About Fish" published by "Sea Shepherd", Fish Biologist, Victoria Braithwater, fish are those species, who not only violently flop their bodies when hooked in the mouth, but also gasp for breath when they are subjected to the most common fishing method. Such a pain has been addressed by Fish Biologist, Victoria Braithwaite in the way a fish is fished when she said, "If we look at trawl netting, that's a pretty gruesome way for fish to die: the barometric trauma of getting ripped from the ocean into open air, and then slowly suffocating". Such an observation reflects the definition set forth for 'animal' by the Merriam Webster's Collegiate Dictionary. Hence, based on the interrelationship between general and scientific interpretation of 'fish', it can be considered as an animal.

In terms of economics, the definition of fish is related to the economic activity associated with fisheries, which involves harvesting fish or any aquatic organism from the wild or raising them in confinement, and which may be either associated with traditional or small scale fisheries for sustenance or large scale or commercial fisheries for profit.

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Law is a set of rules framed by humans to regulate the conduct of humans. Rules having legal enforcement come into picture only when there is a human conduct contradictory to the moral human conduct or dharma, thereby challenging and posing threat to the normal functioning of the society. Law is the mechanism to set right the challenged dharma posed by misconduct through human behavior. Society is a part of biodiversity. Society, which is particularly the association of humans, is dependent on the various forms of lives forming the biodiversity for its survival. However, when such dependence exceeded the reasonable use threatening the principle of intergenerational equity with respect to earth's natural and living resources, the need to legally recognise the assets of biodiversity arose. A notable example of The United States of America being aware of the fact of the valuable input of the fishery resources in the economy and recreational opportunities for people, as well in the food supply and health of the nation; and having realized the threatened survival of certain fish stocks due to decline in such stocks resulting from pressured fishing practices, defined the term 'fish' in Magnuson-Stevens Fishery Conservation and Management Act, as "the term 'fish' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds". Such an Act is a federal Act of the Department of Commerce of the United States of America. Based on the definition provided by this Act, it is clear that fish is an "animal" as recognised by a sovereign state.

Right to fish in the light of socio-economic justice

Right to fish is basically the right of human beings to have access to fisheries for the purpose of economic activities. According to Sea Shepherd Global Campaign, fish being an important source of nutrients, are considered as "stock" to be harvested and sold by the ton. According to a report on "Sustainable Fisheries: International Trade, Trade Policy and Regulatory Issues" , published by United Nations Conference on Trade Development (UNCTAD) in the year 2016, fisheries sector being critical for food security and nutritional intake, as well as for trade, more than 3.2 billion people along the coastlines rely on fish for their livelihood, and developing countries at present are the main exporters of fish. According to this report around 350 million jobs are linked to fisheries, which in turn contributes to the international trade flows in fish and is

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a medium for foreign exchange earnings for developing countries. Further, the compliance process related to fishing activities acts as a source of government revenue.

Such right is recognised globally by the preamble of the “United Nations Convention on the Law of the Seas, 1982” while recognising the sovereignty of all states and the desirability to establish a legal order for peaceful use of the seas and oceans. The framework also provides rights to the coastal states to explore, exploit, conserve and manage the living resources in its territorial sea as well as the exclusive economic zone. It also provides rights of fishing to the nationals of all states subject to the provisions of Article 116 sub-clauses (a),(b) and (c). Thus, right to fish is a global right crucial for the socio-economic upliftment of any state thereby facilitating the aims of “Sustainable Development Goals” primarily: Goal 1 “to end poverty in all its form”; Goal 10 “to reduce inequalities within and among countries”; Goal 2 “to end hunger, achieve food security and improved nutrition”; Goal 3 “to ensure healthy lives and promote well being for all ages”, Goal 5 “to achieve gender equality and empower all women and girls”.

Interdependence of the “socio-economic right to fish” on the “socio-environmental right to fish”

Right to fish for socio-economic justice is further based upon the sustainable management of the fisheries, which promotes maintenance of the quality, diversity and availability of fishery resources in a sustainable manner, to ensure food security, poverty alleviation and sustainable development. The “Convention on the Law of the Sea” provides for the duty of the states to cooperate with other states in taking measures for their nationals as may be necessary for conservation of living resources of the high seas. It also provides for states to conserve and utilization of the living resources by ensuring that living resources are not over-exploited. Such a framework is key to furthering the vision of sustainable development enshrined in Goal 17 “strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development”

The Food and Agricultural Organisation’s “Code Of Conduct For Responsible Fisheries, 1995”, in its effort on recognising the importance of fisheries and fish farmers associated with the activity, provides for an obligation to carry out activities associated with fisheries in a responsible manner so as to ensure effective conservation and management. Conservation and

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management of fisheries is pivotal in ensuring stakeholders' right to fish. Further, according to this code, for the purpose of sustainable fisheries, awareness among the fishers and fishermen with respect to conservation and management as well as their involvement in the formulation and implementation of the policies of the state associated with fisheries is crucial. Such a regulation is a critical point in achieving the objective of SDG Goal 4 "lifelong learning opportunities for all". Thus, based on the concept of conservation and management of living resources the interdependence of "socio-economic right to fish" on the "socio-environmental right to fish" can be ascertained as an important mechanism for a sustainable biodiversity.

"Right of fish" in the context of the vision of national legal frameworks in promoting sustainable fisheries.

Fishing being an economic activity and fish being a renewable living resource under intense pressure of overexploitation, various national legal regulatory frameworks are adopted by the nation states to promote sustainable fisheries. But for the cause of assessing the implied concept of 'right of fish' within 'right to fish', the careful reading of the purpose or objective of any legal regulatory framework is crucial. For instance, the reason behind United States of America adopting the Magnuson -Stevens Fishery Conservation and Management Act, 2007 , was primarily due to the acknowledgement of the contribution of fish, a living resource of the marine environment in achieving socio-economic justice among humans, as well as realization of the fact that fish which are finite but renewable, are under intense pressure of overfishing resulting in the decline and reduction of certain fish stocks. Accordingly, the need to conserve and manage the fishery is crucial for doing away with the long term threats to the viability of commercial and recreational fisheries due to the continuing loss of marine, estuarine and other aquatic habits. The provision in the Act with respect to rebuilding of overfished stocks thereby implies for the 'right of fish' as a resource having life of its own to grow and multiply its growth in a sustainable manner for the purpose of facilitating the sustainable needs of mankind. Apart from the United States of America, India in its National Fishery Policy, 2020 , having visioned for a healthy and vibrant fisheries sector that meets the needs of the present and future generation, came up with the objective of intending to ensure sound management and sustainable development of fishery

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resources and associated habits, with a view to maintaining the integrity of the ecosystem to meet the socio-economic security. Consequently, had the right of fish to sustain peacefully without fear of loss of its habitat been not relevant for ascertaining the socio-economic sustainability of the human race, then the focus of mankind would not have been primarily on rebuilding the stocks of overfished fish. And it is no wonder that such a fact has been implicitly accepted by legal frameworks leading to express provisions on fisheries conservation in the light of “right to fish”.

“Right of fish” in the light of sustainable fisheries being antithesis to sustainable consumption and biologically unsustainable fishing

Fish being pivotal for socio-economic upliftment, such a sector being under intense pressure of overfishing and overfished. According to the report of the United Conference on Trade and Development in 2016(hereinafter referred as the UNCTAD), the global per capita demand for fish increased from 10 kg of fish per capita per year in 1976 to 23 kg in 2014, and as such 87 percent of the world’s marine fish stocks are fully exploited, over exploited or depleted and the number has been increasing steadily. However, the United Nations Food and Agriculture Organisation’s report on “The State of World Fisheries and Aquaculture 2022” , is relevant on two factual submissions, primarily under two parts namely:-

- a) Consumption of Aquatic Food ;
- b) The Status of Fishery Resources

a) “Consumption of Aquatic Food” discussed the trends in aquatic food consumption on the basis of the data collected, that the global annual per capita consumption of aquatic foods grew from an average 9.9 kg in 1960 to a record high of 20.5 kg in 2019. According to this report the upper-middle-income countries experienced the strongest annual growth of 28.1 kg per capita because of its expansion in fisheries and production growth. China being notable with per capita consumption growing from 4.2 kg in 1961 to 40.1 kg in 2019. On the contrary, the high income countries are experiencing moderate growth of 26.5 kg due to already high levels of consumption of aquatic food and 5.4 kg and 15.2 kg in low middle income and lower middle-income countries respectively. The report further provided the fact of consumption not being in proportion to the

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population. The factual evidence of the availability of 158 million tonnes of aquatic food, available for human consumption, Asia accounted for 72 percent of the total consumption, while its population represented 60 percent of the world's population. However, aquatic food consumed in Europe and the United States of America decreased over time with 10 and 6 percent of consumption in 2019 from 32 and 9 percent in 1961. The countries with coastal areas were reported to be in higher consumption levels. In terms of population the consumption is highest in Island, Faroe Islands and Maldives which consume about 80 percent of aquatic food per capita per year. Consumption henceforth is crucial for determining the sustainability of fisheries in terms of the right of the fish to restore and rebuild their stock for the purpose of stability of the biodiversity as well as protection of the socio-economic needs of the growing population.

b) "The Status of Fishery Resources", while discussing the status of marine fisheries, provided that according to the assessment of the FAO, the biologically sustainable stocks accounts for 82.5 percent of the 2019 landings of the assessed stocks. However, the fraction of fishery stocks within biologically sustainable levels having been 90 percent in the year 1974 decreased to 64.6 percent in the year 2019. Regrettably, the percentage of stocks fished at biologically unsustainable levels from 10 percent in 1974 to 35.4 percent in 2019. According to the report sixteen major fishing areas, including the South East Pacific (Area 87) had the highest of 66.7 percent of stocks fished at unsustainable levels, followed by the Mediterranean and Black Sea (Area 37) of 63.4 percent. Further, areas with the lowest proportion of stocks being fished around 13 to 23 percent have also been reported as under biologically unsustainable levels. Furthermore, the report provides that the total landings in the Western Indian Ocean in the year 2019 being 5.5 million tonnes, around 62.5 percent of the assessed stocks were fished within the biologically sustainable levels, while 37.5 percent was carried out in biologically unsustainable levels. On the other hand, the Eastern Indian Ocean countries have been reported to have catches of fish around 6.8 million metric tonnes, out of which only 65.3 percent of stocks have been reported to have fished within biologically sustainable levels. However, Eastern Central Pacific is notable by remaining stable at 85.7 percent since 2015 with a biologically sustainable fishing level. Thus fishing in the context of the sustainability of the existing stock allowing such stock to replenish is crucial in determining the 'right of a fish' to develop in a particular area, else

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biologically unsustainable fishing leads to antithetical impression with the practice of ‘right to fish’ from socio-economic perspective, and the notion of ‘right of fish’ from socio-environmental perspective.

Conclusion and Suggestion

According to Savigny, ‘person’ basically is the subject or bearer of a right. Whereas, according to Salmond, a ‘person’ is any being whom the law regards as capable of right and bound by legal duties. However, the jurist regards beast or lower animals as mere objects of legal rights but not subjects of them. But in the context of biodiversity, who is capable of assigning a legal right is a gray area that needs to be discussed critically. Legal rules having been framed by man based on the consent of only one species of the biodiversity being man himself, does not clarify the ultimate rationality behind setting up of duties for the rest of the species or components of the biodiversity. Man holds a superior position over the components of the various ecosystems of the biodiversity for socio-economic realization of benefits as well as protection of such resources, and accordingly he can be considered as a ‘person’. However, from the environmental point of view each and every species of the ecosystems has equal right to survive and flourish in nature. Natural order of the environment has an upper hand over biodiversity, and the biodiversity has the right and duty to maintain the stability through sustainability. Hence, resources that are critical for survival of different ecosystems including mankind ought to be given a differential treatment in jurisprudence through rational discussion. Fish is one such species, critical not only to human, but also entire marine biodiversity by being a key player in mitigating climate change. Based on the role of fish, the overexploitation of such a sentient being for consumption needs to be balanced in a way that provides an opportunity to such a species to perform its role by restoring its stocks. Consumption, being not in proportion to the population, activities of fishing in a biologically unsustainable manner needs to be regulated along with the existing regulatory legal frameworks in existence.

The Supreme Court of India, in Para 62 of judgment in *Animal Welfare Board Of India v. A. Nagaraja* in the year 2014, held that, “Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the

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Constitution, while safeguarding the rights of humans, protects life and word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. And so far as animals are concerned, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity”. Since Indian statute on “The Prevention of Cruelty To Animals Act, 1960” , while defining ‘animal’ emphasized on animal being any living creature other than a human being; the Ministry of Fisheries, Animal Husbandry and Dairying if possible can frame regulation for upholding the intrinsic worth, honour and dignity of fish in terms of biologically unsustainable capture for the purpose of consumption not in proportion to the population of an area. The rebuilding capacity of the stock in an area of capture needs to be strictly regulated by providing incentives for carrying out fishing activities in a sustainable manner.

References

- <https://www.seashepherdglobal.org/latest-news/care-about-fish>
- <https://legal.un.org/avl/ha/uncls/uncls.html>
- <https://www.macmillanenglish.com/in/dictionary>
- <https://www.merriam-webster.com>
- <https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act>
- https://unctad.org/system/files/official-document/webditcted2015d5_en.pdf
- https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- <https://sdgs.un.org/goals>
- <https://www.fao.org/fishery/en/publication/56346?lang=en>
- <https://www.dof.gov.in/sites/default/files/2021-01/english.pdf>
- <https://unctad.org/publication/trade-and-development-report-2016>
- <https://digitallibrary.un.org/record/3978694?v=pdf>
- Law Finder DoC Id # 552717

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- <https://dahd.nic.in/prevention-cruelty-animals-act-1960>
- <https://www.legalserviceindia.com>
- <https://ebooks.inflibnet.ac.in/lawp01/chapter/244/>



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