

CAUGHT IN THE CROSSFIRE: The Dilemma of Fisherfolk Prisoners



Abdulla Wasti
Meera Nadeem
Zahaid Rehman

Caught in the Crossfire: The Dilemma of Fisherfolk Prisoners

The arrest of fisherfolk of India and Pakistan on the maritime border between the two countries has been an issue of serious concern and engagement for almost three decades. While the conflict between the two neighbours at sea is quite different from the one on land, the two are inextricably linked since the escalation of tensions at terrestrial boundaries has resulted in aggressive action at sea. Every year, dozens of fishing boats from both countries are detained by the Indian and Pakistani governments on charges of trespassing into enemy waters, and flung into jail, often languishing there for years.¹ Almost invariably poor and unlettered, they rarely have any documentation. These fishermen are treated as criminals, unfairly penalised and vilified for the doings of unresolved history and unmarked geography. Prison conditions for these prisoners are miserable, and their already marginalised families back home continue their struggle for survival.²

The trend thus far has been that when tensions between two countries heat up, the arrests of fisherfolk by both countries increase. While there have been interventions in the past by civil society groups bringing some temporary relief, there have been no serious attempts on part of either government to seek a permanent solution to the issue of fisherfolk prisoners. Instead, the release of these prisoners now serves the purpose of a Confidence-Building Measure (CBM) that is contingent on the vicissitudes of the India-Pakistan relationship.³

The issue of fisherfolk prisoners lacks a straightforward solution since it lies at the intersection of political, legal, and environmental roadblocks. From the Sir

Creek Dispute to hurdles surrounding consular access, and the depletion of resources in the Gujarat Sea, it is crucial to untangle these three dimensions to the issue in order to gain a holistic understanding. This policy brief attempts to do just that and proposes policy recommendations to seek a longstanding resolution which would alleviate the miseries of innocent fisherfolk on both sides of the border who have been caught in the crossfire for far too long.



Consular Access and the Indo-Pak Joint Judicial Commission

The quarrel over the issue of imprisoned fishermen goes back to the 1960s, when Pakistan and India first disagreed on the status of Sir Creek, a channel of water that separates the province of Sindh in Pakistan from the Indian state of Gujarat. The argument has since broadened into a wider dispute over how the land borders should extend into the Arabian Sea. There is also a lack of consensus between the countries on what maps to officially use when discussing their sea borders.

¹ Hafsa Adil, "A Village Ails after Pakistani Fishermen's Arrest," Al Jazeera, February 28, 2017, <https://www.aljazeera.com/features/2017/2/28/a-village-ails-after-pakistani-fishermens-arrest>.

² Beena Sarwar, "On Either Side of Border, Fishermen Suffer the Worst of India and Pakistan's Bitter Relations," The Wire, August 13, 2020, <https://thewire.in/south-asia/india-pakistan-cross-border-prisoners-fishermen>.

³ The Research Collective & Pakistan India Peoples' Forum for Peace and Democracy, "Where Do the Fishworkers

Go? Report of the Round Table Conference on India-Pakistan Fishworkers and Prisoners Issues," Update Collective (The Research Collective- PSA, January 28, 2020), <https://updatecollective.wordpress.com/2020/01/28/where-do-the-fishworkers-go-report-of-the-round-table-conference-on-india-pakistan-fishworkers-and-prisoners-issues/>.

In 2008, India and Pakistan agreed to provide consular access to each other's prisoners under the Consular Access Agreement. The provision outlines the repatriation of detained persons from the other country "within one month of confirmation of their national status and completion of sentences" as a 'low hanging' CBM between the two countries. They are also supposed to "provide consular access within three months" to cross-border prisoners, however, this rarely happens. (While the three-month time range applies to Indian fishermen as a result of the Consular Agreement between India and Pakistan, prisoners from all foreign countries are guaranteed the right to consular visits pursuant to the Vienna Convention to which Pakistan is a signatory.) In most cases, the undertrial period can be longer than the actual sentence, and even take months to verify the prisoners' identities. This includes fishermen of both countries that have wandered over into unchartered territory and are captured as prisoners.⁴

The United Nations Convention on the Law of Sea (UNCLOS) allows coastal states to protect their territorial waters and economic zones, following which Pakistan and India have framed their corresponding laws. The Maritime Boundaries of Pakistan are governed by the Exclusive Economic Zone (Regulation of Fishing) Act 1975 and the Territorial Waters and Maritime Zones Act 1976. The maritime boundaries of India are governed by the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976 and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981. The Sir Creek dispute has received more importance after the UNCLOS convention as the claims of the two countries may have implications for the main maritime boundary between them in the Arabian Sea.⁵

The India Pakistan Joint Judicial Committee on Prisoners formed in 2008 has echoed the

demands of peace activists on both sides of the border, who want the states to institute a "no-arrest" policy at seas and equip the fishermen's boats with GPS devices. Comprising of four retired judges from each country, the committee used to meet prisoners jailed on either side twice a year and propose steps to ensure humane treatment and expedite the release of prisoners and fishermen who have completed their terms, until the last meeting in October 2013. This Committee has been inactive since October 2013 due to government delays, but there have been cross-border discussions about reviving it for the humanitarian needs of foreign prisoners. India's Ministry of External Affairs has nominated judges, and while Pakistan's Ministry of Foreign Affairs has greenlighted the Committee's reconstitution, Pakistan has yet to nominate judges. Consequently, while both India and Pakistan periodically release large numbers of prisoners as gestures of goodwill, there appears to be no streamlined process followed that ensures the rights of foreign prisoners are systematically upheld rather than on an ad hoc basis.

Pakistani advocacy groups assert that the arrests violate the United Nations Convention on the Law of the Sea, which both Pakistan and India have signed. Nothing substantial has been done yet however, for these accidental criminals as both governments use them as political leverage at critical points in their perpetually volatile bilateral relationship.

⁴ Ibid.

⁵ Qurat Mirza, "Fishermen on Both Sides of the Pak-India Maritime Borders Are Treated as Prisoners of War—A Story of Tears - Pakistan," ReliefWeb, February 3, 2012,

<https://reliefweb.int/report/pakistan/fishermen-both-sides-pak-india-maritime-borders-are-treated-prisoners-war-story>.

No. of Fisherfolk Prisoners (2014 – 2021)		
Year	Indian citizens	Pakistani citizens
2021	270	77
2020	270	97
2019	209	99
2018	418	108
2017	494	78
2016	463	36
2015	355	27
2014	237	116

Sir Creek Dispute

The Sir Creek dispute is one that is inextricably tied to the problem of fisherfolk being captured across the border on both sides. Without embarking on a long-drawn out history lesson, in recent times, the stance of the sides keeps the two at an impasse. Pakistan claims the entire water body as its own because it contends that the creek was included as a part of Sindh in the resolution by the 1968 tribunal.



The Green Line is the boundary as claimed by Pakistan, the red line is the boundary as claimed by India. The black line is the undisputed section.⁶

India refers to the dispute between the Sindh Division and Rao Mahraj of Kutch in 1908, and claims that the Thalweg principle should be applied. Their reasoning behind this is the contradictory settlement of the claims made over a century ago. The resolution agreement stated that the boundary lay to the east of Sir

Creek, but in a later paragraph also asserts that the watercourse is navigable “most of the year”. This last section is all the impetus India needs to cite the Thalweg principle as the only legitimate means to settle this longstanding dispute.

As far as international law is concerned, it offers up no helpful definitions for the term navigable, and there is no clear distinction of whether this means that it can be used year-round, or simply any crossing point during the year determines the waterbody’s status based on this rule.

Pakistan asserts on international mediation, while India cites the Simla Agreement as the foundation for a bilateral arrangement to overcome the order dispute. The presence of foreign interlocutors is not acceptable to the Indian state.

Sir Creek’s flawed demarcation, however, is something that both states would like to see continue, at least in the foreseeable future. For India, accepting Pakistan’s claim and adhering to Islamabad’s border would entail giving up on the Exclusive Economic Zone and exploitation of the resource-rich continental shelf. Pakistan’s reasons for continuation of the dispute stem from Delhi’s inability to give up the claim on Sir Creek entirely. Since Pakistan claims the whole channel, any negotiated settlement that gives up rights is not acceptable.

But the dispute cannot be extended indefinitely. Environmental changes are changing the lay of the land (and tidal estuary) as well. The course of Sir Creek has diverted over the years, and will continue to do so. If the dispute were to be settled according to thalweg principle (demarking the boundary along the middle of the channel of the water body)—which India supports, both sides might end up losing territory now, with the

⁶ Sir Creek map accessed from Wikipedia.

change in trajectory. Quite naturally, this dispute is one of the central problems related to the arrests made of fisherfolk on both sides of the border.

Ultimately however, debate on the Simla Agreement, Sir Creek and other outstanding issues is pointless if one is to ignore the root for all conflict and strenuous bilateral relations; the Kashmir question. Recent developments since 2019 have led to a settlement on this dispute seeming even less likely than before. India's unilateral decision to scrap Article 370 and 3A have left the status of Kashmiris on the Indian side in limbo.

Pakistan has understandably made Kashmir the non-negotiable focal point of its foreign policy with India. The plight of fisherfolk, lack of trade ties and outstanding questions such as Siachen and Sir Creek take a backseat in comparison.

Arrests

India and Pakistan have been in discussions to resolve the issue of fisherfolk arrests as far back as 1985, without any conclusive change made to date—although the sides came close to an agreement in the early 2000s. There is

270 Indian fishermen are currently in Pakistani custody, while around 77 Pakistani fishermen are in Indian jails. Most of the Indian fishermen in Pakistan jails are from Gujarat, which has India's longest coastline at 1,600 kilometres.

an understanding in both camps that a solution to this issue is important, especially considering the fact that it is the innocent and poor fishermen that suffer the most. However, the Modi government's complete lack of interest in discussing matters of

mutual interest with Pakistan has relegated this problem, like others as well to the bottom of the agenda list.⁷

Experts familiar with the situation have often lamented that the laws related to these arrests are too strict and merit revisiting. Since the problem itself is not overly complicated—at least on the surface—is not possible for the authorities on either side to simply verify citizenship status, confiscate the catch if necessary and release immediately? Previous attempts to resolve this conflict have revealed that this is easier said than done. Getting caught on the coastal territory of the other state means that the arrest is followed by a long and arduous process at the behest of intelligence agencies to determine whether those apprehended pose a greater security threat.⁸

Even after being released—for some this can mean a decade or more—extended scrutiny from one's own covert security officials all but ensures that fishermen, once caught, are not trusted completely by either state.

Even though India stands to gain more from a quick resolution, old fractures in the

In international law, the Thalweg Doctrine states that if two states have a boundary on a waterway—without specific provisions of the type of water body—the boundary between the two can follow the thalweg (the middle of the primary navigable channel). The keyword in this definition however, is the term navigable; Sir Creek is only traversable in high tide, which India claims is enough to determine this boundary on the doctrine. It also cites the 1908 decision as a means to prove that the channel allows for navigation across it.

relationship have also led to this current

⁷ "Exchange of List of Prisoners between India and Pakistan," Ministry of External Affairs - Government of India, January 1, 2021, <https://mea.gov.in/press-releases.htm?dtl/33358/Exchange+of+list+of+prisoners+between+India+and+Pakistan>.

⁸ Smitha R, "Fishermen Caught in India-Pakistan Conflict Keep Languishing in Prisons," VICE, March 9, 2021, <https://www.vice.com/en/article/n7vp4b/the-fraught-lives-of-fishermen-in-india-and-pakistan>.

impasse.⁹ The 2008 Mumbai attacks have led to greater suspicion of infiltration and attacks on both sides and has hence led to this indefinite stalemate. Since then, there have been few noteworthy attempts and opportunities at the official level to seek a resolution to this longstanding issue. The recent cooling of rhetoric and commitment to adhere to the 2003 ceasefire agreement has raised hopes regarding the resumption of bilateral talks, however it remains to be seen if the fisherfolk issue will feature on the agenda as more than just a CBM, if at all.

Environmental Disregard

The issue of fisherfolk prisoners also has an environmental dimension to it which is crucial to examine in order to gain a deeper understanding of the compulsions of the fishworkers. The marine depletion of the Gujarat sea over the years has contributed to the rising number of Indian fishworkers crossing the sea boundary into Pakistan since the 1990s.¹⁰ The Gujarat continental shelf was previously endowed with varied marine resources, however, after the 1990s and extending to the early 2000s, the sea experienced estuary pollution due to unchecked industrialisation taking place in the region. Thermal power plants set up in Saurashtra and Kutch contributed significantly to the gradual depletion of marine resources as the average temperature of the sea water increased by 4 degrees since the 1980s.¹¹

Before fishworkers were able to equip their boats with GPS devices, they would inadvertently cross over to the Pakistani side of the border when fishing. It is interesting to note however that despite being aided by GPS devices, the number of fishworkers involved in crossing over to the other side has

only increased over time. Due to the heating of coastal waters, there is hardly any fish available within the 13 nautical mile radius in the Gujarat sea today. Resultingly, the fishworkers are compelled to trespass into Pakistani territory, often ignoring the GPS warning.¹²

A fishing trip lasts at least a fortnight and costs a boat owner approximately Rs 2.3 to 3 lakh. If a boat returns with a catch not enough to cover the cost or earn the owner a profit, the men lose their livelihoods as boat owners then prefer not to go to the sea. One boat staying ashore means at least eight fishermen miss out on work.

Economic considerations further compel the fishworkers to push the boundaries at sea. The duration of an average fishing trip into the sea would be 8 to 10 days; however, as a consequence of fishes receding further into the sea, the average has now gone up to 15 to 20 days. The longer the fishworkers are at sea, the more distance they have to travel for a catch; increasing their chances of getting apprehended by the Maritime Security Agency (MSA). Majority of the fishworkers are laborers that are sent out into the sea by boat owners who take on substantial loans from money lenders for each fishing trip for partial payments to workers, the fuel cost, the storage, and the equipment. Therefore, the fishworkers who venture out bear the burden to catch fish worth at least the principal amount of the boat, if not more. When unable to do so, the only option left is to take on debts which would be a challenge to pay-off considering their economic situation¹³.

⁹ Damayantee Dhar, "How India's Fishermen Get Caught Between the Devil and the Deep Blue Sea," *The Wire*, January 30, 2018, <https://thewire.in/society/indias-fishermen-get-caught-devil-deep-blue-sea>.

¹⁰ "Fishing in Troubled Waters," *The Hindu*, December 1, 2016, <https://www.thehindu.com/opinion/op-ed/Fishing-in-troubled-waters/article16072089.ece>.

¹¹ "Ending the War at Sea: In Pursuit of Permanent Solutions to the India-Pakistan Fisheries Conflict," *Update Collective* (The Research Collective – PSA, September 9,

2019), <https://updatecollective.wordpress.com/2018/09/03/ending-the-war-at-sea-in-pursuit-of-permanent-solutions-to-the-india-pakistan-fisheries-con%EF%AC%82ict/>.

¹² Charu Gupta and Mukul Sharma, "Blurred Borders: Coastal Conflicts between India and Pakistan," *Economic and Political Weekly* 39, no. 27 (July 2004): pp. 3005-3015, <http://www.jstor.org/stable/4415232>.

¹³ "Ending the War at Sea: In Pursuit of Permanent Solutions to the India-Pakistan Fisheries Conflict," *Update*

Environmental degradation impacting the lives of fisherfolk is not just an issue on the Indian side of the border however, as wetlands in Karachi are being threatened by development projects. The government has shared plans of building a city by taking over the twin islands of Bundal and Buddo which will deprive fishworkers of their livelihood and cause considerable harm to the unique ecology of the delta. Furthermore, the delta is also home to the largest climate mangrove forests in the world.¹⁴ The destruction of mangroves is of serious concern to Pakistani fisherfolk as increasing urbanisation continues to encroach on coastal land. Mangroves are breeding grounds for various fish and crustaceans, provide protection against heat waves, and absorb a large amount of carbon dioxide. Not only do mangrove forests serve as shields for coastal people, but are also important for commercial instalments that could be vulnerable to natural disasters in case of deforestation.¹⁵



Further compounding the miseries of fisherfolk in Pakistan is the lack of clear deep-sea fishing policy that balances commercial interests with ecological preservation. The federal government initiated the process of issuing licenses for deep-sea vessels under a

policy to fish in the Exclusive Economic Zone (EEZ) around 20 miles off the coast in Sindh and Balochistan.¹⁶ Activists deem the expansion of fishing into the deep sea as a grave threat to the livelihood of small fishermen and also for marine ecology.¹⁷ There has also been speculation around government plans to allow Chinese companies to carry-out deep-sea fishing along the 1,050 km coastal line of Sindh and Balochistan, which could threaten the survival of at least a million fisherfolk. Deep sea trawlers are notorious for stirring up the sediment lying on the seabed, displacing and harming marine species, and causing pollutants to mix into plankton and move into the food chain.¹⁸ While the disruption of this delicate ecosystem may not be contributing as much to the issue of fisherfolk prisoners on the Pakistani side, it is nonetheless indicative of the disregard being shown towards the wellbeing and concerns of the fisherfolk community.

Recommendations

It would be worth considering settling the matter without taking it offshore to the courts or prisons. This proposal was in discussion in official channels as early as 1985, but without success. **Releasing the fisherfolk immediately when caught or just confiscating the vessel, without making any arrests on the spot,** would help keep the fisherfolk lead normal lives without disruption. If there was a fine or penalty to be levied, this should be sorted out without taking them to the opposing country for a lengthy incarceration and subsequent release process.

Collective (The Research Collective – PSA, September 9, 2019).

¹⁴ Shah Meer Baloch, "Fishermen Fear Pakistan's New 'City for the Elite' Will End Their Way of Life," *The Guardian* (Guardian News and Media, November 19, 2020), <https://www.theguardian.com/global-development/2020/nov/19/fishermen-fear-pakistan-new-city-for-the-elite-will-end-their-way-of-life>.

¹⁵ Jan Khaskheli, "Consequences of Shrinking Mangroves Ecosystem," *The News*, December 20, 2020, <https://www.thenews.com.pk/print/761311-consequences-of-shrinking-mangroves-ecosystem>.

¹⁶ "PFF to Initiate Drive against Deep-Sea Fishing Trawlers," *The News International*, August 23, 2020, <https://www.thenews.com.pk/print/704564-pff-to-initiate-drive-against-deep-sea-fishing-trawlers>.

¹⁷ "Protest Campaign Planned against Deep-Sea Fishing Trawlers," *DAWN*, September 3, 2020, <https://www.dawn.com/news/1577579>.

¹⁸ Naimat Khan, "No Food Left in the Sea: Pakistani Fishermen Fearful as Chinese Trawlers Dock at Karachi Port," *Arab News*, October 19, 2020, <https://arab.news/vpncr>.

However, with the threat of terrorism and espionage, in current times, it seems unlikely that either side will be amenable to this course of action. At the very least, prisoners should not be held hostage to the volatility of the relationship between the countries and should be released as soon as they have served their time.

Adequate security arrangements must be made to protect the lives of prisoners that have been on the receiving end of death threats. Prisoners have been at the receiving end of abuse and death threats in the past; the welfare of the neighbouring country's citizens must be ensured by the host state.¹⁹

Jail officials on both sides of the border should ensure that **prisoners must not be subjected to inhumane treatment**. It is incumbent upon the jail officials to safeguard prisoners' right to life and meet their medical needs. Prisons are also notorious for being overcrowded and this is even more of a concern since the onset of the COVID-19 pandemic.

The **India-Pakistan Joint Judicial Commission on Prisoners** should be revived. In light of the February 25, 2021 announcement of a ceasefire between India and Pakistan, space has opened up for dialogue on less contentious issues. Therefore, a meeting of the Commission should take place soon to take advantage of the current thaw in relations.

Developing a **quicker mechanism for verification of identities and nationalities** could potentially lead to earlier releases. If there is a fast-track process to verify where the fisherfolk caught are from, a certificate that identifies their trade would assist in streamlining the process.

While there is an established practice of exchanging the list of prisoners on an annual basis, **releasing these lists on a more regular basis** would help with ensuring that

the issue remains in the limelight. Sharing this information more frequently would also increase transparency and serve prisoner welfare. In addition to the names of prisoners, the list should specify the date of arrest and the address of the jail. This is important because consolidated information regarding detained fishermen is lacking as figures are not updated periodically.

Women prisoners, fishermen, and prisoners with frivolous charges should be released in the wake of COVID-19.

Online video-conferencing platforms should be used to **allow for prisoners to interact with their family members**.

Arrests made should be procedural, with specified timeframes and limits to ensure that consular access is provided to those incarcerated within three months, in implementation of the 2008 bilateral agreement. Delays in being presented to court and verification of nationality alongside other issues should be resolved more efficiently, being verified.

Timely repatriation of prisoner dead bodies should be facilitated within a week of their death.

Considering the economic compulsions, especially the depletion of marine life on the Indian side, perhaps **adopting a political economy approach to policy making** would help in achieving a more long-term solution to the issue. This would involve initiating a conversation around the sharing of resources within the maritime economic framework.

The development of a **Maritime Economic Cooperation Agreement (MECA)** between the two countries needs to be considered. Under such an agreement, common fishing fields by both the countries would be declared and there would a transfer of revenue between India and Pakistan, towards the

¹⁹ Shazia Hasan, "Fisherman Beaten to Death in Indian Jail Laid to Rest," DAWN, April 6, 2019, <https://www.dawn.com/news/1474215>.

royalty of the extraction of marine resources. A royalty sharing agreement would also considerably contribute to fish-landing centre development, boat technology development, and fishing livelihood being improved in Pakistan.