

Detained fishermen

Caught in

The system of human rights violation

Pakistan Fisherfolk Forum

INTRODUCTION

The Issue

Pakistani and Indian forces started apprehending each other's fishermen along with their boats in the Arabian Sea in 1987 and for more than last three decades poor fishermen of both the countries have suffered immensely due to this cruel practice. Maritime Security Agency (MSA) of Pakistan is responsible to arrest the Indian fishermen when they reportedly enter the Pakistani waters while for India, Coast Guards, Border Security Force (BSF), Custom or Indian navy does the same to Pakistani fishermen. Pakistani and Indian civil societies have been continuously raising the issue with their respective authorities and due to these efforts many fishermen have been released from the jails from time to time but the problem yet has not been solved for good. Seemingly a simple issue, has been made complicated because the two states have been maintaining a policy of enmity and rivalry all along after their independence and thus arresting each other's fishermen. There is a tit for tat game between the militaries of the two countries. Similarly, the punishment for crossing into the other country's water by the fishing boats may be an imprisonment for a few months but due to the hostility between the establishments / ruling classes of these countries, the fishermen languish for years in the detention centres even after completing their imprisonment.

Background of Civil Society Action

Though the families and relatives of the detained fishermen had been raising the issue with the authorities of both the countries and the media had been highlighting the travails of these prisoners there was no real breakthrough. In mid nineties, alarmed by the serious human rights violation against the detained



fishermen CSOs/NGOs of Pakistan and India came into action—the notable organizations in Pakistan had been Human Rights Commission of Pakistan (HRCP), Pakistan Institute of Labour, Education and Research (PILER) and Anjuman Samaji Behbood of Ibrahim Hydri in Karachi which later grew into Pakistan Fisherfolk Forum (PFF). Their continuous struggles bore the fruit when in Male SAARC Summit in July, 1997 prime ministers of Pakistan and India announced the release of 195 such prisoners from both the countries. Though apprehending the fishermen's boats didn't stop, human rights activists and fisherfolk communities themselves became more vocal about their conditions including this problem of fishermen's arrests in the sea. As South Asia Labour Forum (SALF) also brought this issue in the limelight, various international organizations started paying attention to this human rights issue and it became an international level concern. At present, not only the welfare organizations like Edhi Foundation and Fishermen Cooperative Society (FCS) are continuously involved in responding to the problem, fisherfolk's movement has become strong enough to give a vociferous knock at the authorities' door. So much so that the issue of detained fishermen has become a permanent mention in India-Pakistan foreign relations and dialogues.

Miseries the detained fishermen face

When a fishing boat is encountered in the sea by the armed forces of the other country, the crew gets extremely frightened and they generally react nervously. First, the captain or the crew members decide whether to surrender or make an effort to escape—sometime an escape effort could be dangerous if the members of the arresting party are nasty and cruel. There have been incidents of firing shots, fishermen being injured or killed by these firings by the security persons. Once apprehended these fishermen lose everything they have with them or in the boat (catch, currency, watches, radios, mobiles, food supplies etc.) and the boat. Then, they are taken to the relevant police station (in Pakistan, dockyard police station in Karachi) where the charges are framed, later they are presented before the court and sent to jail. Apprehending party decides about the charges; charges may range from violation of custom rules to spying, drug trafficking, violating the laws governing Exclusive Economic Zone (EEZ) and entering a foreign country.

When the boats don't return in accordance with their expected time, grief and gloom of a death scene overcast the whole village to which the apprehended fishermen belong. Families and close relatives rush for more information and through various means it is confirmed that their loved ones actually were arrested—these days it is possible to confirm quickly because of the communication links between the fishermen organizations on both the sides of the border; previously it used to take months just to do that. In some cases, when other boats have seen the capture while escaping in time, the families are at least saved from the anxiety and fear of the unknown.

In Pakistan, the updated and confirmed information (exact name, address, National Identity Card Number, photo, etc.) about the arrested fishermen is collected and with the help of PFF it is passed on to the FCS. The information is further sent to the interior and foreign ministries and no one can be sure whether these ministries maintain and record such information or not.

From PFF's Files

Since its inception in 1998, PFF has been active in addressing the issue of detained fishermen, Pakistani and Indian both. In addition to mobilizing fisherfolk communities and civil society so as to pressure the government to get the imprisoned fishermen released, it has been maintaining the records for such cases. It represents Pakistan's fishing communities at various forums and raises voices against the miseries these people are going through and particularly highlights the issue of imprisoned fishermen at these humanitarian forums. Overall it performs the following tasks on regular basis:

- It routinely feeds information to the media through press releases; for instance when fishermen are captured—Pakistani fishermen by the Indians or Indian fishermen by the Pakistan MSA. Meanwhile it collects the detailed information about the detained fishermen from their families or close relatives, maintains the record and makes it available to the concerned quarters.



- When Pakistani fishermen are released, PFF informs their families, makes arrangements to receive the released fishermen and quickly points out to the authorities if there are gaps in the lists of actually released and the announced ones. At these occasions it boosts the morale of the freed fishermen that they were not criminals but victims of rivalry between the bureaucracies of the two countries.
- During the campaigns it highlights the miseries, which the children/women of the detained fishermen go through. It supports such families, represents them by presenting their case to the government. In fact the fishing communities of coastal areas of Pakistan (i.e. Sindh and Balochistan) have confidence in PFF and provide all kinds of information about the detained fishermen.

Letters, All Tears

In general, prisoners in South Asian countries can't send letters to their families though the jail manuals allow this. Nevertheless, they find a way to smuggle letters out of the prisons, which finally reach their families. On the one hand these letters provide enormous consolation to their loved ones, on the other these portray extreme helplessness of the imprisoned fishermen. In these letters they repeatedly request their relatives to keep in touch through letters; with the assumption that their loved ones deliberately don't write letters while the truth is that it is difficult to keep the communication open between the people inside jails and those outside—due to the archaic jail systems in these backward countries.

Detained fishermen try to tell everything happening to them in jails of their detaining country, including all the miseries they had gone through and the injustices done to them; but due to limited space confine these letters to sending the greetings by quoting each and every name of their relatives and close family members. One thing they make sure is to inform various other families about their imprisoned persons, in other words these are generally collective letters. They always ask for prayers and good wishes from their acquaintances, friends and families, also request for the efforts to be made for their release and in the end hope that one day they would be home and unite with their families and relatives.

What Happens to the Families

Fishermen who are captured in the sea are generally poor people; they work for the boat owners on catch-sharing basis. Once these bread earners are arrested, most of their families face serious economic crises. In worst scenarios fishermen belonging to the same family (Father with sons and nephews or brothers with brothers in law and nephews) fall in the hands of the enemy's security forces. In any case women, old and children of the affected household quickly run out of food and savings if any. For a few days some neighbour or the boat-owner or a well-off relative may take care of them but in a month or two they are on their own. "Can we imagine that when the only bread-earner of a family is arrested by the coast guards or border force, what happens to the family? Their laughter and happy moments turn into grief and sobs; children are forced to leave the schooling and start begging; their health deteriorates; everybody in the community looks down upon them; veil-observing women are compelled to come out and resort to domestic labour. All they earn is one time food in 24 hours; their dignity is gone and they have to face an insensitive world all around."ⁱ PFF has documented the conditions of such families in its files—it is full of pathetic tales of the victims of this phenomenon of detained fishermen.ⁱⁱ In addition, a fact-finding mission has also documented case studies of such fishermen.ⁱⁱⁱ

Legal Aspects and Obstacles

Once the arrested fishermen are sent to jails they are at the mercy of the legal systems and practices in the respective countries. Legal institutions in both the countries are not much different when it comes to the prisoners. The situation is worse in case of foreigners, in particular Pakistani detained in India or Indians in Pakistan. One of the main obstacles is that the relatives can't go to the other country for pursuing the cases because of strict visa regime—neither they can utilize the system of bribery in the legal systems nor they can facilitate their relatives-prisoners in any way. In nutshell, the procedures are so cumbersome and slow that mostly the fishermen languish in jails for two to three years irrespective of their due punishment based on the charges framed against them.

Whatever the charges, poor fishermen are not told anything about these charges and their implications. They don't have their counsels and can't prepare any legal defence against these cases. So the judges of these courts take full liberties in dealing with such cases. Once they have served their sentences they are



out of jail but can't go to their homes and hence are detained in a different place—sometimes worse than a jail. The simple reason is that they don't have passports and visas. They wait until some protocol of exchange is agreed between the two governments at the higher level. Interestingly, even if the exchange has been agreed, authorities wait until some dignitary visits or there is some event (something like day of independence) so the fishermen are released as a good will gesture or on humanitarian ground.^{iv}

PERFORMANCE OF GOVERNMENT INSTITUTIONS AND LACK OF INFORMATION

Who Deals With It

Logically speaking, ministries of interior (provincial and federal) or home ministry should have all the record and pursue the cases as these are supposed to protect their citizens. The officials of these ministries don't proactively work on the issue; rather wait for the information from FCS or an NGO or fishermen's families. For confirmation they just refer the case to police stations so as to confirm the identity of the detained fishermen, which takes months. They seldom approach the apprehending party across the border directly / quickly; in fact they don't have any direct contact, nor they would like to pursue the cases, as it is not included in their duty. In the meantime there comes a meeting of the secretaries or the ministers of internal/external affairs of the two countries and these official scramble for information so as to use it as a bargaining chip on the negotiating table. That's how the need of consular access to their citizens is felt and the move to issue a notification from the foreign offices is made. Now the high commissions start making efforts to locate these prisoners and again the officials of interior ministries wouldn't know which jails house these prisoners and what is their status.

(One must keep in mind that the number of staff in Indian and Pakistani High Commissions are determined by mutual agreements and they usually are not enough. Telephone communication across the border is either tapped by the intelligence agencies or there is simply fear that it is not safe to call somebody across the border. In any case it is culturally and socially prohibited to make a phone call across the border.)

How It Is Dealt With

There are various kinds and levels of meetings in which the fate of the imprisoned fishermen is decided. Home secretaries' level meetings are extremely important because their will & intensions and thus the agreements really carry weight—they administer police & jails and issue passports & visas. Then there are foreign secretaries meetings, which generally decide the swapping or exchange of prisoners or detained fishermen. Nevertheless the success of these secretaries' level meetings is subject to the quality of relations between the two governments. The quality of relationship or the stance to improve or muddy the relations depends upon various complex factors in the foreign policy initiatives on the part of these two rival countries. In any case foreign ministers' meetings are important in the sense that they initiate the improvement of relations between the countries and thus directly have a positive effect on the situation of prisoners. Similarly meetings between the prime ministers or presidents on the occasion of SAARC summits are valuable as these highlight the issue on a higher / international level. Besides, there are local commanders' meetings and various hotlines, which may help facilitate the resolution of some problems—their good relations sometime stop the forces from arresting the other's citizens.

The most crucial factor in India-Pakistan dealings however is the coordination and cooperation between all these levels; otherwise any one level may and can foil the efforts of the other level. It is generally noted that the defence establishments and intelligence agencies of the two countries undermine the efforts of rapprochement or normalization between the two nations.

Other Facilitators

Certainly other entities like human rights organizations (in particular fisherfolks' associations across the region or the globe play their role to pressurise the government to come to the rescue of these fishermen. Families of the detained fishermen continuously protest against the delays and inactions on the part of the authorities. In fact information gathering and passing it on to the authorities is managed by these civil society organizations. The biggest advantage of these nongovernmental initiatives is that the people are in close contact with their counterparts across the border and quickly can take action as the situation demands.



Lack of Information

There is no consolidated information about detained fishermen because it is not updated regularly. As regards Indian fishermen MSA keeps the record, which seems authentic and updated—because of the simple reason that it is the only force, which apprehends the Indian fishing boats. FCS maintains the file of Pakistani fishermen arrested or released but its source is nothing but PFF or fisherfolk's families. However its information may have gaps sometimes. PFF has sufficient information but it is scattered and needs to be consolidated and checked frequently. Government departments and ministries depend on the communications from MSA or FCS or CSOs. In any case there should be a register somewhere, which consists of all the names of all the detained fishermen with their particulars including date of arrest & release and the address of the jail.

REASONS BEHIND THE ARRESTS

There are various reasons behind this whole phenomenon. Some of the incidents are just circumstantial or accidental or due to ignorance; sometimes these may be interest-driven or due to desperation while there are also deep-rooted systemic problems behind these arrests.

Apparent Reasons

1. There is no physical boundary in the sea; captains of the fishing boats just have a fair guess where not to go. In most cases fishing boats can unwillingly and unintentionally cross in the other's territories because of tidal currents, engine failures, wind force and cyclone.
2. Fishing is like hunting; once the fishermen have spotted the fish, they are engrossed in the pursuit of expected catch and in managing their nets. Meanwhile they might have crossed the so-called border and even are not aware that the apprehending force is keenly watching and following them. This might have been a common cause, initially during the late eighties or early nineties.
3. Because the fish resources have depleted significantly, boat owners now are mostly investors and have a pressure on the captain and the crew not to return empty handed. In any case fishing boats may take a little risk in getting close to the boundary. And if by bad luck the armed contingent of the other country is hell-bent on performing a patriotic duty to catch the "enemy", they are readily arrested.

Systemic Defects

If the above-mentioned circumstances had been the only cause, the arrested fishermen could have been freed quickly, either in the sea after some warning / fine or taken to nearby inland post and after negotiations between the local commanders would have been freed. In fact there are deep-rooted systemic defects, which are reflected in states' policies and practices in relation to the whole fishing sector and the fisherfolks. Moreover, the rivalry between the two states is the main cause for the travails of fishermen.

Law of Sea and the Dispute

United Nations Convention on the Law of Sea (UNCLOS) allows the coastal states to protect their territorial waters and economic zones and hence Pakistan and India have framed the corresponding laws. The Maritime Boundaries of Pakistan are governed by Exclusive Economic Zone (Regulation of Fishing) Act 1975 and Territorial Waters and Maritime Zones Act, 1976. While the Maritime Boundaries of India are governed by 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.^v

Sir Creek dispute between the two countries received more importance after the UNCLOS because the claims of the two countries may have implications for the main maritime boundary between them in the Arabian Sea. From the following map it is clear that if India agrees to Pakistani claim it can't enter the creek's water. Traditionally, Indian fishermen might have been fishing in the creek in the past; so now Indian boats may deliberately enter the creek to stake a claim for sharing the creek. That's why an official



of MSA while giving reasons for the arrest of Indian fishermen said that the Indian fishing boat had gone 34 kilometres inside Pakistan's territory.^{vi} The same official told this scribe that Indians have all the sophisticated equipments to monitor their positions and therefore they can't make a human error. In nutshell, we can conclude that both the states are arresting each other's fishing boats to maintain and compound the Sir Creek dispute.

From Wikipedia, the free encyclopedia



[Sir-Creek-map.svg](#) (SVG file, nominally 800 × 740 pixels, file size: 74 KB)

Title: The [Sir Creek](#) dispute.

Legend: 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.

Fisheries Sector—Defective Policies and Practices

After independence, South Asian countries didn't pay enough attention to their fisheries sectors; rather didn't maintain the colonial policies, which were to some extent fisherfolk-friendly. The new states took control over the resources but didn't develop the sector on modern lines. The main pillar of the new states' policies was to grab the water bodies and fishing areas and tax the fishing activities and the fish / marine production. On the same lines they allowed the industrial fishing trawlers against the paltry license



fees (of course the huge kickbacks were the main attraction for the government officials in granting these licenses). Second major putsch in the sector was allowing the outsiders-investors with their large mechanized boats to enter the fishing business, which gradually reduced the traditional fishermen into mere labourers or confined them to small boats and lesser catch. The first capital and the largest coastal city of then Pakistan was Karachi, which came to be dominated by the migrants from India (called *Mohajirs*) who developed strong disliking for the indigenous fisherfolk communities of Sindh coast. The new rulers not only grabbed the indigenous people's lands, islands and fish-breeding coastal pockets on the pretext of development but polluted the whole marine resources of Karachi Coast. In addition, large irrigation projects and dams upstream of Indus River reduced the water drastically which used to enter Indus delta and was the reason for the prosperity of fishing communities of the Sindh coast. All these policy prescriptions played havoc with the lives of the traditional fisherfolk communities and in the end they were looked down upon by the government as well as by the wealthy sections of the society. All this translates into the government's insensitivity about the rights of the fisherfolk communities and hence ignoring the issue of the detained fishermen in Pakistan.

Fishermen: Pawns in the States' game of rivalry

Prisoners in general and jailed fishermen in particular have become a permanent agenda item in India-Pakistan negotiations, relations or dialogues. The two states have not come out of the inherent rivalry/animosity since their inceptions. The political leaders and governments have tried to normalise the relations but other powerful state institutions like defence establishments or civilian bureaucracies have a way in foiling such initiatives.

Indo-Pakistani relations are marked by a primitive kind of exchange that defines the relationship between individuals and communities in many societies: handshakes are exchanged for handshakes, stranded fishermen are exchanged for stranded fishermen, prisoners are swapped for prisoners, visa restrictions are slapped to avenge visa restrictions and diplomats are insulted to retaliate insults to diplomats.^{vii}

Such a mindset of the two establishments can complicate the fishermen issue in the following ways.

- If in a dialogue or negotiations one party feels that numbers of prisoners are not equal (meaning that they have lesser prisoners), they may postpone the dialogue and return to the table after filling the gap—they may encourage their security agencies to proactively capture the fishermen of the other country. It is in this context that many imprisoned- then-freed captains of the fishing boats have complained that they were captured in their own territories.
- If a party has more prisoners than the other, it may under-report the prisoners they have. This way some fishermen, in spite of having completed their sentences are held back; again a discriminatory tactics for delaying the release.
- Generally the dialogues are composite and involve a long agenda. If the dialogue is stuck on an item of agenda (most of the time a diplomatic tactic to delay the dialogues) the opportunity is lost and the detained fishermen have to wait for the next meeting.
- Even if the dialogues or meetings go very well inter-departmental non-cooperation and other red-tape techniques may undo the whole agreement.

