

# CAUGHT IN THE NET



A regional policy framework for  
incarcerated fisherfolk in India and Pakistan

POLICY PAPER



Human Rights Commission of Pakistan

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# Introduction

The arrest and detention of Pakistani and Indian fisherfolk for crossing territorial waters is a long-standing and contentious issue between the two countries. The fisherfolk, who are invariably from impoverished communities, often inadvertently cross poorly demarcated borders in the sea whilst fishing, which leads to their arrest by the Coast Guards on either side. This issue is of grave humanitarian concern and is impacted by the tense political and complex relations between the two countries.<sup>1</sup>

It has been seen that the fisherfolk are usually detained for long periods on both sides, in circumstances where they endure harsh prison conditions with almost no contact with their families and uncertainty about release. The resulting socioeconomic impact on the fisherfolk and their families is immense, as fishing is a primary source of livelihood for many coastal communities in both countries. The arrest and detention of fisherfolk without resolution for prolonged periods disrupt their lives and affect the local economies dependent on fishing activities.

The incarceration of fisherfolk and the financial burden on their families have long-term consequences, exacerbating poverty and social instability in these regions.<sup>2</sup> Despite various dialogues to resolve the issue, progress has been slow and inconsistent.

India and Pakistan exchange lists of fisherfolk and civilian prisoners held in each other's jails on 1 January and 1 July every year. As per the most recent prisoner exchange lists shared between India and Pakistan on 1 January 2025, Pakistan is holding 266 Indian prisoners, including 49 civilians and 217 fisherfolk. India is holding 462 Pakistani prisoners, comprising 381 civilians and 81 fisherfolk.<sup>3</sup> Fisherfolk detained by both countries are often kept in uncertain conditions following their arrest, with many languishing in jail for years without facing trial. Even those who have completed their sentences are not released, instead waiting for a formal exchange agreement between India and Pakistan.

Both governments occasionally release these fisherfolk as goodwill gestures, often for political reasons and without formal legal processes. These exchanges typically follow the same procedures used for the release or exchange of prisoners of

war. The timing of these releases depends largely on the state of bilateral relations and is often linked to diplomatic events such as meetings between secretaries, prime ministers, regional forums, or local commanders.<sup>4</sup> Whilst such gestures may address individual cases, the broader issue remains unresolved and continues to strain relations between the two nations.

Due to the tense relations between India and Pakistan, implementing a solution has proven to be challenging. As stated, both countries have often used the release of these fisherfolk as a goodwill gesture to improve bilateral relations,<sup>5</sup> Yet, the recurrence of such incidents underscores the need for a permanent and humane solution. The human cost<sup>6</sup> And the socioeconomic impact on the fisherfolk's families makes it imperative for both nations to address this issue through consistent and cooperative measures.

Both Pakistan and India have extensive coastlines. Pakistan's coastline spans approximately 1,046 km, whilst India's is much longer at about 7,515 km.<sup>7</sup> Both nations see great economic potential in their maritime territories, which include rich biodiversity, valuable fishing grounds, and mineral resources. Traditionally focused on land-based issues, both countries increasingly recognise the economic benefits of their oceanic domains, particularly in trade and transportation. This shift in focus has also heightened their concerns about maritime security and economic interests. Due to the disputed Sir Creek maritime zone, both countries' naval forces remain hostile towards each other, and India and Pakistan have been unable to utilise the full potential of the oceans surrounding them. Sir Creek, known for its waters being filled with rich biodiversity, lies on the border between India's Gujarat state and Pakistan's Sindh province. The communities near these waters depend on fishing for food and livelihood, mainly because they have limited economic opportunities.

This report looks into the complexities surrounding the arrest and detention of fisherfolk, reviewing the legal, humanitarian, and diplomatic dimensions of the problem. It aims to provide a comprehensive understanding of the factors contributing to the issue and suggests possible pathways for a sustainable resolution.

### **Subject to torture**

Abdul Karim, a fisherman from the Bhit Island area of Kemari in Karachi, was arrested on 4 January, along with other fisherfolk, after crossing into Indian waters. During his detention at Jaipur prison, he was severely tortured by Indian authorities. His body was later handed over to Pakistani officials at the Wagah Border in Lahore, from where it was transported to Karachi by ambulance. Karim leaves behind a widow and three children.

In April 2019, at least four Pakistani prisoners died in Indian jails within one month. On 26 April, a Pakistani national also passed away while in Indian custody, according to a spokesperson from the Fisherfolk's Co-operative Society.

It is important to highlight that reports of torture and fatalities among detainees, especially fisherfolk, are not widely disclosed by officials. Whilst there may be several reasons for this lack of transparency, it would be valuable to further investigate cases of mortality from both countries, a recommendation that will be addressed in the relevant section of this report.

Source: Pakistani man tortured to death in Indian prison. (2020, July 28). ARY News.

Apart from the ever-present risk of physical violence during detention, there is also the high probability of emotional distress, when an inmate has no hope or knowledge of their release.

Globally, prison sentences were established as a form of penalty that aimed to reintegrate individuals within society after having served their due time and learnt from their mistakes. Instead, research suggests that 'prison sentences have a null or a criminogenic effect on recidivism and a critical impact on inmates' mental health, negatively interfering with their successful reintegration into society.'<sup>8</sup>

In addition, several personal risk factors pose certain individuals at a higher risk of developing mental health illnesses within prison. Those who come from a lower socioeconomic background, such as Indian and Pakistani fisherfolk, are more prone to experiencing severe psychological distress and developing mental illness disorders. Several factors further exacerbate mental health illness, including a disconnection from family, society, and social support, and overcrowding of jail cells.<sup>9</sup>

Thus far, these statistics include individuals who have gone through a fair and free trial and were found guilty. However, when speaking strictly about those who have been imprisoned without a concrete basis, it is 'not unreasonable to assume there is an extra layer of resentment, frustration, confusion, anger and dissonance involved when the individual knows they were wrongfully accused.'<sup>10</sup> There is an additional factor of developing a strong sense of distrust. This distrust is extremely embedded within the individual and may have a personality change following the catastrophic experience, in addition to post-traumatic stress disorder (PTSD), and a negative attitude towards the justice system may develop.<sup>11</sup>

Not only is this a violation of these individuals' human rights, but it is not helping develop society in general. These individuals turn to drugs and crime as a coping mechanism. Others, who were not fortunate enough to be released, have attempted to commit suicide in jail, and have even ended up dying within jail, far away from their homes and families.

In addition, many steps and procedures are outlined, by law, such as Pakistan's Mental Health Ordinance 2001 and Sindh Mental Health Rules 2014, and India's Mental Health Act 2017, particularly Section 103, stating a protocol that the state must follow when an inmate is deemed psychologically unwell, or is presenting symptoms. It would be in the state's best interest to prevent inmates from reaching this stage, as it can prove extremely costly to provide inmates with the suitable support that the law states is required.

Unfortunately, to combat this 'cost', prisoners are being kept within the main jail with no access to mental health support whatsoever. For example, two Indian nationals who were 'identified as mentally unsound in the January 2021 Consular list continue to remain in the Central Jail in Rawalpindi, but they are not identified as such in the list of civilian prisoners handed over to the Government of India in January 2023. It is unclear whether their mental health has improved and thus they remain at the central jail, or whether they are simply being ignored.<sup>12</sup> Yet it can be assumed the latter is true based on the fact that once an individual possesses mental health disorders, it is difficult for them to improve without the proper support and oftentimes



medication, which these inmates are certainly not receiving. Even with proper support, studies suggest that the effects can last long after someone leaves the prison gates.<sup>13</sup>

Therefore, the solution to this is not to ignore the inmates with mental health disorders and keep them in central jail, which is not only a violation of the law, but also simply inhumane. Rather, the answer is to use preventative measures so the inmate does not reach the level of negative psychological impact where they cannot function and require medical attention. Mental health can decline in an instant, therefore, must be constantly monitored and receive support from the very beginning of their detainment, so that it does not escalate. Providing support and medical care when it has progressed severely is not the solution. Further solutions for implementing this notion will be discussed in the recommendations section of this report.

Along with the emotional distress of those detained comes the psychological and heartbreaking pain of those who are left behind. Families are torn apart due to a single miscalculated error that leads fisherfolk into the wrong maritime zone. Families have repeatedly pleaded with the opposite state's government to let their loved ones free, simply to no avail.<sup>14</sup>

# Domestic and international legal framework

The issue of the arrest and detention of Indian and Pakistani fisherfolk crossing territorial waters is governed by various domestic laws, bilateral agreements, and international conventions. The legal framework attempts to regulate maritime boundaries, ensure the humane treatment of detained individuals, and facilitate their timely release and repatriation.

## ***Domestic laws in India and Pakistan***

The Maritime Zones of India Act 1981<sup>15</sup> and the Foreigners Act 1946<sup>16</sup> govern the rights and treatment of individuals detained for maritime violations in India. The Maritime Zones of India Act delineates India's maritime boundaries and warrants authorities to enforce regulations within its exclusive economic zone. It also allows the arrest and detention of foreign vessels violating these boundaries.

The Foreigners Act provides the legal basis for the arrest, detention, and deportation of foreigners found in India without valid documentation or permits, including fisherfolk from Pakistan caught trespassing.

In the case of Pakistan, the Pakistan Maritime Zones Act 2023 defines the country's maritime zones, including territorial waters and the exclusive economic zone.<sup>17</sup> The Act authorises Pakistani authorities to arrest and detain foreign vessels found violating these zones. The Registration of Foreigners Act 1939 mandates the registration and regulation of foreigners entering Pakistan, with provisions for detention and deportation for those found violating immigration laws.<sup>18</sup>

These domestic laws provide the legal basis for the arrest, detention, and legal proceedings against fisherfolk from India and Pakistan involved in maritime violations. However, challenges such as bureaucratic delays, lack of clarity in enforcement procedures, and differing interpretations of maritime boundaries often complicate the implementation of these laws, leading to prolonged detentions and legal uncertainties for fisherfolk.<sup>19</sup>

## ***Bilateral agreements***

The Agreement on Consular Access, signed between Pakistan and India in 2008, aims to ensure 'humane treatment of nationals of either country arrested, detained or imprisoned in the other country.'<sup>20</sup> Both countries agreed to the provision of reciprocal consular facilities, which include maintaining a detailed list of nationals of each country who have been arrested, detained, or imprisoned. The lists are to be shared every six months.

Further, Pakistan and India pledge timely consular access to arrested nationals within three months and commit to promptly informing each other of sentenced individuals, aiming for their release and repatriation within one month upon confirmation of nationality and completion of sentences. Both countries agreed to review cases of a special nature and consider early release and repatriation on compassionate and humanitarian grounds.

The Joint Judicial Committee on Prisoners, comprising four retired judges from each country, was formed by the governments of India and Pakistan in 2007 to propose steps to ensure humane treatment and repatriation of prisoners who had completed their prison terms.<sup>21</sup> The Committee members regularly visited prisons to review and facilitate repatriations. The committee became inoperative in 2013, and efforts to revive it in 2018 were unsuccessful.<sup>22</sup> Among the committee members were Justice (Retd) A. S. Gill and Justice (Retd) M. A. Khan from India, and Justice (Retd) Nasir Aslam Zahid and Justice (Retd) Mian Muhammad Ajmal from Pakistan.<sup>23</sup> The committee's primary task was to visit jails in both countries and help facilitate the release of these detained individuals.

The committee held its first meeting on 26 February 2008, in New Delhi and exchanged prisoner lists on 1 April 2008. Following that, the members visited various jails in Pakistan and India during the summer of 2008. In Karachi, Rawalpindi, and Lahore (9–13 June 2008) and in Amritsar, Delhi, and Jaipur (18–23 August 2008). After these visits, the committee made several recommendations. These included measures to improve communication regarding prisoner deaths, the transfer of bodies, and the treatment of vulnerable prisoners, such as juveniles, women, and those with serious health conditions.

Additionally, it was suggested that prisoners detained for minor offenses like visa violations or border-crossing should be given compassionate consideration.<sup>24</sup>

However, the recommendations were largely ignored by both governments. Justice (Retd) Nasir Aslam Zahid, one of the committee members, expressed frustration over the lack of government support, citing insufficient funds and the absence of political will to make the committee effective.

He noted that despite the apparent concern from both governments, little action was taken to implement the committee's suggestions, their concern is merely 'on paper', and the initiative ultimately lacked the necessary political commitment to succeed. In recent talks of reviving the committee, India nominated judge members in 2018, whereas Pakistan has yet to nominate its members to move forward.<sup>25</sup>

### ***International laws and agreements***

Pakistan and India are both signatories to numerous international human rights conventions that provide protections relevant to the treatment of detained fisherfolk:

- Although not legally binding, the Universal Declaration of Human Rights sets forth fundamental human rights principles, including the right to liberty and security of persons (Article 3) and the right to a fair and public hearing (Article 10).<sup>26</sup>
- The United Nations Convention on the Law of the Sea (UNCLOS), ratified by India and Pakistan in 1995 and 1997, respectively, is an international treaty that provides a legal framework to settle 'all issues relating to the law of the sea', including enforcement of laws and regulations of the coastal State (Article 73), and prompt release of vessels and crews (Article 292).<sup>27</sup> The International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979 and Pakistan in 2010, protects the rights of prisoners, ensuring humane treatment (Articles 9 and 10) and fair trial (Article 14).<sup>28</sup>
- The Vienna Convention on Consular Relations guarantees consular access and communication between detained

individuals and their respective consular officers.<sup>29</sup> This convention ensures detainees can access legal assistance and representation from their home country's diplomatic missions.

- The International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified by Pakistan in 1966 and India in 1968, promotes human rights and fundamental freedom for all, without distinction by race, colour, descent, or national or ethnic origin.<sup>30</sup>

# Case studies: Forgotten lives?

This section illustrates the lived realities of incarcerated fisherfolk and their families through a series of case studies drawing on the experience of both Pakistani and Indian fisherfolk.

## *The families of detained fisherfolk*

In Machar Colony, Karachi, we conducted a focus group discussion with three families profoundly affected by the detention of their loved ones in India since 2019.

Family A, consisting of a mother and father, recounted the day their son left home to go fishing and never returned home. It was later found that Indian authorities had detained him, as revealed in a brief news report on a television channel which showed the photograph of their son.

The mother, deeply affected by her son's absence, battles severe grief, depression, and anxiety. During the interview, she became deeply emotional while discussing her son and the family's circumstances. We paused the interview to give her time to regain her composure. Their financial situation became dire as the detained son was the primary breadwinner, leaving the family struggling to make ends meet.

Family B, represented by a woman with two children whose husband is detained, and family C, represented by a woman whose uncle is missing, also shared their experiences of anguish and uncertainty during the focus group discussion. This emotional trauma extends to the children in Family B, whose education has been halted due to financial strains exacerbated by their father's absence.

All three families expressed frustration with the government's response, noting that no further information or support was provided while receiving their family members' names on a consular list acknowledging their detention.

The ongoing tension between India and Pakistan was cited as a significant reason for exacerbating their situation and increasing uncertainty about their family members' conditions and releases.

During the interview, we acknowledged that there is no greater pain than losing a family member under such tragic circumstances. Despite this, we asked what could potentially ease their pain. Their response underscored that even basic communication with their detained family members would bring some relief—a simple written note to reassure them of their well-being would mean the world to them. They have not received any communication from their family members since they set foot out of the house to go fishing in 2019, which is inhumane.

The cases from this focus group underscore systemic failures in consular support and communication channels between India and Pakistan. Whilst bilateral agreements mandate the exchange of consular lists, these lists often serve as mere formalities without substantive follow-up. The family's anguish over their loved ones' unknown fate speaks volumes about the psychological toll of prolonged separation.

The families' predicament highlights several aspects regarding international legal standards and human rights. The son's detention by Indian authorities, with the family learning about it only through media reports, raises significant issues regarding the right to prompt notification of arrest or detention—a fundamental safeguard under international human rights law. The lack of subsequent communication or updates from the authorities about their family members' well-being and legal status further compounds this violation, denying all three families their right to information.

Moreover, the detainees' roles as breadwinners underscore the economic impact of their prolonged detention, leaving families in severe financial hardship and jeopardising necessities or education. The geopolitical tensions between India and Pakistan are cited as exacerbating factors, contributing to prolonged detentions without proper resolution and perpetuating a cycle of hardship for affected families.

These circumstances underscore the importance of adherence to national and international obligations, including the right to a fair trial, humane treatment of detainees, releasing the detainees on time, and effective communication with families to mitigate the human rights implications of cross-border detentions.

### ***A father and son's experience***

We conducted our second interview at another family's home in Machar Colony. They kindly invited us to sit outside to avoid indoor heat, offering chairs they borrowed from street vendors. The interview focused on an elderly father and his 30-year-old son. The father had been imprisoned for three years while his son endured decade-long detention. They recounted how, during a fishing expedition, they accidentally drifted into Indian waters due to adverse weather conditions and were arrested despite having all the necessary documents like a boat licence and Pakistani identity cards. Their documents were confiscated and not returned upon release.

During their detention, they were held alongside non-Indian detainees and were denied any contact with their families. They described having been forgotten by their country during this time. They noted that detainees from different countries, such as Bhutan, Sri Lanka, and Nepal, were often released within 15 days. In contrast, Pakistanis like themselves were held much longer despite a similar basis for detainment. The son shared his harrowing experience of attempting suicide due to the unbearable uncertainty of being detained forever.

Since their release, they have struggled to find work because they are effectively 'stateless' in Machar Colony, where obtaining a new identity card has been very difficult. The father is now too elderly to find work, and the son, unable to find alternative employment due to a lack of identity documents, returned to fishing despite his traumatic incarceration experience. He emphasised that supporting his family leaves him no other choice. Their lived experience highlights the enduring psychological and economic challenges faced by individuals and families affected by prolonged detention and statelessness in cross-border contexts.

The prolonged detention of these fisherfolk highlights the systemic challenges in upholding their rights under international law. Their prolonged detention in India suggests discrimination based on nationality—a violation of the right to liberty and security of persons guaranteed under international law, including the ICCPR. The denial of timely access to their families during detention further compounds their ordeal, infringing upon



their right to family life and communication, as outlined in various international human rights instruments. Moreover, the geopolitical tensions between India and Pakistan appear to exacerbate these violations, influencing detention practices and bilateral cooperation on detainee issues. Such tensions can lead to prolonged detention periods without adequate legal recourse or fair trial guarantees, undermining fundamental principles of justice and human dignity. The family's experience underscores the urgent need for both countries to adhere to their international obligations, ensuring that detainees are treated fairly and their rights protected, regardless of nationality or political context. Efforts to improve consular access, timely legal assistance, and communication with families are essential to address these human rights concerns in cross-border detainee cases.

The psychological toll of indefinite detention manifested in severe depression and hopelessness, leading to the son's attempted suicide. This tragic incident underscores inadequate mental health support for detainees and the urgent need for trauma-informed care during and after incarceration. Moreover, the near absence of employment opportunities, given their lack of national identity cards within Pakistan increases their economic vulnerability, forcing them back into the precarious livelihood of fishing despite the risks involved. These issues are not isolated incidents affecting only a few individuals and their families, but rather, are pervasive across fishing communities in India and Pakistan.

### ***An Indian fisherman's experience of detention in Pakistan***

Fisherfolk of both countries venture out to the sea, where they are prone to being arrested by the neighbouring country's coast guard due to adverse weather conditions, inadequate navigation systems, and poorly marked fishing zones. Thirty-two-year-old Indian citizen Bharat Majethia recounted the exact moment in 2020 when the Pakistani Coast Guard personnel riding their speedboats approached his launch, which had accidentally crossed the maritime zone.<sup>31</sup> He heard them yelling 'surrender' and firing four or five rounds to create a scare before they jumped in his boat and asked his crew to sail towards Pakistan. Majethia tried to resist, but he was physically abused and threatened. The crew's belongings, money, and catch were confiscated when they

reached Pakistan. Their identification cards were inspected, and they were jailed along with 60 other Indian fisherfolk in a single cell.

Majethia's distressing lived experience highlights many issues of human rights violations. Without evidence, the maritime personnel assumed Majethia and his crewmates to have malicious intent. The personnel did not ask why Majethia's boat had strayed into the zone, and they were considered enemies. The entire basis for detaining needs to be re-evaluated. Another notable violation that occurs is that of overcrowding in prisons, which is prohibited in Pakistani and Indian jails but continues to be practised.

There remains a communication gap between straying into the other state's territory and being immediately detained with no valid basis. Maritime police need to follow a proper protocol that has been designed under SAARC, which is constantly monitored through proper checks and balances to ensure it is being followed. Therefore, the basis for detaining needs to be re-evaluated, of which solutions will be examined in the 'recommendations' section of this report.

The case study above, sourced from the Indian media, highlights the experience of fisherfolk jailed in Pakistan, as reported in the Indian press. Whilst there is limited coverage of this specific incident in Pakistani media, it offers valuable insight into the broader issue of cross-border fisherfolk detentions - this example helps underscore the larger themes of international maritime disputes, bilateral relations, and the humanitarian challenges faced by fisherfolk in both countries.

### ***The death of an Indian fisherman in Pakistani custody***

To provide a balanced perspective and highlight case studies of incidents involving cross-border fisherfolk from both Pakistani and Indian media, a case study from Pakistani media on Indian detention will be discussed to reflect the broader context of these issues, showing that similar concerns are reported across both nations.

According to the Pakistani press, an Indian fisherman named Jagdish, who was arrested for illegally fishing in Pakistani

territorial waters, passed away while in custody at the Malir district prison. The 35-year-old fisherman died on 6 August, though the cause of death remains unclear. His body was kept in cold storage at the Edhi morgue in Sohrab Goth for nearly two weeks, awaiting the necessary documentation from the Indian authorities for repatriation. The Pakistani police surgeon, Summaiya Syed, stated that a post-mortem examination would be conducted to determine the cause of death once the body was properly transferred.<sup>32</sup>

This incident marks the second death of an Indian fisherman in the same prison within a few months, with a previous case in May attributed to health complications. Since November of the previous year, this marks the fifth foreign inmate to have died in the same facility.<sup>33</sup> These deaths emphasize the need for better oversight of detention conditions and consular access, as well as addressing the broader issue of the treatment of fisherfolk caught in cross-border maritime disputes.

# Inadequate legal frameworks and uneasy geopolitics

The case studies presented in the previous section highlight the inadequacies and challenges within existing legal frameworks and international agreements governing the humane treatment of detained fisherfolk. While the United Nations Convention on the Law of the Sea (UNCLOS) provides guidelines for the treatment of detainees and consular access, its implementation often falls short in contexts characterised by geopolitical tensions and bureaucratic inefficiencies.

The ICCPR guarantees fundamental rights to detainees, including fair treatment, consular access, and protection against discriminatory practices. However, these rights are frequently disregarded in the case of detained fisherfolk.

## ***Breach of legal frameworks***

The systematic violations of international norms underscore the need for stronger enforcement mechanisms and accountability measures. Despite bilateral agreements between India and Pakistan on consular access and prisoner exchanges, the lack of transparency and timely repatriation perpetuates the suffering of detainees and their families.

The retaliatory cycle of detentions amid strained bilateral relations further complicates diplomatic efforts to secure the swift and humane treatment of detained fisherfolk, contributing to prolonged periods of uncertainty and despair.

Moreover, the confiscation of identity documents and the denial of post-release employment opportunities underscore the structural barriers that the released fisherfolk face in rebuilding their lives. The psychological trauma inflicted by indefinite detention further underlines the urgency for comprehensive legal reforms and diplomatic engagement to protect the rights and welfare of detained fisherfolk and their families.

In addition to the violation of domestic laws and the principles laid down in the Universal Declaration of Human Rights, the

following breach of international law and treaties is evident from the case studies:

- The prolonged detention of fisherfolk beyond reasonable periods without prompt notification of arrest or consular access violates their right to fair treatment under Article 9 of the ICCPR and Article 73 of the UNCLOS.
- Confiscation of identity documents, bureaucratic delays in accessing consular services, and repatriation assistance breaches detainees' rights under Article 36 of the Vienna Convention on Consular Relations.
- Harsh conditions in prisons and limited contact with families violate the principle of humane treatment under Article 10 of the ICCPR.

### ***Geopolitical tensions and humanitarian considerations***

The geopolitical tensions between India and Pakistan increase the challenges faced by detained fisherfolk and their families, prolonging their detention and impeding diplomatic efforts to secure their release. The lack of cooperation and transparency between the two nations further complicates consular access and prisoner exchanges, leaving detained fisherfolk in prolonged legal limbo.

The cyclic nature of retaliatory detentions between India and Pakistan underscores the humanitarian crisis engendered by maritime disputes. Detained fisherfolk, often the sole providers for their families, endure profound economic hardship and emotional trauma due to prolonged separation and uncertainty. The failure of international legal frameworks and bilateral agreements to safeguard their rights underscores the need for urgent reforms and diplomatic interventions to promote human security and regional stability.

The case studies underscore the urgent need for enhanced legal protections, diplomatic engagement, and support mechanisms to safeguard the rights and well-being of detained fisherfolk and their families. In the face of enduring geopolitical tensions, concerted efforts are required to ensure that international legal norms are upheld and that detained fisherfolk are treated with dignity and humanity.

## ***Limitations of bilateral agreements between India and Pakistan***

The Agreement on Consular Access between India and Pakistan aims to facilitate timely consular access to arrested nationals and ensure communication between the respective governments regarding detained individuals. The agreement mandates the biannual exchange of lists of prisoners, aiming to expedite the identification and repatriation of detainees.

However, challenges persist in the effective implementation of the agreement. Bureaucratic delays, lack of transparency in the exchange of information, and political sensitivities often hinder the timely repatriation and fair treatment of incarcerated fisherfolk. The absence of specific laws governing the repatriation process in both countries further complicates the situation, leaving detained fisherfolk in prolonged legal limbo.

Moreover, the diplomatic and political climate between India and Pakistan, marked by tensions and disputes, can affect the practical application of these bilateral agreements. Instances of cross-border incidents or heightened military activities often exacerbate challenges in consular access and prisoner exchanges, impacting the rights and well-being of detained individuals.

Efforts to enhance bilateral cooperation and adherence to agreed protocols are essential to addressing these challenges. Establishing clear mechanisms for consular access, swift repatriation, and humanitarian treatment of detainees can mitigate the hardships faced by incarcerated fisherfolk and promote regional stability. Continued dialogue and cooperation between India and Pakistan are crucial for protecting the rights and welfare of all individuals affected by maritime disputes.

# Proposal for a regional framework

SAARC, the South Asian Association for Regional Cooperation, was established to foster cooperation among its member states, comprising Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka.<sup>34</sup> Although SAARC has been more or less dormant since 2014, it is a valuable forum for dialogue, offering opportunities to navigate regional complexities and advocate for pragmatic solutions. Revitalising SAARC's relevance requires leveraging existing diplomatic channels and taking measures that prioritise consensus-building and mutual trust among member states. The following approach acknowledges the realities of regional dynamics while aiming to harness collective will towards achieving meaningful progress on humanitarian issues affecting vulnerable communities across South Asia.

The proposed framework would facilitate a coordinated response among SAARC member states to ensure the humane treatment of detained fisherfolk. It includes mechanisms for prompt consular access, timely repatriation, and adherence to constitutional provisions and international maritime laws. By establishing clear protocols, the framework seeks to prevent prolonged detentions and mitigate the socioeconomic impact on affected families.

Upholding constitutional guarantees and international norms is crucial to safeguarding the rights of detained fisherfolk within the SAARC framework. The issues surrounding arbitrary arrests and legal uncertainty for fisherfolk can be effectively addressed by strict adherence to international human rights law and by ensuring fair treatment, consular access, and protection against discriminatory practices. Adherence to these standards upholds international obligations and promotes regional cooperation and stability, which is essential for effectively managing maritime disputes and protecting human rights in the South Asian region.

From the literature review and conversations with impacted persons and their families, it is evident that the issue of incarcerated fisherfolk is of humanitarian concern. The tense relations between the countries contribute to the delay in the resolution and release

of fisherfolk. The following recommendations aim to improve conditions for incarcerated fisherfolk, promote cooperation, and facilitate resolution.

### ***Establish effective communication mechanisms***

Currently, there is no provision for incarcerated Pakistani fisherfolk to communicate with their families or inform them of their arrest. As per our case studies, families typically learn about the arrest of their loved ones through news reports or police stations, where the information is sporadically sent. This lack of communication causes immense mental trauma and anguish as families remain unaware of the well-being and conditions of their loved ones for years on end. This issue needs to be addressed by establishing a standardised communication protocol to ensure timely and regular communication between incarcerated fisherfolk and their families. This could include:

- Notification of arrest: Immediate notification of the arrest will be sent to the respective consulate, which will then inform the family.
- Regular updates: Monthly (at a minimum) updates on the detainees' health and status should be provided to their families through consulate channels.
- Direct communication: Facilitation of direct communication between incarcerated fisherfolk and their families through scheduled phone calls and periodic video calls throughout the entire process.

### ***Strengthen bilateral agreements***

The bilateral agreements between Pakistan and India must be strengthened and implemented in letter and spirit to ensure the humane treatment of those incarcerated:

- Amend the Agreement on Consular Access to include specified timelines for consular access and the verification of prisoners' nationalities to expedite their release. For example, consular access must be ensured within 15 days of arrest and nationality verification within 30 days.
- Establish protocols for the immediate release and repatriation of fisherfolk who accidentally cross maritime



boundaries, treating these incidents as civil infractions rather than criminal offences.

- The Joint Judicial Committee should be reconstituted to include representatives from both countries' fisheries departments, alongside legal and consular officials. This would allow for a more comprehensive review of cases involving fisherfolk and address issues specific to their industry, such as accidental crossings of maritime boundaries. Regular meetings should be held at least twice a year, with a focus on ensuring timely and humane repatriation. The fisheries departments' involvement will ensure that the practical concerns of fisherfolk are directly addressed, facilitating more effective resolutions. Additionally, Pakistan should nominate its judges to the committee, whilst India should re-evaluate its previous nominations from 2018 to ensure they remain valid and reflective of the current legal and diplomatic landscape.
- To ensure the committee's effectiveness, it must operate with full transparency, making its proceedings and decisions publicly available. An independent oversight mechanism should be established to monitor the fairness and human rights compliance of the committee's actions. A clear code of ethics should guide the behaviour of all committee members, with strict consequences for violations. Additionally, expert panels in maritime law, human rights, and fisheries should be consulted to ensure informed decision-making. Members should also be required to disclose any conflicts of interest to maintain impartiality. Finally, a mechanism for stakeholder involvement should be created, allowing fisherfolk and their families to voice concerns and grievances, and the committee's work should be subject to regular reviews by independent bodies to ensure accountability and continuous improvement.

### ***Establish a maritime buffer zone***

Both governments should establish a well-publicised buffer zone along maritime borders by delineating an area to prevent inadvertent crossing violations. The buffer zone can be equipped with surveillance technology and regular patrols by maritime authorities to ensure compliance.

### ***Establish a joint maritime zone***

A joint maritime zone between neighbouring countries could be established to manage and monitor shared fishing grounds effectively. Joint management includes coordinated patrols, shared surveillance resources, and regular consultations to address potential disputes and ensure sustainable fisheries management.

### ***Search actively for detainees***

The authorities must initiate proactive and urgent efforts to locate and release detainees who have completed their sentences but remain in custody, ensuring their return home in alignment with human rights obligations and the principles of justice.

The psychological toll on families awaiting the return of their loved ones is immeasurable, as many families endure extended periods of uncertainty, which severely impacts their mental health and daily lives. To address this, a dedicated task force must be established to track and identify fisherfolk eligible for repatriation, ensuring that no individual who has served their sentence remains unjustly detained.

This task force should work in close collaboration with both local and international authorities, as well as consular representatives, to conduct regular and thorough assessments of detention facilities and verify the status of detainees. The task force should have the authority and resources to take immediate action when prisoners are found to be unlawfully detained beyond their sentence, including following up on any bureaucratic or procedural delays that may have contributed to their prolonged imprisonment.

The task force should also establish direct communication channels with the families of detainees to provide timely updates on the status of their loved ones, keeping families informed and ensuring they are not left in the dark. Coordinating with human rights organizations and legal aid groups will also be crucial in facilitating the swift repatriation of these individuals, ensuring that they are treated with dignity and respect throughout the process. This coordinated, empathetic approach will help to bring closure to families who have endured unnecessary suffering

and give them hope that their loved ones will soon return home. Additionally, the authorities should consider implementing a 'fast-track' process for detainees who have completed their sentences, minimizing delays and ensuring that the process of repatriation is as swift and efficient as possible.

### ***Provide access to mental health support***

Access to mental health support must be provided to detained fisherfolk and their families to address the psychological impact of prolonged detention, separation from loved ones, and uncertainty about their future. This support includes on-site counselling services within detention facilities, access to mental health professionals trained in trauma and stress management, and outreach programs that extend support to families awaiting the return of their loved ones.

### ***Provide access to legal representation***

The detained fisherfolk must be provided access to legal counsel throughout their detention to ensure fair and transparent legal proceedings. This access includes giving information about legal rights, facilitating consultations with qualified lawyers, and ensuring representation during hearings and judicial processes.

### ***Introduce compensation mechanisms***

A mechanism should be introduced for compensation to acknowledge and mitigate the socioeconomic impacts of detention on fisherfolk and their families. Compensation should not only cover lost income during detention, reimbursement for damages to fishing equipment or vessels, and assistance with reintegration into their communities upon release, but also address the loss of personal belongings.

Many fisherfolk, as reflected in this report's case studies, have reported that their personal items, including identification documents, fishing gear, and even boats, are confiscated when they are arrested and, in many cases, never returned. This loss creates additional hardships for the detainees and their families, who face difficulties in proving their identity, obtaining necessary identity documents and boating licenses, or continuing their livelihood upon release.

As part of the compensation mechanism, a clear reparations policy should be established to ensure that all confiscated property is returned to the detainees or their families promptly after release.

In cases where this is not possible, adequate financial compensation should be provided to replace lost or damaged items, including tools, vessels, and identification documents. This will help mitigate the long-term effects of the detention on their livelihood, helping the fisherfolk reintegrate into their communities with dignity and enabling them to rebuild their lives more swiftly.

Moreover, an inventory and tracking system should be set up at the time of detention to document the belongings confiscated from each individual, ensuring transparency and accountability throughout the process. This system will also help ensure that all detainees have the opportunity to recover their personal items and receive compensation for any lost property, thus providing more equitable and just treatment for the fisherfolk caught in this cross-border dilemma.

### ***Improve access to affordable maritime technology for fisherfolk***

One significant challenge for fisherfolk is their inability to afford high-tech boats and navigational systems, which increases the risk of accidentally crossing into other countries' fishing zones. This issue often arises due to insufficient financial resources and the dependence on traditional, low-cost fishing methods. Recommendations to alleviate this problem could include:

- Introducing subsidies or low-interest loans to make navigational tools like GPS systems, maritime radios, and other basic safety equipment more affordable for fisherfolk, ensuring they can operate safely within their designated zones without inadvertently drifting into foreign waters.
- Organizing training programs to educate fisherfolk in safe fishing practices, including basic navigational skills using affordable tools. This could be facilitated through partnerships with maritime agencies or NGOs focused on improving fishing practices and safety.

- Establishing cooperative platforms where small-scale fisherfolk can access shared equipment, including GPS devices, at a reduced cost. These cooperatives could be supported by the government or international organizations working toward improving the livelihoods of marginalized communities.

### ***Create clear and accessible fishing zones with localized regulations***

Fisherfolk often find themselves in a position where unclear or poorly demarcated fishing zones lead them to unknowingly cross into another country's waters. This is particularly problematic in areas with overlapping maritime zones or poorly defined borders. Useful measures include the following:

- Both Pakistan and India should work together to ensure that fishing zones are delineated, with visible markers or boundary demarcations that are easily understandable for fisherfolk. This could include floating markers or visible signs on both sides of the maritime border, indicating safe fishing areas.
- Each country could establish localized support centres along the coast to help fisherfolk understand the boundaries and the current regulations. These centres would guide fishing practices and promote compliance with the maritime laws of both nations.

### ***Establish emergency cross-border cooperation mechanisms for fisherfolk***

In instances where fisherfolk accidentally drift across borders due to weather conditions, currents, or technical difficulties, emergency cross-border cooperation mechanisms should be established.

- Both governments should develop clear protocols that ensure immediate and humane repatriation of fisherfolk who are stranded in foreign waters, with mechanisms in place to address the situation quickly and without punitive measures.
- Establish joint efforts between the maritime authorities of Pakistan and India to offer immediate assistance in cases

where fisherfolk are found drifting into foreign waters due to weather conditions or technical failures. These efforts would include rescue missions, prompt verification of nationality, and repatriation assistance.

### ***Establish an oversight mechanism***

A rigorous oversight mechanism should be established within consular and legal processes to ensure accountability and adherence to agreed-upon protocols. This includes regular monitoring of consular access to detainees, verification of detention conditions, and legal proceeding oversight to prevent undue delays, rights violations, or misconduct.

Special attention must be given to preventing torture and inhumane treatment in detention, which has been a documented issue. To ensure the integrity of the oversight process, the mechanism should be independent, with robust safeguards in place to guarantee transparency and impartiality. All personnel involved in the oversight process should undergo regular financial disclosures and audits to maintain accountability.

Allegations of abuse of power or improper influence must be thoroughly investigated, and those found to violate international human rights laws or domestic regulations should face appropriate consequences.

Independent and transparent channels for reporting misconduct should be established, ensuring that individuals can raise concerns without fear of retaliation. Additionally, international human rights organizations and trusted third parties should conduct regular unannounced inspections of detention facilities to ensure compliance with both international human rights standards and domestic laws.

### ***Establish a hotline for fisherfolk***

One of the most effective measures to safeguard fisherfolk is creating a dedicated hotline specifically designed for them. This hotline would serve as a direct communication channel for fisherfolk who find themselves in distress or who are at risk of being detained for crossing into foreign waters by mistake. In the event of an arrest or an impending arrest, fisherfolk could immediately

contact the hotline to report their location and circumstances. This would ensure that proper legal guidance and assistance are available, as well as providing a mechanism for rapid response from both the local authorities and maritime organisations. It could also help minimize the time spent in detention by facilitating swift intervention to resolve misunderstandings or inadvertent violations.

### ***Provide immediate proof of location and cross-verification at the time of arrest***

A critical step in preventing wrongful detentions is to ensure that proof of the fisherman's location and intent is established at the moment of their arrest. When a fisherman is detained for allegedly crossing into foreign waters, authorities should require that the detained individual provide verifiable evidence, such as GPS data or fishing logs, which demonstrate their location and activities at the time.

This documentation should be cross-checked by relevant authorities before any further action is taken. This process would ensure that arrests are based on accurate and verified information, significantly reducing the number of wrongful detentions and ensuring that individuals are not held unnecessarily. Immediate proof verification could also expedite the resolution of cases, preventing unnecessary delays in legal proceedings.

### ***Maintain constant communication with families***

The emotional and psychological toll on families of fisherfolk detained in foreign waters is profound, and consistent communication with these families must be prioritised. Authorities should be required to maintain regular contact with the families of detained fisherfolk, providing them with updates on the status of their loved ones. In addition, families should have access to legal counsel and support throughout the process. Ensuring that families are kept in the loop not only helps ease their anxiety but also allows for accountability. It is important that families are informed of their rights, the legal processes at play, and any potential outcomes, so they can advocate effectively for their relatives. Regular communication would build trust in the system and offer a human element to an often-bureaucratic process.

### ***Impact of political tensions on justice and accountability***

One of the primary obstacles to the fair and efficient resolution of cases involving fisherfolk is the political tension between India and Pakistan, especially when certain group leaders hold significant 'check and balance' roles. These leaders, often influenced by political considerations, can undermine the fairness of the justice system, making it difficult to ensure that cases are processed equitably.

When political agendas overshadow legal protocols, the system can become stagnant and inefficient, leading to prolonged detentions and, in some cases, wrongful incarcerations. For justice to be truly served, the political influence on these processes must be reduced, ensuring that decisions are based on facts, the rule of law, and international maritime agreements. This would involve creating independent oversight bodies free from political interference, as well as fostering better cooperation between the two nations to ensure fairness and transparency in handling such cases.



# Conclusion

The arrest and prolonged detention of Pakistani and Indian fisherfolk due to inadvertent border crossings represent a pressing humanitarian crisis that demands immediate attention and action. These fisherfolk, predominantly from impoverished coastal communities, go fishing in the sea to earn a livelihood, only to find themselves detained in foreign territories under harsh conditions, and separated from their families for extended periods without knowing when they might be released.

Beyond the individual suffering, which includes severe psychological distress and potentially long-term impact on mental health, these detentions disrupt entire communities reliant on fishing economies. The loss of experienced fisherfolk and the financial strain on their families perpetuate cycles of poverty in coastal regions.

Whilst goodwill gestures through sporadic releases from both nations have been made, the recurring nature of these incidents underscores the inadequacy of current approaches. Both India and Pakistan must prioritise the well-being of these fisherfolk by implementing effective measures. This includes implementing a regional framework that strengthens bilateral agreements, establishes clear communication protocols, ensures prompt consular access, and expedites repatriation processes.

Furthermore, adherence to international human rights norms and legal frameworks such as the UNCLOS is essential to provide these fisherfolk with the protections they deserve. By addressing these issues comprehensively and collaboratively, both nations can alleviate the immediate suffering of detainees and their families and foster goodwill and cooperation that contribute to regional stability and prosperity.

In conclusion, the plight of detained fisherfolk is not just a bilateral issue but a humanitarian imperative that requires decisive action. By prioritising humane treatment, respecting domestic and international obligations, and working towards sustainable solutions, India and Pakistan can demonstrate leadership in safeguarding human rights and promoting mutual respect in maritime disputes.

It is time to act with compassion and resolve to ensure that these fisherfolk and their families are no longer unjustly caught in the crossfire of geopolitical tensions.

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