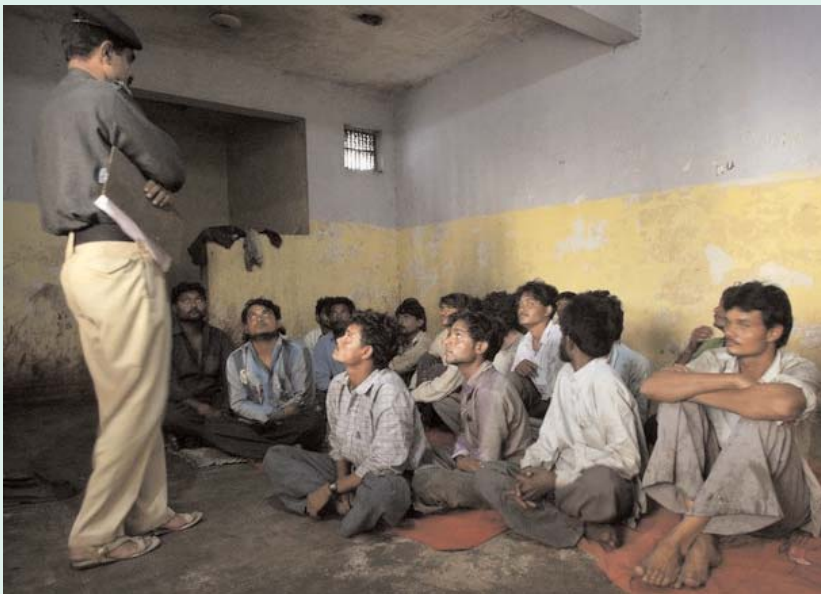


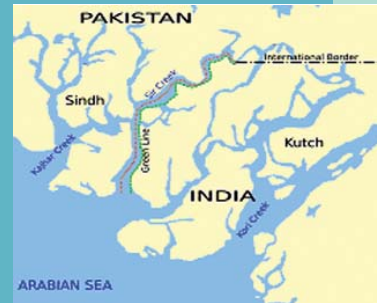
Detained Fishermen Trapped in a Political Game between Pakistan and India



“Who else can wish more for peace between the two countries than us fishermen?” says Muhammad Ajmal, neighbor and close aide of Alam who died in an Indian jail. He was arrested three months ago before his death on allegation of crossing border in the sea between India and Pakistan.

“Peace promises security and employment for the fishermen of the two sides. Otherwise we keep receiving bodies or news of arrests of our colleagues.”¹

Since 1987 Pakistani and Indian forces have been apprehending fishermen for allegedly crossing the sea border. Seemingly simple, the issue has been made complicated because the two states are maintaining a policy of enmity and rivalry since their independence and thus arresting



Most arrests on the Pakistani side take place at Sir Creek, a 96km strip of water that divides the Kutch region in Gujrat, India and the Sindh region in Pakistan. The border at Sir Creek is not agreed upon by India and Pakistan. Each claims a larger portion of the sea extending outwards from the creek as their Exclusive Economic Zone.

(Green line is a boundary claimed by Pakistan and Red is by India.)



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Juvenile Indian Fishermen languish in jails despite serving their sentence

Just like the beginning of every month, 17-year-old Indian fisherman Jaish and his friends embarked on a journey to fish in the sea in February this year. Their smiles and laughter soon turned into a spate of tears and confusion, as their stay for a few hours in open waters of the disputed Sir Creek led to their confinement at the juvenile jail in Karachi. Even though their six-month-long sentence for border violation concluded in September, Jaish and his mates are still languishing behind bars. Dressed in casual jeans and a black t-shirt, his eyes were soon filled with tears as he spoke about his home in the small village of Codaba in the Indian district of Gujrat. "I have been fishing since I was six," he narrated.

(The News, 14 Dec. 2009)

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 waters by the fishing boats may be an imprisonment for a few months but due to the hostility between the establishments of these countries, the fishermen languish for years in detention centers even after completing their sentenced term.

There is no publicized and officially consolidated data on the number of apprehended fishermen and those who are in custody since 2008.

In accordance with the May 2008 India-Pakistan Agreement on Consular Access, both countries are required to exchange lists of prisoners in each other's custody biannually, on January 1 and July 1.

According to these lists, the number of detained Pakistani fishermen in Indian custody is about 500. India failed to submit the list since January 2009.^{2&3} Pakistani Senate claimed there are 132⁴ to 785⁵ Pakistani prisoners in India.

Number of Detained Fishermen in two countries

	Indian Claimed Pakistani Detaind Fisherman	Pakistani Claimed Indian Detaind Fisherman
April 08	14	410
July 08	378	412
January 09	failed to submit	343
July 09	failed to submit	535
January 10	failed to submit	510

Even after the initiation of the exchange of list of prisoners, the arrest of fishermen continues. In 4 months from Oct. 2009 to Jan. 2010, Pakistani media reported arrest of 32 Pakistani fishermen and 53 Indian fishermen, respectively.

Plight of Families

Red tape and Procedural Obstacles

When the boats do not return in accordance with their expected time, grief and gloom of death overcast the whole village to which apprehended fishermen belong. Families

and close relatives rush for more information. After much effort and through various means they eventually come to know that their loved ones have been arrested on the other side of the border.

In Pakistan, information of the apprehended fishermen is



collected and gathered by civil societies. Concerned government departments depend on this information and are not proactive. Identification of apprehended fishermen through official channels takes many months.

Because of strict visa regime, the relatives cannot travel to the country where the arrested fishermen are detained for pursuing the cases. Procedures are so cumbersome and slow that 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 their charges and their implications. They do not have their counsels and cannot prepare any legal defense against these cases. The judges of the country where the arrested are detained take full liberties in dealing with such cases. Once they have served their sentences they are out of jail but cannot go to their homes hence are detained in different places. They have to wait until some protocol of exchange is agreed between the two governments at higher level.

Economic and Emotional Difficulties

Long term detention of the primary earner in the household has devastating effects on their families. Fishermen who are

“While my three sons were away, we had no means of livelihood,”

said Ahmed's father, Abdul Ghani, 70, Karachi (quoted from ISP news on 13th Jan.)

“My brother went fishing when the Indians arrested them and framed them with of smuggling. They had nothing but a fishing boat and their nets. I've been running pillar to post, meeting ministres and officers and even appearing on television from time to time”

siads Bhagi 60 years old. (quoted from The News 9 Dec. 2009)

“I want to go to my home in Gujarat. I want to reunite with my family,”

said 17-year-old Indian prisoner Bhagwan Bana from a Karachi jail.

“It is difficult to live in a prison. I never dreamt that I would go to jail and be punished without committing any crime.”

(quoted from The New 9 Dec. 2009)

captured in the sea are generally poor. They work for the boat owner on catch-sharing basis. Once these bread-earners are arrested, their families face serious economic crises. Women, the elderly and children of the affected families soon run out of food and savings, if any. For a few days some neighbors, the boat owners or well-off relatives may take care of them, but in a month or so, they had to be on their own. There is no organized and easy-to-access welfare system for affected families.

“You can easily imagine what happens to the family when the only bread earner of a family is arrested in the other country.”

Family's laughter and happy moments turn into grief and sobs. Children are forced to leave schools. Women and the elderly who may not have worked before go out and look for jobs that are usually menial and do not pay enough for their survival.

On return: a life of hardship

The fishermen who return after long periods of confinement have reported torture, and other forms of mistreatment such as abuse and inter-inmate brutality, sub standard jail cells, restraints on movement, lack of medical care, and grossly inadequate diet. They became traumatized with these experiences. In some cases, physical and mental health damage they suffer prevent them from working for a living afterwards. One fisherman who had spent eight years in an Indian prison reported that his muscles had so atrophied that he could not function normally any longer. Returning to a life of poverty in fishing villages, he has no access to rehabilitation or any form of health care that could get him back on his feet. Boats seized by the authorities are not returned to those who owned.

Release of Prisoners

How it is dealt with?

Even though arrested fishermen completed sentences, they are not simply released instead used like pawns in a chess game in political negotiation between the two countries. The detained fishermen have to wait until some protocol of exchange is agreed between the two governments at diplomatic level. Even if the exchange has been agreed, authorities wait until some dignitary visits or events come so that release of fishermen is regarded as a good will gesture for both countries.



There are different levels of meetings in which the fate of the imprisoned fishermen is decided:

- Secretary's level meeting
- Prime minister's level meeting
- Regional forum meeting
- Local commander's meeting

Recently Release and the Occasions

Date of Released	Particular	Occasion
14 Aug. 2007	48 Pakistani Fishermen & 100 Indian fishermen Released	Preceded by Home Secretary Meeting Independence Day
25 Nov. 2008	29 Pakistani Fishermen & 101 Indian fishermen Released	Preceded by Home Secretary Meeting
25 Dec. 2009	99 Indian fishermen Released	Good will gesture by PM
2 Jan. 2010	31 Pakistani Fishermen Released	Response to Pak gesture

Recent Developments between the two Countries

Pakistan-India Judicial Committee on Prisoners

On January 2007 at the forth round of composite dialogue between Pakistan and India, both countries agreed to set up a joint judicial committee, called "Pakistan-India Judicial Committee on Prisoners" comprising eight judges -four each from both countries.

Families of detained fishermen seek justice
The families of five fishermen will stage a protest demonstration on Thursday in Islamabad for the release of the detained fishermen.

(reported on 2 Oct 2009 The News)

Release of fishermen from Pakistani, Indian jails sought

Fishermen belonging to Sindh took out a protest rally from the National Press Club to F-6 sector demanding release of hundreds of fishermen languishing in Indian and Pakistani jails. The protest rally was organized by the Pakistan Fisherfolk Forum.

(reported on 2 Oct. 2009, Dawn)

Following the establishment of the joint Committee, several developments took place.

- On 26th February 2008 the committee held its first meeting in New Delhi;
- On 1st April 2008 India and Pakistan exchanged the list of Prisoners;
- On 25th May 2008 two countries signed the agreement on consular access to prisoners in each others' countries and agreed to exchange list of prisoners in each other's custody on 1st January and 1st July every year;
- From 9th to 13th June 2008 the Committee visited jails in Karachi, Rawalpindi and Lahore, Pakistan;
- From 18th to 23rd August 2008 the Committee visited jails in Amritsar, Delhi and Jaipur, India.

Recommendation of the Committee

On June 2008 during the first visit of jails in Pakistan, the Committee recommended several points including the followings;

- The Committee recommends that the following steps/action be taken by either country where a national of the other country dies while in custody;
- High Commission of the other country will be immediately informed in writing of the death of the prisoners and in this regard immediate instructions be issued by the Federal/Central governments to the Home Departments and Inspectors-General of all the Provinces/States for strict compliance.
- Instructions may also be issued for supply of copies of inquest or inquiry reports, if any, and post-mortem reports in respect of such deceased prisoners to the High Commission of the other country.
- Bodies of such prisoners be sent to the other country at the earliest and in any case within three weeks of death.
- Women and Juvenile prisoners, prisoners terminally ill or suffering from serious illness or physical disability and also mentally disabled persons deserve compassionate and humanitarian consideration. The Committee recommends that such prisoners, whether under-trial or convicts, be repatriated to the country of their origin at the earliest and, for that purpose, necessary action be taken for withdrawal of prosecution or for remission of the balance sentence, as the case may require.
- Prisoners involved in minor offences, e.g. violation of Foreigners Act, border-crossing, visa violation, like overstaying or visiting places not covered by the visa,

also deserve compassionate and humanitarian consideration. The Committee makes similar recommendations for such prisoners as made for women, juvenile and physically ill or disabled prisoners.

The Committee also recommended to expedite the repatriation process of those who completed sentences and ensure the consular access for those who are detained.

Though Pakistan continuously have been submitting the list of Indian prisoners in Pakistan to India as agreed, India have been failed to do so since 2009 after the incidence of Mumbai attack. The activities of the Committee, too, have been stagnated since then..

Civil Society's Fight for Resolution

While the relationship of the two countries have trapped fishermen in the misery of state violation of human rights, civil society's struggle for resolving the issue continues.

Collecting information

In Pakistan, when fishermen and their boats do not return on their expected date, family usually start looking for information and contact with the organizations working for fishers like Pakistan Fisherfolk Forum (PFF). First hand information about missing fishermen is collected by civil society organizations.

Confirmation of the apprehended on both sides of the countries

Upon the receipt of information on missing fishermen, PFF shared the information with the civil society counterparts in India - International Collective in Support of Fishworkers, National Fish Forum Gujrat - to confirm whereabouts of the missing fishermen. International networks of the civil society made the process of identification of the arrested fishermen on both sides of the countries faster than before.

Campaign

Civil society led by the PFF has been highlighting the plight of the detained fishermen on both sides of border through public protests, publications, documentaries and statements in newspapers. The continuous coverage on the detained fishermen issue in the media aims for drawing the attention of general public and policy makers to expedite the early resolution of the issues. Collective campaigns of civil

The Pakistani and Indian civil society have announced to launch a campaign to release the detained fishermen of India and Pakistan. Representatives of both the countries said that millions of fishermen had been victimized by the authorities of both the countries due to their prolonged and unsettled disputes....**“On behalf of South Asian Alliance for Poverty Eradication (SAAPE), they have decided to take up the issue of detained fishermen by launching a regional-level campaign,”** said rights activist in India who is visiting Pakistan. (quoted from *The Nation*, July 6, 2009)

organizations in both countries have also taken place.

Relief for detained fishermen

Civil society groups in India and in Pakistan are providing some relief items to the detained fishermen such as clothes, cash.

Welfare for the affected

The PFF are providing some relief to the affected families while the arrested fishermen are in India. They are providing cash, boats and so on to the needy families. However, the coverage is limited and not cover all affected families. There is no organization which is extending assistance of rehabilitation for those who have returned till now.

Call for Action - Act Now!

We call for

- 1) Early resolution of border dispute. Bilateral agreements are needed between India and Pakistan to finalize the border in the sea waters.
- 2) Immediate release of detained fishermen who complete their sentences.
- 3) Implementation of legislation to deal with arrest and detention of fish workers in the waters of other coastal States should be in accordance with Article 73 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS or 1982 Convention), and should not contravene the appropriate articles in the UN International Covenant on Civil and Political Rights, 1976, and the UN International Covenant on Economic, Social and Cultural Rights, 1976, among others.
- 4) Till the resolution of the border dispute, 50 nautical miles from each countries shall be kept as free fishing zone.
- 5) Provision of fishermen identity card for easy identification of the individual who are engaged only in fishing but not for other purpose to avoid unnecessary investigation on any other charges.



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1. Dawn, 17 Jan. 2010

2. The Hindu, 2 Jan. 2010

3. Pakistan-India Judicial Committee on Prisoners recommended in June 2008 that the lists of prisoners exchanged by the two governments on 31st March, 2008 "...are not complete and do not mention names and details of all detainees/prisoners. The Committee expects that the procedure for preparation and updating such lists shall be streamlined and the next lists to be exchanged on 1st July, 2008 will be complete ad without omissions. Such lists shall contain information about the date of arrest, details of sentence, charges under which the prisoner was sentenced and the expected date of release."

4. The News, 25 Dec. 2009 only fishermen

5. Dawn, 20 Jan. 2010 not limited to fishermen