

THE INDIA-SRI LANKA FISHERIES DISPUTE: CREATING A WIN-WIN IN THE PALK BAY

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The Palk Bay, a narrow strip of water separating the state of Tamil Nadu in India from the Northern Province of Sri Lanka, has historically provided rich fishing grounds for both countries. However, the region has become a highly contested site in recent decades, with the conflict taking on a new dimension since the end of the Sri Lankan Civil War in 2009. Multiple issues have compounded to bring tensions to a near crisis point, with serious ramifications for internal and bilateral relations. These issues include ongoing disagreement over the territorial rights to the island of Kachchatheevu, frequent poaching by Indian fisherman in Sri Lankan waters, and the damaging economic and environmental effects of trawling. However, with the governments of both countries recently affirming their commitment “to find a permanent solution to the fisherman issue,”¹ there is an opportunity to create a win-win scenario, in which the bay becomes a common heritage of mutual benefit.

IMPORTANCE OF THE PALK BAY

Strong Ties

The bay, which is 137 kilometers in length and varies from 64 to 137 kilometers in width, is divided by the International Maritime Boundary Line (IMBL). Bordering it are five Indian districts and three Sri Lankan districts. In 2004, there were approximately 262,562 fishermen on the Indian side and 119,000 on the Sri Lankan side.²

The intimate ties between fishermen and the sea have affected the history, economy, and culture of both countries. Historically, the shallow waters of the Palk Bay and geographical contiguity between India and Sri Lanka facilitated the movement of ideas, goods, and men. Sri Lanka, according to many well-known historians, is essentially an extension of

the Indian subcontinent, and its rich cultural heritage is the product of benign crosscultural interaction.³ This relationship is borne from the intimate ties and commonality of culture. In the nineteenth and twentieth centuries, thousands of Indian Tamil laborers were ferried across to provide much needed labor for the development of tea plantations. When ethnic conflict in Sri Lanka escalated in July 1983, thousands of refugees came to Tamil Nadu through the Palk Bay.⁴

The bonds of ethnicity, language, and religion helped fishermen lead lives of harmonious coexistence for several centuries. Frequent migrations between India and Sri Lanka through the Palk Bay took place. Inter marriages were common. However, over the last several decades, internal and bilateral relations have suffered from a range of issues from coastal insecurity to overfishing.

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Strained Relations

Fishing is more important economically for the Northern Province of Sri Lanka. According to Sri Lankan academic Ahilan Kadiragamar, the province “contributed to over a third of the total catch of the country” when normalcy prevailed in Sri Lanka.⁵ Fish production dipped markedly during the protracted ethnic conflict. According to the Government Agent in Jaffna, the Jaffna District went from producing 48,776 metric tons of fish in 1983 to 2,211 metric tons in 2000. In the Mannar District, production went from 11,798 metric tons in 1983 to 3,614 metric tons in 2002.⁶

During the height of the civil war, as a security measure, the Government of Sri Lanka banned fishing on the Sri Lankan side of the IMLB. Fearing persecution, Tamil militants and Tamil fishermen took refuge in India. The Sri Lankan Navy occasionally harassed Tamil fishermen, dumped their catch into the sea, detained some fishermen, and targeted others in incidents of firing.⁷ The vacuum was filled by the Indian Tamil fishermen. During this period, there was perfect camaraderie among Indian Tamil and Sri Lankan Tamil fishermen. Sri Lankan Tamil fishermen who came to India as refugees were often employed by Indian trawler (mechanized boat) owners.

However, since the conflict’s end in 2009, tensions have risen around the livelihood of Sri Lankan Tamil fishermen. They want to resume fishing, but the Sri Lankan Navy has expanded and become more vigilant. Many fishing villages, converted into high security zones during the civil war, continue to be under army control. Further, while Tamil fishermen find the current presence of Indian trawlers to be a major hindrance, the navy has not handled the poaching consistently, causing significant frustration. For a few weeks, during the presidency of Mahinda Rajapaksa, the navy detained the trawlers but released the Indian fishermen. The current government, to avoid tensions in bilateral relations, releases the fishermen first and then later the trawlers. The trawlers are back in Sri Lankan waters the very next day.

In India, the fisheries dispute chiefly began with an internal debate about sovereignty related to ceding of the island of Kachchatheevu to Sri Lanka—a situation that proceeded to exacerbate the tension between fishermen practicing traditional fishing and those using trawlers. To prevent conflicts between the two, the Government of Tamil Nadu enacted the Tamil Nadu Marine Fisheries Regulation Act in 1983, which stipulated that mechanized fishing boats should not fish within three nautical miles from the coast; the area was exclusively reserved for artisanal fishermen. However, artisanal fishermen claim that the government has made no effort to enforce the three nautical mile stipulation.⁸

Internal relations and perspectives in both countries are having a marked impact on bilateral relations. The livelihoods of their populations and the bay’s marine ecology are being threatened, evident by the ongoing disagreement over Kachchatheevu and the economic and environmental effects of increased trawling on both sides of the IMLB.

KEY ISSUES OF THE FISHERIES DISPUTE

Sovereignty of Kachchatheevu

The maritime boundary agreements of 1974 and 1976—which delimited international boundaries in the Palk Bay and the Gulf of Mannar and Bay of Bengal, respectively—were concluded by the two governments in the name of good neighborly relations, but they did not reflect realities on the ground because the people concerned, namely fishermen, were not consulted.⁹ The principle of national sovereignty underpinned both agreements. A close personal relationship between both prime ministers, Indira Gandhi and Sirimavo Bandaranaike, facilitated the successful conclusion. However, from the perspective of Tamil Nadu, the ceding of the island of Kachchatheevu in Palk Bay to Sri Lanka was a grave mistake. With the island previously falling under the Zamindari system of land tenure established by the British

government, New Delhi and Tamil Nadu are still debating the question of sovereignty. At the time of ceding, New Delhi did not consider Kachchatheevu to be part of India, but rather a disputed territory. The Government of India deemed the boundary agreement necessary to promote bilateral relations with Sri Lanka. There was strong opposition in Tamil Nadu, cutting across party lines, but New Delhi brushed it aside.¹⁰ It is notable that if New Delhi's view on sovereignty is accepted, the very unity of India could be at stake; under the British Raj, the majority of land holdings in British India were under Zamindari, Ryotwari, and Mahalwari systems of land tenure.

According to the then foreign minister, Swaran Singh, though the island was ceded to Sri Lanka, the Indian fishermen continued to enjoy their traditional rights of fishing in and around Kachchatheevu and also participated in the St. Anthony's festival (held annually at the end of March) without obtaining visas. This statement aside, those opposing the decision later argued that the 1976 boundary agreement further impeded the traditional rights of fishing.¹¹

The state government of Tamil Nadu claims that it has pursued proactive policies for the "retrieval" of Kachchatheevu and the restoration of traditional fishing rights of Indian fishermen since May 2011. On June 9, 2011, Tamil Nadu's Legislative Assembly passed a unanimous resolution to implead the revenue department based on the writ petition filed by Chief Minister Jayaram Jayalalitha in 2008, challenging the maritime boundary agreements.¹² The case is still pending before the Supreme Court.

Implications

The ongoing dispute has escalated tensions between those fishermen using traditional methods and those using mechanized methods, as well as increased the infringement of territorial boundaries. According to the government of Tamil Nadu, the sufferings of Indian Tamil fishermen is a direct consequence of ceding Kachchatheevu to Sri Lanka and sacrificing the

traditional fishing rights enjoyed by Indian fishermen. In a defiant speech on August 15, 1991, Jayalalitha called on the people of Tamil Nadu to retrieve the island. For the past twenty-five years, Jayalalitha has repeated the call at regular intervals. At the same time, the leaders of two Dravidian political parties, *All India Anna Dravida Munnetra Kazhagam* and *Dravida Munnetra Kazhagam* (DMK), have never admitted that Indian Tamil fishermen go deep into Sri Lankan waters and that their fishing practices have adversely affected the livelihood of their Tamil brethren across the Palk Bay.

Proposed Solutions

It can be argued that the unilateral abrogation of the maritime boundary agreement on India's part would cause irreparable damage to India's image in the comity of nations.¹³ Two courses of action exist: (1) get back the island of Kachchatheevu on "lease in perpetuity" or (2) permit licensed Indian fishermen to fish within a designated area of Sri Lankan waters and vice versa. The first action would let Sri Lanka maintain ownership of Kachchatheevu but give back the island on lease in perpetuity, so that Indian fishermen could continue to fish in and around Kachchatheevu.¹⁴ The Tin Bigha case is a good example to emulate; the 1974 India-Bangladesh boundary agreement gave India sovereignty over Tin Bigha, but a lease in perpetuity later enabled the Bangladeshis to use it for civilian purposes. Both Jayalalitha and Muthuvel Karunanidhi, former chief minister of Tamil Nadu and head of the DMK party, have suggested this option to New Delhi repeatedly but have been unable to persuade New Delhi to reopen the issue.¹⁵

The second course of action would persuade Colombo to permit licensed Indian fishermen to fish in Sri Lankan waters for five nautical miles from the IMBL. There is precedent in the 1976 boundary agreement, which allowed licensed Sri Lankan fishermen to fish in the Wadge Bank (a fertile fishing ground located near Kanyakumari) for a period of three years. In return, Sri Lankan fishermen could be permitted to fish in the

Indian Exclusive Economic Zone under the same terms and conditions applicable to Indian fishermen.¹⁶ Successive governments in Tamil Nadu have supported this action, but for a long time, New Delhi has turned a blind eye to the option.¹⁷

A window of opportunity opened at the end of India-Sri Lanka foreign secretary consultations in July 2003, when the Sri Lankan government agreed for the first time to consider proposals for licensed fishing.¹⁸ This was a missed opportunity, because neither the government of Tamil Nadu nor New Delhi submitted reasonable proposals to Colombo.¹⁹

Poaching and Trawling

Fueling the dispute over Kachchatheevu are the overuse of mechanized trawlers in Palk Bay, the damaging environmental and economic effects of trawling, and the detention of fishermen. To increase productivity and boost exports, the Government of India embarked on a radical transformation of fishing techniques. The result was the introduction of trawlers.²⁰ It was a case of “penny wise, pound foolish.”²¹ Quick returns from prawns attracted many from nonfishing communities to invest in this profitable venture. As a result, numerous fishermen became wage laborers. The period coincided with a growing demand for prawns in the United States, Japan, and Western Europe. According to statistics published by the Indian fisheries department, the number of registered trawlers in three districts of Palk Bay (Thanjavur, Pudukkottai, and Ramanathapuram) increased from 1,568 in 1986 to 3,339 in 2000.²² Both fish catch and exports experienced a sharp increase. Indian exports of marine products shot up from 15,762 metric tons in 1961 to 862,021 metric tons in 2012, an increase of 5,400 percent.²³

Implications

A severe side effect has been the untold damage to marine ecology and, specifically, fish stocks. Trawlers have since been referred to as the “hoovers of the shelf bottom” and “bulldozers mowing down fish and other benthic species.”²⁴ After their

introduction, the Indian side of Palk Bay quickly became devoid of fish. While there was poaching from all fishing harbors, it was fishermen from Rameshwaram who reaped maximum benefit. Rameshwaram had approximately 1,000 mechanized trawlers and a few hundred country boats, many of them motorized.²⁵ The distance between Dhanushkodi, located in the eastern tip of Pamban Island, and the IMBL is only 8 kilometers. On the three days when fishing was permitted, Indian fishermen entered Sri Lanka like a flotilla. They moved deep inside Sri Lanka near the coast. Professor Oscar Amarasinghe of the University of Ruhuna has pointed out that Indian trawlers even entered the northeastern side of Sri Lanka.²⁶ Fishermen in Neduntheevu (Delft Island) lamented that they dare not fish on those three days for fear of having their nets cut. Sri Lankan fishermen were particularly bothered because bottom trawling and pair trawling, which the Indian fishermen resorted to, was principally banned in Sri Lanka.²⁷ Sri Lankan fishermen complained, with justification that, if these practices continued, fish stocks would soon be depleted on the Sri Lankan side as well. A bill to effectively ban all bottom trawling, including the granting of licenses, was introduced in Parliament in 2015; voting has yet to take place.²⁸

In terms of the economic effects, it is extremely difficult to estimate the loss suffered by the Northern Province in Sri Lanka. However, Amarasinghe concluded that the total loss of income to Sri Lanka from poaching by Indian trawlers could amount to Rs. 80 lakhs to Rs. 200 lakhs per day and Rs. 300 crores to Rs. 700 crores per year.²⁹

Proposed Solutions

Proposed solutions, through increased dialogue, have included further limiting the days, timeframe, and location for fishing and an immediate end to bottom trawling. Progressive forces within Sri Lanka and India, eager to arrive at an amicable settlement and ensure the livelihood of fishermen, maximized the opportunity provided by the 2002 Norway-brokered cease-fire between the Sri Lankan government and Tamil

Tiger guerilla. India's Alliance for Release of Innocent Fishermen (ARIF) took the initiative. V. Vivekanandan, ARIF's convener, believed that a solution should be worked out directly among stakeholders. In May 2004, a goodwill mission comprising 21 Indian fishermen held discussions with their Sri Lankan counterparts.³⁰

The official response of both governments to the fishermen's dialogue was lukewarm, occasionally even negative. However, for the first time, due to persistent pleas by Sri Lankan fishermen, the Indian delegation accepted the reality that the use of bottom trawling must be discontinued. They also reluctantly agreed to (1) reduce the number of fishing days to two per week, (2) maintain a distance of three nautical miles from the shore so that the livelihoods of Sri Lankan fishermen were not affected, (3) reduce the fishing time to twelve hours per trip, and (4) introduce a monitoring and enforcement mechanism.³¹ However, the next planned dialogue could not be held in India because the tsunami intervened and many Sri Lankan fishermen were internally displaced. The Indian government did not follow through on the agreement, and poaching in Sri Lankan waters continued. Sri Lankan fishermen began to lose patience and, on occasion, took the law into their hands. In mid-May 2010, Sri Lankan fishermen sunk two Indian trawlers off Mannar coast.³²

In August 2010, negotiations resumed, and a reciprocal visit by Sri Lankan fishermen took place. This time, the Sri Lankan minister for fisheries supported the visit, and the Government of Tamil Nadu agreed to send observers to the meeting. Tamil Nadu fishermen reported being harassed and intimidated by the Sri Lankan Navy, expressing their desire to revive the 2004 agreement; while Sri Lankan fishermen lamented the damage caused by bottom trawling, requesting an immediate end to the practice. Indian delegates pointed out that unless their government introduced concrete steps to buy back trawlers, it would not be possible to stop trawling operations. While conclusions of the dialogue were submitted to government representatives, the dispute remained unresolved.

However, one positive development must be highlighted. A healthy debate about buy-back arrangements of trawlers commenced among nongovernmental organizations and fishermen in Tamil Nadu. In addition, while the Government of Tamil Nadu did not make any official announcement on the subject, in 2005, the governments in New Delhi and Colombo formed a joint working group to explore the option. In subsequent meetings, New Delhi raised the question of allowing licensed Indian fishermen to fish in Sri Lankan waters, but so far there is no consensus.

The efforts of Indian diplomats were focused on ensuring the release of detained Indian fishermen and trawlers. The bureaucratic machinery in Chennai, New Delhi and Colombo swung into action and, as a result, fishermen and trawlers were released.

AVERTING A CRISIS

If the underlying issues of the fisheries dispute are not addressed soon, relations between fishermen and their governments, between Tamil Nadu and New Delhi, and between Tamil Nadu and Colombo could worsen and reach a crisis point. Immediate actions should be taken to begin the phase-out of trawling and identify other fishing practices and waters.

Sri Lankan Tamil fishermen are naturally bitter and angry. Their repeated appeals to the Sri Lankan navy and their government to prevent poaching by Indian trawlers have largely been ignored. The fishermen contend that Colombo is more willing to promote bilateral relations than to ensure the stability of their livelihoods. Similarly, while the Tamil political parties occasionally pay lip service, they avoid making a concerted effort to ameliorate the real issue and focus instead on maintaining cordial relations with Tamil Nadu and New Delhi.

If frustration and disenchantment increases, the possibility of Sri Lankan Tamil fishermen taking up arms cannot be ruled

out. An armed conflict between Sri Lankan and Indian Tamil fishermen will lead to dangerous consequences. Another likely scenario should also be mentioned. If the Sri Lankan government seeks legal remedies and files a case in the International Court of Justice, India's, and especially Tamil Nadu's, reputation will suffer seriously. The Indian objective of striving to create a peaceful neighborhood in South Asia will suffer a serious setback. The perception of many observers in neighboring countries that India is a bully will gain further credence.

Jayalitha's frequent letters to the prime minister pleading to reopen ownership claims of Kachchateevu and protect the traditional fishing rights of Indian fishermen are lauded by her followers. But these efforts are unlikely to contribute to peace and tranquility in Palk Bay. The power to effect change seems to be in Tamil Nadu's hands.

Action should be taken immediately to end the use of mechanized trawlers within one year, and the government should implement a buy-back arrangement as soon as possible. There is unlikely to be much opposition from trawler owners and fishermen because they know the reality. According to informed sources, there are 3,407 mechanized fishing boat trawl netters, most of them operating from Rameshwaram. A trawler costs approximately Rs. 30 lakhs.³³ Therefore, the total expenditure involved in a buy-back arrangement is about Rs. 3,407.10 crores. The central government and Tamil Nadu government could share this expenditure. Other coastal state governments can purchase these trawlers at subsidized rates for use in environments where they do not threaten marine ecology.

Recently, the Government of Tamil Nadu has begun emphasizing the importance of deep sea fishing as part of an effort to diversify. While waiting for New Delhi's approval of a related three-year proposal, Jayalitha has announced the commencement of a smaller scheme to construct 171 Tuna Long Liners.³⁴ Through incentives and persuasion, fishermen from Palk Bay could be encouraged to switch over to deep sea

fishing in the Indian Exclusive Economic Zone (EEZ) and in international waters.

SEIZING AN OPPORTUNITY

The success of diplomacy lies in converting a crisis into an opportunity. If New Delhi and Tamil Nadu are determined, they can create a win-win scenario in Palk Bay. The immediate decommissioning of trawlers is an important prerequisite for this unconventional solution.³⁵ With sincerity and goodwill, the suspicions Sri Lankan Tamil fishermen have about their counterparts' intentions can be assuaged.

India must view the Palk Bay region as a common heritage of the two countries and project this vision.³⁶ The first step for arriving at an amicable solution is to recognize that in addition to New Delhi and Colombo, there are other stakeholders to engage, including the governments of the Northern Province and Tamil Nadu and the fishing communities in both countries. The next step is to form a Palk Bay authority, comprising fisheries experts, marine ecologists, fishermen's representatives, strategic specialists, and government officials. It should include officials from both governments. The authority could determine the ideal sustainable catch, type of fishing equipment that can be used, and the number of fishing dates for Indian and Sri Lankan fishermen. Special provisions could be made to protect the interests of traditional fishermen. The focus should be on the enrichment of marine resources and a qualitative improvement in the lives of coastal people. There is considerable scope for bilateral cooperation among Tamils on both sides in the introduction of multiday boats for deep sea fishing.³⁷

In his effort to transform India-Pakistan relations, former prime minister Manmohan Singh emphasized that while he cannot alter the existing borders, he can try and make them irrelevant.³⁸ That vision of cooperative frontiers in the

Subcontinent has had broad support from his successor, Prime Minister Narendra Modi. Both Singh and Modi have emphasized the centrality of the neighborhood in India's foreign policy strategy. The election of a new government in Sri Lanka, including President Maithripala Sirisena in January 2015, has improved the political chemistry between Delhi and Colombo. The Modi government has renewed dialogue with Sri Lanka on the fisheries problem in the Palk Bay. Delhi and Colombo have affirmed their commitment "to find a permanent solution to the fishermen issue."³⁹ Delhi is also making a new effort to build consensus among domestic stakeholders.⁴⁰ This rare moment of political opportunity is too valuable to miss.

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