

Resolution of the India-Sri Lanka Maritime Border Conflict and Fisheries Dispute

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Summary

The 64 kilometres of ocean between Tamil Nadu and Sri Lanka – the region of the Palk Bay – has been fraught with conflict and violence over the past few decades.¹ These crises arise from the dispute over territorial rights to poach around the island of Kachchatheevu in Palk Bay. The fisheries dispute poses serious economic and environmental ramifications that most affect the local fishing communities on either side of the Palk Bay who rely upon marine resources for their livelihood. The internal politics in India and Sri Lanka have contributed to rising tensions and the lack of resolution. This has deeply affected the bilateral relations between the two states, as seen by the longstanding dispute over the sovereignty of Kachchatheevu. India and Sri Lanka’s implementation of the proposed policy solutions – strict action to ban the use of bottom trawlers, permits for fishermen to poach on both sides of the maritime boundary, restricting fishing to sustainable levels and establishing an authority specifically to manage the Palk Bay maritime concerns and regulations – could assist with reducing the immediate conflict in the area as well as lessening the long-term environmental damage.

Introduction

India’s relations with its South Asian neighbours comprise a crucial maritime aspect, given the geopolitical context. Sri Lanka is not only India’s nearest maritime neighbour but is also critical to India’s international relations and foreign posture, given the governmental and non-governmental relations between India and Sri Lanka in several fields.² The point of maritime contention between the two countries lies in the fishermen and fisheries dispute in the Palk Bay. The 64 kilometres of ocean between Tamil Nadu, the southernmost part of India, and Sri Lanka – the region of Palk Bay – has been fraught with conflict and violence over the past few decades.³ These crises arise from the dispute over territorial rights to poach around the island of Kachchatheevu in the Palk Bay. India and Sri Lanka have failed to reach a suitable and sustainable settlement, despite grave environmental and political concerns. Multiple bilateral agreements and attempts at negotiations between India and Sri Lanka have proved largely ineffective, due to the inability to enforce the terms of existing agreements, divided domestic views, and a lack of compromise or concessions on deal-breaking issues.

¹ V. Suryanarayan, “The India-Sri Lanka Fisheries Dispute”, Carnegie India: Carnegie Endowment for International Peace, 9 September 2016.

² N. Manoharan and Madhumati Deshpande, “Fishing in the Troubled Waters: Fishermen Issue in India-Sri Lanka Relations”, *India Quarterly* 74, no. 1 (March 2018): 73.

³ V. Suryanarayan, “The India-Sri Lanka Fisheries Dispute”, op. cit.

This issue has negatively affected India-Sri Lanka relations, the underlying point of contention being the ceding of Kachchatheevu to Sri Lanka. In addition to being economically damaging to individual communities and locals in both countries who rely heavily on fisheries as a source of income and economic output, the current state is also causing severe environmental damage in the Palk Bay, owing to the use of mechanised trawlers and overfishing.⁴ The severe economic and environmental consequences, as well as negative implications for bilateral relations between India and Sri Lanka, makes the resolution of the issue imperative. This paper presents the strategic recommendations of permits, strong government actions and the establishment of proposed regulatory bodies to promote the peaceful co-existence of fishermen in the Palk Bay to overcome India-Sri Lanka maritime border conflicts.

Historical Backdrop

During the British colonial rule in Ceylon, discussions on the 'Fisheries Line' were held in 1921. Colonial delegations from Ceylon and India agreed "on the need to avoid over-exploitation" and "take measures for the conservation of the marine resources", signalling concern over the environment even at the time. Kachchatheevu was a point of contention during these talks.⁵ The delegates agreed on the 'Fisheries Line' three miles to the west of Kachchatheevu and made compensations elsewhere to ensure "an equitable apportionment in the fisheries domain for both Sri Lanka and India".⁶ Since both countries were under British rule then, sovereignty was not discussed and equidistance was not a key factor in deciding the 'Fisheries Line' of 1921. It is important to note that the 'Fisheries Line' was not territorial "so as not to prejudice any territorial claim which the Government of Madras or the Government of India may wish to prefer in respect of the island of Kachchatheevu".⁷ The British Colonial Office did not ratify the agreements, creating confusion as to whether the 'Fisheries Line' of 1921 was a legally valid maritime boundary line between the two countries.⁸

No maritime borders were officially drawn at independence and in the immediate post-independence period of India and Sri Lanka, and there was largely a free movement of goods across the Palk Bay – a continuation of the free movement prior to and during colonisation. There was an eventual need for an official and clear demarcation of the maritime boundaries where Kachchatheevu was a central concern. The possession of the island was considered by Sri Lanka a question of 'national prestige'. India's proposals of dividing the island, joint administration, and lease in perpetuity were rejected by Sri Lanka.⁹

The Indian government eventually ceded the island of Kachchatheevu to Sri Lanka, a decision based on the bilateral India-Sri Lanka maritime border agreements of 1974 and

⁴ Sivakumaran Sivaramanan, "Environmental Conflict on Exploitation of Fish Stocks in Palk Strait Among Fishermen of India and Sri Lanka", Environmental Impact Assessment Unit, 8 August 2015, <https://doi.org/10.13140/RG.2.1.4521.9682>.

⁵ N. Manoharan, and Madhumati Deshpande, *op. cit.*, pp. 75-76.

⁶ *Ibid.*

⁷ *Ibid.*, p. 75.

⁸ *Ibid.*

⁹ *Ibid.*, p. 74.

1976, which demarcate the border one nautical mile west of the island, giving its possession to Sri Lanka. To India's benefit, the 1974 agreement split the area in the Palk Bay – consisting of 2,100 square miles – between India and Sri Lanka in a ratio of 1.02:1 in favour of India, and protected Indian fishermen by allowing the free travel of vessels through the Palk Bay (fishing was not explicitly stated in the agreement) and free travel to Kachchatheevu for drying fish and nets.¹⁰ The agreement intended to improve relations between India and Sri Lanka and was enacted despite strong opposition from Tamil Nadu, which was ultimately overlooked. The 1976 agreement further extended the border of the Palk Bay region in the Gulf of Mannar and the Bay of Bengal. The principles of national sovereignty underpinned both agreements, which were further eased by good personal relations between then India's Prime Minister Indira Gandhi and Sri Lanka's Prime Minister Sirimavo Bandaranaike.¹¹ Despite the 'successful' conclusion with the agreements, the ceding of Kachchatheevu remained largely disagreeable with the state of Tamil Nadu. Moreover, fishermen from India and Sri Lanka were omitted from the discussions and drafting of the agreements, signalling a disconnect between the negotiations and the interests of those most affected by them.

Subsequently, there was relative harmony between cross-border fishermen for a period. However, the Sri Lankan civil war from 1983 to 2009 diminished the country's capability to enforce borders and protect its territorial waters while Indian fishing fleets and equipment advanced.¹² Restrictions placed by the Sri Lankan government to restrict the activities of the Liberation Tigers of Tamil Eelam prevented the free movement of boats in and across territorial waters, in contrast to the prior freedom of movement. At the height of the conflict, the Sri Lankan government prohibited fishing on the Sri Lankan side to improve security in the region and, from time to time, the Sri Lankan navy would detain and harass Sri Lankan Tamil fishermen. Fearing persecution, many Sri Lankan Tamil fishermen sought refuge in India during this period and were often employed by Indian trawler owners.¹³

The end of the civil war in 2009 brought with it rising tensions, as Sri Lankan Tamil fishermen who tried to resume fishing were restricted by the increased influence of the Sri Lankan navy in the region. As Indian fishing trawlers are more advanced and fishermen from Tamil Nadu seek to earn a livelihood, they repeatedly enter Sri Lankan waters. The agreements of 1974 and 1976 are now being actively violated by the Indian fishermen poaching in Sri Lankan territory. While Indian trawlers are viewed as a major problem, the Sri Lankan navy did not act against the poaching consistently. This has caused frustration among Sri Lankan Tamil fishermen.¹⁴ Further exacerbating tensions is the overuse of Indian mechanised trawlers in Palk Bay, its damaging environmental and economic effects, and the detention of fishermen and trawlers.¹⁵

¹⁰ Ibid, p. 76.

¹¹ V. Suryanarayan, *Conflict over Fisheries in the Palk Bay Region* (New Delhi: Lancer Publishers & Distributors, 2005).

¹² M. Mayilvaganan, "Engaging Post-LTTE Sri Lanka: India's Policy Options", *India Quarterly* 68, no. 1 (2012), pp. 17-28.

¹³ V. Suryanarayan, *Conflict over Fisheries in the Palk Bay Region*, op. cit.

¹⁴ Ibid.

¹⁵ Ibid.

Examining the Issue

Economic Concern

Forty per cent of India's trade with Sri Lanka occurs through Tamil Nadu and the informal trade with Sri Lanka through Tamil Nadu is estimated to be approximately double the amount of formal trade.¹⁶ Fishing accounts for a large portion of economic production in the Northern Province of Sri Lanka, which contributes to more than a third of the country's catch. To increase productivity and gains, the Indian government sought to technologically advance fishing practices and promoted mechanised trawlers. As a result, there was a sharp increase from 1,568 to 3,339 trawlers between the period of 1986 and 2000 in the Palk Bay (during the period of the Sri Lankan civil war).¹⁷ This resulted in the Indian side of the Palk Bay being largely depleted of fish, causing them to venture further into Sri Lankan waters to poach. Indian poaching in Sri Lankan waters results in an estimated loss of US\$40 million (S\$54.3 billion) for Sri Lanka annually, adversely affecting the livelihood of people in coastal towns, as the primary sector is a large provider of income in both Tamil Nadu and Sri Lanka.¹⁸ The more traditional methods and less-developed trawlers employed by Sri Lankan fishermen provide lesser yield, creating another source of tension in the region.

Environmental Concern

Geographically, the southernmost part of India and the northernmost part of Sri Lanka are at the same Latitudinal Biodiversity Gradient (LBG). This is because the region falls between 8°N and 10°N. The LBG is significant to the processes of marine life such as emigration, immigration and speciation, among others.¹⁹ This, along with the lack of strong currents in the region, results in Indian and Sri Lankan fishermen fishing for the same type of marine life. As the resources are depleted on one side, the fishermen have the incentive to cross the border in search of the same resources. The poaching and trawling practices currently utilised in the region are unsustainable and damaging. Indian fishing trawlers and their exploitative fishing practices of bottom trawling severely harm the ecosystem, marine life and fish stocks in the Palk Bay over the long term.²⁰ The case of the tragedy of commons is evident, as those involved act in self-interest by overfishing and depleting the fish stock in the Palk Bay (a common access resource).

In 2017, the Sri Lankan parliament passed a bill banning all bottom trawling. This was in response to concerns raised by Sri Lankan fishermen whose livelihoods were threatened by encroaching Indian bottom trawlers which depleted marine resources on the Sri Lankan side. The Tamil Nadu Marine Fisheries Regulation Act of 1983 (further amended in 2016), which limits fishing and bottom trawling within three nautical miles from the coast and

¹⁶ N. Manoharan and Madhumati Deshpande, op. cit., p. 74.

¹⁷ Ajit Menon et al., "The Political Ecology of Palk Bay Fisheries : Geographies of Capital, Fisher Conflict, Ethnicity and Nation-State", *Antipode* 48, no. 2 (2015), pp. 393-411.

¹⁸ Sarvananthan Muttukrishna, "Envisioning a Smart Resolution to Fishing Disputes between India and Sri Lanka", *Maritime Affairs: Journal of the National Maritime Foundation of India* 14, no. 2 (2018), pp. 92-105.

¹⁹ N. Manoharan and Madhumati Deshpande, op. cit., p. 74.

²⁰ Sivakumaran Sivaramanan, op. cit.

promotes deep-sea fishing, has proved ineffective as there has reportedly been little success in enforcement.²¹

Cultural Factor

The Palk Bay borders five Indian districts and three Sri Lankan districts and, in 2004, there were an estimated 262,562 and 119,000 fishermen on the Indian and Sri Lankan sides respectively.²² Local fishermen in both Sri Lanka and India are Tamil speakers and have shared culture and festivals, owing to centuries of contact and connection through religion, literature, frequent migrations and intermarriages. Before independence, there was free trade and movement of goods across the Palk Bay, which did not entirely cease post-independence.²³ This bond helped the harmonious coexistence of the fishermen for centuries, which has now been detrimentally affected in recent years by the issues of coastal insecurity and overfishing.²⁴

Ineffectual Action

The Sri Lankan navy has increasingly detained numerous Indian fishermen and trawlers encroaching on national territory since the end of the civil war in 2009. The apprehended Indian fishermen, followed soon after by the trawlers, are often released to maintain bilateral relations with India, only for them to come back and poach in Sri Lankan territory again.²⁵ This trend indicates that the current system is ineffective and counterproductively, and increases tensions with Tamil Nadu fishermen who are increasingly frustrated by the risk of being apprehended.

However, despite calls from international groups and even Tamil fishermen (to protect their rights to fish in the Palk Bay), the Indian government has largely neglected to address the issue other than occasionally bailing out Indian fishermen in Sri Lankan custody.²⁶ A disconnect between New Delhi and the Tamil Nadu state government and the domestic politics of the Tamil Nadu state complicates this further. Two Dravidian political parties have refused to acknowledge that Indian fishermen poach in Sri Lankan waters and the state government of Tamil Nadu has a case pending in the Supreme Court challenging the agreements of 1974 and 1976.²⁷

In the short term, the Indian government could continue the practice of sending diplomats to bail out Indian fishermen in Sri Lankan custody.²⁸ However, given repeated calls by the Sri

²¹ "TN Amends Law Giving Thrust for Deep Sea Fishing", *The Economic Times*, 20 February 2016, <https://economictimes.indiatimes.com/news/economy/agriculture/tn-amends-law-giving-thrust-for-deep-sea-fishing/articleshow/51072221.cms>.

²² V. Suryanarayan, "The India-Sri Lanka Fisheries Dispute", op. cit.

²³ N. Manoharan and Madhumati Deshpande, op. cit., p. 74.

²⁴ V. Suryanarayan, "The India-Sri Lanka Fisheries Dispute", op. cit.

²⁵ V. Suryanarayan, *Conflict over Fisheries in the Palk Bay Region*, op. cit.

²⁶ M. Mayilvaganan, "Engaging Post-LTTE Sri Lanka: India's Policy Options", *India Quarterly* 68, no. 1 (2012), pp. 17-28.

²⁷ V. Suryanarayan, "The India-Sri Lanka Fisheries Dispute", op. cit.

²⁸ "Sri Lanka Arrests Indian Fishermen 'In Its Waters'", *BBC News*, 16 February 2011, <https://www.bbc.com/news/world-south-asia-12484278>.

Lankan government for further action, maintaining the status quo is not sustainable as it would harm bilateral relations. This also refutes India's general policy intentions to maintain good relations with its neighbours in South Asia.²⁹ Apart from foreign policy and relations, rising domestic tensions between the Indian government and the Tamil Nadu state government may result in further conflict in the future between local fishermen and political actors. Maintaining the status quo will also be detrimental to the environment as it allows the continuation of unsustainable and harmful trawling practices in the region.

Action must be taken before tensions reach a tipping point and the underlying problems – fishing rights issues and unsustainable fishing – must be addressed. Banning bottom trawling immediately eases some tensions in the Palk Bay. Meanwhile, longer-term solutions include implementing permits and regulations, and establishing authorities to manage the Palk Bay maritime concerns and regulations. Bilateral cooperation to address the policy concerns builds on the cultural history and shared identities of the people of south India and northern Sri Lanka. Furthermore, it reduces tensions domestically between the concerns of those in Tamil Nadu and the inaction of lawmakers in New Delhi. The proposed policy recommendation directly addresses environmental concerns as well.

This presents the dichotomy between the objectives of the foreign policy debate of maintaining relations by reaching solutions on the policy front regarding the rights of Indian fishermen in Sri Lankan territory and vice versa but also reaching solutions to regulate fishing in the entirety of the Palk Bay and restrict unsustainable fishing practices. Tensions between India and Sri Lanka are on the rise as Sri Lankan fishermen complain of continued bottom trawling and overfishing by Indian fishermen. Additionally, there is domestic strife within India as the central government ceded Kachchatheevu without listening to the concerns of Tamil Nadu. As a result, Indian fishermen are now struggling due to the lack of sovereignty over Kachchatheevu.

Policy Recommendations

The proposed policy approaches are evaluated using a set of criteria for feasibility and sustainability over the long term. The abrogation of India-Sri Lanka maritime agreements – rescinding the agreements of 1974 and 1976 unilaterally by India or Sri Lanka – is not feasible or sustainable in the long term as it is likely to exacerbate conflict, damage bilateral relations, harm the country's reputation and worsen diplomatic relations in South Asia.³⁰ Possible alternative policy options are:

1. India obtaining a perpetual lease of Kachchatheevu: Attaining a perpetual lease over the island of Kachchatheevu by India would allow Indian fishermen to fish in the Palk Bay while the Sri Lankan government continues to maintain ownership of the island. This would restore the traditional fishing rights of Indian fishermen, resolving conflict in Palk Bay and domestically. The lease would present an opportunity to restrict the harmful practice of bottom trawling in the waters and permit only agreed-upon use

²⁹ Pratip Chattopadhyay, "The Politics of India's Neighbourhood Policy in South Asia", *South Asian Survey* 18, no. 1 (2011), p. 99.

³⁰ *Ibid*, pp. 93-108.

of the territory at the time of signing the lease by the Indian and Sri Lankan governments. This approach would provide a sustainable solution to the conflict and can restrict harmful fishing practices. However, it is not easily implementable, as witnessed by multiple unsuccessful attempts at opening and progressing dialogue with Sri Lanka for feasible policies on this front.³¹

2. Both countries agreeing over permits for Indian fishermen to fish within designated parts of Sri Lankan territory: This could include persuading the Sri Lankan government to allow Indian fishermen to poach within a few nautical miles into the International Maritime Boundary Line and allow Sri Lankan fishermen to fish in Indian waters to reciprocate and form an agreement. This approach of regulation and permits is sustainable if long-term permits can be agreed upon, allowing Indian fishermen to fish in agreed-upon Sri Lankan territory, and addressing the frustration of Indian fishermen and the territorial disputes directly. Talks for permits for licenced fishing have a precedent from 2003 with the Sri Lanka government agreeing to view permit proposals after bilateral foreign secretary consultations. However, the dialogue failed due to a lack of adequate proposals submitted by the Indian central government.³² Though feasible, this approach might face enforcement issues, as seen in prior agreements of 1974 and 1976, and calls for the expansion of security and patrolling measures, incurring additional costs and funding.
3. Restricting and regulating the timing, location, and days for fishing: By regulating fishing activity in the Palk Bay, the Indian government can reduce overfishing and ban the extremely harmful practice of bottom trawling to preserve and restore the ecosystem of the Indian side of the Palk Bay.³³ Negotiations to restrict fishing continued in 2010. However, they fell through as the Tamil Nadu state government wanted concrete ways to buy back the trawlers of Indian fishermen.³⁴ Reopening dialogue can result in a feasible and sustainable solution with the buyback of trawlers, though it would incur heavy costs. This approach would potentially cause objections among Indian fishermen as their fisheries are restricted, reducing future revenues.

Strategic Recommendations

A combination of the second and third approaches in the policy course of action would potentially be the most effective as they address immediate environmental concerns of overfishing and unsustainable methods, as well as the longer-term fisheries dispute.

1. Strict action to ban the use of bottom trawlers: Immediate steps should be taken by the Indian government to ban mechanised bottom trawlers. An agreement can be reached by the Indian central government and the Tamil Nadu state government to buy back bottom trawlers. The buy-back cost of trawlers could be divided between

³¹ V. Suryanarayan, "The India-Sri Lanka Fisheries Dispute", op. cit.

³² Ibid.

³³ Sivakumaran Sivaramanan, op. cit.

³⁴ V. Suryanarayan, "The India-Sri Lanka Fisheries Dispute", op. cit.

the Tamil Nadu government and the central government in India to fund the buy-back scheme and can be implemented within two years. These mechanised trawlers can later be bought by other state governments for use in waters where they do not harm the ecosystem and coastal environments.³⁵

2. Permits for fishermen to poach on both sides of the maritime boundary and restrict fishing: A system should be implemented in the next four years by the governments of India and Sri Lanka to issue fishing permits to fishermen in regulated and agreed-upon regions in Sri Lankan and Indian waters. This can be accompanied by strong regulations limiting the locations for fishing to sustain the ecosystem and allow it to replenish in areas that have been heavily overfished. This can include the action points: limiting fishing to three days a week, implementing a restriction of hours of fishing per day to 12 hours and creating enforcement procedures (based on prior discussions in May 2004 of Indian and Sri Lankan diplomats and fishermen).³⁶
3. Establish an authority to manage the Palk Bay maritime concerns and regulations: Allocate funding to establish an authority within two years to handle disputes, set regulations and designate regions and timings for fishing. For appropriate and informed decision-making, the authority should comprise ecologists, marine biologists, representatives of fishermen from India and Sri Lanka, and government officials from both countries.³⁷ The creation of the authority would help signal the priorities and commitment of the Indian government towards maintaining strong relations with Sri Lanka and advancing sustainable fishing practices.

The limitations of this analysis are that the majority of the statistics are estimates and up-to-date figures are difficult to attain. With regard to the strategic recommendations, it could be difficult to ascertain and quantify the exact amount of fishing that is harmful, though the establishment of an authority directly researching and addressing these issues should be able to create more empirically-backed and accurate data. The efficacy may be in question because there is a lack of precedence for strong enforcement in the Palk Bay region, along with a high incentive to overfish. Hence, it is imperative to have strong enforcement of restrictions through coastal and marine patrols and to have appropriate systems to handle offences by all fishermen. Finally, restricting fishing and fishing practices will create a need for the creation of alternative economic opportunities in the region.

Conclusion

In conclusion, the fisheries dispute is a key point of contention and hindrance in the bilateral relations between India and Sri Lanka. The fisheries dispute poses serious economic and environmental ramifications that most impact the local fishing communities that rely upon marine resources for their livelihood, on either side of the Palk Bay. The internal politics in India and Sri Lanka have contributed to the rising tensions, and the lack of resolution, and

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

has deeply affected the bilateral relations between the two states, seen by the vigorous dispute over the sovereignty of Kachchatheevu.

As regional powers, India and Sri Lanka should consider implementing the proposed policy solutions. This will assist with lessening the immediate conflict in the area, as well as reducing the long-term environmental impact.

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