



## Mitigating the India-Pakistan Maritime, Humanitarian, and Environmental Adversities with respect to Sir Creek

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### Abstract

Sir Creek, an ecologically vital area abundant in marine life, sustains coastal communities primarily composed of fishermen whose traditional and economic ties are deep-rooted in the region. The recent surge in the river mouth industrialization along the Gujarat coast has led to heightened pollution and a rise in temperature by over four degrees Celsius in the coastal waters, directly impacting the marine ecosystem. The consequent decline in marine life in the coastal areas of Gujarat has compelled fishing communities to venture deeper into the sea, risking inadvertent trespass into the territorial waters of Pakistan. Presently, a concerning number of fishermen, 184 Indians and 81 Pakistanis, are in prisons across borders due to such incidents. These innocent fishermen get embroiled in a situation with either country continuously trying to establish territorial sovereignty. Furthermore, the prisoners on both sides face a violation of the Vienna Convention on Consular Relations, 1963, and the India-Pakistan Agreement on Consular Access, 2008. The prolonged detention and in-custody deaths of Indian and Pakistani fishermen have given rise to an acute and entirely preventable humanitarian crisis. This paper uses a qualitative methodology to delve into judicial pronouncements, statutes, international treaties, reports, and academic literature and outlines an action plan to mitigate the maritime, humanitarian, and environmental adversities plaguing Sir Creek and its surrounding region.

**Keywords:** Coastal Pollution, Consular Relations, Industrialization, Sustainable Technology, The Vienna Convention, 1963

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## 1. Introduction

The Sir Creek, a narrow 96 km waterway between Gujarat in India and the Sindh province in Pakistan, has been embroiled in a protracted territorial dispute since the partition of British India into two independent dominions. Its significance predates independence, serving as the focal point of contention between the rulers of Kutch and Sindh. Following independence, tensions resurfaced in the 1960s, such as unresolved territorial disputes specific to the contrasting interpretations of the maritime boundary line.<sup>1</sup>

In April 1965, an armed conflict erupted between India and Pakistan, which culminated in the signing of an agreement dated 30.06.1965.<sup>2</sup> This pivotal agreement temporarily halted hostilities by declaring a ceasefire and establishing the 'Indo-Pakistan Western Boundary Case Tribunal', tasked with adjudicating the disputed border issues.<sup>3</sup> The tribunal rendered its Award on 19.02.1967, delineating that India was entitled to 90% of the Rann territory, with some specific regions recognized as belonging to Pakistan.<sup>4</sup> However, the said decision did not conclusively solve the disputes over the resource-rich Sir Creek area. The coastal communities of India and Pakistan, traditionally and economically intertwined with the Sir Creek and surrounding areas, face the repercussions of territorial disputes between the two countries. The geopolitical tension in the Sir Creek region is exacerbated by the effects of contemporary industrialization in the area and climate change, particularly the ecological imbalances that drive away the marine life, plunging into the deeper ocean and with it, the fishermen who risk crossing marine borders.<sup>5</sup>

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<sup>1</sup> Palash, Sir Creek Row Began Over Pile of Fire Wood, *ASIAN AGE* (Nov 10, 1998).

<sup>2</sup> Ashok Behuria, India-Pakistan relations and the Kashmir issue (1947-2009), *SOUTH ASIAN SECURITY*, 65-82 (2012).

<sup>3</sup> Reports Of International Arbitral Awards, 1-576 (Feb 19, 1968).

<sup>4</sup> K. Palash, Sir Creek Row Began Over Pile of Fire Wood, *ASIAN AGE* (Nov 10, 1998).

<sup>5</sup> Faraz Haider, Sir Creek, Climate Change and Stability in South Asia, *Research Society Of International Law* (Nov. 18, 2022), <https://rsilpak.org/2022/sir-creek-climate-change-and-stability-in-south-asia/>.



The fishing industry is the backbone of the economy along the coast of Gujarat, employing approximately 5,00,000 fishermen.<sup>6</sup> The coastline, originally teeming with over 400 species of fish, along with the marine habitat of salt marshes and seagrass beds, has massively been polluted by toxins and waste from petrochemical facilities, thermal power stations, cement refineries, and rampant river mouth industrialization.<sup>7</sup> Unfortunately, the inadequate enforcement of existing regulations against the disposal of pollutants into the ocean has compelled fishermen to extend their fishing grounds further into the sea. Consequently, this situation has necessitated fishing communities to abandon the shelter of their territorial waters and instead navigate into neighboring territories, thereby increasing their vulnerability to potential apprehension by naval authorities.

India and Pakistan semiannually exchange a list of prisoners on January 1st and July 1<sup>st</sup> under the 2008 Agreement.<sup>8</sup> As of January 1st, 2024, India has provided a list of 337 civilian prisoners and 81 fishermen who are believed to be Pakistani, while Pakistan has shared a list of 47 civilian prisoners and 184 fishermen believed to be Indian.<sup>9</sup> The substantial population of prisoners from both nations incarcerated in each other's territories is a consequence of diplomatic failures and the absence of adequate safeguards, such as the now-defunct Joint Judicial Committee on Prisoners, which was established in 2007 with the specific mandate to address this very issue.<sup>10</sup> Hence, it is paramount to meticulously scrutinize the long-standing maritime border dispute alongside the environmental crisis.

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<sup>6</sup> Edward H Allison et. al., *Vulnerability of National Economies to the Impacts of Climate Change on Fisheries*, 10 FISH FISH., 173-96 (2009).

<sup>7</sup> Damayanthee Dhar, *Industrial Corridors Swallow Hundreds of Fish Species in Gujarat*, *The Wire* (May 22, 2018), <https://science.thewire.in/economy/industrial-corridors-swallow-hundreds-of-fish-species-in-gujarat/>.

<sup>8</sup> *Agreement on Consular Access Between the Government of the Republic of India and the Government of the Islamic Republic of Pakistan*, India-Pak., May 21, 2008.

<sup>9</sup> Ministry of External Affairs, *Exchange of List of Prisoners between India and Pakistan*, (Press Release dated January 01, 2024).

<sup>10</sup> Ministry of External Affairs, *Exchange of List of Prisoners between India and Pakistan*, <https://fsi.mea.gov.in/press-releases.htm?dtl/37491/Exchange+of+list+of+prisoners+between+India+and+Pakistan> (Press Release dated January 01, 2024).

## 2. Environmental Issues

Conventional evaluations of conflict, which mainly focus on ethnic, religious, and cultural rationales, are insufficient because they fail to consider the increasingly clear connections between violent conflict and the depletion of renewable resources, particularly in developing nations where environmental changes are more likely to occur.<sup>11</sup> Although occasionally as widespread as military dangers, ecological hazards could be more scattered. Furthermore, it is claimed that widespread human-caused environmental pressure may negatively impact national and international security, shaping security around an environmental altar. Ecological deterioration can hamper any potential for arriving at a mutually beneficial solution, raising tensions in national and international communities and enhancing the possibility of numerous types of conflict.<sup>12</sup>

### 2.1. Effects of Industrialization along the Gujarat Coast

Rapid industrialization and agglomeration of manufacturing factories in the western corridor of India have contaminated the ecological health of the seacoast. These industries have disregarded waste disposal laws, allowing untreated water to be discharged into the ocean. Consequently, marine vegetation has been decimated, making it difficult for fish to approach the coast for oxygenation, resulting in a decline in fish population near the Gujarat coast.<sup>13</sup> The migration of fish from warm to calmer waters is a phenomenon that has already commenced, with the warming of the Indian Ocean leading to a reduction in fish catch.<sup>14</sup> This warming has reduced marine algae, which is the foundation of the aquatic food chain, particularly in the western Indian Ocean.<sup>15</sup> The oceans absorb approximately 90% of the

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<sup>11</sup> Thomas F. Homer-Dixon, *Environmental Scarcities and Violent Conflict: Evidence from Cases*, 1 19 MIT PRESS, 5-40 (1994).

<sup>12</sup> Neville Brown, *Climate, Ecology and International Security*, 6 31 SURVIVAL, 519-32 (1989).

<sup>13</sup> The Research Collective, *Where have the fish gone? The impact of industrial development on fishworkers in Gujarat*, PEOPLE'S ARCHIVE OF RURAL INDIA (Nov 2017), <https://ruralindiaonline.org/en/library/resource/where-have-the-fish-gone-the-impact-of-industrial-development-on-fishworkers-in-gujarat/>.

<sup>14</sup> *supra* n.13

<sup>15</sup> Mathew Koll Roxy et. al., *Indian Ocean Warming - The Bigger Picture*, 7 96 B.A.M.S, 1070 (2015).



additional heat from increased greenhouse gas emissions, resulting in significant repercussions for marine ecosystems.<sup>16</sup>

Western coastal fishermen in India are at a high risk of losing their livelihood and face grave safety perils. Fish stocks along the state's coastline are reducing significantly due to gradual pollution from nearby industries over the years. As a result, fishermen have to venture further out to sea to get a better yield, given the cost involved in each trip into the sea. This puts them at a higher risk of being detained by the maritime authorities of Pakistan and potentially imprisoned for indefinite periods. Likewise, fishermen from Pakistan are witnessing dwindling fish stocks. Despite the mid-range availability of GPS systems, fishing boats still need help to accurately determine their coordinates in the sea, making it challenging to stay within permitted waters. Although the territorial borders are adequately guarded, the maritime boundaries are almost undefined, posing a challenge for fishermen to avoid crossing into restricted zones.

## 2.2. Effect of Global Ecological Deterioration on the Gujarat Coast

The marine ecosystem is significantly harmed by anthropogenic pollutants, particularly from the unregulated use of plastics, agricultural fertilizers, and improper effluent treatment facilities. The revenue generated from fishing activities in Gujarat is on a downward trend due to inconsistent monsoons and the rise in extreme weather phenomena, resulting in fewer days available for fishing.<sup>17</sup> Changes in land utilization patterns could exacerbate the impact of severe climate events, leading to increased storm fatalities and the spread of infectious diseases. There is an extreme influence of non-climatic factors such as urbanization, land reclamation, exploitation, degradation, and pollution on the fishing industry.

Alterations in the environment have a direct bearing on the economy and livelihood of fishermen. Erratic monsoons have been

<sup>16</sup> Regina Rodrigues, *Global warming: 90% of emissions heat absorbed by the ocean*, UNITED NATIONS REGIONAL INFORMATION CENTRE FOR WESTERN EUROPE (Sep 25, 2023), <https://unric.org/en/global-warming-90-of-emissions-heat-absorbed-by-the-ocean/>,

<sup>17</sup> M Barange et. al., *Impacts of Climate Change on Fisheries and Aquaculture: Synthesis of Current Knowledge, Adaptation and Mitigation Options*, FAO Fisheries and Aquaculture Technical Paper, 627 FAO (2019).

identified as the most significant consequence of climate change, along with an increase in sea level, with regular disruptions in weather, such as cyclones, which have caused considerable damage to fishing equipment and vessels.<sup>18</sup> There is a rise in instances where high tides breach the coastline, leading to seawater inundation in coastal areas and creating hardships for local settlements. The cost of living has continuously risen while fishing incomes have decreased due to increased fishing costs. This rise in costs is attributed to shifts in fish abundance, which have forced fishermen to venture beyond their traditional fishing grounds in search of commercially valuable fish species.<sup>19</sup>

Despite significant technological advancements, many fishing boats still use primary communication channels, which hamper their ability to cope with the adverse challenges of climate change. The deficiencies in policymaking and issues with implementation lead to insufficient preparedness for disasters. While the Gujarat State Disaster Management Plan 2024-25<sup>20</sup> emphasizes “community-based disaster management,” it lacks sector-specific protocols for fishermen during cyclones or floods.<sup>21</sup> The plan mentions coordination with the Gujarat Maritime Board (GMB) but does not detail evacuation routes, early warning dissemination, or compensation mechanisms tailored to fishing communities. Researchers at the University of Guelph conducted a study to review the concept of adaptation of human communities to global changes, especially climate change.<sup>22</sup> They explored several factors that affect the adaptive capacity of fishers and concluded that adaptation measures should be the central focus of policies aimed at mitigating climate change’s impact.

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<sup>18</sup> **Intergovernmental Panel on Climate Change**, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Hans-Otto Pörtner et al. eds., Cambridge Univ. Press 2022).

<sup>19</sup> Marie-Caroline Badjeck, *Impacts of Climate Variability and Change on Fishery-Based Livelihoods*, 34 MAR. POLICY, 375-83 (2010).

<sup>20</sup> Gujarat State Disaster Management Authority, *Gujarat State Disaster Management Plan, 2016-17* (2016), <http://gsdma.org/uploads/Assets/other/gsdmp-2016-17-volume-106072017115412038.pdf>.

<sup>21</sup> Gujarat State Disaster Management Authority, *Gujarat State Disaster Management Plan, 2024-25* (2024), <http://www.gsdma.org/uploads/Assets/sdmp/y-177volumn210606204024941137.pdf>.

<sup>22</sup> Barry Smit & Johanna Wandel, *Adaptation, Adaptive Capacity and Vulnerability*, 316 GLOB. ENVIRON. CHANGE, 282-92 (2006).



### 2.3. Changing Geographies

It is also pertinent to note that the coastal areas of India and Pakistan face the threat of rising sea levels, which leads to abnormal warming of the surrounding seas and the rapid melting of the Himalayan glaciers that feed into the Arabian Sea.<sup>23</sup> Generally, marine disputes are particularly vulnerable to the influence of climate change, as it fundamentally alters the *status quo* upon which a state's claims are founded. The impact of the rising sea level on Sir Creek's topography has introduced an additional layer of complexity to the two countries' territorial claims. To find a middle ground, a new survey is needed to re-appraise the delimitation of the region.<sup>24</sup>

### 2.4. Depleting Biodiversity: A Need for Intervention

Salim Ali, a renowned ornithologist, documented the presence of over 30,000 flamingos in the Sir Creek region during his survey in 1973, which was commissioned by the Bombay Natural History Society.<sup>25</sup> At that time, the area was teeming with avian biodiversity, tragically overlooked over the years due to the overshadowing political tensions between India and Pakistan. As conservation efforts have taken a back seat to territorial disputes, the once vibrant ecosystem has rapidly declined. Unfortunately, there is currently no effective mechanism to facilitate coordinated conservation efforts between the two nations concerning this critical area, including pollution management, fishing regulations, or deforestation control.

The escalation of the maritime issues between India and Pakistan must be read chronologically in conjunction with the governance regimes of fisheries. It started with the drawing of the international naval boundaries in the 1970s and 1980s, which restricted the Exclusive Economic Zones and the High Seas under United Nations Convention

<sup>23</sup> Zumbish, *Global CO2 Concentration in Atmosphere Hit New High in May 2nd Week: Report, DOWN TO EARTH* (May 18, 2022), <https://www.downtoearth.org.in/news/climate-change/global-co2-concentration-in-atmosphere-hit-new-high-in-may-2nd-week-report-82907>.

<sup>24</sup> Feroz Hassan Khan, *Break the Impasse: Direct Talks Between Army Chiefs in Off Ramps from Confrontation in Southern Asia*, ed. Michael Krepon, Travis Wheeler, and Liv Dowling, United States of America: Stimson Center, (2019).

<sup>25</sup> Lavkumar Khacher, *The Birds of Gujarat: A Salim Ali Centenary Year Overview*, 3 93 JBNHS (1996).

on the Law of the Sea ("UNCLOS").<sup>26</sup> In India, the demarcation of this boundary and the subsequent mechanization of the fisheries across the coast has led to immense conflict between the small-scale fishers and the newly mechanized trawlers over fishing grounds. Through a historic struggle, many Indian coastal states were able to demand a regulations and state-specific laws like the Kerala Marine Fishing Regulation Act, 1980<sup>27</sup> and the Tamil Nadu Marine Fishing Regulation Act, 1983 provide for the regulation, restriction and prohibition of fishing by fishing vessels in the sea along the whole or part of the coast line of the respective state.<sup>28</sup>

### 3. Humanitarian Crisis

As described above, the depletion of marine resources compels fishermen along the western Indian coast to venture deeper into the sea. Consequent to that, this pursuit often leads them inadvertently into the territorial waters of neighboring Pakistan. These fishermen face new challenges when apprehended and become unwitting pawns on a geopolitical chessboard.<sup>29</sup> The arrests of fishermen are erroneously linked to a showcase of territorial sovereignty, sanctioning aggressive measures<sup>30</sup>, especially against innocent fishermen. As a result, these fishermen become scapegoats, with their movement across sea boundaries deemed as trespassing, leading to a significant number of arrests.

#### 3.1. Breach of International Covenants

Based on the list of prisoners exchanged between India and Pakistan, as of January 1, 2024, there are about 337 Pakistani civilian prisoners and 81 Pakistani fishermen in Indian jails. Similarly, there are 47 Indian

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<sup>26</sup> United Nations Convention on the Law of the Sea, 1982.

<sup>27</sup> Kerala Marine Fishing Regulation Act, 1980 (India).

<sup>28</sup> Tamil Nadu Marine Fishing Regulation Act, 1983 (India).

<sup>29</sup> Kanika Gupta & Jamaima Afridi, *Pawns in Border Clash, India and Pakistan Fishermen Desperate for Change*, NIKKEI ASIA (Jan. 16, 2024 06:02 AM), <https://asia.nikkei.com/Spotlight/Asia-Insight/Pawns-in-border-clash-India-and-Pakistan-fishermen-desperate-for-change>

<sup>30</sup> Debanish Achom, *Fisherman Shot Dead by Pak, Matter Being Investigated*, NDTV (Nov. 07, 2021), <https://www.ndtv.com/india-news/indian-fisherman-shot-dead-by-pakistan-matter-being-investigated-sources-2602364>.



civilian prisoners and 184 Indian fishermen in the prisons of Pakistan.<sup>31</sup> The plight of Indian detainees in Pakistan epitomizes a grave injustice characterized by prolonged and unlawful imprisonment, emphasized by a flagrant disregard for established international legal norms. This includes egregious breaches of pivotal agreements and conventions such as the Vienna Convention, 2008 Agreement, the International Covenant on Civil and Political Rights, 1966 (ICCPR), the Universal Declaration of Human Rights of 1948 (UDHR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). These violations not only infringe upon the fundamental rights and dignity of the incarcerated individuals but also undermine the foundational principles of international law, necessitating urgent attention and redress.

### 3.2. The Indo-Pak Joint Judicial Committee

Significant strides have been made towards addressing the longstanding dispute over fishermen between India and Pakistan. In 2007, during India's External Affairs Ministers to visit Islamabad, both governments took a proactive step by establishing a Joint Judicial Committee on Prisoners.<sup>32</sup> This committee, comprising of judicial representatives from both nations, evaluated the conditions of prisons and prisoners, aiming to ensure humane treatment and expedite the release of those who had served their sentences.<sup>33</sup> This Joint Judicial Committee on Prisoners undertook regular visits to jails in both Pakistan and India, alternating between the two countries every six months.<sup>34</sup> By collectively assessing the conditions and circumstances of prisoners, the committee aimed to foster cooperation and ensure fairness in the treatment and release of incarcerated individuals. Between 2008 and 2013, the India-Pakistan Judicial Committee on Prisoners convened seven times, fostering constructive dialogue

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<sup>31</sup> Ministry of External Affairs, *Exchange of List of Prisoners between India and Pakistan*, (Press Release dated January 01, 2024).

<sup>32</sup> Ministry of External Affairs, India's Nomination for the Committee on Prisoners Communicated to Pakistan, (Press Release dated March 09, 2007).

<sup>33</sup> Statement by Minister of External Affairs, Written Answer to Starred Question No. 56, India, Rajya Sabha (Mar. 27, 2007).

<sup>34</sup> Id.

and cooperation.<sup>35</sup> Visits to correctional facilities in both countries, including Tihar, Amritsar, Jaipur, Lahore, Rawalpindi, and Karachi, provided valuable insights into the conditions of detainees. Notably, these discussions led to the release of approximately 440 Indian and 300 Pakistani fishermen, showcasing the positive outcomes of collaborative efforts.<sup>36</sup>

However, even after successfully addressing the dispute between India and Pakistan, it is concerning that the Joint Judicial Committee on Prisoners has not convened in over a decade, halting the progress achieved through previous meetings. Despite plans for further engagement, the committee has not convened since October 2013, posing a setback to the continued efforts to promote consular access and prisoner welfare. Restoring regular dialogue through the Joint Judicial Committee on Prisoners is imperative to address existing challenges and uphold the principles of the 2008 Agreement.<sup>37</sup>

### 3.3. Consular Access

Consular relations fundamentally govern the establishment of consular representatives and the extension of consular access to ensure that individuals detained or arrested in foreign countries can communicate with officials from their home country's consulate or embassy.<sup>38</sup> This right, rooted in international law, aims to safeguard the interests of foreigners and guarantee access to legal and consular assistance during their period of custody. The Vienna Convention on Consular Relations, 1963 serves as the principal framework for consular access, consolidating and codifying customary laws. The Government of India formally joined the Vienna Convention on November 28, 1977,

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<sup>35</sup> Ministry of External Affairs, Government of India, *Joint Statement on the Visit of India-Pakistan Judicial Committee on Prisoners to Pakistani Jails* (May 3, 2013), <https://www.mea.gov.in/press-releases.htm?dtl/21762>.

<sup>36</sup> *Id.*

<sup>37</sup> Statement by Minister of External Affairs, Written Answer to Starred Question No. 863, India, Rajya Sabha (Feb. 09, 2023).

<sup>38</sup> William J. Aceves, *Vienna Convention on Consular Relations—Consular Access to Detained Nationals—International Court of Justice—Provisional Measures—Original Jurisdiction of the U.S. Supreme Court*, 93 4 AM. J. INT'L L. 924-28 (1999).



thereby assuming a range of rights and obligations outlined therein.<sup>39</sup> The preamble of the Vienna Convention eloquently acknowledges the historical establishment of consular relations among nations. This convention embodies the collaborative efforts of 92 states during the conference held in March-April 1963. Remarkably, by the year 2008, a total of 171 states had ratified or acceded to the convention, with the current count of parties standing at 182.<sup>40</sup> The Vienna Convention, specifically Article 36, is of significant importance. It unequivocally mandates the nation-state (such as Pakistan) to afford consular access to Indian fishermen without condition, thereby encompassing all rights conferred upon them by India. Regrettably, this article has been recurrently violated, not only in its literal interpretation but also in its intended spirit.<sup>41</sup>

Article 36 of the Vienna Convention, when applied to the circumstances surrounding the detention of Indian fishermen, stipulates the following imperatives<sup>42</sup>:

- a. Upon the arrest of Indian fishermen by Pakistani authorities, prompt notification to Indian consular officers is obligatory.
- b. Indian consular officers can establish communication with and have unimpeded access to Indian fishermen.
- c. Likewise, Indian fishermen enjoy similar liberties when communicating with and accessing India's consular officers.
- d. Pakistan is mandated to apprise Indian fishermen of their entitlement to communicate with and access India's consular officers.
- e. Any correspondence initiated by Indian fishermen to India's consular post during arrest, imprisonment, custody, or detention must be expeditiously forwarded by Pakistan to India's consular officers.

<sup>39</sup> Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.

<sup>40</sup> John B. Quigley, Vienna Convention on Consular Relations: In Retrospect and into the Future, 38 S. Ill. U. L.J., (2013).

<sup>41</sup> Abhishek Trivedi, The ICJ's Jadhav Judgment and its Implications for Pakistan and India under International Law, 11 ASIAN J.I.L., 13 – 23 (2021).

<sup>42</sup> Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, 596 U.N.T.S. 261.

- f. India's consular officers retain the right to visit, converse with, correspond with, and arrange legal representation for Indian fishermen.

It is to be noted with concern that the mandates above are disregarded when Indian fishermen are unlawfully detained in Pakistan. This continued disregard persists even post-completion of their sentence and confirmation of their national status. The denial of consular access to and the release of Indian fishermen, who were subjected to arrest and trial, constitutes a breach of international obligation. The indisputable absence of factors negating obligations under Article 36 of the Vienna Convention emphasizes the flagrant violation thereof.<sup>43</sup>

### 3.4. Treaty Obligation

The High Court of Calcutta, in the case of *Collr. Of Cus. v. Narayani Trading Concern (Pvt.) Ltd.*<sup>44</sup> conducted a thorough analysis of the legal principles governing international treaties. The court relied upon Mark W. Janis's work in the 'Introduction to International Law.'<sup>45</sup> He defines the Law of Treaties as the body of international law governing international agreements, which serves a function analogous to the law of contracts in domestic legal systems. Similar to the principles underlying the civil law of contracts, the law of treaties places paramount importance on the consent and intentions of the parties involved in determining the legal validity of an agreement. This emphasis on consent stems not only from the influence of civil law traditions but also from the unique characteristics of the international legal system, where the sovereignty and independence of states hold significant weight. In this case, both countries had freely consented to the terms and conditions outlined in the 2008 Agreement.

The *pacta sunt servanda*, provided in the Vienna Convention, emphasizes the binding nature of treaties upon the parties involved,

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<sup>43</sup> Jadhav Case (India v. Pakistan), International Law Reports, 197, 88 – 223 (2022).

<sup>44</sup> *Collr. of Cus. v. Narayani Trading Concern (Pvt.) Ltd.*, (1995) SCC OnLine Cal 463.

<sup>45</sup> MARK W JANIS, AN INTRODUCTION TO INTERNATIONAL LAW, 299 (Brown & Company 1988).



mandating their faithful performance.<sup>46</sup> This principle of good faith, integral to the observance of international agreements, is recognized as a fundamental tenet of international law, as affirmed by Judge Lauterpacht in the Norwegian Loans case.<sup>47</sup> In essence, the analysis undertaken by the Hon'ble High Court of Calcutta in *Collr. Of Cus*<sup>48</sup> emphasizes the foundational principles governing international treaties, emphasizing the centrality of consent, good faith, and adherence to legal obligations in fostering diplomatic relations and upholding international legal norms.

### 3.5. Executive Power of the Union of India under Treaties

The diplomatic interactions between India and other sovereign nations are intricately woven through bilateral agreements and protocols spanning diverse subjects, alongside adherence to international laws, treaties, protocols, and conventions. This complex framework entails a myriad of duties and obligations under the purview of international law. Endorsed by the Constitution of India under Article 73<sup>49</sup>, the executive authority of the Union is granted the mandate to exercise rights, authority, and jurisdiction as stipulated in treaties or agreements.

### 3.6. Directive Principle of State Policy – Article 51

Subclause C of Article 51<sup>50</sup> of the Indian Constitution emphasizes the nation's commitment to fostering international peace and security, maintaining just relations between countries, and encouraging the settlement of disputes through arbitration. The Hon'ble Supreme Court of India, in *Safai Karamchari Andolan v. Union of India*<sup>51</sup>, discussed the binding nature of ratified international covenants, emphasizing their enforceability unless inconsistent with domestic law. Similarly, obligations derived from the 2008 Agreement and

<sup>46</sup> Vienna Convention on Consular Relations art. 26, Apr. 24, 1963, 596 U.N.T.S. 261.

<sup>47</sup> B. MacChesney, Case of Certain Norwegian Loans (France v. Norway), 51 4 AM. J. INT'L L, 777-783 (1957).

<sup>48</sup> Collr. of Cus. v. Narayani Trading Concern (Pvt.) Ltd., (1995) SCC OnLine Cal 463.

<sup>49</sup> India Const. art 73.

<sup>50</sup> India Const. art. 51.

<sup>51</sup> Safai Karamchari Andolan v. UOI, (2014) 11 SCC 224.

the Vienna Convention hold binding force, provided they align with domestic legal provisions. Furthermore, in *People's Union for Civil Liberties v. Union of India*<sup>52</sup>, the Supreme Court of India affirmed that provisions of international agreements, aligning with fundamental rights enshrined in the Constitution, are enforceable. Thus, the 2008 Agreement and the Vienna Convention, insofar as they complement and reinforce constitutional guarantees, serve as potent instruments for safeguarding fundamental rights.

### **3.7. Legal Proceedings in India on behalf of the Pakistani Prisoners in Indian Jails**

In 2005, a writ petition titled *Prof. Bhim Singh v. Union of India and Ors.*<sup>53</sup> was presented before the Hon'ble Supreme Court of India, contesting the unconstitutional and unjust detention of Pakistani prisoners in Indian jails. The Hon'ble Supreme Court of India, in its record of proceedings dated 28.02.2012, expressed deep regret over the continued incarceration of 37 Pakistani prisoners beyond their sentence terms due to pending confirmation of nationality. It asserted that prolonging their detention was unjustifiable and violated their fundamental human rights and dignity. The court clarified that the prisoners could not be lawfully confined post-sentence completion despite the procedural hurdle of unconfirmed nationality hindering their repatriation. In its order dated March 8, 2010, in the case of Bhim Singh, the Hon'ble Supreme Court mandated the immediate deportation of prisoners whose sentences were fulfilled and whose nationality was confirmed. For those whose nationality remained undetermined post-sentence completion, the court instructed the Ministry concerned to expedite the nationality verification process to facilitate their prompt repatriation. Furthermore, in its order dated July 12, 2010, in the case of Bhim Singh, the Hon'ble Supreme Court criticized the Union of India's negligent handling of the matter. It demanded the swift deportation of Pakistani prisoners upon sentence completion. Thereafter, in *Bhim Singh*, the court ordered the repatriation of Pakistani nationals.<sup>54</sup>

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<sup>52</sup> *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433.

<sup>53</sup> *Prof. Bhim Singh v. Union of India and Ors.*, W.P.(CrI.) 310 of 2005.

<sup>54</sup> *supra* n.53



### 3.8. Legal Recourse preferred in India for the Indian Prisoners in Pakistan

Notably, in *Gopal Dass v. Union of India*<sup>55</sup>, which was a writ petition filed under Article 32 of the Constitution of India, seeking the release and repatriation of an Indian national detained in the Lahore Central Jail, Pakistan, the petitioner sought the return of the said Indian citizen. Although the court acknowledged its lack of jurisdiction over Pakistani authorities, it exemplified the humanitarian spirit between India and Pakistan by directly requesting the petitioner's release on humanitarian grounds, demonstrating a mutual commitment to humanitarian principles. The court directly made a request to the Pakistani authorities for the release of the imprisoned Indian national on humanitarian grounds, demonstrating a mutual commitment to humanitarian principles.

In *Angrej Kaur v. Union of India*<sup>56</sup>, a similar case involving a missing individual believed to be imprisoned in Pakistan, the Hon'ble Supreme Court emphasized the paramount importance of delivering justice within the legal framework. While recognizing the limitations in issuing directives to foreign entities, the court directed Indian authorities to continue efforts in ascertaining the missing individual's status, highlighting the judiciary's role in ensuring justice despite technical constraints.

Pertinently, in *Jagjit Singh Aurora & Ors. v. Union of India*<sup>57</sup>, the Gujarat High Court examined the issue of missing defense personnel from the 1971 Indo-Pak war allegedly languishing in Pakistani prisons. The court affirmed citizens' right to approach the High Court under Article 226 if their fundamental rights are infringed due to state inaction or illegal action. Furthermore, it elucidated that while a writ court cannot dictate governmental policy towards neighboring countries or war policies, it can intervene if the government fails to take lawful steps to protect citizens' rights. In this context, the court directed the Union of India to approach the International Court of Justice, asserting that inaction in such cases amounts to a failure to

<sup>55</sup> *Gopal Dass v. UOI*, (2011) 4 SCC 300.

<sup>56</sup> *Angrej Kaur v. UOI*, (2005) 4 SCC 446.

<sup>57</sup> *Jagjit Singh Aurora & Ors. v. Union of India*, (2011) SCC Online Guj 7350.

protect citizens' life and liberty. These cases highlight the judiciary's commitment to upholding justice and safeguarding citizens' rights, even in complex international scenarios. They illustrate the delicate balance between legal principles, diplomatic relations, and the imperative to ensure justice for individuals caught in cross-border legal entanglements.

### 3.9. Legal Proceedings before the Supreme Court of Pakistan

The Supreme Court of Pakistan, in its order dated September 18, 2018, in the case of *Pakistan Fisherfolk Forum (PFF) and Anr. v. Federation of Pakistan & Ors.*<sup>58</sup>, mandated the Federal Government of Pakistan to uphold its commitments concerning Pakistani prisoners detained in Indian jails. The Supreme Court of Pakistan directed its Ministry of Foreign Affairs to establish a comprehensive website within three months of the date of the disposal order to provide detailed information regarding prisoners held in Indian jails, including personal details, place of detention, legal proceedings status, sentence duration, and expected repatriation timeframes.

The Government of Pakistan was tasked with ensuring the full implementation of the 2008 Agreement on Consular Access and was directed to devise mechanisms to implement recommendations in the seventh meeting of the India-Pakistan Joint Judicial Committee on Prisoners, held on October 31, 2013. The Ministry of Interior, Maritime Security Agency, and Ministry of Foreign Affairs (of Pakistan) were required to collaborate in formulating a policy to prevent the future arrest and detention of Pakistani fishermen and their vessels at sea and promptly respond to any representations made by the NGOs concerning the detention or imprisonment of Pakistani fishermen in Indian jails. The Government of Pakistan was obligated by the Supreme Court of Pakistan to exert all possible measures to secure the belongings of the Pakistani fishermen detained in Pakistan.

### 3.10. Efforts by Civil Organizations

In April 2023, several prominent organizations, including the Pakistan Fisherfolk Forum, the National Fishworkers Forum, the South Asian

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<sup>58</sup> *Pakistan Fisherfolk Forum (PFF) and Anr. v. Federation of Pakistan & Ors.*, C.P. 61/2013.



Solidarity Collective, and the Pakistan India Peoples' Forum for Peace & Democracy, collectively appealed to the two countries.<sup>59</sup> They urged the release of fishermen prisoners who had surpassed their designated sentences in each other's incarceration facilities. The appeal emphasized the significance of releasing these prisoners during the holy month of Ramzan and the auspicious occasions of Ramzan Eid and Budh Purnima. Additionally, both governments were implored to facilitate the return of captured fishing vessels and the imprisoned fishers. Furthermore, a plea was made to revive the Joint Judicial Committee on Prisoners, initially established in 2008.<sup>60</sup> Given the substantial number of Indian and Pakistani prisoners languishing in each other's detention centers, the apparent disregard for the 2008 Agreement and pertinent protective treaties, and the inactive state of the Joint Judicial Committee on Prisoners, it is evident that urgent and effective action is imperative.<sup>61</sup>

#### 4. Conclusion and Suggestions

Amidst the intricate web of issues defining relations between India and Pakistan, the maritime dimension often languishes in obscurity, overshadowed by the prominence afforded to land-based disputes. While diplomatic endeavors and media scrutiny primarily target terrestrial concerns, the naval realm bears profound implications for regional stability, international trade, and global security. Thus, it emerges as a critical focal point demanding earnest attention and strategic consideration.

##### 4.1. Rejuvenating Marine Life on the Gujarat Coast

Various artificial and natural factors threaten the survival of fish in the ocean. The oil and gas industry, overfishing, illegal, unreported, and unregulated (IUU) fishing, shipping, and coastal tourism all contribute to the depletion of marine resources. However, the most

<sup>59</sup> *Humanitarian Grounds: Appeal to Pakistan, India Gov'ts to Release Fisherfolk Prisoners*, THE NEWS INT'L (Apr. 13, 2023), <https://www.thenews.com.pk/print/1060180-humanitarian-grounds-appeal-to-pakistan-india-govts-to-release-fisherfolk-prisoners>.

<sup>60</sup> Statement by Minister of External Affairs, *Written Answer to Unstarred Question No. 1832, India*, Rajya Sabha (Mar. 16, 2023).

<sup>61</sup> *supra* n.60

significant threat to fisheries is global warming, which, along with climate change, raises sea temperatures and changes in salinity. Blue Economy is the path forward for humanity in the coming decades. Reliance must be placed on sustainable blue economic activities to thrive and prosper. If the resources are not exploited sustainably, the coastal communities will be disproportionately affected. These communities rely heavily on the resources they obtain from the oceans for their livelihoods.<sup>62</sup> To guide coastal management, Goal 14 of the United Nations resolution 70/1, 'Transforming our world: The 2030 Agenda for Sustainable Development', can be referred to. Goal 14, 'Life Below Water,' seeks to protect and responsibly exploit oceans, seas, and marine resources to promote sustainable progress.<sup>63</sup>

#### 4.2 Regional Cooperation

States must collaborate to enhance mutual benefits and ensure the sustainable management of fisheries resources. They must also ratify and enforce international agreements that regulate sustainable fishing.<sup>64</sup> Despite the legal structure provided by UNCLOS for fisheries management, many coastal states need to pay more attention to these standards and engage in avoiding overfishing and harmful fishing methods.<sup>65</sup> This landmark agreement ended years of conflicts between the two nations. It also showcased how environmental diplomacy can serve as a practical approach to redirect national pride towards meaningful ecological conservation efforts and, in turn, foster peace and cooperation. India and Pakistan abide by the United Nations Convention on Biological Diversity (CBD) and the Ramsar Convention on Wetlands<sup>66</sup>, which aim to protect and manage wetlands. This includes adhering to their obligations under the

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<sup>62</sup> Food and Agriculture Organization, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing*, United Nations (2001), <http://www.fao.org/docrep/003/y1224e/y1224e00.html>.

<sup>63</sup> Sustainable Development Goal 14, *Development of Economic and Social Affairs*, United Nations (2015).

<sup>64</sup> Jayanath Colombage, *Sustainable Fisheries Management in the Indian Ocean: The Way Forward*, <https://bahria.edu.pk/polaris/wp-content/uploads/2021/03/006-Jayanath-colombage-1.pdf>.

<sup>65</sup> United Nations Convention on the Law of the Sea, 1982.

<sup>66</sup> Ramsar Convention on Conservation of Wetlands, *The Need for International Cooperation in Wetland Conservation*, Feb. 2, 1971, C2.8.



UNCLOS and emphasizing transboundary cooperation to conserve shared marine resources. As part of the CBD, the two nations agreed to strengthen protected areas and conserve them using sustainable technology.<sup>67</sup> Despite their international commitments, neither side has taken concrete steps to implement such an effort.

#### 4.3 The Ramsar Convention

The Ramsar Convention offers a framework for protecting wetlands that span multiple countries. Presently, 234 such wetlands, designated as wetlands of international importance, are provided under the Convention. These sites are managed jointly by the countries they span.<sup>68</sup> Designating the Sir Creek as a Ramsar region would enhance regional cooperation. It offers a potential solution to the longstanding territorial dispute over Sir Creek. Ramsar sites provide opportunities for local communities through managed fishing and ecotourism. This would benefit fishermen facing economic or security challenges due to the dispute. Improved accessibility for scientists could lead to better sustainable fish yields, protecting livelihoods and the environment.

#### 4.4 Technology Infusion

The Indian Space Research Organization is currently developing a pilot project, NavIC, that is a dual two-way communication mechanism to assist fishermen by allowing them to check their location with the support of the coast guard.<sup>69</sup> Further, proposals to monitor the flow and sediment movement across the Indian and Pakistani coastal areas could foster greater collaboration and help resolve the territorial dispute in the Sir Creek region. The ongoing discussions under the Joint Working Groups between India and Pakistan offer a platform to advance such an initiative.<sup>70</sup> The proposed

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<sup>67</sup> Id, 75.

<sup>68</sup> Feroz Hassan Khan, *Break the Impasse: Direct Talks Between Army Chiefs in Off Ramps from Confrontation in Southern Asia*, ed. Michael Krepon, Travis Wheeler, and Liv Dowling, United States of America: Stimson Center, (2019).

<sup>69</sup> International Collective in Support of Fishworkers, *Gujarat: For Gujarat Fishermen Pollution is the Major Problem*, <https://demo.icsf.net/newss/gu-jarat-for-gujarat-fishermen-pollution-is-the-major-problem/>.

<sup>70</sup> J. G. Nadkarni, *Looking for Peace on the Arabian Sea*, REDIFF (Jun. 11, 2001), <http://www.rediff.com/news/2001/jun/11nad.htm>.

project involves computer modelling, installation of in situ sensors for remote data collection, and collaborative report development. It also presents preliminary findings from computer modelling studies, highlighting the interconnectedness between the coastal regions of India and Pakistan and emphasizing the need for cooperation.

The coastal project is an example of how technologies and methods proposed for the project could be used in future arms control and treaty verification agreements.<sup>71</sup> This project will demonstrate the effectiveness of cooperative monitoring technologies. The research demonstrates that individuals with advanced levels of education exhibit enhanced abilities in planning, accessing, and comprehending early warning signals and making decisions during natural shocks, thereby reducing sensitivity to these events. Collaboration between the two nations in addressing pollution is a mutually beneficial area of cooperation. The sea, being indifferent to borders, affects all areas equally, making it impossible for any one country to escape the consequences of pollution originating elsewhere. Each country's limited resources hinder its ability to tackle significant pollution challenges on its own, whether due to financial constraints, lack of infrastructure, or technical expertise. Still, by combining efforts and working together to prevent pollution along the Arabian Sea, both countries stand to gain substantial benefits, not only by protecting their marine ecosystems and coastal populations but also by enhancing economic opportunities through cleaner waters, supporting sustainable fishing and tourism, and fostering regional stability. This joint approach allows for shared responsibilities, efficient use of resources, and stronger environmental governance that can serve as a model for broader international cooperation.

#### **4.5. Diplomacy and Dialogue**

Diplomatic channels must be revitalized, and dialogue should be promoted between India and Pakistan. The deteriorating state of diplomatic relations calls for the urgent need to increase efforts towards cooperation and reconciliation. Notably, the dormant state

<sup>71</sup> Gauray Rajen, Cooperative Monitoring Center Occasional Paper/11: Cooperative Environmental Monitoring in the Coastal Regions of India and Pakistan, OSTI.GOV (Jun. 1, 1999), <https://www.osti.gov/servlets/purl/8845>.



of the Joint Judicial Committee since 2013 highlights the necessity to reconvene this crucial body to address the plight of civilian prisoners and fishermen incarcerated in Indian and Pakistani territories. This step would not only provide relief to the Indian and Pakistani prisoners currently languishing in each other's jails but also serve as a reliable medium to address such issues in the future as they come. Furthermore, strict adherence to the 2008 Agreement between India and Pakistan and ensuring the regular exchange of prisoners' lists is necessary to uphold the rights and facilitate the repatriation of those detained.

The intertwined issues of territorial disputes and environmental degradation demand a holistic approach, requiring both nations to collaborate in finding sustainable solutions. Salvaging and enhancing the progress made so far is essential to alleviate the hardships faced by the fishing communities and to mitigate the ecological damage inflicted upon the marine ecosystem. Only through concerted diplomatic efforts and adherence to established agreements and international laws can the well-being of both nations' citizens and the environment be safeguarded.