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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDIAN AND SRI LANKA FISHERMAN CRISIS: **THE PALK STRAIT AND THE** **KACHCHATHEEVU ISLAND DISPUTE**

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Abstract:

The India-Sri Lanka fisheries dispute, centred around the Palk Strait and Kachchatheevu Island, highlights ongoing tensions over maritime boundaries, fishing rights, and sustainable practices. This Paper examines the conflict's historical, legal and geopolitical dimensions, emphasising the destructive impact of bottom-trawling by Indian fishermen and its repercussions on Tamil Nadu's coastal communities. The analysis explores the principles of international law such as UNCLOS and Pacta Sunt Servanda, and their applicability to the dispute. It underscores the lack of an effective dispute-resolution mechanism and the humanitarian challenges posed by arrests and detentions. Recommendations include comprehensive fisheries management, a strict ban on bottom-trawling, adopting GPS tracking systems, and strengthening bilateral and international frameworks. This paper advocates for cooperative, sustainable solutions through Alternative and Global Dispute Resolution mechanisms to ensure justice, uphold international law, and protect livelihoods while fostering peaceful relations between the two nations.

Introduction:

Recently, the Minister of Fisheries Ramalingam Chandrasekhar made a statement saying that the enduring fisheries conflict in Palk Bay, can resolved only if the Indian Side Stops using the destructive bottom-trawling method¹. The dispute of fishermen always poses concerns about the relationship between India and Sri Lanka. One of the most affected states by the fishermen dispute is Tamil Nadu according to the data of the Ministry of External Affairs. Noam Chomsky said, "If it's wrong when they do it, it's wrong when we do it"². This emphasizes the principle

¹ Meera Srinivasan, Bottom Trawling by Indian fisherman must stop : Sri Lanka's Fisheries Minister, THE HINDU, <https://www.thehindu.com/news/international/bottom-trawling-by-indian-fishermen-must-stop-sri-lankas-fisheries-minister/article68977145.ece>

² Noam Chomsky, Quotable Quote, (26 Dec. 2024, 10:00 P.M.) <https://www.goodreads.com/quotes/599016-if-it-s-wrong-when-they-do-it-it-s-wrong-when>

of equality and justice, urging both nations to hold accountable for their action and adopt fair practices in resolving disputes. External Affairs Minister Dr S. Jaishankar stated “I wish to remind the members that in concluding this agreement, the rights to fishing, pilgrimage, and navigation which both sides have enjoyed in the past have been fully safeguarded for the future”³.

Facts of the Dispute:

After the independence, India and Sri Lanka sought to demarcate maritime borders, focusing on Kachchathivu island, a contentious issue. India, viewing it as insignificant, relinquished the island to Sri Lanka through the 1974 Agreement (Indo- Lanka Maritime Agreement), Article 5 allowing Indian fishermen access to pilgrimage and drying nets. In 1974, then-foreign minister Swaran Singh Assured Parliament that Indian fishers would continue accessing their historical fishing grounds⁴. The 1976 Agreement extended maritime boundaries in the Gulf of Mannar and Bay of Bengal, resolving disputes over Sri Lanka’s fishing wadge Bank by allowing temporary fishing access and committing India to supply 2,000 tons of fish annually. An exchange of letters restricted fishermen from both nations from fishing in each other’s water, including the Exclusive Economic Zone (EEZ), without explicit permission⁵.

In 2016, the government of India and Sri Lanka proposed the establishment of a joint working group to create a hotline in Palk Bay⁶. However, Tamil Nadu’s exclusion in negotiation contradicted inclusive federalism. The 1983 Tamil Nadu Marine Fishing Regulation restricting fishing within three nautical miles has led fishermen to cross the International Maritime Boundary Line. India and Sri Lanka both are signatories of the UNCLOS, which must address claims of illegal fishing under Article 19 (Meaning of innocent passage) and 21 (Laws and regulations of the coastal state relating to innocent passage), which protect coastal states’ fisheries law⁷. Even still recent data shows that Indian fishermen are often arrested by Sri Lankan authorities for allegedly crossing the International Maritime Boundary Line (IMBL).

³ Subham Tiwari, Can Katchatheevu’s retrieval Indian’s fishing conundrum?, INDIA TODAY <https://www.indiatoday.in/india/story/katchatheevu-island-row-pm-modi-india-sri-lanka-fishing-rights-fishermen-issue-2521882-2024-04-01>

⁴ Id.

⁵ N.Manoharan and Madhumati Deshpande, Fishing in the Troubled Waters: Fisherman Issue in India - Sri Lanka Relations, Sage Publication, Inc., JSTOR, <https://www.jstor.org/stable/10.2307/48505571>

⁶ Diya Jose, Resolving the India - Sri Lanka fishing dispute, Centre for Public Policy Research, <https://www.cppr.in/articles/resolving-the-india-sri-lanka-fishing-disputes>

⁷Id.

The IMBL was a bilateral agreement signed in 1974 and 1976 under the UNCLOS. However, it has failed to address the issue⁸. In 2008, both the countries agreed to deal with the issue of bonafide fisherman of either side crossing the IMBL⁹. In the year 2014, the Meenakumari committee was set up to review the deep-sea fishing policy and made recommendations like permission for foreign vessels to engage in deep-sea fishing in Indian waters etc. which was later withdrawn¹⁰.

In the case of Unknown Vs. Union of India 2019¹¹, it was submitted before the Madras High Court that India and Sri Lanka do not have a bilateral or multilateral treaty applicable that may confer jurisdiction over the ICJ in matters concerning fishermen.

Issue of the dispute:

The India - Sri Lanka fishing dispute arises from an Indian fisherman crossing the International Maritime Boundary Line (IMBL) near Kachchatheevu Island, ceded to Sri Lanka in the 1974 Indo-Lanka Maritime Agreement. This violates Sri Lankan territorial waters under the UN Convention on the Law of the Sea, leading to arrests and boat seizures by the Sri Lankan Navy. One of the main issues is the no bilateral agreement between the countries to lead the dispute to the International Court of Justice.

Principle of International Law rules and Principle Applicable:

As Hans Kelsen defines, “International Law or Law of Nations is the name of a body of rules which regulate the conduct of states in intercourse with one another¹²”, emphasizes the rules governing the conduct of states in their interaction, which is central to resolving the maritime and fishing rights conflict between India and Sri Lanka. According to J.G. Starke’s definition,

⁸ Subham Tiwari and Bidisha Saha, Decoding India-Sri Lanka fishermen issue: A visual guide, INDIA TODAY, <https://www.indiatoday.in/india/story/india-sri-lanka-fishing-problem-and-maritime-dispute-2517886-2024-03-21>

⁹ ICJ Has no Jurisdiction in Indian fisherman issue, The Hindu, <https://www.thehindu.com/news/national/tamil-nadu/icj-has-no-jurisdiction-in-indian-fishermen-issue/article22599047.ece>

¹⁰ Withdrawal of MeenaKumari Panel Recommendations Welcomed, THE HINDU, <https://www.thehindu.com/news/national/tamil-nadu/withdrawal-of-meenakumari-panel-recommendations-welcomed/article7208091.ece>

¹¹ Fisherman Care Registered Association V. Union of India, W.P.NO. 14156 of 2017, 2019 WL 1823320 (Madras Apr. 22, 2019), INDIAN KANOON, <https://indiankanoon.org/doc/32108175/#:~:text=clause%20may%20provide-.6.,Petition%20contain%20such%20a%20clause.>

¹² Dr. Bhanu Pratap, Definitions, Functions of International Law, University of Lucknow, https://udrc.lkouniv.ac.in/Content/DepartmentContent/SM_d54d2a28-a359-4351-838d-9148482468f8_30.pdf

“International Law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other¹³”, this highlights the binding nature of international principles and rules, such as UNCLOS, which directly apply to the dispute involving maritime boundaries and fishing rights. The 4 stakeholders of International Law include the sovereign state (India and Sri Lanka), the international organizations (UNCLOS, IMO, UNDP, ICJ and Geneva Convention), international NGOs and Individuals.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States by the Charter of the United Nations¹⁴. According to Luis Henkis, generally, all nations observe the principle of International Law and their obligations. According to him objective of any law and its implementation is most important not the means and methods. This emphasizes the adherence of both countries to international laws like UNCLOS.

Both India and Sri Lanka, follow the theory of Dualism which emphasises that Municipal law and International Law are different branches of the same law. The Principle of Pacta Sunt Servanda simplifies that agreements and treaties entered into by member states must be respected and followed in good faith. It is Jus Necessarium of International Law. India and Sri Lanka's 1974 agreement on the boundary in the historical waters between the two nations, the 1976 Maritime Boundary Agreement, and UNCLOS give a binding nature of these treaties under this principle, obligated to honour their terms unless modified by mutual consent or invalidated through legal or diplomatic processes.

Present Status of that issue:

The Fisheries conflict between the two sovereign states India and Sri Lanka remains unresolved primarily due to the ongoing practice of bottom-trawling by Indian fishermen, which Sri Lanka Deems environmentally destructive. According to the Minister of State in the Ministry of External Affairs (Shri Kirti Vardhan Singh), stated that currently there are 83 Indian fishermen in the judicial custody of Sri Lanka, 4 Indian fishermen serving sentences and 169 Indian

¹³ Id.

¹⁴ I.I. Lukashuk, The Principle Pacta Sunt Servanda and the Nature of Obligation Under International Law, The American Journal of International Law, Vol. 83, No. 3 (Jul., 1989), 513-518, Cambridge University Press, JSTOR, <https://www.jstor.org/stable/2203309>

fishing vessels apprehended by the Sri Lankan authorities¹⁵. In 2024, up to July 22, 269 Indian fishermen and 37 were seized, primarily from Tamil Nadu (251). Releases include 195 fishermen, of which 183 were from 2024 and 12 from 2023¹⁶.

Existing Dispute Settlement Mechanism:

Currently, the dispute between the two Sovereign States regarding fisherman rights and maritime boundaries lacks an effective mechanism for dispute resolution. The agreement of 1974 and 1976 was not properly effective between the two nations, there is no clear framework for addressing the continued fisherman crisis crossing the International Maritime Boundary. The lack of proper mechanisms in both Municipal Law and international law creates a great concern for the individual and their families. Sometimes the fisherman can be the sole breadwinner of the family. A proper mechanism on the Municipal Law can resolve the issue in a more peaceful manner between the Sovereign states. The method of humanitarian approach from both sides promotes humanitarian assistance including the early release of detained fishermen and ensuring no use of force against vessels.

The solution to resolve the Issue:

The solution to resolve the issue may include Comprehensive fisheries management, where both countries can collaborate on sustaining the fisheries management. A strict ban on bottom trawlers must be implemented with large trawlers encouraged to operate in the Country's Exclusive Economic Zone. Even the proper knowledge about the coastal area of the poor fishermen can help prevent them from going beyond the Exclusive Economic Zone. With the evolution of the technique, using a Global Position System (GPS) tracking system can help in identifying and monitoring fishermen. Strengthening the Joint Working Group can ensure that agreements are adhered to. In the implementation of the provision, the involvement of the fisherman can ensure that policies address the local needs.

Both nations should comply with the UNCLOS provisions related to the conservation and

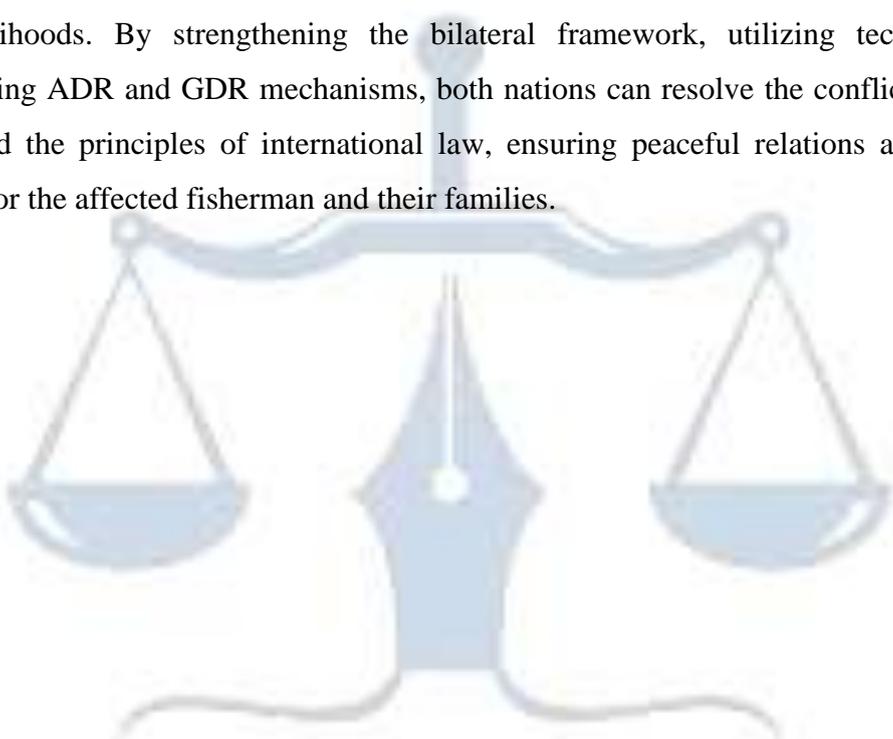
¹⁵ Ministry of External Affairs, Government of India, Rajya Sabha, Unstarred Question No. 1195, August 1, 2024. <https://www.mea.gov.in/rajya-sabha.htm?dtl/38063/QUESTION+NO1195+RELEASE+OF+INDIAN+FISHERMEN+DETAINED+IN+SRI+LANKA#:~:text=Ministry%20of%20External%20Affairs%20Government%20of%20India&text=Currently%2C%20there%20are%2083%20Indian,by%20the%20Sri%20Lankan%20authorities.>

¹⁶ Government of India, Ministry of External Affairs, <https://www.mea.gov.in/lok-sabha.htm?dtl/38038/QUESTION+NO+74+ARRESTED+INDIAN+FISHERMEN>

management of marine resources. This includes cooperative arrangements for sustainable fishing practices and marine ecosystems. The use of Alternative Dispute Resolution (ADR) and Global Dispute Resolution (GDR) can help resolve conflict over fishing rights and territorial claims, ensuring a fair and neutral process.

Conclusion:

In conclusion, the India - Sri Lanka, fisherman dispute requires a cooperative, sustainable approach, focusing on fisheries management, enforcement of agreement, and the protection of local livelihoods. By strengthening the bilateral framework, utilizing technology and implementing ADR and GDR mechanisms, both nations can resolve the conflict fairly. This will uphold the principles of international law, ensuring peaceful relations and long-term solutions for the affected fisherman and their families.



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