
EXTRATERRITORIAL JURISDICTION CHALLENGES: INDIA AND SRI LANKA'S CONFLICT IN THE PALK STRAIT AND ITS IMPLICATIONS FOR FISHERMEN'S RIGHTS

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ABSTRACT

The conflict over fishing rights in the Palk Strait between India and Sri Lanka reflects the deeper challenges of applying extraterritorial jurisdiction in contested maritime spaces. The dispute, shaped by the 1974 transfer of Katchatheevu Island to Sri Lanka, has gradually evolved from a question of sovereignty into one that directly touches the lives and livelihoods of thousands of fishermen. What was once a shared fishing ground has become a site of arrests, seizures, and recurring tension, with human rights concerns at its core. This article explores the legal and constitutional debates surrounding India's position, Sri Lanka's enforcement of maritime boundaries, and the broader framework provided by UNCLOS. Drawing on comparative examples, it argues that unilateral actions have only intensified the crisis, while cooperative solutions such as reciprocal licensing, joint patrolling, and regulated fishing access offer a more balanced path forward. Ultimately, the article suggests that resolving this dispute requires looking beyond hard borders and recognizing the dignity, rights, and survival of fishing communities as central to maritime governance.

Keywords: Palk Strait; Katchatheevu; India–Sri Lanka Relations; Fishermen's Rights; Extraterritorial Jurisdiction; Maritime Disputes; Human Rights; UNCLOS; Livelihood; International Law.

INTRODUCTION

The maritime boundary between India and Sri Lanka, particularly in the Palk Strait and the Gulf of Mannar, represents a complex intersection of history, sovereignty, and human rights. Both states, under international law, enjoy sovereign rights over their territorial seas, continental shelves, and maritime zones. However, the geographical proximity between the two nations separated at their narrowest point by barely 30 nautical miles has historically given rise to contestation over resources and jurisdiction.

Central to this dispute is the island of Katchatheevu, a 285-acre uninhabited landmass located in the Palk Strait. Historically tied to the Raja of Ramnad and later administered under the Madras Presidency during British colonial rule, the island was ceded to Sri Lanka under the 1974 Indo–Sri Lankan Maritime Agreement. The decision was highly controversial in India because it was not ratified by Parliament, despite its far-reaching consequences on the livelihoods of Tamil Nadu’s fishermen. Katchatheevu is not only strategically located but also holds cultural significance, being home to the St. Anthony’s Church, visited annually by devotees from both countries.

For centuries, fishermen from both India and Sri Lanka fished freely in these waters without restriction. However, following the cession of Katchatheevu and the outbreak of Sri Lanka’s civil war in 1983, the Sri Lankan Navy began aggressively policing its maritime zones. Indian fishermen were accused of engaging in smuggling and aiding Tamil militants¹. In practice, this translated into arrests, confiscation of boats, destruction of nets, and even cases of custodial violence. For the fishing community of Tamil Nadu, the issue became emblematic not only of lost livelihood but also of the denial of fundamental constitutional rights such as the Right to Life (Article 21²) and Freedom of Trade and Occupation (Article 19(1)(g)³ and Article 301⁴).

This article examines the legal, constitutional, and humanitarian dimensions of the dispute through the lens of extraterritorial jurisdiction. It traces the historical developments, explores the scope of India’s jurisdictional claims under the Indian Penal Code and Constitution,

¹ *Fishermen Issue between India and Sri Lanka*, MAINSTREAM WEEKLY, Vol. XLIX, No. 13, March 19, 2011, available at: <http://www.mainstreamweekly.net/article2634.html> (last visited Sep. 10, 2025)

² Indian Constitution, art. 21.

³ Indian Constitution, art. 19.

⁴ Indian Constitution, art. 301.

evaluates Sri Lanka's legal position under UNCLOS, and proposes solutions grounded in international law and cooperative governance.

OBJECTIVES

The study seeks to examine the legal and humanitarian implications of extraterritorial jurisdiction in the context of Indo–Sri Lankan maritime disputes. The key objectives are:

- To explore the basis of extraterritorial jurisdiction, with particular focus on the territorial and objective principles.
- To assess the adequacy of existing mechanisms such as comity, reasonableness, and bilateral arrangements in protecting individual rights.
- To evaluate whether unilateral assertions of jurisdiction undermine the rule of law and procedural fairness.

To recommend that assertions of extraterritorial jurisdiction be treaty-based rather than unilateral, ensuring consistency with human rights and constitutional guarantees.

HISTORICAL CONTEXT AND THE KATCHATHEEVU QUESTION:

The roots of the present dispute lie in the Indo–Sri Lankan Maritime Agreements of 1974 and 1976. The 1974 agreement formally ceded Katchatheevu to Sri Lanka, while the 1976 agreement further demarcated the maritime boundary in the Gulf of Mannar and Bay of Bengal. These agreements effectively restricted Indian fishermen from operating around Katchatheevu and within Sri Lankan territorial waters.

The agreements were met with strong opposition in Tamil Nadu. Critics argued that the cession of Katchatheevu was unconstitutional, drawing on the precedent of the *Berubari Union case* (1960)⁵, in which the Supreme Court of India held that ceding Indian territory required a constitutional amendment under Article 368⁶. The lack of parliamentary ratification thus remains a central legal argument in challenges filed before the Supreme Court by the Tamil

⁵ *In Re: The Berubari Union and Exchange of Enclaves*, AIR 1960 SC 845, (1960) 3 SCR 250

⁶ *Indian Constitution*, art. 368.

Nadu government, including petitions led by former Chief Minister J. Jayalalithaa.

Despite the agreements, Indian fishermen continued to fish in and around Katchatheevu, often citing historical rights and customary practices. Sri Lanka, however, treated these acts as violations of its sovereignty, amounting to illegal poaching. The resulting arrests, fines, and imprisonment of fishermen have continued to inflame bilateral relations and stir political unrest within Tamil Nadu.

EXTRATERRITORIAL JURISDICTION IN INDIAN LAW:

The new maritime legislation enacted in 2025, including the Merchant Shipping Act and related statutes, continues to uphold and expand India's extraterritorial jurisdiction provisions in maritime matters. Under Indian law, extraterritorial jurisdiction empowers the state to apply its laws to persons, conduct, or effects outside its territory when a substantial nexus exists. Specifically, Section 3⁷ of the Indian Penal Code (IPC), 1860 permits offences committed beyond Indian territory to be prosecuted within India if so, provided by law. Section 4⁸ of the IPC extends the jurisdiction to Indian citizens globally, offences committed on Indian-registered ships or aircraft, and offences involving computer resources located in India. Additionally, Article 245(2)⁹ of the Constitution validates laws by Parliament even if they operate extraterritorially. These provisions enable India to address illegal maritime activities committed by its nationals abroad, including fishermen alleged to conduct unlawful fishing in foreign waters. The updated maritime statutes reinforce India's sovereign rights in its territorial sea, contiguous zone, and Exclusive Economic Zone (EEZ) per UNCLOS, while balancing obligations of international comity and respect for other states' sovereignty. This legal framework aligns with the 2025 maritime reforms' objectives of modernizing and strengthening India's maritime governance, regulatory clarity, and enforcement capacity in compliance with global maritime standards.

CONFLICT BETWEEN INDIA AND SRI LANKA WITH RESPECT TO FISHERIES

The fisheries conflict has persisted for decades, exacerbated by overlapping claims, security concerns, and livelihood challenges. During Sri Lanka's civil war, Indian fishermen were

⁷ *Indian Penal code, S. 3.*

⁸ *Indian Penal Code, S. 4.*

⁹ *Indian Constitution, art, 245.*

frequently accused of assisting Tamil militant groups, leading to heightened naval surveillance. Even after the conflict ended in 2009¹⁰, arrests and incidents of violence against fishermen continued. While both countries established a Joint Working Group (JWG) on fisheries in 2004, its limited meetings have failed to yield practical solutions.

Incidents of arrests, alleged torture, and confiscation of boats have raised serious human rights concerns. Although the International Maritime Boundary Line (IMBL) defines jurisdiction, the narrow waters of the Palk Strait make unintentional crossings inevitable. Shooting or filing false charges of smuggling against fishermen is disproportionate and inconsistent with humanitarian principles. Joint patrolling, awareness programs, and confidence-building measures have been proposed, but effective implementation remains lacking.

RIGHTS OF INDIVIDUALS IN INTERNATIONAL WATERS:

The United Nations Convention on the Law of the Sea (UNCLOS, 1982) provides the framework for determining sovereign rights, jurisdiction, and duties of states over maritime zones. Coastal states exercise sovereignty up to 12 nautical miles from their baselines (territorial waters) and limited control up to 24 nautical miles (contiguous zone). The exclusive economic zone (EEZ) extends up to 200 nautical miles, giving states rights over resources such as fisheries, oil, and minerals. Disputes arise when fishing communities cross these boundaries, raising questions of culpability and proportional enforcement.

Under international law, states are obligated to balance sovereignty with human rights protections. Fishermen, who rely on the sea for subsistence, should not be subjected to disproportionate penalties such as indefinite detention or destruction of livelihood assets. Any assertion of extraterritorial jurisdiction must therefore respect basic human rights and humanitarian law principles.

HUMAN RIGHTS AND CONSTITUTIONAL CONCERNS:

For Tamil Nadu fishermen, the dispute is not only about sovereignty but also about livelihood and dignity. Fishing is their primary occupation, and restrictions directly affect their right to

¹⁰ Ministry of External Affairs, Government of India, *India-Sri Lanka Relations: January 2014*, available at: http://www.mea.gov.in/Portal/ForeignRelation/Sri_Lanka_January_2014.pdf (last visited Sept. 16., 2025).

life under Article 21¹¹ of the Constitution of India. The seizure of boats and nets has long-term economic consequences, often pushing entire families into debt.

The actions of the Sri Lankan Navy also implicate international human rights law, particularly the right to work, the right to food, and freedom from arbitrary detention. Reports of custodial violence and deaths of fishermen in encounters further highlight violations of humanitarian law principles.

Domestically, the restrictions imposed by Sri Lanka also raise questions under Article 301¹² (freedom of trade and commerce) of the Indian Constitution. Tamil Nadu has consistently argued that Indian citizens' rights to trade and livelihood cannot be curtailed through an executive agreement that bypassed parliamentary scrutiny.

RECOMMENDATIONS AND SUGGESTIONS:

International experience demonstrates that cooperative frameworks can provide sustainable solutions. The International Tribunal for the Law of the Sea's decision in *Bangladesh v. Myanmar*¹³ (2012) emphasized equitable principles in resolving overlapping maritime claims. The United Kingdom and France, despite frequent disputes over fishing rights in the English Channel, have managed the issue through licensing and quota arrangements. Norway and Russia concluded a landmark agreement in 2010 to jointly manage fish stocks in the Barents Sea, demonstrating that shared management is possible even in politically sensitive waters. These examples highlight that unilateral enforcement is rarely effective; cooperative mechanisms that balance sovereignty with shared access tend to yield more durable outcomes.

Against this background, several measures are worth considering for the Indo–Sri Lankan context. Expanding the existing five-nautical-mile buffer zone to at least seven to ten nautical miles would reduce accidental crossings. A reciprocal licensing system allowing regulated access to specified fishing grounds could create a legal basis for shared use. The suggestion of former Indian President A.P.J. Abdul Kalam for alternate-day fishing rights in the Palk Bay deserves renewed attention. Joint patrolling by the Indian Coast Guard and the Sri Lankan Navy would enhance security while reducing the risk of mistaken identity incidents. Equally

¹¹ *Supra* note 2, art. 21.

¹² *Supra* note 4, art 301.

¹³ *Bangladesh v. Myanmar, Judgment, International Court of Justice, 2012*

important are awareness campaigns to educate fishermen about maritime boundaries and the legal consequences of unauthorized fishing. In the long term, both countries may need to explore the possibility of third-party mediation or dispute settlement under UNCLOS if bilateral talks remain inconclusive.

Ultimately, the Palk Strait conflict illustrates the tension between sovereignty, security, and human rights. While Sri Lanka has legitimate concerns about protecting its territorial integrity and preventing smuggling, the disproportionate use of force against unarmed fishermen undermines humanitarian principles. For India, the unresolved constitutional questions surrounding the cession of Katchatheevu continue to fuel domestic discontent. Yet continued confrontation serves neither side's interest. A balanced, treaty-based approach grounded in international law and human rights offers the most promising path forward.

CONCLUSION:

The conflict in the Palk Strait underscores the complex interplay between sovereignty, security, and human rights. While India and Sri Lanka possess legitimate jurisdictional claims under international law, rigid enforcement without regard to humanitarian concerns disproportionately affects vulnerable fishing communities. Resolving this issue requires both countries to prioritize cooperation over confrontation, ensuring that the rights to livelihood, life, and dignity of fishermen are protected. Only through sustained dialogue, legal innovation, and mutual trust can the two nations transform a contested maritime boundary into a space of collaboration and coexistence.