

IN THE SUPREME COURT OF PAKISTAN
(Original Constitutional Jurisdiction)

Constitution Petition No. 61 /2013

1. **Pakistan Fisherfolk Forum (PFF)**
A civil society organization, duly registered under the Societies Registration Act, 1860, having its registered office at Sachal Hall, Ibrahim Hyderi, Bin Qasim Town, Karachi, through its Chairperson, Mr. Muhammad Ali Shah

2. **Pakistan Institute of Labour Education and Research (PILER)**
A social welfare organization, duly registered under the Companies Ordinance, 1984, having its registered office at ST-001, Sector X, Sub-Sector V, Gulshan-e-Maymar, Karachi-75340, through its Secretary, Mr. B. M. Kutty

...Petitioners

versus

1. **Federation of Pakistan**
Through the Secretary, Ministry of Foreign Affairs,
Pak Secretariat, Islamabad

2. **The Secretary, Ministry of Interior**
Government of Pakistan, Pak Secretariat,
Islamabad

3. **The High Commission of Pakistan in India**
Through the High Commissioner, 2/ 50-G,
Shantipath, Chanakyapuri, New Delhi 110021,
India

4. **Pakistan Maritime Security Agency**
Through its Director General, PMSA
Headquarters, 34-A, Dockyard Road, Karachi

...Respondents

**PETITION UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

Respectfully Sheweth:

1. That Pakistan Fisherfolk Forum (PFF), the Petitioner No.1, is a civil society organization established in 1998 and registered under the Societies Registration Act, 1980, which has been striving to advance the socio-economic and political rights of fishermen and fishing communities in Pakistan by lobbying for sustainable fishing policies and a ban on deep-sea trawling and the use of destructive nets, the release and rehabilitation of detained fishermen in Indian and Pakistani jails, abolition of the contract labor system and the introduction of a license system on the inland water bodies, restoration of Indus Delta, and the relief and rehabilitation of people affected by Left Bank Outfall Drainage (LBOD) and Right Bank Outfall Drainage (RBOD).

2. That Pakistan Institute of Labour Education & Research (PILER), the Petitioner No. 2, is a non-government organization, which was established in 1982, and registered as a public company on 28.06.2012 under the Companies Ordinance, 1984. The Petitioner No. 2 has been dedicated to promoting a democratic and effective labour movement by working to protect the rights and interests of the working classes, including fishermen, through, education, research, campaigning and advocacy. PILER also coordinates working of various trade union organizations, including the organization of fishermen and various civil society groups of teachers, writers, human rights social activists and it has also been making its best endeavours for promotion of peace in South Asia, protection of environments, upholding independence of judiciary, rule of law, democratic values and institutions, advancement and promotion of human rights and social justice in Pakistan.

3. That through this petition, the Petitioners seek to draw the attention of this august Court to the imprisonment of Pakistani fishermen in Indian jails for allegedly breaching the international maritime border and entering Indian waters, and crave gracious indulgence of this august Court for redress against the blatant negligence and inaction on the part of the Respondents to seek the

release and repatriation of the Pakistani citizens languishing in Indian jails since as far back as 1993.

4. That the inadvertent straying of Pakistani fishermen is attributable, *inter alia*, to greater pollution caused by oil spills and heavy metals seeping into the sea, gradually lowering water levels, and the entry of big companies and foreign fishing vessels into common waters, which compel traditional fisher people to venture out into deeper waters for a better catch and to improve their livelihoods. However, due to limitations in navigational technology and difficulty in discerning the maritime border, coupled with the indeterminate nature of the international maritime border at Sir Creek, Rann of Kutch, due to disagreements between Pakistan and India over the international border, many fisher people often accidentally venture out into Indian waters and are arrested and detained by the Indian Coast Guard.
5. That arrests and detentions of traditional fisher people on both sides of the border only began after around 1982 with the formal adoption of the Exclusive Economic Zone (EEZ), a 200 nautical mile stretch from the coastline over which the state exercises exclusive economic rights, by the UN Convention on the Law of the Sea (UNCLOS), and due to the escalating hostility between the two nations over their maritime borders, and consequently, their Exclusive Economic Zone (EEZ). Since then, straying fishermen have been arrested by the Indian Coast Guard, Border Security Force (BSF), Indian Customs, or the Indian Navy in India and the Pakistan Maritime Security Agency (Respondent No. 4) in Pakistan, and detained and treated like prisoners of war, with many being detained for indeterminate periods of time well beyond their stipulated sentences, and released only through an exchange protocol, i.e. in exchange for the release of Indian fishermen detained in Pakistani jails. Owing to the lack of political will on the part of the Respondents, detained Pakistani fishermen continue to languish in Indian jails, only to be used as pawns to broker political deals. It is submitted that through this Petition, the Petitioners seek justice for the detained Pakistani fishermen in Indian jails by seeking their release and recovery, and to seek such directions from this august Court as would be appropriate for the protection of fundamental rights and the enforcement of law and policy in order to avoid such incidents in the future. A copy of a report and compilation titled 'Fishing in Troubled Waters- The turmoil of fisher people caught between India and Pakistan' compiled by The Research Collective (TRC) and published by Dialogue for Action (DA) in May 2013, and a copy of a report titled 'Detained

Fishermen Caught in the System of Human Rights Violation' prepared by the Pakistan Fisherfolk Forum (PFF) (the Petitioner No. 1) are enclosed for the perusal of this august Court.

6. That the titled petition has been preceded by multiple petitions filed in this august Court and the Hon'ble High Courts for the release of Indian fishermen detained in Pakistani jails. While the aforementioned cases have resulted in the release of Indian prisoners, with the Home Department, Government of Sindh most recently directing the Inspector General of Prisons, Sindh on 20.08.2013 to release 340 Indian fishermen detained in District Jail, Malir, Karachi and to repatriate them to India on 24.08.2013 via Wagah Border Lahore in compliance with the orders of the Hon'ble Sindh High Court, the Respondents have abysmally failed to take proactive measures to ascertain the presence and legal status of Pakistani fishermen imprisoned in Indian jails and to ensure their release and repatriation, and to prevent against the future arrests and detention of straying fishermen in both Pakistan and India. According to a data chart prepared by the Petitioner No. 1 based on confirmations received from the Government of Pakistan and information provided by the Pakistani fishermen released from Indian jails, 226 Pakistani fishermen are currently detained in Indian jails, some of them since 1993, and with most having completed their sentences. Furthermore, the whereabouts of 66 fishermen, which include minors, are as yet unknown and no efforts have been made by the Respondents to obtain information for clarification or confirmation of whether the missing fishermen are in the custody of Indian authorities. Lists of the aforementioned Pakistani fishermen who are either missing or disowned, or who are being detained in Indian jails since 1993 are enclosed for perusal of this august Court. Likewise, copies of the aforementioned letters dated 19.08.2013 and 20.08.2013 issued by the Home Department, Government of Sindh to the Inspector General of Prisons, Sindh and copies of reports of the release of Indian fishermen from Pakistani jails published in The News are enclosed for perusal of this august Court.

7. That apart from being deprived of their liberty, the detained Pakistani fishermen are also dispossessed of their boats and catch, which are confiscated either to be poorly maintained so as to be of no further use on their eventual recovery, or to be misappropriated and never to be returned to the fishermen. By confiscating their boats, the fishermen are deprived of their sole means of livelihood, and there are reported incidents of released fishermen committing suicide after the confiscation of their boats, since they

were rendered helpless and unable to repay any debts/loans, or to cover the costs of the expensive boats which are mostly bought with borrowed money. The maintenance and recovery of these boats, therefore, is imperative and the practice of depriving the arrested fishermen of their sole source of income, by confiscation of their boats is cruel, inhuman and against all fundamental rights.

8. That in 2006, the Governments of India and Pakistan agreed to establish the Indo-Pak Joint Judicial Committee for investigating the situation of civilians imprisoned in the jails of the other country and to expedite the release of prisoners from India and Pakistan, especially those of fisherman imprisoned for straying across territorial waters. The Committee comprises Justice (Retd) Mr. A.S. Gill, and Justice (Retd) Mr. M.A. Khan from India, and Justice (Retd) Mr. Abdul Qadir Chaudhry, Justice (Retd) Mr. Nasir Aslam Zahid and Justice (Retd) Mr. Mian Muhammad Ajmal from Pakistan. In a joint statement on the Sixth Meeting of the Committee dated 30 April, 2013, the Committee once again recommended, *inter alia*, that the 'Consular Access Agreement' of 2008 signed by both countries be implemented in letter and spirit, that ¹ consular access be ² provided to detainees within three months of their arrest, complete details of charges on the prisoners and court judgments on the sentences be shared, ³ prisoners be repatriated on the confirmation of nationality and within one month of completion of sentence, ⁴ a speedier mechanism of confirmation of nationality after granting consular access be devised, ⁵ a mechanism for compassionate and humane treatment of prisoners, especially women, the elderly, children and those suffering from serious illnesses or physical disability be developed, and to set up a mechanism for release of inadvertent crossers.
9. That in joint statements released by the Minister of Foreign Affairs of Pakistan Ms. Hina Rabbani Khar and the Minister of External Affairs of India Mr. S. M. Krishna after meetings held on July 27, 2011 and September 08, 2012, both parties concurred with the recommendations of the Indo-Pak Joint Judicial Committee and lauded the recent talks held between the Director General of the Pakistan Maritime Security Agency and the Director General of the Indian Coast Guard in New Delhi in July 2012. A joint-statement was also released by an Indian delegation led by R.K. Singh, Indian Home Secretary and the Former Interior Minister on 24-25 May, 2012. Nevertheless, no subsequent efforts have been made by the Ministry of Foreign Affairs (Respondent No. 1), The Ministry of Interior (Respondent No. 2), or the Pakistan Maritime Security Agency (Respondent No. 4) to implement the aforementioned

recommendations. Consequently, detained fishermen are still languishing in the prisons of the respective country, without any relief or redress as recommended by the aforementioned Committee. The texts of the aforementioned joint-statements dated 27.07.2011, 25.05.2012, 08.09.2012 are enclosed for perusal of this august Court,

10. That the Respondent No. 4 is an agency of the government constituted under the Pakistan Maritime Security Agency Act, 1994, which regulates maritime activities and safeguards the maritime interests of Pakistan. Section 10 of the Pakistan Maritime Security Agency Act, 1994, states the powers and functions of the Agency, include, *inter alia*, providing for the protection of fishing vessels and crew against any threat, intrusion or interference within the Maritime Zone [clause (b)], to enforce international laws, treaties and conventions on an under the water [clause (c)], and to assist and coordinate search and rescue for vessels in distress [clause (d)]. However, as signified by the rise in the arrests and detention of Pakistani fishermen across the border, the Respondent No. 4 has not complied with or implemented the mandate of the aforementioned Act in letter and spirit by failing to adopt preventative measures against fishermen straying outside territorial waters; therefore, the Respondent No. 4 has manifestly failed to protect the fundamental rights to life, liberty and property enshrined in the Constitution of the Islamic Republic of Pakistan, 1973, of innocent Pakistani civilians who inadvertently enter into foreign waters.
11. That as submitted herein above, the traditional fishermen are more susceptible to unintentionally crossing the maritime border due to the absence of a clear demarcation of the boundary and lack of navigational technology. This problem is further aggravated by the dispute between India and Pakistan over the international maritime border at Sir Creek in Rann of Kutch. Arrangements for talks between the two nations for the resolution of this issue are thus crucial to break this vicious cycle; otherwise, the one-time release of currently detained Pakistani fishermen in India will not be effective for the resolution of the issue of such detentions across the border for times to come. Furthermore, it is vital that the Respondents engage with Indian authorities to draft a mutual policy for the immediate release of fishermen, along with their boats, that have accidentally ventured into foreign waters. Other effective preventative measures would include the creation of a buffer zone for the fisher people of both Pakistan and India, registration and tracking of fishermen and their boats by Respondent No. 4 who would then be

responsible for guiding straying fishermen back into territorial waters. The Respondents should also endeavour to reach an agreement with India in compliance with the Transfer of Offenders Ordinance, 2002, for the repatriation of imprisoned fishermen who are serving their sentences across the border and who, if need be, could serve the rest of their sentences in their respective countries, thus removing any uncertainty of the whereabouts of missing fishermen, if acted upon in conjunction with the aforementioned steps.

12. That the failure of Respondents No. 1 to 3 to act against the prolonged detentions of Pakistani fishermen in Indian jails by exchanging information with Indian authorities and expediting their release and repatriation has led to infringement of the fundamental rights embodied in Articles 9, 14, 18 & 24 and the Principles of Policy enumerated in Article 38 of the Constitution of the Islamic Republic of Pakistan, 1973, as innocent Pakistani fishermen are deprived of their right to life, liberty, and dignity as they serve prolonged detentions beyond the stipulated sentences and the stigma attached with imprisonment for no fault of their own, and their right to property and their freedom to trade is taken away as their sole means of livelihood is confiscated and threatened by arrests by the Indian Coast Guard for straying into foreign waters. The matter relates to questions of public importance involving enforcement of fundamental rights of poor citizens of the Islamic Republic of Pakistan (the fishermen). Therefore, jurisdiction of this august Court under Article 184(3) is being invoked for the enforcement of fundamental rights embodied in Articles 9, 14, 18 & 24 Constitution of the Islamic Republic of Pakistan, 1973 and for the prevention of such violations in the future.

In view of the above, it is respectfully prayed that for the enforcement of the fundamental rights of the poor citizens of Pakistan embodied in Articles 9, 14, 18 & 24 of the Constitution of the Islamic Republic of Pakistan, 1973, this august Court may graciously be pleased to:

(a) Issue appropriate directions to Respondents No. 1 to 3 to:

1. Obtain information and confirmation regarding the presence of Pakistani fishermen in Indian jails, details of charges on the prisoners, and court judgments on the sentences awarded to

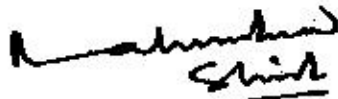
Pakistani fishermen detained in Indian jails, and take all the necessary steps to provide for the legal aid and assistance necessary for their release and deportation to Pakistan;

- ii. Create a forum/mechanism for information and data sharing regarding Pakistani fishermen detained in Indian jails till such time as the issue of arrests and detention of straying fishermen across the maritime borders is resolved;
 - iii. Endeavour to implement forthwith the recommendations of the Indo-Pak Joint Judicial Committee on various aspects of release and repatriation of prisoners and fishermen, last recommendations being made in statement dated 30.04.2013, which are within its power to do so;
 - iv. Seek the immediate release and repatriation of Pakistani fishermen currently detained in Indian jails who have completed their sentences;
 - v. Seek the immediate recovery of boats confiscated by the Indian Coast Guard, at the very least, in the conditions in which they were confiscated, or to seek compensation for any damages caused to the boats for lack of maintenance or for boats, which have been misappropriated;
 - vi. Make all necessary efforts to devise a mechanism whereby detained Pakistani fishermen are, on their release, deported to Pakistan through the sea route along with their confiscated boats;
 - vii. Do all that is necessary for controlling and prevention of such incidents in future.
- (b) Issue appropriate directions to the Respondent No. 4 to protect the life, liberty and property of Pakistani fishermen in compliance with the Fundamental Rights enshrined in Articles 9, 14, 18, 24 and the Principles of Policy enumerated in Article 38 of the Constitution of the Islamic Republic of Pakistan, 1973, by:

- i. Performing its duty and mandated functions in accordance with law, including those stated in clauses (b), (c) and (d) of Section 10 of the Pakistan Maritime Security Agency Act, 1994, for the protection of fishing vessels and crew against any threat, intrusion or interference within the Maritime Zone, to enforce international laws, treaties and conventions on an under the water, and to assist and coordinate search and rescue for vessels in distress, by framing a scheme or guidelines for bringing about a remedial end to the issue of Pakistani fishermen straying out into Indian waters and by taking all necessary steps pursuant thereto for ensuring against future straying of Pakistani fishermen into foreign waters;
 - ii. Taking all necessary steps for devising a mechanism for the exchange of information with the Indian Coast Guard regarding any straying fishing boats, and for guiding them back into territorial waters;
 - iii. Taking all necessary steps for the prompt release of fishermen, along with their boats, who inadvertently cross the maritime border.
- (c) Issue appropriate directions to the Respondents to periodically submit a report regarding compliance with the orders issued by this august Court.
- (d) Any other relief to which the Petitioners are found entitled to by this august Court in law, justice and equity in the facts and circumstances of the case.

Drawn & Settled By

Filed by



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MEHMOOD.A.SHEIKH
Advocate on Record

Certificate U/O XXV Rule 6 of the Supreme Court Rules, 1980:

It is certified that this is the first Constitutional Petition on this issue under Article 184(3) of the Constitution on behalf of Petitioners, and Petitioners have not moved the Hon'ble High Court for the same relief.

ADVOCATE ON RECORD