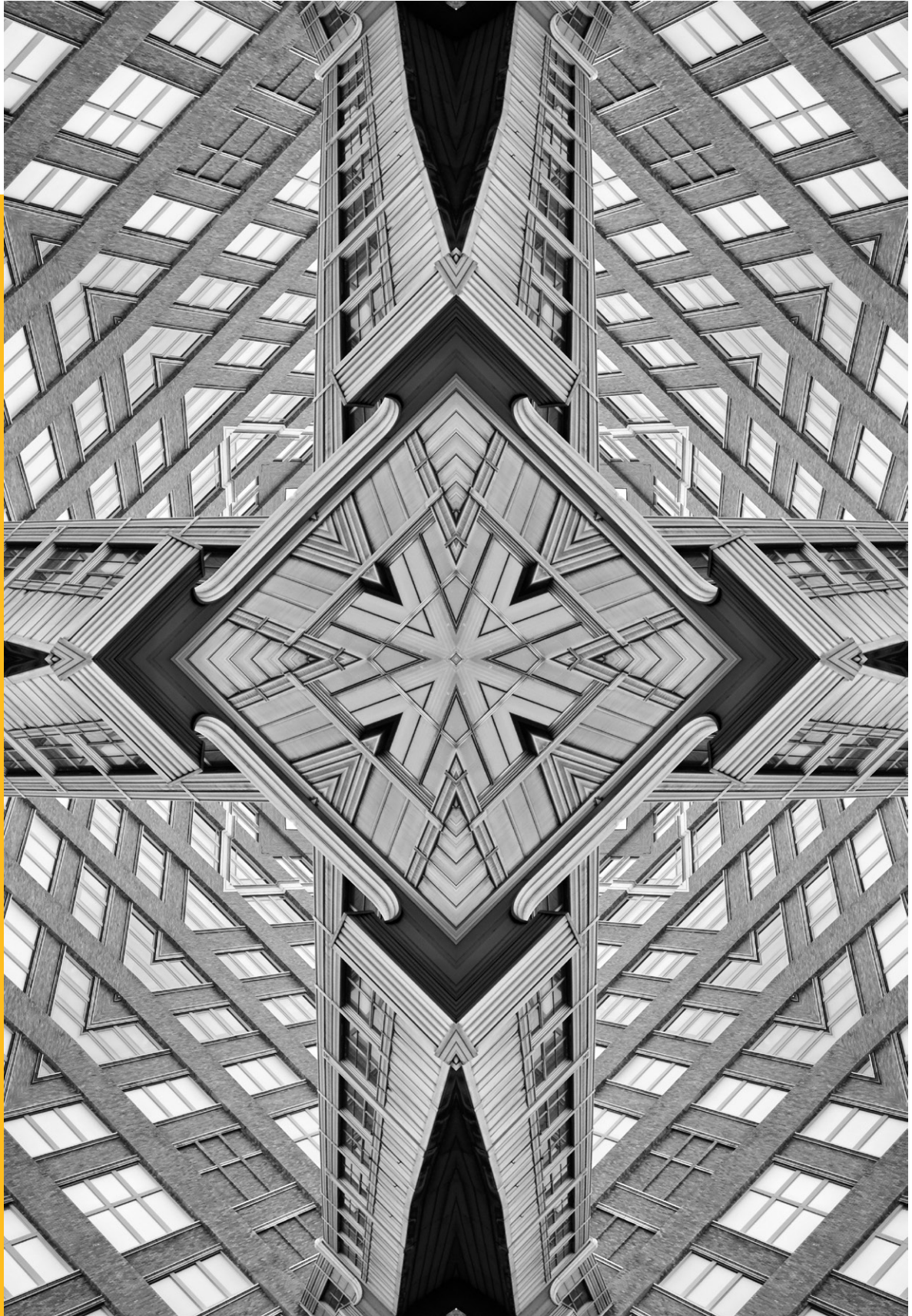


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Finding Solutions to Fishermen Transgressions in the India-Bangladesh Maritime Space

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Abstract

Aiming to secure their marine resources in the Bay of Bengal, India and Bangladesh settled their maritime boundary in 2014. Despite the delimitation, however, fishers from both countries continue to commit unlawful forays into each other's sovereign waters, leading to the enforcement of punitive measures against those accused or convicted. Such incidents not only jeopardise the fishers' livelihoods, but repeated occurrences also nettle relations between the two countries. This paper calls for a proactive strategy for India and Bangladesh to engage in meaningful diplomatic collaboration to reduce the incidence of trespassing by fishermen, in particular through the development of Blue Economy.

India and Bangladesh share a contiguous coastline of almost 737 km,^a forming the northern shore of the Bay of Bengal. To secure their sovereign access to marine resources through designated oceanic zones, the two countries in 2014 settled their maritime boundary dispute in the Bay, in accordance with the verdict of the Permanent Court of Arbitration (PCA) at The Hague.^{b,1} Yet, despite the delineation, there continue to be reports of unlawful forays into each other's sovereign waters by the fishers of both countries. Although less frequent than similar instances in the shared waters of India and Sri Lanka,² these transgressions are irritants in Indo-Bangladesh relations—they disturb the overall bonhomie between the two countries, and they can pose non-traditional security threats.^c

Only months after the maritime boundary line was demarcated, 79 Indian fishers were arrested by the Bangladesh Coast Guard in 2015, of whom 37 were not released for six months despite repeated requests by the Indian government. The next year, in January 2016, Bangladesh released 178 Indian fishermen after two months of imprisonment.³ While it may be understandable that such incidents happened frequently in the immediate years following the delimitation of the boundary owing to fishers' lack of awareness, such instances have continued since then.

In 2019, the Bangladesh Coast Guard arrested 519 Indians for fishing inside their Exclusive Economic Zone (EEZ).^d Consequences have been severe in some occasions: in 2019, too, the Border Guard Bangladesh (BGB) intercepted an Indian boat carrying three Indian fishermen. The situation escalated and a BGB personnel opened fire, killing a Head Constable of the Indian Border Security Force (BSF). Investigations by the Indian government found 64 Indian fishermen in the jails of Bangladesh, detained on charges of illegal fishing.⁴

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- a The northern coastline of the Bay of Bengal comprises the coast of West Bengal in India which runs for 157 km and the coast of Bangladesh which is 580 km long. Therefore, the calculated total length of the northern coast of the Bay is 737 km.
 - b The PCA is an intergovernmental organisation established in 1899, which provides an array of dispute resolution services to the international community.
 - c Non-traditional security threats are challenges to the security of countries and the well-being of its people that arise out of non-state or non-military sources.
 - d The United Nations Convention for Laws of the Sea (UNCLOS) 1982, delimited the four areas of maritime rights as: Territorial Sea-12 nautical miles-nm in which the state exercises full legal sovereignty; Contiguous Zones-24 nm in which the state exercises limited sovereignty; the Exclusive Economic Zones-200 nm in which the state exercises full economic sovereignty; and the Continental Shelf- 350 nm (maximum) in which the state exercises limited economic sovereignty.

On the other side of the border, anecdotal evidence indicate that in 2020, there were 100 Bangladeshi fishers in a single prison in West Bengal, India.⁵ The latest reported incident of arrest occurred in December 2020⁶ while 13 Indian fishermen were detained by the Bangladesh Coast Guard, as recent as August 2021, for intrusion into its waters.⁷ These recurrent arrests, if allowed to continue, could endanger the lives and livelihoods of fisherfolk. Such a situation is already seen between India and Sri Lanka—the “fishermen problem” has aggravated over the years, costing lives and straining the otherwise congenial ties between the two countries.⁸

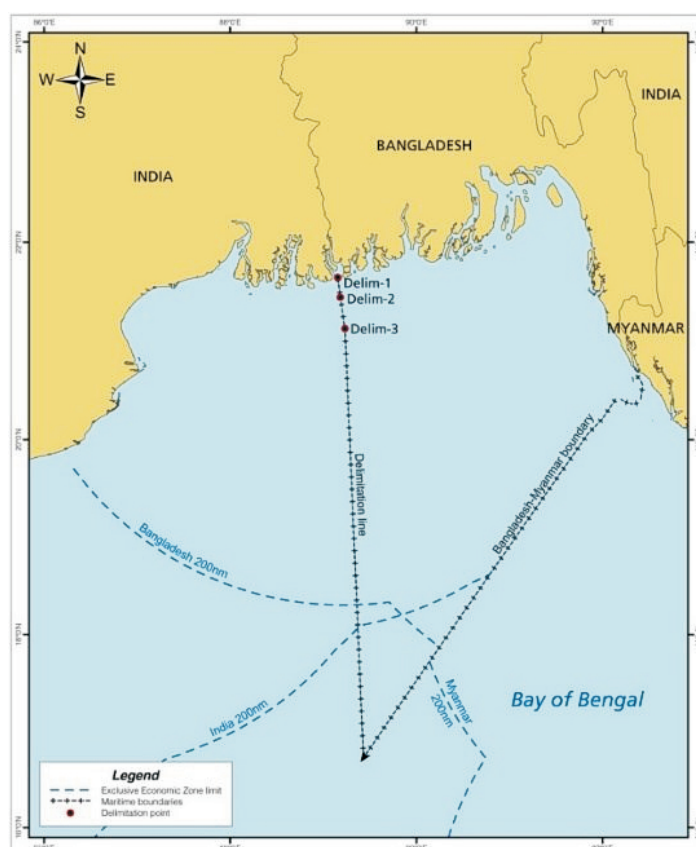
This paper explores ways by which India and Bangladesh can use diplomacy to minimise transgressions, and the arrest of fishermen, in their adjacent maritime space. The aim is four-fold: to understand why such transgressions happen and take stock of the incidents since the boundary delimitation of 2014; to review the domestic legal frameworks of both countries, as well as their bilateral agreements, aimed at reducing such cases; to draw lessons from the fishers’ disputes between India and Sri Lanka; and to analyse how India-Bangladesh cooperation in the area of Blue Economy can help promote peace in these maritime spaces.

“Recurrent incidents of fishermen trespassing each other’s sovereign waters are irritants in India-Bangladesh relations.”

Transgressions in the India-Bangladesh Maritime Space: An Overview

Since the independence of Bangladesh in 1971, it has faced allegations that its fishers are encroaching on India's sovereign waters; India, too, is accused of the same by Bangladesh. Effective action could not be taken in the absence of a clear demarcation of their boundary in the Bay of Bengal.⁹ Official negotiations for delimitation began in early 1974,¹⁰ but both zealously guarded their marine resources—primarily hydrocarbons and fishing stock—and failed to reach an agreement.

Figure 1 The India-Bangladesh Maritime Boundary Line, according to The Hague Tribunal



Source: Permanent Court of Arbitration¹⁴

Transgressions in the India-Bangladesh Maritime Space: An Overview

Forty years later, in July 2014, the Permanent Court of Attribution (PCA) at The Hague delineated the maritime boundary line between India and Bangladesh, in its ruling determining their territorial seas, EEZs,¹¹ and continental shelves. Bangladesh had initiated arbitral proceedings before the PCA in October 2009.¹² The Tribunal's ruling created two separate and adjacent areas of maritime rights.¹³

Seven years since the delimitation of maritime boundaries, the fishing interests of the two countries continue to diverge. Intentional transgressions by fishers thus occur, owing to three broad reasons:

- **Want of a better catch:** Many fish species such as herrings like Hilsa and demersal species such as lobsters are migratory in nature, moving between EEZs to feed or spawn. Other species such as the Indian mackerel and the threadfin beam are found all along the Bay, while Bombay Duck is found in only specific parts. In the hope of better catch, fishers sometimes cross maritime boundaries. Such instances of illegal fishing are increasing; depleted fish stocks means more boats are chasing fewer fish.¹⁵ Neighbouring fishing trawlers often trespass into Bangladesh waters and target the Hilsa, a prized commodity in West Bengal and Bangladesh.¹⁶ Fishing vessels from Bangladesh also encroach into India's territorial waters, according to the Federation of Indian Fisheries Industries.¹⁷ There are reports that foreign fishing vessels are able to enter Indian waters by paying bribes to Coast Guard officials—a claim the Indian Coast Guard denies.¹⁸
- **Incongruous fishing bans:** Lack of complementarity in fishing bans between neighbouring countries forces fishers to cross boundaries. For example, Bangladesh enforces a 22-day seasonal fishing ban of brood hilsa shad in October every year, the starting date depending on the full moon period.¹⁹ The neighbouring Indian state of West Bengal, too, imposes a seasonal ban on Hilsa fishing, tentatively between September 15 to October 24, before and after five days of the full moon.²⁰ Furthermore, all the states along the Indian east coast^e impose an annual 61-day fishing ban from 15 April to 14 June,²¹ whereas Bangladesh implements a 65-day ban on all types of marine fishing from 20 May to 23 July, every year.²² Such lack of uniformity in prohibitions does not encourage compliance.²³ Not unexpectedly, Bangladeshi fishers view their 65-day ban as unjust especially as fleets from neighbouring countries continue to fish illegally in their waters.²⁴ Such disparities in ban periods, compounded by a dearth in alternative livelihoods, only reinforce acts of transgression. Illegal forays for a better catch emerges as a more lucrative livelihood option, if not a survival strategy.

e These states are West Bengal, Odisha, Andhra Pradesh and Tamil Nadu.

Transgressions in the India-Bangladesh Maritime Space: An Overview

- **Bonds above borders:** The familial and cultural ties across the borders between India and Bangladesh also contribute to the concern. Partition is a relatively recent phenomenon in this maritime space and therefore fishing communities who live along the coast have historically shared their waters with the communities of neighbouring countries. A 2012 report by the Bay of Bengal Large Marine Ecosystem^f (BOBLME) Project, “Scoping Study on Migrant Fishers and Transboundary Fishing in the Bay of Bengal,” noted that as long as the communities are comfortable with each other given their cultural and linguistic similarities, they do not report instances of border crossing.²⁵

Unintentional Transgressions

Fishers using small vessels sometimes cross into the sovereign waters of neighbouring countries unintentionally as they lose their way: they lack a navigational system, experience technical glitches, or do not have any awareness of the location of maritime boundaries.²⁶

Accidental transgressions are also possible in the Bay of Bengal as it is a turbulent maritime space, subject to frequent cyclones. The BOBLME report of 2012 observed instances where fishers were faced with adverse weather conditions and “blown” over to foreign waters, and consequently were arrested.²⁷ To be sure, however, cyclone forecasting has improved since the time of that report, and early warnings are provided weeks in advance. However, in cases of technical failure, such as the boat’s engines malfunctioning, vessels can still be drawn into foreign waters by strong monsoon currents.

The ‘Grey Areas’

The Tribunal’s boundary demarcation in 2014 had led to the creation of a ‘Grey area’—a small wedge-shaped space, 200 nautical miles beyond the coast of Bangladesh but within 200 nautical miles of India’s shores, where the two states have overlapping claims over the resources of the area²⁸ (see Figure 2). In 2014, the International Tribunal for the Law of the Sea^g (ITLOS) decreed,

^f BOBLME is an internationally funded initiative to facilitate trans-boundary collaboration for marine fisheries and environmental issues.

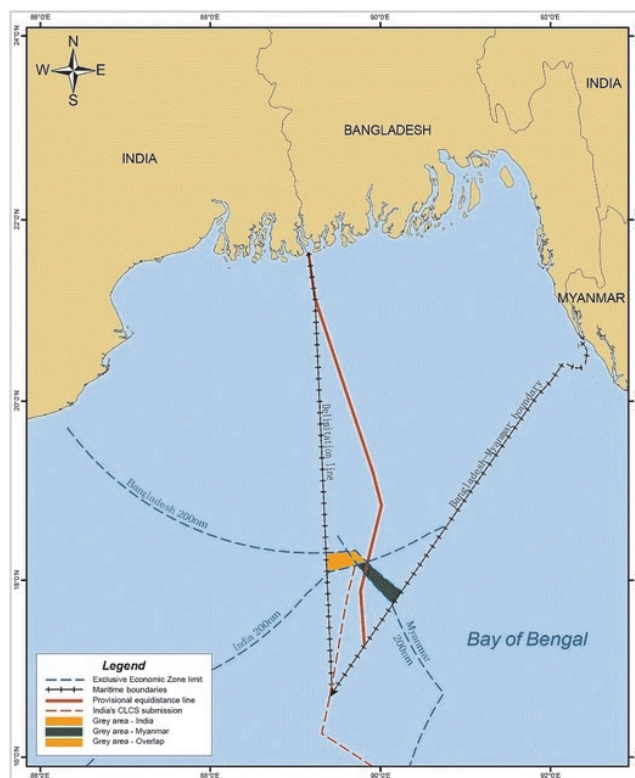
^g The ITLOS is an independent judicial body established by the UNCLOS in 1982. It has jurisdiction over any dispute concerning the interpretation or application of the Convention, and over all other matters which are specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Transgressions in the India-Bangladesh Maritime Space: An Overview

that the shelf rights, seabed and subsoil belong to Bangladesh, but the rights on superjacent waters belong to India.²⁹ A portion of this space also overlaps with the ‘grey area’ between Bangladesh and Myanmar, creating a zone where three countries have sovereign rights. In this zone, Bangladesh has rights over the continental shelf whereas India and Myanmar have rights over the EEZ water columns.³⁰

In practise, however, this distinction is difficult to implement—although the states exercise their rights on different planes, geographically, their rights exist in the same space.³¹ Therefore, fishing practices by India such as trawling (which scrape the seabed), can compromise the rights of Bangladesh.³² As any agreement is yet to be reached amongst the countries on fishing methods to be used in the ‘grey areas’, there is a continuing danger of inter-state disputes where the fishers stand to suffer the consequences.³³

Figure 2
The ‘Grey Areas’ in the Bay of Bengal



Source: *Economic and Political Weekly*³⁴

Transgressions in the India-Bangladesh Maritime Space: An Overview

Fishers who are arrested for trespassing on sovereign maritime space suffer manifold: they lose their livelihoods³⁵ as they remain in a foreign jail for many months while their court case drags, and while incarcerated suffer difficult conditions.³⁶ Table 1 gives a snapshot of the recurrent arrests, and a few repatriations, between India and Bangladesh since the signing of the Maritime Boundary Line in 2014. The data was collated primarily from newspaper reports, except for the years 2015, 2016 and 2017 where government data was made available, following Question 55 raised in the Lok Sabha to the Ministry of External Affairs in 2016, regarding the state of Indian fishers in foreign jails.³⁷

Table 1
Arrests of fishers and their release
(2014-2021)

Year	Arrests reported	Releases reported
2021	Data not available.	Mar: 61 Indian fishers released from Bangladesh. ³⁸
2020	<p>Jan: 26 Indian fishers and two fishing trawlers detained by Bangladesh Navy.³⁹</p> <p>Feb: 12 Indian fishers and a trawler arrested by Bangladesh Coast Guard.⁴⁰</p> <p>Mar: 157 Indian prisoners, including fishers, found in Bangladesh jails.⁴¹</p> <p>May: 38 Indian fishers found in Bangladesh jails.⁴²</p> <p>Jun: 100 Bangladeshi fishers found in a single prison in West Bengal, India.⁴³</p> <p>Aug: Bangladesh requested release of 25 fishers.⁴⁴</p> <p>Dec: 17 Indian fishers and a trawler detained by Bangladesh Coast Guard.⁴⁵</p>	Jan: 63 Indian fishers released from Bagerhat jail, Bangladesh. ⁴⁶

Transgressions in the India-Bangladesh Maritime Space: An Overview

2019	<p>Jul: 519 fishers and 32 trawlers detained by Bangladesh Coast Guard.⁴⁷</p> <p>Oct: 23 Indian fishers arrested by Bangladesh.⁴⁸</p>	<p>Jul: 516 fishers and 32 trawlers repatriated by Bangladesh.⁴⁹</p> <p>Sep: Bangladesh to release 519 Indian fishers.⁵⁰</p>
2018	Data not available.	Data not available.
2017	None ⁵¹	None ⁵²
2016	10 Indian fishers imprisoned/ attacked and one boat detained by Bangladesh. ⁵³	191 Indian fishers and 15 boats released by Bangladesh. ⁵⁴
2015	340 Indian fishers imprisoned/ attacked and 17 boats detained by Bangladesh. ⁵⁵	217 Indian fishers and 19 boats released by Bangladesh. ⁵⁶
2014	<p>Dec: 17 Indian fishers arrested by Bangladesh.⁵⁷</p> <p>Oct: 132 Indian fishers arrested by Bangladesh.⁵⁸</p>	Data not available.

In view of the recurrent arrests that the fishers face and their prolonged imprisonment, it is important to undertake a review of the existing laws and regulations in both India and Bangladesh, as well as their bilateral agreements, aimed at minimising such incidents. It is important to state here that the focus of this paper is on the diplomatic negotiations to reduce the incidence of arrest and detention of fishers on both sides. Measures to combat illegal fishing, per se, are beyond the scope of this paper.

“Fishers who are arrested for crossing into another country’s space lose their livelihoods, remaining in a foreign jail for many months while their case drags in court.”

India and Bangladesh are both maritime countries that rely on fishing for commerce as well as food security; the two have in place a set of national policies and laws that aim to manage the fishing sector. These domestic regulations provide for how the country will develop its fisheries sector, regulate fishing in sovereign waters, provide procedures to deal with offences, and, overall, govern the activities of fishers.

Domestic policies and laws

India's 'National Fisheries Policy, 2020' is an integration of existing policies on inland fisheries and the National Policy on Marine Fisheries of 2017.⁵⁹ It aims to develop a socially inclusive fisheries sector that contributes towards the wellbeing of fishers.⁶⁰ To prevent trespassing, provisions are in place to strengthen the surveillance system for monitoring the position of all fishing boats, including foreign vessels, in India's waters. The boats are also supposed to be fitted with communication and navigational devices that will reduce their chances of straying into foreign waters. The policy instructs government authorities to undertake awareness programmes for sea-venturing fishers. The policy also advocates training fishers in community-based disaster management,⁶¹ which will help further reduce such cases.⁶² Lastly, cognisant of the importance of trans-boundary cooperation in managing a shared resource, the law recommends inter-country collaboration for the "safeguard of human rights, in particular for fishermen straying in waters of other countries."⁶³ The policy, however, does not mention any strategy to reduce the detention of Indian fishers arrested by other countries or, similarly, those arrested by India.

Compared to the Indian policy, the Bangladesh National Policy on Fisheries is more dated, having been formulated in 1998. As the policy precedes the maritime boundary delimitation by a long 16 years, it does not outline the government's vision on issues that have consequently attained more gravity, such as the problem of fishing transgressions, the importance of surveillance systems for vessels, and the concern of fishers' arrests and detention.⁶⁴

The challenge is that even as both India and Bangladesh have specific fisheries policies in place, they are, at best, a declaration of the government's vision; they are not legally binding. For instance, although it is the Indian government's policy to strengthen maritime surveillance systems, it has yet to be translated into law that would be legally enforceable and would earn its violators some form of punitive action. The following paragraphs will discuss India's and Bangladesh's laws that are relevant to the arrest and repatriation of foreign fishers.

The Maritime Zones of India Act of 1981 is the primary law that regulates fishing by foreign vessels in India’s waters, providing clear procedures of punishment and repatriation. It provides that arrested fishers cannot be detained for more than 24 hours and need to be taken to court immediately. If further investigation is required, they are to be put temporarily in jail. In reality, however, often a couple of months pass before the court proceedings begin; and once it does, it is a slow process that can take about many months. Three ministries—Home Affairs; External Affairs; and Fishers, Animal Husbandry and Dairying—have to agree on giving a release order for the state court to initiate the process. When proved that contravention has taken place in territorial waters, the convicted fishers are sentenced to a maximum of three years’ imprisonment, or a fine not exceeding INR 15 lakhs, or both. For EEZs, the fine is limited to INR 10 lakhs.⁶⁵ The legal ramifications of trespassing in sovereign waters can take a heavy toll on fishers. Non-government organisations (NGOs) have active programmes that support undertrials or those already in prison, advocating for their release and supporting their families in their absence.⁶⁶

Similar terms were ordained by Bangladesh’s Marine Fisheries Ordinance of 1983: any foreign vessel entering the country’s waters illegally were liable to rigorous imprisonment for a term not exceeding three years and to a fine not exceeding Taka one lakh.⁶⁷ In 2020, this Ordinance was superseded by the Marine Fisheries Act, which imposes more stringent terms. The law says that the crew of any foreign fishing vessel found illegally entering “বাংলাদেশে সামুদ্রিক মৎস্য জলসীমা” which translates to Bangladesh Marine Fishing Space” (inclusive of the Territorial Sea, Contiguous Zone and EEZ) will be subject to imprisonment for a term not exceeding three years or a fine not exceeding Taka 5 crore (or one-third of it), or both. Furthermore, the arrested fishing vessel, its equipment and the haul of fish will be forfeited by the Government and auctioned, and the revenue collected will be added to the state treasury.⁶⁸

As both India and Bangladesh are signatories to the UN Convention on the Laws of the Sea (UNCLOS), it is expected that their domestic laws will be aligned to it.^h The UNCLOS, in effect since 1994, differentiates between what is defined as ‘territorial sea’, and the EEZs, with regard to punishing trespassers. This is because a country’s territorial sea is as good a part of its territory, and illegal fishing in this area is equivalent to a national security threat. The country exercises its *complete legal sovereignty* over its territorial sea and reserves the right to punish intruders by its own laws, and UNCLOS does not stand in the way of arresting and detaining fishers for illegally fishing in foreign territorial waters.⁶⁹ Accordingly, Article 19 of the UNCLOS considers vessels engaged in illegal

^h As a set of international laws, the UNLCOS is not legally binding on its signatories. These countries can therefore choose to adhere to their own laws over the terms of the UNCLOS in areas which fall within national jurisdiction.

fishing activities in foreign territorial seas, to be ‘prejudicial’ to the “peace, good order or security of the coastal State” and Article 21 allows the “coastal State to adopt laws and regulations” for the prevention of infringement of its fisheries laws and regulations.⁷⁰

The situation is different in the EEZs over which countries can only exercise *full economic sovereignty* and which are often overlapping between neighbouring countries, especially in semi-enclosed maritime spaces like the Bay. Article 73 of UNCLOS states: “Coastal state to manage the living resources in the EEZ, may take such measures, including boarding, inspection, arrest and judicial proceedings, as necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention. However, the arrested vessels and their crews shall be promptly released upon the posting of a reasonable bond or other security and that the coastal state shall not use imprisonment or any other form of corporal punishment for the violation of fisheries law unless there are specific agreements between the states involved.”⁷¹

The Indian Act, although passed more than a decade before UNCLOS, does comply as it distinguishes between fishers caught in its territorial sea and those in its EEZs. The 2020 Act of Bangladesh, for its part, states that any illegal fishing vessels found in the “Bangladesh Marine Fishing Space” (a blanket term including both the Territorial Sea and EEZ), will be subject to either imprisonment or fines, or both.ⁱ It may thus be interpreted as a violation of Article 73 of UNCLOS, as it provides for imprisonment of

foreign fishers engaged in illegal fishing in the EEZs. This violation is heightened by the fact that there exists no agreement between India and Bangladesh to imprison fishers transgressing into each other’s EEZs, as required by the UNCLOS if both countries concur. Arrests in the Bangladesh EEZ can therefore lead to future disagreements between the two countries. However, it may also be argued that the Act is not a violation, since it states either ‘imprisonment’ or ‘fine’, and offenses committed in the EEZ may be charged with fine alone.

“Both India and Bangladesh have fisheries policies in place; but they are at best a declaration of the government’s vision, and not legally binding.”

ⁱ Bangladesh’s considerably guarded stance in punishing transgressors, as evident from the articulation of its laws, may be attributed to it being more decisively cautious of its sovereignty and territorial rights compared to India. This can be traced to it being a more newly independent country and the fact that it has a smaller coastline with a critical dependence on fisheries for food and financial security.

Therefore, preventive measures that can help reduce transgressions remain non-enforceable or even unstated as in the case of Bangladesh, unlike the punitive regulations that provide for long-term imprisonment upon conviction. This allows for the recurrence of transgression by fishers from both sides, and their arrest, as governments are not obligated to execute official policy provisions. Agreements between India and Bangladesh also play a role in governing the livelihood of fishers, as this is a shared maritime space with migratory resources. The terms of these agreements require an examination to understand how both countries have collaborated to prevent the arrest of fishers who transgress maritime boundaries, and reduce the risk of their getting detained.

Bilateral engagements

Collaboration between India and Bangladesh in fisheries had until recently been confined to exchange of scientific knowledge and allied activities.⁷² With the demarcation of the maritime boundary in 2014, the need for collaboration to prevent transgressions was highlighted. The governments of both countries shortly came together to address the concern, in the context of promoting Blue Economy in their waters.

On 6 June 2015, India and Bangladesh signed a *Memorandum of Understanding on Blue Economy*. For the first time both countries sought to work together to address the inadvertent crossing of the international maritime boundary by fishers, and to facilitate their early release. To smoothen its implementation, the Parties agreed to set up a Joint Working Group on Blue Economy and Maritime Cooperation; it is yet to be created, however.⁷³ On the same day, an *MoU for the Establishment of Collaborative Relationship to Combat Transnational Illegal Activities at Sea and Develop Regional Cooperation* was also signed between the Coast Guards of the two countries, with aims to cooperate in maritime safety including refraining fishers from crossing boundaries.⁷⁴ Building on this theme, both countries in September 2015 agreed to expedite the repatriation of arrested fishermen.⁷⁵ Since then, however, the terms of the agreement, if any, have not been made publicly available.

“Preventive measures that can help reduce fishing transgressions remain non-enforceable.”

Earlier, in 2013,⁷⁶ the India-Bangladesh Treaty on Extradition which endorses repatriation between the two countries came into force; a year later, the Maritime Boundary was delimited. The year 2015 thus saw some activity, as described earlier. However, MoUs are joint decisions taken by partner governments and are not legally enforceable. Indeed, six years have passed since India and Bangladesh signed the MoU on Blue Economy, but no effort has been made to evolve it into an agreement. This delay can be partly explained by the fact that in both countries, Blue Economy is nascent: without clear policy directives on the matter, either country cannot enter into any legal commitments. The need to address the issue of transgressions has not speeded up the process, given the considerably low number of cases. Understandably, neither country has felt the urgency to enforce stronger measures to prevent such occurrences.

However, there is no guarantee that the situation will remain benign. What happened between India and Sri Lanka is a cautionary tale; for long, the issue of fishing transgressions was left unmitigated until it worsened, and today it is a primary concern in their bilateral relations.

“Six years since the India-Bangladesh MoU on Blue Economy, no effort has been made to evolve it into an agreement.”

Case Study: India-Sri Lanka Fishing Dispute

In January 2021, Indian External Affairs Minister S. Jaishankar visited Sri Lanka to discuss key concerns in bilateral relations, one of which was to find a long-term solution to the problem of frequent arrests of fishers for trespassing into the other's waters in the Palk Bay.⁷⁷ Over the years, multiple issues have aggravated the concern until it escalated to a near-crisis point. The problem has three inter-related facets: disagreements over Kachchatheevu; poaching by Indian fishers in Sri Lankan waters; and their use of trawlers, which worsens the crisis.⁷⁸

The dispute over Kachchateevu—an islet southwest of the Deft Island in the Palk Strait—dates back to the maritime boundary delimitation between India and Sri Lanka in the Palk Strait in 1974,⁷⁹ and in the Gulf of Mannar and Bay of Bengal in 1976.⁸⁰ According to the demarcation, the island fell on the Sri Lankan side and New Delhi agreed,^j although fishers of Tamil Nadu were used to fishing in the island's surrounding waters, given their traditional claim in it.⁸¹ Subsequently, Indian vessels were forbidden from fishing in Sri Lanka's sovereign waters, and vice versa.⁸² However, although the movement of the fishing vessels came to be legally restricted, it could not be strictly implemented owing not only to the Sri Lankan Navy's limited capacity, but also to diplomatic sensitivities.^{k,83} Therefore, fishers from Tamil Nadu continued their tradition of fishing near Kachchateevu, despite it being an act of transgression.

Poaching by Indian fishers, however, worsened with the onset of the Blue Revolution in the late 1980s, which encouraged the use of mechanised trawlers to boost catch levels.^l Being a harmful technique, it invited more stringent monitoring from the Sri Lankan Navy. Matters came to a head with the 1983 civil war in Sri Lanka, when forces of the Liberation Tigers of Tamil Eelam, disguised as fishers, began attacking the Sri Lankan Navy, compelling them to 'shoot first and question later'.⁸⁴ As the Navy responded to the attacks from the rebels, many Indian fishers engaged in poaching—who were not carrying proper identity cards—got killed. The Tamil Nadu government, in a submission to the Madurai bench of the Madras High Court said that 83 fishermen were killed from 1991 to 2011.⁸⁵ Despite the risk, transgressions continued as fishers weighed the risk to be less than the need for livelihood.^{m,86} After the civil war ended in 2009,

j Barren and uninhabited except for a Catholic Church which fishers made pilgrimages to, the Kachchateevu island appeared without any strategic significance to the Indian government.

k In the 1970s, India and Sri Lanka relations was characterised by the personal rapport between the then Sri Lankan Prime Minister Sirimavo Bandaranaike and the then Indian Prime Minister Indira Gandhi. Consequently, many issues in the bilateral ties were glossed over by personal diplomacy.

l The method of 'bottom trawling' severely harms the ocean bed and thus causes the depletion of fish stocks.

m Tamil fishers who fled to Tamil Nadu from Sri Lanka fearing persecution, accompanied Indian fishers to identify Sri Lanka's rich fishing blocks.

Case Study: India-Sri Lanka Fishing Dispute

Sri Lanka lifted restrictions on the movement of its fishing boats. This led to further confrontations, as the interests of the Sri Lankan fishers clashed with those of Indian trawlers, whose number grew following the distribution of the 2004 tsunami relief funds, which were used to purchase fishing vessels. This provoked more aggressive patrolling from the Sri Lankan Navy.⁸⁷

Incidents of poaching by Indian fishers—and their shooting by the Sri Lankan navy—are witnessed mostly in the Palk Bay given the frontal proximity of the two countries' coasts. Not all illegal fishermen are shot, however—some are returned with a warning and others are arrested.⁸⁸ In 2019 and 2020, a total of 284 Indian fishermen were arrested and a total of 53 Indian boats were confiscated by the Sri Lankan authorities.⁸⁹ Still, the casualty is high: even by conservative estimates, over 150 Indian fishers have been killed by the Sri Lankan Navy between 1983 and 2018.

This number is far higher than any other record of Indian fishers killed by foreign marine forces.^{n,90} More unorthodox estimates quote the number of deaths closer to 500.⁹¹ In 2004, to find solutions to the problem, a Joint Working Group⁹² was established and meetings were held between the fishing communities of the two countries.⁹³ However, the recommendations of these committees⁹⁴ have received lukewarm reception by both governments owing to diplomatic sensitivities,⁹⁵ and the issue remains unresolved.

The reasons remain—i.e., transgression for want of a better catch and as result of continuing to fish in traditional waters. A cause of concern is also that like the India-Bangladesh issue of transgressions, the Indian-Sri Lankan case, too, was deemed “benign” in the beginning and thus left unattended. Its example therefore should remind India and Bangladesh to find a resolution while it is still manageable. Both countries are pondering the potential of Blue Economy as a means in in this direction.

“India-Sri Lanka fishing disputes should serve as a cautionary tale for India and Bangladesh.”

n There have also been instances of Indian fishers being killed by the Pakistan Maritime Security Agency.

Blue Economy as Response to Fishers Transgressions

Blue Economy (BE) is a model of marine-based development that endorses the sustainable utilisation of oceanic resources while improving the livelihoods of people dependent on these resources. As it tries to attain a balance between the need for environmental protection, economic prosperity, and social inclusivity across a wide range of economic sectors (including fishing), BE is considered a holistic and unique model of growth to which coastal countries, including India and Bangladesh, aspire to.

The Indian Government has identified BE as one of the ten core dimensions of development in its ‘Vision of New India by 2030’. In 2014, Bangladesh Prime Minister Sheikh Hasina declared it an opportunity for the country’s sustainable growth. But effective implementation of this model requires collaboration amongst countries sharing a maritime space, as it is based on the use of transnational oceanic resources as well as the ocean itself. This explains the MoU of 2015 on Blue Economy between India and Bangladesh.

The pursuit of BE necessitates a sustainable resolution to the problem of transgressions by fishers; illegal fishing, especially during conservation bans, interferes with the breeding season of species thereby leading to the overexploitation of fish stocks. The very principle of sustainable use of marine resources does not allow for the frequent occurrence of fishing transgressions. At the same time, the arrest and prolonged detention of fishers contradicts the aim of improving livelihoods, which is a pillar of BE. It is thus understandable that India and Bangladesh deemed it necessary to address the problem of maritime trespassing as they attempt to pursue their Blue Economy goals, even as both countries have given it little attention in the past, if at all.

“In Blue Economy, the principle of sustainable use of marine resources does not allow for frequent fishing transgressions.”

Blue Economy as Response to Fishers Transgressions

For any real progress to be made, India and Bangladesh must translate the MoU into a legally binding agreement. However, this will not be possible until both the countries put in place clear policies that will outline their vision of Blue Economy. To begin with, the two sides would have to ascertain complementarity in the approach towards the issue, before any collaborative initiatives can be pursued. This is particularly difficult in the case of Blue Economy, as there exists no universally accepted definition and each country has been defining its own concept. India and Bangladesh ought to officially articulate their positions on Blue Economy, and thereafter finalise their points of convergence.

A reading of draft policies and official documents of both countries on Blue Economy nonetheless helps in gauging the focal areas of cooperation that will follow an agreement. In particular, this analysis is interested in whether these statements indicate whether the issue of fishing transgressions will receive the necessary emphasis.

For India, Blue Economy is a subset of national economy, having “...clear linkages with economic growth, environmental sustainability and national security,”⁹⁶ according to the draft policy framework of September 2020. The overall emphasis of the draft is on the utilisation and conservation of marine resources which are the country’s “assets”. Discussions on the wellbeing of fishermen is limited to their safety from marine terrorism/piracy, and their financial and food security. Indeed, the issue of transgressions does not feature prominently. In the entire draft policy, the issue is mentioned only twice, and both in the frame of the India-Sri Lanka fishers’ dispute.⁹⁷ The omission of the India-Bangladesh context may once again be attributed to the prevailing low number of cases.

Like India, for Bangladesh too, BE is a subset of the national economy—a tool for promoting inclusive and sustainable livelihoods, amongst other goals.⁹⁸ Publicly available official documents suggest that Bangladesh’s understanding of ensuring “sustainable livelihoods” as regards the fishing sector, remains confined to increasing sustainable fishing capacity and creating alternative job opportunities for the country’s fisherfolk. Similar to India’s draft policy, the focus is on the sustainable use of national resources and thus, collaboration with the international community is oriented towards ending overfishing and other malpractices.⁹⁹ It does not extend to cooperation in implementing geo-fencing,^o

^o Geofencing is a modern service that triggers alerts when a device enters a designated location. It is increasingly being used to ensure that fishermen do not transgress maritime boundaries. But trans-boundary cooperation between neighbouring countries is required for its effective implementation to ensure that the decreed maritime boundary lines are adhered by all involved parties, thereby reducing the scope for future friction.

Blue Economy as Response to Fishers Transgressions

raising awareness amongst the fishers to manually prevent transgressions, or expediting the release of those that have been arrested. Deliberations on improving the wellbeing of fishers is underemphasised.

As may be observed, the leanings of India and Bangladesh towards BE are similar and therefore conducive for an agreement. The chances of addressing the concern of fishing transgressions, though, are slim. It may be further argued that, for both countries although the model of BE is deemed to be aligned to national security, it is the component of resource security that has been highlighted. Policy provisions such as those aimed at reducing illegal fishing, are in place for the conservation of fish stocks. These are not oriented towards addressing the aspects of the problem that are faced by the fishermen on their arrest—i.e., prolonged detention and costly fines. The outlook of both countries towards Blue Economy therefore remains inadequate in reducing fishers transgressions and mitigating their impacts.

“Both India and Bangladesh view Blue Economy as a tool for promoting livelihoods; the policies do not discuss fishers transgressions.”

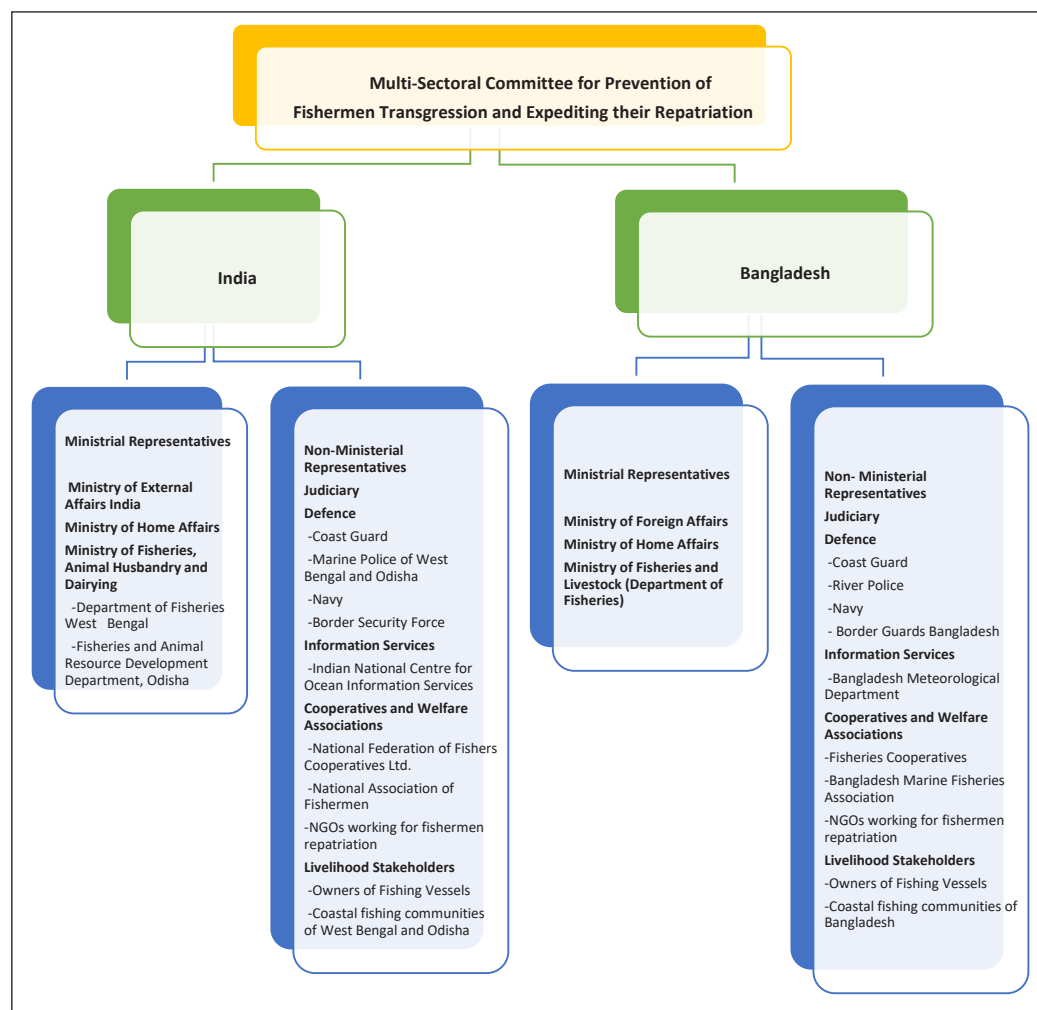
Transgressions as Potential Bilateral Concern

In describing the current imperative to address the issue of fishers' disputes in the shared waters of India and Bangladesh, an English idiom is apt: to "nip a problem in the bud." The persistent recurrence of fishing transgressions despite the delimitation of the maritime boundary line between the two countries, indicates the need for intervention to avert a crisis. However, as policies that recommend ways to prevent such transgressions are yet to be translated into legally enforceable laws, an immediate resolution seems unlikely.

The MoU on Blue Economy, with its clause on redressing the fishers' issue, had borne promise. However, the above analysis of the BE perspectives of both countries suggests that it might not yet fructify in the near future. Both countries will first need to recognise the issue as a potential crisis. Such a possibility is not without merit, given the lessons from similar fishing transgressions between India and Sri Lanka. There is need therefore for the governments of both India and Bangladesh to revise their perspectives on BE and incorporate the need to address the concern of fishing transgressions, and the arrest and detention of these illegal fishermen. Only then will the BE strategy be comprehensive in its aim to improve the livelihoods of those who are dependent on marine resources.

The India Bangladesh Joint Working Group on Blue Economy, once formed, must strive towards the creation of a committee that will work on the targeted objectives of preventing transgressions and, in the immediate term, expediting the repatriation of those who have been arrested and detained. To be effective, the committee must be composed of members who would represent all stakeholders in the matter. Its mandates must also be legally enforceable (see Table 2 for a proposed composition of such an organisation). The creation of such an organisation has also been recommended by V. Suryanarayan in the context of the Palk Bay.¹⁰⁰

Table 2
Tentative composition of a collaborative committee to address transgressions



Source: Author's own

Note 1: Representatives from the relevant Ministries of the states of West Bengal and Odisha have been included in this Committee as the India-Bangladesh Maritime Boundary Line runs past their coasts.

Note 2: As the coast of West Bengal and Bangladesh is deltaic, facilitating easy movement of fishers from sea into the rivers, there is need for the inclusion of representatives from the Indian Border Security Force and Border Guards Bangladesh in this Committee.

Transgressions as Potential Bilateral Concern

This paper offers the following recommendations for the committee to implement:


- The MoUs on Blue Economy and between the Coast Guards, which pertain to fishing transgressions and the faster repatriation of arrested fishers, must be translated to legally binding Agreements.
- Terms of the Fisheries Acts must be clearly articulated to avoid unnecessary misinterpretations that can have punitive implications on convicted fishers such as arrests and fines, and strain bilateral ties.
- Fluidity of the resource^p and the historical leniency of coastal communities in sharing their fishing waters with neighbouring fishers, must be considered while deciding the severity of penalties that the Acts provide for transgressions.
- Both India and Bangladesh must design a common maritime code of conduct that will help resolve the cases of transgression without unnecessary delays.¹⁰¹
- There must be increased International Boundary Line Meetings between the Coast Guards and Navies of both countries to better govern the sanctity of the boundaries.
- Fishing can also be prohibited for 5 to 10 km on either side of the boundary as happens between India and Sri Lanka.
- Collaborative efforts must be made to ensure that fishers in the 'Grey Areas' employ only fishing methods that have been jointly agreed upon by the stakeholder countries to avoid disputes.
- Collaborative awareness trainings must be undertaken so that fishermen on either side are aware of the precise location of the maritime boundary line. Furthermore, satellite alerts can be disseminated when fishers reach close proximity to the boundary; geofencing can also be implemented.
- Transboundary cooperation in the management of shared fish stocks and a convergence in fishing bans between neighbouring countries are required not only for better conservation of fish but also to reduce the instances of ban violation (and the consequent arrests of violators).

^p As fishes migrate from one part of the ocean to another for several reasons, they are considered a 'fluid resource'.

Transgressions as Potential Bilateral Concern

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- Fishers of both countries should have the opportunity to interact with one another on this issue as it can lead to identification of more pragmatic solutions that may otherwise be difficult to arrive at from the policymaker's seat.
- The cooperation of the Coast Guards must be extended to providing basic rescue training to the crew of fishing vessels to improve their security against severe oceanic conditions and thereby reduce their chances of drifting into foreign waters.
- The multilateral platform of BIMSTEC^q must be cultivated further by both countries to exchange best practices in fisheries regulation and prevent illegal and overfishing.¹⁰² This will help in reducing fishing transgressions.

The issue of transgressions, if allowed to escalate, can turn into a national security issue that will in time generate poverty and environmental degradation. The objective therefore is to curb the issue before it becomes more contentious as what has transpired in the waters of India and Sri Lanka. It is an opportune time as India and Bangladesh celebrate 50 years of bilateral ties. Resolving the issue of fishing transgressions is a step in the direction of more harmonious relations. 

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