

ANALYSIS OF COASTAL REGULATION IN INDIA

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The basic idea behind the CRZ notifications issued in 1991 under the Environment Protection Act and rules of 1986, has been to protect and improve the costal environment of India, by restricting and regulating in the human activities in such areas and aimed at permitting only those activities which entirely depend for their existence on the costal environment. The restrictions put up are extended up to 500 m from the High Tide Line and the land lying between the Low Tide Line and the High Tide Line. Further the costal stretches within 500 meters of the High Tide Line on the Landward side are further classified into four categories, namely, CRZ-I, CRZ-II, CRZ -III, CRZ –IV with reference to activities which can be allowed within the geographical area. The implementation of the notification of 1991 was under the purview of State Government and the respective government has to identify, classify and record all the CRZ areas within their territory in the State Coastal Zone Management Plans (SCZMP) and have them approved by the environmental ministry.

The present paper deals with the various aspects of the 1991 and the 2011 CRZ Notifications, a further analysis of landmark judgments with reference to the aforementioned regulations has also been done.

Introduction

CRZ notifications issued in year 1991 under the Environment Protection Act and rules of 1986, had been specifically enacted to protect and improve the costal zone environment of India, by restricting and regulating in the human activities in such areas and aimed at permitting only those activities which entirely depend for their existence on the costal environment.¹ The original notifications of 1991 were amended number of times by issuance of amendment, and finally in the year a new set of notifications were issued by the Movement of India.²

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¹ A. Sridhar, 'CRZ 1991-2010: Anti-people? Anti- environment? Or Anti- climax?' *Infochange News & Features*, January 2011, available at <http://infochangeindia.org/Environment/Coastal-commons/CRZ-Notification-1991-2010-Anti-people-Anti-environment-Or-anti-climax.html>

² Coastal Regulation Zone Notification (Amendment) 1991, 1994 and 1997; the CRZ Amendment Notification of 21/10/1997; the CRZ Amendment Notification of 20/ 04/ 1998; the CRZ Amendment Notification of 30/09/ 1998; the CRZ Amendment Notification of 29/ 12/1998; and the CRZ Amendment Notification of 5/ 2/ 1999, 12/02/1999, 28/ 05/ 1999, 30/06/1999, 13/07/1999, 03/08/1999 and 05/08/1999.

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Deficiencies in the 1991 notification:³

1. Being a uniform regulation, it failed to take into consideration the biologically diverse coastline
2. No procedure for obtaining CRZ clearance including the time lines or the applications to be submitted.
3. Did not provide for any post clearance monitoring mechanism
4. No concrete steps were indicated in the 1991 Notification with regard to the pollution emanating from land-based activities.
5. Further, it even failed to take into consideration the interests of the traditional coastal communities.
6. There were constant demand for changes to be brought in the 1991, all of which were subsequently incorporated in the 2011 notification.

In 2009, MoEF set up an Expert committee to carry out an extensive and comprehensive review of the CRZ notification and formulate new set of notifications based on solid scientific principles.⁴ The report advocated that the regulations should now be changed into an Integrated Coastal Zone Management (ICZM) system. After public consultation and deliberations with the stakeholders on the subject, the MoEF, brought in the new 2011 notification with the following new features:

- I. The scope of the notification was extended to include the territorial waters.
- II. Separate Island Protection Zone Notification was formulated keeping in mind the ecologically unique and sensitive areas like the Lakshwadeep and Andaman and Nicobar Islands
- III. A demarcation of the hazard line, to indicate the threatened areas and thus to protect the life and property located at the coastlines.
- IV. A detailed procedure has been laid down for obtaining clearance for the developmental activities in the CRZ regions.
- V. The CRZ AREAS OF Greater Mumbai, Goa, Kerala and the Coastal Areas of Sunderbans have been listed as 'areas requiring special consideration'
- VI. Provisions have been made in the notification for industrial pollution from land-based activities in order to prevent erosion and other forms of environmental degradation.

A three-step approach for regulation has been established under the notification, which has been given as under:

³ Coastal Regulation in India, why do we need a new notification?; available at: http://equitabletourism.org/stage/files/fileDocuments814_uid13.pdf Last accessed : 14th May, 2015

⁴ REVIEW OF THE SWAMINATHAN COMMITTEE REPORT ON THE CRZ NOTIFICATION; available at: http://seaturtlesofindia.org/wp-content/uploads/2014/02/Sridhar-et-al_Swaminathan-report.pdf ; Last access 14th May, 2015.

- a) Certain specific activities have been permitted and prohibited in the entire CRZ area.
- b) The demarcation into CRZ has been continued with the formulation of two new zones and the notification further very well defines the kinds of activities permitted and prohibited under these specific zones.
- c) Further a well-defined procedure for the clearance of activities has been laid down under the notification.

Costal Zones as classified under the 2011 notification:⁵

- **CRZ-I:** Ecologically Sensitive area; which includes mangroves, coral and coral reefs, marine parks and other such areas which are likely to be inundated by global warming, as under the notification no new development project will be allowed in this region except for projects relating to the department of atomic energy or other such major infrastructure projects, e.g. The Green Field Airport at Navi Mumbai.
- **CRZ-II:** Built- up area; these include areas that have been developed up to or close to the shoreline, these areas that have been provided with drainage and approach roads and other infrastructural facilities, construction and reconstruction of buildings, facilities, notified ports are allowed in this zone.
- **CRZ-III:** Rural Area; these are relatively undisturbed areas and have been declared to be a 'no development zone' within a region of 200 m from the HTL on the landward side. For seafront and 100 m along the tidal water bodies or the creek, whichever is less. No construction will be allowed in this area apart from the repair or reconstruction of the existing structures. There are certain exceptions to this like, small-scale projects including, agriculture, horticulture, salt manufacture from seawater, projects relating to the Department of Atomic Energy, the mining of rare minerals, and facilities for generating power by non-conventional energy sources, bridges, and roads.
- **CRZ-IV:** Water area; this is the water area from the Low Tide Line to 12 nautical miles on the seaward side, including also the water area of the tidal influenced water bodies. It has been notified that in the CRZ IV areas, no untreated sewage, effluents, ballast water, or solid waste from any activity shall be dumped. Further, the coastal cities are as under the notification required to formulate a sewage treatment plan and implement it within a year.

There has been a further classification to include, a) any CRZ area within municipal limits of Greater Mumbai; b) the CRZ areas of Kerala including the backwaters and backwater islands and c) the CRZ areas of Goa and the critically vulnerable coastal areas such as the Sunderbans region of West Bengal. But there are certain defects with the 2011 notification, which have been listed below:

⁵ Frequently Asked Questions on the Coastal Regulation Zone Notification, 2011 and Island Protection Zone Notification, 2011; available at: <http://www.moef.nic.in/downloads/public-information/FAQ-CRZ.pdf>

- Even though the no-development zone has been reduced to 100 metres from the HTL, the provision has been made applicable only to “traditional coastal communities, including fisher-folk”, thereby giving the chance for increased construction on the coast and higher pressure on coastal resources.⁶
- No restrictions have been put forth on the expansion of housing for the rural communities in CRZ III
- Further according to some the 2011 notification has in violation of various Supreme Court Judgments, reduced the powers on the National Coastal Regulating authority, with about 480 complaints of CRZ violations been filed in a span of 2 years from the coming into force of the notification.⁷

Analysis of Cases in relation to Costal Regulation Zone:

➤ Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.⁸

Dahanu is situated 120 km. north of Mumbai, in the Thane district of Maharashtra, and among the last green belts along the country's western coast. In 1989 Maharashtra Government approved a proposal of the Bombay Suburban Electricity Supply Company (BSESC), to set up a coal-based thermal power plant in the Dahanu. On 29 March 1989, two local environmental activists: Nergis Irani and Kityam Rustom along with Bombay Environmental Action Group filed writ petitions first in the Bombay High Court and then in the Supreme Court challenging the decision of the Central Government to build the power plant. The court ruling in favor of the government held that there was a necessity for the establishment of the power project in order to power the city of Mumbai and hence a sanction to the project was granted. Keeping in mind the apprehensions of the petitioner's the court ordered that a Flue Gas desulphurization plant be established.

What has to be noted here is that Dahanu has been 'notified' and has been declared “eco fragile” under the Indian Coastal Regulation Zone by the Ministry of environment in 1991 and as according to CRZ any new development activity within 500 meters of the high tide line. The keeping in mind the interests of the related parties both political industrial and economical the government kept bringing forward various development projects in the area. This led to environmentalist Bittu Sehgal to file a petition in the Supreme Court of India, for a declaration for the implementation of the CRZ notification in the area.⁹

The Supreme Court, now appointed the National Environmental Engineering Research Institute (NEERI) to investigate the issue raised in the petition, based on the report of the aforementioned institution, the court ordered that the Dhanau notification, prohibiting change

⁶ Critical Analysis of the Coastal Regulation Zone (CRZ) Notification, 2011; available at: <http://mowingthelaw.blogspot.in/2012/05/critical-analysis-of-coastal-regulation.html>

⁷ 480 'CRZ violations' reported from April 2012 to June 2014; available at: <http://www.heralddgoa.in/Goa/480-%E2%80%98CRZ-violations%E2%80%99-reported-from-April-2012-to-June-2014/76732.html>

⁸ 1991 (2) SCC 539

⁹ (2001)9SCC181

in the district be upheld and ordered for the formation of a committee of experts u/s. 3 of the Environment Protection Act to protect and ensure the application of the environmental laws in the area. In pursuance of the said order, Maharashtra Government along with the MoEF appointed the Dahanu Taluka Environmental Protection Authority in 1996 under the chairmanship of retired Mumbai High Court judge Justice C. S. Dharmadhikari, the committee has been empowered to not only ensure the implementation of the Courts order but also of the eco fragile notification in the year 1991.

➤ **S Jagannath v. Union of India¹⁰**

Also known as the Shrimp Culture case, the petitioner in the present case was the chairman of the Gram Sawaraj Movement and sought the enforcement of the Costal Zone Regulation Notification 1991, by prohibiting intensive and semi-intensive types of prawn farming in the ecologically fragile coastal areas and by prohibiting the use of wet lands for prawn farming. The petitioner in the present case also demanded that the court order the constitution of National Coastal Management Authority to safeguard the marine and the coastal areas.

The court passing various interim injunctions prohibiting the setting up of new shrimp farms or conversion of agricultural land to aquacultural farms not just in Andhra Pradesh and Tamil Nadu, but also in all the costal states, till the final disposal of the case.

The court here noted that a more intensified shrimp farming in certain parts of the country without much control of feeds, seeds and other inputs and water management practices- has brought to the fore a serious threat to the environment and ecology. Further the court was of the view that before any shrimp industry or shrimp pond is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There has to be a high-powered “Authority” under the Act to scrutinize each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broadbased primarily concerning environmental degradation linked with shrimp farming. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who are affected and prejudiced.

The court further issued various directions some of which have been listed below, namely

- The Central Government shall constitute an authority under section 8(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal states/Union Territories.

¹⁰ (1997) 2 SCC 87

- The authority so constituted by the Central Government shall implement “the Precautionary Principle” and “the Polluter Pays” principles.
- All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997.
- The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the “authority” constituted by this order.
- The agricultural lands, salt pan lands, mangroves, wetlands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.
- No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter of Chilk Lake, Pulicat Lake (including Bird Sanctuaries namely Uadurapattu and Nelapattu)

For the implementation of the order of the court, a National Coastal Zone Authority (NCZMA) and a State Coastal Zone Authority (SCZMA) were set up to implement the CRZ notification.

➤ **Indian Council for Enviro-Legal Action v. Union of India¹¹**

The main grievance in the petition filed before the Court by the petitioners was the non-implementation or enforcement of the 1991 CRZ regulations, further as according to the petitioner, the notifications were again relaxed in the year 1994, which defeated the entire intent of the notification of 1991. Also, due to the non-implementation the developmental activities in the area remained unregulated, causing further environmental degradation.

The union of India, as the respondents’ contended that, the reason for the non-implementation of the notification was the practical difficulties so involved, to this the Court held that, there has to be a proper and detailed implementation of the notification which till now has been “tardy”, with the authorities showing no concern for the proper implementation of the act and the development being taking place for the personal gains with the environment at stake.

Conclusion

As noted by many the regulatory approaches undertaken in the 2011 notification are either not fully developed, failing to set certain standards of how the government wants the Indian Coasts to be, the changes in the 2011 notification are merely cosmetic. There needs to be a clear reference and setting up of judicially reviewable objectives set up, if the authorities want a proper implementation of the environment legislations. There is at this juncture an requirement that various departments of the central and the state government decide and lay down guidelines, which are taking into consideration the interest the environmentalist lobby, and that of the fishermen. The interest of the two along with the commercial interests of

¹¹ [1996] Supp1 SCR 507

various industries has to be taken care of simultaneously. The approach needs to be that of preservation and protection.

Apart from formulation of more meaningful and stringent notifications for the protection of CRZ regions, the most important is the enforcement of such notifications, for which there is a requirement for the establishment of an independent body, with powers to issue penal orders against the infringers. Further, such independent body should also have the power to release new guidelines from time to time, keeping in mind the specific requirements of such Coastal zone.