

ANALYSIS OF COASTAL REGULATION IN INDIA

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ABSTRACT

It was in 1991 that under the Environment Protection Act and rules of 1986 CRZ notification was issued. The base idea on the further side of this regulation was to improve the Indian coastal environment and to ensure its protection. This intended protection was aimed to achieve by regularizing as well as restricting therein the human activities that have the tendency to spoil the climate of such coastal zone, the exception being such activities which entirely are connected essentially with the existence of humans living in such areas. The restrictions extend up to 500 meters between high tide line and low tide line. The coastal zone is further classified into 4 zones that are, CRZ-1, CRZ-2, CRZ-3 & CRZ-4 respectively. These coastal zones are classified on the basis of the activities which are legally allowed to be performed within such geographical divides. The concerned state governments were responsible for the proper implementation of the 1991 regulation and put a check on the activities within the coastal zone under their control. The present article serve before its readers forward an effort being made genuinely to deal with varies aspects of 2011 and 1991 CRZ notification. The article further fractionates the landmark judgments in reference with the 2011 and 1991 regulations.

Introduction:

Environment Protection Act and Rules of 1986 is the birth mother of 1991 regulation. The 1991 regulation was aimed basically to not only improve but also to protect the coastal environment which has an everyday threat from the coastal activities. The regulation banned all such human activities which threat the coastal environment exception being such activities which are

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exclusively essential on their sustenance on coastal environment¹. Before the regulation of 1991 actually came into existence the coastal regulations for protection were amended a number of times, until in 1991 where a new set of notification came into existence by the movement of India².

The periphery of these restrictions extends from 500 meters from that of high tide line and the earth lying between the high tide and the low tide line. The coastal further stretches within 500 meters of that of high tide line measuring from the landward side which has been further classified into 4 categories these are:

- CRZ-1;
- CRZ-2;
- CRZ-3; &
- CRZ-4

These coastal regulation zones have been classified in accordance with the permitted activities in these earthly areas. The power and duty for the implementation of this 1991 regulation was under the ambit of state government and it was responsible for identifying, classifying and recording such coastal areas and activities permitted within such areas. However the state coastal zone management plans (SCZMP) were subject to the approval by the environmental ministry.

Deficiencies in the 1991 notification:³

- Though intended to be a uniform regulation for the coastal regulation it has failed to consider the biological diversity of the various coastlines.
- No clear procedure for laying the application for obtaining the clearance as well as time lines for the same has been mentioned.

¹ https://www.academia.edu/3462410/CRZ_Notification_1991-2010_Anti-people_Anti-environment_Or_anti-climax

² https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj78srHq4jNAhXFtY8KHT5QAHIQFggBMAA&url=http%3A%2F%2Fwww.forests.tn.nic.in%2Flegislations%2Fgraphics%2F01_Coastal%2520Regulation%2520Zone%2520Notifications.rtf&usg=AFQjCNGeC_37jZpQNIU57cByamhG0nwggg&sig2=Vi_9GTTEjnXMiU_BrfZlyg&bvm=bv.123664746,d.c2I&cad=rjt

³ <http://admin.indiaenvironmentportal.org.in/files/coastal%20regulation%20in%20india.pdf>

- Nevertheless, it provides for any such mechanism which focuses on the post clearance process and mechanism.
- No palpable steps were stipulated in the 1991 notification with reference to the pollution exhaled by land-based activities.
- Further it has not succeeded in taking into account the interests of the traditional coastal communities.
- A continuous demand for the changes to be brought in 1991 notification has brought forward before us the notification of 2011.

MoEF (ministry of environment and forest) in year 2009 constituted an expert committee to carry out the extensive and deep review of the 1991 notification on coastal zones regulation, and make a solid new regulation for protection and regulation of coastal areas based on scientific approach and to wipe out the deficiencies in the old notification⁴. The Swaminathan committee advocated for ICZM (integrated coastal zone management). However after public consultations and various recommendations brought forward the 2011 notification, which incorporated in itself the following brand new features:

- The scope of the notification was extended by including the territorial waters also.
- Keeping into consideration the sensitive ecological areas like Andaman and Lakshadweep a separate island protection zone notification was brought up.
- A good demarcation was made of that of the hazard line, to point out and highlight the area which are threatened and thus to protect their environment and life as well as property located in such hazard areas.
- It laid down a clear procedure for the purpose of obtaining the clearance for carrying out and developmental activities in such CRZ areas.
- The CRZ areas of Greater Mumbai, Goa, Kerala, coastal areas of Sunderbans were categorized and listed as the areas requiring special considerations based on their hyper-sensitive ecological setup.

⁴ http://seaturtlesofindia.org/wp-content/uploads/2014/02/Sridhar-et-al_Swaminathan-report.pdf

- Provisions were embedded this time in this new notification for the regulation, check and control the land-activities, industrial pollution causing the effect on environment and responsible for its degradation.

Under the notification of 2011 a three step approach towards achieving the goals it mentions for coastal zone has been taken up, the same has been given as under:

- a) Certain activities have been listed as totally permitted or prohibited in the entire coastal area.
- b) The demarcation made by the 1991 notification has also been continued by this new notification of 2011, in addition to these demarcation two special zones has been added; further mentioning the activities being permitted or prohibited in these special zones.
- c) Procedure for obtaining the clearance has been laid down very clearly under the notification of year 2011.

Coastal zones classifications as made under 2011 notification⁵:

- **CRZ-I:** This classification includes the area that is ecologically sensitive and includes under it the mangroves⁶, coral⁷ and coral reefs, marine parks and areas which are highly sensitive to global warming and prone to get besieged by the other non-favorable human activities on them. As per this new notification of 2011 no new developmental projects have been allowed except those related to atomic energy, or any other project which is in public interest and involves any major infrastructure. The perfect example for the same is the green field airport at Navi Mumbai.

⁵ <http://www.moef.nic.in/downloads/public-information/CRZ-Notification-2011.pdf>

⁶ a tree or shrub which grows in tidal, chiefly tropical, coastal swamps, having numerous tangled roots that grow above ground and form dense thickets. <https://www.google.co.in/search?q=mangroves+meaning&oq=mangroves+meaning&aqs=chrome..69i57j015.4904j0j9&sourceid=chrome&ie=UTF-8>

⁷ a sedentary coelenterate of warm and tropical seas, with a calcareous, horny, or soft skeleton. <https://www.google.co.in/search?q=coral+meaning&oq=coral+&aqs=chrome.0.69i59j69i57j014.3977j0j9&sourceid=chrome&ie=UTF-8>

- **CRZ-2:** Area includes the ones which are developed near the shoreline, having the infrastructure and facilities plus, the approach roads and proper drainage. The perfect example is the notified ports.
- **CRZ-3:** The areas covered under this zonal bifurcation is mostly the area which is left untouched, and declared to be the ‘*no development zone*’ starting from the count of 200 meters from High tide line on the landward side. For the seafront and 100 m along with that of the tidal water bodies or that of the creek, whichever is less. No new construction is allowed in this area except the reconstruction and repair of the existing infrastructures. However, the exception to this being the; small-scale projects, agriculture, horticulture, making salt from the seawater, projects in relation to the department atomic energy and development in this field, bridges, roads, generation of power with the use of non-convention sources of energy.
- **CRZ-4:** Water area is covered under this zonal bifurcation that is, 12 nautical miles measuring from the Low tide line on the seaward side. It has been notified that, under this coastal zone strictly no solid waste dumping, sewage dumping, no untreated- sewage is allowed. Furtherance on this, all the coastal cities are under the obligatory duty to formulate a plan for sewage treatment within a year from the 2011 notification.

However, being the new notification replacing the old notification of 1991, the 2011 notification was also not free from defects, some of which can be listed below:

- The 2011 notification has reduced the no-development zone to 100 meters from the HTL but, that has only been done for traditional coastal communities, including fisher-folk; therefore these not only permits the activities in such area but indirectly the higher pressure on coastal regions.
- Under the CRZ-3 no restrictions have been put up for expansion of that of housing activities for the rural faction.
- Some of the 2011 notifications have been made overlooking the supreme court guidelines it has issued in various cases, this notification also reduced the powers of the National

Coastal Regulatory Authority with almost 440 complains been files of violations of CRZ in a very short span of 2 years after the notification came into existence⁸

Analysis of cases in relation to Coastal Regulation Zone:

❖ *Dahunu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.*⁹

Dahuna is a place situated 120kms north to the city of Mumbai; Dahuna falls in the Thane district of Maharashtra, and is looked as the last green belt which falls along the western coast of our country India. In 1989 Bombay Suburban Electricity Supply Company laid down a proposal which was accepted by the government of Maharashtra for setting up in Dahuna a thermal power-plant. Bombay Environment Action group along with two environment activists Nergis Irani and Kityam Ruston first approached to the high court of Maharashtra and then the apex court of India, the Supreme Court against setting up of this power plant in Dahuna. The court while giving its judgment took government's side and explained that there was need of a power plant for fulfilling the electricity demand of the city of Mumbai and therefore looking at this factor of demand the permission for setting up of the power-plant was granted by the government. However, keeping in mind the contention being put before it by the petitioner, it ordered to establish a Flue Gas Desulphurization plant.

The point to be noted here is that Dahuna has been declared and notified to be 'eco fragile zone' under the CRZ notification of year 1991. Even though, being notified in the notification the government still kept bring such developmental activities ignoring the fact that the area has been notified as 'eco fragile zone'. This whole set of incidents led the environmentalist Bittu Sehgal to approach the apex court and file a petition to enforce the declaration, CRZ notification in Dahuna area.

The Supreme Court this time over the Bittu Sehgal's petition took a concrete step by constituting National Environmental Engineering Research Institute (NEERI) to investigate

⁸ <http://www.heraldgoa.in/Goa/480-%E2%80%98CRZ-violations%E2%80%99-reported-from-April-2012-to-June-2014/76732.html>

⁹ 1991 (2) SCC 539

over the issue being raised by the petitioner in his petition concerning serious environmental damage. The institute submitted its report and court as per the notification ordered an expert committee to be constituted u/s. 3 of the Environment Protection Act to ensure that environmental law has its proper application in this sensitive area of Dahuna. The committee was composed under the chairmanship of Justice C.S.Dharmadhikari (retired high court justice) and was entrusted with the implementation of the 'eco fragile' notification of 1991 to protect and save the sensitive environmental condition of Dahuna.

❖ S.Jagannath v. Union of India¹⁰

This case is a celebrated case also known as 'shrimp case', the case was filed by the chairman of gram swaraj moment under the notification of year 1991, by prohibition of prawn farming that is semi intensive and intensive in nature. The petition was principally filed to save some of the fragile area and wet land located in coastal areas which were more prone to be devastated ecologically. The petitioner in the present case also demanded for constituting NCMA (National Coastal Management Authority) for the safeguard of coastal as well as marine areas.

The court also took a step further by passing various interim orders and injunctions which prohibited the setting up of new farms for prawn farming and its cultivation in ecologically fragile zones, coastal areas, till case is finally decided.

In this case the Supreme Court noted that the intensified shrimp farming in various parts of the country without looking and taking care about the seeds, feeds and water management has given rise to a serious situation and threat to the ecological balance. The court ordered that any new shrimp farming to be set up in the ecologically fragile zone shall go through the strict environmental test, before these actually start to function. The court advised to first check the ecological effect on the area and overall impact on surrounding ecology whenever new commercial shrimp farm is proposed to be set up. These assessments must also include the impact on various population and group of people based on such areas.

The apex court also issued various guidelines in this case, some of which are given below:

¹⁰ (1997) 2 SCC 87

- The court ordered to constitute u/s 8(3) of the Environment Protection Act a committee to look into the matter of non-licensed shrimp culture for the protection of the ecologically fragile coastal zones and deal with any of the harmful condition which may come into its notice.
- The authority shall also implement ‘the precautionary principle¹¹, & ‘the polluter pays principle¹².
- The court ordered for the demolition and removal of all agricultural industries/ shrimp culture ponds etc, from such area.
- The farmers engaged in aquaculture through improved traditional systems are allowed to do the same with advanced technological process but, not without the prior approval of the authority ordered to be constituted by the Supreme Court.
- The following shall not be converted and used as shrimp culture ponds
 - a) The agricultural lands;
 - b) Salt pan lands;
 - c) Mangroves;
 - d) Wetlands;
 - e) Forest lands;
 - f) Land for common purpose of a village;
 - g) And any land meant for using as public land.
- No aquaculture, shrimp culture to be done within a 1000 meter sphere of Chilka lake, pulicat lake (including Uadurapattu bird century and Nelapattu bird century)

For the implementation of the above orders and guidelines of the court National Coastal Zone Authority & State Coastal Zone Authority is on these authorities concerning their area of function.

¹¹ The precautionary principle (or precautionary approach) to risk management states that if an action or policy has a suspected risk of causing harm to the public, or to the environment, in the absence of scientific consensus (that the action or policy is not harmful), the burden of proof that it is *not* harmful falls on those taking an action that may or may not be a risk. https://en.wikipedia.org/wiki/Precautionary_principle

¹² In environmental law, the polluter pays principle is enacted to make the party responsible for producing pollution responsible for paying for the damage done to the natural environment. https://en.wikipedia.org/wiki/Polluter_pays_principle

➤ *Indian Council for Enviro-Legal Action v. Union of India*¹³

The grievance that was brought forward before the apex court was non-implementation of the 1991 CRZ Notification, not only this but, as contended by the petitioner the notification was relaxed in year 1994, which weakened the whole spirit of the 1991 notification. These whole set of events led to the further degradation of the alleged ecologically fragile zone. The union of India acted as Respondents in this particular case, alleged that the reason for the non-implementation of the 1991 notification being the practical difficulties involved in the notification. The court judged that to take this plea it must be shown that at least once the effort was made for the implementation though, it was hurdled by the non-practibility of the notification. Hence, ordered the government for the implementation of the same.

Conclusion:

The 2011 notification was issued to make correction in 1991 notification. However, these proved to be merely cosmetic in nature and didn't do much for improving the situation. Now, what needs to be done is set up a strict judicial review of such notification and to put a strict check on its proper and fast implementation. There is also the requirement from the side of state as well as central government to prepare guidelines and strategy for the systematic and effective implementation of the notification. Because, making of notification by the parliament is not just enough, that has to be put into execution to reap some positive results. The need for imposing the penal orders against the people who prove themselves as infringers is the need of the time. Keeping in mind the needs of the particular coastal zones the appropriate governments should be empowered to update and make changes in the notification for its proper implementation.

¹³ (1996) supp 1 SCR 507