

Significance of Jurisprudential Principles of Draft Proposal Coastal Regulation Zone (CRZ) 2010 for the Protection and Promotion of Coastal Ecology and Marine Environment

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I. Introductory Remarks:

The Sun now rose upon the right:

Out of the sea came he,
Still hid in mist, and on the left
Went down into the sea.

And the good south wind still blew behind,

But no sweet bird did follow,
Nor any day for food or play
Came to the mariners' hollo!

Samuel Taylor Coleridge

Coastal States have a significant role in protecting, preserving and promoting their coastlines. With unique environmental characteristics, the coastal zone is a meeting point for land, sea and inland waters. Coastal zones have played important role in the evolution of culture and civilization. In the human history, human contact developed across seas. After the Renaissance and Reformation in Europe, it also converted into a battleground for power and foreign domination. The European countries set up their colonies across the sea including India.

India has a coastline of about 7,500 kilometres, of which the mainland accounts for 5,400 kms. Lakshadweep coast extends to 132 kms and Andaman and Nicobar Islands have a coastline of about 1,900 kms. India is one of the leading coastal States in the entire world. Apart from being rich in minerals, it has potential for exploitation and exploitation of tidal energy, and ocean thermal energy for the benefit of development. Ecologically important, the

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coastal zone in India is endowed with a very wide range of coastal eco-systems like mangroves, coral reefs, sea grasses, salt marshes, sand dunes, estuaries and lagoons. The Government of India is taking positive steps for the preservation, protection and promotion of coastal ecology.

The Ministry of Environment and Forests, the Central Government *vides* its notification number S.O.114 (E), dated the 19th February, 1991,² declared Coastal Regulation Zone. It imposed certain restrictions on the setting up and expansion of industries, operations and processes in the said Zones for its protection.

The Hon'ble Supreme Court in the Order dated 19th April, 1993 in Writ Petition No. 664 of 1993, directed the Central Government and the coastal States that 'There is 6000 km long coastline of India. It is the responsibility of coastal States and Union territories in which these stretches exists to see that both the notifications are compiled with and enforced.

In compliance to the Orders of the Hon'ble Supreme Court, the coastal States and Union territory, prepared the Coastal Zone Management Plans which were approved with condition and modifications dated 27th September, 1996.³

The said notification was amended, from time to time, based on recommendations of various committees, judicial pronouncements, representations from State Governments, Ministries and Departments of the Central Government, and the general public, consistent with the basic objective of the said notification.

The Central Government in the Ministry of Environment and Forests issued a draft notification on the 22nd July, 2008 vide number S.O.1761 (E) under sub-section (1) and

². DRAFT (To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) of dated the- April, 2010.) Government of India, Ministry of Environment and Forests, New Delhi, the...April, 2010.

³ The name of the case is *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281. The case was decided by a three Judges Bench of the Supreme Court consisting of Kuldip Singh, S. Saghir Ahmad, and B.N.Kirpal JJ. in Writ Petition (c) N. 644 of 1993. It was filed under Article 32 of the Constitution and decided on April 18, 1996. However, in the Preamble of the Notification, the order of the date is given 19th February 1993. In this case the Hon'ble Supreme Court observed as follows:

There is 6000 km long coastline of India. It is the responsibility of the coastal States and Union territories in which these stretches exists to see that both the notifications are compiled with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the main notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest.

clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) inviting suggestions and objections from the public likely to be affected thereby.

The Central Government in the Ministry of Environment and Forests (MoEF) received large number of suggestions and objections on the draft notification which were examined by an Expert Committee constituted under the Chairmanship of Prof. M. S. Swaminathan.

The Expert Committee under the Chairmanship of Prof. M. S. Swaminathan after detailed examination of the comments received on the draft Coastal Management Zone Notification, 2008 and consultation with the stakeholders submitted the Report titled “Final Frontier” on the 16th July, 2009. This Report recommended to lead the draft Coastal Management Zone Notification, 2008 lapse and to strengthen the CRZ Notification, 1991.

The Expert Committee under the Chairmanship of Prof. M. S. Swaminathan, with experts in the areas of environmental law, marine biodiversity, marine ecology environmental economics, socio-economic, remote sensing, coastal engineering, urban planning and marine fisheries noted that, the Indian coast is doubly vulnerable today-

1. It is facing unprecedented pressures because of industrial and urban development; and
2. It will be threatened by climate change-related devastation –from growing intensities of cyclonic storms to sea surges and eventual sea level rise.

All this requires increased attention and vigilance for the protection of the coasts and the people who live there. It is also clear that coastal areas are the habitats of fishing communities. These communities are in double danger as well – ironically from-

1. Conservation; and
2. Development.

Future policies for coastal area management must reverse these trends and find approaches to conserve and protect vulnerable ecosystems and secure the livelihoods and habitats of its people. This is the challenge. Further, the Committee made several recommendations for strengthening the coastal zone management approach in the country.⁴

The Central Government, after carefully considering the above said report and all the recommendations undertook consultations with the fishermen communities, local

⁴. The Central Government after taking into account the Report of Prof.M.S. Swaminathan and the report submitted by CEE regarding special consideration to be given to some of the areas in the coastal region in-view of the demographic pressure, geographical and ecological uniqueness.

communities and NGOs from August, 2009-March, 2010. These consultations were organized by Centre of Environmental Education, who submitted the Report of the consultation process in 25th March, 2010.

The Central Government, taking into account the outcome of the above consultation process and the recommendations made by Prof. M. S. Swaminathan Committee report dated 16th July, 2009, proposed to make the following proposal under sub-section (1) and clause (v) of sub section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification of the Government of India in the Ministry of Environment and Forests, number S.O.114 (E), dated the 19th February, 1991, in so far as it relate to the conservation and protection of the coastal stretches of the country, in supersession of the Coastal Regulation Zone Notification, 1991, S.O.No.114 (E), dated 19.2.1991, except as respects things done or omitted to be done before such supersession.

II. PRINCIPLES LAID DOWN IN *INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION CASE*⁵:

A. Judgment of the Case

In the leading case of *Indian Council for Enviro-Legal Action case*⁶, a three Judges Bench of the Supreme Court has made beautiful observations regarding the significance of jurisprudence, rule of law and object and purpose of law.

It was stated that concern for the protection of ecology and for preventing irreversible ecological damage to the coastal areas of the country had led to the filing of the present petition under Article 32 of the Constitution of India as public interest litigation.

The petitioner was a registered voluntary organisation working for the case of environment protection in India. India has a coast line running into 6000 kms. which has

⁵ . *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.

⁶ . *Ibid.* See also *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446: (1996) 3 SCC 212.

abundance of natural endowments, geographic attractions and natural beauty. According to the petitioner, these coastal areas are highly complex and have dynamic ecosystems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors responsible for the decline in environmental quality in these areas. The developmental activities in the coastal areas were stated to cause short-term and long-term physical, chemical and biological changes that would and has caused damage to *flora and fauna*, public health and environment. It was further alleged that as a consequence of indiscriminate industrialisation and urbanisation without the requisite pollution control systems, the coastal waters were highly polluted.

The Supreme Court held that while examining the validity of the 1994 Notification, it has to be borne in mind that normally, such Notification is issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing wide-spread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and *vice-versa*, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.

B. General Conclusion

The Supreme Court held that the main Notification was issued under Sections 3 (1) and (3) (v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of Notification itself which shows how coastal areas have been classified into

different zones and the activities which are prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance. The Court observed:

We accordingly hold, that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (I) (Item i) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective is *ultra vires* and is hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the larger public interest, and the exercise of power under such proviso will not result in large-scale ecological degradation and violative of Article 21 of the citizens living in those areas.⁷

The Court stated that with rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions the Apex Court. The primary effort of the Court, while dealing with the environmental issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the

⁷ . *Id.* at 298, para 38.

Executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement - agencies to implement the law.⁸

The Court remarked that as far as the Supreme Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in different parts of the Country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by the Supreme Court, more effective implementation of the same can, in a number of cases, be affected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading the pollution or degradation of ecology.⁹The Court observed:

With increasing threat to the environment degradation taking place in the different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act¹⁰, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers

⁸ . *Id.*, at 300-301.

⁹ *Id.* at 301.

¹⁰ . Act here means the Environment Act, 1986.

and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them.¹¹

It is submitted that the Apex Court stated that a law is usually laid down because the Legislature feels that it is necessary to fulfill certain objects and purposes. Law should not only be meant for law abiding. It is meant to be obeyed by all those persons for whom it has been enacted. Laying down a law, but tolerating its infringement, is worse than not making law at all. Continued tolerance of such violations of law makes legal provisions nugatory. However, such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any democratic and civilized society.

It is important to note that that although Parliament and the State Legislature have enacted the aforesaid laws imposing duties on the Central and State Board and the municipalities for prevention and control of pollution of water, many of those provisions have just remained on paper without any adequate action being taken in pursuant thereto.

It is an obligation of a State to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Further, it is the fundamental duty of every human society to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

III. DRAFT PROPOSAL COASTAL REGULATION ZONE (CRZ), 2010:

In exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view of providing livelihood security to the local communities, promote conservation and protection of coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, declares the coastal stretches of the country and the water area up to territorial

¹¹ . *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281 at 302-303, para 47.

water limit except the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands up to its territorial limit as Coastal Regulation Zone(CRZ) and restricts the areas from the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances as specified in the Hazardous Substances (Handling, Management and Transboundary Movement) Rules, 2009.

A. Restrictions on the setting up and expansion of industries, operations or processes etc., in the CRZP: Paragraph 2

In exercise of powers conferred by clause (d) of sub rule (3) of Rule 5 of Environment (Protection) Rules, 1986 and all powers vesting in its behalf, the Central Government declares the following areas as CRZ and imposes with effect from the date of this Notification¹² the following restrictions on the setting up and expansion of industries, operations or processes etc., in the said CRZ:-

- (i) The land area from High Tide Line (HTL) to 500mts on the landward side along the sea front.
- (ii) CRZ shall apply to the land area between HTL to 100 mts on the landward side along the tidal influenced water bodies that are connected to the sea. Tidal influenced water bodies means the water bodies influenced by tidal effects from sea. The distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt) measured during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (CZMPs).¹³
- (iii) The land area falling between the hazard line and 500mts from HTL on the landward side. ¹⁴

¹². Paragraph 2 of the Draft Notification.

¹³. Tidal influenced water bodies means, seas, bays, estuaries, creeks, backwaters, lagoons etc.

¹⁴ Hazard line means the line demarcated by Ministry of Environment and Forests (MoEF) through survey of India taking into account tides, waves and sea and shoreline changes.

(iv) Land area between HTL and Low Tide Line (LTL) which will be termed as the intertidal zone.

(v) The water area between the LTL demarcated by Ministry of Environment and Forests (MoEF) through Survey of India (SoI) taking into account tides to the territorial water limit (12 Nm) in case of sea and the water area between LTL to LTL in case of tidal influenced water bodies.¹⁵

In brief, the Draft Notification provides a number of restrictions on the setting up and expansion of industries, operations or processes etc., in the said CRZ. However, the restrictions laid down are not satisfactory. They do not make provisions taking into account the global warming, sea level rise and marine environment. Further, they do not provide provisions for the prevention of establishment of hazardous industries.

B. Prohibited Activities within CRZ: Paragraph 3

The Notification lays down prohibited activities within CRZ¹⁶. It declares the following as prohibited activities within the CRZ:-

- (i) Setting up of new industries and expansion of existing industries except,-
 - (a) those directly related to water front or directly needing foreshore facilities;
 - (b) projects of Department of Atomic Energy;
 - (c) non-polluting industries in the field of Information Technology and other service industries in the CRZ of Special Economic Zone (SEZ);
 - (d) facilities for generating power by non-conventional energy sources and setting up of desalination plants in the areas not classified as CRZ-I(i);
 - (e) development of green field Airport at Navi Mumbai shall be undertaken subject to detailed scientific study for incorporating adequate environmental safeguard measures required for neutralizing damage to coastal environment as may be appropriate to the Navi Mumbai region.

¹⁵. Paragraph 2 (1) of the Draft Notification. For the purposes of the notification, the HTL means the line on the land up to which the highest water line reaches during the spring tide. The HTL shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorized by the Central Government in accordance with the general guidelines issued at Annexure-I.

¹⁶. Paragraph 3 of the Draft Notification.

(ii) Manufacture or handling oil storage or disposal of hazardous substance except,-

(a) transfer of hazardous substances from ships to ports, terminals and refineries and *vice versa*;

(b) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to the notification¹⁷ and facilities for regasification of Liquefied Natural Gas (LNG) in the areas not classified as CRZ I(i) subject to implementation of safety regulations including guidelines issued by Oil Industry Safety Directorate in the Ministry of Petroleum and Natural Gas and guidelines issued by MoEF and subject to further terms and conditions for implementation of ameliorative and restorative measures in relation to environment as may be stipulated by Government of India in MoEF.

However, facilities for receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid etc., shall be permitted within the said zone in the areas not classified as CRZ-I(i).

(iii) Setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas);¹⁸

(iv) Setting up and expansion of units or mechanism for disposal of wastes and effluents except facilities required for-

(a) discharging treated effluents into the water course with approval under Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) storm water drains;

¹⁷. Annexure-II of the Draft Notification provides list of petroleum and chemical products permitted for storage in [SPCZ except SPCZ -I(i)](i) Crude oil; (ii) Liquefied Petroleum Gas; (iii) Motor spirit; (iv) Kerosene; (v) Aviation fuel; (vi) High speed diesel; (vii) Lubricating oil; (viii) Butane; (ix) Propane; (x) Compressed Natural Gas; (xi) Naphtha; (xii) Furnace oil; (xiii) Low Sulphur Heavy Stock; (xiv) Liquefied Natural Gas; (xv) Fertilizers and raw materials for manufacture of fertilizers.

¹⁸ However, the existing fish processing units for modernization purposes may utilize 25% additional plinth area required for additional equipment and pollution control measures only subject to existing Floor Space Index/Floor Area Ratio norms and subject to the condition that additional plinth area shall not be towards seaward side of existing unit and also subject to approval of State Pollution Control Board (SPCB) or Pollution Control Committee (PCC).

- (c) treatment of waste and effluents arising from hotels and beach resorts located in CRZ areas other than CRZ-I and disposal of treated wastes and effluents;
- (v) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements, schemes shall be implemented by the concerned authorities for phasing out existing practices, if any, within a time period not exceeding two years from the date of the notification.
- (vi) Dumping of city or town waste, industrial solid waste, fly ash for the purpose of land filling or otherwise; any existing practice, if any, shall be phased out within a period of one year from date of this notification.¹⁹
- (viii) Land reclamation, bunding or disturbing the natural course of seawater except those,-
- (a) required for construction of modernization or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealinks, roads on stilts and for other facilities that are essential for activities permissible under the notification;
 - (b) measures for control of erosion, based on scientific studies including EIA studies;
 - (c) maintenance or clearing of waterways, channels and ports, based on scientific studies including EIA studies;
 - (d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on scientific studies including EIA studies carried out by reputed national agencies.²⁰

¹⁹ The State and Union territory (UT) Governments shall prepare an Action Plan for items 3 (v) and 3 (vi) above and allocate adequate budget to deal with pollution of coastal areas and waters in a time bound manner. An action in this regard shall be submitted to MoEF within six months from date of issue of this notification for approval. Thereafter, their Action Plans shall be implemented by the State/UT Government in a time bound manner. MoEF/Central Pollution Control Board (CPCB) shall monitor the implementation of the Action Plan.

²⁰ Further, MoEF through reputed scientific institution shall undertake a study to determine the coastal stretch that are undergoing shoreline changes, and classify such coastal stretches as 'high eroding sites', 'medium eroding sites' and 'low or stable sites'. MoEF with State Authorities/Government Departments and scientific institutions shall identify the causes of such shoreline changes and take necessary measures to minimize such erosion within a stipulated period of time not exceeding two years from the date of issue of this notification. Till such time no port projects shall be permitted in the high eroding sites. These classifications of the stretches indicating the shoreline changes shall be mapped on the Coastal Zone Management Plans.

- (ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities;
- (x) Mining of sand, rocks and other sub-strata materials except,-
 - (a) those rare minerals not available outside the CRZ area,
 - (b) exploration and exploitation of Oil and Natural Gas,
- (xi) Drawal of groundwater and construction of mechanisms therefore, within 200mts of HTL, except in the areas which are inhabited by the local communities. In the area between 200mts-500mts zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries.²¹
- (xii) Construction activities in CRZ-I;
- (xiii) Any construction activity between LTL and HTL except facilities for carrying treated effluents and wastewater discharges into the sea, facilities for carrying seawater for cooling purposes, oil , gas and similar pipelines and facilities essential for activities permitted under the notification;
- (xiv) Dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purpose except as permissible under the notification.

Thus, the Draft Notification lays down a vast list of prohibited activities in the CRZ. However, the list of prohibited activities in the CRZ is not satisfactory. It does not make provisions to prevent the use of fertilizers, chemicals, drugs etc. Further, it does not lay down any provision for the prevention of large number of marine coastal outfalls.

C. Regulation of Permissible Activities in CRZ Area: Paragraph 4

The Notification provides regulation of permissible activities in CRZ area²². It states that all other activities except those prohibited in paragraph 3 will be regulated as under:-

²¹ However, the drawal of groundwater is permitted where no other source of water is available and when done manually through ordinary wells or hand pumps, for drinking and domestic purposes, in the zone between 50metres to 200metres from HTL in case of sea, bays and estuaries and within 200m or the CRZ, whichever is less, from HTL in case of rivers, creeks and backwaters subject to such restrictions, as may be deemed necessary, in areas affected by seawater intrusion, that may be imposed by an Authority designated by the State Government/Union Territory Administration.

²². Paragraph 4 of the Draft Notification.

(i) clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities. However, for those projects which are listed under the notification and also attract Environment Impact Assessment (EIA) Notification, 2006 (S.O.1533 (E), dated 14.9.2006), for such projects clearance under EIA Notification only would be required subject to being recommended by the concerned State/Union Territory Coastal Zone Management Authority (CZMA).

(ii) following activities will require clearance from MoEF, Government of India, namely,-

(a) construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves, quays; except for classified operational component of defence projects. Such projects will be considered by a separate procedure which shall be notified by the Ministry. Residential buildings, office buildings, hospital complexes, workshops shall not come within the definition of operational requirements except in very special cases and hence shall not normally be permitted in the CRZ;

(b) the clearance granted shall be valid for a period of five years for the commencement of construction or operation;

(c) construction and operation for ports and harbours, jetties, wharves, quays, slipways;

(d) construction and operation of breakwaters, groynes, erosion control measures;

(e) construction, operation of lighthouses;

(f) laying of pipelines, conveying systems, transmission line;

(g) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;

(iii) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater/cooling water from thermal power plants;

(iv) Housing schemes in Coastal Regulation Zone;

(v) Mining of rare minerals;

- (vi) Specified activities/facilities in SEZ subject to one time approval by Government of India in the MoEF to such activities based on Master Plan of SEZ, special distribution of projects to be located in CRZ and such other information as may be required for the purpose;
- (vii) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;
- (viii) Demolition or/and reconstruction of-
 - (a) buildings of archaeological and historical importance,
 - (b) heritage buildings; and buildings under public use. Public use buildings shall include building for the purposes of worship, education, medical care and cultural activities;

All construction and township projects more than 20,000sq mts shall be approved in accordance with EIA Notification, 2006. In case of projects less than 20,000sq mts shall be approved by the concerned planning authorities in accordance with the notification after obtaining recommendations from the concerned Coastal Zone Management Authority (CZMA).²³

D. Preparation of Coastal Zone Management Plans (CZMPs): Paragraph 5

It will be the responsibility of the MoEF to get the CZMPs prepared through reputed National scientific institution including the National Institute for Sustainable Coastal Zone Management (NISCZM) of MoEF in consultation with the respective State/Union territory Governments and other stakeholders. MoEF shall provide the technical and financial support for preparing the CZMPs.²⁴

Hazard mapping– The hazard line shall be mapped by MoEF through Survey of India all along the coastline of the country. The hazard line shall be demarcated taking into account, tide, waves, sea level rise and shoreline changes. For the purpose of depicting the flooding due to tide, waves and sea level rise in the next fifty/hundred years, the contour mapping of the coastline shall be carried out at 0.5m interval up to 7km from HTL. The shoreline changes shall be demarcated based on historical data by comparing the previous satellite imageries with the recent satellite images. Mapping of the hazard line shall be carried

²³ Paragraph 4.2 of the Draft Notification deals with procedure for clearance of permissible activities.

²⁴ Paragraph 5 of the Draft Notification.

out in 1:25,000 scales for macro scale land use planning and also on 1:10,000 scales for local level mapping.²⁵

The coastal States and Union Territory shall prepare within a period of one year from the date of the notification, CZMPs identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification. The draft CZMPs will be submitted to the concerned CZMA who shall give wide publicity and invite comments from stakeholders to the draft CZMPs in accordance with the procedure laid down in Environment (Protection) Act, 1986. Accordingly, the State/Union Territory shall prepare the final Coastal Zone Management Plan within period of six months and obtain approval from the Central Government in MoEF. MoEF shall consider and approve the CZMPs within a period of three months from the date of receipt of the final CZMPs. Within the framework of such approved plans, all development and activities listed in the notification shall be regulated by the State Government, Union Territory Administration, the local authority or the concerned CZMA as the case may be in accordance with provisions of the notification. All developmental activities within the CRZ zone shall be carried out in accordance with the notification and the approved CZMP. Based on the request received from the concerned State/Union Territory, the CZMPs can be revised after five years from date of finalization.

E. Criticism of the Draft Notification

The Draft Notification is vast and it contains elaborate provisions for the Coastal Zone Management Plans. The main aims and objectives of the Notification is to declare Coastal Regulation Zone and impose certain restrictions on the setting up and expansion of industries, operations and processes in the said Zones for its protection. However, it may be criticized on the following grounds:-

1. The courts have consistently stated in its decisions that it is the duty of the State and public at large to preserve, protect and promote marine environment. The provisions of the Draft Notification are not consistent with the decisions of the Courts.
2. The list of prohibited activities within the CRZ has not adopted all the principles laid down in International Conventions and decisions of the

²⁵ Paragraph 5.1 (i).

Apex Court of the country. Therefore its provisions should be reviewed and list of prohibited activities should be expanded.

3. Restrictions on the setting up and expansion of industries, operations or processes etc., in the CRZ are impracticable and unsatisfactory.
4. Regulation of permissible activities in CRZ area is not effective to be enforced.
5. The provisions for preparation of Coastal Zone Management Plans (CZMS) are ineffective and unsatisfactory.
6. The provisions for enforcement of the Notification are not effective.
7. The Draft Notification does not lay down provisions to prevent the use of fertilizers, chemicals, drugs etc. Further, it does not lay down any provision for the prevention of large number of marine coastal outfalls.
8. The Guidelines for development of beach resorts/hotels in the designated areas of SPCZ-III and SPCZ-II for temporary occupation of tourist/visitors as laid down in Annexure-III suffers from shortcomings.
9. The notification is anti-people, anti-environment and pro-industry.
10. The notification has totally rejected the many of the recommendations contained in the “Final Frontier Report”, submitted by the MS Swaminathan Committee in 2009.
11. The notification ignores the burning issues and it is opening up coastal areas to further unsustainable development which is against the basic principles of environmental jurisprudence.
12. It is grossly inadequate to control the rampant industrialization on the Indian coast line.
13. The Notification has not adopted the principles laid down in the U.N. Convention on the Law of the Sea, 1982.
14. The Notification has not incorporated ‘the Precautionary Principle’ and ‘the Polluter Pays Principle’ as has been recommended by the Hon’ble Supreme Court.
15. The Notification has not incorporated all the principles laid down in Stockholm Conference on Human Environment, 1972 and Rio Declaration, 1992.
16. The Notification has grossly ignored all the principles laid down in the Environment (Protection) Act, 1986.

17. It has rejected the basic principles of the Water (Prevention and Control of Pollution) Act, 1974.

In brief, the provisions of the Draft Notification have not laid down effective provisions to preserve, protect and promote marine environment. It has not provided any guidelines regarding participation of non-governmental organizations and general public at large for the preservation, protection and promotion of marine environment.

IV. Approach of the Supreme Court towards Environmental Jurisprudence:

A.

In the leading case of *Vellore Citizens Welfare Forum*,²⁶ the Apex Court has dealt with the concept of 'sustainable development' and has specifically accepted 'the Precautionary Principle' and 'the Polluter Pays principle' as part of the environmental laws of the land and included in the expression 'life and personal liberty' under Article 21 of the Constitution. The relevant part of the judgment is as under:

...We are, however, of the view that 'the Precautionary Principle' and 'the Polluter Pays principle' are essential features of 'Sustainable Development'. 'The 'Precautionary Principle' - in the context of the municipal law - means:

- (i) Environment measures - by the State Government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

²⁶. *Vellore Citizens Welfare Forum v. Union of India & Ors*, AIR 1996 SC 2715.

(iii) The ‘Onus of proof’ is on the actor of the developer/industrialist to show that his action is environmentally benign.²⁷

B.

‘The Polluter Pays principle’ has been held to be a sound principle by the Supreme Court in *Indian Council for Enviro-Legal Action case*²⁸. The Court observed:

We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.²⁹

The Court ruled that:

Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.³⁰

C.

*S. Jagannath*³¹ is an important case decided by a Division Bench of the Supreme Court. Speaking on behalf of the Court Justice Kuldip Singh stated that Shrimp (Prawn) Culture Industry is taking roots in India. Since long the fishermen in Indian have been following the traditional rice/shrimp rotating aquaculture system. Rice is grown during part of the year and shrimp and other fish species are cultured during the rest of the year. However, during the last decade the traditional system which, apart from producing rice, produced 140 kgs. of shrimp per hectare of land began to give way to more intensive methods of shrimp culture which could produce thousands of kilograms per hectare. A large number of private companies and multinational corporations have started investing in

²⁷ *Id.*, at 2720-2721, paras 10-11.

²⁸ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

²⁹ *Id.* at 246, para 65.

³⁰ *Id.* at 246, para 65.

³¹ *S. Jagannath v. Union of India & ors*, (1997) 2 SCC 87. The case was heard by a Division Bench consisting of Kuldip Singh and S. Saghir Ahmad JJ. However, the judgment of the Court was delivered by Kuldip Singh, J. See also *Indian Council and Enviro-Legal Action V. Union of India*.(1995) 3 SCC 77.

shrimp farms. In the last few years more than eighty thousand hectares of land have been converted to shrimp farming. India's marine export weighed in a 70,000 tonnes in 1993 and these exports are projected to reach 200 thousand tonnes by the year 2000. The shrimp farming advocates regard aquaculture as potential savior of developing countries because it is a short-duration crop that provides a high investment return and enjoys an expanding market. The said expectation is sought to be achieved by replacing the environmentally benign traditional mode of culture by semi-intensive and intensive methods. More and more areas are being brought under semi-intensive and intensive modes of shrimp farming. The environmental impact of shrimp culture essentially depends on the mode of culture adopted in the shrimp farming. Indeed, the new trend of 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.³²

D.

This petition under Article 32 of the Constitution of India- in public interest - had been filed by S. Jagannathan, Chairman, Gram Swaraj Movement, a voluntary organisation working for the upliftment of the weaker section of society. The petitioner has sought the enforcement of Coastal Zone Regulation Notification dated February 19, 1991 issued by the Government of India, stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, prohibition from using the wastelands/wetlands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas.

Commenting upon the Coastal Pollution problem in India the Apex Judge observed:

Coastal Pollution, universally, is an emerging problem. So far as India is concerned it has already become a serious environmental problem.

Besides direct dumping of waste materials in the seas discharge through marine outfalls, large volumes of untreated or semi-treated wastes generated in various land-based sources/activities ultimately find way to the seas. The coastal waters directly receive the inland waters, by way of surface run-off and land-drainage, laden with myriad of refuse materials - the rejects or wastes of

³² *Id.*, at 91-92, para 1.

the civilisation. Apart from inputs from rivers and effluent outfalls, the coastal areas are subject to intensive fishing, navigational activities, recreations, ports, industrial discharge and harbours which are causative factors of water quality degradation to varying degrees. Contrary to the open sea, the changes in the quality of coastal waters are much greater due to river discharges under tidal conditions.³³

E.

The Apex Court stated that according to the facts placed on record by the Central Pollution Control Board the Board the coastline of India's mainland is about 6000 km long. Out of the total landmass of about 3.28 million sq. kms nearly 0.15 million sq. kms of coastal land-belt (considering 25 km landward distance) girdles three sides of the Country's sea front which in turn underlays about 3.13 million sq. km sea-bed up to the territorial limit. The Country being riverine, has 14 major, 44 medium and 55 minor rivers which discharge annually about 1566 thousand million cubic meters of water through land drainage into the seas transporting a wide range of pollutants generated by land-based activities. Nine out of fourteen major rivers meet the sea in the east coast (Brahmaputra through Bangladesh) and the remaining five in the west coast (Indus through Pakistan).³⁴

The Court pointed out that besides land drainage; there is large number of marine coastal outfalls discharging directly or indirectly industrial and municipal effluents into the seas. Uncontrolled disposal of land-based waste into the seas, through rivers and effluent outfalls, is a major cause of pollution of coastal waters. There are nine coastal States and one Union Territory (UT) in India namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala, Tamil Nadu, Pondicherry (UT), Andhra Pradesh, Orissa and West Bengal, More than one-fourth of the total population of the country is settled in the coastal areas.³⁵

It was held that in marine pollution control utmost importance has to be given to the beaches. The beaches and other areas of special interest are to be maintained aesthetically

³³ . *Id.* at 94, para 5.

³⁴ . *Id.* at 95, para 7.

³⁵ *Id.* at 95, para 8.

and at permissible levels of enteric bacteria. Protection of ecologically sensitive areas and land-sea interface resource areas is equally important.

F.

Thus, the Supreme Court warned against coastal pollution problem and pointed out that India is facing serious environmental problem. The Court issued a number of directions to be followed by the Central Government and State Governments for the protection and promotion of the marine environment. The Central Government should constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986. It must confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas. The authority so constituted by the Central Government must implement 'the Precautionary Principle' and 'the Polluter pays' principles as directed by the Apex Court of the country. It was further directed that any violation or non-compliance of the directions of the Apex Court shall attract the provisions of the Contempt of Courts Act, 1971 in addition.

It is submitted that 'the Precautionary Principle' and 'the Polluter Pays Principles' are essential features of 'sustainable development'. The principle of 'sustainable development' is applied to strike a balance between the developmental activities and their impact on ecosystem and environment.³⁶

V. Conclusion and Recommendations:

The Constitution of India is probably first in the world which makes provision for the protection of environment. Article 48 makes provision for the protection and improvement of environment. The provisions of the Article provide, "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." To implement the directions of the Constitution, the Parliament has enacted the Environment (Protection) Act, 1986 (29 of 1986) which has been brought into force throughout India with effect from Nov. 19, 1986. The Act was enacted as a result of the decisions taken at the

³⁶ Professor H.N. Tiwari, *Environmental Law*, (Fourth Edition, 2010, Allahabad Law Agency, Faridabad, Haryana) at 50-78.

United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India participated.

The Central Government issued the Coastal Regulation Zone Notification on February 19, 1991 for the effective preservation, protection and promotion of marine environment. Further, the Supreme Court has made beautiful and effective observations regarding prevention of marine pollution and protection and preservation of marine environment. The Supreme Court pointed out that at universal level, coastal pollution is an emerging problem. India is already suffering from a serious environmental problem.

In April, 2010, the Ministry of Environment and Forests, the Central Government vide its notification number S.O.114 (E), dated the 19th February, 1991, declared Coastal Regulation Zone. It imposed certain restrictions on the setting up and expansion of industries, operations and processes in the said zones for its protection. It is submitted that the said Notification will be helpful to protect and promote marine environment.

Regarding the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment Venkataramiath J. observed:

Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution [vide Clause (g) of Article 51A of the Constitution] we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this

subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.³⁷

In order to rouse amongst the people the consciousness of cleanliness of environment, the learned Judge further observed:

In order to rouse amongst the people the consciousness of cleanliness of environment the Government of India and the Governments of the States and of the Union Territories may consider the desirability of organising 'Keep the city clean' week (Nagar Nirmalikaarana Saptaha), 'Keep the town clean' week (Nagara Nirmalikaarana Saptaha) and 'Keep the village clean' week (Grama Nirmalikaarana Saptaha) in every city, town and village throughout India at least once a year. During that week the entire city, town or village should be kept as far as possible clean, tidy and free from pollution of land, water and air. The organisation of the week should be entrusted to the Nagar Mahapalikas, Municipal Corporations, Town Municipalities, Village Panchayats or such other local authorities having jurisdiction over the area in question. If the authorities decide to organise such a week it may not be celebrated in the same week throughout India but may be staggered depending upon the convenience of the particular city, town or village. During that week all the citizens including the members of the executive, members of Parliament and the State Legislatures, members of the judiciary may be requested to co-operate with the local authorities and to take part in the celebrations by rendering free personal service. This would surely create a national awareness of the problems faced by the people by the appalling all-round deterioration of the environment which we are witnessing today. We request the Ministry of Environment of the Government of India to give a serious consideration to the above suggestion.³⁸

Further, the Draft Notification should adopt following recommendations and suggestions:-

³⁷. *M.C.Mehta (II) v. Union of India*, (1988) 1 SCC 471 at 491, para 24.

³⁸ *Id* at 491-492, para 25.

1. The Notification should adopt all the principles laid down in *Indian Council for Enviro-Legal Action case*.³⁹
2. The Notification should incorporate all the guidelines as directed by the Hon'ble Apex Court and High Courts.
3. The Notification should follow the principles laid down in the U.N. Convention on the Law of the Sea, 1982.
4. The Notification should incorporate all the principles laid down in Stockholm Conference on Human Environment, 1972 and Rio Declaration, 1992.
5. The Notification should be amended in the light of the 'the Precautionary Principle' and 'the Polluter Pays Principle' as has been recommended by the Hon'ble Supreme Court.
6. The Notification must expressly incorporate all the principles laid down in the Environment (Protection) Act, 1986.
7. The Notification should be amended in the light of the provisions of the Water (Prevention and Control of Pollution) Act, 1974.
8. The Notification should make effective provisions to prevent the use of fertilizers, chemicals drugs etc. Further, it should lay down provisions for the prevention of large number of marine coastal outfalls.
9. The list of prohibited activities within the CRZ should be made more effective. Further, restrictions on the setting up and expansion of industries, operations or processes etc., in the CRZ should be made more practicable and satisfactory. Regulation of permissible activities in CRZ area should be made more effective to be enforced.
10. The provisions for preparation of Coastal Zone Management Plans (CZMS) must be more effective and satisfactory.
11. The Guidelines for development of beach resorts/hotels in the designated areas of SPCZ-III and SPCZ-II for temporary occupation of tourist/visitors as laid down in Annexure-III must be made more proper and effective.

³⁹. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.

12. The Notification must expressly lay down guidelines regarding participation of non-governmental organizations and general public at large for the preservation, protection and promotion of marine environment.

In brief, the provisions of the Draft Notification should lay down effective provisions to preserve, protect and promote marine environment.

It is submitted that the executive, legislature and judiciary should adopt a positivistic approach for the true realization of marine environment to the people. The judges, advocates, NGOs and media should play a decisive role for marine environment awareness. The marine environment literacy should be spread through publications, the seminars and other available means. The marine environment education should be made compulsory in educational institutions. The State should promote research in the field of marine environment. Marine environment should be made a compulsory subject in the competitive examination of Union Public Service Commission and State Public Service Commissions. Further, for the effective preservation, protection and promotion of marine environment, a marine environment movement must be initiated in the country.