

DE JURE NEXUS LAW JOURNAL

Author:

Saloni Jaiman

NLIU, Bhopal

B.A. LL.B. (Hons.), 2nd Year.**LEGAL CONTROL MECHANISM FOR PROTECTION AND PRESERVATION OF MARINE ENVIRONMENT****ABSTRACT**

India is a land full of diversity, the marine-life in India is equally captivating and alluring; however; with the rise in population, the needs of people for space, housing and shelter have increased, what is the judicial mechanism to curb the pollution arising out of the developmental activities being undertaken to satiate the needs of the people and how the government plans to support the marine environment and at the same time not compromising with the needs of people shall be discussed here.

MEANING AND UNDERSTANDING OF THE TERM “MARINE ENVIRONMENT”**INTRODUCTION**

Before analysing the issues about the protection of environment comprising the marine-life, it becomes pertinent to understand the concept associated with the term “*environment*,” environment in a general sense implies the surroundings to which the organisms or the flora and fauna respond or stimuli. However, from the legal perspective, the environment is of the broad spectrum which brings within its ambit “*hygienic atmosphere and ecological balance*”.¹ The Indian Constitution brings into its scope the protection of the environment as part of its Directive Principles of the policy of the state.² The growth and development of the entire country economically and the preservation of the entire environment must go side-by-side and

¹ Virender Gaur v. the State of Haryana, (1995) 2 SCC 577; Constitution of India 42nd Amendment Act, 1976, Part IV Art. 48-A.;

² *Ibid.*

must not contest against each other.³ When discussed the word “marine” it straightway implies anything which is “*of or relating to the sea.*”⁴

Black's Law Dictionary, “defines 'environment' as the totality of Physical, Economic, Cultural, Aesthetic and Soul circumstances and factors which surround and affect the desirability and value of property; it also affects the quality of individual lives and living.”⁵ When both the words are read together, the term marine environment would imply the environment relating to the sea.

LEGAL MEASURES TO PROTECT MARINE PROTECTION AND PRESERVATION

BIODIVERSITY AND PROTECTION OF MARINE ENVIRONMENT

Animal and Environmental Legal Defence Fund v. Union of India, the reference made to fishing near the areas reserved for the sanctuary “*while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood.*”⁶

In *Rural Litigation and Entitlement Kendra v. the State of U.P.*⁷

“*The Supreme Court ordered the closure of all limestone quarries in the Doon Valley taking notice of the fact that limestone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commenting on the closure of the limestone quarries, the Court stated that this would undoubtedly cause hardship to owners of the limestone quarries, but it is the price that has to be paid for protecting and*

³ Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281

⁴ Pidilite Industries Ltd. v. Jubilant Agri & Consumer Products Ltd. 2014 (57) PTC (Bom) 617; Ultra Tech Cement Ltd. v. Alaknanda Cement Pvt. Ltd. 2011 (5) Bom. CR 588.; Alaknanda Cement Pvt. Ltd. v. Ultra Tech Cement Ltd. 2012 (1) Bom. CR 519.

⁵ Garner, Bryan A., BLACK LAW DICTIONARY (11TH Ed.) (Thomas Reuters)

⁶ Animal and Environmental Legal Defence Fund v. Union of India, AIR 1997 SC 1071;

[Legal Framework for Conservation of Coastal and Marine Environment of India: A Review \(Deutsche Gesellschaft für Internationale Zusammenarbeit \(GIZ\) GmbH\)](#)

⁷ [(1985) 2 SCC 431: AIR 1985 SC 652]

safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and their cattle, homes and agricultural land and undue affectation of air, water and environment.”

THE COAST GUARDS ACT, 1978

The Coast Guards Act is meant to ensure that the marine environment is protected to the extent of the best interest of the marine life and the developmental activities such as port activities could be initiated at the same time, keeping in view the general interest of the marine environment at hand.⁸ As per § 14 of The Coast Guard Act, 1978:

14. *“(1) It shall be the duty of the Coast Guard to protect by such measures, as it thinks fit, the maritime and other national interests of India in the maritime zones of India,*

(2) -Without' prejudice to the generality of the provisions of subsection (1), the measures referred to therein may provide for- (a) ensuring the safety and protection of artificial islands, offshore terminals. installations and other structures and devices in any maritime zone;

(b) protecting fishermen including assistance to them at sea while in distress;

(c)" taking such measures- as' are necessary to preserve and protect the maritime environment and to prevent and control marine pollution;

(d) assisting the' customs and other authorities in anti-smuggling operations;

(e) enforcing the provisions of such enactments as are for the time being in force in the maritime zones; and

⁸ The Coast Guard Act, 1978’;

“The MARPOL Convention normally referred to as "MARPOL 73/78”, may be traced to its beginnings in 1954, when the first conference was held and an International Convention was adopted for the Prevention of Pollution of Sea by Oil (OILPOL). The same came into force on 26-7-1958 and attempted to tackle the problem of pollution of the seas by oil, such as,

(a) crude oil;

(b) fuel oil;

(c) heavy diesel oil; and

(d) lubricating oil.”

(f) such other matters, including measures for the safety of life all the property at sea and' collection of scientific data,' as may be prescribed.”⁹

FORMATION OF COASTAL REGULATION ZONES

The Coastal Regulation Zones have been formed under the Ministry of Environment Forest and Climate Change, under the aegis of the Environment Protection Act, 1986.¹⁰¹¹ It is essential to bring about that the Coastal Regulation Zones (hereinafter referred to as CRZ) are meant for protection of the marine environment and regulating the conduct of activities undertaken.¹² Therefore, there is a three-tier division of CRZs, which divides them based on exceptions to economic activities undertaken in a specific CRZ.^{13,14}

REGIONAL SEAS PROGRAMME OF UNEP¹⁵

The United Nations had adopted this programme to ensure that with the support of local communities in the regional areas, the water and marine environment in these areas could be preserved.

WHAT HAS BEEN ACHIEVED SO FAR?

⁹ The Coast Guards Act, 1978 Chapter III § 14

¹⁰ The Environment Protection Act, 1986

¹¹ “*Shailesh Nayak Committee Report on Coastal Regulation Zone*

Shailesh Nayak committee was constituted in June 2014, and it submitted its report in January 2015.

The committee recommended relaxation on the terms set up by the CRZ 2011 notification. The major objective behind the recommendations was to boost tourism, port construction and real estate.

The committee suggested diluting the regulatory powers of the Central Government in the coastal areas. Except for those activities which require environmental clearances all other activity should fall under the ambit of state and local planning bodies.”

“Based on the recommended actions of Shailesh Nayak committee, the suggestions were given by the coastal states and union territories, and the CRZ 2018 notifications were issued.”

¹² “*Ecologically sensitive areas (ESA) given Special Dispensations under CRZ 2011*

Sunderbans, Gulf of Khambat and Gulf of Kutch, Malvan, Achra-Ratnagiri in Maharashtra, Karwar and Coondapur in Karnataka, Vembanad in Kerala, Bhaitarkanika in Orissa, Coringa in East Godavari and Krishna in Andhra Pradesh would be declared as Critical Vulnerable Coastal Areas (CVCA) and the integrated management plan would be prepared for each of these areas in consultation with the local communities.

Beaches such as Mandrem, Morjim, Galgiba and Agonda in Goa have been designated as turtle nesting sites and protected under the Wildlife Protection Act, 1972. No developmental activities shall be permitted in these areas.”

¹³ “*The CRZ has been brought into the picture by the Ministry of Environment and Forest through the Environment Protection Act, via notification in the year 1991.”*

¹⁴ [Legal Framework for Conservation of Coastal and Marine Environment of India: A Review \(Deutsche Gesellschaft für Internationale Zusammenarbeit \(GIZ\) GmbH\)](#)

¹⁵ [Wickremeratne, Shanti United Nations Environment Programme and the International Ocean Institute.](#)

As per the Government of India, Ministry of Statistics and Programme Implementation, which released the Coastal Water Quality Index, the following information could be productively harnessed to note down the water quality structure coupled with legal mechanism and the use of natural resources.¹⁶The quality of water available near Paradip, Hoogly and Dhamra appear to be significantly poor, pointing at 30 on the scale of 0-100, wherein 100 is indicative of the best quality of coastal water. The locations of Worli, Hazira and Mumbai indicate the same story, however, Kavaratti came in the "moderate coastal water quality" category.¹⁷In another report, under the aegis of the same authority (2015-2016), the potential of several agro-based industries and several miscellaneous industries in this area has been well-figured in this report, however, what matters is that the same must not harm sustainable growth.

CONCLUSION

It has been brought into the picture that the government and judiciary have across several of its judgments and reports, brought forth the concern for the marine pollution in the specific and environmental pollution in general, but the most important aspect associated with it is that of the growth of industries and growth of the marine life at the same time, some amount of natural biodiversity is lost every time in construction activities, this, in turn; also harms the ecological balance, however, with the rise in population, growth and improvement in the standard of living becomes essential, what matters next is how the minimum damage could be done to gain maximum benefit.

¹⁶The Coastal Water Quality Index, Ministry of Statistics and Programme Implementation, the Indian Government

http://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/EnviStats/Chapter_4_1.pdf.

¹⁷http://dcmsme.gov.in/dips/state_wise_profile_16-17/lakshadweep%20profile_5816.pdf.