

Protection Of Marine Related Issues In India, Legislative As Well As Judicial, Perspective-

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Abstract-Except Super Power no one know that, who is the creator of the Marine, but it has been in existence from time immemorial. When Lord Ram was try to cross the Sea between India and Lanka, the Vibhishan said that, the Sea is an ancestor¹ of yours and suggest for pray to the Sea in respect of crossing the sea. During Vedic period the main motto of social life was to live in harmony with nature, Sages, Saints and great teachers of India lived in forest at the bank of the rivers and convince the Gurukuls for teaching purpose. Vedas, Upanishads, Smiritis and Dharmashtra are the intellectual work of Vedic period. This literature shows worshipful and benevolent attitude towards mother earth (dharti mata), sky (akash), air (vayu), water (jal), fire (agni), animals, plants and toward trees. The Marine is also treated as divine out of thirty three crore deities of Hindu religion’.

I. Competency of Indian Legislations in respect of Marine Protection before adaptation of constitution:-After the mutiny of independence of year 1857 AD, the administration of India was handed over to British Crown from East India company. The provisions of legislation for regarding the issues, near about related to the Sea, prior the enactment of the Constitution of India are as follows-

A. The Indian Penal Code- 1860:-The exclusive provisions regarding protection and conservation of marine , has not yet been placed in any of the section of this Indian Penal code, however some penal provisions of Chapter-XIV, regarding environment protection and conservation has been presented by this code. Provisions of this chapter define, deals and concerns with the public nuisance, negligent and malignant acts and punishments for these acts and omissions. The Sections- 268-291, deals with Public Nuisance, while Sections- 277 & 278, deals with ‘Fouling

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water of Public Spring or Reservoir’ and ‘Making Atmosphere noxious to health’ respectively. It is also noticeable that this aforesaid code has its authority on-12 Nautical Mile (1852 Metre) into the sea.

B. The Code of Criminal Procedure-1973:-Sections-133 & 144, of this Code deals, with ‘Conditional order for removal of Nuisance’ and ‘Urgent cases of Nuisance or Apprehended Dangers’.

No accurate provision or amendment has been take place or made in these mega legislations regarding protection and conservation of coastal ecology and marine environment.

II. Position under the Constitution of India:-The constitution is known as the basic of land equivalent to this grand norm. The constitution of India is a supreme law of India. Every executive, legislative and judicial power, whether these belong to the federation, state or union territory, is subordinate to and directed by this constitution. All laws attain their legality from this constitution of India². But year-1950 constitution of India had not laid down any specific provision regarding the protection and conservation of the environment.

The Parliament of India passed the forty-IIInd (42) amendment to the constitution in year-1976. By this amendment, two specific articles 48-A and 51-A(g) relating to protection and improvement of the environment were incorporated in the fourth and forth-A part of constitution, as a directive principle of State policy and as a fundamental duty.

Although protection and conservation marine environment, has not yet been place in any list of the constitution of India, (i.e. Union, State and Concurrent List), However articles-297 is placed for the same purpose. Articles-297, regarding the protection, promotion and conservation of the marine and its resources.

Article-297³³

The main aim of this article is to enlarge the scope of sovereign rights⁴ of India over the sea wealth and include the concept of Exclusive Economic Zone. The word all land, minerals and other things of value, underlying the ocean with the Territorial water or Continental Shelf or Exclusive Economic Zone of India, is a very important moot point of the International Law. This statement creates a difference among surface rights, mineral rights and social rights.

Importance of Article-297:-The logic behind this aforesaid article is that, when any state having coast join the Union of India, then the

territorial waters of that maritime state will go to the central Government, therefore any question regarding this issue, will not arise.

III. Independent India and protection of Environment:- Having attained independence, India enact and adopt its own constitution. After independence, to protect, promote, conserve and to regulate the environmental incidents, the Government of India enact a various number of legislation. These legislations are as below:-

The Water Prevention and Control of Pollution Act-1974, The Water Prevention and Control of Pollution Rules-1978, The Water Prevention and Control of Pollution Act-1977, The Environment Protection Act-1986, The Environment (Protection), Rules-1986, The National Water Policy-1987, The National Environmental Policy-2006 were also passed, but they are not specific in respect of protection of issues related to marine. The 'National Green Tribunal' with The Green Tribunal Act-2010, has been established in New Delhi for fast disposal of the issues raised from violations of eco laws. To ensure protection, promotion, development, conservation, utilization, management, environmental stability and to maintain ecological balance among the human activities and resources in coastal areas, The Coastal Regulation Zone Notification-1991 and thereafter, The Coastal Regulation Zone Notification-2011, were passed by the Central Government of India. Central Government for the protection, promotion and conservation river Ganga, at the National as well as State level, issued Notifications with intent, to constitute the Ganga River Basin Authorities, at National as well as in State of Uttar Pradesh, Bihar, Jharkhand and West Bengal Ganga Conservation Authorities.

IV. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act- 1976-With the appetency of providing the matter analogue to the name of this legislation, the parliament of India, enacted this Act by year-1976. This Act deals with definitions, limit, delimitation, sovereign as well as exclusive right including jurisdiction in respect of the 'Territorial Waters', 'Contagious Zone', 'Continental Shelf', 'Exclusive Economic Zone' and 'Historic Waters' of India. This Act declares that, all rights are vested in the Central Government of India and without Licence or letter of authority no one including foreign State can enjoy the Waters.

V. The Coastal Regulation Zone-1991, Notification- The 7516 kilometre long coast of India, including the Arabian Sea in the West, the

way of Bengal in the East and the Indian Ocean in the South, comprise a wide variety of diverse habitats and ecosystems from estuaries, coral reefs, sea grass beds, mangrove swamps, creeks, back waters and lagoons to bays cliffs sandy and rocky beaches. The linkages among these wide varieties of diverse habitats and ecosystems are essential for the maintenance of food webs, migration routes and to increase productivity. Many segments of which are fragile and sensitive from the security of the Union of India and environment point of view. Nine states as well as many other union administered has coast line. One fourth population of India resides in the coastal areas creating density ranging from more than 2000 person per sq kilometre. The impact of human activity in the coastal system is multifaceted over the years. The population load, technological development and multifaceted activity in the coastal regions have increased interaction and competition for the coastal resources and have caused conflicts among resource users.

A. Primary Object of the CRZ-1991, Notification:-The primary object of the Coastal Regulation Zone-1991 Notification is that, 'To protect and improve coastal environment of India by restricting and regulating human activities on the coast'.

B. Prohibited Activities:-By this Regulation, certain activities are declared as prohibited within the Coastal Regulation Zone, as follows-
(i)- Setting up and Expansion of Industrial Units⁵, except (a) industries, directly related to water front or directly needing foreshore facilities, projects of department of Atomic Energy, and non polluting industries in the field of information technology, and other service industries in the coastal regulation zone of Special Economic Zones (SEZ)⁶,

(ii)- Storage of Chemical and Petroleum Products⁷,

(iii)- Fishery and Allied Activities⁸,

(iv)- Disposal of Waters Effluents⁹ and Untreated Wastes and Effluents¹⁰:-except treated effluents into water course with the approval under the Water (Prevention and control of pollution) Act-1974, storm water drains,

(v)- Dumping of Town wastes¹¹ as well as ash discharged from National Thermal Power Corporation (NTPC)¹²

(vi)- Land Reclamation and Structure to Prevent Erosion and Salinity Ingression¹³ except actions essential for conservation or modernization or expansion of the ports, harbours, jetties, wharves, quays, slipways,

bridges and Sea- links, control of coastal erosion and maintenance or clearing of water ways, channels and ports or for preventions of sandbars or for tidal regulations, storm water drains or for structures for prevention of salinity ingress and sweet water recharge,

(vii)- Mining Activities and Extraction of Oil and Natural Gas¹⁴ except rare minerals, Oil and natural gas, if not available outside,

(viii)- Extraction of Ground Water¹⁵, except if done manually for the purpose of drinking, domestic purposes horticulture, agriculture and fisheries purpose, if no other source of water is available¹⁶;

(ix)- Construction Activities¹⁷, except specified in Annexure no-1¹⁸ of the Notification,

(x)- Dressing and Shape Changing Activities¹⁹

C. Permissible Activities:- A number of activities are declared prohibited by the para-2 of the Coastal Regulation Zone-1991, Notification, but except these prohibited activities, all other activities are permissible and can be regulated in the Coastal Regulation Zone after environmental clearance of the Ministry of Environment and Forest Govt. of India.

The activities are as follows-

(i) Construction Activities for Atomic or Defense Purpose²⁰,

(ii) Construction Activities²¹, for ports, harbours and light houses, jetties, wharves, quays, slipways, pipelines and transmission of these lines, and exploration and extraction of Oil and Natural Gas²²,

(iii) Transportation of raw materials, in-take of cooling water and out fall of waste water, cooling water facilities for Thermal Power Plants²³, Mining of rare Earth Minerals²⁴. generation of power by non-conventional energy sources, desalination plants and weather RADARs²⁵ are permissible in the CRZ areas.

(iv) Demolition or Reconstruction²⁶ of buildings important to Archeological, historical, heritage, worship, education, medical care and cultural activities purposes,

D. Classification²⁷ of the Coastal Area-

By this Notification, the Coastal stretches are categorized into four different zones as follows-

(i) Category-I (CRZ-I):- First category includes those areas, that are ecologically sensitive and important, such as national parks, marine parks, sanctuaries, reserve forests, wild life habitats, mangroves, corals, coral reefs, areas closed to breeding and spawning grounds of fish and other

marine life areas, areas of outstanding natural beauty, historical and heritage areas, areas rich in genetic-diversity, areas likely to be inundated due to rise in sea level consequent upon global warming.

(ii) Category-II (CRZ-II):- Second category contains those areas, that have already been developed upto or close to the shoreline. For this purpose, 'developed areas' includes those areas, which are within the Municipal limits or in other legally designated urban areas, are already substantially built up and with drainage system, roads, water supply, sewerage mains and other infrastructural facilities.

(iii) Category-III (CRZ-III):- Third category is related to those areas, that are relatively undisturbed as well as those, which do not belong to either category-I or category-II of this said notification. CRZ-III also include coastal zone of the rural areas, whether developed or undeveloped and areas within Municipal limits or in other legally designated urban areas, which are not substantially built up.

(iv) Category-IV (CRZ-IV):- Fourth category comprises the coastal stretches of the Andaman & Nicobars, Lakshadweep and of other Islands, except those areas, which are designated as CRZ-I, CRZ-II or CRZ-III.

E. Norms²⁸ for Regulation of Activities in Coastal Regulation Zone Notified

Footnotes-

- 1 Prabhu Kulguru Jaladhi Kahihi Upay Bichari, Binu Prayasa Sagar tarihi Sakala Bhalu Kapi Dharihi, Page-812, Cuplet-50, SundarKand, Sri ramcharitmanas by Geeta press Gorakhpur
- 2 D.D. Basu, Introduction to the Constitution of India, 20th edn-2011 Nagpur; Lexis Nexis Butter Worths Wadhwa
- 3 Thing of value within Territorial waters or Continental Shelf and Resources of Exclusive Economic Zone to vest in India-
(1) All lands, Minerals and other things of value, underlying the Ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purpose of the Union.
(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purpose of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other marine zones of India shall be such as may be specified, from time to time, by or under any law made by Parliament.

4 The Territorial water, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act-1976, fixed-

(1) 12 Nautical Miles for Territorial waters,

(2) 200 Nautical Miles for Continental Shelf and beyond 200 Miles. And

(3) 200 Nautical Miles for Exclusive Economic Zone and the sovereignty of India has and always had extended in respect of these areas,

One Nautical Mile is equivalent to 1852 Metres

5 Pera 2(i) of The Coastal Regulation Zone-1991. Notification

6 Inserted by S.O. 550(E) dated-21th May 2002, vide Gazette of India (Extra) No-470

7 Ibid, Para 2(ii)

8 Ibid, Para 2(iii)

9 Ibid, Para 2(iv)

10 Ibid. Para 2(v)

11 Ibid, Para-2(vi)

12 Ibid, Para 2(vii)

13 Ibid, Para 2(viii)

14 Ibid, Para 2(ix)

15 Ibis, Para 2(x)

16 Substituted by S.O. No-494 (E) dated-9th July-1997, vide Gazette of India (Extra) No-393

17 IBID, Para 2(xi)

18 Inserted by S.O. No-329 (E) dated-12th April-2001, vide Gazette of India (Extra) No-237 Annexure No- of this notification contains two clause:-

(a) Clause-6(1) regarding classification of coastal regulation zones, and

(b) Clause-6(2) relates to norms for regulation of activities for development in the said zones

19 Ibid, Para 2(xiii)

20 Ibid, Para-3(i)

21 Ibid, Para-3(ii)

22 Instituted by S.O.730(E) dated-4th August 2000, Vide Gazette of India 9Extra0 No-521

23 Ibid, Para-3(iii)

24 Ibid, Para-3(iiib) Inserted by S.O.550(E) dated-21 Mayth2003, Vide Gazette of India(Extra) N0-906

25 Ibid, Para-3(iiid)

26 Ibid, Para-3(iv) Substituted by S.O.460(E) dated-22nd April 2003, Vise Gazette of India(Extra) No-376

27 Annexure-I

28 Clause-6(2), Annexure-I of the CRZ-1991, Notification

References-

(i) The Indian Penal Code-1860, bare Provisions,

(ii) The Code of Criminal Procedure-1973, bare Provisions,

(iii) The Constitution of India, by Professor J. N. Pandey

(iv) The Coastal Regulation Zone-1991, Notification,

(v) The Coastal Regulation Zone-2011, Notification,

(vi) Origin and Development of the Law of the Sea, by R. P. Anand, Volume-7, 1983, Martinus Nijhoff Publishers, London

(vii) The Outlines of Maritime Law, by Dr. S. P. Gupta, Second Edition-2014 Allahabad Law Agency Faridabad (Haryana)

(viii) Indian Council for Enviro Legal Action and Others V. Union of India and Others, (1996) 3 Supreme Court-212,

