

**REPRESSED COASTAL POPULATION' - AN ANALYSIS OF RIGHTS OF
COASTAL COMMUNITIES AND INEFFECTIVE INTRICACIES OF COASTAL
LAW REGIME IN INDIA**

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“The earth has enough for everyone’s need but not for everyone’s greed.”

-Mahatma Gandhi

INTRODUCTION

With a 138-crore population, India faces several fatalities as a consequence of natural disasters. Climate change, geo climatic conditions and high socio-economic vulnerability are the main reasons for coastal issues in India. Furthermore, catastrophic incidents and different types of complex environmental conundrums are increasing due to the industrial and economic activities in coastal zones, wherein half of the Indian population lives. Enormous economic renovations and urbanisation has ensued in deprivation as well as ecological damage to coastal zones in India. Even after three decades of Coastal law, India is still combating coastal issues; sustaining the livelihood security of fishing communities, preserving the health of coastal eco systems and bio diversities which are crucial to overall sustainability of coastal regions². But while striving to accomplish the economic goals of our country, our coastal policies have failed to incorporate the powerful concept that survival of human beings depends on their harmonization with nature. There is a close collaboration between man and nature. But at the same time, development is as important as environmental protection. Coasts offer crucial components for social and economic development to the world. However, the unregulated development in coastal zones have resulted in livelihood challenges to coastal communities and this article mainly addresses the tripartite issue of development, environmental protection, and livelihood challenges of coastal communities in India. Therefore, the objective of this paper is to study the legal and environmental advancements for the sustainable development of our coasts as well as to analyse the issues faced by coastal inhabitants.

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² Hemant Kumar. A. Chouhan et al, *Coastal ecology and Fishing Community in Mumbai*,51 EPW 39 (Sep.24, 2016)

COASTAL LAW REGIME IN INDIA

Coastal Regulations in India tracked its concepts from UN Conference on Human Environment, held in Stockholm in 1972. Based on that 'The Environment Protection Act (EPA) 1986³' was enacted to execute India's commitments as a party to the conference. The Coastal Regulation Zone (CRZ) Notification of 1991 was made under the provisions of the Environmental Protection Act 1986, to protect coastal environments and also the social security and livelihood securities of fishing communities in India. For the last three decades, this subordinate legislation is the only trail in managing coastal zones of India. Coastal Regulation Zone Notification is applicable to the entire Indian Coast including the Andaman & Nicobar Islands and the Lakshadweep Islands. It generally covers the coastal stretches of seas, bays, estuaries, creeks, rivers, and backwaters influenced by tidal action up to the defined distance into the land from High Tide Line (HTL).

The CRZ Notification was introduced with the following three main purposes:

- i) To arrive at a balance between development needs and protection of natural resource.
- ii) To prohibit and/or regulate the activities which are harmful for both coastal communities and environment.
- iii) To plan for a sustainable management, so that the livelihoods of millions of people are protected, and the coastal environment is preserved for the future generation.

The Coastal Regulation Zone Notification (CRZ) in India was initially saluted as a progressive law by fish worker activists and environmental groups as they already recognised that coastal areas needed some reforms from unregulated development. CRZ Notifications were also intended to govern human and industrial activity close to the coastline, to protect the fragile ecosystems near the sea. CRZ Notification was enacted to restrict certain kinds of activities like large constructions, setting up of new industries, storage or disposal of hazardous material, mining, or reclamation and bunding, within a certain distance from the coastline. The real issue is that the delicate areas next to the sea are home to many marines and aquatic life forms and are also endangered by climate change. Therefore, they need to be protected against unregulated development. However, India's fiscal transformations had influence on the functioning of CRZ notification and it damagingly touched the objectives of

³ Environmental Protection Act, 1986, Act No.29, Acts of Parliament, 1986 (India).

CRZ. It is critiqued that considerations of economy overweighed ecology. The clauses of the notification prohibiting and restricting activities along the coast remained unimplemented, and the mandatory Coastal Zone Management Plans were also not implemented. Further, there was no proper institutional mechanism to ensure execution of CRZ Notification. So, The Honourable Supreme Court in **S. Jagannath v. Union of India**⁴, declared that sea beaches and sea coasts are gifts of nature and any activity which pollutes these natural resources, or the gift of nature cannot be permitted to function. In this case, a shrimp farming culture industry by modern method was harming the eco system, polluting potable ground water and exhausting plantations. All of these activities were held to be violative of constitutional provisions and non-implementation of Coastal Regulation Zone Notification was debated expansively by the Supreme Court of India. The court further held that before the induction of any such industry in a fragile coastal area should necessarily pass the strict ecological test. After this judgment, there have been several amendments to the CRZ Notification, 1991, based on the recommendations of various committees which are consistent with the basic objective of the notification. But there were continued difficulties posed by the CRZ Notification, to its effective implementation, from the beginning. In 2019 the CRZ was restructured to regulate the activities of coastal zones in India. However, its main criticism was the disregard for livelihood perspectives of coastal communities in the wake of continuous disasters which are happening in our country.

GENESIS OF CRZ

In 1981, the then Prime Minister Mrs. Indira Gandhi, through a letter to Chief Ministers of all coastal states of India, insisted to start initial measures for protection of coastal areas to enhance their conditions. In 1982, The Ministry of Environment and Forests set up working groups to prepare environmental guidelines for the development of beaches and coastal areas and it resulted in the formation of Working Group on Beach Development Guidelines, 1983. It was the guidelines for the development of Beaches, Tourism, Industrial Development, Urban and Rural Development, special areas such as mangroves, scenic areas, corals, oceanic islands etc. In 1991, the CRZ Notification came into force based on Environment Protection Act of 1986. During these years various committees were appointed, and based on the recommendations of Dr. Swaminathan committee, MoEF revised the earlier notification and

⁴ S. Jagannath v. Union of India, AIR 1997 SC 811.

the CRZ Notification, 2011 revision came into existence. But both Notifications faced severe criticisms and later in 2019, CRZ Notification 2011 was revised and the CRZ 2019 came into force. However, the CRZ 2019 notification faced huge disagreements from its stakeholders for various reasons⁵.

CONSTITUTIONAL MANDATE FOR COASTAL PROTECTION

Right to pollution free environment is a fundamental right under Art.21 of our constitution. Protection of natural resources and environment is encompassed in our fundamental duties also. India is known for enacting necessary environmental Acts from time to time in accordance with various international conventions including the Stockholm and Rio declarations. More than this,our Constitution guarantees to its citizens certain fundamental rights such as Article 21⁶ which guarantees to every person ‘the right to life’. Consequent to judicial interpretation, now includes the right to a clean environment and access to natural resources⁷. It is relevant to note that India has given a constitutional status to environment protection by imposing a duty on the State to protect and improve the environment under Article 48A and Art. 51 A (g). It also imposes a fundamental duty on every citizen to protect and improve the environment. Art.47 puts a duty on the state to raise the standard of living and to improve public health which depends on the quality of the environment. In **Subash Kumar V. State of Bihar**⁸, it was held that the state is under a Constitutional Obligation to protect the right to environment and citizens have a right to the wholesome environment. In **M.C. Mehta v. Union of India**⁹ also, the court held that Art. 39(e), 47 and 48A cast a duty on the state to secure public health and environmental protection. Art. 51 A(g)¹⁰ places a fundamental duty on the state to protect public health and environment. Through many judicial decisions¹¹ it is reaffirmed that Coastal regions and water bodies are an integral part of our environment, and the states are obligated to protect the coasts of India.

⁵ Amisha Aggarwal, *Climate Change and coastal Zone Regulation: Regulation of Coastal Protection, an analysis of CRZ Notification*, 2018, 13 IOSR-JESTFT 8,49-56(Aug. 2019).

⁶ INDIA CONSTI. art.21.

⁷ Abdul Jabbar Haque, *The Right to live in healthy and pollution free environment: An analysis in Constitutional Perspective*, 3 NJEL 1, 30-38(2020).

⁸ Subash Kumar v. State of Bihar, AIR 1991 SC 420

⁹ M.C. Mehta v. Union of India, 2002 (2)SCR 963

¹⁰ INDIA CONSTI. art. 51 A §g

¹¹ Indian Council for Enviro Legal Action v. Union of India,(1996)5 SCC 281, Kinkeri Devi v. State Of HP (AIR 1988 HP 4) , S. Jagannath v. Union of India (1997 SC 811)

COASTAL COMMUNITY AND COASTAL REGULATIONS IN INDIA

The coasts of India are generally facing environmental damage, displacement of coastal communities and causing hurt to the livelihoods of millions who depend on the sea for their survival. Coastal communities argue that traditionally the coastal land belongs to them and their rights in such coastal areas should be respected. But other than a brief mention in the preamble of the CRZ Notification as well as in the interpretation available in the 1996 judgment of the Supreme Court, there is very little in the CRZ Notification vis-à-vis fisher rights. **S. Jagannath v. Union of India**¹², identified the adverse impacts of coastal pollution caused by non-traditional and unregulated prawn farming. It held that *the intention of the CRZ Notification is to guard the ecologically fragile coastal areas and to maintain the aesthetic qualities of the seacoast. The setting up of modern shrimp aquaculture farms near the seacoast is perilous and is degrading the marine ecology, coastal environment and the aesthetic uses of the sea coast.* The Court concluded that prawn farming industries should be banned in the coastal Regulation zones under the CRZ Notification 1991 because their functioning was in violation of numerous environmental laws. However, the Court allowed the traditional systems of aquaculture to continue by taking into consideration the traditional coastal communities in that area.

The objective of the CRZ Notification was to control ecological damage to coastal areas caused by pollution, maintain coastal livelihood security, uphold the traditional rights of fishermen and maintain the aesthetic value of the coast. However, there were no concrete provisions and measures that explicitly defined the rights of fishers. At present, coastal people are facing the issues of landlessness, unemployment, and homelessness. An evaluation of the CRZ Rules should link larger issues of livelihood and environmental sustainability of coastal regions. Insights to small scale fishery-based livelihoods and environmental sustainability should be taken into consideration while framing coastal policies. Coastal livelihood issues and the developmental activities in coasts and its repercussions on the lives and livelihood of fishing community is of serious debate. According to CRZ 2019, the country's coastline which is currently protected will be thrown up for development and this move will lead to the development of resorts, hotels, and mega housing projects, ultimately leading to the uprooting of fishermen. It does not define activities which are to be prohibited

¹² *Id*

in the coastal zones. Instead, it allows state governments to identify economically significant areas and allow industries to grow. Also, the notification is silent on the management of these zones and suffers from so many loopholes as it fails to consider the biological diversity, demographic patterns, and distribution of natural resources in the coastal zones even if the area is ecologically fragile¹³. Furthermore, the Provision for the development of new ports which might be disastrous for India's ecological balance. In **M. Wilfred v. Ministry of Environment and Forests**¹⁴, the applicants have claimed that the site of the proposed port project, in its immediate vicinity, is inhabited by small scale fishermen who depend on Coastal and offshore water for fishing as a part of their livelihood. In the above case the applicants, seek to protect and safeguard coastal areas of outstanding natural beauty and areas likely to be inundated due to rise in sea level consequent upon global warming. The areas were declared by the Central Government or the concerned authorities at the State/ Union territory level from time as CRZ under CRZ Notification of 2011. In this case the court ordered Central Government to go for an Environment Impact Assessment (EIA) and CRZ clearances before implementing the projects. Recently in **Worly Koliwada Naksha Matsya Vyavasai Sahakari Society v. Municipal Corporation of Navi Mumbai**¹⁵, The Supreme Court stopped the coastal road project in Mumbai on the basis that it had not obtained environmental clearance from the authorities, and it had adverse impact on the coastal community. So, the judicial pronouncements arising out of coastal issues initiated by environmental activists are quite often enough to understand the law. But it is criticised that, through the new notification in 2019, the policy makers have regularised the violations. It will protect structures built on the seaward side of the existing roads and structures built contrary to CRZ in the name of development facilities for temporary tourism infrastructure. It will also have a negative impact on the fisheries as it will restrict the movement of fishermen in the inter habitation segments. Indian fishermen have been using the fishing waters and the land to process their catch, repair their nets, or sell their products as common property resources. If these areas are provided for tourism infrastructure development, the means of livelihood of local inhabitants will be in distress. Additionally, the new notification may lead to them being treated as encroachers and may lead to their displacement without any

¹³ Raghav Parthasarathy & Vikas Gahlot, *Coastal Regulation Zone: A Journey From 1991 Till 2019*, NLS ENV.LAW, (Jun.9, 2020) <http://nlse.org/coastal-regulation-zone-a-journey-from-1991-till-2019/>.

¹⁴ M. Wilfred v. Ministry of Environment and Forests, 2016 SCC Online 426

¹⁵ Worly Koliwada Naksha Matsya Vyavasai Sahakari Society v. Municipal Corporation of Navi Mumbai, WP(L) No. 560 of 2019 dated 16. 7.2019

compensation. In **Ramdas Janardhan Kohli and others v. Secretary MOEFCC and others**¹⁶, the traditional fisherman sought compensation from City and Industrial Development Corporation (CIDCO) as well as the Oil and Natural Gas Corporation (ONGC). Fisherman residing in coastal areas around Mumbai had objected to infrastructure activities in the region, citing potential loss of their means of livelihood. They argued that urbanization has caused environmental damages to fishing areas and had a negative impact on more than 1600 families. They had been damaged by a project launched by CIDCO. The fisherman complained that they used to catch fish varieties near the shore but now that area had been destroyed by CIDCO. National Green Tribunal awarded compensation worth INR 950 million to be split between 1630 affected families and held them liable for damaging environment and affecting livelihood of fisherman community in that area. In **Alexio Arnolfo Perera v. State of Goa**¹⁷, The court ordered against Goa Government's temporary shack policy for tourism development as it was against CRZ Notification. Therefore, our judiciary has been proactively interfering in conservative as well as livelihood issues of coastal zones.

COASTAL POPULATION EXPECTING ENVIRONMENTAL DISPLACEMENTS IN FUTURE

The essential characteristic of coastal populations is that they are primitive traits and stay in peculiar geographical location. They are economically backward with unique cultural identity and are usually isolated from the mainstream community. This weaker section of society which got separated over several parameters was always retained out of the mainstream society and have thus become ignorant towards their rights and means to redress their problems. They are also prone to social, economic and environmental challenges. The main encounters confronted by the coastal community are as follows.

1. Vulnerability to natural calamities and climate change
2. Threats to coastal population and infrastructure
3. Livelihood securities of coastal people
4. Non-identification of the special needs of coastal people in the ecologically sensitive areas.

¹⁶ Ramdas Janardhan Kohli and others v. Secretary MOEFCC and others, MANU/GT/0056/2015 (India).

¹⁷ Alexio Arnolfo Perera v. State of Goa (2014) SCC Online NGT 6655.

5. Rapidly increasing pollution and associated urbanisation and commercialisation resulting in detrimental fishing methods.
6. Legal uncertainty related to land rights and other rights.
7. Competition over limited coastal spaces and resources.
8. Environmental displacements in future.

The Coastal community fears that CRZ, 2019 will be a shaded period for coastal communities like fisherman, toddy tappers and farmers. It is complained that they will be displaced as the Non development Zone is reduced from 500 meters to 50 meters. National Fish Worker Forum (NFF) have expressed their fear that all Sagarmala packages, plans and projects will uproot the livelihoods of traditional fish workers. These projects will only benefit corporates and are against the interests of coastal community of India.

Lack of concern for disasters and climate change are also a concern for the community. Okhy, Gaja, Fani Cyclones and devastative floods have created huge losses to fishing communities and it is the need of hour to formulate policies to compensate their losses due to natural calamities. NFF says that CRZ, 2019 is a strategy which impacts the livelihood of small-scale fish workers and it is a move to privatise the coasts and hand it over to corporates¹⁸. While executing The Coastal law in 1991, the livelihood aspects of coastal community were given significance. Dr. Swaminathan committee set up as an aftermath of tsunami, went as far as suggesting a Land Right Recognition Law and suggested that specific protection should be provided to traditional communities who subsist on coastal areas only on the basis of their customary rights. But the recommendation was never executed, and the concept of customary ownership itself is grabbed by way of tourism and other developmental purposes. Over the last three decades, the regulation has been amended thrice and revised around 34 times. The coastal community views it as a lack of community and environment-oriented policy. National Fish Workers Forum says that the policy should include a well demarcated hazard line and should factor the effects of climate change. Further, they say that CRZ 2019 will pave a way to future disasters and the coastlines will be more exposed in the upcoming years. The CRZ, 2019 is merely giving more access to the corporate /tourism, land

¹⁸ National Fish workers Forum (NFF), Press Release Dated 26-5-2019.

mafia for development, and the coastal community's livelihood as well as the environment are being ignored.¹⁹

Coastal communities are vulnerable to unforeseen events such as Tsunami, a regional flood/cyclones. They are not resilient to normally recurring hazards. The deprivation of coastal environment is primarily due to human induced actions which jeopardizes food security, livelihood, fiscal development, and existence of coastal communities. They are not naturally resilient to coastal hazards²⁰. Many internal assessments of post-tsunami relief and rehabilitation, undertaken mostly by international non-governmental organisation and local NGOs, highlight the significant gaps that exist between goals and achievements as well as recognise that the felt needs of local people have been inadequately addressed. While many, including fishers, are arguing that initial relief was quite effective, though restricted to the villages near the main roads, rehabilitation has been haphazard with no clear goals both for the rehabilitator and the rehabilitated²¹. Many NGOs entered the rehabilitation arena completely ignorant about the socio-economic issues relevant to coastal communities, and consequently blamed the shortcomings of delivery on poor implementation and local political and social dynamics²². But such explanations are unfinished. To understand developments in fishing villages and issues of coastal community, it is necessary to delve into the uneven antiquity of coastal management in the context of shifting urgencies along the coast. This description will also highlight the challenges gaining for integrated coastal zone management. Besides the physical damage, the tsunami left an indelible stamp on people's minds that a fear intensified by requirement of NGOs and the governmental intervention. Post-tsunami relief and rehabilitation exertions have not agonised from a lack of funds but due to lack of governance and legal uncertainty. The coastal areas which have been customarily inhabited by traditional fishing communities are also antagonized with large-scale industrial growth and development. The coastal hazards are aggravated by rapid urbanization and unplanned human settlements, poorly engineered construction, lack of adequate infrastructure, poverty, and inadequate environmental practices such as deforestation, mangrove destruction, and land degradation etc. Thus, the coastal policies

¹⁹ *Fishermen's body rejects CRZ 2019, Demands rollback*, TIMES OF INDIA,(Feb.25,2019 12.45PM) www.timesofindia.com.

²⁰ Sushama Guleria et al., *Coastal community resilience: Analysis of resilient elements in 3 districts of Tamil Nadu State, India*,16 JNL. OF COASTAL CONSERVATION 1,101-110(Mar. 2012).

²¹ Ajith Menon et al, *Reconfiguring the Coast*, 43 EPW 16 ,35-38 (Apr. 19-25,2008).

²² Senthil Babu, *Coastal accumulation in Tamilnadu*,46 EPW 48, 12-13(Nov. 26,2011)

should corroborate the need for proper risk assessment as this would aid the coastal community in planning and responding to coastal hazards, making the coastal population safer from the risk of disasters. The 1992 Earth Summit in Rio de Janeiro, contributed to new perspectives about coastal management to include the role of education in engaging people to work towards a more sustainable future for the world's coastal areas. In response to these challenges and international trends, governments at all levels and non-governmental organizations should develop policies, strategies, and programs to support more integrated and effective coastal disaster reduction.

Since the inception of the CRZ notification, fishing communities of several states have been trying to negotiate with the MoEF for the protection of their customary rights and representation in the decision-making process. To maintain social stability and promote distributional justice, local coastal communities should be allotted clearly drafted, specific use and property rights about specific areas. Fishing collectives and environmental groups objected to the latest CRZ 2019 notification which opened India's coastline for enhanced commercial activities, primarily on the following grounds.

- No prior consultation was held with coastal communities, especially the fisher folks.
- The lifting of development restrictions would be disastrous for coastal environment and traditional communities living there.
- Interfering with ecologically sensitive coastal areas would leave them more vulnerable to natural hazards.

So, the coastal community has articulated their displeasure towards CRZ, 2019 and has demanded a comprehensive CRZ Act which ensures their rights. They also claim for an all-inclusive study on assessment of vulnerability and inclusive community participation which can afford an important guide to coastal planning and resource allocation at various levels. It can benefit to raise public awareness about the risks, and such initiatives must envision prevention of catastrophic disasters and sustainable recovery in the aftermath of a disaster. It can also reduce the coastal community's vulnerability to natural disasters.

The CRZ notification is critical to the lives and livelihood of communities comprising of 170 million people or 14% of Indian population living across 70 coastal districts, 66 main

lands and four island territories²³. Their future especially that of the marginalised communities, is directly linked to the health and disaster preparedness of coasts.

The 2019 CRZ notification violates the balance between ecosystem and development²⁴. The property rights and economic development in coastal zones are severely hampered with several unrealistic and unachievable restrictions when applied with a common yardstick throughout the country. The mandatory 50-meters buffer zone for mangrove forest in private land with an expanse of more than 1,000 sq. m has been taken by the present notification. This will affect the coastal ecosystem. The notification has given relaxation in Coastal Regulatory Zone and this will be helpful for people with small land holdings but the disastrous impact of it on ecology will be against the coastal community.

Environment Scientists and green activists have expressed their concerns regarding unbridled construction activities on the coastal areas and its negative impact which are to be addressed. They have also warned the government against gifting coastal areas to the tourism sector in the name of fishermen. As huge populations live in the coastal areas, their need for economic development and subsistence activities infringe on the quality of the environment in that region.²⁵.

According to National Disaster Management Authority, up to 36 million Indians are likely to encounter coastal floods due to rising sea levels by 2050²⁶. So, ensuring protection to coastal populations and structures from risk of inundation from extreme weather and geological events is the need of the hour. It should guarantee that the livelihoods of coastal populations are not unduly hampered by these frequent amendments.

To maintain social stability and promote distributional justice, local coastal communities should be assigned with clearly drafted, specific use property rights about specific coastal areas. The coastal communities often have established experienced and practices to manage local ecosystems sustainably. It is proved in many cases that assigning exclusive

²³ Meenakshi Kapoor, *Ignoring objections ,India finalises New Coastal Laws*, INDIA SPEND(Mar.21,2020) www.indiaspend.org, art.14.com/post/ignoring-own-experts-fisherfolks-experts-india-finalises-new-coastal-law-investigation.

²⁴ Vinod. K. Dhargalkar et al., *CRZ Notifications 2018- Disastrous to eco system functioning*, 6 INT.JNL. OF ECOLOGY AND ECO. SOLUTION 1, 10-15(Mar.2019).

²⁵ A. Ramachandran et al. *Coastal Regulation Zone Rules in Coastal Panchayats (Villages) of Kerala, India vis-à-vis socio economic impacts from recently introduced people's participatory programme for local self-governance and sustainable development*, 48 OCEAN AND COASTAL MGMT. 632- 635(2005), www.Elsevier.com/locate/ocecoman.

²⁶ Study by Climate Center, National Disaster Management Authority, October 2018.

rights to local communities can also help to protect coastal eco-systems. Accordingly, the rights and obligations laid down in CRZ notification should have a clear and increasingly comprehensive content which will be enforceable in the Courts.²⁷

RIGHTS OF COASTAL POPULATION- UNIDENTIFIED AND REPRESSED?

RIGHT TO LIFE AND LIVELIHOOD: Strengthening the livelihoods of fishing communities and maintaining coastal ecologies and biodiversity are vital for the sustainability of coastal regions of India. The rising environmental vulnerabilities expand deprivation of coastal ecosystems and livelihood security of coastal communities. Traditional and customary rights in relation to fisheries and living space, as well as historic rights of coastal fishing communities are not recognised in the Coastal Regulation Zone Notifications. Ensuring traditional coastal community rights is of great significance and possibly to ensure social justice for traditional fishing communities is to designate a zone to protect their right through which only we can sustain their fundamental right to life and livelihood.

RIGHT TO POLLUTION FREE ENVIRONMENT: This right is included indirectly as a part of Art.21 by various judicial interpretations. Environment deterioration can eventually endanger life of present and future generations. It includes right to survive as species, quality of life, the right to live with dignity, right to good environment and right to livelihood. All these rights are implicitly recognised as Constitutional rights. In **Subash Kumar V. State of Bihar**²⁸, it was held that the right to life includes right to enjoyment of pollution free environment and if anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 for removing the pollution which is detrimental to his life. Further in a series of cases like **M.C. Mehta v. Kamal Nath**²⁹, **Enviro- Legal Action V. Union of India**,³⁰ reiterated the same opinion that the right to pollution free environment is a part of Art.21.

The poor and the under privileged classes of coastal people and other indigenous classes of people are usually suffering the burden of environmental glitches. Ironically, the crisis is due to unsustainable and destructive models of development. Anyway, right to pollution free

²⁷ Abhishek Das, *Coastal Regulation Zone: Governance and Conservation*, LAWYERS CLUB INDIA(OCT 9,2019.12.18PM) <http://www.lawyersclubindia.com/articles>

²⁸ Subash Kumar V. State of Bihar, (1991) 1 SCC 598

²⁹ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388

³⁰ Enviro- Legal Action V. Union of India, (1996) 3 SCC 212

environment as a part of Art.21 through the decisions of Supreme Court have become the bed rock of environmental jurisprudence. So, the destruction and depletion of coastal ecosystem and its people depending on the natural/ coastal resources of their own locality to meet their basic needs will be violative of their fundamental right. They also have the right to enjoy life, livelihood, cultural sustenance, aesthetics of natural surroundings. The violations of these rights may lead to other violations such as displacement and sustainable common property management, loss of access to productive land, destruction to life support system etc. So, a better understanding of diverse coastal system should be there to assure the coastal communities right to pollution free environment as their fundamental as well as a human right.

RIGHT TO DEVELOPMENT: Prof. Upendra Baxi said that, development is a participatory process of implementing all rights for all people. Right to development is a holistic concept and development vis-a -vis environment has been a placard of all concerned stakeholders. In Coastal issues also, the most discussed area is whether we should give priority to environment or to development. But, in **Vellore citizens Forum v. Union of India**,³¹ the court already settled that development and ecology are no longer opposed to each other and sustainable development has to be accepted as a viable concept to eradicate poverty and improve quality of human life while supporting the surrounding ecosystems. So coastal community also have the right to development along with sustainable development of Coasts. It should be kept in mind that development encompasses much more than economic wellbeing and includes the whole spectrum of civil, cultural, economic, political, and social process for the improvement of people's wellbeing and realisation of their full potential.³² Therefore, while implementing new policies for coastal development, the above-mentioned concepts should be considered for the protection of coastal community. Present coastal law regime in India mainly focuses on development of coastal areas only and unfortunately does not include the development of coastal population. So, experts argue that both should go hand in hand to achieve the expected sustainable development in coastal regions of India. Further in **Nature Lovers Movement v. State of Kerala**³³, case it was held that there should be an adjustment and reconciliation in between preservation of environment and development of

³¹ Vellore citizens Forum v. Union of India, (1996) 5 SCC 647

³² N.D. Jayal v. Union of India, (2004) 9 SCC 362.

³³ Nature Lovers Movement v. State of Kerala, AIR 2000 Ker.31.

economy. Therefore, while implementing guidelines of an appropriate developmental policy to coasts it should also analyse the obstacles and implementation deficits in sustainable coastal management.

RIGHT TO PARTICIPATION IN COASTAL MANAGEMENT: Public participation is recognised as crucial in making environmental governance more robust. 'Participatory' mechanisms in environmental governance are advocated for a variety of reasons, including an implied emphasis on participation as furthering justice and equity, ambitions to make participative or deliberative measures as supplements or alternatives to representative democracy and enhancement of legitimacy of controversial environmental decisions.³⁴ In connection with the notion of sustainable development, the Rio Declaration stated that environmental concerns are to be solved with the participation of all concerned people at the relevant level. Despite of the agreement on the importance of public participation in environmental decision-making there is a clear lack of consensus on what public participation is supposed to mean and more importantly on what it is supposed to accomplish.³⁵ The Preamble of Aarhus convention³⁶ says that involvement of stakeholders and public at large will improve the substantive quality and outcomes of Environmental decisions. It is said that consultation with public and interest groups may unquestionably increase the knowledge and help to make more technical and holistic environmental decisions.

The marginalised coastal community in India is discriminated and always kept away from coastal policy making and it is also evident in the latest CRZ Notification, 2019. The coastal community remained silent spectators of development, but the obligation of environmental degradation usually affects them. These marginalised sections of people are away from material benefits and from environmental decision making. Even the coastal zone management plans were not available to them and were against the basic concept of environmental democracy in coastal planning. In **Kaloor Joseph v. State of Kerala**³⁷, The court observed that the state cannot refuse the right of citizen's access to Coastal

³⁴ Naveen Thayyil, *Public Participation in Environmental Clearances in India: Prospects for democratic decision making*, 56 JILI 4, 463-492 (Oct- Dec. 2014)

³⁵ Nichola Tilche, *In what ways is the emphasis on public participation a positive development in Environmental law? An analysis of Aarhus Convention and its impact on EU Environmental law and policy*, 1 EPLR 1-23 (2011).

³⁶ UNECE Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environment matters. Signed on 25 June 1998.

³⁷ OP NO. 20278 of 1997, dated 2nd June 1998 (unreported)

Management Plan. Right to information of Citizen is the right protected by our Constitution of India under Art.21. State or Local authorities cannot refuse it and they have a duty to publish CZMP. The court also directed the government to give sufficient publicity to management Plan prepared by the State so as to enable the public to know whether there is any deficiency in that plan and to ensure that CZMP was properly implemented and not violated by anyone and also to ensure that it's not violative of rights of coastal people. It is said that economic activities in the ecological sensitive areas should be able to assure social justice in distributing environmental resources also³⁸. So, implementation of the concepts of environmental justice and environmental democracy is the need of the hour otherwise the environmental/ coastal resources will unequally be distributed between the capitalist and fishermen. The fishermen will become the scape goats of the hazards of coastal degradation. Hence, the right to participate in coastal policy making and awareness and informed consent for coastal development should be made available to the coastal community and all other stakeholders.

SECURING AND ENFORCING PROPERTY RIGHTS/LAND RIGHTS

The Coastal community is oblivious of their land rights. The individual and collective rights of fishing communities over coastal lands became highly debated in recent years after the frequent amendments of CRZ Notifications in India, as communities do not even have titles and deeds for their houses and settlements even after 60 years of Independence. In the past few decades, fisher folk have prepared and planned to request land rights from the State because of the rapid development in these areas. There have been tourism/development projects, and interest groups who have been waiting to take over the coastal land and its abundant resources. However, the coastal community's traditional claims over coastal lands have precluded the scope of privatisation in the coastal areas to some extent. When CRZ 2019 came into force the land mafia threatened the coastal community and purchased the coastal properties by saying that their properties will be displaced by the provisions of recent notification³⁹. So, proper alertness should be given to them by unambiguously defining property rights and assurance should be given to them that the policy changes will not adversely affect them. Then only they can be capably safeguarded against meddlers. The land

³⁸ Pavan Vinayak et al. *The role of Principles of environmental justice in securing equality in distribution of environmental resources- A critique*, 6 IN LAW MAGAZINE NLSIU(Nov.2020)

³⁹ Kerala Coastal Zone Management v. Maradu Municipality, 2019 (2) KLJ 944.

ownership issues in coastal areas are gaining eminence with use-based entitlements. Construction of Special Economic Zones, land mafias/land acquisitions, non - recognition of coastal rights have changed the concept of land ownership in coastal zones⁴⁰. They tend to provide more handler-based rights in coastal Zones, where right is delegated over land for a demarcated commercial or development activity. Furthermore, under the Coastal Regulation Zone Notification,2019 the coastal dweller's right to use coastal lands and concept of coastal commons etc. are not recognized.

The fishing communities and coastal lands rapport is very intricate in nature. Most of the studies on fishing communities mention the absence of official legal ownership rights for fishers over coastal lands⁴¹. One of the dominant rationales for non-identification of their right is due to the poor condition of life and the inadequate conditions of the marine fishing populations in India. The gathering of the unabridged community on a narrow strip of land along the length of coastline also increase their exposures and it is a consequence of the highly spread nature of the fishery resource and the dangerous of fishing operations by them. Every fisherman chooses to live on the seafront to spot the sea and to land his craft safely. This also have implications on whether their lands were considered 'authorised constructions' under the CRZ Notification or not. In general, the traditional occupation of fishing seems to need a closer association with the sea than with the land and it is decisive for signifying the interests of fishing communities. The fishing community people have been the traditional inhabitants of the coast. Their livelihood adjoining the sea is deep-rooted in their connotation with the sea. They never identified the need to prove their right over coastal lands through land titles. The triviality is that fishing community is also conferred to land-based regulations, but it is not recognised by them due to their social, economic, educational backwardness. The recognition of land rights of local inhabitants of coastal area is a necessity and it is claimed that the local inhabitants should be avoided from the strict application of CRZ notification. So, while considering the social preferences and beliefs regarding the land rights of coastal people, a liberal approach to eco system people and their traditional land accessibility is highly required as it has become a sensitive issue now a day.

⁴⁰ Sudarshan.S. Rodreguez, *Coastal land rights of Fishing communities- Claims for survival*, Dakshin Foundations, Bangalore 42(2010)

⁴¹ Sebastian Mathew, *Coastal Management Zone- Implications of Fishing Communities*, 43 EPW 25, 17-21(Jun.21-27,2008).

RIGHT TO COASTAL COMMONS

Coastal common means the coastal resources that come under the realm of common property from which various communities and stakeholders derive economical, and ecological benefits⁴². Indian coastal regulations are quiet on fisherfolk's traditional rights to coastal and ocean spaces. High courts and Supreme Court of India upheld the right to commons in case of fishing communities and other inland communities. Indian courts established that foreshore between the high tideline and low tideline belong to the government and fisherfolks can work their trade without unsettled to the land. In **Abas v. Andi Chettiyar**⁴³, a single judge in Madras High Court denied the plea of a property owner to possess and fence certain forelands and upheld the customary rights of fisherfolks to dry fish and park boats on the land . Thus, public access to the commons has been ferociously guarded by Indian Courts. In **Jagpal Singh v. State of Punjab**⁴⁴,The Supreme Court held that enclosure of a village pond by real estate developers is illegal, and the court ordered to evict all illegal /unauthorised occupants of village and restored it for common use of villagers. This is a watershed judgment of The Supreme Court which ensures the rights of coastal commons⁴⁵

The CRZ 1991, although is a delegated legislation, cited the traditional rights and customary uses of coastal areas. But it was restricted to the housing purposes and other built-up spaces for their works. It did not admit the customary livelihood, culture, and other uses of the common fisherfolks. CRZ 2011 offered certain concessions to the fisherfolks and instructed maritime states to prepare detailed Coastal Zone Management Plans, land -use plans and other long- term plans for CRZ area. However, the important clauses in CRZ 2011 remain unimplemented and CRZ 2019 is silent about all these issues. The frequent amendments weakened the law and because of its poor enforcement leads to the spread of privatisation, encroachments, urbanisation, and as a result withdrawal of coastal people from coastal spaces have increased in an unprecedented manner. For example, Kohli community in Mumbai are losing their traditional space. It is connected to real estate booming in coastal areas for the purpose of tourism and other developmental and business activities. So, the need of protecting the right to coastal commons is a necessary evil to promote the community values,

⁴² Niskula Jamir et al. ,*Coastal Commons and Conservation Cascades: Indian saga at Protection attempts under CRZ Notifications*, 1 ENV.LAW AND SOCIETY JNL,NUALS,45-66 (2013).

⁴³ Abas v. Andi Chettiyar AIR 1963 Mad.74.

⁴⁴ Jagpal Singh v. State of Punjab AIR 2011 SC 396

⁴⁵ Mukul Kumar et al, *Mapping the coastal commons : Fisher Folks and the politics of Coastal Urbanisation in Chennai*, 29 EPW 48, 46-53(Nov.29,2014)

aesthetics, culture, and tradition of coastal people and thereby to promote their rights and needs in a significant method.

SUGGESTIONS

The traditional coastal communities are integral to the coastal areas of India. The State must recognise the rights of the fishing community's livelihood issues as well as the access and use of beach space. The CRZ Notification initially contained certain provisions that protected the interests of fisher communities whose livelihood depended on a healthy coast. If coastal communities are involved in the implementation of the notification and its monitoring, it could ensure the protection of coastal habitats as well as relieve the state government from the responsibility of being involved in the day-to-day implementation of the notification. Therefore, it is important for the notification to emphasise the necessity of capacity building and active participation of local governments and citizens in rural and urban coastal areas. In its contemporary form, the above concepts are absent in the notification. Several traditional fisherfolk and coastal community institutions bargain themselves against jointing in CRZ 2019 because the notification does not recognise their presence or their potential role in coastal conservation. It would be useful to study how these community institutions can play a role in the implementation and monitoring of coastal zone management laws.

Further state should regulate the entry of external actors in eco-sensitive areas and to clear the demands to strengthen the CRZ Notification while recognising and guaranteeing rights of fisher communities to resources and its management which must be obligatory in present day scenario. There has been a consistent demand to recognise the rights of fishing communities to access and use the coastal space. There was also a very clear mandate for the unambiguous role and responsibility of fishing communities in the management and protection of the coasts. Serious flaws and omissions in the enforcement and implementation design should be avoided. Vagueness and arbitrariness of the new categorisation, deficiency of clear procedure, definitions, objectives, lack of transparency, non-involvement of stakeholders are reasons for the failure of present CRZ Notification⁴⁶. To avoid all these issues, it can suggest the following recommendations.

⁴⁶ Ayush Verma, *A Sail through the management of coastal zones in India*, BLOGIPLADERS (JUL. 16, 2020) Blog ipladers.in/Sail-Management-Coastal-Zone -India.

RECOMMENDATIONS

1. Use of the coastal area only for direct resource-based livelihoods and infrastructure needs of the country.
2. Sustainable development of the coast and its resources in future.
3. Participation of stakeholders in the decisions related to the use and management of the coast and its resources.
4. Evolve and strengthen government policies along with community-based governance structures.
5. Special provisions for the control, rights and access of coastal resources and coastal lands to ensure the life and livelihood of coastal people and for coastal protection.
6. Ensure coastal land rights of fishing communities as defined by socio-cultural traditional boundaries to make a balance between development planning, coastal management, and fisher livelihood security.
7. Inclusion of a list of livelihood activities which are permissible in CRZ region and it should be specially designed for the protection of coastal community.
8. Relaxing the No Development Zone (NDZ) should not be detrimental to the interests of traditional coastal communities.
9. Allowing dwelling units for fisherfolk
10. Permitting economic activities like tourism under the ownership of fisher folk.

The above suggestions cannot guarantee the livelihood security of fishing communities absolutely. While the government has established policies and legislations for conserving marine resources, the state governments and respective forest and marine departments are facing issues in implementing these regulations. But we can understand that the present patchwork Notification does not solve the issue of conflicts and issue of access and rights over the coastal space which is inherently allied to the livelihood security of fisherfolk. It is crucial that rights of traditional fisher communities to coastal spaces be legally recognised and expanded in prevalence over infrastructural development in such places. Merely permitting a set of fishing activities and facilities within the CRZ or any coastal law falls short of the fisherfolk's demand for control over coastal governance. Ignoring this element will only lead to further conflict between fisherfolk and non-fisher interest groups like large tourism/ industrial mafia and government authorities, as being witnessed in the State of Goa and Kerala where large developmental activities by corporates are causing problems to the

coastal community. Hence it is vehemently recommended that the conservation methods should strike a balance between the economy and ecology at the same time⁴⁷. Most importantly, the model of community-based conservation that found success in other countries should be adopted in Indian context also.

Further, enunciating human rights with the environment generates a rights-based approach to environmental protection as it will be obligated to develop new approaches and policies to safeguard the rights of individuals and communities reliant on natural resources. It will also help in providing remedies to people harmed by environmental degradation. Taking a human rights approach to coastal protection is beneficial that it reinforces the concept of mutual goals and the serious outcome each may have on the others. The understanding in terms of an incompatible burden between development perquisites, environmental protection and human rights of local inhabitants must be abridged in coastal zones, both at international and national levels.

CONCLUSION

The coastal law regime in India faces a lot of turbulence in the present scenario and the CRZ notification leaves so many issues unaddressed and unclear. It is high time to identify the paths for improvement in Indian environmental law especially the coastal regulations because the present CRZ is incompatible with its own objectives due to its deceptive mechanism, deficient procedures and lack of transparency. The issues of coastal encroachments throughout the country are continuing and it is witnessing the lacunae in existing legislation. The concept of development has historically taken precedence over coastal protection, and it is not in conjunction with stakeholders as well. The Grant of coastal clearances is a key step in the statutory framework to balance ecological concerns of the coastal environment, and concerns of coastal communities about the quality of their immediate surroundings, including issues of sustainable access of poor and marginal communities to common property resource for their everyday subsistence. There is a need for having public consultation and participation in coastal management, and a provision for such participation and consultation should be included in the Indian CRZ Regime. The paper describes and analyses the extremely limited space for public participation in the existing CRZ regime. It argues for a broad-based coastal law that has public consultation at multiple stages, right from screening,

⁴⁷ Radha Krishan, *Environmental Protection: Legal and Human Right Perspective*,2 NJEL 1,30-34(2019) www.stmjournals.com

scoping, and appraisal during EIAs, to post-clearance monitoring as well as compliance of clearance conditions. It is possible that a comprehensive, dedicated national legislation for coastal zones which even while adopting uniform approach to multifarious issues faced by Indian coastal areas will give States enough room to address the local issues of coastal community. In the current pace of economic growth, a battle for coastal land grab to fuel development projects, tourism and so on is the truth of coastal spaces. This suggests that a sense of urgency must accompany for a new legislation. Until then, each individual fishing settlement will have to fight its own encounter against each local developmental menace and bear in an unjust political space. The present CRZ Framework is neither comprehensive nor exhaustive, so a Pan National Law is necessary to ensure environmental sustainability as well as livelihood security of the coastal community. The described the threat of displacement of fisher communities as coasts were being opened up for development. CRZ 2019 expands such issues for those who live in various informal settlements along the coast. Therefore, while drafting coastal policies we should focus on a central theme of *equitable, sustainable, pro-poor, pro-fisher housing and development models for our coasts*.