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Sustainable Management of Coast: Reality or Dream?

by

Prof. P Leelakrishnan*

The legal regime of managing the coast, its people and resources has been operating for more than a decade and a half in the India under the aegis of the Coastal Regulation Zone (CRZ) notification 1991¹. The Central Government has fathered the notification² but deserted the child at the door step of the coastal States to foster. Without central backing sufficient wherewithal or infrastructure the States strove to protect the coastal environment with its own management plans and strategies. Initially, not so convinced with the arrangement, the States found it convenient to sleep over and took no interest for framing the Coastal Zone Management Plans (CZMPs) with which the coastal regime had to work. With the interference of the Supreme Court³, States willy-nilly prepared the plans and the CRZ regime started working in a feeble manner.

The Central Government found the 500 meter regulation zone from the high tide line and the 200 meter No-Development Zone (NDZ) provided in the CRZ notification as obstructing large scale development activities. Beach tourism is a specific illustration. Hence an attempt was made to do away with this obstruction by an amendment to the notification reducing the restrictions within the zones. Holding that relaxing the rigor of CRZ and NDZ would spell doom to the coastal ethos, ecology and people, the Supreme Court suggested modification of the parameters for tourist hotels and resorts in the coast but emphasised that such initiatives should not hinder smooth passage of the people who live and depend on the coast and the adjacent sea for their livelihood⁴.



The growing awareness of the people on the importance of coastal environment, recognition of the traditional rights of fishing community, urgent need to prevent major development activities along the coast and suitable exploitation of tourism potential of the coast are the positive aspects of the CRZ notification. However, lack of will and sufficient enforcement machinery, resulted in destruction of mangroves, coral reefs and breeding sights. Illegal constructions in prohibited areas continued to a considerable extent. Uniformity of regulations, ambiguous terminologies and absence of a scientific approach and scientific institutions, lack of funding and nil incentive for conservation of ecosystem are some of the difficulties of the CRZ notification⁵.

Swaminathan Committee

How to get over the road-blocks in "development" was a constant worry for the powers-that-be. The position was that values of ecology should not be sacrificed; environmentally malign industry should not be allowed to intrude into the coastal regions rich with biotic resources. The Committee headed by MS Swaminathan went into the whole gamut of the CRZ notification 1991 and recommended a paradigm shift from regulation to sustainable management⁶. Although it received mixed comments, the report has seized of the problems of the coast⁷. Population pressure, increase in

housing needs, expansion of tourism and hotel industry, commercial demands on fragile ecosystems were some of them. The dilemma of sea level rise is to be met; the ecological profile of the territorial sea be maintained.

Trying to transform "rhetoric" to "reality", the Swaminathan Committee championed for "an integrated and ecologically and socially sustainable coastal management system jointly by government agencies and coastal communities"⁸. According to the Committee, one of the main goals of the coastal zone management is to improve the quality of life of human communities who depend up on coastal resources while maintaining the biological diversity and productivity of coastal ecosystems⁹. There are certain significant recommendations and suggestions such as participatory and sustainable CZM strategy, social mobilisation through Panchayati Raj institutions and managing coastal resources as



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common property resources and not as private ownership¹⁰. The Committee was of the view that in sustainable utilisation of coastal resources, clear distinction was to be drawn between the genuine needs of local communities and the requirements of commercial interests¹¹. Ground water in coastal areas was to be considered as social resources¹² and coastal systems and resources including cultural and heritage sites should not to be measured in terms of monetary goods and services¹³. The regulations should be guided by the principles of equity, fairness, justice and transparency¹⁴. The Committee went on to say that instead of building sea walls, it would be advisable to initiate a program of raising bio-shields and coastal green belts¹⁵ and emphasised that the role of the coastal zone management authorities was to be expanded from a mere policing the coast for conservation purposes to one of sustainable and integrated management.¹⁶

Attempt at Sustainable Coastal Management

The Draft Coastal Management Zone (CMZ) Notification, 2008¹⁷ is the outcome of the Swaminathan Report and is intended to



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substitute the existing CRZ notification¹⁸. The objective as laid in the notification is for

protection and sustainable development of the coastal stretches and marine environment through sustainable coastal zone management practices based on sound scientific principles taking into account the vulnerability of the coast to natural hazards, sustainable livelihood security for local communities and conservation of ecologically and culturally significant coastal resources¹⁹.

In short the thrust is on sustainable use of the resources available in the coastal regions.

For the purpose of Coastal Zone Management (CZM), the coastal zones are classified into four. CMZ I consists of Ecologically Sensitive Areas (ESAs)²⁰. CMZ II contains "areas of particular concern" such as economically important areas, high population areas and culturally and/or strategically important areas²¹. CMZ III consists of all other open areas including coastal waters and tidal influenced inland water bodies. All those areas that do not come within CMZ I, CMZ II or CMZ IV are included in CMZ III²². It is in CMZ III developmental activities are permitted in seaward side²³.

CMZ IV relates to Andaman and Nicobar and Lakshadweep inlands. The local authorities can place other islands into this category.

New Proposals: A Critique

The Environment (Protection) Act, 1986 (EPA) provides no specific provision²⁴ for ecologically and culturally sensitive areas.



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Inclusion of such areas stated to be specified under EPA in the definition of coastal zone is obviously confusing²⁵. However, an indicative list appended²⁶ is helpful. The definition of Integrated Coastal Zone Management (ICZM) lays emphasis only on "land use" and "development" and leaves out conservation of coastal resources including water use²⁷. The newly introduced concept of "set-back line" is significant as on the seaward side of the line certain restrictions are made and permissions allowed in CZM-II and CZM-III. However, the determination of the line is taken by the Ministry of Environment and Forests (MoEF) and other top scientific agencies on certain given parameters²⁸. The coastal people live by sustainable use of the resources available in the coast for generations. They do not have any role to play on the decision-making process of the set-back line nor do the local bodies or even the State Government have any participation.

The concerned States prepare Integrated Coastal Zone Management (ICZM) plans that lay down management strategies for the coastal zones. In preparing ICZM plans, the State authorities should seek help from a policy-making central authority and established scientific organisations and should get final endorsement from the Central Government. No doubt the plans should ensure proper protection of ecological entities as well as the safety and needs of local communities in ESAs of CMZ I. A distinctive chain of centralism binds the whole range of decision-making processes while the local communities and institutions whose safety and needs are to be guaranteed at the grass roots were left out. The absence of participatory decisions is a manifest lacuna of CZM. There may arise a doubt why in preparing the plans for ecologically sensitive areas in CZM I the authority should keep in view of "essential development"²⁹. Probably, the construction of a road for fishermen to



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move about is justifiable. How can one rule out wider interpretation "essential development" in order to bring in industries unhelpful to sustainable development of the coast?

The seaward side of the set-back line in CMZ II is practically a no-development zone for industries other than those needing foreshore facilities. The ICZM plans lay down regulation of these areas of particular concern such as areas of economic, cultural and strategic importance and high population density. Separate mechanisms are envisaged on the two sides of the set-back line. As stated earlier the set-back line is determined without local body's participation. However, development in the landward areas shall be governed by the local town and country planning rules³⁰. If this is so, arbitrary demarcation by the set-back line by the MoEF of large portion of the seaward area without local body participation restricts and infringes the powers

conferred on the local authorities under the Constitution³¹. Local bodies with population density of more than 400 persons per square kilometre are placed in CMZ II. This density criterion is not a realistic proposition. CMZ III areas are those which do have less population. Thus the States which do not have a coastal population less than the limit will have no CMZ III. They shall only CMZ I, CMZ II and CMZ IV. Such States with no CMZ III area or States with less CMZ III area will be in an unfavorable position. This is so because most of the developmental activities are allowed in CMZ-III. The States will be deprived of these development potentialities. Undoubtedly, the density criterion in CMZ II will have to be modified with respect of States having a populous coast. Such States should have the discretion to declare in their ICZM plan which coastal territories should get CMZ III facilities of development.

Fisheries including traditional fish processing, ice plants and ice crushing facilities³² are permitted in CMZ III. No doubt this indicates that fishing and related activities other than traditional fishing are allowed. That existing dwelling units and other infrastructure and the activities relating to fishing by traditional communities will not be disturbed or relocated may appear to be a protection for traditional fishers³³. However, monitoring these safeguards is the responsibility of the State coastal zone management



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authority. Here again the evil of concentration of power in the hands of the Central Government is quite apparent. The State coastal zone authorities are not authorities appointed by the States as they deceptively appear but are central authorities set up under the Environment Protection Act and responsible to the Central Government³⁴. Necessarily, instead of ivory tower scientists and technicians nominated by the Central Government, the State authorities should consist of experts nominated by the State Governments and people representing the ethos and traditions of the coastal regions.

There shall be no regulation for fishing or fishery related activities in CMZ II³⁵. Today, coastal zones are areas of fierce economic transactions with interplay of large foreign exchange outputs. Unbridled exploitation and influx of commercial interests into the coast are to be checked. Besides doing this function, regulation prevents misuse of the freedom of fishing and fishing related activities. Absence of regulation leads to anarchy.³⁶

It is true that protection of ecologically fragile resources is given importance while coastal management zones are classified. However, the notification provides that enforcement and monitoring will be the responsibility of the State coastal zone management authority³⁷ concerned. One wonders whether the responsibilities given to biodiversity management committee in local bodies under the Biological Diversity Act, 2002 (BDA) do not conflict with those of State coastal zone management authorities. BDA is a later specific law meant to preserve biological diversity. Will this not prevail over the CZM notification issued under Environment Act of 1986?

The concept of no-development zone laid down in the CRZ notification of 1991 is clear and specific. On the other hand, demarcation of areas by the set-back line though based on certain



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parameters³⁸ may turn out to be not based on other objective criteria and to be

illusory and vague.

The tribal people as a community do have rights to the resources in the forest habitat for their living. The village poor rely largely on groundwater for drinking. The rural farmers use river water to irrigate their farms. The coastal dwellers depend on the coastal resources and waters to make both ends meet. Recognition of these community rights are often absent in legislation dealing with sustainable management of the resources. It is said that while the agenda will be to help manage, regenerate and efficiently use natural resources, the rights of people to these resources are given no importance nor are they recognised as part of a broader strategy of livelihood enhancement in a neo-liberal regime³⁹. There needs to be a constant struggle for recognition of these community rights over land and resources⁴⁰. Neither the legislature nor the executive does take care in recognising community rights of the stake holders whenever they are to be deprived of their traditional and existing rights in the quest for industrialisation. Complex are the consequences of new CMZ⁴¹ that claims a paradigm shift⁴² from regulatory mechanism to sustainable management. When one makes an incisive scrutiny of the CZM notification it is found that sustainable use of the coastal resources or sustainable development of coastal zones is almost abandoned⁴³. The classification of coastal management zones and their management methodology ignore the rights of the fishermen and other coastal dwellers who entirely subsist on the resources from the coast and the coastal waters. The community participation in demarcating the set-back line is absolutely nil. The top-down mechanism of imposing decisions disregarding the stake holders and even the local bodies concerned rather transforms the CMZ notification into an "eviction law" or a "land use law" for development than laying down norms for



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protection or improvement of the ecology of the coast. This is contrary to the concept of sustainable development.

Provision is made for fisheries other than traditional fish processing⁴⁴, water sports and recreational facilities⁴⁵ and temporary construction of tourism facilities⁴⁶. These provisions are prone to misuse. It is not difficult for temporary facilities of tourism to give way to permanent arrangements of using beaches for beach front villas, water front recreation park and beach tourism. Manifestly, such uses restrict the easy movement of fishermen and other coastal dwellers. *Indian Council for Enviro-Legal Action v. Union of India*⁴⁷ is a strong warning from the Supreme Court against invasion to the integrity of the coast that infringes the freedom of movement of the coastal dwellers in search of livelihood.

Tourism as such need not be forbidden. Eco-tourism is allowed everywhere. The activities will have to be so environmentally, economically, socially and culturally sustainable that it benefits the local communities, strengthens the local economy and employs the local work force⁴⁸. These parameters of eco-tourism are thrown to the winds in the new model of coastal management as envisaged in the CMZ notification.

Conclusion

The fishermen and other coastal dwellers have their rights to the coast as the tribal people and other forest dwellers do have to the forest habitat. Their traditions and way of living are evolved through the centuries of indigenous knowledge and wisdom like those of their counterparts in forest. Understanding the needs of the stakeholders and sharing their indigenous knowledge for the benefit of society are the key to sustainable development. The proposed CZM regime does not endow them with their inherent

rights of owning, possessing or managing the sea shores and adjacent coastal waters. Contrary to the suggestions in the Swaminathan Report there is no attempt to profitably utilise the indigenous knowledge for protection and improvement of the coastal zones by a joint participatory management. Nor is there an effort to give importance to equity, fairness, justice and transparency in decision-making processes. In

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countries⁴⁹ where coastal protection regime has come to stay, the legislation provides specifically for the financial backing with which the system has to work. Here again the notification does pay attention to the Swaminathan Report. All this makes it necessary that the proposed CZM regime must be given a second look before it is too late.

* Formerly Professor and Dean, Faculty of Law, Cochin University of Science and Technology.

1. S.O. 114(E) dated 19-2-1991

2. The notification was issued under the powers given to the Central Government under Section 3(1) and (2)(i) of the Environment (Protection) Act, 1986.

3. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281 pp. 301-304

4. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281 pp. 301-304

5. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III], paragraphs 3.2.3., 3.2.4., 3.2.5., 3.7.1. and 3.7.2.

6. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III], paragraphs 3.2.3., 3.2.4., 3.2.5., 3.7.1. and 3.7.2.

7. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] paragraph 4.0

8. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] Preface p 1

9. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] paragraph 1.4.1.5.

10. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] Ch. 4

11. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] paragraph 4.1.2.(i)

12. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] paragraph 4.1.2 (viii)

13. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] paragraph 4.1.2. (ix)

14. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III], paragraphs 3.2.3., 3.2.4., 3.2.5., 3.7.1. and 3.7.2

15. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III] 4.1.3 (xiii). The construction of sea walls has been proposed by some States as one of the solutions for preventing damage by tidal waves. However, the construction of sea walls alters long-shore currents and modifies coastal geomorphology. In many places it also causes loss and fragmentation of coastal habitats. As a result it also prevents the access to the beach and estuaries which marine organisms need for breeding and rearing their young. Estuaries, which serve as habitats of mangrove species will be affected. Structures for preventing coastal erosion should be located beyond the High Tide Line.

16. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III 4.1.3.(xxv) In most cases of the composition, management authorities is imbalanced, having none or very little local community representation. If they are to be effective, the authorities at national and State level need to be reconstituted such that representation of local communities: community based organisations and non-governmental organisations are ensured. For efficient monitoring the coastal zone management authorities need to be constituted at district levels as well. There needs to be an active participation of local communities in the planning and monitoring of activities on the coast. This also dovetails with the point that local community representatives need to be on managing authorities.
17. S.O. 1070(E) issued by the MoEF dated 1-5-2008.
18. S.O. 114(E) dated 19-2-1991.
19. S.O. 1070(E) issued by the MoEF dated 1-5-2008, paragraph 2.
20. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 4(i). An indicative list is given in Appendix II. See S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 3(a)
21. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 4(ii). For an indicative list, see Appendix III. Coastal municipalities/corporations (the entire notified area), coastal panchayats with population density more than 400 persons per sq km (the entire notified area) as per the latest census of India, ports and harbors, notified tourism areas, mining sites, notified industrial estates, foreshore facilities for special economic zones, heritage areas, notified archaeological sites under the Protected Monuments Act, defence areas/installations, power plants and green field airports and expansion and modernisation of existing airports.
22. S.O. 1070(E) issued by the MoEF dated 1-5-2008, paragraph 4 (iii).
23. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix VI.
24. Under Section 3(2)(v) of EPA, the Central Governments can impose "restrictions of areas in which any industries, operations or processes or class of industries, operations or processes, shall not be carried out subject to certain safeguards".
25. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 3(a)
26. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix II. Mangroves, coral reefs, sand beaches and sand dunes, mudflats, marine wildlife protected areas under the Wildlife (Protection) Act, 1972, coastal freshwater bodies such as creeks and lakes, salt marshes, turtle nesting grounds, horse shoe crabs habitats, sea grass beds, sea weed beds and nesting grounds of birds.
27. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 3(1).
28. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraphs 3(4) and 6(1). The parameters as given in Appendix I are elevation, geomorphology, sea level trends and horizontal shoreline displacement.
29. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 4(ii)
30. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 6(iii), second sub-paragraph.
31. Items in Eleventh and Twelfth Schedules introduced by the 73rd and 74th amendments of the Constitution of India.
32. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix VI item 1(2)
33. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 6(iii) Coastal zone management - III.
34. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Paragraph 5(ii). The Central Government can exercise its necessary and expedient clause in S. 3(3) of EPA and appoint such authorities as are necessary to carry out functions under its supervision.
35. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix V item 15.
36. In these days, international financial crises, champions of globalisation, liberalisation and privatisation wake up from their slumber and lay emphasis on the need for effective monitoring in controlling cross border investment, trade and banking. See the speech of Prime Minister Manmohan Singh in the Asian and European leaders' meet at Beijing. *The Hindu*, 25-10-2008.
37. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix V item 16.
38. S.O. 1070(E) issued by the MoEF dated 1-5-2008, the parameters are elevation, geo-morphology, sea-level

trends and horizontal shoreline displacement.

39. Ajit Menon, Environmental Policy, Legislation and Construction of Social Nature, *Economic and Political Weekly*, 21-1-2006, p. 190
40. Ajit Menon, Environmental Policy, Legislation and Construction of Social Nature, *Economic and Political Weekly*, 21-1-2006, p. 192. The struggle should be to protect the communities already enmeshed in and swallowed by spaces of good governance and market based environmental management to help them get out of this market and good governance rhetorics.
41. S.O. 1070(E) issued by the MoEF dated 1-5-2008.
42. For a detailed discussion of the benefits and evils, see [M.S. Swaminathan, "Report to Review the Coastal Regulation Notification 1991", 2005 Ch. III], paragraphs 3.2.3., 3.2.4., 3.2.5., 3.7.1. and 3.7.2.
43. S.O. 1070(E) issued by the MoEF dated 1-5-2008.
44. S.O. 1070(E) issued by the MoEF dated 1-5-2008, Appendix, item (i) 2.
45. S.O. 1070(E) issued by the MoEF dated 1-5-2008, item (ii) 4.
46. S.O. 1070(E) issued by the MoEF dated 1-5-2008, item (ii) 4.
47. (1996) 5 SCC 281 pp. 297, 298 and 300
48. *Forest Friendly Camps Pvt. Ltd. v. State of Rajasthan*, AIR 2002 Raj 214 p. 217
49. Under Coastal Management Act, 1972 (USA), the Federal Government meets not less than 80% of the expenditure of coastal management programmes. Grants trickle down to States and from States to local governments and other agencies. See, for more details, see P. Leelakrishnan, *Environmental Law in India*, 2008, pp. 86-89

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