CHAPTER- VI
COASTAL DWELLERS’ RIGHT TO POLLUTION FREE ENVIRONMENT

6.1 Introduction

Coastal environment, in general is that environmental zone which can be defined as that lying at the interface between land and sea. The coast and its near areas on and off shore are an important part of a local ecosystem, the mixture of surface and salt water in estuaries provides many nutrients for marine life. Salt marshes and beaches also support a diversity of plants, animals and insects crucial to the food chain. This area witnesses high level of biological activity which is caused by the high level of biodiversity found in these places. This has in turn attracted a brisk human activity for thousands of years.

Many human-induced environmental impacts are found on the coasts which result in the climate changes contributing to an accelerated trend in sea level rise threatening coastal habitats. Pollution is occurring from a number of sources—garbage and industrial debris; the transportation of petroleum in tankers increasing the probability of large oil spills; small oil spills created by large and small vessels, which flush bilge water into the ocean. The activities like habitat degradation, overfishing trawling, catch of unwanted animals and climate change have resulted in decline of fish. Intensive fishing has spread from a few concentrated areas to encompass nearly all fisheries since the growth of global fishing enterprises after the 1950s. The scraping of the ocean floor in bottom trawling is devastating to coral, sponges and other long-lived species that do not recover quickly. This destruction alters the functioning of the ecosystem and can permanently alter species composition and biodiversity. The capture of unintended
species in the course of fishing is typically returned to the ocean only to die from injuries or exposure. The bycatch in marine represents about a quarter of all marine catch. In the case of shrimp capture, the bycatch is five times larger than the shrimp caught. The Governments as well as the law courts have started taking this situation seriously and have tried their best to prevent further deploring of the situation.

The Coastal Zone Management (CZM) is a process of governance that consists of the legal and institutional framework necessary to ensure that development and management plans for coastal zones are integrated with environmental and social goals, and are developed with the participation of those affected. The term ‘Coastal Zone Management’ means and includes the management and maintenance of the environmental wellbeing of the coastal area and such other structures which are promoting the coastal aspects such as harbors, ports etc., and the coastal waters such as internal waters, back waters, territorial sea, continental shelf and exclusive economic zones within the coastal state’s jurisdiction. Marine resources management programmes were initiated as early as 1897, when the Indian Fisheries Act was passed. Though the said Act was passed long ago protective measures are not properly implemented. And therefore, currently, coastal zones face a bleak future due to growing challenges that stem from hunger, health-related issues, and violent conflicts. These challenges threaten the populations and economies of countries around the globe, this in turn results into greater strain on the critical resources offered by coastal zones. And they are stressed to limit. This leads to a sharp conflict between the need for immediate consumption or use of

3 Act No. 4 of 1897.
coastal resources and the need to ensure the long-term supply of those resources. In many countries this conflict has already reached a critical stage. Large parts of the coastal zone polluted from local or upland sources, fisheries severely are degraded or destroyed, wetlands drained, coral reefs dynamited and beaches long since ruined for human enjoyment. Effective action is urgently needed to maintain these coastal resources. An integrated approach is required to answer this need. This need has resulted in framing a management system which is now called Integrated Coastal Zone Management (ICZM). Several issues related to coastal management were addressed by various ministries and departments of State and Central Governments. However, all these management initiatives were concentrated and related to specific issues such as coastal erosion, coastal pollution, ports and harbors, waterways and sea life, etc. The Coastal Regulation Zone Notification issued in 1991 was the first major legislation that was aimed at regulating various coastal activities and protecting the coastal environment. The scope for development of ocean energy, wave energy, offshore mineral and oil deposits, sea farming and coastal aquaculture add to the value of these areas. Sea level rise and human activities make the preservation and management of coastal zone resources and its environment of utmost importance.

A Coastal region is the area where land meets the sea or ocean. It is an interface between the land and the sea and therefore this region is unique geological, ecological and biological domain of vital importance to an astounding array of terrestrial and aquatic

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6 The Gazette of India (Extraordinary), No. 105, Part II, Section 3(ii) dated February 20, 1991.
7 Report of the Prof. M.S. Swaminathan Committee on the CRZ notification,2005, pp.6-7.
8 Environment Economics Research Committee, Central Marine Fisheries Research Institute Cochin, 2002 Rport,p.7
life forms. It has very significant role also in the rise and fall of humankind. Natural resources such as air, water and land are fundamental to all life forms; they are, much more than the monetary wealth and economic infrastructure, they need to be considered as the base of our survival. Large numbers of people who hail from coastal regions are fully dependent on the coastal life system to lead their daily life and attain the economic prosperity. Coastal environment plays a vital role in the nation's economy by virtue of its resources, productive habitats, water ways and rich biodiversity.\textsuperscript{9} Mangrove forest ecosystems, in particular, are known to have multiple functions of great economic importance, which include timber production, coastal flood protection and provision of fish spawning and nursery areas.\textsuperscript{10} The coastal zone is the most productive area accessible to people. Fish and other seafood meet the significant dietary needs for millions of people around the world. The fishery and aquaculture industries are commercial mainstays for thousands of coastal communities. The coastal region is an important safety feature for the people living near the ocean. The coastal zone is a gateway to the oceans resources, a livelihood for local communities, a reserve for special flora and fauna, and an attractive area for leisure and tourism.\textsuperscript{11} Many types of coasts provide a barrier from natural hazards emanating from turbulent seas. Beaches, dunes, cliffs and barrier islands all act as buffers against the high winds and waves associated with coastal storms. The recreational aspects of coastal zone are another reason, to value


\textsuperscript{10} Clare Shine and Cyrille de klemm, Wetlands, Water and the Law, (IUCH Environmental Law Centre, Bonn, Germany, 1999), p.69.

The coastal zone also provides for unique habitat for thousands of animals and plant species. Coastal ecosystem, as a whole, is a dynamic and regenerative force, if left alone natural mechanism maintains equilibrium between natural environment and living things.\(^\text{13}\)

Coastal environment is one of the complex phenomena, owing to its progressive or cyclic changes due to dynamic processes and it supports a variety of economic activities such as industrial, commercial and recreational, etc. Coastal areas and oceans are complex and fragile environments with many different functions linked to public health, food security, and other economic and social benefits. The coastal environment, is now, highly disturbed and threatened due to increase of population and developmental activities.\(^\text{14}\)

The coastal zones of the world contain vitally important economic and environmental resources, and yet they are threatened by erosion, flooding and environmental damage from urbanization, industrialization and unwise protection schemes.

People are depending on the oceans and coasts, to secure their resources for their survival, health and well-being, and that a significant number of people derive their food security and economic livelihood from the coastal and marine environment. Many of those areas, in particular low-lying coastal areas and Small Island developing States, are


\(^{13}\) Ibid. p. 3

vulnerable to the rise in the sea level and climate-related natural disasters as well as the effects of pollution of the marine environment, resulting from land-based activities.\textsuperscript{15}

The contamination of coastal waters with sewage-borne pathogens creates health problems. Since the 1972 \textit{UN Conference on Human Environment} held in Stockholm human induced changes in the natural flow of sediments have emerged as a major threat to coastal habitats.\textsuperscript{16} The members of United Nations, participating in Earth Summit in the 1992, made an ambitious effort to provide policy guidance across the entire spectrum of environment, development, and social issues confronting humankind.\textsuperscript{17} According to the UN Convention on the Law of the Sea, the States have fundamental duty to prevent, reduce and control pollution of the marine environment from land-based activities.\textsuperscript{18}

Coastal zones have many uses and serve many functions. These areas provide natural, social and economic facilities. A great variety of social and economic activity takes place in coastal zones including:

1. Tourism
2. Commercial and recreational fishing
3. Oil and gas development
4. Habitats for endangered species, species breeding and resting areas
5. Groundwater recharge
6. Water treatment; and
7. Flood attenuation.

\textsuperscript{15} Beijing Declaration on furthering the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities -2006, (UNEP/GPA/IGR 2/7,annex V).
\textsuperscript{17} Chapter 40 of Agenda 21 of Earth Summit 1992.
Over 50 per cent of the earth’s population lives within 100 kilometers from the coasts, and this population is expected to increase to 35 per cent by the year 2025. Approximately 634 million people live in coastal zones. In India, the coastal and offshore environment supports rich biodiversity and provides basic source of food and income for up to 13 million people. Land-based activities like clearing vegetation, mining, building, roads, homes, industries and hotels generate harmful impacts and together affect the health of the invaluable salt and brackish water ecosystems, and of the people who depend on them as a source of wealth and recreation. Development activities in various sectors done through unsustainable practices of utilization of natural resources have contributed to increased environmental degradation, which resulted in drastically decreased fish population. Physical alteration of coastal areas due to urbanization, industrialization, tourism, agriculture, changing physical land forms in coastal areas and built infrastructure and of inland areas which impact on the coastal environment and the destruction of habitats is now probably the most significant single threat to the coastal environment. Land-sourced nutrient pollution has caused both ecological and public health problems.

Major activities that are responsible for the coastal pollution in India are discharge and disposal of untreated domestic and industrial wastes; industrial effluents contain an

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19 Costa Rica Declaration Pro-Poor Coastal Zone Management, The International Federation of Surveyors (FIG), Copenhagen, Denmark, 2008, p.7.
22 Cormac Culliman, Integrated Coastal Management Law, (Food and Agricultural Organization of UN, Rome, 2006), p.16
appreciable amount of metals. From their long term and continuous discharge into the water body results in elevated metal concentrations in aqueous environment,\textsuperscript{24} discharges of chemical mixed water, harbor activities such as dredging, cargo handling, dumping of ship wastes, spilling of cargo’s chemicals and metal ores, oil transport, side effects of mechanized fishing activities, such as draining of waste oil, painting of fishing vessels, scrapping of metal linings of fishing boats, dumping of waste and trash fishes, oil transport, oil exploration and oil refining activities, ship breaking, recreation and tourism activities, salt production, etc. also create concern in the coastal pollution sector.\textsuperscript{25} The quality of life in coastal communities is inextricably linked to the quality of the coastal and marine resources. The management task is to balance economic development, social needs and environment protection.\textsuperscript{26} Unplanned and uncontrolled development of the coast has the real potential to damage the social, economic and environmental interests of the residents within this area, each State and Territory and each region or unit of local government.\textsuperscript{27}

The corals of Indian mainland consisting of fringing reefs and coral patches are severely threatened by siltation, pollution from industry, sewerage from settlement, shipping, thermal plants, tourism, mining and collection, fishing etc. Coral reefs are natural protective barriers against soil erosion and storm surge. The coral animals are highly adaptable for collecting plankton from the water, thereby collecting nutrients, which are largest biogenic calcium carbonate producers. They provide a substrate for

\textsuperscript{25} Report of the Prof. M.S. Swaminathan Committee on coastal regulation Zone, 2005.
\textsuperscript{26} Costa Rica Declaration Pro-Poor Coastal Zone Management,2008. (Fig Publication No. 43).
mangroves. Coral reefs are constantly degraded. About 20 per cent of the Indian population reside in the coastal area and they derive their resources from the coast.\textsuperscript{28} In coastal rural areas fishing of near shore waters and farming of coastal lowlands are the major economic activities, supplying fish and agricultural products for subsistence of the inhabitants of near and far off urban centers. Fish is an important part of the diet for the majority of the coastal population and a major source of animal protein in India. It is also a source of income in the coastal regions in the absence of, or limited opportunities of employment in those regions, this sector provides food and livelihood security to the large coastal population.\textsuperscript{29} Activities that add further value to coastal resources include sea borne sports, recreation and tourism, which have become major sources of domestic revenue and foreign exchange earnings in many coastal nations. The intrinsic economic value of coastal resources represents a “capital” investment for humankind by nature.\textsuperscript{30} The well-being of these citizens and the economic viability of the places where they live and work depend on the preservation of the bio-physical characteristics, natural resources, marine and terrestrial biodiversity, landscape and cultural heritage of coasts. However, coastal areas face continuous pressures from human activities such as tourism, trade, fishing, port activities, shipping, transport, energy production, etc., particularly where development exceeds the carrying capacity of the coastal zone. Impacts from human activities include the decline of fish stocks, sediment contamination from inland or marine pollution, issues of water quality as demand exceeds supply or wastewater treatment capacity and the loss of coastal ecosystems such as coastal wetlands that are

\textsuperscript{28} Supra note 12,p.1  
\textsuperscript{30} Supra note A, p.4
important buffer zones. Coastal regions are also increasingly vulnerable to the possible impacts of climate change, whether this is in the form of coastal flooding from rising sea levels, coastal erosion, water scarcity and droughts, saltwater infiltration of aquifers, habitat destruction, or loss of biodiversity. These negative environmental impacts usually lead to threats to the key economic activities such as the development of forms of sustainable energy, tourism and trade and also to the social issues including unemployment and social instability, loss of development, destruction of cultural heritage and competition between stakeholders for the resources.

6.2. The Law

The Indian Fisheries Act, 1897.\(^{31}\)

The Government of India has been very sensitive to the said issues and has adopted legislative measures to conserve the fisheries resources since a long period of time. *The Indian Fisheries Act 1897* prohibits destruction of fish by explosives in inland waters and on coastal area. The Act stipulates that ‘any person who uses dynamite or any other explosive substance in any water with an intent thereby to catch or destroy any of the fish that may be therein, shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.'\(^{32}\) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.\(^{33}\)

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\(^{31}\) Act No. 4 of 1897.

\(^{32}\) Section 4 of *the Indian Fisheries Act, 1897*.

\(^{33}\) Section 5 of *the Indian Fisheries Act, 1897*. 
The Merchant Shipping Act, 1958.\textsuperscript{34}

The Merchant Shipping Act enacted with an intention to develop and ensure the efficient maintenance of a marine in the manner which is best suited to serve the national interest and for that purpose to establish a National Shipping Board. Under this Act, the Government has power to Control the pollution from ships and offshore platforms. The government is authorized to give notice to owner of polluting ship, (1) where the Central Government is satisfied that (a) oil pilferages or is likely to pilferage from a tanker, a ship other than a tanker or any off-shore installation, and (b) the oil so pilferages or is likely to pilferage is causing or threatens to cause pollution of any part of coasts or coastal waters of India, it may, for the purpose of minimizing the pollution already caused or for preventing the pollution threatened to be caused.\textsuperscript{35} No oil or oily mixture shall be discharged from an Indian tanker anywhere into the sea or from a foreign tanker anywhere within the coastal waters of India except the circumstances as contained in this Act.\textsuperscript{36}

The Indian Ports Act, 1908.\textsuperscript{37}

This enactment relates to ports and port charges, provides rules for the safety of shipping and conservation of ports. The Indian Ports Act covers a wide range of operational and procedural aspects governing the operation of Indian ports and delineates powers and responsibilities of state and union governments.

The Government may, in addition to any rules, which it may make under any other enactment for the time being in force, make such rules consistent with this Act, as it

\textsuperscript{34} Act No.44 of 1958.
\textsuperscript{35} Section 356 J of the Merchant Shipping Act, 1958.
\textsuperscript{36} Section 356 C of the Merchant Shipping Act, 1958.
\textsuperscript{37} Act NO. 15 of 1908.
thinks necessary for any of the purposes contained in the provision of the Act for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same.\textsuperscript{38} No ballast or rubbish and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (ee) of sub-section (1) of section 6 of this Act apply, otherwise than in accordance with such rules.\textsuperscript{39} Except with the permission of the conservator, removing any stones, shingle, gravel, sand, soil or injuring shores of any port subject to this Act is prohibited.\textsuperscript{40}

\textit{The Wildlife (Protection) Act, 1972}.\textsuperscript{41}

The \textit{Wildlife (Protection) Act} of 1972 provides the basic framework to ensure the protection and management of wildlife. The Act was amended subsequently in 1982, 1986, 1991, 1993, 2003 and 2006 to accommodate provisions for its effective implementation. This is an Act which provides for the protection of wild animals, birds and plants and matters connected with them, with a view to ensure the ecological and environmental security of India. The term ‘wildlife’ includes any animal, aquatic or land vegetation which form part of any habitat. The Act provides for the protection of ‘specified’ plants listed in Schedule VI. No person is allowed to willfully pick, uproot,
damage, acquire or collect any specified plants from forest land and other areas specified by the Central Government.\textsuperscript{42}

The Water (Prevention and Control of Pollution) Act, 1974.\textsuperscript{43}

This Act was enacted for the prevention and control of water pollution and maintaining and restoring of wholesomeness of water. The Central and State Pollution Control Boards have been constituted under section 3 and 4 of the Act respectively. The main functions of the Central Board shall be, to promote cleanliness of streams and wells in different areas of the States\textsuperscript{44} and plan and cause to be executed a nationwide programme for the prevention, control or abatement of water pollution.\textsuperscript{45} The Act regulates control of water pollution from land-based sources. And also provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter, whether directly or indirectly, into any stream or well or sewer or on land\textsuperscript{46} and no person, shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.\textsuperscript{47} This Act regulates the water pollution in coastal area. It is applicable to maintain water quality in coastal ecosystem.

\textsuperscript{42} Section 17A of the Wildlife (Protection) 1972.
\textsuperscript{43} Act No. 6 of 1974.
\textsuperscript{44} Section 16(1) of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{45} Section 16(2)(h) of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{46} Section 24 of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{47} Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.
The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.\(^{48}\)

This is an Act to provide for the regulation of fishing by foreign vessels in certain maritime zones of India and for matters connected therewith. ‘Maritime zones of India’ means the territorial waters of India or the exclusive economic zone of India; subject to the provisions of this Act, no foreign vessel shall, except under and in accordance with: (1) a license granted under Section 4 of this Act, or (2) a permit granted under Section 5, of this Act, by the Central Government, be used for fishing within any maritime zone of India.\(^{49}\) The Act protect the coastal resources from the over exploitation.

The Environment (Protection) Act, 1986.\(^{50}\)

The Environment (Protection) Act was passed to provide for the protection and improvement of the environment and the prevention of hazards to human beings, other living creatures, plants and property. Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.\(^{51}\)

In exercise of powers conferred by the Environment (Protection) Act, 1986\(^52\) the Central Government notified the Environment (protection) Rules, 1986\(^53\). Under the powers conferred by the Clause (d) of sub-rule (3) of Rule 5 of the Environment

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\(^{48}\) Act No.42 of 1981.
\(^{49}\) Section 3 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981. AIR 1993 Cal 215
\(^{50}\) Act No.29 of 1986.
\(^{51}\) Section 3 of the Environment (Protection) Act, 1986.
\(^{52}\) Act No. 29 of 1986.
\(^{53}\) The Gazette Of India, Extraordinary, Part II, Section 3(i),19. November 1986.
(Protection) Rules, 1986, and all other powers vesting in its behalf, Government of India, on February 19, 1991, issued *the Coastal Regulation Zone (CRZ) Notification*.\(^{54}\)

**The Coastal Regulation Zone (CRZ) Notification, 1991.**\(^{55}\)

Under the CRZ Notification, 1991, the Central Government declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL) as well as the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone and imposes restrictions on the setting up and expansion of industries, operations or processes etc. in the Coastal Regulation Zone (CRZ) as defined in the Notification of 1991.\(^{56}\) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of the said notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in the CRZ Notification, 1991.\(^{57}\) The provision prohibits discharge of untreated wastes and effluents from industrial cities or towns and other human settlements. It also imposes a duty on the concerned authorities to frame schemes for phasing out the existing practices, if any, within a reasonable time.\(^{58}\) The Notification prohibits the manufacture or handling or storage or disposal of hazardous substances and mining of lands, rocks and other substrata materials, except those rare mineral, not available outside the CRZ areas.\(^{59}\)

Several State Governments and other stakeholders expressed difficulties in implementing its provisions, some of which have been based on the directions of

\(^{54}\) The Gazette Of India, Extraordinary, Part II, Section 3(ii), 19th February, 1991.

\(^{55}\) Ibid.

\(^{56}\) Rule 2(1) of the Coastal Regulation Zone (CRZ) Notification, 1991.

\(^{57}\) Rule 3(3) of the Coastal Regulation Zone (CRZ) Notification, 1991.

\(^{58}\) Rule 2(5) of the Coastal Regulation Zone (CRZ) Notification, 1991.

\(^{59}\) Rule 2(ii)&(ix) of the Coastal Regulation Zone (CRZ) Notification, 1991.
the Supreme Court. The Union Environment Ministry has notified the revised and modified Coastal Regulation Zone (CRZ) Notification 2011 replacing the CRZ notification of 1991.

*The Coastal Regulation Zone (CRZ) Notification, 2011.*

The Central Government notified CRZ Notification, 2011, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas. It does declare the coastal stretches of the country and the water area up to its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands up to its territorial limit, as Coastal Regulation Zone (CRZ) and restricts the setting up and expansion of any industry, operations or processes of manufacture or handling or storage or disposal of hazardous substances.

According to the notification, the water and bed area between the low tide line to the territorial water limit of 12 nautical miles will be included for purposes of regulation. The new notification has classified coastal areas into four categories, CRZ-I to IV. While the first three zones are similar to the earlier classification, CRZ-IV comprises territorial waters.

For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ areas are classified as follows,

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60 The Gazette of India, Extraordinary, Part-II, Section 3(ii), 6th January 2011.
1. CRZ-I: Ecologically sensitive areas such as mangroves, coral reefs, salt marshes, turtle nesting ground and the inter-tidal zone.

2. CRZ-II: Areas close to the shoreline and which have been developed.

3. CRZ-III: Coastal areas that are not substantially built up, including rural coastal areas.

4. CRZ-IV: Water area from Low Tide Line to the limit of territorial waters of India.\(^{62}\)

6.3. Judicial Decisions

In *M/s Vaamika Island (Green Lagoon Resort) v. Union of India and Others*,\(^{63}\) where, petitioner filed a writ Petition, before the High Court of Kerala seeking a declaration that properties of petitioner were wrongly included in Map No. 32A of the Coastal Zone Management Plan (CZMP), prepared by the Kerala Coastal Zone Management Authority (KCZMA), based on the guidelines issued by the Ministry of Environment and Forests (MoEF), and hence ultra vires the *Coastal Regulation Zone (CRZ) Notification, 1991* and *CRZ Notification, 2011*. Petitioner has also sought for a declaration that classification of its properties situated in the Vettilla Thuruthu Island as Filtration Pond and the consequent categorization of the same under CRZ-I is unconstitutional, being *ultra vires* the CRZ 1991 as well as CRZ 2011.

The Vembanad Backwater is a Critically Vulnerable Coastal Area, which supports exceptionally large biological diversity and the second largest wetlands in India. There are several Islands in and around Vembanad Backwaters; Vettilla Thuruthu is one amongst them.

\(^{62}\) Rule 7 of the Coastal Regulation Zone (CRZ) Notification, 2011.

\(^{63}\) (2013) 8 SCC 760.
Ministry of Environment and Forest (MoEF) also filed a statement before the High Court, wherein it was stated that the Coastal Zone Management Plan for Kerala was prepared by the MoEF on 27.9.1996, and that the construction of beach resorts within CRZ area requires prior clearance from MoEF, based on the recommendations of the KCZMA. Further, it was also pointed out, that Category I (CRZ-I) includes the area that are ecologically sensitive and important to the protection of Coastal Biomes and that the Government of India, in exercise of the powers conferred under Subsections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986, has notified the KCZMA as the authority for the implementation of the provisions of both CRZ Notification 1991 as well as CRZ Notification 2011. The High Court of Kerala points out that buildings, which have been constructed by the petitioner after the notification issued in 1991, clearly violated the notification, hence, the Court ordered to Government to take action for the removal of the same. On appeal, the Supreme Court upheld the decision of High Court of Kerala. The Supreme Court pointed out that such notifications have been issued in the interest of protecting the environment and ecology in the coastal area and the construction in violation of such regulations cannot be lightly condoned.

In The Goa Foundation and Others v. The North Goa Planning Authority, where, the petitioners filed the writ petition alleging that the construction of Palm Hotel by the respondent violates the Coastal Regulation Zone Notification, 1991. The petitioners were filed this application for stay also, on the ground that the construction works are causing irreversible damage everyday to the fragile ecology of the area. The Interim Report of the Committee submitted, after its members visited various places in

64 AIR 2001 SC 184.
Goa, on a complaint that a series of violations were being done in the State in respect of constructions made in breach of the provisions of the Notification. The Report further noted that on visual inspection of the beach the site of the construction is clearly located on a bay and since the river Mandovi flows into the bay this is an estuarine area which is ecologically sensitive and vital for marine life. The Report has taken note that the water extends from the beach up to the hotel site and it also observed that several marine organisms and sea life like star fish, crabs, cuttlefish and variety of sea shells were found in the said land. It was also reported that there was natural ‘beachfront vegetation’ on either side of the site. The petitioners also brought to the notice of the Court that the Supreme Court by its order dated 13th December, 1994 has laid down a ban on constructions in the said area, at least up to 500 meters from the sea water, as a maximum High Tide and therefore the said area from the High Tide Level up to 500 meters should be kept free from constructions of any type. The Government of Goa through the Chief Town Planner also filed an affidavit, wherein it was stated that the plans submitted by the respondent for the construction of their hotel at Miramar were scrutinized by the Planning and Development Authority and 'No Objection Certificate' was granted after considering all the aspects including the that of environmental interests.

While dismissing the said petition the Supreme Court made it clear that it did not find any ground to interfere in the matter. The respondent started the work after all clearances and no objection certificates were granted by the concerned authorities, both at the State and Central level. The Court further pointed out that the findings of the Interim Report of the Committee cannot be said as adverting to the Court any new facts which might have given to the petitioners a fresh cause of action to apply again for the stoppage
of the construction on the strength of any subsequent violation of the *Environment (Protection) Act*. The said judgment seems to direct all the States, which were parties in the petition, not to permit the setting up of an industry or construction of any type in an area at least up to 500 meters from the sea water as the maximum High Tide Line and thus it does not seem that this judgment can be extended so as to apply its ratio to constructions which already started and are in full progress after having been cleared on all technical and environmental aspects by the concerned authorities.

In *P. Navin Kumar And Others v. Bombay Municipal Corporation and others*.

where, the petitioners filed writ petition, in the Bombay High Court, as Public Interest Petition, against the construction of the new toilet block near "Gateway of India" in Mumbai by the Municipal Corporation in violation of *Coastal Regulation Zone (CRZ) Notification, 1991*, and other provisions of the *Environment (Protection) Act* and for demolition of the old toilet block. The High Court observed that Gateway of India was fully developed up to shore line. It is within the Municipal limits of Greater Mumbai. It was already completely built up and it has been provided with drainage and approach roads and other infrastructural facilities. Hence, the entire city of Mumbai would fall within the ambit of CRZ II. And also the Court pointed out that once an area is covered under CRZ II, it could not fall within the ambit of CRZ I or CRZ III. The construction of the toilet block was not beyond the road on the sea-ward side. The Municipal Corporation constructed toilet block according to approved rules.

On appeal, the Supreme Court of pointed out as to the observations in the impugned judgment of High Court that the entire city of Bombay would fall within the

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65 1999 (3) LRI 57.
ambit of Coastal Regulation Zone II, it was submitted that the High Court was not concerned with the other areas except Fort area, where the structure of the Gateway of India is situated and whole of the area is built up within the roads. In the view of matter, it was submitted that it was not necessary in this case to consider whether the structure or any other place falls within the CRZ I or CRZ II. It was then submitted that the State Government had clarified that it would be sending the revised guidelines for CRZ and it was most unlikely that the structure of the Gateway of India would be falling with the CRZ I and the area around it would fall in CRZ II and that the said revised proposal was likely to be issued by the State Government very soon. Accordingly the petition is disposed of.

In *S. Jagannath v. Union of India & Ors.*\(^6^6\) where, a writ petition was filed, by a voluntary organization working for the upliftment of the weaker sections of society, under Article 32 of the Constitution of India, alleging that States are allowing big business houses to develop prawn farms on a large scale in the ecologically fragile coastal areas of the States, concerned in violation of *Environment Protection Act*, 1986, and the rules framed there under and various other legislations. There was loss of agricultural land and mangroves, obstruction of natural drains and destruction of natural seed resources, use of drugs and chemicals, and extraction of groundwater in coastal area by shrimp culture, The petitioner demanded to stop intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, and to prohibit the use of waste and wetlands for prawn (shrimp) farming, and also requested to constitute a National Coastal Management Authority to safeguard the marine life and coastal areas.

\(^{66}\) AIR 1997 SC 811.
The Court observed that under Clause (d) of Sub-rule (3) of Rule 5 of the *Environment (Protection) Rules, 1986*, wherein it was declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwater which are influenced by the tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL) and the lands between the Low Tide Line (LTL) and the HTL are Coastal Regulation Zone. The Central Government has imposed various restrictions in the said Notification. The Court directed the Central Government to direct all the respondent States not to permit the setting up of any industry or the construction of any type in the area at least up to 500 meters from the seawater at the maximum High Tide.

The Court ordered as follows:

1. The Central Government shall constitute an authority under Section 3 (3) of the *Environment (Protection) Act, 1986* and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shores, water front and other coastal areas, and especially to deal with the situation created by the shrimp culture in the Coastal States and Union Territories.

2. The authority so constituted by the Central Government shall implement the ‘Precautionary’ principle and the ‘Polluter Pays’ principle.

3. All aquaculture industries, shrimp culture industries, shrimp culture ponds operating in the coastal regulation zone, as defined under the CRZ Notification, shall be demolished and removed from the said area before March 31, 1997.

In the case of *Piedade Filomena Gonsalves v. State of Goa and Ors*,\(^6^7\) two writ petitions were filed before the High Court of Bombay at Goa. 1. CWP No. 76 of 1995 filed by the appellant's neighbor seeking demolition of the construction put up by the

appellant. 2. CWP No. 237 of 1999 was filed by the appellant seeking protection of the construction. The petitioner in CWP No. 76 of 1995, alleged that the appellant's construction is unauthorized, and also encroaches the area within the High Tide Line in Coastal Regulated Zone, within which no construction is permissible under the rules.

The High Court directed that the construction put up by the respondent in CWP No. 76 of 1995 who is also the appellant of CWP No. 237 of 1999 to be demolished.

On appeal, the Supreme Court held that the Coastal Regulation Zone notifications have been issued in the interest of protecting the environment and ecology in the coastal area. Constructions raised in violation of such regulations cannot be lightly condoned. And the Court directed to demolish Construction of the building, which was constructed without securing permission from the competent authorities.

In Trust for Restoration of Ecology v. The Member Secretary Tamil Nadu Coastal Zone Management Authority, the petitioner, a public charitable trust, filed writ petition, before the High Court of Madras, seeking writ of Mandamus or any other order or direction in the nature of a writ directing the respondent Member Secretary, Tamil Nadu Coastal Zone Management Authority, to take all measures including preventive measures for cessation of all illegal activities including clearing and leveling of land, extraction and removal of sand, raising unauthorized structures on the Elliots Beach, north of the Urur Olcott Kuppam and ensure compliance of the Coastal Regulation Zone Notification, 1991, to remediate the areas affected by the sand extraction.

The Court issued the writ of mandamus, and pointed out that it is the statutory duty of the respondent to take all measures including preventive measures for cessation

of all illegal activities like clearing and leveling of land, extraction and removal of sand, raising unauthorized structures, in the area in question.


The main grievance in this petition is that a Notification dated 19.2.1991 declaring coastal stretches as Coastal Regulation Zones, which regulates the activities in the said zones has not been implemented or enforced. This omission has led to continued degradation of ecology in the said coastal areas. According to the petitioner, these coastal areas are highly complex and have dynamic eco-systems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors responsible for the decline in environmental quality in these areas. The developmental activities in the coastal areas are stated to cause short-term and long-term physical, chemical and biological changes that will and have caused damage to flora and fauna, public health and environment. It is further alleged that as a

\(^{69}\) AIR 1996 SC 1446.
consequence of indiscriminate industrialization and urbanization without the requisite pollution control systems, the coastal waters are highly polluted.

The Supreme Court issued an order to all coastal state governments to prepare the management plans of their coastal areas based on CRZ Notification and to take necessary steps to implement the plans. Consequently, all the nine coastal states prepared the plan and they were approved by the Ministry of Environment and Forest after putting forth certain conditions and queries as well as clarifications to many sections in the plans.

The writ petition also challenged the validity of the amendments to the main Notification of 1991, especially those which sought to provide the Centre with discretionary powers to permit any construction within the 200 meters of ‘No Development Zone’ (NDZ) along any part of the coastline. The Court observed that the Government had framed regulations to protect and preserve the environment and save it for the future generations and to ensure good quality of life. Parliament had enacted the anti-pollution laws, namely, *the Water (Prevention and Control of Pollution) Act, 1974*, *the Air (Prevention and Control of Pollution) Act, 1981* and *the Environment (Protection) Act, 1986*. These Acts and Rules framed and Notification issued there under contained provisions which prohibit or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, an infringement of law, which is actively or passively condoned for personal gain, will be encouraged which amounts to and in turn, leads to a lawless society. Violation of anti-pollution laws, not only degrades quality of life, but the non-
enforcement of the legal provisions often results in ecological imbalance and degradation of the environment, the adverse effect of which will have to be borne by the future generations.

In the case of *Essar Oil Limited v. Halar Utkarsh Samiti*, Court pointed out that the laying of pipelines is one of the exceptions to the general bar against any construction in the CRZ-I areas. It cannot be said that the invariable consequence of laying of pipelines through ecologically sensitive areas has been the destruction or removal of the wildlife. It would, ultimately, be a question of fact to be determined by experts in each case. There is no prior presumption of destruction of wildlife in the laying of pipelines. Cases of oil spills have undoubtedly been ecologically disastrous and have drawn the attention of the world, but no attention was drawn to any instance of leakage resulting from the laying of pipelines.

In the case of *Union Territory of Lakshadweep v. Seashells Beach Resort*, the Supreme Court set aside the interim order of the High Court of Kerala. The High Court had directed the appellants to permit the respondent to run the resort at Agatti. Equitable considerations were wholly misplaced in a situation where the very erection of the building to be used as resort violated the CRZ requirements or the conditions of land use diversion. The resort could not be commissioned under judicial order in disregard of serious objections that were raised by the Administration. In the said case objections had to be answered by the respondent before any direction could be issued by the High Court. Supreme Court appointed an Expert Committee for the preparation of the Integrated Island Management Plan.

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71 AIR 2012 SC 2309.
In case of *Union of India v. Chennai Metropolitan Development Authority*,\(^{72}\) the main point, which was raised before the High Court of Madras, was the applicability of the impugned notification (CRZ Notification) for construction activities, which are not related to the industries. The Court observed that though the CRZ Notification has been issued under the *Environment (Protection) Act, 1986* and the *Environment (Protection) Rules, 1986*, it applies to all environmental degradations. It is immaterial as to whether the proposed construction activity is by any individual or Government or Public Sector undertaking. It cannot be held that the activities prohibited or regulated are only industrial. The expressions contained in the Act should be given the widest possible meaning so as to prevent the possibility of any environmental degradation. The expressions are wide enough to include any activity, including the construction of a building even for residential purpose.

It was held in the case *Ansari Konath v. State of Kerala*,\(^ {73}\) that, by delegation of power, the Central Government does not stand denuded of its authority to initiate action under Sec. 5 of the *Environment Protection Act, 1986*. The Kerala High Court pointed out that the report of the expert is sufficient to the Ministry of Environment and Forests to pass orders against the degradation of the environment. Constitution of State Coastal Zone Management Authority does not denude the powers of the Central Government to issue directions under section 5 of the *Environment Protection Act, 1986*, as the mangrove forests in Kerala comes under CRZ-I and action can be initiated.

\(^{72}\) 2006(4) CTC 460.  
\(^{73}\) ILR 2011 (1) Ker 403.
In *Madereddy Padma Rambabu v. District Forest Officer*,\(^74\) where, some owners of agricultural lands were carrying shrimp culture, prawn culture as also, aquaculture in their agricultural lands. Small agriculturists who cannot carry on their agricultural activities because of prawn and shrimp culture or aquaculture in the surrounding lands and their lands have been rendered unfit for agriculture. The revenue and the forest officers demolishing the tanks erected for shrimp culture, prawn culture as also, aquaculture. And also refused to give permission to renew thereof. The petitioner filed a writ petition before the High Court of Allahabad. The contention of the petitioner was that the revenue or the forest officers have been acting illegally and without jurisdiction in interfering therewith, by either demolishing the tanks erected for shrimp culture, prawn culture as also, aquaculture. The High Court held that the directions issued by the Supreme Court of India apply to all types of aquaculture like prawn culture, shrimp culture. The directions of the Supreme Court are not confined to shrimp culture or prawn culture in brackish/saline water within Coastal Regulation Zone but also applicable to aquaculture and prawn culture in fresh water.

In case of *Krishnadevi Malchand Kamathia & Others v. Bombay Environmental Action Group & Others*,\(^75\) the petitioners knowingly and purposely damaged the mangroves and other vegetation of the wetland of the CRZ-I area, violating the order of the Supreme Court dated 7.5.2010 in Civil Appeal No.4421 of 2010 and District Collector’s order dated 27.1.2010 against Salt harvesting by solar evaporation of sea water. An application was filed by the District Collector, Mumbai Suburban District, to initiate the contempt proceedings against the appellants Krishnadevi Malchand Kamathia

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\(^74\) 2002 (1) ALD 728.

\(^75\) (2011) 3 SCC 363.
& Ors., for violating the order of the Court and his own order, and to issue directions to remove the newly constructed bund and allow sea water to come in so as to save the mangrove forest. Further direction has been sought against the appellants to remove the debris, soil, stones which were used to construct the bund. The Court held that the action of the appellants is not lawful at its inception and directed to restore the height and width of the bund as existed prior to the order passed by the District Collector.

The conservation of wetlands was the issue in *Consumer Action Group v. Union of India*,\(^\text{76}\) (The Adyar Creek Case). Where, the writ petition was filed for the issue of a writ of mandamus against the respondents to restore the land in the Adyar Creek area of Mylapore village, to its original character and to forbid the respondents from undertaking any development or construction activity in that area. The petitioner contended that conversion of a low lying area by filling the same with sand for the construction of a memorial to Dr. Ambedkar, resulted in ecological imbalances, which lead to environmental deterioration. The Madras High Court directed the Government of Tamil Nadu to reconsider the proposal in a more rational way and ensure the ecological integrity of the wetlands.

In the case of *People United For Better Living in Calcutta v. State of West Bengal*,\(^\text{77}\) a writ petition was instituted against the State of West Bengal, challenging the attempt of the State Government to reclaim the wetlands on the eastern side of the Calcutta Metropolis for the proposed World Trade Centre, to promote trade activities, not only of Calcutta but also of the country as a whole. Establishment of World Trade Centre was not allowed by the Court on the ground that no material was produced on record by

\(^{76}\) (1994) 1 MLJ 481.

\(^{77}\) AIR 1993 Cal 215.
the State to show that the project will result in social benefit. The Calcutta High Court clearly considered the protection of wetlands as a social necessity. India is a contracting party to the *Ramsar Convention*, an Inter-Governmental Treaty on Wetlands, under which she is obliged to promote the conservation of wetland habitats in her territory.

6.4. Development in Law

Indian judiciary makes an effort to fill legislative gaps and remove the implementation deficits that may be seen as obstacles to achieving sound and sustainable coastal management. The Supreme Court and High Courts in order to tackle ecological degradation in coastal areas give directions to the concerned governmental agencies and lay down clear normative standards. India has laws guiding anthropogenic activities along the coast, of which the most significant and specialized legislation is the Coastal Regulation Zone (CRZ) Notification, 1991.\(^55\) There have been about 25 amendments to this notification from 1991, some of which have been based on the directions of the Supreme Court.

(1) As a result of decision of Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India and others*,\(^78\) change in coastal zone regulations were brought about:

(a) The proviso of annexure II, in paragraph 7, in sub-paragraph (l), for item (i), of the Coastal Regulation Zone (CRZ) Notification, 1991, as amended in 1994,\(^57\) empowering Central Government to permit construction in any particular case taking into account the geographical features and other relevant aspects, is declared as ultra vires.

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\(^{55}\) Gazette Notification S.O. No. 114(E) of 20 February 1991, under section 3(1) and section 3(2)(v) of the Environment Protection Act, 1986 and Rule 5(3)(d) of Environment Protection Rules 1986, declaring Coastal Stretches as Coastal Regulation Zone.
(b) By the amendment of 1994, the NDZ for rivers, creeks and backwaters which was 100 meters from HTL has been relaxed to 50 meters. The Court held that amendment is contrary to the object of the *Environment Protection Act*. Therefore the Court held it as illegal.

(c) The Supreme Court issued an order to all coastal state governments to prepare the management plans of their coastal areas based on CRZ Notification and get it approved from the MoEF and to take necessary steps to implement this.

(2) In *S.Jagannath v Union of India* the Apex Court expressed the view that a High Powered Authority under the Environment Act was to be created. Accordingly the Central Government constituted the authority called Coastal Zone Management Authority.

(3) In *T.N. Godavarman Thirumalpad v. Union of India & Ors.* the Supreme Court ordered for phasing out extraction of sand at 20% per year, on reducing balance basis to bring the sand mining to the level of 33% of the level of mining in 2001-02 within a period of 5 years. Sand mining in Andaman & Nicobar Islands was brought down to 22,581 in 2006-07. As a consequence of this order of Court, mining of sand, rocks and other sub-strata materials except those rare (1) minerals not available outside the ICRZ area has been prohibited as per Para 7 (xvi) of Island Protection Zone Notification, 2011.

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80 Gazette of India vide number S.O. 114(E), dated, the 19th February 1991
82 Inserted by S.O. 595 (E) dated 18th August, 1994.
83 Inserted by S.O. 595 (E) dated 18th August, 1994.
84 *Supra* note 56.
6.5 Conclusion

The renewable living aquatic resources of the sea represent a unique gift of nature to mankind. By the end of this century One Fourth of India’s population will live in the coastal areas. Many large cities and urban habitations are also near to the seacoast. Coastal environment plays a vital role in nation’s economy by virtue of the resources, productive habitats and rich biodiversity. The coastal areas are assuming greater importance in recent years, owing to increasing human population, urbanization and accelerated developmental activities. These anthropogenic activities have put tremendous pressure on the fragile coastal environment. For the purpose of protecting and conserving the coastal environment the Central Government has issued the Coastal Regulation Zone Notification dated 19.2.1991 under Environment (Protection) Act, 1986. This notification regulates all developmental activities in the Coastal Regulation Zone area. With rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With governmental authorities showing no serious regard to the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. As far as the

85 AIR 1997 SC 811.
86 Act No. 29 of 1986.
Supreme Court is concerned, being conscious of its constitutional obligations to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of coastal environment and preventing pollution.

In the light of judgments given by Supreme Court and various High Courts, the Governments have made changes in environmental legislations to protect the environmental rights of the coastal dwellers. In Indian Council for Enviro-Legal Action v. Union of India and others, the Supreme Court declared that the provision of the Coastal Regulation Zone (CRZ) Notification, 1991, as amended in 1994, was illegal on the ground that it conferred wide discretionary power on Central Government to permit construction in any particular case taking into account the geographical features. In the case of People United For Better Living in Calcutta v. State of West Bengal, Calcutta High Court clearly considered the protection of wetlands as a social necessity After going through the landmark judgments of the Apex Court and High Courts one can clearly see that there has been Judicial Activism in safeguarding the environmental rights of the Coast dwellers.

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87 AIR 1996 SC 1446.  