

INTERVENTIONS IN THE LAW OF THE LAND:
REFLECTIONS ON LEGAL STRUGGLES

Dr. M. C. Rajan

India

- ▣ India's long coastline of close to 8000 kilometres covers **nine states** and **five union territories**. Not only is it home to wetlands, several species of fish, reptiles, crustaceans, corals, mangroves, it also supports the livelihood of around **3300 fishing villages**.
- ▣ Coastal fishing employs a million people full time, and the post-harvest fisheries employ another 1.2 million.

Indian Constitution

- ▣ The need for protection and conservation of environment and sustainable use of natural resources is reflected in the **constitutional framework of India** and also in the **international commitments** of India.

Art 51A–Fundamental Duties

- ▣ The Constitution under Part IVA (Art 51A-Fundamental Duties) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Art 48A–Directive Principles of State Policies

- ▣ The Constitution of India under Part IV (Art 48A-Directive Principles of State Policies) stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

UN Conference on the Human Environment (Stockholm, 1972)

- ▣ After the Stockholm Conference, 1972, **the National Council for Environmental Policy and Planning** was set up in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment-related issues.

Ministry of Environment and Forests

- ▣ This Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF).
- ▣ MoEF was established in 1985, which today is the apex administrative body in the country for regulating and ensuring environmental protection and **lays down the legal and regulatory framework** for the same.

important legislations for environment protection

- ▣ The National Green Tribunal Act, 2010
- ▣ The Air (Prevention and Control of Pollution) Act, 1981
- ▣ The Water (Prevention and Control of Pollution) Act, 1974
- ▣ The Environment Protection Act, 1986
- ▣ The Hazardous Waste Management Regulations, etc
- ▣ The Wildlife Protection Act, 1972
- ▣ The Forest Conservation Act, 1980
- ▣ Public Liability Insurance Act, 1991
- ▣ The Biological Diversity Act, 2002

Coastal Regulation Zone Notification

- ▣ The Ministry of Environment and Forests had issued the Coastal Regulation Zone Notification vide Notification no. S O. 19(E), dated **January 06, 2011** with an objective to ensure livelihood security to the fishing communities and other local communities living in the coastal areas.

- * to conserve and protect coastal stretches
- * to promote development in a sustainable manner based on scientific principles,
- * taking into account the dangers of natural hazards in the coastal areas and sea level rise due to global warming.

The Supreme Court of India

- ▣ One of the areas of environmental concern where the Supreme Court's involvement has been crucial is the **protection and conservation** of India's coastal environment.
- ▣ I would like to quote a few cases to highlight the role of highest judiciary in protecting the coastlines.

Indian Council for Enviro-legal Action v Union of India

[(1996) 5 SCC 281]

- ▣ On the issue of non-enforcement of environmental laws, the Court observed that '[e]nactment of a law, but tolerating its infringement, is worse than not enacting a law at all. ... Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society'.

- ▣ The Court also found two of the 1994 amendments – that reduced the no-development zone (NDZ) – to be illegal.
- ▣ It asked the Central Government to consider constituting State and National Coastal Zone Management Authorities (CZMAs) for the effective implementation of the 1991 Notification.

S. Jagannath v Union of India [(1997) 2 SCC 87]

- ▣ In this case, the Court referred to expert reports to identify the adverse impacts of coastal pollution caused by **non-traditional and unregulated prawn farming**.
- ▣ The Court decided that prawn farming industries were prohibited in the coastal regulation zones under the CRZ Notification 1991 and their functioning was in violation of various other laws.

- ▣ It held '[t]he purpose of the CRZ Notification is to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast ... is **per se hazardous and is bound to degrade the marine ecology**, coastal environment and the aesthetic uses of the sea coast'.

In Vaamika Island v Union of India and Ors. [(2013) 8 SCC

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- ▣ The issue before the Court was whether certain properties on an island in the Vembanad Backwaters of Kerala should have been categorised as CRZ 1, which restricts its rebuilding or expansion, in Kerala's CZMP.
- ▣ The Court upheld the High Court's direction **to demolish the illegal structures.**

Three principles

- ▣ First, protection and conservation of our environment is the paramount objective of Indian environmental laws, and decision-making processes under these laws should support the furtherance of this objective.
- ▣ In *Indian Council for Enviro-legal Action*, the Court assessed the government's amendment to allow any construction within the NDZ, i.e. the area within 200 m from the High Tide Line (HTL). The **Court invalidated this amendment** holding that

- ▣ '[n]o suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the **larger public interest**, and the exercise of power under the said proviso will not result in **large-scale ecological degradation and violation of Article 21 of the citizens** living in those areas'.

- ▣ In *S. Jagannath*, the Court held that '[k]eeping with the international commitments, and in greater national interest, the Government of India and the **Governments of the coastal States** are under a **legal obligation to control marine pollution and protect the coastal environment**'.

- ▣ The Court also highlighted that '[a]ny activity which has the effect of **degrading the environment cannot be permitted**. Apart from that **the right of the fishermen and farmers** living in the coastal areas to eke their living by way of fishing and farming **cannot be denied to them**'.

- ▣ In **Vaamika Island**, the Court supported the Kerala High Court's judgement on the CZMP categorisation as the 'direction was issued by the High Court taking into consideration the larger public interest and to save **Vembanad Lake** which is an **ecologically sensitive area**, so proclaimed nationally and internationally.

- ▣ It affirmed the High Court's order of **demolition of illegal structures** based on a previous decision of the Supreme Court in *Piedade Filomena Gonsalves v State of Goa* [(2004) 3 SCC 445] wherein the Court had held **construction raised in violation of CRZ cannot be lightly condoned.**

- ▣ **Second**, environmental decision-making must benefit from **expert knowledge and inputs**, and for any decision which is at variance with such knowledge, the decision-maker should provide clear reasons.

- ▣ While assessing the validity of the **1994 amendments** in Indian Council for Enviro-Legal Action, the Court considered the recommendations of the **Vohra Committee**,
- ▣ the Court observed that '**no satisfactory reason has been given by the Union of India as to why it departed from the opinion of the Expert Committee** and that too in such a manner that the concession which has now been given is far in excess of what was demanded by the Hotel and Tourism Industry'.

- ▣ In *S. Jagannath*, the Court opined that ‘before any shrimp industry or shrimp pond is permitted to be installed in the ecolog[icall]y fragile coastal area **it must pass through a strict environmental test...** There must be an **environmental impact assessment** before permission is granted to install commercial shrimp farms...

- ▣ **Third**, the government cannot arrogate to itself **unbridled discretionary powers** to dilute environmental norms.
- ▣ **In the absence of proper guidance** on how to exercise such powers, the cost to the environment, and the people dependent on it, could be very high.

- ▣ In Indian Council for Enviro-Legal Action, while invalidating part of the 1994 amendments, the Court observed that the amendment 'which gives the Central Government **arbitrary, uncanalized and unguided power**, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective is ultra vires'.

The Kerala State Coastal Zone Management Authority vs The State of Kerala Maradu
Municipality & Ors.

- ▣ In most cases, owners are able to secure stays from the Court to protect these structures. However, by ordering the demolition in Maradu, the Court may just have set a precedent on how strictly the environment conservation measures are to be taken in the country.

G. Sundarrajan Vs Union of India and others ... CIVIL APPEAL NO.

4440 OF 2013 (Arising out of S.L.P. (C) No.27335 of 2012)

- ▣ The court issued 15 directions.
- ▣ 1. The plant should not be made operational unless AERB, NPCIL, DAE accord final clearance for commissioning of the plant ensuring the quality of various components and systems because their reliability is of vital importance.
- ▣ There is nothing to show that such a committee was formed to study the quality.

- ▣ 2. MoEF should oversee and monitor whether the NPCIL is complying with the conditions laid down, while granting clearance vide its communication dated 23.9.2008 under the provisions of EIA Notification of 2006, so also the conditions laid down in the environmental clearance granted by the MoEF vide its communication dated 31.12.2009. **AERB and MoEF will see that all the conditions stipulated by them are duly complied with before the plant is made operational.**

- ▣ 3. Maintaining safety is an ongoing process not only at the design level, but also during the operation for the nuclear plant. Safeguarding NPP, radioactive materials, ensuring physical security of the NSF are of paramount importance. NPCIL, AERB, the **regulatory authority, should maintain constant vigil and make periodical inspection of the plant** at least once in three months and if any defect is noticed, the same has to be rectified forthwith.

- ▣ 4. NPCIL (Nuclear Power Corporation of India Limited) shall send periodical reports to AERB and the AERB shall take prompt action on those reports, if any fallacy is noticed in the reports.

- ▣ 5. SNF (Spent Nuclear Fuel) generated needs to be managed in a safe manner to ensure protection of human health and environment from the **undue effect of ionizing radiation now and future**, for which sufficient surveillance and monitoring programme have to be evolved and implemented.

- ▣ 6. AERB should periodically review the **design-safety aspects of AFR feasibly** at KKNPP so that there will be no adverse impact on the environment due to such storage which may also allay the fears and apprehensions expressed by the people.

- ▣ 7. DGR (The Deep Geological Repository Project) has to be set up at the earliest so that SNF could be transported from the nuclear plant to DGR. **NPCIL says the same would be done within a period of five years.** Effective steps should be taken by the Union of India, NPCIL, AERB, AEC, DAE etc. to have a permanent DGR at the earliest so that apprehension voiced by the people of keeping the NSF at the site of Kudankulam NPP could be dispelled.
- ▣ So far nothing has been done to this effect.

- ▣ 8. NPCIL should ensure that **the radioactive discharges** to the environmental aquatic atmosphere and terrestrial route shall **not cross the limits** prescribed by the Regulatory Body.
- ▣ 9. The Union of India, AERB and NPCIL should **take steps at the earliest to comply with** rest of the **seventeen recommendations**, within the time stipulated in the affidavit filed by the NPCIL on 3.12.2012.

- ▣ 10. SNF is not being re-processed at the site, which has to be transported to a Re-Processing facility. Therefore, the **management and transportation of SNF** be carried out strictly by the Code of Practices laid down by the AERB, following the norms and regulations laid down by IAEA.

- ▣ 11. NPCIL, AERB and State of Tamil Nadu should take adequate steps to implement the National Disaster Management Guidelines, 2009 and also carry out the periodical emergency exercises on and off site, with the support of the concerned Ministries of the Government of India, Officials of the State Government and local authorities.

- ▣ 12. NPCIL, in association with the District Collector, Tirunelveli should take **steps to discharge NPCIL Corporate Social Responsibilities** in accordance with DPE Guidelines and there must be effective and proper monitoring and supervision of the various projects undertaken under CSR to the fullest benefit of the people who are residing in and around KKNPP.

- ▣ 13. NPCIL and the State of Tamil Nadu, based on the comprehensive emergency preparedness plan **should conduct training courses on site and off site administer personnel**, including the State Government officials and other stakeholders, including police, fire service, medicos, emergency services etc.

- ▣ 14. Endeavour should be made **to withdraw all the criminal cases filed against the agitators** so that peace and normalcy be restored at Kudankulam and nearby places and steps should be taken to educate the people of the necessity of the plant which is in the largest interest of the nation particularly the State of Tamil Nadu.

- ▣ 15. The AERB, NPCIL, MoEF and TNPCB would oversee each and every aspect of the matter, including the safety of the plant, impact on environment, quality of various components and systems in the plant before commissioning of the plant. **A report to that effect be filed before this Court before commissioning of the plant.**