

## Coastal Property Resources in Goa – Alarming Trends

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*If you want a piece of Goa's coastline, follow three simple steps. Just grab the land, build on it (after making pretences that your structures are temporary) and then forget it.<sup>1</sup>*

### **Introduction**

Tourism in Goa has largely been and still remains 'Beach tourism'. The beaches in Goa have been exploited to the hilt. Over 90% of domestic tourists and 99% of international tourists visit and reside along the beach front.<sup>2</sup> The packaging of Goa as a major international tourist destination is still actively underway, even though the number of tourists visiting Goa has exceeded the region's carrying capacity, bringing about a steady and relentless degradation of the natural environment as well as a deterioration of the social and cultural fabric. Tourism, now is Goa's Primary Industry. It handles 12% of all foreign tourist arrivals in India. Goa receives more tourists per annum than its total residential population (refer T.No.1, as per govt. sources, the population of Goa for the year 08-09 was 13.48 lakhs)<sup>3</sup>

The decisive issue facing any tourism destination is the benefit – cost ratio. This has never been calculated in the State. Destruction of the environment on the scale occurring in Goa can only be justified if the returns from any industry are such that they lead to enhancement of prosperity, provision of employment and reduction of poverty levels, since poverty is described as the greatest threat to environmental protection. No EIA (Environmental Impact Assessment) which would have considered various tourism options and then selected one or more areas for development, keeping in mind the environmental impact; has ever been undertaken either.<sup>4</sup>

With each holiday season, a greater threat to the tourist trade emerges – coastal erosion that is leading to fears that some of the famous white sandy beaches could disappear for good. Presently, more than 10% of Goa's 105 km coastline is falling into the sea, including the beach next to the State Governor's official Raj Bhavan. A total of twenty one stretches are affected and these cover 11-12 kms of coastal area.

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<sup>1</sup> Peter de Souza and Preetu Nair; CRZ violations in Goa-GRAB IT, BUILD IT, FORGET IT; Dec 8 2006; <http://goadourado.sulekha.com/blog/post/2006/12/crz-violations-in-go-a-grab-it-build-it-forget-it.htm>

<sup>2</sup> Sawkar, K. Noronha, L. Mascarhenas, A and Chauhan O. S. in Tourism and the Environment Case Studies on Goa, India and Maldives, Economic Development Institute, World Bank, New York, 1998.

<sup>3</sup> Goa Economy in Figures – 2009; Directorate of Planning, Statistics and Evaluation, Govt of Goa; Panaji.

<sup>4</sup> Claude Alvares ( 2002); Fish curry and rice, The Goa Foundation; Mapusa, Goa.

Two major stretches of beaches namely, Colva, in south Goa and Coco Beach, in the north, are being reinforced with flexible barriers called 'geo tubes' which stop land being undercut by erosion. Other beaches where work is required include Calangute, Baga, Sinquerim, Candolim and Palolem. For Goa's many shoreline tourist bars, the situation would wreck already insecure livelihoods. Flooding due to coastal erosion has already affected trade at some beaches.<sup>5</sup>

At Danadi, in Nerul Village, the livelihood of 40 fishermen families has been affected. At present heavy erosion and submergence of a 100 meter stretch of the famous Coco Beach has resulted in fishermen and shack owners struggling for survival in the limited space at Danadi. Incidentally, villagers here depend largely on fishing, while others live off income generated from operating shacks.<sup>6</sup>

Environmental scientists say that while Goa thrives on tourism, the various other activities are also responsible for coastal degradation. With no one to monitor its 105 kms coastline, sand dunes and vegetation on the beaches have been wiped off destroying much of the coasts' natural defense system.<sup>7</sup> Further, destruction of mangroves and saltpans, plus, sand mining and construction for tourism have exacerbated problems. Powerful lobbies of builders and resort owners, who have invested heavily in coastal area are mainly responsible for construction of illegal structures and for flouting environmental guidelines.

It is predominantly, the unplanned and consequently exploitative growth of tourism in Goa, ably assisted by haphazard and often illegal mining; (51 mines are violating various laws as per the findings of a govt. study<sup>8</sup>) that have thrown up issues which call for serious contemplation and action.

#### THE 'HOW' OF COASTAL PROPERTY ABUSE IN GOA :

##### 1. Receding silvery coastline of Goa: A man made disaster ?

It is no doubt true that global warming will result in the rise in sea water levels, thereby affecting the coastal States. However, what is, in reality responsible for the degradation and erosion of Goan beaches are the following three factors:<sup>9</sup>

- a) Reclamation of low-lying areas and mangroves to give rise to concrete jungles as seen at Patta Plaza, Panaji and other mangrove regions in the coastal talukas of Goa.
- b) The degradation of coastal sand dunes and indigenous vegetation which prevent sea water rise, wind erosion and the adverse impacts of flooding. Several 5 star hotels which occupy prime locations along the

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<sup>5</sup> <http://www.smh.com.au/travel/travel-news/goan-beaches>, Aug 31, 2009.

<sup>6</sup> A 'Shack' in a temporary restaurant, made with wood or other material, established on the beach front, taken off, during monsoon. See Nerul V P; 'Worried for Fishing Community', Times of India (Goa edtn), 19<sup>th</sup> Jan. 2009.

<sup>7</sup> <http://www.ndtv.com/convergence/ndtv/new/Ndtv-show-special-story>.

<sup>8</sup> 'RP 2021 will be needy in 6 mnths, assures TCP secy', The Navhind Times, Thursday, 22<sup>nd</sup> April, 2010.

<sup>9</sup> D'Souza, Joe; 'Erosion in Goa is a man-made disaster', Times of India, (Goa Edtn); 22<sup>nd</sup> June, 2008.

coastline, have blatantly bulldozed these sand dunes and vegetation, thus exposing the adjoining coastal stretches of Goa to the vagaries of monsoon winds and eroding waves of the Arabian Sea.

c) Cutting of hills for mining and housing has severely affected the fresh water discharge and distribution into water bodies and sea.

Rapid urbanization has meant concretizing of hills which in turn implies that the hills have lost the ability to absorb and harness monsoon waters. The tremendous monsoon runoff places acute pressure on Goan beaches. Further, Mining has not only flattened hills, but caused silting of rivers and become the main cause of unscientific discharge of fresh water into the sea and the consequent erosion of beaches along the coast of Goa.

## 2. Land conversions:

The super rich would like to own a second home/holiday cottage in Goa. The investors would like to build cottages/ apartments so as to rent these out at super rates. The lure of money is stronger than the love for land. Traditional livelihoods of coconut and rice farming are receding as farmlands along the coast are being converted into real estate and are sold upward of Rs.30,000/- per square metre. Goan newspapers are full of advertisements for high-priced properties.<sup>10</sup>

In the coastal villages massive land conversions are being proposed. There are proposals for conversion of 675 hectares (33%) of Mandrem's 2,031 hectares from settlement zone to other purposes. Besides, other coastal villages of Pernem also want large tracts, even in no development zones, converted (see T.No.2). This is because villagers feel that they have not got a sizeable share of the tourism cake. In Arambol, out of 950 hectares, private parties and the panchayat have sought change of land use to the tune of 120 hectares with as much as 50 hectares being land classified as Eco 1. Keri – Tiracol has sought land use change to the tune of 136 hectares out of 576 hectares while eco-sensitive area sought to be converted is about hectares. Such massive land conversions are bound to lead to destruction of eco-sensitive and CRZ areas.<sup>11</sup> [See table 2].

## 3. With active Government support beaches can become private property:

On 2<sup>nd</sup> March, 2009, the Goa State Governor promulgated an ordinance amending a 114- year-old law. The amendment to the Land Acquisition Act of 1894 has saved the hotel's illegal extensions from demolition, at least for the present. Ordinances are promulgated in public interest when the administration has to deal with an emergency and it is not possible to wait for the assembly session to convene. Thus the ordinance is a class example of the 'protector' (the govt.) turning 'plunderer'.

## **Legal Challenges in protecting beaches from Land grabbers:**

The hotel, Cidade de Goa is a luxury resort occupying 16 hectares of prime land on Vainguinim beach, 7 kms south of Panaji. Fomento Resorts & Hotels Ltd., owns the hotel. The irregularity began when 50 extra rooms and facilities were constructed without permission. The result was that the public access to the beach was cut off and the beach became a private beach exclusively for hotel guests. As a result

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<sup>10</sup> <http://www.tehelka.Com/story-main 38 asp?>

<sup>11</sup> 'Coastal Villages seek massive land conversion', TOI (Goa Edtn) 1<sup>st</sup> April, 2010.

numerous petitions were filed in the Bombay High Court. These cited the original agreement between the State Government and Fomento in 1983 which said public should have access to the beach. The Bombay High Court on April 25, 2000, ordered that if an alternative road is made available and the same has been in use for several years, such an arrangement need not be disturbed. The High Court, however, ordered that the alternative road to public access is not proper, as the road lead to rocks and makes the beach highly inaccessible, rather same must be re-laid so as to make in people/public friendly. In this case was the case *Goa Foundation v Fomento Resorts and Hotels*<sup>12</sup> wherein the issue was 'Access to Public place'. Whether the Government can demarcate a beach to a private resort and not allow public access to the beach? Cidade de Goa beach resort took land on lease from the Goa Government, adjacent to public beach. Later, they sought permission for construction of the Hotel. Government of Goa, readily agreed and Gram Panchayat as well as various other authorities gave permission for construction of the hotel subject to condition that the hotel will maintain access for public to the beach by provision of footpath and facility for parking. The Hotel shifted public access to beach to another location, which was more convenient for the hotel guests. The High court found that the beach is accessible to the public on alternate site and directed the Hotel to shift public road as well so that the public will be away from the hotel site where a near 10,000 Kg. poisonous gas tank installed for hotel would create public safety issues. The Supreme Court found that when public access to beach is available at an alternate site and same is existing for almost 20 years, there is no reason to interfere with the same. Further, the Supreme Court also held that all permission from Town Planning Body and Gram Panchayat before creating alternate site for access to beach have been sought, hence the resort was in compliance of rules and regulations and hence can operate form the same premises. The Court held *"If access to public place has been shifted after due permission from authority and alternate access has been in use for a substantial period then it is not unlawful if it does not strictly follow the rules as long as it serves the public purpose."* Further, dismissing the appeal, the Court held that the alternate site of access to the beach was proposed in 1979 and hence it was brought to the notice of the court too late, hence the Court justified its non-interference on the grounds of time, which the petitioners should have taken up the matter. The Court forgot that the petitioner in the case was not seeking remedies under the private dispute of land, but was arguing for 'public access to land' and in 'public interest'. However, before any of the dispute could create controversy, the Governor issued the an Ordinance to the Land Acquisition Act, 1894. This Ordinance empowers the State Government to modify any agreement with the company. The ordinance read "Any clause prohibiting the company from constructing buildings on the acquired land shall be deleted with retrospective effect from Oct. 15,1964"<sup>13</sup>.

4. Coastal Regulation Zone: CRZ [Carryon Regardless Zone]: Impracticality for implementation in Goa [see Annexure 1]

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<sup>12</sup> 2009(6)BomCR478, 2009(1)SCALE696, (2009)3SCC739. B.N. Agrawal and G. S. Singhvi, JJ.

<sup>13</sup> Jamwal, Nidhi; Five star emergency: Down to Earth (March 16 -31,2003), Vol.17. No.21, New Delhi.

Since unplanned development had started along coastal strips of the country, a national legislation known as Coastal Regulation Zone (CRZ) notification<sup>14</sup> was formulated in 1991. The Ministry of Environment and Forests (MoEF) enacted the CRZ notification issued under the Environment Protection Act of 1986. Its main purpose was to control, minimize and protect environmental damage to sensitive coastal structures from unplanned human interference. Goa became a focus of the legislation because coastal tourism is a major economic activity in the State. The Government of India, thereafter declared coastal stretched of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) upto 500m. from the High Tide Line (HTL) and the land between Low Tide Line (LTL) and HTL as CRZ. The notification also imposed restrictions and formulated guidelines for various coastal activities.

The notification lists various prohibited activities, regulation of permissible activities, procedures for monitoring and enforcement of coastal area classification and development regulations, regulation of activities and detailed guidelines for the development of beach resorts and hotels. The CRZ notification has placed India amongst the select countries in the world that have framed laws to legally protect sensitive coastal ecosystems and to demarcate areas for conservation. In the notification, CRZ is divided into four main categories. (However a proposed amendment in the Coastal Regulations Zone notification 2010 Says CRZ will now have five classifications against the earlier four).<sup>15</sup>

#### Rationale of No Development Zones( NDZ ):

NDZs are justified on the following grounds:

- a) The ecologically sensitive dune belts along Indian coasts (including the coast of Goa)<sup>16</sup> often extend more than 500m. from the beach.
- b) Erosion is prevalent along the world's sandy as well as swampy coasts. About 70% of the world's sandy shores have eroded and retreated during the past few decades.<sup>17</sup>
- c) Accelerated erosion is observed along the world's developed Coastlines.<sup>18</sup> Loss of property occurs when coasts experience erosion.
- d) Sandy coasts withdraw with a sea level rise. Sandy dunes are likely to retreat 40 to 400m. per meter of sea level rise<sup>19</sup>

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<sup>14</sup> Ministry of Environment and Forest, The Gazette of India, Notification, S.O. No.114(E), 20<sup>th</sup> Feb 1991.

<sup>15</sup> 'Amendment Seeks to Demarcate Erosion-prone Areas', TOI (Goa edtn) , 24<sup>th</sup> April, 2010.

<sup>16</sup> Mascarenhas A. Coastal Sand Dune Ecosystems of Goa: Significance, Uses and Anthropogenic impacts, 1998.

<sup>17</sup> Nordstrom, K.F., in Coastal Evolution: Late Quaternary Shoreline Dynamics (eds Carter, R.W G and Woodroffe C.D.), Cambridge Press, London, 1994; Bird, E.C.F. in Sea Level Rise and Coastal Subsidence: Causes, consequences and strategies (eds. Millimas, J>D. and Haq. B.U.) Kluwer, The Netherlands, 1996.

<sup>18</sup> De Ronde, J.G. in Sea Level Rise and Coastal Subsidence: Causes, Consequences and strategies (eds. Milliman, J. D. and Haq B. U. ), Kluwer, The Netherlands. 1996.

<sup>19</sup> Nair Venugopalan R.:' Goa flouts CRZ notifications', March, 2008, Down to Earth, N. Delhi.

- e) Rising sea level could also mean greater intrusion of saline waters into estuaries.
- f) Global climate change models have forecast increase in the intensity of storms and cyclones and flooding of coastal lowlands.

In view of above, the most cost effective long term solution is to set aside land to preserve coasts for posterity, mitigate forces of the ocean and allow future marine transgressions. Hence, the need for NDZs.

Opposition to setback lines:

Along the sea front, a vacant space of 500meters from High Tide Line is compulsory for CRZ I and 200 meters for CRZ III. For rivers and backwaters the setback is 100m or the width of river or creek whichever is less. These mandatory buffer zones have met with resistance and have generated considerable debate due to<sup>20</sup>

- i) In rural coastal, under developed villages, the common man has reduced opportunity to expand an existing house or build a new one.
- ii) Common man complains as his progress and expansion have been rigidly regulated, hence making it a political issue.
- iii) Since, the State Government is promoting upmarket tourism, many beach resorts have spurned setback rules.
- iv) New spaces for future development are being created seaward by leveling dunes and reclaiming swamps.

### **CRZ violations in Goa**

Data on constructions in CRZ III in Goa show that the number of structures in the coastal villages of Goa has almost doubled in the past 15 years. During 1991 – 2006, structures between 200m. and 500m. of the HTL, increased from more than 4,000 to 8,000. In North Goa, the number increased from 2,500 in 1991 to more than 4,500 in 2006, while in South Goa, the number increased from 1,643 to 3,470 for the same period.<sup>21</sup> The Goa Coastal Zone Management Authority (GCZMA) submitted the report to the High Court of Bombay at Goa on Jan. 28, 2008. The report also says that building construction is rampant in the area, even though it has been earmarked “no development zone” in CRZ-III in Feb.1991. The report was submitted in response to an October 2006 ruling of High Court of Bombay, Panaji Bench, on a petition filed by the NGO- Goa Foundation. The Court had then directed the State Government. to stall all new constructions in CRZ III. The administration was expected to conduct a survey of structures that have come up inside 200 m of the HTL after 1991. The court had also said that until the authorities complete the survey no new licenses were to be issued except for repairs and renovation.

Interestingly, in 1999 the State Government had made it clear that no authority, including Panchayats, had the permission to approve new constructions or houses in coastal villages that fall within 500 m. of HTL. Coastal land being prime land, local

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<sup>20</sup> Mascharenhas Antonio, Oct. 1999, The Coastal Regulation Zone of Goa: Oceanographic, environmental And Societal perspectives.

<sup>21</sup> ‘Govt. soft on commercial violations of CRZ in Goa’, April 24,2010, Digital Goa.

people and people in power often violate the law under the guise of renovation or repairs of existing structures.

*Illustrative example of violations:*

In 2005, when the Mormugao Municipal Council had issued 34 demolition notices to illegal construction for violation of the CRZ guidelines near Khariawado Seashore, the Municipal Tribunal Appellate Jurisdiction, Panaji, issued stay order. According to municipal authorities, provision of water and electricity connections to such houses makes it difficult for action to be taken against them.

A circular issued by the Dept. of Revenue on Dec.26<sup>th</sup>, 2004, had stated that several directions/notices had been issued to local authorities to take action but they failed to do so. The circular had also stated that the Additional Collector and Additional District Magistrate(II) in the North Goa and South Goa Collectorates would be the officers responsible for execution of directives issued by the GCZMA for the demolition of unauthorized constructions. The circular had further stated that all directives issued by GCZMA shall be complied and action taken by the Additional Collector/Additional District Magistrate and the report shall be sent to the Chief Secretary from time to time.

Clearly CRZ management in Goa suffers from the malaise of buck passing and lack of political will.

In *Goan Real Estate and Construction Ltd. v People's Movement for Civic Action*<sup>22</sup> the main contention was whether an existing construction activity, prior to 1996, should be completed or not. The Appellant was asked to restrict construction within 50 to 100 meters of High Tide Line, after the Supreme Court of India in *Indian Council for Enviro-Legal Action v. Union of India*<sup>23</sup> had held that the amendment reducing the No Development Zone from 100 meters to 50 meters was illegal.<sup>24</sup> Later the matter of referred to National Coastal Zone Management Authority. The Authority gave hearing to all the parties and had treated the project of the appellants as an ongoing project. By an impugned order the High Court in 1997, the said project was directed to maintain its status quo regarding construction, till further orders. The decision dated October 30, 2007 rendered by the National Coastal Zone Management Authority was in favour of the appellants, which was challenged in this present case. The Court held that 'Grant of stay of construction activity would result into considerable loss to the appellants who have invested huge amount in the project. On the facts and in the circumstances of the case the Court was of the opinion that interest of justice would be served if the appellants are permitted to complete incomplete construction at their own risk and cost'. The Court in its own words held '*project being an on going one , it ought to be completed as it had begun before the order of reduction in area in respect of no development zone was passed by this court*'.

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<sup>22</sup> MANU/SC/7981/2008.As per K. G. Balakrishnan, C.J. and J. M. Panchal, J.

<sup>23</sup> (1996)5SCC281.

<sup>24</sup> Amended brought before 1996.

The *Goa Foundation*<sup>25</sup> v *Ramesh Hotels and Resorts Pvt. Ltd.*<sup>26</sup> the provision of the CRZ notification were alleged to be violated. Respondent owned residential house within Coastal Regulation Zone(CRZ) and they sought permission for renovation/repair of same. The Panchayat and other authorities granted permission. Goa Foundation made representation before concerned authority for cancellation of permission and they alleged that the construction was being made in CRZ II and the structure is illegal. Respondent countered that the present permission was in existing of only repair and renovation and the premises was in CRZ-III and the same impugned permission was given under authority of law. The Court held that 'The petition also proceeds on the basis that CRZ-III Notification prohibits construction and development activities within 200 metres of HTL. What it postulates and contemplates is only repairs of existing authorized structure by utilizing floor area of the existing plinth and nothing more.'

A perusal of the CRZ notification states that the area upto 200 metres from the HTL is to be earmarked as "No Development Zone" provided that such area does not fall within any notified port limits or any notified Special Economic Zone. We have proceeded on the basis that the HTL is already demarcated. We are also proceeding on the basis that the construction is within 200 metres of the HTL, as this seems to be the undisputed position. Thus the court had to only consider whether or not the construction is permissible and whether the construction is exceeding the existing plinth area or not ?'

The Court held, "if any construction is proposed to be made within the authority of law then court of law should not interfere therewith provided construction does not cross prescribed limit. However, any construction done in excess of proposed floor area is illegal and liable to be demolished. Thus the Court concluded that "*Mere threat of damage to ecology is not sufficient to stop any construction if such construction is made under permission from concerned authority*".

One understands the difficulty of the Judges in such cases. Having not visited the ground realities they are mostly left to decide these cases based on the affidavits filed by the Executive Officers who mostly claim otherwise than what is alleged. One who would visit these sites, clearly understand the ground violations that are taking place. In *Goa Foundation v Goa State Coastal Zone Management Authority*<sup>27</sup> the petitioner challenged the construction of a vacation ownership resort called "Sunset Dunes", at Baga beach by Piva Resorts Pvt. Ltd. The contention of the petitioner was that the said construction is in violation of the CRZ Notification. The petitioner also challenged the permissions by the Panchayat. Initially, it appeared that the application was made for construction of residential units, but subsequently, application was made for construction of vacation resort, which was granted by the relevant authorities. It was the contention of the petitioner that the coastal areas of Calangute fall into three CRZ categories: CRZ I, II and III and since the plot in question falls on

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<sup>25</sup> Accepting the petition the Court held: 'The petitioners are an organization/society which is engaged in protection of ecology and environment. Members of the Petitioners Society are citizens of India and in furtherance of the fundamental duty enshrined under Article 51(g) of the Constitution of India have filed this petition. They have been filing petitions in this Court with regard to environmental issues, so also challenging unauthorised and illegal constructions which violate planning laws'.

<sup>26</sup> MANU/MH/0686/2008. As per S.C. Dharmadhikari and R.C. Chavan, JJ.

<sup>27</sup> MANU/MH/0964/2000. 2001(2)ALLMR224, 2001(4)BomCR226.



a sand dune, the areas should be demarcated as CRZ I. The petitioner alleged that in CRZ I area no construction or development whatsoever is permitted and since existence of a sand dune is admitted on the said plot of land, no construction is permissible in that area, therefore, all the concerned authorities should not have granted permissions for construction of the beach resort. The petitioner's contention was that in the instant case, permissions, however, have been granted on the assumption that the area falls within the CRZ III. Even if the area is classified as CRZ III, development in this area is still severally restricted and as per CRZ Notification only two types of construction are permitted in the 200-500 mts. area zoned as CRZ III :

"a) construction of beach resorts or dwellings for the temporary occupation of tourists for which prior permission has to be obtained from the Ministry of Environment and Forests under CRZ Notification;

b) The second category of permissions can be granted solely in terms of Clause 6(2) CRZ III(iii) of the CRZ Notification which reads as under :---

"Construction/reconstruction of dwelling units between 200 to 500 metres of the High Tide Line permitted so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not extend 9 metres and construction shall not be more than 2 floors (ground floor plus one floor)".

The stretch of Baga-Calangute-Candolim, has been classified as CRZ II, except the Fort area of Aguada in Candolim, which is classified as CRZ I in the Coastal Zone Management Plan for Goa prepared and submitted to the Ministry of Environment and Forests, Government of India, New Delhi, in accordance with the directions of the Supreme Court. The basis for classification of this area as CRZ II in the approved State Coastal Zone Management Plans for Goa is as per the guidelines laid down in the CRZ Notification in as much as the area is a Census Town and substantially developed and built up to and close to the shoreline with all infrastructural facilities. The portion of the property which is the subject matter of this petition is within 200 mts. from the HTL and the remaining portion is within 200 - 500 mts. from the HTL. In respect of the area within 200 mts. from the HTL, no permission was granted, in respect of the portion of the property beyond 200 mts. and upto 500 mts. from the HTL the proposals for construction of residential units submitted has been approved by adopting the criteria laid down for CRZ III, in order to ensure better protection of environment notwithstanding the fact that this area is classified as above as CRZ II. The proposal/plans in respect of the subject matter of this petition has been approved by excluding the sand dune area. While approving the above proposal a specific condition was inter alia imposed, namely that existing sand dunes should not be disturbed in any case. The above plot which is the subject matter of this petition is otherwise not a vacant plot in as much as there were and continue to be residential house in the said property.

The Court relied upon the decision of the Supreme Court in *Tata Cellular v. Union of India*<sup>28</sup> wherein it was held that judicial review by the Court is permissible

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<sup>28</sup> AIR1996 SC 11.

only in respect of the decision making process and the merits of the decision itself is not reviewable as the Court does not sit in appeal over those decisions while exercising power of judicial review. Highlighting the principle laid down by the Supreme Court in *Tata Cellular (supra)*, it was submitted that the duty of the Court is to confine itself to the question of legality and its concern should be restricted only to the following, namely :-

1. Whether a decision making authority exceeded its powers ?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable Tribunal would have reached or,
5. Abused its powers.

The Apex Court in *Tata Cellular (supra)*, held that it is not for the Court to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair and that the Court is only concerned with the manner in which those decisions have been taken. Lord Greene M.R. in *Associated Provincial Picture Houses v. Wednesbury Corporation*,<sup>29</sup> held as follows :

"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matter which they ought not to have taken into account, or conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the Court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them."

Highlighting this "Wednesbury principle", the Court held that 'it is not the function of a Judge to act as a super board or a pedantic school master substituting its judgment for that of the administrator'. As was held in the *Tata Cellular's* case (*supra*) at page 681 :---

"The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non expert Judge. The alternative is for the Court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a Court were to review fully the decision of a body such as 'State board of medical examiners' it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeial'. Such a situation as a State Court expressed it many years ago is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question." Thus the court concluded that 'Though balance of interest

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<sup>29</sup> 1948(1) K.B. 223 : 1947(2) All.E.R. 680.

between preservation of ecology and development of tourism has to be harmoniously maintained, there is no malafides in granting permission for the resort’.

But in the same year, the Panaji bench of the Bombay High Court in *Goa Foundation v State of Goa*<sup>30</sup> warned the Government against the illegal construction in the CRZ areas. During the pendency of the case, a Government order was issued in exercise of the powers conferred by sub-sections (1) and (3) of section 3 of the Environment (Protection) Act, 1986. By the said order, the Goa Coastal Zone Management Authority was constituted. Powers have conferred on the said authority were

"(ii)(a) Inquiry into cases of alleged violations of the provisions of the said Act and/or the Rules made thereunder, or under any other law which is relatable to the objects of the said Act and, if found necessary in a specific case, issuing directions under section 5 of the said Act insofar as such directions are not consistent with any direction issued in that specific case by the National Coastal Zone Authority or by the Central Government."

(VIII) The authority shall ensure compliance of all specific conditions that are laid down in the approved Coastal Zone Management Plan of Goa".

Further the Court noted that the statutory duty cast on the authorities have not been discharged by those statutory authorities. The petitioners had to approach the Court to ensure performance of statutory functions by the said authorities. In these circumstances, the Court held that it is just and proper and as petitioners have acted in public interest they must be compensated for bringing to the notice of the Court the ecological degradation of the coastal area and mushrooming of illegal constructions. Therefore, The Government of Goa was asked to pay compensatory cost to pay the petitioners to the tune of Rs. 15,000.

### **Laying pipelines**

The CRZ notification has been amended nearly 25 times. Mostly to dilute the notification and to create exceptions, either for tourism, industrial, port or atomic energy related activity. Rejecting the allegation of violations made by an NGO in *Enviroinsare Foundation v Union of India*<sup>31</sup> the court held that CRZ notification specifically provides for exceptions to be made for laying of pipelines. The Court upheld the project, in view of the ‘intention of the legislature’ in brining a specific amendment to the CRZ notification, which provides for laying pipelines and exploration work in 2001. The Court held ‘the amendment of April 2001, has been brought about by way of abundant caution and as the amendment itself declared, it has been brought to consider the requirements of projects relating to Department of Atomic Energy and pipelines, conveying systems and transmission lines in C.R.Z. areas and to harmonise existing provisions of the notification. This being the declared objective of the amendment, the amended notification will have to be read purposively. Inasmuch as Naphtha processed from the natural gas of Bombay High is forwarded from the refinery through the pipeline, the construction of this pipeline will have to be looked at from that point of view. ....It will have to be held as a permitted activity, which will be regulated under the environmental clearance from the M.O.E.F. and that clearance has been granted by the Ministry’.The CRZ

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<sup>30</sup> 2000(4)BomCR709.

<sup>31</sup> 2003(2)BomCR519.

notification of 19th February, 1991 came to be amended on 12th April, 2001. Amongst others, the preamble of this amending notification states as follows:--

And whereas the Central Government has also considered the requirement of projects relating to Department of Atomic Energy and Pipelines, conveying system including transmission lines and other facilities essential for activities permissible under the notification in the C.R.Z. areas;

And whereas the Central Government deems it necessary to harmonise the existing provisions of the notification. Therefore, the Central Government was making the amendment as mentioned in the amending notification.<sup>32</sup>

### **Catching the small fish to show off compliance:**

The biggest concern then would be, have the Coastal Management Authorities ever worked, are they active and have they carried on removal of illegal structures? The obvious answer are in affirmative as the presence of the Authority have to be felt by the common man.

In *David D'souza v The Goa Coastal Zone Management Authority*,<sup>33</sup> the court found nothing wrong in the order of the GCZMA to demolish a structure which was within the 'No Development Zone'. The Court held that the structure was within 200 m, hence is liable to be demolished. The case was not of a resort, but of a individual man and his house.

In *Lindo Furtado v Goa Coastal Zone Management Authority*,<sup>34</sup> the Court asked the GCZMA to pass speaking orders. While the Authority had passed the order for demolishing of a structure, the same was not made out in a reasoned decision. Hence lack of proper exercise of power is clearly made out in this case. Further the Court passed an order directing the GCZMA to provide an opportunity of fair hearing to the

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<sup>32</sup> Clause 2 of this notification declares as prohibited within the C R Z, the activities mentioned therein. The initial Clause (1) appearing thereafter now came to be replaced by the following sub-clause, which reads thus:--

"(i) setting up of new industries and expansion of existing industries, except (a) those directly related to water front or directly needing foreshore facilities and (b) projects of Department of Atomic Energy."

Thereafter appears the original sub-clause (ii) which reads as follows:-

"(ii) manufacturing or handling or storage of hazardous substances as specified in the notifications of the Government of India in the Ministry of Environment & Forest No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E), dated 27th November, 1989 and G.S.R. 1037 (E), dated 5th December, 1989; except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas."

To this sub-clause (ii), the following proviso came to be added:--

"Provided that, facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure III appended to this notification and facilities for degasification of liquefied natural gas, may be permitted within the said zone in areas not classified as C.R.Z.-1 (i), subject to implementation of safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Government of India, Ministry of Petroleum and Natural Gas and guidelines issued by the Ministry of Environment and Forests and subject to such further terms and conditions for implementation of ameliorative and restorative measures in relation to the environment as may be stipulated by the Government of India in the Ministry of Environment and Forests."

<sup>33</sup> (2005)107BOMLR807.

<sup>34</sup> MANU/MH/0922/2009.

citizens whose premises were supposed to be demolished. The principle of fair hearing is the foremost principle in the application of the principle of natural justice.

#### 5. Tarballs and Oil Slicks :

About 35% of global marine transport of oil from the Middle East takes place along the Arabian Sea route. Annually, oil cargo of one billion metric ton is transported within just a few kms from the coastline of Goa. The entry of oil in the Arabian Sea from the operational discharges has been about a million ton annually. This results in an estimated formation of 3,700 ton of tar balls annually. Due to currents, these are deposited on the beaches during the monsoon. Almost all beaches in Goa are now covered with toxic and carcinogenic tar balls.

Oil slicks have been sighted close to Goa very frequently. The Japan Oceanographic Centre has reported that during 1975 -80 on 495 out of 611 occasions, oil slicks were sighted in a sample quadrant close to Goa. That's the highest frequency of oil slicks in the Indian ocean. Thus, there is an urgent need to prepare a 'Marine environmental threat perception and mitigation report' which could lead to the state's effective and rapid response to any future threat from the sea.

In March 2005, merchant vessel 'Maritime Wisdom' was the cause of an accidental oil spill in Aguada Bay. Fortunately, the weather and sea conditions were favourable to dispose the oil slick. The Indian Coast Guard was prompt and efficient in controlling the spill. Even in June 1993, when the oil carrying vessel, "Sea Transporter" drifted close to Sinkerim beach, the Indian Coast guard had pumped out hundreds of tonnes of thick, viscous furnace oil. The entire North Goa tourism industry had held its breath till the operation was completed.<sup>35</sup> Later, the River Princess episode happened in the monsoon of 2000. Oil spills eventually result in tar ball formations. Studies have shown that tar ball deposition on Indian beaches range from 22 to 448 gms per sq.mt. The organic compounds in these tar balls are toxic and carcinogenic. All the beaches in Goa have been reporting large amounts of tar ball deposition. The Government does not seem to care about this calamity despite the tourism industry from Goa contributing Rs. 2,000 crore annually to its foreign exchange kitty.<sup>36</sup>

#### Conclusion

Recently(2010), even after the Central Government's decision to consider giving special status to Goa as far as CRZ is concerned, things haven't still improved. Despite receiving a letter (March, 2010) from the Central Minister of Environment and Forests asking the State governments to take action against commercial structures violating CRZ, while giving assurance to protect the traditional structures of fisherman community of Goa.<sup>37</sup> The Government of Goa seems to be still dilly dallying over the situation and has not taken a survey as yet to identify the illegal structures.

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<sup>35</sup> Kamat, Nandkumar, 'Goa: Marine Pollution Management Needed', The Navhind Times, 28th March, 2005.

<sup>36</sup> Kamat, Nandkumar, 'Ecoterrorism on Goan Beaches', The Navhind Times, 21<sup>st</sup> Sept., 2005.

<sup>37</sup> 'CRZ violations taking alarming proportions', The Navhind Times, Jan 10<sup>th</sup>, 2005.

A proposed amendment in the Coastal Regulations Zone( CRZ) notification, 2010 says CRZ will now have six classifications as against the earlier four. The first three CRZ –I (ecologically sensitive areas), CRZ-II (build up Municipal areas), CRZ-III (rural areas) remain unchanged, while CRZ-IV is proposed to be changed to include aquatic area, CRZ-V will include areas requiring special consideration and CRZ –VI would deal with ‘special cases’. While CRZ notification 1991, which is still in force and has been amended almost 25 times, aims at protecting and regulating land use within 500 m. of the shore and 100m along the tidal influenced water bodies, the Union Ministry has proposed amendments to it, considering problems expressed by State Government, and other stake holders in implementing its provisions. This was in view of recommendations of the Swaminathan Committee report and consultations.

**Table NO.1**

Tourist Arrival in Goa				
Year	Domestic	Foreign	Total	%change
2000	976804	291709	1268513	1.9
2001	1120242	260071	1380313	8.8
2002	1325296	271645	1596941	15.7
2003	1725140	314357	2039497	27.7
2004	2085729	363230	2448959	20.1
2005	1965343	336803	2302146	- 6.0
2006	2098654	380414	2479068	7.7
2007	2208986	388457	2597443	4.8
2008	2020416	351123	2371539	- 8.7
Source: Tourism Dept., Govt. of Goa.				

**Table No.2**

Land conversions ( proposed )

Name of Place	Total area	Change Sought
Morjim	874	200
Arambol	950	120
Keri-Tiracol	576	136
Mandrem	2031	675

Source: TOI,( Goa edtn), 1.4.2010

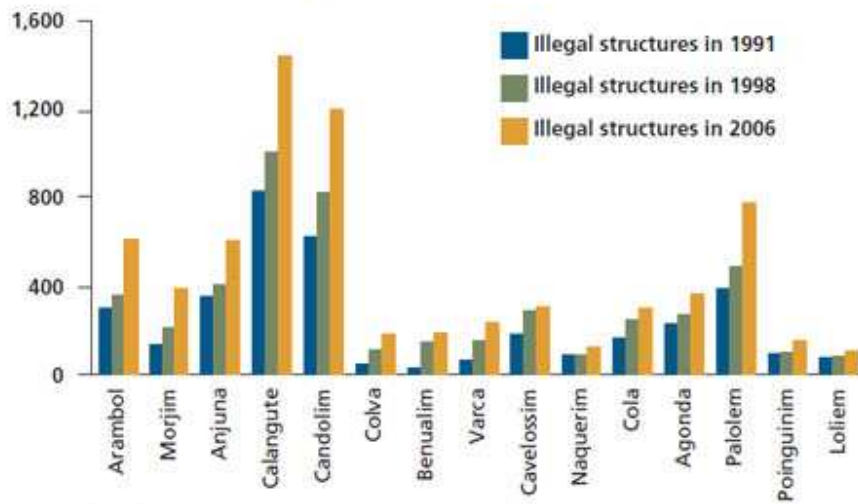
(Area in hectares)

### Annexure 1

<http://www.downtoearth.org.in/node/1651> Issue: Aug 15, 2010

#### Illegal boom

*Prominent CRZ violations in Goa*



Source: Affidavits filed in the High Court of Bombay in Goa