

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**WESTERN ZONE BENCH, PUNE**

**MEMORANDUM OF APPLICATION**

(UNDER SECTION 14 AND SECTION 18(1) READ WITH  
SECTION 20 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010 )  
ORIGINAL APPLICATION NO. 106 OF 2022

**IN THE MATTER OF:**

Vanashakti & Anr. ....Applicants

*Versus*

Union of India & Ors. ....Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANTS**

**I. BROAD OVERVIEW**

1. This Application challenges various provisions of the Coastal Regulation Zone Notification 2019 (“**CRZ 2019**”).
2. Primarily, the challenge to the various provisions to the CRZ are on 3 grounds:
  - a) That the Regulations contravene 5(3) of the Environment Protection Rules, 1986 as none of the new provisions were included in the Draft CRZ Notification;
  - b) That the Regulations contravene Articles 14 and 21 of the Constitution of India in as much as they have no rational nexus to the object sought to be achieved, are vague, arbitrary, and are disproportionate.

- c) Many of the new provisions are contrary to the recommendations of various Committees set up by the Government of India to review the CRZ regime;
  - d) That the Regulations in various cases are in the teeth of various judgements of the Hon'ble Supreme Court on the same issues.
3. For the sake of convenience, each topic area and consequent provisions of the CRZ 2019 under challenge in the present Petition shall be dealt with independently. These topic areas are set out below:
- a) Bifurcation Of CRZ-III Into CRZ-IIIA AND IIIB, And Reduction of 200 Meter NDZ To 50 Meters In CRZ-IIIA [Regulation 2.3.1 and 2.3.2]
  - b) Reduction In The CRZ For Tidal Influenced Water Bodies From 100M TO 50M [Regulation 1.0 (ii)]
  - c) Change Of FSI Norms In CRZ-II From Those Existing In 1991 To Those Presently Existing [Regulation 5.2 (iii) and 5.2 (iv) ]
  - d) Procedure For Clearance Of Projects Including Dispensing With EIA, Risk Assessment Report, And Disaster Management Plans in certain cases [Regulation 8 (i) (b) and 8 (i) (c)]
  - e) Dilution of essential components in preparation Of CZMP (Annexure – IV)
  - f) Dilution of essential components in Application Form for CRZ Clearance (Annexure – V)
  - g) Dilution Of Protection For Mangroves And Mangrove Buffer [Regulation 5.1.1.(i), Regulation 5.1.1.(ii)]
  - h) Changes In The Regulation Of Permissible Activities (Hotels, Port Development, Airport) In the CRZ [Regulation 5.1.2(i)(a), Regulation 5.2 (v), Regulation 5.4(ii)(a); Regulation 5.3 (g), Regulation 5.3 (v)];

- i) Deleting Items From The List Of Prohibited Activities In The CRZ (Waste Disposal, Land Reclamation, Fish Processing units, and dressing of Sand Dunes) [Regulation 4 (i) and (ix)]
- j) Increase In The Number Of Petroleum And Chemical Products Permitted To Store In CRZ Areas Except For CRZ-I(A) [Annexure II Regulations (xvi) to (xxiii)]
- k) Dilution Of CRZ – I By Removing The Term ‘Associated Biodiversity’ In Respect Of Protection Of Coral Reefs [Regulation 2.1.1 (a) (ii)]
- l) Reduction In CRZ From 50 Meters To 20 Meters On Islands [Regulation 10.2 (ii)]
- m) Construction Of Statues / Monuments [Regulation 5.4 (xv)]
- n) Deletion of Special Provisions For Koliwadās And Gaothans In Greater Mumbai
- o) Deletion of Special Provisions for Mumbai

4. These will now be dealt with individually below:

**A. BIFURCATION OF CRZ-III INTO CRZ-IIIA AND IIIB, AND REDUCTION OF 200 METER NDZ TO 50 METERS IN CRZ-IIIA**

5. The relevant provisions of CRZ 2011 & CRZ 2019 concerning the issue are set out below in a tabular form:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
Regulation 7(iii) <sup>1</sup> defines CRZ-III as under:  <i>“areas that are relatively undisturbed and those that do not belong to either CRZ-I or II, which includes coastal</i>	Regulation 2.3 <sup>2</sup> dealing with CRZ-III reads as under:  <b>2.3 CRZ-III:</b> <i>Land areas that are relatively undisturbed (viz. rural areas, etc.)</i>

<sup>1</sup> Annexure A-2 @Pg. 112, OA

<sup>2</sup> Annexure A-1 @Pg. 79, OA

*zone in rural areas (develop and undeveloped) and also areas within municipal limits or in other legally designated urban areas which are not substantially built-up”*

Regulation 8(III.)(A.) of CRZ 2011 deals with NDZ as follows:

*A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as “No Development Zone (NDZ)”,-*

*(i) the NDZ shall not be applicable in such area falling within any notified port limits;*

*(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities;*

*Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities including fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State*

*and those which do not fall under CRZ-II, shall constitute CRZ-III, and CRZ-III shall be further classified into following categories:*

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**2.3.1 CRZ-III A:**

*Such densely populated CRZ-III areas, where the population density is more than 2161 per square kilometre as per 2011 census base, shall be designated as CRZ-III A and in CRZ-III A, area up to 50 meters from the HTL on the landward side shall be earmarked as the ‘No Development Zone (NDZ)’, provided the CZMP as per this notification, framed with due consultative process, have been approved, failing which, a NDZ of 200 meters shall continue to apply.*

**2.3.2 CRZ-III B:**

*All other CRZ-III areas with population density of less than 2161 per square kilometre, as per 2011 census base, shall be designated as CRZ-III B and in CRZ-III B, the area up to 200 meters from the HTL on the landward side shall be earmarked as the ‘No Development Zone (NDZ)’.*

**2.3.3:**

*Land area up to 50 meters from the HTL, or width of the creek whichever is less, along the tidal influenced water bodies in the CRZ III, shall also be earmarked as the NDZ in CRZ III.*

*Note: The NDZ shall not be applicable in the areas falling within notified Port limits.*

<i>or the Union territory CZMA to NCZMA for approval by MoEF.</i>	
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6. In CRZ 2019, it can therefore be seen that CRZ-III has been bifurcated into CRZ-IIIA and CRZ-IIIB, the former of which is an area where the population is more than 2161 person per square kilometre as per 2011 census base, and the latter where the population density is less than 2161. The NDZ for CRZ-IIIA has been relaxed to 50 meters. Therefore in more densely populated areas, where the toll/strain on the environment is in greater need of environmental protection, the opposite has been done.

**Challenge:**

7. The challenge to this provision is based on the following grounds:
- (i) The basis for the said reduction has no rational nexus with the object of the said reduction and is disproportionate. The same is therefore arbitrary and violates Article 14 of the Constitution.

7.1. The Nayak Committee that examined changes to the CRZ has recommended this bifurcation and consequent relaxation of the No Development Zone (NDZ) in CRZ-IIIA. This recommendation appears to have been made on the representations made by State Governments that in some rural areas in Kerala and Karnataka are thickly populated and local communities who possess land in such NDZ were according to these representations, deprived of opportunities to construct or expand their houses. The population density standard of 2161 people per sq.km appears to be taken from standard set up in class III towns of 2001 census of India<sup>3</sup>. This reasoning is arbitrary for a number of reasons:

<sup>3</sup> Nayak Committee report section 3.2.1 at page 70 and 71 of 112.

- a) *Firstly*, under CRZ 2011 (and indeed under CRZ 2019), there was a specific provision for construction/ reconstruction of dwelling units of traditional coastal communities permitted between 100 and 200 meters from HTL<sup>4</sup> (which was within the NDZ of 200 meter under CRZ, 2011). Similarly, there was a provision for construction of facilities that were required for local inhabitants on a case to case basis<sup>5</sup>. In Regulation 5.3(ii)(a), (c) and (d), similar provision has been made for coastal communities in CRZ 2019. Therefore, a blanket relaxation cannot be said to have any nexus with the objective enunciated by the Nayak Committee for protecting “coastal communities”. The rights of coastal communities were adequately addressed under CRZ 2011 and are separately protected by Regulation 5.3 (ii) (a) (c ) and (d) of CRZ 2019. Relaxation for the legitimate concerns of a few cannot allow the ‘many’ with no legitimate concerns to benefit from the same at the cost of huge environmental damage. The measure is therefore also disproportionate. Clearly, the manner in which a general relaxation has been done, indicates that the needs of ‘coastal communities’ was nothing but an excuse. Indeed, if the comments to the draft CRZ notification are perused, it is clear that a large number of comments received from coastal communities opposed the impugned notification. There is no consideration as to whether or how the provisions of CRZ 2011 were adequate/inadequate to deal with the needs of traditional coastal communities.
- b) *Secondly*, there has been absolutely no consideration of the environmental impact of the said relaxation by either the Nayak

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<sup>4</sup> CRZ 2011, Regulation 8 III A (ii)

<sup>5</sup> CRZ 2011, Regulation 8 III A (iii)(j)

Committee or the MoEF. A need to relax is but one facet. The environmental consequences of such relaxation are equally important. There is however no consideration whatsoever in the consequences. At the very least, a balancing exercise was called for and a well-considered solution, which was mindful of the 'effects' of relaxation, devised. This was one of the reasons that the Supreme Court struck down a Notification reducing the CRZ area from 100m to 50 meters for rivers, creeks, and backwaters in the *Indian Council for Environment-Legal Actions*<sup>6</sup> in the following manner:

*i) According to the main Notification, distance of 200 metres from the HTL was a no-development zone (hereinafter referred to as 'NDZ'). The representation of the Hotel and Tourism Industry was that the existing 200 metres' depth of NDZ constituted a serious handicap to the said industry competing with the beach hotels of other countries where there were no such restrictions. It was represented that a reduction of the NDZ would not be ecologically harmful and there was no convincing scientific reason for fixing 200 metres as the appropriate width for the NDZ. It was also stated before the Committee that according to its projection, the Hotel Industry in India would at the most require only about 20-30 kms of coastline for the construction of seaside resorts over the next 15 years or so. If this requirement was viewed in the context of the fact that the total coastline of the country was over 6000 kms in length, the industry represented that relaxation with regard to this limited area would not pose any big threat to the country's ecology.*

*35. The Vohra Committee in its recommendations observed that certain members of the Committee had felt that a blanket provision of 200 metres in the case of sandy beaches would lead to difficulties and there should be provision for relaxation to be made in suitable cases, **but the consensus that emerged was that the present regulations should not be disturbed.** The Committee, however, recommended that relaxations in 200 metres' rule may be made in a case-to-case basis with regard to such stretches of the coastline which were rocky or hilly, but the relaxations should be made after carrying out necessary impact assessment studies. Furthermore, this*

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<sup>6</sup> *Indian Council for Environment-Legal Actions vs Union of India & Ors* [(1996) 5 SCC 281]

*relaxation should be made by the Ministry of Environment and Forests and not by the State Governments concerned.*

***36. In the 1994 Notification, there is a clear departure from the recommendations of the Vohra Committee. The notification now provides that for reasons to be recorded, the Central Government may permit any construction within the said 200 metres NDZ subject to such conditions and restrictions as it may deem fit.***

*37. In the written submissions filed by the Union of India in this Court on 29-9-1995, this amendment has been sought to be justified and explained by it in the following words:*

*"As regards the developmental activities up to the High Tide Line, the Central Government may for reasons recorded in writing permit construction in any particular case taking into account the geographical features and other relevant aspects.*

*This is necessary as providing of 200 metres of no-development zone all along was not possible in the coastal line in a uniform way on account of wide variations in geographical features, existing human settlements and developmental activities requiring foreshore facilities etc."*

*The relaxation with regard to NDZ was sought by the Hotel and Tourism Industry and they desired concession only with regard to 20-30 kms of coastline. By the amended notification, power had been given to the Central Government to make such relaxation with regard to any part of the 6000 kms long coastline of India. **The Central Government has, thus, retained the absolute power of relaxation of the entire 6000 kms long coastline and this, in effect, may lead to the causing of serious ecological damage as the said provision gives unbridled power and does not contain any guidelines as to a how or when the power is to be exercised. The said provision is capable of abuse. The Central Government also did not confine the relaxation to the extent as specified by the Vohra Committee. 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.***

***38. We, accordingly, hold that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (1) (Item z) 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 and is hereby quashed. No 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.”*

(Emphasis supplied)

The situation in the CRZ 2019 notification is identical. There is no consideration whatsoever of the ecological consequences of the reduction of NDZ in the Nayak Committee Report. The stated basis for the change is merely the population density without having regard to ecological and geomorphological features of an area. The only avowed basis has been the rights of local communities to construct or expand their houses, which in any event had specific provisions for the same in CRZ 2011.

- c) What has been completely ignored is that the above relaxation will heavily increase the risk of collapsing all coastal infrastructure and coastal farmlands in rural areas due to coastal flooding attributed to sea level rise and will also cause intrusion of excess saltwater into inland farmlands, thereby adversely affecting paddy farms and seriously threatening food security of various coastal regions of coastal states. This has been recorded in a scientific peer-reviewed research article<sup>7</sup> as under:

*“2.2. Impacts on fruit and vegetable crops*

*.....Increasing temperature will reduce the irrigation water availability, decrease soil fertility, increase soil erosion and flooding and salinity incursion; which are major restrictive*

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<sup>7</sup> Paras 1.2 and 2.2, “Paradigms of climate change impacts on some major food sources of the world: A review on current knowledge and future prospects, January 2016” by Ashutosh Tripathi, Durgesh Kumar Tripathi, D.K. Chauhan, Niraj Kumar & G.S. Singh published in the Journal “Agriculture, Ecosystems and Environment” at Annexure A-8 @Pgs. 495 and 500, OA.

*factors in sustainable vegetable production (Wheeler and von Braun. 2013; Anwar et al., 2015). Salinity causes ion-specific stresses reflected in wilting, loss of turgor, leaf curling and epinasty, leaf abscission, decreased photosynthesis, respiratory changes, loss of cellular integrity and tissue necrosis which may prove fatal for the vegetable plants.”*

8. In respect of the above the Applicant makes the following prayers C. (a) and (b), which are in alternative to prayer A:<sup>8</sup>

**B. REDUCTION IN THE CRZ FOR TIDAL INFLUENCED WATER**

**BODIES FROM 100m TO 50m:**

9. The relevant provisions of CRZ 2011 & CRZ 2019 concerning the instant section are set out below:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
<p>Regulation 1(ii)<sup>9</sup> provides the CRZ limits for Tidal influenced water bodies such as creeks, lagoons, estuaries, ponds (that are influenced by tide) as under:</p> <p><i>“CRZ shall apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity</i></p>	<p>Regulation 1.0(ii)<sup>10</sup> deals with CRZ limits for Tidal influenced water bodies as under:</p> <p><i>“CRZ shall apply to the land area between HTL to 50 meters or width of the creek, whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance upto which development along such tidal influenced water bodies is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of five parts</i></p>

<sup>8</sup> Prayer C(a) and (b) @Pgs. 59-60, OA.

<sup>9</sup> Annexure A-2 @Pg. 104, OA

<sup>10</sup> Annexure A-1 @Pgs. 77-78, OA

<p><i>concentration of 5 parts per thousand (ppt) measured during the driest period of the year and distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (hereinafter referred to as the CZMPs).</i></p> <p><i>Explanation.- For the purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds connected to the sea or creeks and the like.”</i></p>	<p><i>per thousand (ppt) measured during the driest period of the year and distance up to which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plan (hereinafter referred to as the CZMP):</i></p> <p><i>Provided that the CRZ limit of 50 meters or width of the creek whichever is less, shall be subject to revision and final approval of the respective CZMPs as per this notification, framed with due consultative process, public hearing etc. and environmental safeguards enlisted therein, and till such time the CZMP to this notification is approved, the limit of 100 meters or width of the creek whichever is less, shall continue to apply.</i></p> <p><i>Explanation.- For the purposes of this sub-paragraph the expression “tidal influenced water bodies” means the water bodies influenced by tidal effects from sea in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds that are connected to the sea.”</i></p>
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10. From the above, it is clear that CRZ 2019 has reduced the CRZ for tidal-influenced waterbodies from 100m to 50 meters.

**Challenge:**

11. The Challenge to this reduction in the area of CRZ to 50 meters is on three grounds:

- (i) The change is contrary to the recommendations of the various committees.

11.1. The Nayak Committee has in fact recommended 100 meters as the correct area which ought to come within the purview of CRZ in the case of tidally influenced waterbodies. Both Reports of the Swaminathan Committee of February 2005 and 16th July 2009 (titled “Final Frontier”), note that the Hon'ble Supreme Court in the judgement in the case of Indian Council for Environment-Legal Actions vs Union of India & Ors<sup>11</sup> struck down the proposed reduction in area of CRZ from 100 to 50 meters. The said reports did not make any recommendation to reduce the area from 100 to 50 meters<sup>12</sup>. None of the Committee Reports recommended reduction in the said CRZ area. The file noting in the MoEF also shows that none of these aspects have been considered.

- (ii) The Supreme Court struck down a similar amendment reducing the CRZ from 100m to 50m

11.2. In the case of Indian Council for Indian Council for Environment-Legal Actions vs Union of India & Ors [(1996) 5 SCC 281]. The Hon'ble Supreme Court held that there was no basis given for the reduction in the said area. It noted that even the Vohra Committee which had been set up to look into the demand into the tourism industry did not make any such recommendation either from an environmental point of view or otherwise and therefore, the proposal did not appear to have been made for any valid environmental reasons and was therefore arbitrary. Furthermore, the court noted that in some areas like Goa, there are mangrove areas that need protection which stretch to more than 100 meters from the river bank and

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<sup>11</sup> 1996 (5) SCC 281 decided on 18.04.1996

<sup>12</sup> Annexure A-6, Final Frontier report dated 16<sup>th</sup> July 2009, at paragraph 13(iii) @Pg. 442;  
Annexure A-5, Swaminathan Committee report dated 9<sup>th</sup> February, 2005, at paragraph 3.1.2 @Pg. 358

this contention had not been denied. Therefore, the court in the absence of any justification for this reduction, concluded that the relaxation was done for some extraneous reasons. The reduction in the distance of CRZ from 100 to 50 meters was therefore held to be contrary to the object of the Environment (Protection) Act, 1986 and was held to be illegal and was struck down<sup>13</sup>. This decision squarely applies, on all fours, to the present case and the relevant paragraphs Indian Council for Environment-Legal Actions are as under:

*“(ii) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended notification, been relaxed to 50 metres. As already seen the main Notification does not apply to all the rivers, It applies only to tidal rivers which are part of the coastal environment. It was contended that the reduction from 100 metres to 50 metres was arbitrary and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas, tidal ingress could go up to 50 kms from the coastline.*

*39. Justifying this amendment, it was contended by the Union of India that in case of creeks, rivers or backwaters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each State authority concerned in their own Management Plans **but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra Committee which had been set up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was submitted, at the time of arguments by the Additional Solicitor General that construction has already taken place along such rivers,***

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<sup>13</sup> *Indian Council for Environment Legal Actions vs Union of India & Ors [(1996) 5 SCC 281], paragraph 39.*

*creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. **This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal.**"<sup>14</sup>*

(emphasis supplied)

- (iii) The basis for the said reduction has no rational nexus with the object of the said reduction and is disproportionate. The same is therefore arbitrary and violates Article 14 of the Constitution.

11.3. The only reasoning for this change appears in the file noting of Ministry of Environment that reads is as under:

*"(iv) Instead of 100 metres or width of the water body, whichever is less, 50 metres or width of the water body whichever is less shall be maintained along tidal influenced waterbodies.*

**My Views:** - *This suggestion may be agreed as these tidal influenced water bodies do not generally get flooded beyond HTL. The cushion of 50 metres would be adequate. However, the local authorities must remove all encroachments, ensure no future encroachment" and develop the 50 metre open space as green belt and "environmental safeguards" by mandate.*<sup>15</sup>

11.4. This has no co-relation with the objects of the Environment (Protection) Act, 1986 and is therefore arbitrary and illegal. Indeed, in the draft notification recommended by the Nayak Committee the CRZ for tidally influenced waterbodies is shown as 100 meters.<sup>16</sup> As stated above,

<sup>14</sup> Annexure A-9, @Pgs. 528-529

<sup>15</sup> Annexure A-7, File noting of MOEF, para 4(iv) @Pg. 488

<sup>16</sup> Annexure A-4, Nayak Committee report, draft notification Regulation 3(ii) @Pg. 260

this is contrary to the expert reports.<sup>17</sup> Scientific material also shows the dangers of global warming and the necessity of adequate inter-tidal areas.<sup>18</sup>

(iv) The said changes would also cause other damage to the environment.

11.5. Tidal influenced water bodies are rich in bio diversity and need extra protection. Many sites form sites for migratory birds such as Flamingos at certain times of the year. They are also the breeding grounds for fishes and crustaceans like crabs etc. that live close to the coast. Reducing the CRZ in such circumstances would have a drastic impact on the food chain in such a fragile ecosystem. Mangroves are one of the many ecological indicators of inter tidal activity. The presence of intertidal fauna and flora has to be recognised and protected.

11.6. In respect of the above, the Applicant makes prayers (c), (d) and (e).

### **C. CHANGE OF FSI NORMS IN CRZ-II FROM THOSE EXISTING IN 1991 TO THOSE EXISTING AS ON 18<sup>TH</sup> JANUARY 2019**

12. The relevant provisions of CRZ 2011 & CRZ 2019 concerning the instant issue are set out below:

<i><b>Relevant provision in CRZ 2011</b></i>	<i><b>Relevant provision in CRZ 2019</b></i>
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<sup>17</sup> Annexure A-7, Final Frontier Report, 2011, Para 13(ii) @Pg. 442

<sup>18</sup> Annexure A-10, Article titled “New elevation date triple estimates of global vulnerability to sea-level rise and coastal flooding” published in the journal “Nature Communications” in October, 2009 @Pgs. 536-537; Annexure A-11, New York Times Article dated 29.10.2019 titled “Rising Seas Will Erase More Cities by 2020, New Research Shows” @Pg. 549; Annexure A-12 “Making India’s coastal infrastructure climate-resilient: Challenges and Opportunities,” published by Observer Research Foundation in August, 2019, Para 4.1 @Pg. 566;

<p>Regulation 8(II)(ii) and (iii) provides for the FSI norms in CRZ-II as under:</p> <p><i>“(ii) buildings permitted on the landward side of the existing and proposed roads or existing authorised structures shall be subject to the existing local town and country planning regulations as modified from time to time, except the Floor Space Index or Floor Area Ratio, which shall be as per 1991 level:</i></p> <p><b><i>Provided</i></b> that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road:</p> <p><b><i>Provided further</i></b> that the construction in CRZ-II area of Goa, Kerala and Mumbai shall be governed by the provisions of Clause V of paragraph 8.</p> <p><i>(iii) reconstruction of authorized building to be permitted subject with the existing Floor Space Index or Floor Area Ratio Norms and without change in present use;”</i></p>	<p>Regulation 5.2(iii) and (iv)<sup>19</sup> deals with the FSI norms in CR-II as under:</p> <p><i>(iii) Buildings permitted as in {ii} above, shall be subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index (FSI) or Floor Area Ratio (FAR) prevailing as on the date of this Notification, and in the event that there is a need for amendment of the FSI after the date of publication of this notification in the official Gazette, the Urban Local Body or State Government or Union Territory Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management Authority (SCZMA) or Union Territory Coastal Zone Management Authority, as the case may be and the SCZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities, environmental protection measures, etc., and take a suitable decision on the proposal and it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste</i></p>
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<sup>19</sup> Annexure A-1 @Pgs. 77-78, OA

*Management Rules and no untreated sewage is discharged on to the coast or coastal waters.*

*(iv) Reconstruction of authorised buildings shall be permitted, without change in present land use, subject to the local town and country planning regulations as applicable from time to time, and the norms for the Floor Space Index or Floor Area Ratio, prevailing as on the date of publication of this notification in the official Gazette and in the event that there is a need for amendment of the FSI after the said date of this notification, the Urban Local Body or State Government or Union territory Administration shall approach the Ministry of Environment, Forest and Climate Change through the concerned State Coastal Zone Management Authority (SCZMA) or Union Territory Coastal Zone Management Authority, as the case may be and the CZMA shall forward the proposal to the National Coastal Zone Management Authority (NCZMA) with its views -in the matter, and the NCZMA shall thereafter examine various aspects like availability of public amenities, environmental protection measures etc., and take a suitable decision on the proposal and it shall be the responsibility of the concerned Town Planning Authority to ensure that the Solid Wastes are handled as per respective Solid Waste Management Rules and no untreated sewage is discharged on to the coast or coastal waters.*

13. CRZ 2011 contained a provision stating that the FSI, FAR, and other local town and country planning norms would be as “existing”. This was the exact same wording as in CRZ 1991.<sup>20</sup> The Hon'ble Supreme Court in **Suresh Estates** interpreted the term “existing” to mean that the town and country planning norms as of the date of coming into force of CRZ 1991 would apply in the following manner:

*“19. The word “existing” as employed in the CRZ notification means the town and country planning regulations in force as on 19-2-1991. If it had been the intention that the town and country planning regulations as in force on the date of the grant of permission for building would apply to the building activity, it would have been so specified. It is well to remember that CRZ notification refers also to structures which were in existence on the date of the notification. What is stressed by the notification is that irrespective of what local town and country planning regulations may provide in future the building activity permitted under the notification shall be frozen to the laws and norms existing on the date of the notification.”<sup>21</sup>*

14. It may be pointed out here for clarity, the provisions of CRZ 2011 were modified to clarify that the applicable local town planning norms including FSI, FAR would be as of 19<sup>th</sup> February 1991.

15. Regulations 5.2 (iii) and (iv) of CRZ 2019, provide that FSI (floor space index)/ FAR(floor area ratio) shall be as per relevant town and country planning norms as on the date of CRZ 2019 i.e. 18<sup>th</sup> January 2019.

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<sup>20</sup> CRZ 1991, Annexure 1, CRZ-II (i)

<sup>21</sup> Annexure A-13, Para 19 @Pg. 597

16. This removes the freeze on town planning norms in the earlier CRZ which were frozen on the date of coming into force of CRZ 1991 in the judgment of the Supreme Court in *Suresh Estates vs Municipal Corporation of Greater Mumbai & Ors.* [(2007) 14 SCC 439].

17. Therefore, CRZ 2019 has changed the applicable town planning norms from those that were applicable on coming into force of CRZ 1991 to those in force on coming into force of CRZ 2019 i.e. 18<sup>th</sup> January 2019. The disastrous implications thereof are only too evident, since development in ecologically and environmentally vulnerable areas will now mushroom exponentially.

**Challenge:**

18. The challenge to the said provision is based on the following grounds:

- (i) The said change is arbitrary and affects the right to a healthy environment by permitting uncontrolled development. The changes would be in contravention to the MRTP Act.

18.1. This change would have grave consequences for the environment. This change will, by itself, destroy the coastal environment. This change will also have devastating consequences on the standard of life of persons living in these areas. The following Table setting out the permissible FSI structure for Mumbai under DCR 1991 and DCR 2034, graphically highlights this.

Sr. No.	DEVELOPMENT ACTIVITY IN CRZ AREAS (As per CRZ, 2019)	FSI under DCR 1967 (as applicable to CRZ areas under CRZ 1991 & 2011)	FSI under DCPR 2034 (as applicable to proposed CRZ 2019)
1.	New construction of residential buildings in CRZ-II on the landward side	(i) Coast along Tardeo, Haji Ali, Worli, Mahalaxmi – 1.66 (ii) Coast along Napean Sea Road, Carnac Road, Mahim Causeway to Bombay-Agra	Total Permissible FSI is linked to road width (width) – (FSI)  <b>I. Island City</b>

		<p>Road (upto Mulund) - - 1.66</p> <p>(iii) Suburbs and Extended Suburbs (Western) - 1.00</p> <p>(iv) Reclamation area of MHADA in Mahim Creek (Bandra West) - 2.00</p> <p>(v) Areas close to shore/creek in 'M' ward - 0.75 or 0.5</p> <p>(vi) Backbay Reclamation Schemes I &amp; II - 2.45</p> <p>(vii) Backbay Reclamation Schemes III to VI - 3.5</p>	<p>Upto 9m - 1.8</p> <p>9m - 12m - 2.7</p> <p>12m-18m - 3.24</p> <p>18m-27m - 3.65</p> <p>above 27m - 4.05</p> <p><b>II. Suburbs</b></p> <p>Upto 9m - 1.35</p> <p>9m - 12m - 2.7</p> <p>12m-18m - 2.97</p> <p>18m-27m - 3.24</p> <p>above 27m - 3.375</p>
2.	New construction of office space development in CRZ-II	Same as above.	<p>Total Permissible FSI is linked to road width (<i>Greater than 12 m road width only</i>)</p> <p><b>FOR ENTIRE CITY</b></p> <p>12m - 18m - 4.05</p> <p>18m - 27m - 5.40</p> <p>Above 27m - 6.75</p>
4.	Reconstruction of authorized buildings in CRZ-II		<p>Redevelopment of construction of staff quarters of govt/MCGM/statutory bodies on govt lands - 4.0 [DCR 33(3A)]</p> <p>Redevelopment of construction of staff quarters of govt/MCGM/statutory bodies on private lands - 3.0 for min. 12m road width &amp; 4.0 for min. 18m road width. [DCR 33(3B)]</p> <p>Redevelopment of MHADA Hsg schemes - 4.0 plus upto 70% incentives [DCR 33(5)]</p> <p>Reconstruction of cessed buildings undertaken by Co-</p>

			<p>operative Hsg. Society – 3.0 plus up to 50% more incentive FSI [DCR 33(7)]</p> <p>Reconstruction/Redevelopment of cluster buildings by MHADA/MCGM – 4.00 plus up to 100% incentives [DCR 33(9)]</p> <p>Redevelopment under SRA Scheme – 4.0 plus incentives [DCR 33(10)]</p>
5.	Construction of Hotels in CRZ-II areas	N/A	<p>Road width – FSI Min. 12m – 3.0 Min. 18 m – 4.0 Min. 27m – 5.0 Plus up to 50% additional incentives [DCR 33(4)]</p>
6.	Construction of Hotels in CRZ-III areas	N/A	DCR not applicable as CRZ, 2019 itself states that maximum FSI shall be 1.33

18.2. DCR 2034 was the result of a planning exercise which came into force on 1st September, 2018 (& certain additional provisions were notified on 13th November, 2018). This exercise factored in the load based on DCR 1991 in coastal areas. The exponential increase that CRZ 2019 would bring forth was not contemplated in DCR 2034.

18.3. Therefore, quality of life, air, water, open spaces etc. will all catastrophically deteriorate/diminish and noise pollution and population will increase. In places like Mumbai, a drastic increase in FSI in coastal areas will have a disproportionate impact on the population, which has not been considered at all when the planning for DCR 2034 was done.

18.4. Coastal areas constitute 53.58 sq. km which is approximately 10% of the area of Mumbai and 26% of the total area of Greater Mumbai is affected by CRZ. If there were a drastic revision of FSI norms (as contemplated in CRZ 2019), it would constitute a “modification of a substantial nature” under Sections 22A (a) and (c) of the Maharashtra Regional and Town Planning Act. Such a revision would normally require an elaborate procedure to be followed, and study to be conducted before being permitted, none of which has been done before modifying CRZ 2019, and its consequential impact on DCR 2034.

(ii) The proposed changes have no rational nexus with any environmental reasons.

19. The environmental impact of the same has not been considered in any of the recommendations. The Nayak Committee does not provide any scientific/environmental analysis and merely states the following at Para 3.1.2:

*“The Committee also examined the Office Order of September, 1998 issued by MoEF&CC which freezes the FSI as on 19.2.1991 including the Orders of Hon'ble High Court of Bombay which has upheld the above Orders of MoEF&CC. The Orders of Hon'ble High Court of Bombay in freezing the FSI as on 1991 have also been examined. The Orders of the Hon'ble High Court in this matter does not prevent the Government to amend the law. Hence, the Committee is of the opinion that in view of the serious environmental and social issues arising due to proliferation of slums the matter should be left to the State Governments to implement the slum rehabilitation schemes as per the concerned State Government norms issued from time to time.”<sup>22</sup>*

20. This reasoning has no rational nexus with the implementation of Slum Rehabilitation Schemes and redevelopment of dilapidated buildings. In CRZ

<sup>22</sup> Annexure A-4, Nayak committee report, para 3.1.1, 3.1.2 and 3.1.3 @Pgs. 234-236

2011, an extensive regimen was set up especially considering Slum Rehabilitation Scheme; and dilapidated, cessed and unsafe buildings. Therefore, the said recommendation cannot be said to furnish any valid reasoning at all. If the aim was to ensure redevelopment of slum areas as well as dilapidated, cessed and unsafe buildings, there was no need to make a general relaxation in the date on which relevant town and country planning norms shall apply.

21. In the various other committee recommendations and comments of MOEF, no specific reason has been provided for why there should be a general relaxation of the date on which the FSI/ FAR are frozen and the extension of the same from 19th February 1991 to 18th January 2019. Indeed, as pointed out earlier, these provisions in respect of the areas sought to be protected were already provided for in CRZ 2011. The said provision is therefore manifestly arbitrary.

22. In respect of the above the Applicant makes prayers (f), and (g).

**D. PROCEDURE FOR CLEARANCE OF PROJECTS INCLUDING DISPENSING WITH EIA, RISK ASSESSMENT REPORT, AND DISASTER MANAGEMENT PLANS DILUTED IN CERTAIN CASES**

23. The relevant provisions of the Draft CRZ 2018 & CRZ 2019 concerning the instant section are set out below:

<i>Relevant provision in Draft CRZ 2018</i>	<i>Relevant provision in CRZ 2019</i>
Regulations 8(i)(c) and (d) provide as under:	Regulations 8(i)(c) and (d) provide as under:
<i>“8. Procedure for CRZ clearance for permissible/regulated activities:</i>	<i>“8. Procedure for CRZ clearance for permissible/regulated activities:</i>

<p><i>(i) The project proponents shall apply with the following documents to the concerned State or the Union territory Coastal Zone Management Authority for seeking prior clearance under CRZ Notification:</i></p> <p>....</p> <p><i>(c) Comprehensive EIA with cumulative studies for projects, if located in low and medium eroding stretches, as per the CZMP to this notification.</i></p> <p><i>(d) Risk Assessment Report and Disaster Management Plan.”</i></p>	<p><i>(i) The project proponents shall apply with the following documents to the concerned State or the Union territory Coastal Zone Management Authority for seeking prior clearance under CRZ Notification:</i></p> <p>....</p> <p><i>(c) Comprehensive EIA with cumulative studies for projects, (except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O 1533(E), dated 14<sup>th</sup> September, 2006) if located in low and medium eroding stretches, as per the CZMP to this notification.</i></p> <p><i>(d) Risk Assessment Report and Disaster Management Plan, except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O 1533(E), dated 14<sup>th</sup> September, 2006.</i></p>
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24.Regulations 8.(i) (c) and (d) of CRZ 2019 grant an exemption to building construction projects and housing schemes which are less than the threshold limit mentioned in the EIA Notification of 2006, from submitting a comprehensive EIA study, Risk Assessment Report and Disaster Management Plan. No such exemption was provided in the 2011 Notification.

**Challenge:**

(i) The said provision was not in the 2018 Draft Notification which required all project proponents to submit a comprehensive. It has not been included in accordance with Rule 5(3) of the EPA Rules.

25. This is in contravention of Rule 5(3) of the Environment (Protection) Rules, 1986 (“EPR”) which requires that the relevant change has to be published and objections from the public be invited thereon and considered. It is clear that this was not an emergency measure by its very nature. The process of a review of CRZ 2011 has been underway for a long time period.

(ii) The said provision is arbitrary and violates Articles 14 and 21

26. The threshold Unit prescribed for building construction projects and housing schemes, under the EIA Notification, is 20,000 sq/mtr. Therefore every proposal involving an area of less than 2,00,000 sq. ft. can now be sanctioned with no need to do an EIA Study, Risk Assessment, etc. EIA report with cumulative studies, risk assessment report and a disaster management plan for CRZ Clearance was mandatory under CRZ 2011.<sup>23</sup>

27. The provision places no cap on the number of such projects and the aggregate area covered thereby. It is therefore possible to put up unlimited construction in a CRZ area by merely submitting (and getting approval) separate proposals for individual buildings each below 2 Lac Sq.Ft., which in the first instance is a significant area.

28. This is evident from the judgement of the Supreme Court in *Hanuman Laxman Aroskar* which states as under:

**“91. .... The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain...”**

<sup>23</sup> Annexure A-3, Regulation 8 of the Draft CRZ Notification, 2018 @Pg. 147

92. In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. ***The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wet lands, water sources, water bodies, costal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of bio-diversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied....***

108. ....The point, however, is simple: there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. ***For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring any component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.***

29. In respect of the above the Applicant makes prayers (k), and (l).

**E. DILUTION OF ESSENTIAL COMPONENTS IN PREPARATION OF CZMP's**

30. The relevant provisions of the CRZ 2011 & CRZ 2019 concerning the instant section are set out below:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
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<p>Annexure-I to CRZ 2011 deals with Guidelines for preparation of CZMPs as under:</p> <p><i>“ I. B. Preparation of CZM Maps</i></p> <p>8. The following geomorphological features shall be considered while demarcating in HTL or LTL:  Landward (monsoonal) berm crest in the case of sandy beaches  Rocks, Headlands, Cliffs  Seawalls or revetments or embankments</p> <p><i>II. Classification of CRZ Areas:</i></p> <p>8. <i>No developmental activities other than those listed above shall be permitted in the areas between the hazard line and 500mts or 100mts or width of the creek on the landward side. The dwelling unit of the local communities including that of the fishers will not be relocated if the dwelling units are located on the seaward side of the hazard line. The State Government will provide necessary safeguards from natural disaster to such dwelling units of local communities.</i></p> <p>....</p> <p><i>11. The water area shall be demarcated indicating the pollution levels as per Central Pollution Control Board standards on water quality.”</i></p>	<p><b>Deleted from CRZ 2019.</b></p>
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31. In CRZ 2019, there have been drastic changes in the manner in which CZMP's have to be prepared which transforms all the protections/provisions of CRZ 2019 to a dead letter. This primarily flows from the changes to Annexure IV of the Notification. These lacunae are as under:

31.1. Firstly, CRZ 2019 leaves scope for arbitrary demarcation and seeks no second layer of verification for ground-truthing.

31.2. Under CRZ 2011, pollution levels in the water area were required to be demarcated, as per water quality standards set by Central Pollution Control Board.<sup>24</sup> CRZ 2019 does away with this requirement. This would be essential to granting CRZ permission.

31.3. CRZ 2011 considered important geomorphological features such as landward (monsoonal) berm crest in the case of sandy beaches, rocks, headlands, cliffs, seawalls or revetments or embankments while demarcating in HTL or LTL.<sup>25</sup>

32. The protection in the 2011 Notification of dwelling units of local communities including those of the fishermen located on the seaward side of the hazard line has been done away with. The mandate of the State Government to provide necessary safeguards from natural disasters to such dwelling units has also been withdrawn.<sup>26</sup>

**Challenge:**

(i) There are no environmental reasons for the said change.

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<sup>24</sup> Cause II (11) of Annexure I of CRZ 2011 Notification, @Pg. 121, OA.

<sup>25</sup> Regulation I B (8) Annexure 1 of CRZ 2011 Notification, @120, OA.

<sup>26</sup> Regulation II (8) of Annexure I of CRZ 2011 Notification, @Pg. 121, OA.

33. In the file notings of MoEF on Shailesh Nayak Report, it is claimed that ground verification and rectification has been assigned to NCSCM.<sup>27</sup> However, there has been no mention of such methodology in the final notification. The absence of such criteria in the CZMP's would render CRZ 2019 a dead letter at a practical level.

34. In respect of the above the Applicant makes prayers (m), and (n).

#### **F. DILUTION OF PROTECTION FOR MANGROVES AND MANGROVE BUFFER**

35. The relevant provisions of the CRZ 2011 & CRZ 2019 concerning the instant section are set out below:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
<p>Regulation 8 V. (I) (A) (ii) of CRZ 2011 deals with the extent of compensatory afforestation for mangroves as under:</p> <p><i>“ V 1. CRZ areas falling within municipal limits of Greater Mumbai</i></p> <p><b>B. (ii) Five times</b> the number of mangroves destroyed/cut during the construction process shall be replanted.”</p>	<p>Regulation 5.1.1. deals with regulation of permissible activities in CRZ-IA as under:</p> <p><i>“5.1.1. CRZ-IA: These areas are ecologically most sensitive and generally no activities shall be permitted to be carried out in the CRZ-I A area, with following exceptions:-</i></p> <p><i>(i) Eco-tourism activities such as mangrove walks, tree huts, nature trails, etc., in identified stretches areas subject to such eco-tourism plan featuring in the approved CZMP as per this notification, framed with due consultative process, public hearing, etc. and further subject to environmental safeguards and precautions related</i></p>

<sup>27</sup> Clause 4(i) of the file notings of MoEF on Shailesh Nayak Report @Pg. 487, OA.

	<p><i>to the Ecologically Sensitive Areas, as enlisted in the CZMP.</i></p> <p><i>(ii) In the mangrove buffer, only such activities shall be permitted like <b>laying of pipelines, transmission lines, conveyance systems or mechanisms and construction of road on stilts, etc. that are required for public utilities.</b></i></p> <p><i>(iii) Construction of roads and roads on stilts, by way of reclamation in CRZ-I areas, shall be permitted only in exceptional cases for defence, strategic purposes and public utilities, subject to a detailed marine or terrestrial or both environment impact assessment, to be recommended by the Coastal Zone Management Authority and approved by the Ministry of Environment, Forest and Climate Change; and in case construction of such roads passes through mangrove areas or is likely to damage the mangroves, <b>a minimum three times the mangrove area</b> affected or destroyed or cut during the construction process shall be taken up for compensatory plantation of mangroves.</i></p>
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36. There has been a reduction of protection of mangroves in CRZ 2019. It is extremely important to highlight the immense importance of mangroves to the environment. The following observations made by the Hon'ble High Court of Bombay in *Bombay Environmental Action Group & Anr. v/s State of Maharashtra & Ors. (PIL No. 87 of 2006)*, while relying upon *Krishnadevi*

*Malchand Kamathia and Ors. v/s Bombay Environmental Action Group & Ors. (2011) 3 SCC 363* may be noted:-

“55. Mangroves ecosystems play a vital role in human life. In the subsequent part of this judgment, we have quoted a decision of the Apex Court which notes that the mangroves forests are of great ecological importance and are also ecologically sensitive. Considering the vital role played by the mangroves which can be seen from what is set out above, if a citizen is to lead a meaningful life as contemplated by Article 21 of the Constitution of India, the mangroves will have to be preserved and protected. Considering the drastic effects of destruction of mangroves on the environment, the destruction of mangroves and the failure of the State to take steps for its restoration will amount to violation of fundamental rights guaranteed by Article 21 of the Constitution.”

### **Challenge:**

#### **(i) Increasing the types of permissible activity:**

37. The 2019 Notification adds “etc.” to the definition of eco-tourism activities permitted in mangrove areas which includes mangrove walks among other things. This sub-Regulation wasn’t included in the earlier Notification.<sup>28</sup> There are no reasons given for adding the word “etc.” to the definition of eco-tourism activities. It is designed to expand and expands the term and is extremely vague. The Notification uses the word “etc” and not “or the like” which would have clearly brought in the *ejusdem generis* principle,. – the definition of permissible activities is vague and therefore arbitrary. It is *ultra-vires* Rule 5(3) of the EPA Rules, and violates Articles 14 and 21 of the Constitution of India.

#### **(ii) Change in Buffer Zone:**

38. There has been a complete change in the permissible activities in the buffer zone. CRZ 2019 adds another Regulation which permits laying of pipelines,

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<sup>28</sup> Annexure A-1, Regulation 5.1.1.(i) of the 2019 Notification @Pg. 80, OA

transmission lines, conveyance systems/mechanisms and construction of road on stilts etc. that are required for public utilities in the mangrove buffer area.<sup>29</sup> This is without any reasoning or consideration. It is also contrary to the recommendations of the Swaminathan report. The Swaminathan report mentioned the benefit of the buffer area of 50m which was to be around the mangrove stretch.

*“In addition to the diversity of the habitat, the mangroves play an important role in a sediment repository, stabilises shoreline, a buffer against storm surges (that would otherwise have a more damaging effect on the coast. Its positive impact was noticed in the Bangladesh cyclone of 1991. In the recent Gujarat and Orissa cyclones the devastation was reported to have been lesser where sufficient mangrove buffers were present”.*<sup>30</sup>

39. In its 87th meeting in January 2014, the Maharashtra CZMA decided that there should be a policy to manage the 50 m buffer zone around mangrove areas of 1,000 sq. mts. or more. It resolved that a green belt has to be developed by project proponents in the proximity of the mangrove areas in the 50 m buffer zone for the protection of existing mangroves.”<sup>31</sup>

40. However, the Shailesh Nayak Report drastically changed the purpose of the buffer land area. It recommended that:

*“This buffer zone of 50 m shall be utilized for constructing walkways, interpretation centers, promenades public facilities for developing parks, research facilities related to mangrove biodiversity, facilities for conservation and the like. Further, in the mangrove area and in the buffer, all activities are prohibited except for laying of pipelines, transmission lines, conveyor belts, construction of road on stilts and other conveying mechanisms that are required for public use. Défense establishments such as watch tower could be taken up in the mangrove area”.*<sup>32</sup>

<sup>29</sup> Annexure A-1, Regulation 5.1.1.(ii) of the 2019 Notification @Pg. 80, OA.

<sup>30</sup> Annexure A-5, Para 2.4.1. of Swaminathan Committee Report, 2005, @Pg. 323, OA.

<sup>31</sup> Q. 11 of the Report “CZMAs and Coastal Environments”, 2015 internal pg 127.

<sup>32</sup> Annexure A-4, Clause (I)(A)(a) of the Shailesh Nayak Report, @Pg. 274, OA.

41. However, this is not the case in the notification. The MoEF file notes only mention that development projects could be undertaken only if no other option exists,<sup>33</sup> but does not seem to give any reasons for relaxing the requirements in the buffer area. The importance of the buffer area was noted by the Hon'ble Bombay High Court in PIL No. 87 of 2006 (Bombay Environmental Action Group & Anr. v/s the State of Maharashtra & Ors) in the following manner:

*62. We must note here that none of the respondents have ventured to deny this factual statements made in the petition about the important role played by the mangroves eco-sytems. On the contrary, the affidavit of the State of Shri Milind Panditrao, Divisional Forest Officer shows that except for the directions regarding the mangroves on private lands, the State Government claims to have made a sincere effort to implement the directions issued by this Court under the order dated 6<sup>th</sup> October 2005. Whether the State has implemented all the directions issued or not is an altogether a different issue. What is important is that the State has shown willingness to abide by almost all directions including the direction regarding keeping buffer zone of 50 meters. **Considering the applicability of the public trust doctrine and the statutory and constitutional duty of the State, the said direction for stopping all construction taking place within 50 meters on all sides of all mangroves will have to be maintained as this direction will protect the mangroves. If construction activity is permitted in the said buffer zone, it will inevitably cause damage to the mangroves. No construction/development permission can be granted in the buffer zone of 50 meters of mangroves having an area less than 1000 square meters, unless the concerned development authorities are fully satisfied that even if development is carried out, no damage whatsoever will be caused to the mangroves. As pointed out earlier, in case of mangrove area of 1000 square meters or more, 50 meter buffer zone will be a part of CRZ-I and such a buffer zone will be subject to all the restrictions provided in CRZ Regulations.***

The final provision therefore goes against the very nature of a buffer area and changes the entire purpose of the buffer area.

**(iii) Compensatory Afforestation:**

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<sup>33</sup> Annexure A-7, Clause 3.2 of file notings of MoEF for the Shailesh Nayak Committee Report, @Pg. 484, OA.

42. In a mangrove area, a minimum of three times the mangrove area affected or destroyed or cut during the construction process shall be taken up for compensatory plantation of mangroves as per the 2019 Notification<sup>34</sup> as opposed to the five times that the CRZ 2011 Notification directs.<sup>35</sup> The Shailesh Nayak Report itself states that the Government (State/Union) shall undertake 10 (ten) times mangrove afforestation in lieu of the mangrove land area reclaimed for the purpose.<sup>36</sup> Therefore the requirement of compulsory afforestation of only 3 times the affected area is contrary to all the reports. There is no reasoning for dilution of the requirement under CRZ 2011. This dilution is therefore illegal, unlawful, and arbitrary.

43. In respect of the above the Applicant makes prayers (h), (i) and (j).

**G. CHANGES IN THE REGULATION OF PERMISSIBLE  
ACTIVITIES (HOTELS, PORT DEVELOPMENT, AIRPORT) IN  
THE CRZ**

44. The change in permissible activities can be bifurcated into the following sub-categories: (i) Hotels; (ii) Airports; and (iii) Port Development

**(i) HOTELS-**

There are 2 major issues in the new CRZ 2019 regime in respect of Hotels: (a) Expanding scope of Beach Resorts/hotels and (b) Relaxation of regulations in CRZ-III.

45. The relevant provisions of the CRZ 2011 & CRZ 2019 concerning the expansion of scope of Beach Resorts/hotels are set out below:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
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<sup>34</sup> Annexure A-1, Regulation 5.1.1.(iii) of CRZ 2019 @Pg. 80, OA.

<sup>35</sup> Annexure A-2, Clause 8(V.)(1.)(A.)(ii) of CRZ 2011 @Pg. 115, OA.

<sup>36</sup> Annexure A-4, Clause (I)(A)(c) of the Shailesh Nayak Report, @Pg. 274, OA.

<p>Regulation 3(ix) CRZ 2011 deals with prohibition on reclamation for commercial purposes as under:</p> <p><i>“(ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities.”</i></p>	<p>Regulation 5.2. and 5.3 deal with regulation of permissible activities in CRZ-II and III as under:</p> <p><i>“5.2. v) Development of vacant plots in designated areas for construction of beach resorts or hotels or <b>tourism development projects</b> subject to the conditions or guidelines at Annexure-III to this notification.</i></p> <p>....</p> <p><i>5.3.(iii) (a) Development of vacant plots in designated areas for construction of beach resorts or hotels or <b>tourism development projects</b> subject to the conditions or guidelines at Annexure-III to this notification.”</i></p>
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**Challenge:**

*(a) Expanding scope of Beach Resorts/hotels to include “Tourist Development Projects”*

46. This change is contrary Rule 5(3) of the Environment (Protection) Rules, 1986 (“EPR”).

46.1. Regulation 5.2 (v) & 5.3(iii)(a) read with Annexure III of CRZ 2019 has expanded the scope of tourism development in CRZ areas by adding the words “tourism development projects”<sup>37</sup> The draft 2018 Notification only permitted development of beach resorts and hotels and not “Tourism Development Projects”. It may be pointed out that the CRZ 2011 prohibited reclamation for commercial purposes such as shopping and

<sup>37</sup> Annexure A-1, Annexure III of CRZ 2019 and *also at* Regulation 5.2 (v) @Pg. 83 & 5.3(iii)(a) @Pg. 84, OA

housing complexes, hotels and entertainment activities.<sup>38</sup> It is clear that this was not an emergency measure by its very nature. The process of a review of CRZ 2011 has been underway for a long time.

47. It is also vague, arbitrary and illegal and violates Articles 14 and 21 of the Constitution of India.

47.1. That apart, the expression “Tourism Development Project” is not defined. Tourism and tourists are of many types. There can be any number of possibilities of projects which develop or promote tourism. E.g. Casinos promote tourism. Museums, Art Galleries, Opera Houses, and Theatres also promote tourism. High End Shopping Malls/High Streets promote tourism. Sporting facilities promote tourism. A “Tourism Development Project” will therefore sound the death knell for the coastal ecology. This is therefore totally arbitrary, irrational and a source of unregulated and uncanalised power and therefore bad in law.

In respect of the above the Applicant makes prayer (o).

*(b) Relaxation of regulations in CRZ-III:*

48. Secondly, Annexure-III of CRZ 2019 removes various restrictions on construction of “tourism development projects” such as:

(i) the restriction on construction for the distance of 200 mts from the shore for the construction of hotels in CRZ II and CRZ III.<sup>39</sup>

(ii) One example is the criteria relating to FSI (which shall not exceed 0.33) is now restricted only to CRZ III, which was earlier applicable to both zones.

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<sup>38</sup> Annexure A-2, Regulation 3 (ix) of CRZ 2011 @Pg. 107, OA

<sup>39</sup> Annexure A-2, CRZ 2011, Annexure III – Regulation I.(a) @Pg. 124, OA.

(iii) Similarly, most of the other safeguards of the 2011 notification have been applied to CRZ III but not for CRZ II.<sup>40</sup>

The relevant provisions of CRZ 2011 and CRZ 2019 under this section are as under:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
<p>Annexure – III deals with Guidelines for development of beach resorts or hotels in designated areas of CRZ-III and CRZ-II and the relevant provisions are as under:</p> <p><i>“I. (a) The project proponent shall not undertake any construction within 200 metres in the landward side of High Tide Line and within the area between Low Tide Line and High Tide Line</i></p> <p>...</p> <p><i>(h) though no construction is allowed in the no development zone for the purposes of calculation of Floor Space Index, the area of entire plot including the portion which falls within the no development zone shall be taken into account;</i></p> <p><i>(i) the total plot size shall not be less than 0.4 hectares and the total covered area on all floors shall not exceed 33 percent of the plot size i.e., the Floor Space Index shall not exceed 0.33 and the open area shall be suitably</i></p>	<p><b>Deleted from CRZ 2019</b></p>

<sup>40</sup> *Ibid.* Annexure III – Regulations I.(h),(i),(j),(k),(l),(m),(p) @Pgs. 124-125

<p><i>landscaped with appropriate vegetal cover;</i></p> <p><i>(j) the construction shall be consistent with the surrounding landscape and local architectural style;</i></p> <p><i>(k) the overall height of construction upto the highest ridge of the roof, shall not exceed 9metres and the construction shall not be more than two floors (ground floor plus one upper floor);</i></p> <p><i>(l) groundwater shall not be tapped within 200metre of the High Tide Line; within the 200metre 500metre zone it can be tapped only with the concurrence of the Central or State Ground Water Board;</i></p> <p><i>(m)extraction of sand, leveling or digging of sandy stretches except for structural foundation of building, swimming pool shall not be permitted within 500meters of the High Tide Line;</i></p> <p>....</p> <p><i>(p) to allow public access to the beach, atleast a gap of 20metres width shall be provided between any two hotels or beach resorts; and in no case shall gaps be less than 500metres apart; and”</i></p>	
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**Challenge:**

49. These provisions are not based on any rational or environmental reasons. The Shailesh Nayak Report did not comment on differentiation on the applicability of FSI up to 0.33 between CRZ-II and CRZ-III. It has merely recorded the

objection of Government of Kerala that such a differentiation is required.<sup>41</sup> There has been no consideration of ecological (or indeed any) factors. A similar reason formed the basis of the Supreme Court striking down a similar amendment in *Indian Council for Environment-Legal Action* as has been shown earlier.<sup>42</sup>

50. In respect of the above the Applicant makes prayer (p).

(ii) **AIRPORTS-**

51. The relevant provisions of CRZ 2011 and CRZ 2019 under this section are as under:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
Regulation 8 (I.) (i) (f) of CRZ 2011 deals with airports as under:  <i>“(f) development of green field airport already approved at <b>only</b> Navi Mumbai;”</i>	Regulation 5(3)(v) is concerned with airports as under:  <i>“(v) Development of airports in wastelands and non-arable lands in CRZ-III areas with adequate environmental safeguards.”</i>

52. The 2011 Notification specifically permitted only a green field airport at Navi Mumbai. Regulation 5.3 (v) of CRZ 2019 notification makes a departure from this to allow the development of airports in wastelands and non-arable lands in CRZ-III areas with adequate environmental safeguards.

**Challenge:**

<sup>41</sup> Annexure A-4, Para 2.3.3 (f) of Shailesh Nayak Committee Report, 2015, @Pg. 207, OA.

<sup>42</sup> (1996) 5 SCC 281 – *Indian Council for Environment - legal Action v. Union of India*.

(i) This contravenes Rule 5(3) of the Environment (Protection) Rules, 1986 (“EPR”)

53. The draft Notification 2018 did not include a provision permitting development of airports in CRZ – III except for the Navi Mumbai airport whereas the 2019 Notification<sup>43</sup> permits development of airports in wastelands and non-arable lands in CRZ-III areas.

(ii) There is no reasoning for any of the changes suggested above, the same are arbitrary and unreasonable.

54. The Shailesh Nayak report vaguely states ‘Though in several countries offshore airports are operating, this issue needs to be examined from both economic and environmental angles.’<sup>44</sup> It however provides no adequate reasoning or positive recommendation on the same.

55. In respect of the above the Applicant makes prayers (q), and (r).

(iii) **PORT DEVELOPMENT-**

56. The 2019 notification now permits construction of ports in CRZ I B<sup>45</sup> (Regulation 5.1.2(i)(a)) and in CRZ IV<sup>46</sup> (Regulation 5.4(ii)(a)) which was not permitted in the earlier notification.

### **Challenge:**

(i) No reasons have been mentioned in any of the reports. The same is therefore without any reasoning.

The file notings of the MoEFCC contains no reasoning regarding the development of ports. Shailesh Nayak report recommends reclamation of sea bed in CRZ-IV areas for construction of ports and harbour without any discussion on the adverse impact on marine biodiversity and marine

<sup>43</sup> Annexure A-1, Regulation 5.3(iii) (v) of the CRZ 2019 Notification @Pg. 84, OA.

<sup>44</sup> Annexure A-4, Shailesh Nayak Report, Para 3.12.2, @Pg. 249, OA.

<sup>45</sup> Annexure A-1, CRZ, 2019, Regulation 5.1.2(i)(a) @Pg. 81, OA.

<sup>46</sup> *Ibid.* Annexure A-1, Regulation 5.4(ii)(a) @Pg. 84, OA.

ecosystem.<sup>47</sup> The major consequence of permitting reclamation of seabed will be the change in hydrology of coastal regions nearby which will lead to more coastal flooding and ingress of seawater, especially in the present scenario of rising sea levels due to global warming. It will also reduce fishing resources for the traditional fisherfolk which will ultimately affect the fish stocks and fish productivity of the country.

57. In respect of the above the Applicant makes prayers (s), and (t).

#### **H. DELETING ITEMS FROM THE LIST OF PROHIBITED ACTIVITIES IN THE CRZ**

58. This section is split into three parts. The following prohibited activities have now been permitted in CRZ areas under the 2019 Notification:

***(i) Units for waste disposal now permitted***

59. The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
<p>Regulations 3(v) and 3(vi) of CRZ 2011 deals with prohibition in disposal of waste and effluents in CRZ as under:</p> <p><i>“(v) Setting up and expansion of units or mechanism for disposal of wastes and effluents except facilities required for,-</i></p> <p><i>(a) discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);</i></p> <p><i>(b) storm water drains and ancillary structures for pumping;</i></p>	<b><i>Deleted in CRZ 2019</i></b>

<sup>47</sup> Shailesh Nayak Committee Report, Para D(v.), Internal Pg. 104 of 112

<p><i>(c) treatment of waste and effluents arising from hotels, beach resorts and human settlements located in CRZ areas other than CRZ-I and disposal of treated wastes and effluents;”</i></p> <p><i>(vi) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements. The concerned authorities shall implement schemes for phasing out existing discharge of this nature, if any, within a time period not exceeding two years from the date of issue of this notification.”</i></p>	
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60. The 2011 Notification includes a statement which emphasises the need for phasing out the discharge of untreated waste and effluents from industries, cities or towns and other human settlements within a period of 2 years by the concerned authorities, which has been deleted in the Draft Notification of 2018 and the 2019 Notification<sup>48</sup>. The 2019 Notification does not prohibit the setting up and expansion of units or mechanism for disposal of wastes and effluents, which was prohibited in the 2011 Notification.<sup>49</sup>

### **Challenge**

61. This provision is contrary to the spirit of the recommendations of the various committees. The Shailesh Nayak Committee Report time and again mentions the importance of zero discharge for buildings, industrial units, etc. and that efforts should be made to do the same. CRZ 2019 completely ignores this and does not include such a provision. Deletion of the provision that seeks phasing out of discharge of untreated waste and effluents from industries, cities or

<sup>48</sup> Comparing Regulation 3(vi) of CRZ 2011, pg 3 to Regulation 4 of CRZ 2019, pg 33.

<sup>49</sup> Comparing Regulation 3(v) of CRZ 2011, pg 3 to Regulation 4 of CRZ 2019, pg 33.

towns and other human settlements in CRZ areas within a period of 2 years from CRZ 2019 will substantially worsen the overall quality of a healthy coastal ecosystem in regions where discharge still continues and where phasing out of such activities has not yet been undertaken. Deletion of such a provision in CRZ 2019 regularises and condones the violation of continuing such activities in CRZ areas by perpetrators and therefore, such a dilution gravely violates the Doctrine of Non-Regression.

62. In respect of the above the Applicant makes prayers (u), and (v).

**(ii) Setting up and expansion of fish processing units**

63. The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
<p>Regulations 3(iii) of CRZ 2011 deals with prohibition on setting up and expansion of fish processing units as under:</p> <p><i>“(iii) Setting up and expansion of fish processing units <b>including warehousing</b> except hatchery and natural fish drying in permitted areas:”</i></p>	<p>Regulation 4(iii) relates to prohibited activities under CRZ 2019:</p> <p><i>“(iii) Setting up of new fish processing units.”</i></p>

64. CRZ 2011<sup>50</sup> prohibited setting up and expansion of fish processing units including warehousing except for hatchery and natural fish drying in permitted areas. Regulation 4 (iii) of CRZ 2019<sup>51</sup> only prohibits setting up

<sup>50</sup> Annexure A-2, CRZ 2011 @Pg. 107, OA.

<sup>51</sup> Annexure A-1, CRZ 2019 @Pg. 80, OA.

of fish processing units while permitting “expansion”. It does not prohibit “warehousing”.

**Challenge:**

This provision is contrary to the recommendations of the various committees.

65. Usage of the words “expansion” and not including “warehousing” of fish processing units effectively means that existing fish processing units can be expanded without an limit. The file notings of the Shailesh Nayak Committee Report mention that for fish processing units, modernization should be allowed on landward side to any extent and utilize the dynamic FSI of local body.<sup>52</sup> These restrictions are not in the final notification.

66. In respect of the above, the Applicant makes prayer (w).

**(iii) Adressing or altering the sand dunes, hills, natural features**

67. The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<b><i>Relevant provision in CRZ 2011</i></b>	<b><i>Relevant provision in CRZ 2019</i></b>
<p>Regulations 3(xiii)<sup>53</sup> of CRZ 2011 deals with the following prohibition in CRZ areas</p> <p><i>“(iii) dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purposes:”</i></p>	<p>Regulation 4(ix)<sup>54</sup> relates to the following prohibited activity under CRZ 2019:</p> <p><i>“(ix) dressing or altering of <u>active sand dunes.</u>”</i></p>

**Challenge:**

<sup>52</sup> Para 41.(vii), Annexure A-7 file notings of Shailesh Nayak Committee Report @Pg. 480, OA.

<sup>53</sup> Annexure A-2, CRZ, 2011, Regulation 3(xiii) @Pg. 107, OA.

<sup>54</sup> Annexure A-1, CRZ, 2019, Regulation 4(ix) @Pg. 80, OA.

The said changes are made for no environmental purpose and violate Articles 14 and 21.

68. Sand dunes and Natural features such as rocky cliffs and headlands play an important role in controlling the morphology of the beach adjacent to them and preventing erosion and flooding.<sup>55</sup> The present provision provides for their alteration/destruction for “recreational” and “aesthetic” purposes. The 2019 Notification is therefore more regressive and against the positive principles of conservation and protection.

69. In respect of the above the Applicant makes prayers (x), and (y).

#### **I. DILUTION OF ESSENTIAL COMPONENTS IN APPLICATION FORM FOR CRZ CLEARANCE**

70. In CRZ 2019, there have also been drastic change in the information required to be submitted along with the application form for CRZ Clearance. The Application Form at Annexure-V to CRZ, 2019 entirely deletes the following requirements concerning risk mitigation and risk avoidance that were required to be submitted under CRZ, 2011<sup>56</sup> such as:

- (i) whether project area is located in hazard zone,
- (ii) providing information on whether the project area is prone to cyclone, Tsunami, tidal surge, subduction, earthquake,
- (iii) risk of accidents involved,
- (iv) whether underground works is involved in the project area,
- (v) any production or manufacturing processes involved for the project,
- (vi) any diversion or culverting of natural coastal area,
- (vii) any changes in any water body,

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<sup>55</sup> Ministry of Earth Sciences Report of 2018 titled “National Assessment of Shoreline Changes along Indian Coast” Annexure A-14 @Pg. 610 (last para)

<sup>56</sup> Annexure A-2, Item Nos. 1.6, 1.15, 1.19, 1.34, 9.4, III(3.), (8.), (9), (12) @Pgs. 126-131, OA.

- (viii) influx of number of people on the project site,
- (ix) cumulative environmental impact
- (x) the extent of environmental sensitivity in the project area and surrounding areas in terms of migratory species, breeding, nesting, biosphere areas
- (xi) density of population
- (xii) sensitive man-made areas
- (xiii) fishing and/or surface resources

**Challenge:**

- (i) The above-mentioned change has not been made for environmental reasons.

71. The two reasons for the change in the Shailesh Nayak Report are on the unfounded assumption that the above information sought at Annexure-IV of CRZ, 2011 may not be available with the agencies proposing to undertake project activities and that detailed information may also not be required for small projects.<sup>57</sup> Therefore, this amendment has been made without considering any environmental reasons/factors. It also violates the principles of sustainable development and the precautionary principle as the information. The Swaminathan Report considered this aspect and recommended in no unclear terms that along with a comprehensive EIA, safety/disaster planning analysis that takes climate change implications and extreme events into account is sine qua non for allowing any permissible activity in CRZ areas.<sup>58</sup>

72. In respect of the above, the Applicant makes prayer (jj).

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<sup>57</sup> Annexure A-4, Para 3.9.2 of Shailesh Nayak Report @Pgs. 242-243, OA.

<sup>58</sup> Annexure A-5, Para 4.1.3(xiii) of Swaminathan Committee Report @Pg. 385, OA.

**J. INCREASE IN THE NUMBER OF PETROLEUM AND  
CHEMICAL PRODUCTS PERMITTED TO STORE IN CRZ  
AREAS EXCEPT FOR CRZ-I(A)**

73.The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
<p>Annexure-II to CRZ 2011 provides for a list of following petroleum and chemical products permitted for storage in CRZ:</p> <ul style="list-style-type: none"> <li>(i) Crude oil;</li> <li>(ii) Liquefied Petroleum Gas;</li> <li>(iii) Motor spirit;</li> <li>(iv) Kerosene;</li> <li>(v) Aviation fuel;</li> <li>(vi) High speed diesel;</li> <li>(vii) Lubricating oil;</li> <li>(viii) Butane;</li> <li>(ix) Propane;</li> <li>(x) Compressed Natural Gas;</li> <li>(xi) Naphtha;</li> <li>(xii) Furnace oil;</li> <li>(xiii) Low Sulphur Heavy Stock;</li> <li>(xiv) Liquefied Natural Gas;</li> <li>(xv) Fertilizers and raw materials for manufacture of fertilizers.</li> </ul>	<p>Annexure-II to CRZ 2019 also provides for a list petroleum and chemical products permitted for storage in CRZ:</p> <ul style="list-style-type: none"> <li>(i) Crude oil;</li> <li>(ii) Liquefied Petroleum Gas;</li> <li>(iii) Motor spirit;</li> <li>(iv) Kerosene;</li> <li>(v) Aviation fuel;</li> <li>(vi) High speed diesel;</li> <li>(vii) Lubricating oil;</li> <li>(viii) Butane;</li> <li>(ix) Propane;</li> <li>(x) Compressed Natural Gas;</li> <li>(xi) Naphtha;</li> <li>(xii) Furnace oil;</li> <li>(xiii) Low Sulphur Heavy Stock;</li> <li>(xiv) Liquefied Natural Gas;</li> <li>(xv) Fertilizers and raw materials for manufacture of fertilizers;</li> <li><b>(xvi) Acetic acid;</b></li> <li><b>(xvii) Mono ethylene glycol;</b></li> <li><b>(xviii) Paraxylene;</b></li> <li><b>(xix) Ethane;</b></li> <li><b>(xx) Butadine;</b></li> <li><b>(xxi) Methanol;</b></li> <li><b>(xxii) Caustic;</b></li> <li><b>(xxiil) Bitumen.</b></li> </ul>

**Challenge:**

- (i) The inclusion of Items (xviii) to (xxiii) in Annexure II to CRZ, 2019 contravenes Rule 5(3) of the Environment (Protection) Rules, 1986 (“EPR”)

74. The existing framework did a balancing exercise, by restricting the categories of products into two broad categories; namely (i) petroleum/fuel; and (ii) fertilizer. These were critical to the economy and imported in large quantities. The new list of products do not answer this description at all. These changes/additions (except for Acetic Acid and Mono Ethylene Glycol) were not even included in the Draft Notification, 201859.

- (ii) There has also been absolutely no consideration/reasoning as to why the storage of the said additional chemicals ought to be permitted.

75. In Shailesh Nayak Committee report, there is no consideration of the said issue. File notings of the MoEF state that use of petroleum products ought to be permitted and that no fertilizers should be permitted.<sup>60</sup> However, it appears that apart from Acetic Acid & Butadine, none of the chemicals are reflected in the said Notifications. Lastly, the Final Frontier Report of 2009 does not speak of Petroleum Products.<sup>61</sup> The inclusion of these additional chemicals is therefore arbitrary being based on no reasons whatsoever.

- (iii) The above-mentioned chemicals are highly toxic and the nature and extent of harm that such toxic chemicals can cause are as under:

76. Each of these chemicals is highly toxic. The effects of the same out to have been considered before being included.

76.1. Acetic Acid is a corrosive substance, where inhalation of concentrated vapour may cause serious damage to the linings of these

<sup>59</sup> Annexure A-3, Draft CRZ Notification, 2018, Annexure II @Pg. 155, OA.

<sup>60</sup> Annexure A-7, File notings of the MoEF, paragraph 41(xvi) and (xvii) @Pg. 481, OA.

<sup>61</sup> Annexure I-6, Entry 58, Annexure II @Pg. 431, OA.

organs and may result in breathing difficulties. Even skin contact can lead to second degree burns. In high concentrations it can be harmful to plants, animals and aquatic life. Inhalation of acetic acid causes irritation to the nose, throat and lungs.<sup>62</sup>

76.2. Ethylene Glycol is a dangerous chemical to store as it is highly combustible and if mixed with water and leaked into fields, a short term exposure of it can cause renal failure and brain injury.<sup>63</sup>

76.3. The main effect of inhaling xylene vapor is depression of the central nervous system, with symptoms such as headache, dizziness, nausea and vomiting. At very high levels of exposure, xylene can injure the liver and kidneys.<sup>64</sup>

76.4. Spillage of methanol, Butadine, Ethanol and Bitumen can have detrimental effects on the fertility of the soil Specifically, Bitumen can disrupt the activities of soil microorganisms and affect the growth of plants and crops.<sup>65</sup> Bitumen can also lead to absolute erosion of soil fertility. Similarly, Caustic, a fertilizer, also causes damage to the soil fertility.

77. In respect of the above the Applicant makes prayers (z) and (aa).

## **K. DILUTION OF CRZ – I BY REMOVING THE TERM ‘ASSOCIATED BIODIVERSITY’ IN RESPECT OF PROTECTION OF CORAL REEFS**

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<sup>62</sup> National Pollutant Inventory, Department of Agriculture, Government of Australia at <http://www.npi.gov.au/resource/acetic-acid-ethanoic-acid>

<sup>63</sup> World Health Organisation (WHO), Concise International Chemical Assessment Document at <https://www.who.int/ipcs/publications/cicad/en/cicad22.pdf>

<sup>64</sup> “Xylene: An overview of its health hazards and preventive measures” by [Reena Kandyala Sumanth Phani C Raghavendra](#) and [Saraswathi T Rajasekharan](#), Journal of Oral and Maxillofacial Pathology, Jan-June 2010

<sup>65</sup> Journal of Science & Technology, “*Environmental Impact of Bitumen on Soil, Water and Plant in Lodasa Area, Ode-Irele, Ondo State, Nigeria*”

78. The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
Regulations 7 (i) deals with classification of CRZ-I areas and defines CRZ-I(A) areas as under:  “(b) Corals and coral reefs and associated biodiversity;” <sup>66</sup>	Regulation 2.1.1 (a) relates to definition of CRZ-I (A) areas as under:  “(ii) Corals and coral reefs;” <sup>67</sup>

79. The words ‘associated biodiversity’ along with Coral Reefs in the definition of CRZ-I has been deleted in CRZ 2019.

**Challenge:**

(i) This deletion is contrary to the recommendations of the various committees.

80. Swaminathan Committee Report lays down details regarding the importance of reefs and how different countries have realised started taking steps for conserving the same.<sup>68</sup> Shailesh Nayak Committee Report also mentions the importance of the protection of coral reefs along with their associated biodiversity and lays that their destruction is prohibited.<sup>69</sup> In the file notings of the MoEFCC, it is stated that coral biodiversity is extremely important for the very existence of corals as they live in symbiotic relation, hence coral biodiversity should be addressed completely.<sup>70</sup> It was only the Joint Secretary (as per the file notings) who recommended the deletion of

<sup>66</sup> Annexure A-2, CRZ 2011, Regulation 7(i)(A)(b) @Pg. 111, OA.

<sup>67</sup> Annexure A-1, Regulation 2.1.1(a)(ii.) @Pg. 78, OA.

<sup>68</sup> Annexure A-5, Swaminathan Report, 2005, Clause 2.4.2. @Pg. 324, OA.

<sup>69</sup> Annexure A-4, Shailesh Nayak Committee Report, Annexure A – Clause II @Pg. 275, OA.

<sup>70</sup> Annexure A-7, File notings of the MoEF (SS) on Shailesh Nayak Committee Report @Pg. 488, OA.

the words “associated biodiversity” because it has no definite meaning for identification.<sup>71</sup> Rather than define it, It was deleted.

81.The term “associated biodiversity” is crucial for protecting reefs ecosystems. Apart from the corals, there are various types of biotic factors in each ecosystem of coral reefs. Coral reef ecosystem has one of the highest biodiversity of any ecosystem in the world – more than a tropical rainforest. These live in a symbiotic manner with the coral reefs though they do not form part of the coral reefs themselves. In India, this includes about 180 species of biotic algae, 20 species of sea weeds, 20 species sea grasses, 115 species of Poriferans, 5 species of Crustaceans, 110 species of Echinoderms, gastropods, bivalves, cephalopods, and 600 species of bony fishes.

82.In respect of the above the Applicant makes prayer (bb).

#### **L. REDUCTION IN CRZ FROM 50 METERS TO 20 METERS ON ISLANDS**

83.The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
<p>Regulation 8(i) (V) (2) deals with CRZ area in backwater islands (for Kerala) as under:</p> <p><i>“(ii) the islands within the backwaters shall have 50mts width from the High Tide Line on the landward side as the CRZ area;”</i><sup>72</sup></p>	<p>Regulation 10.2 relates to CRZ for inland backwater islands and islands along mainland coast:</p> <p><i>“(ii) In view of the unique coastal systems of backwater islands and islands along the mainland coast, along with space limitations in such coastal stretches, CRZ of 20 meters</i></p>

<sup>71</sup> *Ibid.* Recommendation (ix) of the File Notings of MoEF (JS) @Pg. 488, OA.

<sup>72</sup> Annexure A-2, CRZ 2011, Regulation 8(i)(V)(2) @Pg. 118, OA.

	<i>from the HTL on the landward side shall uniformly apply to such islands and activities shall be regulated as under:”<sup>73</sup></i>
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84. The CRZ has been reduced from 50 meters in CRZ 2011<sup>74</sup> Notification to 20 meters in CRZ 2019.<sup>75</sup> (Regulation 10.2(ii)) from the HTL on the landward side. Andaman & Nicobar islands and Lakshadweep Islands are excluded since they are governed by a separate notification, viz. Island Protection Zone Notification, 2019.

**Challenge:**

There is no reasoning or study made before affecting the said changes.

85. The purported reason for change in the Shailesh Nayak Report is the hardships of local communities and the potential loss of tourism.<sup>76</sup> File notings of the MoEF accepted the regulation for reducing the NDZ to 10 meters on backwater islands in CRZ II for “promoting tourism”.<sup>77</sup> However, no scientific study or rationale has been provided to show the basis of reducing the CRZ limits to a mere 20 meters is environmentally benign, especially when sea level rise due to climate change is now certain in the near future.

86. There is also no distinction here made between large and small islands. The reduced CRZ may be required/essential for smaller islands, but the same cannot be applied to all Islands. Islands in India range from those the size of Mumbai to smaller islands in backwaters.

<sup>73</sup> Annexure A-1, CRZ 2019, Regulation 10.2.(ii) @Pg. 89, OA.

<sup>76</sup> Annexure A-4, Shailesh Nayak Report, Para 2.5.21 @Pg. 231, OA.

<sup>77</sup> Annexure A-7, File notings, @Pg. 486, OA.

87.As stated earlier, the Supreme Court has held that considerations of Tourism alone cannot be the basis of relaxing CRZ norms. There must be a study of the cost/benefit with respect to the environment.

88.In respect of the above the Applicant makes prayers (cc), (dd), and (ee).

### **M.CONSTRUCTION OF STATUES / MONUMENTS / MEMORIALS**

89.CRZ 2019 continues to permit construction of monuments and memorials and allied facilities by the concerned State Governments in exceptional cases.<sup>78</sup> Additionally, CRZ 2019 lays down that if the Central Government considers it necessary so to do, it can dispense with the requirement of public hearing for constructions of monuments and memorials if it is satisfied that the project will not involve rehabilitation and resettlement of the public or the project site is located away from human habitation.<sup>79</sup>

#### **Reasons for change**

- i) This Regulation is arbitrary and irrational as it does not consider large-scale environmental consequences of reclamation of sea bed

90.The Shailesh Nayak Report states that *“With regard to monuments/memorials proposed by the State/UT Government recommended by the local CZMA to be approved by MoEF&CC on a case-to-case basis taking into account the erosion control and other disaster mitigation measures. Wherever reclamation, if any, for the above projects are permitted, the original HTL as demarcated in the approved CZMP shall prevail.”*<sup>80</sup>

<sup>78</sup> Annexure A-1, Regulation 5.4(xv) of CRZ, 2019 @Pg. 85, OA.

<sup>79</sup> *Ibid.* @Pg. 86, OA.

<sup>80</sup> Annexure A-4, Para D(v) of Shailesh Nayak Report @Pg. 271, OA.

91. This ignores the serious impact that such reclamations may have on the environment.

92. In light of the above the Applicant makes prayers (ff) and (gg).

**N. DELETION OF SPECIAL PROVISIONS FOR KOLIWADAS AND GAUTHANS IN GREATER MUMBAI**

93. The relevant provisions of CRZ, 2011 and CRZ, 2019 under the instant section are as under:

<i>Relevant provision in CRZ 2011</i>	<i>Relevant provision in CRZ 2019</i>
<p>Regulation 8(i) (V) (1.) deals with special consideration within municipal limits of Greater Mumbai with an emphasis on Koliwadadas as under:</p> <p><i>“g) Koliwada namely, fishing settlement areas as identified in the Development Plan of 1981 or relevant records of the Government of Maharashtra, shall be mapped and declared as CRZ-III so that any development, including construction and reconstruction of dwelling units within these settlements shall be undertaken in accordance with applicable as per local Town and Country Planning Regulations.</i></p> <p><i>(h) Reconstruction and repair works of the dwelling units, belonging to fisher communities and other local communities identified by the State Government, shall be considered and granted permission by the Competent Authorities on a priority basis, in</i></p>	<p><b><i>Deleted in CRZ 2019</i></b></p>

<i>accordance with the applicable Town and Country Planning Regulations.”<sup>81</sup></i>	
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94. In CRZ 2019, there is no special regime/provision for Koliwadadas and Gauthans in Greater Mumbai. In CRZ 2011, Koliwadadas were declared as CRZ – III so as to ensure optimal protection of traditional coastal communities of Greater Mumbai. Their development, including repair, construction or reconstruction norms in these areas, can be carried out as per the Town and Country Planning Regulations. Koliwadadas were given a special protection under special consideration given to Greater Mumbai under CRZ 2011.

**Challenge:**

- i) There also does not appear to be any reasoning for the changes. The same is therefore arbitrary and violative of Articles 14 and 21.

95. In fact, Final Frontier report of 2009 perused, considered and recorded the objections of the local fishing communities (Kolis) that in the name of slum rehabilitation or reconstruction of dilapidated structures, the houses of local communities were given the least priority. Prime land, belonging to these communities were sold at exorbitant costs by the developers, while the redeveloped area earmarked for fisherfolk was small and on marginal lands. The said fisherfolk got little benefit from the same. They requested the Committee to debar all projects of slum redevelopment in these lands, arguing that only projects which secured their ownership should be permitted.<sup>82</sup> However, the 2019 Notification deletes the special

<sup>81</sup> Annexure A-2, CRZ 2011, Regulation (V.)(1)(g) and (h) @Pg. 118, OA.

<sup>82</sup> Annexure A-6, Final Frontier Report, Para 7.3, @Pg. 421, OA.

consideration of koliwadadas and completely disregards the reasons as to why such special distinction was made for fisher communities of Mumbai.<sup>83</sup>

96. The Shailesh Nayak Committee concludes that CRZ 2011 restricted the development of Koliwadadas and sought to bring in development on par with other parts of Mumbai and meet the economic aspirations of the society.<sup>84</sup> There was no consultation or representation with these communities which formed the basis of this conclusion. It was only because the traditional communities of Mumbai demanded for Koliwadadas to be protected under CRZ-III and be treated differently from slum areas of Mumbai did the relevant protectionist provision was drafted in CRZ, 2011. It now opens up the land of these communities to rampant overdevelopment.

97. In respect of the above the Applicant makes prayer (hh).

#### **O. DILUTION OF SPECIAL PROTECTIONS GRANTED TO GREATER MUMBAI IN CRZ 2011**

98. The entire special regime for Mumbai has been severely diluted in CRZ 2019. This had been introduced to deal with the peculiar problems of the environmental issues relating to (i) degradation of mangroves, (ii) pollution of creeks and coastal waters, (iii) discharge of untreated effluents and disposal of solid waste, (iv) provision of decent housing to the poor section of society.<sup>85</sup>

99. Mumbai, being an island city, is the most populated city in India by density and therefore general provisions that apply to coastal areas could not be implemented *in toto* in Mumbai. However, this entire section was deleted

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<sup>83</sup> Annexure A-1, CRZ 2019, Regulation 5.3(ii)(a) @Pg. 83, OA.

<sup>84</sup> Annexure A-4, Shailesh Nayak Committee Report, Para 3.1.4, @Pg. 236, OA.

<sup>85</sup> Annexure A-2, CRZ Notification, Clause 8.V.1 @Pgs. 115-118, OA.

in the Draft Notification of 2018 and the CRZ 2019 except for two Regulations, namely the Regulation for the protection of open spaces, parks, gardens and playgrounds in CRZ areas and for the construction of Sewage Treatment plants in CRZ-I area.<sup>86</sup>

**Challenge:**

The deletion of these sections is arbitrary and unreasonable and violates Articles 14 and 21 of the Constitution of India.

100. There has been no change in this on account of intervening developments on the above aspects. In fact, the need for special provisions has increased. There are no circumstances reflected in the Committee Reports that suggest otherwise.

101. The Shailesh Nayak Committee Report suggested a uniform DCR for entire Mumbai without having special consideration for sensitive areas like CRZ. The committee termed this practice of following the 1967 regulation as one that would ‘inhibit development in the city’ and “unrealistic and anachronistic”.<sup>87</sup>

102. In respect of the above the Applicant makes prayer (ii).

Submitted by:

Akash Rebello & Zaman Ali,

Advocates for the Applicants

29.11.2023

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<sup>86</sup> Annexure A-1, CRZ 2019, Regulation 10.3 @Pg. 90, OA.

<sup>87</sup> Annexure A-4, Shailesh Nayak Committee Report, Clause 2.4.12 (a) @Pgs. 219-220, OA.

**BEFORE THE NATIONAL GREEN  
TRIBUNAL, WESTERN BENCH  
SITTING AT PUNE  
ORIGINAL APPLICATION  
NO. 106 OF 2022**

**BETWEEN:**

Vanashakti & Anr.

...APPLICANTS

*Versus*

Union of India & Ors.

...RESPONDENTS

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**ORIGINAL APPLICATION**  
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Dated this 29<sup>th</sup> day of November, 2023

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