

**Constitution of India and Environmental Governance:**

**Administrative and Adjudicatory Process**

**Dr. M. K. Ramesh**

**Professor of Law**

**National Law School of India University**

**Lecture - 37**

**Specific Ecosystems and their Management - Ecologically Sensitive Zones (ESZ)**

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**8.B. ECOLOGICALLY SENSITIVE ZONES(ESZ)**

Dr.M.K.Ramesh  
Professor, NLSIU



In this segment, we get into a discourse on a very special ecosystem which are referred to as Ecologically Sensitive Zones, a nomenclature that does not find expression in the original Environment Protection Act but makes an appearance only a few years back thanks to judicial interventions in India. But before that, some of the basic things about ecological sensitive zones.

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National Law School  
of India University  
Bangalore

### I. SIGNIFICANCE & BACKGROUND

- AREAS COVERING 10 K.Ms. AROUND PAs (-NPs AND SANCTUARIES-),SO DECLARED THROUGH A NOTIFICATION OF MoEFCC
- PURPOSE: TO CREATE A BUFFER- A SHOCK ABSORBER FOR THE PROTECTED AREA- ALSO TO ACT AS A TRANSITIONAL ZONE FROM AREAS OF HIGH PROTECTION TO THE ONES WITH LESS PROTECTION- FOR IN-SITU CONSERVATION OF SOME OF THE ENDANGERED SPECIES IN ITS NATURAL HABITAT (- LIKE, ONE-HORNED RHINO OF KAZIRANGA NATL. PARK, ASSAM)- MINIMISE FOREST DEPLETION AND MAN-ANIMAL CONFLICT- BASED ON THE CORE AND BUFFER MODEL OF MANAGEMENT, THROUGH WHICH LOCAL AREA COMMUNITIES ARE ALSO PROTECTED AND BENEFITTED
- FINDS NO EXPLICIT REFERENCE UNDER EPA,1986- GENESIS ,TRACED TO CONCERNS EXPRESSED IN A NUMBER OF CASES ABOUT THE SAFETY, SECURITY AND PROTECTION OF FORESTS AND WILDLIFE ,WHEN INTENSIVE DEVELOPMENTS WERE ALLOWED TO TAKE PLACE IN THEIR CLOSE PROXIMITY – CONSEQUENTIAL DIRECTIONS ISSUED BY SUPREME COURT, TO THE GOVT , TO ENSURE AREAS CLOSE TO PROTECTED AREAS BE INSULATED FROM DEVELOPMENTAL ACTIVITIES



These are areas which extend up to about 10 kilometres around protected areas like national parks or sanctuaries and they are declared as such through a notification of the Ministry of Environment Forest and Climate Change. What is the purpose behind such a kind of a declaration?

The idea is to create a buffer, a kind of a shock absorber for those very protected areas which in its neighborhood if it is not properly taken care of would adversely impact on the very integrity of these protected areas. In a way, these areas act as transitional zones from areas of high protection to the ones with less protection.

They also help in in-situ conservation, some of the rare endangered species in the natural habitat like rhino of the Kaziranga National Park, and they minimize the depletion of the forest cover and also to a large extent, reduce man-animal conflict which is one of the major problems we have in India.

And this is essentially based upon the core and buffer model of management of protected areas in which local communities are also given an opportunity of, number one, protection and also getting benefit. Although it does not have a kind of a legal origin in terms of a statutory formulation under the Protection Act concerning environment, its origin can be traced to a

number of cases decided by the higher judiciary which expressed concerns about the safety, security, and protection of forest and wildlife and their immediate neighborhood where intensive developments take place in their close proximity.

The courts of law have invariably exercised caution by insisting on the government to follow some of its directions for the protection of these core protected areas and insulate them from developmental activities.

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- WILDLIFE CONSERVATION STRATEGY, 2002, ADOPTED BY THE NATIONAL BOARD OF WILDLIFE - ENVISAGES NOTIFICATION OF AREAS WITHIN 10 KILOMETRES OF THE BOUNDARIES OF NPS AND SANCTUARIES, AS ECOFRAGILE ZONES (EFZ), UNDER 5.3(V) OF EPA, 1986 AND RULE 5, UNDER IT. -STATE GOVTS. WERE REQUESTED TO PREPARE A LIST OF SUCH AREAS AND FURNISH DETAILS OF THEM TO BE NOTIFIED AS ECO-SENSITIVE AREAS (ESA) - NOT PROMPTLY RESPONDED TO BY STATES
- EMPHASISING THE NEED FOR PROTECTION OF AREAS OUTSIDE THE PAs, AS THEY, OFTEN, ACT AS VITAL CORRIDOR LINKS TO PREVENT ISOLATION AND ENSURE SURVIVAL OF FRAGMENTS OF BIODIVERSITY, IN THE LONG RUN, THE NATIONAL WILDLIFE ACTION PLAN (2002-2006) INDICATED THE NEED FOR LAND AND WATER USE POLICIES TO STRICTLY PROTECT THESE ECOLOGICALLY FRAGILE AREAS (EFA) AND REGULATE USE OF LAND AND WATER FOR ANY DEVELOPMENTAL ACTIVITY IN THESE AREAS - IT ALSO INDICATED THAT SUCH IDENTIFIED AREAS BE DECLARED AS EFAs, UNDER EPA, 1986.



Of course, around the year 2002, following a series of High Court and Supreme Court orders in this regard, the government of India came up with what is called as the Wildlife Conservation Strategy in the year 2002 and this desires a notification to be issued about areas which come within 10 kilometres of the boundaries of national parks and sanctuaries to be declared as eco fragile zones under Section 3 Clause 5 of Environment Protection Act and the rules under the Act.

The state governments, the strategy required, they were required to prepare a list of such areas and furnish details of them to be notified as echo sensitive areas. Look at that, two nomenclatures were used Eco Fragile Zones or EFZ, or Eco Sensitive Areas ESA and the states did not

promptly respond because the conservation area with its expansion, developmental activities would get shrunken. So, they had their own reservations and so, they did not promptly respond to them.

But the strategy insisted that this is very much needed because the areas outside the protect areas are vital corridors that link that wildlife that is there between two or three protected areas and that would prevent isolation and ensure survival of fragments of biodiversity in the long run.

Even the national wildlife action plan that was unveiled in the year 2002 for a period of five years indicated the need for land and water use policies to strictly protect these EFAs and regulate use of land and water for any developmental activity in the area. They also indicated that such identified area be declared as EFAs under the EPA.

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• IN RESPONSE TO A PIL BY GOA FOUNDATION, THE SUPREME COURT IN 2006, DESIRED THE MoEFCC TO RE-NEW OPPORTUNITY TO STATES TO RESPOND TO THE REQUIREMENT OF SUBMITTING PROPOSALS FOR DECLARATION OF ESA FOR IDENTIFIED AREAS BY THEM- COMPLIANCE BY ONLY A FEW STATES - S.C IN 2010, IN TWO CASES : T.N.GODAVERMAN AND ANAND ARYA, INSISTED ON THE CENTRE TO ISSUE GUIDELINES FOR THE PURPOSE AND GIVE EFFECT TO THE IDEA OF A SPECIAL CONSERVATION REGIME - AGAIN IN 2018, BY ANOTHER ORDER THE S.C, ON BEING INFORMED ABOUT RECEIPT OF PROPOSALS OF STATES FOR 641 OF THE 662 SANCTUARIES AND NATIONAL PARKS BY THE STATES, DIRECTED THE CENTRE TO DECLARE 10 K.Ms AROUND THE REMAINING 21 PROTECTED AREAS AS ESZ, AS WELL.



There was another public interest litigation filed by Goa Foundation and the Supreme Court on hearing this petition about lack of response or poor response by the states to the umpteen number of entreaties by the central government in this regard, it required the ministry to once again give another opportunity for the states to respond to the requirement of submitting proposals for declaration of ESA for identified areas by them.

And only a few states responded and in two major landmark cases T. N. Godavarman and Anand Arya, two cases decided by the Supreme Court in 2010. Supreme Court took note of this laxity of response by the states, directed the Centre to issue guidelines for the purpose, and give effect to the idea of a special conservation regime.

And then subsequently, there was yet another order by the Supreme Court on being informed of by the Central Government of receipt of proposal by the state that out of the sanctuaries and national parks that we have which number around 662, 641 proposals are received, the rest they are yet to give. The court directed the centre to declare 10 kilometres around even the remaining protected areas as ESZ as well.

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## II. NOTIFICATIONS ON ESZ



- GOVT. BEGAN ISSUING NOTNs. FOR EACH ESZ - AS ON 25.6.2019 MoEFCC HAD ISSUED FINAL ESZ NOTIFICATIONS COVERING 316 PAs and DRAFT NOTNS. COVERING 199 PAs (- UNDER 5.3(2)(v) OF EPA,1986 AND RULE 5 UNDER IT)- A SET OF GUIDELINES ARE ISSUED, FROM TIME TO TIME FOR THIS PURPOSE – THEY LAY OUT THE CRITERIA ON WHICH THE AREAS CAN BE DECLARED AS ESZs – LIKE, ON THE BASIS OF SPECIES (-ENDEMICISM, RARITY ETC.), UNIQUE ECOSYSTEM (- SACRED GROVES, FRONTIER FORESTS ETC.) OR UNIQUE GEO-MORPHOLOGICAL FEATURES (-UNINHABITED ISLANDS, ORIGINS OF RIVERS, ETC.)
- THROUGH EACH NOTIFICATION, IDENTIFIED PROJECTS OR ACTIVITIES ARE REGULATED OR PROHIBITED, AS THE CASE MAY BE, IN A SITE-SPECIFIC MANNER – FOR THE CONSERVATION AND SUSTAINABLE DEVELOPMENT OF THE NOTIFIED AREA, A ZONAL MASTER PLAN GETS PREPARED, ON A SCIENTIFIC BASIS, WITH ADEQUATE PARTICIPATION OF LOCAL COMMUNITIES AND THE LINE DEPTs. OF THE STATE GOVT.



So, all this led to a series of notifications being issued by the Central Government, notifications on ecologically sensitive zones. And over a period of time by around 2019, the Ministry has issued notifications covering 316 protected areas and draft notifications covering another 199 protected areas under this provision, and a set of guidelines also were issued from time to time for that purpose. What do they do?

These guidelines lay out the criteria on which the areas can be declared as ESZ, ecologically sensitive zones, on the basis of, number one, species, based on the endemism or rarity or

uniqueness of the ecosystem like sacred groves or frontier forest, or unique geomorphological feature that they exhibit like an uninhabited island or the birth of a river that ecosystem, that kind of thing.

And through each notification, identified projects or activities were regulated or prohibited as the case may be in a site-specific manner for the conservation and sustainable development of the notified areas. A zonal master plan should be prepared by the states on a scientific basis with adequate participation of local communities and the line departments of the state government. This is the requirement of the guideline.

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\* IN SPECIFIC TERMS THE ACTIVITIES IN THE ESZ, ARE GROUPED UNDER THE FOLLOWING HEADS:

**PROHIBITED ACTIVITIES:** COMMERCIAL MINING, SAW MILLS, INDUSTRIES CAUSING VARIOUS TYPES OF POLLUTION, ESTABLISHMENT OF MAJOR HYDROELECTRIC PROJECTS, COMMERCIAL USE OF WOOD, TOURISM ACTIVITIES LIKE, HOT-AIR BALLOONS OVER NPs, DISCHARGE OF EFFLUENTS, OR ANY SOLID WASTE OR PRODUCTION OF HAZARDOUS SUBSTANCES

**REGULATED ACTIVITIES:** FELLING OF TREES, ESTABLISHMENT OF HOTELS AND RESORTS, COMMERCIAL USE OF NATURAL WATER, ERECTION OF ELECTRIC CABLES, DRASTIC CHANGE IN AGRICULTURE AND AGRICULTURAL SYSTEMS (- HEAVY USE OF PESTICIDES ETC.), WIDENING OF ROADS

**PERMITTED ACTIVITIES :** ONGOING AGRICULTURAL OR HORTICULTURAL PRACTICES, RAINWATER HARVESTING, ORGANIC FARMING, USE OF RENEWABLE ENERGY SOURCES, ADOPTION OF GREEN TECHNOLOGY

\* GUIDELINES BY THE CENTRE AND IMPLEMENTATION AT THE STATE LEVEL – IMPRESSIVE REGULATIONS APART, THE MONITORING OF COMPLIANCE AND IMPLEMENTATION, ARE QUITE WEAK



In specific terms, if you look into the guidelines that are issued, they referred to the conditions laid down under the guidelines under three heads, prohibited areas or prohibited activities like commercial mining, establishment of sawmills prohibited, and so many other activities of that kind.

Regulated activities like falling of trees, establishment of hotels, etc., and third, permitted activities which relate to agriculture or ongoing agricultural or horticultural practices, rainwater harvesting something which is conservation oriented and which is least harmful for these Eco-Sensitive Zones.

Guidelines are issued by the centre and the implementation is always done at the state level. The regulations and the guidelines are very impressive and this is what the states were supposed to put that into application but whatever the grand eloquence of these guidelines, the real monitoring and the real-time compliance, its implementation which are in the hands of the state government are not that very impressive. It is still to come to the expectations of the guidelines that are laid down in this regard.