

# The Evolution and Implementation of Legislation for Coastal Zone Management in a Developing Country - the Sri Lanka Experience

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Legislation specifically directed towards coastal zone management did not exist in Sri Lanka till the latter part of 1980. Provision for some measure of development appraisal and control within the coastal zone, however, existed in the general regime applicable to land use planning and enacted during earlier times. These provisions however did neither take into account the dynamic physical nature of the coastal zone nor its intricate and complex environmental characteristics. There was no general awareness of the fragile nature of the island's coastal zone in the minds of the policy makers as the coastal lands were generally considered of little economic potential in a country where major economic activity was based on inland agriculture.

Since independence in 1948, with increasing emphasis on provision of modern harbour facilities, upgrading the fishery and the emergence of new coast-based industries of high economic potential such as tourism, coastal areas assumed increasing importance. Development pressures on the coastal zone and the increasing inci-

dence of coastal erosion - due to both man-made and natural causes focussed the attention of both scientists and policy makers on the need for some action to arrest a rapidly deteriorating situation. The initial response was based on finding engineering solutions such as execution of schemes of work for coastal protection. The dubious cost effectiveness entailed in this approach and the perceived need for better coastal zone management then focussed the attention of policy makers on the need to provide a better legal framework for such management.

## GENERAL LEGISLATION PRE - 1975 PERIOD

Until the emergences of legislative measures drafted specifically for the planned development of the coastal zone in the form of the Coast Conservation Act No. 57 of 1981, the coastal areas of Sri Lanka were governed by the general legal regime applicable to all areas.

These were :

- (a) The Crown Lands Ordinance Nos. 8 of 1947, 9 of 1947 and the Act No. 13 of 1949).

- (b) The Housing and Town Improvement Ordinance No. 19 of 1915.
- (c) The Town & Country Planning Ordinance (No. 13 of 1946; Acts Nos. 9 of 1950, 29 of 1953, 10 of 1955 and 22 of 1955).
- (d) Tourist Development Act No. 14 of 1968.
- (e) Mines and Minerals Law No. 4 of 1973.
- (f) Soil Conservation Act No. 25 of 1951.

There were many other Acts and Ordinances that covered through incidental provisions some aspects of relevance to coastal zone management. As is apparent in the long title of these enactments they were designed for a variety of different needs perceived at the time. The clauses that could be invoked for the management of the coastal zone were mostly incidental clauses, and were neither comprehensive nor specific enough for this task. Another drawback was the fact that the authority for the implementation of these laws was spread over a wide range of governmental institutions established for the various purposes. They were general purpose laws implemented by several agencies. Hardly any horizontal links existed among these laws and among their executing agencies. As far as effective coastal zone management was concerned, the incidental provision of these laws often created lacunae, conflicts or overlapping jurisdiction. Another problem was that this general legal regime did not take into account, adequately, the special characteristics of the coastal zone which require consideration of a much broader spectrum of elements.

Work on the drafting of a new Act commenced in early 1972. The long title of the proposed Act was to read as follows: "A Law to Consolidate the Law relating to Coast Conservation and the administration, control, custody and management of the coastal zone and to make provision for matters connected therewith or incidental thereto."

In a parallel development the Government obtained the services of a UN Consultant, Gerritsen, to carry out the following mission:

- (a) Evaluate the problems of coast erosion in the country and their possible solutions.
- (b) Assess the potential resources which may aid in the solution of the problems.
- (c) Make recommendations on the organisation of a Coastal Engineering Research Centre.

The Consultant submitted his report to the Government in October 1974. The main recommendations of the Consultant were:

- (a) The establishment of a "Department of Coast Conservation" for the implementation of the Act being drafted.
- (b) The establishment of a Coastal Engineering Research Centre as a part of the proposed Department.

The Draft Coast Conservation Act was presented in Parliament as a Bill by the Minister of Shipping, Aviation and Tourism on October 12th, 1976. The main provisions of this Bill were as follows:

1. The definition of the Coastal Zone as constituting "all that area lying within a limit at a distance 30 meters landwards of the plus 0.6 meters mean sea level contour and a limit at a distance 2 kilo meters sea wards of the minus 0.6 meters mean sea level contour or lying within such limits adjacent thereto as may be specified by the Minister by notification published in the Gazette."
11. The vesting of the authority for the administration, control, custody and management of the coastal zone in the Republic.
111. The appointment of a Director of Coast Conservation with the power to carry out the provisions of the Law and in particular to:
  - (a) control and regulate all activity within the coastal zone which may have adverse effects on coast conservation in Sri Lanka;

- (b) implement measures for coast conservation and the control of sea erosion in terms of national policies formulated from time to time;
- (c) scrutinize and regulate any projects or schemes of work relating to activity affecting coast conservation, undertaken by Government departments, local authorities, and any other institution or person;
- (d) organize, foster, assist, encourage and co-ordinate coastal investigation and research, including the publication of material, on matters pertaining to coastal engineering problems and allied subjects;
- (e) authorise and supervise the execution of any coast protection work;
- (f) establish such departments as may be necessary to carry out the provisions of this Law into execution; and
- (g) do all other acts which are necessary or conducive or incidental to the proper execution of the functions aforesaid and for the attainment of the general objectives of this Law.

IV. The establishment of an advisory council to advise the Minister on all matters concerning coast conservation.

V. The requirement that any scheme of work within the coastal zone shall be carried out only under the authority of a permit issued by the Director of Coast Conservation

PART III of the Act was titled "Management of the Coastal Zone" and provided authority for the Minister to totally prohibit the excavation of materials from or under the seashore.

*Whilst the draft legislation shifted the emphasis from "Coast*

*Protection" to "Coast Conservation" its provisions were essentially limited to controlling of activities that may cause erosion. The section entitled "Coastal Zone Management" provided only for prohibiting the removal of any sand, stone, coral or other substances within the coastal zone without a permit issued by the Government prohibiting the removal of any sand, stone, coral or other substances within the coastal zone without a permit issued by the Government Agent in consultation with the Director of Coast Conservation.*

This Bill did not enter the statute books as Parliament was prorogued and dissolved in 1977, before it could be taken up for discussion and vote.

## THE NEW COAST CONSERVATION ACT

The subject of coast conservation was transferred to the Ministry of Fisheries in January 1978 as a result of a decision by the Cabinet of Ministers. A new Division of the Ministry was established to handle this subject. The staff and equipment of the Coast Conservation Unit of the Port Commission were transferred to this Division. The division was structured in three branches, namely Coastal Engineering Research Centre, Coastal Works Branch, and Planning and Development Branch (P & D). The first policy objective of the P & D Branch was the enactment of new legislation for coast conservation. Assistance of a UNEP Consultant in environmental legislation, J.N.Shane, was obtained to review the original Bill and draft a new Act with adequate provision for Coastal Zone Management and environmental content. The first draft prepared by the Consultant contained the following important departures from the earlier Bill:

- (a) It established the authority of the Director, Coast Conservation, over all development activity within the coastal zone.
- (b) "Development Activity" was

defined as "Any human activity which is likely to alter the physical nature of the coastal zone in any way.... except that fishing shall not be considered a development activity."

- (c) The landward limit of the coastal zone contained in the earlier Bill was widened to include "All that area lying within 300m landwards of the plus 0.6 meters MSL contour ..."
- (d) The preparation of a Coastal Zone Management Plan including detailed inventories was made a mandatory requirement of the Law.
- (e) Provision was made for the formulation of an inter-Ministerial Advisory Council.
- (f) A detailed Permit Procedure was prescribed for control of "Development Activity" by the private sector and individuals within the coastal zone.
- (g) It prescribed a procedure to ensure that Government sponsored activities within the coastal zone are properly reviewed prior to formal commitment of funds by sponsoring agencies.
- (h) It established the Director, Coast Conservation, as the official exclusively charged with the responsibility for formulation, execution, and supervision of coast protection works.
- (i) It prescribed that an environmental impact assessment is required as part of the information submitted in applications for permits to undertake major development activities within the coastal zone.

This draft was subsequently subjected to exhaustive analysis by several committees. This was necessary in order to ensure that there would be no conflicts with other parallel legislation that was being drafted at the time. The Law as finally enacted by Parliament in 1981 contains certain important differences from the original draft. They are -

- (a) A widening of the definition of the coastal zone to include some portion of the water areas of lagoons and estuaries and rivers.
- (b) A uniform procedure for permit applications that does not distinguish between development activities undertaken by private and state sectors.
- (c) Provision for collaboration between various Government agencies involved in research and development activities within the coastal zone.
- (d) Provision for a better procedure for appeals against refusal of permits by the Director.
- (e) Makes provision for some measure of control over situations where stability and quality of the coastal zone is affected as a result of activity outside the zone.
- (f) Imposition of enhanced penalties for contravention of the Law.
- (g) Empowers the Director to order demolition of unauthorised structures.
- (h) Grants immunity to implementors of the law in respect of action taken in good faith.
- (i) Establishes horizontal links between this Act and other parallel legislation such as the Urban Development Authority Act.

*The Act is purpose directed and different to some of the parallel legislation in the sense that powers, functions and authority vested by it are specifically directed towards the clear objective of coast conservation. It is structured as follows:-*

### PART I - Administration

- (a) Vests the authority for administration, control and custody of the coastal zone in the Republic.
- (b) Clearly defines the duty and functions of the Director and limits for delegation of powers.