

Coastal Security and Coastal States
Dr KR Singh@

Introduction

Government of India (GoI) launched with great fanfare and after a great deal of deliberations the Coastal Security Scheme (CSS) in 2005-06. After the first phase was over, it launched the second phase of that scheme in 2011. It also has a five-year span. Rs 646 crore were earmarked for the first phase and Rs 1,579.91 crore have been earmarked for the second phase. The CSS, as it has evolved, has to a great extent sidelined the role of major stake holders; the coastal state and the coastal population and has given the Central Government primary responsibility. The expenditure is to be borne by the Ministry of Home Affairs (MHA). The enforcement is under the Navy and the Coast Guard, both come under the Ministry of Defence (MoD). The Marine Police, that represents the involvement of the coastal state, has been given a marginal role. Thus, the scheme, as it is envisaged, has reversed the roles. Those who are the prime targets and whose active cooperation is essential for its success have been marginalised.

Coastal Security Scheme

As noted, the first phase covered the period upto 2011. It was decided to extend the scheme for five more years. Coastal states and Union Territories were asked to carry out a vulnerability gap analysis in consultation with the Coast Guard, to firm up their additional requirements for formulation of Phase II of the scheme. Thrust of Phase II was no different than that of Phase I. More funds were allocated under heads that were earlier listed under Phase I for Phase II as well. There was no enhancement in the role of Coastal Police, nor were they equipped with vessels that would have enabled them to challenge heavily armed terrorists even in the waters along the sea shore. The only item of significance that was proposed was to construct 60 new jetties for the boats of Marine Police during Phase II. Accompanying table giving details of the allocation of funds by MHA for infrastructure construction and acquisition of equipment will help to understand the limited nature of role that coastal state (Marine Police) is expected to play in coastal security. This is independent of the contribution by MoD for the Navy and the Coast Guard.

The role of various maritime security agencies entrusted with ensuring coastal security is specified. As per the Annual Report of 2013 of the MHA (Coastal Security, 3.57) it is a multilateral arrangement involving the Indian Navy, Indian Coast Guard and the Marine Police of the coastal states and Union Territories. Interestingly, the Customs (Marine Wing) that is responsible for economic security upto the outer limit of India's contiguous zone [24 nautical miles (NM) from the coast line] has not been listed as participating in the scheme of coastal security. One wonders why?

Table: Coastal Security Scheme I & II (MHA's contribution)

	Scheme I 1905/6-11	Scheme II 2011-16
Financial (in Rs. Crores)		
Total outlay	646.00	1,579.91
Non-recurring	495.00	1,154.91
Recurring	151.00	425.00
(on fuel, repairs, training)		
Major infrastructure		
Coastal police stations	73	131*
Check points	97	-
Outposts	58	-
Barracks	30	
Jetties	Nil	60
Equipment		
Jeeps	153	131
Motorcycles	312	242
Patrol boats:		
12 tons	120	150
5 tons	86	75 (includes 10 larger vessels for A & N, and 12 rigid inflatable boats for Lakshadweep.)

*28 existing police stations in Andaman and Nicobar Islands (A&N) to be upgraded.

The Report also specifies the division of the roles of these three agencies. Surveillance on the high seas is carried out along the limits of exclusive economic zone (EEZ) by the Navy and the Coast Guard. If one overlooks the confusion created by terms like 'along the limits of EEZ', it is clear that the sea space beyond the outer limits of the territorial waters is entrusted to the Navy and the Coast Guard for surveillance only. It is because only these two,

besides Customs (Marine) have vessels that can operate effectively in those waters and are so authorised.

The Report says that in the territorial waters, the Coast Guard (alone) protects Indian interests through vessels and aerial surveillance. Thus, the Marine Police is not entrusted with maritime security of the whole of territorial waters adjacent to the coast. As per the report, Marine Police has been entrusted with close coastal patrolling. The Report also makes the following statement, "The State's jurisdiction extends upto 12 NM in the shallow territorial waters". Thus, under the Scheme, the state has jurisdiction but no capability and hence, limited responsibility vis-à-vis coastal security.

Constitutional and Legal Constraints

Is the coastal security perspective the result of an inherited land-centric or so-called sub-continental mindset, reinforced by the constraints imposed by the Constitution and subsequent policy formulations? The reference is to the controversial Centre-State relationship as defined under the Constitution and reflected in policy formulations. One need not find faults with the constitution makers of those days. They wanted all states to enjoy equal rights as also privileges. Hence, the Constitution limited the extent of state's territory to its 'land' border. Under Article 297, Central Government reserved to itself exclusive right to exploit all non-living resources even within the territorial waters adjacent to the coast. Also, all fishing activities 'beyond the territorial waters' were retained under the control of the Central Government. By implication coastal state could have the power to regulate fishing activities only within the territorial waters adjacent to its coast. This backdrop is essential to understand the psyche that dominated the concept of sea governance and hence of coastal security.

In that context, Article 297 of the Constitution that gave the Central Government exclusive jurisdiction over the resources of the adjacent sea space (3 NM in 1951) assumes great significance when one analyses India's extended jurisdiction over its adjacent sea space. India extended the outer limit of its territorial waters from 3 NM to 6 NM through a Presidential Ordinance in 1956. The same year, by another Presidential Ordinance, it introduced the concept of contiguous zone. It extended 6 NM beyond the outer limit of territorial waters. In 1963, India amended Article 297 and added the concept of continental-shelf. No outer limit was specified but it legalised the exploration and exploitation of oil and gas reserves of the Bombay High. Article 297 was once again amended on 27 Apr 1976. It not only extended the outer limits of the territorial waters and the contiguous zone but also created a new zone - the EEZ. All that was before UN Convention of the Law of the Sea (UNCLOS-III) of 1982.

Article 297, as amended in 1976, enabled the Parliament to enact the Maritime Zones of India (MZI) Act, 1976. It fixed the outer limits of various maritime zones; territorial waters (12 NM), contiguous zone (24 NM) and EEZ/Continental Shelf (200 NM). That act also defined the extent of India's jurisdiction and sovereignty over each of these zones. That act also took care not to violate the concept of freedom of navigation on the high seas. Though India signed UNCLOS-III in 1982 and ratified it in 1995, it has not enacted any bill that legalises its provisions; Piracy Bill 2012 being the sole exception. Hence, MZI Act, 1976, provides the primary basis for defining India's maritime security framework vis-à-vis various zones.

MZI Act, 1976, did not provide for arrest, trial and punishment of persons apprehended for violating its provisions. Parliament had to enact specific laws in that context. It enacted Suppression of Unlawful Acts (SUA) Act, 2002, to legalise the provisions of the SUA Convention of 1988. It also passed the Piracy Bill in 2012. But, to the best of my knowledge it has not as yet passed a bill that can empower maritime enforcement agencies to neutralise the threat of maritime terrorism beyond the narrow limits of territorial waters.

Coastal Security under MZI Act, 1976

One point needs to be underlined here. Before the GoI introduces a bill in that context, it can very well take advantage of the provisions of MZI Act, 1976. Section 5 deals with the contiguous zone, sea space that extends 12 NM beyond the outer limit of territorial waters. Since this section is often ignored while examining the question of maritime security, the same is reproduced below :-

Section 5, Subsection 4. The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to:-

- (a) The security of India
- (b) Immigration, sanitation, customs and other fiscal matters.

Section 5, subsection 5 - The Central Government may, by notification in the Official Gazette :-

- (a) Extend, with such restrictions and modifications as it thinks fit, any enactment relating to any matter referred to in clause (a) or clause (b) of sub-section 4, for the time being in force in India or any part thereof to the contiguous zone.
- (b) Make such provisions as it may consider necessary in such notification, and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

Thus, MZI Act, 1976 already provides for enlarging India's maritime security zone upto the outer-limit of its contiguous zone (24 NM) even without enacting a new law. That notification will provide the maritime enforcement agencies of the Central Government, the Navy, the Coast Guard as well as the Customs (Marine), the legal basis to apprehend likely suspects well away from the coast. These suspects can then be produced before the designated court for trial under existing national laws.

Some legal purists might object to it by arguing that such an action would violate the concept of freedom of navigation on the high seas. Indian action does not violate that freedom under two counts. The first is that provision of

UNCLOS-III dealing with freedom of navigation applies to state actors alone and not to non-state actors. Secondly, since India has only ratified UNCLOS-III but not given it legal sanction by enacting an appropriate bill, MZI Act, 1976 reigns supreme and its provisions alone will be upheld before the Indian courts. Hence, Government of India should take steps to operationalise the contents of Section 5, Sub-section 4 (a) and 5 that deal with security so as to legally strengthen the hands of the enforcement agencies to curb activities of terrorists further away from the coast.

Coastal States and Sea Governance

While the framers of the Constitution as also those who formulated the framework of governance gave primacy to problems dealing with 'land territory', little attention was given to the question of sea governance. The Constitution tried to bypass that question by placing almost all aspects of sea governance, be they fishing on the high seas, shipping, major harbours, foreign trade, exploration and exploitation of sea based resources etc under the control of the Union Government. The result was that coastal states that were the real stake-holders as also main beneficiaries had practically no role to play in sea governance, not even in matters of intimate concern like marine fishery beyond the narrow limit of territorial waters. The result was that most of the maritime governance issues, that should have reflected the maritime concerns of India, were allowed to languish by bureaucracy sitting far away in New Delhi.

Marine fishery is an area that has been long neglected. MZI Act, 1976, gave India exclusive right to exploit living resources in this vast 200 NM EEZ. While GoI passed laws in 1981/82 regulating fishing by foreign fishermen in these waters it has failed to enact a law that regulates fishing by Indians in these waters. Under the terms of MZI Act 1976, Indians are free to fish anywhere in India's EEZ. Indian fishing, even deep water fishing, has expanded rapidly over the decades. Indian fishermen, who operate from fishing harbours and landing sites along the coast and fish in waters beyond the outer limits of the territorial waters, are not governed under any law. Absence of a law facilitated Pakistan-based terrorists to target Mumbai in 2008; they captured a fishing boat from the Gujarat coast and used it to sail unhindered all the way to Mumbai. Such a thing can happen even now because 'Indian' fishing boat has a license under MZI Act, 1976 to fish anywhere in India's EEZ.

Attempts are being made to register Indian fishing boats under a new scheme. Since the subject (shipping) comes under the jurisdiction of the Central Government, there are proposals to formulate a common code and the task of registration is to be entrusted to coastal states. The data can be centralised. At best, that can help identify the boat, the place of its registration, owner and may be its crew. But that information alone cannot undo the present-day lawlessness on these waters, or give the enforcement agency the power to intercept and verify the need for presence of the vessel in a given place. A fishing vessel from Gujarat can still reach the coast of Maharashtra or even Kerala.

The Central Government, on its own can never truly regulate fishing in India's EEZ by Indian fishermen. It must involve coastal states in some aspects of sea governance. Some sort of supervisory role by the coastal states on marine fishery can be a major input in that direction. Since these boats are largely based along the coast – fishing harbour and landing sites – it is easy to monitor their activities and even to regulate them to the extent possible because these boats cannot be operated without the input of facilities like fuel, ice, places for landing of fish, cold storage, canning facilities, repair facilities, dockyards etc. These can be best handled at the level of the coastal states. A law dealing with fishing by Indian fishermen can not only be a step towards better sea governance but also a step towards combating acts of maritime terrorism and other crimes like smuggling in which these boats are often involved.

Recommendations

One can suggest a few following steps that can enhance coastal security without disturbing the present framework of coastal security and with very small financial input. The first step is to strengthen legal norms. As noted, India has not enacted a law that can permit maritime security agencies like the Coast Guard and the Navy to apprehend suspected terrorists beyond the outer limits of the territorial waters. Pending the passing of such an act, Central Government can well invoke Section 5, Sub-sections 4(a) and 5 of the MZI Act, 1976. As discussed before, that provides a legal basis to treat India's contiguous zone as India's maritime security zone.

Secondly, steps need to be taken to enable coastal states to play a more active role in two matters related to coastal security. They are marine fishery and maritime security. An amendment can be suggested to include marine fishery as an item in the Concurrent List (List III) of VIIth Schedule. That will enable the coastal states to help the Union Government in organising the activities of fisher folk in respective states without in any way limiting the power vested in the Union Government under item 57 of the Union List.

Thirdly, the Constitution does not specify any role in matters of maritime security to coastal states. Its security reach, at best, extends to the outer limit of the territorial waters adjacent to its coast. It is too narrow a sea space given the long reach of contemporary terrorists. Also, even a fast fishing boat can cover that distance in an hour leaving little time for effective response. Maritime security concerns of a coastal state do not end with the outer limit of its territorial waters. It must have some means of at least monitoring the adjacent sea space where its fisher folk also operate and which is not being monitored by its Marine Police. If the Constitution is amended so as to list maritime security as an item under the Concurrent List, it can constitutionally empower the coastal state to extend its zone of concern well beyond the narrow confines of territorial waters.

Thus, a concept that recognises the role of coastal states in further strengthening sea governance will create an environment that will, over the years, not only lead to good sea governance but will also ensure a more equitable balance of responsibility between the Central Government and the State Governments even in matters of coastal security.

Dr KR Singh retired as a professor from Jawaharlal Nehru University, New Delhi on 07 May 1997. He has held a Chair of Excellence at USI from 01 Sep 2010 to 31 Aug 2011 and authored a book 'Coastal Security : Maritime Dimensions of

India's Homeland Security', Vij Books India Pvt Ltd, 2012.

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