



The Doctrine of Public Trust and Environmental Protection in India

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The doctrine of public trust has evolved over the years to emerge as a cardinal principle for the judiciary to determine the validity of governmental action that interferes with the use by the general public of certain natural resources. The application of the doctrine has resulted in the imposition of a check upon governmental authorities who seek to divest State control over such natural resources in favour of private interests. Though of ancient origin and of considerable vintage in the United States, it is only recently that the doctrine has been applied in India.

The antiquity of the doctrine of public trust:

The roots in history of the doctrine are traced to the Roman emperor, Justinian. In Book II of his Institutes, Justinian proclaims :

By the law of nature these things are common to mankind---the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore ...

The doctrine of public trust in the United States

The doctrine of public trust, in its modern form, is owed to the Courts of the United States. The case of *Illinois Central Railroad Company v. Illinois* [] has been identified as "the Lodestar in American Public Trust Law". In that case, the legislature granted lands underlying Lake Michigan to a private company. A few years later, the legislature had second thoughts about the grant and repealed it. In an action brought by the state to have the original grant declared invalid, the Supreme Court of the United States stated that the title to the lands given in grant were different in character from that which the state holds in lands ...state that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein freed from the obstruction or interferences of private parties. Though the Court did not prohibit the disposition of trust lands to private parties, it stated that the state cannot divest itself of authority to govern the whole of an area in which it has responsibility to exercise its police power; to grant the entire waterfront of a major city (Chicago) to a private company is, in effect, to abdicate legislative authority over navigation. Subsequently, the superior Courts of some State like



Massachusetts have modified the doctrine to suit the peculiar status and uses of public resources prevalent in those states.

The doctrine in India - *M.C.Mehta v. Kamal Nath And Others*

(1997)1 SCC 388

The Supreme Court of India applied the doctrine for the first time in the above case. The case involved encroachment of forest land and an attempt to change the course of the River Beas to facilitate the construction of a motel by a company reportedly having direct links with the family of Kamal Nath, former Minister of Environment and Forests.

The Supreme Court took notice of a news item regarding the above developments and proceeded to quash the prior approval granted by the central government for leasing out forest land and also the lease deed between the government of Himachal Pradesh and the company. The Court also directed the Government of Himachal Pradesh to takeover the entire area and restore it to its natural-original state. The company was directed to remove the construction made in the river bed and on the banks of the river, to pay compensation by way of cost for the restitution of the environment and ecology of the area and to prohibit from discharging untreated effluents into the river. While directing the company to construct a boundary wall separating the building from the river basin, the Court made it clear that the river bank and the river basin were to be left open for public use. The Court pronounced in categorical terms :

"The public trust doctrine, as discussed by us in this judgment is a part of the law of the land."

The public trust doctrine therefore furnishes a theoretical framework to the Courts in deciding those cases relating to the environment where a major community resource has been directed towards purposes and uses other than those for common enjoyment and benefit.

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Introduction

Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone regardless of their status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

Public trust doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources. It is a common law concept, defined and addressed by academics in the United States and the United Kingdom. Various common properties; including rivers, the seashore, and the air, are held by the government in trusteeship for the uninterrupted use of the public. The sovereign could not, therefore, transfer public trust properties to a private party if the grant would interfere with the public interest. The public trust has been widely used and scrutinized in the United States, but its scope is still uncertain. Various laws have been made to apply this doctrine to protect navigable and non-navigable waters, public land sand parks, and to apply it to both public and private lands and ecological resources. The Supreme Court of California has broadened the definition of public trust by including ecological and aesthetic considerations. Although the public trusts doctrine is not without its fair share of criticism it is being increasingly related to sustainable development, the precautionary principle and bio-diversity protection. The doctrine combines the guarantee of public access to public trust resources with a requirement of public accountability in respect of decision-making regarding such resources. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension.

The Stockholm Declaration of United Nations on Human Environment evidences this seminal proposition: "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural system, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate..."

The Public Trust Doctrine can also be used as leverage during policy deliberations and public scoping sessions and hearings. This forces agencies to prove that their actions are not environmentally harmful to the extent that they will destroy a public resource. If the agencies fail to provide a more environmentally benign alternative, then you can bring up a Public Trust lawsuit. Although the court process may be long and arduous, many important precedents have been established.



The Doctrine of Public Trust In India

The public Trust Doctrine has its origins in Roman Law. It has been extended in recent years, placing a duty on the state to hold environmental resources in trust for the benefits of the public. At its widest, it could be used by the courts as a tool to protect the environment from many kinds of degradation. In some countries, the doctrine has formed the basis of environmental policy legislation, allowing private rights of action by citizens for violations by the state (directly or indirectly) of the public trust.

The Rule of Law runs close to the rule of life and the Indian Constitution, in its humanist vision, has made environmental-ecological preservation a fundamental value. The higher jurisprudence of Article 21 of the Constitution (right to life) embraces the protection and preservation of nature's gift without which life ceases to be viable and human rights become a simulacrum. In other words, this right to life under article 21 has been extended to include the right to a healthy environment and the right to livelihood. The third aspect of the right to life is the application of public trust doctrine to protect and preserve the public land. When the Indian courts have applied the public trust doctrine, they have considered it not only as an international law concept, but one, which is well established in their national legal system.

Accepting public trust doctrine as a part of common law, the Indian courts have applied this explicitly in three recent cases, the first one in 1997 and two cases in 1999, including the case under consideration. Articles 48A and 51A of the Constitution also furnish the principles of jurisprudence, which are fundamental to our governance under the Rule of Law.

The doctrine is first mentioned in *M.C. Mehta v Kamal Nath and others* where the Indian Supreme Court applied public trust with regard to the protection and preservation of natural resources. In this case, the State Government granted lease of riparian forestland to a private company for commercial purpose. The purpose of the lease was to build a motel at the bank of the River Beas. A report published in a national newspaper alleged that the motel management interfered with the natural flow of the river in order to divert its course and to save the motel from future floods. The Supreme Court initiated suo motu action based on the newspaper item because the facts disclosed, if true, would be a serious act of environmental degradation.

The Supreme Court in *M.C. Mehta* started that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would be unjustified to make them a subject of private ownership. The court observed that:

Our Indian legal system, which is based on English common law, includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is



the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. As rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. Thus, the Public Trust doctrine is a part of the law of the land. The court also ruled that there is no any justifiable reason to rule out the application of the public trust doctrine in all ecosystems in India.

In this case, the Supreme Court was faced with the classic struggle between those members of the public who would preserve our rivers, lakes and open lands in their pristine purity and those charged with administrative responsibilities who find it necessary to encroach to some extent upon open land.... It stated that the public bodies should apply trust doctrine when there is no legislation to protect the natural resources.

In their view, applying the polluter pays principle, the Court directed the developer to pay compensation by way of cost for the restitution of the environment and ecology of the area. It had no difficulty in holding that the Himachal Pradesh government committed a patent breach of public trust by leasing out the ecologically fragile land to be developed.

Chronologically, the second case on this subject is *Th. Majra Singh v Indian Oil Corporation*, where the petitioner objected to the location of a plant for filling cylinders with liquefied petroleum gas. It was held that the High Court can only examine whether authorities have taken all precautions with a view to see that laws dealing with environment and pollution have been given due care and attention. Though the case was decided on the basis of the precautionary principle, it confirmed that the public trust doctrine has become part of the Indian legal thought processes. In the High Court's opinion, the doctrine is a part and parcel of Article 21 of the Constitution and that there can be no dispute that the State is under an obligation to see that forests, lakes and wildlife and environment are duly protected. According to the Court, the idea that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land.

In the third case, *M.I. Builder v Radhey Shyam Sahu*, the Supreme Court has applied the Public trust doctrine. Here, the Lucknow Nagar Mahapalika (i.e. Lucknow City Corporation) granted permission to a private builder to construct an underground shopping complex was against the municipal Act and Master plan of the city of Lucknow. The builder was supposed to develop the site at its own cost and then to realize the cost with profit not exceeding more than 10% of the investment in respect of each shop. Under the terms of the agreement, full freedom was given to the builder too lease out the shops as per its own terms and conditions



to persons of its choice on behalf of the Mahapalika. The builder was also given the right to sign the agreement on behalf of the Mahapalika and was only required to a copy to the Mahapalika after its execution. Both the builder and the Mahapalika were to be bound by the terms of that agreement.

When the matter was challenged, the High Court set aside and quashed the agreement between Mahapalika and the builder, and the relevant order of the Mahapalika permitting such construction. The Court ordered Mahapalika to restore the park to its original position within a period of three months from the date of the judgment and until that was done, to take adequate measures and to provide necessary safeguards and protections to the users of the park. The High Court took the accounts of the fact that Mahapalika never denied the historical importance of the park and the preservation or maintenance of the park was necessary from environmental angle. However, the only reason advanced by Mahapalika for the construction of the underground commercial complex was to ease the congestion in the area. The High Court took judicial notice of the conditions prevailing at the site and found that the construction of an underground market would further congest the area. It added that the public purpose, which is alleged to be served by construction of the underground commercial complex, seemed total illusory.

On appeal by the builders, the Supreme Court held that the terms of agreement showed that the clauses of the agreement are unreasonable, unfair and atrocious. The Mahapalika, as a trustee for the proper management of the park, has to be more cautious in dealing with its properties. The Court added that the land of immense value had been handed over to it to construct an underground shopping complex in violation of the public trust doctrine. The maintenance of the park, because of its historical importance and environmental necessity, was in itself a public purpose. Therefore, the construction of an underground market in the grab of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction, Mahapalika has deprived its residents, and also others, of the quality of life to which they were entitled to under the Constitution and under the Municipal Act.

The agreement was opposed to public policy and not in the public interest. Mahapalika allowed the commercial shopping complex to be build upon a public park in clear defiance of the Uttar Pradesh Municipal Corporation Adhiniyam 1959. In addition, the Mahapalika violated the public trust doctrine and the Court ordered the demolition of the unauthorized shopping complex.

The Supreme Court, in M.I. Builders reconfirmed that the public trust doctrine is established in the Indian legal system and asserted that the public authorities should act as trustees of natural resources. However, it is clear from all these cases that the court did not confer any property right on the public under the trust. While applying the public trust doctrine, the Court in all these cases, took account of either the polluter pays the principle or the precautionary principle or both.



In the Kamal Nath case, the Supreme Court and in the Th. Majra Singh case, the High court applied the public trust doctrine along with other principles such as the precautionary principle and polluter pays principle. Moreover, in Kamal Nath case, the Supreme Court directed, inter alia, that the lease be quashed and the full cost of restoration of the land to its original natural condition be paid by the Motel.

The Court also ordered the Motel to remove all the construction on the riverbed and the banks of the River Beas. However, in Th. Majra Singh, the High court found that the Indian Oil Corporation (IOC) had taken all the precautions and followed all the safeguards required by the law. Giving to the go ahead to the installation of the LRG plant located in the vicinity of a polluted village, the Court ordered the IOC to take due precautions, so that pollution is not caused to the environment and to plant fast growing trees like poplar & eucalyptus. In the M.I. Builders case, the Supreme Court ordered Mahapalika to demolish the unauthorized shopping complex and to restore the park to its original beauty. It is clear that in these cases, the Court adopted a balanced development approach.

It is interesting to note that in the Kamal Nath case the Supreme Court held that even if there is a separate and a specific law to deal with the issue before the Court, it may still apply public trust doctrine. If there is no suitable legislation to preserve the natural resources, the public authorities should take advantage of this doctrine in addition to the fact that there was a branch of municipal law. Secondly the Supreme Court in M.I. Builders, however, stated that public trust doctrine has grown from Article 21 of the constitution. By attaching this doctrine to the fundamental right to life, the Supreme Court appears to be willing to diversify the application of this doctrine. It seems likely that the court would give precedence to right to life when the public trust doctrine, as a part of right to a safe and healthy environment, is challenged by any other fundamental rights. Thirdly by ordering the Mahapalika to restore the park to its original beauty, the Supreme Court redefined the duties of a trustee to its beneficiaries the users of the park. In effect, it aligned the local authorities duty as a trustee with the concept of intra-generational and inter-generational equity. Fourthly, the case came before the court as a judicial review and not as challenge against the decision of the government from a beneficiary. As this doctrine acts as a check upon administrative action by providing a mechanism for judicial or resource allocation decisions. Therefore, public trust doctrine could serve as an additional tool for environmental protection particularly where administrative discretion has been abused.

Conclusion

From the above discussions on the doctrine and various case laws, it is evident that the state is not the owner of the natural resources in the country but a trustee who holds fiduciary relationship with the people. By accepting this task the government is accepted to be loyal to the interests of its citizens and to discharge its duty with the interest of the citizens at heart and involve them in decision-making process concerning the management of natural resources in the country. The Public Trust Doctrine may provide the means for increasing the effectiveness of



environmental impact assessment laws. Thus, under this doctrine, the state has a duty as a trustee under Art. 48A to protect and improve the environment and safeguard the forests and wildlife of the country. While applying Art.21 (right to life), the state is obliged to take account of Art. 48A, a Directive Principle of State Policy. The state's trusteeship duties has been expanded to include a right to a healthy environment.

