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Doctrine of Public Trust and its development in India

Shubham Sharma

In order to protect public interest and grant access to natural resources the Doctrine of Public Trust was created. The doctrine was developed in Roman law, where it was believed that, air, running water, sea and its share are res commune omnium, common property to all. Therefore, everyone was entitled to use such property. Historically this right was undermined by the King, who owned all the property and his lords who were vested with rights by the King. this led to great inconvenience to the the public. It was only after the Magna Carta, was the doctrine was used to serve the public interest, although in a limited scope. As the Magna Carta only recognised limited public right in navigation and fishery[1].

The Doctrine was further devlped by the writing of Bracton, who developed the concept further into, (/) just privatum, the right to private ownership; and (//) just publicum, the right vested in a king to hold the sea, running water, land and any such property for the benefit of the people. The right of the public was recognized, the right of private ownership flourished in the the industrial ages, so much so that courts and legislatures would often look over private or abuse of common property by individuals to foster industrial growth.

The modern concept of Public Trust was revived in an american case law throughout the 19th century, In the case of illinois Central Railroad v Illinois,[2] In this landmark judgement the courts opined "The state can no more abdicate its trust over property in which the whole people are beneficially interested... than it can abdicate its police powers." This case brought in Judicial oversight of government action in relation to public property. Where the Courts would look with considerable skepticism actions of the government where it reallocated a resource to restricted use or to the self interest of a private individual.

The courts in the Illinois case stated that a Public Trust is in which, A title is held by the state in the trust for the people of the state. For the purpose of enjoyment of natural resources such as the sea, where the sea should be free for navigation, commerce, and fishing without obstruction or interference of private parties. Traditionally, Public Trust was just a right in waters and bottomlands where as the modern understanding of this doctrine has a far greater scope, the Supreme court in the Illinois case recognized this widened definition of the doctrine, by holding the state as a trustee of the public interest in natural resources or public property. The

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1 Rajamani, L. (1996). DOCTRINE OF PUBLIC TRUST : A TOOL TO ENSURE EFFECTIVE STATE MANAGEMENT OFNATURAL RESOURCES. *Journal of the Indian Law Institute*, [online] 38(1), pp.72-82. Available at: https://www.jstor.org/stable/43951624 [Accessed 4 Feb. 2019].

2 46 U.S. 387 (1892).

understanding of doctrine today is that all-natural resources come under Public trust, including the preservation of land in its natural state[3].

INDIAN POSITION

The Public trust Doctrine was brought into indian jurisprudence in the landmark case of M.C Mehta v Kamal Nath[4]. In brief the facts are as follows, A resort was being constructed on the banks of the river Bias. the first contention was, they encroached on protected forest land. Secondly, they changed the course of the flow of the river causing threat to nearby villages on the bank because the river was prone to flooding. Kamal Nath was minister at the time, Kamal Nath wife owned 42% share in the company creating the resort. Amongst other issues the courts cited the Roman law stating that some resources are either owned by no one or they are owned by everyone. The courts are borrowing from the conceptual understanding that was laid out by the sochlor . Joseph L. sax, who stated that, this doctrine is subject to special judicial scrutiny, which are as follows:

1) That some interests are so intrinsic to citizens that their free availability is what distinguishes citizens forms serfs, therefore these interests have to be protected from individuals or groups.
2) Some resources are such a gift from nature that they must be available for everyone.
3) Some uses have a public nature, hence conversion of that same to private would be inappropriate.

With this understanding that courts in the M.C Mehta case state that firstly, Property subject to trust must not only be used for public purpose but available for public use. Secondly, the Property should not be for sale even for an equal exchange of property in a different location. Lastly, The property must be maintained for a particular use. The courts effectively affirmed the american stance in this case, by saying that you could not change the flow of the river and you could not take protected forest land and compensate by giving an equal amounts of land in a different area.

Part III of the Indian constitution contain with them the The Fundamental Rights, which embodies the rights and part IV which contains the Directive Principles of the state policy which embody the duties of the trustee, the state, every action of the state is governed by this. The duty

[3] Marks v. Whitney, 6 Cal. 3d 251 at 259-60

[4] MANU|SC|1007/1997

of the state as a trustee is enforceable under part IV principles and any laws made have to be in accordance to part III and IV. Protection of the environment has been worked into part III under article 21, right ot life, to mean a right to a clean and wholesome environment, this was done by the supreme court in the M.I. Builders v Radhey Shyam Sahu[5]

Following the implementation of the public trust doctrine and its grounding in fundamental rights the courts further examine the doctrine in the case of Susetha vs State of Tamil Nadu & ors,[6] where it stated that the Public trust doctrine is not a restriction the the government to give/allot land to the public for public purpose. It is no a probiton on the state from alinanting rather it imposes restriction on the alienation. The purpose of such a restriction is to insure higher judicial scrutiny over the state in cases of Public trust, as the state is a trustee of resources. Furthermore, in where the state is disposing of public land, the alienation can only be in a manner that is consistent with the nature of such a trust[7]. The intention of the courts in the Susetha case was to create distinction between the general obligation of the state and the specific obligation of the state as trustee.

The Doctrine has evolved from a simple traditional public right of the sea and air, to a more complex modern understanding of the Doctrine. In which the state is a trustee to all natural and public resources for the public at large, in India the definition has been put under a fundamental right, the right to life, by being able to enjoy the natural resources and the public good without interference by an individual or a group. The Doctrine is seen as a tool to ensure effective state management of natural resources. With its undefined possibility the doctrine could stand to conceptually other environmental conflicts.

[5] AIR 1999 SC 2468

[6] MANU|SC|8003/2006

[7] Intellectual Forum v State of A.P (2006) 3 SCC 549