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Evolution of Public Trust Doctrine in India

Sukriti Bhagat and Dhananjai Shekhawat

I. INTRODUCTION

The Public Trust Doctrine can be followed to its origin in Roman law. Roman jurists believed that the fundamental concept of natural law i.e., waters are common to all, could not be left to the whims and fancies of the legislators.¹ Similarly, the modern jurists concerned about the rapid depletion of natural resources, especially the exploitation done for commercial gains, adopted this doctrine to safeguard the ecosystems. This doctrine, in its rudimentary form, pertained to the relationship of the state and the water resources within its territory. The fundamental notion underlying this doctrine is the public's interest in the natural resources of the state. The courts have, with time, expanded the purview of this doctrine to include natural resources not limited to water bodies. It holds the state as the trustee of the ecosystems and imposes a duty upon them to ensure their protection.

The Public Trust Doctrine has been accepted and applied internationally. It has been studied, researched, and developed extensively in the legal systems of the United Kingdom and the United States of America. The 2nd principle of the Stockholm Declaration of United Nation in Human-Environment finds its roots in this doctrine and accordingly states that “*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*”.² The Supreme Court of California in the landmark 1983 judgment of *National Audubon Society v Superior Court* unchained the contemporary principle of the Public Trust Doctrine which was traditionally interpreted and applied only to water bodies and wisely envisaged it as a doctrine protecting under its am-bit all sorts of ecosystems.³

This article will discuss important landmark judgments to track the adoption and evolution of the Public Trust Doctrine in India. It will also delve into an analysis of its socio-political impact and its contemporary relevance.

¹ Melissa K. Scanlan, The Evolution of the Public Trust Doctrine and the Degradation of Trust Resources, 27 Ecology L. Q. 135, (2000).

²G.A. Res. 2994 A, United Nations Conference on the Human Environment, (Dec. 15, 1972).

³ National Audubon Society v. Superior Court 189 Cal.Rptr. 346 (1983).

II. LANDMARK JUDGEMENTS

M.C. Mehta v. Kamal Nath and Ors.⁴

The State Government of Himachal Pradesh leased out riparian forest land to a private company, 'Span Motels Pvt. Ltd.' (herein referred to as the Motel Company), for commercial purposes i.e. to construct a motel at the bank of the river Beas. A national newspaper, The Indian Express, reported that the Motel Company had interfered with the natural flow of the river Beas to divert its course and prevent the motel from floods. The Motel Company had also, allegedly, encroached upon 27.12 bighas of land which included forest land. The then Minister of Environment and Forests - Shri Kamal Nath was alleged to have direct links with the Motel Company. The Supreme Court took *suo moto* action based on the newspaper report because the facts if found to be true, would amount to an act of grave environmental degradation.

Mr. Harish Salve, appearing for Mr. Kamal Nath, didn't dispute the fact that almost all the shares in the Company were owned by his family. However, he strongly contended that any construction made by the Company on the land under its possession, and the area around was in good faith and was done purely intending to prevent the land on lease from the floods. He further submitted that the same was permitted by the Divisional Forest Officer by a letter dated December 1, 1993. However, the court disagreed with the above contention and ordered the management of the Company to return the forest land to the Government of Himachal Pradesh and remove all sorts of encroachments. The court established the principle of Exemplary Damages and mentioned the Public Trust Doctrine for the first time in India. It applied the 'Polluter Pays Principle' which requires the polluter to pay for the damages caused by her/his

Judgment

In the judgment delivered by the Divisional Bench of Justice Kuldeep Singh and Justice S. Saghir Ahmad, the court recognized the Roman Empire theory of 'Public Trust Doctrine' as a vital and inseparable part of our legal system. This theory relies on the principle that naturally occurring resources such as the air, water, forests, and seas carry immense importance for all humans, and thus it is inexcusable to allow private ownership over them. It further opined that the doctrine vested with the government, the duty to safeguard these

⁴ M.C. Mehta v. Kamal Nath and Others, (1997) 1 SCC 388 (India).

resources for the benefit of people as a whole and to prevent their use for commercial or private purposes.

The court emphasized that the issues involved in this case highlight the rift between those sections of the society that seek to care for and keep natural resources like forests, water bodies, and open lands untouched by human activities, Further, those who possess administrative responsibilities and are under the burden of a progressing and expanding society, find no choice but to impinge upon these resources. The Apex Court also noted that the solution of this conflict is for the legislature to look for but in absence of a legislation for the same, the administrative authorities according to the doctrine are, henceforth, compelled to be the trustees of natural resources and ensure that their erosion is not permitted for commercial, private or any other use unless the courts deem it necessary, in good faith, for the good of and in the interest of the public to intrude upon such resources. In light of the above, the court held that the Himachal Pradesh government committed a 'patent breach of public trust' by leasing out the ecologically fragile land to the Motel Company Management and quashed the approval granted vide letter dated November 24, 1993, and the lease deed dated April 11, 1994, in favor of the Company.

The court also confirmed that the Motel Company management company indeed contributed to the degradation of the environment by constructing illegally and interfering with the natural flow of the river. The Apex Court reiterated the 'Polluter Pays Principle' and instructed the Motel Company to pay compensation through cost for the restoration of the ecology of the region. Pollution caused due to the construction made by the Motel Company was to be removed and reversed, the costs of which were to be borne by the Motel Company under the 'Polluter Pays Principle'. The National Environmental Engineering Research Institute was instructed to scrutinize the area and, if required, provide a report of the approximate cost of reversing the environmental degradation caused. The Management of the Motel Company was instructed to show cause as to why pollution fines should not be imposed on them in addition to the costs mentioned above. They were also instructed to build a boundary wall not exceeding 4 meters from the Motel's main building towards the river basin and the same could only be built on the area leased out to the company. The river basin and the bank were ordered to be left for open public use. The Company was reprimanded from discharging untreated effluents into the river. The state pollution control board was instructed to examine the pollution control

treatment plants of the company and to inspect all factories/institutions in the Kullu Manali region, as to whether they are discharging untreated waste in the river.

According to the main order, the Motel Company was asked to show cause as to why pollution fine not be levied in addition to the costs.⁵ The division bench comprising of Justice A. Saghir Ahmad and Justice Doraiswamy Raju deliberated upon this question and concluded that the fine cannot be imposed on the Motel Company “*unless the entire procedure prescribed under the Act is followed and M/s Span Motel is tried for any of the offences contemplated by the Act and is found guilty*”.⁶ The fine cannot be imposed in exercise of power under Article 142 of the Constitution of India since the same would be in contravention of the legislation in force to regulate and prevent pollution and safeguard the environment.⁷ However, the court further opined that since pollution is a civil wrong and is a tort against the community, the person charged with causing pollution has to pay exemplary damages. While the court withdrew the notice for payment of pollution fine, they issued a new notice asking the Motel Company to show cause as to why they exemplary damages not be awarded in addition to the costs as per the main judgment.

The court’s intent behind awarding exemplary damages is also that of deterrence for others to not commit actions contributing to pollution. The court held that the question before it was to determine the quantum of exemplary damages which it fixed at Rupees Ten Lakhs keeping in mind public interest and justice.⁸ This amount was reached at considering the undertaking of the Company that they would pay their share for the ecological costs of restitution of the harm caused by them to the environment.

M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu⁹

In this case, the apex court, while dealing with the challenge to the construction of a shopping complex in the place of a public park, used the Public Trust Doctrine in consonance with the Right to Life. They ruled the public park as a public resource and hence denied the permission to demolish the park for the said construction. They also took into consideration the historic value and importance of the public garden while determining its status as a public resource. The Hon’ble court cited *M.C. Mehta* as

⁵ *Ibid.*

⁶ *Supra* note 4.

⁷ The Constitution of India, 1950, Art. 142.

⁸ *Supra* note 4.

⁹ *M.I. Builders v Radhey Shyam Sahu*, (1999) INSC 228 (India).

precedence and held that allowing the construction of a shopping complex in its place will affect the public's quality of life adversely under the ambit of Article 21 of the Constitution of India.^{10 11}

The court directed the government to ensure the maintenance of the public park as a part of its obligations under the Public Trust doctrine. It was held that this doctrine can be read in consonance with or even under the ambit of Article 21 of the Indian Constitution. It is well settled, therefore, that it may be evoked to protect the abrogation of fundamental rights as mentioned in Part III of the Constitution.¹²

III. ANALYSIS AND SOCIO-POLITICAL IMPACT

The Supreme Court initiated *suo moto* action based on the newspaper report. The court exercised its powers under Article 142 of the Constitution of India to recognize a newspaper item, letter et al. and take up the matter as Public Interest Litigation (PIL).¹³ This provision exists for the court to provide complete justice and make access to the formal justice system less cumbersome, which otherwise has many procedural restrictions.

Incorporation of the Public Trust Doctrine facilitates two purposes i.e. affirmative action mandating the government to preserve and protect ecosystems and natural resources and enabling the public to raise concerns regarding the failure of this duty enjoined upon the state.¹⁴ The Public Trust Doctrine is an important part of the English Common Law and thus is considered to be a part of our legal system as well.

In India, the Right to Life under Article 21 of the Constitution of India includes the right to a healthy environment.¹⁵ The incorporation of this doctrine in our legal system was seen as one in line with Article 21 of the Constitution of India and hence was considered to be an integral part of our legal system as well.¹⁶ The doctrine was for the first time considered and followed by its application in the case of *Th. Majra Singh v Indian Oil Corporation*.¹⁷ Although this case involved being decided on a precautionary principle, the Public Trust Doctrine was reiterated and held to be an integral part of our national legal system. The J&K High Court also viewed this doctrine to

¹⁰ Supra note 4.

¹¹ The Constitution of India, 1950, Art. 21.

¹² *Ibid.*

¹³ Supra note 7.

¹⁴ Carol M. Rose, Joseph Sax and the Idea of the Public Trust, 25 Ecology LQ 351, (1998).

¹⁵ Supra note 11.

¹⁶ Supra note 11.

¹⁷ *Th. Majra Singh v. Indian Oil Corporation*, (1999) AIR J&K 81(India).

be a part of Article 21 of the Constitution of India.¹⁸ In *M.I. Builders v Radhey Shyam Sabu*, the apex court repeated the Public Trust Doctrine and reminded the public authorities of their role as the trustees of the ecosystems.¹⁹ These cases showcase that while the court empowered the people to exercise their right to question the government of its duty as the trustee of the natural resources, it did not endow the administrative authorities or the government with any property rights over these resources. Moreover, the fact that the court ordered the defendants in these cases to restore the environment to its previous state points to the approach of steady and stable development. In *M.C. Mehta v Kamal Nath*, while acknowledging that it is not the court's prerogative to resolve the conflict between those working for the protection of the environment in its pure form and the executive bearing the pressure of a growing society and its needs.²⁰ Further, the court observed that in the absence of legislation for this issue, the administrative authorities are under a duty as per the Public Trust Doctrine to ensure that the natural resources aren't encroached upon. However, in *M.I. Builders v Radhey Shyam Sabu*, the court applied the doctrine even though there was a clear violation of the municipal law.²¹ The doctrine was applied even though the matter at hand was a judicial review case. This brings to attention the role of the Public Trust Doctrine and its immense potential in being used in cases of abuse of administrative discretion. Finally, by holding the Public Trust Doctrine as a part of the broad interpretation of Article 21 of the Constitution of India the court made it inescapably clear that the doctrine will be given primacy over other fundamental rights in case of a conflict.²² Articles 48A of the Constitution of India and 51A of the Constitution of India can also be associated with this doctrine to make its way in Indian jurisprudence.²³ ²⁴ In *Intellectual Form v. State of Andhra Pradesh*, the apex court held that a higher degree of scrutiny would follow in cases of resources held by the government as trustee.²⁵ The court also opined that vegetation cover requires to be given more importance and the disclosure provisions and appraisals are to be followed strictly in *Hanuman Laxman Aroskar v. Union of India*.²⁶

IV. CONCLUSION

The evolution of the Public Trust Doctrine has expanded the state's duty to ensure the right to a healthy environment under Article 21 of the Constitution of India.²⁷ The jurisprudence as it exists

¹⁸ Supra note 11.

¹⁹ Supra note 9.

²⁰ Supra Note 4.

²¹ Supra note 9.

²² Supra note 11

²³ The Constitution of India, 1950, Art. 48A.

²⁴ The Constitution of India, 1950, Art. 51A.

²⁵ *Intellectual Form Vs. State of Andhra Pradesh*, (2006) 3 SCC 549 (India).

²⁶ *Hanuman Laxman Aroskar Vs. Union of India*, (2019) SCC OnLine SC 441 (India).

²⁷ Supra note 11.

is such that natural resources cannot be exploited for private or commercial use. It has been a settled position in cases concerning an administrative decision that a writ court will focus on the process of 'how the decision was reached at' rather than on the merits of the decision; unless arbitrariness is established following the *Wednesbury Principal*, the decision cannot be quashed or reversed. However, cases involving natural resources warrant a greater degree of inspection. This doctrine has been adopted not only due to its wide international recognition but also because it is a Common Law concept and thus, was considered to be a part of our national legal system by the apex court.

Justice Kuldeep Singh, considered to be an activist green judge ignited a robust environmental jurisprudence in India. The case of *M. C. Mehta v. Kamal Nath* is a testament to his legacy and pivotal contribution to the environmental law jurisprudence in India.²⁸ The Public Trust Doctrine establishes that the natural resources are under the trusteeship of the administrative authorities and shall be protected from private and commercial use. In that context when we consider the Aarey Forest in Maharashtra, the Public Trust Doctrine could not be directly applied because the use of the forest land, in this case, was not for private or commercial use per se. Therefore the Aarey Forest land could not be protected under the umbrella of the Public Trust Doctrine. However, it is justified to conclude that we must look to further expand the scope of the Public Trust Doctrine. The apex court observed in the case of *Intellectual Form v. State of Andhra Pradesh* that the natural resources held by the State as a trustee invite a much higher degree of judicial scrutiny with regards to the actions of the Government.²⁹ Hence, it is time for the jurisprudence to grow further and for the Public Trust Doctrine to apply to natural public resources that are being used for any specific purpose whether privately or by the state.

²⁸ Supra note 4.

²⁹ Supra note 25.