# A STUDY ON THE POSITION OF PUBLIC TRUST DOCTRINE IN INDIA

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**ABSTRACT**

The public trust doctrine (PTD) is an old-fashioned legal principle that has been recently gaining attention as a framework for contemporary conservation. It is based on the idea that some natural resources cannot be managed by private owners effectively or equitably and therefore should be held in trust by the government. The government, in turn, will be responsible for managing the consumption of these resources, and safeguarding them for the benefit of both present and future citizens. Previously, the PTD doctrine only applied to a limited number of natural resources such as oyster beds and submerged lands. However, the courts and legal scholars have expanded the definition of trust resources to encompass a much broader spectrum, including wildlife, oceans, and ecosystem services in general. The vast variety of PTD interpretations is viewed as both a weakness and a strength. On one hand, the PTD's broad definition might ultimately lead to uncertainty in property ownership. On the other hand, the strength of the PTD is its ability to be modified and adjusted according to new knowledge. Decisions related to the safeguarding of public trust resources can depend on scientific data and information concerning what is necessary to maintain ecosystems and natural resources. Furthermore, the PTD is not a one-size-fits-all approach, and its application can vary depending on the jurisdiction and the resource at question. This adaptability and flexibility have been essential in making it a useful principle for a range of natural resources, from rivers and oceans to air and other ecological systems. In conclusion, the public trust doctrine is resurfacing as a citizen-driven mechanism for promoting conservation and asking for accountability from policymakers. Notably, it offers another way of thinking about environmental protection and the public goods nature provides. Nonetheless, as is true with all doctrines, it will require significant adaptation and evolution for it keep up with changing societal and environmental conditions.

## Introduction

The Public Trust Doctrine is based primarily on the idea that some resources, such as the air, sea, and waters, and the woods, are of such tremendous value to the entire population that it would be completely unreasonable to submit them to private ownership. Given that the aforementioned resources are a gift from nature, they need to be freely accessible to everyone, regardless of social standing. The idea requires the government to guard the resources as trustees for the general public's enjoyment rather than allowing their usage for private ownership or business endeavours.

In three recent cases—the first in 1997 and the other two in 1999—Indian courts clearly applied the public trust theory, which they accepted as a component of common law. The principles of jurisprudence are also provided in Articles 48A[1] and 51A[2] of the Indian Constitution. According to this theory, the state has an obligation under Art. 48A as a trustee to preserve the nation's woods and wildlife as well as to protect the environment. Article 21[3] of the Constitution served as the foundation for this public trust doctrine.

The public trust doctrine serves two purposes: it requires affirmative governmental action for effective resource management and gives citizens the authority to challenge ineffective resource management.[4] It is a common law notion that has been defined and discussed by academics in the US and the UK. The government holds a variety of common resources, including as rivers, the coastline, and the air, in trust for the unhindered use of the general populace. The doctrine blends a duty for public accountability in relation to decisions made respecting such resources with a guarantee of public access to resources held in public trust. Additionally, it includes an intergenerational component and can be utilised to safeguard the public against improper planning law or environmental impact assessment implementation.

## Definition of the Public Trust Doctrine

The public trust doctrine serves two purposes: it requires affirmative governmental action for effective resource management and gives citizens the authority to challenge ineffective resource management.[5] It is a common law notion that has been defined and discussed by

[1] Article 48A in The Constitution of India 1949
[2] Article 51A in The Constitution of India 1949
[3] Article 21 in The Constitution of India 1949
[4] Notion of public trust doctrine (March,10, 2023, 4.00 PM)http://www.legalserviceindia.com/articles/ptdoc.htm
[5] Public Trust Doctrine and its application, (march,12,2023, 6.00 PM) https://www.merriam-webster.com/legal/public%20trust%20doctrine

academics in the US and the UK. The government holds a variety of common resources in trust for the unhindered use of the general public, including rivers, the coastline, and the air. Therefore, if the grant would conflict with the public interest, the sovereign could not transfer properties held in public trust to a private entity.[6]

In the United States, the public trust has been extensively used and examined, but its exact reach is still unknown. There have been several attempts to use this theory to safeguard both navigable and non-navigable waters, public lands, parks, and ecological resources on both public and private properties. The definition of public trust has been expanded by the California Supreme Court to take into account aesthetic and ecological factors. Although the public trusts theory has received some criticism, it is becoming more and more associated with sustainable development, the precautionary principle, and protecting biodiversity.

The theory combines the assurance of public access to resources held in public trust with a need for public accountability in regard to decisions made about such resources.[7] Additionally, it includes an intergenerational component and can be utilised to safeguard the public against improper planning law or environmental impact assessment implementation.

**History**

Roman law serves as the foundation for the Public Trust Doctrine. In recent years, it has been expanded, requiring the state to hold environmental resources in trust for the benefit of the general public. In its broadest sense, the courts could make use of it as a tool to defend the environment against various forms of deterioration. According to the Public Trust Doctrine, certain resources must be protected for public use and the government is obligated to keep them in good condition for that purpose. All national resources, which are by their very nature intended for public use and enjoyment, are held in trust by the State, in accordance with the Doctrine of Public Trust.

The seashore, flowing streams, airs, woods, and ecologically vulnerable territories benefit the general public. The State has a legal obligation to protect the natural resources because they are public property and not to be used for personal gain. Earlier, the Supreme Court and High Courts did not make explicit reference to the Doctrine of Public Trust, but they did so implicitly

[6] Public trust doctrine (March 15, 2020, 3.00 PM) https://ballotpedia.org/Public_Trust_Doctrine
[7] Supranote 5

in many decisions. However, in the case of M.C. Mehta v. Kamal Nath, the Supreme Court has recently discussed and granted this doctrine to Indian environmental law.

The doctrine is now being used to limit over-exploitation of the environment, even though historically it was solely used to maintain public access to the commons for their benefit. People in the general public wish to save our rivers, woods, parks, and open areas in all of their pure purity. Additionally, some individuals who are in charge of administrative duties feel that some degree of encroachment against open spaces is inevitable due to the strain of shifting social demands in an ever-more complicated society. Who will strike a balance between these two opposing groups in their ongoing war is the question. The legislative and the courts, in the court's opinion.

The executive branch, working in accordance with the Public Trust Doctrine, is not permitted to relinquish control of natural resources and turn them over to private ownership or for commercial purposes in the absence of any law. Unless the courts deem it necessary, in good faith, for the public benefit and in the public interest to trespass upon the abovementioned resources, the aesthetic usage and the pristine glory cannot be permitted to be diminished for private, commercial, or any other use. The Public Trust Doctrine's core principle is that it places restrictions and duties on government entities and their managers on behalf of all citizens, especially future generations.[8]

Today, every person who uses the air, water, or land and related natural ecosystems has a responsibility to ensure that the rest of us have the same rights to live there or utilise that property in another way for the benefit of future generations. In other words, a landowner, lessee, or holder of a water right has a responsibility to use such resources in a way that protects the rights of the people and their long-term interest in that property. The seashore that had not been assigned for private use was considered public property according to ancient regulations of the Roman Emperor Justinian.

In England, this principle was also enshrined into law. A few centuries later, the English lords insisted that fishing weirs that interfered with free navigation be removed from rivers, which led to the further strengthening of public rights in the Magna Carta. The Justinian Institute of the Romans (530 A.D.), which was later incorporated into English Common Law, is where the doctrine first appeared. The Public Trust Doctrine was recognised to be a part of their

[8] TheEvolutionofthePublicTrustDoctrineandtheDegradationofResources.pdf (March 17,2023, 1.30 PM) https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/

established law by the Magna Carta (1215), with its amendments introduced in 1641 and 1647. They affirmed that the administration, protection, management, and conservation of fish and wildlife are explicit obligations of the government.

Both Spanish civil law and the French Civil Code both recognise the doctrine as a form of property. The complex rules regulating the Roman Empire were streamlined by Justinian 1,500 years ago. During Justinian's reign, he hired many prominent jurists who contributed to the Corpus Juris Civilis. In 529, Justinian added a sentence stating that certain resources, such as the air, running water, the sea and its shores were common to all mankind by the law of nature. This concept became known as the Public Trust Doctrine which asserts that certain resources are shared property of all citizens and should be managed and protected by the State in perpetuity. This idea is still relevant today and has expanded to include other resources beyond water. |

The Magna Carta made Justinian's words official in England, and in 1225 King John was compelled to withdraw his friends' exclusive rights to hunting and fishing because this infringed on the right of the public to utilise these shared resources.[9] In England, the King thus managed public lands in trust for the general populace despite having legal possession of them. In all jurisdictions where the Public Trust Doctrine is still in effect, this idea of government ownership of resources held in trust as a common is a shared precept. This legal theory originated in the ancient Roman Empire and was based on the notion that certain common resources, such as rivers, seashores, woods, and the air, were held in trust by the government for the general public's unrestricted and unhindered usage.

These resources were either owned by no one (res nullious) or by everyone in common (res communious) according to Roman law. However, under English Common law, the Sovereign could only have limited control of these resources; the Crown was not allowed to transfer these properties to private owners if doing so would jeopardise public interests in fishing or navigation. The Crown was thought to be holding in trust resources that were appropriate for these purposes for the general welfare.

**Modern Renaissance**

However, Professor Joseph Sax revitalised the idea in 1970 by arguing that it might be built upon and applied by law-abiding citizens to file environmental lawsuits. His contention was

[9] Supranote-4

that "the doctrine required courts to review with scepticism any government action that restricted or burdened public access to potentially any natural resource." Since the release of his first book on the public trust, US courts have used the doctrine to mandate public access to resources other than navigable water and the lands below, such as wildlife, portage routes near rivers, and dry sand parts of a beach. Many people have also gotten behind "the public trust cause," which suggests that the theory might be applied to resources like public lands and wildlife. Others, however, who were horrified by the revival of the public trust concept, criticised it on the grounds that it lacked a sound doctrinal foundation, did not take into account contemporary environmental problems, required a court with what could be described as "a pro-environment bias," and was therefore undemocratic. The Modern Public Trust Doctrine was promoted by University of Michigan law professor Joseph L. Sax.[10]

According to Prof. Sax, the public trust doctrine places three main restrictions on governmental authority. These include the requirement that property subject to the trust be used for a public purpose and made available to the general public, that it cannot be sold even for a fair price, and that it must be maintained. The doctrine has great potential as a standard for assessing the environmental impact of presidential actions. In the United States, the public trust concept was developed over time as a philosophy of environmental protection. The Supreme Court of India adopted this idea from American case law in M.C. Mehta vs. Kamal Nath and recognized it as part of Indian legal system.[11]

**Protection of Resources Under the Public Trust Doctrine**

The force of the Public Trust Doctrine stems from the long-held belief that certain aspects of the natural world are gifts from nature that are so vital to human life that private interests cannot be served by them, and that the sovereign must thus guard them against such capture. The primary components of the and duties attach immigration of those who would safeguard both the natural world and the public's right to a sustainable use of that world are not the particular resources to which the concepts and duties attach but rather the philosophy and obligation. Therefore, it appears that the people Trust Doctrine's application is only limited by the creativity of those who want to safeguard both the natural world and the rights of the general

[10] THE_USE_OF_THE_PUBLIC_TRUST_DOCTRINE_IN_ENVIRONMENTAL_LAW (March 18, 2023, 4.30 PM) https://www.researchgate.net/publication/237483576_
[11] Notion of Public Trust Doctrine (march,26 ,2023, 3.0PM) http://www.legalserviceindia.com/articles/ptdoc.htm

people to the sustainable use of that world.

While Sax's interpretation of the Public Trust Doctrine placed a strong emphasis on public resources and how those interests might be protected, it is important to emphasise the enlarged resources that the Public Trust Doctrine protects. Even though Professor William Araiza characterises the Public Trust Doctrine as a "backward-looking anti-democratic vestige whose time, if it ever existed, has passed," he also contends that its ENS have energised activists who have used it to support resource protection outside of the Doctrine's traditional sphere of influence. flexible in supporting the essential human rights of Additionally, as we will see below, the philosophy has been applied to a variety of biological resources in India and other countries. Up until quite recently, the Public Trust Doctrine only applied to a small subset of resources.[12] The Public Trust Doctrine has generally safeguarded the area of the public domain that is below the low-water mark on the shores of the sea and the great lakes, the waters over that land, and the waters with rivers and streams of any significance. Occasionally, the common law interpretation of the public trust concept has covered parklands granted to the public. This is known as U of the Public Trust concept.[13]

**Position of Public Trust Doctrine in India[14]**

Roman Law serves as the foundation for the Public Trust Doctrine. In recent years, it has been expanded, requiring the state to hold environmental resources in trust for the benefit of the general public. In its broadest sense, the courts could make use of it as a tool to defend the environment against various forms of deterioration. The idea has served as the foundation for environmental policy legislation in several nations, giving citizens private legal recourse for state breaches of the public trust (either directly or indirectly).

The Indian Constitution values the protection and preservation of the environment, recognizing it as a core value. This is reflected in Article 21, which guarantees the right to life. The Indian judiciary has interpreted this to include the right to a wholesome environment and means of subsistence. The public trust doctrine is an established concept in Indian law and has been used to protect public lands as part of the right to life. When applying the doctrine, Indian courts

[12] Supranote-10
[13] Public Trust Doctrine and its applicability (March 30,2023, 8.00 PM) https://www.jstor.org/journal/michlawrevi?refreqid=excelsior%3A76c1a864ebbd06c87a6c975e0160eac6
[14]Legalserviceindia.com/articles/ptdoc.htm#: ~:text=The%20doctrine%20is%20first%20mentioned, private%20company%20for%20commercial%20purpose.

consider both domestic and international law.

The Indian courts have clearly applied the public trust doctrine in three recent decisions, the first of which was in 1997 and the other two of which were in 1999, including the issue at hand. The Constitution also lays forth the jurisprudential concepts that are essential to our Rule of Law-based government in Articles 48A and 51A.

In M.C. Mehta v. Kamal Nath and Others[15], the Indian Supreme Court for the first time applied the public trust theory to the preservation and conservation of natural resources. In this instance, the State Government awarded a private corporation a lease of riparian forestland for commercial purposes. The lease was made with the intention of constructing a motel along the river Beas. According to a story in a national publication, the motel management altered the river's natural flow to change its direction and protect the motel from future floods. The newspaper article served as the basis for the Supreme Court's suo motu proceedings since the facts it contained, if accurate, would constitute a major environmental damage act.

According to the Supreme Court's decision in the M.C. Mehta case, the Public Trust Doctrine is based on the belief that certain resources, including the air, sea, and forests, are of such great value to the public that it is inappropriate for them to be owned privately. This doctrine is a part of India's legal system, which has its basis in English common law. The court stated that all natural resources are owned by the State and are intended for public use and enjoyment, and it is the State's responsibility to act as a trustee to safeguard these resources. Natural resources such as rivers, forests, and minerals should be conserved and utilized efficiently for the benefit of every generation. As a result, the Public Trust doctrine is applicable to all ecosystems in India and upheld by the legal system.

In this case, the Supreme Court had to decide between the public's desire to preserve our rivers, lakes, and open lands in their pristine purity and those in charge of administrative duties who feel it is necessary to infringe on open land to some extent. It was argued that in the absence of legislation protecting natural resources, public authorities should follow the public trust theory.

According to them, the Court ordered the developer to pay compensation by way of costs for the restoration of the area's ecology and environment after adopting the polluter pays concept.

[15] [(1997) 1 SCC 388].

It had no trouble concluding that the Himachal Pradesh government had violated the public's trust by leasing out the ecologically sensitive area for development.

Th. Majra Singh v. Indian Oil Corporation[16], which occurred later in the timeline, included a petitioner who objected to the site of a facility for filling cylinders with liquefied petroleum gas. In order to ensure that laws pertaining to the environment and pollution have received the proper care and attention, it was decided that the High Court can only assess whether authorities have taken all reasonable steps. Although the case was decided using the precautionary principle, it proved that the public trust doctrine has been incorporated into Indian legal systems. According to the High Court, the doctrine is an integral part of Article 21 of the Constitution, and there is no question that the State has a duty to ensure that the environment, including forests, lakes, wildlife, and wildlife habitats, is properly safeguarded. The Court asserts that the notion that the public has a right to anticipate that particular lands and natural regions would maintain their original features is making its way into the law of the land.

In M.I. Builders[17], the Supreme Court reaffirmed that the public trust theory is a cornerstone of Indian law and said that the government should act as the natural resources' trustees. All of these cases demonstrate, however, that the court did not grant the general public any property rights as a result of the trust. In all of these decisions, the Court considered the precautionary principle, the polluter pays principle, or both when applying the public trust concept.

The public trust doctrine was used in conjunction with other tenets including the precautionary principle and the polluter pays principle in the Kamal Nath case by the Supreme Court, and in the Th. Majra Singh case by the High court. In the Kamal Nath case, the Supreme Court also ordered, among other things, that the lease be revoked, and that the Motel bear the full expense of returning the property to its pristine natural state.

The Motel was also required by the court to remove all building from the River Beas's banks and riverbed. In Th. Majra Singh, however, the High court determined that the Indian Oil Corporation (IOC) had taken all necessary precautions and adhered to all legal requirements. The Court approved the establishment of the LRG plant near a polluted village but ordered the IOC to take the necessary safeguards to prevent environmental pollution and to plant fast-growing trees like poplar and eucalyptus. The Supreme Court mandated demolition of the

[16] AIR 1999 J K 81.
[17] M.I. Builders v Radhey Shyam Sahu, AIR 1999 SC 2468

illegal shopping complex and restoration of the park to its former beauty in the M.I. Builders case.

## Conclusion

It is clear from the aforementioned analysis of the doctrine and different case laws that the state is a trustee who has a fiduciary relationship with the people rather than the country's actual owner of its natural resources. By taking on this responsibility, the government is required to uphold the interests of its people, carry out its duties with their best interests in mind, and involve the people in the decision-making process for the management of the nation's natural resources. The Public Trust Doctrine might offer a way to make laws requiring environmental impact assessments more effective. According to this idea, the state has an obligation to conserve the nation's forests and animals as well as to protect and improve the environment as a trustee under Article 48A. The state is required to take into account art. 48A, a Directive Principle of State Policy, when applying art. 21 (right to life). A right to a healthy environment has been added to the state's trusteeship obligations.