

## **“Evolution of Policy Trust Doctrine in India – M.C. Mehta v Kamal Nath & Ors.”**

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### **Introduction**

#### **How the Doctrine of Public Trust was adopted in India**

It is the basic human right for every individual to demand for a safe living environment. In today's times when the world is dealing with a lot of environmental challenges our constitution has provided us with a number of constitutional & statutory provisions to ensure that there is no compromise in the standards of livelihood and human dignity.<sup>1</sup> Some of the provisions which ensure us this protection are- Article 48-A which promises that the “*State shall protect and improve the environment and safeguard the forests and wild fire of the country,*” Article 21 that provides “*that no person shall be deprived of his life and personal liberty,*” further, Article 51 – A (g) states that “*it is the duty of each citizen to enhance and protect the natural environment including forests, lakes, rivers and wildlife, and to possess compassion for living creatures.*”<sup>2</sup>

The Hindu Sceptres of Atharva Veda, states “What of thee I dig out let that quickly grow over.”<sup>3</sup> The doctrine of Public Trust was first mentioned in the case, *M.C Mehta v. Kamal Nath*,<sup>4</sup> where the Hon'ble Supreme Court held that the Public Trust Doctrine applied in India.<sup>5</sup>

The Public Trust Doctrine has been created on the principle that certain resources like air, sea, waters and the forests are of such great importance to the general public as a whole that it would be wholly unpardonable to make them a subject of personal ownership.<sup>6</sup> The said resources are a gift of nature, thus should be made freely available to everyone regardless of their status in life.<sup>7</sup> The doctrine entrusts the Government with the protection of these resources as trustees for their use and enjoyment by the general public. They must condemn their private ownership or personal-enjoyment.<sup>8</sup>

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<sup>1</sup> Satish C. Shastri, *Environmental Law in India*, Edn. 2, Eastern Book Company pp. 896 (2005).

<sup>2</sup> INDIA CONST. art 48-A, 51, 21, *amended by* The Constitution (Eightieth Amendment) Act, 2000.

<sup>3</sup> Nicola Tilche, In What Ways Is the Emphasis on Public Participation A Positive Development in Environmental Law? An Analysis of The Aarhus Convention and Its Impact on EU Environmental Law and Policy. *Environmental Law & Practice Review*, Volume 1, 2011

<sup>4</sup> *M.C. Mehta v Kamal Nath*, (1997)1 SCC 388

<sup>5</sup> Justice Ashok A. Dcsai, *Environmental Jurisprudence*, p. 113 (2002).

<sup>6</sup> Hardman Reis, T., *Compensation for Environmental Damages Under International Law*, Kluwer Law International, The Hague, ISBN 978-90-4113437-0 (2011).

<sup>7</sup> Sukhvinder Singh Dari & Rangam Sharma, *An Overview of Environmental Jurisprudence in India*, *Journal of General Management Research*, Vol. 1, Issue 1, pp. 1–13, ISSN 2348-2869 (2014).

<sup>8</sup> Ankita Toppo & Dr. K. Syamala, “M.C Mehta Case on the Protection of Environment” Volume 6, Issue 5, May 2018 *International Journal of Scientific Engineering and Research (IJSER)* ISSN (Online): 2347-3878.

Through this research project I wish to discuss the origin, evolution of the doctrine of Public Trust in the Indian sub-continent along with one of the landmark judgements of M.C. Mehta vs Kamal Nath & Ors.<sup>9</sup> which impacted the outlook of many people towards environmental protection and conservation.

### Research Questions

1. Whether the importance of the doctrine of Public Trust has increased in the Indian Context?
2. Whether the natural resources are private commodities of individuals or are available at the public's disposal?
3. Whether there is a need to increase the safety and awareness about the importance of conservation of Environmental resources in the world?

## HISTORICAL JURISPRUDENCE

### Public Trust Doctrine in India

In the case of M.C. Mehta v Kamal Nath<sup>10</sup> the Supreme Court of India for the first time applied Public Trust Doctrine with regard to the protection and preservation of natural resources. Before this case there was no set definition as to who may and who may not have ownership or control over these natural resources of the environment.<sup>11</sup> It was established by romans and was used by England, later it was adopted by other common law countries like the United States of America where this doctrine is applicable to both waters influenced by the tides and waters that are navigable in fact. The Public Trust also applies to the natural resources such as minerals or animal contained in the soil and water over those Public Trust lands.<sup>12</sup> This doctrine embodies the following characteristic features –

1. **State as a trustee** – This doctrine entrusts the state as a trustee of environmental resources and its protector.<sup>13</sup>
2. **Perpetual state trusteeship** – this doctrine ensures that such trust can never be surrendered, alienated or abrogated.<sup>14</sup> Therefore a state has perpetual trusteeship of the Public Trust land.
3. **Nature of state's control** – this particular characteristic is specific in nature, like that such doctrine must be used for the purpose of development and maintenance of resources and they must be used for public purpose. It also states that the Public Trust

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<sup>9</sup> Supra note 5.

<sup>10</sup> Id.

<sup>11</sup> M.C Mehta, Growth of environmental jurisprudence in India, p.71 (1999).

<sup>12</sup> Elishabeth Fisher & Bettina Lange, Environmental Law, Oxford University Press, ISBN – 978-0-19-927088-0, pp. 170-176

<sup>13</sup> Justice T.S. Dobia, Environmental & Pollution Laws in India, Edn. 3, Vol. 1, Lexis Nexis Publications (2017).

<sup>14</sup> Id.

resources must be used in such a manner that the environmental justice and generational equality is not hampered.<sup>15</sup>

In the case, a lease was granted by the state government to a private company for commercial use of the riparian forestland. The purpose of the lease was to build a motel at the bank of River Beas.<sup>16</sup> A report was published with the national newspaper that alleged that the motel management had interfered with the natural flow of the river so as 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 if the facts disclosed, were found to be true then it would be an act of serious environmental degradation.<sup>17</sup>

The Supreme Court emphasised as rivers, minerals, forests and such other resources constitute to a nation's environmental wealth. These resources are not for being exhausted by any one generation.<sup>18</sup> Every generation owes a duty to all succeeding generations for the development and conservation of all the environmental resources. Thus, the general Public Trust doctrine can be 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 the eco-systems of India.

In light of the application of 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. The court did find it challenging to hold the Himachal Pradesh Government liable for committing a patent breach of Public Trust by leasing out the ecologically fragile land to be developed.<sup>19</sup>

The Public Trust doctrine serves three main purposes:

1. It mandates affirmative state action for effective management of resources
2. It gives the authority to the citizens to question ineffective management of natural resources.
3. The doctrine has been invoked for giving judicial protection to environment, ecology and natural resources.

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<sup>15</sup> Supra Note 13

<sup>16</sup> Bhasin K, Environmental Governance in India: An inefficient outcome due to lack of “specialized” and strong institution? Pp. 345-403 (2018).

<sup>17</sup> Divan, Shyam & Rosencranz, Armin, Environmental Law and Policy in India Cases, Materials and Statues, Oxford University Press, (2005)

<sup>18</sup> Dube & Indrajit., Environmental Jurisprudence- Polluter’s Liability, Lexis Nexis Butterworths, pp. 78-109 (2007).

<sup>19</sup> M.C. Mehta v Kamal Nath, (1997)1 SCC 388

**M.C. Mehta v Kamal Nath**

## Factual Background

An article was published by The Indian Express newspaper reporting that the Span Motel Pvt. Ltd. belonging to an Indian Politician Kamal Nath had leased a 27.12 bighas of land, including substantial forestland.

The regularisation was done when Kamal Nath was the Minister of Environment and Forests. This encroachment led to the swelling of the Beas River, and thus river changed its course and engulfed the Span Club and therefore the adjoining lawns, washing it away. For almost five months, the Span Resorts management has been moving bulldozers and earth movers to turn the course of the Beas for the second time.

The worry was regarding the river eating into the mountains, leading to landslides which were an occasional occurrence in that area. Due to this in September, floods occurred in the Beas and destroyed property worth Rs. 105 crores. The Government of India, Ministry of Environment and Forests by the letter dated 24.11.1993, addressed to the Secretary, Forest Government of Himachal Pradesh, Shimla. It conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act, 1980 for leasing to the Motel for 27 bighas and 12 bighas of forest land adjoining to the land already on lease with the Motel. An expert committee formed to assess the situation of the area who arrived at the conclusion that the river was highly unstable and was an invitation for future occurrences of floods.

**RATIO UPHELD**

The forest land which have been given on rent to the Motel by the State Governments are arranged at the bank of the stream Beas.<sup>20</sup> Beas is a youthful and dynamic river. The river has a quick flow and conveys rock at the time of occurrences of floods.<sup>21</sup> At the point when water speed isn't adequate to convey the rocks, they stay in the channel continuously obstructing the progression of water. Under such conditions the waterway stream changes its course, staying inside the valley however swinging from one bank to the next.<sup>22</sup> The right bank of Beas is where the motel is found for the most part goes under woods, the left bank comprises of levels, having steep banks confronting the waterway, where natural product plantations and grain development are dominating.<sup>23</sup> The region being naturally delicate and brimming with picturesque magnificence ought not have been allowed to be changed over into private proprietorship and for business gains.

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<sup>20</sup> Ariwala, C.M., Environment and Justice, APH Publishing Corporation, (2004) pp. 67-69

<sup>21</sup> Id.

<sup>22</sup> Gitanjali Nain Gill, Environmental Justice in India: The National Green Tribunal and Expert Members, Vol. 1 Transnational Environmental Law, 175-205 (2016).

<sup>23</sup> Id.

**Principle of Public Trust under Roman Law -**

The idea that people in general have an option to anticipate that specific grounds and common territories should hold their normal trademark is discovering its way into the tradition that must be adhered to. The antiquated Roman Empire built up a legitimate hypothesis known as the "Teaching of the Public Trust".<sup>24</sup> It was established on the thoughts that specific basic properties, for example, waterways, coastline, forests, woods and the air were held by Government in trusteeship for the free and unrestricted utilization of the overall population. Under the Roman Law these assets were either possessed by nobody (Res Nullious) or by everybody in a like manner (Res Communious).<sup>25</sup>

**Principle of Public Trust under English Common Law -**

Under the English custom-based law, be that as it may, the Sovereign could possess these assets yet the proprietorship was restricted in nature, the Crown couldn't allow these properties to private proprietors if the impact was to meddle with the open interests in route of angling. Assets that were appropriate for these utilizations were considered to be held in trust by the Crown to assist general society.

The Public Trust Doctrine essentially lays down the rule that specific assets like air, ocean, waters and the timberlands have such an incredible significance to the individuals all in all that it might be entirely unjustified to form them a topic of personal proprietorship.<sup>26</sup> The said assets being an endowment of nature. They ought to be made unreservedly accessible to everybody regardless of the status throughout everyday life. The teaching urges upon the Government to secure the assets for the delight in the overall population as opposed to allow their utilization for private possession or business purposes. Three sorts of limitations on administrative authority are frequently thought to be forced by the open trust: first, that the property subject to the trust must not exclusively be utilized for an open reason, yet it must be held accessible for use by the overall population; second, that the property may not be sold, in any event, for a reasonable money comparable; and third, that the property must be kept up for specific kinds of employments.<sup>27</sup>

The Public Trust doctrine, as discussed by the Court in this judgment was made a part of the law of the land. The prior approval granted by the Govt. of India, Ministry of Environment and Forest and thereof the lease-deed dated 11.04.1994 in favour of the Motel was quashed. And the lease granted to the Motel by the said lease-deed in respect of 27 bighas and 12 bighas of area, was cancelled and set aside.<sup>28</sup> The Himachal Pradesh Government took over the area and restore it to its original-natural conditions. The Motel was ordered to pay compensation by way of cost for the restitution of the environment and ecology of that

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<sup>24</sup> Supra note 27

<sup>25</sup> James L. Huffman, "Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy " Issues in Legal Scholarship, Joseph Sax and the Public Trust (2003).

<sup>26</sup> Id.

<sup>27</sup> Supra note 15

<sup>28</sup> Id.

particular area. The pollution caused by various constitutions made by the Motel in the riverbed and the banks of the river Beas were removed and reversed.<sup>29</sup>

## **DOCTRINE OF PUBLIC TRUST**

### **Recognition of the Doctrine all over the world**

Fundamentally, the antiquated Roman Empire built up the legitimate hypothesis for example precept of the Public Trust. it is a precedent-based law idea, characterized and tended to by scholastics in the united states and the United Kingdom. Different natural properties including streams, the beach, and the air, are held by the administration in trusteeship for the continuous use by general society. The sovereign proved unable, accordingly, move Public Trust properties to a private gathering as the award would meddle with the open intrigue.<sup>30</sup> The precept of Public Trust has been broadly utilized and examined in the united states, yet its extension is as yet questionable. Different have been made to apply this tenet to secure traversable and non-safe waters, open land sand parks, and to apply it to both open and private terrains and natural assets.<sup>31</sup>

The Supreme Court of California has expanded the meaning of Public Trust by including environmental and tasteful contemplations. Despite the fact that the Public Trust tenet isn't without a lot of analysis it is as a rule progressively identified with practical advancement, the preparatory guideline and bio-decent variety assurance. the precept joins the assurance of community to Public Trust assets with a prerequisite of open responsibility in regard of basic leadership in regards to such assets.<sup>32</sup> Additionally, not exclusively would it be able to be utilized to shield general society from poor utilization of arranging law or natural effect appraisal, it likewise has an intergenerational measurement. The Stockholm declaration of United Nations on human environment expresses that -

"The environmental assets of the planet, just like the air, water, land, verdure and particularly delegate tests of common framework, must be defended to aid present people for the long term through cautious arranging or the executives, as suitable..."<sup>33</sup>

The Public Trust doctrine can likewise be utilized as an influencer during arrangement, considerations and open checking sessions and hearings. This empowers offices to demonstrate that their activities are not naturally destructive to the degree that they will annihilate a natural asset. On the offset some of the offices may neglect to give a more environmentally considerate option, at that point one can raise a Public Trust claim. In spite

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<sup>29</sup> Id.

<sup>30</sup> James Limburg, The Responsibility of Royalty: Genesis 1-11 and the Care of the Earth 11:2 Word & World 124-130 (1991).

<sup>31</sup> Id.

<sup>32</sup> Geoffrey R. Scott, The Expanding Public Trust Doctrine: A Warning to Environmentalists and Policy Makers Volume 10, Fordham Environmental Law Review (2017)

<sup>33</sup> David Takacs, The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property, 717 New York University Environmental Law Journal (2008).

of the fact, that the court procedure might be long and exhausting, numerous significant points of reference have been set up since the implementation of the doctrine.

### **Critical Analysis**

The Public Trust Doctrine, when put in action of environmental human rights, offers a new policy and legal strategies for protecting environmental resources and protects the citizens ability to use those resources in a sustainable way.<sup>34</sup> The application of the doctrine of public trust should be accepted and adopted all over the world as it weaves the path for the future generations to use their resources wisely. The nature's resources are a gift that belongs to all the individuals and the government must act as a steward to prevent both private arrogation of public resources.

The Public Trust doctrine is a legitimate idea with old roots, which is progressively being analysed as a system for present day environmental protection agent. At its centre, the Doctrine depends on the possibility that specific common assets can't be decently or adequately overseen by private proprietors.<sup>35</sup> The environmental assets are ought to be entrusted with the government, as it would ensure its preservation and protection from the present generation and for its use by the future residents of the country.<sup>36</sup> Although, verifiably the Doctrine applies to a restricted arrangement of regular natural assets, for example, shellfish beds and submerged terrains or natural rainforests with their flora & fauna, the courts and legitimate researchers have extended the meaning of trust assets to incorporate natural life, seas, and biological system benefits by a large margin.<sup>37</sup> The wide scope of understanding of the Doctrine is viewed as both a shortcoming since it prompts vulnerability in natural property possession and a quality since it can adjust to oblige rising science about the measures to ensure environmental protection.<sup>38</sup>

Modern Progressives, like their early twentieth century predecessors, inclined to be skeptical of democratic policymaking.<sup>39</sup> They prefer to put their trust on the experts, scientific management and expeditious executive action to implement policies they know to be right and good. It was early prevention with these traditional American principles that led Professor Sax to call for the idea of liberating the Public Trust Doctrine from its historical shackles.<sup>40</sup> He documented that if courts could be persuaded to expand and accept the

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<sup>34</sup> National Working Waterfront Network (July 22, 2015). "Public Trust Doctrine". [www.Wateraccessus.com](http://www.Wateraccessus.com) (Retrieved January 22, 2015)

<sup>35</sup> Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India: Cases, Materials and Statutes*, p.41 (2001).

<sup>36</sup> Michael C. Blumm, *Public Property and the Democratization of Western Water Law: A Modern View of the Public Trust Doctrine*, 19 *Env'tl. L.* 573, 597 n.108 (1989).

<sup>37</sup> David Takacs, *The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property*, 717 *New York University Environmental Law Journal*, 117,198 (2008).

<sup>38</sup> James L. Huffman, *Speaking of Inconvenient Truths—A History of the Public Trust Doctrine*, 18 *Duke Env'tl. L. & Pol'y F.* 1-9 (2007).

<sup>39</sup> Joseph L. Sax, *Liberating the Public Trust Doctrine from Its Historical Shackles*, 14 *U.C. Davis L. Rev.* 185 (1980).

<sup>40</sup> R. Shapiro, *The Most-Cited Law Review Articles*, 73 *Calif. L. Rev.* 1540, 1551 (1985).

doctrine, environmentalists could revolutionize American property law while claiming the mantle of the rule of law. Courts would pass rule for the environmentalist claims not because it is the right thing to do but because the law required it.<sup>41</sup>

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<sup>41</sup> Id.

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