



# THE FORMAL RECOGNITION OF THE PUBLIC TRUST DOCTRINE IN INDIA UNDER ENVIRONMENTAL LAW

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*The natural rights on uses of public property, finds the basis in the ancient and the modern reception, in the Roman, English, American and the Indian law. It embraces the old concept into the modern text, by applying the public uses of property to environmental matters. It's modern usage from the Professor Sax's to the Supreme Court's interpretation, in Illinois Rail road case to Kamal Nath's case, displays its adaptation in modern environmental regime worldwide. The concept aimed at Government's realization to protect the public resources, from unfair uses, seeks protectionist policies to be promoted for environmental protection. It also helps in upholding the fundamental right to life juxtaposed to right to livelihoods, where the former has prevalence over the latter. The entailment of this concept of guardianship, for protectionist environmental regime for future generations too, has already gained a magna carta status for preservative environmental regime.*

*Key words: property uses, environmental protection, modern law*

## I-INTRODUCTION

The environmentalists discerning of the *Public Trust Doctrine*, lies in the Roman origins of *res communis* or the common properties. This is also in consonance with collective rights of groups, backed by human rights which can be implemented for the common good of the people. The perception is interpreted from its implementation perspective in the domestic borders of each Nation State, conforming to the doctrine, while implementing the laws and policies for a better environment. While traditionalist view differs slightly from the modern view, the doctrine finds place in a case law or a dispute which clarifies the situation for adjudication of those disputes. This Doctrine as it stands with its historic and current standing, holds meaning and importance, in the regime of modern environmental law. The questions of an environmentalist as to who owns the natural resources on the earth and using these resources for economic gains by private persons to the detriment of both people and environment, finds a few situations where they are disputed or juxtaposed to matters of environmental law. The traditional view based itself on the ethics and the value system, where the current system is based on principles advocated by the Stockholm convention and the world charter for nature, holding it on the same pedigree but a differential situation to common property uses. The perimeter of the doctrine was not very clearly defined, but was used in the contextual nature of common property. Even today the doctrine is applied to the use of natural resources, when used for profits and gains, to the effect of deterioration of environment and limiting it from public use of the same resource. This is when an echo is heard of its applicability in the courts for decisions related to environmental matters. It questions the administrative role in a legal system, to protect the natural resources as well as other rights, for access to

nature, especially, when it is not adequately protected. It calls upon the government duties, to make them available to all and not divert them for their detrimental effects, along with the fact that the use by the public is limited or not made accessible. The burgeoning of conflicts between groups competing for land and resources have seen interesting interpretations for disputed claims. The realization strikes those who are affected by its limitations that non-economic gains are equally important to economic gains where right to life may be affected in environmental matters. The Indian law gained momentum only after the Bhopal disaster in 1984, and the country felt the need for environmental laws to be legislated and adjudicated, as a protectionist measure from further deterioration of the environmental and the resources be used by the general public for the common good. The Doctrine received impetus in the case of Kamal Nath, where a detrimental environmental activity brought the doctrine in focus to pay for not only the losses caused, but also for the restoration of environment as long as that was possible in the case. As development takes place, more and more resources are utilized by the development process. The conflicts as they are brought to the courts finds place where application of the doctrine helps in arriving at the rights and liabilities of the disputed parties in environmental matters of resource uses. The administrative and regulatory decisions of the government are inquired into during the continuation of adjudication on these matters. While International law and principles under the umbrella of Sustainable Development promulgate the protection of environment, this principle holds a viable importance in the modern regime of protection of the global commons for our future generations too. The quoting of this Doctrine comes in the shape of governmental responsibility and liability for environmental regulatory policies and laws to be adequately implemented.

### A-INTERNATIONAL ENVIRONMENTAL LAW

The governing principles of Environmental law are ingrained in Sustainable Development, under which the principles of Polluter Pays Principle, Principle of Equity, Precautionary Principle, and Public Trust Doctrine, play a pivotal role.<sup>2</sup> The unrelenting use of natural resources to the detriment of all life on earth without any agreeable measures by Nations has been questioned time to time, but rarely implemented with force, barring a few situations. The magnitudes of the effect of non-conformity to international agreements set forth with the fall out of climate change convention, which has led to initialization of natural disasters. The ideas emanating since the 1972 Stockholm Declaration have talked of various legislations to be brought forth, and percolated into the mainstreams of Nations. Sustainable development was found to be the key to those situations. The principles framed as a part of sustainable development have also formed the foundation for other Environmental issues where frameworks for action work were based on those principles. However, the various principles along with the principle of equity or Intergenerational equity, was a fledgling, gaining maturity over a period of time, for environmental protection since the 1972 Stockholm Declaration. The Brundtland Commission report sought to define equity in terms of: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>3</sup> The rhetoric of equity has been endorsed in subsequent Conventions with developmental policies and strategies incorporated with regulations by the participating Nations in accordance with the importance of each convention. The Earth Summit, 1992 in its principles, Agenda 21 and the Convention on Climate change, after reaffirming the principle of equity also added the principle of ‘Common but differentiated Responsibility’. Equity is about fairness, and is derived from the concept of social justice, that the basic needs of all humanity should be fulfilled, that burdens and rewards should not be spread too divergently across the community. No one should fall below a minimum level of income and environmental quality; everyone should have equal access to community resources and opportunities and gains and losses should be equally distributed. The Universal Declaration of Human Rights states that the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. It means in terms of equity, that we inherit the Earth from previous generations and have an obligation to pass it on in reasonable condition to future generations.<sup>4</sup> Intergenerational equity is each generation's responsibility to leave an inheritance of wealth no less than what they themselves have inherited.<sup>5</sup> The present

<sup>2</sup> <https://lawsofnigeria.placng.org/laws/R12.pdf> Last visited: 17 September 2021.

<sup>3</sup> <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> Last visited: 17 September 2021

<sup>4</sup> Beder Sharon, ‘Costing the Earth: Equity, Sustainable Development and Environmental Economics’ <https://ro.uow.edu.au/artspapers/30> Last visited: 03 August 2021

<sup>5</sup> Max Valverde Soto, ‘General Principles of International Environmental law’, 3 *ILSA Journal of International & Comparative Law* 193,209 (1996) <http://HeinOnline.org>. Last visited: 17 September 2021.

generation holds the natural resources in trust for future generations.”<sup>6</sup> Another principle is the principle of ‘Common but differentiated responsibility’ principle. The principle is based on environmental protection by the States by cooperation and the responsibilities towards a sound environment are common—each state doing its part in a sort of global partnership. The principle of CBDR, however, also acknowledges that these responsibilities are not equally distributed, and the degree of differential responsibility will be measured against states’ contribution to the creation of an environmental problem and their ability to prevent, reduce, and control the threat.<sup>7</sup> The notion of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) is a cardinal notion in the context of international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC). In the complex conundrum of international climate change negotiations, CBDR-RC reflects a lasting political consensus that the widest possible cooperation by all countries is needed to combat climate change and the adverse effects thereof, and that, second, all have a responsibility to act accordingly. However, the word “differentiated” also implies the adoption and implementation of differing commitments for different states while taking into account their diverse circumstances and capacities, their historical contributions to CO<sub>2</sub> emissions and their specific development needs<sup>8</sup> Thus these principles provide the guiding factors to environmental governance, and that the development should take place in a regulated manner thus focusing on sustainable development. The benefits should be shared and losses be minimized as stated under the equity principle. Each country has a responsibility according to their respective status to protect the environment.

## B- THE PUBLIC TRUST DOCTRINE

The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that “certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public.” The conceptual relationship of the legal doctrine to environment can be realized while interpretation of the same to contemporary concerns. Under the Roman Law, “these resources were either owned by no one (*Res Nullius*) or by everyone in common (*Res Communis*).” The differential situation arose under the English common law where they stated that “the Sovereign could own these resources in a limited manner, but it could not grant them to private owners, if it interfered with public interest in navigation of fishing.” Otherwise, it concurred with the defining of the Doctrine as being suitable for public uses and held by the Crown for the benefit of the public. Professor Joseph L. Sax propagated in his defining of the theory about its Roman and English origins and the nature of property rights being in the rivers, the sea and seashore. He further elucidated on two points namely that “navigation and fishing as certain interests should be preserved for the benefit of the public and it is to be distinguished from general public property which could be granted to private owners. The other point being that while the first point remaining intact, instances of these being enforced against the sovereign or government are not accounted for in any previous situations present for infringement of their public interests of the public. It is not deciphered also whether these rights could be enforced against a recalcitrant government too.”<sup>9</sup>

## III-HISTORICAL PERCEPTION OF THE PUBLIC TRUST DOCTRINE

This Roman law *res communes* doctrine is affirmed to be found deeply embedded in the Natural Law with its well-founded moral principles forming the basis of all formal legal systems and the Sovereign domains.<sup>10</sup> The Jurists have discussed the distinction between *res communes omnibus*, property singled out only for general use, and *res communes omnium*, property that is commonly owned.<sup>11</sup> It is a quasi-constitutional doctrine with its reminiscences in the natural law of its Roman origins, and its operation as an inextinguishable constraint, on

<sup>6</sup> Edith Brown Weiss, ‘Our Rights and Obligations to Future Generations for the Environment’, 81 *The Georgetown Law Journal* 675,710, (1990); <https://scholarship.law.georgetown.edu/facpub>. Last visited: 17 September 2021.

<sup>7</sup> F Morosini, ‘Trade and Climate Change: unveiling the principle of common but differentiated responsibilities from the WTO Agreements’ 42 *George Washington International Law Review* 713 (2010); <http://HeinOnline.org> Last visited: 28 August 2021.

<sup>8</sup> Pauw, Pieter et al, Different perspectives on differentiated responsibilities: a state-of-the-art review of the notion of common but differentiated responsibilities in international negotiations, Discussion Paper, No. 6/2014, ISBN 978-3-88985-596-1, 2010 Deutsches Institut für Entwicklungspolitik (DIE), Bonn. <http://hdl.handle.net/10419/199419>. Last visited: 20/02/2022.

<sup>9</sup> Joseph L. Sax, Liberating the Public Trust Doctrine from Its Historical Shackles, 14 *University of California Davis Law Review*, pp 185-194, 1980-1981, <http://heinonline.org>. Last visited: 20/02/2022.

<sup>10</sup> Infra, note 11, Bruce W. Frier, The Roman Origins of the Public Trust Doctrine, 32 *Journal of Roman Archaeology* 641, 643 (2019).

<sup>11</sup> Ibid.

the authority of the Sovereign of the Nation State for its modern application.<sup>12</sup> This Doctrine traced in its origins in the sixth century with juxtaposition of different dynasties within the same time period, which were the King Arthur's victory over the Saxon's, the Sui dynasty unification, and the Emperor Justinian's Byzantine empire in Rome. The Codification of the Roman law fortified legal education and the *Jus Publicum* principle of common ownership of air, water and the sea as natural resources. These Public Commons principle echoed centuries later, in the common law jurisprudence among common law countries of England, France, Spain and likewise European nations with affirmative legislations and judicial decisions.<sup>13</sup> The riparian Law was more in vogue in the 19<sup>th</sup> century, when the flow of the river water could be utilized by water mills in modest amount without creating obstructions in the flow. This concept is in consonance with the modern environmental issues of preserving the bulk of resources while permitting modest uses along with little infringement which still should align with the overall preservation concept. As stated by the jurist. "The riparian solution to this problem had several parts. First, it limited the use of river water to riverbank owners, prohibiting inter-basin transfer and thus effectively turning the river water into a property common to the bank owners while excluding all others. Second, within this group of water users, each was allocated a modest claim, limited to "reasonable use"-a minor use compatible with similar consumptive claims by all other users and with the untouched preservation of the bulk of the river resource."<sup>14</sup> The Early British Law in around the Principle found its place initiated with the Magna Carta in 1215, and then the Charter of the Forest, in 1217 by King Henry III remaining in effect until centuries thereafter with application to access to the natural resources along with the forests to the royal underdeveloped lands.<sup>15</sup> In 1611, the King's bench affirmed that while beds of non-navigable waterways could have private ownership, the navigable waterways were under the Sovereign domain for its public use.<sup>16</sup> In 1670, the renowned Treatise on English Maritime Law, by Sir Matthew Hale, described Sovereign rights over, namely the coastal land royal right which is for public navigational access, and could be privately owned. The unveiling of this doctrine found under American Legal jurisprudence is traced in several state court decisions, with its affirmations by the U.S. Supreme Court in its later adjudicated decisions.<sup>17</sup> The American law was based on their Supreme Court decision in *Illinois Central R.R. Company v. Illinois* (146 US537), where in 1869 the Illinois legislature made a grant of submerged lands along the lake Michigan shoreline up to one mile to the Illinois Central Railroad which were repealed in 1869. In the disputed suit to title, it was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them, and have liberty of fishing therein free from obstruction or interference of private parties. According to the Professor Sax the court in Illinois' Central "articulated a principle that has become the central substantive thought in public trust litigation."<sup>18</sup> In *Could v. Greylock Reservation Commission* (350 Mass 410), the Greylock area which was to be converted into a park was declared a reserved area in 1888, where in 1953 the Government was stopped from granted it for building an aerial tramway under the Public Trust Doctrine.<sup>19</sup> In *Sacco v. Development of Public Works* (532 MASS 670), the Massachusetts Department of Public Works was restrained for conversion of a pond by filling it as a policy plan for relocation of a State Highway.<sup>20</sup> In *Robbins v. Department of Public Works* (255 N.E. 577), the Supreme Judicial Court of Massachusetts adjudicated to restrain the Public Works Department from conversion of Fowl Meadows to a passage for construction of a highway.<sup>21</sup> In *National Audubon Society v. Superior Court of Alpine County* (33 CAL. 419), with its populist naming as "the Mono lake case, where it had brine shrimp feeding a large number of nestling and migratory birds along with it being a tourist attraction for visitors. The diversions created in the lake had started its extinction leading to the doctrine being invoked for its protection."<sup>22</sup> In *Phillips Petroleum co. v. Mississippi* (108 S.C.C.791), the United States Supreme

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<sup>12</sup> Ibid.

<sup>13</sup> Erin Ryan, A Short History Of The Public Trust Doctrine And Its Intersection With Private Water Law, *Virginia Environmental Law Journal* Vol. 38:2, PP 136-206, (2020). <http://www.velj.org>. Last visited :22/02/2-22.

<sup>14</sup> Carol M. Rose, Energy and Efficiency in the Realignment of Common-Law Water Rights, 19 *Journal of Legal Studies* 261, 290-93 (1990). <http://www.heinonline.org>. Last visited: 22/02/2022.

<sup>15</sup> Supra n.13.

<sup>16</sup> Ibid.

<sup>17</sup> Lazarus, Richard J., "Changing Conceptions of Property and Sovereignty in Natural Resources Law: Questioning the Public Trust Doctrine" *Georgetown Law Faculty Publications and Other Works*. 152. (1986). <https://scholarship.law.georgetown.edu/facpub/152>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Infra note 23

<sup>21</sup> Joseph D. Kearney & Thomas W. Merrill, The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central, 71 *University of Chicago Law Review* 799 (2004); <http://scholarship.law.marquette.edu/facpub>. Last visited: 20/02/2022.

<sup>22</sup> Ibid.

Court upheld Mississippi's extension of public trust doctrine to lands underlying no navigable tidal areas based on ecological and not on commercial considerations.<sup>23</sup> The Indian law has its acceptability in its cases only in the eighties after the Bhopal Disaster and the Oleum gas leak cases with a legislative confirmation and judicial intervention and recognition of the principle in the later cases.<sup>24</sup>

#### IV- INDIAN LAW

The modern Indian legal system finds its roots in the Constitutional law for enforcement of its fundamental rights namely Article 14, and 21 as equality of the law and equal protection of the laws along with Right to life and personal liberty for all beings in environmental matters. Where Article 19 or right to your trade and profession if conflicts with the right to life, the latter will have preference over the former backed by its legislative and judicial confirmation. The Judiciary has also emphasized on the need to States and citizens to look into their duties for these affirmations under Articles 47, 48A, 51(A)(g). The right to constitutional remedies is provided under Article 32 and 226 for the public interest litigation of legal procedural requirements in the limited application of citizen suit provision of the specific air and water laws under the Central and the state legislations.<sup>25</sup>

#### V- KAMAL NATH CASE

The reflection of Judicial activism in environmental matters in the first known Indian case can be found in the Kamal Nath case<sup>26</sup> where the court took cognizance of a news appearing in a leading newspaper on February 25, 1996 that Mr. Kamal Nath was trying to build a tourist motel by changing the topography of the area in the Kullu Manali valley. The detailed facts confirmed that Kamal Nath and his family owned a company named Span Motels Private limited managed by professionals, where the Span Resort in the Kullu Manali valley on the banks of the river Beas in the snow-capped Zanskar range of the Himalayas. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The land was later regularised and leased out to the company on April 11, 1994.<sup>27</sup> The swollen Beas changed its course and engulfed the Span club and the adjoining lawns, washing it away. For almost five months, the Span Resorts management had moved bulldozers and earth-movers to turn the course of the Beas. The heavy earth mover had been used to block the flow of the river just 500 meters upstream. The bulldozers were trying to divert the river to at least one kilometre downstream for creation of a new passage for the river. The tractor trolleys moved earth and boulders to shore up the embankment surrounding Span Resort for flaying a lawn. According to the Span Resorts management, the entire reclaiming operation should have been over by March 31 and were likely to cost over a crore or rupees. That would have affected two villages specially, named as Rangri and Chakki east 2/3 kilometres away, and in general several others in its vicinity if it had changed the course of the river in its rearrangement of the flow of the river. The court directed the State board to make an assessment of environmental damage caused along with compensation to the affected villages and people of the area. It further directed the Himachal Pradesh Pollution Control Board not to permit the discharge of effluents by any Tourist resorts in the area into the river Beas. It took the American examples of the Public Trust Doctrine used in their case laws to settle citizen-state disputes related to common lands diverted for private uses.<sup>28</sup> It also took refuge in the definition as given by Professor Joseph L. Sax where the Government is a Trustee of the natural resources of a country and the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses<sup>29</sup>.

<sup>23</sup> James L. Huffman, Speaking of Inconvenient Truths—A History of The Public Trust Doctrine, 18 *Duke Environmental Law & Policy Forum*, 1, Fall (2007). <http://heinonline.org>. Last visited: 20/02/2022.

<sup>24</sup> M. Raymond Izarali, Globalization and the Bhopal Disaster: A Criminogenic Inquiry, 6 *International Journal of Social Inquiry* 1, 91-112, (2013); <https://dergipark.org.tr/en/download/article-file/164094>. Last visited: 20/02/2022.

<sup>25</sup> K.Jayakumar, Environment Protection Act: A Critical overview, *Cochin University Law Review*, 33-39, (1987) <http://dspace.cusat.ac.in/jspui/bitstream/123456789/10926/1/Environment%20Protection%20Act%20A%20Critical%20Overview.PDF>. Last visited: 20/02/2022.

<sup>26</sup> (1997) 1 SCC 388; AIR 2000 SC 1997; AIR 2002 SC 1515

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Supra, n.9.

## VI-COURT DECISIONS

In the case of *Vellore Citizens Welfare Forum v. Union of India*,<sup>30</sup> the Supreme Court found affirmation of Sustainable Development and its other salient principles culled out in Brundtland report and other international documents, where the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation and it is must ask the industrialist to have the onus of environmental protection while carrying out its activity. In *Pragnesh Shah vs. Arun Kumar Sharma & Ors.*<sup>31</sup> the Supreme Court while upholding the decision of the National Green Tribunal. directed the Zonal Master Plan 2030 to be modified to bring it into conformity with the Eco Sensitive Zone Notification and that no construction should be allowed to take place on the appellants land. The NGT held that it was necessary to protect bio-diversity zones by creating regulated buffers around them to protect their flora and fauna, prevent habitat destruction and protect fragile ecology. It further relied on the decision in a former case<sup>32</sup> where the court had directed to identify the eco sensitive zones. The legislative provisions are to be read in conformity with the protection of fundamental rights granted under Article 21 while dealing with vital policy and regulatory aspects of environmental law. In the case of *Mukund Dhote vs. Union of India & Ors.*,<sup>33</sup> The National Green Tribunal questioned the violation of environmental conditions by a builder of housing project in Faridabad Haryana by seeking reports from government authorities and then imposed penalties for violations whether accidental or unintentional and further made injunctions for similar acts not to be carried out while making construction of housing complexes based on the said Doctrine. In the case of *Ram Bahal vs. State of U.P. & Another.*,<sup>34</sup> the Allahabad High Court enjoined upon citizens not to raise or transport minerals illegally obtained by using any tool, equipment or vehicle and further authorizing the concerned officers to take action for these reported criminal incidents under the MMDR Act. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, water and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership. In *Udankaar (NGO) vs. Delhi Pollution Control Committee & Ors.*,<sup>35</sup> The National Green Tribunal upheld the Public Trust Doctrine for protection of a water body known as the Bhalswa lake, against pollution and encroachment. Under the same doctrine it asked for governmental accountability of the issue and also propagated gathering all information of all water bodies in the State of Delhi (*Tribunal on its own motion v. Govt. of NCT of Delhi & Ors.*) for rejuvenation purposes. In *K.V.Shanmugam vs. State Of T.N.*,<sup>36</sup> the Madras High Court laid down that as per the government decisions to grant lease of forest lands for mining purposes, a strict compliance of the provisions of the Forest (conservation) Act, 1980 must be done. Also, prior approval of the Central government is a condition precedent for grant of lease under the forest laws.<sup>37</sup> In *Association for Environment Protection vs. State of Kerala & Others*,<sup>38</sup> the Supreme Court based on Public Trust Doctrine questioned the construction of hotel will adversely affect the flow of water as well as the river bed and Marthanda Varma Bridge where construction work was undertaken without conducting any environmental impact assessment and in violation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, hence a violation of fundamental right of right to life under Article 21. In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*,<sup>39</sup> the Supreme Court applied public trust doctrine for upholding the order of Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika M.I. Builders Pvt. Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. In *Intellectuals Forum, Tirupathi v. State of A.P.*<sup>40</sup>, the Supreme Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati town, referred to some judicial precedents including *M.C. Mehta v. Kamal Nath* as a part of the affirmative duties of the State with

<sup>30</sup> AIR 1996 SC 2715

<sup>31</sup> 2022 Legal Eagle 70: 2022 Gojuris 70

<sup>32</sup> T.N. Godavarman v. Union of India & Ors, AIR 2006 SC 177.

<sup>33</sup> 2021 Legal Eagle 368 : 2021 Gojuris 368

<sup>34</sup> 2021 Legal Eagle 288 : 2021 Gojuris 288

<sup>35</sup> 2021 Legal Eagle 168: 2021 Gojuris 168

<sup>36</sup> 1997 Legal Eagle 286: 1997 Gojuris 286, 1997 AIR(MAD) 338

<sup>37</sup> *Ambica Quarry Works V. State of Gujarat* (1987) 1 SCC 213: (AIR 1987 Sc 1073); *Rural Litigation and Entitlement Kendra V. State of U. P.*, AIR 1988 SC 2187; *State Of Madhya Pradesh V. Krishnadas Tikaram*, 1995 Supp (1) SCC 587, *Uthagamangalam V. S. Moharned Hussan* (1996) I Mad Law Journal (NRC) 43.

<sup>38</sup> 2013 AIR(SC) 2500: 2013 AIR(SCW) 3840.

<sup>39</sup> (1999) 6 SCC 464.

<sup>40</sup> (2006) 3 SCC 549

regard to public trust. In *Fomento Resorts and Hotels Ltd. v. Minguel Martins*<sup>41</sup>, this Court was called upon to consider whether the appellant was entitled to block passage to the beach by erecting fence in the garb of protecting its property was regarded in the negative as such actions, if allowed by the State would affect public interest for the doctrine mandates affirmative State action for effective management of natural resources and empowers the citizens to question any ineffective management. In *Sterlite Industries (India) Ltd. vs. Union of India & Ors.*,<sup>42</sup> the Supreme Court, laid down that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the Tamil Nadu Pollution Control Board had ignored these principles and had gone ahead and hastily granted environmental clearance and the consent under the two Acts for a copper smelting plant to conduct its activities. It also sought for damages to be awarded based on the previous cases<sup>43</sup> and the Public Trust Doctrine. In *T.N. Godavarman Thirumulpad vs. Union of India & Others*,<sup>44</sup> the Supreme court while acknowledging fundamental rights in India, concept of Sustainable development including Public Trust Doctrine stated, that these being inclusive in the international Treaties/Conventions and not contrary to Municipal laws in India, should be deemed to be incorporated in the domestic law.<sup>45</sup> Reaffirming this, it sought Central government intervention for restraining Sandalwood uses and to take steps for inclusion of 'Red Sanders' in Schedule VI of the Wildlife Act, Biodiversity Act, 2002, Environment Protection Act, 1986, Kerala Forest (Amendment) Act, 2010, Forest Act, and the Tamil Nadu Forest Act, 1982. CITES as well as IUCN has acknowledged that Red Sandalwood is an endangered species. Sandalwood is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central Government for its exploitation and endangerment, for its fragrance and rich oil content and unabated uses particularly in southern States. In *Centre For Environment Law, WWF-I vs. Union of India & Others*,<sup>46</sup> the Supreme court invoked the Doctrine under the Wild-life Protection and Preservation for Shifting of Asiatic Lion (*Panthera leo persica*) to second home vis-a-vis Rehabilitation of ousting families. Asiatic Lion is an endangered species so as a necessity is found for its long-term survival and to protect the species from extinction. It existed in the Gir forest of Gujrat which due to climatic conditions faces extinction, should be shifted to Kuno Sanctuary in Madhya Pradesh. In *Gram Panchayat Navlakh Umbre vs. Union of India and others*,<sup>47</sup> the Bombay High Court under the State duties called for the Ministry Of Environment and Forests of the Union Government (MOEF) to issue a notification in exercise of powers inter alia conferred by Section 3 of the Environment (Protection) Act 1986 stipulating a requirement of a prior environmental clearance for setting up new projects or activities and for the expansion or modernization of existing projects or activities falling within the purview of the notification. When expert bodies are conferred with statutory duties which are envisaged in the public interest, particularly having regard to the need to protect sensitive interests such as those of the environment, it is necessary that those duties must be performed scrupulously keeping in mind the safeguards which are provided by enacting legal provisions. In *Th. Majra Singh and others vs. Indian Oil Corporation and others*,<sup>48</sup> the High Court sustained the objections of the petitioner for establishing a plant for filling cylinders with LPG (Liquified Petroleum Gas) calling upon the duties of the State under the Doctrine to take concerned legislations preventive and protective measures before allowing to such activities to take place. It also referred to other like activities for disallowing such activities for preventive and protectionist aspects of the environment.<sup>49</sup> In *Susetha vs. State of Tamil Nadu & Others*,<sup>50</sup> the Supreme Court in its affirmative actions of the State with regard to public trust as it allowed the construction of a shopping complex on a water body where the Plea of water shortage was not found to be correct as the site was situated near a sea and having five water tanks in or around. The activity called for relocation of a few families of the village and would provide shops and dwelling units for them. The court also reiterated that when formulated from a negatory

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<sup>41</sup> (2009) 3 SCC 571

<sup>42</sup> 2013 AIR(SCW) 3231; 2013 (5) Scale 202; 2013 (4) SCC 575

<sup>43</sup> M. C. Mehta and Another vs. Union of India and others, (1987) 1 SCC 395 ; Vellore Citizens Welfare Forum v. Union of India & Ors. [ (1996) 5 SCC 647 ], Tirupur Dyeing Factory Owners' Association v. Noyyal River Ayacutdars Protection Association [ (2009) 9 SCC 737 ] and M.C. Mehta v. Union of India Ors. [ (2009) 6 SCC 142 ]

<sup>44</sup> 2012 AIR(SCW) 1644; 2012 (2) RCR(Civil) 652; 2012 (2) Scale 551; 2012 (4) SCC 362

<sup>45</sup> Jolly George v. Bank of Cochin (1980) 2 SCC 360 , Gramophone Company of India v Birendra Baldev Pandey (1984) 2 SCC 534

<sup>46</sup> 2013 AIR(SCW) 2317; 2013 (5) Scale 710; 2013 (8) SCC 234; 2013 (8) SCC 266; 2013 (8) SCC 268

<sup>47</sup> 2012 (114) Bombay Law Review 2695.sa

<sup>48</sup> 1999 AIR(J&K) 81

<sup>49</sup> M. C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India, (1997) 3 SCC 715 and S. Jagannath v. Union of India, (1997) 2 SCC 87 : AIR 1997 SC 811 .

<sup>50</sup> 2006 AIR(SC) 2893; 2006 AIR(SCW) 4026

angle, the doctrine does not prohibit alienation of property. In *K.M. Chinnappa v. Union of India*,<sup>51</sup> the Supreme Court while dealing with the renewal of the mining leases in the Kedarmukh National Park under the Forest (conservation) Act, 1980 laid down that the renewal of lease is not a vested right of the lessee. There is a total prohibition against the grant of mining lease in a forest area without concurrence of the central government. As was observed by this Court in *M.C. Mehta v. Kamal Nath and Others* stated that our legal system based on English common law includes the public trust doctrine as part of its jurisprudence.

## VII-CONCLUSION

The Public Trust Doctrine entails community and guardianship of the natural resources keeping environmental concerns for applicability purposes. The challenges are the evocative historical origins<sup>52</sup> of the doctrine to the current appreciation in environment cases for disputed claims. Initially the thrust of the Doctrine with its roman and English applications was not for environment but for public property use. The doctrine was applied for public uses as fishing, navigation, commerce, rights of way, riparian rights etc and environmental aspects were not in focus for these uses. The modern applicability came after its elucidation in the American protectionist regime of environmental laws and applications. Its reference in the Illinois Rail Road case and Professor Joseph L. Sax's elaboration of the concept with reference to traditional origins led to it being a universal norm for conflicting economic and environmental claims and governmental obligations. This is backed by judicial interventions and adjudication for the environmental damage as well as claims of natural resources for use by the general public for non-detrimental environmental issues. The urgency for precautionary and remedial measures to environmental deterioration cases and the magnitude of increase of such like of despoliation in the last part of the century coupled with legislative and judicial endeavours have led to an expansion in the scope of the Doctrine. The current applicability in both the English and American cases have also brought the cost benefit analysis of such environmental projects and issues, on the forefront for want of a backing by this doctrine. The outcry for loss of private ownership rights have been overpowered by legislative and judicial interventions, but the rising graph of such cases is overflowing the courts for applicability of the Doctrine. It is propagated that abdication of economic losses and private uses is too small a price to be paid, for the imperilled environment.<sup>53</sup> The American interpretations have percolated in the domestic regime of Indian law by judicial judgements for disputed economic loss and environmental damage claims. In such issues the courts have often invoked questioning of the governmental lack of initiatives for implementation purposes. The initiation in the Indian case law of *M.C. Mehta v. Kamal Nath* floods the popularity and applicability of the Doctrine to environmental issues. The Indian Supreme Court has in its affirmative actions for environment, upheld the ancient Roman and English origins, and the American public uses of property issue for applicability to the Indian context.

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<sup>51</sup> 2003 AIR(SC) 724

<sup>52</sup> Carol M. Rose, Joseph Sax and the Idea of the Public Trust, 25 *Ecology Law Quarterly*, 351-362, (1998-1999); [http:// www. HeinOnline.org](http://www.HeinOnline.org). Last visited: 22/02/2022.

<sup>53</sup> Searle, Johanna, "Private Property Rights Yield to the Environmental Crisis: Perspectives on the Public Trust Doctrine," 41 *South Carolina Law Review* Issue 4, Article 11, (1990).

Available at: <https://scholarcommons.sc.edu/sclr/vol41/iss4/11>. Last visited: 22/02/2022.