



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Public Trust Doctrine

Nishtha Ahlawat
190BALLB014
Course: BALLB (HONS.)

Abstract

We have seen such a rise in global warming and pollution over the years. There is a change in the vegetation and food chain, the wetlands are vanishing. We humans have destroyed the environment that we need to survive. This doctrine shows consistency with the present environmental issues. The public trust doctrine enforces a legal right for the citizens under Article 21 and gives a positive duty to the state to preserve and safeguard the environment. The paper concludes that the public trust doctrine is a very effective way to solve all the environmental issues and conflicts in a proper legal framework, as India does not have separate environmental protection laws. By promoting the public trust doctrine we are promoting the protection of the earth and its resources.

Introduction

The Public trust doctrine is a doctrine that is concerned with governing the management of natural resources and the environment. It is an ancient doctrine which stems from Roman law. It acts as a public property doctrine that limits the use of public property i.e. natural resources by the government. According to the doctrine, the public is treated as a beneficiary and the state is treated as their trustee¹.

According to the public trust doctrine, the government as a trustee should hold and manage the public property, which consists of the natural resources and the environment. The state is to manage the resources in such a way that the public including the future generations benefits from it. For the natural resources to be available for future generations, the state needs to follow smart allocation and sustainable development, as otherwise, we will deprive the future generations of their right to exploit the natural resources².

¹ Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.

² Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.

The objective of Public Trust Doctrine

Originally the doctrine of public trust was only constricted to protect such rights as the right to fisheries, hunting, boating, and navigation for anchoring or standing. Now the Public Trust Doctrine checks the state's action for the management of resources and also questions the actions taken for the management of resources. The doctrine has named the state as its trustee and the state holds all resources. The state must preserve, prevent, and protect all the resources for public use. The state is expected to perform its solemn duty.³

Scope of Public Trust Doctrine

As it has been mentioned before, the Public Trust Doctrine was originally used to protect a triad of public rights—fishing, navigation, and commerce in the US navigable waters, which included rivers; the Great Lakes, and coastal waters. The state originally applied the Public Trust Doctrine to all the submerged land in the navigable waters, to stop it from becoming private property. The nineteenth-century courts very adamantly wanted to protect interstate commerce, the majority of which took place via barges and boats along the major rivers and coasts in the Great Lakes. The significance of the protection of interstate commerce in the first century of the United States cannot be exaggerated enough; in the year 1824, the Supreme Court said, "Indeed the power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government"⁴

The rights of nature movement has basic principles—that the nature and all its elements have an intrinsic value and should be protected separately from the needs of man—these principles have appeared from early times in the human history and these still are a vital part in many cultures and religions where the honour and rights of the nature are protected.⁵ For various such communities the rights of nature principles are an ancient ingrained concept⁶. Reflecting on the growing rights of the nature principle movement among the various Indigenous communities today, Geneva E.B. Thompson, Associate General Counsel for the Yurok Tribe of California, has observed:

"For many indigenous nations, the advocacy for a healthy environment is deeply intertwined with the protection of traditional, historical, and cultural lifeways and practices. . . . [a connection that] has been in place since time immemorial and will continue to be an important and sacred connection well into the future⁷."

The first landmark case concerning the Public Trust Doctrine was in 1821, by a property owner against an individual for harvesting oysters from submerged lands, the supreme court of New Jersey then declared that the state must protect the 'common use' rights to "navigation, fishing, fowling, sustenance and all the other uses of [navigable water] and its products." importantly, the initial Public Trust Doctrine did not make it impossible for the state to sell the trust lands to private owners to build ports docks and wharves. But, transfers of the trust land had to appreciate the ability of the public to approach and use trust resources, and the states were very much responsible for the shielding of the trust lands and resources from substantial impairment.⁸

This limitation was most enormously established in 1892 by the US Supreme Court in a judgment regarding the Illinois Legislature's granting of the entire Chicago waterfront to the Illinois Central Railroad Company. The Court ruled:

³ Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.

⁴ Public Trust Doctrine; Water Education Foundation.

⁵ Joseph Kowalski, Environmentalism Isn't New: Lessons From Indigenous Law, 26 Buffalo Env't L.J. 15, 29 (2019).

⁶ Boyd, Supra ("A Key Element Of The Legal Systems Of Many Indigenous Cultures Is A Set Of Reciprocal Rights And Responsibilities Between Humans And Other Species, As Well As Between Humans And Non-Living Elements Of The Environment.").

⁷ Geneva E. B. Thompson, Codifying The Rights Of Nature: The Growing Indigenous Movement, 59 Judges' J. 12, 12 (2020).

⁸ Erin Ryan; Short History of Public Trust Doctrine and its Intersections with Private Water Law; Virginia Environmental Law Journal; 2020.

The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the State may grant parcels of the submerged lands...But that is a very different doctrine from the one which would sanction the abdication of the general control of the State over lands under the navigable waters of an entire harbor or bay, or of a sea or lake. Such abdication is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public.

In conclusion, the early courts understood the importance of the trust lands and the resources to each one of the citizens of the US and the requirement of protecting the capability of the public to access and make use of them, in the process permitting some "improvement" via grants of private property rights. The fundamental purpose of the Public Trust Doctrine has tolerated two centuries of interpretation by state and federal courts, but the Public Trust Doctrine has also evolved. As each state was at liberty to develop the Public Trust Doctrine at its discretion, today there are 51 Public Trust Doctrines in the US. The states are at liberty to decide the geographical extent of the resources and land they want to hold under the protection of the trust, and the gravity to which they grant private rights in the trust lands. It is understood that no state shall abolish its Public Trust Doctrine; in 1981 a court said, "The trust is of such a nature that it can be held only by the sovereign, and can only be destroyed by the destruction of the sovereign". Thus, at the least, the Public Trust Doctrine lays out a limit below which governments cannot go but above which exists a broad legal operating zone⁹.

The growth of the Public Trust Doctrine in the last 40 years in this area was accelerated by an influential in 1970, a law review article by Sax, published in the budding time of the modern environmental era. In 1970, the National Environmental Policy Act came into effect, and the Environmental Protection Agency was created by President Nixon. The Clean Air and Water Acts, the Endangered Species Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA; commonly called the Superfund Act), to name a few, were all still to come¹⁰.

Sax argued that the reach of the Public Trust Doctrine should be broadened as elements such as air, water, etc are of extreme importance to all the citizens as a whole. The government must protect them for the general public and the public should be able to employ the Public Trust Doctrine to fight pollution, strip mining, overuse of pesticides, and the destruction of the wetland habitat. During that time, it was very hard for the public to play an active role in making decisions concerning natural resources, or to bring a suit against polluters. Sax's squabble for a broader identification of the Public Trust Doctrine was rooted in his true belief in the scarcity of resources for concerned citizens: "Of all the concepts known to American law, only the Public Trust Doctrine seems to have the breadth and substantive content which might make it useful as a tool of general application for citizens seeking to develop a comprehensive legal approach to resource management problems"¹¹

Sax thought that for the Public Trust Doctrine to be viable, it must "encompass a legal right that is: (1) vested in the public; (2) enforceable against the government; and (3) harmonious with environmental concerns"

Reviewing Sax's legal arguments, there are three key tangents along which the Public Trust Doctrine has evolved and expanded. First, an ecological angle which is concerned with the types of natural resources encompassed by the Public Trust Doctrine; second, the citizen's rights angle, which regards the suite of rights

⁹ Erin Ryan; Short History of Public Trust Doctrine and its Intersections with Private Water Law; Virginia Environmental Law Journal; 2020.

¹⁰ Michael C. Blumm Zachary A. Schwartz; The Public Trust Doctrine Fifty Years After Sax and Some Thoughts on Its Future; Public Land & Resources Law Review; June 2021.

¹¹ Michael C. Blumm Zachary A. Schwartz; The Public Trust Doctrine Fifty Years After Sax and Some Thoughts on Its Future; Public Land & Resources Law Review; June 2021.

citizens have about their use of trust resources and enforcing the terms of the trust; third, as other countries and international bodies are also practicing public trusteeship, the third and the final angle is of geopolitical scope¹².

Restriction on the State

The Public Trust Doctrine Imposes three types of restrictions on the government:

1. Some resources may not be used by the public but they should be stored by the government for the public.
2. These resources are the gift of nature and they cannot be sold by the government.
3. The property must be maintained and its adaptation should not lead to private use. There are certain limits and No individual should be allowed to cross these limits.

Public Trust Doctrine in India

The public trust doctrine in India has grown and expanded via landmark judgments. The court said that as our nation follows the common law system, the public trust doctrine is included in the jurisprudence of our constitution. The court took both substantive and procedural rights with sincere gravity and made this doctrine applicable to the protection of the environment. The court also referred to various articles of the Indian constitution; article 48A which came via Article 21 by including the right to a clean environment under the right to life and Article 39 which states the proper distribution of the resources.¹³

India does not have specific environmental laws, hence, the Supreme Court has gone forth and emphasized the Public Trust Doctrine. There have been various occasions, like when the Supreme Court of India declared unauthorized mining causing degradation of the environment of the particular area as illegal as it violated article 21 of the constitution and the court also mentioned how a healthy environment is a necessity for the protection of the rights of the people. In another case, the high court of Kerala held that the government can not violate Article 21 when a government action causes harm to a freshwater source. In the Bhopal tragedy case, the court established a relationship between the right to life and a clean environment. The Public Trust Doctrine in India imposes restrictions on the government and private property rights in India. After reading numerous judgments and various interpretations, it is still not clear how the court invoked the public trust doctrine. It is not clear whether the public trust doctrine was already a part of the jurisprudence of the Indian constitution or if it is added now. The court only mentioned how the doctrine is included in the United States through various judgments and how British law also considered the public trust doctrine, hence, considering that India also follows the common law system, our nation should also include the public trust doctrine. However, the court did what it felt was necessary for the protection of the rights of the citizens and made the state responsible for the protection of these rights and laws under the public trust doctrine.¹⁴

The Public Trust doctrine didn't exist in India as a doctrine but it came through a landmark judgement which was M.C Mehta vs Kamalnath.

“We don't inherit the earth from our ancestors; we borrow it from our children.”

The public trust doctrine is new to India. The doctrine has been accepted under the common law through numerous landmark cases. Article 21 is where the public trust doctrine stems from. Article 21 guarantees the right to life as a fundamental right. Right to life does not just mean the right to live, but consists of, and is not

¹² Michael C. Blumm & Rachel D. Guthrie; Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision; University of California, Davis.

¹³ Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023

¹⁴ Shruti Goel; Right to Clean Environment – M.C Mehta v. Union of India; ipleaders; October 3, 2019.

limited to, the right to life with dignity, the right to livelihood, the right to a healthy environment, pollution-free air, clean water, etc. Each individual should get access to a clean and healthy environment. It is of utmost importance to protect and appreciate the natural environment to lead a healthy life¹⁵.

Articles 48A and 51A of the Constitution specifically deal with the protection of the environment. Article 48A has made it mandatory for the state to improve and protect the environment and makes it mandatory for the state to preserve the forest and the country's wildlife. Article 51A deals with the fundamental duties of the citizens. Subsection (g) of Article 51A makes it a duty of the citizens to protect and improve the natural environment.

The Public Trust Doctrine has two purposes:

1. It makes it mandatory for the state to take effective actions for the control and management of natural resources; and
2. It gives power to the citizens to raise questions about the ineffective management of natural resources.

Thus, any act that is in violation of nature or is in favor of environmental degradation shall be strictly prohibited/controlled at once. The Public Trust Doctrine in India gives the responsibility of safeguarding the environment to the State/government. The doctrine makes it mandatory for the state to protect and appreciate public property (natural resources) and regulate the activities of private parties who are owners of such public property¹⁶.

According to the Annual Review of Environment and Resources Volume 37, 2012¹⁷: "All natural resources should be utilized sustainably. Overexploitation/exaggerated use of the resources will strip the rights of future generations to utilize such natural resources. It should be constantly kept in mind that we have just borrowed the earth, which consists of the environment, from our children, and each individual must return it to their children in a better condition and not in the worst condition."

Limitations Of The Public Trust Doctrine

The courts in India do not provide any comprehensive definition of the doctrine. A simple review of a case law does not help identify the relevance of a complex concept in different situations, the courts are yet to find an independent place of the doctrine in any national environmental law¹⁸. As there is a lack of a definition, it is difficult to describe the protection available to the properties that are a part of the public trust—what does a property which is a part of the trust mean in law? Are there any restrictions which are placed on the existing private and public rights? Will the decision making by the legislation be any different between a public trust held property and a non public trust property? Will there be a separate standard of assessment? Would it be a more complex procedural process?¹⁹

¹⁵ Public Trust Doctrine In Environmental Law; Law Corner; March 23, 2021.

¹⁶ Lavanya Rajamani; Doctrine Of Public Trust: A Tool To Ensure Effective State Management Of Natural Resources Journal of the Indian Law Institute; January 1996.

¹⁷ Ashok Gadgil and Diana M. Liverman; Annual review of environmental resources volume 37, 2012, Sagarin, pp 473-496

¹⁸ The Draft National Water Framework Bill 2016 [Clause 2(r)]

¹⁹ Shibani Ghosh, Public Trust Doctrine in Indian Environmental Law

Indian courts have talked about the three restrictions which are mentioned in an American case law and summarised by Sax to identify the violation of the public trust doctrine—first, the trust property must not just be used for a public purpose, but it must be available for use by the general public; second, the property must not be sold for any price; and third, the property must be maintained for particular types of uses. Significantly, Sax acknowledged the limitations of defining the doctrine in terms of these three restrictions. In his 1970 article, he noted, ‘the case law has not developed in any way that permits confident assertions about the outer limits of state power’. Indian courts have used his tentative explanation as a basis for the doctrine in the country. Including this concept in the Indian legal system and the decision-making process for natural resources is of extreme importance²⁰.

The state's responsibility

The parameters of the action which is required to be taken by the state can not be underestimated. There needs to be a fundamental transformation of all the sectors of our industry, including energy, manufacturing, transport, infrastructure, agriculture, forestry, and land use. All citizens must be cautious while using natural resources and manage their waste²¹.

The government can not rely on market forces to solve all the prevalent issues. The responsibility to take action is of the government. The plastic crisis in the ocean waters is expected to triple by the next 20 years, affecting our ecosystems, health, and economies disastrously.²² The UN estimates that the agricultural production needs to increase by at least 50% by 2050 to keep pace with with the increasing demand for food²³. The food systems cause about a third of the greenhouse gas emissions, up to 80% of biodiversity loss, and use around 70% of freshwater reserves. Governments can choose from various types of policy interventions and financing measures to help transform energy and industrial systems, improve energy efficiency, tackle environmental pollution, and protect and replenish natural capital²⁴.

The stick-and-carrot approach is being adopted by many. This includes green taxes on harmful environmental activities and standards and certification for energy performance, tighter regulations, emissions, and pollutants—including tax rebates for meeting these standards. Many examples of loans and grants for green investments in sustainable agriculture, renewable or low-carbon energy sources, energy-efficient buildings, public walkways and cycleways, and electric vehicle (EV) infrastructure are also seen by us. Additional tools to increase demand for products and services like EVs, solar panels, or renewable energy are subsidies and tax rebates. Research institutes, academic institutions, and private R&D firms are being offered subsidies by the government to boost innovation and technology and develop transformative technologies such as renewable energy, carbon capture, waste management, and energy efficiency.²⁵

Additionally, the 2020 Sustainability Leaders survey from GlobeScan (pdf)²⁶ concludes that national governments lack leadership on sustainable development – this is evidence that there is a need for more decisive state interventions to deal with the increasingly global sustainability challenges. Tackling the sustainability challenges requires a significant investment which is far beyond current levels. According to Citi, the difference between the actual and necessary climate crisis spending is more than US\$3-US\$5 trillion per year²⁷. The actions

²⁰ Shibani Ghosh, Public Trust Doctrine in Indian Environmental Law

²¹ Meghan Mills, Six Ways That Governments Can Drive The Green Transition, EY, 13 may 2022.

²² Fiona Harvey, Plastic Waste Entering Oceans Expected To Triple In 20 Years, Wed 23 Sep 2020.

²³ Global Food Systems: An Outlook to 2050, Iaran.

²⁴ Meghan Mills, Six Ways That Governments Can Drive The Green Transition, EY, 13 may 2022.

²⁵ Meghan Mills, Six Ways That Governments Can Drive The Green Transition, EY, 13 may 2022.

²⁶ 701 Qualified Sustainability Experts Completed The Online Questionnaire From May 11th To July 2nd, 2020.

²⁷ Eric G Lee, Financing a Greener Planet, 21 Feb 2021.

that governments take now could set the world on a path to a more sustainable future that balances environmental, economic, and social outcomes. But the clock is ticking, and rapid progress demands priorities:

1. Provide detailed action plans with clear accountability
2. Be bolder in incentivizing the market and mandating change
3. Boost innovation through increased funding
4. Improve the design and delivery of green initiatives
5. Act as a role model for other parts of the economy
6. Promote a whole-of-society, people-centered approach

Various governments have taken strict measures to ban the products polluting the environment. Plastic increases climate change by emitting greenhouse gases at every stage of its lifespan. Rwanda was the first country to be plastic free in 2009. They achieved this standard by banning all plastic bags and packaging for 10 years. Canada declared plastic a "toxic" substance, they proposed a ban on most single-use plastics by 2021.²⁸

Landmark Judgments

1. M.C Mehta v. Kamalnath²⁹

The public trust doctrine first came to India via this landmark case. This case is also called the SPAN motel case. In this particular case, a PIL challenged the minister of the environment; Mr. Kamalnath (respondent) who has given permission to the SPAN motel company to construct a motel near the mouth of the river Beas in Himachal Pradesh and also permitted the company to change the course of the river for the construction of the Motel by blasting the river bed. The construction of the Motel was planned on the land which was taken on lease for 99 years from the government. The ministry and the gram panchayat of the area also permitted it to construct the motel. The supreme court held that "the public trust is more like an order for the state to use the public property for public purposes". The state must protect the environment, lakes, and public heritage and it can only be renounced in a rare case where it is not in compliance with the public trust. The court observed that the earth's natural resources are the gift of nature; they must be protected and the court also stated that the values and laws of our society must adhere to the environment. The court declared that the public at large is a beneficiary of the earth's resources like water, air, land, etc., and as the state is the trustee it must protect these resources and not give them away to private builders for the fulfillment of their gain.

The court asked the company to pay compensation for the restoration of the environment of that area under the polluter pay principle.

2. M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu³⁰

In this of M.I. Builders Pvt. Ltd. V. Radhey Shyam Shau, the court covered the public trust doctrine under the right to life and stopped the construction of the shopping complex in place of a public garden declaring the garden as a public resource. The court observed that the park is a public place with historical relevance. The court cited the MC Mehta case and the public trust doctrine as precedents. The court said that permitting the construction of the said motel would deprive the public of the quality of life stated in Article 21 of the Constitution. The court gave the obligation to maintain the public park for the citizen's enjoyment to the

²⁸ Lori Campbell, Top 10 Countries Doing The Most To Tackle Plastic Pollution, Good With Money, 29th June 2023

²⁹ MC Mehta V. Kamalnath (1997) 1 SCC 388

³⁰ M.I. Builders Pvt. Ltd. V. Radhey Shyam 1999 SC 2468

government as the government does have this duty under the public trust interest which is also applicable in India.

The court said that the doctrine has grown, derived, and evolved under Article 21 of the Indian constitution. It is invoked in India to protect the fundamental rights of the people.

3. Shailesh R. Shah v. State of Gujarat³¹

In the initial judgment, the court portrayed the state in a negative light but in Shailesh R. Shah V. State of Gujarat, the Gujarat high court has portrayed this particular duty of the state to prevent any degradation of the natural resources such as land, air, water and, etc in a very positive light. Conservation of natural resources for the public's use and conservation of article 21 has been called a positive duty. According to the court, it is a positive duty of the court to maintain, prevent degradation, and safeguard our natural resources from extinction.

Judicial pronouncements

1. Th. Majra Singh v. Indian Oil Corporation (1998)

A suit was filed against a liquid petroleum gas (LPG) plant that was used for filling cylinders in this case. The solicitor thought that it was located near the village of Katholi in Jammu District and could be harmful to the health of the people staying in the locality. The respondent contended that proper steps have been taken to ensure that no harm is caused to the residents living in the particular locality. They ensured that they had followed all the measures to control pollution. The Jammu and Kashmir High Court held that their power is limited to examining whether proper precautions have been taken by the ones in charge, keeping in mind the environmental laws and policies, to prevent pollution or degradation.

Other than the fact that the case was decided by the High Court based on the precautionary principle, it ensured the establishment of the public trust doctrine in the Indian legal system. The High Court observed that this public trust doctrine is an integral part of Article 21 of the Constitution, and the State is obliged to protect and preserve the lakes, lands, forests, wildlife, and environment. The Court stated that people's notion that they have the right to anticipate particular lands to retain their originality is making its way into the law of the land.³²

2. Jitendra Singh v. Ministry of Environment (2019)

This case was filed against the allotment of water bodies to private industrialists. The Supreme Court stated that in the Indian constitution, article 21 safeguards the fundamental rights of the villagers. For the villagers, water bodies such as ponds are an important source of potable water and fishing. Most citizens do not have access to clean drinking water in India. Hence it was observed that the ministry's scheme of providing water bodies as a whole to private industrialists was not legal.

This would have had several negative impacts on the vegetation and groundwater. The marine animals would die and the villagers would have to relocate to find a source of water and vegetation which would be completely unfair. Hence the respondent proposed to destroy the existing water bodies and make new sources of water as

³¹ Shailesh R. Shah V. State of Gujarat (2002) 3 GLR 447

³² Minhas Joshi, Public trust doctrine in India, ipleaders, August 22, 2023

a way of environment protection. Then again if the water level is made superficially it does not guarantee that it would offset the destruction and damage done to the environment³³.

3. Lt. Col. Sarvadaman Singh Oberoi v. Union of India(2020)

In this case, the full bench of the National Green Tribunal (NGT) discussed the problem regarding the restoration of the water bodies. The issue discussed was in the interest of the environmental protection of the whole nation. The petition was registered with the tribunal regarding the water bodies in the possession of Gurgaon's district. Gurgaon was asked to maintain and restore the water bodies. The tribunal asked Haryana to take restoration steps which were to be submitted within 6 months.

The bench was of the opinion that continuous monitoring of resources is necessary at the state, national, and district levels. Such monitoring could be delegated to the River Rejuvenation Committee, any Wetland Authority of the State, or any other authority designated for this purpose, like the Secretary of Irrigation and Public Health/Water Resources.

The precautionary principle and sustainable development principles were upheld by the bench, it directed the states and the UTs to monitor the restoration of the water bodies, and they were to oversee the planning of such restoration³⁴.

4. Union of India v. Reliance Industries Limited (2023)

The dispute between reliance and the state took place when the state got evidence that gas had migrated from the reliance block gas pools to the ONGC blocks. This case was resolved by arbitration. There were three arbitrators and one of them gave a dissenting opinion in favor of the petitioner. The arbitral award was then challenged before the Delhi High Court under section 34v of the Arbitration and conciliation act, 1996. One of the issues of the case was whether this transaction was governed by the public trust doctrine or not. The Delhi High Court stated that the arbitral award given by the tribunal would be upheld and that the respondent's act was in furtherance of the public trust doctrine. The act of the respondent was sensible and cautious in an efficient manner as required.³⁵

Conclusion

The term 'environment' has numerous meanings and hence it is very difficult to define it. Environmentalists who have been working in this field are also not able to put a proper definition to this term. For several centuries, we have exploited and changed our surroundings, and our environment at our will, this has made us aware that our environment is extremely malleable. But does this malleability have its limitations? Yes, the two centuries have also proved that there are severe consequences of our actions. We have seen such a rise in global warming and pollution over the years. There is a change in the vegetation and food chain, the wetlands are vanishing. We humans have destroyed the environment that we need to survive.

Not to anybody's surprise, the Supreme Court took such a bold and dynamic step to invoke the public trust doctrine. The public trust doctrine was the necessary legal step regarding the safeguarding of natural resources. This doctrine shows consistency with the present environmental issues. The public trust doctrine enforces a legal right for the citizens under Article 21 and also gives a positive duty to the state to preserve and safeguard

³³ Minhas Joshi, Public trust doctrine in India, ipleaders, August 22, 2023

³⁴ Minhas Joshi, Public trust doctrine in India, ipleaders, August 22, 2023

³⁵ Minhas Joshi, Public trust doctrine in India, ipleaders, August 22, 2023

the environment. Our constitution considers the concern for the environment and it also guarantees the legal right to the citizens of a clean environment to live in.

The public trust doctrine is a very effective way to ensure the safeguarding of the environment, as it keeps the management of the state in check and ensures timely and effective management of these resources. It is a tool used to acknowledge the increasing degradation of the environment. The public trust doctrine is a very effective way to solve all the environmental issues and conflicts in a proper legal framework, as India does not have separate environmental laws. By promoting the public trust doctrine we are promoting the protection of the earth and its resources.

The public has the right to question the use of natural resources and this is the very reason why 1500 years ago a Roman legal scholar labeled the public trust doctrine. They said that either the resources are available to everyone or nobody. This doctrine questioned the ideology of private use of natural resources. This doctrine is seen as a conduct, this is the very reason why many great philosophers and legal scholars are debating about the rights of the public over the usage of natural resources³⁶.

Acknowledgement

This is to acknowledge that Nishtha Ahlawat, a student of the Law School of The Sushant University, with the assigned Roll Number 190BALLB014, has prepared this memorial under the guidance of my Professor Mr. Aushotosh Raj Anand.

I am very much thankful for his support and guidance during the completion of my project and I am even very much thankful to him for giving me this opportunity to prepare this project on this case study and it is all due to his timely guidelines and support that I was able to complete my agreement within the given time.

Literature Review: Public Trust Doctrine and Environmental Conservation

Public Trust Doctrine in Indian Environmental Law by Shibani Ghosh deconstructs the public trust doctrine and elaborates on the source, principles and issues of the doctrine.

Six Ways That Governments Can Drive The Green Transition by Meghan Mills explores all the ways the state can take responsibility and help implement more sustainable measures nationwide to strive and reach the green transition.

References

1. Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.
2. Shailesh R. Shah V. State of Gujarat (2002) 3 GLR 447
3. M.I. Builders Pvt. Ltd. V. Radhey Shyam 1999 SC 2468
4. MC Mehta V. Kamalnath (1997) 1 SCC 388
5. Ashok Gadgil and Diana M. Liverman; Annual review of environmental resources volume 37, 2012, Sagarin, pp 473-496
6. Lavanyya Rajamani; Doctrine Of Public Trust: A Tool To Ensure Effective State Management Of Natural Resources Journal of the Indian Law Institute; January 1996.
7. Public Trust Doctrine In Environmental Law; Law Corner; March 23, 2021.
8. Shruti Goel; Right to Clean Environment – M.C Mehta v. Union of India; ipleaders; October 3, 2019.
9. Michael C. Blumm & Rachel D. Guthrie; Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision; University of California, Davis.
10. Erin Ryan; Short History of Public Trust Doctrine and its Intersections with Private Water Law; Virginia Environmental Law Journal; 2020.

³⁶ Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.

11. Rachit Garg; Public trust doctrine in India; ipleaders; August 22, 2023.
12. Public Trust Doctrine; Water Education Foundation.
13. Joseph Kowalski, Environmentalism Isn't New: Lessons From Indigenous Law, 26 Buffalo Env't L.J. 15, 29 (2019).
14. Boyd, Supra ("A Key Element Of The Legal Systems Of Many Indigenous Cultures Is A Set Of Reciprocal Rights And Responsibilities Between Humans And Other Species, As Well As Between Humans And Non-Living Elements Of The Environment.").
15. Geneva E. B. Thompson, Codifying The Rights Of Nature: The Growing Indigenous Movement, 59 Judges' J. 12, 12 (2020).
16. The Draft National Water Framework Bill 2016 [Clause 2(r)]
17. Shibani Ghosh, Public Trust Doctrine in Indian Environmental Law
18. Meghan Mills, Six Ways That Governments Can Drive The Green Transition, EY, 13 may 2022.
19. Fiona Harvey, Plastic Waste Entering Oceans Expected To Triple In 20 Years, Wed 23 Sep 2020.
20. Global Food Systems: An Outlook to 2050, Iaran.
21. Meghan Mills, Six Ways That Governments Can Drive The Green Transition, EY, 13 may 2022.
22. Eric G Lee, Financing a Greener Planet, 21 Feb 2021.
23. Lori Campbell, Top 10 Countries Doing The Most To Tackle Plastic Pollution, Good With Money, 29th Jun 2023
24. Minhas Joshi, Public trust doctrine in India, ipleaders, August 22, 2023

