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## Public Trust Doctrine: A Repository of Governmental Obligations to Protect the Environment

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### ABSTRACT

*Earth is our mother and each and every individual on the earth is a child of this mother earth. Thus everyone is entitled equally to enjoy all the bounties of nature and also have equally a duty to protect the environment. It is the duty of the state to act as a guardian of the environment and natural resources and take all steps to protect the mother earth. This concept of the state as a guardian of environment is not of a recent origin but it can be traced to the ancient legal systems as well as reflected in majority of religious system. The present day measures taken by the government for protecting the environment are simply an extension its duty and obligation towards the environment and individuals. This is because the state is a trustee of the environment and is holding all the natural resources and environment as a trustee for the benefit of its people. This paper seeks to examine the scope of doctrine of public trust and its application in India.*

**Keywords : Public Trust Doctrine, Environmental Protection, Role of Government and Protection of Environment**

### Introduction:

"The Earth is our Mother and we are all her children.... Supreme Lord, let there be peace in the sky and in the atmosphere, peace in the plant world and in the forests; let the cosmic powers be peaceful; let Brahma be peaceful, let there be undiluted and fulfilling peace everywhere".

The above ancient Hindu prayer emphasizes the link between human being and all creations and the environment. It also highlights the earth as our mother and each and every individual on the earth as a child of this mother earth. Thus everyone is entitled equally to enjoy all the bounties of nature and also have equally a duty to protect the environment. It is the duty of the state to act as a guardian of the environment and natural resources and take all steps to protect the mother earth. This concept of the state as a guardian of environment is not of a recent origin but it can be traced to the ancient legal systems as well as reflected in majority of religious system. The present day measures taken by the government for protecting the environment are simply an extension its duty and obligation towards the environment and individuals. This is because the state is a trustee of the environment and is holding all the natural resources and environment as a trustee for the benefit of its people. This paper seeks to examine the scope of doctrine of public trust and its application in India.

### Origin of the Public Trust Doctrine:

The origin of the public trust doctrine can be traced to Roman law concepts of common property. Under Roman law, the air, the rivers, the sea and the seashore were not meant for private ownership but they were to be used for the public. After the fall of Roman Empire, this doctrine has been incorporated into common law. The Magna Carta of 1225 established that use of natural resources for fishing and hunting cannot be limited exclusively to some people but it should be open to all public. Thus in England, though the King had vested ownership of public lands, he handled them in trust for the public. This notion of government ownership of resources held in trust for the public is the foundation for public trust doctrine.

The modern form of the doctrine of public trust is a creation of the US Courts. The US Supreme Court in *Illinois Central Railroad Company v. People of the State of Illinois*, held that, "the bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses

for which they are adapted. The state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust, is permissible".

### Public Trust Doctrine:

The Public Trust Doctrine is, essentially, an element of common law, though it has found its way into the Constitutions of numerous states. The essence of the doctrine is the legal right of the public to use certain lands and waters. The rights of the public are vested in each state as owner and trustee of Trust lands, with the protection of those rights remaining in states. Generally, tidewaters to their farthest reach, tidelands, navigable waters, and permanently submerged lands, including those extending lake ward or seaward to the limit of state ownership, are subject to the Public Trust Doctrine. Black's Law Dictionary defines the public trust doctrine as that which: Provides that submerged and submersible lands are preserved for public use in navigation, fishing, and recreation and the state, as trustee for the people, bears responsibility of preserving and protecting the right of the public to the use of these lands and the waters above them for those purposes.

The public trust doctrine asserts that the 'public' has the legal right to utilize certain resources, such as tidewaters or navigable rivers without restriction by private owners. These resources are so inherently common in their nature that their permanent assignment to exclusive, private ownership is inappropriate. To insure group values are respected, the rights of the public are vested in the state as trustee of the resource. As such, the state through its administrative agencies has a duty to administer, protect, manage and conserve the resource. Any existing private users have only usufruct rights that can be withdrawn whenever the state deems that they are inconsistent with the public trust. Because there are no private property rights, there is no basis for takings challenges in such reallocations. Furthermore, the legislature cannot alienate trust resources, which must remain with the state. The public trust doctrine therefore provides for a powerful regulatory and supervisory role for the state with regard to the resources that are covered.

Natural resources thus have traditionally been found either under the sovereignty of a particular state or in the so-called global commons. Where the resources are held by a state,

the essence of the PTD is that the state or governmental authority, as trustee, has a fiduciary duty of stewardship of the public's 'environmental capital'. These resources must be held in trust by the state for the benefit and use of the general public which includes current and future generations. The State must not alienate trust property unless the public benefit that would accrue outweighs the loss of the public use or 'social wealth' derived from it. The trust imposes three kinds of restrictions on the state:

- The property subject to the trust must not only be used for a public purpose, it must be held available for use by the general public;
- The property must not be sold, even for fair cash equivalent; and
- The property must be maintained for particular kind of uses, such as navigation, recreation, or fishery.

The most fundamental duty that a trustee has is the duty of loyalty and an obligation to act solely in the interest of the beneficiaries. The trustee also has a duty to use care and skill to preserve the trust property (including the duty to protect against 'invasion of the trust'). In addition, the trustee has a duty to furnish information to the beneficiaries, a duty to make the trust productive, and a duty to deal impartially with beneficiaries. In meeting its duties, the trustee must act prudently, diligently, and in good faith. Thus the Public Trust Doctrine is a powerful tool to protect the environment as well as environmental rights.

#### Public Trust Doctrine in India:

The Public Trust Doctrine has been applied in various cases as a tool to protect the environmental rights of the common people. In various cases the Indian Judiciary has emphasized that the Public Trust Doctrine is an affirmation of the duty of the State to use public property such as streams, lakes, forest, marsh lands, and tide lands for public purposes only. The use of such common property by the State shall be in rare cases when the abandonment by right is consistent with purpose of the public trust.

In *M.C. Mehta v. Kamal Nath* the Supreme Court unequivocally declared that, our legal system is based on English Common Law and includes the Public Trust Doctrine as a part of jurisprudence. The State is the trustee of all national resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forest, and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources: these resources are meant for public use and cannot be converted into private ownership. Justice Saghir Ahmed also reiterated that Public Trust Doctrine is a part of the law of the land. Again, Justice Arjit Parsayat, while de-

scribing that destroying natural environment, man is committing matricide, having in a way killed Mother Earth, declared in *T N Godavarma Thirumulpad v. Union of India*, that- "Our legal system based on English common law includes the Public Trust Doctrine as a part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running water, air, forests and ecologically fragile land. The State as trustees under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. The aesthetic use and pristine glory cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary in good faith, for public good and in public interest to encroach upon the said resources". This doctrine has also been reiterated in *Natures Lovers Movement v. State of Kerala*, *M I Builders v. Radhey Shyam Sahu*, *Common Cause-A Registered Society v. Union of India*, etc.

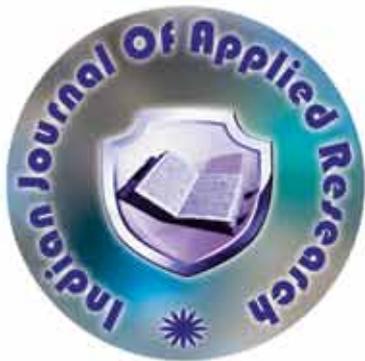
Thus the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public. This concept has now become part of Indian legal system. In fact the provision of right to life under Article 21 of the Constitution of India has been given a dynamic interpretation to include right to clean and healthy environment. An analysis of various judicial decisions reveals that there is a constitutional mandate to right to life and this right includes a bundle of rights including right to environment. The protection of these rights is primarily linked with the duty of the State to protect the environment. This is in fact because of the Public Trust Doctrine. The various constitutional provisions relating to environmental protection can be considered as a repository of this Doctrine of Public Trust in India.

#### Conclusion:

The environment and natural resources are the common heritage of all mankind and cannot be appropriated for private use by any individual including the State. In fact it is the sacred obligation of the State to protect the environment which it holds as a trustee for the benefit of its people. This concept embodied in the Public Trust Doctrine is a powerful tool to protect and conserve the environment not only for the present but also for the future. This concept also serves to prevent any misuse of environment by private parties as well as the State in the name of development.

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