



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.B.**

**Semester: IV**

**SUBJECT: Environmental Laws**

**SUBJECT CODE: LLB404**

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# Lecture-8



## LECTURE 8: Public Trust Doctrine

### PUBLIC TRUST DOCTRINE

Government shall be the trustee for all the natural resources like; river, lake, trees and other things which are present in the environment. Doctrine was founded on idea of government is the trusteeship for fee and unimpeded use of general public. It is the common law concept, defined and addressed by academics in the United States and the United Kingdom. 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 to protect the resources for enjoyment of general public rather than to permit their use for private ownership or commercial purposes. The PTD has developed in India through several landmark cases in the Supreme Court. The Supreme Court has deduced this doctrine from various sources such as the Common Law and Article 21 of the Indian Constitution.

The public trust doctrine “is based on the notion that the public holds inviolable rights in certain lands and resources, and that regardless of title ownership”, and that “the state retains certain rights in such lands and resources in trust for the public.” This conception of public rights has two ancient bases.

Firstly, under Roman law the air, running water, the sea, and consequently the sea shore’ were the property of no man but rather were common to all.” Secondly, early English common law provided that title to tidelands had two components”: “the King’s right of jus privatum, which could be alienated, and the jus public cum rights of navigation and fishing, which were held by the King in inalienable trust for the public” the Constitution, which guarantees the fundamental right to life, and Article 39 in Part IV of the Constitution which provides for equitable distribution of material resources.

#### **M. I. Builders v Radhey shyam sahu (AIR 1999 SC 2468)**

- Case was Decided was by Justice Majumder and Justice Wadhwa, Construction of Underground Shopping Complex in public park Permission granted by City Corporation, entrusting construction to a private builder Tenders were not invited was against the Municipal Act and Developmental plan

- Judicial Review was under Article 226, on violation of public trust doctrine, The builder

was supposed to develop the site at its own cost and then to realize the cost with profit not exceeding more than 10% of the investment in respect of each shop. Under the terms of the agreement, full freedom was given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika.

- The builder was also given the right to sign the agreement on behalf of the Mahapalika and was only required to a copy to the Mahapalika after its execution. Both the builder and the Mahapalika were to be bound by the terms of that agreement.

## **JUDGMENT**

- The Court ordered Mahapalika to restore the park to its original position within a period of three months from the date of the judgment and until that was done, to take adequate measures and to provide necessary safeguards and protections to the users of the park.

- The only reason given by Mahapalika for the construction of the underground commercial complex was to ease the congestion in the area but it led in to more congestion Supreme Court found that the terms, conditions, clauses of Agreement between M.I. Builders and Mahapalika were found were unreasonable, unfair atrocious. Agreement was opposed to Public policy, court ordered for demolition of said shopping complex. Supreme court reaffirmed that the public trust doctrine is established in the Indian legal system and asserted that the public authorities should act as trustees of natural resources.

### **Perumatty Grama Panchayat v State of Kerala, 2004 (1) KLT 731**

Coca-Cola Company (soft drinks giant) established a factory at Plachimada, Kerala to produce beverages, the main raw material of which was groundwater. The company obtained a licence from the Perumatty Grama Panchayat and started commercial production in March 2000.

The company started operation the local people (mainly from tribal communities) began to experience groundwater scarcity as wells in the nearby area became dry. As the local people raised objection against the groundwater exploitation of the company the Panchayat refused to renew the licence of the company. Later the State Government of Kerala challenged the Gram Panchayat's power to take such decision in the High Court.

The State and its instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this

regard will tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of India.

- Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Article 21 of the Constitution. So, even in the absence of any law governing ground water, Panchayat and the State are bound to protect ground water from excessive exploitation.

-The matter went up to the supreme court and finally the Hindustan Coca-Cola Beverages Limited, informed the Supreme Court that it had no plans whatsoever to restart operations in its bottling plant in Plachimada, Kerala, the curtain came down on more than a decade-long tireless agitation by the residents of Perumatty *gram panchayat* against the beverage giant.

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