International Journal of Environmental Sciences
ISSN: 2229-7359
Vol. 11 No. 16s, 2025
https://www.theaspd.com/ijes.php

The Public Trust Doctrine And Legislative Inertia: Reimagining India's Statutory Environmental Framework

Varun Sharma[1]*, Prof. (Dr.) Pradeep Kulshreshtha[2]

[1*]PhD-Scholar, School of Law, Bennett University, Noida, Uttar Pradesh, l21solp0002@bennett.edu.in
[2]Dean, School of Law, Bennett University, Noida, Uttar Pradesh, pradeep.kulshrestha@bennett.edu.in

INTRODUCTION: The public trust doctrine has emerged as a foundational principle in environmental jurisprudence worldwide, positing that certain natural resources are held by the state in trust for the public. In India, this doctrine has been invoked by courts as a tool of environmental protection, raising the question of whether it stands as a codified ideal or a construct of judicial innovation. This paper highlights how the doctrine has been woven into India's Article 21[i] Jurisprudence via judicial activism and explores the tension between this judge-made principle and the country's statutory environmental framework. The discussion also flags the notable reluctance of the Indian legislature to codify the doctrine, setting the stage for a comparative look at other jurisdictions (such as South Africa and Australia) to contextualize India's approach and incorporate best practices into the domestic jurisdiction.

ORIGIN- ROMANS AND "RES COMMUNIS":
The concept of a public trust in natural resources can be traced back to classical Roman law and its notions of the '*commons*'. Roman jurists recognized that certain things by their very nature were common to all and could not be privately owned. Justinian's '*Corpus Juris Civilis*' declared that *"By the law of nature these things are common to all mankind, the air, running water, the sea, and consequently the shores of the sea"*. This articulation established a principle that resources fundamental to human life and society – air, water, and the sea – are part of the commons and are incapable of being exclusively appropriated. Philosophically, this reflected the natural law idea that such resources, being gifts of nature, should be available to all. Legal historians regard this Roman precept as laying the groundwork for the modern public trust doctrine. In essence, the sovereign came to be seen as a guardian or custodian of these special natural resources, managing them for the community's benefit rather than for private exploitation[ii].
Medieval and early modern legal traditions carried forward these notions of common ownership and sovereign guardianship. In Europe, and later in English law, the idea took root that certain resources (like navigable waters, shorelines, and forests) were held by the Crown "in trust" for the public's use and could not be alienated to private owners. For example, English common law, influenced by Magna Carta and jurists such as Henry de Bracton and Sir Matthew Hale, recognized public rights in tidelands and navigable rivers. The Crown's title to the beds of tidal waters was burdened with a public servitude and the obligation to preserve the public's right of navigation, fishing, and access. These early environmental or resource-use traditions did not use the term "public trust doctrine" per se, but they encapsulated the core ideal: that the sovereign holds certain resources in fiduciary capacity for the community. This legal heritage formed the conceptual bridge from the Roman doctrine of '*res communes*' to the later formalization of the public trust doctrine in Anglo-American law.

EVOLUTION THROUGH COMMON LAW AND AMERICAN EXPANSION:
The public trust concept underwent significant transformation under English common law and, especially, in its transatlantic voyage to the United States. In British law, the principle remained somewhat limited in scope – primarily ensuring public access to navigable waters and preventing total privatization of rivers, the seashore, and fisheries. Courts treated the Crown as unable to abdicate its responsibility over such resources, thus implicitly recognizing a trust-like duty. Notably, English common law provided that title to resources like rivers, lakes, coastal waters, and the seashore was vested in the Crown "in trust" for the benefit of the public. This meant the government had no unfettered authority to dispose of these resources; it was constrained by the obligation to preserve the public's ability to use and enjoy them without unjustified hindrances. However, beyond these traditional uses, the doctrine did not dramatically expand in its country of origin[iii].

It was in the United States that the public trust doctrine was more fully articulated and expanded as a distinct legal doctrine. American courts, after Independence, inherited the English 'common law' principles and then developed them further. A hallmark of this development was the U.S. Supreme Court's landmark case[iv], often cited as the seminal public trust case. In this case, the Court struck down a legislative grant that had transferred a large portion of the Chicago harbor to a private railroad company. The Court reasoned that "*the state held title to the lands under navigable waters in trust for the people, and that it could not alienate such trust property for purely private purposes without impairing the public interest in navigation and commerce*". This decision "expanded the doctrine" into a constitutional limitation on state power, affirming that "*the state cannot divest itself of public trust resources if the result would undermine the public's right to use them*"[v]. Illinois Central established two key points: (1) the public trust doctrine limits the government's ability to convey essential resources into private hands, and (2) the state has an affirmative duty to supervise and maintain such resources for public use. American jurisprudence thus transformed the doctrine from a mere background principle into a legally enforceable trust obligation of the state.

In the twentieth century, the public trust doctrine in the U.S. was further reinvigorated and conceptually broadened. A pivotal moment was the scholarship of Professor Joseph L. Sax, whose famous 1970 law review article[vi], advocated using the doctrine as a robust legal tool for environmental protection. He distilled the doctrine's core restrictions on government: trust resources must be used for a public purpose and remain available to the public; they cannot be sold into purely private ownership; and they should be maintained for certain types of uses. Sax's work effectively revived the public trust concept in modern environmental law, inspiring courts and advocates to extend it to new contexts such as parks, wildlife, and ecological values. Subsequent American cases heeded this call. For instance, the California Supreme Court's case[vii] built on both Illinois Central and Sax's reasoning to hold that the state's trust duty extended to preventing ecological harm to navigable waters caused by upstream diversions. The court recognized "trust values" in water, which included recreational and ecological interests, and imposed a continuing duty on state agencies to monitor and reallocate water rights if necessary to protect those interests. By the late 20th century, many U.S. jurisdictions had embraced the public trust doctrine in some form and were testing its frontiers in areas like groundwater, wetlands, and the atmosphere.

In essence, through English common law, the doctrine provided a basis for public rights in certain resources, and through American jurisprudence, it blossomed into a powerful doctrine of resource stewardship. The transatlantic migration turned the public trust from a narrow customary rule into a broader principle of environmental law, especially under the influence of progressive scholarship and bold judicial decisions.

THE PUBLIC TRUST DOCTRINE IN INDIAN JURISPRUDENCE:

India's entry into the public trust discourse came mainly through judicial innovation in the 1980s and 1990s, at a time when the higher judiciary was actively expanding environmental rights under the aegis of the Constitution[viii]. Although Indian law did not explicitly codify the public trust doctrine in any statute, the Supreme Court grafted this principle onto Indian jurisprudence as part of its broader environmental activism. Through environmental PILs, Indian courts ventured "beyond adjudicating specific cases" and began to articulate overarching principles and oversee environmental governance. Scholars have noted that during this period, the higher judiciary became a "prime actor" in developing environmental law in India, often stepping into the void left by executive inaction. Judges not only enforced existing laws but also innovated new doctrines and procedural relaxations to address environmental harms.

The public trust doctrine in India was explicitly recognized and applied for the first time by the Supreme Court in the case of M.C. Mehta[ix]. This case is now a beacon in Indian environmental jurisprudence as it involved a private company's attempt to divert the flow of the Beas River in Himachal Pradesh to benefit a riverside motel, with the state government's consent. Finding this act egregiously harmful to the environment, the Supreme Court seized the opportunity to articulate a new doctrine. Drawing from American precedents[x] and English common law[xi], the Court declared that "our legal system is based on English common law and includes the public trust doctrine as part of its jurisprudence". Emphasizing the role of the state as trustee of all natural resources "meant for public use and enjoyment," the Court held that 'the government is under a legal duty to protect these resources and cannot abdicate the trust by allocating them for private ownership or commercial use'. In effect, the Supreme Court constitutionalized the public trust doctrine, linking it to Article 21[xii] and to the state's

fundamental duty under Article 48A to protect and improve the environment. It asserted that even in the absence of specific legislation, the public trust principle is a restriction on state authority and the state must act as a guardian of natural resources and cannot "convert them into private ownership". *Kamal Nath's case*[xiii] thus firmly planted the public trust doctrine in Indian law, and it did so by blending common law trust principles with constitutional values. The judiciary's reasoning made clear that henceforth the doctrine would serve as a backdrop against which all state action regarding natural resources would be judged. In the years following this decision, Indian courts, i.e., both the Supreme Court and various High Courts, repeatedly invoked the public trust doctrine to safeguard diverse ecological assets. For example, the Supreme Court[xiv] relied on the public trust doctrine to nullify a municipal contract that allowed a private developer to construct an underground market beneath a historic public garden in Lucknow. The Court held that the city authorities, by leasing out a public park for a commercial use, had violated their duty as trustees to maintain that open space for the public. Similarly, in the Hinch Lal Tiwari case[xv], the Supreme Court applied the doctrine to protect village common lands from being allotted for housing, affirming that natural resources like forests, lakes, ponds, and hillocks are "material resources of the community" that must be safeguarded for a healthy environment.

At the same time, the Indian judiciary has shown pragmatism and restraint in applying the doctrine. In the *Calcutta High Court case*[xvi], a public park was partially encroached to rehabilitate street vendors. The court acknowledged that "ecological balance and greenery are essential," but held that the need for development could not be totally ignored. Similarly, in the 2006 case[xvii], the Supreme Court analyzed public trust closely and emphasized that it imposes a positive duty on the State but "does not prohibit alienation of property." The Court observed that the government may not use public lands in a manner "against public purpose" or sell them, and should not "deviate from the traditional uses of the resources" without an overriding public necessity. In other words, courts have generally balanced the public trust principle against competing needs: they enforce the doctrine to block blatant profiteering on commons, but have accepted reasonable development when duly justified. For example, in the Andhra High Court case,[xviii] the court held that subterranean water belongs to the State in public trust and can be protected from pollution even absent specific legislation, but it did not absolutely bar sensible uses of forest land. In this way, the doctrine has grown into a flexible fiduciary standard: the State must regulate and restrict use of public resources to protect the "pristine purity" of commons, subject to demonstrable public interest requirements.

High Courts across India have paralleled the Supreme Court in embracing the public trust doctrine, especially in environmental PILs. The Kerala High Court's famous case[xix] applied public trust doctrine to groundwater conservation. There, a local panchayat had cancelled a private company's licence for over-drawing groundwater, after wells went dry in the village. The High Court reinforced that groundwater is a public resource and the State holds it in trust for villagers. Critically, the court quoted at length: "The Public Trust Doctrine primarily rests on the principle that certain resources like 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 doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public, rather than to permit their use for private ownership or commercial purposes". Relying on *Kamal Nath*[xx], the Kerala High Court held that the State had "committed a patent breach of public trust" by allowing commercial bottling on an ecologically sensitive forest area. It therefore imposed strict safeguards: groundwater withdrawal had to be monitored and regulated by the panchayat, and the company's licence was effectively revoked. Notably, the Kerala court emphasized that *Kamal Nath* had "expanded" the public trust doctrine beyond water to *all ecosystems and natural resources*. Other High Courts have followed suit. For instance, courts have ruled that municipal authorities cannot convert parks or commons into commercial schemes, and that tanks and ponds originally meant for rainwater harvesting must be protected from infill. In each such case, the underlying message is the same: the State and its agencies cannot abdicate the public trust by handing over community-owned ecology to private interests.

By the 2010s, the National Green Tribunal (NGT) became the specialized forum for environmental justice. The NGT's early climate and pollution-related orders have touched indirectly on public trust doctrine. In a 2014 suo motu case concerning the fragile Rohtang Pass in Himachal Pradesh, the NGT acknowledged the State's duty to curb activities that threaten glaciers and ecosystem balance. It found the state had violated fundamental duties (Articles 21, 48A, 51A(g)) by failing to limit tourism traffic, which was causing glacial melt. The NGT affirmed

the polluter-pays and precautionary principles but did not explicitly invoke "public trust doctrine" terminology; instead, it ordered afforestation and strict traffic controls to restore the commons[xxi].

More recently, litigants have begun to press the public trust doctrine in climate-change cases before the NGT. In 2019, a group of school students filed[xxii], explicitly arguing that the State had breached its public trust in the atmosphere and climate system. The petition invoked India's obligations under the Paris Agreement[xxiii] and argued that "environment" in law must encompass climate, thereby triggering the government's duty to enforce mitigation measures. In its ruling, the NGT did not reject these premises out of hand, but it ultimately dismissed the case on technical grounds. It noted that international commitments like the Paris Accord are indeed reflected in India's policy framework and held that India's environmental regulations "necessarily encompass the climate". In effect, the Tribunal signalled that some climate responsibility is already implicit in the law, but it stopped short of issuing new orders under the public trust doctrine. In conclusion, the NGT has demonstrated cautious engagement: it applies broad constitutional duties to environmental harms but has been reluctant to grant sweeping new powers based on public trust doctrine without a clear legislative mandate.

Throughout this evolution, the Indian judiciary has widely used the public trust doctrine as a doctrinal tool to expand environmental governance. Apart from *Kamal Nath* and *Plachimada*, courts have applied it in dozens of PILs: examples include challenges to coastal development, sand mining, wetland destruction, pollution, and industrial permits. The doctrine's flexibility has let judges *fill gaps* left by weak legislation. When regulators fail or licenses are granted improperly, courts have invoked the public trust doctrine to void those actions and demand restoration. In this way, jurisprudence on trusts and trustees has become part of India's environmental arsenal, complementing principles such as the precautionary principle and the polluter-pays principle. Doctrinally, Indian cases have thus treated public trust as a judicially enforceable principle of constitutional governance; it is not a statutory right, but a common-law principle now woven into the fabric of Article 21 and Directive Principles. Courts routinely cite it to impose affirmative duties on the executive, for instance, ordering afforestation, restoration of river courses, and even penal sanctions on polluters, all in service of the public trust.

The socio-legal context of this judicial activism is striking. Indian courts began embracing environmental PILs in the 1980s and 1990s precisely because legislative and administrative responses were seen as inadequate. At that time, a mix of mass movements and grassroots activism generated public interest litigation, and the Supreme Court responded by evolving new principles of "constitutional environmentalism". *Kamal Nath's Case* itself drew on international common-law sources and grafted them onto India's Constitution. In effect, the judiciary expanded the rule of law into domains where Parliament and the executive had not yet acted, treating the environment as a trust for posterity. This met with public approval among environmentalists but also triggered pushback. Commentators note that by the late 1990s, some critics began to decry the Supreme Court's "judicial overreach" and argued that unelected judges were making policy rather than simply interpreting law. Scholars observed that "the Court's interventions in policy matters and in securing the enforcement of judgments were viewed as overreach" by others. The NGT itself was ultimately created in 2010–11 to channel environmental disputes to a tribunal with greater technical expertise and to moderate the broad remedies being fashioned in PILs.

Critically, the public trust doctrine's usage has not been uniform or uncontested. Some analysts argue that Indian courts have applied it selectively. It is argued that while the Court has vigorously curtailed small-scale polluters, it has been more deferential to large corporate or infrastructure projects. In empirical studies, scholars like Muralidhar[xxiv] and Baviskar[xxv] have documented that many environmental PILs have pitted middle-class litigants, demanding clean air/parks against impoverished locals facing eviction or job loss, raising the question "who has rights to the city" in the name of "environmentalism". These critiques highlight a potential democratic accountability problem whereby, in enforcing the public trust doctrine aggressively, courts may inadvertently privilege certain groups and interests.

In summary, Indian jurisprudence has appropriated the public trust doctrine in an expansive manner, using it to hold the State and other actors accountable for protecting the commons from degradation. From *Kamal Nath* in 1996 to the NGT's recent climate petitions, courts have treated natural resources as irreplaceable assets belonging to all. This judicial expansion of environmental governance has corrected many regulatory failures, but it also raises questions about the separation of powers. Critics warn that judges are sometimes acting as environmental trustees in place of elected officials, potentially straining democratic legitimacy. At the same time,

supporters argue that in the face of persistent pollution and ecological harm, creative judicial doctrines like public trust are necessary to enforce fundamental rights. The future evolution of the doctrine in India will likely depend on this tension: whether legislatures and agencies take greater responsibility or whether citizens continue to compel the courts to treat nature as a precious public trust.

STATUTORY ENVIRONMENTAL LAW VS. JUDGE-MADE PRINCIPLES: A DOCTRINAL TENSION

Despite a robust framework of environmental statutes in India, ranging from the Air and Water Acts to the Environment (Protection) Act, 1986, and the Forest Conservation Act, 1980, much of the country's environmental governance has been driven by judicially created principles. The Supreme Court and, more recently, the National Green Tribunal (NGT) have evolved doctrines such as the precautionary principle, polluter pays principle, absolute liability, strict liability, and the public trust doctrine to address the perceived lacunae in the statutory regime. It is a common thought amongst environmental scholars that national and state agencies "have largely failed in their duties" of environmental protection, effectively compelling the judiciary to assume quasi-legislative powers to redress governmental inaction. This mix of judge-made norms with formal legislation creates doctrinal and procedural dissonance[xxvi]. On the one hand, statutes prescribe specific processes, such as the requirement of prior clearances, prescribed standards, or compensatory afforestation conditions. On the other hand, courts insist that broad constitutional obligations (Art. 48A, Art. 51A(g), Art. 21)[xxvii] and international principles must guide environmental outcomes, sometimes extending beyond what the statutes explicitly mandate. The result is a persistent gap between the law as written and the law as enforced[xxviii].

This gap can be seen most clearly in how judicially declared principles have no direct counterpart in statute. For example, in the Vellore case,[xxix] the Supreme Court held that the precautionary principle and the polluter-pays principle "have been accepted as part of the environmental law of the country". These principles were invoked under the aegis of the Directive Principles of State Policy under Art. 48A and Fundamental Duties under Art. 51A(g), even though neither EPA 1986 nor any central enactment explicitly enshrines them. Similarly, judges have articulated an "absolute liability" rule for hazardous industries and have applied an expansive public trust doctrine to natural resources. In each case, the Court effectively invented substantive obligations in the name of sustainable development. Yet, these innovations stretch beyond the letter of the Constitution and statutes. In other words, the judiciary has treated broad policy principles as though they were binding norms, while the legislature and executive have not codified them with the matching detail.

Institutions like the Ministry of Environment, Forests & Climate Change (MoEFCC) and the Pollution Control Boards (SPCBs/CPCB) are charged with enforcing environmental law but have often been overwhelmed or under-empowered. It is observed that the executive agencies "have not only failed to enforce policies but also to adapt them to India's changing environmental needs"[xxx]. This institutional weakness compounds the legislative–judicial divide in India. When regulators neglect environmental standards or permit harmful projects, courts step in under the Writ Jurisdiction of Art. 32 or 226 to impose requisite remedies. For instance, the Supreme Court in 2004[xxxi] struck down a MoEFCC circular that retrospectively extended deadlines for mining leaseholders to comply with the EIA Notification, holding that a statutory clearance requirement "cannot be notified by circulars" and has no retrospective application. Here, the Court re-affirmed the primacy of the statutory written law i.e. the 1994 EIA Notification under the Environment Protection Act 1986, against an executive attempt to rewrite it. But, in practice such strong stances are more exception than the rule; more often, courts fill gaps by broad interpretation rather than awaiting legislative reform.

The Polluter Pays Principle illustrates this disagreement. Judges have famously declared that polluters are "absolutely liable" to pay not only compensation to victims but also remediation costs, even independent of intent or negligence. The Supreme Court in 1996 characterized pollution of land and water in Rajasthan, and the resulting public health crisis, as a nuisance that invoked the polluter-pays norm. It pronounced that the cost of pollution should be borne by polluting industries and even mandated the creation of a fund from the offenders for environmental cleanup[xxxii]. However, statutory law did not mandate such an outcome. The Water and Air Acts impose criminal penalties and fines, and EPA rules allow seizure of hazardous substances, but there is no express scheme for internalizing full ecological costs. It is to be noted that although the polluter pays principle has been accepted in principle it still remains largely a judicial policy rather than a detailed statute. In practice, when courts apply it, they do so as a matter of equitable justice, often citing general public interest rather than

enforcing a clear statutory right. Thus, while the Supreme Court may proclaim "the polluter pays principle" as a constitutional ideal, factories and developers operate under regulatory regimes that do not automatically fix the cost to cover environmental harm. The chasm becomes apparent when remediation costs are contested: the courts impose them case by case, but legislation has no built-in mechanism to calculate or collect such costs routinely. In short, judicially created liability hangs in the air unless the legislature expressly codifies or the executive designs a compliance mechanism to implement it.

A similar pattern appears with the Precautionary Principle. The Supreme Court distilled its contours in the enviro-legal case[xxxiii] where regulators must "*anticipate, prevent and attack the causes of environmental degradation*", scientific uncertainty cannot justify inaction, and the burden of proof shifts to developers to demonstrate a benign impact. The Court has since invoked this doctrine in many PILs, for example, in a recent Bombay High Court case which involved a protest against the Mumbai's coastal roads, the court held that splitting a single project into two EIAs violated the precautionary approach. Here again, however, there is no one-to-one match in statutory law. India's EIA regime requires prior clearance for defined projects and calls for environmental management plans, but it does not inherently forbid "truncating" a project or guarantee independent oversight beyond the checklists. When developers or authorities have tried to game the system, say, by treating different road segments as separate projects, it is only courts that have insisted on full risk assessment consistent with precaution. Outside litigation, precaution is only ambiguously present in policy statements; the National Environment Policy, 2006, speaks of a precautionary approach, but its own implementation is "limited to an economic argument," encouraging integration rather than hard limits. In effect, the principle of precaution has been largely judicially imposed against a backdrop of technical environmental clearance rules. As with the polluter pays, this creates gaps in procedure: the judiciary demands caution, but the legislation provides no routine trigger or standard to enforce it. This mismatch forces reliance on litigation to apply the principle, rather than on proactive regulatory design.

Concrete examples of this 'jurisprudence–legislation' gap abound in contentious approvals. Consider the forest diversion regime. As per the legislation, any non-forest use of forestland requires prior approval of the Central Government under the Forest Conservation Act, 1980(FCA 1980, and conditions of compensatory afforestation and measures for protection. In practice, however, confusion arose over central authority, where an NGT bench[xxxiv] clarified that Section 2 of FCA vests "final" sanction in the State Forest Department, subject to appeal to MoEFCC, overturning earlier practice that the Centre had veto power. This decision effectively re-interpreted the statute: although FCA 1980 formally requires "prior approval of the Central Government" for tree-felling, the NGT held that states have the power to make initial decisions with central clearance as a later formality. Critics see this as an expansion of judicial overreach into the legislative sphere. On the other hand, it highlights a real implementation gap: the clearing process had become stalled by uncertain allocations of authority, and the courts stepped in to resolve it. Yet the need for NGT intervention itself shows that the Legislature's language proved ambiguous or insufficiently granular. Further, while FCA rules impose compensatory afforestation quantitatively e.g. 1:1 or 2:1 ratio, courts in Godavarman litigation[xxxv] have repeatedly admonished poor compliance with compensatory afforestation requirements, implying that the strict scheme exists more on paper than on the ground. Thus, both the procedural law and its implementation have been propped up by judicial monitoring, revealing a deep dependence on judge-made enforcement rather than purely statutory processes.

Even in the core environmental impact assessment regime, conflicts between statutes and cases arise. The EPA 1986 empowers the executive to notify projects requiring clearance as embodied in the 1994 and 2006 EIA Notifications. However, courts and tribunals have repeatedly scrutinized whether this scheme has been properly applied. In the mining case[xxxvi], the Supreme Court admonished MoEFCC for using mere administrative circulars to extend EIA deadlines, calling such circulars a "total non-sensitivity" to the Notification's purpose. The Court insisted that the mining sector must comply with the Notification's white-paper rules as a mandatory law. Likewise, the NGT in 2015[xxxvii] interpreted the 2006 EIA Notification expansively, where a huge Yamuna bridge was held to be a "project" requiring clearance, even though the Ministry had earlier maintained that such bridges fell outside the list. The NGT concluded that any bridge above the notified thresholds must undergo Category B appraisal under EIA guidelines. This judicial correction of the executive's narrow reading again shows the gap where the statute's broad scheme collided with administrative interpretation, and the Court/Tribunal enforced

the former. The judiciary has likewise refused to allow "truncated EIAs.The result is that India's EIA regime relies on continual judicial oversight to work as intended, rather than on legislative refinement or executive rigor alone. Where statutory law falls short, even the NGT Act blends jurisprudence into statutory form. The 2010 National Green Tribunal Act explicitly instructs the Tribunal to apply the precautionary principle, polluter-pays principle, and sustainable development "while passing any order". In other words, certain judge-made concepts have been transmuted into statutory standards but only within the NGT's own proceedings. The NGT wields broad remedial powers and binding authority, but it too relies on the underlying environmental statutes to frame its remedies. For example, the NGT in the Vikrant Tongad[xxxviii] case had exercised authority only because those projects technically fell under the Notification. Nevertheless, by incorporating judicial doctrines as part of the NGT mandate, the legislature acknowledges the very gap this section intends to highlight; it signals that, absent these judge-made norms, the statutory regime might be incomplete.

The institutional interplay further underscores the disjunction. On one hand, pollution control boards and the MoEFCC are meant to implement environmental law in the first instance – issuing consents, monitoring compliance, and enforcing standards. On the other hand, courts have repeatedly censured these bodies for inaction or misfeasance. The result is cyclical, dynamic courts that emphasize statutes when they review clearances; however, it also injects broad principles into those reviews when statutory law seems inadequate. For instance, in judicial review of an industrial permit, a High Court might only quash the permit if the competent authority acted "outside the powers given to it by the EPA" or was "Wednesbury unreasonable". But in public interest litigation, it may go further, invoking the right to life and sustainable development. This creates procedural tension where standard civil doctrine is strict, still, environmental cases routinely employ relaxed rules. In essence, this doctrinal gap between Indian environmental jurisprudence and legislation reflects both a creative judicial response to policy failure and a structural tension in the legal system. The Supreme Court's "aggressive stance" has improved public awareness and enforced constitutional mandates, but it has also "disrupted the balance of powers". On the one hand, courts have had no choice but to step in given executive and legislative inertia. On the other hand, this intervention has sometimes overshot, imposing wide obligations without a clear statutory basis. In practice, the environment continues to be governed by a hybrid regime: formal statutes provide the skeletal architecture, while judicial principles flesh out the gaps, often in the form of case-specific mandates. This hybrid system can yield innovative protection, but it also results in uncertainty. Unless legislative reform explicitly codifies widely accepted principles like the precautionary principle and the polluter-pays principle, or empowers institutions to implement them, the law will remain a patchwork of statutory text and judge-made doctrine. Ultimately, bridging the gap requires both doctrinal critique and institutional reform: statutes must be clarified and agencies must be strengthened so that environmental goals need not rely solely on the courts' goodwill.

LEGISLATIVE RELUCTANCE AND COMPARATIVE PERSPECTIVES

Despite over two decades since *Kamal Nath*[xxxix] and a rich body of case law applying the public trust doctrine, the Indian Parliament has conspicuously avoided codifying this doctrine explicitly in environmental legislation. Important environmental statutes enacted or amended post-1996, such as the Wildlife (Protection) Amendment (2002), the National Green Tribunal Act (2010), or the Compensatory Afforestation Fund Act (2016) – do not contain language declaring the state a "trustee" of natural resources or directly incorporating public trust obligations. The Forest Rights Act of 2006, which recognizes the traditional rights of forest-dwelling communities, implicitly acknowledges a more democratic distribution of forest resource stewardship; still, that Act frames the state's role in terms of managing and protecting forests without invoking a trustee terminology. This legislative silence or reluctance may stem from multiple factors. It might reflect a political calculation to leave flexible room for development decisions without the stringent constraints a codified trust duty would impose. It may also indicate that lawmakers consider the existing constitutional provisions under Articles 48A and 51A(g) and the wide array of regulatory statutes sufficient, rendering an express trust doctrine unnecessary or duplicative.

Another possibility is that the principle, being judge-made, has simply not been on the legislative agenda and perhaps out of deference to the courts' domain over it, or due to a lack of consensus on its scope. Whatever the reason, the result is that in India, the public trust doctrine today lives in the judicial realm and legal scholarship

only, rather than in black-letter statutory law. It is, in a sense, a constitutional principle by interpretation and a part of the "common law" of the Indian Constitution, rather than a codified rule. This stands in contrast with some other jurisdictions where the legislature or constitution explicitly recognizes state trusteeship of the environment. Indeed, attempts to use the Public Trust Doctrine in Parliament could be seen as provocative if the doctrine is viewed as a product of judicial activism. For instance, after the Mullaperiyar dam litigation[xl], the Kerala legislature passed a law invoking the precautionary principle to raise the dam's water level. The Supreme Court struck this down as an impermissible intrusion into its final fact-finding. This incident sent a clear message that the legislatures cannot override settled court findings by invoking the Public Trust Doctrine or similar doctrines. Such episodes create mutual wariness: if Parliament enshrined the Public Trust Doctrine, it might find its laws challenged as attempts to influence courts, or conversely, it might feel judicial control over resource policy was too expansive. Another dimension is "turf-sensitivity." The Public Trust Doctrine implicates core sovereign functions such as allocation of public resources, environmental management, and areas where executive and legislature naturally dominate. Judges inserting themselves into this policy space can breed resentment. India's Supreme Court has "repeatedly gone beyond the principle of separation of powers and redefined its role in environmental protection". This has led to criticism that courts are carrying out functions normally belonging to experts or regulators.

In short, all factors are likely at play. By not codifying PTD, lawmakers retain a loosely bound framework that allows adaptive management of natural resources, a kind of deliberate "constitutional common law" approach. But this may also reflect cautious turf-guarding. The judiciary made the Public Trust Doctrine prominent by declaring it "law of the land"; the legislature may simply have watched, unwilling to pre-empt or constrain that process. The result is a doctrine that "assigns responsibility to the state to manage the nation's public resources for future generations," but that has "raised issues regarding the balance of powers among the judicial, executive, and legislative branches".

A comparative glance is illuminating to better understand the aspects associated with the Public Trust Doctrine. South Africa explicitly incorporated a public-trust-like duty into its environmental statutes. It proclaims: "the environment is held in trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage."[xli]. This express trust clause is not just aspirational text: it underlies sectoral laws too. For instance, the Water Act[xlii], declares the national government "public trustee of the nation's water resources" with a mandate to ensure water is managed equitably and sustainably. The Mineral Act[xliii] similarly calls minerals the "common heritage of all South Africans", and names the State as custodian. In short, South Africa chose legislative codification of trusteeship rather than judicial interpretation. The aim appears to be anchoring environmental justice in law, giving courts and citizens a clear statutory mandate to enforce sustainable use. These trust provisions have been upheld as principles that guide decision-makers and even inform constitutional interpretation, even if courts have not been asked to strike down a law for violating them. The South African model shows how codification can embed trusteeship into routine governance, reducing reliance on ad-hoc judicial decrees.

By contrast, Australia has never embraced the common-law doctrine on Public Trust. Courts in Australia have "frequently rejected" applying the doctrine, and it contemporarily "does not form part of Australia's common law". Instead, Australian environmental protection rests on statutory schemes like the Environmental Act,[xliv] and administrative processes. While there is growing academic interest in the Public Trust Doctrine globally, as of now, Australian courts deflect from it and focus on legislative objectives and procedures. This creates a very different balance where resource governance is largely policy-driven and political, with judicial review checking statutory compliance, rather than enforceable constitutional trust obligations. Environmental disputes in Australia tend to revolve around permit conditions, EIA processes, or specific statutory duties, not on broad common-law trust duties.

These contrasts suggest different trade-offs. South Africa's codification adds clarity and permanence: trusteeship is now part of black-letter law and has constitutional backing, since its Bill of Rights guarantees environmental rights. It enhances 'Rule of Law' predictability where citizens can point to a statutory trust duty, and legislators must work within it. But it also means policy debates must contend with a clear standard. Australia's reliance on statutes gives more legislative flexibility, but also means there is no overarching trust principle to constrain all resource decisions. Our doctrine sits at a crossroads of law and policy. The Supreme Court has embraced it as a

constitutional principle, yet Parliament has remained silent, neither enshrining it in new statutes nor modifying existing laws to embody it. This appears to be a blend of strategic caution and institutional deference whereby not legislating, India keeps a flexible judge-made standard but also avoids direct conflict with the judiciary over resource policy. Comparative lessons are mixed; South Africa shows how codification can lock in environmental justice, while Australia demonstrates how statutory regimes can function without any trust principle. In India's case, the public trust doctrine today remains a "judge-made" edifice. Unless lawmakers actively codify it, the doctrine's future influence will depend on continued judicial advocacy. That in turn means courts must carefully balance their environmental zeal with respect for parliamentary supremacy. The outcome will shape whether India's trusteeship ideal remains an aspirational injunction of the courts or matures into a statutory right that guides all the government's policy on natural resources. In effect, India's trust doctrine operates like South Africa's in spirit, but like Australia's in form: courts can invoke it, but administrations aren't formally bound by a "trust code."

CONCLUSION AND RECOMMENDATIONS:

Through this paper, we have scrutinised the public trust doctrine in India through legislative, judicial, and doctrinal lenses, exposing a deep disconnect between the law and practice. We found that despite the Supreme Court's declaration that "*the state is the trustee of all natural resources for public use*" and that such resources "*cannot be converted into private ownership*", no comprehensive statute explicitly embodies the trust principle within the statute. In fact, the Court itself has lamented this void, noting that "in the absence of any legislation, the executive acting under the public trust doctrine cannot abdicate the natural resources and convert them". In practice, therefore, the doctrine in India has evolved almost entirely through purposive judicial interpretation. Courts have innovatively imposed remedies like the requirement to pay net present value for forest land use on public authorities, precisely by invoking an implicit trust-based mandate. These developments underscore both the potential of the Public Trust Doctrine to guide resource management and the limitation that it rests on ad-hoc judicial intervention rather than clear statutory command.

A major issue running through our analysis is regulatory fragmentation and statutory gaps. India's environmental legal framework is highly segmented, with multiple sectoral Acts and agencies governing water, air, forests, wildlife, etc. This leads to a "multiplicity of laws" that are crying out for consolidation. In such a patchwork system, the public trust doctrine lacks a single institutional home. No statute, not even the Environment Protection Act or Water (Prevention & Control of Pollution) Act, unambiguously spells out public trusteeship or channels it into norms or licenses. The result is overlapping or inconsistent mandates among ministries and boards, which courts must navigate on a case-by-case basis. This fragmentation amplifies statutory gaps with no unified code; essential trust principles, such as restrictions on alienation of resources, have no legislative anchor. Because of these gaps, the judiciary has taken the lead in fleshing out the mandate of the public trust doctrine. Landmark decisions like M.C. Mehta v. Kamal Nath expanded the doctrine's scope and used it to invalidate executive approvals that squandered environmental patrimony. Doctrinally, India's Public Trust Doctrine has emerged as a quintessential judicial innovation. The Supreme Court of India has explicitly linked it to constitutional duties, for example, supporting compensatory levies from a constitutional trust standpoint, and routinely invoked it in matters of forests, water, and parks. However, this case-by-case development means the doctrine's application can be unpredictable and uneven due to subjective judicial discretion. Each new context has required litigants to infuse the doctrine into existing laws or in the void between them. In short, Indian courts have had to "fill the gaps" left by the legislature.

The foregoing analysis suggests that a purely judicial approach cannot by itself ensure robust trust-protection of resources. Legislative actors must assume responsibility. Fortunately, there is significant potential in a legislative approach towards the public trust doctrine, if properly pursued. Translating the doctrine into law could mean codifying trustee duties in a unified Environment Code, or amending existing Acts to impose express trust obligations on public agencies. It could also involve setting clear benchmarks grounded in trusteeship, so that the doctrine is no longer just an injunction but a guide to regulation.

Policy recommendations: To bridge statutory gaps and harmonize mandates, this paper advances the following prescriptions, drawn from our analysis:

A. Legislative codification of the Public trust Doctrine: Enact a unified environmental statute or constitutional amendment explicitly recognizing the state's trustee role. This could mirror how the Supreme Court phrases the doctrine – e.g. by declaring that water, air, forests and shorelines are held in public trust and cannot be alienated for private/commercial use. A clear legal mandate would remove uncertainty about the doctrine's scope and ensure all regulators must implement it in policy and licensing.
B. Institutional reform: Establish empowered environmental bodies at the Centre and state levels (for example, a National Environment Management Authority and State Environmental Authorities) as envisaged by recent reform proposals. These bodies would have rulemaking and enforcement powers across sectors, ensuring trusteeship principles pervade decision-making. A single-window approval mechanism or appellate forum, also recommended in reform reports, would streamline oversight and reduce the fragmented handling of projects that currently lets precious resources slip through procedural cracks.

Harmonization of laws. Consolidate overlapping statutes to eliminate regulatory overlaps and contradictions. In practice, this means merging statutes like the Water Act, Air Act, and EPA into one coherent environmental law, as earlier expert committees have suggested. Subordinate rules and policies should likewise be reviewed to align with public trust goals. Such harmonization would reduce gaps and delegate clarity about how the doctrine should influence every field, for example, making it a guiding principle in urban planning, forestry, mining and water allocation schemes.

These recommendations are aimed at moving the trust doctrine from an informal judicial construct to a structured public policy framework. By explicitly embedding trusteeship in law and institutions, India can turn its judicial gains into lasting policy. In doing so, it will address the "limitations" of the present legislative approach, namely, the absence of trust-based duties in statutes and the fragmentation of authority, while realizing the doctrine's potential to protect commons for future generations. In essence, our analysis reveals that India's trust doctrine is now only as solid as our statutes allow it to be. Courts have kept the doctrine alive, but only legislation can give it robust, predictable force. A proactive parliamentary and executive agenda aiming at codifying the doctrine, unifying environmental laws, and institutionalizing guardianship is the most plausible way forward if India is to honor its public trust obligations in law as well as in principle.

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