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Doctrine of Public Trust Superimposes Secularism: Discourse with Reference to the Covid-19 Mass Deaths in India

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ABSTRACT

The mass deaths in COVID-19 persuaded the human race to align their actions for the protection of environment and human health as a part and parcel of it. In India, the lack of resources and water in the river for the performance of 'final rites' ceremony of the deceased disgruntled the economically weaker sections of the community and forced them to leave the corpse without the performance of final rites ceremony. The newspaper reports about two thousand such corpses lying in the bank of holy Ganges. This situation raises the question of purity of water and the piousness of Ganges on the one side, and the probable implication on the health and ecology as a whole on the other side. This paper endeavours to state that the international instruments for protection of environment and the provisions of the Constitution of India require the State to dispose of the corpses in such a manner that prevents any further harm to the ecological integrity of the Ganges river basin and other such water bodies. It highlights the significance of public trust doctrine for protection of natural resources stating that the State could swap away the burial customs for protection of human rights and the environment. It provides the significance of holocene approach and concludes with the positive role of the State for protection of the environment.

KEYWORDS

COVID, Doctrine of Public Trust, Health, Burial Customs, Environment Protection

INTRODUCTION

India is facing the threat of corona virus pandemic since the inception of January 2020.(1) There have been a number of

persistent and recurrent lockdowns. (2) COVID-19 has taken the lives of about five lakh people and infected more than three crore people all over the country.(3) It led to despicable conditions all over the World. The pandemic caused unique perplexity in the management of natural resources for final rites of the deceased. (4) This paper endeavours to highlight the enormity of issue in terms of health, environment and public conscience. It provides that the mass disposal of corpses through the machinery of State is a part of its responsibility under the public trust doctrine recognised by various international instruments like Stockholm Conference on Human Environment 1972, Rio Declaration on Environment and Development 1992, etc. and Articles 48 and 51-A(g) (5) of the Constitution of India.

It also endeavours to state that the concept of secularism does not restrict to show allegiance to the customary norms of any religion for the public welfare or in terms of the public trust doctrine.

COVID-19 MASS DEATHS AND THE ENVIRONMENTAL CRISIS

COVID-19 created a pathetic situation which raised demands for coffins and spaces on burial grounds all over the World. The government of United States had to extend the sanctioned spaces for the burial grounds. (6) Most of the Christians prefer burying the corpse rather than cremation. (7) So, burying is the custom in the United States and most of the Western countries dominated by Christian community. However, India represents diversity in religious faiths, language, ethnicity and culture. Most of the religious communities perform cremation rather than burials. (8)

Unlike burial, cremation necessitates a heap of wood to ignite fire. It is despicable to note that the mass deaths occurred due to COVID-19 created a daunting situation by lack of fire woods for the final journey. (9) The media reports an extremely despair state where thousands of people had to leave the corpse of their relatives without having means to offer a final rite ceremony to them. This fact situation is being analysed in the context of public conscience and the consequences for the environmental balance on the following grounds:

1. All the religions and sects in this World follow the practice of offering veneration to God for the life and after-life of the deceased. Most of the religions believe on heaven and hell after the death of a human being and therefore, prefer to read aloud the holy texts from the scriptures of various religions. They practice several norms of prohibition and charity for the well-being of deceased in their after-life.

2. The dead body of a human-being starts decomposition within a short span of death. there are five stages of decomposition (10) which may take even twelve months for its final journey when accompanied through natural food web. The natural decomposition or decay of corpse lying on earth is performed by some specific types of insects which multiply laying eggs on different parts of the body itself. Thus, it is quite disgruntling for any human being even after death and for their relatives too.
3. It is worth notable that if any person utters or expresses or does something that is likely to or that does harm the reputation of any deceased is a punishable offence under sections 500 (11) and 503 (12) of Indian Penal Code 1860.
4. The dead body in the natural environment is prone to attack by dogs, rodents, and various mammals in a disgusting manner which shocks the humanity and norms of an orderly society.
5. It is despicable to note that in the vulnerable and pathetic condition of human life and safety of health created by pandemic COVID-19, such decomposition of corpse by the insects, rodents, pets and other wild animals is likely to generate breeding ground for different types of existing as well as unknown diseases that affects human beings or are likely to affect plants and other living creatures. It has potential to disrupt the agriculture, food web and endanger the life by another endemic of its kind.
6. Uttar Pradesh is one of the highly populated State after Rajasthan. The newspaper reports of more than three thousand corpses lying on the bank of Ganges having lack of enough water to dissolve or or take up the dead bodies could disgruntle public morality to infinite despairs. (13) This is because Ganga is a mighty river which originates from Hemadri and flows throughout the north-eastern Himalayas and joins the river Brahmaputra south-east. It covers a distance of about two thousand five hundred kilometers and thus, it is the longest perennial river in the World. But 'this might' of Ganges poses a vulnerable hazard in these circumstances of pandemic because it usually floods a large part of Uttar Pradesh, Bihar, and West Bengal during the monsoon seasons. (14) It considerably increases the water level of its tributaries Yamuna, Saraswati, and dozens of rivers flowing through them. (15) So, the flood plains wherein the helpless poor citizens have deposited the corpse are likely to get filled up with water of these rivers and the despair to humanity lies in the fact that the flood would not expedite decomposition process instead, it would float the dead bodies. It is also uncertain whether this mighty water current would take the corpse to their distant

bays or would just float them in the flood pins. Thus, it would be quite desecrate tribute to the corpse of a human being who has contributed towards betterment of their family and society throughout its life and have unidentifiable contribution to the maintenance of worth of human values, cultures, emotions and traditions.

7. Such a desolate state of affairs is likely to cause public abhorrence and would be an utter disregard to the principles of constitutional morality.
8. It is worth that the State governments have contributed a lot by deputing their machineries for burying the corpse at the place of crematories by mounds of soil in the bank of respective rivers. But it would be a matter to discern whether such mounds of soils are likely to decompose the corpse completely before the onset of monsoon seasons? It is also discernable to note whether such heaps of soil could withstand the mighty water of floods because usually the upper layer of soils are completely eroded by the flood. The water is likely to get filled in the heaps of mud covering the corpses, thus could even float them and such a situation is likely to:
 - (a) create endemic, generating foul smell of methane gas in bulk;
 - (b) shock public morality and humanity as a whole.

This situation is more apparent because a part of the flood water gets percolated up to the mantle and even core of the earth thus, charging the ground water for rest of the year.

The mass death due to the pandemic COVID-19 was due to a life-threatening respiratory disease. Also, the deaths were caused due to the fact that COVID-19 acted as a catalytic agent for existing life-threatening diseases thus expediting the event of death. So, the chemicals and biomes inside the dead body could act as stimulus for spread of chronic diseases in the insects and animals who attempts to feed upon them.

DOCTRINE OF PUBLIC TRUST FOR THE PROTECTION OF ENVIRONMENT

The concern for protection of environment initiated for the first time in the written form from Stockholm Declaration on Human Environment 1972 (16) which states in Principle 2 that, The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. Later, Principle 1 of the Rio Declaration on Environment and Development 1992 (17) states that, Human

beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. It further integrated the precautionary principle in following terms(18): In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Constitution of India in Article 48 provides an umbrella directive to the State that, The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Thus, this provision favours the holocene rather than anthropocene. These provisions therefore, require the State to dispose the corpses in such a manner that would be in consonance with the principles of Sustainable development, precautionary principle, etc. Such disposal of corpses is also essential in reference to Principle 3 of the Stockholm Declaration on Human Environment 1972 which states, The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

The disposal of corpses could ensure the piousness of the water of Ganges and preserve the faith bestowed in the holy water of Ganges. (19) It would be an indispensable contribution in the protection of environment of rivers, lakes, etc and the wildlife by ensuring the cleanliness of the bank of all these water bodies and preventing other living beings from feeding upon the corpses. These steps would be integral in maintenance of the health of human beings, animals and the ecosystem as a whole and constitute an indispensable obligation of the State through the doctrine of public trust (20). According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority.

"Three types of restrictions on governmental authority are often though to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses".ⁱ (21) The (Hon'ble California Supreme Court) summed up the powers of the state as trustee in the following words:-

"Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the

abandonment of that right is consistent with the purposes of the trust....."ⁱⁱ (22). In *M.C. Mehta v. Kamalnath*,ⁱⁱⁱ (23) Hon'ble Supreme Court of India stated:

"Our legal system - based on English Common Law - includes the public trust doctrine as 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 sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

SECULARISM DO NOT CONFLICTS THE PUBLIC TRUST DOCTRINE

India is a socialist country (24) where the State acts as a trustee for the welfare of people by the conservation and protection of natural resources air, water, forests, lakes, rivers, etc. It is quite desperate that COVID-19 forced many people to have no alternative than to left without the performance of final rites for the deceased. There was glaring perplexity of lack of fire wood and people had to give up their customary practice of offering various holy rhymes before the final rites 'ceremony.

But to leave the corpse without its proper disposal could accelerate various unknown consequences for health, purity of environment, public conscience with reference to reverence and humanity as a whole. Therefore, these circumstances pose a unique question of involvement of machinery of state for proper performance of ceremony of final rites in the context of Secularism.

Constitution of India envisions a secular State which purports that the State has no religion of its own or that the State will not abide by any religion but simultaneously, the State should respect every religion. (25) In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra* (26) this Court held that: "The Secular State rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds." Therefore, this concept of secularism (27) raises a constitutional issue of general importance that whether the State could dispense with the 'customary mode' for performance of final rites for the sake of non availability of resources or convenience? In my view, the State should dispose the corpses according to the norms of the Hindu religion because:

- (i) the population of Hindus are more and

- (ii) other religions does not require firewood or water for the same.

The corpses are lying at the bank of Ganges due to paucity of firewood, water, etc. essential for the performance of final rites ceremony. Such a desolate state of affairs, therefore, empowers the State to dispose the corpses without adherence to the regular burial customs. The public trust doctrine (28) justifies such an alternative measure of the State and it would not conflict with secularism. The application of the doctrine of public trust in the context of protection of environment, human rights, etc. could be construed appropriately in Ronald Dworkin's words:

"Some parts of any constitutional theory must be independent of the intentions or beliefs or indeed the acts of the people the theory designates as framers. Some part must stand on its own political or moral theory; otherwise the theory would be wholly circular."^{iv} (29)

In *S. R. Bommai v. Union of India*^v (30), Court observed:

"The State guarantee individual and corporate religious freedom and dealt with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government." While theorizing the impact of secularism to check the abuse of religious thoughts, Court observed, "The secularism, therefore, represents faiths born out of the exercise of rational faculties. It enables people to see the imperative requirements for human progress in all aspects and cultural and social advancement and indeed for human survival itself." The secularism, through the exercise of such rational faculties provides imperative requirements of human progress and paves way for the effective implementation of the doctrine of public trust for the protection of environment.

Therefore, if the State enforces any measure in defiance of the regular customary norms for the disposal of corpses, such as burying, rather than cremation, such a measure is justified for the reason that:

- (i) the corpses are lying without their proper disposal for want of fire wood, water, etc.;
- (ii) the State is required to dispose the corpses for protection of natural resources, to prevent any endemic and to ensure sustenance of the ecosystem.

So, a secular State is justified in adopting a method different from

the regular customary rites for the disposal of corpses in terms of the doctrine of public trust for the protection of environment.

CONCLUSION

The pandemic posed a threat to the burial customs due to lack of firewood, water in the rivers and the risk of infection amidst mass deaths. So, the state discharged its obligation for protection of environment and safety of health of living beings through disposal of corpses. But this altered the burial customs from cremation to burials, etc. for the Hindus, in particular.

India is a secular State which means that State shall not abide by any religion but shall respect all religions. This paper endeavors to state that the concept of secularism does not pose any restriction on the application of the doctrine of public trust. Further, that the protection of environment through the doctrine of public trust would not be abhorrent to secularism, though it could offend the norms of a particular religion. The doctrine of public trust necessarily requires the State to protect the water, air and other natural resources for the public good and protection of environment.

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- (2) PM Modi announces 21-day lockdown as COVID-19 toll touches 12 see <https://www.thehindu.com/news/national/pm-announces-21-day-lockdown-as-covid-19-toll-touches-10/article61958513.ece> (last visited 13.09.2022).
- (3) India recorded over 30 lakh Covid-19 deaths till July, shows analysis see <https://scroll.in/latest/1014605/india-recorded-over-30-lakh-covid-19-deaths-till-july-shows-analysis> (last visited 13.09.2022).
- (4) Bodies of COVID-19 victims among those dumped in India's Ganges -govt document see <https://www.reuters.com/world/india/bodies-covid-19-victims-among-those-dumped-indias-ganges-govt-document-2021-05-15/> (last visited 13.09.2022) ; Why bodies of India's COVID-19 victims are being dumped in the Ganges River see <https://midwesttimes.com.au/news/coronavirus/bodies-of-covid-19-dead-dumped-in-ganges-c-2850948> (last visited 13.09.2022).

(5) Article 51-A(g) of the Constitution of India states:

"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

(6) Hundreds of bodies of Covid-19 victims still stored in New York's refrigerated trucks see <https://www.hindustantimes.com/world-news/hundreds-of-bodies-of-covid-19-victims-still-in-new-york-s-refrigerated-trucks-101620660542303.html> (last visited 13.09.2022).

(7) <https://timesofindia.indiatimes.com/india/christians-taking-to-cremation-in-big-way/articleshow/2374986.cms> (last visited 13.09.2022).

(8) Islamic funeral customs require that: The body be buried as soon as possible after death. Sikhs prefer cremation over all other ways of disposal. Other methods (including burial in the ground or at sea) are permitted if the cremation is impossible. The deceased may be cremated or buried, although cremation is traditional. Monks, if present, will perform last rites before the casket is sealed. According to Hindu funeral customs, the body remains at the home until it is cremated, which is usually within 24 hours after death. see In case of Jews, It is traditional Jewish practice to perform a ritual washing of the body ("Tahara") and then to dress it in a plain burial shroud. Watchers ("Chevra Kadisha") remain with the body around-the-clock until the funeral. The many forms of Hindu worship, ritual and meditation are intended to lead the soul toward the direct experience of God or Self. The typical Christian funeral includes: An opening statement lead by the priest or minister.see <https://www.funeralwise.com/customs> (last visited 11.06.2021).

(9) <https://www.deccanherald.com/city/top-bengaluru-stories/as-covid-19-continues-to-kill-demand-for-firewood-shoots-up-in-bengaluru-982069.html> (last visited 13.09.2022).

(10) A corpse generally progresses through five stages of decomposition—fresh, bloat (autolysis), active decay (putrefaction), advanced decay and skeletonization. While these stages can vary in length depending on the conditions the corpse is exposed to, each phase attracts specific types of insects (for example flies come first, then beetles). see <https://www.science.org.au/curious/decomposition> (last visited 11.06.2021).; <https://weather.com/science/news/flesh-bone-what-role-weather-plays-body-decomposition-20131031> (last visited 11.06.2021).; <https://www.ranker.com/list/underwater-decomposition-facts/natalie-hazen> (last visited 11.06.2021).

(11) Explanation 1 to section 499 of IPC reads: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

(12) Section 503 of IPC defines Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

(13) Green tribunal raps government over dead bodies in Ganga river see <https://www.deccanchronicle.com/current-affairs/200116/ngt-raps-government-over-dead-bodies-in-ganga-river.html>; <https://www.indiatoday.in/fact-check/story/face-check-pictures-show-bodies-of-coronavirus-patients-being-thrown-in-ganges-river-ganga-patna-viral-1698903-2020-07-10> (last visited 13.09.2022); <https://www.bbc.com/news/world-asia-india-57154564> (last visited 13.09.2022).

(14) The map depicts that about 7.34 million hectares area in Uttar Pradesh, 4.26 million hectares area in Bihar and 2.65 million hectares in West Bengal are flood prone areas. see <https://www.mapsofindia.com/top-ten/geography/india-flood.html> (last visited 11.06.2021).

(15) Uttar Pradesh, Bihar, and West Bengal are the worst affected states in the Ganga basin. In eastern Uttar Pradesh, the rivers that cause flooding include the Sarada, the Ghagra, the Rapti, and the Gandak besides the main Ganga River. see http://117.252.14.242/rbis/India_Information/flood.htm (last visited 11.06.2021).

(16) https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf (last visited 13.09.2022).

(17) <https://www.cbd.int/doc/ref/rio-declaration.shtml> (last visited 13.09.2022).

(18) Article 15 of the Rio Declaration on Environment and Development 1992.

(19) <https://theconversation.com/indians-are-forced-to-change-rituals-for-their-dead-as-covid-19-rages-through-cities-and-villages-160076> ; Indians are forced to change rituals for their dead as COVID-19 rages through cities and villages see <https://theconversation.com/indians-are-forced-to-change-rituals-for-their-dead-as-covid-19-rages-through-cities-and-villages-160076> (last visited 13.09.2022).

(20) The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. see Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970).

(21) *ibid.*

(22) *M.C. Mehta v. Kamalnath*, AIR 1996 SC.

(23) *ibid.*

(24) Drakakis-Smith, David, Joe Doherty, and Nigel Thrift. "Introduction: What Is a Socialist Developing Country?" *Geography* 72, no. 4 (1987): 333–35. <http://www.jstor.org/stable/40571308> (last visited 13.09.2022).

(25) Article 25 inhibits the Government to patronise a particular religion as State religion overtly or covertly. see *S. R. Bommai v. Union of India*, AIR 1994 SC 1918.

(26) AIR 1975 SC 1778.

(27) In *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 and *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299, this Court held that secularism is a basic feature of the Constitution.

(28) "The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained. "[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints.... "There

is a limit to the capacity of the environment to service...growth, both in providing raw materials and in assimilating by-product wastes due to consumption." see David Hunter, *An Ecological Perspective on Property*, 12 HARV. ENVTL. L. REV. 311 (1988).

(29) *Infra* note 25.

(30) *ibid.*
