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Spectrum as Public Resource – The Supreme Court Ruling and Its Telecom Implications

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MAINS RELEVANCE:

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INTERVIEW ANGLE

"The Supreme Court affirmed spectrum as an inalienable public resource under the Public Trust Doctrine — what does this mean for India's telecom sector, the IBC framework, and future spectrum policy?"

WHY IN NEWS

The Supreme Court ruled that **telecom spectrum is a Union of India public resource** that cannot be treated as a corporate asset or monetised under the **Insolvency and Bankruptcy Code (IBC), 2016**. The ruling invokes the **Public Trust Doctrine** and has significant implications for spectrum governance, telecom insolvency cases (Aircel, RCom), and the rights of financial creditors in the sector.

THE CORE LEGAL QUESTION

When a telecom company collapses under debt (as Aircel and Reliance Communications did), should its **spectrum licences** be treated as an asset available to financial creditors during insolvency proceedings?

The Supreme Court said **No** — clearly and unambiguously.

Spectrum is not the company's property. It is:

A **limited natural resource** (a finite range of electromagnetic frequencies)

Assigned by the Union Government as a **conditional, revocable licence**

Subject to **public trust** — the government holds it as trustee for the nation, not as a transactable commodity

THE PUBLIC TRUST DOCTRINE

The **Public Trust Doctrine** (PTD) holds that certain natural resources are held by the state not as owner but as **trustee** for present and future generations. These resources cannot be alienated, encumbered, or transferred to private parties by a mere commercial transaction.

Origins: The doctrine originates in Roman and English common law (the Magna Carta tradition) and was explicitly applied by the US Supreme Court in *Illinois Central Railroad v. Illinois* (1892). In India, it was first significantly applied by the Supreme Court in **M.C. Mehta v. Kamal Nath** (1997) — extending PTD to India’s environmental law.

Resources covered by PTD in India (by court precedent):

Forests and wildlife (M.C. Mehta 1997)

Rivers, lakes, waterbodies

Coastal areas (CRZ regulations)

Telecom spectrum (2012 2G case + 2026 ruling)

Airspace

THE 2G SPECTRUM CASE — HISTORICAL CONTEXT

The 2026 ruling builds on the landmark **2G spectrum case (2012)**, where the Supreme Court cancelled **122 telecom licences** allocated by the UPA government under former Telecom Minister **A. Raja** on a first-come-first-served basis at 2001 prices. The court held:

Spectrum is a public natural resource

Its allocation must be through a **transparent, fair, and competitive process** (auction preferred)

The state cannot give away public resources at arbitrary prices to specific private parties

This led to TRAI reforming spectrum allocation to a **competitive auction model** — which India now uses for all spectrum assignments.

IMPACT ON INSOLVENCY PROCEEDINGS

The IBC 2016 creates a framework where, when a company is insolvent, an **Insolvency Resolution Professional (IRP)** takes control and the **Committee of Creditors (CoC)** (dominated by financial creditors — banks) decides the resolution plan.

Banks’ argument: Spectrum has commercial value; it should be part of the insolvency estate available to settle debt.

SC's ruling: The spectrum was never the company's property — it was a **government licence**. When the company violates licence terms or goes insolvent, the DoT may reclaim the spectrum. Financial creditors (SBI, etc.) cannot claim spectrum as security or force its transfer to a new entity without fresh DoT assignment.

Practical impact:

Aircel and RCom spectrum reclaimed by DoT — can be re-auctioned

Banks must recover through other assets (tower infrastructure, fibre, brand)

Future telecom lending must factor in the non-asset nature of spectrum

TELECOM SECTOR GOVERNANCE FRAMEWORK

| Law/Regulation | Mandate |
|------------------------------|--|
| Telecommunications Act 2023 | Governs spectrum assignment, licensing, and spectrum surrender; replaces Indian Telegraph Act 1885 |
| TRAI Act 1997 | TRAI (Telecom Regulatory Authority of India) — recommends spectrum pricing, licensing conditions |
| IBC 2016 | Insolvency framework — now clarified to NOT cover spectrum |
| Spectrum Usage Charges (SUC) | Annual fee paid by licensees for spectrum use; structured as % of revenue |

TRAI can recommend but not decide spectrum price — the final allocation and pricing decision rests with DoT (Department of Telecommunications) under the Telecom Ministry, guided by Cabinet approval.

BROADER POLICY IMPLICATIONS

For spectrum policy:

Confirms the **auction model** as constitutionally sound and the only permissible way to assign spectrum

Limits the government's ability to use spectrum as an equity stake in companies (e.g., converting AGR dues to equity, as proposed for BSNL-style restructuring)

For ease of doing business in telecom:

International investors and lenders may view Indian telecom as riskier — spectrum cannot serve as collateral

India needs to develop **alternative security structures** for telecom lending (tower asset monetisation, receivables securitisation)

For IBC reform:

Suggests the IBC framework needs sector-specific carve-outs recognising that government licences (telecom, mining, aviation slots) are not corporate assets

Aligns with **Adjusted Gross Revenue (AGR) judgment** (2020) which also prioritised government dues over creditor claims

UPSC RELEVANCE

*Public Trust Doctrine, Telecommunications Act 2023, TRAI (1997), IBC 2016, 2G spectrum case 2012, spectrum auction (India moved to auction post-2012), Aircel/RCom insolvency, AGR (Adjusted Gross Revenue). **Mains GS-2:** Telecom regulation and TRAI's quasi-judicial role; spectrum governance; Supreme Court and policy-making; IBC and its sectoral limits. **GS-3:** Telecom sector development; spectrum as critical infrastructure for digital economy; 5G rollout governance.*

★ FACTS CORNER — KNOWLEDGEPEDIA

SC SPECTRUM RULING (2026):

Ruling: Spectrum = **Union of India public resource**; cannot be monetised under IBC 2016

Doctrine invoked: **Public Trust Doctrine (PTD)**

Key principle: Spectrum is a **conditional, revocable licence** — not a corporate proprietary right

Impact: DoT can reclaim Aircel/RCom spectrum; financial creditors cannot claim it

PUBLIC TRUST DOCTRINE — INDIA:

First major Indian application: **M.C. Mehta v. Kamal Nath (1997)** — forests

Applied to spectrum: 2G case (2012) + current ruling (2026)

PTD: State holds certain natural resources as trustee, not owner

2G SPECTRUM CASE (2012):

SC cancelled **122 licences**

Allocated at 2001 prices on first-come-first-served basis by A. Raja (Telecom Minister)

Resulted in spectrum **auction model** becoming mandatory

TELECOM REGULATION:

Telecommunications Act 2023: replaces Indian Telegraph Act 1885; governs spectrum

TRAI: Telecom Regulatory Authority of India; established under TRAI Act 1997; advisory role on spectrum pricing

AGR (Adjusted Gross Revenue): base for telecom licence fees; SC 2020 ruling upheld DoT's broad definition

OTHER RELEVANT FACTS:

IBC 2016: Resolution time target 270 days; governed by NCLT (National Company Law Tribunal) and NCLAT

Insolvency Resolution Professional (IRP): court-appointed administrator during insolvency

Committee of Creditors (CoC): financial creditors vote on resolution plans (75% majority needed)

India spectrum bands: 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2300 MHz, 2500 MHz, 3300 MHz (5G), 26 GHz (mmWave 5G)

Sources: Indian Express, Drishti IAS

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