**Team Code: 38**

**Before the Hon’ble Supreme Court of Aressia, at Ahali City**

**In The Matters Of:**

**Two Aressian States & Others ... Appellant**

**v.**

**The Union of Aressia ... Respondent**

**Appeal Nos. \_\_\_/2014, \_\_\_/2014,**

***Clubbed With***

**Writ Petition Nos. \_\_\_/2010, \_\_\_/2012**

**On Submission to the Hon’ble Supreme Court of Aressia**

**Under Article 32 of the Constitution of Aressia**

**Written Submissions on Behalf of the appellants**

**Counsel Appearing on Behalf of the appellants**

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# STATEMENT OF JURISDICTION

**I.** The Appellant No. 1 has approached this Hon’ble Court under Article 132 of the Constitution. Leave has been accordingly granted.

**II.** The Appellant No. 2 has approached this Hon’ble Court under Article 32 of the Constitution. Leave has been accordingly granted.

**III.** The Appellant No. 3 has approached this Hon’ble Court under Article 32 of the Constitution. Leave has been accordingly granted.

**IV.** The Appellant No. 4 has approached this Hon’ble Court under Article 136 of the Constitution. Leave has been accordingly granted.

# STATEMENT OF FACTS

**1.** The material case arises out of four separate claims: *first*, a claim by the Forum for Environmental Right (hereinafter, “FER”) before the High Court of Neruda against the Government of Aressia; *second*, a joint claim made by the State of Adhali and the State of Parmala challenging the constitutional validity of the Linking of Rivers Act, 2010; *third*, a claim by the ‘Save the Farmer’s Forum’ that the fundamental rights of the people of the State of Normanda and the State of Vindhya have been violated; *fourth*, a claim by the Centre for Environmental Rights and Advocacy (Hereinafter, “CERA”) that the Linking of Rivers project violates the environmental rights of the citizens of Aressia.

**I. Background**

**2.** Aressia is a South Asian country with a written Constitution and a federal form of Government. The laws of Aressia are in *pari material* to the laws of India. A number of rivers flow through the land of Aressia which are essential to the economy which primarily based on agriculture and fishing. In the last two decades, failure of agricultural crops has become a major problem due to shortage of water. This has caused many farmers to be rendered bankrupt and many have committed suicide. In light of this, in 2009 the Aressian Civil Liberties Union (ACLU), a non-governmental organisation, filed a writ petition before the Supreme Court of Aressia stressing on the predicament of the people of Aressia due to scarcity of water. The Supreme Court directed the Government of Aressia to constitute a ‘High Level Expert Committee’ to consider the viability of Linking of Rivers across Aressia as well as the formation of an Environmental Impact Assessment body to study the potential environmental affect.

**II. The Linking of Rivers Act, 2010**

**3.** In December 2009, the two committees were appointed. One committee was constituted for studying the practical exigencies of linking rivers and; the other committee to assess the potential environmental impact of such a project. The latter committee consisted of individuals from various interest groups such as the Central Government, State Government, Environmentalists, etc. Pursuant to a favourable report from the two Committees, the Linking of Rivers Act, 2010 was enacted by the Central Government. The Act provides for the formation of the ‘Authority for Linking of Rivers’ (ALR)which shall be vested with such powers as necessary to implement the linking of rivers in Aressia.

**III. The Criticism**

**4.** The State Governments and various NGOs criticised the linking of rivers project on the grounds that it would adversely affect the environment, change climatic conditions and that the entire project was politically motivated and would involve corruption. However, the Government decided to go ahead with the project despite the criticism keeping the prospective benefits in mind. Subsequently, in telecasted interview, some members of the aforementioned EIA divulged that there was political pressure on them to give a favourable report to the linking of rivers project. This sparked extensive protests against the implementation of the project.

**IV. The First Phase**

**5.** The first phase of the project involved eight intra-state rivers which were to be networked and made inter-state. Among them was the river ‘Bhargavi’ which was a trans-boundary river shared with neighbouring country Boressia. Moreover, the State of Vindhya has the largest wetlands in Aressia and it was feared that the project would irreparably damage the same. In light of this, the Government decided to exclude Vindhya from the project which meant that the people of Vindhya and Normanda would still face water scarcity.

**V. The resultant litigation**

**6.** Pursuant to the aforementioned factual matrix, two Aressian States moved the Supreme Court claiming that the Linking of Rivers Act, 2010 was an unconstitutional encroachment on the power of the States. Due to the non-inclusion of the State of Vindhya in the project, ‘Save the Farmers Forum’ moved the Supreme Court on the grounds that this was a violation of their fundamental rights. An international NGO petitioned the High Court of Neruda contending that the inclusion of ‘Bhargavi’ would violate the fundamental rights of the people of Boressia, due to subsequent dismissal of the petition they are in appeal before the Supreme Court

.

# STATEMENT OF ISSUES

**1.** Whether the writ petition filed by the FER at the High Court of Neruda is maintainable?

**2.** Whether § 3 of the Linking of Rivers Act, 2010 is *ultra vires* the Constitution of Aressia?

**3.** Whether the exclusion of the State of Vindhya from the Linking of Rivers Project violated the fundamental rights of the people of Vindhya and Normanda?

**4.** Whether the Linking of Rivers Act, 2010 violates the environmental rights of citizens of Aressia and the provisions of the Forest (Conservation) Act, 1980?

# SUMMARY OF ARGUMENTS

**I. That the writ petition filed before the High Court of Neruda is maintainable**

The exercise of the writ jurisdiction of the High Courts under Article 226 is largely discretionary in nature, it is argued that the present petition is maintainable primarily on three grounds: 1.1] That the ‘Forum for Environmental Right’ has locus standi to file the present petition since they are a special-interest group with a presence in Aressia and the writ petition comes within the ambit of the doctrine of public interest litigation. 1.2] That the right to a healthy environment and livelihood under Article 21 may stand violated since the constitutional guarantee of Article 21 is not territorially limited; and 1.3] That including the river ‘Bhargavi’ in the Linking of Rivers Project may violate Customary International Law which automatically forms a part of domestic law unless there exists a conflict between the two.

**II. That § 3 of the Linking of Rivers Act, 2010 is *ultra vires* the Constitution of Aressia**

Under the federal structure of Aressia, the Union and the States are competent to legislate for different spheres. In order to demonstrate that the Linking of Rivers Act 2010 is *ultra vires* the Constitution it must be shown that the State Legislatures reserved the exclusive competence with regard to the subject-matter of the legislation. To this end, it is argued that 2.1] the ‘pith and substance’ of § 3 lies within the bounds of List II of the Seventh Schedule because the ‘object’, ‘scope’ and ‘effect’ of the Act are within the domain of the State Legislatures 2.2] that no resolutions under article 252 were passed by the state legislatures as constitutionally mandated in the event that the Union wants to legislate upon a subject-matter enumerated in the State List.

**III. That the exclusion of Vindhya from the Linking of Rivers Project is violative of the fundamental rights of citizens of Vindhiya and Normanda.**

Implementation of the project in the state of Vindhiya has violated fundamental rights under Article 14 and Article 21 of the citizens of Vindhiya and Normanda as: 3.1] the right to equality has been violated due to arbitrary implementation of project in some states and not others. Arbitrariness is antithetical to the process of equality; and 3.2] right to life and liberty has been violated due to a violation in the rights that have been read under A.21 such as Right to Water, Right to Basic Necessities, Right to Social Justice and Economic Empowerment, Right to Livelihood and Right to Work.

**IV. That the Linking of Rivers Act, 2010 violates the environmental rights of citizens of Aressia and the provisions of the Aorest (Conservation) Act, 1980.**

The environmental rights of the Aressians have been violated by the Legislature on passing the impugned Act as is evidenced by testing them against the Doctrines of Public Trust and Precautionary Principle. The Preamble of a statue reflects the intention of the legislature and the latter is required to ascertain the object of the act. Following the rule on interpretation, we realised that the provisions of the Linking of Rivers Act are contrary to the object of the Forest (Conservation) Act and the Environment Protection Act, enshrined in their respective preambles, which is one of granting environmental rights to the citizens of Aressia. Not conforming to the objective specified in these environmental statues is an explicit show of how the impugned act defies the environmental rights of the Aressians.

# ARGUMENTS ADVANCED

## 1. THAT THE WRIT PETITION FILED WITH THE HIGH COURT OF NERUDA IS MAINTAINABLE

1. Writ Jurisdiction of the High Courts’ flows from Article 226,[[1]](#footnote-1) which confers wide powers enabling the Court to issue writs, directions, orders for the enforcement of fundamental or legal rights.[[2]](#footnote-2) The exercise of writ jurisdiction by the High Court is discretionary in nature.[[3]](#footnote-3) It is submitted that the writ petition is maintainable on primarily three grounds: 1.1. That the ‘Forum for Environmental Right’ has *locus standi* to file the present petition; 1.2. That the right to a healthy environment and livelihood under Article 21 may stand violated; and 1.3. That including the river ‘Bhargavi’ in the Linking of Rivers Project may violate Customary International Law.

### 1.1. That the Forum for Environmental Right has locus standi to file the present petition

1. In public law, the rule that only the aggrieved person is entitled to seek judicial redress has been liberalised to include any “public-spirited individual” or “association”.[[4]](#footnote-4) In case a class of people have a collective grievance, even an unrecognised association may initiate writ proceedings.[[5]](#footnote-5) In England, *Greenpeace* was granted standing on the basis that they are acting in public interest, rather than for their own members.[[6]](#footnote-6) In instances of public wrong or injury, if an act or omission by the State runs contrary to the Constitution then any member of the public has *locus standi*.[[7]](#footnote-7) In *Vishwanath Chaturvedi* v. *Union of India*,[[8]](#footnote-8) it has been observed that in determining the question of *locus standi* in ‘public interest litigation’ the Court must look into: (i) the credentials of the applicant; (ii) *prima facie* correctness of information; (iii) information should show failure of public duty (iv) must not go into merits of the case.[[9]](#footnote-9)
2. In the present case, FER is an international NGO which has a presence in Aressia.[[10]](#footnote-10) The claim made by the FER relates to widespread public grievance caused by environmental harm and loss of livelihood.[[11]](#footnote-11) The *prima facie* accuracy of the claims may be demonstrated by other independent facts such as: (i) the Environmental Impact Assessment (hereinafter, EIA) report has identified various environmental and social harm which may be caused; (ii) members of the EIA committed have admitted to downplaying the harm which may be caused in the aforementioned report; (iii) the apprehension that the linking of rivers project shall cause large-scale harm is shared by other stakeholders within Aressia.[[12]](#footnote-12)
3. Furthermore, a writ petition is maintainable even before the violation of a constitutional or otherwise legal right has been committed.[[13]](#footnote-13) Once a law or order has been passed which potentially infringes a legal right, a writ petition may be filed.[[14]](#footnote-14) The passing of the Linking of Rivers Act, the decision to implement the same, and the inclusion of the river ‘Bhargavi’, were events which occurred before the writ petition was filed.[[15]](#footnote-15) It is further contended that the FER is a special-interest group which is best placed to bring the issue to the attention of the Court. Hence, it is humbly submitted that the FER has *locus standi* to file the writ petition.

### 1.2. That the right to a healthy environment and livelihood under Article 21 may stand violated

1. If the right guaranteed under A. 21 stands to be violated, it is open for the aggrieved person to seek judicial redress under A. 226.[[16]](#footnote-16) It is herein submitted that the fundamental right under A. 21 may stand infringed.

#### 1.2.1 That the ambit of A. 21 is not limited to citizens of Aressia.

1. The fundamental right under A. 21 extend to all persons rather than just citizens of the country.[[17]](#footnote-17) In *National Human Rights Commission* v. *State of Arunachal Pradesh*,[[18]](#footnote-18) it was observed that it was the constitutional duty of the state to safeguard the life, health and well-being of a foreign group called *Chakmas* which had migrated into Arunachal Pradesh.[[19]](#footnote-19) The said right being made available to all people regardless of citizenship forms the basis of a civilized society, and was adopted from the American Constitution.[[20]](#footnote-20) It is worthy of note that this right may not be deprived but by procedure established by law;[[21]](#footnote-21) and such law may not be arbitrary, capricious or unreasonable.[[22]](#footnote-22) In the instant case, the rights which have been purported to be affected are those of the citizens of Boressia.[[23]](#footnote-23) It is humbly submitted that even though the people of Boressia may not be citizens of Aressia, they are still protected within the ambit of Article 21 and may question a law depriving them of the same.

#### 1.2.2 That Article 21 extends beyond the territorial limit of Aressia.

1. In *Satwant Singh Sawhney*,[[24]](#footnote-24) it has been held that the right to travel abroad is an integral part of personal right and is exercisable outside the territory of India.[[25]](#footnote-25) The order of the Passport Officer which refused to issue a passport to the petitioner was struck down as unconstitutional.[[26]](#footnote-26) The said view has been upheld in *Maneka Gandhi*,[[27]](#footnote-27) which further holds that the right to freedom of speech and expression is also exercisable outside India.[[28]](#footnote-28) It was observed that the inability to take state action outside territorial limits and that there is no underlying principle in the Constitution which limits the operation of Part III to the territory of India.[[29]](#footnote-29) This position of law is analogous to that of America wherein there are no inherent geographical limitations to the Bill of Rights.[[30]](#footnote-30) Thus, despite the fact that the people of Boressia reside outside the territorial limits of Aressia,[[31]](#footnote-31) the State of Aressia may not infringe upon their right to life but by procedure established by law.

#### 1.2.3 That the right to a healthy environment and livelihood are present within the auspices of Article 21.

1. The Supreme Court, in a number of instances, has recognised the right to a healthy environment as part of the right articulated under Article 21.[[32]](#footnote-32) In *Sterlite Industries* v. *UOI*,[[33]](#footnote-33) it was observed that by virtue of A. 21 an industry which does not meet the standards of emission which are necessary for a healthy environment may be closed down.[[34]](#footnote-34)In the instant case, it is purported that the linking of the river ‘Bhargavi’ would lead to destruction of forest and wildlife and submergence of wetlands.[[35]](#footnote-35)
2. Furthermore, the right to livelihood has also been read into the constitutional guarantee under A. 21.[[36]](#footnote-36) It has been observed that in interpreting ‘life’ in the strict sense without including livelihood would render the right meaningless since nobody could live without means of livelihood.[[37]](#footnote-37) It has been claimed by the FER that the livelihood of thousands of fishermen in Boressia would be affected by the linking of ‘Bhargavi’.[[38]](#footnote-38)
3. In light of the above, it is humbly submitted that the constitutional guarantee under A. 21 extends to the people of Boressia and a writ petition regarding their plight may not be preliminarily rejected.

### 1.3. That including the river ‘Bhargavi’ in the Linking of Rivers Project may violate Customary International Law.

1. The Indian Constitution urges the State to honour its international law and treaty obligations,[[39]](#footnote-39) which are understood as creating ‘legitimate expectations’ of their observance.[[40]](#footnote-40) The Supreme Court has regularly imported international norms where there is a gap in domestic law.[[41]](#footnote-41) The ‘doctrine of incorporation’ has been implemented in the Indian legal system, according to which rules of international law become part of domestic law.[[42]](#footnote-42)
2. The customary international law doctrines of ‘sustainable development’ and ‘precautionary principle’ have been read into the Constitution of India,[[43]](#footnote-43) and thereby Aressia.[[44]](#footnote-44) In *MC Mehta v. Union of India*,[[45]](#footnote-45) the Supreme Court placed a positive Constitutional burden on the State to prevent environmental degradation.[[46]](#footnote-46) In the present case, the writ petition was filed based on the finding that the decision of the ALR to link the river ‘Bhargavi’ would cause widespread environmental damage.[[47]](#footnote-47) Furthermore, members of the EIA, which was constituted to investigate the environmental damage caused by the linking of rivers, have admitted to giving false favourable reports under political pressure.[[48]](#footnote-48) It is humbly submitted that there is a constitutional obligation on Aressia to protect the environment from damage and that the extraterritorial nature of the potential damage should not be a deterrent as degradation of the environment is a global concern and would have ramifications within Aressia.

## 2. THAT § 3 OF THE LINKING OF RIVERS ACT 2010 IS ULTRA VIRES THE CONSTITUTION OF ARESSIA

1. As a component of the Federal Structure of the Constitution of Aressia, legislative powers have been divided between the Parliament and State Legislatures.[[49]](#footnote-49) The competing legislatures may not infringe upon the each other’s legislative domain.[[50]](#footnote-50) The constitutional *vires* of § 3 of the Linking of Rivers Act (hereinafter, the impugned Act) has been challenged on the grounds of legislative competence.[[51]](#footnote-51) It is submitted that the said provisions are *ultra vires* the Constitution as 2.1] the ‘pith and substance’ of § 3 lies within the bounds of List II of the Seventh Schedule and 2.2] that no resolutions under article 252 were passed by the state legislatures as constitutionally mandated.

### 2.1 That § 3 of the linking of rivers act in ‘pith and substance’ falls within the exclusive legislative competence of the states

1. The doctrine of ‘pith and substance’ is one of the key principles of interpretation used to construe entries classified under the three lists of the Seventh Schedule of the Constitution.[[52]](#footnote-52) In order to determine whether a particular statute comes within the purview of one legislature or the other, the pith and substance of the enactment is to be looked into.[[53]](#footnote-53) If the ‘true nature and character’ of a legislation falls outside the permissible limits assigned to the respective legislature then such law is *ultra vires* the constitution.[[54]](#footnote-54) Only the offending part of the Act may be declared invalid in case it is sufficiently separable from the rest of the Act.[[55]](#footnote-55) The relevant factors which must be considered to ascertain the pith and substance of a statute are: (i) the object and purpose; (ii) the scope and; (iii) the effect of the provisions.[[56]](#footnote-56)

#### 2.1.1. The object and purpose of the impugned section relates to subjects exclusively enumerated in List II of the Seventh Schedule

1. In *State of Rajasthan* v. *G. Chawla,*[[57]](#footnote-57) giving significant importance to the object of legislation in determining its pith and substance,[[58]](#footnote-58) it was held that a legislation controlling the use of amplifiers was public health legislation under List II rather than a broadcasting legislation under List I.[[59]](#footnote-59) In order to determine the object and purpose of a statute, we may refer to the circumstances which prevailed at the time and necessitated the passing of the Act.[[60]](#footnote-60) In *State of West Bengal* v. *Union of India*,[[61]](#footnote-61) the existing dearth of coal in the country shaped the Court’s understanding of the object of Coal Bearing Areas (Acquisition and Development) Act, 1957.[[62]](#footnote-62)
2. We must refer to the various legislative fields under the seventh schedule to ascertain which subject-matters fall under the exclusive competence of the States.[[63]](#footnote-63) Entry 17 of the State List empowers the State Legislature to enact laws relating to water, its supply, irrigation, drainage, *inter alia*.[[64]](#footnote-64)
3. Presently, Aressian states are facing dearth of water which has caused unavailability of drinking water as well as the failure of agricultural crops.[[65]](#footnote-65) The impugned Act was passed pursuant to a ‘High Level Expert Committee’ report which advised that various rivers should be linked together to mitigate the problem of water scarcity.[[66]](#footnote-66) It was stated by the Prime Minister in Parliament that the Linking of Rivers Project was to be used to increase availability of water for drinking and sanitation as well as for agricultural and industrial purposes.[[67]](#footnote-67) In light of the above, it is submitted that the primary objective of impugned section is to increase the availability of ‘water’ for improving ‘public health’, ‘agriculture’ and ‘industry’ which fall within the legislative domain of the states.

#### 2.1.2. The scope of the impugned section relates to subjects exclusively enumerated in List II of the Seventh Schedule

1. The meaning and import of the provisions of an Act have to be enquired into in order to determine its scope.[[68]](#footnote-68) The scope of a parliamentary statute must not fall within the ambit of legislative fields enumerated in List II.[[69]](#footnote-69) The supply of water is a subject-matter within the ambit of Entry 17 of List II.[[70]](#footnote-70) However, the power to legislate under Entry 17 of List II is subject to Entry 56 of List I.[[71]](#footnote-71) Thus, we must ascertain the inter-relationship between the aforementioned entries.
2. In the event that an entry under List II confers a general power to State Legislatures whereas specific power relating to the same subject-matter has been conferred to the Parliament under List I,[[72]](#footnote-72) then the general power would be limited to the extent of the special power.[[73]](#footnote-73) In *Kerala SMTF* v. *Kerala TBO*,[[74]](#footnote-74) it was held that the States would have the exclusive power to legislate with respect to fisheries within their territorial borders.[[75]](#footnote-75) Similarly, *In Re: Cauvery Water Disputes Tribunal*,[[76]](#footnote-76) with respect to water it was observed that the States had the exclusive power to legislate with regard to water which was present solely within its territorial limits.[[77]](#footnote-77) In the present case, §3 of the Linking of Rivers Act relates to the supply and accessibility of water.[[78]](#footnote-78) The rivers which come within the scope of the provision are intra-state rivers.[[79]](#footnote-79) Thereby, it is submitted that the scope of § 3 lies within the exclusive ambit of State Legislatures.

#### 2.1.3. The Effect of the impugned section relates to subjects exclusively enumerated in List II of the Seventh Schedule

1. Reflecting the object and purpose of § 3, the ostensible effect which the provision would have would be on matters within the auspices of the State List which are water, agriculture, public health.[[80]](#footnote-80) Furthermore, the enforcement of the impugned section may also lead to the salinization of fertile agricultural land as well as cause a decrease in fisheries.[[81]](#footnote-81)
2. It is therefore submitted that the ‘pith and substance’ of the impugned section lies within the legislative domain of the State Legislatures.

### 2.2. That no resolutions under Article 252 were passed by the State Legislatures as constitutionally mandated

1. The power to legislate with respect to subject-matters enumerated within the State List may be vested in Parliament if desired by the States through a resolution passed by the State Legislatures.[[82]](#footnote-82)In *Tata Iron & Steel Co. Ltd.* v. *The State of Bihar & Ors.,*[[83]](#footnote-83) it was held that Parliament was legislatively competent to enact the Water (Prevention and Control of Pollution) Cess Act, 1977 due to resolutions to that effect being passed by State Legislatures as mandated by Article 252.[[84]](#footnote-84)
2. In the instant case, the State Governments have not passed the requisite resolutions under A. 252.[[85]](#footnote-85) As the authority to legislate with regard to *inter alia* intra-state rivers has not been vested with Parliament, it is submitted that § 3 of the impugned Act is unconstitutional.

## 3. THAT THE EXCLUSION AND NON- IMPLEMENTATION OF LINKING OF RIVER PROJECT FOR THE STATE OF VINDHIYA IS VIOLATIVE OF THE FUNDAMENTAL RIGHTS OF CITIZENS OF VINDHIYA AND NORMANDA.

1. It is humbly submitted, that in light of the below mentioned laws, cases, and arguments, the exclusion and non- implementation of Linking of River Project in the State of Vindhiya is violative of A.14 and A.21 of the fundamental rights of the citizens of the States of Vindhiya and Normanda. These rights, embodying the Directive Principles of the government, have been guaranteed by the Constitution of India under A. 13.[[86]](#footnote-86)

### 3.1. That Article 14 Has Been Violated.

#### 3.1.1 That Executive Orders are considered Law and a Writ Petition passed against the same is maintainable.

##### 3.1.1.1. That Executive Orders are considered law.

1. In *Indra Sawhney v. Union of India*,[[87]](#footnote-87) the Hon’ble Supreme Court held that, *“*Executive order is no less a law under Article [13(3)](javascript:fnOpenGlobalPopUp('/ba/disp.asp','16909','1');).”[[88]](#footnote-88)
2. Thus, even if the statute which conferred power to the executive is not discriminatory, the executive order which derived its power from the statute can be challenged under A.14 on the grounds of being discriminatory,[[89]](#footnote-89) or arbitrary,[[90]](#footnote-90) as A.14 does not allow the **State** to discriminate between persons.[[91]](#footnote-91)
3. Furthermore, ‘State’ defined under A. 12 includes the Legislature and Executive of both the Centre and the States and other executive authorities within the territories of India.
4. *“*Article 14, therefore, is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. It protects us from both legislative and executive tyranny by way of discrimination*.”*[[92]](#footnote-92)
5. The trilogy formed by Articles 12, 13 and 14 ensure non- discrimination in State action in the spheres of both legislation and execution in India.[[93]](#footnote-93)
6. Thus when any executive order violates fundamental rights, it will be quashed by the judiciary as to keep the excesses of the executive at bay.[[94]](#footnote-94) The Hon’ble Supreme Court is the repository of fundamental rights of the citizens.[[95]](#footnote-95)

##### 3.1.1.2. That a writ petition against the executive order passed by Government of Aressia is maintainable

1. In the present case, the Government of Aressia has directed the ALR[[96]](#footnote-96) formulated by §3(3) of the Linking of Rivers Act,[[97]](#footnote-97) to exclude Vindhiya from the list of States, the rivers of which were to be linked in the Linking of Rivers Project that was going to be implemented in the First Phase of the Project.[[98]](#footnote-98) This executive order, as will be proven in the following sections, is unconstitutional, as it violates the fundamental rights of the citizens of Aressia.
2. As aforementioned, the executive order passed by the Government of Aressia has the same effect as would a statue as specified in A. 13(3)(a) of the Constitution. The Appellant can thus approach the Supreme Court for a remedy for the violation of A.14 as they could have done if a statute had violated their fundamental rights.

This writ petition against the Government of Aressia’s executive order is thus maintainable on grounds of violating the fundamental rights of the citizens of Vindhiya and Normanda.

#### 3.1.2. That the executive order of exclusion violates the right to equality as envisaged under Article 14.

##### 3.1.2.1. That A.14 guarantees the citizens of States of Vindhiya and Normanda the right to be treated equally with those farmers in the rest of India.

1. A.14 is read as a positive obligation[[99]](#footnote-99) on the state to confer equal measures that benefit all citizens, including the right of all citizens in a political democracy to enjoy social and economic justice.[[100]](#footnote-100) After 1974, the Hon’ble Supreme Court held in a number of cases that there was an over- emphasis on the doctrine of classification.[[101]](#footnote-101)
2. Since *Maneka Gandhi’s* case,[[102]](#footnote-102) the Courts have adopted the Wednesbuy principle[[103]](#footnote-103) that if the classification was an arbitrary act of the state under A.12 of the Constitution, A.14 would strike it down.[[104]](#footnote-104) The test for arbitrariness is whether the executive acted illegally or omitted reasonable factors or its opinion was one which no reasonable man would have taken.[[105]](#footnote-105) Arbitrariness is primarily an action performed by the executive capriciously without adequately determining principle and classifying based on unfounded nature of things.[[106]](#footnote-106)

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##### 3.1.2.2 That the rights of the farmers of the Vindhiya and Normanda are being violated under Article 14 by not including Vindhiya in the Inter-linking of River Project.

1. In the present case, the citizens of the State of Vindhiya should be given the right to avail water just as this right has been given to the citizens of every other state through which rivers pass. The citizens of all states deserve any policy being uniformly implemented throughout the country. The citizens of the State of Normanda are suffering in the process as collateral victims of the executive order and hence their rights have been violated too.
2. The executive’s excuse for taking this decision was that by excluding Vindhiya from the list of states in the Linking of Rivers project, Aressia was abiding by International law.[[107]](#footnote-107)
3. A. 27 of the Vienna Convention of the Law of Treaties which binds countries to international law has a rider, A. 46 of VCLT, which states that issues of fundamental importance are to be given greater importance than provisions of international law. In this case, the fundamental rights of the farmers are of fundamental importance and hence should ideally be given more credence than international law.
4. A. 14 is especially applicable to Normanda since equal protection also entails affirmative action by the state towards unequals by providing them with facilities and opportunities.[[108]](#footnote-108) Instead of confining the application of the act to the area where the needs are deemed to be the clearest,[[109]](#footnote-109) the executive is depriving Normanda from the surplus water that it would have otherwise received from the rivers of Vindhiya which flood often.
5. The executive’s reason for excluding Vindhiya from the project passes the test of arbitrariness as no reasonable man would have given precedence to international obligation over the welfare of its citizens due to a natural resource that the State inherently possessed.
6. Due to the aforementioned law, precedents and arguments, the Counsel humbly submits that the fundamental Right to Equality of the farmers of Vindhiya and Normanda have been violated under A. 14 of the Constitution.

### 3.2. That Article 21 Has Been Violated

#### 3.2.1. That the State has a positive obligation to guarantee A.21 of the Constitution.

1. The Rights read into A. 21 are those Directive Principles which the Supreme Court believed important enough to make justiciable by including them under the ambit of Fundamental rights. Though A.21 is couched in negative phraseology,[[110]](#footnote-110) it enforces positive obligations[[111]](#footnote-111) on the state to take steps to ensure that the individual enjoys a dignified life.[[112]](#footnote-112)
2. In the present case, the Government of Aressia has to ensure that the Linking of Rivers project enforces the rights mentioned hereinafter and in a manner that each state gets an equal right in accordance with A. 21 read with A. 14 of the Constitution.
3. Post *Maneka Gandhi v. Union of India*,[[113]](#footnote-113) the Supreme Court expanded the phrase “personal liberty” in its interpretation of A. 21 to the widest amplitude.[[114]](#footnote-114) This fundamental right guarantees various rights, the following of which have been violated in this situation:

#### 3.2.2. That A. 21 extends to the right to water and the same has been violated.

##### 3.2.2.1. That Article 21 extends to the right to water.

1. The Hon’ble Supreme Court has interpreted the Right to Water within the Right to Life and Liberty,[[115]](#footnote-115) and has given a differential importance to it in accordance with its two primary functions; [a] For the purpose of consumption: water is imperative to the survival of man and is thus regarded as a human right.[[116]](#footnote-116) This right has been read into A.21 as an absolute right and the in keeping with the Directive Principle of State Policy under A.47,[[117]](#footnote-117) reminded the State of its duty to provide for the same to its citizens.[[118]](#footnote-118)
2. (2) For purposes of irrigation and industrial use: it is observed that the right to flowing water 'is a right *publici juris*’[[119]](#footnote-119) and though not an absolute or human right, water for this purpose is recognised under A.21 as a Right to Use Water. In *Narmada Bachao Andolan v. Union of India and Others*,[[120]](#footnote-120) the Hon’ble Supreme Court upheld the Right to Water as a fundamental right.

##### 3.2.2.1. That the Right to Water has been violated.

1. Inclusion of water into A.21 shows the indispensable importance of water.[[121]](#footnote-121) In the given case, all the Aressians have an equal right to water and right to use water as guaranteed by A.21 of the Constitution. Since both these rights are imperative to a dignified life and are so intrinsically related with the survival of the farmers,[[122]](#footnote-122) the State has to ensure these rights in their absolute form and implement the Linking of Rivers project inclusively.

Since the Vindhiya has a wetland and 12 rivers,[[123]](#footnote-123) it has an excess supply of water which can fund the Normanda’s water supply which is in a precarious situation with due to the scarce sources of water in the region.[[124]](#footnote-124) Dependent on Vidhiya for water, the farmers of Normanda are entitled to water both for its consumption,[[125]](#footnote-125) as well as for its use as an economic lifeline, guaranteed by the fundamental Right to Life and Liberty under A. 21 of the Constitution.

1. In light of the aforementioned law, cases and arguments, the Counsel humbly submits that the Right to Water has been violated and consequently, the Right to Life and Liberty has also been violated as guaranteed by A. 21 of the Constitution.

#### 3.2.3. That A. 21 extends to right to basic necessities and the same has been violated

##### 3.2.3.1. That A. 21 extends to the Right to Basic Necessities

1. The Hon’ble Supreme Court has read Right to Basic Necessities[[126]](#footnote-126) into the Right to Life and Liberty under A.21.[[127]](#footnote-127) This right inherently ensures a dignified life to citizens of India,[[128]](#footnote-128) which not only entails an assurance of fulfilling their primary needs,[[129]](#footnote-129) but also guarantees all those conditions to the citizens which make life worth living.[[130]](#footnote-130) A.21 of the Constitution has been given a qualitative concept to Life,[[131]](#footnote-131) and it safeguards the basic human rights required of every civilization.[[132]](#footnote-132)

##### 3.2.3.2. That a violation of Right to Basic Necessities is a violation of a Right to Life and Liberty under A. 21 of the Constitution.

1. In this case, the executive order has left the citizens of Normanda indirectlyout of the Linking of Rivers Project and has in the process deprived them of a minimal standard of living, which water as a basic necessity guarantees. Not only is water an absolute necessity for the purpose of consumption, but it also governs and shapes the life of men.[[133]](#footnote-133) It influences the Aressians lives to an extent where its absence is causing farmers to commit suicide.[[134]](#footnote-134)
2. As aforementioned, the Right to Life and Liberty under A.21 of the Constitution extends to the Right to Basic Necessities. The executive order by depriving them of their latter has in effect deprived them of the former right too.

#### 3.2.4. That A. 21 extends to Right to Livelihood and Right to Work and the same have been violated.

##### 3.2.4.1. That A.21 extends to Right to Livelihood and Right to Work

1. The landmark case *Olga Tellis v. Bombay Municipal Corporation,[[135]](#footnote-135)* established that Right to Livelihood, is a fundamental right under the purview of A.21.

“*Deprive a person of his right to livelihood and you shall have deprived him of his life*.”[[136]](#footnote-136)

1. In *Delhi Development Horticulture Employee’s Union v. Delhi Administration,[[137]](#footnote-137)* the Supreme Court further expanded this Right to include the Right to Work.

A.37 though renders Directive Principles unenforceable; A.39 (a) and A.41have been read harmoniously[[138]](#footnote-138) with fundamental rights. The State has an obligation to ensure that Right to livelihood and Right to Work should be read into Right to Life.[[139]](#footnote-139)

##### 3.2.4.1. That a Violation of Right to Livelihood and Right to Work Violate The Right To Life.

1. The primary occupation of the citizens of Aressia is agriculture,[[140]](#footnote-140) an occupation so intrinsically connected with the requirement of water, that its absence is creating such a drastic impact on the livelihood of farmers.[[141]](#footnote-141) These farmers have been guaranteed a Right to a Dignified life which guarantees them of their livelihood and Work, under A. 21 which as specified in §2.1., entails a positive obligation on the state to provide them with water, the very means of their livelihood.
2. In light of the aforementioned law, cases and arguments, the Counsel humbly submits that the by being deprived of water, the farmers and the women[[142]](#footnote-142) of Normanda are being deprived of their Right to Livelihood and Right to Work under A. 21 of the Constitution.

#### 3.2.5. That Article 21 Extends to Right to Socio- Economic Justice And Economic Empowerment And the same has been violated

##### 3.2.5.1. That A.21 Extends to Right To Socio- Economic Justice And Economic Empowerment

1. By reading social justice[[143]](#footnote-143) and economic empowerment of weaker sections,[[144]](#footnote-144) as enshrined in the Preamble and the Directive Principles of State Policy, into A.21 of the Constitution,[[145]](#footnote-145) the Hon’ble Supreme Court has legally assured all citizens of a life of human dignity.[[146]](#footnote-146)

##### 3.2.5. That a Violation of Right to Socio- Economic Justice and Economic Empowerment is a violation of the Right to Life and Liberty.

1. The farmers employed in this primary occupation stem from the lowest economic and social class in the hierarchy of the nation. The project’s primary objective should be to empower this class, both economically and socially and hence should be implemented in the State of Vindhiya to prevent a lop-sided geographical empowerment. Water is the lifeline of the farmers and to ensure their economic empowerment and subsequent social empowerment, which will help Aressia realise social integration,[[147]](#footnote-147) it is very important that this project is implemented at in all states.
2. Due to the aforementioned law and precedents, it is submitted that a gross violation of A.21 of the Constitution has been evidenced by the exclusion of States of Vindhiya and Normanda from amongst the States in Aressia in the inter-linking of rivers Project, as by their very exclusion they have been deprived of the Right to Social Justice and Economic Empowerment which has been read into A. 21 of the Constitution of India.

## 4. THAT THE LINKING OF RIVERS ACT, 2010 VIOLATES THE ENVIRONMENTAL RIGHTS OF CITIZENS OF ARESSIA AND THE PROVISIONS OF THE FOREST (CONSERVATION) ACT, 1980.

### 4.1. That Purposive Interpretation Of An Act Can Be Done By Looking At Its Preamble And The Same Helps Ascertain Environmental Rights.

#### 4.1.1 That purposive interpretation of an act can be done by looking at its Preamble:

1. A rule often applied by judges in approaching a case regarding environmental laws (beneficent legislation)[[148]](#footnote-148) is by looking at the intent of the legislature who drafted the statute and accordingly pronouncing a judgment based on this overarching objective.[[149]](#footnote-149)
2. This intention of the legislature can be gauged by the judiciary by looking at the words employed in the preamble of the statute.[[150]](#footnote-150) This was further enunciated by Justice G.P. Singh[[151]](#footnote-151) who believed that the preamble of a statue though not an enabling part is, an admissible aid to construction. It expresses the scope, object and purpose of the Act most comprehensively. It recites the ground and cause of making the statute, the evils sought to be remedied or the doubts intended to be settled. This was upheld in the landmark case[[152]](#footnote-152) *Goa Foundation and Peaceful Society v. Union of India and Ors*.,[[153]](#footnote-153) where the judge took the aid of the preamble of the environmental statutes to ascertain the environmental rights of the citizens and accordingly grant them justice.

### 4.2. That The Environmental Rights Of The Citizens Of Aressia Have Been Violated Under The Environment Protection Act 1986 (EPA).

1. The EPA’s object reflects in its preamble which states that decisions are to be implemented so far as they relate to protection and improvement of the environment and prevent hazards to human beings, other creatures, plants and property.
2. In this case, the impugned Act will only further deteriorate the existent poor environmental condition Aressia[[154]](#footnote-154) which is contrary to the basic objective of EPA. The EIA Committee confirmed this with its statement that the project will indefinitely cause untold social and environmental harms,[[155]](#footnote-155) an apprehension shared by the Aressian states who fear that for the cause of a probable better supply of water, the geography of their states is to be entirely revamped, which will have untold and irreversible ramifications.[[156]](#footnote-156) The impugned Act does not address the issues raised. On the contrary perusal of §3 of the impugned Act clearly indicates that the focus is on ensuring availability and accessibility of water all over the country at any cost.
3. Furthermore, the fourth paragraph of the Preamble of the National Green Tribunal Act 2010, reads Right to a Healthy Environment into A.21 of the Constitution,[[157]](#footnote-157) in consonance with the judgments of the judiciary which have emphasised that a clean and healthy environment is so intrinsic to the dignity and standard of living of individuals, that its absence is a gross violation of the fundamental as well as environmental rights of the citizens.[[158]](#footnote-158)
4. The impugned Act is incongruous with the environmental rights of the citizens which have been enshrined in the Preamble of the EPA. Since the Act is violating the environmental rights of the citizens, the Government should be restrained from implementation thereof.

### 4.3. That ‘Reasonable Person’s Test Determines Which Right Is Given Precedence And The Environmental Rights Take Precedence In The Present Case.

#### 4.3.1. That the Reasonable Person’s Test is used to determine the right be given precedence.

1. Since the ambit of A. 21 is so vast, it encompasses several rights. What happens in the case two out of the several rights encompassed by A. 21 are in conflict?
2. In cases where the opportunity cost of saving the environment is stifling development, the judges have taken into account the interest of the larger group,[[159]](#footnote-159)by taking the “Reasonable Person’s Test”.[[160]](#footnote-160) This was upheld in *Sundararajan* v. *Union of India & Ors*.,[[161]](#footnote-161)

Individual interest or, smaller public interest must yield to larger public interest and inconvenience of some shall be bypassed for larger interest of society.

1. In one the most recent cases of 2014, *Court on Its Own Motion v. State Of Himachal Pradesh and Ors.,*[[162]](#footnote-162)the National Green Tribunal took cognizance of the debilitating condition of the environment in Kullu Manali due to construction of roads. It held that:

*“The risk of potential harm to the environment resulting from development should be considered by tilting the balance in favour of the environment and in the larger public interest. According to “reasonable person's test”, life and ecology have priority over unemployment and loss of revenue.”*

#### 4.3.2. That Environmental rights are to be given precedence.

1. In the present case, though both rights are fundamental to the Aressians, environmental rights are given precedence over economic rights by the judiciary as the comparative interest of the larger group is given primacy over the interest of the smaller group when the interests of the two groups are in conflict. The former group comprises not only the Aressians but the future citizens too, while the latter is a comparatively smaller group of farmers who are asking for their economic rights. Also, a reasonable man would have also preferred the former.
2. Instead of looking at what seems like a probable better option, the Legislature of Aressia should have tested the doctrine against the touchstone of ‘Reasonable Person’s Test’ to realise the importance of environmental rights of the citizens.

### 4.4. That Environmental Rights Are Governed By The Doctrines Of Precautionary Principle And Sustainable Development And The Same Have Been Breached.

#### 4.4.1. That the doctrines of Precautionary Principle and Sustainable Development govern environmental rights.

1. [a] By reading them into A.21 of the Constitution, the doctrines of Precautionary Principle and Sustainable Development[[163]](#footnote-163)have been read into the environmental law of the land by the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India,*[[164]](#footnote-164)since these principles are accepted as part of customary international law, there should be no difficulties in accepting them as part of our domestic law. The judgment primarily emphasised that not only did the public have a fundamental right to enjoy a wholesome environment under A.21, but the state had a positive duty to ensure that such an environmental right was made available to the citizens.[[165]](#footnote-165) This was upheld in several cases.[[166]](#footnote-166)
2. The Precautionary Principle has been imported from Principle 15 of the Rio Declaration which made the theory of Precautionary Principle sound international law by integrating it with many treaties which India is a signatory to[[167]](#footnote-167) and hence Aressia too.[[168]](#footnote-168)
3. [b] In *MC Mehta v. Union of India*,[[169]](#footnote-169) the Supreme Court explained the scope of the Precautionary Principle and stated that the principle should be read with the principle of sustainable development.[[170]](#footnote-170)
4. Precautionary principle states that any harm which can be **reasonably foreseeable** is to be prevented immediately.[[171]](#footnote-171) Its elements comprise,[[172]](#footnote-172) [a] Anticipatory Action, [b] Conveying the probable environmental impact of the harm to the community [c] Alternate planning [d] Cost-benefit analysis [e] Transparent, participatory, and informed decisions.

#### 4.4.2. That the doctrines have not been adhered to.

1. In this case, the government had reasonably foreseen the harm and in accordance with the doctrine of Precautionary Principle, it should have not implemented the project. The government has also breached Rule [b] by concealing the actual environmental impact of the project from the public,[[173]](#footnote-173) by pressurising the Committee members to fabricate the facts to hoodwink the community into support which has subsequently violated the other rules.
2. In accordance with the aforementioned fact, laws and rules, the Counsel humbly submits that by failing to comply with the test of Precautionary Principle, the executive has violated the environmental rights that should have ideally been guaranteed to the citizens.

### 4.5. That The Doctrine Of Public Trust Is To Be Exercised By The Government And The Non- Exercising Of The Same Has Violated Environmental Rights Of The Citizens Of Aressia.

#### 4.5.1. That the Doctrine of Public Trust is to be exercised by the Government of India.

1. The doctrine of Public Trust in Common law[[174]](#footnote-174) states that the government holds the natural resources as a trustee and is to use them only for the benefit of the general public.[[175]](#footnote-175) The nucleus of this Doctrine was formulated by Professor Sax,[[176]](#footnote-176) who believed that

“*Public trust problems are found whenever governmental regulation comes into question, in situations where diffused public interests need protection against tightly organized groups with clear and immediate goals*.”

1. This understanding of the doctrine was first adopted by the Indian Judiciary in *MC Mehta v. Kamal Nath & Ors.,[[177]](#footnote-177)* to determine the environmental rights of the citizens. The state as a trustee is expected to safeguard the natural resource for the benefit of the public and to ensure that these are utilised only to the extent of their requirement.

#### 4.5.2.That the Doctrine has not been followed.

1. In this case, if the legislation had been genuinely working for the interests of the farmers, women and others aggrieved,[[178]](#footnote-178) then even after passing the Act, the legislature would have abided by the assessment of the EIA.[[179]](#footnote-179) However, due to considerations both economic and political,[[180]](#footnote-180) the legislature refused to listen to the apprehension that most states following the EIA were articulating against this.
2. Due to the aforementioned principled, law and arguments, the Counsel humbly submits that the environmental rights of the Aressians have been violated due to a breach in the Public Trust Doctrine by the Legislature insofar as it formulated the impugned legislation.

### 4.6. That the forest (conservation) act’s object is to prevent deforestation and the same has not been adhered to.

#### 4.6.1.That the objective of the Forest (Conservation) Act 1980 is to Prevent Deforestation.

1. In *Ambika Quarry Works v. State of Gujarat and Ors*.,[[181]](#footnote-181) the Hon’ble Supreme Court held that since the State Government had to take permission from the Central Government in case of situations §2(i) and §2(ii) of the FC Act, it meant that the legislature wished to hamper such activities.[[182]](#footnote-182) The judgment also stated the objective of the FC Act,

This is an Act in recognition of the awareness that ecological imbalances as a result of deforestation have become social menaces and further deforestation should be prevented.[[183]](#footnote-183)

1. The *Goa Foundation* Judgment[[184]](#footnote-184) mentioned that the purpose of the legislature for formulating the act should supersede the specificities of the act since the objective of the act is that of preventing further deforestation,[[185]](#footnote-185) judgments on all cases should be passed keeping this objective in consideration.

#### 4.6.2. The Objective of the FC Act has not been adhered to.

1. In accordance with the aforementioned cases, law and arguments, the counsel submits that the impugned legislation is incongruous with the objective the FC Act as the former excites an action which involves destroying several forests, an act in defiance of the purpose of the FC Act which is to prevent future deforestation and to protect the forests present.
2. The impugned Act would also not be implemented due to the judgment of the Hon’ble Supreme Court in *Nature Lovers Movement* v. *State of Kerala and others,[[186]](#footnote-186)* where it was held that “the provisions of the said Act (FC Act) would override all executive orders”.
3. Due to the aforementioned law, cases and arguments, the Counsel humbly submits that the provisions of the Forest (Conservation) Act 1980 have been violated by the impugned Act

# PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Honourable Court may be pleased to adjudge and declare:

**1.** That the writ petition filed by the Forum for Environmental Right (FER) is maintainable before the High Court of Nerduda.

**2.** That Section 3 of the Linking of River Act, 2010 is *ultra vires* to the Constitution of Aressia

**3.** That the exclusion and non-implementation of the Linking of Rivers Project for the State of Vindhya violates the fundamental rights of the people of Vindhya and Normanda.

**4.** That the Linking of Rivers Act, 2010 violates the environmental rights of citizens of Aressia and the provisions of the Forest (Conservation) Act, 1980

And pass any such order, writ or direction as the Honourable Court deems fit and proper, for this the Appellants shall duty bound pray.

All Of Which Is Respectfully Submitted

Counsel For The Appellants

1. Article 226, Constitution of India. [↑](#footnote-ref-1)
2. H. M. Seervai, Constitutional Law of India, 4th ed., vol. 2, 2007 at p. 1586. [↑](#footnote-ref-2)
3. D.D. Basu, Commentary on the Constitution of India, C.K. Thakker & S.S. Subramani & T. S. Doabia & B. P. Banerjee eds., Vol. 6, 8th ed. 2012, p. 6614. [↑](#footnote-ref-3)
4. S. P. Gupta v. President of India & Ors., AIR 1982 SC 149 at ¶¶ 14-25 (per P. N. Bhagwati, J.); Banwasi Seva Ashram v. State of U.P., AIR 1987 SC 374. [↑](#footnote-ref-4)
5. Akhil Bhartiya Soshit Karamchari Sangh (Rly.) v. Union of India, AIR 1981 SC 298 at ¶ 63 (per Krishna Iyer). [↑](#footnote-ref-5)
6. R. v. Inspector of Pollution exparte Greanpeace Ltd., (1994) All ER 329; R. Stech,A carrot and stick approach? An analysis of the UK Government's proposals on environmental judicial review, Journal of Environmental Review, Vol. 15 (2), 2013, pp. 139-140. [↑](#footnote-ref-6)
7. People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 2330 at ¶ 10. [↑](#footnote-ref-7)
8. Vishwanath Chaturvedi v. Union of India, (2007) 4 SCC 380. [↑](#footnote-ref-8)
9. Vishwanath Chaturvedi v. Union of India, (2007) 4 SCC 380 at ¶¶ 27-30. [↑](#footnote-ref-9)
10. Factsheet, ¶ 14. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Factsheet, ¶¶ 5, 15, 13. [↑](#footnote-ref-12)
13. Bengal Immunity Co. v. State of Bihar, AIR 1955 SC 661 at ¶ 8. [↑](#footnote-ref-13)
14. Purtabpur Co. v. Cane Commissoner, AIR 1971 SC 1896 at ¶ 24. [↑](#footnote-ref-14)
15. Factsheet, ¶¶ 6, 8, 9, 14. [↑](#footnote-ref-15)
16. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at ¶¶ 46-48. [↑](#footnote-ref-16)
17. Chaiman, Railway Board v. Chandrima Das, AIR 2000 SC 998 at ¶ 32; Louis De Raedt and Ors.v. Union of India & Ors, AIR 1991 SC 1886 at ¶ 13. [↑](#footnote-ref-17)
18. National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1234. [↑](#footnote-ref-18)
19. National Human Rights Commission v. State of Arunachal Pradesh, AIR1996 SC 1234 at ¶¶ 20-21. [↑](#footnote-ref-19)
20. Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.,AIR 2011 SC 312 at ¶ 60. [↑](#footnote-ref-20)
21. Kharak Singh v. State of Uttar Pradesh, (1994) 3 SCC 569, ¶ 5. [↑](#footnote-ref-21)
22. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180 at ¶ 39. [↑](#footnote-ref-22)
23. Factsheet at ¶ 14. [↑](#footnote-ref-23)
24. Satwant Singh Sawhneyv. D. Ramarathnam, Assistant Passport Officer & Ors, AIR 1967 SC 1836. [↑](#footnote-ref-24)
25. Satwant Singh Sawhneyv. D. Ramarathnam, Assistant Passport Officer & Ors, AIR 1967 SC 1836, ¶ 58. [↑](#footnote-ref-25)
26. *Ibid.* [↑](#footnote-ref-26)
27. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597. [↑](#footnote-ref-27)
28. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597 at ¶73-74. [↑](#footnote-ref-28)
29. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597 at ¶ 76. [↑](#footnote-ref-29)
30. LakhdarBoumedieneet et al.v.George W. Bush et al.,128 S. Ct. 2229 (2008), ¶¶ 120-124; Christopher S. Ford, Rights And Remedies Under The Constitution: Extraterritorial Application Of the Writ of Habeas Corpus, Duke Journal Of Constitutional Law & Public Policy Special Issue, Vol. 7 No. 2 2012, p. 26. [↑](#footnote-ref-30)
31. Factsheet, ¶ 9. [↑](#footnote-ref-31)
32. Justice T. S. Doabia, Environmental & Pollution Laws in India, Wadhwa Nagpur, Volume 1, 1st ed. 2005, p. 6. [↑](#footnote-ref-32)
33. M/s Sterlite Industries Ltd. v. Union of India &Ors., (2013) 4 SCC 575. [↑](#footnote-ref-33)
34. M/s Sterlite Industries Ltd. v. Union of India &Ors., (2013) 4 SCC 575, at ¶ 35. [↑](#footnote-ref-34)
35. Factsheet, ¶ 14. [↑](#footnote-ref-35)
36. D. K. Yadav v. J. M. A. Industries, AIR 1986 SC 180, ¶¶ 13- 14. [↑](#footnote-ref-36)
37. Olga Tellis v. Bombay Municipal Corpn., AIR 1986 SC 180, ¶ 32. [↑](#footnote-ref-37)
38. Factsheet, ¶ 14. [↑](#footnote-ref-38)
39. Article 51(c), Constitution of Aressia; His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461 at ¶164. [↑](#footnote-ref-39)
40. Vishaka v. State of Rajasthan, AIR 1997 SC 3011 at ¶14. [↑](#footnote-ref-40)
41. Shamnad Basheer & Prashant Reddy, “Ducking” TRIPS in India: A Saga Involving Novartis and the Legality of Section 3(d), 20 National Law School of India Review 131, 142 (2008). [↑](#footnote-ref-41)
42. Vishaka v State of Rajasthan, AIR 1997 SC 3011, ¶14; Gramophone Company of India v. Birendra Bahadur Pandey, AIR 1984 SC 667, ¶3-4; Maganbhai Ishwarbhai Patel v. Union of India, AIR 1969 SC 783, ¶79. [↑](#footnote-ref-42)
43. Vellore Citizens Welfare Forum v. Union of India and Ors, AIR 1996 SC 2715 at ¶¶ 14- 15; A.P. Pollution Control Board v. Prof. M.V. Nayadu (Retd.) & Ors., AIR 1999 SC 812, ¶ 30. [↑](#footnote-ref-43)
44. Factsheet, Note 1. [↑](#footnote-ref-44)
45. MC Mehta v. Union of India, (1997) 3 SCC 715. [↑](#footnote-ref-45)
46. MC Mehta v. Union of India, (1997) 3 SCC 715 at ¶ 9. [↑](#footnote-ref-46)
47. Factsheet, ¶ 14. [↑](#footnote-ref-47)
48. Factsheet at ¶ 15. [↑](#footnote-ref-48)
49. D.D. Basu, Commentary on the Constitution of India, C.K. Thakker & S.S. Subramani& T. S. Doabia & B. P. Banerjee eds., Vol. 8, 8th ed. 2012, p. 8626 [↑](#footnote-ref-49)
50. State of Kerala and Ors.v. Mar AppraemKuri Company Ltd. and Anr., AIR 2012 SC 2375, ¶ 12. [↑](#footnote-ref-50)
51. Factsheet, ¶ 10. [↑](#footnote-ref-51)
52. D.D. Basu, Commentary on the Constitution of India, C.K. Thakker& S.S. Subramani& T. S. Doabia& B. P. Banerjee eds., Vol. 10, 8th ed. 2012, p. 11731. [↑](#footnote-ref-52)
53. Jamshed N. Guzdar v. State of Maharashtra and Ors., AIR 2005 SC 862 at ¶ 88; Prafulla Kumar Mukherjee and others v. Bank of Commerce Ltd., Khulna, AIR 1947 PC 60 at ¶¶ 35-38. [↑](#footnote-ref-53)
54. State of Maharashtra v. Bharat Shanti Lal Shah and Ors.,(2008) 13 SCC 5 at ¶ 30. [↑](#footnote-ref-54)
55. Lt. Col. Sawai Bhawani Singh and Ors v. State of Rajasthan and Ors., (1996) 3 SCC 105 at ¶ 8., R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628 at ¶ 5. [↑](#footnote-ref-55)
56. Offshore Holdings Pvt. Ltd.v. Bangalore Development Authority and Ors., (2011) 3 SCC 139 at ¶ 64; A. S. Krishna v. State of Madras, AIR 1957 SC 297 at ¶16. [↑](#footnote-ref-56)
57. State of Rajasthan v. G.Chawla, AIR 1959 SC 544. [↑](#footnote-ref-57)
58. State of Rajasthan v. G. Chawla, AIR 1959 SC 544 at ¶ 14. [↑](#footnote-ref-58)
59. State of Rajasthan v. G. Chawla, AIR 1959 SC 544 at ¶ 15. [↑](#footnote-ref-59)
60. Shashikant Laxman Kale and Anr. v. Union of India (UOI) and Anr., AIR 1990 SC 2114 at ¶ 16, State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors. at ¶¶ 5-7. [↑](#footnote-ref-60)
61. West Bengal v. Union of India, AIR 1963 SC 1241. [↑](#footnote-ref-61)
62. West Bengal v. Union of India, AIR 1963 SC 1241 at ¶¶ 7-9. [↑](#footnote-ref-62)
63. M.P. Jain Indian Constitutional Law, Justice Ruma Pal, Samaraditya Pal, eds., 6th ed. 2010, p. 533. [↑](#footnote-ref-63)
64. Entry 17 List II, Seventh Schedule, Constitution of Aressia. [↑](#footnote-ref-64)
65. Factsheet, ¶¶ 1-2. [↑](#footnote-ref-65)
66. Factsheet, ¶¶ 3-6. [↑](#footnote-ref-66)
67. Factsheet, ¶ 8. [↑](#footnote-ref-67)
68. Orissa Cement Ltd. (M/s) v. State of Orissa, AIR 1991 SC 1676 at ¶ 37. [↑](#footnote-ref-68)
69. Naga People’s Movement of Human Rights v. Union of India, AIR 1998 SC 431 at ¶ 25. [↑](#footnote-ref-69)
70. *Supra* No. 19; See also, Dr. Radhakrishna Co-operative Housing Society Limited, Hosur, Hubli and Ors. v. Government of Karnataka, Housing and Urban Development Department, Bangalore and Ors., 1999 (2) KarLJ 637 at ¶¶ 8-9. [↑](#footnote-ref-70)
71. *Supra* No. 18 at 551. [↑](#footnote-ref-71)
72. For example, Entry 17, 18, 23, 33 of List II limited by Entry 56, 3, 54, 60 of List I respectively. [↑](#footnote-ref-72)
73. Indu Bhushan Bose v. Rama Sundari Debi, AIR 1970 SC 228 at ¶12. [↑](#footnote-ref-73)
74. Kerala Swathanthra Malaya Thozhilali Federation and Ors.v. Kerala Trawlnet Boat Operators Association and Ors., (1994) 5 SCC 28. [↑](#footnote-ref-74)
75. Kerala Swathanthra Malaya Thozhilali Federation and Ors.v. Kerala Trawlnet Boat Operators Association and Ors., (1994) 5 SCC 28 at ¶ 4. [↑](#footnote-ref-75)
76. In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552. [↑](#footnote-ref-76)
77. In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552 at ¶¶47-50. [↑](#footnote-ref-77)
78. Factsheet, ¶ 6. [↑](#footnote-ref-78)
79. Factsheet, ¶ 9. [↑](#footnote-ref-79)
80. Factsheet, ¶¶ 1,2,6,8. [↑](#footnote-ref-80)
81. Factsheet, ¶ 7. [↑](#footnote-ref-81)
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83. Tata Iron & Steel Co. Ltd. v. The State of Bihar &ors.,1989 (2) PLJR 88. [↑](#footnote-ref-83)
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86. [K. JanakikuttyAmma](http://www.jstor.org/action/doBasicSearch?hp=25&acc=on&wc=on&fc=off&so=rel&Query=au:%22K.+Janakikutty+Amma%22&si=1), [Fundamental Rights In Relation To The Indian Constitution](http://www.jstor.org/stable/10.2307/42743209?Search=yes&resultItemClick=true&searchText=%22fundamental%20rights%22&searchText=%22democracy%22&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3D%2522fundamental%2Brights%2522%2522democracy%2522%26amp%3Bprq%3Dimportance%2Bof%2Bfundamental%2Brights%26amp%3Bhp%3D25%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bso%3Drel), The Indian Journal of Political Science, Vol. 9, No. 2/3 (April—September, 1948), pp. 19-23. [↑](#footnote-ref-86)
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88. Indra Sawhney v. Union of India*,* AIR 1993 SC 477, ¶527. [↑](#footnote-ref-88)
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90. Premium Granites v. State of Tamil Nadu, AIR 1994 SC 2233. [↑](#footnote-ref-90)
91. Basheshar Nath v.The Commissioner of Income Tax, Delhi & Rajasthan**,** AIR 1959 SC 149, ¶25. [↑](#footnote-ref-91)
92. *Ibid.* [↑](#footnote-ref-92)
93. The State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, ¶8. [↑](#footnote-ref-93)
94. Gupta Enterprises v. Delhi Pollution Control Committee and Anr., (2008) ILR 1 Delhi 940. [↑](#footnote-ref-94)
95. N. Jayapalan, Indian Society And Social Institutions, Atlantic Publishers & Distributors, 2001, p.531. [↑](#footnote-ref-95)
96. Factsheet, ¶11. [↑](#footnote-ref-96)
97. Factsheet, ¶8. [↑](#footnote-ref-97)
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101. Saujat Ali v. Union of India, AIR 1974 SC 1631, ¶26. [↑](#footnote-ref-101)
102. Maneka v. Union of India, AIR 1978 SC 597. [↑](#footnote-ref-102)
103. Associated Provincial Picture v. Wednesbury Corpn., (1948) 1 KB 223. [↑](#footnote-ref-103)
104. KasturiLal Lakshmi Reddy . State of J &K, AIR 1980 SC 1992 ¶14. [↑](#footnote-ref-104)
105. Om Kumar v. Union of India, AIR AIR 2000 SC 3689. [↑](#footnote-ref-105)
106. Mittal, Right To Equality And The Indian Supreme Court, The American Journal of Comparative Law, Vol. 14, 1965, p. 426- 428. [↑](#footnote-ref-106)
107. Factsheet, ¶12. [↑](#footnote-ref-107)
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109. Sakhawat Ali v. State of Orissa, AIR 1955 SC 166. [↑](#footnote-ref-109)
110. Nandini Sundar and Ors. v. State of Chattisgarh, AIR 2011 SC 2839, ¶63. [↑](#footnote-ref-110)
111. Maruti Shripati Dubal v. State of Maharashtra, 1987 (1) Bom CR 499. [↑](#footnote-ref-111)
112. Alan Gewirth, Are All Rights Positive?, Philosophy & Public Affairs, Vol. 30, No. 3, 2001, p. 321. [↑](#footnote-ref-112)
113. Hereinafter referred to as the ‘Maneka Gandhi case’. [↑](#footnote-ref-113)
114. Pathumma and Ors.v. State of Kerala and Ors., AIR 1978 SC 771. [↑](#footnote-ref-114)
115. State of Karnataka Vs. State of Andhra Pradesh & Ors.,AIR 2001 SC 1560. [↑](#footnote-ref-115)
116. Atma Linga Reddy and Ors.v. Union of India (UOI) and Ors, AIR 2009 SC 436. [↑](#footnote-ref-116)
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