**Team Code:**

T 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 Respondents**

**Counsel Appearing on Behalf of the Respondents**

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**Books, Article & Treatises**

Amartya Sen, (1999). Development as freedom, (1st ed.). New York: Oxford University Press, 1999 19

Charmian Barton, Precautionary Principle In Australia, Vol. 22, 1988, Harv. Env. L. Rev 11

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 1

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 5

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 4, 7

D.D. Basu, Shorter Constitution of India, 13th ed., 2001 8

Dr. Maheshwara Swamy, Law Relating To Environmental Pollution And Protection, Vol. 2, 5th ed., Thomson Reuters 17

Dr. Sunil Kumar Agarwal, Implementation Of International Law In India: Role Of Judiciary, in Dean Maxwell & Isle Cohen Doctoral Seminar in International Law Hans & Tamar Oppenheimer Chair in Public International Law Faculty of Law, McGill University 13

G.P. Singh, Principles of Statutory Interpretation, 13th ed. 2012 19

Granville Austin, The Indian Constitution – Cornerstone of a Nation 195 (2nd ed. 1999) 4

H. M. Seervai, Constitutional Law of India, 4th ed., vol. 2, 2007 1

M. Shamsul Haque, Environmental Discourse and Sustainable Development: Linkages and Limitations, Ethics and the Environment, Vol. 5, No. 1 (2000) 18

M.P. Jain Indian Constitutional Law, Justice Ruma Pal, Samaraditya Pal, eds., 6th ed. 2010 2

Malcolm N Shaw, International Law, Cambridge University Press, 6th ed, 2008 3

The Ramsar Convention Manual: a guide to the Convention on Wetlands (Ramsar, Iran, 1971), 6th ed. Ramsar Convention Secretariat, Gland, Switzerland 12, 14

Cases

A. S. Krishna v. State of Madras, AIR 1957 SC 297 5

A.P. Pollution Control Board v. Prof. M.V. Nayadu (Retd.) & Others, AIR1999SC812 11

AIR 1971 SC 870 8

Avinder Singh v. State of Punjab, AIR 1979 SC 321 9

Ayaaubkhan Noorkhan Pathan v. The State of Maharashtra and Ors, 2012 (11) SCALE 39 2

Bhatnagars & Co. v. Union of India, AIR 1957 SC 478 1

Bombay Dyeing 81 Meg. Co. Ltd. V. Bombay Environmental Action Group And Others, 2006(3) SCC 434 18

Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors, AIR 2006 SC 1489 19

Calcutta Gas Co. v. State of West Bengal, AIR 1962 SC 1044 3

Caleb Nelson, *PREEMPTION,* Virginia Law Review, Vol. 86, No. 2 (Mar., 2000) 20

Chanan Singh v. Registrar. Co-op Societies, AIR 1976 SC 1821 4

Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, AIR 1987 SC 117, ¶69 20

Coffee Bd. v. Jt. C.T.O, AIR 1971 SC 870 8

Coffee Board Bangalore v. Joint Commercial Tax Officer, AIR 1971 SC 870 8

Court on Its Own Motion v. State Of Hp Ors.*,* CWPIL No. 15 of 2010 11

Dalpat Abasaheb Solunke and Ors. v.:Dr. B.S. Mahajan and Ors., AIR 1990 SC 434 16

Dhirenda v. Legal Remembrancer, AIR 1954SC424 9

Diwan Sugar Mills v. Union of India, AIR 1959SC626 9

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 6

Essar Oil v. Halar Utkarsh Samiti AIR 2004 SC 1834 18

Friends Colony Development Committee v. Orissa, (2004) 8 SCC 733 18

G. Sundararajan v. Union of India and Ors., (2013) 6 SCC 620 11

Garg RK v. Union of India, AIR 1981 SC 2138 9

Goa Foundation and Peaceful Society v. Union of India and Ors., 2014 (4) EFLT 60 19

Gopal v. State of UP, AIR 1964SC370 9

Gramophone Company of India v. Birendra Bahadur Pandey, AIR 1984 SC 667 3

Hanif v. State of Bihar, AIR 1958 SC 731 9

HMT Ltd v. Mudappa, AIR 2007 SC 1106 4

In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552 6, 7

In Vellore Citizens Welfare Forum V. Union Of India Reported, (1996) AIR 1996 SC 2715 18

Indian Express Newspapers (Bombay) v. Union of India, AIR 1986 SC 515 1

Indu Bhushan Bose v. Rama Sundari Debi, AIR 1970 SC 228 6

Intellectuals Forum v. State Of A.P*,* 2006 (3) Scc 549 18

Intellectuals Forum, Tirupati v. State Of A.P, AIR 2006 SC 1350 18

International Tourist Corpn. v. State of Haryana, AIR 1981 SC 774 7

J. K. Industries v. Union of India, (2007) 13 SCC 391 1

Jamshed N. Guzdar v. State of Maharashtra and Ors., AIR 2005 SC 862 5

Jia Lal v. Delhi Administration, AIR 1962 SC 1781 9

Kapan v. Jagmohan, AIR 1981 SC 126 3

Kasturi Lal Lakshmi Reddy . State of J &K, AIR 1980 SC 1992 9

Kausha PN v. Union of India, AIR 1978 SC 1457 9

Kedar Nath Bajoria v. State of W.B, AIR 1953 SC 404 9

Maganbhai Ishwarbhai Patel v. Union of India, AIR 1969 SC 783 3

Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597 2

Mayor etc. of Westminister v. London & North Western Ry. Co [1905] A.C. 426 16

MC Mehta v. Union of India*,* Writ petition (civil) no. 13381 of 1984 15

Mittal v. Union of India, AIR 1983 SC 1 7

Mullaperiyar Environmental Protection Forum v. Union of India (UOI) and Ors AIR 2006 SC 1428 16

N.D. Jayal And Another v. Union Of India Others*,* (2004) 9 SCC 362 19

Naga People’s Movement of Human Rights v. Union of India, AIR 1998 SC 431 6

Nandini Sundar and Ors. v. State of Chhattisgarh, (2011) 7 SCC 547 2

National Legal Services Authority v. Union of India (UOI) and Ors., AIR 2014 SC 1863 13

Offshore Holdings Pvt. Ltd. v. Bangalore Development Authority and Ors., (2011) 3 SCC 139 5

Orissa Cement Ltd. (M/s) v. State of Orissa, AIR 1991 SC 1676 6

P. B. Roy v. Union of India, AIR 1972 SC 908 9

Pathumma v. State of Kerala, AIR 1979 SC 771 9

Prafulla Kumar Mukherjee and others v. Bank of Commerce Ltd., Khulna, AIR 1947 PC 60 5

Pune Municipal Corporation and Anr . v . Promoters and Builders Association and Anr ., AIR 2004 SC 3502 1

Purshottam v. Desai, (1955) 2 SCR 887(902) 9

Republic of Italy thr. Ambassador and Ors. v. Union of India (UOI) and Ors., (2013) 4 SCC 721…………………………………………………………………………………………….2

Rural Litigation and Entitlement Kendra and Ors v. State of Uttar Pradesh and Ors.AIR1987 SC 359 16

Salomon v. Commissioners of Customs and Excise, (1967) 2 QB 116 3

Second G.T.O. v. Nazareth, AIR 1971 SC 999 7

Shashikant Laxman Kale and Anr. v. Union of India (UOI) and Anr., AIR 1990 SC 2114 5

State of Kerala and Ors. v. Mar Appraem Kuri Company Ltd. and Anr., AIR 2012 SC 2375 4

State of Madhya Pradesh v. Bhola @ Bhairon Prasad Raghuvanshi, AIR 2003 SC 1191 1

State of Maharashtra v. Bharat Shanti Lal Shah and Ors., (2008) 13 SCC 5 5

State of Nagaland v. Ratan Singh, AIR 1967SC212 9

State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors. 5

State of Punjab v. Ajaib Singh, AIR 1953SC10 9

State of Rajasthan v. G. Chawla, AIR 1959 SC 544 5

State of Tamil Nadu v. State of Kerala and Anr*,* AIR 2014 SC 2407 17

State of West Bengal v. Kesoram Industries, (2004) 10 SCC 201 8

The Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors., AIR 2000 SC 988 2

The Dominion Of India And Anr. v. Shrinbai A. Irani And Anr, AIR 1954 SC 596 20

The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue Trivandrum and Anr*.,*AIR 1964 SC 207 20

The State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12 2

Tirupur Dyeing Factory Owners Association v.  Noyyal River Ayacutdars Protection Association and Ors., AIR 2010 SC 3645 15

Treatment of Polish Nationals in Denzig Case*,* Series A/B, no. 44 12

Union of India & Anr. v. Azadi Bachao Andolan & Anr., (2004) 10 SCC 1 3

Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 15

Vishaka v State of Rajasthan, AIR 1997 SC 3011 3

West Bengal v. Union of India, AIR 1963 SC 1241 5

Yashpal & Anr. v. State of Chhatisgarh & Ors., AIR 2005 SC 2026 7

# 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. The Respondent No. 1 humbly submits to the jurisdiction of this Hon’ble Court.

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

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

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

# 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 not 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 since: 1.1] That none of the grounds to challenge the purported move by the ALR were satisfied since the subordinate authority acted within its powers; 1.2] That domestic law may not be questioned on the grounds of contravening international commitments since they do not confer rights on members of the public *per se*; 1.3] That the application of fundamental rights is restricted to the territory of Aressia and thereby have not been violated; and 1.4] That the writ petition is based on pure apprehension and no right has been infringed.

**II. That § 3 of the Linking of Rivers Act, 2010 is *intra 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 outside the legislative domain of the State Legislatures since the ‘object’, ‘scope’ and ‘effect’ of the same relate to subject-matters outside the State List and; 2.2] Residuary Powers with respect to legislative competence is vested with the Parliament and any subject-matter falling outside the domain of the State may be legislated upon by Parliament.

**III. That the exclusion of Vindhya from the Linking of Rivers Project is not violative of the fundamental rights of citizens of Vindhiya and Normanda.**

Exclusion of Vindhiya from the list of states where the Linking of Rivers Project is to be implemented, is neither in violation of A.14 since this right allows for reasonable classification as was made in the present situation, nor in violation of A.21 where a ‘Reasonable Person’s Test’ was employed to find out that Right to Wholesome Environment should be given precedence to Right to Livelihood when the two are in conflict. Instead A.21 ha been especially adhered to since this order of the Government followed the Precautionary principle read into A.21. Also this order of the Central Government was passed in conformity to international law since India is a signatory to the Ramsar Convention and a violation of the same would have discredited India in the sphere of international relations.

**IV. That the Linking of Rivers Act, 2010 does not violates the environmental rights of citizens of Aressia and the provisions of the Forest (Conservation) Act, 1980.**

The impugned act does not violate environmental rights of the people of Aressia as it follows the Principle of Sustainable development which encourages a harmonious mixture of both encouraging development while also ensuring that there is no irreversible societal harm caused in the process. The judiciary should not look into the merits of the EIA Committee’s reports but accept their findings as fact. The impugned act also does not violate the provisions of the Forest (Conservation) Act as the non- obstante clause in §2 of the latter supersedes the ‘subject to’ clause of §3 of the Linking of Rivers Act, ensuring that the impugned act stays in conformity with the provisions of the Forest (Conservation) Act.

# ARGUMENTS ADVANCED

## 1. THAT THE WRIT PETITION FILED WITH THE HIGH COURT OF NERUDA IS NOT 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 not maintainable on primarily four grounds: 1.1] That none of the grounds to challenge the purported move by the Authority for Linking of Rivers (hereinafter, ALR) as delegated legislation were satisfied; 1.2] That domestic law may not be questioned on the grounds of contravening international commitments; 1.3] That the application of fundamental rights is restricted to the territory of Aressia; and 1.4] That the writ petition is based on pure apprehension.

### 1.1 That none of the grounds to challenge the purported move by the ALR as delegated legislation were satisfied

**2.** The legislature can confer power upon a subordinate agency to make rules, in detail, to better carry out the scheme of the legislation,[[4]](#footnote-4) as is the present instance wherein the ALR has been conferred powers under § 3 (3) of the Linking of Rivers Act (hereinafter, the impugned Act).[[5]](#footnote-5) Delegated legislation may not be questioned on grounds of violating principles of natural justice or not taking into consideration certain circumstances.[[6]](#footnote-6) The judicial review of delegated legislation may be made on the following grounds: (i) legislative competence on which the plenary legislation is also subject; (ii) being *ultra vires* the parent statute; (iii) being in conflict with another statute; (iv) be so arbitrary as to violate Article 14 of the Constitution.[[7]](#footnote-7)

**3.** In the instant case, the move towards linking the river ‘Bhargavi’ comes squarely within the ambit of the powers conferred upon the ALR under §3 (3).[[8]](#footnote-8) Furthermore, the move to link the said river is based on a ‘High Level Committee Report’ as well as an ‘Environment Impact Assessment Report’ which vitiate the proposition that the said move is patently arbitrary or unreasonable.[[9]](#footnote-9) It is further submitted that the purported move by the ALR is not in conflict with any other statute. Thereby, it is submitted that a challenge to the validity of the delegated legislation would not be maintainable.

### 1.2 That no *prima-facie* case for breach of fundamental rights has been established

**4.** A writ petition under Article 226 is maintainable for the purposes of enforcing a legal or statutory right or compelling the performance of a statutory duty.[[10]](#footnote-10) The principle fundamental rights which are applicable to non-citizens are under Article 14 and Article 21 of the Constitution.[[11]](#footnote-11) However, Article 14 is expressly limited to the territory of the country.[[12]](#footnote-12) In *Maneka Gandhi* v. *Union of India*, it was held that the right to freedom of movement could be located under Article 21 and such right was extra-territorially applicable.[[13]](#footnote-13) In subsequent cases, it has been observed that the right under Article 21 is available to aliens only when sought to be subject to the legal process of India.[[14]](#footnote-14) It is thereby contended that extra-territorial application of fundamental rights is limited to the right to freedom of movement. It is submitted that this right may be distinguished from other rights under Article 21 since the right to freedom of movement by its very nature would imply extra-territoriality.

**5.** Furthermore, the Constitution imposes a positive obligation on the State to take all necessary steps to realise the bundle of rights read into Article 21.[[15]](#footnote-15) It is submitted that such a positive obligation may not be made extra-territorial since it would infringe upon the sovereignty of other nations.

**6.** In the present case, it has been alleged that Aressia has violated the fundamental rights of the people of Boressia in implementing the Linking of Rivers Act.[[16]](#footnote-16) It is submitted that the right to livelihood or the right to healthy environment under Article 21 have not been extended beyond the territory of Aressia. Thus, the people of Boressia are not guaranteed such fundamental rights under the Constitution of Aressia and such writ petition would not be maintainable.

### 1.3 That domestic law may not be questioned on the grounds of contravening international commitments

**7.** International customary law is part of municipal law unless it is inconsistent with municipal law in which case municipal law prevails over international law.[[17]](#footnote-17) Municipal Courts are bound by domestic statute and international law cannot confer any rights which are cognizable in municipal courts.[[18]](#footnote-18) Therefore, for an international treaty or convention can only be judicially enforceable by legislative action to that effect.[[19]](#footnote-19) In *Union of India* v. *Azadi Bachao Andolan*,[[20]](#footnote-20) it has been unequivocally held that any international agreement or treaties which are binding upon the state are not by themselves binding on Indian nationals and such agreements must be transformed into domestic law by legislation.[[21]](#footnote-21)

**8.** The primary condition which must exist in order to move the High Court under Article 226 is that a fundamental or legal right must vest with the petitioner.[[22]](#footnote-22) In the present case, a writ petition had been filed with the High Court of Neruda claiming that the rights of the citizens of Boressia have been violated.[[23]](#footnote-23) It is contended that a writ petition under Article 226 purely for the enforcement of an international obligation is not maintainable.

### 1.4 That the writ petition is based on pure apprehension.

**9.** A writ petition may be liable to be dismissed if it is premature.[[24]](#footnote-24) Ordinarily, a Court confines itself to the facts at hand and does not delve into assumptions.[[25]](#footnote-25) In *HMT Ltd* v. *Mudappa*,[[26]](#footnote-26) it was held that a writ petition against a notification for the proposed acquisition of land under the Karnataka Industrial Areas Development Act, 1966 was premature.[[27]](#footnote-27) Similarly, in the present case, the fears expressed by the FER were not realised.[[28]](#footnote-28) The linking of rivers was being done pursuant to an Environmental Impact Assessment report and a High Level Committee Report which had proposed the requisite safeguards for the protection of the environment.[[29]](#footnote-29) Furthermore, the fears that the members of the EIA committee were under political pressure had not materialised as then.[[30]](#footnote-30)

**10.** Thereby, it is humbly submitted that the said writ petition was not maintainable before the High Court of Neruda since no action had been taken to unreasonably detriment the legal rights of the people of Boressia, if any.

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

**11.** As a component of the Federal Structure of the Constitution of Aressia, legislative powers have been divided between the Parliament and State Legislatures.[[31]](#footnote-31) The competing legislatures may not infringe upon the each other’s legislative domain;[[32]](#footnote-32) though Parliament is legislatively supreme to the State Legislatures.[[33]](#footnote-33) The constitutional *vires* of § 3 of the Linking of Rivers Act (hereinafter, the impugned Act) was challenged on the grounds of legislative competence.[[34]](#footnote-34) It is submitted that the said provisions are not *ultra vires* the Constitution since: 2.1] the ‘pith and substance’ of § 3 lies outside the legislative domain of the State Legislatures and; 2.2] Residuary Powers with respect to legislative competence is vested with the Parliament.

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

**12.** 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.[[35]](#footnote-35) 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.[[36]](#footnote-36) 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.[[37]](#footnote-37) The relevant factors which must be considered in order 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.[[38]](#footnote-38)

#### 2.1.1 The object and purpose of the impugned section does not relate to subject-matters enumerated in List II of the Seventh Schedule

**13.** In *State of Rajasthan* v. *G. Chawla,*[[39]](#footnote-39) giving significant importance to the object of legislation in determining its pith and substance,[[40]](#footnote-40) 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.[[41]](#footnote-41) 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.[[42]](#footnote-42) In *State of West Bengal* v. *Union of India*,[[43]](#footnote-43) 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.[[44]](#footnote-44)

**14.** We must refer to the various legislative fields under the seventh schedule to ascertain which relevant subject-matters fall under the exclusive competence of the States.[[45]](#footnote-45) Entry 42, Union List of the Seventh Schedule deals with the development and regulation of ‘inter-state rivers’.[[46]](#footnote-46) On the other hand, Entry 17 of the State List empowers the State Legislature to enact laws relating to water, its supply, irrigation, drainage, *inter alia*.[[47]](#footnote-47) *In Re:* *Cauvery Water Disputes Tribunal*,[[48]](#footnote-48) the Hon’ble bench in interpreting the competing entries observed that the States cannot pass legislation which affects water present beyond its own territorial limits.[[49]](#footnote-49)

**15.** Due to large scale pollution of river waters, population growth, sand mining, etc., the numbers of rivers across Aressia have decreased or become unfit for use.[[50]](#footnote-50) The Linking of Rivers 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 which existed across the country.[[51]](#footnote-51) In light of the above, it is submitted that the primary objective of impugned section is the linking of rivers across Aressia which would address a number of socio-economic problems plaguing the country.

#### 2.1.2 The scope of the impugned section relates to subjects outside the legislative competence of the State Legislatures

**16.** The meaning and import of the provisions of an Act have to be enquired into in order to determine its scope.[[52]](#footnote-52) The scope of a parliamentary statute must not fall within the ambit of legislative fields enumerated in List II.[[53]](#footnote-53) The supply of water is a subject-matter within the ambit of Entry 17 of List II.[[54]](#footnote-54) However, as has been noted above, the power to legislate under Entry 17 of List II is subject to Entry 56 of List I.[[55]](#footnote-55) 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,[[56]](#footnote-56) then the general power would be limited to the extent of the special power.[[57]](#footnote-57) In *Prof Yashpal & Anr.* v. *State of Chhatisgarh &* Ors.,[[58]](#footnote-58) it was held that despite ‘university’ being a subject-matter within the State List, the power to legislate with regard to educational standards vested with the Parliament.[[59]](#footnote-59) Similarly, Parliament reserves the power to legislate with regard to water insofar as it has implications outside the boundaries of individual states.[[60]](#footnote-60) In the present case, §3 of the Linking of Rivers Act relates to the linking of rivers across Aressia and the **c**onstitution of an authority to implement the same.[[61]](#footnote-61) Thereby, it is submitted that the scope of the said provision lies outside the legislative ambit of State Legislatures.

#### 2.1.3 The Effect of the impugned section relates to matter outside the legislative competence of the State Legislatures

**17.** Reflecting the object and purpose of § 3, the ostensible effect of the impugned section would be on matters within the auspices of the State List which is the linking of rivers across Aressia and the creation of inter-state rivers.[[62]](#footnote-62)

**18.** It is therefore submitted that the ‘pith and substance’ of the impugned section lies outside the legislative domain of the State Legislatures.

### 2.2 That Residuary Powers with respect to legislative competence is vested with the Parliament.

**19.** Entry 97 of List I read with Article 246 and 248 of the Constitution provide for the scope of Residuary Powers.[[63]](#footnote-63) In case a subject-matter cannot be comprehended within the auspices of any Entry within the three Lists, the power to legislate with regard to such subject-matter vests with the Parliament.[[64]](#footnote-64) In the event that legislative incompetence of the State Legislatures with regard to a subject-matter has been established, the Parliament may claim exclusive competence.[[65]](#footnote-65) It is not permissible to interpret Entries under List II too broadly in order to uphold the legislative competence of the State, the necessary competence must then vest with the Parliament.[[66]](#footnote-66) Thus, in light of Contention 2.1 it is established that the State Legislatures are incompetent to pass legislation with respect to the subject-matter of the Linking of Rivers Act. Thereby, it is humbly submitted that § 3 of the said Act is *intra vires* the Constitution and that Parliament has not encroached upon the constitutional powers of the States.

## 3. THAT THE EXCLUSION OF THE STATE OF VINDHIYA FROM THE LINKING OF RIVERS PROJECT IS NOT VIOLATIVE OF THE FUNDAMENTAL RIGHTS OF THE PEOPLE OF STATE OF VINDHIYA AND STATE OF NORMANDA.

### 3.1 That The Writ Petition Is Not Maintainable Since There Has Been No Violation Of Fundamental Rights

**20.** In *Coffee Bd.* v. *Jt. C.T.O*,[[67]](#footnote-67) the Hon’ble Supreme court has held that no question other than that relating to fundamental right will be determined in proceedings under Article 32.

Since in the present case, there has been no violation of fundamental rights, the writ petition is not maintainable under A.32 of the Constitution.

#### 3.1.1 Right To Equality Allows For Classification Under Certain Circumstances And The Same Has Not Been Violated.

##### 3.1.1.1 Right To Equality Allows Classification Under Certain Circumstances:

**21.** When any case is brought before the Court with regards to challenging an executive order by the Central Government on the grounds of A.14, the Court works on the presumption that the order passed is constitutionally valid. This presumption is imperative if the executive’s independence is to be maintained and its powers given some credibility. The Central Government in a democratic nation understands and correctly appreciates the needs of its own people and formulates laws that are directed to problems made manifest by experience and the discriminations formulated by the Government are thus based on adequate grounds.[[68]](#footnote-68) The burden to prove otherwise rests on the Petitioner.

**22.** Mere discrimination or inequality of treatment does not amount to discrimination within the ambit of A.14.[[69]](#footnote-69) For an order of the executive to be not violative of the fundamental rights, it must not be an arbitrary act of the state,[[70]](#footnote-70) and fulfil the following two conditions: [a] **intelligible differentia** which distinguishes persons or things that are grouped together from others left out in the group.[[71]](#footnote-71) This is done by examining the purpose and policy of the Act, which can be ascertained from an examination of its *title, preamble[[72]](#footnote-72) and provisions.*[[73]](#footnote-73) [b] **rational**[[74]](#footnote-74) **nexus** that connects the object sought to be achieved by the act with the intelligible differentia ascertained in [a].[[75]](#footnote-75) The reasonableness of the nexus is to be ascertained with reference to the object of the legislation and not on the basis of any moral considerations.[[76]](#footnote-76)

**23.** Intelligible differentia can also exist amongst different states. A.14 does not restrict a state from applying different laws to different states owing to the local circumstances.[[77]](#footnote-77) Hence, classification may be geographical; however, a nexus has to be proven between the territorial basis of the classification and the object sought to be achieved by the order.[[78]](#footnote-78) Central enactment can be extended to particular states.[[79]](#footnote-79)

##### 3.1.1.2 That A.14 Has Not Been Violated

**24.** In this case, both the conditions for reasonable classification have been fulfilled and thus the government order does not violate A.14. [a] The executive has made a geographical classification in this fact situation which is allowed as proved aforementioned as long as the particular states classified have some local circumstances that qualify for intelligible differentia. This intelligible differentia has been evidenced between those states which have a wetland of such status as provided for in the Ramsar Convention and those that do not; [b] There is thus a rational nexus between the **object** of the government order which was to stay in consonance with the Ramsar Convention and the **act** done by the order which was to exclude the State of Vindhiya from the list of states where the Inter-linking of Rivers project was to be implemented so as to preserve and conserve the wetland in Vindhiya.

**25.** When the law does not make any classification in the statute but the executive does so while implementing it, so long as a classification is reasonable, the order is not arbitrary.[[80]](#footnote-80) Classification has thus been on reasonable grounds fulfilling the test of classification. By not making this classification, the government would have tried to enforce a sense of equality amongst unequals.

**26.** It is humbly submitted, that in light of the aforementioned laws, cases and arguments, the writ petition is not maintainable as A.14 of the Constitution has not been violated.

### 3.2 That A.21 Of The Constitution Is Subject To The Reasonable Person’s Test And Has Not Been Violated

#### 3.2.1 That A. 21 of the Constitution includes Right to Live in a Wholesome Environment

**27.** Indian Constitution is one of the few which has an explicit mention of environment protection in terms of fundamental duties and directive principles of state policy. Judicial decisions have only further strengthened these and given them constitutional mandate.

**28.** A.21 of the Constitution provides for the Right to Life and Liberty which has been interpreted by Indian courts to include the Right to a Wholesome Environment. The Judiciary believes 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 fundamental rights.[[81]](#footnote-81)

**29.** The state has a positive obligation[[82]](#footnote-82) of ensuring that it delivers this right to the people and the Directive Principles of State Policy also direct the State to do so under A.41 (a).

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

**30.** Since the ambit of Article 21 is so vast, it encompasses several rights. But what happens in the case two out of the several rights present in A.21 are in conflict?

**31.** The aid of the “Reasonable Person’s Test”[[83]](#footnote-83) is usually taken to ascertain which Right is to be implemented when both cannot exist in the presence of the other. This is decided based on what is the best interest for the public at large.[[84]](#footnote-84) In cases where the opportunity cost of saving the environment is stifling development, the judges in India have often taken into account the benefit of the larger group. In *G. Sundararajan v. Union of India and Ors*.,[[85]](#footnote-85), the explicit ratio stated: Individual interest or, smaller public interest must yield to larger public interest and inconvenience of some shall be bypassed for larger interest or cause of society. In one the most recent cases of 2014, *Court on Its Own Motion v. State Of Hp Ors.,*[[86]](#footnote-86)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 and human health 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, public health and ecology have priority over unemployment and loss of revenue.”[[87]](#footnote-87)*

#### 3.2.3 A.21 of the Constitution has not been violated.

**32.** In the present case, the conflict is whether the wetland should be protected by excluding the State of Vindhiya from the Inter-linking of Rivers Project, or the economy of the citizens of Vindhiya and Normanda be supported by implementing the Inter-linking of Rivers Project. Both the Right to Livelihood and the Right to Wholesome Environment are embodied in the Right to Life and Liberty under A.21 of the Constitution; the question is which one should be privileged when the opportunity cost of exercising one is that of losing the other.

**33.** The Right to Life and Liberty under A.21 has not been violated as the Right to Wholesome Environment has merely been giver privilege over the Right to Livelihood by the judiciary. The public interest at large requires a healthy environment, bereft of pollution and debilitation. Not just the public, but development should take place in tune with the probable requirements of the future generations too.

**34.** In accordance with the above mentioned law, cases and arguments, it is held that the executive order has not violated A.21 of the constitution, but rather adhered to since the Right to Wholesome Environment has been respected. Since no fundamental rights have been violated, the Counsel humbly submits that the writ petition should not be held maintainable.

### 3.3 That Not Following The Commitments Of The Ramsar Convention Is A Violation Of International Law.

#### 3.3.1 That the commitments of the Ramsar Convention are International Law and must be adhered to.

**35.** The Ramsar Conventions specifies 4 primary commitments that are to be adhered to by the signatories:[[88]](#footnote-88) [a] A.3.2 (§4.3.7): Parties have to arrange to be informed about any damage of ecological character and information of the same has to be passed without delay. [b] A.3.1: talks about ‘wise use’ of wetland in their respective territory. §4.2 defines ‘wise use’ as ‘sustainable use’. [c] A.4: Contracting Parties must establish nature reserves and “promote training in the fields of wetland research, management and wardening.” [d] A.5: Contracting parties will consult each other while implementing the Convention.

**36.** Though the Convention is not regulatory in nature and has no punitive sanction for violation of the convention or any of its commitments, the Convention falls within the ambit of a treaty and is hence binding in international law. The edifice of this convention is based on accountability and expectations of commitment.

**37.** The Vienna Convention on the Law of Treaties, in A. 27 says that no party can invoke the excuse of an internal law to justify its non- performance of an international treaty. This article applies with respect to provisions of the Constitution too and is supplemented by the doctrine of Pacta Sunct Servanda under A.26 which emphasises the binding effect of a treaty in force.

**38.** This was upheld by the Permanent Court of International Justice which took the position that internal law, particularly a constitution cannot be invoked to justify non- performance of treat obligations. This was the advisory opinion of the ICJ in *Treatment of Polish Nationals in Denzig Case,[[89]](#footnote-89)* where it was stated that: “… a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force”.

**39.** The Constitution lacks a 'supremacy clause' and thus the Courts in India apply the rules of International law according to the principles of comity of Nations, unless they are overridden by clear rules of domestic law.[[90]](#footnote-90)

**40.** Though, India is not a signatory to the Vienna Convention on Law of treaties, the Vienna Convention on Law of Treaties is part of the customary international law which binds India too. Also, in *National Legal Services Authority v. Union of India (UOI) and Ors.,*[[91]](#footnote-91)the Supreme Court recognised the Vienna Convention on Law of Treaties and used it as a guide for interpretation.

*“A perusal of the jurisprudence shows that a pro-active role is being played by Indian judiciary in implementing India’s international obligations under International treaties, especially in the field of human rights and environmental law. Thus, “judicial activism” is filling up the gaps in the municipal law.”[[92]](#footnote-92)*

#### 3.3.2 That By Excluding The State Of Vindhiya From The Project, Aressia Has Abided By International Law

**41.** In the present case, if the Inter-Linking of Rivers Project is implemented in Vindhiya also, then Aressia will be unable to adhere to the commitments that she has promised to adhere to under the Ramsar Convention; these include Commitments 3 and 4. The wetland will be destroyed if the Project is implemented since the rivers feeding it would dry up.[[93]](#footnote-93)

**42.** The Ramsar Convention is a treaty obligation that is binding on Aressia, Aressia being a signatory of the same. Under the customary international law, Aressia has to abide by international law and in conformity of the same, the executive has passed such an order.

### 3.4 That The Committee On Eia Was Adhering To Treaty Guidelines And National Law And The Central Government Was Acting In Conformity With The Same

#### 3.4.1 That The EIA Committee was Adhering To Treaty Guidelines and National law

**43.** Resolution 5.1 of the 6th Ramsar Convention Manual clearly mentions the Framework for implementation the Ramsar Convention. One of the key clauses of this resolution is that the state would make an Environmental Assessment Impact before transforming the wetland.[[94]](#footnote-94) In 2006, the Environment Protection Act, 1986 passed an EIA notification which clearly specified that any construction of new projects would be undertaken in India only after the same had been cleared by the State EIA Committee or the Central Government.

**44.** This notification was in adherence to Rule 17 of the **Rio Declaration on Environment and Development**[[95]](#footnote-95), a declaration signed at the 1992 UN Conference on Environment and Development (UNCED) to which India was party to.

#### 3.4.2 That the Central Government was acting on the report of the EIA to stay in conformity with the International Obligations and National Laws.

**45.** In the present case, the report prepared by the EIA Committee of the State of Vindhiya[[96]](#footnote-96) was in conformity to the text of Resolution 5.1, the 2006 notification of the EPA 1986, and in consonance with Rule 17 of the Rio Declaration.

**46.** An EIA was constituted under the EPA to survey in an impartial manner, the probable damages that the implementation of the Project would have on the Wetland in Vindhiya. It produced a report on the very basis of which, the state government of Vindhiya approached the Central Government, and requested them to exclude the States of Vindhiya from the project. If the Central Government after the report of the EIA would have included Vindhiya in the Interlinking of Rivers Project, the Central Government would be breaching the provisions of the Ramsar Convention.

### 3.5 The Doctrines Of Precautionary Principle And Sustainable Development Are A Part Of National Environmental Law And Have Been Adhered To

#### 3.5.1 The Precautionary principle is a part of national environmental law:

**47.** The Precautionary Principle has been read into A.21 of the Constitution, thereby reading it into the National Environmental law of India. *Vellore Citizens Welfare Forum v. Union of India*[[97]](#footnote-97) has been a landmark case in this regard.

*“…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.”*

**48.** The judgment primarily emphasised on the fact 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 environment was made available to the citizens. This was further upheld in several cases. 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. Since the laws of Aressia are in *pari materia* with those of India,[[98]](#footnote-98) Aressia too will be bound by this international treaty. In *MC Mehta v. Union of India*,[[99]](#footnote-99) the Supreme Court explained the scope of the Precautionary Principle and stated that the principle should be read with the principle of sustainable development.[[100]](#footnote-100) Precautionary principle states that any harm which can reasonably be foreseen is to be prevented immediately.

#### 3.5.2 Precautionary Principle has been adhered to.

**49.** The result of the survey conducted by the State EIA clearly showed that there was a grave threat to the biodiversity and to the very existence of the wetland in Vindhiya if the Project included Vindhiya.[[101]](#footnote-101) The executive, by passing the order to exclude Vindhiya had merely conformed to the Precautionary Principle to avoid any unprecedented harm that society could possibly accrue as a result of the inclusion of Vindhiya in the Project. In accordance with the aforementioned fact, laws and rules, the Counsel humbly submits that by adhering to the Precautionary Principle, the executive has safeguarded A.21 of the Constitution and upheld the Environmental rights of the citizens of the States of Vindhiya and Normanda.

## 4. THAT THE LINKING OF RIVERS ACT, 2010 DOES NOT VIOLATE THE ENVIRONMENTAL RIGHTS OF CITIZENS OF ARESSIA AND THE PROVISIONS OF THE FOREST (CONSERVATION) ACT, 1980.

### 4.1 That Judicial Review Does Not Extend To Expert Committee Reports And The Same Has Been Complied With.

#### 4.1.1 That judicial review does not extend to expert committee reports.

**50.** The judicial review of Indian courts does not extend to looking into committee reports as these reports are formulated after extensive research at the ground level by an exclusively selected pool of people who are highly experience and knowledgeable in that field.[[102]](#footnote-102) Lord Halsbury in *Mayor etc. of Westminister v. London & North Western Ry. Co*. held that,[[103]](#footnote-103) *“Where the legislature has confided the power to a particular body with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion”*. Of course, this assumes that the thing done is the thing which the Legislature has authorised.

**51.** In *Rural Litigation and Entitlement Kendra and Ors v. State of Uttar Pradesh and Ors*.,[[104]](#footnote-104) the Hon’ble Supreme Court held that the government should decide which one was to be given more preference, the environment or the industrial requirement when the two were in conflict. The judgment manifestly excluded the judiciary from doing the same. The expert body must have greater control over the operation and strike a balance between preservation and utilisation: and on the basis of appropriate advice, government should take a policy decision and implement it.[[105]](#footnote-105)

**52.** In the case, *Mullaperiyar Environmental Protection Forum v. Union of India (UOI) and Ors.*,[[106]](#footnote-106) a committee was appointed by the State of Kerala to look into an issue of the Mullaperiyar dam in the forest. Committee said that the strengthening of the dam will do benefit the environment by enhancing the flow of water and which will consequentially lead to a thriving natural environment. Court without going into technicalities accepted this view of the expert committee. The Expert Committee has reported that there will be improvement in the environment. The apprehension regarding adverse impact on environment and ecology has been found by the experts to be unfounded.[[107]](#footnote-107) This was further upheld in a most recent case of 2014, *State of Tamil Nadu v. State of Kerala and Anr.,[[108]](#footnote-108)*where the judgment of Mullaperiyar Dam was questioned by the petitioner who claimed that the expert committee did not perform a good survey.

#### 4.1.2 That the Hon’ble Supreme Court should rely on the decision of the Environment Impact Assessment Committee.

**53.** In this case, the Environment Impact Assessment Committee[[109]](#footnote-109) has been constituted in a lawful manner by the Central Government in December, 2009 to conduct an inquiry into the impact on the environment by the linking of rivers. [[110]](#footnote-110) The formulation of the impugned act was contingent on the response by the EIA’s report. EIA’s reports mentioned the possibility of social and environmental harms that could take place if such an idea was given legislative binding, but also cleared the project since these harms could be provided for.[[111]](#footnote-111)

**54.** Hence, the Legislature formulated the Act only after the EIA ratified the idea of the linking of rivers.[[112]](#footnote-112) The states and the various NGOs merely have an **apprehension** of environmental damage, which is unfounded since the EIA has promised otherwise.[[113]](#footnote-113) Since the courts do not have judicial review over the work of the expert committee, when the EIA is claiming that the consequence of implementing the impugned act will have no drastic environmental damages that will irreversibly damage the environment, the court should adhere to their decision. Due to aforementioned cases, law and arguments, the Counsel humbly submits that no environmental rights of the citizens have been violated since harm to the environment is a mere apprehension of the future and EIA has promised that the harm can be avoided if due care is taken. The decision of the NGT should be upheld since the judiciary should not interfere in the report by an expert committee as the latter will be better versed with the fact situation and realities than will the former.[[114]](#footnote-114)

### 4.2 That The Doctrine Of Sustainable Development Is Supplementary To The Doctrine Of Precautionary Principle And Both Have Been Accounted For In This Case.

#### 4.2.1 That the doctrine of Precautionary Principle and Sustainable Development, are supplementary.

**55.** None of the doctrines of environmental jurisprudence can be understood without the doctrine of sustainable development.[[115]](#footnote-115) Merely using the doctrine of Sustainable development has led to harmonising the protection of the environment,[[116]](#footnote-116) without compromising on encouragement given to development.[[117]](#footnote-117) Sustainable development has become the “most significant and focal point of environmental legislation and judicial decisions relating to the same.”[[118]](#footnote-118) The development is such that the future generations are not deprived of environment completely.[[119]](#footnote-119) However, this development should take place in the interest of the public.[[120]](#footnote-120) It was held in *Intellectuals Forum v. State Of A.P*.,[[121]](#footnote-121)

*“Merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellant alleges.”*

**56.** The Hon’ble Supreme Court has in another case,[[122]](#footnote-122) read Right to Development into A.21 of the Constitution and held that Right to a Healthy Environment should be read in a parallel manner with Right to Development and one cannot be privileged over the other. Here the right is not treated as a mere economic right. As Nobel Prize winner Amartya Sen’s book said 'the issue of development cannot be separated from the conceptual framework of human right'.[[123]](#footnote-123) Hence this right becomes all the more imperative to human survival.

#### 4.2.2 The Central Government has passed the order keeping in view the doctrine of sustainable development.

**57.** The Environment Protection Act, 1986 has a primary object of attaining sustainable development which can be interpreted from reading its preamble.[[124]](#footnote-124) In order to act in conformity with environmental statutes, the preamble has to be followed and hence the doctrine of sustainable development should be adhered to.[[125]](#footnote-125) It is impossible to ignore environmental laws but is also impossible to ignore the immediate requirements of a society.[[126]](#footnote-126) The Linking of Rivers Act proposes development in a sustainable manner that will not deteriorate the environment to such an extent that it is unable to replenish itself. This can be evidenced from the fact that an accommodation was made especially for Vindhiya be excluding it from the Project,[[127]](#footnote-127) since the State EIA said that the development in that state would not take place in a sustainable manner.[[128]](#footnote-128)

**58.** The Central Legislature cares for its citizens and wants to drastically improve their lives. The legislation was drafted and passed in light of the compelling circumstances that the Aressians were experiencing,[[129]](#footnote-129) and its only object was to bring a long term solution to the menace of shortage of water in order to preserve the interest of the public at large. Due to the aforementioned cases, law and arguments, the Counsel humbly submits that no environmental right of any citizen has been violated since the doctrine of sustainable development has been adhered to, a doctrine fundamental to the deliverance of executive rights.

### 4.3 A Non-Obstante Clause Precludes Any Contrary Interpretation And The Same Is Applicable To § 2 Of The Forest (Conservation) Act.

#### 4.3.1 A Non-Obstante Clause super precludes any contrary interpretation.

**59.** In *The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue Trivandrum and Anr.,[[130]](#footnote-130)* the Hon’ble Supreme Court brought out the difference between a clause beginning with “subject to” and a clause beginning with “Notwithstanding”. While “Subject to” gives the impression that the provision following the phrase “subject to” is yielding place to another provision to which it is subservient to, “Notwithstanding” precludes anything that contradicts it.[[131]](#footnote-131)

#### 4.3.2 The Forest (Conservation) Act, 1980 supersedes the impugned act.

**60.** § 2 of the FC Act begins with a ‘Notwithstanding anything contained in any other law’. This raises that clause to such a pedestal that no other law can attempt to be an impediment to the operation of this act. [[132]](#footnote-132) This clause thus empowers the Act by giving the operative part of the clause precedence to any contrary law.[[133]](#footnote-133) In contrast to this, §3 of the impugned Act begins with a “Subject to the other provisions”,[[134]](#footnote-134) and hence is subservient to the FC Act. The impugned Act in no way violates any provision of the FC Act, but acts in consonance with it.

**61.** Due to aforementioned law, cases and arguments, the Counsel humbly submits that the impugned act is in conformity with the FC Act since §2 of the latter applies in case of the impugned legislation too. The Linking of Rivers Act has thus not violated the Forest (Conservation) Act in any way, but has conformed to its provisions.

# 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 not maintainable before the High Court of Nerduda.

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

**3.** That the exclusion and non-implementation of the Linking of Rivers Project for the State of Vindhya does not violate the fundamental rights of the people of Vindhya and Normanda.

**4.** That the Linking of Rivers Act, 2010 does not violate 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 Respondents shall duty bound pray.

All Of Which Is Respectfully Submitted

Counsel For The Respondents

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. J. K. Industries v. Union of India, (2007) 13 SCC 391, ¶ 38; Bhatnagars & Co. v. Union of India, AIR 1957 SC 478, ¶¶ 14-15. [↑](#footnote-ref-4)
5. Factsheet, ¶ 6. [↑](#footnote-ref-5)
6. Pune Municipal Corporation and Anr . v . Promoters and Builders Association and Anr ., AIR 2004 SC 3502, ¶ 4. [↑](#footnote-ref-6)
7. Indian Express Newspapers (Bombay) v. Union of India, AIR 1986 SC 515, ¶ 75; State of Madhya Pradesh v. Bhola @ Bhairon Prasad Raghuvanshi, AIR 2003 SC 1191, ¶ 21. [↑](#footnote-ref-7)
8. Factsheet, ¶ 6. [↑](#footnote-ref-8)
9. Factsheet, ¶¶ 4-5. [↑](#footnote-ref-9)
10. The State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12, ¶ 7; Ayaaubkhan Noorkhan Pathan v. The State of Maharashtra and Ors, 2012 (11) SCALE 39, ¶¶ 9-11. [↑](#footnote-ref-10)
11. M.P. Jain Indian Constitutional Law, Justice Ruma Pal, Samaraditya Pal, eds., 6th ed. 2010, p. 1130. [↑](#footnote-ref-11)
12. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597 at ¶ 168. [↑](#footnote-ref-12)
13. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597 at ¶¶ 73-76. [↑](#footnote-ref-13)
14. Republic of Italy thr. Ambassador and Ors. v. Union of India (UOI) and Ors., (2013) 4 SCC 721, ¶ 122; The Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors., AIR 2000 SC 988, ¶ 35. [↑](#footnote-ref-14)
15. Nandini Sundar and Ors. v. State of Chhattisgarh, (2011) 7 SCC 547, ¶ 41. [↑](#footnote-ref-15)
16. Factsheet, ¶ 14. [↑](#footnote-ref-16)
17. Vishaka v State of Rajasthan, AIR 1997 SC 3011 at ¶14; Gramophone Company of India v. Birendra Bahadur Pandey, AIR 1984 SC 667 at ¶ 3-4; [↑](#footnote-ref-17)
18. Malcolm N Shaw, International Law, Cambridge University Press, 6th ed, 2008, at p. 141-148 [↑](#footnote-ref-18)
19. Maganbhai Ishwarbhai Patel v. Union of India, AIR 1969 SC 783, ¶ 79; Salomon v. Commissioners of Customs and Excise, (1967) 2 QB 116. [↑](#footnote-ref-19)
20. Union of India & Anr. v. Azadi Bachao Andolan & Anr., (2004) 10 SCC 1. [↑](#footnote-ref-20)
21. Union of India & Anr. v. Azadi Bachao Andolan & Anr., (2004) 10 SCC 1 at ¶ 17. [↑](#footnote-ref-21)
22. Calcutta Gas Co. v. State of West Bengal, AIR 1962 SC 1044 at ¶ 5. [↑](#footnote-ref-22)
23. Factsheet, ¶ 14. [↑](#footnote-ref-23)
24. Kapan v. Jagmohan, AIR 1981 SC 126, ¶ 25 [↑](#footnote-ref-24)
25. Chanan Singh v. Registrar. Co-op Societies, AIR 1976 SC 1821, ¶¶ 6-7 (per V. R. Krishna Iyer J.) [↑](#footnote-ref-25)
26. HMT Ltd v. Mudappa, AIR 2007 SC 1106. [↑](#footnote-ref-26)
27. HMT Ltd v. Mudappa, AIR 2007 SC 1106, ¶¶ 17- 18. [↑](#footnote-ref-27)
28. Factsheet, ¶ 14. [↑](#footnote-ref-28)
29. Factsheet, ¶¶ 4- 5. [↑](#footnote-ref-29)
30. Factsheet, ¶¶ 14- 15. [↑](#footnote-ref-30)
31. 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-31)
32. State of Kerala and Ors. v. Mar Appraem Kuri Company Ltd. and Anr., AIR 2012 SC 2375, ¶12. [↑](#footnote-ref-32)
33. Granville Austin, The Indian Constitution – Cornerstone of a Nation, 2nd ed. 1999, p. 195. [↑](#footnote-ref-33)
34. Factsheet, ¶ 10. [↑](#footnote-ref-34)
35. 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-35)
36. 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-36)
37. State of Maharashtra v. Bharat Shanti Lal Shah and Ors., (2008) 13 SCC 5 at ¶ 30. [↑](#footnote-ref-37)
38. 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-38)
39. State of Rajasthan v. G. Chawla, AIR 1959 SC 544. [↑](#footnote-ref-39)
40. State of Rajasthan v. G. Chawla, AIR 1959 SC 544 at ¶ 14. [↑](#footnote-ref-40)
41. State of Rajasthan v. G. Chawla, AIR 1959 SC 544 at ¶ 15. [↑](#footnote-ref-41)
42. 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-42)
43. West Bengal v. Union of India, AIR 1963 SC 1241. [↑](#footnote-ref-43)
44. West Bengal v. Union of India, AIR 1963 SC 1241 at ¶¶ 7-9. [↑](#footnote-ref-44)
45. M.P. Jain Indian Constitutional Law, Justice Ruma Pal, Samaraditya Pal, eds., 6th ed. 2010, p. 533. [↑](#footnote-ref-45)
46. Entry 56 List I, Seventh Schedule, Constitution of Aressia; See Also, Supra No. 3 at p. 11887. [↑](#footnote-ref-46)
47. Entry 17 List II, Seventh Schedule, Constitution of Aressia. [↑](#footnote-ref-47)
48. In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552. [↑](#footnote-ref-48)
49. In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552 at ¶¶47-50. [↑](#footnote-ref-49)
50. Factsheet, ¶¶ 2-3. [↑](#footnote-ref-50)
51. Factsheet, ¶ 5. [↑](#footnote-ref-51)
52. Orissa Cement Ltd. (M/s) v. State of Orissa, AIR 1991 SC 1676 at ¶ 37. [↑](#footnote-ref-52)
53. Naga People’s Movement of Human Rights v. Union of India, AIR 1998 SC 431 at ¶ 25. [↑](#footnote-ref-53)
54. 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-54)
55. Supra No. 18 at 551 [↑](#footnote-ref-55)
56. For example, Entry 17, 18, 23, 33 of List II limited by Entry 56, 3, 54, 60 of List I respectively. [↑](#footnote-ref-56)
57. Indu Bhushan Bose v. Rama Sundari Debi, AIR 1970 SC 228 at ¶12; [↑](#footnote-ref-57)
58. Yashpal & Anr. v. State of Chhatisgarh & Ors., AIR 2005 SC 2026. [↑](#footnote-ref-58)
59. Yashpal & Anr. v. State of Chhatisgarh & Ors., AIR 2005 SC 2026 at ¶ 20. [↑](#footnote-ref-59)
60. In Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 552 at ¶¶47-50. [↑](#footnote-ref-60)
61. Factsheet, ¶ 6. [↑](#footnote-ref-61)
62. Factsheet, ¶¶ 1, 2, 5, 6. [↑](#footnote-ref-62)
63. 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. 8985. [↑](#footnote-ref-63)
64. Second G.T.O. v. Nazareth, AIR 1971 SC 999 at ¶ 10; Mittal v. Union of India, AIR 1983 SC 1 at ¶¶ 70-72. [↑](#footnote-ref-64)
65. International Tourist Corpn. v. State of Haryana, AIR 1981 SC 774, ¶ 7. [↑](#footnote-ref-65)
66. State of West Bengal v. Kesoram Industries, (2004) 10 SCC 201, ¶ 251. [↑](#footnote-ref-66)
67. Coffee Bd. v. Jt. C.T.O, AIR 1971 SC 870, ¶1. [↑](#footnote-ref-67)
68. Prabhu Das v. Union of India, AIR1966 SC 1044. [↑](#footnote-ref-68)
69. D.D. Basu, Shorter Constitution of India, 13th ed., 2001, vol. 1, p.62. [↑](#footnote-ref-69)
70. Kasturi Lal Lakshmi Reddy . State of J &K, AIR 1980 SC 1992 ¶14. [↑](#footnote-ref-70)
71. Pathumma v. State of Kerala, AIR 1979 SC 771, ¶41. [↑](#footnote-ref-71)
72. Kausha PN v. Union of India, AIR 1978 SC 1457, ¶¶ 60-62; Avinder Singh v. State of Punjab, AIR 1979 SC 321, ¶9. [↑](#footnote-ref-72)
73. P. B. Roy v. Union of India, AIR 1972 SC 908. [↑](#footnote-ref-73)
74. Kedar Nath Bajoria v. State of W.B, AIR 1953 SC 404. [↑](#footnote-ref-74)
75. Hanif v. State of Bihar, AIR 1958 SC 731. [↑](#footnote-ref-75)
76. Garg RK v. Union of India, AIR 1981 SC 2138, ¶17. [↑](#footnote-ref-76)
77. State of Nagaland v. Ratan Singh, AIR 1967 SC 212; Gopal v. State of UP, AIR 1964 SC 370. [↑](#footnote-ref-77)
78. Purshottam v. Desai, (1955) 2 SCR 887(902); Jia Lal v. Delhi Administration, AIR 1962 SC 1781. [↑](#footnote-ref-78)
79. State of Punjab v. Ajaib Singh, AIR 1953 SC 10; Dhirenda v. Legal Remembrancer, AIR 1954 SC 424; Diwan Sugar Mills v. Union of India, AIR 1959 SC 626. [↑](#footnote-ref-79)
80. Ramakrishna v. Tendolkar, AIR1958SC538. [↑](#footnote-ref-80)
81. [M/s Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board](http://indiankanoon.org/doc/154188161/), Appeal Nos. 57 and 58 of 2013. [↑](#footnote-ref-81)
82. Maruti Shripati Dubal v. State of Maharashtra, 1987 (1) Bom CR 499. [↑](#footnote-ref-82)
83. Charmian Barton, Precautionary Principle In Australia, Vol. 22, 1988, Harv. Env. L. Rev. p.509. [↑](#footnote-ref-83)
84. A.P. Pollution Control Board v. Prof. M.V. Nayadu (Retd.) & Others, AIR 1999 SC 812, ¶38. [↑](#footnote-ref-84)
85. G. Sundararajan v. Union of India and Ors., (2013) 6 SCC 620. [↑](#footnote-ref-85)
86. Court on Its Own Motion v. State Of Hp Ors.*,* CWPIL No. 15 of 2010, ¶11. [↑](#footnote-ref-86)
87. *Ibid.* [↑](#footnote-ref-87)
88. The Ramsar Convention Manual: A guide to the Convention on Wetlands, Ramsar, Iran, 1971, 6th ed. Ramsar Convention Secretariat, Gland, Switzerland, p.16. [↑](#footnote-ref-88)
89. Treatment of Polish Nationals in Denzig Case*,* Series A/B, no. 44, p. 24. [↑](#footnote-ref-89)
90. National Legal Services Authority v. Union of India (UOI) and Ors., AIR 2014 SC 1863 ¶51. [↑](#footnote-ref-90)
91. *Ibid*. [↑](#footnote-ref-91)
92. Dr. Sunil Kumar Agarwal, Implementation Of International Law In India: Role Of Judiciary, in Dean Maxwell & Isle Cohen Doctoral Seminar in International Law Hans & Tamar Oppenheimer Chair in Public International Law Faculty of Law, McGill University. [↑](#footnote-ref-92)
93. Factsheet, ¶11. [↑](#footnote-ref-93)
94. The Ramsar Convention Manual: A guide to the Convention on Wetlands, Ramsar, Iran, 1971, 6th ed. Ramsar Convention Secretariat, Gland, Switzerland, p.17. [↑](#footnote-ref-94)
95. Hereinafter referred to as ‘Rio Declaration’. [↑](#footnote-ref-95)
96. Factsheet, ¶11. [↑](#footnote-ref-96)
97. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715, ¶34. [↑](#footnote-ref-97)
98. Factsheet, Note, 1. [↑](#footnote-ref-98)
99. MC Mehta v. Union of India*,* Writ petition (civil) no. 13381 of 1984. [↑](#footnote-ref-99)
100. Tirupur Dyeing Factory Owners Association v.  Noyyal River Ayacutdars Protection Association and Ors., AIR 2010 SC 3645. [↑](#footnote-ref-100)
101. Factsheet, ¶11. [↑](#footnote-ref-101)
102. Dalpat Abasaheb Solunke and Ors. v.:Dr. B.S. Mahajan and Ors., AIR 1990 SC 434, ¶7. [↑](#footnote-ref-102)
103. Mayor etc. of Westminister v. London & North Western Ry. Co [1905] A.C. 426. [↑](#footnote-ref-103)
104. Rural Litigation and Entitlement Kendra and Ors v. State of Uttar Pradesh and Ors.AIR1987 SC 359, ¶17. [↑](#footnote-ref-104)
105. *Ibid*. [↑](#footnote-ref-105)
106. Mullaperiyar Environmental Protection Forum v. Union of India (UOI) and Ors AIR 2006 SC 1428,¶29. [↑](#footnote-ref-106)
107. *Ibid*, ¶28. [↑](#footnote-ref-107)
108. State of Tamil Nadu v. State of Kerala and Anr*,* AIR 2014 SC 2407, ¶138. [↑](#footnote-ref-108)
109. Dr. Maheshwara Swamy, Law Relating To Environmental Pollution And Protection, Vol. 2, 5th ed., Thomson Reuters, p.1058. [↑](#footnote-ref-109)
110. Factsheet, ¶4. [↑](#footnote-ref-110)
111. Factsheet, ¶6. [↑](#footnote-ref-111)
112. Factsheet, ¶5. [↑](#footnote-ref-112)
113. Factsheet, ¶7. [↑](#footnote-ref-113)
114. Factsheet, ¶16. [↑](#footnote-ref-114)
115. In Vellore Citizens Welfare Forum V. Union Of India Reported, (1996) AIR 1996 SC 2715, ¶11. [↑](#footnote-ref-115)
116. Essar Oil v. Halar Utkarsh Samiti AIR 2004 SC 1834, ¶27.  [↑](#footnote-ref-116)
117. Intellectuals Forum, Tirupati v. State Of A.P, AIR 2006 SC 1350, ¶56. [↑](#footnote-ref-117)
118. Bombay Dyeing 81 Meg. Co. Ltd. V. Bombay Environmental Action Group And Others, 2006(3) SCC 434, ¶251. [↑](#footnote-ref-118)
119. M. Shamsul Haque, Environmental Discourse and Sustainable Development: Linkages and Limitations, Ethics and the Environment, Vol. 5, No. 1 (2000), pp. 3-21. [↑](#footnote-ref-119)
120. Friends Colony Development Committee v. Orissa, (2004) 8 SCC 733, ¶6. [↑](#footnote-ref-120)
121. Intellectuals Forum v. State Of A.P*,* 2006 (3) SCC 549, ¶58. [↑](#footnote-ref-121)
122. N.D. Jayal And Another v. Union Of India Others*,* (2004) 9 SCC 362, ¶23. [↑](#footnote-ref-122)
123. Amartya Sen, (1999). Development as freedom, (1st ed.). New York: Oxford University Press, 1999. [↑](#footnote-ref-123)
124. G.P. Singh, Principles of Statutory Interpretation, 13th ed. 2012. [↑](#footnote-ref-124)
125. Goa Foundation and Peaceful Society v. Union of India and Ors., 2014 (4) EFLT 60, ¶8. [↑](#footnote-ref-125)
126. Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors, AIR 2006 SC 1489, ¶199 [↑](#footnote-ref-126)
127. Factsheet, ¶12. [↑](#footnote-ref-127)
128. Factsheet, ¶11. [↑](#footnote-ref-128)
129. Factsheet, ¶¶12. [↑](#footnote-ref-129)
130. The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue Trivandrum and Anr*.,*AIR 1964 SC 207, ¶27. [↑](#footnote-ref-130)
131. The Dominion Of India And Anr. v. Shrinbai A. Irani And Anr, AIR 1954 SC 596. [↑](#footnote-ref-131)
132. Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, AIR 1987 SC 117, ¶69. [↑](#footnote-ref-132)
133. Caleb Nelson, *PREEMPTION,* Virginia Law Review, Vol. 86, No. 2 (Mar., 2000), p.231 [↑](#footnote-ref-133)
134. Factsheet, ¶6. [↑](#footnote-ref-134)