**Team Code: 06**

**In The Hon’ble Supreme Court Of Aressia, At Ahali City, Aressia**

Writ, Original and Civil Appellate Jurisdiction

No.\_\_\_ of 2014

**In The Matter Between**

**Two Aressian States & Others ….Appellants**

**v.**

**Union Of Aressia ….Respondents**

Memorandum on Behalf of the Appellants

[This Memorandum has been prepared for Petitioners: Forum for Environmental Rights (FER), State of Adhala & State of Pamala, Save the Farmers Forum (SFF) and Centre for Environment Rights and Advocacy (CERA).]

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# ABBREVIATIONS

¶ : Paragraph

ACLU : Aressian Civil Liberties Union

AIR : All India Reporter

ALR : Authority for Linking of Rivers

Art. : Article

CERA : Centre for Environment Rights and Advocacy

DPA : Democratic Progressive Alliance

EC : Environmental Clearance

EIA : Environmental Impact Assessment

EPA : Environment (Protection) Act, 1986

Factsheet : Statement of Facts, 7th HNMCC, 2014 Problem

FC : Forest Clearance

FCA : Forest (Conservation) Act, 1980

FER : Forum for Environmental Right

HLEC : High Level Expert Committee

Hon'ble : Honourable

ICCPR : International Covenant on Civil and Political Rights

MoEF : Ministry of Environment and Forest, Government of India

NGT : National Green Tribunal

PIL : Public Interest Litigation

SC : Supreme Court

SCC : Supreme Court Cases

UDHR : Universal Declaration of Human Rights

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## Important Definitions

‘Petitioners’ for the purposes of this memorandum in the first issue shall stand for ‘Forum For Environmental Right’, in the second issue shall stand for ‘State of Adhala and Pamala’, in the third issue shall stand for ‘Save the Farmers Forum’, in the fourth issue shall stand for ‘Centre For Environmental Rights’.

‘Respondent’ for the purposes of this memorandum stands for ‘The Union of India’.

# STATEMENT OF JURISDICTION

The Hon’ble Supreme Court of Aressia has inherent jurisdiction to try, entertain and dispose of the present case by virtue of Article 131, 32 and 136 of The Constitution of India, 1950. Also under S. 22 of National Green Tribunal Act, 2010 read with S. 100 of the Code of Civil Procedure, 1908 the Supreme Court is empowered to hear appeal on those cases that are adjudged by the National Green Tribunal.

Further Rule 5 Order XLVII of the Supreme Court Rules, 1966[[1]](#footnote-2) allows the Supreme Court to hear all the Petitions together.

# STATEMENT OF FACTS

**PART-I**

1. Aressia, a South Asian Country is a union of 26 states, with land of many small and big rivers (including trans-boundary rivers) and is having a written Constitution and a federal government with strong centralizing tendency. The main economic activity in the country is Agriculture but due to shortage of water it is being significantly affected for the past two decades.

**PART-II**

2. Aressian Civil Liberties Union (ACLU), a NGO, filed a writ petition before the Hon’ble Supreme Court of Aressia highlighting the shortage of water. The Hon’ble Supreme Court disposed the said petition by providing directions to the Government of Aressia to constitute two committees. On the direction of Apex Court, Central Government constituted two committees namely ‘High Level Expert Committee’ and ‘Environment Impact Assessment Committee’. The detailed report given by HLEC suggested and identified that certain rivers can be linked in the country and EIA committee also identified various environmental and social impacts however it approved the project cautioning the Government to take precautionary measures.

**PART-III**

3. In August, 2010 a Central Legislation ‘the Linking of Rivers Act, 2010’ was enacted. The Centre is given all such powers as necessary to ensure availability of water and linking of rivers vide S. 3 of the Act and also the power to constitute an appropriate authority to fulfill such functions. In furtherance of the aforesaid sections the Central Government constituted an ‘Authority for Linking of Rivers’(ALR). However this project was criticized by several State governments as well as NGOs. The Government decided not to implement the project immediately. In April, 2011 there was a change in government. Due to huge financial cost involved the Government decided to implement the project in phases. In February, 2012 ALR published the first phase-list (the list) of rivers which then were exclusively belonging to the State but after the enforcement of the Act.

**PART –IV**

4. In March, 2012 the State of Adhali and the State of Parmala have objected the move of ALR and jointly approached the Hon’ble Supreme Court of Aressia by challenging it is an encroachment by Centre over State’s power and thus the Section 3 of the said Act is ultra vires the Constitution.

5. In an apprehension that Wetlands would be damaged the State of Vindhya requested the CG for the exclusion of itself from the said Act. The CG had directed ALR to do the same. The first phase of the proposed project identified 12 rivers of State of Vindhya that were to be linked; out of which 8 were to be linked to State of Normanda which was facing acute scarcity of water. Protesting the exclusion, the farmers of both the states, formed an organization, ‘Save the Farmers Forum’ (SFF) and approached the Apex Court of the Country under Article 32 of the Constitution of Aressia.

6. One of the rivers included in the list was ‘Bhargavi’ which is a trans-boundary river, flowing from State of Neruda to Boressia. In April 2013, the MoAF of Boressia requested Union of Aressia to exclude river Bhargavi from the first phase of the project. However, considering the prospective benefits for such an inclusion the CG did not change its decision. The Forum for Environmental Right (FER) approached the Hon’ble High Court of Neruda for challenging the inclusion of river Bhargavi on the ground that it is violative of Fundamental Rights of people of Boressia. The Govt. of Aressia challenged the maintainability of FER’s petition and the Hon’ble High Court of Neruda dismissed the petition filed by FER Aggrieved by this FER has approached the Apex Court of Aressia on 2nd March, 2014.

7. In March, 2014 a news channel, ‘Daily News’ had telecasted an interview with four members of EIA committee constituted by the Central Government who disclosed that enforcement of the Act would result in Environmental Degradation and also confessed that because of political pressure they had submitted a favorable EIA report. CERA, approached NGT for challenging the validity of the aforesaid Act. However, on 4th July 2014 the NGT had dismissed CERA’s petition. Aggrieved by this, on 5th August, 2014 CERA has appealed to Apex Court of the country. The Hon’ble Supreme Court of Aressia for the sake of convenience decided to hear all the Petitions together.

# STATEMENT OF ISSUES

**ISSUE 1:** Whether the petition filed by Forum for Environmental Right (FER) is maintainable before the High Court of Neruda?

**ISSUE 2:** Whether Section 3 of the Linking of Rivers Act, 2010 is ultra vires to the Constitution of Aressia?

**ISSUE 3:** Whether, the exclusion and non-implementation of Linking of River Project for the State of Vindhya is violative of fundamental rights of people of State of Vindhya and State of Normanda?

**ISSUE 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

**Issue One: The Petition Filed By Forum For Environmental Right (FER) Is Maintainable.**

The petition filed by FER is maintainable. Firstly, Aressia is under an obligation to not cause trans-boundary environmental damage. Secondly, the violation of such obligation would infringe the legal as well as fundamental right of the people of Borresia. Therefore, the High Court of Neruda is the appropriate forum to enforce the legal right of the Petitioner.

**Issue Two: Section 3 of the Linking of Rivers Act, 2010 is ultra vires to the Constitution of Aressia.**

Section 3 of the Linking of the Rivers Act, 2010 is ultra vires the Constitution of Aressia as it is providing with such a power to the Union to legislate on a subject over which the States have an exclusive legal right. Further, the Union acting in furtherance of such a power as conferred by the impugned section has wrongfully encroached upon the States powers.

**Issue Three: exclusion and non-implementation of Linking of Rivers Project for the State of Vindhya is violative of fundamental rights of people of State of Vindhya and State of Normanda.**

The governmental action of exclusion and non-implementation of the Linking of Rivers Act, 2010 for the State of Vindhya is violative of fundamental rights of people of State Of Vindhya and State Of Normanda as it does not satisfy the elements of Reasonability Test under Article 14, 19 and 21 of the Constitution.

**Issue Four: The Linking of Rivers Act, 2010 violates the environmental rights of citizens of Aressia and the provisions of the Forest (Conservation) Act, 1980.**

The Linking of Rivers Act, 2010 is ultra vires the Constitution of Aressia as it is in violation with the environmental rights of the citizens of Aressia guaranteed under Article 21 of the Constitution & Environment (Protection) Act, 1986 and provisions of the Forest (Conservation) Act, 1980.

# ARGUMENTS ADVANCED

## Issue One

**Whether the petition filed by Forum for Environmental Right (FER) is maintainable before the High Court of Neruda?**

**(¶1.)**The writ petition filed by the Petitioner against the Respondent is maintainable before the High Court of Neruda as Aressia is under an obligation to not cause trans-boundary environmental damage **[A]**. Further, the violation of such obligation would infringe the legal as well as fundamental right of the Petitioner **[B]** and therefore, the High Court of Neruda is the appropriate forum to enforce the legal right of the Petitioner **[C]**.

**A. Aressia is bound to follow International Obligations**

**(¶2.)**In order to fulfill spirit of international obligations which India has entered into, when they are not in conflict with the existing domestic law, the Hon’ble Supreme Court has extensively made use of international law.[[2]](#footnote-3) It is humbly submitted before this Hon’ble Court that certain International Conventions, to which Aressia is a party, impose an obligation upon Aressia to not cause trans-boundary environmental damage and also to not violate the human rights (i). Further, any attempt to link river Bhargavi with any other river in Aressia would lead to violation of such obligation (ii).

*i) Aressia is under International Obligation to not cause Trans-boundary environmental damage and also to not violate the human rights*

**(¶3.)**Where the protection of environment, ecology and other second generation or third generation right is involved, the courts shall not be loathe to refer to the International Conventions.[[3]](#footnote-4) Art. 51 of the Indian Constitution directs the State that it shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. In the case of *His Holiness Kesavanada Bharati Sripadavalvaru v. State of Kerala,[[4]](#footnote-5)*it was stated that in view of Art. 51 of the Constitution, the Court must interpret language of the Constitution, if not intractable, in the light of United Nations Charter and the solemn declaration subscribed to it by India. The Hon’ble Supreme Court has also pointed out in the case of *Apparel Export Promotion Council v. A.K. Chopra,[[5]](#footnote-6)* that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. In other words, Courts in India would apply the rules of international law according to the principles of comity of Nations, unless they are overridden by clear rules of domestic law.[[6]](#footnote-7)

**(¶4.)***Firstly,* the fundamental doctrine in customary law principles of good neighborly relations and non-interference, *Sic utero tuoutolienum non leades* ‘one must use his own rights so as not do injury to another’[[7]](#footnote-8) is applicable in the instant case. The doctrine of *sic utero tuo* as summarized by Oppenheim means that “no state is allowed to alter the natural condition of its territory to the disadvantage of natural conditions of the neighboring state, adding that a state is not only forbidden to stop or divert the flow of a river which runs from its own to a neighboring state, but likewise to make such use of water of the river as causes danger to the neighboring state, or prevent it from making proper use of the flow of the river on its part.”[[8]](#footnote-9)The customary law principles of good neighborly relations and non-interference (*sic utero tu out alienumlaedas*) on which certain decisions such as the case of *Trail smelter,[[9]](#footnote-10) Corfu channel[[10]](#footnote-11)*and *Lake Lanoux[[11]](#footnote-12)*were based have now been developed into the generally accepted rule that States must refrain from activities injurious to other States, that they are liable for damages and that they must compensate the victims adequately.[[12]](#footnote-13)

**(¶5.)***Secondly,* the *sic utero tu* doctrine has been reflected in certain International Declarations and Charters. Article 74 of the United Nations Charter states that members of the UN must base their policy on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters. Further, Principle 21 of the Stockholm Declaration and Principle 2 of Rio Declaration impose a responsibility upon the States to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and this principle also finds its place in the United Nations General Assembly Resolution, 1974.[[13]](#footnote-14) Further this rule of International law has not been overridden by clear rules of domestic law in the country of Aressia.

**(¶6.)**It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.[[14]](#footnote-15) As Aressia is a member of United Nations[[15]](#footnote-16) and a ratified party to the aforementioned Stockholm[[16]](#footnote-17) and Rio Declarations[[17]](#footnote-18) and UN Charter[[18]](#footnote-19) it is bound to follow the obligations and responsibilities set out by these International Instruments i.e. to not cause trans-boundary environmental pollution.

*(iii) Any attempt to link river Bhargavi will lead to violation of International Obligation*

**(¶7.)**River Bhargavi is a trans-boundary river which begins in the Country of Aressia and ends in the Country of Boressia which is its neighboring country.[[19]](#footnote-20) Any attempt to link river Bhargavi with any other rivers in Aressia will lead to destruction of forest area and wildlife, submergence of wetlands and violation of right to livelihood of thousands of fishermen in Boressia.[[20]](#footnote-21) Thus, by linking river Bhargavi with other rivers in Aressia, the Government of Aressia would be causing trans-boundary environmental damage in the country of Boressia. This action of Government of Aressia is a prima facie violation of its international obligation to not cause trans-boundary environmental pollution and hence any attempt to link river Bhargavi will lead to violation of International Obligations that Aressia is bound by.

**B. Petitioners have an enforceable Legal and Fundamental right**

**(¶8.)**The existence of a right is the foundation of a petition under Art. 226.[[21]](#footnote-22) The right alleged may be a fundamental right[[22]](#footnote-23) or an ordinary legal right.[[23]](#footnote-24) Legal Right means legally enforceable right or an ascertainable claim.[[24]](#footnote-25) It was held by the apex court in the case of *Jagadish Saran v. Union of India,[[25]](#footnote-26)*that, “it is also well-settled that interpretation of the Constitution of India or statues would change from time to time. Being a living organ, it is ongoing and with the passage of time, law must change. New rights may have to be found out within the constitutional scheme. Horizons of constitutional law are expanding.” It is humbly submitted before the Hon’ble Court that the Petitioners legal right flows from the obligation that the Respondent has.

*Obligation is a corollary to duty and duty is a corollary to right*

**(¶9.)**Obligation in its popular sense is merely a synonym for duty.[[26]](#footnote-27) When the law recognizes an act as a duty, it commonly enforces the performance of it, or punishes the disregard of it.[[27]](#footnote-28) Every duty must be a duty towards some person or persons, in whom therefore, a correlative right is vested. There can therefore be no duty unless there is someone to whom it is due; there can be no right unless there is someone from whom it is claimed; and there can be no wrong unless there is someone who is wronged.[[28]](#footnote-29) Thus, there cannot be a duty without a corresponding right.[[29]](#footnote-30)

**(¶10.)**It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be followed by the courts of law.[[30]](#footnote-31) The rules laid down in the aforementioned International Instruments casts an obligation upon the Respondents the following of which is their duty. This duty is directed towards the Petitioners for the reason that the failure of this internationally casted duty would wrong the Petitioners and hence the Petitioners has a title, that is to say, certain facts or events by reason of which the right has become vested in them.

**(¶11.)**Furthermore, International law can be used to provide a relief contained in a covenant but not in national law.[[31]](#footnote-32) As Aressia is a ratified party of these conventions it creates a legitimate expectation amongst the people with regard to its observance. This rule of legitimate expectation of an international rule has been recognized in the case of *Minister for Immigration and Ethnic Affairs v. Tech*.[[32]](#footnote-33) For the aforementioned reasons, the Petitioners have a legal right which is enforceable and this legal right flows from the ‘enforceable public duty’ that is casted upon the Respondent.

**(¶12.)**Also, the Petitioners Right to Life which is a Fundamental Right guaranteed by the Constitution[[33]](#footnote-34) which includes within it Right to Environment[[34]](#footnote-35) and Right to Livelihood[[35]](#footnote-36) is also in imminent danger of being violated by the Respondent.

**C. High Court of Neruda is the most appropriate forum**

**(¶13.)**It is humbly submitted that the High Court of Neruda is the most appropriate forum as *Firstly,*the Petitioners have the locus standi to file the petition. The law with respect to *locus standi* has considerably advanced.[[36]](#footnote-37) Whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law *any member* of the public acting *bona fide* and having sufficient interest can maintain an action for redressal of such wrong or public injury.[[37]](#footnote-38) In the instant case the linking of river Bhargavi with other rivers in Aressia would cause a public wrong. Further, the Forum for Environmental Rights (FER) which is an International NGO having its head office in the country of Boressia,[[38]](#footnote-39) which is where the impact of the said action of State would be realized, has sufficient interest to maintain an action of public injury and pray for the observance of constitutional law. Hence, FER has the Locus Standi to file the instant writ petition.

**(¶14.)***Secondly,* A High Court can issue a writ if the cause of action either wholly or partly arises within the High Court’s territorial jurisdiction.[[39]](#footnote-40) Cause of action implies a right to sue.[[40]](#footnote-41) Cause of action can be interpreted to mean every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.[[41]](#footnote-42) Even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the petition.[[42]](#footnote-43) In the instant case the river Bhargavi starts from the State of Neruda.[[43]](#footnote-44) It follows that the implementation of the project of linking the river Bhargavi when commenced would take place within the territories of Neruda and thus the cause of action is wholly arising in the State of Neruda and the High Court of Neruda is competent vide Article 226 (2) to accept the said petition as the writ is well within its territorial jurisdiction.

**(¶15.)***Thirdly,* the Petitioners contend that the place of effect is not a material fact. In the case of *Central Bank of India Ltd. v. Ram Narain,[[44]](#footnote-45)*the court supported the *active nationality* principle of jurisdiction, i.e., regardless of the place of the wrong, a State may exercise its civil and criminal jurisdiction over its nationals – legal and natural, based on the concept of allegiance. The court opined in this case that the jurisdiction of an offence cannot be lost by reason of the venue of the offence.[[45]](#footnote-46) Thus, it is contended that the scope of Article 21 even extends to the environment of Boressia and livelihood of people of Boressia for the reason that the cause of the degradation of environment and loss of livelihood is due to the actions of the State of Aressia.

**(¶16.)***Fourthly,* there is no alternate remedy available for the Petitioner. The Petitioner cannot be a party to the International Court of Justice and further even though he may get the Country of Boressia to approach the ICJ it is uncertain that Aressia would accede to its jurisdiction. Access to justice is a human right.[[46]](#footnote-47) Power under Article 226 can be exercised by High Courts to reach injustice whenever it is found.[[47]](#footnote-48) The High Court is empowered to exercise its extra ordinary jurisdiction under Article 226 to meet unprecedented extraordinary situations with no parallel[[48]](#footnote-49) and it can even subject a policy decision to judicial review if it is unconstitutional.[[49]](#footnote-50)

**(¶17.)**It is humbly submitted that while interpreting legal provisions a court of law cannot be unmindful of the hard realities of life.[[50]](#footnote-51) The approach of the court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential.[[51]](#footnote-52) The High Court of Neruda by dismissing the writ petition filed by FER has clearly diverted from the acceptable approach that has to be adopted by a High Court.

*In light of the aforementioned reasons, it is humbly submitted that the Petition filed by FER is maintainable in the High Court of Neruda.*

## Issue Two

**Issue II: Whether Section 3 of the Linking of Rivers Act, 2010 is *ultra vires* to the Constitution of Aressia?**

**(¶18.)** The counsel on behalf of the State of Adhali and State of Parmala (Hereinafter referred to as **“States”**) humbly submit to this Hon’ble Court that S. 3 of the Linking of Rivers Act, 2010 (Hereinafter referred to as **“Act”**) is *ultra vires* to the Constitution of Aressia as it is the States and not the Union who have an exclusive legal right to legislate upon rivers that are within their territories **[A]**. Further, the Union has wrongfully encroached upon the States powers **[B]**.

**A. States have a Legal Right to legislate upon ‘exclusive legal rivers’**

**(¶19.)** The States invoke the extraordinary original jurisdiction of the Supreme Court in the instant case (i). They humbly submit that the pith and substance of the impugned act is ‘water’ (ii). Further, the word ‘water’ in Entry 17 of State List in Schedule Seven when interpreted broadly includes ‘exclusive rivers’ within it (iii) and as such States have a legal right to legislate upon ‘exclusive rivers’.

*States invoke the Extraordinary Original Jurisdiction of the Supreme Court*

**(¶20.)** Supreme Court is a tribunal for the determination of “disputes between the constituent units of the Federation.”[[52]](#footnote-53) under Art. 131, the Supreme Court has exclusive original jurisdiction in any dispute between the Centre and a State.[[53]](#footnote-54) The article is a necessary concomitant of a federal or a *quasi-*federal form of government and it is attracted only when the parties to the dispute are the Government of India or one or more States arranged on either side.[[54]](#footnote-55) The instant case being one between Two State of Aressia on one side and the Government of Aressia on the other the extraordinary original jurisdiction of the Supreme Court is thus, invoked.

**(¶21.)** Further, in order to invoke the jurisdiction of the Supreme Court vide Art. 131 the dispute, in question, must involve ‘a question of law’ on which the existence or extent of a legal right depends.[[55]](#footnote-56) The expression ‘legal right’ has been liberally interpreted[[56]](#footnote-57) to include the validity of a law of Union or of a State[[57]](#footnote-58) and any claim or dispute between the Union and a State as to their competence, under Schedule seven, to legislate over a subject.[[58]](#footnote-59) As the instant case is regarding the competence of the Union to legislate upon a subject which is under the exclusive domain of the States the jurisdiction of Supreme Court vide Art. 131 is invoked.

*The pith and substance of the impugned act is ‘water’*

**(¶22.)** Before the Legislation with respect to a subject in one List, and touching also on a subject in an other List, is declared to be bad, the Courts apply the rule of pith and substance.[[59]](#footnote-60) This rule envisages that the legislation as a whole be examined to ascertain its ‘true nature and character’ in order to determine to what entry in which List it relates.[[60]](#footnote-61) To ascertain the true character of a law, it must be looked into as an organic whole.[[61]](#footnote-62)

**(¶23.)** *Firstly,* the object of the impugned Act as reflected from S. 3 is to ensure availability and accessibility of water and linking of rivers all over the country.[[62]](#footnote-63)*Secondly,* the circumstances due to which the impugned Act came into existence reveal that the Act is primarily concerned in providing accessibility of water.[[63]](#footnote-64) *Thirdly,* in order to achieve accessibility of water the impugned Act aims at linking of rivers throughout the country. Hence, the whole object of the act is to make water accessible and the effect of its provisions is on rivers. Thus, it is humbly submitted by the States that the pith and substance or the subject matter of the impugned Act is ‘water’.

*‘Water’ in Entry 17 of List II includes ‘Rivers’ and hence States have a Legal Right*

**(¶24.)** The Seventh Schedule to the Constitution spells out different fields of legislation under the Union List (List I), State List (List II) and Concurrent List (List III). An important principle to interpret the entries is Schedule Seven is that none of them should be read in a narrow, pedantic sense; that the ‘widest possible’ and ‘most liberal’ construction be put on each entry, and that each general word in an entry should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.[[64]](#footnote-65)

**(¶25.)** Entry 17 of List II relates to water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of Union List. Entry 17 begins with the general word ‘water’. The word ‘water’ is defined as the fluid which descends from the clouds in rain and which forms *rivers,* lakes, seas, etc.[[65]](#footnote-66) Illustrating what is ‘water’ the entry says that it includes ‘canals’. The (English) Public Health (Control of Disease) Act, 1984[[66]](#footnote-67) defines ‘canal’ to include any *river* and the Northern India Canal and Drainage Act, 1973[[67]](#footnote-68) defines ‘canal’ to include any part of a *river*. The word ‘river’ in turn as defined by the Indian Forest Act, 1927[[68]](#footnote-69) includes ‘canal’ in it. This indicates that a ‘canal’ includes a ‘river’ and vice versa.

**(¶26.)** The word ‘river’ is defined to be a large stream of *water*[[69]](#footnote-70) and as such it falls under the ambit of Entry 17 of the State List. As a State can only deal with water within its territory[[70]](#footnote-71) and as ‘water’ includes ‘rivers’, it is humbly submitted that ‘rivers’ that are ‘exclusive’ i.e. which are within the territories of a State fall within the ambit of Entry 17 of the State List and hence the States have a legal right to legislate upon ‘exclusive rivers’.

**B. Union has wrongfully encroached upon State powers**

**(¶27.)** Part XI of the Constitution of Aressia lays down the relation between the Union and the States. Art. 246 in Part XI of the Constitution demarcates the legislative fields’ with precision and emphasizes the exclusive power of the Union and the States to make laws in respect of the matters enumerated in the lists in the Seventh Schedule and allotted to the Union or the States, as the case may be.[[71]](#footnote-72) Article 246 (3) confers an exclusive power on the States to make laws with respect to the matter enumerated in the State List.

**(¶28.)** It is the submission of the States that the Union by legislating the impugned Act has traversed the Constitutional Limitations as the impugned legislation does not fall under Entry 56 of Union List (i) nor can the Union resort to the residuary powers that it has vide Entry 97 of Union List (ii). Further there are no special circumstances evident from the fact sheet which empower the Union to legislate in State field and as such the Union lacked the legislative competence to enact the impugned Act (iii).

*The impugned Act does not fall under Entry 56*

**(¶29.)** In the instant case, vide S. 3 of the impugned Act the ‘Authority for Linking of Rivers’ (Hereinafter referred to as **“ALR”**) acting on behalf of the Central Government has proposed to link the ‘exclusive rivers’ of the Petitioner States. Entry 56 of Union List empowers the Union Parliament to enact laws in relation to the regulation and development of inter-state rivers and river valleys in furtherance of public interest. However, the scope of Entry 17 of State List is wider than Entry 56 of Union List.[[72]](#footnote-73) Unless Parliament declares the extent to which the regulation and development of inter-state rivers and river-valleys are to be centrally controlled; the State Legislature has full power to enact all legislation regarding water.[[73]](#footnote-74)

**(¶30.)** On a true construction of Entry 56 of List I it would be clear that the said entry could not be invoked by the Union to acquire the rights over ‘exclusive rivers’ of a State. Entry 56 of List I is limited to the regulation and development of those rivers that are inter-state. It cannot be interpreted to mean that the Union can create Inter-state Rivers. The use of the word *Inter-State* before Rivers makes if further clear that the intention of the founding fathers of the Constitution was to exclude ‘exclusive rivers’ from the Union List. Thus, the impugned Act cannot be legislated by the Union by taking resort to Entry 56 of Union List as the field of Entry 56 is limited to Inter-State Rivers alone.

**(¶31.)** Even on a harmonious construction of both these entries i.e. Entry 56 and Entry 17 it cannot be said that the impugned Act has a mere incidental effect on the Entry 17. The impugned Act has a direct effect upon Entry 17 of State List. Further the impugned Act doesn’t any where expressly mention that the Act was made in furtherance of public interest and as such the Union cannot invoke Entry 56 of List I to legislate upon the subject matter of ‘water’.

*Union cannot resort to Residuary Powers*

**(¶32.)** If a particular matter falls within the exclusive competence of the States, i.e, List II of Seventh Schedule, that represents the prohibited field for the Centre.[[74]](#footnote-75) Entry 97 of List I read with Art. 248 (1) gives the Parliament the exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. However Union can take recourse to the Residuary Powers only if the matter is found to be outside the State purview. Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State Legislature must be clearly established.[[75]](#footnote-76)

**(¶33.)** Only when the subject-matter of the impugned legislation does not fall under any entry in List II or List III the Parliament can take recourse to residuary power.[[76]](#footnote-77) Parliament’s residuary power is not to be interpreted so expansively as to whittle down the power of the State Legislatures. To do so would be to affect the federal principles adversely. If there is competition between an entry in List II and the residuary power of the Centre, the former may be given a broad and plentiful interpretation.[[77]](#footnote-78) It is clear that the subject matter of the impugned Act is ‘water’ which falls squarely into Entry 17 of State List and therefore the State has legislative competence over the subject matter of the impugned Act and thus, the Union cannot resort to Residuary Powers.

*Centre cannot legislate in the State Field as no special circumstances exist.*

**(¶34.)** The Union, is empowered to legislate with respect to a matter in the State List in certain special circumstances which are specified in the Constitution in Art. 249, 250, 252 and 253.Vide Art. 249, 250, 252 and 253 the Parliament is empowered to legislate on a State subject in national interest by obtaining a resolution from the Council of States to that effect,and during a Proclamation of Emergency is in operation or when two or more states consent and to enact such Legislation for the implementation of treaties or international agreements respectively. As none of these special circumstance are present in the instant case the Union is not justified in legislating upon a subject which is within the exclusive domain of a State.

*In light of the above mentioned reasons it is humbly submitted that S. 3 of the impugned Act is ultra vires as it traverses the Constitutional Limitations.*

## Issue Three

**Issue III: Whether, The Exclusion And Non-Implementation Of The Linking Of River Act For The State Of Vindhya Is Violative Of Fundamental Rights Of People Of State Of Vindhya And State Of Normanda?**

**(¶35.)** The counsel on behalf of ‘*Save the Farmers Forum’* contends that the governmental action of exclusion and non-implementation of the Linking of Rivers Act, 2010 for the State of Vindhya is violative of fundamental rights of people of State Of Vindhya and State Of Normanda. It is contended so for the reason that such governmental action is violative of Article 14 **[A]** and Article 19, 21 of the Constitution. **[B]**

**A. Governmental Action violates Article 14 of the Constitution**

*Scope of Article 14 of the Constitution*

**(¶36.)** The governmental action of excluding the State of Vindhya[[78]](#footnote-79) falls under the definition of ‘law’ as defined under Article 13(3) (a)[[79]](#footnote-80) of the Constitution, as the law in Article 14[[80]](#footnote-81) is not confined to the law enacted by the legislature but includes any order or notification[[81]](#footnote-82). The petitioner contends that the exclusion of the State of Vindhya is violative of Article 14 of the Constitution. Article 14 envisages equality before law and equal protection of laws. The Supreme Court has aptly observed that ‘Equal Protection of Laws is corollary to Equality before Law and in substance both the expressions mean the same’.[[82]](#footnote-83) The principle of equal protection does not take away from the state the power of classifying persons for the legitimate purpose.[[83]](#footnote-84) But the doctrine of Reasonable Classification must not be over emphasized as it is only a subsidiary rule involved to give practical content to the doctrine of Equality and therefore the doctrine of equality should remain superior to doctrine of classification.[[84]](#footnote-85) As per law the classification[[85]](#footnote-86) should be based upon two things[[86]](#footnote-87) firstly, it should be based upon the Intelligible Differentia[[87]](#footnote-88) and secondly, the Intelligible Differentia should have a rational nexus with the object sought to be achieved[[88]](#footnote-89).

*There is no intelligible differentia for the exclusion of State of Vindhya and that there is no reasonable nexus with the object sought to be achieved.*

**(¶37.)** The petitioner humbly submits that the Intelligible Differentia adopted by the government is not reasonable and that it has no rational nexus to the object sought to be achieved. In the present case, the Intelligible Differentia applied by the Government is to fulfill its International Obligations[[89]](#footnote-90) for the protection of Wetlands[[90]](#footnote-91) in the State of Vindhya. The International Obligation which applies to Wetlands is Ramsar Convention, 1971[[91]](#footnote-92). Aressia is a contractual party to it and has few commitments to preserve Wetlands. But, Article 2.3[[92]](#footnote-93) of the said Convention does not prejudice the Sovereign rights of the Contracting Party.

**(¶38.)** Further, Article 3.2[[93]](#footnote-94) of the said Convention empowers the fellow signatories of this Convention to exercise their Sovereign rights by way of technological development and to inform The International Union for the Conservation of Nature and Natural Resources if any change is made or is likely to be made with respect to ecological character[[94]](#footnote-95) of any Wetland in its territory. Therefore, it can be asserted that the Ramsar Convention does not bind the parties from implementing any development project affecting the Wetlands present in their territory.

*Exclusion Of State Of Vindhya Is Corollary To Exclusion Of The State Of Normanda And Hence Defeating The Object Of The Linking Of Rivers Act, 2010*

**(¶39.)** The first phase of the Linking of Rivers Project identified 12 rivers from The State of Vindhya. Out of these 12 rivers, 8 rivers were to be linked with rivers of State of Normanda which was facing acute scarcity of water hence, the exclusion of the State of Vindhya from the Linking of Rivers Act, 2010 is leading to the exclusion of the State of Normanda[[95]](#footnote-96). To challenge a law where a fundamental right under Article 14 is violated, the first duty of the court is to examine the purpose and policy of the Act and then to discover whether the classification has a reasonable relation to the object which the legislature seeks to obtain[[96]](#footnote-97). The object of the Linking of Rivers Act, 2010[[97]](#footnote-98) is to ensure availability and accessibility of water and linking of rivers all over the country. The exclusion of State of Vindhya and the State of Normanda on the basis of International Obligation will defeat the very object of the Act itself and therefore the differential treatment by the government of Aressia is unlawful as it is not supported by a rational relation with the object of the Statute.[[98]](#footnote-99) Therefore, it is humbly submitted that the exclusion of State of Vindhya and State of Normanda from the Linking of Rivers Act, 2010 is violative of Article 14 of the Constitution as there is no rational nexus between the Intelligible Differentia and the object sought to be achieved[[99]](#footnote-100).

**B. Governmental Action violates Article 19 and 21 of the Constitution**

**(¶40.)** The petitioner humbly submits before this Hon’ble Court of Law that due to non-implementation of linking of rivers under the Linking of Rivers Act, 2010 is infringing the fundamental right to occupation of the petitioner under Article 19(1)(g). Further Right to water and Right to livelihood of the petitioner under Article 21[[100]](#footnote-101) of the Constitution is being abridged.

*Right To Water Is A Fundamental Right*

**(¶41.)** It is humbly submitted that in the present case, the State of Normanda is facing acute scarcity of water[[101]](#footnote-102) and non-implementation of linking of rivers project in the State of Vindhya[[102]](#footnote-103)would not enable the petitioner to enjoy the most cherished right of the Constitution. It is further submitted that under the constitution, right to water is a part of right to life[[103]](#footnote-104) and thus a fundamental right.[[104]](#footnote-105) Equitable distribution of water is also an integral part of the right to life, as the people should have access to the basic resources.[[105]](#footnote-106) Being a basic human need for health, indeed, for survival and therefore it is not an exaggeration to call it one of the basic human rights[[106]](#footnote-107)

**(¶42.)** In the case of *Narmada Bachao Andolan v. Union of India*[[107]](#footnote-108), the majority held that augmentation of water supply on a tremendous scale was pointed out as one of the main benefits of increasing the height of the dam. The Court went on to say that only the people living on the bank of the river, but also the people pinning for water in the arid and semi-arid regions of the states of Gujarat and Rajasthan be benefitted. Therefore it is submitted that Court should consider it from humanitarian point of view as water is the property of the people of the nation and is dedicated totheir use.[[108]](#footnote-109)

*Non-Implementation Of Linking Of Rivers Project To The State Of Vindhya Is In Violation Of Right To Livelihood*

**(¶43.)** The first phase of Linking of Rivers Project identified 12 rivers from State of Vindhya. Out these 12 rivers, 8 rivers were to be linked with the rivers in state of Normanda.[[109]](#footnote-110) Agriculture is the main occupation of the farmers[[110]](#footnote-111) and irrigation is the main source of agriculture. Therefore it is humbly submitted that an equally facet of Article 21 includes Right to Livelihood[[111]](#footnote-112) because no person can live without the means of living, that is, means of livelihood.[[112]](#footnote-113) Article 21 has to be read along with Article 39(a)[[113]](#footnote-114) and Article 37[[114]](#footnote-115) of the Constitution for the understanding and interpretation of Right to Livelihood. The reading of above mentioned articles clarifies that State is under an obligation to secure to the citizens an adequate means of livelihood. Further it is contended that State cannot curtail the Right to Livelihood as the procedure established by law in this case is itself discriminatory.

**(¶44.)** It is humbly submitted that there are many benefits arising out of Linkingof Rivers Project.[[115]](#footnote-116) The people of State of Vindhya and State of Normanda are being deprived of the benefits arising out of the Linking of Rivers Project. Such benefits would improve the irrigation facilities of the farmers as the water flowing through the rivers will directly reach to the farmlands after linking of rivers been done. Further, it is contented that the petitioner has the right to carry on any occupation under Article 19(1)(g) of the Constitution and word “Occupation” means an activity undertaken by a person as means of livelihood or a mission in life.[[116]](#footnote-117) The exclusion made by the Central Government does not fall under the scope of reasonable restrictions vide Article 19(6) of the Constitution therefore Right under Article 19(1)(g) is being infringed.

*In light of the above mentioned reasons it is humbly submitted that writ of mandamus should be issued to Union of Aressia as the exclusion of State of Vindhya from Linking of Rivers Project is in violation of Article 14, 19 and 21 of the Constitution.*

## Issue Four

**Issue IV: Whether the Linking of the Rivers Act, 2010 violates the environmental rights of citizens of Aressia and the provisions of the Forest Conservation Act, 1980?**

**(¶45.)** The appellant is an NGO working for the protection of environment and wildlife and thereby approaches this Hon’ble for challenging the legality of Linking of Rivers Act, 2010. The Act, 2010 is violating the environmental rights of the people of Aressia. **[A]** It is further contended by the appellant that provisions of the Linking of Rivers Act, 2010 is also violating the provisions of Forest (Conservation) Act, 2010. **[B]**

**A. The Linking of Rivers Act, 2010 is violating the environmental rights of the people of Aressia**

*Environmental Rights includes right under Art. 21 of the Constitution*

**(¶46.)** The Court has strengthened Article 21[[117]](#footnote-118) in two ways (i) laws affecting personal liberty have to pass the tests of Article 14 and Article 19 of the Constitution[[118]](#footnote-119) and (ii) the Court recognized several unarticulated liberties that are implied by Article 21. The environmental issues must and should receive the highest attention from this court.[[119]](#footnote-120) Every person enjoys the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21.[[120]](#footnote-121)It is basic right of all to live in a healthy environment. The acute poverty in the country requires developmental process to be accelerated, but we cannot do so at the cost of environment hereby endangering not only the present generation to meet their own needs but also of coming generations.[[121]](#footnote-122)

**(¶47.)** It is humbly submitted that the Linking of Rivers Project, 2010 is violating the environmental rights of the people of Aressia. The Act, 2010 will lead to many environmental issues and petitioner is concerned about the damage which will be caused to the environment by the implementation of Linking of Rivers Project. Linking of River Project may cause submergence of lands and forests, inclusion of saline water in fertile coastal regions, decrease in fisheries.[[122]](#footnote-123) It is further contended that out of 424 rivers 50 percent of rivers are heavily polluted.[[123]](#footnote-124) If there will be linking of these rivers, it will not cause water pollution that will degrade the environment and in no manner such Project will serve National Interest.

**(¶48.)** Fundamental Rights are but means to achieve the goal indicated in Part IV and thus must be construed in the light of Directive Principles.[[124]](#footnote-125) Apart from Article 21 of the Constitution, article 48-A, 51-A(g) highlights the national consensus on the importance of environmental protection and improvement and lay a foundation for a jurisprudence of environment protection.[[125]](#footnote-126) There was considerable debate in Parliament over the wording of draft of Article 48-A. Some said it should include conserve and develop the water, soil, and other natural resources, while another proposed to ensure that the state’s efforts to protect and improve the environment would not harm tribal forest dwellers. The result to this debate was that the broad term of Article 48-A need not contain details.[[126]](#footnote-127)

**(¶49.)** It is humbly submitted that damage to the environment is damage to the Country’s assets as a whole. Ecology knows no boundaries and it can have impact on the climate.[[127]](#footnote-128) Whenever a problem of ecology is brought before, the Court is bound to bear in mind Article 48-A and Article 51-A(g). When the court is called upon to give effect to the Directive Principle and the Fundamental Duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority.[[128]](#footnote-129) The Directive Principles of State Policy formed the fundamental structure and the conscience of the Constitution and the Constitution enjoins upon the State to implement these Directive Principles.[[129]](#footnote-130) Although not enforceable by a court, Directive Principles are increasingly being cited by judges as Complementary to the Fundamental Right.[[130]](#footnote-131) In several environment cases the courts have been guided by the language of Article 48-A.[[131]](#footnote-132)

*Environmental Rights include Statutory Rights under Environment (Protection Act, 1986) and Forest (Conservation) Act, 1980.*

**(¶50.)** Environment (Protection) Act, 1986 is a parent legislation enacted by the Parliament for protection and improvement of environment. The power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.[[132]](#footnote-133) A power conferred by the Environment (Protection) Act, 1986 having regard to its object cannot be treated as power simpliciter, but is a power coupled with a duty and therefore it is a duty of the State to make sure that the conditions or directions under the Act are fulfilled.[[133]](#footnote-134)Enforcement agencies are under an obligation to strictly enforce environmental laws.[[134]](#footnote-135)

**(¶51.)** It is humbly submitted that wetlands are not only present in State of Vindhya but in other states of Aressia as well.[[135]](#footnote-136) The other wetlands are also present in the Ramsar List of Wetlands of International Importance.[[136]](#footnote-137) Therefore State is under obligation to protect them.If State does not take the appropriate action then Courts have to make sure that fundamental rights of the people are safeguarded. In the case of *Indian Council for Enviro-Legal Action v. Union of India,[[137]](#footnote-138)* This Hon’ble Court issued direction for the enforcement and implementation of the laws to protect the Fundamental Right of life of the people. The Court observed that even though it is the function of the executive, but because of non-functioning of the enforcement agencies, the court as of necessity have had to pass orders directing the enforcement agencies to implement the law for protection of fundamental rights of people.

**(¶52.)** The Supreme Court laid down that in view of the Constitutional provisions contained in Articles 21, 47, 48-A, 51-A(g) and other relevant statutory provisions contained in the Water Act, Air Act, Environment (Protection) Act impliedly includes the precautionary principle and the polluter pay principle.[[138]](#footnote-139) The precautionary principle requires government authorities to anticipate, prevent and attack the causes of environmental pollution. It also imposes the onus of proof on the developer or industrialists to show that his or her action is environmentally benign.[[139]](#footnote-140) Therefore in the instant case the Linking of Rivers Act, 2010 through Linking of Rivers Project, government should resist from implementing this project otherwise the environmental rights of the people of Aressia will be in great peril.

**B. Linking of Rivers Project Act, 2010 also violate provisions of Forest Conservation Act, 1980**

*Scope of Forest (Conservation) Act, 1980*

**(¶53.)** Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance and provision of conservation of forests must apply to all forests irrespective of the nature of ownership or classification therefore.[[140]](#footnote-141)Governmental Development agencies charged with decision making ought to give due regard to ecological factors including (a) the environmental policy of the Central and State government (b) the obligation of the present generation to preserve natural resources and pass on to the future generations an environment as intact as the one we inherited from the previous generation.[[141]](#footnote-142) The Principal aim of the National Forest Policy[[142]](#footnote-143) is to ensure environment stability and maintenance of ecological balance including atmospheric equilibrium which is vital for sustenance of all life forms human, animal and plant. The derivation of direct economic benefit must be subordinate to this principal aim. The National Forest Policy, 1988 has a statutory flavor. The non-fulfillment of aforesaid principle aim would be violative of Article 14 and Article 21 of the Constitution.[[143]](#footnote-144)

*Violation of Forest (Conservation) Act, 1980*

**(¶54.)** It is humbly submitted that in the instant case environmental clearance is needed to implement Liking of River Project. Government appointed Environment Impact Assessment Committee to assess the impacts of linking the rivers.[[144]](#footnote-145) The report identified various rivers which can be linked together and gave a detailed report. The EIA committee also identified various environmental and social harms that may be caused by inter linking of rivers. In spite of such harms being identified, EIA committee approved the project.[[145]](#footnote-146) Such non-application of mind on the part of EIA members is evident from the disclosure by EIA Committee members on a news channel. They confessed that, there was political pressure on them to give a favorable EIA report. It was also disclosed that due to Linking of Rivers Project there would be submergence of land, destruction of forest, wildlife and importantly ecology balance would be disturbed.[[146]](#footnote-147)

**(¶55.)** It is humbly submitted that Conservation and preservation of forest wealth and environment is under the preview of public interest[[147]](#footnote-148). The implementation of Linking of Rivers Project under the Linking of Rivers Project, 2010 without appropriate approvals is in violation to Forest (Conservation) Act, 1980.

*In light of the above mentioned reasons it is humbly submitted that Linking of Rivers Act, 2010 to be struck down as the Act is ultra-vires of the Constitution.*

# PRAYER

WHEREFORE, in light of the issues raised, arguments advanced and authorities cited it is most humbly and respectfully requested that this Hon’ble Court to adjudge and declare on behalf of:

1. FER that The Petition filed by FER is maintainable and shall be redirected to the High Court of Neruda for adjudication.
2. Two Aressian States that the Section 3 of the Linking of Rivers Act, 2010 is ultra vires the Constitution.
3. Save the Farmers Forum that to issue a writ of mandamus to the Government of Aressia for including and implementing the Linking of Rivers Act, 2010 of the State of Vindhya.
4. Centre for Environment Rights and Advocacy that the Linking of Rivers Act, 2010 as ultra vires the Constitution.

The court may also be pleased to pass any other order, which this Hon’ble Court may deem fit in light of justice, equity and good conscience. All of which is respectfully submitted on behalf of

The Appellants

Sd/-

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(Counsel for the “Appellants’”)

1. Rule 5 Order XLVII of the Supreme Court Rules, 1966 reads as : Where there are two or more appeals arising out of the same matter, the Court may at any time either on its own motion or on the application of any party, order that the appeals be consolidated. [↑](#footnote-ref-2)
2. Entertainment Network (I) Ltd. v. Super Cassette Industries, 2008 (9) SCALE 69 [↑](#footnote-ref-3)
3. Id. [↑](#footnote-ref-4)
4. His Holiness Kesavanada Bharati Sripadavalvaru v. State of Kerala, (1973) 4 SCC 225 [↑](#footnote-ref-5)
5. Apparel Export Promotion Council v. A.K. Chopra*,* (1999) 1 SCC 759 [↑](#footnote-ref-6)
6. National Legal Services Authority v. Union of India, (2014) 5 SCC 438; Also see, Gramophone Company of India Ltd. v. BirendrabahadurPandey (1984) 2 SCC 534 and Tractor Export v. Tarapore& Co. (1969) 3 SCC 562, Mirza Ali Akbar Kashani v. United Arab Republic, (1966) 1 SCR 391 [↑](#footnote-ref-7)
7. Kapoor S.K., International Law & Human Rights, 399 (14th Ed. Central Law Agency, 2002) [↑](#footnote-ref-8)
8. Oppenheim, International Law, 475 (8thed, Vol. 1, 1955) [↑](#footnote-ref-9)
9. United States v. Canada (Trail smelter), Vol. 35A. J.I.L. (1941), P. 684 [↑](#footnote-ref-10)
10. United Kingdom v. Albania (Corfu Channel Case), 15 XII 49, I.C.J. Reports 1949, p. 244 [↑](#footnote-ref-11)
11. France v. Spain (Lake Lanoux Arbitration), (1957) 12 R.I.A.A. 281; 24 I.L.R. 101 [↑](#footnote-ref-12)
12. An Introduction to Environmental Rights Dr. Rathin Bandopadhyay 189 [↑](#footnote-ref-13)
13. United Nations General Assembly Resolution No. 3281 [XXVII] (1974) [↑](#footnote-ref-14)
14. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 [↑](#footnote-ref-15)
15. Clarifications to the Fact Sheet, question no. 8 [↑](#footnote-ref-16)
16. *See* http://chm.pops.int/Countries/StatusofRatifications/PartiesandSignatories/tabid/252/Default.aspx [↑](#footnote-ref-17)
17. *See* http://unfccc.int/essential\_background/convention/status\_of\_ratification/items/2631.php [↑](#footnote-ref-18)
18. *See* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=I-1&chapter=1&lang=en [↑](#footnote-ref-19)
19. Fact Sheet, para 9 [↑](#footnote-ref-20)
20. Id., para 14 [↑](#footnote-ref-21)
21. State of Orissa v. Ram Chandra Dev, AIR 1964 SC 685 [↑](#footnote-ref-22)
22. Bokaro v. State of Bihar, AIR 1963 SC 516 : 1962 (Supp-3) SCR 831 [↑](#footnote-ref-23)
23. Calcutta Gas Co. v. State of West Bengal., AIR 1962 SC 1044 (1047) : 1962 (Supp-3) SCR 1. [↑](#footnote-ref-24)
24. P Ramanatha Aiyar, Advanced law Lexicon, 2688 (3rd Ed, LexisNexis Butterworths Wadhwa Nagpur, 2009) [↑](#footnote-ref-25)
25. (1980) 2 SCC 768 [↑](#footnote-ref-26)
26. Salmond on Jurisprudence, 446 (P J Fitzgerald, 12th Ed, Universal Law Publishing Co. 2010) [↑](#footnote-ref-27)
27. Id., p. 217 [↑](#footnote-ref-28)
28. Id., p. 216 [↑](#footnote-ref-29)
29. Id., p. 220 [↑](#footnote-ref-30)
30. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 [↑](#footnote-ref-31)
31. Entertainment Network (I) Ltd. v. Super Cassette Industries, 2008 (9) SCALE 69 [↑](#footnote-ref-32)
32. Minister for Immigration and Ethnic Affairs v. Tech ,128 ALR 353 [↑](#footnote-ref-33)
33. Art. 21 of the Constitution of India, 1950 [↑](#footnote-ref-34)
34. Rural Litigation and entitlement Kendra, Dehradun v. State of Uttar Pradesh*,* AIR 1988 SC 2187; Kendra, Dehradun v. State of Uttar Pradesh*,*AIR 1988 SC 2187 [↑](#footnote-ref-35)
35. Olga Tellis v. Bombay Municipal Corporation,AIR 1986 SC 180 [↑](#footnote-ref-36)
36. M/s. J. Mohapatra& Co. v. Orissa, AIR 1984 SC 1572, 1574 : (1984) 4 SCC 108 [↑](#footnote-ref-37)
37. S.P. Gupta v. Union of India, AIR 1982 SC 149 : 1981 Supp SCC 87 [↑](#footnote-ref-38)
38. Fact Sheet, para 14 [↑](#footnote-ref-39)
39. Art. 226 (2) of The Constitution of India, 1950 [↑](#footnote-ref-40)
40. MP Jain,Indian Constitutional Law,429 (6th ed., LexisNexis Butterworths Wadhwa Nagpur, 2010) [↑](#footnote-ref-41)
41. Id., [↑](#footnote-ref-42)
42. Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335 : AIR 2007 SC 1812 [↑](#footnote-ref-43)
43. Fact Sheet, para 9 [↑](#footnote-ref-44)
44. Central Bank of India Ltd. v. Ram Narain, AIR 1955 SC 36 at 38 [↑](#footnote-ref-45)
45. Id., 38-39 [↑](#footnote-ref-46)
46. Tashi Delek Gaming Solutions Ltd. v. State of Karnataka, (2006) 1 SCC 442 [↑](#footnote-ref-47)
47. Secy, ONGC Ltd. v. V.U. Warrier, (2005) 5 SCC 245 : AIR 2005 SC 3039 [↑](#footnote-ref-48)
48. T.K. Rangarajan v. Govt. of T.N., (2003) 6 SCC 581 : AIR 2003 SC 3032 [↑](#footnote-ref-49)
49. DDA v. Joint Action Committee, (2008) 2 SCC 672 (678) [↑](#footnote-ref-50)
50. DevDutt v. Union of India, (2008) 8 SCC 725 [↑](#footnote-ref-51)
51. Id. [↑](#footnote-ref-52)
52. Hanif v. Estate of Bihar, (1959) SCR 629 (631) [↑](#footnote-ref-53)
53. MP Jain, Indian Constitutional Law, 224 [↑](#footnote-ref-54)
54. State of Karnataka v. Union of India, AIR 1978 SC at 143 [↑](#footnote-ref-55)
55. Art. 131 of the Constitution of India, 1950 [↑](#footnote-ref-56)
56. State of Rajasthan v. Union of India, AIR 1977 SC 1361 : (1978) 1 SCR 1 : (1977) 3 SCC 592 (paras, 92, 105-07, 134-36), per Beg, CJ., Chandrachud, Bhagawati and Gupta, JJ. [7 – Judge Bench]. [↑](#footnote-ref-57)
57. State of Seraikella v. Union of India, AIR 1951 SC 253 : (1951) SCR 474 [↑](#footnote-ref-58)
58. State of Karnataka v. Union of India, AIR 1978 SC 68 : (1978) 2 SCR 1 : 91977) 4 SCC 608 (paras. 202, 276) [↑](#footnote-ref-59)
59. The rule has been borrowed from Canada. Some Canadian cases on the rule are: Citizens Insurance Company v. Parsons, 7 A.C. 96; Russell v. The Queen, 7 A.C. 829; Att. Gen for Canada v. Att. Gen. for British Columbia, 1930 A.C. 111; Att. Gen. for Saskatchewan v. Att. Gen. for Canada, AIR 1949 P.C. 190 [↑](#footnote-ref-60)
60. MP Jain, Indian Constitutional Law,591 [↑](#footnote-ref-61)
61. Id. [↑](#footnote-ref-62)
62. Factsheet, para 6 [↑](#footnote-ref-63)
63. Factsheet, para 1 [↑](#footnote-ref-64)
64. The Elel Hotels and Investment Ltd. v. Union of India, AIR 1990 SC 1664, at 1669 : (1989) 3 SCC 698; State of Rajasthan v. Chawla, AIR 1959 SC 544 : 1959 Supp (1) SCR 904; Hans Muller v. Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367 : (1955) 1 SCR 1284; Navichandra Mafatlal v. Commr. Of Income – tax, Bombay, AIR 1955 SC 58 : (1955) 1 SCR 829; See also Welfare Assn. ARP v. Ranjit P. Gohil, (2003) 9 SCC 358 : AIR 2003 SC 1266; [↑](#footnote-ref-65)
65. P Ramanatha Aiyar, Advanced law Lexicon, 4939 [↑](#footnote-ref-66)
66. S. 53 of the (English) Public Health (Control of Disease) Act [↑](#footnote-ref-67)
67. S. 3(1) of the Northern India Canal and Drainage Act [↑](#footnote-ref-68)
68. S. 2(5) of the Indian Forest Act, 1927 [↑](#footnote-ref-69)
69. P Ramanatha Aiyar, Advanced law Lexicon,4158 [↑](#footnote-ref-70)
70. 1992 AIR SCW 119 (154) [↑](#footnote-ref-71)
71. State of West Bengal v. Union of India, 1963 AIR 1241, 1964 SCR (1) 371 [↑](#footnote-ref-72)
72. MP Jain, Indian Constitutional Law, 551 [↑](#footnote-ref-73)
73. Id. [↑](#footnote-ref-74)
74. MP Jain, Indian Constitutional Law , 532 [↑](#footnote-ref-75)
75. International Tourist Corp. v. State of Haryana, 1981 AIR 774 : 1981 SCR (2) 364 [↑](#footnote-ref-76)
76. Union of India v. H.S. Dhillon, AIR 1972 SC 1061 : (1971) 2 SCC 779 [↑](#footnote-ref-77)
77. Jaora Sugar Mills v. State of Madhya Pradesh, AIR 1966 SC 416, 421 : (1966) 1 SCR 523 [↑](#footnote-ref-78)
78. Fact Sheet, para 11 [↑](#footnote-ref-79)
79. Art. 13(3)(a) of Constitution of India, 1950 [↑](#footnote-ref-80)
80. Art. 14 of Constitution of India, 1950 [↑](#footnote-ref-81)
81. State of West Bengal v. Anwar Ali Sarkar AIR 1952 SCR 284 [↑](#footnote-ref-82)
82. Id. [↑](#footnote-ref-83)
83. State of Bombay v. Balsara F. N.AIR 1951 SC 609 [↑](#footnote-ref-84)
84. Mohd.Shujat Ali v. UOI, AIR 1974 SC 1631 [↑](#footnote-ref-85)
85. “Classification means segregation of classes which have a systematic relation, usually found in common properties and characteristics.” 2 Acharya Dr. Durga Das Basu, Commentary on the Constitution of India, 1396 (8th Ed., LexisNexis Butterworths Wadhwa Nagpur, 2007) [↑](#footnote-ref-86)
86. Kangshari v. State of W.B., 1960 SC 457(484): (1960) 2 SCR 646; KedarNath v. State of West.Bengal. 1954 SCR 30 AIR 1953 SC 404; Ram Sarup v. Union of India, AIR 1965 SC 247(252): (1964) SCR 931 [↑](#footnote-ref-87)
87. “The expression Intelligible Diffrentia means difference capable of being understood. A factor that distinguishes or in different state or class from another which is capable of being understood”. 2 Ramanatha Aiyer, Advance Law Mexican, 2391, (3rd Ed., 2005) [↑](#footnote-ref-88)
88. LaxmiKhandsari v. State of Uttar Pradesh, 1981 SC 873, 891: (1981) 2 SCC 600; Budhan v. State of Bihar, AIR 1970 SC 1453: (1969) 2 SCC 166. [↑](#footnote-ref-89)
89. Fact Sheet, Para 12 [↑](#footnote-ref-90)
90. Rule 2(g) of Wetlands (Management and Conservation) Rules, 2010 [↑](#footnote-ref-91)
91. Ramsar Convention Secretariat, 2013.*The Ramsar Convention Manual: a guide to the Convention on Wetlands (Ramsar, Iran, 1971)*, 6th ed. Ramsar Convention Secretariat, Gland, Switzerland. [↑](#footnote-ref-92)
92. Article 2.3 of the Ramsar Convention, Iran, 1971 [↑](#footnote-ref-93)
93. Article 3.2 of the Ramsar Convention, Iran, 1971 [↑](#footnote-ref-94)
94. ‘Change in ecological charactermeans “the human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service” ’. (Resolution IX.1, Annex A) *A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character*(2005; Ramsar Handbook 1) [↑](#footnote-ref-95)
95. Fact Sheet, para 12 [↑](#footnote-ref-96)
96. Kedar Nath v. State of West Bengal, AIR 1953 SC 835 [↑](#footnote-ref-97)
97. Fact Sheet, Para 6 [↑](#footnote-ref-98)
98. State of Madhya Pradesh v. Bhopal Sugar Industries Limited, AIR 1964 SC 1199 (1181) [↑](#footnote-ref-99)
99. Kangshari v. State of West Bengal, AIR 1960 SC 457 [↑](#footnote-ref-100)
100. Art. 21 of the Constitution of India, 1950 [↑](#footnote-ref-101)
101. Fact Sheet, para 12 [↑](#footnote-ref-102)
102. Fact Sheet, para 11 [↑](#footnote-ref-103)
103. S. K. Garg v. State of Uttar Pradesh, AIR 1999 All 41 [↑](#footnote-ref-104)
104. State of Karnataka v. State of A.P, (2000) 9 SCC 572 [↑](#footnote-ref-105)
105. United Nations Declaration on the Right to Development, 1986. [↑](#footnote-ref-106)
106. P. Leelakrishnan, Environmental Law in India,195 (2nd Ed, Lexis Nexis Buttersworth, 2005) [↑](#footnote-ref-107)
107. Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751, p. 3786 [↑](#footnote-ref-108)
108. D. M. Singhvi v. Union of India, AIR 2005 Raj 280 [↑](#footnote-ref-109)
109. Fact Sheet, para 12 [↑](#footnote-ref-110)
110. T. M. A. Pai Foundation and Ors. v. State of Karnataka, AIR 2003 SC 355(379) [↑](#footnote-ref-111)
111. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180 [↑](#footnote-ref-112)
112. 2 L.M. Singhvi, & Jagdish Swarup, Constitution of India, (2013), 1249 [↑](#footnote-ref-113)
113. Art. 39(a) of the Constitution [↑](#footnote-ref-114)
114. Art. 37 of the Constitution [↑](#footnote-ref-115)
115. In Re Networking of Rivers, 2012(3)SCALE74 [↑](#footnote-ref-116)
116. T. M. A. Pai Foundation & Others v. State of Karnatake & Others, AIR 2003 SC 355 (379) [↑](#footnote-ref-117)
117. Art. 21 of the Constitution of India, 1950 [↑](#footnote-ref-118)
118. Maneka Gandhi v. Union of India, AIR 1978 SC 597 [↑](#footnote-ref-119)
119. Tarun Bharat Sangh, Alwar v. Union of India, 1992 Supp (2) SCC 448 [↑](#footnote-ref-120)
120. Subhash Kumar v. State of Bihar, AIR 1991 SC 420; M. C. Mehta v. Union of India, 1992 (3) SCC 256; Virendar Gaur v. State of Haryana, 1995 (2) SCC 577. [↑](#footnote-ref-121)
121. The World Commission on Environment and Development, 43 (1987) [↑](#footnote-ref-122)
122. Fact Sheet, para 7 [↑](#footnote-ref-123)
123. Fact Sheet, para 3 [↑](#footnote-ref-124)
124. Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645 [↑](#footnote-ref-125)
125. M.C. Mehta v. State of Orissa, AIR 1992 Ori 225 [↑](#footnote-ref-126)
126. The Lok Sabha is the House of the People (Lower House of Parliament). *Lok Sabha Debates,* Eighteenth Session, Fifth Series, Vol. LXV, No. 5, Oct. 29, 1976, columns 94-116. The Constitution (Forty-Fourth Amendment) Bill of 1976 after passage became the Constitution (Forty-Second Amendment) Act of 1976. [↑](#footnote-ref-127)
127. T. N. Godavarman Thirumulvad v. Union of India & Others, (2006) 1 SCC 1 [↑](#footnote-ref-128)
128. Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109 [↑](#footnote-ref-129)
129. State of Kerala v. N. M. Thomas, AIR 1976 SC 490 [↑](#footnote-ref-130)
130. Som Prakash Rekhi v. Union of India, AIR 1981 SC 212 [↑](#footnote-ref-131)
131. Virendra Gaur v. State of Harayana, 1995 (2) SCC 571 [↑](#footnote-ref-132)
132. Bangalore Medical Trust v. B. S. Muddappa, AIR 1991 SC 1902 [↑](#footnote-ref-133)
133. N. D. Jayal v. Union of India, AIR 2004 SC 86 [↑](#footnote-ref-134)
134. Indian Council for Enviro-Legal Action v. Union of India, 1996 (5) SCC 281 [↑](#footnote-ref-135)
135. Clarification to the Fact Sheet page. 2 [↑](#footnote-ref-136)
136. Ramsar Convention Secretariat, 2013. The Ramsar Convention Manual: a guide to the Convention on Wetlands (Ramsar, Iran, 1971), 6th ed. Ramsar Convention Secretariat, Gland, Switzerland. [↑](#footnote-ref-137)
137. Indian Council for Enviro-Legal Action v. Union of India,1996 (5) SCC 281 [↑](#footnote-ref-138)
138. Vellore Citizen’s Welfare Forum v. Union of India, AIR 1996 SC 2715 [↑](#footnote-ref-139)
139. Id., S. Jagannath v. Union of India, AIR 1997 SC 811; A. P. Pollution Control Board v. Prof. M. V. Nayadu, AIR 1999 SC 812 [↑](#footnote-ref-140)
140. T. N. Godavarman Thirumulakpad v. Union of India, (1997) 2 SCC 267 [↑](#footnote-ref-141)
141. State of Himachal Pradesh v. Ganesh Wood Products, AIR 1996 SC 149 [↑](#footnote-ref-142)
142. National Forest Policy, 1988 [↑](#footnote-ref-143)
143. T. N. Godavarman Thirumulpad v. Union of India, AIR 2005 SC 4256 [↑](#footnote-ref-144)
144. Fact Sheet, Para 4 [↑](#footnote-ref-145)
145. Fact Sheet, Para 5 [↑](#footnote-ref-146)
146. Fact Sheet, Para 15 [↑](#footnote-ref-147)
147. Sushila Saw Mills v. State of Orissa, (1995) SCC 615. [↑](#footnote-ref-148)