**Team Code: 06**

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

Writ, Original and Civil Appellate Jurisdiction

Civil Appeal No.\_\_\_ of 2014

**In The Matter Between**

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

**v.**

**Union Of Aressia ….Respondents**

Memorandum on Behalf of the Respondents

[This Memorandum has been prepared for Respondents: Union of Aressia.]

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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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5. Northern India Canal and Drainage Act, 1973
6. The (English) Public Health (Control of Disease) Act, 1984

**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 Not Maintainable.**

The petition filed by FER is not maintainable in the High Court of Neruda as Firstly, whether to link of not to link a particular river is purely a policy decision and the Court cannot sit on judgment upon the wisdom of the policy. Secondly, all relevant considerations were taken before such policy was enacted and thirdly, the Petitioners do not have any enforceable fundamental or legal right to invoke the jurisdiction of the High Court.

**Issue Two: Section 3 of the Linking of Rivers Act, 2010 is Not ultra vires to the Constitution of Aressia.**

The Union has competence in enacting the Linking of Rivers Act as firstly, the subject matter of the Act fall in the Union List particularly Entry 56 read with Entry 97 of List I. Secondly, the matter is of economic and social importance vide Entry 20 of Concurrent List which requires planning and implementation at a national stage. Thus the impugned section is not ultra vires the Constitution of Aressia.

**Issue Three: The exclusion and non-implementation of Linking of River Project for the State of Vindhya is Not violative of fundamental rights of people of State of Vindhya and State of Normanda.**

The exclusion of State of Vindhya was necessary to protect the environment and also to abide by the international obligations. The exclusion was not arbitrary or unreasonable as the same was made after due assessment and as such the exclusion is not violative of Art. 14, 19 and 21.

**Issue Four: The Linking of Rivers Act, 2010 does NOT violate the environmental rights of citizens of Aressia and the provisions of the Forest (Conservation) Act.**

The impugned Act is in furtherance of providing water to the citizens of Aressia which is their fundamental right and all due assessments with regard to environment was taken before the Act was enacted and as such the impugned legislation is legal and constitutionally valid.

# ARGUMENTS ADVANCED

## Issue One

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

**(¶1.)** It is humbly contended before the Hon’ble Court that the writ petition filed by Forum for Environmental Right [Hereinafter referred to as **“FER”**] in High Court of Neruda [Hereinafter referred to as **“HC”**] is not maintainable. *Firstly*, linking of river Bhargavi with other rivers in Aressia is a pure Policy Decision **[A]** and s*econdly*, no fundamental or legal right was infringed by the Policy Decision **[B]** and therefore the writ will not be maintainable on these regards.

**A. Courts cannot sit in judgment over the wisdom of policy**

**(¶2.)** It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision.[[2]](#footnote-3) The question of policy is essentially for the State[[3]](#footnote-4) and such matters do not ordinarily attract the power of judicial review.[[4]](#footnote-5) In the case of *Maharashtra Board of Secondary & Higher Secondary Education v. Paritosh,[[5]](#footnote-6)* the Supreme Court held that, a court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body.[[6]](#footnote-7)

*Linking of river Bhargavi is a Policy Decision*

**(¶3.)** The Respondent relies upon the decision of the Apex Court in the case of *Narmada Bachao Andolan Etc v. Union of India and Others,[[7]](#footnote-8)* wherein the court, while observing that Establishment of large dam is a Policy Decision, held that ‘whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill equipped to adjudicate on a policy decision so undertaken.’[[8]](#footnote-9) In light of the aforementioned reasoning it is contended that the governmental decision of linking river Bhargavi with other rivers in Aressia would classify to be a Policy Decision.

*The courts are ill equipped to decide on the appropriateness of a policy*

**(¶4.)** In *Ugar Sugar Works Ltd. v. Delhi Administration,[[9]](#footnote-10)* the Apex Court adverted to the rule of self-imposed restraint that there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. It was observed in this case that, “the courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”[[10]](#footnote-11) Further, while dismissing a petition challenging the validity of a particular import policy on the grounds of Policy Decision the Supreme Court in the case of *Liberty Oil Mills v. Union of India,[[11]](#footnote-12)* held that, “Obviously, Courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy.”

**(¶5.)** Extending the ration of *Liberty Oil Mills[[12]](#footnote-13)* ratio in the case of *Delhi Science Forum v. Union of India,* the Supreme Court, while dismissing a petition which challenged the inclusion of private companies in telecommunication industry, held that “what has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law…. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained?... All these questions have to be answered by a vigilant Parliament… This court cannot review and examine as to whether the said policy should have been adopted.”

*All relevant factors are assessed before the Policy has been decided*

**(¶6.)** A Policy Decision depends upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.[[13]](#footnote-14) In the instant case all relevant assessment were taken up by the Government before going ahead with the Linking of Rivers Project. An Environment Impact Assessment Committee [Hereinafter referred to as **“EIA Committee”**] was constituted in order to conduct an Environment Impact Assessment pertaining to linking of rivers[[14]](#footnote-15) and consequently the said EIA Committee has approved the Linking of rivers projects.[[15]](#footnote-16) The Government has also considered the prospective benefits of inclusion of river Bhargavi in first phase of Linking of River Project and only then it decided to go ahead with the project without any change.[[16]](#footnote-17) All this has been done by the Government to ensure the availability of sufficient water[[17]](#footnote-18) as the country of Aressia is witnessing failure of agriculture due to shortage of water.[[18]](#footnote-19) Thus, as an overall assessment of relevant factors has been taken up before reaching to a particular policy i.e. the decision of linking river Bhargavi.

*The Policy is in furtherance of Public Interest and Object of the Act*

**(¶7.)** It is humbly submitted that the Policy decision of linking river Bhargavi is in furtherance of Public Interest and Object of the Act. In the case of *Shri Sitaram Sugar Co. Ltd. v. Union of India,[[19]](#footnote-20)* a challenge against a policy decision was dismissed by observing that, “what is best for the sugar industry and in what manner the policy should be formulated and implemented, bearing in mind the fundamental object of the statue, viz., supply and equitable distribution of essential commodities at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review.”[[20]](#footnote-21) Placing reliance on the aforementioned case it is humbly submitted that the Object of the Linking of Rivers Act as is reflected in Section 3 of the Act is to ensure availability and accessibility of water in the best interest of public and it is in furtherance of such objective and public interest that river Bhargavi is being linked with other rivers in Aressia. Such decision of linking river Bhargavi in the first phase of the project is a decision exclusively within the province of the Central Government and thus wouldn’t attract judicial review.

**B. No Fundamental Right is infringed due to the Policy Decision**

*Presumption of Constitutionality*

**(¶8.)** The Legislature composed as it is of the elected representatives of the people is presumed to know and be aware of the needs of the people and what is good or bad for them and that a Court cannot sit in judgment over the wisdom of the Legislature.[[21]](#footnote-22) Therefore usually the presumption is in favour of the Constitutionality of the statue and the onus to prove that it is unconstitutional lies upon the person who is challenging it.[[22]](#footnote-23) The allegations regarding the violation of a constitutional provision should be specific, clear and unambiguous and it is for the person who impeaches the law as violative of the constitutional guarantee to show that the provision is infirm for the reasons stated by him.[[23]](#footnote-24)

*Existence of Right is the foundation of the petition under Article 226*

**(¶9.)** The existence of right is the foundation of the petition under Article 226.[[24]](#footnote-25) The right alleged may be a fundamental right[[25]](#footnote-26) or an ordinary legal right.[[26]](#footnote-27) Hence the person who complains of the infringement of a fundamental right must show that the alleged fundamental right belongs to him.[[27]](#footnote-28) A person, who does not belong to the class of persons to whom a law or Rule applies, cannot challenge its constitutionality.[[28]](#footnote-29)

**(¶10.)** Reliance is placed on the case of *Chairman, Railway Board and Others v. Chandrima Das (Mrs) and Others,[[29]](#footnote-30)* On this principle, even those who are not citizens of this country and *come here* merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to life *in this country.* Thus, they also have the right to live, so long *as they are here,* with human dignity. Just as the State is under an obligation to protect the life of every citizen *in this country,* so also the State is under an obligation to protect the life of the persons who are not citizens. (Emphasis supplied).

**(¶11.)** Further, the Respondents as per Article 74 of the United Nations Charter took part in consultation with the Ministry of Environment of the Boressia much before the project has been implemented. It was only after the negotiations were complete and after all relevant assessments were made that the Union decided to go ahead with the Project. Hence no international obligations were violated by the Respondent in the instant case by linking river Bhargavi.

*In the light of the aforementioned reasons, it is humbly submitted that petition filed by FER in the High Court of Neruda is not maintainable*

## Issue Two

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

**(¶12.)** The counsel on behalf of the Union humbly submits that S. 3 of the Linking of Rivers Act, 2010 (Hereinafter referred as “**Act**”) is within the legislative competence of the Union as the subject matter of the Act fall under the Union List and Concurrent List and thus is not ultra vires to the Constitution of Aressia.

 **The subject matter of the Act fall under the Union List and Concurrent List**

**(¶13.)** In order to ensure availability and accessibility of water and linking of rivers the Union has enacted the Linking of Rivers Act, 2012. It is humbly submitted that the pith and substance or the subject matter of the Act is ‘networking of rivers all over the country’ (i). Further the said subject matter falls under the Union List and the Concurrent List (ii).

*The pith and substance of the Act is ‘Networking of rivers all over the country’*

**(¶14.)** Before the legislation with respect to a subject in one List, and touching also on a subject in another List, is declared to be bad, the Courts apply the rule of pith and substance.[[30]](#footnote-31) To adjudge whether any particular enactment is within the purview of one legislature or the other, it is the pith and substance of the legislation in question that has to be looked into.[[31]](#footnote-32) 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.[[32]](#footnote-33) To ascertain the true character of the legislation in question, one must have regard to it as a whole, to its objects and to the scope and effect of its provisions.

**(¶15.)** The Linking of Rivers Act came into picture at a time when Aressia is facing shortage of water which in turn affected the agriculture and ultimately the economy of Aressia. Failure in agriculture lead to bankruptcy of hundreds of farmers all over the country and many of them committed suicide. Many areas in western and eastern regions of Aressia faced water scarcity and sufficient drinking water wasn’t available. Finding that Linking of Rivers can mitigate the problem of water shortage in the country the Government, after duly assessing the environmental impact of such linking of rivers, the Union enacted the Linking of Rivers Act, 2010.

**(¶16.)** The object of the act as reflected in S. 3 is to ensure availability and accessibility of water and linking of rivers. The scope of the act is further evident in S. 3 wherein it declares that the Central Government shall have the power to take all such measure as it deems necessary or expedient for the purpose of ensuring availability and accessibility of water and linking of rivers *all over the country.* Therefore, the true nature of the Linking of Rivers Act is to develop a networking of rivers which in turn would help in making water accessible to all and hence the subject matter of the Act is ‘networking of rivers’.

*The subject matter of the Act falls under the Union List and the Concurrent List*

**(¶17.)** A succinct appraisal of the relevant provisions of the Constitution reveals that the Union has competence in enacting the Linking of Rivers Act. *Firstly,* Art. 246(1) confers on Parliament an ‘exclusive power’ to make laws with respect to any of the matters in the Union List. The entries in this List are such as need a uniform law for the whole country.[[33]](#footnote-34) Entry 56 of Union List reads as, “Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

**(¶18.)** It is an accepted principle that Parliament can supplement any of its power under any entry in List I and III with its residuary power.[[34]](#footnote-35) It is also a well-recognized principle that entries in the lists have to be given ‘widest amplitude’[[35]](#footnote-36) and ‘most liberal’ construction[[36]](#footnote-37) has to be put on each entry. Art. 248 (1) says that “Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List of State List.” The Union vide Art. 248 (1) gets the power to legislate on residuary powers. The field to legislate on residuary matters is present in Entry 97 of List I which runs as “Any other matter not enumerated in List II and List III including matter not enumerated in the Concurrent List or State List.”

**(¶19.)** Complex modern governmental administration in a federal set-up providing distribution of legislative powers coupled with power of judicial review may raise such situations that a subject of legislation may not squarely fall in any specific entry in List I or List III. Simultaneously, on correct appraisal it may not be covered by any entry in List II, though on a superficial view it may be covered by an Entry in List II. In such a situation, Parliament would have power to legislate on the subject in the exercise of residuary power under entry 97, List I, and it would not be proper to unduly circumscribe, corrode or whittle down this power by saying that the subject of legislation was present to the mind of framers of the constitution because apparently it falls in one of the entries in List II, and thereby deny power to legislate under entry 97.[[37]](#footnote-38) The Supreme Court has refused to accept any such limitation on the residuary power saying that it is not proper to unduly circumscribe, erode or whittle down the residuary by a process of interpretation as new developments may demand new laws not covered by any of the three Lists and these Lists cannot be regarded as exhaustive of governmental action and activity.[[38]](#footnote-39)

**(¶20.)** In the case of *Dillion* the majority took a more expansive view of the residuary power of the Centre. They took a view that Art. 248 was framed in the “widest possible terms” and so the scope of residuary power was vast. A matter not included in List II or in List III falls within the residuary field. No question need be asked whether the matter falls under List I or not. If the subject-matter does not fall in List II or List III, Parliament has power to legislate on it.

**(¶21.)** There is no entry in the State List regarding Networking of rivers and States can only deal with water within its territory.[[39]](#footnote-40) It is humbly submitted that accessibility of water can be provided only when the rivers across the country can be linked which is beyond the competence of a State to do so. There is no provision in the State List and as Residuary powers of the Union List can be used to expand the scope of Entry 56 of Union List the said Act is intra vires and within the Constitutional Limits for its subject matters falls within the Union List.

**(¶22.)** Any incidental encroachment by the Union into the legislative domain of the State list does not render the legislation as void. Reliance is placed on the case of *Premchand Jain v. R.K. Chhabra[[40]](#footnote-41)* wherein it was held by the Supreme Court that:

“As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made, it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the power expressly conferred by the Constitution upon the Legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.”[[41]](#footnote-42)

**(¶23.)** Effect is not the same thing as subject matter.[[42]](#footnote-43) Once it is found that in pith and substance a law falls within permitted field, any incidental encroachment by it on a forbidden field does not affect the competence of the concerned legislature to enact the law. As the pith and substance i.e. the subject matter of the Act is ‘networking of rivers’ and as such subject is within the Union List the Act cannot be declared to be *ultra vires* the Constitution as the Union has got every power to enact a legislation upon the matters within and beyond the Union List as long as the same is not present in the State List by virtue of Art. 246(1) and 248(1) and hence the powers acquired by the Central Government by the Act, particularly S. 3 are well within the Constitutional limits and not beyond them.

**(¶24.)** *Thirdly,* Article 246 (2) empowers the Union to legislate on any matters contained in the Concurrent List. The entry in the Concurrent list that is relevant to the instant case is that of Economic and Social Planning. The instant project of linking of rivers aims at uplifting the economy of Aressia by providing water to irrigation and industries and also helps the farmers and women of the society. There is an element of Economic and Social Planning involved in the instant case which is a subject upon which the Union can legislate as per Entry 20 of the Concurrent List and hence the Act is within the legislative competence of the Union.

*In light of the aforementioned reasons, it is contended that the impugned Act is intra vires the Constitution of India and the contention that S. 3 is ultra vires hold no substance in the scheme of the Constitution.*

## Issue Three

**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?**

**(¶25.)** The counsel on behalf of Union of Aressia contends that the governmental action of exclusion and non-implementation of Linking of Rivers Act for the State of Vindhya is in furtherance of protection of the environment and thus not in violation of Article 14 **[A]** and Article 19, 21 **[B]** of people of State of Vindhya and State of Normanda.

**A. Governmental action is in accordance with Article 14**

*Scope of Article 14 of the Constitution*

**(¶26.)** The counsel on the behalf of the respondents humbly submits before this Hon’ble court that the governmental action of exclusion of State of Vindhya under Linking of Rivers Project is valid under law and does not transgress the limits set by Article 14[[43]](#footnote-44) of the Constitution. Article 14 envisages equality before law and equal protection of law. .[[44]](#footnote-45) The principle of equal protection does not take away from the state the power of classifying persons for the legitimate purpose.[[45]](#footnote-46) The classification[[46]](#footnote-47) should be based upon two things[[47]](#footnote-48) firstly, it should be based upon the Intelligible Differentia[[48]](#footnote-49) and secondly, the Intelligible Differentia should have a rational nexus with the object sought to be achieved.[[49]](#footnote-50) Reasonable Classification is not just permitted but also necessary in the interest of actual justice.[[50]](#footnote-51) It must be presumed that the legislation understands and correctly appreciates the need of its own people.[[51]](#footnote-52) Equality clause does not forbid geographical classification provided the difference between the geographical units has reasonable relation to the object sought to be achieved.[[52]](#footnote-53)

**(¶27.)** State of Vindhya is distinctive and does not stand at the same footing when compared to other states.[[53]](#footnote-54) The respondent recognized such distinctiveness of State of Vindhya and excluded it from Linking of Rivers Project under the Linking of Rivers Act, 2010. The basis of exclusion of State of Vindhya is that Aressia is International Obligations and the object is to protect wet lands[[54]](#footnote-55) in the State of Vindhya. Aressia is under International Obligation[[55]](#footnote-56) as it is party to Stockholm Declaration 1972[[56]](#footnote-57) and Ramsar Convention, 1971[[57]](#footnote-58). It is an obligation upon the signatory states to International Covenants and Declarations not to do anything that would defeat the purpose of the Convention.[[58]](#footnote-59) The Courts have taken affirmative action towards protection of wet lands by recognizing Ramsar Convention and obligation of the Contracting Party towards this Convention. In the case of *People United for Better Living in Calcutta v. State of West Bengal*,[[59]](#footnote-60)Court considered protection of wetlands as a social necessity. In another case the court prevented the destruction of wetlands in the Adyar estuary by directing the Madras Metropolitan Development Authority not to permit the construction in the area.[[60]](#footnote-61)

**(¶28.)** It is humbly submitted that Government of Aressia is not merely under International Obligation to protect environment but also under Statutory Obligation. Under Article 253[[61]](#footnote-62) read with Entry 13 of List I[[62]](#footnote-63) of the Constitution the Parliament can give effect to International Convention in the form of law for the whole or any part of the territory of the country. Therefore the Parliament enacted Environment (Protection) Act, 1986[[63]](#footnote-64) to give effect to Stockholm Declaration. The preamble of the Environment Protection Act, 1986[[64]](#footnote-65) clearly indicates that Parliament took an affirmative action in protection and improvement of Environment.[[65]](#footnote-66) The object of this Environment (Protection) Act, 1986 corresponds to Principles laid down in Stockholm Declaration. The Government by exercising its powers under Section 25,[[66]](#footnote-67) read with sub-section (1)[[67]](#footnote-68) and clause (v)[[68]](#footnote-69) of sub-section 2 and sub-section 3[[69]](#footnote-70) of section 3 of the Environment (Protection) Act, 1986 notified Wetland (Conservation and Management) Rules, 2010 (Herein after referred as Rules, 2010). The Preamble of Rules, 2010 identifies Aressia being party to Ramsar Convention, 1971[[70]](#footnote-71) and such rules are framed for wise use[[71]](#footnote-72) of wetlands. The Rules, 2010 also recognizes benefits of wetlands to environment.[[72]](#footnote-73) Apart from the International and Statutory obligation, Constitution cast a mandate on the state by virtue of Article 48A[[73]](#footnote-74) to secure the health of the people, improve public health and protect and improve the environment.[[74]](#footnote-75) Therefore it is submitted that as long as there is nexus between the basis of classification and the object sought to be achieved, the classification is valid.[[75]](#footnote-76)

*Exclusion is based on proper findings and on request of State of Vindhya*

**(¶29.)** Environment (Protection) Act, 1986 being parent legislation ensures that any activity which deals with environmental aspect, the exercise of Environment Impact Assessment is mandatorily required to be done by the competent authority.[[76]](#footnote-77) It is necessary to carry out Environment Impact Assessment (Herein referred as EIA) under EIA Notification, 2006 to carry out Linking of Rivers Project. Rule 4(2)(i)[[77]](#footnote-78) of Rules, 2010 read with Rule 2**[[78]](#footnote-79)** of EIA Notification, 2006 empowers State government to carry out EIA upon the state. As per State EIA findings the Linking of River Project would lead to damage to wet lands. On the request of State of Vindhya, central government directed Authority for Linking Rivers to exclude the State of Vindhya. It is contended that if governmental action after due care and consideration to the conflicting issues then court cannot sit in appeal over such a decision. If the decision is not against any law, mala fide or arbitrary in nature, the court cannot investigate into those areas.[[79]](#footnote-80) Therefore it is humbly submitted that the Respondent through State EIA carried out its duty and for the protection and preservation of wet lands.

**B. Governmental action is in accordance with Article 19 and 21 of the Constitution**

*No actual violation of Article 19 and Article 21*

**(¶30.)** It is humbly submitted that to invoke Article 21 of the Constitution, it is necessary that there should be an actual violation of right. Mere future possibility of infringement would not attract Article 19 and 21. The right under Article 19(1)(g) does not cast an obligation on the State or any authority subordinate authority to create conditions so as to make the trade lucrative or to bring customers to the trader or businessman.[[80]](#footnote-81) State may not by affirmative action; be compellable to provide adequate means of livelihood or work to the citizens.[[81]](#footnote-82)

*Right to carry any occupation and Right to Livelihood is subject to Right to Environment*

**(¶31.)** The right under 19(1)(g) is not an absolute right but one which is liable to be restricted under Article 19(6).[[82]](#footnote-83) The restrictions must be in the interests of general public, an expression which is a very wide one and will include all matters affecting public weal, such as public safety, public health, public morals etc.[[83]](#footnote-84) A great American Judge emphasizing the imperative issue of environment by saying that government is placed above big business, individual liberty above government and environment above all.[[84]](#footnote-85) Therefore right to livelihood cannot render national interest and public interest subservient to Right of an individual or Right of a community. In *M. C. Mehta v. Union of India,*[[85]](#footnote-86) the closure of tanneries might result in unemployment and loss of revenue; life, health and ecology had greater importance. In another case the rights of an ivory dealer are subject to the paramount rights of other people to have healthy and balanced ecology.[[86]](#footnote-87)

**(¶32.)** It is further submitted that Environment Protection Act, 1986 aims at sustainable development.[[87]](#footnote-88) Doctrine of Sustainable Development is not an empty slogan; bust must be viewed in a pragmatic manner.[[88]](#footnote-89) It demands delicate balance between environmental values and developmental needs.[[89]](#footnote-90) The Supreme Court observed that environmental statutes were enacted to ensure a good quality of life for unborn generations since it is they who must bear the brunt of ecological degradation.[[90]](#footnote-91) Therefore it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21[[91]](#footnote-92) of the Constitution as it embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed.[[92]](#footnote-93)

*In light of the above mentioned reasons it is humbly submitted that writ of mandamus should NOT be issued to Union of Aressia as the exclusion of State of Vindhya from Linking of River Project is NOT in violation of Article 14, 19 and 21 of the Constitution.*

## Issue Four

**Whether The Linking Of Rivers Act, 2010 Violates The Environmental Rights Of Citizens Of Aressia And The Provisions Of The Forest (Conservation) Act, 1980?**

**(¶33.)** The counsel on the behalf of Respondent contends that Linking of Rivers Act, 2010 is not in violation to environmental rights of the citizens of Aressia **[A]** and also not in violation to the provisions of Forest (Conservation) Act, 1980. **[B]**

**A. Linking of Rivers Act does not violate Environmental Rights of citizens of Aressia**

*Linking of Rivers Act, 2010 is in National Interest*

**(¶34.)** It is humbly submitted that Water is the basic need for the survival of human beings and is part of right of life and human rights as enshrined in Article 21[[93]](#footnote-94) of the Constitution.[[94]](#footnote-95) The Linking of Rivers Act, 2010 aims to ensure availability and ensure availability and accessibility of water.[[95]](#footnote-96) To fulfill this object, linking of rivers is being done throughout the Country. There is acute shortage of water in Western and Eastern Regions of Aressia[[96]](#footnote-97) and this can only be removed by providing source of water where there is none. The Resolution of the U.N.O. in 1977[[97]](#footnote-98) to which Aressia is a signatory, during the United Nations Water Conference resolved unanimously inter alia as under:

*“All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”*

**(¶35.)** It is humbly submitted that in the instant case, the prime reason for the agriculture failure is shortage of water.[[98]](#footnote-99) For safeguarding the right to livelihood of the farmers, Respondent enacted Linking of Rivers Act, 2010. NCAER report clearly opines that interlinking of river projects will prove fruitful for the nation as a whole and would serve a greater purpose by allowing higher returns from the agricultural sector for the benefit of the entire economy.[[99]](#footnote-100) The 1980 National Perspective Plan of the erstwhile Ministry of Irrigation, presently the Ministry for Water Resources, envisaged inter-basin transfer from water-surplus to deficit areas. Linking of Rivers would have direct benefits, like the irrigation of 35 million hectares (Mha), full exploitation of existing irrigation projects of 140 Mha, power generation of 34 million Kilowatt (KW); besides the indirect benefits like flood control, navigation, water supply, fisheries, pollution control, recreation facilities, employment generation, infrastructure and socio-economic development etc.[[100]](#footnote-101) In *Re: Networking of Rivers* this Court has aptly observed that the project of linking of rivers to be of National Importance.[[101]](#footnote-102)

*Right to Development vis-à-vis Right to Environment*

**(¶36.)** The Counsel on behalf of the Respondent submits that Linking of Rivers Project will improve the ecology and environment of the nation. The change in environment does not per se violate any right under Article 21 especially when ameliorative steps are taken not only to preserve but to improve ecology and environment.[[102]](#footnote-103) The proper channelization of developmental activities enhances ecology and environment.[[103]](#footnote-104) There is an apprehension that Linking of Rivers Project will submerge land and forests but it is humbly submitted that Dams and other like projects submerge the forest area, but they convert wasteland into greener areas.[[104]](#footnote-105)

**(¶37.)** It is further submitted that the crops and trees in the irrigated areas increase in photosynthesis, and improve the overall availability of oxygen. Rise in overall water table improves greenery in the area. Catchment area treatment and command area development will solve the problem of soil erosion caused by massive degradation of forest.[[105]](#footnote-106)

**(¶38.)** It is humbly submitted that protection of life under Article 21 includes the principle of sustainable development and it is sine qua non for maintenance of symbolic balance between rights to development and environment.[[106]](#footnote-107) This Court in N. D. Jayal v. Union of India,[[107]](#footnote-108) held Sustainable development to be a fundamental right in order to justify construction of a dam as a symbol of wholesome development. Construction of dam or mega project is treated as integral component for development.[[108]](#footnote-109) The concept of sustainable development means “that development that meets the need of the present without compromising the ability of future generations to meet their own needs**[[109]](#footnote-110)**”.

**(¶39.)** Further, as per Preambulary statement given by New Delhi International Law Association (ILA) on Principle of International Law Relating to Sustainable Development “*Sustainable Development involves a comprehensive and integrated approach to economic, social and political processes, which aim at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic developments depend and which seek to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in the development and in the fair distribution of benefits resulting there from, with due regard to the needs and interests of future generations.”****[[110]](#footnote-111)***

**B. Linking of Rivers Project Act, 2010 does not violates provisions of Forest (Conservation) Act, 1980**

**(¶40.)** The counsel from the Respondent submits that Linking of Rivers Project, 2000 is not in violation to the provisions of Forest (Conservation) Act, 1980. As per Environment (Protection) Act, 1986 read with Forest (Conservation) Act, 1980, Government is under an obligation to conduct an Environment Impact Assessment of Projects pertaining to Environment.

**(¶41.)** It is humbly submitted that in the instant case Government took necessary and required measures for environment clearance of Linking of Rivers Project. On the directions of this Court,[[111]](#footnote-112) Central Government appointed two committees. The first was High Level Expert Committee was appointed to study the practical issues involved in Linking of Rivers Project and the other was Environment Impact Assessment Committee to assess the impacts of Linking of Rivers.[[112]](#footnote-113) High Level Expert Committee identified various rivers that can be linked together to mitigate the problem of water shortage in the country. The EIA committee also approved the project.[[113]](#footnote-114)

**(¶42.)** It is humbly submitted that EIA committee comprised of representatives from all sections i.e. Central Government, State Government, Environmental Experts, NGO’s, Industrialists and members from farmers’ organization,[[114]](#footnote-115) therefore approval from EIA Committee due to political pressure does not comes into question. It is further submitted that a policy decision based on the report of a High Powered Committee shall not be interfered by Court.[[115]](#footnote-116) Courts can only investigate and adjudicate the questions as to whether the Government was conscious to the inherent danger and applied its mind to the safety of the dam.[[116]](#footnote-117)

 **(¶43.)** In the case of *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd*.[[117]](#footnote-118) the court stated that ‘we are not concerned with the question whether the decision taken is right or wrong; the question is whether it has been taken after consideration of all relevant aspects.

*In light of the above mentioned reasons it is humbly submitted that Linking of Rivers Act, 2010 is legal and constitutionally valid law.*

# 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 the Union of Aressia that:

* 1. The Petition filed by FER is not maintainable before the High Court of Neruda.
	2. The Section 3 of the Linking of Rivers Act, 2010 is intra vires the Constitution.
	3. The exclusion and non-implementation of the Linking of Rivers Act, 2010 to the State of Vindhya is valid.
	4. The Linking of Rivers Act, 2010 is legal and constitutionally valid law.

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 Respondent

Sd/-

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 (Counsel for the “Respondent”)

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. Narmada Bachao Andolan v. Union of India and Others, AIR 2000 SC 3751 [↑](#footnote-ref-3)
3. State of Maharashtra v. Lok Siksha Sanstha, AIR 1973 SC 588 : (1971) 2 SCC 410 : 1971 Supp SCR 879 [↑](#footnote-ref-4)
4. Shri Sitaram Sugar Co. Ltd. v. Union of India, AIR 1990 SC 1277 : (1990) 3 SCC 223 [↑](#footnote-ref-5)
5. Maharashtra Board of Secondary & Higher Secondary Education v. Paritosh AIR 1984 SC 1543 : (1984) 4 SCC 27 [↑](#footnote-ref-6)
6. Id., at p. 1551 – 52 (AIR) : 42 (SCC) [↑](#footnote-ref-7)
7. Narmada Bachao Andolan Etc v. Union of India and Others AIR 2000 SC 3751 [↑](#footnote-ref-8)
8. Id., at para 293 [↑](#footnote-ref-9)
9. Ugar Sugar Works Ltd. v. Delhi Administration (2001) 3 SCC 635 : AIR 2001 SC 1447 [↑](#footnote-ref-10)
10. Id., at p. 643 (SCC) : 1452 (AIR) [↑](#footnote-ref-11)
11. Liberty Oil Mills v. Union of India (1984) 3 SCC 465, 478 : AIR 1984 SC 1271, 1279; see also Glass Catons Importers & Users’Association v. Union of India,(1962) 1 SCR 862 : AIR 1961 SC 1514. [↑](#footnote-ref-12)
12. Liberty Oil Mills & Others v. Union of India & Others, 1984 AIR 1271 : 1984 SCR (3) 676 [↑](#footnote-ref-13)
13. State of Maharashtra v. Lok Siksha Sanstha, AIR 1973 SC 588 : (1971) 2 SCC 410 : 1971 Supp SCR 879 at p. 415(SCC) : 592 (AIR); See Also D.D. Suri v. Union of India, (1979) 3 SCC 553, 561-62 : AIR 1979 SC 1596, 1601-02; Suman Gupta v. State of J&K, (1983) 4 SCC 339, 344 : AIR 1983 SC 1235, 1238; Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh, (1984) 4 SCC 27, 42-43, 50-21 : AIR 1984 SC 1543, 1551-52, 1556-57 : (1985) 1 SCR 9; Sushma Sharma v. State of Rajasthan, 1985 Supp SCC 45, 59 : AIR 1958 SC 11367, 1374-75; Vidharbha Sikshan Vyawashapak Sahasangh v. State of Maharashtra, (1986) 4 SCC 361 : AIR 11987 SC 135 [↑](#footnote-ref-14)
14. Fact Sheet, para 4 [↑](#footnote-ref-15)
15. Id., para 5 [↑](#footnote-ref-16)
16. Id., para 13 [↑](#footnote-ref-17)
17. Id., para 8 [↑](#footnote-ref-18)
18. Id., para 1 [↑](#footnote-ref-19)
19. Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223 : AIR 1990 SC 1277 [↑](#footnote-ref-20)
20. Id., at p. 256 (SCC) : 1299 (AIR) [↑](#footnote-ref-21)
21. State of Andhra Pradesh v. McDowell & Co., AIR 1996 SC 1628 at 1641 [↑](#footnote-ref-22)
22. Charanjit lal Chowdhary v. Union of India, AIR 1951 SC 41; Bombay v. F.N. Balsara, AIR 1951 SC 318; Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942; Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101 [↑](#footnote-ref-23)
23. Amrit Banaspati Ltd v. Union of India, AIR 1995 SC 1340 at 1343 [↑](#footnote-ref-24)
24. State of Orissa v. Ram Chandra Dev, AIR 1964 SC 685 [↑](#footnote-ref-25)
25. Bokaro v. State of Bihar, AIR 1963 SC 516 : 1962 (Supp-3) SCR 831 [↑](#footnote-ref-26)
26. Calcutta Gas Co. v. State of W.B., AIR 1962 SC 1044 (1047) : 1962 (Supp-3) SCR 1 [↑](#footnote-ref-27)
27. 6 Acharya Dr. Durga Das Basu, Commentary on the Constitution of India, 6735 (8th Ed., 2007) [↑](#footnote-ref-28)
28. Nagaraj v. State of Karnataka, AIR 1977 SC 876 : (1977) 2 SCC 148 (para. 7); Jonnala v. State of A.P., AIR 1971 SC 1507 : (1971) 2 SCC 163 (para. 9) [↑](#footnote-ref-29)
29. Chairman, Railway Board and Others v. Chandrima Das (Mrs) and Others AIR 2000 SC 988 : (2000) 2 SCC 465 [↑](#footnote-ref-30)
30. Premchand Jain v. R.K. Chhabra, AIR 1984 SC 981 : (1984) 2 SCC 302 [↑](#footnote-ref-31)
31. MP Jain, Indian Constitutional Law, 591 (6th Ed, LexisNexis Butterworth Wadhwa, 2010) [↑](#footnote-ref-32)
32. Id. [↑](#footnote-ref-33)
33. MP Jain, Indian Constitutional Law, 532 [↑](#footnote-ref-34)
34. Union of India v. H.S. Dhillon, 1972 AIR 1061 [↑](#footnote-ref-35)
35. Karnataka Bank Ltd. v. State of Andhra Pradesh, (2008) 2 SCC 254 : (2008) 1 SCALE 660 [↑](#footnote-ref-36)
36. Hans Muller v. Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367 : (1955) 1 SCR 1284; Navinchandra 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-37)
37. Satpal & Co. v. Lt. Governor of Delhi, AIR 1979 SC 1950 [↑](#footnote-ref-38)
38. Id. [↑](#footnote-ref-39)
39. 1992 AIR SCW 119 (154) [↑](#footnote-ref-40)
40. Premchand Jain v. R.K. Chhabra, AIR 1984 SC 981 : (1984) 2 SCC 302 [↑](#footnote-ref-41)
41. Also see, State of Rajasthan v. Vatan medical & General Store, AIR 2001 SC 1937 : (2001) 4 SCC 642 [↑](#footnote-ref-42)
42. State of Bombay v. Narottamdas, AIR 1951 SC 69, 96 : 1951 SCR 51; Atiabari Tea Co. v. State of Asam, AIR 1961 SC 232 : 1961 (1) SCR 809; Kannan D.H.P. Co. v. State of Kerala, AIR 1972 SC 2301. Also, Sita Ram v. State of Karnataka v. Ranganatha Reddy, AIR 1978 SC 251; Southern Pharmaceutical ltd. V. State of Bihar, AIR 1983 SC 1019 : (1983) 4 SCC 45; Krishna Bhimrao Deshpande v. Land tribunal, AIR 1993 SC 883; P.N. Krishna Lal v. Govt. of Kerala, (1995) Supp (2) SCC 187; Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 Cri LJ 3139; Union of India v. Shah Goverdhan L. Kabra Teachers College, (2002) 7 SCALE 435. [↑](#footnote-ref-43)
43. Art. 14 of the Constitution of India, 1950 [↑](#footnote-ref-44)
44. Id. [↑](#footnote-ref-45)
45. State of Bombay v. Balsara F. N.AIR 1951 SC 609 [↑](#footnote-ref-46)
46. “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., 2007) [↑](#footnote-ref-47)
47. Kangshari v. State of W.B., 1960 SC 457(484): (1960) 2 SCR 646; Kedar Nath v. State of W.B. 1954 SCR 30: AIR 1953 SC 404; Ram Sarup v. UOI AIR 1965 SC 247(252): (1964) SCR 931 [↑](#footnote-ref-48)
48. “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 Lexicon, 2391 (3rd Ed., 2005) [↑](#footnote-ref-49)
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50. Jagjit Singh v. State of Hyderabad, AIR 1954 Hyd 28 [↑](#footnote-ref-51)
51. Aushotosh Gupta v. State of Rajasthan, AIR 2002 SC 1533 [↑](#footnote-ref-52)
52. Gopal Narain v. State of Uttar Pradesh, AIR 1964 SC 370 (375) [↑](#footnote-ref-53)
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60. Indian Metal and Metallurgical Corporation vs. Industrial Tribunal, Madras and Anr., 1994 (1) Mad. L. J. REP. 481 [↑](#footnote-ref-61)
61. Art. 253 of the Constitution of India, 1950 [↑](#footnote-ref-62)
62. Entry 13 of List I of the Constitution [↑](#footnote-ref-63)
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65. Section 2(a) of Environment (Protection) Act, 1986 [↑](#footnote-ref-66)
66. Section 25 of Environment (Protection) Act, 1986 [↑](#footnote-ref-67)
67. Section 3(1) of Environment (Protection) Act, 1986 [↑](#footnote-ref-68)
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