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**LA MARTINIERE
MOOT COURT
2024**

IN THE HONOURABLE SUPREME COURT OF ANGORKI

.....NATIONAL HUMAN RIGHTS
COMMISSION..... *Petitioner*

v.

.....THE STATE OF
ZAD..... *Respondent*

MEMORIAL ON BEHALF OF THE PETITIONER

IN THE HON'BLE SUPREME COURT OF ANGORKI

WRIT PETITION

IN THE MATTER OF:

NATIONAL HUMAN RIGHTS COMMISSION.....PETITIONER

V.

STATE OF ZAD.....RESPONDENT

**UPON SUBMISSION YO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION
JUSTICES OF THE SUPREME COURT OF ANGORKI**

-Memorial for the petitioner-

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LIST OF ABBREVIATIONS

ABBREVIATIONS	EXPANSION
&	And
AIHC	All India High Court Cases
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
Ed.	Edition
Ltd.	Limited
No.	Number
Ors.	Others
Pvt.	Private
SC	Supreme Court
SSC	Supreme Court Case
SCR	Supreme Court Report
Sec.	Section
Supp.	Supplementary
UOI	Union Of India
v.	Versus
MNC	Multi-National Company
GRS	Ghasi Raksha Samiti
NHRC	National Human Rights Commission
COA	Constitution of Angorki
WWF	World Wide Fund for Nature
ILO	International Labour Organization
EPA	Environment Protection Act
Govt.	Government

INDEX OF AUTHORITIES

Registered V. Union of India (2018)5 SCC1, AIR 2018 SC 1665

Bandhua Mukti Morcha V. Union of India &Ors. (1997) 10 SCC 549 1986 Ori 47

M.C. Metha &Anr. V. Union of India &Ors. (1987) 1 SCC 395

Subhash Kumar V. State of Bihar &Ors. (1991) 1 SCC 598

A.D.M. Jabalpur V. Shiv Kant Shukla (1976) AIR 1207, 1976 SCR 172

Rashid Ahmed V. The Municipal Board (1950) AIR 163, 1950 SCR 566

Nilabati Behera V. State of Orissa (1993) AIR 1960, 1993 SCR(2) 581

State of Uttar Pradesh V. Mohammad Naim (1964) AIR 703, 1964 SCR (2) 363

Deepal Kumar Etc. V. State of Harayana&Ors. Etc.,AIR 2012 SC 1386

A.P. Pollution Control Board V. Prof. M.V. Nayudu &Ors., AIR 1999 SC 812

N.D. Jayal &Anr. V. Union of India &Ors. AIR 2004 SC 867

Deepak Kumar Etc. V. State of Haryana &Ors. Etc., AIR 2012 SC 1386

Essar Oil Ltd. V. Halar Utkarsh Samiti &Ors., AIR 2004 SC 1350

CESC Ltd. V. Subash Chandra Bose (1992) AIR 573, 1991 SCR Supl. (2) 267

Gaur V. State of Harayana and Ors., (1995) 2 SCC 577

Court in ChhetriyaPardushan Mukti Sangarsh Samiti V. State of Uttar Pradesh &Ors.,(1990) 4 SCC 449

Sanchidanand Pandey V. State of West Bengal, (1987)2 SCC 295

Lubicon Band V. Canada (1990)CCRC/38/D/167/1984 (United Nations Development)

Diaguita V. Goldcorps (2014)

SipacapaVGuatemala (2014)

Daryao v. State of Uttar Pradesh (1961) AIR 1457, 1962 SCR (1) 574

Hari Krishna Mandir Trust v. State of Maharashtra (2020)

Tilokchandmotichand v. H.B. Munshi (1970) AIR 898

Sri Narayan Gosain &Ors. v. The Collector, Calcutta &Ors. AIR 1986 Ori 47

State of Uttar Pradesh v. Mohammad Nooh 1958 AIR 86, 1968 SCR 595

Mohammad Ishaq v. S. Kasam Pasha (2009)

Naga People'S Movement, Of Human v. Union Of India on 27 November, 1997

Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016)

BOOKS AND LEXICON

1.	M.P. Jain Indian Constitution Law.8th Ed. Lexis Nexis
2.	M Laxmikanth, Indian Polity (Mc Graw Hill, fifth edition) 7.1
3.	Dr. J.N. Pandey, Constitution Law Of India (Central Law Agency, fifty seventh edition)29
4.	MP Jain & SN Jain's Principles of Administrative Law (7 th ed., 2011)
5.	DD Basu, Introduction to the Constitution of India (Lexis Nexis, Twenty Third Edition 2018)100
6.	Oxford Dictionary & Thesaurus

STATUTE AND CONSTITUTION

1.	The Environment Protection Act,1986
2.	National Green Tribunal Act,2010
3.	ILO: International Labour Organization
4.	UNDC: United Nations Development Corporation
5.	The Constitution of India
6.	Forest Conservation Act, 1980
7.	Electricity Supply Act, 1948

WEB RESOURCES

1.	www.westlaw.India.com (WEST LAW INDIA)
2.	www.manupatrafast.com (MANUPATRA)
3.	www.sci.gov.in (SUPREME COURT OF INDIA OFFICIAL)
4.	www.jstor.org (JSTOR)
5.	www.sconline.com (SCC ONLINE)
6.	https://indian.kanoon.org
7.	www.legal.un.org . (UNITED NATIONS)

STATEMENT OF JURISDICTION

The Petitioner herein has invoked the Writ Jurisdiction of this Hon'ble Court under article 32 of the Constitution of Angorki. Article 32 read as-

32. **Remedies for enforcement of the rights conferred by this Part.** *-(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of the habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

STATEMENT OF FACTS

- State of Zad, country of Angorki, Jhokai district in State of Zad. Jhokai populated by primitive tribe “Ghasi Tribe”, their ways, culture, systems are crude, cut off from main stream of the country, it is a scheduled tribe listed in Schedule V of the Constitution of Angorki.

- In 2021, a multi-national company (MNC), with due approvals of the govt. of Angorki, came up with proposal for establishing a hydroelectric project in district of Jhokai, Ghasi tribe protested against setting up of this project, would lead to submergence of more than 80% of land occupied by them, it would displace majority of population. The preliminary survey of the site was conducted by the government for approval, government had not taken prior consent of the people before granting approval. “Ghasi Raksha Samiti” (GRS), a citizens’ organisation, was also involved in the protests.

- Mr. Benjamin, Secretary of the GRS, garnered much support for the movement organized by his association, he printed request leaflets appealing for financial support for GRS and started collecting money from the public. The police forces raided the house and office of Mr. Benjamin, printed material such as donation request letters, receipts along with unaccounted money amounting to Rs. 3,00,000/- were found in the premises. The govt. declared the GRS as an illegal organisation, accused it of sedition and extortion of money from the public.

- Three men in plain clothes claiming to be policemen, came to the residence of Mr. Benjamin at 12:00 midnight. Without a warrant for arrest, they took him into their custody without providing any valid reason. After a span of three days following the incident, his mutilated body was found by the villagers at the outskirts of the village. The people of Jhokai district felt that the extra-judicial killing of Mr. Benjamin was done by the State police forces. Effigies of the Prime Minister, the Home Minister and Chief Minister were burnt on the streets. The protesters also set alight some of the public buses and other means of transport to show their anger and disapproval. The

police opened fire at the mob killing 50 persons, which included 10 women and 5 children, when the media questioned the police, the Commissioner of Police replied that it had been done in self-defence as the mob had turned violent.

- The GRS approached the National Human Right Commission (NHRC) and filed a complaint of gross violation of human rights by the State Government and its Police force. The NHRC made following recommendations to the Government of Zad:
 - That an FIR be lodged regarding the arrest, torture and death of Mr Benjamin.
 - That the project should be halted till a proper Environment Impact Assessment was conducted, free, prior and informed consent of the Ghasi community be obtained before the proceeding of the project.
 - That the notification declaring the GRS as illegal be revoked.
 - That ex-gratia payments of Rs.3 lakhs, to heirs of each person killed in the police firing, an inquiry to be conducted to fix responsibility for the police firing.

- The govt. agreed to register an FIR for murder, also agreed to make ex-gratia payments, on humanitarian grounds, to the heirs the persons dead in the police firing but refused to lift the ban on the GRS because it believed that the unaccounted money recovered from Mr. Benjamin was meant to support the underground organisation opposing the govt.

- For the govt. of State Zad, the Hydroelectric Project is its flagship project aimed at providing much needed water and electricity to the whole of the State of Zad as well as its neighbouring States. It has already invested a substantial amount of its annual budget into this project. State of Zad has already prepared a detailed plan for rehabilitation of the displaced persons and allocated sufficient funds for the same.

- The NHRC has filed a Writ petition before the Supreme Court under Article 32 of the Constitution of Angorki .

ISSUES RAISED

I.

WHETHER THE WRIT PETITION FILED BY THE NATIONAL HUMAN RIGHTS COMMISSION UNDER ARTICLE 32 IS MAINTAINABLE?

II.

WHETHER THE HYDROELECTRIC PROJECT IN THE JHOKAI DISTRICT MUST BE HALTED DUE TO ENVIRONMENTAL CONCERNS?

III.

WHETHER THE UNAWARENESS OF THE GHASI TRIBE REGARDING THE PROJECT IS IN VIOLATION OF NATIONAL AND INTERNATIONAL LAWS RELATING TO THE PROTECTION OF INDIGENOUS AND TRIBAL PEOPLE?

IV.

WHETHER THE BAN ON GRS INFRINGES THE RIGHTS GUARANTEED UNDER PART III AND PART X READ WITH SCHEDULE V OF THE CONSTITUTION OF ANGORKI?

V.

WHETHER AN INQUIRY SHOULD BE INITIATED TO FIX THE RESPONSIBILITY OF EXCESSIVE USE OF FORCE ON THE ORDINARY CITIZENS?

SUMMARY OF ARGUMENTS

[1].Whether the writ petition filed by National Human Rights Commission under Article 32 of The Constitution of Angorki is maintainable?

It is humbly contended before the Hon'ble Supreme Court of Angorki that the Writ Petition in the present case is maintainable under Article 32. There are 4 aspects to the current argument. Firstly, Article 32 is a fundamental right guaranteed by the Constitution of Angorki. Secondly, the petitioners have a *bona fide* interest hence they have a *locus standi*. Thirdly, there have been gross violations of fundamental rights viz. Art 19 and 21 of the Ghasi tribe. Fourthly, the cases that impose a rule of exhaustion of local remedies are not binding upon this Court. Furthermore, the alternate remedies are not equally conducive.

[2].Whether the hydroelectric project in the Jhokai district must be halted due to environmental concerns?

1. It is humbly contended before the Hon'ble Court that the Hydroelectric project will have adverse effects on mother nature, which would cause great harm to the ecosystem in the near future.
2. It is humbly contended before the Hon'ble Court that the Environmental Impact Assessment is a crucial process for evaluating the potential environmental consequences of the hydroelectric project and for mitigating the repercussions attached to the same.
3. It is humbly submitted before the Hon'ble Court that the State is mandated to form policies in light of Article 48A of the Constitution which comes under Directive Principles of the State Policy, and gives power to the State to protect and improve the environment.
4. It is also humbly submitted that the proposed hydroelectric project would violate Art. 21, the fundamental right to life and liberty enshrined in the Constitution of Angorki.
5. It is further contended that it also a fundamental duty of the citizens to protect and preserve the environment under article 51A(g) enshrined in Part IVA of the Constitution of Angorki.

[3]. Whether the unawareness of the Ghasi tribe regarding the project is in violation of national and international laws relating to the protection of indigenous and tribal people?

1. It is humbly submitted before the Hon'ble Court that The ILO Indigenous and Tribal Peoples Convention (169) in Article 6, requires that indigenous and tribal peoples must be consulted on issues that affect them.
2. It is humbly submitted before the Hon'ble court that Article 27 of the United Nations Covenant on Civil and Political Rights (Citation1966) supports the rights of indigenous peoples to preserve and enjoy their culture.

[4]. Whether the ban on GRS infringes the rights guaranteed under Part III and Part X read with Schedule V of the constitution of Angorki?

1. It is humbly submitted before the Hon'ble court that ILO Article 6, 1(a) provides that the peoples concerned must be consulted through their representative institutions.
2. It is humbly contended before the Hon'ble court that the lack of consent taken by the ghasi tribe before starting the hydroelectric project in the State of Angorki started by the Government is not only a direct violation of the international laws stated by the ILO but also shows the government's unawareness of the Ghasi tribe.
3. It is also submitted before the Hon'ble Court that it is stated under Article 27 of the United Nations Covenant on Civil and Political Rights supports the rights of indigenous peoples to preserve and enjoy their culture.
4. It is also submitted before the Hon'ble Court that any state which interferes with, steals, or injures genetic resources of indigenous peoples would be in violation of the Convention on Biological Diversity whether as a signatory or under customary international law.

[5]. Whether an inquiry should be initiated to fix the responsibility of excessive use of force on the ordinary citizens?

1. It is humbly contended before the Hon'ble Court that an inquiry must be initiated to fix the responsibility of excessive use of force on the ordinary citizens.

2. It is humbly submitted that the Right to life and liberty of a total of 50 persons including 10 women and 5 children were infringed when they were killed in the open fire by the police

ARGUMENTS ADVANCED

ISSUE 1: WHETHER THE WRIT PETITION FILED BY THE NATIONAL HUMAN RIGHTS COMMISSION UNDER ARTICLE 32 IS MAINTAINABLE?

It is humbly submitted before the Hon'ble Supreme Court of Angorki that the Writ Petition filed by the National Human Rights Commission against The State Government of Zad under Article 32¹ of The Constitution of Angorki is maintainable. The veracity of the claim can be substantiated by the following contentions.

1.1 Article 32 is a fundamental right guaranteed by The Constitution of Angorki.

It is humbly submitted that Art 32 is a fundamental right enshrined in Part III of the Constitution of Angorki. The same was also justified in the case of **Common Cause, A Registered v. Union Of India & Ors.**², where it was held that “*Right to access to this Court under Article 32 of the Constitution is a fundamental right*³. The Court has been given the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever may be

¹Article 32, Constitution of Angorki, 1949:—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of the habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

²*Registered V. Union of India (2018)*5 SCC1, AIR 2018 SC 1665 (www.sconline.com (SCC ONLINE) 10:00 p.m.

³ The same was reiterated in *Daryao v. State of Uttar Pradesh; Tilokchandmotichand v. H.B.Munshi* that “Article 32 is not merely a descriptive power of the Court but a fundamental right guaranteed by the Constitution”<https://indian.kanoon.org>10:15 p.m.

appropriate, for the enforcement of the fundamental rights.⁴ Obviously, the fundamental rights would be enforced against the Govt. or its executive or administrative officers or other public bodies. It is in the matter of enforcement of fundamental rights that the Court has the right to award damages to compensate the loss caused to a person on account of violation of his fundamental rights.”

It was further reinstated in the ***Bandhua Mukti Morcha V. Union Of India***⁵ that, “*While interpreting Article 32, it must be borne in mind that our approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this Article has been enacted as a Fundamental Right in the Constitution and its interpretation must receive illumination from the trinity of provisions which permeate and energies the entire Constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy”*

1.2 The Petitioner has a Locus Standi in the instant case.

“Locus Standi” is the right of a party to appear and be heard on the question before any tribunal.⁶ It means the legal capacity to invoke the jurisdiction of the court.

It is humbly submitted that the Petitioner will have Locus Standi in the said case on bona fide grounds which was also stated in the **Judges Appointment and Transfer Case(1)** or in the landmark case of ***S.P. Gupta v. Union of India***⁷,

The hon’ble Court for the first time took the view that,

“The Supreme Court has laid down that its jurisdiction can be invoked by a third party in the case of violation of the constitutional rights of another person or determinate class of persons who, by reason of poverty, helplessness, disability or social or economic disadvantage is unable to move the Court personally for relief. The Court observed further that where the public injury was suffered by an indeterminate class of persons from the breach of a public duty or from the violation of a constitutional provision of the

⁴In the ***Hari Krishna Mandir Trust v. State of Maharashtra (2020)***, the Hon’ble Supreme Court held that the High Courts are obligated by law to issue Writs of Mandamus in order to enforce a public duty. <https://indian kanoon.org> 11:00 p.m.

⁵***Bandhua Mukti Morcha V. Union Of India & Ors.***(1997) 10 SCC 549 1986 Ori 47 <https://indian kanoon.org> 9:00 p.m.

⁶ Wharton’s law lexicon, 15th edition 2009, p.g.1019

⁷[1983] 2 S.C.R. 365

law, any member of the public having sufficient interest can maintain an action for judicial redress for such public injury. The principle was qualified by the reservation that such petitioner should act bona fide and not for personal gain or private profit, nor be moved by political or other oblique motivation. The doctrine of standing has thus been enlarged in this country to provide, where reasonably possible, access to justice to large sections of people for whom so far it had been a matter of despair.⁸” This was done so that, “the fundamental rights may become meaningful not only for the rich and the well-to-do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress.”

1.3 There was a grave violation of fundamental rights of the Ghasi tribe

It is humbly submitted that the fundamental rights of the Ghasi tribe have been gravely violated due to the acts of the Government of State of Zad. The fundamental rights are fundamental in the sense that human liberty is predicated on their availability and vice-versa⁹. Violation of fundamental rights is sin qua non of the exercise of the right conferred by article 32.¹⁰ The fundamental rights are intended to protect individual rights but they are based on high public policy.¹¹ Liberty of the individual and the protection of Fundamental Rights is the very essence of the democratic way of life adopted by the constitution and it is the privilege and duty of this Hon’ble court to uphold those rights.¹²

It is humbly contended that the Petitioner has a right to move the Hon’ble Court due to violation of the fundamental rights of the Ghasi Tribe. This can be proved by the case of *M.C. Mehta & Anr. vs. Union of India & Ors.*, (1987) 1 SCC 395, where this Court observed that:

⁸In *Sri Narayan Gosain And Ors. vs The Collector, Cuttack And Ors.* on 19 August, 1985 also, the meaning of locus standi was vastly expanded in order that public spirited men will take up causes of the underling, the poor and the helpless and the mute sufferers of high handed and illegal action of public officers and others for securing justice. The above being the view of the highest Court of justice of the land which by an epoch making judgment gave rays of hope into the minds and showered beams of sunshine to the hearts of the above categories of people to fight against invasion of their legal rights and injustice.

⁹*Bashesar Nah v. IT Commissioner; Ollgatellis v. Bombay Municipal Corporaton ; Nar singh pal v uoi*

¹⁰ *Federation of Bar Association in Karnataka v. Union of India* <https://indian kanoon.org> 8:00p.m.

¹¹Justice Gajendragadkari in the case of *Prem Chand Garg v Excise Commissioner* said “Court has to play the role of a ‘sentinel on the qui vive’ and it must always regard it as its solemn duty to protect the said Fundamental Rights ‘zealously and vigilantly’.” www.westlaw.india.com 12:00p.m.

¹²*Daryao v State of Uttar Pradesh* AIR 1457 <https://indian kanoon.org> 12:10p.m.

"7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) of the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide **Bandhua Mukti Morcha**¹³ case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32."

It is further submitted that the Hon'ble Court that the petitioner has the right to recourse to Article 32 of the Constitution of Angorki for the hydroelectric project would hamper the quality of life of the Ghasi Tribe. The same stance was held in the case of **Subhash Kumar v. State of Bihar**¹⁴ where the Hon'ble Court held that:

"Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental rights of a citizen. Right to live is a fundamental right Under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life. A petition Under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social

¹³Justice PN Bhagwati in the **Bandhua Mukti Morcha vs Union Of India & Others** 1984 AIR 802, highlighted the constitutional philosophy of the right to constitutional remedies – "the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress but would have the power to issue any direction, order or writ.."

¹⁴1991 SCR (1) 5.

workers or journalists. But recourse to proceeding Under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community.”

1.4 There is no requirement for the petitioner to exhaust local remedies

a) The right under Article 32 is not subject to exhaustion of local remedies

It is humbly submitted that the right to move the Supreme Court granted under Article 32 of the Constitution of Angorki is not subject to exhaustion of local remedies. In the landmark case of *Maneka Gandhi v. Union of India (1978)*¹⁵, The Supreme Court held that the right to move the Supreme Court under Article 32 is not subject to the law of exhaustion of remedies. The court emphasized that the remedy provided under Article 32 is a fundamental right itself and cannot be denied on the ground of not exhausting alternative remedies.

It was further reaffirmed in the case of *A.D.M. Jabalpur v. Shiv Kant Shukla (1976)*¹⁶, where Justice H.R. Khanna argued that the power of the court under Article 32 is not subject to any restrictions, and individuals can directly approach the Supreme Court without exhausting other remedies. Furthermore, this Hon’ble Court has rejected arguments that called upon the necessity of the law of exhaustion of local remedies.

b) The rule of exhaustion of local remedies is not binding upon this Hon’ble Court

It is humbly submitted before the hon’ble court that the law of exhaustion of local remedies is a self-imposed constraint and is merely a rule of convenience and discretion¹⁷ and does not oust the jurisdiction of this court under Article 32¹⁸

In the *Rashid Ahmad v. Municipal Board*¹⁹ case, it was held that “*in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ though the fact may be taken into consideration.*”

¹⁵ *Maneka Gandhi v. Union of India (1978)* AIR 1978 SC 597 www.manupatrafast.com 10:00 a.m.

¹⁶ *A.D.M. Jabalpur v. Shiv Kant Shukla (1976)* AIR 1207, 1976 SCR 172 www.sci.gov.in 10:12a.m.

¹⁷ *State of Uttar Pradesh v. Mohammad Nooh (1958)* AIR 86, 1958 SCR 595 www.scoonline.com 10:20a.m.

¹⁸ *Mohammed Ishaq v. S Kazam Pasha (2009)* <https://indiankanoon.org> 10:27a.m.

¹⁹ *Rashid Ahmad v. Municipal Board (1950)* AIR 163, 1950 SCR 566 www.jstor.org 10:30a.m.

Subsequently in the *Rashid Ahmad v. Municipal Board*²⁰ case, the Hon'ble Supreme Court emphasized that the rule of exhaustion of local remedies is not an absolute rule and may be relaxed in exceptional cases. The court held that if a person's fundamental rights are violated, they can approach the Supreme Court directly under Article 32 without exhausting all available remedies.

Furthermore, in the case of *State of U.P. v. Mohammad Naim (1964)*²¹, the Supreme Court acknowledged the principle that if a constitutional remedy is more effective and convenient than the statutory remedy, the court may entertain a petition directly under Article 32 without insisting on the exhaustion of local remedies.

Hence, the writ petition is maintainable.

²⁰*Rashid Ahmad v. Municipal Board (1950)* AIR 163, 1950 SCR 566 www.scconline.com 10:36a.m.

²¹*State of U.P. v. Mohammad Naim (1964)* AIR 703, 1964 SCR (2) 363 <https://indiankanoon.org> 11:00a.m.

ISSUE 2: WHETHER THE HYDROELECTRIC PROJECT IN THE DISTRICT OF JHOKAI MUST BE HALTED DUE TO ENVIRONMENTAL CONCERNS?

2.1 The impact of the project on the environment.

2.1.1 'Nature shall be respected and its essentials not be impaired'²² is the very first principle of the *World Charter for Nature*.

It is humbly submitted that the construction of the dam results in immense ecological effect as, when a part of the river flow is altered, the entire ecosystem as a whole is affected. The basic insight of ecology is that all living things exist in inter-related systems, nothing exists in isolation. The world system is web-like and to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem.²³ Chapter V, Article 22 of the *Berlin Rules on Water Resources*²⁴, states that 'States shall take all appropriate measures to protect the ecological integrity necessary to sustain ecosystems dependent on particular waters.' Ecology knows no boundaries and environmental effects can have far reaching long term impact as well. Thus, the State of Zad is obliged to protect and preserve the environment at all costs.

2.1.2 Extending the above argument, it is humbly submitted before the hon'ble court that the hydroelectric project in the district of Jhokai will adversely affect the water bodies of that region constituting to environmental degradation. The downstream environment impacts of dams are :

²² Principle 1 of the *World Charter for Nature* adopted by the UN General Assembly on 28th October, 1982.

²³ *A. P. Pollution Control Board v. Prof. M.V. Nayudu & Ors.*, AIR 1999 SC 812. www.scconline.com 11:15a.m.

²⁴ International Law Association, Berlin Rules, 2004

(1) Water-logging and salinity (2) micro-climatic changes (3) reduced water flow and deposition in river, with related impacts on aquatic eco-system, flora and fauna (4) flash floods (5) loss of land fertility along with river (6) vector breeding and increase in related diseases. These adverse effects have long term and irreversible loss of quality of human life and other creatures in the region.²⁵ Altering the habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian²⁶ habitat.²⁷

Habitat characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature.²⁸

2.1.3 It is humbly submitted that the afore-mentioned consequences of the hydroelectric project make it rather crucial for a proper Environment Impact Assessment²⁹ to be conducted. In the case of *Vijay Bansal & Sons v. The State of Haryana*³⁰, The Supreme Court had directed that “no public auction shall be held and no licence/contract/lease or right for extraction of minerals from the Shivalik ranges of Himalayas shall be granted by the State of Haryana until the final ‘Environment Impact Assessment Report’ is prepared and made available as a public document to the prospective bidders.”

Furthermore, In the case of *T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2006)*³¹, the Supreme Court dealt with environmental issues related to similar hydroelectric projects, including those in tribal regions. The court issued guidelines to regulate forest-related activities and emphasized the importance of obtaining environmental clearances before initiating such projects.

Additionally, the case of Centre for Environmental Law, *WWF-India v. Union of India & Ors. (2011)*³² also dealt with issues related to the environmental impact assessment (EIA)

²⁵ *N. D. Jayal & Anr v. Union of India & Ors.*, AIR 2004 SC 867 www.westlaw.india.com 11:30a.m.

²⁶ *Belonging or relating to the bank of a river; of or on the bank*; *Black's law dictionary*

²⁷ *Deepak Kumar Etc. v. State of Haryana & Ors. Etc.*, AIR 2012 SC 1386 <https://indian.kanoon.org> 11:34a.m.

²⁸ *Deepak Kumar Etc. v. State of Haryana & Ors. Etc.*, AIR 2012 SC 1386. <https://indian.kanoon.org> 11:42a.m.

²⁹ **Environment Impact Assessment** or EIA can be defined as the study to predict the effect of a proposed activity/project on the environment. A decision making tool, EIA compares various alternatives for a project and seeks to identify the one which represents the best combination of economic and environmental costs and benefits. It helps to identify possible environmental effects of the proposed project, proposes measures to mitigate adverse effects and predicts whether there will be significant adverse environmental effects, even after the mitigation is implemented; www.cseindia.org

³⁰ *Vijay Bansal & Sons v. The State of Haryana (1982)* www.sci.gov.in 11:55a.m.

³¹ *T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2006)* www.scconline.com 11:59a.m.

³² *WWF-India v. Union of India & Ors. (1991)* www.westlaw.india.com 12:15p.m.

process for hydroelectric projects. The court stressed the need for a thorough and comprehensive EIA to assess the potential impact on the environment, particularly in tribal areas, before approving such projects.

Hence, the arguments put forth above prove the importance of conducting an Environment Impact Assessment for the hydroelectric project in the District of Jhokai.

2.1.4 The Supreme Court in *Vellore Citizens Welfare Forum v. Union of India & Ors.* *JT*³³ explained the "Precautionary Principle" and "Polluters Pays principle" as under:-

"Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report³⁴ and other international documents, are inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" has been emphasized in the World Charter for Nature³⁵ and reiterated in the Rio Conference, 1992³⁶.

In the context of the municipal law, it means:

- (i) Environment measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
- (iii) The "Onus of proof" is on the actor or the developer/industrialist to show that this action is environmentally benign."*

2.1.5 It is further submitted that the aforesaid Precautionary Principles have clearly not been followed by the Government of Zad which proves that the Environment Impact Assessment is

³³ 1996(7) S.C.375

³⁴**Brundtland Report:** The Brundtland Report stated that critical global environmental problems were primarily the result of the enormous poverty of the South and the non-sustainable patterns of consumption and production in the North.

³⁵World Charter for Nature, 1982, Principle 11; .

³⁶**Rio Conference (1992):** The Earth Summit 1992 concluded that sustainable development was an achievable global goal while focusing on economic, social and environmental concerns. Earth Summit 1992, a convention where 179 national government leaders met in Rio de Janeiro. This event also served as the official launch event for UNCED (United Nations Conference on Environment and Development)

extremely necessary in order to efficiently mitigate the adverse consequences of the project because “Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³⁷

2.1.6 It is humbly contended that the the State of Angorki and hence the State of Zad are obliged to preserve the environment to protect the right of the future generation to an unfiltered environment. This can be substantiated by the UN Conference on Human Environment-*Stockholm Declaration, 1972*, the Magna Carta of our Environment³⁸, which states that the Natural resources of the Earth, including air, water, land, flora and fauna should be protected for present and future generations³⁹. This is the principle of *inter-generational equity* which provides that nature does not belong to one generation alone, it must be preserved for the future as well. The construction of the this hydroelectric power plant project will affect the right of the future generations to enjoy a beautiful and unaltered ecosystem and also deprive them of the originality of the ecosystem subject to natural cyclic changes. The obligation to preserve mainly relates to freshwater ecosystems in their original condition.

2.2 The violation of Article 21, Article 48(a) and Article 51A(g) of the Constitution of Angorki

2.2.1. In the Atharvaveda, it has been said that “Man’s paradise is on earth; this living world is the beloved place of all; It has the blessings of nature’s bounties; live in a lovely spirit.”⁴⁰

It is humbly submitted that the hydroelectric project undertaken by the Government of Zad should be halted because the environment cannot be put in danger in the name of development. A similar stance was taken in the case of *People United for Better Living in Calcutta v. State of W.B.*⁴¹ where U.C. Banerjee J. (then a Judge of the Calcutta High Court) held that:

³⁷(World Commission on Economic Development [WCED], 1987 : 43)- Brundtland report

³⁸*Essar Oil Ltd. v. Halar Utkarsh Samiti & Ors.*, AIR 2004 SC 1350 <https://indiankanoon.org> 12:25p.m.

³⁹Principles 1 & 2 of the Stockholm Declaration, 1972.

⁴⁰Press Information Bureau, *Environment Protection under Constitutional Framework of India*, <<https://pib.gov.in/newsite/printrelease.aspx?relid=105411#:~:text=Mehta%20vs.,creates%20pollution%20in%20the%20society>> accessed on 30th August 2023 at 8:25 p.m.

⁴¹*People United for Better Living in Calcutta v. State of West Bengal (1993)* AIR 1993 Cal 215,97 CWN 142 <https://indiankanoon.org> 12:35p.m.

"While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. Nature will not tolerate us after a certain degree of its destruction and it will in any event, have its toll on the lives of the people: Can the present-day society afford to have such a state and allow the nature to have its toll in future - the answer shall have to be in the negative: The present day society has a responsibility towards the posterity to breathe normally and live in a cleaner environment and have a consequent fuller development: Time has now come therefore, to check and control the degradation of the environment and since the Law Courts also have a duty towards the society for its proper growth and further development and more so by reason of definite legislations in regard thereto as noted hereinafter, it is a plain exercise of the judicial power to see that there is no such degradation of the society and there ought not to be any hesitation in regard"

2.2.2 It is humbly submitted that the right to life under Art. 21⁴² also embraces the right to live in a wholesome, pollution-free environment. This has to be read in conjunction with Art. 48A⁴³ and Art. 51A (g)⁴⁴ that imposes a duty on the State to preserve and improve the environment. Further, this is in line with India's international obligations.

The abovementioned argument can be proved by the ***Virender Gaur Ors.v. State of Haryana & Ors.***⁴⁵, [19951 2 SCC 577] case where this Court in paragraph 7 at pages 580-81 held that *"environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of right to life assured by Article 21. Hygienic and environment are an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promotion of environmental protection implies maintenance of eco-friendly environment as whole comprising of man-made and the natural environment."*

⁴² **Article 21**, Constitution of Angorki(1949): Protection of life and personal liberty.

⁴³ **Article 48 A**: Protection and Improvement of Environment and safeguarding of forests, and wildlife.

⁴⁴ **Article 51 A (g)**: Fundamental Duties

⁴⁵ ***Virender Gaur Ors.v. State of Haryana & Ors.*** (1994) <https://indian kanoon.org> 1:00 p.m.

It is submitted that the hydroelectric operations in the district of Jhokai violates the aforesaid right to wholesome environment in two ways: First, the project violates right to pollution-free environment by impacting the water quality and temperature, thus, amounting to water pollution. The compulsory exposure of unwilling persons to pollution has been held to violate Art. 21. Secondly, it is submitted that the Project would result in an ecological imbalance and destroy the guarantee of a wholesome environment. This Court has a duty to guard against irreversible ecological damage. This court in the M.C.Mehta case, imposed a duty on the State to *anticipate, prevent* and *attack* the causes of environmental degradation. Therefore, it is not open to the respondent to depend on scientific uncertainty to push forth a project that violates the right life of several people.

2.2.3 It is humbly contended that the hydroelectric project must be halted as it would infringe the right to health which has been held to be an integral to the meaningful right to life, and is thus, protected under Art. 21⁴⁶. "Further, it is both a constitutional obligation under Art. 47⁴⁷ and an international obligation to allow citizens to enjoy the highest standard of health. Indeed, this obligation has been interpreted to include a hygienic environment.⁴⁸" However, it is submitted that the Court must adopt the precautionary principle in matters of public health also. Indeed, there is a global trend towards the same." Moreover, the courts in Angorki have recognised that it is impossible to eliminate hazards altogether. even with the most sophisticated safety and alarm systems⁴⁹. This is particularly true in a developing country like Angorki "In light of the foregoing, it is submitted that the right to health is negated by the project under dispute.⁵⁰

2.2.4 It is humbly contended before the Hon'ble Court that the issue of environmental pollution is not merely a state, but a global issue. This is evident due to the several legislations and conventions that deal with the protection of the environment, on a global scale, because if a country is a signatory to a number of international conventions for safeguarding the environment, it is not only a national responsibility but an international responsibility that binds the state to take actions to prevent environmental degradation.⁵¹

⁴⁶ *M.C. Mehta v Union of India* 1998 AIR 1086, 1987 SCR (1) 819 www.sconline.com 1:15p.m.

⁴⁷ *CESC Ltd v. Subash Chandra Bose* 1992 AIR 573, 1991 SCR Supl. (2) 267 www.westlaw.india.com 1:25p.m,

⁴⁸ *Virendra Gaur v.State of Haryana* 1994 <https://indian.kanoon.org> 1:24p.m.

⁴⁹ *M.C. Mehta v.Union of India*1987; *Bayer India Ltd v.State of Maharashtra* 1995 www.westlaw.india.com 1:29p.m.

⁵⁰ **ibid**

⁵¹The University Of Melbourne, International Environmental Law,

Article 51(c) lays down provisions for the same.⁵²Besides this, the state is also obliged⁵³ to endeavour to protect and improve the environment and to safeguard the wildlife and forests of the country under article 48(a) of the constitution which lays down the directive principles of state policy. By the construction of the said project, article 48(a) would be completely infringed. It is also the duty of the citizens⁵⁴ of the state of Angorki under article 51 (a)(g) of Part IVA of the constitution to protect and improve the natural environment including forests,lakes,rivers and wild life.

2.2.5 It is also submitted that the respondents are bound under Section 5 of the Environment Protection Act, 1986⁵⁵ to comply with the environment clearance and are bound under Section 2 of the Forest Conservation Act, 1980⁵⁶ to comply with the forest clearance and are also bound under Section 29 of the Electricity Supply Act, 1948⁵⁷ to comply with the clearances of the Central Electricity Authority. Hence, this hydroelectric project must be halted till a proper Environmental Impact Assessment is not initiated as it will have negative impacts on the ecosystem and it infringes the fundamental rights of the tribal people of Ghasi.

⁵²Article 51 (c): foster respect for international law and treaty obligations in the dealings of organised peoples with one another;

⁵³*ChhetriyaPardushan Mukti Sangarsh Samiti v. State of U.P. &Ors., [1990] 4 SCC 449* and *Subhash Kumar v.State of Bihar &Ors., [1991] 1 SCC 598*, had held that the protection to environment is the duty of the State

⁵⁴*Sachidanand Pandey v. State of West Bengal, [1987J 2 SCC 295]*www.westlaw.india.com 2:00p.m.

⁵⁵**The Environment Protection Act, 1986:**It empowers the Central Government to establish authorities charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country. The Act was last emended in 1991.

⁵⁶ **Section 2,The Forest Conservation Act, 1980:** Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-- (i) that any reserved forest (within the meaning of the expression reserved forest in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose. [(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

⁵⁷**The Electricity Supply Act, 1948:** The Electricity Supply Act 1948 is an act that was established for taking necessary measures for the production and supply of electricity.

ISSUE3: WHETHER THE UNAWARENESS OF THE GHASI TRIBE REGARDING THE PROJECT IS IN VIOLATION OF NATIONAL AND INTERNATIONAL LAWS RELATING TO THE PROTECTION OF INDIGENOUS AND TRIBAL PEOPLE?

3.1If the consultation is legally insufficient one never reaches the consent issue. The ILO Indigenous and Tribal Peoples Convention (169) in Article 6, requires that indigenous and tribal peoples must be consulted on issues that affect them. Article 6, 1(a) provides that the peoples concerned must be consulted through their representative institutions. Secondly, Article 1(b) provides that the government must ensure that the peoples can freely participate and 1(c) states that the government must “provide the resources necessary for this purpose”. Article 6, 2 states as follows: “the consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (Lillich et al., Citation2009, pp. 117–118).

The Supreme Court of Chile, in *Diaguíta v. Goldcorps (7 October 2014)*⁵⁸, applying state and international law, halted the development of a gold and copper mine owned by a Canadian corporation until the indigenous peoples were properly consulted. The Court, following the ILO Convention of 1989 as to the necessity of consultation, prior to initiating economic development projects affecting indigenous peoples, set forth various guidelines that the Chilean government should follow in consulting with the indigenous peoples in question.

3.2In the recent case of Council of *Sipacapa v. Guatemala*⁵⁹(<http://Upsidedownworld.org.2014> (<http://Upsidedownworld.org.2014>)), a

⁵⁸*Diaguíta v. Goldcorps (2014)*

⁵⁹*Sipacapa v. Guatemala (2014)*www.legal.un.org 2:00a.m. (<http://Upsidedownworld.org.2014> (<http://Upsidedownworld.org.2014>))

Guatemala appeals court held that Goldcorps mine projects, approved by the Guatemalan government, could not proceed because the government had completely failed to consult with the indigenous people. The peoples concerned had previously voted against the mine in Sipacapa in a popular referendum by a vote of 99% against (Sipacapa has 24,000 residents). The Goldcorps Corporation unsuccessfully challenged the validity of the referendum. Guatemala has established the right to consultation for indigenous peoples in the Guatemalan Constitution, thus implementing the requirement of special measures set forth in the ILO Convention No. 169 and the Declaration of the Rights of Indigenous Peoples.

The Court in the Sipacapa case ordered the Guatemalan government and its corporate allies to pursue a consultation process with the Sipacapa peoples. The consultation would have to be conducted in good faith which means in part the government has to determine if the mining project of Goldcorps would be harmful to the environment. Clearly, an action which has a significant, adverse effect on the physical environment would interfere with indigenous peoples' "right to enjoy their culture" as well as their property and economic interests, all guaranteed by Article 27 of the Covenant on Civil and Political Rights (Citation 1966)⁶⁰ (Lillich et al., Citation 2009, p. 51) which was signed by Guatemala and most UN members, including the USA and Canada. There are international and domestic law remedies available to aggrieved persons or groups whose properties and resources have been contaminated by harmful substances produced by development projects.

Regardless of the issue of consent and adequate consultation, indigenous peoples can prevail under international law if the State and its developer allies threaten the physical and cultural survival of the peoples concerned, unless they can show that they have obtained legally recognized consent.

3.3 Article 27 of the United Nations Covenant on Civil and Political Rights (Citation 1966) supports the rights of indigenous peoples to preserve and enjoy their culture. Article 27 is designed to protect the people from activities harmful to their way of life. There is case law which supports the notion that indigenous peoples' property, culture, and right to make a living cannot be taken away.

⁶⁰ **Article 27** of the Covenant: In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Under Article 1 of the Covenant, the states commit themselves to promote the right to self-determination and to respect that right. It also recognises the rights of peoples to freely own, trade and dispose of their natural wealth and resources.

These cases include *Lubicon Band v. Canada (United Nations Document)*⁶¹

In the following case, Ominayak (Lubicon Lake Band) v. Canada, Chief Bernard Ominayak of the Lubicon Lake Band, Canada, brought a complaint alleging that Canada had denied members of the Lubicon Lake Band their rights to self-determination and to dispose freely of their natural wealth and resources.

Any state which interferes with, steals, or injures genetic resources of indigenous peoples would be in violation of the Convention on Biological Diversity⁶² whether as a signatory or under customary international law. The Convention on Biological Diversity, like the ILO Convention 169 and the Declaration on the Rights of Indigenous Peoples, has provisions for obtaining free, prior, and informed consent. It would appear that if consent is obtained after proper consultation of the peoples concerned, the infringement would be permitted.

⁶¹*Lubicon Band v. Canada (1990)* CCRC/38/D/167/1984 (United Nations Document) www.legal.un.org 2:25a.m.

⁶²**The Convention on Biological Diversity (CBD)** is an international legally-binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; and the fair and equitable sharing of the benefits arising from the use of genetic resources.

ISSUE 4: WHETHER THE BAN ON GRS INFRINGES THE RIGHTS GUARANTEED UNDER PART III AND PART X READ WITH SCHEDULE V OF THE CONSTITUTION OF ANGORKI?

4.1. It is humbly contended before the Hon'ble Court that the unawareness of the Ghasi tribe regarding the project is in violation of national and international laws relating to protection of indigenous and tribal people.

4.2 It is humbly submitted before the Hon'ble Court that The Fundamental Right of the farmer to cultivation is a part of right to livelihood. In *Waman Rao v. Union of India*⁶³, [1981] 2 SCR 1 a Constitution Bench had observed that India being a predominantly agricultural society, there is "strong linkage between the land and the person's status in social system". Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source for economic empowerment, Ninety per cent of the Scheduled Tribes predominantly live in forest areas and intractable terrains 95 per cent of them are below poverty line and totally depend upon agriculture or agriculture based activities.

4.3 It is humbly submitted before the Hon'ble Court that according to *New Riviera Cooperative Housing Society v. Special Land Acquisition Officer*⁶⁴ in which the Supreme Court has held that if the contention that acquisition of land by the State for public purpose

⁶³ *Waman Rao v. Union of India*, [1981] 2 SCR 1

⁶⁴ *New Riviera Cooperative Housing Society v. Special Land Acquisition Officer* 1996 SCC (1) 731, JT 1995 (9) 215

violates Art. 21 of the Constitution is given credence, then no land can be acquired under the Land Acquisition Act, 1894 for any public purpose since in all such cases, owners and all other persons would be deprived of their property.

4.4 It is humbly contended before the Hon'ble Court that The ILO Indigenous and Tribal Peoples Convention (169) in Article 6⁶⁵, requires that indigenous and tribal peoples must be consulted on issues that affect them. Article 6, 1(a) provides that the peoples concerned must be consulted through their representative institutions.

4.5 It is also humbly contended before the Hon'ble Court that Article 6, 2 states as follows: "the consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures".

4.6 It is humbly contended before the Hon'ble court that the lack of consent taken by the Ghasi tribe before starting the hydroelectric project in the State of Angorki started by the Government is not only a direct violation of the international laws stated by the ILO but also shows the government's unawareness of the Ghasi tribe.

4.7 It is also submitted before the Hon'ble Court that under *Diaguita v. Goldcorps* (7 October 2014)⁶⁶, the Supreme Court of Chile applied the state and international law and halted the development of a gold and copper mine owned by a Canadian corporation until the indigenous peoples were properly consulted. The Court, following the ILO Convention of 1989 as to the necessity of consultation, prior to initiating economic development projects affecting indigenous peoples, set forth various guidelines that the Chilean government should follow in consulting with the indigenous peoples in question.

4.8 It is also submitted before the Hon'ble Court that under *Council of Sipacapa v. Guatemala*⁶⁷, a Guatemala appeals court held that Goldcorps mine projects, approved by the Guatemalan government, could not proceed because the government had completely failed to consult with the indigenous people. The Court in the Sipacapa case ordered the Guatemalan government and its corporate allies to pursue a consultation process with the Sipacapa peoples. The consultation would have to be conducted in good faith which means in part the government has to determine if the mining project of Goldcorps would be harmful to the people as well as the environment.

⁶⁵Article 6 of the Covenant: Every human being has the inherent right to life.

⁶⁶*Diaguita v. Goldcorps (2014)*www.legal.un.org 3:00a.m.

⁶⁷*Sipacapa v. Guatemala(2014)*www.legal.un.org 3:15a.m.

4.9 It is also submitted before the Hon'ble Court that it is stated under Article 27⁶⁸ of the United Nations Covenant on Civil and Political Rights supports the rights of indigenous peoples to preserve and enjoy their culture. Article 27 is designed to protect the people from activities harmful to their way of life. It supports the notion that indigenous peoples' property, culture, and right to make a living cannot be taken away.

4.10 It is also submitted before the Hon'ble Court that under These cases include Lubicon Band v. Canada (United Nations Document)⁶⁹In the following case,Ominayak (Lubicon Lake Band) v. Canada, Chief Bernard Ominayak of the Lubicon Lake Band, Canada, brought a complaint alleging that Canada had denied members of the Lubicon Lake Band their rights to self-determination and to dispose freely of their natural wealth and resources.

4.11 It is also submitted before the Hon'ble Court that any state which interferes with, steals, or injures genetic resources of indigenous peoples would be in violation of the Convention on Biological Diversity whether as a signatory or under customary international law. The Convention on Biological Diversity, like the ILO Convention 169 and the Declaration on the Rights of Indigenous Peoples, has provisions for obtaining free, prior, and informed consent. It would appear that if consent is obtained after proper consultation of the peoples concerned, the infringement would be permitted and as the Court is aware that in this particular case there was no consent taken by the Ghasi Tribe.

⁶⁸Article 27 of the Covenant:In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

⁶⁹*Lubicon Band v. Canada(1990)*, U.N. Doc. Supp. No. 40 (A/45/40) (United Nations Document)www.legal.un.org 3:45a.m.

ISSUE 5: WHETHER AN INQUIRY SHOULD BE INITIATED TO FIX THE RESPONSIBILITY OF EXCESSIVE USE OF FORCE ON THE ORDINARY CITIZENS?

5.1 It is humbly contended before the Hon'ble Court that an inquiry must be initiated to fix the responsibility of excessive use of force on the ordinary citizens.

5.2 It is humbly submitted that the Right to life and liberty of a total of 50 persons including 10 women and 5 children were infringed when they were killed in the open fire by the police. Such human Rights excuses in the name of defence are unacceptable. Similarly, in the case of *Naga People's Movement of Human Rights v. Union of India (1997)*⁷⁰, the Supreme Court emphasized the duty of the state to conduct investigations into allegations of human rights abuses by its own armed forces and held that the armed forces cannot enjoy absolute immunity for their actions.

5.3 It is further humbly contended that there have been many cases where people were killed in the name of encounters which were extra-judicial killings in reality, hence it is necessary for an inquiry to be conducted in the given case as well. This can be substantiated by the case of *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016)*⁷¹ wherein the Supreme Court dealt with allegations of extrajudicial executions by security forces in Manipur. The Supreme Court emphasized the need for an independent investigation into each case of encounter killing and directed the establishment of a Special Investigation Team (SIT) to probe the allegations.

Hence, it is crucial to fix the responsibility of the excessive use of force by the police.

⁷⁰ *Naga People'S Movement, Of Human v. Union Of India on 27 November, 1997*

⁷¹ *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016)* WRIT PETITION (CRIMINAL) NO.129 OF 2012

PRAYER

Wherefore, in the light of the facts of the case, issues raised, arguments advanced and authorities cited, this Hon'ble Court may graciously be pleased to adjudge and declare that:

1. **That the present Petition is allowed,**
2. **That the Hydroelectric project in the District of Jhokai shall be halted till an Environmental Impact Assessment is conducted,**
3. **That the unawareness of the Ghasi tribe regarding the project is in violation of national and international laws relating to protection of Indigenous and tribal people,**
4. **That the ban on Ghasi Raksha Samiti infringes the right guaranteed under Part III and X read with Schedule V of the Constitution of Angorki,**
5. **That an inquiry shall be initiated by the State of Zad to fix the responsibility for the excessive use of force on ordinary citizens,**

And pass any order(s) in favour of the petitioner as the Court may deem fit.

All of which is humbly submitted to the Hon'ble Court

LM05

Counsel on behalf of Petitioner