
**6TH SURANA AND SURANA, UNIVERSITY INSTITUTE OF
LEGAL STUDIES, MOOT COURT COMPETITION, 2023**

**BEFORE
THE HON'BLE COURT OF
KARTINA**

IN THE MATTER OF

DEMOCRATIC REPUBLIC OF DHALL

....APPLICANT

VS.

THE REPUBLIC OF KARTINA

....RESPONDENT

MEMORIAL ON BEHALF OF RESPONDENT

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LIST OF ABBREVIATIONS

&	And
Anr.	Another
AP	Andhra Pradesh
Art	Article
b/w	Between
ICJ	International Court Of Justice
Govt.	Government
Hon'ble	Honorable
BOMLR	Bombay law reporter
r/w	Read With
Ors.	Others
CriLJ	Criminal Law Journal
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Report
SUPTD	Superintendent

INDEX OF AUTHORITIES

A) CASES

1.Narmada bachao andolan v. Union of India & Ors, AIR 2000 SC 3751.
2.US v. TEXAS, 162 U.S. 1(1896).
3.State of Tamil Nadu etc v. State of Karnataka & Ors, 1991 SCR (2) 501, 1991 SCC Supl. (1) 240.
4. R. Krishnaiah v. Union Of India, 1996 (4) ALT 175.
5. Jainarain Ram Lundia v. Surajmall Sagarmall, 1949 51 BOMLR 979.
6.Vellore Citizens Welfare Forum v. Union of India, 1996 5 SCC 647.
7. M C Mehta v. Union of India, 2002 4 SCC 356.
8. Samata v. State of Andhra Pradesh, 1997 8 SCC 191.
9. Madhu Kishore v. State of Bihar, 1996 5 SCC 125.
10. N.D. Jayal & anr v. Union Of India & Ors, (Writ Petition (civil) 295 of 1992).
11.The Goa Foundation & anr v. The Konkan Railway Corporation & Ors, AIR 1992 Bom 471.
12. Hunnowara Taluka Parisara & ors v. State of Karnataka & ors, (Writ Petition NO.147584/2020(CS-EL/M)).
13.Tehri Bandh Virodhi v. State of U.P & Ors, 1990 SCR, Supl. (2) 606 1992 SCC Supl. (1) 44.
14. Nicaragua v. United States, ICJ GL No 70, [1984] ICJ Rep 392, ICGJ 111 (ICJ 1984).
15. Republic of the Congo v. Uganda, ICJ GL No 116, [2005] ICJ Rep 168, ICGJ 31 (ICJ 2005).
16. Castrique v. Imrie & Ors, 142 E.R. 483.
17. Menahem Mesha Menahem Messa v. Moses Bunin Menahem Messa, (1938) 40 BOMLR 571.
18. Hilton v. Guyot, 159 U.S. 133 1895.
19.Hans Muller of Nurenburg v. Supdt. Presidency Jail, Calcutta, 1955 AIR 367, 1955 SCR (1)1284.
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21.Sk. Md. Soleman v. State Of West Bengal & anr, AIR 1965 Cal 312, 1965 CriLJ 679.

B) CONSTITUTION AND STATUTES

1. The Constitution of Kartina, 1950
2. The River Board Act, 1956
3. Inter-State Water Dispute Act, 1956
4. The statute of the International Court of Justice, 1945.

C) BOOKS

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5. The law of International Watercourses.

D) LEXICONS

1. Mekong River Basin [Eyler, B.; Weatherby, C. New Evidence: How China Turned off the Tap on the Mekong River, Stimson Center: Washington, DC, USA, 2020.]
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6. The Strategic Significance of the Mekong/Vol. 22, No. 3 (December 2000), pp. 429-444 (16 pages)/MILTON OSBORNE.

E) ONLINE WEBSITES

1. <http://www.barandbench.com/>
2. <http://www.scconline.com/>
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4. <https://1.next.westlaw.com/>
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STATEMENT OF JURISDICTION

The Hon'ble Court has jurisdiction to try the instant matter under article 262 of Constitution of Kartina, 1950.

The Applicant has approached the Hon'ble Court of Kartina to hear & adjudicate over the instant matter under ARTICLE 262 of the CONSTITUTION OF KARTINA r/w Section 4 of The Inter- State Water Disputes Act, 1956, wherein an ad hoc Tribunal is to adjudicate & resolve the dispute in hand.

¹Article 262 of Constitution of India,1950 states that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

²Section 4 of inter-state river water dispute act,1956 states the constitution of tribunal.

STATEMENT OF FACTS

1. The Republic of Kartina is a developing ex-colony situated in the continent of Tymayus. Topologically, the country is mostly flat, barring a range of mountains. The Kartinan people are primarily engaged in the agricultural sector, their largest export being tea. To a large extent the water that is used to irrigate the crops in the land is taken by the locals from River Biffin.

2. The Democratic Republic of Dhall shares a portion of its eastern border with the western border of Kartina. It has the sea on the south of its landmass. A large portion of the residents are fisherman. The sea water being saline, the farmers rely heavily on River Biffin for irrigation.

3. In 1979, both countries signed a bilateral Treaty on River Biffin, preventing actions that alter the river's flow or course. The Treaty has a 50-year term.

4. Kartina has faced a standard of living crisis since independence in 1951. Despite economic growth, basic resources like food, water, and electricity remain scarce. On 22nd June, 2022, President Angelo Mubble of Kartina announced The Great Kartina Dam on River Biffin, aiming to double electricity output by 2036 through a Run-of-River Plant.

5. When questioned about whether the action was in contravention to the Treaty, President Mubble states that the Dam won't affect the river's flow until 2030 and offer subsidized hydroelectricity to Dhall. Prime Minister Nancy Lu of Dhall is concerned about the Dam's downsides despite the subsidized electricity benefit. They maintained the stance that the advantages did not outweigh the downfalls.

6. On 28th September 2022, she presented a report worked on by Dhall's leading environmental scientists, that illustrated all the damage that the Dam would do to the ecosystem as well as the profession of the people of Fadray. The Report stated the potential harm caused by the Dam. Changes in river flow and quality can disrupt ecosystems downstream, affecting agriculture and marine life.

7. President Mubble prioritizes technological development over environmental preservation, urging Dhall to consider broader impact and accept subsidized electricity. Prime Minister Lu remains steadfast as a result, Dhall seeks resolution through Kartina's domestic courts as per the Inter-State Water Disputes Act. An ad hoc Tribunal is formed to address the issue.

STATEMENT OF ISSUES

ISSUE 1

Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?

ISSUE 2

Whether or not The Republic of Kartina is in contravention of the principles of international environmental law and international treaty law?

ISSUE 3

Whether the Claim of the respondent with regards to the fundamental rights & the Constitution's inapplicability in the instant matter is a Valid Claim?

SUMMARY OF ARGUMENTS

ISSUE I

Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?

The Respondent here contends that proportionality based on population and river flow in the river Biffin dispute is legally sound and reflects the river's unique geography. Kartina states its upper riparian status due to River Biffin's origin & that Historical usage, dependency, and prior appropriation doctrine justify Kartina's proportional claim. International cases like China's Mekong River approach emphasize origin-based sovereignty. Further, the respondent argues that its approach aligns with Article 5 of the Watercourses Convention, emphasizing equitable use considering social and economic needs. The issue also explains that the Respondent's approach to promote both parties' needs is in cooperation with Article V and Article 6 of the Treaty.

ISSUE II

Whether or not The Republic of Kartina is in contravention of the principles of international environmental law and international treaty law?

The counsel for the respondents in the present argument asserts that Kartina has adhered to treaty obligations and international customary law, rendering the applicant's claims baseless as Kartina's activities align with the bilateral treaty's non-consumptive use provisions; constructions respect river flow. Referencing the case of *US v. Texas*, the counsel highlights the Harmon doctrine granting upper riparian states rights over river waters. Further, Kartina's long-standing resource usage supports its legitimate claim via Theory of Prior Appropriation. Citing the Cauvery dispute and the importance of negotiations, the counsel emphasizes equitable water distribution based on socio-economic needs. The counsel also establishes that the onus lies on the applicant to provide evidence of adverse effects from the proposed dam. The argument is lastly supported via precedents such as the *N.D. Jayal And Anr v. Union of India*, where the integral role of

development projects in achieving sustainable development is emphasized.

ISSUE III

Whether the Claim of the respondent with regards to the fundamental rights & the Constitution's inapplicability in the instant matter is a Valid Claim?

This issue argues that the Applicant lacks the standing to proceed & the failure to pursue dispute resolution via treaties, arbitration, mediation, or negotiation renders the case non-maintainable. The Respondent contends that the fundamental rights enshrined in the Kartinian Constitution aren't applicable to international disputes, given the jurisdictional limitations. The Respondent places reliance on Case law that confirms fundamental rights in the Constitution are intended solely for citizens and do not extend to foreigners.

ARGUMENTS ADVANCED

ISSUE I

Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?

Kartina's claim that the proportionality of resources should be determined by considering the population and the length of flow within each country is a legitimate approach that aligns with established legal principles and the unique geographical dynamics of the river Biffin. This approach seeks to ensure that both countries benefit fairly from the shared resource while acknowledging the realities of their respective needs and positions.

1) The principle Equitable and Reasonable Utilization:

(i) Article 5 of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (Watercourses Convention) underscores the principle of equitable and reasonable utilization, taking into account all relevant factors, including the social and economic needs of the watercourse states. In the instant matter Kartina's larger population's substantial dependency on the resources of River Biffin mandates the attainment of a proportionate allocation. This position is rooted in the recognition that equitable and just utilization of shared water resources must consider the varying needs and imperatives of the respective populations.

Further, Article II of the River Biffin Water Treaty signed b/w Dhall & Kartina elaborate on the Provisions Regarding the Obligations of Kartina wherein under sub clause

(2) The respondent is obligated to let the waters of the river Biffin flow for various purposes, including Domestic Use, Non-Consumptive Use, Agricultural Use, and the Generation of Hydro-Electric Power. The significance of such provisions recognizes the dependency for both parties' populations on the river, Therefore, Kartina's claim to have a say in resource distribution, considering the population and river flow, supports the Treaty's intent to facilitate these essential uses without disproportionate harm to either country.

(i) Article V of the Treaty emphasizes "Future Co-operation" and mutual interest in the development

of the river Biffin. Kartina's approach, which considers population and river flow, promotes coordinated development that benefits both parties. By acknowledging the interdependence of their resource utilization, Kartina's claim aligns with the spirit of cooperation enshrined in the Treaty, ensuring that the development of hydroelectric power benefits Dhall as well.

(ii) Article 6 (General Obligation Not to Cause Harm) of the Watercourse Treaty - Obliges states to prevent significant harm to other watercourse states. The respondent state's approach, considering population and river flow, aims to prevent harm to its citizens due to resource scarcity while also ensuring that Dhall's interests are not unduly compromised.

(iii) Article 8 (General Obligation to Cooperate) of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses mandates watercourse states to cooperate in managing and protecting the watercourse. Kartina's approach of considering factors like population and river flow aligns with cooperative principles by addressing the needs of both countries in a mutually beneficial manner.

(iv) Article 10 of the Watercourse Convention states norms for (Protection, Preservation, and Management of Ecosystems). Herein it is noteworthy that the respondent state argues to build a "Run of the River Plant" which is a type of hydroelectric generation whereby little or no water storage is provided. "Such Hydropower so generated is a renewable, non-polluting and environmentally benign source of energy. Like all hydro-electric power, run-of-the-river hydro harnesses the natural potential energy of water, eliminating the need to burn coal or natural gas to generate the electricity needed by consumers & industry." Hence, Kartina's approach seeks to avoid ecological imbalances by ensuring a balanced distribution of resources while maintaining the health of the river Biffin ecosystem.

(2) Customary International Law: The principle of equitable utilization is recognized as customary international law, reflecting the broader principles of fairness, reasonableness, and cooperation in the allocation and use of shared water resources. Customary law evolves through state practice and *opinio juris* (the belief that a practice is legally obligatory).

- (i) ILC Draft Articles on the Law of Transboundary Aquifers: While not directly applicable to the current case involving a river, these draft articles by the International Law Commission (ILC) provide additional insights into the general principles of equitable

utilization and reasonable participation in shared water resources, which can be relevant in discussions of customary international law.

- (ii) **Scholars' Commentary:** Scholars stress that equitable utilization doesn't mean equal sharing, but rather a distribution that's fair and takes into account the unique circumstances of each state.

Equitability considers factors such as population size, water needs, geographical location, and economic conditions. It's a context-specific concept that seeks to avoid inequitable outcomes.

The principle of equitable utilization underscores the significance of considering the unique circumstances of each riparian state. Kartina's assertion that its population's dependency on River Biffin's resources is exceptional due to its larger demographic makes a compelling case. Such circumstances should be factored into the allocation equation, ensuring that Kartina's legitimate needs are adequately addressed.

The principle requires balancing the interests of all riparian states. While Dhall may express concerns about the downstream impacts of Kartina's proposed dam, Kartina's argument highlights the socio-economic interests and well-being of its population. The principle acknowledges that the interests of each state should be weighed while arriving at a reasonable allocation that respects their respective needs.

3) **Geographical and Hydrological Realities:** The unique geography of the river Biffin, flowing from Kartina's northern mountains to Dhall's southern coast, highlights Kartina's role as an upper riparian state. The length of flow within Kartina's territory gives it a legitimate interest in resource management, especially considering the water's source and its journey through the country.

(A) **Prior Usage and Dependency:** The applicant being an upper riparian state contends that its population's historical dependency on River Biffin's resources, as well as its geographic position at the origin of the river, gives it a legitimate claim to a proportional share of the resources. Moreover, the concept of prior appropriation is rooted in customary international law. This doctrine suggests that the first user of water from a river has a vested right to continue that use. While this principle has been historically associated with water law in the Western United States, the same can be applied in the present matter emphasizing Kartina's historical use of River Biffin's resources.

(B) The Principle of Permanent Sovereignty: It is a fundamental concept in international law that asserts a nation's inherent right to control and make decisions regarding its own resources, territory, and affairs without external interference. It is often applied to matters of natural resources and economic development. While it is typically associated with resources like minerals, land, and energy, its principles can be extended to water resources as well. Kartina as an upper riparian state with the river originating within its borders, it inherently possesses a significant degree of control over the river's resources. This control extends to the water flowing through its territory, which is a manifestation of its permanent sovereignty. While asserting permanent sovereignty, President Mr. Angelo Mubble has also duly emphasized on "balancing interests" by offering the Hydroelectricity generated by Dam to Dhall at an immensely subsidized rate.

For allocation of river water, population and origin is considered important as also referred In The book titled "**The Law of International Watercourses**" (2007) Professor Stephen C. McCaffrey, an expert in international water law, emphasizes the considerations of population, geography, and economic development when allocating transboundary water resources.

In the case of the Dam projects and disputes in the Mekong River Basin "China's approach towards the sharing of the river channel was based on the principal or territorial sovereignty and origin. Despite the fact that the Mekong is a shared resource flowing through several Southeast Asian countries before emptying into the South China Sea, China considers water originating in China to be the sovereign property of China, rather than a resource to be shared with downstream countries."

³ Refer to Moot Problem, para no.4.

⁴ The law of the Non- Navigational Uses of International Watercourses, 1997.

ISSUE II

Whether or not The Republic of Kartina is in contravention of the principles of international environmental law and international treaty law?

In the article titled "**The Right to Development as a Human Right**" published in the "Michigan Journal of International Law" in 1980 (Vol. 2, No. 1) Professor Oscar Schachter, a renowned international law scholar, emphasizes the importance of balancing development rights with environmental concerns in cases involving potential transboundary harm.

In the case of **Narmada Bachao Andolan v. Union Of India & Ors** Majority Judgment, at p. 48. Court concludes that "dams play a 'vital role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood waters back'. It also asserts that the displacement of persons need not 'per se result in the violation of their fundamental or other rights'" "The court also finds that the precautionary principle applies only in cases of polluting industries and that it would be inapplicable to dams." - **Narmada Bachao Andolan v. Union Of India & Ors** Majority Judgment, at pp. 95-6.

The counsel for the respondent's most humbly contends that The Republic of Kartina has duly complied with the treaty obligations and the international customary law as all the activities by the respondent state are carried out within the boundaries of its sovereignty and in accordance with the treaty, henceforth the Applicant's claims of contravention of international environmental law and treaty law principles stand baseless.

(1) Treaty Compliance and Interpretation: The bi-lateral treaty signed b/w Kartina and Dhall allows for non-consumptive uses, including construction, as long as they do not alter the flow of the river. The construction activities undertaken by Kartina are in line with the treaty's language, as they do not directly affect the flow of the river. The principle of "pacta sunt servanda" Underscores the obligations of abiding by treaty. Article 26 of the Vienna Convention on the Law of Treaties also state that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." The facts in hand for the instant matter highlights the bona fide intent of the respondent state by obeying with the treaty provisos, as the construction of Dam hasn't commenced just yet and the gesture of the respondent to offer the hydroelectricity generated by the Dam to Dhall at an "immensely subsidized rate" also complies with the duty of the state to perform functions under "good faith".

2) [i] Theory of absolute territorial sovereignty: In the case of **US v. TEXAS**, Attorney General Harmon, of the U.S. in 1896 evolved this doctrine of territorial sovereignty as a variant of what is known as the "Harmon" doctrine in the United States. "According to the Harmon doctrine an

upper Riparian State the right to do whatsoever it wishes with the waters running through its territory, without regard to its effect on other co riparian state and no riparian state has a right to demand the continued flow of water from other states."

[ii] Theory of prior appropriation. This theory says that the first user who puts the water to beneficial use establishes a prior right and subsequent users can only appropriate what is left by the first user. This doctrine allocates property rights to water on the basis of historical use. Thus, the right to use arises by appropriation and a prior user is given due preference.

[iii] Theory of equitable utilization of Inter-State river waters: This theory per does not provide for equal distribution of water literally, rather it says that water should be distributed based on a large number of factors including the socio- economic needs of all states concerned. This concept is a utilitarian one, which would be against the storing of river water for the future when it is required now.

Further, the counsel would request to deviate the court's attention to the **State Of Tamil Nadu Etc vs State Of Karnataka & Ors** also referred to as the Cauvery dispute, wherein- "From 1972-1990 due to increase in irrigation activities and ayacuts development interstate utilization of the Cauvery waters underwent a substantial change resulting in dispute over sharing of water and led to negotiations. These negotiations (1968-1990) however failed to bring about any consensus & There was a divergence of interest between Karnataka and Tamil Nadu on the question of pursuing negotiations & the same was majorly because of several socio-economic and political factors." These facts are similar to the instant matter wherein "Farmers and political leaders in both contending states needs to recognize the fact that losing or gaining some quantities in the process of negotiation is much better than keep on bargaining forever or keeping conflict alive. Mere uncertainty and anxiety put farmers in both states under enormous pressures in terms of earning livelihoods, while concerned states and people pay a political, social, economic and ecological price for the prolonged conflict."

The Respondent country has time and again initiated negotiating with the Applicant by ensuring a common benefit for all by leveraging the hydroelectric produce of the Dam. In the case of **R. Krishnaiah vs Union Of India** also called Krishna water dispute "Relying on the case of **Jainarain Ram Lundia v. Surajmall Sagarmall** "the tribunal had arrived at a conclusion that no perfect contract was possible without the agreement and without a clear understanding of what the other side of the party wants and needs to be a party to the agreement. On the grounds of equity, if a case is made for enforceability, the part which is non-consenting has to prove and show that it would

result in substantial injustice." Drawing upon this precedent, as a consequence, the onus of establishing proof is distinctly transferred onto the Applicant nation. It becomes imperative for the Applicant nation to furnish compelling empirical evidence substantiating the contention that the proposed construction possesses the potential to adversely affect the ecological equilibrium, as posited by its argument.

3) The Construction of the Dam Aligns with the Tenets of Sustainable Development:

The Counsel for the Respondent humbly contends, that the construction of the Great Kartinian Dam duly upholds the objectives of sustainability in the present dispute. As held in the **Narmada Bachao Andolan Case**, "Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known that the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation." The court went on to say "The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in a change of environment but it would not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster." The demerits of the construction of the Kartinian Dam as claimed by the applicant is mere "presumptions" based out of multiple factors including but not limited to, "Previous resultants of such constructions, The Applicant's demand to have an equal resource allocation out of the Biffin River, and its continuous non-cooperation for negotiation." Nevertheless, such assumptions of the dam to result in a disaster stand completely unjustified & incorrect.

In **Vellore Citizens Welfare Forum v. Union of India**, and in **MC Mehta v. Union of India**, "it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of 'sustainable development.' "All environmental-related developmental activities should benefit more people while maintaining the environmental balance." In a different context, the right to development is also declared as a component of Article 21 in cases like **Samata v. State of AP** and in **Madhu Kishore v. State of Bihar**. In the case of **N.D. Jayal And Anr vs. Union Of India And Ors**, It was stated by the Hon'ble Court "The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights." "The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and

realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development."

"Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to 'sustainable development' cannot be singled out."

⁵Narmada Bachao Andolan v. Union of India & Ors, AIR 2000 SC 3751.

⁶US v. Texas, 162 U.S. 1(1896).

⁷State of Tamil Nadu Etc v. State of Karnataka & Ors, (1991) SCR (2) 501, 1991 SCC Supl. (1) 240.

⁸R. Krishnaiah v. Union of India, 1996 (4) ALT 175.

⁹Jainarain Ram Lundia v. Surajmall Sagarmall, 1949 51 BOMLR 979

¹⁰Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

¹¹The Constitution of India, 1950.

¹²MC Mehta v. Union of India, (2002) 4 SCC 356.

¹³Samata v. State of AP, (1997) 8 SCC 191.

¹⁴N.D. Jayal & Anr v. Union of India & Ors, Writ Petition (civil) 295 of 1992.

ISSUE III

Whether the Claim of the respondent with regards to the fundamental rights & the Constitution's inapplicability in the instant matter is a Valid Claim?

1) THE APPLICANT DOES NOT HAVE THE LOCUS STANDI TO INITIATE PROCEEDING FOR THE INSTANT MATTER:

(i) The Counsel for the Respondent most humbly contends that the Applicant herein has failed to exhaust their alternative remedies by not availing the dispute resolution via the international legislative mechanism, given the fact that the instant matter is ipso facto pertaining to an international concern. The Democratic Republic of Dhall didn't utilize the traditional route by relying on international treaties governing dispute resolution, or by Arbitration, Mediation, or Negotiation, hence making the maintainability of the case void.

(ii) Further in the Case Commentary on "Changing Judicial Power: Courts on Infrastructure Projects and Environment." The court's approach with regard to disputes arising out of but not limited to large infrastructure projects like Dams, was discussed. "The grounds of challenge have included: adverse environmental impacts, safety aspects, extraneous financial considerations, forced displacement and inadequate resettlement and rehabilitation measures arising therefrom. The general response of the higher courts has been that of scrupulous non-interference basically on the promise that these cases raised technical issues and policy matters which are best left to expert authorities of the executive."

Likewise, in another case (**The Goa Foundation and anr v. The Konkan Railway Corporation & Ors** where it was sought that the Konkan Railway Corporation be compelled to obtain requisite environmental clearance for its proposed rail alignment, the high court reasoned that the corporation had set up a specialized committee and engaged a renowned engineer, and when they had given the "green signal" the court is not to interfere. The judicial self-restraint in such cases gets further clear from a case before the Karnataka High Court **Hunnowara Taluka Parisara & ors v. State of Karnataka & ors** where release of forest land for the construction of a dam and environmental approval by the central government for a hydroelectric project was challenged. Though the court directed the government to reconsider both the clearances, it took trouble to clarify that if all the relevant aspects are considered by the government, the court would not Interfere with its decision. The Apex court has also in the [**Tehri Dam Case**] placed the onus on the Government of the country to "consider the importance of public projects for the betterment of the conditions of living of the people" & that this nature of the limitation of judicial review was called "the self-imposed restrictions of a court in considering such an issue". Such instances underscore the court's restricted approach to address matters emerging from environmental conflicts, as exemplified in the present case.

2) THE PRINCIPLE OF NON-INTERVENTION:

"In international law, the principle of non-intervention includes, but is not limited to, the prohibition of the threat or use of force against the territorial integrity or political independence of any state (Article 2.4 of the Charter)". This Principle was also early formulated in the Covenant of the League of Nations and the Montevideo Convention on Rights and Duties of States of 1933, under Article 15 (8) which prohibited "interference with the freedom, the sovereignty or other internal affairs, or the processes of the Governments of other nations," together with the Additional Protocol on Non-Intervention of 1936. The prohibition of intervention "is a corollary of every state's right to sovereignty, territorial integrity and political independence".

In the Case of **NICARAGUA v. UNITED STATES OF AMERICA**, The International Court of Justice said "[t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law." "international law requires political integrity to be respected" "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States". In **Democratic Republic of the Congo v. Uganda** "the Court noted that Nicaragua had "made it clear that the principle of non-intervention prohibits a State "to intervene, directly or indirectly, with or without armed force, in support of the internal opposition within a State". The Applicant nation, by lodging its case before the domestic courts of the Respondent is violating the principal of "non-intervention" founded under the international law.

(3) APPLICABILITY OF THE KARTINIAN CONSTITUTION TO AN INTERNATIONAL WATER DISPUTE:

(i) Territorial Jurisdiction Of the Domestic Cases and Tribunals: IN THE COURT OF COMMON PLEAS AND IN THE EXCHEQUER CHAMBER **Castrique and Imrie and Others**, Relying upon the Story of Conflict of Laws (para. 586 of his Book), the learned Judge observed: "In order however to found a proper ground of recognition of any foreign judgment in another country, it is indispensable to establish that the Court pronouncing judgment should have a lawful jurisdiction over the cause, over the thing, and over the parties. If the jurisdiction fails as to either it is treated as a mere nullity, having no obligation, and entitled to no respect beyond the domestic tribunals. And this is equally true, whether the proceedings lie in rem or in personam or in rem and also in personam". In **Menahem Mesha Menahem Messa v. Moses Bunin Menahem Messa**, Lord Selborne in that case at p. 185 observed -

"Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over movables within the territory;

and in question of status or succession governed by domicile, it may exist as to persons domiciled, or who when living were domiciled, within the territory."

"The legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognize against foreigners, who owe no allegiance or obedience to the Power which so legislates."

In **Hilton v Guyot**, the American Supreme Court expressed the following opinion: "No law has any effect beyond the limits of the sovereignty from which its authority is derived. The extent to which one nation shall be allowed to operate within the dominion of another nation depends upon the comity of nations. Comity is neither a matter of absolute obligation nor a mere courtesy and good will. It is a recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or other persons who are under the protection of its laws. "

(ii) Applicability of the Fundamental Rights and Kartinian Constitution in an International River Water Dispute:

(A) Preamble: The Preamble of the Constitution emphasizes the sovereignty of the people of India and their determination to secure for all citizens justice, liberty, equality, and fraternity. It sets the tone for the Constitution's application within the country.

(B) Article 1: This article defines India as a Union of States. It lays out the territory of India and its states, signifying the geographical scope of the Indian Constitution.

(C) Article 246: This article delineates the distribution of legislative powers between the Parliament and the State Legislatures. It highlights that the laws enacted by Parliament and the State Legislatures are applicable within their respective territories.

(D) Article 246A: The introduction of Article 246A through the 101st Constitutional Amendment Act, 2016, provides for the Goods and Services Tax (GST) legislation. This article reflects the division of powers between the Union and States concerning the GST within their respective territories.

(E) Article 253: Article 253 empowers the Parliament to make laws for the whole or any part of the territory of India for implementing international agreements. These Articles enshrined under the Constitution Of Kartina, expressly Highlight the territorial applicability of the laws so formulated within the country.

(F) Article 15(1): "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

(G) Article 15(2): "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

(H) Article 16(1): "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

(I) Article 19(1)(a): "All citizens shall have the right to freedom of speech and expression."

(J) Article 29: "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

(K) Article 30: "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. "These rights are explicitly framed in the Kartinian Constitution to apply to citizens of India, emphasizing their special status in these contexts in **Hans Muller of Nurenburg v. Supdt. Presidency Jail, Calcutta**, where learned bench delivering the judgment of the Supreme Court at page 1297 laid down:

"Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land."

The former **Madhya Bharat High Court in Noor Mohammad v. State**, after applying the above Supreme Court decision in Hans Muller's case, observed:

"The petitioners being Pakistan citizens have thus no fundamental right to reside in this country. If Article 19 does not apply to foreigners, the question of the Indian Passport Act in its applicability to foreigners being repugnant to Article 19 cannot arise." In the case of **Sk. Md. Soleman vs State Of West Bengal And Anr**, the court stated "We are unable to accept that just because Article 19 uses only the words "All citizens" and not "Citizens of India" therefore the fundamental right guaranteed by that Article is open to a person who is not a citizen of India."

"The very idea or context of such a freedom which is a right to freedom under the Constitution excludes the idea that such freedom as a fundamentally guaranteed Constitutional right was at all intended for foreigners or persons not citizens of India. That Constitutional right is open only to

Indian citizens and none else."

The court also held that "Other persons may have rights in respect of the matters mentioned in Article 19 of the Constitution; but those rights are not constitutionally guaranteed fundamental right and for that purpose If such persons were not citizens of India they have to seek them as ordinary legal rights independently of the Constitution."

In light of the above, the present case initiated by the Applicant based on the constitutional provisions of the Respondent state should be regarded as void due to its inherent lack of maintainability.

¹⁵Goa Foundation & anr v. The Konkan Railway Corporation & ors, AIR 1992 Bom 471.

¹⁶Hunnawara Taluka Parisara & ors v. State of Karnataka & ors, Writ Petition NO.147584/2020(CS-EL/M).

¹⁷Nicaragua v. United States of America, ICJ GL No 70, [1984] ICJ Rep 392, ICGJ 111 (ICJ 1984).

¹⁸Republic of the Congo v. Uganda, ICJ GL No 116, [2005] ICJ Rep 168, ICGJ 31 (ICJ 2005).

¹⁹Menahem Meshah Menahem Messa v. Moses Bunin Menahem Messa, (1938) 40 BOMLR 571.

²⁰Hilton v. Guyot, 159 U.S. 133.

²¹Nurenburg v. Dupdt. Presidency Jail, 1955 AIR 367, 1955 SCR (1)1284.

²²Noor Mohammad v. State, AIR 1956 Madh B 211.

²³Sk. Md. Soleman v. State of West Bengal and anr, AIR 1965 Cal 312, 1965 CriLJ 679.

²⁴The Constitution of India, 1950.

PRAYER

In the light of argument advanced, issues raised and authorities cited it is humbly prayed before this Hon'ble Court that this Hon'ble Court may graciously be pleased to:

- 1) Pass an appropriate order, direction, or writ as deemed suitable by this Hon'ble Court, upholding the cardinal principle of "Non-Intervention" enshrined in International Law thereby permitting the construction of the Great Kartina Dam.
- 2) Upholding the respondents' contention being a sovereign Upper Riparian State, with regard to the allocation of water resources based on a dual foundation of population & origin on the river Biffin.
- 3) Pray for the Hon'ble Court to declare the case presented as Not Maintainable, given that the constitution and Fundamental Rights of the respondent country are not germane to the current dispute in hand.

AND/OR

Pass any other order which this Hon'ble Court may deem fit in the ends of justice, equity and good conscience.

**ALL OF WHICH IS HUMBLY PRAYED,
COUNSELS FOR THE RESPONDENT.**