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**BEFORE THE HON'BLE  
SUPREME COURT OF INDIA**

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**Original Writ Jurisdiction  
PUBLIC INTEREST LITIGATION**

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W.P. (CIVIL) NO. \_\_\_\_\_ OF 2014

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

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SWADESHI SURAKSHA SAMITI .....PETITIONER

v.

UNION OF INDIA AND ANR. .... RESPONDENTS

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UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION  
JUSTICES OF THE SUPREME COURT OF INDIA

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**MEMORANDUM ON BEHALF OF THE RESPONDENTS**

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**LIST OF ABBREVIATIONS**

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¶	Para
¶¶	Paras
AIR	All India Reporter
Art.	Article
Ano.	Another
Ass.	Assam
AP	Andhra Pradesh
APLJ	Andhra Pradesh Law Journal
Corp.	Corporation
Cr.LJ	Criminal Law Journal
HP	Himachal Pradesh
ILO	International Labour Organization
ICODHR	International Convention on Declaration of Human Rights
ICSCR- OP	Optional Protocol of the Covenant on Economic, Social and Cultural Rights
ICCR	Indian Council for Cultural Relations
J.	Justice
Ltd.	Limited
MMDR	Mines and Minerals (development and Regulation) Act
Mad. LJ	Madras Law Journal
Ors.	Others
RUC	RUSTAM URANIUM CORPORATION PRIVATE LIMITED
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Supl.	Supplementary

*List of Abbreviations*

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Supp.	Supplementary
STFDA	Scheduled Tribes and Forest Dwellers Act
UOI	Union Of India
UN	United Nations
Vol.	Volume
V.	Versus

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6. MINES AND MINERALS ACT, 1957
7. ATOMIC ENERGY ACT, 1962
8. INDIAN FOREST ACT, 1927
9. NATIONAL GREEN TRIBUNAL ACT, 2010
10. PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT OF 2001
11. PUBLIC LIABILITY INSURANCE ACT, 1991
12. WATER (PREVENTION AND CONTROL OF POLLUTION), 1974
13. WILD LIFE (PROTECTION) AMENDMENT ACT, 2002
14. WILDLIFE PROTECTION ACT OF 1972
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**STATEMENT OF JURISDICTION**

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THE PETITIONER HAS FILED THIS WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR THE VIOLATION OF FUNDAMENTAL RIGHTS ENUMERATED IN PART III OF THE CONSTITUTION. THE RESPONDENT MAINTAINS THAT NO VIOLATION OF RIGHTS HAS TAKEN PLACE. THEREFORE, THIS HON'BLE COURT NEED NOT ENTRATAIN ITS JURISDICTION IN THIS WRIT PETITION.

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## **STATEMENT OF FACTS**

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1. The Territory of INDIA is largely an industrial economy with about 40% of the population involved in agricultural Activities. INDIA is rich in atomic resources, especially Uranium that are abundantly found in the mineralized zone of 'HITHRO', declared as a 'Scheduled Area' under Panchayat (Extension of Scheduled Areas) Act, 1996', which has a total cover area of 25 sq. km. in the 'Reserve Forest' of SWADESHI, an area of 125 sq. km, which was rich in atomic resources and is home to the Indigenous tribal people 400 to 450 in number, in the STATE OF REALKHAND who derived their means of livelihood from the by carrying out activities such as apiculture, gathering of herbs, flowers and fruits and collection of gum dust and other produce. The commercial exploitation of Swadeshi was not permitted as they were considered as a sacred place by the indigenous tribes. India took pride in the rare natural biodiversity in the forests of Swadeshi.
2. INDIA incurred an electricity-crisis as on 12th January 2012 that led to a situation of reduced supply of electricity for major areas of the Industry. The result of this was that several industries had to be closed down, temporarily, and several workers were either laid off, and/or retrenched in accordance with law. On 26th May 2012, The industries approached the SUPREME COURT OF INDIA to quash the order of lay-offs and also to direct the GOVERNMENT OF INDIA to provide for a remedy to the power crisis, that has affected their Right to Livelihood, guaranteed under the Constitution of INDIA. The Court passed an order that directed the GoI to initiate action so as to resolve the electricity crisis.
3. The GoI, on 20th August 2012, in light of the Report submitted by the Department of Atomic Energy on 11th July 2012 leased an area of 45 sq. km, inclusive of the Scheduled Area-SWADESHI, for a period of fifty years, to URANIUM CORPORATION OF INDIA LIMITED a fully owned entity of the DoAE, India. In the months of August-September 2012, there was a protest that was undertaken by the Indigenous communities alleging that the said mining activity would hinder their livelihood and peaceful existence in the forests of SWADESHI. SWADESHI SURAKSHA SAMITI a Non-Governmental Organisation, protested that Uranium mill tailings retain about 85% of the original radioactivity of the ore, and it is very difficult to minimise releases of radioactive decay products such as Radium and Radon as well as heavy metals, given the developing economy of India.

4. On 16th December 2012, UCIL gave a Tender Notification, to sub-lease the process of extraction of minerals from the ores of SWADESHI, whereby RUC, the highest bidder, was granted the lease on January 30th 2013. As per the agreement between the UCIL and RUC, the Extracted Minerals are to be owned by the UCIL, and the land is leased to RUC for a period of 30 Years, commencing from the date of grant of 'Environmental Clearance', by the 'Ministry of Environment and Forests, for the process of extraction.
5. The RUC applied for an Environmental Clearance after due compliance with the necessary Rules and Regulations in this regard, on 13th July 2013. The Gram Panchayats, living in and around the vicinity of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance. The Public Hearing of the tribal community, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government.
6. On 1st June 2014, A Conditional Environmental Clearance was granted for a period of 30 years. On 5th July 2014, RUC managed to get a Forest Clearance for carrying out the mining activities in Swadeshi.
7. The tribal communities were not in favour of the Project, they agitated on grounds that they were to be displaced of the lands that were their homes and were also sacred to them. SSS, espoused the cause of the tribal communities, alleging that the rights of the tribal communities would be affected by mining activity and alleged that the Environmental Clearance was not in consonance with the objects of the Environment (Protection) Act, 1986 and the Forest Conservation Act, 1980, and thereon filed a Writ Petition under Article 32 of the Constitution of India, on 14th July 2014.

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**QUESTIONS PRESENTED**

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**1.WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE**

- 1.1.The petition has been filed in public interest and therefore maintainable as public interest litigation
- 1.2. Alternative remedy not a bar
- 1.3.The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the rights alleged in the present matter

**2.WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW**

- 2.1.Arbitrary and capricious acts of the State are annulled by Art. 14
- 2.2. The Policy of mining in the forests of Swadeshi is arbitrary and capricious and hence violates of Art. 14 and Art. 21

**3.WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS**

- 3.1.Violation of Constitutional protection and safeguards
- 3.2. The forced assimilation of indigenous people violates constitutional provisions of India and international conventions & treaties

**4.WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID**

- 4.1.Environmental clearance invalid based on procedural violations
- 4.2.Violation of Mines and Minerals (Development and Regulation) Act, 1957
- 4.3.Environment Clearance when validated

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**SUMMARY OF PLEADINGS**

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**1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE.**

The respondents contend that there has been no violation of fundamental right in the present case. Moreover, the petition has been filed prematurely. A petition can be filed under Art. 32 of the constitution only when the fundamental right is violated. Also, the alternative remedy has not been exhausted. Thus, the writ petition is not maintainable.

**2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW.**

The policy decision has a sound reason behind it. Also, it is not violative of the fundamental rights enshrined in the part III of the Constitution. The previous implementation of similar projects speaks to the merit of this decision. The concept of sustainable development has been adhered to. Thus, they are not violative of the rights of the people.

**3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS**

It is humbly submitted that no violation of fundamental rights of the indigenous tribal community has occurred since; there is no special right has been conferred to the tribal communities. No violation of the fundamental rights has taken place because there will never be a situation of forced assimilation. It is further submitted that there has been no restraint imposed on the indigenous people i.e., against their fundamental rights and that the establishment and development of the uranium mining facility is based on strict reason.

**4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID**

It is humbly submitted that the environment clearance is in consonance with the Atomic Energy Act of 1962, the Environment Protection Act of 1986, Forest Conservation Act of 1980, Mines and Minerals Act of 1957 and that there has been no violation of any of the above acts. The respondent is completely aware of the apprehensions developed in the minds of the tribal community of Swadeshi and therefore has laid down stringent safeguard measures to protect the environment while simultaneously contributing to the economic growth and development of the country. It is submitted that the mining project is of utmost necessity to solve the power crisis in the country.

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**PLEADINGS**

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**1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE.**

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A Public Interest Litigation can be filed under Article 32 of the Constitution for enforcement of Fundamental Rights<sup>1</sup>, as guaranteed by part III of the Constitution.<sup>2</sup>

In the present case, there has been no violation of the fundamental rights since, the action taken by the State was in furtherance of the principle of economic and social justice and thus cannot be termed as arbitrary or as one which was without the application of the mind.

**1.1. Whether the present writ petition has been filed prematurely**

The respondent submits that the Court has held that only if there is a violation of Fundamental Rights can it step in under the Jurisdiction of Article 32<sup>3</sup>. The petitioner is raising a mere scholarly objection, without any *locus standi*. No one has been displaced, there has been no forceful assimilation and nothing has been done to the environment. Hence when there is no *damnus*, the Petitioner cannot seek a remedy. Moreover, the enactment of the National Green Tribunal, 2010 has added a new dimension to the existing forest governance structure. The National Green Tribunal has explicit power to hear matters concerning the Forest (Conservation) Act, 1980 which forms the core of the various decisions of the Godavarman case<sup>4</sup>. When an authority has been specifically set up to hear the issues pertaining to the nature of this writ petition, the petitioner need not waste the time of this Hon'ble Court.

**1.1.1. Whether the principle of Res judicata Applies In The Present Case**

The respondent maintains the applicability of the maxim, *interest reipublicae ut sit finis litium*<sup>5</sup>. This fundamental maxim is the basis for the conception of Res judicata, as also the principle of Judicial Infallibility. In addition, *Res judicata pro veritate occipitur*, or a judicial decision must be accepted as correct.<sup>6</sup> In *Govt. of A.P v. A.P Jaiswal*, the court observed the importance of

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<sup>1</sup>Article 32(1) when r/w 32(2) itself states that, Article 32 can only be invoked for enforcement of rights as guaranteed by Part III and, for issuing writs to enforce Rights as guaranteed under Part III.

<sup>2</sup>*Andhra Industrial Works v.. Chief Controller of Imports and Ors*, AIR 1974 SC 1539 ¶ 10, *Guruvayur Devaswom Managing Committee v. CK Rajan and Ors.* (2003) 7 SCC 546 ¶ 50, *BALCO Employees Union (Regd.) v. Union of India* (2002) 2 SCC 333.

<sup>3</sup>*Romesh Thapar v Union of India*, AIR 1950 SC 124

<sup>4</sup> *Rithwick Datta, Bhupender Yadav, Supreme Court on Forest Conservation* (3<sup>rd</sup> ed, 2011.)

<sup>5</sup>“In the interest of the state, there should be an end to litigation.”

<sup>6</sup>Mulla, *Code Of Civil Procedure* 69 (14<sup>th</sup>ed, 2004)

consistency in judicial decisions.<sup>7</sup> It was this Hon'ble court's order to take alternative steps to solve the power crisis in the country<sup>8</sup>. Moreover, when this matter has already been dealt in *All India Labor Forum v. Union of India*<sup>9</sup>, thus principle of Res Judicata is applicable here. Therefore the respondents submit that the petition is not maintainable.

### **1.2. Whether this honourable court would be justified in interfering with a policy decision**

The respondent most humbly submits that the Supreme Court has long held that interference into policy actions is not within the its jurisdiction<sup>10</sup> as reiterated in the recent Iodine Salt Case<sup>11</sup>. It has been held that a writ petition cannot be maintainable if its sole purpose is to question a policy decision of the Government<sup>12</sup>. The position of law on the matter of policy decisions is quite clear, from decisions such as *BALCO Employees Union*<sup>13</sup>, and a host of other cases. The list is truly extensive<sup>14</sup>, as the underlying principle is sound in law. Unless there is prima facie evidence to prove that exercise of discretion has been arbitrary, unreasonable or mala fide, the

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<sup>7</sup>Appeal (civil) 4799-4844 of 1997; "Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements; the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

<sup>8</sup> Page 5 of 9 ANNEXURE A ¶3 sub clause b

<sup>9</sup>[W P No: xx/2012 dated xx/2012]

<sup>10</sup>*Directorate Of Film Festivals v. Gaurav Ashwin Jain & Ors*, Appeal (civil) 1892 of 2007 "This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collecting and analysing inputs from surveys and research... The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

<sup>11</sup>*Academy of Nutrition Improvement v. Union of India*, WP(C) 80 of 2006, 4 July 2011

<sup>12</sup>*Association of Drugs and Pharmaceuticals, Manufacturers, A.P. v.A.P. Health, Medical, Housing and Infrastructure Development Corporation, Hyd. and Anr.*, 2002 (2) ALD 609 "It is the policy of the Government and the Corporation to procure and distribute drugs supplied by the manufacturers with WHO GMP, and a writ petition is not maintainable to question the policy decision. The decision is not arbitrary and irrational... It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical"

<sup>13</sup>*BALCO Employees Union (Regd.) v. Union of India*, 2001 AIR SCW 5135 "It was submitted ... that the wisdom and advisability of economic policies of Government are not amenable to judicial review. It is not for Courts to consider the relative merits of different economic policies. Court is not the Forum for resolving the conflicting clauses regarding the wisdom or advisability of policy.." 14

<sup>14</sup>*SC. Cooper v. Union of India*, [1970] 3 SCR 530; *Fertilizer Corporation Kamgar Union v. Union of India*, (1981) ILLJ 193 SC; *R.K. Garg v. Union of India*, AIR 1981 SC 2138; *G.B. Mahajan v. Jalgaon Municipal Council*, AIR 1991 SC 1153.

Court cannot step into the shoes of the Government to decide the validity of a policy<sup>15</sup>. It is a matter of public policy that the Court not permit litigations on the same issue be raised in perpetuity<sup>16</sup>, as no public undertaking will ever succeed if such a practice is encouraged. Thus, the policy decision of the Government regarding the uranium project cannot be questioned before the court of law.

### **1.3. Alternative remedy has not been exhausted**

The tribunals are competent enough to hear this particular case by the virtue of *L. Chandrakumar V. Union of India*<sup>17</sup>. Alternative remedy is a bar unless there was complete lack of jurisdiction in the officer or authority to take action impugned<sup>18</sup>, however, the existence of a competent body<sup>19</sup> to hear this particular case questions the maintainability of the writ petition filed. It was held this Hon'ble apex court in *Asstt. Collector of Central Excise v. Jainson Hosiery*<sup>20</sup> where there is alternative statutory remedy court should not interfere unless the alternative remedy is too dilatory or cannot grant quick relief. Thus, the respondents humbly submit that the present writ petition is not maintainable on the ground that alternative remedy has not been exhausted.

Thus, the respondents submit that the present writ petition is not maintainable for the aforesaid reasons.

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## **2. WHETHER THE POLICY DECISION OF THE GOVERNMENT OF INDIA IS VIOLATIVE OF ART. 14 & 21 OF THE CONSTITUTION OF INDIA, AND THE RULE OF LAW.**

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It is submitted by the respondents that the policy decision of the government is not violative of Art.14, 21 and the Rule of Law.

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<sup>15</sup> *State of M.P. and Others vs. Nandlal Jaiswal and Other*, (1986) 4 SCC 566

<sup>16</sup> *Sushila Devi v. Ramnandan Prasad*, AIR 1976 SC 177; *Satyadhyan Ghosal v. Sm. Deorajin*, AIR 1960 SC 941; *Daryao v. State of U.P.*, AIR 1961 SC 1457; *Deena Dayal v. Union of India*, AIR 1983 SC 1155; *Yaro Khan v. Union of India*, WP(C) 2599 of 2007

<sup>17</sup> AIR 1997 SC 1125 ¶ 94

<sup>18</sup> *A.V. Venkateshwaran v. R.S. Wadhvani* AIR 1961 SC 1906

<sup>19</sup> National Green Tribunal Act 2010

<sup>20</sup> AIR 1979 SC 1889

## **2.1. Whether or not the policy decision has been framed arbitrarily**

The respondent submits that the policy decision has not been framed arbitrarily. The decision has been taken in consonance with various provisions of various act in the interests of economic development.

### **2.1.1. The Policy Decision Has Been Framed Based On the Rule of Reason**

The respondent humbly submits that the uranium mining project is based on strict reason. It is clear from 'Report of Department of Atomic Energy' submitted on 11th July 2012 .In the given scenario, the production of electricity through the mining and extraction of Uranium from the ores of SWADESHI is most feasible option available<sup>21</sup>. Counsel on behalf of the respondent humbly submit before this Hon'ble Court that the policy decision of the government is based on scientific research , rule of necessity<sup>22</sup> and reason and is therefore not arbitrary and thus does not violate the provisions under Art. 14 of the Constitution of India.

### **2.1.2. Success Of Similar Projects In the Past Speaks To Its Merit**

The respondent submits that uranium mining is neither new in India, nor is it new in the rest of the world. India with 21 units has the capacity to produce 5780 MW<sup>23</sup>. About 12% of the world's electricity is generated from uranium in nuclear reactors. This amounts to over 2500 billion kWh each year, as much as from all sources of electricity worldwide in 1960. It comes from some 430 nuclear reactors with a total output capacity of about 375 000 megawatts (MWe) operating in 31 countries. Over 70 more reactors are under construction and another 170 are planned.<sup>24</sup>

The Annual Production Capacity of 1.65 million tonnes of Uranium Ore can efficiently generate abundant electricity to solve the power crisis. It must be noted that one pellet of uranium can generate as much energy as one ton of coal, which amounts to 3100kw-h. Thus, the power crisis and the related problems can be solved<sup>25</sup>.

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<sup>21</sup> Page 6 of 9 Fact sheet Part II

<sup>22</sup> *Election Commission of india V. Dr. Subramaniam Swamy*, 1996 SCC (4) 104

<sup>23</sup> *India's 20th nuclear reactor connected to power grid*, Jan 19, 2011, <http://timesofindia.indiatimes.com/india/Indias-20th-nuclear-reactor-connected-to-power-grid/articleshow/7319085.cms?referral=PM>

<sup>24</sup> *What is Uranium? How Does it Work?* , March 2014, <http://www.world-nuclear.org/info/Nuclear-fuel-cycle/introduction/what-is-Uranium--How-Does-it-Work/>

<sup>25</sup> One pellet of uranium can give out 3100kw-h. one pellet= 7gms. Therefore, 3100/7= 442.89 kw-h of electricity. 1.65 million tons = 1.4968548e+12 gms. Thus, calculate.

## **2.2. Whether the policy decision of the government violates article 21**

The Respondent submits that the report of the ‘Report of Department of Atomic Energy the production of electricity through the mining and extraction of Uranium from the ores of SWADESHI is most feasible option<sup>26</sup>.

- Importance of livelihood vs. Importance of Culture

Article 21 occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law.<sup>27</sup> India, being a signatory to the International Covenant on Civil and Political Rights, 1966 compels Article 21 of the Indian Constitution to be interpreted in conformity with international law<sup>28</sup>. The State has an obligation to preserve the life and livelihood of every person. That which alone can make it possible to live must be declared to be an integral component of the right to life.<sup>29</sup> Thus electricity must be produced to save the lives of people<sup>30</sup>.

- Provides Employment opportunities

The respondent submits that the state is duty bound to provide employment opportunities and economic empowerment<sup>31</sup> for its citizens. The mining project not only solves the power crisis, it helps in the development of the economy as well. Built with the view of protecting the livelihood of people, the construction and maintenance of the wall also serves to secure employment opportunities for the indigenous people as well the people living in the villages in and around the forests of Swadeshi<sup>32</sup>.

### 2.2.1. The Principle of Sustainable Development is Adhered to in the Construction Project

Right to Sustainable Development is a fundamental right and is to be treated as an integral part of life under article 21. The RESPONDENT contends that the principle of sustainable development has been strictly observed in framing of the policy uranium mining<sup>33</sup>. The Courts have balanced priorities while deciding environmental matters in the past<sup>34</sup>. As India is a developing country, certain ecological sacrifices are deemed necessary to ensure the benefit of

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<sup>26</sup> Page 6 of 9 part B

<sup>27</sup> Durga Das Basu, *Shorter Constitution of India* 364 (14<sup>th</sup> ed, 2010)

<sup>28</sup> *People's Union for Civil Liberties vs Union Of India* (1997)1SCC301 (paras. 20&26)

<sup>29</sup> *Paramanand Katara vs Union of India*, AIR 1989 SC 2039( para 7&8)

<sup>30</sup> ¶ 3, Page 9, Moot Proposition

<sup>31</sup> *Ashok kumar Gupta vs State of U.P.*, (97) 5SCC 201 (para 26)

<sup>32</sup> Specific safeguards (v), Annexure C, Moot Proposition

<sup>33</sup> Specific safe guards (vii), Annexure C, Moot Proposition

<sup>34</sup> M.C. Mehta (Taj Trapezium Matter)

future generations. This ethical mix is termed sustainable development. Therefore, the respondent humbly submits that the policy of the government does not violate Article 14 or Article 21 of Constitution of India.

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### **3. WHETHER THE GOVERNMENT HAS VIOLATED THE RIGHTS OF THE INDIGENOUS PEOPLE.**

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The respondent submits that the establishment and development of the uranium mining facility is based on strict reason. The large scale electricity crisis has disabled the country and its people from following with their daily activities. India now depends heavily on this uranium mining project so as to relatively bridge the gap. It is also submitted that the fundamental rights of the indigenous tribal communities have not been violated. No violation of the fundamental rights has taken place because there will never be a situation of forced assimilation.

The fundamental rights of the indigenous people have not been violated by the order of the government since [1] No special right is guaranteed to them under the Constitution; [2] No violation of Article 19; [3] Article 21 of the Constitution of India and; [4] No violation of fundamental rights because of forced assimilation or isolation, therefore, no rehabilitation is required. It is submitted that both the Supreme Court as well the Government have time and again made it clear that they are not against mining per se but only against mining projects that are in violation of the Forest (Conservation) Act, 1980.<sup>35</sup>

#### **3.1. The constitutional rights of the indigenous people have not been violated.**

##### ***3.1.1. The right to movement of the Indigenous people.***

The fundamental rights of the citizens, to reside and to move freely or to carry out their occupation have in no way been infringed in the present case; as given under Art. 19(1)(e)<sup>36</sup>. Also the International conventions such as UDHR<sup>37</sup> & ICCPR<sup>38</sup>, considered to enlarge the scope of fundamental rights, have not been violated. In the present case, the RESPONDENT submits that, the government through the pre-conditions expressed by it in the environmental clearance, makes it mandatory for the Corporation and the agencies to respect the right to movement,

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<sup>35</sup>I.A. No. 419 & 420.

<sup>36</sup>*Court on its own motion v. Union of India*, 2012(12) SCALE 30; *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295; *Waman Rao v. Union of India*, (1981) 2 SCC 362; *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

<sup>37</sup>Article 13, UDHR.

<sup>38</sup>Article 12, ICCPR.

personal liberty as well as the right to forage in the forest of the Indigenous people.<sup>39</sup>

Therefore, the indigenous tribal people have the right to reside and settle along the borders of the forests, as they have been guaranteed earlier under Art. 19(1)(e) and the government being the guarantor of the fundamental rights has the duty to protect the rights; keeping in mind the restrictions imposed.

### 3.1.2.No violation of Article 19

Article 19(1)(e) provides the right to reside and settle in any part of the country; but reasonable restriction under Article 19(5) can be imposed if it is in public interest<sup>40</sup>. Public interest means a subject matter in which the rights of the public or section of public is interested<sup>41</sup> to the means of concern which is advantageous to people as whole<sup>42</sup>. Therefore, the rights of the indigenous people to reside and settle in the forest area is not an absolute right and can be restricted under Article 19(5) if it is in the public interest.<sup>43</sup> 'Interest of general public' is a comprehensive expression intended to achieve the socio- economic justice for people by the State.<sup>44</sup>

The respondent submits that there has been no restraint imposed on the indigenous people which are against their fundamental rights. It is pointed out that the Environmental Clearance is a not permanent in nature and non-compliance with any of the mentioned conditions in the clearance, including those containing provisions pertaining to the rights of the indigenous people as assured, would effectively render the clearance invalid. 'Interest of general public' is a comprehensive expression intended to achieve the socio- economic justice for people by the State.<sup>45</sup> In May 2001, The Committee on Economic, Social and Cultural rights adopted a statement on poverty<sup>46</sup>, which recognized that poverty constituted a denial of human rights and defined it as a state of deprivation of the resources, capabilities, choices & security. The Government's policies are in light of the declaration; it is the duty of the government to meet its

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<sup>39</sup>*Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest*, 2013 STPL(Web) 323 SC; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 at 249; *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 at 1487.

<sup>40</sup>*State of Kerala v. Peoples Union for Civil Liberties*, Civil Appeal Nos. 104-105 Of 2001.

<sup>41</sup>*Kuttisankaran Nair v. State of Kerala*, AIR 1965 Ker 161

<sup>42</sup>*T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

<sup>43</sup>*Court on its own motion v. Union of India*, 2012 (12) SCALE 307; *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295; *Waman Rao v. Union of India*, (1981) 2 SCC 362; *Bachan Singh v. State of Punjab*, AIR1980 SC 898.

<sup>44</sup>See *Id.*

<sup>45</sup>*Court on its own motion v. Union of India*, 2012 (12) SCALE307.

<sup>46</sup>E/C. 12/2001/10.

duties and to reduce poverty in the society.<sup>47</sup> In *Kharak Singh v. State of U.P.*<sup>48</sup> it was observed that mere obstruction of movement by physical restrictions cannot be the object of a person's travel. Thus the mere exposition that the right to free movement has been restricted on the account of the mining activities does not hold good. It is also pointed out that the right of freedom of movement of the indigenous people has been guaranteed by the government through the Environmental clearance.

Thus, as pointed out by the Hon'ble Court, the provisions of the *Bihar Maintenance of Public Order Act*, so far as provisions permit the passing of reasonable restrictions in the interests of the general public on the exercise of the rights conferred by the clauses (d) and (e) of Art. 19(1) of the Constitution.<sup>49</sup>

As in regards to the right to practise any profession as guaranteed under Art. 19(1)(g) the respondent humbly submits that there is no violation of the said right. The Indigenous people have guaranteed rights to carry on with any profession of their choice. Every citizen has a right to carry out any lawful calling business or profession he may choose subject only to such restrictions as are imposed.<sup>50</sup> It is pointed out that no such restrictions have been imposed on the indigenous tribal communities. The indigenous people' right of foraging the forests, which is in many ways their livelihood, has not been violated.

It should also be noted, even if only for argument's sake, that the right to freedom as enshrined in Art. 19 of the Constitution, though fundamental, is not an absolute right as such; it is always subject to reasonable restrictions which may be imposed in the larger interest of the society. Freedom of profession, trade and business as contemplated by Clause (1)(g) of the Article 19 of the Constitution is always subject to the limits as may be imposed by the state in the interest of public welfare.<sup>51</sup> A Government policy in the public interest would override the business interests of an individual person.<sup>52</sup>

Social justice is the recognition of greater good to larger number without deprivation of accrual of legal rights of anybody which are considered to be their fundamental rights, and the government while exercising its power and by subscribing to the concept of social and economic

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<sup>47</sup>*Indigenous Perspectives*, 28-46 (2005).

<sup>48</sup>AIR 1963 SC 1295, quoted in *Moti Sunar v. State of U.P.*, 1997 Cri LJ 2260 at 2261 (All).

<sup>49</sup>*Bodi Alam v. State of Bihar*, 1952 Pat. 376.

<sup>50</sup>*Dent v. West Virginia*, 32 L. ed. 623; See also *Quong Wing v. Kirkendel*, 56 L. ed. 350.

<sup>51</sup>*Obbaya Pujary v. Member-Secretary, Karnataka State Pollution Control Board, Bangalore*, AIR 1999 Kant 157 (165).

<sup>52</sup>*State of Orissa v. Radheyshyam Meher*, AIR 1995 SC 855 (857).

justice as enshrined in the constitution might detract from some technical rule in favour of a party<sup>53</sup>, in order to do greater good to a large number so as to act in consonance with the principles of equality and public trust. Thus it is humbly submitted by the respondent, that there is no violation of any provision of Art. 19 by the Union of India.

3.1.3. No violation of Art. 21 of the Constitution

In the present case, there has been no violation of Article 21 of the Constitution. To establish the violation Article 21, the act should be subjected to the equality test of Article 14 and test of reasonableness under Article 19.<sup>54</sup> Article 14 ensures fairness<sup>55</sup> and guarantees against arbitrariness.<sup>56</sup> It provides that every action of the government must be informed by reasons and guided by public interest.<sup>57</sup> Article 19 provides that a restriction can be characterized to be reasonable if it strikes a balance between the fundamental right and restriction imposed thereon.<sup>58</sup>

In the present case the Union of India was facing continuously a power crisis which in many ways chopped economic growth and employment in the country. The Supreme Court, in its earlier order, stated clearly that it is the duty of the government to provide the people of the country with necessary conditions for leading a peaceful life as promised by the Constitution under Art. 21.<sup>59</sup> The respondent has only followed the said order. Hence, it is submitted that there has been no violation as such on the part of the government.

It was a duty of the State to provide indigenous people who would be displaced with accommodation and basic standard of living guaranteed under Article 21 of the Constitution. Since, Article 21 envisages a right to life and personal liberty of a person, which not merely guarantees the right to continuance of a person's existence but a quality of life<sup>60</sup>, and therefore, State is casted upon a duty to protect the rights of the citizen in discharge of its constitutional

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<sup>53</sup>*Sadhuram Bansal v. Pulin Behari Sarkar*, AIR 1984 SC 1471

<sup>54</sup>*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>55</sup>*Delhi Transport Corporation v. DTC Mazdoor Congress*, AIR 1991 SC 101; *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn*, AIR 1993 SC 935.

<sup>56</sup>*Express Newspaper Ltd. v. Union of India*, AIR 1986 SC 872; *Netai Bag v. State of West Bengal*, AIR 2000 SC 3313.

<sup>57</sup>*M S Bhut Educational Trust v. State of Gujarat*, AIR 2000 Guj 160; *LIC v. Consumer Education and Research Centre*, AIR 1995 SC 1811.

<sup>58</sup>*Om Kumar v. Union of India*, AIR 2000 SC 3689.

<sup>59</sup>*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

<sup>60</sup>*Francis Coralie v. Union Territory Of Delhi*, Air 1994 SC 1844; *Vellore Citizens' Welfare Forum v. Union Of India*, (1996) 5 SCC 647: Principle 2 of Stockholm Conference, 1973 & Principle 1 of Rio Declaration, 1992.

obligation in the larger public interest<sup>61</sup>, guaranteed as a fundamental right under Article 21 of the Constitution. The onerous duty lies upon the State under the concept of 'sustainable development'<sup>62</sup> recognized as a fundamental right under Article 21<sup>63</sup> to keep in mind the "principle of proportionality"<sup>64</sup> so as to ensure protection of environment on the one hand<sup>65</sup> and to undertake necessary development measures on the other hand<sup>66</sup>, since, the economic development cannot be allowed to take place at the cost of ecology but the necessity to preserve ecology and environment should not hamper economic and other developments<sup>67</sup>, which includes generation of revenue and public interest.<sup>68</sup>

Hence, despite the fact that life of the indigenous people is dependent on the forest, the Government not only has to consider the necessity to preserve the ecology, while allowing deforestation, but also has to consider the importance of public projects for the betterment of the conditions of living of the people and the revenue generated from such projects.

Therefore, it was a duty of the State to provide people with accommodation and basic standard of living guaranteed under Article 21 of the Constitution. Since, Article 21 envisages a right to life and personal liberty of a person, which not merely guarantees the right to continuance of a person's existence but a quality of life, and therefore, State is casted upon a duty to protect the rights of the citizen in discharge of its constitutional obligation in the larger public interest, guaranteed as a fundamental right under Article 21 of the Constitution.

Therefore, the fact that the new buildings or permanent structures are to be constructed by deforestation in some area of reserved forest cannot be considered to be violation of Article 21 as it is protecting the right to shelter of the Indigenous people and generates revenue and electricity which will further provide aid to the government in countering the present energy crisis. Also,

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<sup>61</sup>*Consumer Education and Research Centre and Others v. Union of India and Others*, AIR 1995 SC 922.

<sup>62</sup>Brutland Commission Report, 1983; Principle 2 of Stockhom Conference,1973; Principle 1 of Rio Declaration,1992.

<sup>63</sup>*Indian Council for Enviro-Legal Action v. Union of India* ,(1996) 5 SCC 281; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

<sup>64</sup>*Thirumalpad v. Union of India and Ors.*(2002) 10 SCC 606; *M C Mehta v. Kamal Nath*, [1997] 1 SCC 388.

<sup>65</sup>*Court On Its Own Motion v. Union of India*, 2012 (12) Scale 307.

<sup>66</sup>*Thirumalpad v. Union of India and Ors.* (2002) 10 SCC 606; *Subhash Kumar v. State Of Bihar*, AIR 1991 SC 420; *M.C.Mehta v. Union Of India*, AIR 1988 SC 1037; *Narmada Bachao Andolan v. Union Of India* (2000) 10 SCC 664; *A.P.Pollution Control Board v. M.V.Nayudu*, AIR 1999 SC 812; *T.N.Godavarmanthirumulkpad v. Union Of India*, AIR 1997 SC 1228.

<sup>67</sup>*Banwaslveva Ashram v. State of U.P.*, AIR 1987 SC 374; *T.N. Godavarmanthirumalpad v. Union of India and Ors.*, (2002) 10 SCC 606.

<sup>68</sup>*Research Foundation for Science Technology and Natural Resource Policy v. Union of India and Others*, AIR 2007 SC (Supp) 852.

the fact that the indigenous people were not relocated, except for those displaced within the mining area, from the reserved forest considering their importance to environment shows that the Government had indeed taken into account the needs and rights of the indigenous population and thus, it cannot be said that the Government violated the same. Therefore, the government has struck a balance to protect the fundamental right of all the citizens including indigenous population, so it cannot be considered that there is violation of Article 21 especially the right to life of indigenous people, since; the action of the government is guided by public interest.

### **3.2.The assimilation present is forced and violative of Arts. 29(1), 48A and 51 A**

In the present case, the rights of the indigenous people have not been violated on the account of forced assimilation or isolation, since the movement of the people to forest was rather an inevitable consequence. It is considered that the gradual assimilation of the indigenous people in the mainstream of the society will lead to their betterment and progress.<sup>69</sup>

Assimilation is a process in which formerly distinct and separate groups come to share a common culture and merge together socially. Assimilation is inevitable in a political system based on democracy and impartial justice.<sup>70</sup> As society undergoes assimilation, differences among groups decrease. Conflict is part and parcel of progress. Relations are such that when different cultural groups come in contact there almost always exists inertia. Eventually, through the process of assimilation “interpenetration and fusion” of groups is caused.

#### **3.2.1. Whether the Assimilation Present Is Coercive In Nature**

Forced assimilation is a process of forced cultural assimilation of a religious or ethnic minority group with an already established, larger community. In Australia, the majority population tried to impose their own values, customs and beliefs onto the Aboriginal people thereby preventing them from continuing with traditional customs and beliefs and forcing the Aborigines to give up their heritage and adopt the culture of the majority<sup>71</sup>. This was not the case in India.

There is absence of a coercive element in the situation. The respondent submits that there is no evidence to show that the assimilation caused will be caused by the mining project.

#### **3.2.2. Whether the Assimilation has an adverse impact on the Indigenous Forest Dwellers.**

The assimilation between migrants and the indigenous people has been incorrectly assumed to

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<sup>69</sup>*Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

<sup>70</sup>*Park & Burgess* 735 (1924).

<sup>71</sup>*What was assimilation?*, Skwirk, [http://www.skwirk.com/p-c\\_s-14\\_u-120\\_t-328\\_c-1126/what-was-assimilation- /nsw/what-was-assimilation- /changing-rights-and-freedoms-aboriginal-people/stealing-a-generat](http://www.skwirk.com/p-c_s-14_u-120_t-328_c-1126/what-was-assimilation- /nsw/what-was-assimilation- /changing-rights-and-freedoms-aboriginal-people/stealing-a-generat).

have a negative impact. The interaction between two cultural groups is a form of progression. The political ideas during the time of assimilation policy in US are known by many Indians as the progressive era, but more commonly known as the assimilation era (1890–1928). The interchangeability of the phrases ‘progressive era’ and ‘assimilation era’ alone tells us the positive scope of assimilation. In fact increased interaction between isolated communities is necessary to promote healthy cultural dialogue.

3.2.3. Whether the assimilation present is violative of Art.29 (1), 48A and 51 A of the Constitution of India

Article 29(1) guarantees to every section of citizens having a distinct language, script or culture the right to conserve the same. The right vouchsafed is included in clause (1) of Art. 19. In *State of M.P. v. Bharat Singh*<sup>72</sup>, this Hon’ble Court upheld the fundamental right of a citizen to reside in any place he desires. In this particular case the government has not displaced the Tribal minorities, except for the places where the land has been acquired by the government. The Government, through the MoEF, has instructed that the mining activities should in no way disturb the cultural values of the Indigenous people. The Government understands that depriving any person of these basic requirements would be a deprivation of their livelihood. No person can live without the means of livelihood.<sup>73</sup> Moreover, provisions of Art 48A of the Constitution are required to be construed as a part of the principles contained in Art 21 of Constitution. A statute may not be ultra vires of Art.48 itself if it not otherwise offensive of Arts.14 and 21of the Constitution.<sup>74</sup> The respondent submits that the Policy Decision of the government is based on reason and not arbitrary consideration. The governments endeavour is not to colonize or denude the tribal land.

**3.3. Whether the Right to healthy environment is violated.**

The respondent submits that the right to healthy environment as under Art. 21 is not violated by the policies of the Government. It is further submitted that all reasonable measures for the protection of the environment and sustainable development have been initiated by the respondent. As the Hon'ble Apex Court ruled in *Hinch Lal Tiwari v. Kamla Devi and others*<sup>75</sup>, the government acknowledges the importance of the actions and the consequences, which have been

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<sup>72</sup>*State of M.P. v. Bharath Singh*, AIR 1967 SC 1170.

<sup>73</sup>*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 .

<sup>74</sup>*Bombay Dyeing and manufacturing Co. Ltd. v. Bombay Environmental Action Group*, (2006) 3 SCC 434.

<sup>75</sup>*Hinch Lal Tiwari v. Kamla Devi*, 2001 (92) RD 689 (SC).

kept in mind all through the policy making process.

The Hon'ble Supreme Court has in no sense proscribed the Government from carrying on mining projects; it is only the projects where the environmental protection measures were not complied with that the Hon'ble Court was against such activities. In the present case enough measures have been taken so as to maintain and herald sustainable development. The *Declaration on the right to development 1986* states right to development as an inalienable human right and *ILO Convention No. 169* declares that the people concerned shall have the right to choose their own process of development; the government acknowledges and respects such rights which is the reason why the indigenous tribal communities have not been displaced.

Right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India. But the question is, can the environment be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn is the main factor behind the degradation of environment. To resolve the issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e., there must be balance between development and ecology.

The Right to Life under Art. 21 of the Constitution is a guarantee against the state and for enforcing this fundamental right of the person against the state, which alone has a right to grant mining leases of the mines, can be directed by the Court if it believes that there is no necessity for the mining activity. In *Powell and Rayner v. United Kingdom*<sup>76</sup>, the Court though acknowledging the fact that the rights of the person involved is affected in a strict interpretation of the guidelines, ultimately found that running an economic institution like an airport was a modern economic necessity that justified the breach.<sup>77</sup>

It should be noted that the Indian Constitution is one of the few constitutions of the world that contains specific provisions on environmental protection. This Hon'ble Court strengthened Art. 21 in two ways after the emergency. First, it required laws affecting personal liberty to also pass the tests of Arts. 14 & 19.<sup>78</sup> Second, the Hon'ble court recognized several unarticulated liberties that were implied by Art.21. It is by this that the right to wholesome environment springs out.

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<sup>76</sup>*Powell and Rayner v. United Kingdom*, 12 EHRR 355.

<sup>77</sup>See *Id.*

<sup>78</sup>*Maneka Gandhi v. Union of India*, AIR 1978 SC 597, 623-4; Article 14 enshrines the right to equality before law and protects a person against arbitrary or unreasonable state action. Article 19 enumerates certain fundamental rights, such as the right to freedom of speech and expression and the right to form associations or unions.

Focussing on the importance of Arts. 48A and 51A(g), Justice A.R. Lakshmanan, in *Intellectuals v. State of A.P.*<sup>79</sup> observed that these two Articles are the governing principles through which the Government can bring in development. The Government, as the custodian of fundamental rights has taken into mind and is guided by these Articles in its pursuance of development. The State has, in particular, directed its policies toward ensuring that the ownership and control of the material resources are so distributed as best to sub-serve the common good.

Similarly in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*,<sup>80</sup> Justice Jagannatha Rao observed that the policies should be such that the environment and the ecology should not be disturbed at the same that these should not hinder development; the government has taken the same position in its policy towards the mining lease agreement. This Hon'ble Court in the same decision went on to observe that the scientific and technical aspects for investigation should be by bodies such as the National Environmental Appellate Authority. It should be taken in mind that after compliance with the rules set out by the Hon'ble Court, which are very similar to the conditions laid down here by the DoEF, this Court allowed the furtherance of the Uranium mining project in Rajiv Gandhi Wildlife Sanctuary.

Therefore, it is submitted that the respondent has acted with at most care in the formulation and the execution of its policies. The respondent submits that the policies of the government are based on reason and that reasonable care has been taken so as to pave way for development.

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#### **4. WHETHER THE ENVIRONMENT CLEARANCE IS VALID**

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The respondent humbly submits that the environment clearance is completely in consonance with the Environment Protection Act, 1986, Forest Conservation Act, 1980 and there has been no violation of the provisions of any act. The respondent is completely aware of the apprehensions developed in the minds of the tribal community of Swadeshi and therefore has laid down stringent safeguard measures to protect the environment while simultaneously contributing to the economic growth and development of the country. In *M.C.Mehta v. Union of India*,<sup>81</sup> it was held that it is possible to carry on development activity without degrading the environment, by following certain measures to protect the environment. In that eventuality, the development has to go on because one cannot lose sight of the need for development of industries irrigation

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<sup>79</sup>*Intellectuals v. State of A.P.*, (2006) 3 SCC 549.

<sup>80</sup>*A.P. Pollution Control Board v. Prof. M.V. Nayudu*, AIR 1999 SC 812.

<sup>81</sup> AIR 2004 SC 4016

resources and power projects including the need to improve employment opportunities and the generation of revenue.

#### **4.1. In consonance with the provisions of various Acts**

It is submitted that the environment clearance granted by the respondent, for the purpose of mining activities is in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 and the Atomic Energy Act, 1962, in the exercise of its power to conduct mining operations as a remedy for the power crisis in India. Further, the clearance is in consonance with the Environment Protection Act, 1986 and the Forest Conservation Act, 1980 in the performance of the respondent government's duty to protect the environment from any damage and protect the people. The respondent totally believes in the striking of balance between the environment protection and economic development by generating power for the industries of India.

##### 4.1.1. In accordance with the Mines and Minerals (Development and Regulation) Act, 1957

The Chapter IV of the Mineral Concession Rules, 1960 framed by the Central Government in exercise of the powers conferred by Section 13 of Mines and Minerals (Regulation and Development) Act, 1957 relates to the grant of mining leases in respect of land in which the minerals vest. The stipulations of the mining plan include the mineral reserves area, assessment of impact of mining activity and the details of the scheme, if restoration of the area is by afforestation.<sup>82</sup>

It is submitted that the Rule 3 of the Mineral Concession Rules of 1960<sup>83</sup> which were framed in furtherance of the Mines and Minerals (Development and Regulation) Act of 1957, states that nothing in this rules shall affect the functioning of the provisions of the Atomic Energy Act of 1962. On further submission, it is stated that the respondent followed every provision in granting the environmental clearance for the mining operations.

##### 4.1.2. Totally in consonance with the Atomic Energy Act, 1962

It is the humble submission of the respondent that the environment clearance granted is valid based on the clearance granted according to the provisions of the Atomic Energy Act of 1962, exercising its discretion, along with the above mentioned acts. Every person who has discovered or has a reason to believe that Uranium occurs in any part of India shall intimate the Central

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<sup>82</sup>*Ishwar Industries v Union of India*, AIR 2004 Del 294

<sup>83</sup>Rule 3. Saving of Act 33 of 1962 :- Nothing in these rules shall affect the provisions of the Atomic Energy Act, 1962 ( 33 of 1962) and the rules made thereunder in respect of licensing relating to atomic minerals listed in Part B of the First Schedule to the Mines and Minerals Act 1957.

Government.<sup>84</sup> Here, the Department of Atomic Energy was duty bound in reporting the presence of Uranium in and around the Swadeshi area in the State of Realkhand.<sup>85</sup>

Following the report, the Central Government, the respondent herein, exercised its power to take over the control of Uranium mining, by leasing the lands for this purpose according to Section 5 of the Atomic Energy Act, 1962.<sup>86</sup> It contemplates that if it is in the opinion of the Central Government that Uranium can be or may be reasonably to be expected to be isolated or extracted, or is engaged or is about to be engaged in treating or concentrating by any physical, chemical or metallurgical process any substance, it may give notice in writing to the person operating requiring him to comply with such terms and conditions and adopt such processes as the Central Government may from time to time think fit or totally prohibit him from conducting mining operations or treating or concentrating the substances.<sup>87</sup>

In this case, it is the discretion of the respondent Central Government to decide as to whether any licence could be granted to the respondent under Rule 66A of the Rules and Section 5 of the Atomic Energy Act and Rule 3 of the Atomic Energy (Working of the Mines, Minerals and Handling of the Prescribed Substances) Rules, 1984. Further, it is submitted that the respondent has acted according to the provisions of Section 10 of the Atomic Energy Act 1962 which confers the right to acquire and use any land for the purpose of erecting any necessary buildings and installing any necessary plant in connection with the working of the minerals.<sup>88</sup> It is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals.<sup>89</sup> This ground is strengthened in the provision of Section

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<sup>84</sup> Section 4 Atomic Energy Act 1962:-

(2) Every person who has a reason to believe that Uranium or Thorium occurs at any place in India shall without delay, send intimation of such belief and the reasons therefor to the Central Government or to any such person or authority as aforesaid.

<sup>85</sup> Part II, Annexure B, Moot Proposition

<sup>86</sup> Section 5:-

If the Central Government is satisfied that any person is mining or is engaged in treating or concentrating by any physical, chemical or metallurgical process, any substance from which uranium can be isolated or extracted, the Central Government by notice in writing given to that person-Require him in conducting the mining operations or in treating or concentrating the substance aforesaid to comply with such terms and conditions and adopt such process as the Central Government may in notice, or from time to time thereafter, think fit to specify

<sup>87</sup> *Indian Industrial Mineral Producers Welfare Association .v Union of India*, 2005 (2) ALD 471

<sup>88</sup> Section 10 :- Where it appears to the Central Government that any minerals from which in its opinion any of the prescribed substances can be obtained are present in or on any land, it may by order provide for compulsorily vesting in the Central Government the exclusive right, to work for those minerals or pass any subsequent order for compulsorily vesting

<sup>89</sup> *Threesiamma Jacob v. Geologist, Dept. of Mining and Geology*, AIR 2013 SC 3251

14<sup>90</sup> which conferred complete control over production and use of atomic energy upon the Central Government.<sup>91</sup>

In addition to this, the respondent submits that the Central Government has all powers conferred upon it by the Section 22 which gives the authority to develop a sound and adequate national policy in regard to atomic power, to co-ordinate such policy with the Central Electricity Authority and the State Electricity Boards other similar statutory corporations concerned with the control and utilization of other power resources, to implement schemes for the generation of electricity in pursuance of such policy and to operate [either by itself or through any authority or corporation established by it or a Government company] atomic power stations in the manner determined by it in consultation with the Boards or Corporations concerned, with whom it shall enter into agreement regarding the supply of electricity so produced.<sup>92</sup> In this case, the respondent has directed the company to conduct mining activities in the Swadeshi forest areas a remedy for the power crisis in India. This is in exercise of the Section 22 stated above and the Section 30 of the Act which clearly lays down the power of Central Government to make rules<sup>93</sup> for carrying out the purposes of this particular act and Section 31 which states that every provision and rules under this act is binding on the government.<sup>94</sup>

#### *4.1.3 In accordance with the Forest Conservation Act, 1980*

It is submitted that the respondent alone has the power under Section 2 of the Forest Conservation Act<sup>95</sup>, 1980 to approve any activity that results in the conversion of forests for non-

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<sup>90</sup>Section 14:- (1) The Central Government may, subject to such rules as may be made in this behalf, by order prohibit except under a licence granted by it-- (i) the working of any mine or minerals specified in the order, being a mine or minerals from which in the opinion of the Central Government any of the prescribed substances can be obtained; (ii) the acquisition, production, possession, use, disposal, export or import-- (a) of any of the prescribed substances; or (b) of any minerals or other substances specified in the rules, from which in the opinion of the Central Government any of the prescribed substances can be obtained, or (c) of any plant designed or adapted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith; or (d) of any prescribed equipment.

<sup>91</sup>*Electronics Corporation of India Limited Hyderabad v. State of Andhra Pradesh*, 2013 (1) ALT 794

<sup>92</sup>*G. Sundarajan v. Union of India*, 2013 (6) SCC 620

<sup>93</sup>*People's Union for Civil Liberty v. Union of India*, AIR 2004 SC 1442

<sup>94</sup> Section 30:- (1)The Central Government may, by notification, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for— (d)control over mining or concentration of substances containing uranium; (f)compulsory acquisition of prescribed substances, minerals and plants (k)developing, controlling, supervising and licensing the production, application and use of atomic energy;

<sup>95</sup> Section 2 of 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

forest purposes<sup>96</sup> and de-reservation of forests. Any mining lease can be obtained from the Central Government that can solely exercise its powers under clause (iii) of Section 2(1) of the act and deems it necessary for the economic development with some measures taken in furtherance of it.<sup>97</sup> In this case, the respondent rightly exercised its powers under Section 2 to grant mining licence to solve the power crisis in India.

In addition to the submissions, it is important to direct the Hon'ble court's attention to Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which enumerates various rights of the traditional forest dwellers with respect to the use of the forest land and its products. This also includes the restriction on production of non-conventional source of energy in the forest areas. In this case, the production of atomic energy by uranium mining is a conventional source of energy. The act has neither expressly nor impliedly mentioned the same, nor taken away the rights of the State over the minerals lying underneath the forest land nor is there any exclusion provision.<sup>98</sup> It is submitted that every act done in furtherance of the mining operation right from the lease of land to environment clearance followed the procedure laid down.<sup>99</sup>

#### **4.2.Safeguards against environmental damage**

The respondent being aware of all the apprehensions of people of Swadeshi, has granted environmental clearance to the companies conducting mining operations in the area of Swadeshi forests by listing down various safety measure to be followed.<sup>100</sup> By doing so, the respondent has complied with the provisions of all the acts mentioned above, that contain a mandatory provision to safeguard the environment from any damage. This is a clear evidence of the respondent taking necessary steps to protect the people and the environment while developing mining projects for power.

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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 organisation 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.

<sup>96</sup>*T.N. Godavarman Tirumulpad v. Union of India*, 1997 (2) SC 67; *B.S. Sandhu v. Govt. of India*, 2014(7)SCALE390

<sup>97</sup>*State of Bihar v. Banshi Ram Modi*, AIR 1985 SC 814

<sup>98</sup>*Amrithlal Nathubhai Shah v. Union of India*, AIR 1976 SC 2591

<sup>99</sup>*Kalpavriksh v. Union of India*; Para 7, Moot Proposition

<sup>100</sup> Para 8, Moot Proposition

4.2.1. The Environment Protection Act, 1986

The respondent humbly submits that the environmental clearance is valid and in accordance with the provisions of the Environment Protection Act, 1986. Section 8 of the act states that any person shall handle any hazardous substance only after complying with the safeguards prescribed.<sup>101</sup> This point was affirmed in the case of *A.P. Pollution Control Board v Prof M.V. Naydu*,<sup>102</sup> where it was stated that just by the mere reason of an industry being hazardous, it cannot be debarred from functioning. Necessary steps need to be taken to safeguard the environment and the people. Following the safeguards, any person shall be allowed to handle hazardous substances. Their lordships in *S. Jagannath v Union of India*<sup>103</sup> mandate the Central Government to take all necessary steps to protect the environment from any damage during the development of ecologically fragile environment. In the instant case, the petitioner cannot pray before the Hon'ble Court that the Uranium mining is an activity related to hazardous substances and should be stopped from functioning. The respondent herein has taken all necessary steps to safeguard the environment from damage. The project would develop effective emergency response procedure to ensure appropriate Risk Management System in the Public Domain, if any, due to the Project.<sup>104</sup>

Further, the respondent has mentioned under the special safeguards that there would be no disturbance to natural water course due to the mining activities and there shall be no permanent structure in the Swadeshi reserved forest area other than the one for core mining activity. This is clearly a safeguard measure to protect the environment according to the provisions of the Environment Protection Act of 1986. Section 18 of the Act states that no suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder thereby invalidating any charge made against the government for granting environmental clearance.

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<sup>101</sup> Section 8:- No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

<sup>102</sup> 2000 (3) SCALE 354

<sup>103</sup> AIR 1997 SC 811

<sup>104</sup> Specific Safeguards (iii), Annexure C, Moot Proposition

Here, the respondent granted the environmental clearance in total good faith, to satisfy the public interest of solving the power crisis by leasing the lands for mining operations.<sup>105</sup>

4.2.2. The Atomic Energy Act, 1962

It is humbly submitted that the safety provisions laid down in the Atomic Energy Act of 1962 was totally followed and the environmental clearance was granted in consonance with the act. Section 17 of The Atomic Energy Act of 1962 lays out special provisions relating to safety. The Central Government may make any provision by rules to prevent injury caused to the health of persons by radiations or ingestion of any radioactive substances. Also, the Central Government shall make provisions to secure that any radioactive waste products resulting from such mining are disposed-off safely. In this case, the respondent herein has mention done of the safeguard measures to ensure Risk Management System in case there is any exposure to radioactive substances during the course of the project.<sup>106</sup>

In *People's Union for Civil Liberties v Union of India*,<sup>107</sup> the Court held that the Atomic Energy Act deals with a sensitive subject. Statutory scheme contained in the provisions of the Act, the Rules framed thereunder, composition of the AEC and AERB leave no manner of doubt that the effective functions of the nuclear power plants are sensitive in nature. Various codes of practice, safety guidelines, extensively discussed above and the decision taken in various international conventions and the guidelines laid down by various international agencies followed by India are meant to protect the life and property of people including the environment, guaranteed under Article 21 of the Constitution of India. This in turn, satisfies the aim of the Hon'ble Court in various cases where health of a worker is to be protected and safety measures should be taken in furtherance of it.<sup>108</sup> Also, the directive principles enshrined in the Constitution directing the states to act according to certain provisions under Part IV is fulfilled. In *G. Sundarrajan v. Union of India*,<sup>109</sup> the court relied upon various international conventions and the precautionary principle and held that the Central Government should act according to the provisions of Section 17 in order to strike a balance between environment protection and economic development. It is

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<sup>105</sup> Annexure B, Moot Proposition

<sup>106</sup> Annexure C, Moot Proposition

<sup>107</sup>(2004) 2 SCC 476

<sup>108</sup>*Kalyaneswari v. Union of India*, (2011) 3 SCC 287; *Consumer Education & Research Centre v Union of India*, AIR 1995 SC 922

<sup>109</sup>(2013) 6 SCC 620

firm on the point that the Central Government should proceed with the atomic energy activities only after complying with all the rules and guidelines are adopted.

#### **4.3. Necessity**

The respondent herein submits that the country is facing huge power crisis and is unable to protect the right to livelihood of the majority of the population. The industries were shut down due to power crisis thereby giving rise to unemployment and deprivation of right to life under Article 21 hence granting environment clearance for the mining project along with various safeguard measures.<sup>110</sup> The Doctrine of Public Necessity i.e., the welfare of the people is of paramount importance and is to be applied in the instant case.<sup>111</sup> To achieve the larger public good, the property, liberty and life of an individual can be placed in jeopardy in the case of existing, immediate and overwhelming necessity<sup>112</sup>

The important principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society.<sup>113</sup> In the instant case, the public hearing was conducted prior to the grant of environment clearance. There was no objection from the people of Swadeshi. The respondent herein submits that the environmental clearance was granted taking necessary safeguard measures in order to satisfy the larger public necessity. The development of the mining projects to solve power crisis in India is the most feasible and an utmost necessity.<sup>114</sup>

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<sup>110</sup> ¶ 3, Moot Proposition

<sup>111</sup> *RekharaniMaitra & Ors. v. Additional District Magistrate & Ors.* C.R. No. 9063 (W) of 1983

<sup>112</sup> *Malvererv. Spinke*(1537) Dyer, (Part I), 356.

<sup>113</sup> *G. Sundarrajan v. Union of India*, 2013 (6) SCC 620

<sup>114</sup> *BSES Ltd. v. Union of India* 2001 (1) Bom CR 394; *DahanuTaluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.* (1991) 2 SCC 539.

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**PRAYER**

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In the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. Dismiss the writ petition.
2. In the alternative declare and adjudge:
  - a. That the Respondents have not violated the fundamental rights of the indigenous people.
  - b. That the Respondents are not causing environmental degradation

AND/OR

Pass any other order that it deems fit in the interest of Justice, Equity and Good Conscience.

And for this, the Respondents as in duty bound, shall humbly pray.

COUNSELS FOR THE RESPONDENTS

Place:

Date: