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**RESTORING THE KONGU COMMONS: CONSTITUTIONAL
REMEDIES FOR INDUSTRIAL POLLUTION, PUBLIC HEALTH, AND
SACRED WATER BODIES**

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ABSTRACT

The Public Interest Litigation raises a persistent environmental and public health emergency in the Kongu region of Tamil Nadu, where continuous industrial non-compliance has contaminated groundwater and soils, impaired forests and wetlands, and harmed vulnerable communities' health in measurable ways, all in violation of basic rights protected under Articles 21, 14, and 25 of the Constitution. The empirical materials before the Court, including laboratory evidence of carcinogenic chemicals in breast milk from 300 women living within five km of dye clusters in Tiruppur; public health facilities that have mapped clusters of paediatric respiratory illness, and NABL-certified groundwater and soil contamination reports that show heavy metals and toxic organics consistent with industrial effluents corroborated by CGWB and PWD trend data on aquifer decline and aquifer quality deterioration. These harms occur alongside the collapse of wetlands, deforestation down to 18.5 percent by 2024, and encroachment and dumping that impact temple tanks and traditional water commons, which are collectively harms against life, health, dignity, livelihood, and cultural-religious practice. Legally, the petition places relief within recognised constitutional environmental doctrine: precautionary principle, polluter-pays, intergenerational equity, and public trust, as the Supreme Court noted and operationalised in its environmental jurisprudence and continuing mandamus practice in systemic cases among agencies and districts. Under Article 21, the right to a clean and healthful environment compels immediate protective action where there is credible evidence of actual harm and high risk; under Article

14, regulatory inaction in the face of over 50 citizen complaints since 2020, and the pending operation of these units under no valid environmental clearances, consistent consents, or ZLD and consent regimes, constitute arbitrariness demanding uniform enforcement; Article 19(1)(g) is expressly subject to reasonable environmental and public health regulation; and Article 25 is engaged when temple tanks - sacred ecological commons - are encroached and polluted, extinguishing religious practice, itself interwoven with community water security. The petition seeks proportionate, structural remedies suited to continuing wrongs. First, immediate suspension or closure of noncompliant units lacking valid EC/CTE/CTO or violating ZLD/discharge limits, with explicit prohibition on post-facto regularisation in line with the no-ex post cure principle reaffirmed in recent doctrine, accompanied by utility disconnection during non-compliance and reopening only upon independent certification of verified compliance. Second, a Court-monitored Restoration and Health Rehabilitation Fund, capitalised by defaulting industries on a strict/absolute liability basis, to finance piped or bulk potable water, maternal-child screening and treatment with registries, aquifer and soil remediation, river and tank rejuvenation, and livelihood restoration for affected farmers and workers, administered under transparent, audit-rich governance. Third, a s.33 EPA expert authority to set cluster-wide protocols, certify compliance-first reopening, supervise restoration and health programs, and file quarterly reports; coupled with OCEMS-based real-time monitoring, sentinel wells, tamper-proof metering, public dashboards, and automatic stoppage protocols for breaches. Fourth, timebound GIS survey, demarcation, de-encroachment, and scientific restoration of temple tanks, wetlands, and water commons, with local Water Commons Committees and co-governance to embed stewardship and intergenerational equity. Finally, CPCB/NGT-based environmental compensation with interest, prosecution of persistent violators, disqualification of chronic defaulters from incentives and clearances, and officer liability to restore deterrence and equality in enforcement. Innovatively, the draft integrates health-rights enforcement with environmental restoration through a unified fund and monitoring architecture, links Article 25 cultural protection to hydrological revival of temple tanks under public trust stewardship, operationalises cluster-wide compliance-first reopening verified by independent audits and OCEMS/sentinel networks, and embeds community co-governance within a continuing mandamus framework to secure durable compliance and intergenerational justice across a multi-district industrial landscape.

Key Words – Environmental justice, Public health, industrial pollution, Constitutional Rights, Restoration & Compliance.

BEFORE
THE HONOURABLE SUPREME COURT OF REPUBLIC OF INDIA
UNDER ARTICLES 32 OF CONSTITUTION OF INDIA
IN THE MATTER OF
KONGU CITIZENS WELFARE FORUM & ANR.....PETITIONERS
Versus
UNION OF INDIA & ORS.....RESPONDENTS

WRIT PETITION NO: XXXX/2025

MEMORIAL ON BEHALF OF THE PETITIONER

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Abbreviation	Full form
SCR	Supreme Court Reports
SCC	Supreme Court Cases
AIR	All India Reporter
v.	Versus
Ors.	Others
Hon'ble	Honourable
SC	Supreme Court
UOI	Union of India
Art.	Article
TNPCB	Tamil Nadu Pollution Control Board
MoEFCC	Ministry of Environment, Forest, and Climate Change
&	And
PIL	Public Interest Litigation

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- a. A.P. Pollution Control Board v. Prof. M.V. Nayudu (II), (2001)
- b. Adi Saiva Sivachariyargal Nala Sangam v. State of T.N., (2016) 2 SCC 725
- c. Alembic Pharmaceuticals Ltd. v. Rohit Prajapati
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- e. Church of God (Full Gospel) in India v. K.K.R. Majestic, (2000) 7 SCC 282
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- l. Intellectuals Forum v. State of A.P.
- m. Lafarge Umiam Mining v. Union of India
- n. M.C. Mehta v. Union of India (Ganga Pollution)
- o. M.C. Mehta v. Union of India (Oleum Gas), (1987)
- p. M.C. Mehta v. Union of India (Taj Trapezium), (1997) 2 SCC 353
- q. M.C. Mehta v. Union of India (Vehicular Pollution), (1991) 2 SCC 353
- r. M.I. Builders v. Radhey Shyam Sahu
- s. Maneka Gandhi v. Union of India, AIR 1978 SC 597
- t. Municipal Council, Ratlam v. Vardhichand
- u. Paryavaran Suraksha Samiti v. Union of India
- v. Priyanka Estates v. State of Assam
- w. Research Foundation for Science v. Union of India
- x. Romesh Thappar v. State of Madras, 1950 SCR 594
- y. Sterlite Industries (Vedanta) Ltd. v. TNPCB, (2019) 19 SCC 479
- z. Subhash Kumar v. State of Bihar aa.Subhash Kumar v. State of Bihar, (1991) 1 SCC
bb.T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267 cc.Vellore Citizens' Welfare Forum v. Union of India, (1996) dd.A.P. Pollution Control Board v. Prof. M.V. Nayudu (I), (1999)

Statement of jurisdiction

The Petitioner respectfully submits this Hon'ble court that the present Public Interest Litigation is being filed under Article 32 of the Constitution of India, which invokes the writ jurisdiction of this Hon'ble Court for the enforcement of fundamental rights as guaranteed in Part III of the Constitution of India.

That this Hon'ble Court has the jurisdiction to entertain and decide the present petition under Article 32 of the Constitution of India, because the issues raised herein involve the violation and infringement of the fundamental rights of citizens of India, and specifically Articles 14,21,25, which rights this Hon'ble Court is asked to protect and enforce.

Statement of Facts

The Kongu region, or Kongu Nadu or Kongu Mandalam, is a historical-cultural-geographical belt located in the western and northwestern parts of Tamil Nadu. There are definitions of the region in which it can be slightly enlarged to include surrounding areas in southeastern Karnataka and southeastern Kerala. At its broadest, Kongu includes the core districts of Coimbatore, Tiruppur, Erode, Salem, Namakkal, Karur, Dharmapuri, Krishnagiri, Nilgiris and parts of Dindigul and Tiruchirappalli; there are some definitions that also combine

Palakkad (Kerala) and Chamarajanagar (Karnataka). Currently, the region contributes 60% of India's cotton textiles and has an annual export of over Rs 6 billion; however, going forward the developments have led to an ecological devastation with critical depletion of groundwater levels and hazardous air quality.

By 2024, the forest cover had diminished to 18.5% and wetlands ceased to exist in areas of industry, driving wildlife migration and alternate loss to biodiversity corridors that local communities had utilized for generations. Agricultural productivity decreased by 40% with soils being contaminated with industrial effluents (untreated), and thousands of farmers had no alternate means of sustenance because their farms had become essentially sterile. It was discovered in 2024 that carcinogenic chemicals were present in the breastmilk samples of 300 women living within 5 km of textile dyeing units in Tiruppur, who also had alarming levels of respiratory illnesses in children aged 10 years or younger.

Over a period of time, traditional water bodies such as temple tanks once considered sacred places where water was drawn, have been invaded and filled with industrial waste - violating the rights of local people under Article 25. The ruined water bodies allow waste to freely flow into

the remaining waterways which is injurious to local people's health and well-being. Since 2020, the community members have filed over 50 complaints with the Tamil Nadu Pollution Control Board on all of the polluting factories without any effective remedy taking place from the pollution control board.

A number of industries are still operating without appropriate consent, or without valid environmental clearance from MOEF prior to disrupting our ecosystem. Respondents such as the Union Ministry of Environment, Union of India, Tamil Nadu Pollution Control Board, and the Confederation of Indian Textile Industry have wilfully failed to enforce environmental laws that protect public health and safety, and violated our fundamental rights granted to us under Articles 14, 19, 21, and 25 of the Constitution.

The Kongu Citizen's welfare forum a NGO working for the welfare of the people in Kongu region has filed this PIL on behalf of the community members asking for the closure of the offending industries (were applicable), treatment and an investigation of their health issues, restoration of damaged ecosystems (through court monitored and managed rehabilitation fund), and stricter environmental regulations with public involvement in

these decisions. The Petitioners argues that unchecked industrial evolution has transformed from an economic boon into an existential ban on the constitutional right to life, health, and cultural identity, necessitating urgent Supreme Court intervention to prevent irreversible environmental and social catastrophe in one of India's most industrially significant regions.

Issues Raised

1. Whether the respondents' failure to prevent, regulate, and remediate industrial pollution in the Kongu region resulting in groundwater contamination, loss of forest/wetlands, and severe public health impacts violates the petitioners' fundamental right to life, health, and a clean environment guaranteed under Article 21 read with Articles 14 and 19(1)(g), thereby warranting court-mandated preventive, remedial, and compensatory directions?
2. Whether the continued operation of non-compliant industries without valid environmental clearances/consents, and the State's inaction despite repeated

complaints, is arbitrary and violative of Article 14?

3. Whether the encroachment and degradation of traditional water bodies and sacred commons, without prior informed consent and effective public participation, infringe cultural and religious rights protected under Article 25 and the right to livelihood and dignity under Article 21?
4. Whether the present Petition under Article 32 of the Constitution is maintainable for addressing systemic, cross-district, and continuing environmental violations, and whether the structural reliefs sought by the Petitioners are proportionate and necessary?

Summary of Arguments

Issue 1: Whether the respondents' failure to prevent, regulate, and remediate pollution- resulting in groundwater contamination, loss of forests/wetlands, and severe public health impacts-violates the petitioners' fundamental rights under Article 21 read with Articles 14 and 19(1)(g), warranting preventive, remedial, and compensatory directions?

Petitioners under Article 21, invoking a right to a dignified and pollution-free life. The petitioners relied upon a number of Supreme Court decisions (Subhash Kumar; M.C. Mehta; Vellore; Indian Council; Oleum; Nayudu). The petitioners demonstrate irreversible harm in Kongu including poisonous pollutants in breastmilk, respiratory illness among children, contamination of ground water and soil, the collapse of wetlands, loss of forests, declining agriculture, and the lack of action by the government and regulators. The petitioners seek structured relief, and oversight by the now Court: closures; re-opening only if put in compliant condition; decision to stay and independent audits; and a Restoration and Health Rehabilitation Fund funded by polluters for safe drinking water, health care, remediation, and livelihood. The petitioners ask that the Court does an application of precautionary principle, polluter pays principle, intergenerational equity approach, sustainable development, and public trust doctrines, and ordered continuing mandamus and co-governance so undertaken by the community and others of the commons.

Issue 2 Whether the continued operation of non-compliant industries without valid environmental clearances/consents, and the State's

inaction, is arbitrary and violative of Article 14?

Companies in Tiruppur and Kongu are not adhering to environmental clearances and consents or pursuing ZLD, since these industries are operating illegally. The Supreme Court of India expressly prohibits (post-facto) approvals after commencing operations. The State's inaction with respect to more than 50 complaints is arbitrary and illegal under Article 14. The sector must be closed immediately alongside the need for environmental damages compensation. The Reclamation Project must be done under the supervision of the courts with reasonable independent audits and public disclosures.

Issue 3: Whether encroachment and degradation of traditional water bodies and sacred commons, without consent and participation, infringe Article 25 and the right to livelihood and dignity under Article 21?

Temple tanks in Kongu are protected as sacred sites under Article 25 and as ecological commons under Article 21. Their encroachment and industrial pollution violate both rights. Under the Public Trust Doctrine, the State must prevent degradation from both encroachment and pollution, and ensure restoration, and ensure community access through court-monitored demarcation and

eviction of encroachers, rejuvenation to scientific standards, and local, long-term oversight and care.

Issue 4: Whether the present Petition under Article 32 of the Constitution is maintainable for addressing systemic, cross-district, and continuing environmental violations, and whether the structural reliefs sought by the Petitioners are proportionate and necessary?

Arguments Advanced

ISSUE1: RESPONDENTS' FAILURE TO PREVENT, REGULATE, AND REMEDIATE INDUSTRIAL POLLUTION IN THE KONGU REGION VIOLATES ARTICLES 21,14, AND 19(1)(G); THE CONSTITUTIONAL ENVIRONMENTAL DOCTRINES OF PRECAUTION, POLLUTER-PAYS, INTERGENERATIONAL EQUITY, AND PUBLIC TRUST ARE ATTRACTED; COURT-MANDATED PREVENTIVE, REMEDIAL, AND COMPENSATORY DIRECTIONS ARE WARRANTED.

1.1 Article 21 is engaged:

It is respectfully submitted before this Hon'ble court that the right to life under Article 21 extends beyond mere animal existence to include the right to live with human dignity and the right to a wholesome, pollution-free environment.

This Hon'ble Court has consistently read environmental protection into Article 21, recognizing that pollution of air and water, contamination of soil, and toxic exposures imperil life and health in a manner that demands judicial protection. **Subhash Kumar v. State of Bihar** held that the right to life includes the right of enjoyment of pollution-free water and air. **M.C. Mehta v. Union of India** (Ganga Pollution) ordered closure of polluting tanneries to protect the river, explicitly prioritizing public health and environmental integrity over non-compliant industrial activity. **Vellore Citizens' Welfare Forum v. Union of India, (1996)**¹ entrenched that environmental protection is integral to the right to life and that sustainable development is the pathway for reconciling industry and ecology.

The Petitioners have pleaded a detailed and disturbing fact that the critical depletion and contamination of groundwater across multiple industrial belts; hazardous air quality near dyeing and processing clusters; empirically documented morbidities among women and children, including the discovery in 2024 of carcinogenic chemicals in breast milk samples of 300 women living within 5 km of textile dyeing units in Tiruppur and spike in respiratory illnesses among children up to 10 years of

age; the diminution of forest cover to 18.5% by 2024 and the collapse of wetlands in industrial zones; a 40% decline in agricultural productivity due to untreated industrial effluents rendering soils sterile; progressive degradation and encroachment upon temple tanks and other traditional water bodies; and chronic regulatory inaction despite over 50 complaints to the Tamil Nadu Pollution Control Board (TNPCB) since 2020. These are not isolated aberrations; they reflect a continuing wrong that directly impinges on life, health, dignity, water security, and livelihood-interests squarely protected under Article 21.

This Court has devised structural relief for continuing environmental wrongs, including court monitored compensation, closure of non-compliant units, creation of restorative funds, and appointment of expert bodies. See Vellore (closure and compensation for tannery pollution; articulation of precautionary and polluter-pays principles); **Indian Council for Enviro-Legal Action v. Union of India, (1996)**¹¹ (holding toxic polluters liable to compensate and remediate) and (2011)² (execution and deterrent recovery); **M.C. Mehta v. Union of India (Oleum Gas)**,

¹ 1(1996) 3 SCC 212

² (2011) 8 SCC 161

(1987)³ (strict and absolute liability for hazardous industries; constitutional tort and public law compensation). When the risk profile is high and the affected populations are vulnerable, the State's positive obligations under Article 21 are triggered to ensure safe water, medical screening and care, and timely, effective remediation. *A.P. Pollution Control Board v. Prof. M.V. Nayudu (I), (1999)*³ and *(II), (2001)*³ specifically counsel precaution in the face of scientific complexity and potential irreversibility and encourage courts to harness expert inputs to shape protective relief.

In the Kongu record, credible evidence goes well beyond mere risk to actual harm i.e., toxic signatures in maternal breast milk; paediatric respiratory clusters; aquifer and soil contamination; the obliteration of wetlands and consequent biodiversity corridor disruption; and the breakdown of traditional water commons. This sustained pattern reveals that the State did not discharge its mandate to protect life and health, calling for Article 21-based intervention with structural contours.

1.2 The binding constitutional doctrines of precaution, polluter-pays, intergenerational equity, and public trust directly govern the present

controversy and prescribe the contours of relief.

- It is respectfully submitted that This Hon'ble Court in *Vellore citizens welfare forum v. Union of India*⁴ constitutionalized the precautionary principle under Articles 21, 48A, and 51A(g), requiring authorities to anticipate, prevent, and attack the causes of environmental degradation and imposing the onus of proof on the polluter to show that the activity is environmentally benign. *Nayudu (I) and (II)* elaborate that scientific uncertainty cannot be an alibi for inaction when the consequences of error are grave and potentially irreversible. *Research Foundation for Science v. Union of India*⁴ further applied precaution in hazardous waste management. Application to facts: The detection of carcinogens in human breast milk near dyeing clusters, documented child respiratory illnesses, severe groundwater toxicity, and the collapse of wetlands collectively demand immediate precautionary relief-interim restraints where necessary, independent environmental and health audits,

³ (1987) 1 SCC 395

⁴ AIR 1996 SC 2715

compliance-first reopening regimes, and mandated upgrades to treatment infrastructure, without waiting for conclusive causation to be proven beyond reasonable doubt.

- It is further submitted that the Vellore and Indian Council (1996; 2011) establish that polluters must bear the full cost of preventing and remedying the pollution they cause, including ecological and public health restoration costs, enforceable with interest and execution mechanisms ensuing until full compliance. *Sterlite Industries (Vedanta) Ltd.*

v. TNPCB evidences this Court's readiness to uphold closure and environmental compensation in the face of persistent non-compliance and significant environmental risk. Application to facts: A court-monitored Restoration and Health Rehabilitation Fund should be capitalized by defaulting units on a strict/absolute liability basis to finance safe drinking water supply (piped/bulk), population-level screening and treatment (including maternal-child health registries and referrals), aquifer and soil remediation, river and tank rejuvenation, and livelihood restoration for affected farmers and workers. The fund's governance must be audit-rich and transparent, administered under the

supervision of a court-constituted committee.

- Intergenerational equity and sustainable development: The Godavarman forest series (since (1997) 2 SCC 267) has fortified intergenerational equity and a continuing mandamus model to conserve forests and associated ecosystems. *Lafarge Umiam Mining v. Union of India* clarifies that sustainable development is not a slogan but a structured decision-making process that internalizes environmental constraints, performs rigorous appraisal, and deploys mitigation hierarchies. The shrinkage of forest cover to 18.5%, wetlands' disappearance in industrial pockets, and disruption of biodiversity corridors in Kongu are intergenerational harms. This Court must institute a continuing mandamus that enforces time-bound restoration, cumulative impact assessments, ecological offsetting where appropriate, and strict treatment/monitoring regimes that embed sustainability into the region's industrial operations.
- Public trust doctrine: *M.I. Builders v. Radhey Shyam Sahu* and *Intellectuals Forum v. State of A.P.*

teach that the State holds natural resources-lakes, tanks, wetlands, and parks-in trust for the public and cannot alienate or permit their degradation. *Fomento Resorts v. Minguel Martins* applied the doctrine to coastal common resources. Temple tanks and commons in Kongu are not merely utilitarian water storage; they are religious-cultural nodes and ecological assets. Encroachment and dumping of industrial waste into such tanks violate the public trust. Demarcation, de-encroachment, and scientific revival must be directed, with co-governance arrangements that include local communities, temple trustees, women's self-help groups, and ecological experts.

1.3 Article 14 is violated by arbitrary and unequal enforcement; tolerance of illegality despite over 50 citizen complaints since 2020, and ongoing visible harm, is constitutionally indefensible.

Arbitrariness is antithetical to equality under Article 14. *E.P. Royappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India* require state action to be fair, reasonable, and nonarbitrary. In

Paryavaran Suraksha Samiti v. Union of India this Court prescribed bright-line rules: no industrial operation is permissible absent functional effluent treatment plants (ETP), common effluent treatment plants (CETP), or sewage treatment plants (STP) as applicable; closure must follow non-compliance. The Court set hard timelines, mandating closure, and criminal prosecution where persisted default occurred.

The admitted inaction of TNPCB despite over 50 formal complaints since 2020, coupled with the continued operation of units without valid consents or in breach of ZLD/discharge norms, constitutes arbitrariness in enforcement policy. *Priyanka Estates v. State of Assam* underscores the duty of authorities to enforce the law; *Municipal Council, Ratlam v. Vardhichand* confirms this Court's power to compel public authorities to discharge their duties to protect public health and abate nuisance. *Indian Council (2011) 8 SCC 161* emphasized execution and deterrence against persistent defaulters. In the Kongu setting, where pollutant impacts are evidenced and regulatory paralysis is patent, Article 14's non-arbitrariness norm is plainly breached, justifying judicial assumption of supervision and the imposition of uniform,

non-negotiable compliance benchmarks across the cluster.

1.4 Article 19(1)(g) rights of industry are subject to reasonable restrictions in the interests of general public, health, and environment; closures, compliance conditions, and compensation are proportionate and constitutional responses.

This Hon'ble Court in *M.C. Mehta v. Union of India (Taj Trapezium)* tained relocations/closures where environmental harms threatened cultural heritage and public health. In *Sterlite (2019) 19 SCC 479*, the Court upheld closure in the face of environmental noncompliance and justified environmental compensation and strict controls. The principle is well settled that industrial freedom cannot trump the constitutional imperative of health and environment protection; reasonable restrictions that are evidence-based and proportionate are constitutionally valid.

Temporary closures/suspensions pending verified compliance, mandatory adherence to ZLD/CETP, OCEMS-based real-time monitoring, and proportional compensation for past and ongoing harm are plainly justified and indeed compelled by precedent, especially where the health of children and women and the integrity of shared water sources are placed at risk.

ISSUE 2 -CONTINUED OPERATION OF NON-COMPLIANT INDUSTRIES WITHOUT VALID ENVIRONMENTAL CLEARANCES/CONSENTS AND THE STATE'S INACTION DESPITE REPEATED COMPLAINTS ARE PER SE ILLEGAL AND ARBITRARY; IMMEDIATE CLOSURE/SUSPENSION, ENVIRONMENTAL COMPENSATION, AND COURT-SUPERVISED COMPLIANCE ARE NECESSARY.

2.1 Operation without EC/consents or in breach of consent/ZLD norms is ultra vires; post-facto regularization is impermissible, especially amidst ongoing harm.

There is a comprehensive regime of pre-conditions under the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981: a) Environmental Clearance (EC) under EIA framework, if applicable, is a pre-condition; b) Consent to Establish (CTE) and Consent to Operate (CTO) are pre-conditions in any event, provided the consent conditions are adhered to including ZLD / ETP/ CETP - statutes - pre-conditions to operate a profession/ industry lawfully, any continuing there on would be ultra vires and subject to immediate cessation.

The Supreme Court has held that it is impermissible to rely on ex post facto EC to

“cure” unlawful operation and continuing harm to the environment, and that environmental clearance is a necessary precondition, and that retrospective regularisation is unknown in environmental law.

Industrial premises discharging effluent without functional individual ETP, or CETP, where relevant, is not permissible; the Supreme Court’s directions made the setup and functional ETP/CETP/STP statutory with strict timelines for setup, non-compliance would end in closure and that responsibility for compliance was transferred to BMC for monitoring and enforcement.

It is further submitted that the units in the textile/dyeing clusters of Tiruppur and adjoining Kongu districts that are operating without valid EC (where required), CTE/CTO, or in breach of consent/ZLD norms are acting unlawfully per se, independent of measured harm; by law they must be shut until verified compliance, with no recourse to post-facto absolution

2.2 No post-facto regularization: the Alembic and Common Cause line forecloses ex post cures for ongoing or irreversible harm

In *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, the Supreme Court determined that ex post facto Environmental Clearance

(EC) is foreign to law and cannot indirectly create a legal flavour to illegality or reverse irreversible environmental harm; a previous EC was required even under the 1994 EIA regime and the issuance of administrative circulars does not relax that requirement. Common Cause reaffirmed that the notion of ‘ex post facto’ or retrospective EC is entirely foreign to environmental jurisprudence, rejecting arguments that later approvals can make earlier illegality moot, and requiring instead restitution and a deterring remedy. Commentary and recent decisions have reaffirmed that attempts to ‘one-time regularize’ chronic non-compliance, through ex post facto ECs, are legally void and an affront to the rule of law in environmental policy; and while alleged exceptions must be narrowly construed, and cannot be construed as a justification for the continued illegal operation of a toxic cluster

It is further submitted that, where the Kongu units acted without EC/consents, and caused aquifer penetration and injury to public health, there can be no post facto EC to cure the unlawful acts; the only operative law is to close up/ restore/reinstate, not retroactively cure.

2.3 Article 14 arbitrariness: regulatory inaction despite 50+ complaints (2020–present) is unequal, unreasonable, and unconstitutional

Arbitrariness is the opposite of equality; there must be fairness, reasonableness, and uniformity in state dealings; systematic failure to implement environmental standards against known violators while the knowing victims of environmental-health harms is arbitrary within the meaning of Article 14. Fairness demands judicial intervention.

The Supreme Court's compliance architecture developed in *Paryavaran Suraksha* creates uniform, time-bound obligations; the failure of TNPCB/MoEFCC to apply these obligations uniformly when presented with repeated complaints and evidence of harms in Kongu is arbitrary, unintended, and contrary to equality as required by the constitution. For purposes of state action, arbitrariness includes a refusal to enforce policy itself and relenting to bad actors you know are either persistently violating or are reasonable to know are persistently violating the law. Courts have consistently held that regulators have the responsibility to enforce their statutory duties, to order and enforce compensation orders, and that regulators cannot allow persistent defaulters to evade the legal consequences of their ongoing actions. The prolonged failure or refusal to implement action to enforce the rule of law is inconsistent with the rule of law and necessitates court

intervention to restore uniformity, meaning and deterrence.

It is further submitted that the Given the literal record of more than 50 citizen complaints since 2020; the fact units are repeatedly non-compliant; TNPCB/MoEFCC has not made a uniform enforcement decision with respect to all the complaints made; they have instead decided not to enforce in what appears to be selective certainty; arbitrary means the behaviour here is arbitrary and unwanted; an application for Supreme Court oversight or to enforce uniform directions for the end of selective tolerance for unlawful operation is constitutionally justified.

2.4 Environmental compensation: polluter- pays with interest; strict/absolute liability for hazardous harms; fund to finance water, health, and remediation

Pursuant to the polluter-pays principle, polluters are required to recover full environmental and public-health costs. The Supreme Court ordered both compensation with interest and enforcement action for when compliance is lagging, sending a clear message that liability lasts until the damage to the environment is reversed.

The Supreme Court has held that hazardous industrial activities will attract strict/absolute liability in the context of

public law compensation to affected communities and constitutional tort remedies for private law claims.

The objective of compensation is to recover costs for environmental restoration and individual/community relief; courts have directed district collectors to recover compensation in arrears and to disburse for the remediation and victims' relief under the court's supervision.

it is further submitted that A defaulting unit will be ordered to deposit environmental compensation into a court-controlled Restoration and Health Rehabilitation Fund using either the methods of the CPCB or the National Green Tribunal based on duration, toxicity, injury to aquifers/soils, and health impact, with the funds designated to pay for piped/bulk potable water, maternal/child testing and treatment, aquifer/soil remediation and river/tank rejuvenation, with interest and attachment for non-payment.

ISSUE3: ENCROACHMENT AND DEGRADATION OF TEMPLE TANKS AND SACRED COMMONS

VIOLATE ARTICLE 25 AND THE ENVIRONMENTAL FACET OF ARTICLE 21; THE PUBLIC TRUST DOCTRINE MANDATES DEMARCATION, DE-ENCROACHMENT, SCIENTIFIC RESTORATION, AND COMMUNITY STEWARDSHIP UNDER COURT SUPERVISION.

3.1 Constitutional frame: Article 25 (i.e., religious practice) and Article 21 (i.e., life, dignity, health) overlay temple tanks and water commons

It is respectfully submitted that temple tanks and traditional water bodies in the Kongu region have a special constitutional position in that they are both sacred-cultural entities protected by Article 25 and ecological resources protected by Article 21(Right to life and Personal Liberty).By dumping industrial waste in temple tanks, by encroaching on their banks and by failing to act due to the inaction of the State, the systematic degradation of temple tanks and traditional water bodies violates the enjoyment of the freedom of religion and the fundamental right to life, health and dignity.

It is also submitted that regarding the first matter, Article 25 protects the right to the freedom of conscience and to profess, practice and propagate religion freely subject only to public order, morality, and health. *In Church of God (Full Gospel) in India v. K.K.R. Majestic* ^{this} court stressed the putative rights to religious freedoms must be weighed against public health, while at the same time it mandated the State to protect spaces of value to religious freedoms. Temple tanks are an essential part of Hindu religious practices for ritual purposes including abhishekam

(ceremonial bathing of deities), community festivities and observances connected to ceremonies that have continued or survived for generations in the cultural landscape of Tamil Nadu.

Article 21's expansive interpretation by this Court encompasses not merely survival but life with dignity, including the right to a pollution-free environment, clean water, and the preservation of cultural-ecological systems that sustain community life. In *Subhash Kumar v State of Bihar*^{this} Court held that the right to live includes the right of enjoyment of pollutionfree water and air. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*^{this} Court established that Article 21 includes the right to livelihood.

The relationship between Articles 25 and 21 over temple tanks is supported in this Court in its environmental jurisprudence read together with cultural rights. In *T.N. Godavarman Thirumulpad v Union of India*, this court has recognised that environmental protection under Articles 48A and 51A(g) forms part of Article 21. In *Adi Saiva Sivachariyargal Nala Sangam v State of T.N.*,^{the} Court provided protection to religious practices within the constitutional fold. Temple tanks are the nexus where ecological integrity, and spiritual practice coincide; the pollution of

temple tanks destroys environmental health and religious health.

It is further submitted that the pleaded facts illustrate this double violation clearly: temple tanks in Kongu have been repeatedly encroached upon and turned into industrial waste dumping grounds, taking devotees away from ritual access and polluting groundwater used by surrounding villages. The state's acquiescence to this damage violates its positive obligations under Article 25 (to protect places of worship and religious practices) and Article 21 (to maintain environmental health and dignity).

The appropriation of sacred temple tanks for use as industrial waste dumping ground is clearly a direct interference with religious observances protected by Article 25 while the resulting pollution and ecological damages are pervasive violations of the environmental aspect of Article 21, indicating a strong and compelling case for intervention by the Court.

3.2 Public Trust Doctrine: the State as a trustee of lakes, tanks, wetlands, and commons: cannot alienate, or degrade these and must restore them

It is respectfully submitted that the public trust doctrine is a basic tenet of Indian environmental law which affirms that natural resources - especially, water bodies,

parks, seashores and commons - are held by the State in trust for present and future generations and cannot be alienated, degraded or converted for private commercial purposes. The public trust doctrine has a constitutional basis in the State duty under Articles 48A and 51A(g) of the Constitution of India, as part of the constitutional provisions for Article 21's environmental component.

In *M.I. Builders v. Radhey Shyam Sahu*⁵, this Court applied the public trust doctrine to enjoin the conversion of a historic public park to a commercial development stating: "the State is the trustee of all the natural resources which are by their nature kept for public use and enjoyment, the public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile land, in the position of trustee, the State is legally obligated to protect the natural resources.

The doctrine's application to water bodies specifically was elaborated in Intellectuals Forum, *Tirupathi v. State of A.P.* where this Court held that tanks and lakes are community properties, the State is the trustee, and when confronted with development pressures it must not surrender its responsibilities to preserve.

The Court observed: "when we use the term "public trust doctrine" we mean that the State is not an absolute owner, but a trustee of the natural resources and the State/public authorities are under a legal duty to protect the natural resources.

Fomento Resorts v. Minguel Martins,⁶ extended the doctrine to coastal commons, affirming that the doctrine is based upon the fact that certain resources are of such importance to every citizen that it would be foolish to allow for private ownership of the resource. The Court explained that water bodies, including traditional tanks, were included because embodied multiple ecological and social functions that are necessary for the welfare of the community.

The trustee duty is not passive but requires affirmative protections and restoration. In *Hinch Lal Tiwari v. Kamala Devi* this Court confirmed that the State cannot permit the destruction of tanks and water bodies but must preservation efforts. The duty extends to preventing encroachment, ensuring water quality, maintaining hydrological functions, and facilitating community access for legitimate purposes.

Temple tanks in Tamil Nadu illustrate an especially compelling application of the public trust doctrine. Temple tanks are not

⁵ (1999) 6 SCC 464

⁶ (2009) 3 SCC 571

just water storage facilities; they are socio-ecological systems. Along with their religious implications, temple tanks provide community identity, recharge groundwater, control floods, and protect biodiversity. Community stewardship of temple tanks predates the current environmental era by over a thousand years and, unequivocally, temple tanks are a public trust resource that the State has the responsibility to maintain rather than allow them to be systematically degraded. Systematic encroachment and industrial pollution are blatant violations of the State's trustee obligation. In light of M.I. Builders, Intellectuals Forum, and Fomento Resorts, the State cannot allow or tolerate the non-use of the temple tanks as a public trust resource; restoration and protection are positive constitutional obligations and cannot be cast as discretionary policy options.

ISSUE4: MAINTAINABILITY UNDER ARTICLE 32 AND THE NECESSITY FOR STRUCTURAL RELIEF: THE VIOLATIONS ARE SYSTEMIC, CROSS-DISTRICT, AND CONTINUING; THE PROPORTIONALITY OF THE PETITIONERS' PRAYERS IS MANIFEST.

4.1 Article 32 is the proper vehicle to enforce fundamental rights in systemic environmental violations spanning multiple districts and agencies.

4.1.1 ARTICLE 32 AS THE HEART AND SOUL OF THE CONSTITUTIONS- DIRECT ACCESS FOR VIOLATIONS OF FUNDAMENTAL RIGHTS

It is respectfully submitted, that Article 32, which Dr. B.R. Ambedkar referred to as the "heart and soul" of the Constitution, gives this Hon'ble Court extraordinary jurisdiction and access to issue writs to enforce fundamental rights. The Supreme Court in *Romesh Thappar v. State of Madras*⁷, articulated the fundamental idea that Article 32 is not just a procedural provision, but it was one of the fundamental rights a person possesses - the right to constitutional remedies and such right can only be suspended under Article 359 with a constitutionally defined emergency.

In *Bandhua Mukti Morcha v. Union of India* ^{this} Court loosened the traditional definition of locus standi, allowing any public-spirited citizen/organization to approach the Court where the fundamental rights of an unpopular or disadvantaged group were being invoked. The Court also stated, "Public Interest Litigation is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses." This principal has not been limited to just discreet instances of environmental damage but has been employed across a broad spectrum of

environmental cases, where diffuse harm has impacted untold large populations who do not have individual access to remedy and who may not be aware that they have individual access to remedy.

The environmental disaster in the Kongu region exhibits many of these features: it is dispersed across districts of Tamil Nadu, involves both State (TNPCB) and Union government (MoEFCC) agencies and requires reasonably sophisticated technical examinations of groundwater pollution, air quality and health impact, and ecosystem degradation, and it requires that the circumstances of the case be monitored and remediated over a long time period and wherein only the continuing mandamus of this Court will ensure any successes.

4.1.2 ENVIRONMENTAL VIOLATIONS AS TYPICAL CASES FOR ARTICLE 32 JURISDICTION

This Hon'ble Court has always entertained environmental PILs directly under Article 32 on the grounds that the environmental harm may involve elements crossing territorial boundaries, may involve multiple agencies under different jurisdictions, and claims uniform and integrated relief only the Supreme Court can adequately provide. Established environmental law cases-

Subhash Kumar v. State of Bihar, (1991) 1 SCC 598; *M.C. Mehta v. Union of India (Ganga Pollution)*, 1988 Supp SCC 497; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 and the *T.N Godavarman cases (later series)*- originated from this Court under Article 32 and served as routes of precedent.

In *M.C. Mehta v. Union of India (Vehicular Pollution)*⁷, this Court stated that environmental pollution issues are deserving of consideration directly by the Supreme Court because: (i) they involve scientific and technical complexities requiring expert consideration which may not be available in all the High Courts; (ii) they may address issues that span State boundaries; (iii) they will involve State agencies and Union of India agencies; and (iv) they are issues which will require ongoing oversight over a lengthy duration and the appellate mandamus jurisdiction of this Supreme Court is best able provide oversight . The environmental crisis in Kongu region illustrates these characteristics: the crisis covers multiple districts in Tamil Nadu; involves both State actors (TNPCB) and Union government actors (MoEFCC); necessitates technical assessments of groundwater pollution, air quality

⁷ (1991) 2 SCC 353

impacts on health, and ecosystem damage that are both complex and sophisticated; and requires long term monitoring and remediation that only the Court's continuing mandamus can reliably ensure. actors (MoEFCC); necessitates technical assessments of groundwater pollution, air quality impacts on health, and ecosystem damage that are both complex and sophisticated; and requires long term monitoring and remediation that only the Court's continuing mandamus can reliably ensure.

This Court in the *Indian Council for Enviro-Legal Action v. Union of India*⁸, will deal with chemical pollution involving multiple states: This Court expressly observed, about chemical pollution having multi-state implications, that, "environmental problems do not recognize State boundaries" and in the interests of preventing fragmentation of regulation, uniform directions were necessary from the Supreme Court. Likewise, in Vellore, the Court noted that leather tannery pollution had affected multiple smaller districts, and required a coordinated shut down, contain and remedy that could only be coordinated adequately from the Supreme Court.

Prayer

Wherefore, in light of the facts stated, issues raised, arguments advanced, and authorities cited, it is most humbly and respectfully prayed that the hon'ble court may graciously be pleased to declare that:

- Declare the Respondents' acts/omissions in preventing, regulating, and remediating industrial pollution in the Kongu region as violative of Articles 21 & 14 and contrary to the precautionary principle, polluter-pays principle, intergenerational equity principle, and public trust doctrines.
- Direct immediate closure/suspension of units without valid EC/consents or failing ZLD/discharge norms; disconnect utilities during non-compliance; prohibit post-facto regularisation.
- Constitute a Court-monitored Restoration & Health Rehabilitation Fund, funded by defaulting industries, for safe water, medical care, remediation, rejuvenation of water bodies, and livelihood restoration.
- Appoint an Expert Authority under s.3(3) EPA, 1986, to set compliance protocols, certify reopening,

⁸ (1996) 3SCC 212

supervise restoration/health programs, and report quarterly to this Court.

- Declare that there should be real time monitoring of OCERS integration, sentinel wells, public dashboards, tamper-proof meters, and automatic stoppage protocols.
- Direct independent audits & health surveillance: CERP/IETP performance, contamination mapping, health risk assessments, mobile clinics, referral systems.
- Order time-bound GIS survey, demarcation, and restoration of temple tanks, wetlands, and commons; remove encroachments; constitute Water Commons Committees.
- Enforce compensation & deterrence: levy CPCB/NGT-based

damages, prosecute persistent violators, bar incentives/clearances to defaulters, fix officer liability.

- Retain seisin through continuing mandamus, with periodic monitoring, quarterly reports, and provision for community compliance affidavits.

AND PASS ANY OTHER ORDER THAT THE COURT DEEMS FIT IN THE INTEREST

OF JUSTICE EQUITY AND GOOD CONSCIENCE

All of which is most humbly and respectfully submitted

Place:
s/d _____

Date:
counsel for the Petitioner