

From the Supreme Court

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2073/07/25 BS (November 10, 2016 AD)

COURT SEAL

Supreme Court, Division Bench

Hon. Justice Mr. Ishwor Prasad Khatiwada

Hon. Justice Mr. Anil Kumar Sinha

Order

071-WO-0371

Subject: Including Mandamus

Advocate Arjun Kumar Aryal, having permanent home at Syangja District, Putalibazar Municipality, Ward No 12 and presently residing at Lalitpur Sub-Metropolitan City, Ward No 1, Kupondole.....1

Saroj Kumar Neupane, having permanent home at Morang District, Biratnagar Sub-Metropolitan City, Ward No 4 and presently residing at Kathmandu District, Kathmandu Metropolitan City, Ward No 9.....1 **Petitioner**

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu.....1

Ministry of Science, Technology and Environment, Singhdurbar, Kathmandu1 **Defendant**

Gadhimai Festival Organizing Committee, Bariyapur V.D.C., Bara, Gadhimai.....1

The writ petition of 2071-WO-0371 by petitioner advocate Arjun Kumar Aryal and others V. Gadhimai Temple Management Committee, Gadhimai Bara and others, case: Certiorari, Mandamus and Prohibition.

Gadhimai Temple Management Committee, Gadhimai Bara.....1

071-WO-0372

Case:- Including certiorari, mandamus, prohibition

Rajyalaxmi Golchha, a resident of Morang District, Biratnagar Sub-Metropolitan City, Ward No 3.....1

Manoj Gautam, a resident of Dang District, Tribhuvan Municipality, Ward No 6 and presently residing at Kathmandu District, Kathmandu Metropolitan City, Ward No 9.....1 **Petitioner**

Niraj Gautam, a resident of Kathmandu District, Kathmandu Metropolitan City, Ward No 9.....1

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers.....1

Government of Nepal, Ministry of Culture, Tourism and Civil Aviation, Kathmandu.....1

Government of Nepal, Ministry of Home Affairs, Singhdurbar, Kathmandu.....1

Defendant

District Administration Office, Bara, Kalaiya.....1

District Police Office, Bara, Kalaiya.....1

Village Development Committee Office, Bariyapur, Bara.....1

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071-WO-0373

Case:- Mandamus

Gita Prasad Dahal, a resident of Kavrepalanchok District, Banepa Municipality, Ward No 11... 1

Advocate Ram Krishna Banjara, a resident of Kavrepalanchok District, Panauti Municipality,
Ward NO 8.....1 **Petitioner**

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singhdurbar..... 1

Ministry of Health and Population, Ramshah Path, Kathmandu..... 1

Ministry of Science and Technology, Singhdurbar, Kathmandu..... 1

Ministry of Agriculture Development, Singhdurbar, Kathmandu..... 1

Defendant

Ministry of Culture, Tourism and Civil Aviation, Singhdurbar, Kathmandu..... 1

Central Livestock Quarantine Office, Budhanilkantha..... 1

District Administration Office, Bara, Kalaiya..... 1

Gadhimai Temple Operation and Development Committee..... 1

The brief fact and decision of the referred petitions lodged being under the jurisdiction of this court pursuant to Article 107(2) of Interim Constitution of Nepal, 2007 are as follows:

The details of the writ petition No 071-WO-0371 of petitioner advocate Arjun Kumar Aryal and Saroj Neupane:

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1. Gadhimai festival is being celebrated in every five year which is going to be held from 11th Day of Mangshir BS (November 26) in this year. The tradition of Gadhimai festival is just 2/3 hundred years old. It is said that a landlord was detained by then king of Makawanpur and at the same time, the landlord had saw a dream that if he had offered blood in Gadhimai temple everything would become normal so later when he became freed from the detention, he had offered blood from various five parts of his body by **preaching** henceforth from the same time Gadhimai festival is being celebrated, according to common belief. In the span of time, the tradition becomes deviated therefore instead of shedding own blood, there is a doubt that without doing so but offering blood of thousands of innocent animals and also polluting environment of the nearby areas by communicating various types of disease. This practice is a horrible twist of the custom. Due to the superstition of common public, the tradition become horrible and due to the tradition sacrifice of thousands of animals have also been creating serious obstruction on the protection of environment henceforth as an alternative of animal sacrifice managing for offering flowers and offerings and performing other necessary process henceforth demanded for suitable order directing to stop animal sacrifice in the temple. With the perspectives of Hindu *vaidic* giving sacrifice has been taken as great fault. Due to this superstition, Gadhimai has been known as the biggest animal sacrifice giving place in the world. This has given a negative message across the world. Animal right workers in Nepal, India and other country have been criticizing such animal slaughters. This has attacked on the very spirit of ancient Hindu philosophy and doubt has been raised even making Hindu religion as horrible one. Even the Supreme Court of India, in a writ filed by animal rights activists demanding to protect the rights of the animals, has issued interim order to stop entry of any animal to Nepal for giving sacrifice in Gadhimai. Without testing pregnancy, sick and other status of the animals and without providing water and foods, animals have been giving

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sacrifice in a cruel, brutal and inhuman way due to which the environment is being polluted. Cruelty has been developed on women, children, youths and entire people and also the negative effect has been developed therefore sought for mandamus order in the name of the defendants for not allow and caused to allow hundreds and thousands of animals sacrifice.

2. There is a tradition for giving sacrifice of thousands of Buffalos and other animals in Mangshir of every five years in Bariyapur, Bara District since the last 260 years. The practice is existed for giving sacrifice of so many animals in cruel manner in Gadhimai temple by bringing animals not only from Nepal but also from neighboring India. Also the state agencies have been providing resources for animal sacrifice. With the support of local administration, the festival is being carried out and there is the practice for also arranging security. Even in this year also, the organizers have made the plan to give sacrifice of thousands of animals and according to the same plan, the local administration has been doing serious efforts in coordination with the local administration.

So many national and international organizations, associations and individuals have been raising voice against the tradition of animal sacrifice. This tradition has also infringed the right of the public to live in healthy environment and since there is no way for alternative remedy for the protection of such rights henceforth attended along with this petition of public interest litigation under the extra-ordinary jurisdiction of the Supreme Court pursuant to Article 32 and 107 (2) of the Constitution. Animal sacrifice should not be allowed to such a holly temple like Gadhimai which is being held in Mangshir (December) month.

Article 16(1) of the Constitution of Interim Constitution of Nepal has ensured for every citizen to live in clean environment. Section 2(A) of the Environment Protection Act, 2053 BS (1997 AD) has defined "environment" means the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and

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their components. Section 2(B) has defined "pollution" means the activities that significantly degrade, damage the environment or harm on the beneficial or useful purpose of the environment, by changing the environment, directly or indirectly. The dead body and the flesh of the sacrificed animals has been polluting the Gadhimai area which pollutes the temple, nearby religious and social areas directly. Even though the sacrificed chicken, pigeon, goat in the premises of Gadhimai temple would have been taken away but these dead animals have been creating adverse effect to the environment. However, there is a tradition to take the meat of buffalo only 24 hours later by dalit people. Since a huge quantity of blood and other types of waste is being created from such a huge numbers of sacrificed animals but removing such wasted things would be done only 24 hours later thus it has been creating waste when such dead bodies are being kept in the same place thus there is the problem of creating communicable disease from the dead body along with the possibilities of disease transmission. Henceforth, if Gadhimai area is not changed free of animal sacrifice area, it may create adverse effect on the right guaranteed pursuant to Article 16(1) of the Interim Constitution of Nepal hence such activities should be stopped.

Animal Health and Livestock Service Act, 2055 has the provision of quarantine check. However, in terms of Gadhimai festival such checks according to law is not being carried out. There is the possibility of creating negative impact on the children psychology due to the animal sacrifice in Gadhimai festival. Article 17 of Convention on Rights of the Child, 1989 has prohibited such activity which may create negative impact on physical and mental health of the child. Pursuant to Section 9 of Treaties Act, 2047 BS (1990 AD), the provision of the convention should be followed by Nepal.

In view of the provisions of Environment Protection Act, 2053 BS (1997 AD); Communicable Diseases Act, 2020 BS (1964 AD), Animal Health and Livestock Services Act,

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2055 BS (1999 AD); Treaties Act, 2047 BS (1990 AD); Animal Slaughter and Meat Inspection Act, 2055 BS (1999 AD), polluting environment and creating adverse impact on the public health has been prohibited. Animal sacrifice is against the rights enshrined by Article 16(1), 23(1) and (2) and Article 29(2) but there is no other alternative remedy therefore attended before the honorable court along with this petition pursuant to Section 32 and 107(2) of the Constitution. The details of petition sought for stopping cruel animal sacrifice which is being carried out in Gadhimai through mandamus or other appropriate order or directives pursuant to Article 107(2) of the Constitution.

3. Among the petitioners, I, Gita Prasad Dahal am a Nepali citizen and I am active for protecting and caring livestock animal and birds and working in the field of development since a decade ago. Among the petitioners, being a student of law, I, Ram Krishna Banjara have been providing service since the last seven years with the capacity of an advocate. There is a tradition of organizing a big festival in Gadhimai Temple in every five year in Bariyapur Village Development Committee, Ward No 2, Bara District, Nepal. There is a tradition of giving sacrifice of five kinds of animals and birds including Goat, Buffalo, Duck, Chicken and Mice in the festival. Earlier, news was published and broadcasted in the media describing that five years ago thousands of animals were sacrificed in such a way which has polluted the environment of the nearby places due to the sacrifice (especially calves and buffalos) and the dead body of the animals and the bad smell were communicated across the region. In relation to this same thing of Gadhimai temple, national and international media have been making a news matter by portraying Gadhimai as the biggest animal sacrifice place of the world. In its continuation, since the last six months, the national and international media and the animal rights activists have been expressing their concern. Meanwhile, a petition Gauri Mallekhi V. UOI and Others was lodged in Supreme Court of India and order has also been issued

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prohibiting animal entry in Nepal expect permitted animals therefore the Supreme Court of India has shown judicial activism into this matter. In this way, news and views were published in the media and also the petitioners have asked the concerning authorities of the Government of Nepal by holding programme to review on the system of giving animal sacrifice. Since it has been said that contractor has been appointed to export meat of the animal up to China amounting to Rs 26.7 million for which contractor has been assigned therefore it is clear that the animal sacrifice has not only been assigned symbolic. Similarly, for such animal sacrifice, the nearby area of land has been allocated for animal slaughter in the Gadhimai temple and the same place has also been portrayed for slaughtering because pictures have also been published in various media. Even though information has been sought from the defendants on testing the animals being brought for giving sacrifice, their meat have not been tested because there is no mechanism and programme has been made till the date and no information has been given to us. After the sacrifice of such animals, the meat of such animals will be sold through tender process therefore the meat shall be reached to the common public due to which the meat might communicate infection to the general public directly through meat because this fact has already been established by giving tender process. However, the defendant does not show any interest that such meat must be healthy therefore unhealthy may reached up to the access of the common public. **It is the responsibility of the Government of Nepal to say whether any foodstuff is consumable pursuant to Foods Act, Animal Health and Livestock Services Act.** However, the defendants have not fulfilled their responsibilities. Therefore, the description of the petition sought for quarantine testing of the animals, arranging for animal slaughtering, not allowing cruel behavior to animals, to set up committee immediately pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 BS (1999 AD), for adequate management of animal goods, testing of meat, animal sacrifice should only remain

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in symbolic way and to implement Animal Slaughter and Meat Inspection Act, 2053 BS (1997 AD) henceforth order including mandamus have sought in the name of the defendants.

4. The details of show cause notice and interim order:

A single bench order dated 2071/08/08 BS (November 24, 2014 AD) states: in this, be it submitted by taking written notice from the defendants. Moreover, on condition of creating adverse effect on human health, development of human health, animal slaughtering has not been allowed, no cruel behavior could be done towards the animal, only the consumable goods could be used, importing sick animals has been prohibited, animal trafficking are not prohibited are such matters which are addressed pursuant to Animal Health and Livestock Service Act, 2055 BS (1999 AD), Animal Slaughter and Meat Inspection Act, 2055 BS (1999 AD), Communicable Diseases Act, 2020 BS (1964 AD) and Environment Protection Act, 2053 BS (1997 AD). In such matters which have already been addressed by the law needs not be issued further order by the court but the local authorities, organizations and common public should be ready against doing such work in adverse of these laws henceforth keeping in mind the provisions and also doing management of Gadhimai temple, stay order has been issued for drawing the attention of the defendants.

5. Written reply of the Government of Nepal, Office of the Prime Minister and Council of Ministers:

The written reply states: Opponent writ petitioner could not clearly mention what act, process or decision of the Government of Nepal, Office of the Prime Minister and Council of Ministers has infringed any constitutional or legal right of the petitioners. It is not appropriate to lodge write petition against this Office on any act, process or decision made by any other legitimate authority and official as well. The Government of Nepal, Office of the Prime Minister and Council of Ministers is committed for translating the concept of welfare state by

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implementing the Constitution and other laws and protecting and implementing the constitutionally and legally protected and guaranteed rights of the citizens. Right to religion, is a fundamental right of an individual. The constitution has ensured for practicing and professing own religion as per the prevailing social and cultural tradition being practiced and professed since the ancient time. The Gadhimai festival which is being carried out in every five years in Bara District is a center point of the people who practice and process Hindu religion not only from Nepal but from India as well. In such festival, thousands of people used to come along with their offerings to the God because they think that Gadhimai has fulfilled their wishes. Completely respecting the rights of the religion and not allowing for adverse impact on human health and environment and also not inspiring for animal sacrifice, public campaigns are being carried out with the support of government and the locals. Government of Nepal is fully agreed on various matters raised by the writ petitioners like no cruel behavior is accepted, consumable meat should only come for the consumption, sick animals should not be imported, animals should not be trafficked. In this regard, Animal Health and Livestock Services Act, 2055 BS, Animal Slaughter and Meat Inspection Act, 2055 BS, Infectious Disease Act, 2020 BS, Environment Protection Act, 2053 BS have also clear provisions and the government is committed for implement and caused to implement. Practicing and professing offering, giving sacrifice in the temple are the matters of religious freedom and the existing laws do not prohibit animal sacrifice therefore it does not seemed suitable to intervene by the government of Nepal. Since Gadhimai festival has already been completed therefore in this background it is not required for issuing order from the respected court but deserved quashing the petition.

6. Written reply of the Ministry of Science, Technology and Environment:

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The written reply states: The petitioner could not make clear on which act or process of this Ministry has infringed the right of the petitioner and common people and on the act and process as claimed by the petitioner, the act, duty and authority of this Ministry cannot be attracted therefore there was no need to make this Ministry as defendant henceforth up to that limitation, the claim of the petition deserved annulment. With the effective implementation of the provision of Foods Act, 2023 BS and Animal Health and Livestock Services Act, 2055 BS the claim of the petitioner has the alternative provision for the implementation but without properly doing that alternative, this petition has been filed pursuant to Article 107 (2) of the Interim Constitution of Nepal henceforth this petition deserved annulment.

7. Written reply of the Ministry of Culture, Tourism and Civil Aviation:

The written reply states: There is a tradition to give animal sacrifice in Gahimai temple located at Bara District in every five years. In the context of not prohibiting animal sacrifice by the existing laws of Nepal, public campaign shall be significant for discouraging and decreasing this custom. The ministry has been doing efforts to manage with the capacity of the Ministry of Culture, Tourism and Civil Aviation.

8. Written reply of the Ministry of Home Affairs:

The written reply states: If any social organization, association and authority demands security, the home affairs shall give the security. The matter claimed by the writ petitioner has not been mentioned what act of the Ministry of Home Affairs has infringed what kind of right. This Ministry does not have any relation on the matter claimed by the writ petitioner therefore requests for annulling the writ which even could not mention the reason of entitling the defendant.

9. Written reply submitted by the Ministry of Health and Population:

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The written reply states: There is no second thought on exercising the right to dignified healthy life, environment and health, education and culture, religion, right of the child and the rights guaranteed by national and international laws is the right of the Nepali citizen. Examining the health of the animal, not allowing any kind of cruel behavior against the animals and doing work in relating to environment do not comes under the jurisdiction of this Ministry. Since this matter shall be clarified from the Ministry and the authority therefore there is no requirement and reason to make this Ministry as defendant therefore requests to annul the writ petition.

10. Written reply of the Ministry of Agriculture Development:

The written reply states: Foods Act, 2023 BS has provisioned that no one has right to produce, sell and distribute and import and export polluted foodstuff or low quality of food and doing any such act of storing therefore it has provision to fix the quality of the food and examination of such goods. In relation to the quality of the foodstuffs, Foods Technology and Quality Determination Department of this Ministry and the subordinate offices are already active. Not being able to specify on doing any act or occurred the specific loss or being occurred but made defendant this Ministry without any reason. According to Section 5 of Animal Health and Livestock Services Act, 2055 BS, has provisioned that the Ministry shall appoint quarantine officer time and again and the animal goods imported by the importers or animal product goods should be examined in the quarantine. In accordance to Animal Slaughter and Meat Inspection Act, 2055, the appointment of meat inspector and the examination of animal before slaughter are prevalent into the practice. The Ministry is confident that practice is being carried out the practice to give sacrifice of healthy animals. If proven of giving sacrifice of any sick and unhealthy animal, the Ministry if committed to take action against such person therefore at the same time, the writ petition lodged by raising imaginary and unnecessary

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things and also undermining the efforts of the systematic sacrifice of the animals management, operating temple and development committee cannot be existed therefore requests for its annulment.

11. Written reply of Central Animal Quarantine Office:

The written reply states: The sacrificed animal in the Gadhimai temple should be kept in quarantine pursuant to Section 6 of Animal Health and Livestock Services Act, 2055 BS, and sacrifice can only be given after completing the process of giving quarantine certificate for which the Government of Nepal has formed Animal Quarantine Office and Matiarwa of Bara Animal Quarantine Check Post for doing works. Optimum efforts have been made from Livestock Service Department and its subordinate offices in order to control cruel behavior against animals. Following the animal sacrifice, the meat items left by the devotees have been managed suitably pursuant Foods Act, 2023 BS and to Section 7 of Environment Protection Act, 2053 BS therefore requests to annul the writ petition lodged making defendant to this Office.

12. Written reply of District Administration Office Bara:

The written reply states: District Administration Office Bara has been arranging security management from the previous day of festival making the security issue as the main concerning matter, coordinating with concerning agencies for security of visiting devotees, giving directions to the security agencies meeting, doing regular monitoring for making the animal sacrifice systematic, and managing the animal slaughters is being done with the optimum limitation of Nepal's existing rules and regulation. Possibility of spreading infectious disease from the sacrificed animals, environmental pollution and the effects of that have also been informing to the concerning agencies, making them aware on directing, not allowing for any other improper activities and without 3 kilometers area of Gadhimai temple

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selling of alcoholic items and visiting with the consumption of alcoholic items have also been prohibited. This Office is aware for keeping intact the management of Gadhimai festival, security of visiting devotees, clean environment, religious and social unity, brotherhood and committed towards it for the future also therefore requests for annulling the writ petition lodged making defendant to this Office.

13. Written reply of District Police Office, Bara:

The written reply states: One month before the beginning of five-year Gadhimai festival, a security base camp used to be set-up under the leadership of Deputy Superintendent of Police along with means of communication and other necessary equipments and being operated for the security of visiting devotees also by facilitating for animal sacrifice, easy offering and other necessary managements. In coordination and consultations with pundits of Gadhimai Temple, Gadhimai Festival Committee, District Administration Office Bara, Armed Police Force and other concerning authorities, preplanned have been arranged for banning unwarranted activities within the 3 kilometers area of the temple by prohibiting for selling and consumption of alcohol by imposing prohibited area. Keeping in mind the matter of management of Gadhimai festival, keeping intact the security of the devotees, clean environment, religious and social unity, offering and animal sacrifice have been arranged in the festival. Festival has already been completed in absence of any unwarranted incident in peaceful and well arranged manner. In relation to the stopping of animal sacrifice, there is no possibility of stopping animal sacrifice therefore requests for annulling the writ petition.

14. Since Gadhimai temple is historic therefore it is not only popular in Nepal but in international level with religious importance. Since this temple has power of Devi therefore the pray to Devi is based with sacrifice. Since the *vaidic* era, thus pray is being offered with five types of sacrifice. Thousands of devotees' tourists participate to this temple from outside and inside

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the country. Due to the internal and external religious tourism of Nepal, this festival has been significantly supporting to the tourism of Nepal. While stopping the animal sacrifice based on religion, it may infringe the belief towards religion and which may directly attacks on the religion therefore the existing law has also given respite. Section No 1A of Chapter of **Adal** has also provisioned to impose fine and punishment if anyone poses threat to any religious place or religious act. For doing suitable management on animal sacrifice to be given to the Gadhimai temple, protection of the temple, operation, development, tourism promotion, Gadhimai Temple Operation and Development Committee was formed on 2060/11/15 BS (February 27, 2004 AD). Since the establishment of this organization, it has been doing management on sacrifice, offering management, locals' health, suitable management of the meat left by the devotees. No negative impact is being found due to the sacrifice given to Gadhimai temple till the date and not disease has been spread in that area. Even the writ petitioners could not justify the matters like the adverse impact on environment and spreading disease. Even though the writ petitioners have claimed of giving sacrifice of pregnant, sick animals and kept the animals without giving foods and water, giving the animal sacrificed in a extremely cruel manner, environment has been polluted and negative impact is being spread in the society but could not cite the factual basis of the same. In the sacrifice which is being given to Gadhimai temple, no animal oriented behavior has been done but completely sacrifice has been managed. Therefore, since the matters raised by the petitioners do not have any reality and this Organization has been doing work by giving full concentration for operating festival and managing sacrifice henceforth requests for annulling the writ petition.

15. No written explanation has been lodged by the Village Development Committee, Bariyapur, Bara but remain silent by expiring the statute of limitation.

16. Arguments of the legal practitioners:

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Heard the arguments of learned advocate Ramkrishna Banjara, learned advocate Mr. Hari Phuyal, learned advocate Mr. Kedar Dahal, attended on behalf of the writ petitioners, stating that there must be interrelation between human being and animals. Giving sacrifice of thousands of animals and birds in Gadhimai temple, environment is being polluted and communicating disease. This tradition is horrific state of tradition. Gadhimai of Nepal is being known as the biggest place of giving animal sacrifice in the world on the basis of superstition. This has also given a negative message around the world. Pregnant, sick animals have also used to be given sacrifice even without their testing, without giving food and water; the animals have also been given sacrifice with seriously cruel manner. Numbers of animals are being brought not only from Nepal but also from India for giving sacrifice in cruel manner. For giving animal sacrifice, government agencies have also been providing resources for this festival. Even though various national and international organizations and associations have been raising voice against the animal sacrifice but no restriction has been maintained. The dead body of the sacrificed animals has been polluting the environment of Gadhimai area and which has also been affecting the temple and its nearby area's religion and social aspects as well. The animals and birds sacrificed in the Gadhimai premises environment has been adversely affected. Possibility has been increased for spreading disease from the dead body of the killed animals. Animal Health and Livestock Services Act, 2066 BS has the provision on quarantine examination but such examination as per the law has not been carried out. No information on health examination of the animals brought for sacrifice, testing the meat of the killed animals, testing the quality of the meat has been received yet. There is rampant cruel behavior against the animals. Due to the activities to be done in the Gadhimai temple, some of the fundamental rights of the citizens have also been infringed. Therefore, as per the demand of the writ petition, there is a urgent need of the formation of committee pursuant to Section

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27 of Animal Health and Livestock Services Act, 2055 BS, and enforcing the Animal Slaughter and Meat Inspection Act, 2053 BS for the suitable management of animal items, determining the quality of the meat by issuing mandamus order in the name of the defendants.

17. Learned Government Joint Attorney Gita Prasad Timalina, attended on behalf of various authorities of the defendant Government of Nepal, argued stating that the right to religion is fundamental and human rights of individual. The Constitution has ensured every citizen to practice and profess the right to religion since the ancient time by maintaining the respect of self-social and cultural respect. The festival to be held in Gadhimai is not only the central point of respect and trust to Nepal but the Hindu religion people of India. Cruel behavior should not be done towards the animal, only the consumable meat should come into consumption, sick animals should not be imported and animal should not be smuggled have been raised in the writ petition which have been addressed by Animal Health and Livestock Services Act, 2055 BS, Animal Slaughter and Meat Inspection Act, 2055 BS, Infectious Disease Act, 2020 BS and Environment Protection Act, 2053 BS etc. There is the provision of inspection of the meat imported by the importers even by appointing quarantine officers by the government time and again while keeping the animal goods and animal oriented materials. The act of giving animal sacrifice to the temple comes under the religious freedom and the existing laws and the existing animal sacrifice has not prohibited the tradition of animal sacrifice therefore intervention from the Government of Nepal is not suitable. Since no rights of the petitioners have been infringed therefore the claim of the petition should be annulled.

18. Learned advocate Mr. Arun Gyawali and learned advocate Mr Dilli Prasad Neupane, attended on behalf of representing Gadhimai festival organizing committee and Gadhimai Temple management Committee, argued stating that the petitioners do not have the locus standi to

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lodge such a Public Interest Litigation. This festival has been significantly contributing towards the tourism development. Management of offerings to the Gadhimai temple, protection of the temple, operation, development, and tourism promotion has been done. The management of the sacrifice to be given to Gadhimai temple, management of the donation, health of the locals and suitable management of the meat of the animals left by the devotees. The sacrifice given to the Gadhimai temple, do not create any adverse impact on the environment and no disease has been spread in that area. Writ petitioners could not justify the fact of creating adverse impact to the environment and spreading disease. The statement of doing cruel behavior to the animals by not testing the health of the animals did not provided foods and water is not true. The matter raised by the petitioner do not based on fact therefore the writ petition need to be annulled.

19. Questions need to be settled:

The file of the referred case submitted before the bench with the submission of the daily cause list according to the rules has been observed. In view of the writ petition, the details of the written reply and the arguments of the learned advocates, seems to address the following questions:

1. Whether the writ petitioners have the locus standi to lodge petition on the referred case?
2. Whether or not to issue stopping or restricting animal sacrifice to the Gadhimai Temple?
What type of arrangement should be done into this matter?
3. Whether or not to issue order in order to set up committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 BS to prohibit torture and cruel behavior to the animals and birds brought for giving sacrifice?
4. Whether or not to issue order for the quarantine inspection of the animals brought for giving sacrifice to Gadhimai temple and receiving certificate as a mandatory provision?

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5. Whether or not to do proper management of meat and other things to be produced by the animals brought for giving sacrifice and whether or not to determine the quality of meat, inspection or control from creating adverse impact to the public health and whether or not to control environment pollution?
6. Whether or not to issue certiorari, mandamus and other suitable order as demanded by the petitioners?

20. Base, Reason and ratio *decidendi* of issuing order:

Firstly, there is a need to address on the question raised by the opponent party claiming that the writ petitioners do not have locus standi to lodge public interest litigation on the said matter. The said writ petition has been lodged pursuant to Sub-Section (2) of Section 107 of the Interim Constitution of Nepal. This is not the first Public Interest Litigation. Basically, on the context of Article 88(2) of the Interim Constitution of Nepal, 1990 numbers of disputes were settled by this court in relation to Public Interest Litigation time and again and principles have been laid down. It seems that the interpretation made in relation to the writ petition filed by advocate Radheshyam Adhikari on the appointment of ambassadors, the modern jurisprudence on Public Interest Litigation has began.¹ Meanwhile, in relation to address the various disputes, the scope of disputes of public interest litigation, purpose, objectives and limitation or area have been discussed. Article 88(2) of the Constitution of Nepal, 1990, Article 107(2) of the Constitution of Nepal, 2007 and Article 133(2) of the Constitution of Nepal 2015 have adopted similar norms and values in relation to the Public Interest Litigation therefore it seems reasonable to settle such disputes on the pretext of the settled principles laid down by this Court.

¹ Advocate Radheshyam Adhikari Vs. His Majesty's Government, Secretariat of the Council of Ministers and others, N.K.P. 2048, Decision No 4430, Page-810

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21. The dispute of Public Interest Litigation is not only the dispute with the concern of any specific individual or individuals but which indicates the dispute which has the relation of the common citizens of the Kingdom of Nepal or the common interest or right of any community.² If does not do any act which should be done by the Government of Nepal or any public body or official pursuant to the Constitution and laws or done any work which should not have been done due to which creates adverse effect on right, interest of common people and may be the matter of public interest or concern. Even it is not a matter to count the number of people while determining whether the matter is “Public” or not. It seems the matter of concern and interest to represent the interest of the common people, it cannot be discarded the public interest litigation just with the counting of the numbers of affected people. Any type of dispute should be determined whether such matter is public interest matter or not on the basis of the nature, character of dispute of such matter. Generally, the security of the country, system of governance, social peace, education of the common citizens, health and morality, economic condition of the country, matter of culture and religion, social justice and environmental justice shall be the matter of public concern on the basis of the context. Henceforth, it cannot be listed any subject, or area confining the matter of public concern. It seems of determining on the case to case basis of every case. Even though, while determining the meaning of every matter of concern to be settled by the court, it should be determined with the subjective meaning of right enshrined by the Constitution or the law.
22. There might be so many matters of public interest matters. However, all the interest or concern of the common people shall not be justiciable matter of public concern. The dispute needs to be settled by the court should not be imaginable or projected but it should be based

² Id, Advocate Radheshyam Adhikari Vs. His Majesty’s Government, Secretariat of the Council of Ministers and others, N.K.P. 2048, Decision No 4430, Page-810

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on the fact. If the matter of dispute is justiciable by the court and related with the matter of concern and interest of the common people, it can be taken as the matter of Public Interest Litigation. The Public Interest Litigation should not be brought to exercise anyone's intellectual interest, curiosity or concern. If any matter such as social, economic, political, religious and moral issue should not deserve settling justice or need not be settled cannot also be taken as Public Interest Litigation. There is a need to give judicial view in self-restraint while determining any particular matter as the matter of public concern. There might be numbers of issues of public concern or there might be numbers of mistakes committed by the public bodies or officials but neither it is possible to settle such entire matter through Public Interest Litigation nor possible. The power conferred to the court by the Constitution and the laws, the nature of the judicial work and limitation and the matter of decision should be evaluated in relation to the public relation, it should be intervened on the matter of public interest litigation.

23. The question of "*locus standi*" will be significant in every dispute. The general principle of *locus standi* is to claim on the same matter which must have the right. In relation to the development of the concept of Public Interest Litigation, the basis and circle of *locus standi* has also been extended. Sometime, the Public Interest Litigation has been taken as the voice of the voiceless. For the protection and promotion of the interest and concern of backward class, community, this concept of public interest litigation has become a fortune. However, it does not mean that anyone can lodge, file case or petition on any matter. The complainant or the petitioner should have meaningful relation or substantial relation on the matter of dispute and in such matter it is also required to make the court satisfied that the individual duly represent into the matter. Evaluating such matter of facts, this court has interpreted in the case Radheshyam Adhikari saying: "If can be entered any or every kind of public interest matter

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under the extra-ordinary jurisdiction of this court, the flood of such petitions may also affect the efficiency and capacity of this court and which may also ends the purpose of the said constitutional provision. That is not the intention of the constitution.” In view of the concept of the public interest litigation and the principles laid down by this court in relation to various disputes, it seems the meaningful relation between the petitioners and the disputed matter, serious concern and also seems justiciable for its settlement therefore seems to attend before the court by taking public interest litigation.

24. On the basis of the conceptual background mentioned herein above, there is a need to consider whether the writ petitioners have the right to lodge petition on public interest litigation. In view towards the disputed matter, basically the matter of giving sacrifice of the big numbers of animals in Nepali society at the time of Gadhimai festival; some matter of superstition and fundamentalist behavior in this relation; cruel, brutal and inhuman behavior; effect to environment due to the animal sacrifice; negative effect on the public health; the matter of quarantine examination of the imported animals and birds from foreign countries and possible transmission problem of diseases; the matter of not implementing Act until 17 years of its promulgation by the legislature have also been raised when the petitioners have attended in the court seeking judicial decision. The above matters are obviously public interest litigation and public concern matters in prima fascia basis. Fundamentalist nature of some Hindu religion practicing people and superstition somehow remain in the country is obvious to Hindu religion practicing people in the country; due to the animal sacrifice, the environmental problem raised due to the animal sacrifice, the matter of its effect to public health would be the matter of concern of common conscious citizens. The cruel behavior to be done while transporting animals and birds from any corner of the country from east to west should not only be taken the matter of concern and interest of the local people around

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Gadhimai area. The matter of not bringing the Act into effect even 17 years later of its promulgation should not only be taken as the person matter of interest, concern or significance of any individual. It seems that the above mentioned matters are related to constitutionally guaranteed right to dignified life, right to religion, right to clean environment, right relating to health, right to foods, consumers right and also are the matters of adequate implementation of the law. This context has been inserted in the existing Constitution and previous Interim Constitution of Nepal, 2007 in order to maintain welfare state connecting the matter in the directive principles and state policies of the state. There is no doubt on the matter that among the writ petitioners some had already worked as lawmaker, some are law practitioner advocate and some are social activist working in the field of animal rights. There is no reason for considering them of being incapable to represent any matter of public concern henceforth it seems that the petitioners have due right to attend the court with the matter of public concern and interest.

25. In consideration of the second question on whether or not to issue order to stop or close the tradition of animal sacrifice prevalent in Gadhimai temple on the demand of writ petitioner Rajya Laxmi Golchha in Writ No 071-WO-0372 therefore there is a need to analyze some matters of religion, cultural and social aspects. The tradition of animal sacrifice has become a matter of religious faith of some people. This tradition has also been taken as a matter of discussion in terms of cultural rights in some context. A section of Hindu religion practicing people have significantly following the animal sacrifice tradition. Therefore, it has become a social reality and a section or community of Hindu religion practicing people has strong desire towards animal sacrifice. The animal sacrifice tradition is prevalent in Nepali society and in the numbers of shrine and temples and in relation to special offering, animal sacrifice is continually giving. This is the reality of our society at present. There is a need to seriously

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rethink on this side whether or not to give continuity of this social reality and context further continue.

26. Present age is the age of science and conscience. The modern age cannot accept the fundamentalist superstition. Some of the illogical, inhuman and socially disturbing practices and customs of the progressive development of the society prevalent in the past have enough disregarding examples. If does not disregard the matters conflicting with the change of the society, the destination of change we have been expecting will be pitiable and poor. Replacing old practices are required to establish new practices. The old concepts prevalent in the society with various names like culture, practices and customs are needed to be displaced. If to continue all the old practices in the various names like culture, practices and customs accepting them, there will be no possibility for the modern change of the society. Our social reality reflected by our Great Poet Laxmi Prasad Devkota in the language of his poem is suitable to cite here: *“Machhhele kati ke garyo, piesakyo bramhanda nai tantani; hamra bahun hami makhha chha ajahi tuppi, janai, kandanai” or what has been done by the men, took the sip of the world itself, our priest, we are still satisfy with our tuppi, janai, kandani”* This expression of the Great Poet is symbolic and has deep and strong message of change of the society. If we accept that whatever has been done since the past is good and unchangeable, there is no possibility of change in the society. We should dare to give up bad things and to accept good things. This is also a formula of human development. The animal sacrifice should also be considered with this angle.

27. Probably, neither it is required nor possible to discuss on religious principles in this present context. Now, it may not be suitable to argue that the matters of concepts of religion are the matters to be settled by the experts of religion (pundits). Therefore, the matters of religion and ways are not the matters to be determined by the court. Even though, since the writ petitioners

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have raised questions on the matters of religious concept, belief and superstition and the opponents have also cited the freedom of religion to justify the animal sacrifice therefore it seems that the religious matters are in the center of dispute therefore brief or symbolic citation of religious context is required to settle the disputed questions.

28. With the study of great manuscript of Hindu religion, it seems the non-violence viewpoint in the main course of religion has been accepted. With the study of Ved, Upanisad, Puran, *Ramayan, Mahabharat, Geeta*, we cannot find any example of giving animal sacrifice by the God and the people with the character of divine power and other good people like rishi *maharshi*. Even though, it seems that the said religious manuscripts have given the message that protecting the lives is the duty of human being. It does not seem of giving animal sacrifice or giving message of animal sacrifice by Hindus Gods Ram or Krishna. There is no religious evidence of giving animal sacrifice by any of Yogi, Maharshi, Santa and Sadhaks while performing *Yagya or Hom*. On the other hand, there are some examples that those who had evil nature (rakshyaks) like Rawan or Kansha who had not only given animal sacrifice but also given human sacrifice. If need to talk about the religion, we have accepted the God to Ram, Krishna- not Rawan or Kansha. Whom we have been accepting as the God, we need to be inspired with the life and need to be guided with the character of the same. Whom we have been taking as villain, his character cannot be our matter of interest and follow. Can't have faith in one way but making character into another way. Killing, violence is the introduction of nature of evil. In view in this context, the practice of animal sacrifice should not be taken relating to the religion. In fact, the Hindu religion has given special priority to non-violence. It seems that for the big numbers of people who have been accepted non violence and vegetarian nature has become the animal sacrifice as a serious matter of persecution. This persecution is

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not only associated with our religious matter. The matter of animal sacrifice has also been associated with the social goodwill and harmony.

29. It seems that some people have the concept of giving animal sacrifice in order to make happy Goddess Bhagawati. Defendants (written reply submitting parties) have also tried to justify the practice of giving animal sacrifice by citing the same thing. It seems that even some people also have the concept of making the life of animal and birds successful by giving sacrifice. According to the religious manuscripts Goddess Bhagawati has been known as "*Jagat Janani*". Janani is the mother. As per the religious concept, Goddess Bhagawati is the mother of the entire life. For the mother, incomparable love and affection shall have with every child. How to make her happy by giving sacrifice of the child of the same mother? It is not a matter to be known with logic. It seems that some have concept of giving sacrifice for gaining power. In fact, if we see, we can find that some people who do not have faith towards the sacrifice tradition have also become powerful and also become the ruler. We can see examples anywhere in the society that those people who love for giving sacrifice are poor, helpless and weak. The capacity of any person, labour, nature of work, contribution, willpower, context and coincidence might be related for whether or not gaining power by any person; the traditional nature of giving unseen matter, imaginary things to give the source of power by covering with religion will not be possible for progressive change of the society. Giving traditionalism or superstition under the veil of religious concept and belief and being blind supporter is not reasonable. Raising social awareness in this context is essential.
30. Keeping adore, faith and friend-feeling to every life is the objective of every religion. It is not suitable for the modern age to brutally kill thousands of animals in the name of religion or practice. Due to the extreme behavior of such practice, extremely pitiable, condemnable act against the humanity have also been published somewhere. A group of ideology against the

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practice of animal sacrifice has also been taken against Hindu religion in our society. Anyway, it is not good to understand religion and culture as a part of violence and support it. Giving the coverage of religion to fundamentalism and superstition, should not allow blocking the current of progressive change of the society. Practice of sacrifice is not suitable behavior of twenty first century's modern culture. Due to that reason, controlling on the practice of sacrifice, stopping or closing to it is an urgent.

31. Nepal is a holy land of various *Rishi, Sadhu and Santa*. It is the working land of Janak. Nepal is the birth place of various national heroes including Sita, Gautam Buddha. Our societal religion and social moralities and norms and values are guided with "*Ahimsha Paramo Dharma*" or "*Non- violence is the biggest religion*". On the basis of adore, affection, love and goodwill our social values are made. In fact, we should give the sacrifice (giving up) of *kam, krodh, lova, moha and irsha* (extremism, proud, greedy, affection and jealousy) which are the evil practice. It is not good to think for doing religion by brutally killing millions of innocent animals. Now holy Nepal-land has been known as largest animals sacrifice giving land across the world. This matter cannot become a matter of proud in the modern society.
32. The reasonability testing of animal sacrifice is also essential in terms of ecology. This world is the common residence of men and other animals, birds, water lives and plants. Thinking in terms of the interest of the men also, ecological protection seems essential for health of human being and happy life. If breaks the eco-system, the life of the men shall be difficult and disgraceful. If thousands of animal sacrifice is giving sacrifice to the Gadhimai temple alone, how many animals have been given sacrifice to the other temples and shrines of God and Goddess. Instead of lack of specific figure, we can easily estimate that this number will be a big and troubling. This has definitely created adverse effect to ecological balance. Giving continuity of such situation shall not be in the interest of the lives and human being.

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33. Now, it is contextual to discuss how much it would be suitable to issue immediate order in order to stop practice of sacrifice in Gadhimai temple. In this view point, the social context or objective reality of the society is especially considerable part. Our shrines and temples remain in hundreds of numbers, therefore obviously we can estimate of giving thousands of animal sacrifice in such places in daily basis. Gadhimai temple is one among the various other such places where animals are giving sacrifice. Documents attached with the case-file and pundits of the temple and other office-bearers of temple management committee attended before the bench during the discussion have shown the figure of animal sacrifice around one hundred thousand of animals and birds in a single of the festival including 25/30 thousands of he buffalos. This has clearly shows that- thousands of people have their faith on it. The practice of animal sacrifice is prevalent in Nepali society since a long time and in various shrines and temples animals are giving sacrifice. Animal sacrifice is not only given by individual basis but there are instances of giving animal sacrifice with the expenses of the government. It seems that by getting support from the Government and with the means of Guthi, animals are sacrificed on the occasion of some festivals. Whatever this is good or bad but this has deeply rooted in Nepali society and become a matter of cultural norms. Therefore, undermining all this social context and reality, it is not reasonable to direct by this court for immediately stopping animal sacrifice. But it does not mean to continue the practice of animal sacrifice. In view point of every aspect religiously, socially, culturally, ecologically or morality and logical way, it would be essential to stop the practice of animal practice. However, raising public awareness is essential for it in the first place. The main basis of the social change is social awareness and the change accepted by the social awareness would be sustainable and durable. By addressing various aspects including social structure, faith of the men, social norms and values and making strategic plan to end the practice of sacrifice within specific timeframe,

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programmes should be operated. In this way, sometime may require for stopping the practice of animal sacrifice. Immediately, ways of control could be adopted. Controlling the act of sacrifice which has been increasing in daily basis, attempts could be made to decrease the quantity of it by collecting attractive fees, determine process oriented terms, determining maximum numbers of animals sacrifice, determining maximum and minimum age for the sacrificed animals, prohibiting sacrifice of the sick and unhealthy animals would be necessary and suitable terms for preventive measures to control animal sacrifice which would lead animal sacrifice towards frustration and discourage. Since this matter needs to be addressed accordingly therefore serious attention should be given towards it hence it seems reasonable for issuing directive order in the name of the concerning authorities of the Government of Nepal to do accordingly.

34. Now, it seems suitable for discussion on the third question on whether or not to form a committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 BS to control inhuman, cruel or torturous behavior to the animals and birds brought for animal sacrifice. For settling this question, rights of the animals and the practices in other countries need to be discussed firstly.
35. With the study of various national and international legal documents, it seems that every animal shall have the right to life and it is essential to protected by the Act. Even the animals have the right to respect and regard and such rights should not be violated in arbitrary manner as this concept has been established in the contemporary world community. With the efforts of World Society for the Protection of Animals, controlling persecution on animals and with an intention of establishing welfare to animals Universal Declaration of Animal Welfare has

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been issued. The World Organization for Animal Health (OIE)³ has been working inspirable work in the field of animal health and animal welfare. This animal health world organization has determined the standards as an animal is in good state of welfare if it is healthy, comfortable, well nourished, safe, able to express innate behavior and if it is not suffering from unpleasant states of such as pain, fear and distress.⁴ In Chapter 7.1.2 of OIE Guidelines, the following five types of freedoms have been mentioned.⁵

1. Freedom from hunger, thirst and malnutrition;
2. Freedom from fear and distress;
3. Freedom from physical and thermal discomfort;
4. Freedom from pain, injury and disease; and
5. Freedom to express normal patterns of behavior

36. There is a common practice to recognize cattle as “assets” of men. Even though, some cattle fall under protected category and despite some animals come under the ownership of individual, the responsibility of their health and protection comes under the state. Therefore, despite any property might be the private property of any individual, its use cannot be done by that person randomly. Being under the standard prescribed by the law, use of own property should be done within the prescribed standard. There is life with the animals and birds as like as human being therefore admire and care should be done while using the cattle in comparison to use other assets according to the concept developed in the contemporary international area.

³ OIE is an intergovernmental organization and its office is situated to Paris of France. On January 25, 1924, its name was maintained The Office International Des Epizooties but its name has been changed into World Organization for Animal Health in 2003. But in respect to its contribution, its Acronym

⁴ An animal is in good state of welfare if it is healthy, comfortable, well nourished, safe, able to express innate behavior and if it is not suffering from unpleasant states of such as pain, fear and distress.

⁵ In some context, known as Brambell’s Five Freedoms, such five types of freedoms are known as the fundamental freedoms of animals.

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37. The concept of right to life of the animals is the legal concept developed in twenty century.

The modern constitutions have recognized the right of life of the men as the fundamental rights. This is an inviolable and inseparable right. This right to life has right to respect and admiration, clean and healthy environment has been consisted. Under the matter of this clean and healthy environment, the right to life also gets connection. Apart from this, the animals have their own different rights. Basically, the domestic cattle have the right to live in clean hygiene environment, right against unnecessary distress from men, right to food, and getting shelter in shed and hut and protecting such rights would be the duty of all concerning cattle owners. Therefore honor and respects are not only the rights of men but also become the matter of concern of the animals. Beating the animals, approaching tails, causing to carry heavy load, causing torture, cruel activities and acts are matters against the activities are recognized and adopted by the modern society and against the law. Regulating and managing various kinds of scientific testing on the animals, attempts have been made to bring under suitable limitations. Similarly, due to the developed aspects, we should also get advantages. But in view towards our reality, inspiring state is not seemed.

38. While making conclusion of anyone's rights, it should be based on whether that object can talk, whether can give reason and whether can suffer or not according to Jeremy Bentham.⁶ While ensuring rights, he stressed on the concept of acknowledging suffers as the main basis. As like as the man express suffer in the same manner, the animal also suffers and also expressed in own language. The rights of the animal shall not be determined on the basis of how much it is useful to human being. Also the animals have the capacity and behavior to feel suffer, happiness, fear, hopeless or pain or loneliness. The rights have been determined and

⁶ Jeremy Bentham mentions in his book named Principles of Morals and Legislation 1789 mentioning, 'When deciding on a being's rights, "The question is not Can they reason?" nor 'Can they talk?" but "Can they Suffer?"

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should be determined on that basis. According to traditional utility and protectionism concept, animals have basically been taken as the useful objects but in the latest time, the profounder of the animal rights have advocated that the animals have also their rights and forwarded the concept and said that their protection falls under the liability of men. In his book *Animal Liberation*, Peter Singer states: “The basic principle of equality does not require equal or identical treatment; it requires equal consideration.” Need to analyze the matter of rights of the animals from this point. The animals should get right to live being above from suffer and exploitation.

39. According to modern concept of animal rights, it is considered that the other animals other than the man also have right to live being above from torture and suffer. On the basis of ecological differences, there should not have discrimination on moral values and basic protection of life. There is advocacy in this regard since 1970 in this part. In this context, famous writer and social engineer Richard D. Dwyer has forwarded the concept of “Speciesism”⁷ Comparing with caste-based discrimination, sex-based discrimination or colour based discrimination, he forwarded the concept to control speciesism. On the basis of being different just with the ecological introduction, this concept stresses on the animals should not be deprived of their right to life. This concept has been developed with the principle that there should not be any kind of stress prevalent in “*Matsya-Nyaya*” where the powerful could suppress the weak.

40. In view of giving a glance towards the rights of the animals, protecting the animals or on the matter of rights of animals separate agreement should not be made in the international level. In the meantime, the United States has been working being centric towards the rights of the

⁷ In Oxford English Dictionary, Speciesism has been mentioned, “the assumption of human superiority over the creatures, leading to the exploitation of animals.

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men. But no separate covenant or convention on the rights of the animals has been made. Still a big work remain undoing in favor of the rights of the animals and birds who has been giving company to mean in happy and sad moments and also become the objects of food as well. In terms of environmental justice, some matters of right to animals used to be addressed. According to environmental justice experts, in terms of the rights of the animals, the international environmental justice could be divided into three stages of its progress of development:

41. In the first stage; the concept of nature conversation has been developed for protecting the interest of the human being. In this spirit Declaration on the Protection of Birds Useful to Agriculture 91875), Convention Designed to Ensure the Protection of Various Species of Wild Animals, which are Useful to Man or Inoffensive (1900); Convention for the Revolution of Whaling (1931) have been issued. Such convention and covenant have been concentrated to ensure the rights of the men to use the animals. In the second stage, beginning of intergenerational equity concept and the progress of change towards the concept of anthropocentrism. For example, the Whaling Convention 1945 can be taken. In its preamble, it seems mentioned the protection of Whale for with an interest of the future generation.⁸ Through this expression, it seems that the protection of whale has become the matter of fulfilling the interest of the future generation therefore the Convention has been made. Similarly, in the Stockholm Declaration, it is stated that it is the duty of the human being to protect ecology and to careful and preplanned use for the present and the future generation.⁹

⁸ It is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the Whale Stocks-Preamble of the Whaling Convention, 1946.

⁹ “Man bears a solemn responsibility to protect and improve the environment for present and future generations ...the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management”- Stockholm Declaration.

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Later, it has been mentioned for sustainable development and in result: the matter of animal protection has also been addressed to some extent. In the third stage, the right of the nature has been taken as the significant right of the cultural preservation and its intrinsic value has been accepted. In the UNEP Biodiversity Convention (1992), awareness towards natural conversation has been accepted, its ecological minerals, social, economic, educational, cultural, entertaining values have been adopted and declared for not discriminating among any life on their self-respect on the protection of their life.¹⁰

42. In relation to the rights of the animals and their protection, such context as mentioned herein above have been mentioned and now it would be contextual to mention in relation to do cruel behavior to be done against the animals. The cruelty against the animals or inhuman behavior means the intentional suppress given by the men. Stress is stress in reality, if it is not prohibited by the law, it cannot be said that there is no social and moral responsibility on it. Stress, cruelty and being suffered with the cruelty are the behavior of the animals. The rights of the animals should be taken on the same basis. The animals should not be taken as the objects of use. It would be suitable to adopt human behavior towards life-behavior remain in the animals.¹¹

43. There are two ways—active and passive—to cause stress to animals. Keeping cattle without giving foods and water, do not manage for shed or hut as per the adverse of weather, remain without getting treatment from veterinary doctor at the time of being suffered with illness are the matters to cause stress passively to animals. There might be various ways of causing direct

¹⁰ UNEP Biodiversity Convention (1992) has also included the matters: Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic biodiversity and its components. And further states, “Every form of life is unique, warranting respect regardless of its worth to man.”

¹¹ Charles Darwin wrote a book under the title of The Decent of Man: “There is no fundamental differences between man and the higher mammals in their mental faculties.”

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stress to the animals. In this, the ways from willful stress causing to animals due to the stress and anxiety and to religion, custom, culture, business and other matters relating to entertainment falls. Unnecessary scientific examinations or demonstrations have also been the matters of stress identified by the animal rights activists have also been taken as the objectionable stress on animals. The mental stress shall be more deplorable than the physical stress. The animals shall also have the same mental feelings as lie as the men. Therefore, in their article “Animals in Transition” of Temple Grandin and Catherine Johnson stress that the extremely stressful behavior to me is to terrorize the animals by showing fear and anxieties.¹²

44. There is also a need to give a glimpse on the use and tradition of other countries. It would be the duty of the human being to keep compassion to every life. The Supreme Court of India, in its interpretation to Article 48, 48A and Article 51 A of the Constitution, every citizen shall have the compassion and kindness to life laid down the principle.¹³ Similarly, humanism is another serious part. Its meaning is to show human feelings to all the common lives. Not giving improper torture and stress to the animals and doing protective act has also been the matters of humanism in this referred matter. The matter of animal rights has been taken under the eco-centric principles by the Indian Supreme Court. In terms of some disputes including T.N. Godavarman Thairumpulpad case can be taken with the interpretation of the Supreme Court of India as the matter of example¹⁴. The attention of modern animal rights activists have been drawn on the use of animals on non-essential activities. Acts like Bullock-cart race,

¹² In their own words- “The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals. I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they’d probably pick fear”.

¹³ See: State of Gujarat V. Mirzapur Moti Kureshi Kessab Jamat and Others (2005) 8 SCC 534.

¹⁴ See: Godavarman Thirumulpad Vs. Union of India and Others (2012) 3 SCC 277, T.N. Godavarman Thirumulpad V. Union of Indian and Others (2012) 4SCC 362 and Centre for Environmental Law World Wide Fund, India V. Union of India and Others (2013) 8 SCC 234.

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Jallikattu¹⁵ are the games only to play for the purpose of getting entertainment to men, due to which, stress used to be given to the animal, stressed to be caused and which should be presumed as “non-essential activities” seems that the Supreme Court of India has passed an opinion to prohibit it.¹⁶ It seems also that according to the provision of Prevention to Cruelty to Animals Act and Animal Welfare Act, the Government of India has formed committees including Committee for the Prevention of Cruelty to Animals/Animal Welfare Board and operated. Cruel and inhuman behaviors to be done to animals have also been criminalized. Not only to the government level, civil society, or from private sectors also there are so many examples of launching various programmes against brutal and cruel activities against animals.

45. The rights of the animals have been managed in various countries on the basis of eco-centric principles. With the second amendment of the Constitution of Germany in 2002, it has been provisioned to rest the responsibility to protect “animal dignity” to the state. The Animal Welfare Act of Germany has protected on the animals by prohibiting any kind of activity of fight between the animals which may cause stress to the animal or cause physical loss. It seems that in some countries including Switzerland, Slovenia, Austria have constitutionally ensured the balance between the rights of the individuals and the rights of the animals and prohibits unnecessary stress, loss or fear to the animals. According to the law of Britain, any person convicted on doing cruel behavior to animal shall get up to 51 weeks jail sentence and up to 20,000 Pound fine. Around a century ago, Britain had enacted the Protection of Animals in 1911. It seems that a local pressure group Royal Society for the Prevention of Cruelty to Animals had been working for the protection of animals. A strict jail term and fine has been

¹⁵ A tradition existed in Tamilnadu, India where a game used to be played by giving physical and mental torture to an ox to get entertainment.

¹⁶ See: Animal Welfare Board of India Vs. A Nagaraja & Ors, SC India, Civil Appeal No 5387 of 2014 (Judgment Delivery: May 07, 2014)

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determined to those who cause strong labour to animals. Various laws have ensured protection to animals including London Police Act, 1839, Protection of Animals Act 1934, Abandonment of Animals Act 1960, Criminal Damage Act 1971, Animal Welfare Act, 2006 by ensuring provisions of prohibiting torture and loss to animals. Norway's Animal Welfare Act, 2010 states: "animals have an intrinsic value which is irrespective of usable value. They may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain." Such provisions can be taken as welfare provision for heading towards protecting the animals' rights.

46. The law of Egypt has criminalized the act of beating and killing inhumanly to domestic animals. With the active role of the organization named "Egyptian Society for the Prevention of Cruelty to Animals" established with the efforts of Britain 100 years ago, the tradition of "buffalo fight" has been abolished. The criminal code of South Sudan has also prohibited the behavior of cruelty and stress to animals. The Act of Sudan has penalized acts of causing for carrying heavy load on animals and taking service from minor, old and sick animals in a cruel manner. Moreover, citing here the provision of Section 196 of Criminal Code of South Sudan is contextual:

"Whoever cruelly beats, tortures or otherwise willfully ill-treats any tame, domestic or wild animal, which has previously been deprived of its liberty, or arranges, promotes or organizes fights between cocks, rams, bulls or other domestic animals or encourages such acts, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding two months or with a fine."

47. Argentina and Canada have criminalized the cruel behavior against animals. It seems that in the American Animal Welfare Act, 1966 has provisioned on the behavior on animals, research and study work and its use and the welfare of the animals management. Japan's Welfare and

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Management Act of Animals Act, 1973 states: “No person shall kill injure or inflict cruelty to animals without due course.” This Act prohibits causing stress to various kinds of domestic animals like cow, horse, goat, sheep, pig, dog, cat, pigeon, chicken, rabbit, duck and birds and prohibiting any kinds of stresses and cruel activities and without suitable reason up to one year jail term shall be given as per the situation. It seems that up to two years jail sentence and fine up to 30,000 Euro¹⁷ shall be given to those who do cruel behavior to animals. The limitation of this sentence has been determined up to three years jail term for such offense in Germany and Italy. The limitation of the fine has been determined from minimum 3000 to maximum 1,60,000 Euro.¹⁸ In order to do protection animals and control cruel behavior against the animals, various legal provisions has been made in Australia and some of the activities have been criminalized. Federal Animal Welfare Act, 1992 and according to the provincial Acts works is being done for the protection of animal protection.

48. The matters mentioned herein above are just brief representative examples. In various other countries in the world, efforts are being made for the protection of rights of the animals. Cruel behaviors against the animals have also been criminalized. Various programmes on protection have also been implemented. But our situation seems different. In view of legal or practical way, our efforts have been abandoned with weak conceptual grounds. Firstly, Act relating to animal rights is incomplete and imperfect. Secondly, it does not seem of adopting efficiency for the implementation of the existing laws. Not addressing the cruel behavior against the animals and not penalizing such acts could be taken as a best example of this. Even though some few provisions are there in the Animals Chapter on Muluki Ain (Country Code) in relation to the animals but which is limited against beating and killing or injuring cow and ox.

¹⁷ Around equal to Rs 3.5 million.

¹⁸ Around twenty million Nepalese Rupees

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It seems that being inspired with the Hindu religion and culture to worship cow as Laxmi, this law has been enacted. It does not seem mentioning any other cruel behavior against other animals and birds except cow and ox in that Chapter on Animals. Some of the other cruel and inhuman behaviors even against cow and ox have not been included in this Act. The Acts including Animal Health and Livestock Services Act, 2055 BS and Animal Slaughters and Meat Inspection Act, 2055 BS have also not penalized cruel and other inhuman behaviors against animals.

49. Even though doing cruel and inhuman activities against animals have been prohibited in Section 27 of Animal Health and Livestock Services Act, 2055 but it has not been implemented. In Section 27 of the Act, which was enacted around 17 years ago states: “A committee can be constituted by the Government of Nepal by publishing a notice in the Nepal Gazette in order to stop inhuman behaviors against animals and the work, duty and rights of such committee shall be according to whatever has been determined into the same notice.” But such a committee has not been formed yet. Definitely, for the protection of animals’ rights, this provision is not enough. It is unfortunate for not being implementing such an Act which was enacted 17 years ago even for symbolic way.
50. The relation between human being and animals and birds is deep. The animals and birds used to be the foods of the human being; daily consumable milk used to be produce from animals; the cloths which has been used to cover the body of the human being used to be produced from the weather or feather of the animals and birds; various medicines which have been produced for the protection of human being used to be produced from the various body organs of the bodies of animals and birds. Sometime, the animals and birds used to be the friends of human being; the security of life and property and care and protection of such property has been doing by animals and birds like dog and parrots. Animals and birds have become the

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means of entertainment. Animals have also been used as the means of transportation and load carters. Animals are used for the irrigation of land; the **excrement** produced from the animals and birds have been used to make the soil productive. Some of the animals become the foods of the other animals. Without adopting seriousness on such gorgeous ecological life-cycle but doing brutal, ruthless and cruel behavior would become itself as animal-kind of behavior. Human being is conscious human being. The human wisdom should be reflected into the practice. Ultimately, doing love, affection, adores and kind behavior to the animal would ultimately support and protect the human civilization. This fact need to be adopted into the system of governance.

51. The cruel behavior against animals is rampant across the society apart from Gadhimai festival in other various contexts. **Plaguing** for a long time without giving sufficient foods and water to ox and buffalos, beating cruelly, causing a heavy load to the cart for carrying them due to which horse, donkey and **sheep**, while transporting animals through truck, tractor, tying the rope by making whole in the nose so causing for shedding blood, keeping one animal to another animals without managing enough space incidents are seems common daily routing. It seems that chickens have been transporting one place to another by making goods as non living things. There is a practice of giving sacrifice without discrimination to animals between newly born or old animals. It seems that there is a practice in some class of the society that even being inspired with the psychology of religion, there is a concept against giving sacrifice of such animals which are sick. However, it does not seem to be defined and directed as public accountability. It seems that a large numbers of animals have been killed in the name of animals sacrifice. Caring men or animals all the acts of terroristic activities have become common activities. Even though cruel behaviors are being occurred against the animals in various names including religion, culture, customs, agriculture-farming, business and trade,

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vehicle transportation, entertainment but no successful attempt has been made. It is not good to allow existing such incidents. Effective attempts need to be launched by the Government of Nepal to ensure the rights of animal rights, arranging animal welfare and stopping every kind of cruel, ruthless and inhuman activities against animals. Therefore, it seems reasonable to issue necessary order in the name of the defendants to form committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 BS; recognizing animal rights and defining cruel, ruthless and inhuman behavior against animals and panelizing such act is a need by enacting Act; and preparing mechanism for effective implementation of the Act.

52. In view on the fourth question on quarantine examination of animals and birds to be brought during the Gadhimai festival, it seems from the written reply of the Central Animal Quarantine Office out of the defendants, the Government of Nepal's Animal Quarantine Office at Birgunj and establishing Quarantine Check-Post at Matiarwa, Bara District. It seems the defendants have also accepted the matter of examining Animal Quarantine. There are various provisions of Animal Quarantine in Chapter 2, from Section 3 to 15 of Animal Health and Livestock Services Act, 2055 BS. Even the Animal Health and Livestock Services Rules, 2056 BS also has the additional provision on the examination of quarantine and process-wise arrangement. It does not seemed of making regulatory provision in the Act and the Rule to be formed permanent or temporary types of quarantine check-post, to be built quarantine place, to be appointed quarantine officer, the exporter should be kept animal, animal products, animal products goods for the period of time of examination and giving certificate of quarantine as well. It seems that mainly, the above mentioned provisions have made "some animal, animal goods or animal products goods should be examined quarantine.

53. The objectives cannot be fulfilled only with the existence of the Act; the relevance of the Act shall be transferred into reality if the Act is implemented. Therefore, it should be suitable to

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make a view into the implementation of quarantine examination. None of the defendants have cited the situation of the examination of quarantine on the basis of facts and figure. There is no doubt on giving sacrifice of millions of animals in Gadhimai temple. Whether there is sufficient area to keep such a number of animals and whether examining technical human resources are sufficient or not? Whether the examination is being regularly or not? Whether the examination is regular or not? How many certificate of quarantine examination of animals has been issued? How many animals were banned from the entry of Nepal? Whether there is any example or not of returning animals to the concerning country? Whether there were any inspections or control over animals trafficking from other open entry point apart from the tradition point? Some of such questions are unanswerable. The objectives of the Act shall not be fulfilled just with the examinations which are only having the intention to fulfill the formality. ‘Peste Des Petits Ruminats’ named infectious disease was spread in Dhanusha, Mahottari, Sarlahi, Bara and Rautahat districts in 1995 from the animals brought from India to give sacrifice in Gadhimai and while beginning “mass vaccination” in 2001 the problem was seen up to 52 districts according to the news published ¹⁹in 2012 by Veterinary Epidemiology Centre under the Animal Health Directorate. Easy assumption could be made that such a situation was out broke due to the weakness of quarantine examination.

54. It is an essential and significant work of examination of animals imported from the foreign countries. Due to the open boarder, during the process of quarantine examination, “exporter should export the animals, animals products or animals goods through the way of quarantine check-post” as per Section 9 of Animal Health and Livestock Services Act, 2055 BS hence the provision of the Act should be followed strictly. There is no guarantee of providing such service from Birgunj Animal Quarantine Office and Bara District based Matiarwa Animal

¹⁹ See: Status of Animal Disease Outbreak in Identification of Provisional Disease Free Zone/Area, Volume-2, No.1, Veterinary Epidemiology Centre, Tripureshwor, Kathmandu, February 2012, Page-13.

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Quarantine Check-Post. With the study of the documents attached with the file, it seems that there is a need to make quarantine examination work an effective one by forming necessary mechanisms with effective and reliable management and making provision of receiving certificate as a compulsory one.

55. The fifth question need to settle is—whether or not to issue order to manage the meat of the animals and birds and their effect to the human being in order to control the effects for the human being by the determination, examination of quality of the meat and to manage and control the environmental pollution? For the settlement of this question, on Gadhimai temple and animal sacrifice, the following facts produced by the writ petitioners need to be discussed briefly:

“There is a practice of giving sacrifice of five types of living being like Goat, Buffalo, Duck, Hen and Mice which is popularly known as *Panchabali*”. There is a practice of giving sacrifice of more than hundred thousand animals out of which thousands (around 25,000-30,000) buffalos, and other animals and birds in every festival.²⁰ These animals are brought from various parts of Nepal and India.²¹ Even though it is said that there is a check post in Bara district based Matiarwa and Birgunj, no effective and reliable management of animal quarantine examination is not found. While transporting the animals and birds for giving sacrifice and killing and doing cruel and brutal behavior is being done. The animals brought to the place for giving sacrifice have faced cruel and brutal behavior by using the weapons

²⁰ There is no official figure of sacrificed animals. In a writ petition filed by advocate Arjun Kumar Aryal states of giving sacrifice of around five hundred thousand animals in a festival. This number has not been supported by any other matter. Even though, on the basis of the discussion in the bench with the officials including priest of the temple Mangal Chaudhari and Chairman of Temple Management Committee, Ramchandra Shah, it seems that more than one hundred thousand animals are given sacrifice in every festival in general therefore it can be presumed of giving one hundred thousand animals in every festival.

²¹ Indian Supreme Court has issued an order prohibiting illegal entry of animals in Nepal in a case Gauri Maulekhi V. Union Of India & Others on October 17, 2014. It is learnt that the process of bringing animals from India is still continue from the discussion of the Gadhimai Festival Management Committee Officials even though somehow animals import from India has been decreased due to this order.

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randomly by the priests and the others which can be seen by the other people. Even some resources have also been provided by the state treasury for the sacrifice. There is no systematic place for giving sacrifice but the animals have been killing the animals in the open space. Due to the wasted meat of the sacrificed animals, that area has become dirty and polluted and affects the health of the human being. This has created negative effect on the local 'religious', social and cultural life. Various media made publicity identifying this area as the biggest animal sacrifice giving place in the world. No regulatory work like the examination of the health of the sacrifice animals, inspection of the meat of the sacrifice animals, restricting the distribution of non-consumable goods has been done. For managing the work of controlling meat from being wastages, no arrangement of cold has been done. Arrangement of giving contract has been made for selling the meat of the sacrificed animals. A tender for selling the meat of the sacrificed animals was call on 2071/07/16 BS (November 02, 2014 AD) by disclosing the price of Rs 26.7 million. It seems that sometime, there is a practice of forcefully taking the meat of the sacrificed animals by the locals with robbery style and consumed.

56. The above mentioned facts are only some examples. Even though, this example itself seems enough to estimate dangerous situation created due to animal sacrifice given in Gadhimai festival. In this way, it can be easily imagine that with the work of giving animal sacrifice in rampant way has seriously created impact with the people's health. Due to the weakness of the management, the problem of scarcity or vacancy causes the public health and ecology more difficult and sensitive. Determining, examination and controlling the quality of the meat does not been arranged therefore the effect caused in the public health has not been made any study. While saying briefly, for the protection of public health and environment, it does not

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seem to be satisfy on the work to be done by the concerning authorities of the Government of Nepal with the basic works of management.

57. Some matters on animal slaughter and meat inspection have been attempted to manage by the legislature by enacting the Act. It seems that for this Animal Slaughter and Meat Inspection Act, 2055 has been promulgated. It seems that some useful provisions on the arrangement of selling healthy meat have been included in the Act. The Section 8 of the Act states: “Prior to kill any animal, in the area where animal slaughter house has been formed and in the area where there is not established animal slaughter house there is a need of inspecting meat by the meat supervisor.” Section 9 of the same Act states: “the animal which seems appropriate to slaughter need to slaughter in the slaughter house, but in the area where there is not established the animal slaughter should slaughter at the time and venue as determined by the meat supervisor.” Section 16 of the same Act, states: Whatever has been mentioned anywhere in this Act, in the festival being carried out since the ancient time, religious offerings, in the process like slaughtering animals for the purpose of any social gathering or religious festival there is no restriction on slaughtering animals and consuming the meat along with skin,”²² seems managing the provision. It seems that citing the same provision of the Act, the ad-joiners have tried to justify open sacrifice of animals in the Gadhimai festival. It cannot be justified of giving animal sacrifice in open manner just with the legitimate reason which does not prohibit animal sacrifice. It shall be the duty of the government agencies to adequately manage it. It shall not be logical to take support of the exceptional provision by sidelining the main provision of the Act. Exception to it, without the enforcement of the Act,

²² It seems in a dispute between Bikalpa Rajbhandari and others, on behalf of Law Students Society, Kathmandu V. Government of Nepal, Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu and others (N.K.P. 2072, Decision No 9319, Issue 1) decision has been made interpreting that that since the said Section 16 of the Constitution does not seemed contradictory with the equality provision of the Constitution therefore it does not seemed to be declared null and void by this Court’s Special Bench

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it does not seem suitable for the government to take support of such exceptional provision of the Act.

58. It does not seem of implementing Animal Slaughter and Meat Inspection Act, 2055 BS in other part of the country except some few parts of Hetauda municipal area.²³ It would be also a matter of strange of not implementing Act up to 17 -years would be strange. It is the accountability of the executive (government) to implement the Act within the reasonable timeframe. However, it does not seem of fulfilling this liability by the government till the completion of 17 years of promulgating the Act. In order to implement the said Act, Animal Slaughter and Meat Inspection Rules, 2057 BS has also been issued for doing necessary procedural arrangement. It seems that the Rules was issued saying “To be effective from the date of issuance of the Act in the area of when the Act came into effect” is ineffective due to the reason of non-enactment of the Act. While enacting the Act, the legislature had given some time for doing preparations to implement the Act from the prescribed date for which has only given relax of time to the government. Meaning of such provision does not mean of not implementing the Act till indefinite period. It seems that this court had issued directive order in a petition lodged by advocate Bhojraj Ayer in the name of the defendants to implement this Animal Slaughter and Meat Inspection Act, 2055 BS (1999 AD) in 2061 BS (2004 AD) by doing and causing to do necessary preparations for the implementation of this Act.²⁴ The order issued more than a decade ago the following details has been issued in regard to the implementation of the Act:

²³ The provision of Section 1(2) of Animal Slaughter and Meat Inspection Act, 2055 BS states: “This Act shall come into effect from the date prescribed by the Government by publishing notice in the Nepal Gazette in the area prescribed.” Pursuant to this provision, as per the notice published in Nepal Gazette on 2060/01/08 BS (April 21, 2003 AD) this Act come into effect to Area of Hetauda Municipality as per the date of 1st Baisakh, 2060 BS (April 14, 2003 AD). Except of it, other areas of the country, this Act does not come into effect.

²⁴ Advocate Bhojraj Ayer V. Rt. Hon. Prime Minister and Office of the Prime Minister and others, N.K.P. 2062, Decision No 7522, Page 435.

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“If enacting Act by the legislature for the welfare of the common public with specific objectives but the executive does not implement or enforce the same Act by citing the provision of the time given for the execution of the Act but remain silent for a long time but do not show readiness for the implementation of the Act shall create a horrible situation on the matter of human sensitivity. Following the enactment of the Act by the legislature but which doe does not have the nature to implement at once, the executive should make action plan to implement the Act in phase wise and need to implement as per the requirement, therefore it could be presumed of being fulfilled the objectives of the Act.”

59. In such a way, in regard to the implementation of the Act, which was promulgated 17 years ago was issued order by this court 10 years ago which has not been implemented yet is unfortunate and inappropriate. This situation cannot be suitable in the democratic system of governance. It cannot be taken of performing responsibility of doing any act if ignored the matter which was directed by the legislature and the court issued through Act and decision/order respectively. In view of the written replies of the written reply submitting authorities of the Government of Nepal, the existing legal provision and the acts to be performed in view of public welfare are found to be mentioned being aware, but could not produce any concrete and result oriented work towards the implementation. There is no such a situation of being satisfy the court from such baseless written replies. In this part, there is an urgent need to draw serious attention of the concerning authorities of the Government of Nepal.

60. While defining “Polluted food items” and “Sub-standard foods” by Section 2(B) and (C) of Foods Act, 2023 BS (1967 AD), the animal products have also been included. Section 3 of the same Act, states “No one can produce, sell and distribute, import or export polluted food items or sub-standard food items or storing such food stuffs for any reason.” It seems of

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declaring for awarding sentence and fine for any person of doing work in violation of such provision. However, it does not seem that during the Gadhimai festival in regard to the meat of the sacrificed animals, such a provision of Foods Act has not been brought for implementation. As a result, it seems that adverse impact on the public health has been occurred/remain the situation of happened. By this, it can be easily presumed of creating adverse impact on the adverse effect towards the environmental status easily.

61. Stating that “clean and healthy environment is the overall part of life therefore the clean environment comes under the right to life” principle has been laid down by this court in the dispute of Godawari Marble underlining that the right to clean environment comes under the right to life.²⁵ Even after this, in various disputes, it seems that precedents have also been set time to time therefore the right to live in clean environment has also been included under the right to life. The court gave the equal status of the right to environment as the fundamental right when it was not clearly gave the status of fundamental right by the Constitution. Sub-article (1) of Article 30 of the existing Constitution states: “Every citizen shall have the right to live in clean and healthy environment.” Sub-article (2) of Article 30 states: “The victim shall have the right to get compensation of the loss occurred due to environmental pollution and loss from due to the act of the perpetrators”. In fact, within the right to life, there shall be the right to dignified and prestigious healthy life. There is no legal and practical significance of presuming the right to life with an animal existence under the traditional concept. Therefore, the matter of right to live in clean and healthy environment is the constitutionally ensured fundamental right therefore there is an urgent need to protect and do necessary management for the protection and exercise of this right. Performing constructive role for exercising this right is also the responsibility of this court. Therefore, it seems suitable for

²⁵ Surya Prasad Sharma Dhungel Vs Godawari Marble Industries Pvt. Ltd. and others, N.K.P. 2052, Page 169 (Some Important Precedents of the Supreme Court on public welfare, Part-8, 2063, Page 7)

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issuing order in the name of the defendants to control environmental pollution and remain intact the clean and healthy environment by doing proper management of meat and other items, determining the quality of meat and managing blood, meat and skin in and around the Gadhimai temple in during the festival and due to other reason restricting from doing other work by causing of prohibiting adverse effect on the public health pursuant to Animal Slaughter and Meat Inspection Act, 2055 BS (1999 AD).

62. Issued writ order:

Based on the above analyzed grounds and reasons, in order to control on the tradition of giving sacrifice of the animals, don't causing adverse impact on the local environment and public health due to animal sacrifice, don't causing cruel, brutal and inhuman behavior to animals and birds, the following mentioned order has been issued in the name of the defendants to do and cause to do pursuant to Article 107(2) of the Interim Constitution of Nepal and Article 133(2) and (3) of the existing Constitution of Nepal:

I. Directive Order:

In consideration of religion, social, cultural, ecological, ethnic or logical view, existence of the practice of animal sacrifice is not appropriate. Therefore the animal sacrifice should be closed. However, our efforts on reform and change should be well managed; should not have the nature of destructing the social structure. Even though the animal sacrifice should be stopped but without considering social context and cultural reality, it does not seem appropriate to issue mandamus order to immediately stop the practice of animal sacrifice. Therefore, since it seems appropriate to stop the tradition of animal sacrifice and also seem essential to address the social and cultural values therefore the under mentioned order has been issued in the name of the defendants--Government of Nepal, Office of the Prime Minister and Council of Ministers, Ministry of Home Affairs, Ministry of Health and

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Population, Ministry of Science, Technology and Environment, Ministry of Culture, Tourism and Civil Aviation, Ministry of Agricultural Development, Animal Quarantine Office and the other concerning government authorities and Ministries-- to do as follows in order to stop or ban the practice of animal sacrifice:

- A. Directive order is hereby issued for preparing strategic plan and programme for addressing the various aspects such as social structure and context, faith of the man, cultural values to end (stop) the practice of animal sacrifice and bring phase wise basis and arrange for enact laws prohibiting the practice of animal sacrifice.
- B. Directive order is hereby issued to launch and cause to launch programme to raise public awareness and make by publishing and broadcasting in order to end the animal sacrifice by determining specific time frame.
- C. Directive order is hereby issued to discourage animal sacrifice by gradually controlling and decreasing the numbers of animal by collecting maximum charges from those interested to give animal sacrifice in an organized manner, determine process-wise terms, determining maximum numbers of animals for giving sacrifice; determining maximum and minimum age of the animals for giving sacrifice; prohibiting for giving sacrifice of unhealthy and sick animals and prohibiting for giving animal sacrifice in open and public place till the date of ending the animal sacrifice as mentioned herein above.
- D. Directive order is hereby issued in order to enact suitable law for legally defining the rights of the animals and controlling cruel behavior towards the animals is essential therefore in order to ensure the rights of the animals, promoting the welfare of the animals and prohibiting every types of cruel, brutal, inhuman behavior by penalizing there is a need to do study of the other countries and enacting laws as per our social context.

II. Mandamus Order:

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This mandamus order is hereby issued on the following matter notwithstanding with the directive order issued as mentioned herein above to end the practice of giving animal sacrifice without affecting the above mentioned matters:

- A. Mandamus order is hereby issued to do set up and caused to set up a committee or other necessary mechanism pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 to prohibit cruel, brutal and inhuman behavior to the animals and birds during the time of giving sacrifice or transferring the animals for giving sacrifice.
- B. Mandamus order is hereby issued to fully implement the Animal Slaughter and Meat Inspection Act, 2055 BS by doing and caused to do for arranging suitably; even amending the Act if required to implement it even though that a directive order has been issued by this court ten years ago in regard to the implementation of the Act which was promulgated by the legislature 17 years ago but no sensitivity has been adopted for the implementation of the Act but remain frustration reflecting an unfortunate situation.
- C. Mandamus order is hereby issued directing to make mandatory, reliable and effective work for quarantine examination and obtaining the certificate of the imported animal; and setting up check-posts in the necessary points and provide effective service by setting up other regulatory mechanisms.
- D. Mandamus order is hereby issued in the name of the defendants to control environmental pollution which may outbreak during the Gadhimai festival and maintain clean and healthy environment and suitably manage the meat and other items of the sacrificed animals, examine and determine the quality of the meat of the sacrificed animals and maintain the clean and healthy environment in and around the

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Gadhimai temple and manage blood, meat, skin or other things so that adverse effect shall not be caused to the public health.

E. Mandamus order is hereby issued in the name of the defendants for not inspiring or supporting directly on any act of giving or cause to give animals sacrifice and discourage and cause to discourage such an act.

63. Direction is hereby issued to Monitoring and Inspection Division of this Court in order to do periodic monitoring on the implementation and guaranteeing the complete implementation of this order through this order.

64. A copy of this order be forwarded to the Monitoring and Inspection Division of this Court and a copy be forwarded to the Office of the Attorney General for the notice to the opponents. Do other things as per the rule for forwarding to the Achieves Section.

_____ Sd _____

(Ishwor Prasad Khatiwada)

(Justice)

I concur with the above opinion,

_____ Sd _____

(Anil Kumar Sinha)

(Justice)

Bench Officer: Yam Prasad Banskota

Computer: Manjita Dhungana

Executed on Thursday, the 20th Day of the Month of Srawan of the Year 2073 BS (August 04, 2016 AD)

This judgment is translated by Advocate Ananta Raj Luitel

Licence No. 7112

The writ petition of 2071-WO-0371 by petitioner advocate Arjun Kumar Aryal and others V. Gadhimai Temple Management Committee, Gadhimai Bara and others, case: Certiorari, Mandamus and Prohibition.