

Supreme Court, Division Bench
Honourable Justice Dr. Ananda Mohan Bhattarai
Honourable Justice Sushmalata Mathema

Order

Date of Order: 2078.5.21

073-WO-1404

Subject: Writ of Mandamus

Petitioner: Amarnath Jha, aged 37, resident of Saptari District, former Tilathi V.D.C. Ward No. 1 currently Tilathi Koilathi Rural Municipality, Ward No. 1

Vs.

Respondent: Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu, et.al.

- The court must seriously consider the increasing scope and importance of environment, climate change and human rights law. The right of the people to live in a healthy and safe environment must all ways be respected. The court must recognize the adverse effects caused by floods and landslides and must exercise its power to protect the property of the people. The court's interest and concern ought to rise even when the rights of an individual is violated.
- Apart from protecting their rights and ensuring a dignified and secured life for individuals and communities affected by disasters this court has no other aspirations. Judicial activism need not be exercised by the courts, provided the government fulfils its responsibilities in a meaningful manner Nevertheless, if rights are violated and there is degradation of environment then it is the duty of this court to discharge its obligations.

(Para No. 25)

- When disaster strikes it becomes news for a while and some relief is also distributed, but with the passage of time the issue of rescue and rehabilitation of the victims is obliterated from the memory of the government. For the purpose of rule of law and the protection of human rights there needs to be a transformation in the thought process and in the state of affairs and the people should be able to live with dignity in a safe environment and this is their inherent and inalienable right.

(Para No. 26)

- Pursuant to the policies and programs formulated for disaster management, measures for mitigating human, economic and physical problems and losses must be adhered to in every stage and it is the responsibility of the State to manage and implement laws and policies for rehabilitation of the flood victims.

(Para No. 27)

- An order of mandamus is hereby issued in the name of the respondent to carry out a risk assessment of the areas that are prone to floods and to manage the rivers by constructing embankments, to observe the pattern of the flow of the rivers and construct robust and stable embankments in areas likely to be affected by floods and provided construction needs to be carried out on private land, alternative arrangements without causing any loss to the landowners such as relocation of the landowner to a safe place or providing appropriate compensation pursuant to the law should be provided and should construct or cause to construct the embankment.

(Para No. 28)

On behalf of the Applicant:

On behalf of the Respondent: Learned Joint Government Attorney Sanjiv Regmi

Precedents Cited:

- Nepal Law Reporter 2076, Decision No. 10203, Page 1573

Relevant Laws:

- The Constitution of Nepal
- Disaster Risk Reduction and Management Act, 2074
- Natural Calamity Relief Act, 2039

Order

Honourable Justice Dr. Anand Mohan Bhattarai: A summary of the writ petition submitted pursuant to Article 46 and Article 133 (2) of the Constitution of Nepal falling within the jurisdiction of this court is as follows:

Fact Section

The contents of the writ petition submitted by Sunil Kumar Chauhan representative of Amarnath Jha is as follows: that the petitioner is a Nepali citizen affected by the flood in Saptari district. On 2074/3/23 (corresponding to 7 July, 2017) owing to the incessant rainfall from Friday evening till Saturday more than thousands of houses in various rural municipalities of Saptari district have been inundated. 150 houses in Trikaul have been inundated by Mehauli River, 70 houses in

Bhediya of Tirhut Rural Municipality, 6 houses in Rupani Rural Municipality and 6 in Birendranagar have been inundated by Dudhaila River. Similarly, the flood in the Khado River has inundated Gajendra Narayan Singh Industrial Area, 300 houses in Tilathi, 150 houses in Belhila of Tilathi Koilathi Rural Municipality, 50 houses in Sankarpur, the office of Tilathi Rural Municipality, the office of Ward No. 8, and the Tilathi Health Post and a police constable has gone missing, and an unidentified dead body has been recovered. Where the houses have been inundated by the floods people have been forced to stay hungry since they are unable to prepare food, and peoples' mobility has been restricted since the entire village has been inundated. The flood water has contaminated the hand pumps and people have been compelled to drink contaminated water thereby causing serious health problems. Majority of the embankments constructed have been damaged by the flood and in many places the dams have been eroded by the floods. For the purpose of controlling the floods, 370 million rupees have been spent in Saptari district in the current fiscal year for the construction and renovation of embankments and spurs. However, even where millions of rupees are being invested annually, the number of flood victims is ever increasing. In the absence of appropriate and effective planning the lives of citizens residing in the area are at risk. This is an obvious example of community based discrimination. Over several years the course of the Khado River has been shifting towards Tilathi village, but owing to the presence of land owned by the local people, the initiation to build the embankment has always been a disputed matter owing to the lack of proper management and criterion. For public interest, the State can acquire private land by providing fair compensation but unfortunately this remains unfulfilled.

Therefore, based on the aforementioned facts, grounds, legal provisions and the status-quo of the local people and for guaranteeing the fundamental rights of the people, the petitioner hereby request the court to issue an order of mandamus ordering the authority to adopt appropriate measures for the construction of embankment and to make or cause to make proper oversight and management to control the flood and provided any private land is to be acquired, the same should be done by making alternative arrangements and providing compensation pursuant to the law. Likewise, the petitioner also seeks the court to issue an interim order in the name of the respondents directing the respondents to provide daily subsistence items such as food grains, safe shelter, drinking water and medical treatment to the people affected by the flood.

A show cause notice had been issued by this court which reads as follows: "What has happened in this matter? Why should the order sought by the petitioner not be issued? Provided, there are any reason and grounds for not issuing the order, the respondents are directed to submit their rejoinder within 15 days excluding the period of travel through the Office of the Attorney General. It is hereby ordered to provide a copy of the writ petition and to issue summon in the names of the respondents and to submit the case file upon submission of the rejoinder or upon the expiry of the limitation period. With regards to the request for issuance of an interim order, Article 16 (1) of the Constitution of Nepal has guaranteed every person the right to live with dignity. Owing to the flood and water-induced disaster, the right to food as guaranteed by Article 36, the right to housing as guaranteed by Article 37, and the right to basic health and emergency health services as guaranteed by Article 35 are directly impacted. It is the primary duty of the

State to respect the rights guaranteed by the Constitution. Provided, if rights declared are not executed meaningfully this will create discontent towards State mechanism ultimately leading the rule of law to be in crisis. On 2074/03/30 (corresponding to 14 July, 2017) an interim order pursuant to Rule 41 (1) of the Supreme Court Regulation, 2049 had issued in the name of the respondents directing the respondents to immediately provide food grains, safe shelter, clean drinking water, and medical treatment and other essential materials and services to the flood-affected people of Saptari district, and the court hereby directs the respondents to provide in their rejoinder a description of the acts performed till the time of submission of the rejoinder.

The rejoinder submitted by Nepal government, Ministry of Irrigation and Department of Water-Induced Disaster Management reads as follows: that this department and its subordinate offices by utilizing the available resources to the maximum have been working with high priority in flood and water-induced disaster management and in order to minimize the risk of flooding and damage, the department through its flood control project in Khado river located in Saptari district has been involved in the construction of dams and embankments in the Khado and other rivers. While constructing embankments and riverbank on the rivers provided, the course and current of the rivers falls on personal land, Nepal government has no policy to acquire those land for the construction of dams and embankment. Provided, it is deemed important to construct a dam and embankment on personal land, then such dams and embankments are constructed upon the consent of the landowner or on the demand and participation of the local community allowing the ownership of the land to remain with that individual. Based on the location, person and the community, the Department of Water-Induced Disaster Management and its subordinate offices have been working to minimize and manage the disaster and have been involved in the protection of the fundamental right to life of the people without any discrimination therefore, since there is no rationality in making this Department a respondent, the respondent hereby requests the petition to be quashed.

The content of the rejoinder submitted by the National Planning Commission reads as follows: that the provisions of the Articles of the Constitution of Nepal mentioned in the writ petition has not been violated nor has any adverse actions have been undertaken by the National Planning Commission, and upon ensuring the resources deemed necessary, plans have been prepared, approved and implemented by the National Planning Commission and the Commission rather than being obstructive has been supportive and since the Commission has not committed any errors, the writ petition should be dismissed.

The rejoinder submitted by Legislative-Parliament and Development Committees subordinate to it reads as follows: that the writ petitioner through the writ petition has not been able to provide any grounds and reasons as to how the right to life, freedom of movement and residence of the petitioner and other Nepali citizens have been seriously violated by the actions of the Legislature-Parliament and the Development Committee subordinate to it. The writ petitioner has stated that shelter, food grains and other assistance to flood victims including the construction of embankments for controlling flood falls within the jurisdiction of the Executive, however, the respondents' states that the Development Committee subordinate to Executive on 2074/03/26

(corresponding to 10 July, 2017) had held a discussion with relevant officials on issues relating to flood, inundation, landslide and construction of embankments and had also issued a 6 point directives and therefore, the order as sought by the petitioner need not be issued and hence the writ petition should be quashed.

The content of the writ petition submitted by Nepal government Ministry of Home is as follows: that the state is not indifferent towards the flood victims of Saptari district as raised by the petitioner. A high-level team from the Honourable Prime Minister's office has conducted an on-site inspection of the areas in Saptari district that was mostly affected by the flood and landslide wherein the Honourable Prime Minister had announced that a total of 25,000 rupees would be provided out of which 15,000 rupees would be provided for purchasing zinc corrugated sheets and ten thousand for building shed. Furthermore, pursuant to the provisions prescribed in the Disaster Victim Relief Criteria, 2064, an additional amount of Rs. 25,000 will be provided and consent from the Ministry of Finance has been obtained to provide a convenient loan of up to Rs. 1,500,000 for the construction of house. In order to minimize the loss of life and property due to floods and landslides and to carry out activities in disaster risk reduction and recovery, a National Emergency Operation Centre has been established and is making headway and therefore, the claims made by the petitioner is erroneous and false and hence the writ petition should be quashed.

The rejoinder submitted by Nepal government Office of the Prime Minister and Council of Ministers is as follows: that the Nepal government through the implementation of the Constitution and prevailing laws of Nepal is committed towards the realization of the concept of the rule of law, respecting, protecting, and promoting citizens' rights thereby ensuring and guaranteeing consumption. The Natural Disaster (Relief) Act, 2039 (1982), has been enacted and implemented for disaster relief work. With regards to providing relief and loans to the flood victims, a proposal submitted by the Ministry of Home Affairs had been tabled on 2075/3/26 (corresponding to 10 July, 2018) before the Council of Ministers wherein a number of decisions were taken. The fact that various units of Nepal government has been providing relief and essential support to the flood victims of Saptari district has been overlooked by the petitioner and therefore, the writ petition should be quashed.

The content of the rejoinder submitted by the Minister of Federal Affairs and Local Development reads as follows: that pursuant to the policies made therein, the Ministry of Home Affairs and the District Disaster Relief Committees are involved in the search and rescue operations relating to disaster management, and this Ministry does not have a direct role in those activities. The Constitution of Nepal has prescribed constitutional provision related to disaster management and pursuant to Schedule 8, the local level have the sole monopoly to exercise this right and this Ministry has been entrusted with the task of policy facilitation. Where the Ministry has no direct affiliation and where the Ministry is not responsible for its execution, the writ petition should be dismissed.

The content of the rejoinder submitted by Water-Induced Disaster Management Division Office No. 4, Lahan, Siraha reads as follows: that for the purpose of controlling the Khado river, a separate office for the Khado River Control Project has been established and various works have been carried out since the last fiscal year. Rajbiraj Municipality, Tilathi Koilathi Rural Municipality and majority of the places raised by the petitioner in the petition falls within the Khado River control area and does not fall within the jurisdiction of this office and therefore, details relating to this are not available in this office. Since floods are natural disasters it is beyond anyone's control, wherein activities relating to control of the river needs to be carried out sequentially and activities relating to controlling of the river are being carried out in high risk areas and will be gradually extended to other places and therefore, the writ petition should be dismissed.

An order on 2075/07/19 (corresponding to 5 November, 2018) had been set aside which reads as follows: "that the petitioner in the writ petition had stated about the loss of lives and property caused by Mahuli, Dudhauri and Khado River and therefore, this Bench hereby orders the respondent Department and Project to submit a progress report and details of the work carried out by the Water-Induced Disaster Control and Khado River Control Project with regards to the control of the rivers and to submit the report upon receiving the same.

An order had been issued on 2077/09/04 (corresponding to 19 December, 2020) which reads as follows: that pursuant to the order dated 2075/07/19 (corresponding to 5 November, 2018) the annual progress report for the fiscal year 2074/75 regarding the control of Mahuli, Dhudhauri and Khado River of Saptari District is attached with the case file. The court hereby orders for the submission of the annual progress report for the fiscal year 2075/76 and 2076/077 and the progress till date within 1 (one) month from the Department and Project and to submit the same upon receipt of the report.

Order of this Court

The writ petition pursuant to the cause-list has been submitted before this Bench and it has been noted that the writ petitioner has expired the due date prescribed by this court. The learned Joint Government Attorney Sanjeev Raj Regmi on behalf of the respondent Nepal government argued that the government has provided relief and loan for construction of houses for the people affected by the 2074 Ashar flood. That Disaster Risk Reduction and Management Act, 2074 has been enacted to implement the rights guaranteed by the Constitution and that the government is committed to implement the Act and hence the writ petition should be quashed.

Upon perusal of the writ petition, rejoinder and the arguments made therein, it is for this Bench to deliberate and resolve the following issues.

1. As to whether or not the writ petition can be deemed to be a matter of public interest and concern?
2. What is the nature of the dispute raised in the writ petition?

3. How should disaster like a flood and landslide be perceived?
 4. What are the developed concepts in international jurisprudence on this topic?
 5. Within the context of the Constitution and the legal provisions, how should the issue raised in the petition be understood?
 6. What measures should be adopted to control the impact of floods caused by the river? As to whether or not the order sought by the petitioner should be issued?
2. As to whether or not the writ petition can be deemed to be a matter of public interest and concern, it has been noted that the present writ petition has been registered pursuant to Article 133 (2) (3) of the Constitution of Nepal. The petitioner has introduced himself as a Nepali citizen affected by the flood in Saptari district and has presented a description of the disaster caused by the 2074/3/23 (corresponding to 7 July, 2017) flood and has raised that the description presented in the writ petition needs to be addressed. Where the lives of thousands of people have been affected by the flood and where it has caused impediment in the exercise of their rights guaranteed by the Constitution, the Bench deems that the writ petition can be construed as a matter of public interest and concern. In matters relating to public interest and concern the writ petitioner is merely an informant, and therefore, it is plausible to examine and resolve the subject matter with a broader perspective taking cognizance of the damage caused to human life and the environment by the flood and the landslide.
 3. Regarding the nature of the dispute, it has been noted through the writ petition that various rural municipalities and Municipality of Saptari district has been annually affected by the floods causing significant loss to life and property. The petitioner further states that owing to the incessant rainfall commencing from 2074/3/23 (corresponding to 7 July, 2017) caused floods in the Mehuli, Dudhaila, and Khado rivers which resulted in the inundation of 726 houses located in various villages, in the ruination of embankments and structures constructed to control the flood, and despite spending millions of rupees every year to control the flood, the investment yielded no dividends. The petitioner additionally states that the floodwaters have inundated houses and public structures located in various villages and the Koilathi market area, resulting in the loss of life, disappearance of people, and problems in food, and shelter which inter alia has affected the right to live with dignity, the right to housing, and the right to a healthy and clean environment as guaranteed by the Constitution. The petitioner requests the court to issue an order of mandamus directing the respondents to build dikes and embankments to control and manage the flood and in order to achieve this provided land is to be acquired, the same should be done upon providing appropriate compensation or alternative arrangements with a long-term plan should be formulated and implemented immediately to resolve the problem.
 4. The petitioner raised the issue of the flood that occurred in Saptari district in 2074, however, this is a pressing problem of the country. Every year due to flooding there is a significant loss to life and property in various districts of the country. During the monsoons, it is common for the water level to rise in the rivers and streams, however, when the water enters human settlements, agricultural lands, physical infrastructures, and causes damage then it takes the

form of a disaster. Floods occur due to natural or human-induced changes in water and weather. Although floods occurring during the monsoon are considered natural phenomena, of late in addition to natural causes, the damage caused by floods has increased due to human-induced pressures. Regardless of spatial sensitivity, human activities such as unplanned settlements, deforestation, sand mining, uncontrolled tapping of river, unrestrained construction work and land use have contributed to the increase in flood. Climate change has also been projected as one of the factors that will contribute to flood in the coming days and therefore, it is imperative to carry out in-depth study and analysis in this matter. Before divulging into the issue of disaster management, it is imperative and expedient to shed light on the definition of disaster, its origination, and nature which will be discussed in the preceding paragraphs.

5. With regards to the third question as to how should disasters like flood and landslide be perceived? The term "disaster" denotes natural or man-made calamities that cause devastation to natural or physical infrastructures. Due to various factors such as spatial arrangement, topography, weather conditions, human activities, and in the current period the climate change has affected many areas across the globe that are at risk to various disaster scenarios. The Disaster Risk Reduction and Management Act, 2074 (2017) defines disaster as "a natural or non-natural disaster causing a threatening situation in any place that results in loss of lives and properties and makes severe impacts on livelihood and the environment"¹. The United Nations' International Strategy² for Disaster Reduction defines disaster as: "A serious disruption of the functioning of a community or a society involving widespread human, material, or environmental losses and impacts which exceeds the ability of the affected community to cope using only its own resources." Disasters happen when a community is "not appropriately resourced or organized to withstand the impact, and whose population is vulnerable because of poverty, exclusion or socially disadvantaged in some way"³.
6. It is not necessary that every hazard invites disaster. Hazard converts into disaster when three elements natural or man-made risk, capacity to cope and vulnerability are amalgamated. Flood which is a natural disaster cannot be completely averted, nonetheless; with appropriate management, the risk can be mitigated. . Risk indicates the likelihood of a disaster and provided risk can be mitigated, this will prevent hazard from turning into a disaster. When the capacity to cope is low in a highly vulnerable and high-risk situation the impact of a disaster tends to be severe⁴. The higher the vulnerability, the greater the risk of disaster. Therefore, if risk and vulnerability can be mitigated then we can prevent hazard from converting into disaster.

¹ Clause 2 (l) of Disaster Risk Reduction and Management Act, 2074 (2017)

² UN Office for Disaster Risk Reduction, *Use of Terminology on Disaster*, available at <https://www.undrr.org/terminology/disaster>

³ Mami Mizutori, Special Representative of the Secretary-General for Disaster Risk Reduction, *United Nations Office for Disaster Risk Reduction* at IFRC Website, available at <https://www.ifrc.org/what-disaster>. "Disasters happen when a community is "not appropriately resourced or organized to withstand the impact, and whose population is vulnerable because of poverty, exclusion or socially disadvantaged in some way".

⁴ USAID, *Introduction to Disaster Risk Reduction*, USAID, 2011, p. 14.

7. Although the nature of a disaster is the same, it has an unequal impact on individuals and communities owing to the social, physical, personal, economic, geographical, political, and environmental diversity. The brunt of the damage caused by the disaster is borne mostly by vulnerable⁵ individuals or communities. The sensitivity and vulnerability of a community or of an individual determines as to whether or not they can easily mitigate the risks and impacts of a disaster⁶. At the time of disaster, people who are economically disadvantaged, minorities, people who are not in the mainstream, geographically marginalized remote, and living in sensitive areas are more precarious to disaster. The neglected class are the ones who are mostly affected by disaster. They live in temporary thatched huts that are vulnerable to fire, flood, or landslide, or tempest. Due to the lack of proper sanitation and potable water, as well as limited access to education and resources they are often the primary victims of epidemics. Among them, people with disabilities, the elderly, pregnant women, children, and prisoners are even more vulnerable. During disaster provided there are multiple adversities the situation escalates and intensifies. For example, poor and landless individuals are compelled to reside in temporarily in marginalized settlements and riverbanks and any kind of disaster in such areas will cause immense damage. Even during the post-disaster recovery phase, it is very difficult for people and families lacking resources, who are marginalized, ones not included in the mainstream of the State and are economically deprived to return to normal life. Those who struggling to survive in normal conditions are pushed to the brink of desperation by a disaster.
8. The impact of disaster depends on the vulnerability of the affected individuals, families, and communities. The concept of vulnerability is directly related to human rights and concept of sustainable development. This can vary from person to person and from family to family. High vulnerability can have an adverse effect on the guarantee of human rights. To reduce vulnerability, the right to live with dignity, the right to food, the right to health, the right to housing and other rights must not be violated. Likewise, reconstruction and recovery during the post-disaster period must be effective. Provided, this can be achieved, vulnerability can be reduced and the affected individuals can experience a sense of relief and lead a more comfortable life. However, if vulnerability increases the individuals may be overwhelmed by the disaster. As a result, in order to avoid disaster they may be displaced⁷ and may be forced to relocate to other places. Provided there is a delay in rehabilitation and provided disaster strikes again, the disaster victims and communities may abandon their homes. When they cannot adopt any other measures of security and where the burden of damage from the disaster becomes unbearable and making their survival endurable, the affected individuals and families will always be entrapped in a cycle of poverty. Such displacement is often internal.

⁵ National Society for Earthquake Technology-Nepal and UNISRD Asia-Pacific Regional Office, Terminology on Disaster Risk Reduction, 2010, p. 92

⁶ USAID, (n 4) p.11

⁷ UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 22 July 1998, p. 5, para 2, "Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."

The Guiding Principles on Internal Displacement has identified disaster as a major cause of internal displacement and recognizes the right against arbitrary displacement from one's home and place of residence⁸.

9. Considering displacement from the perspective of stress dimension, it creates a risk of being ensnared into the clutches of socio-economic, physical, and psychological stress and poverty. The possibilities of risks of displacement include landlessness, unemployment, and state of being homeless, marginalization, problem in food insecurity, damage of resources to common property and disruption of social relationships⁹. Displaced communities become more vulnerable to recurring disasters and are always entrapped in the cycle of disaster and poverty¹⁰. In order to prevent displacement, it is imperative that one should focus on the social, economic, and human aspects of disasters rather than just considering them as natural phenomenon. Although, it is not possible to completely avert disasters, the State can mitigate the impact caused by disasters. To this end, it is imperative to prioritize in developing the capacity of disaster victims and communities and should focus in maintaining their quality of life.
10. In recent years, climate change has become another element that has further aggravated the state of disaster¹¹. Owing to the multi-dimensional impacts of climate change we have been witnessing rise in global warming, excessive rainfall, drought, and rise sea levels¹². Climate change has amplified the normal weather processes. Adverse changes in weather patterns have also led to changes in environmental activities such as changes in the temperature, rainfall, winds, and snowfall. Droughts and excessive rainfalls have also led to the increase in floods, landslides, and drought. According to a report released by the Intergovernmental Panel on Climate Change in 2021, owing to man-made factors the earth's temperature in the last 2000 years is at its highest point. Every decade since 1850 it has been gradually getting warmer than the previous decade. Similarly, the global average rainfall has increased since 1950 and has been increasing more rapidly after 1980¹³. It is estimated that with a global

⁸ ECOSOC, *The United Nations' Guiding Principles on Internal Displacement*, February 1998, Principle 6 (1), (2). "1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. 2. The prohibition of arbitrary displacement includes displacement:...(d) In cases of disasters, unless the safety and health of those affected requires their evacuation."

⁹ Ananda Mohan Bhattarai, *Displacement and Rehabilitation in Nepal, Law, Policy and Practice*, Anmol Publications, 2001. pp. 4-10 citing Michael Cernea, *African Involuntary Population Resettlement in a Global Context*, World Bank, 1997, p.10.

¹⁰ Chris Lavell & Justin Ginnett, *Technical Paper: The risk of disaster-induced displacement*, Internal Displacement Monitoring Centre, 2013, p.14. "Displacement is seen as an extreme manifestation of disaster risk in which vulnerability levels and lack of resilience are so high that natural events (both extreme and non-extreme) compel people to leave their homes and livelihoods just to survive".

¹¹ Climate change not only invites disaster but also weakens the capacity to counter disaster. (USAID (n 4) p. 49

¹² International Strategy for Disaster Reduction, *Climate Change and Disaster Reduction*, 2008, p.9

¹³ Intergovernmental Panel on Climate Change (IPCC), 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)], pp. 4-6

temperature rise of 1.5 degrees Celsius will lead to torrential rainfall and this will invite severe flooding in most areas of Africa and Asia¹⁴.

11. In Nepal, since the mid-20th century climate change has led to excessive rainfall, rise in temperature, melting of snow and glacial lake outburst thereby increasing water-induced disasters. A report shows that approximately 157,000 people are affected by floods every year in Nepal, and the annual impact of floods on GDP is around \$210 million U.S. dollars¹⁵. Majority of the rivers and streams flowing from the northern part of Nepal to the Terai region surge with high velocity and carry a large amount of sediment. When these rivers reach the Terai region their velocity decreases and the stones, pebbles and sand that are carried by the rivers are deposited as sediments and in this process many of the rivers in the Terai region deviate from their course and make their way into the villages. In Nepal, floods in the Terai region are mainly caused by high rainfall however; there are other causes for floods. Changes in the hydrological cycle of rivers, uncontrolled tapping of rivers, encroachment of riverbanks and floodplains and degradation of the environment converts hazards into disasters thereby causing damage to life and property. This process has been on-going for a long time. However, in the past few years, owing to climate change there has been an increase in temperature leading to melting of snow and glacial lake outburst which inter alia has increased the flow of water in the lower coastal areas and increase in unpredictable and excessive rainfall. As a result, some areas in Nepal are vulnerable to flooding. Owing to climate change there is a risk of unexpected droughts and unpredictable and excessive rainfall. Owing to climate change there is also a risk of outburst of glacial lakes. Climate change has also increased the frequency and magnitude of floods and has also increased the likelihood and risk of floods¹⁶. As a result, many areas in the Terai region are vulnerable to flooding, and the severity of the risk is also escalating¹⁷. The problem created by climate change becomes complex and multi-dimensional and the capacity to cope with disasters also declines. Therefore, disaster and climate can be perceived to be complementary to each other and this relationship is lethal. Since climate change invites disasters and also increases the impact of disaster, it is indispensable that this should be included within the scope of disaster management. The Sustainable Development Goals related to climate change also emphasize the need for States to focus on capacity development to address natural disasters and combat climate change¹⁸.
12. In a country like Nepal owing to the geographical and environmental diversity, the factors, behaviours, and effects of floods are also found to be varied. Studies have shown¹⁹ that Nepal is prone to four types of floods: "flash floods" that is caused by high velocity of water from

¹⁴ Ibid, p. 24

¹⁵ Asian Development Bank, *Climate Risk Country Profile: Nepal*, 2021, pp.13-14.

¹⁶ Practical Action Nepal, *Disaster Management: Concept and Practices in the context of Nepal*, UKAID, 2010, p. 75

¹⁷ International Federation of Red Cross, *World Disaster Report*, 2020, p.119.

¹⁸ UN General Assembly, *Transforming Our World : the 2030 Agenda for Sustainable Development*, October 2015, Goal 13.1, "Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries".

¹⁹ Water Resources Development Organization, *Directive for Management of Community Floods in Nepal*, Water Resources Development, Nepal, p. 5-6

the rivers originating from the Chure mountain range, "monsoon floods" caused by rainfall in the watershed area, "local floods" caused by heavy rainfall in specific areas causing floods in the local water resources, and "floods caused by glacial lake outburst". Likewise, occurrence of landslide and other disasters can also lead to floods. Unplanned use of land, lack of proper waste management, unrestrained excavation and extraction of river resources thereby altering the course and flow of the river, and human settlements on riverbanks are instigating factors contributing to floods. In a nutshell, it is essential to understand the concept of disaster and review the studies and concepts developed elsewhere and in Nepal.

13. Having discussed on the concepts related to disaster and disaster management and the present scenario, it is imperative to delve on the fourth question regarding the concepts that have been developed in international jurisprudence in this topic. The important international treaty that expects international cooperation and commitment regarding floods, droughts, and other disasters caused by climate change is the United Nations Framework Convention on Climate Change, 1992²⁰. The Convention defines climate change as "climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods"²¹. Likewise, the Convention acknowledges that floods, droughts and other disasters that is related to climate change also has an impact in the production of food grains and has caused impediment to the sustainable development goals of developing countries and the Convention emphasizes the need for cooperation and participation from developed countries based on the principle of "common but differentiated responsibilities and respective capabilities" and stresses on increasing international commitment in the protection of climate system²². The Convention also emphasizes that special attention should be given to countries that are vulnerable to climate change and prescribes adoption of preventive measures²³. It calls upon member states to address the impacts of climate change on water resources and agriculture and to develop comprehensive and integrated plans for the conservation and rehabilitation of areas affected by drought and floods²⁴. In addition to this Convention, the Rio Declaration of 1992 also calls for international cooperation to prioritize the needs of countries that are at risk from environmental hazards²⁵. Agenda 21 of the Rio Convention identifies the need for

²⁰ UN General Assembly, *United Nations Framework Convention on Climate Change*, adopted by the General Assembly, 20 January 1994, (Preamble) stating "Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semiarid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change".

²¹ *Id.* Art. 1(2), "Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."

²² See *Id.* Art. 2. (Objectives), Art 3 (1), to "protect climate system for benefit of present and future generation on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities."

²³ *Id.* Art 3(2), (3).

²⁴ *Id.* Art 4(e).

²⁵ United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, June 1992, Principle 6, "The special situation and needs of developing countries, particularly the least developed and those most

international cooperation to achieve sustainable development goals, and emphasizes that during the decision-making processes, development and environment should be integrated and in particular health, housing, conservation of land resources, sustainable mountain development, agriculture, rural development and water resource management²⁶. Chapter 7 of Agenda 21 discusses the “concept of secure housing” and lays down that such housing is essential for physical, mental, social, and economic well-being, and directs for the development of sustainable housing. Agenda 21 also emphasizes the need to adopt measures to mitigate the adverse effects of disasters and to develop pre and post disaster planning and also emphasizes developing a sustainable culture of safety. In order to mitigate the impacts of climate change, the Paris Agreement, 2015, declares and recognizes the importance of early warning, emergency preparedness, assessment of risk and damage, management, and insurance to enhance resilience to climate change and promote sustainable livelihoods and environment²⁷. Among the measures to mitigate the effects of climate change, the Paris Agreement recognizes that climate change adaptation and disaster risk reduction must be integrated and targets for sustainable development goals should be set out and cooperation should be garnered to build the capacity of the public.

14. In addition to the Rio Convention there are other international documents that are currently available to the public. In the context of climate change and mitigating the risk relating to natural and man-made disasters, the first World Conference held in Yokohama, Japan in 1994 under the auspices of the United Nations produced the "Yokohama Strategy for Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation and its Plan of Action" (Yokohama Strategy, 1994). This strategy includes issues such as predicting and preventing potential damages from natural disasters, mitigating damages from disasters, identifying damage and vulnerability risk, acknowledging sustainable development, and actively engaging local communities in disaster management²⁸. After Yokohama, in 2005, the Hyogo Framework for Action 2005-2015, was endorsed at the second World Conference on Disaster Reduction in 2005, which provides strategic guidance to states to reduce disaster risk and vulnerabilities related to it²⁹. The Hyogo Framework prioritizes five actions: a) developing institutional capacity for disaster management and making it a national priority, b) identifying, assessing, and monitoring disaster risks and developing early warning systems, c) developing a culture of safety and resilience at all levels through existing knowledge, innovative research, and education, d) reducing underlying risk factors, and e) strengthening

environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.”

²⁶ United Nations Conference on Environment and Development, *Agenda 21, Rio Declaration, Forest Principles*, United Nations, 1992.

²⁷ United Nations Framework Convention on Climate Change, *Paris Agreement on Climate Change*, December 2015, Art 8.

²⁸ World Conference on Natural Disaster Reduction, *Yokohama Strategy and Plan of Action for a Safer World: Guidelines to Natural Disaster Prevention, Preparedness and Mitigation*, 1994. The World Conference has been convened three times, with each edition to date having been hosted by Japan: in Yokohama in 1994, in Hyogo in 2005 and in Sendai in 2015.

²⁹ United Nations, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters*, January 2005, p.4.

disaster preparedness for effective response at all levels³⁰. After Hyogo, the Sendai Framework 2015-2030 was created for disaster risk reduction. For disaster management, The Sendai Framework prioritizes four actions: understanding disaster risk by the State, strengthening disaster risk governance to manage disaster risk, investing in disaster risk reduction for resilience, and enhancing disaster preparedness in recovery, rehabilitation, and reconstruction³¹.

15. Recently, the Sustainable Development Goals endorsed by the United Nations also recognizes and identifies the relationship between disaster risk reduction and vulnerability. Sustainable development includes poverty eradication, eradicating hunger, food security, good health, clean drinking water and sanitation, construction of disaster resilient structures, sustainable urban development, sustainable land use which have a direct relationship in reducing the risk that is associated with disasters. The goal of sustainable development is that the goals of sustainable development can only be achieved by reducing the risk of disasters³².
16. To minimize the risk of disasters and while formulating policies and programs in every stage of disaster management, it is necessary to determine the level of vulnerability. Changes in the socio-economic conditions, governance, and political environment also lead to changes in vulnerability. Therefore, policies and programs addressing vulnerability and capacity development to mitigate disasters also need to be updated accordingly³³. To develop the capacity to brave disasters, disaster management methods based on livelihood need to be developed and then only will the capacity to face potential risks will be enhanced which inter alia will increase resilience. There are three principal stages of disaster management which are a) pre-preparedness (measures taken before a disaster), b) response (measures taken during a disaster), and c) recovery and reconstruction (post-disaster measures)³⁴. Based on these stages, various standards and measures have been explored, and from the study and analysis of the aforementioned international laws and strategies it is evident that the environmental sustainable development goals have been taken into account.
17. When discussing and commenting on international law and policies, the principles developed under environmental law, such as the Precautionary Principle, Principle of Public Trust, and

³⁰ Id. pp .8-9.

³¹ UN General Assembly, *Sendai Framework for Disaster Risk Reduction 2015-2030*, March 2015, p.13. "Priority 1: Understanding disaster risk. Priority 2: Strengthening disaster risk governance to manage disaster risk. Priority 3: Investing in disaster risk reduction for resilience. Priority 4: Enhancing disaster preparedness for effective response and to "Build Back Better" in recovery, rehabilitation and reconstruction".

³² UN General Assembly, *Transforming Our World : the 2030 Agenda for Sustainable Development*, October 2015, Goal 1 (1.5) "By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; Goal 2 (2.4), "By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality".

³³ Practical Action Nepal, *Disaster Management: Concepts and Practices in the context of Nepal*, UKAID, 2010, p 38.

³⁴ Id. P 51-53

Polluter Pays Principle are also relevant in the context of disasters like floods and landslides. The Precautionary Principle seeks information but in the absence of scientific and updated information, it does not allow the State to shy away from its obligation. The mandatory conditions under this Principle is to take precautionary measures to prevent floods, landslides and other disasters, to develop an information system, in anticipation of floods and landslides to relocate people to safer places, and manage relief efforts. Similarly, the Principle of Public Trust calls upon the state to play the role of a servant or guardian, while the Polluter Pays Principle holds individuals who are directly involved in endangering the lives of the people by encroaching on river systems, carrying out uncontrolled exploitation, and altering the course of rivers by dumping garbage in the rivers and are held responsible and accountable to pay compensation. At the international level, the Principle of Common but Differentiated Responsibility and Capacity encourages cooperation and sharing of responsibilities among countries with different roles and capabilities in addressing climate change and can also be applied to different regions within a country. By doing this we can not only achieve equity but also inter-generational equity and through this we can ensure the transfer of the nature and the environment to the future generations in the same or in an improved condition than what we had received. While formulating appropriate policies and laws relating to floods and landslides, it is expedient to consider these principles developed in the context of international environmental law.

18. In summary, the aforementioned points are only a glimpse of the laws, legal principles, strategies, and work structures developed at the international level. These are not exhaustive or comprehensive. The purpose of mentioning these points is to suggest that while reviewing our country's Constitution and laws and while charting a course for resolving disaster or formulating appropriate policies and plans it is expedient to be conversant with the international developments and established standards.
19. Having discussed the above matters, it is now relevant to discuss as to how the issues raised in the petition should be construed in the context of the Constitution and legal provisions of Nepal. The writ petition underlines the violation of the constitutional rights of the flood-affected residents of Saptari, particularly the right to live with dignity (Article 16), right to freedom of movement (Article 17 (2) (e), right to equality and right against untouchability and non-discrimination (Articles 18 and 24), right to health and drinking water (Article 35), right to food (Article 36), and right to housing (Article 37). When a flood takes the form of a calamity, it sweeps away everything, including humans, livestock, house and sheds, food grains, clothes, ornaments, cash, and other valuables. The destruction of homes and property also affects the rights to education (Article 31), right to profession (Article 17), right to employment (Article 33), right to religion and culture (Article 26), and right to environment (Article 30). Every individual has the right to live in a healthy and safe environment. Floods by and large affect the right to housing and the right to security and consequently, other rights are also affected.
20. Acknowledging the interplay between the aforementioned rights and other economic, social, and cultural rights, it is evident that disasters like flood and landslides has an impact on the

rights of individuals, families, and communities and therefore, it is imperative to protect these rights. The rights guaranteed by the Constitution are not ornamental but is guaranteed to be enjoyed by individuals and citizens. The rights are protected only when the country implements the principles of environmental sustainability thereby maintaining equilibrium between development and the environment and acts responsibly through appropriate plans and programs. Taking into account the country's geographical and geological sensitivity, the Constitution under the State directive principles and policies has formulated policies for the protection, conservation, and utilization of natural resources whereby "water-induced disaster control and river management" and "advance warning, preparedness, rescue, relief, and rehabilitation in order to mitigate risks from natural disaster" has been adopted as State policy³⁵. The impact of flood and disaster is related to the river system. Managing the numerous rivers originating from Tibet that is beyond the Himalayas, and from the Himalayas of Nepal, high and mid hills and the Churia region is a challenging task. However, in the absence of sustainable management of these rivers, streams, and rivulets, it is impossible to mitigate the risk from floods and landslides. Nepal, on the one hand needs to prioritize the control of water-induced disaster and on the other hand it needs to address the flood-related disasters by properly managing the rivers and should give importance and priority to early warning, preparedness, rescue, relief, and rehabilitation in order to mitigate the risk of disaster originating from floods. Considering the geographical sensitivity, it is expedient that a land use policy for the country should be formulated which should include management plan and annual strategic plans and programs and other issues such as biodiversity, conservation of environment relating to sustainable environmental development and should allocate requisite substantial amount of forest land for environmental stability. In the context where our Constitution not only recognizes a clean but also a "healthy environment" as a fundamental right of citizens, it is fundamental to keep the river system clean and healthy and for this it is expedient to implement the aforementioned policies. Recognizing the principle of inter-generational equity, the state has a responsibility to protect and conserve natural resources, ensure the enjoyment of fundamental rights and freedoms and implement the principles and policies of the state, and therefore, the State cannot shy away from its parental role or forego the responsibility entrusted to it by the Constitution. The state must fulfil its role as envisioned by the Constitution.

21. Some relevant legal provisions with regards to the implementation of the provisions prescribed in the Constitution have been noted. For instance, the Natural Disaster Relief Act, 2039 is an old Act related to natural disaster. This Act prescribes measures for the protection of life, property, and public property from natural disasters and carrying out disaster relief work". To carry out post-disaster relief, treatment, rehabilitation and other works, the Act prescribes for the formation of committees and sub-committees consisting of representatives from the concerned agencies of Nepal government³⁶. Similarly, to carry out activities relating to disaster management, the Act prescribes for the formation of level-wise committees at the

³⁵ Article 51 (g) (1) (4) (5) (6) (8) (9) of the Constitution of Nepal

³⁶ Clause 5, 5 (a), 5 (b), 5 (c), 6, 7, 7 (a), 8, 9 (a)

central, regional, district and local levels. With the promulgation of the present Constitution, the Disaster Risk Reduction and Management Act, 2074 (2017) has been enacted. The objective of the Act is stated in its Preamble which is "to protect human lives and properties of the public, private and individual, to preserve natural and cultural heritage and to keep physical infrastructures safe from natural and non-natural disasters by effectively coordinating and managing all activities on reduction of disaster risk management". The Act defines natural and non-natural disasters and establishes a "Disaster Risk Reduction and Management Council" as a central structure to carry out disaster management work and Clause 5 of the Act prescribes the functions, duties, and powers of the Council which includes (a) to approve national policies and plans related to disaster management, (b) to provide necessary directions to the Executive Committee and the Authority in relation to policy and plans on disaster management, (c) to provide necessary policy guidance to the provincial and local levels on disaster management, (d) to provide direction to the Executive Committee and the Authority for the management of financial resources for disaster management, and (e) to evaluate the functions of disaster management work. Similarly, Clause 10 of the Act prescribes for the establishment of a National Disaster Risk Reduction and Management Authority to effectively carryout and manage disaster management activities. In the context where the country has adopted a federal system of government, "disaster management" is included in the list of shared powers between the federal, provincial and local level government (Schedule 9, No. 9) and the same has been separately included in the list of local levels (Schedule 8, No. 20). Furthermore, natural and non-natural disaster preparedness, rescue, and relief, and rehabilitation are included in the list of shared powers between the federal and provincial government (Schedule 7, No. 17), and land use policy, settlement development policy, and environmental adaptation are included in the list of federal powers (Schedule 5, No. 29). In this context, the Act provides for the establishment of a "Provincial Disaster Management Council"³⁷ and a "Provincial Disaster Management Committee" and "District and Local Disaster Management Committee" and specifies their functions, duties, and powers³⁸. The Act also prescribes for the establishment of a disaster management fund at the federal, provincial, and local levels, ensures commitment among the security agencies, public institutions, professional organizations, and civil societies to collaborate to work together and also prescribes punishment for offences committed during disasters. These are some of the significant features of the Act.

22. Local Government Operation Act, 2074 is another law related to disaster management. Clause 11(o) of that Act has included works relating to disaster management as the work, duty, and power of the Rural Municipality and Municipality. Clause 26 of the Environment Protection Act, 2076, through the policy, strategy and action plan envisages cooperation among the three levels of government to reduce the adverse effects and risks caused by climate change, while Clause 38 has entrusted Nepal government the responsibility to formulate environmental protection plan.

³⁷ Clause 13 (a), 14, 15 of Disaster Risk Reduction and Management Act, 2074

³⁸ Clause 16, 17 of Disaster Risk Reduction and Management Act, 2074

23. The National Water Resources Policy, 2077³⁹ and the National Climate Change Policy, 2076, which addresses climate change and climate-induced disaster is also in force. This policy recognizes floods, landslides, storms, and forest fires as climate-induced disasters and with the objective of developing climate-resilient society, the Policy includes provisions relating disaster risk reduction and management⁴⁰. In addition, other policies such as the Disaster Risk Management National Strategy 2066, Land Use Policy 2060, Water-Induced Disaster Management Policy 2072, National Reconstruction and Rehabilitation Policy 2071, and National Disaster Response Framework 2070, are directly or indirectly related to disasters. The consistency of these various policies and strategies with the legal provisions related to disasters is yet to be noticed. Whatever provisions have been prescribed in the Constitution and laws regarding necessary involvement and participation of all three levels of the state with regards to protection of the environment in particular disaster management must be implemented. In simpler terms, the works relating to "early warning, preparedness, rescue, relief, and rehabilitation" needed for disaster prevention and risk reduction should be effectively implemented. Policy arrangements should assist the effective implementation of the tasks directed by the Constitution and laws. Sustainable development of the environment as envisaged by the Constitution can be achieved only when the policies and laws are effectively implemented and followed and can be deemed to be in accordance with its spirit and essence.
24. Within the backdrop of our understanding regarding jurisprudential concept relating to disaster and the arrangements made by international law, the Constitution and laws of our country, it is now for this Bench to decide as to what needs to be done to control the effect of the impact caused by the floods occurring in the various rivers of Saptari district in 2074 BS, and as to whether or not the order as sought by the petitioner should be issued. The writ petition states that the incessant rain occurring on Friday night of 2074/03/23 (corresponding to 7 July, 2017), had inundated more than one thousand houses in various Rural Municipalities of Saptari district. The petition further states that the Mehuli, Dudhali and Khado rivers had inundated 726 houses, one industrial area, office of the Rural Municipality, and with a police constable missing and retrieval of an unidentified dead body. This is not a minor havoc created by the flood. Realizing the severity of the disaster, this court on 2074/03/30 (corresponding to 14 July, 2017) had issued an interim order directing the government "to provide immediate food, safe shelter, clean drinking water, and essential medicines and treatment and other essential materials and services to the flood-affected people of Saptari district and to submit a rejoinder detailing the activities carried out therein". The Right Honourable Prime Minister through the rejoinder had stated that an on-site visit of the flood-affected areas had been carried out and that an announcement to provide relief of 25,000 rupees including 15 thousand for purchasing corrugated iron sheets and 10 thousand for erecting temporary shelters would be provided to the affected families and that an agreement to provide a convenient loan of Rs 1,500,000 for building a house and been reached

³⁹ National Water Resource Policy, 2077, Strategy 11

⁴⁰ National Climate Change Police, 2076, Policy 8.8

and that through a separate plan activities to control the flood in the Khado River were being implemented. Pursuant to the interim order issued by this court on 2074/3/30 (corresponding to 14 July, 2017) and pursuant to the orders issued on 2075/7/19 (corresponding to 5 November, 2108) and 2077/9/04 (corresponding 19 December, 2018) with regards to submission of descriptions relating to relief and rehabilitation, the progress reports of the Khado River Management Project for the fiscal years 2075/76, 2076/77, and 2077/78 had been made available. The progress report attached with case file underlines the construction of embankments and land clearing, such as construction of revetment and spurs activities relating to river control, and conservation of environment. The report highlights commissioning of activities to control the Khado River, however, there is no factual report stating as to what kind of support the individuals and families who were inundated received in terms of relief and rehabilitation. The insensitivity and dismal behaviour of the government agency are not acceptable in the light of the duties created by the Constitution, legal system, and international law.

25. Democracy is people-oriented and an accountable system. No one has the right to be indifferent towards the rights of the sovereign people. The concept of environmental sustainability cannot be overlooked by the courts. Where people every year are agonized by natural and unnatural disasters such as floods, landslides and epidemics and where the government remains apathetic towards its responsibility and does not provide information sought by the court even upon repeated orders, then such actions cannot be deemed to be consonance with the Constitution. The court seriously considers the increasing scope and importance of laws relating to environment, climate change and human rights. People's right to live in a healthy and safe environment must always be respected. The court understanding the adverse effects of floods and landslides in the exercise of the rights must exercise its power to protect the lives and property of the people. The courts interest and concern ought to rise even when the rights of one individual is violated.. Here, thousands of people have been affected by the floods. An interim order had been issued by this court in favour of the affected people to protect their rights guaranteed by the Constitution. Apart from protecting their rights and ensuring a dignified and secured life for individuals and communities affected by disaster, this court has no other aspiration. Judicial activism need not be exercised by the courts provided the government fulfils its responsibilities in a meaningful manner. Nevertheless, if rights are violated and there is degradation of the environment, then it is the duty of this court to discharge its obligations.
26. Owing to its geography, topography, and geological structure, Nepal from time to time is prone to various natural disasters such as floods, landslides, and earthquakes. The water-induced disasters have mostly affected the Terai region resulting in the sweeping away or destruction of physical infrastructures every year thereby putting the lives, homes, and food crops of the local people at risk. The writ petition highlights the damages induced by the Ashar 2074 floods occurring in various Rural Municipalities of Saptari district, however, such disasters also occur in other parts of the Terai and in various hilly regions. When a disaster strikes it becomes news for a while and some relief is also distributed, but with the passage

of time, the issue of rescue and rehabilitation of the victims is obliterated from the memory of the government. For the purpose of rule of law and protection of human rights there should be a transformation in the thought process and in the state affairs and the people should be able to live with dignity in a safe environment and this is their natural and inalienable right.

27. Floods occurring during the monsoons often cause settlements to be completely or partially inundated forcing the inhabitants to abandon their homes and move to safer places denying them proper food and clothing. During the monsoons, the risk of loss of life is perilous. Provided, effective management is not in place at the time of disaster, the lives of the victim and communities will be ravaged. Provided, appropriate rehabilitation is not provided after the occurrence of a disaster, the victim groups will be forced to live in dilapidated conditions for a long spell wherein the affected individuals will not be able to exercise their fundamental rights guaranteed by the Constitution. Pursuant to the policies and programs formulated for disaster management, measures for mitigating human, economic, and physical problems and losses must be adhered to in every stage and it is the responsibility of the State to manage and implement laws and policies for rehabilitation of the flood victims.
28. Taking note of the aforementioned circumstances and context, it is for this Bench to decide as to what kind of order need to be issued. For the enforcement of the rights guaranteed by the Constitution, it is evident that the victims are not only entitled to efficacious relief but are also entitled to rehabilitation. Even with the issuance of orders on various dates, accurate and updated information as to the relief provided to the victims were not available. Consuming a long period of time for obtaining the particulars is not justifiable. Therefore, an order of mandamus is hereby issued in the names of the respondents directing them to coordinate with each other to produce an up-to-date record of distribution of relief and other facilities and data of the affected village and family of Saptari and provide and distribute relief without causing any duplication, and to initiate or cause to initiate rehabilitation works for flood-affected individuals, families, and communities. An order of mandamus is hereby issued in the name of the respondent to carry out a risk assessment of the areas that are prone to floods and to manage the rivers by constructing embankments, to observe the pattern of the flow of the rivers and construct robust and stable embankments in areas likely to be affected by floods and provided construction needs to be carried out on private land, alternative arrangements without causing any loss to the landowners such as relocation of the landowner to a safe place or providing appropriate compensation pursuant to the law should be provided and should construct or cause to construct the embankment. An order of mandamus is hereby issued in the name of the respondent to carry out a risk assessment of the areas that are prone to floods and to manage the rivers by constructing embankments, to observe the pattern of the flow of the rivers and construct robust and stable embankments in areas likely to be affected by floods and provided construction needs to be carried out on private land, alternative arrangements without causing any loss to the landowners such as relocation of the landowner to a safe place or providing appropriate compensation pursuant to the law should be provided and should construct or cause to construct the embankment.

29. Although some legal provisions for disaster management have been provided, it is imperative that the State adopt appropriate measures to ensure long-term security. The State should not be proactive only times of disasters but rather the State should be prudent in maintaining a disaster resilient State. Since the nature and impact of disasters vary according to the environmental, geographical, and socio-economic conditions across Nepal, the policies of management and activities must be carried out accordingly. With regards to disaster risk caused by fire, this court in *Raksharam Harijan* has issued some directive⁴¹. The matters expressed in that order are relevant in this context however, reiteration is not deemed necessary. Therefore, with relevance to those directive orders, directive orders is hereby issued in the names of the respondents to carry out or cause to carry out the following works so as to effectively and appropriately address the impact of disaster management and climate change.

1. To develop and implement a National Master Plan on Disaster Management so as to respect and protect the rights guaranteed by the Constitution of Nepal and to implement the concept of environmental sustainable development as reflected in the Constitution, and in particular to focus on "Water-induced Disaster Control and River Management" and "Disaster Risk Reduction through Early Warning, Preparedness, Rescue, Relief, and Rehabilitation" and to promote the involvement of the federal, provincial, and local levels, recognizing geographical sensitivity, diversity, and climate adaptability, and recognizing the traditional knowledge and skills of local people in the control of flood and landslide and matters relating to the promotion of public participation and capacity development;
2. Carry out an extensive study of Nepal's geographical and climatic conditions, the nature, status, flow of the rivers located in various parts of Nepal, and based on the river basin and incorporating periodic plans develop and implement land use policies and land management programs. While doing so, necessary forest areas should be maintained for environmental balance and follow the policy of conservation, promotion and sustainable utilization of biodiversity;
3. Since date is deemed necessary for proper management of disasters, it is hereby deemed necessary to have scientific data on the geographical location, nature, flow and behaviour of rivers and streams, as well as measurement of river-borne materials, and based on information technology collect detailed data regarding potential human and other damages that may be caused by floods, and to regularly update them;
4. To collect data of the citizens who are yet to be rehabilitated from the impacts of floods and landslides and based on the data formulate policies and programs relating to post-disaster reconstruction;

⁴¹ *Raksharam Harijan vs. Home Ministry et.al.* Nepal Law Reporter 2076, Decision No. 10203, p. 1573

5. To construct resilient housing with basic facilities for disaster victims so as to ensure their right to housing as guaranteed by Article 37 of the Constitution and to increase the resilience of other public and private infrastructures;
6. To implement a national-level crop and livestock insurance program so as to appropriately address the impact caused to farmers owing to untimely rainfall, droughts and other disasters thereby destroying their crops and to adopt and provide security measures and compensation arrangements;
7. To make readily available real-time information related to disasters, to develop early warning systems and emergency communication mechanisms, and to enable the immediate implementation of relief programs, as well as conduct informative programs on disaster reduction and management, provide training on first aid, rescue, and from time-to-time conduct trainings on rescue and provide knowledge and develop the capacity of local residents in disaster-prone areas so that they are capable to manage and respond to disasters.

It is hereby ordered to provide a notice of the order to the Judgment Execution Directorate and Notice to the parties shall be given to the Office of the Attorney General and the Directorate of Judgment the respondents through the Office of the Attorney General and upload the judgment and submit the case file accordingly.

Concurring with the above opinion.

Honorable Justice Sushmalata Mathema

Bench Officer: Shankar Adhikari, Section Officer: Shreya Sanjel

Research Assistant Intern: Roshan Nepal

Dated Year 2078 of the Month of Bhadra Date 21 Day 2

(Corresponding to Year 2021 of the Month of September Date 6 Day 3)