

Supreme Court, Division Bench

Honorable Justice Ishwor Prasad Khatiwada

Honorable Justice Anil Kumar Sinha

2073/04/20

Order

071-WO-0371, 071-WO-0372, 071-WO-0373

Sub: Mandamus

Petitioner: Advocate Arjun Kumar Aryal et.al., resident of Syanjha District, Putali Bazaar Municipality Ward No. 12 currently resident of Lalitpur Sub-metropolitan City Ward No. 1 Kupondole

Vs.

Respondent: Government of Nepal, Prime Minister and Office of the Council of Ministers, Singha Durbar, Kathmandu

071-WO-072

Case: Certiorari, Mandamus, Prohibition

071-WO-0372

Petitioner: Rajya Laxmi Golcha et.al., resident of Moran District, Biratnagar Sub-metropolitan City Ward No. 3

Vs.

Respondent: Nepal Government, Prime Minister and Office of the Council of Ministers, Singha Durbar

071-WO-0373

Petitioner: Geeta Prasad Dahal et.al., resident of Kavrepalanchowk District, Banepa Municipality Ward No. 11

Vs.

Respondent: Nepal Government, Prime Minister and Office of the Council of Ministers, Singha Durbar

- Where the Government of Nepal, or any public body or official, has failed to perform a duty required under the Constitution or law, or has undertaken an act that it was not authorized to do, resulting in adverse effects on the rights, interests, or welfare of the general public, the matter is considered a subject of public interest. In determining whether an issue is “public” or not, it is not to be decided merely by counting the number of persons. If a matter represents the general rights or interests of the public, it cannot be denied the character of a public-interest dispute solely on the basis of the number of people affected.
- The determination of whether a dispute is a public or a private dispute must be made based on the nature, character, and circumstances of the dispute. Generally, matters relating to national security, governance, social peace, public education, health and morality, the country’s economic condition, cultural or religious issues, social justice, and environmental justice may, depending on the context, constitute subjects of public interest or concern. In reality, it is not possible to exhaustively enumerate the areas that qualify as matters of public interest or concern. Such determination must be made on a case-by-case basis, considering the factual circumstances of each dispute. However, while interpreting a dispute as one of public interest, its meaning must be understood in relation to the rights and entitlements conferred by the Constitution or law.

(Para 3)

- Primarily, the petitioners have approached the court raising questions on various issues for judicial determination, including: the large-scale animal sacrifices conducted in Nepali society, particularly during the Gadhimai festival; certain superstitions and traditional practices associated with such rituals; the cruel, merciless, brutal, and inhumane treatment of animals; the environmental impacts arising from the sacrifices; the adverse effects on public health; the quarantine and testing of imported animals and birds, and the potential risk of contagious diseases; and the fact that the legislation enacted by the Legislature has not been implemented even 17 years after its enactment. The issues mentioned above, by their very nature and prima facie clearly constitute matters of public interest and concern. Certain superstitions and traditional practices prevailing among the Hindu devotees of the country naturally fall within the sphere of concern of these citizens. Environmental problems arising from animal and bird sacrifices, as well as impacts on public health are matters of concern for all conscious citizens. The cruel treatment inflicted upon animals and birds during their transportation from various parts of the country to the Gadhimai area cannot be regarded as a concern solely of the local people of the Gadhimai region.
- The failure to implement an Act enacted by the Legislature more than 17 years ago cannot be regarded merely as a matter of individual benefit, interest, or concern. These issues relate to rights guaranteed by the Constitution, including the right to live with dignity, the right to freedom of religion, the right to a clean environment, the right to health, the right to food, and consumer rights and they also pertain to the proper implementation of the law.

This matter is also connected with the principles and policies of a well-ordered state as provided in the current Constitution, as well as in the Interim Constitution of Nepal, 2063, which aim to establish a welfare state. It is indisputable that the writ petitioners include individuals who have been members of Parliament, practicing lawyers, and social activists working in the field of animal welfare. There is no reason to assume that the petitioners are incapable of representing the interests and concerns of the general public. Accordingly, the writ petitioners are entitled to approach the court by filing a writ petition in relation to matters concerning public interest and public concern.

(Para 6)

- The present era is an era of science and consciousness. The modern age cannot continue to endorse superstitious beliefs. There are numerous examples in society where certain past practices and traditions, which were irrational, inhumane, and obstructive to social development and progressive change, have already been abandoned. If practices and beliefs that are inconsistent with the science of social change are not abandoned, the destination of the transformation we aspire to will remain difficult or unattainable. For new norms to be established, old beliefs must necessarily be displaced. If all old beliefs, under the guise of customs, traditions, or practices, are blindly followed, the modern transformation of society cannot be realized.
- If it is to be assumed that whatever has been done in the past is entirely correct and immutable, progressive transformation of society will not be possible. It is necessary to abandon what is wrong and adopt what is good. This is also one of the principles of human development. From this perspective, it is essential to examine the practice of animal sacrifice.

(Para 8)

- It is observed that some individuals hold the belief that animal sacrifices must be offered for the liberation of the animals being sacrificed. According to religious scriptures, the Goddess Bhagwati is regarded as the “Mother of the Universe” (*Jagat Janani*), wherein *Janani* which signifies a mother. Religious belief holds that the Goddess Bhagwati is the mother of all living beings. A mother inherently possesses boundless love and compassion for all her children. How offering the children of the Goddess in her name as a sacrifice could please and satisfy her is a matter that cannot be understood rationally. It is also observed that some believe animal sacrifices are performed to gain power. In reality, however, many individuals who do not adhere to the practice of animal sacrifice have nonetheless become powerful and have effectively administered the affairs of the state. Examples of individuals who rejoice in performing animal sacrifices have been found to be in a state of poverty, compassion, or weakness in the society. Whether a person attains power or not depends on the alignment of their abilities, effort, diligence, sacrifice, dedication, willpower, circumstances, and chance. The regressive tendency to attribute an

invisible or imaginary phenomenon to a divine source of power under the guise of religion obstructs the forward and progressive transformation of society.

(Para 11)

- The legality of openly sacrificing millions of animals cannot be justified merely on the ground that no law explicitly prohibits it. Proper management of such practices is the responsibility of the relevant government authorities. It is not reasonable to disregard the main provisions of the Act and invoke exceptional arrangements as a pretext. Moreover, it is unbecoming for the government to rely on exceptions under an Act that has not even been implemented.

(Para 39)

- In fact, the right to life inherently includes the right to live with dignity and to enjoy a healthy and respectable life. The antiquated notion of understanding the right to life merely as the mere existence of an animal (*animal existence*) has no legal or practical significance today. In fact, the right to live in a clean and healthy environment is a fundamental right guaranteed by the Constitution, and it is both mandatory and desirable for the State to make necessary arrangements for the protection and promotion of this right. Ensuring the exercise of this right and playing a constructive role in its realization also constitutes a duty of this court.
- It is necessary to issue orders against the respondents to ensure proper management of the meat and other by-products of animals sacrificed during the Gadhimai festival, to control environmental pollution, and to maintain a clean and healthy environment. This includes determining, testing, and regulating the quality of the meat, implementing the Slaughterhouse and Meat Inspection Act, 2055, and taking appropriate measures to prevent any adverse impact on public health in and around the Gadhimai Temple area arising from the blood, meat, hide, or other remains of the sacrificed animals.

(Para 43)

On behalf of Appellant/Defendant:

On behalf of Plaintiff/Petitioner:

Precedents Cited:

Relevant Laws:

Order

Honorable Justice Ishwar Prasad Khatiwada: The summary of facts and the order of the writ petition submitted pursuant to Article 107 (2) of the Interim Constitution of Nepal, 2063, and within the jurisdiction of this court are as follows:

Contents of the writ petition no. 071-WO-0371 filed by Advocate Arjun Kumar Aryal and Saroj Neupane are as follows:

The Gadhimai festival, which is celebrated every five years, is scheduled to commence on the 11th of Mangsir of this year. The tradition of the Gadhimai festival is believed to be approximately two to three hundred years old. According to local belief, a landowner in Makwanpur was once taken hostage by the then king. During that time, the landowner reportedly had a dream in which he went to the Gadhimai Temple and offered blood, after which all his wishes were fulfilled. Upon being released from captivity, the landowner is said to have gone to the Gadhimai Temple and offered his own blood from five parts of his body. Ever since that time, the Gadhimai festival has been held every five years in accordance with this popular belief. Over time, this practice has become distorted, resulting not in the offering of one's own blood, but in the sacrifice of thousands of innocent animals and birds. This has caused environmental pollution in the surrounding area and raised serious concerns regarding the spread of various diseases. This practice represents a perverted form of the original tradition. Given that the distortion of the tradition due to the superstitions of the general public has led to the sacrifice of millions of animals and birds, causing serious obstacles to environmental protection, and therefore, the petitioners' requests the honorable court to issue appropriate order in the name of the aforementioned respondents directing them to make alternative offerings such as floral tributes or other appropriate arrangements where no animals or birds shall be sacrificed. From the perspective of the eternal Hindu Vedic philosophy, the act of offering sacrifices is considered a great sin (*mahapaap*). Due to superstitious beliefs, Gadhimai in Nepal has become known as the site of the largest animal sacrifices in the world. This practice sends a negative message globally. Experts working in the field of animal rights in Nepal, India, and other countries have voiced their opposition to the killing of these innocent creatures. It is feared that this practice not only undermines the essence of eternal Hindu Vedic philosophy but also has the potential to distort the principles of the Hindu religion itself. The Supreme Court of India, while hearing a writ petition filed by animal rights activists, issued an interim order directing that no animals be exported to Nepal from India for the purpose of sacrifice at the Gadhimai festival. Pregnant and diseased animals, without any prior examination, are subjected to extreme cruelty, being denied food and water, and are sacrificed in a highly inhumane manner. Since such practices also cause environmental pollution and may foster a criminal mindset among women, children, youth, and the general public, thereby producing negative effects on society, the petitioners' requests the honorable court to issue an order of mandamus in the names of the respondents directing them not to sacrifice or cause to sacrifice thousands of animals.

Contents of the writ petition no. 071-WO-0372 filed by petitioner Rajya Laxmi Golcha, Manoj Gautam and Niraj Gautam is as follows:

At the Gadhimai festival held every five years in Mangsir at Bariyarapur in Bara District, the practice of sacrificing thousands of buffaloes and other animals has been continuing for the past 260 years. For this festival, animals are brought for sacrifice not only from within Nepal but also

in large numbers from the neighboring country, India, where they are subjected to cruel slaughter. State agencies too have been providing resources and means in support of this practice of animal sacrifice at the festival. With the assistance of the local administration, the festival has traditionally been conducted, including arrangements for security. This year as well, the organizers have planned to sacrifice hundreds of thousands of animals, and, in coordination with the local administration, intensive preparations are underway in accordance with that plan.

Various national and international organizations, institutions, and individuals have been raising their voices against animal sacrifice. Since this practice has curtailed citizens' right to live a healthy life in a clean environment, and as there is no alternative legal remedy available for the protection and enforcement of this right, the petitioners' have appeared before this honorable court by exercising the extraordinary jurisdiction under Articles 32 and 107 (2) of the Constitution. Animal sacrifice at the sacred religious site of Gadhimai should not be allowed to take place during the month of Mangsir.

Article 16 (1) of the Interim Constitution of Nepal, 2063, provides the constitutional guarantee that every person shall have the right to live in a clean environment. Section 2 (a) of the Environment Protection Act, 2053, defines "environment" as the interaction and inter-relationship among the components of natural, cultural, and social systems, economic and human activities, and their components. Section 2 (b) defines "pollution" as 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 carcasses of sacrificed animals cause the Gadhimai area to become extremely foul-smelling, which directly affects the religious and social environment of the temple and its surroundings. Although chickens, pigeons, and goats sacrificed in the Gadhimai premises are taken away immediately, the dead birds still have an adverse impact on the environment. However, owing to the existing tradition, the meat of sacrificed buffaloes is taken only after twenty-four hours by members of the Dalit community. Since thousands of animals are sacrificed, a large quantity of blood and other waste materials is produced, and when these remain in one place for twenty-four hours, they not only turn into filth but also pose a risk of infection from the carcasses. If the Gadhimai area is not declared free from animal sacrifice, it will adversely affect the right guaranteed by Article 16 (1) of Nepal's Interim Constitution and therefore, such activities must be stopped. The Animal Health and Animal Services Act, 2055, provides for quarantine inspection. However, in the context of the Gadhimai fair, it appears that no such inspection is carried out in accordance with the law.

Owing to the sacrifices of animals carried out at Gadhimai, there exists a situation where the psychology of children may be adversely affected. Article 17 of the Convention on the Rights of the Child, 1989, provides that no activity shall be conducted that is detrimental to the physical or mental health of children. Pursuant to Section 9 of the Treaty Act, 2047, Nepal must comply with the provisions contained in that Convention.

From the perspective of the provisions contained in the Environment Protection Act, 2053, the Infectious Diseases Act, 2020, the Animal Health and Livestock Services Act, 2055, the Treaty Act, 2047, and the Animal Slaughterhouse and Meat Inspection Act, 2055, activities offering animal sacrifices that cause pollution and adversely affecting public health should not be allowed. Since the act of offering animal sacrifices is contrary to the constitutional rights guaranteed under Articles 16 (1), 23 (1) and (2), and 29 (2) of the Interim Constitution of Nepal, and where no other effective alternative legal remedy exists, the petitioners' have approached this honorable court under Articles 32 and 107 (2) of the Constitution to seek judicial intervention in this matter of public interest. The petitioner requests that an order of mandamus or any other appropriate order be issued under Article 107 (2) of the Constitution prohibiting or causing to prohibit the violent act of animal sacrifice scheduled to take place at Gadhimai.

Contents of the writ petition no. 071-WO-0373 filed by Geeta Prasad Dahal and Advocate Ram Krishna Banjara is as follows:

From among the petitioners, I, Geeta Prasad Dahal, am a Nepali citizen and have been working for the past ten years in the field of protection, care, and development of domestic animals and poultry. From among the petitioners, I, Ram Krishna Banjara, am a student of law and have been practicing as an advocate for the past seven years. A large fair is held every five years at the Gadhimai Temple, located in Ward No. 2 of Bariyarpur Village Development Committee of Bara District, Nepal. At this fair, five types of animals and poultry namely goats, buffaloes, ducks, chickens, and mice are sacrificed. Five years ago, hundreds of thousands of animals were sacrificed and the surrounding area became polluted with animal remains and by-products (especially calf of buffaloes and buffaloes), resulting in a foul odor, which was reported in newspapers and other media. In this regard, both nationally and internationally, the media have long covered the Gadhimai Temple fair, portraying it as the place in the world where the largest number of animal sacrifices occurs. Continuing this trend, over the past approximately six months, various national and international media outlets, as well as animal rights activists, have expressed their concerns regarding this issue. In this context, a case titled *Gauri Mallekhi v. UOI and Others* was filed in the Supreme Court of India, and on October 17, 2014, the court issued an order prohibiting the exportation of animals into Nepal for sacrifice, except for those specifically authorized, demonstrating the Indian Supreme Court's judicial activism and awareness on this matter. In this way, media coverage, news reports, and public discussions regarding animal sacrifice have been widely circulated, and the petitioners had organized various programs urging the relevant agencies of the Government of Nepal to reconsider the practice of offering animals for sacrifice. Despite this, for the sale of animal products derived from such sacrifices, a tender worth approximately NPR 26.7 million was announced on 16 Ashwin 2071 B.S., and a contractor was appointed for exporting the meat to China. This indicates that the concerned authorities, in effect, have taken no measures to reduce or symbolically limit the practice of animal sacrifice. Similarly, for the purpose of sacrifice, the land surrounding the Gadhimai Temple was designated as a slaughterhouse, and the area was depicted as sacrificial grounds with photographs published in newspapers and other

media indicating animal slaughter. Although a tender had been issued for managing the sacrificed animals, when the petitioners contacted the concerned authorities to obtain information regarding the health checks of the animals brought for sacrifice and inspection of the meat from the slaughtered animals, no information could be obtained to date regarding any mechanism or program set up for testing the quality of the meat or conducting health inspections. There is no public record indicating that the animals brought for the Gadhimai sacrifice were subjected to quarantine procedures to ensure they were free from illness or infectious diseases. After the animals are slaughtered and the meat is sold through contractors, it reaches the general public. Public information and the fact that the meat is tendered for sale establish that such meat could directly affect human health if it comes from infected or diseased animals. However, since the concerned authorities have shown no attention to ensuring the meat's safety, it appears that unhealthy animal products could reach the general public. Under the provisions of the Food Act and the Animal Health and Animal Service Act, the legal obligation to ensure that food products are safe for human consumption rests with the Government of Nepal. However, the respondents have not fulfilled this obligation. Therefore, pursuant to Articles 32 and 107 (2) of the Interim Constitution of Nepal, it is requested that an order of mandamus and any other appropriate order be issued against the respondents directing them to conduct quarantine testing of animals intended for sacrifice, ensure that the sacrifice is carried out in an organized and regulated manner, prevent cruel treatment of the animals, immediately constitute a committee in accordance with Section 27 of the Animal Health and Animal Service Act, 2055, ensure proper management of animal products, determine the quality of meat, limit the sacrifice to symbolic offerings only, and implement the Slaughterhouse and Meat Inspection Act, 2053, along with any other appropriate directives.

Show Cause Notice and Interim Order

A show cause notice had been issued by this court on 2071/8/8 (corresponding to 24 November, 2014) wherein the respondents were ordered to furnish a rejoinder. Furthermore, the issues raised by the petitioner such as the prohibition of slaughtering animals in a manner that causes serious adverse effects on human health, human development, and the environment; the prohibition of cruel treatment toward animals; ensuring that only meat fit for consumption enters the market; preventing the import of diseased animals; and preventing animal smuggling are found to be addressed by the *Animal Health and Animal Services Act, 2055 (1999)*, the *Animal Slaughterhouse and Meat Inspection Act, 2055 (1999)*, the *Infectious Disease Act, 2020 (1963)*, and the *Environment Protection Act, 2053 (1997)*. In matters already regulated in detail by the statute, it is not necessary for this court to issue further directions. Rather, it is incumbent upon the local authorities, concerned institutions, the general public, and all bodies responsible for health, administration, and police services to remain vigilant so that no act contrary to the prevailing laws is committed. Accordingly, taking into consideration the relevant Acts and laws, an interim order was issued in the name of the respondents to draw their attention toward properly managing the Gadhimai Fair.

Rejoinder Submitted by the Office of the Prime Minister and Council of Ministers

The opposing writ-petitioner has not been able to clearly specify as to what act, action, or decision of the Government of Nepal, the Office of the Prime Minister and Council of Ministers, has violated their constitutional or legal rights. It is also not permissible to file a writ petition by making this Office a respondent in relation to acts, actions, or decisions carried out by other bodies or officials who are vested with authority to act in accordance with the prevailing laws. The Government of Nepal and the Office of the Prime Minister and Council of Ministers are committed to upholding and enforcing the Constitution and the laws, thereby realizing the concept of the rule of law, and to respecting, protecting, and promoting the rights and entitlements granted to citizens by the Constitution and the laws. The right to religion is a fundamental and human right of every individual. Pursuant to the prevailing social and cultural traditions, the Constitution guarantees each person the right to observe, practice, and protect the religion they have followed since time immemorial. The Gadhimai fair held every five years in Bara District is a focal point of religious faith and devotion not only for the Nepali devotees but also for Hindu devotees from the neighboring country, India. Every five years, hundreds of thousands of people who hold reverence and faith in Gadhimai gather at the temple to offer the objects they had vowed in the name of the deity, believing that their wishes and aspirations have been fulfilled. While fully safeguarding the right to religion, efforts have been undertaken with the cooperation of government authorities and local stakeholders to raise public awareness so as to prevent serious adverse impacts on human health and the environment, and to discourage the practice of animal slaughter. The Government of Nepal is in complete agreement with the concerns raised by the writ petitioners, including that animals should not be subjected to cruel treatment, that only meat fit for consumption should enter the market, that diseased animals should not be imported, and that animal smuggling must not occur. In this regard, clear provisions are also found in the *Animal Health and Animal Services Act, 2055*, the *Animal Slaughterhouse and Meat Inspection Act, 2055*, the *Infectious Disease Act, 2020*, and the *Environment Protection Act, 2053*, and the Government remains committed to ensuring their enforcement. Since the recitation of scriptures, worship, and the offering of sacrifices at the temple fall within the sphere of religious freedom, and as the prevailing laws do not prohibit the practice of animal sacrifice, the Government of Nepal finds no basis to intervene. Since the Gadhimai fair has already concluded, there is no reason for issuing any further orders and as such the writ petition ought to be dismissed.

Rejoinder Submitted by Ministry of Science and Environment

The petitioner has failed to clarify which act or proceeding of this Ministry has adversely affected his rights or those of the general public. Moreover, the subject matter of the petition, as claimed by the petitioner, does not appear to fall within the functions, duties, or jurisdiction of this Ministry. Therefore, to the extent that the Ministry has been made a respondent when it ought not to have been, the petition is liable to be dismissed. The claims made by the petitioner could have been appropriately addressed through the effective implementation of the legal provisions under the

Food Act, 2023 and the *Animal Health and Animal Services Act, 2055*. However, without resorting to these alternative measures, the petitioner has filed the present writ petition. Accordingly, the writ petition, as filed under Article 107(2) of the Interim Constitution of Nepal, 2063 (2007), is liable to be dismissed

Rejoinder Submitted by Ministry of Culture, Tourism and Civil Aviation

At the Gadhimai Temple in Bara District, the practice of animal sacrifice occurs every five years during the fair. Since the prevailing laws of Nepal do not prohibit animal sacrifice, raising public awareness plays a crucial role in discouraging, reducing, and regulating this practice. Accordingly, in its capacity, the Ministry of Culture, Tourism, and Civil Aviation is making efforts, in coordination and cooperation with various governmental and non-governmental bodies, to regulate the practice of animal sacrifice in the future. As it has not been demonstrated how any act or proceeding of this Ministry has caused any adverse impact on the rights of the respondent, the writ petition is also liable to be dismissed.

Rejoinder Submitted by Ministry of Home

When any social organization or body requests security, it is the responsibility of the Ministry of Home Affairs to provide such security. The writ petition nowhere specifies how any act or proceeding of the Ministry of Home Affairs has resulted in a violation of rights concerning the matter claimed by the petitioner. As the petitioner has failed to demonstrate the Ministry's involvement or provide any basis or evidence for making it a respondent, the writ petition is also liable to be dismissed, as stated in the written response.

Rejoinder Submitted by Ministry of Health and Population

There can be no difference of opinion that under the Interim Constitution of Nepal, 2063, every Nepali has the right to live with dignity and in good health, and to enjoy rights protected by national and international law, including the rights to a healthy environment, health, education and culture, religion, and the rights of children. The inspection of animal health, prevention of cruel treatment of animals used for any purpose, and environmental issues arising from animal sacrifice do not fall within the functional domain of this Ministry. As these matters are to be addressed by the concerned ministry or authority, there is neither any basis nor justification for making this Ministry a respondent and therefore, the writ petition should be quashed.

Rejoinder Submitted by Ministry of Agriculture

The *Food Act, 2023*, prohibits any person from producing, selling, distributing, exporting, or storing adulterated or substandard food, or from engaging in any of these activities with such food. To determine and regulate food quality, the Act provides for the establishment of a Food Testing and Quality Determination Committee. In this regard, the Department of Food Technology and

Quality Control under this Ministry, along with its subordinate offices, continues to remain actively engaged in monitoring and ensuring food quality. In brief, the writ petition has been filed against this Ministry on mere assumptions, without specifying how any act or proceeding of the Ministry has caused or is causing any harm. Under Section 5 of the *Animal Health and Animal Services Act, 2055*, the Ministry is empowered to appoint quarantine officers from time to time to place animal-derived products or animal production materials brought in by importers under quarantine for inspection and testing. Under the *Slaughterhouse and Meat Inspection Act, 2055*, legal provisions regarding the appointment of meat inspectors and the mandatory inspection of animals prior to slaughter are being implemented. The Ministry remains assured that even at religious sites only healthy animals are being sacrificed. In the event that any person is found to have slaughtered a diseased or unhealthy animal, the Ministry remains committed to taking appropriate action. However, the writ petition has been filed unnecessarily by raising hypothetical issues, disregarding the fact that the management of animal sacrifices at religious sites is being conducted in accordance with the law and under the supervision of the Temple Management and Development Committee and therefore, the writ petition is liable to be quashed.

Rejoinder Submitted by Central Animal Quarantine Office

Animals to be sacrificed at the Gadhimai Temple are placed under quarantine and issued quarantine certificates in accordance with Sections 6 and 7 of the *Animal Health and Animal Services Act, 2055*, and only after completing this procedure are they permitted for sacrifice. To facilitate this, the Government of Nepal has established an Animal Quarantine Office in Birgunj and an Animal Quarantine Checkpost in Matiarwa, Bara District, which are actively functioning. To prevent cruelty towards animals, concerted efforts are being made by the Department of Animal Services and its subordinate bodies. Since appropriate arrangements pursuant to Section 7 of the Food Act, 2023, and the provisions of the Environment Protection Act, 2053, have been made at the local level to prevent environmental pollution from the meat and animal-derived products left behind by devotees after the animal sacrifice, the writ petition, which has made this Office a respondent is also liable to be dismissed.

Rejoinder Submitted by District Administration Office, Bara

The District Administration Office, Bara, from at least one month prior to the fair has prioritized security management, coordinating with relevant agencies to maintain peace and order at the Gadhimai Fair and ensure the safety of incoming devotees. It has convened meetings of security agencies, issued directives, continuously monitored and supervised the fair and the animal sacrifice activities, and managed the slaughterhouses all within the limits of available resources and strictly in accordance with the prevailing laws and regulations of Nepal. Measures have been taken to inform, sensitize, and issue directives to the concerned responsible authorities regarding communicable diseases and pollution that may arise from the sacrificed animals, and their potential impacts. Additionally, to prevent any undesirable activities during the fair, a prohibited zone

extending up to 3 kilometers around the Gadhimai Temple has been declared, within which the sale, distribution, or consumption of intoxicating substances is strictly prohibited. Since, this Office has remained vigilant in managing the Gadhimai Fair, ensuring the safety of incoming devotees, maintaining environmental cleanliness, and upholding religious and social unity and harmony, and remains committed to doing so in the future and therefore, the writ petition, which has made this Office a respondent, is liable to be quashed.

Rejoinder Submitted by District Police Office, Bara

From at least one month prior to the commencement of the five-yearly Gadhimai Fair, this Office, under the command of the Deputy Superintendent of Police, has established and operated a security base camp at the Gadhimai Temple, equipped with necessary communication and other essential facilities. This has been done to ensure the security of incoming devotees and to facilitate the orderly conduct of animal sacrifices, worship, and other religious rituals in a smooth and organized manner. In coordination, discussion, and consultation with the priests of Gadhimai Temple, the Gadhimai Fair Committee, the District Administration Office, Bara, the Armed Police Force, and other concerned authorities, preparatory measures have been taken to ensure that no undesirable activities occur during the fair. This includes declaring a prohibited zone extending up to 3 kilometers around the temple, within which the sale, distribution, and consumption of alcohol are strictly prohibited. Taking into account the management of the Gadhimai Fair, the safety of devotees, environmental cleanliness, and the maintenance of religious and social unity and harmony, the worship and animal sacrifice at the fair have been conducted in an orderly manner. The fair was successfully completed peacefully and without any untoward incidents. As it is not feasible to completely prohibit a practice of animal sacrifice that has continued since time immemorial, the writ petition is liable to be dismissed.

Rejoinder Submitted by Gadhimai Fair Organizing Committee and Gadhimai Temple Management Committee

Gadhimai Temple holds ancient and sacred significance and is recognized not only within Nepal but also internationally as a powerful center of religious faith. As the temple is dedicated to the Goddess Shakti, worship here is often accompanied by sacrificial offerings. Since Vedic times, the practice of five-fold (*panchabali*) sacrifices has been observed at this temple. Hundreds of thousands of devotees and tourists, both domestic and foreign, participate in the fair, drawn by their religious faith. Due to both domestic and international religious tourism, the Gadhimai Fair has significantly contributed to the development of tourism in Nepal. As the animal sacrifices are offered as an expression of religious faith, prohibiting them would interfere with the religious practice. For this reason, the law provides exemptions for such longstanding religious traditions. Under Section 1(a) under the Chapter of Adal of the *Muluki Ain* (Country Code), any act that interferes with a religious site or religious activity is punishable with imprisonment. To ensure proper management of the animal sacrifices at the Gadhimai Fair, as well as the protection,

administration, development of the temple, and promotion of tourism, the Gadhimai Temple Management and Development Committee was established on 2060/11/15 (February 27, 2004). Since its establishment, the Committee has been managing the animal sacrifices and offerings at Gadhimai Temple, overseeing the health of local residents, and ensuring the proper disposal of meat from animals left behind by devotees. To date, the sacrifices at Gadhimai Temple have not caused any adverse impact on the environment, nor has any disease been reported in the area as a result of the sacrifices. The writ petitioners have also failed to provide any evidence to substantiate claims of environmental damage or transmission of disease. Although the writ petitioners have alleged that pregnant and diseased animals were not tested, and that the animals were deprived of food and water, and that they were sacrificed in a highly cruel manner, and that these acts caused environmental pollution and social harm, they have failed to provide any factual basis for these claims. The sacrifices at Gadhimai are conducted in an entirely orderly manner, without any cruel or inhumane treatment to the animals. Accordingly, the allegations raised by the petitioner are devoid of any truth, and as the Committee has been diligently managing the fair and overseeing the animal sacrifices, the writ petition is liable to be dismissed.

Office of the Village Development Committee, Bariyapur, Bara failed to submit its rejoinder and had expired the limitation period

Pleading and Deliberation of Learned Advocates

On behalf of the writ petitioners, learned Advocate Ramkrishna Banjara, learned Advocate Mr. Hari Phuyal, and learned Advocate Mr. Kedar Dahal submitted that the mutually interdependent social relationship between human beings and animals must be preserved. At the Gadhimai fair, thousands of animals and birds are sacrificed, thereby polluting the surrounding environment and causing the spread of various diseases. This practice represents a distorted form of tradition. Owing to superstitious belief, Nepal's Gadhimai has come to be known as the largest site of animal sacrifice in the world. It has conveyed a negative message at the global level. Without conducting any examination of pregnant or diseased animals, and without providing them even water or fodder, such animals are kept and then sacrificed in an extremely cruel manner. At the Gadhimai Temple, animals are brought for sacrifice not only from Nepal but also in large numbers from the neighboring country India, where they are subjected to merciless slaughter. Various resources and means are being provided by the organs of the State for the purpose of facilitating animal sacrifice at this fair. Although various national and international organizations, institutions, and individuals have raised their voices against animal sacrifice, no effective control has been maintained over this practice. The carcasses of the sacrificed animals cause severe foul odor in the Gadhimai area, adversely affecting the religious and social aspects of the temple and its surroundings. The animals and birds sacrificed within the Gadhimai premises have had a detrimental impact on the environment. There is also a risk of infection arising from the bodies of the animals that have died. Although the Animal Health and Animal Services Act, 2055, provides for quarantine inspection, such examinations are not being conducted in accordance with the law. Till date, there is no

information as to the kind of mechanism or program that have been put in place for examining the health of animals brought for sacrifice, inspecting the meat of slaughtered animals, or testing the quality of such meat. Animals are subjected to cruel treatment. Owing to the activities conducted at the Gadhimai fair, certain fundamental rights of individuals have been adversely affected. It was further argued that an order of mandamus along with other appropriate order need to be issued in the names of the respondents directing them to immediately constitute a Committee pursuant to Section 27 of the Animal Health and Animal Services Act, 2055, proper management of animal-based products must be ensured, standards for meat quality must be prescribed, animal sacrifice should be limited to symbolic form and the Animal Slaughterhouse and Meat Inspection Act, 2053, must be enforced.

On behalf of the various agencies of the respondent Government of Nepal, learned Joint Government Attorney Mr. Gita Prasad Timilsina submitted that the right to religion is a fundamental and human right of every individual. The Constitution guarantees each person the right to observe, practice, and protect his or her religion in accordance with the long-standing social and cultural traditions. The Gadhimai fair is not only significant for the Nepali people but also serves as a focal point of religious faith and belief for Hindu devotees from the neighboring country, India. Matters raised by the writ petitioners such as the prohibition against cruel treatment of animals, the requirement that only wholesome meat be brought into consumption, the prohibition on the importation of diseased animals, and the prevention of animal trafficking are likewise addressed under the Animal Health and Animal Services Act, 2055, the Animal Slaughterhouse and Meat Inspection Act, 2055, the Infectious Diseases Act, 2020 (1963), and the Environment Protection Act, 2053. The Government has, from time to time, appointed quarantine officers and made arrangements requiring that animal products or animal-derived materials brought in by importers be placed under quarantine for inspection. The act of offering animal sacrifice at a temple falls within the sphere of religious freedom, and as the prevailing laws do not prohibit the practice of animal sacrifice, no basis exists for governmental intervention. It was further argued that since the rights of the writ petitioners has not been infringed; the writ petition should be quashed.

On behalf of the Gadhimai Fair Organizing Committee and the Gadhimai Temple Management Committee, learned Advocate Mr. Arun Gyawali and learned Advocate Mr. Dilli Prasad Neupane argued that the writ petitioners do not have the locus standi to file a public interest petition on the subject matter. The fair has been significantly contributing to the development of tourism. Proper arrangements have been made for managing the sacrifices offered at the Gadhimai fair, as well as for the preservation, operation, and development of the temple and the promotion of tourism-related activities. Proper arrangements have been made for managing the sacrifices offered at the Gadhimai Temple, for handling monetary offerings, for safeguarding the health of local residents, and for ensuring the proper management of the meat of animals left behind by devotees. The sacrifices made at the Gadhimai Temple have not caused any adverse environmental impact, nor has there been any instance of transmission of disease attributable to such sacrifices in the area.

The writ petitioners have not been able to substantiate their claims regarding environmental harm or the spread of disease. It is not true that pregnant or diseased animals were left unexamined, deprived of water and fodder, or subjected to cruel treatment. It was further argued that since there was no truth in the matters raised by the writ petitioners, the writ petition should be dismissed.

Issues to be Resolved

In accordance with the rules, the case listed in the daily cause-list was presented before the Bench and was examined. Having considered the writ petition, the rejoinders and the arguments presented by the learned advocates, it is noted that decisions on the following questions need to be provided:

- (1) As to whether or not the writ petitioners have the locus-standi to file a public interest petition on the subject matter?
- (2) As to whether or not an order should be issued to prohibit or stop the practice of animal sacrifice at the Gadhimai Temple? In this regard, what immediate arrangements or measures, if any, should be made?
- (3) As to whether or not an order should be issued to prevent cruel, harsh, or painful treatment of animals and birds brought for sacrifice, and as to whether or not an order to constitute a committee pursuant to Section 27 of the Animal Health and Animal Services Act, 2055 should be issued?
- (4) As to whether or not an order should be issued mandating the compulsory quarantine inspection of animals and birds brought for sacrifice during the Gadhimai fair and the issuance of certificates thereof?
- (5) As to whether or not an order should be issued to make arrangements for the management of the meat and other products of sacrificed animals and birds, including measures to ensure meat quality, testing, control, and to prevent adverse effects on public health, as well as for controlling environmental pollution?
- (6) As to whether or not an order of certiorari, mandamus and other appropriate order as sought by the petitioners should be issued?

Basis, Reasons, and Grounds for the Order:

2. Firstly, it appears necessary to address the question raised on behalf of the respondents that the writ petitioners do not have the locus-standi to file a public interest petition. The present writ petition falls under sub-article (2) of Article 107 of the Interim Constitution of Nepal, 2063. This dispute is not the first case relating to matters of public interest. Particularly with reference to Article 88 (2) of the Constitution of 2047, numerous disputes have been examined by this

Court from time to time, and principles regarding public interest have been repeatedly propounded. The interpretation rendered in the context of the writ petition filed by Advocate Radheshyam Adhikari concerning the appointment of an ambassador appears to mark the beginning of the modern jurisprudential development of the law relating to public interest¹. This court in the course of examining numerous disputes has deliberated on the scope, purpose, objective, limits, and ambit of controversies relating to public interest. The provisions of Article 88 (2) of the Constitution of the Kingdom of Nepal, 2047, Article 107 (2) of the Interim Constitution of Nepal, 2063, and Article 133 (2) of the Constitution of Nepal, 2072, essentially embody the same recognition and philosophy concerning public interest disputes. In view of this, it is appropriate for this court to address the question of locus-standi in light of the principles previously laid down.

3. **A dispute concerning public right or public interest does not refer merely to the rights or interests of a particular individual or a limited group of individuals, but denotes a controversy relating to the collective rights or interests of the general public of the Kingdom of Nepal or of a particular community².** Where the Government of Nepal, or any public body or official, has failed to perform a duty required under the Constitution or law, or has undertaken an act that it was not authorized to do, resulting in adverse effects on the rights, interests, or welfare of the general public, the matter is considered a matter of public interest. In determining whether an issue is “public” or not, it is not to be decided merely by counting the number of persons. If a matter represents the general rights or interests of the public, it cannot be denied the character of a public-interest dispute solely on the basis of the number of people affected. The determination of whether a dispute is a public or a private dispute must be made based on the nature, character, and circumstances of the dispute. Generally, matters relating to national security, governance, social peace, public education, health and morality, the country’s economic condition, cultural or religious issues, social justice, and environmental justice may, depending on the context, constitute subjects of public interest or concern. In reality, it is not possible to exhaustively enumerate the areas that qualify as matters of public interest or concern. Such determination must be made on a case-by-case basis, considering the factual circumstances of each dispute. However, while interpreting a dispute as one of public interest, its meaning must be understood in relation to the rights and entitlements conferred by the Constitution or law.
4. Matters of public concern and interest can be manifold. However, not every concern or interest of the general public qualifies as a justiciable matter of public interest. A dispute that is to be addressed by the court must not be hypothetical or speculative, but must relate to a concrete and actual controversy. If the dispute involves the constitutional or legally conferred rights,

¹ Advocate Radheshyam Adhikari vs. His Majesty’s Government, Secretariat of Council of Ministers et.al., Nepal Law Reporter 2048, Decision No. 4430, pg. 810

² ibid

interests, or concerns of the general public that can be judicially examined, it may be regarded as a matter of public interest. A public controversy cannot be invoked merely as a means to satisfy someone's intellectual curiosity, interest, or inquisitiveness. A matter cannot be regarded as a public interest or public right dispute solely on the basis that the general public has an interest in the social, economic, political, religious, intellectual, moral, or similar matters that are not justiciable or should not be subject to judicial determination. It is necessary to exercise judicial caution in determining as to whether or not a matter is judicially justiciable. Matters of concern or interest to the general public may be numerous, and various errors or lapses may occur on the part of public bodies or officials. Providing judicial remedies on all such matters through the medium of a public interest dispute is neither appropriate nor, in many cases, practically feasible. The court should intervene in matters of public interest only after evaluating the authority conferred upon it by the Constitution or law, the nature and limits of its judicial functions, and the public dimension of the matter to be adjudicated.

5. In any dispute, the question of *locus standi* is of vital importance. As a general principle of locus-standi, only the person who has a right in a particular matter is entitled to make a claim regarding it. In the development of the concept of public interest disputes, the basis or scope of *locus standi* has also been broadened. In certain circumstances, a public interest dispute may be regarded as giving voice to those who cannot speak for themselves i.e. the *voice of the voiceless*. This concept of public interest has, in certain instances, served as a boon for the protection of the rights, interests, or concerns of socially or economically disadvantaged and marginalized classes and communities. However, this does not imply that any individual may file a complaint, petition, or writ petition in respect of every matter of public concern. The petitioner or complainant must have a meaningful relation or a substantial interest in the subject matter of the dispute, and it is also necessary to satisfy the court that the individual can appropriately represent the matter. Considering these facts, in the writ petition filed by Radheshyam Adhikari, it has been interpreted that “*if any person were allowed to bring any dispute concerning public rights or interests within the extraordinary jurisdiction of this court, the sheer volume of such petitions could affect the efficiency and effectiveness of the court's functioning, and the very purpose of the constitutional provision could be defeated. That is not the intention of the Constitution.*” In view of the concept of public interest disputes and the principles laid down by this court in various cases, it appears that a public interest dispute may be brought before the court when there exists a meaningful relationship between the writ petitioners and the subject matter of the dispute, a substantial interest is shown, and the matter concerns rights or entitlements conferred by the Constitution or law that are justiciable.
6. Against the aforementioned conceptual background, it becomes necessary to consider whether the writ petitioners have the locus-standi to file a petition in relation to the public interest dispute. Primarily, the petitioners have approached the court raising questions on various issues for judicial determination, including: the large-scale animal sacrifices conducted in Nepali society, particularly during the Gadhimai festival; certain superstitions and traditional practices

associated with such rituals; the cruel, merciless, brutal, and inhumane treatment of animals; the environmental impacts arising from the sacrifices; the adverse effects on public health; the quarantine and testing of imported animals and birds, and the potential risk of contagious diseases; and the fact that the legislation enacted by the Legislature has not been implemented even 17 years after its enactment. The issues mentioned above, by their very nature and prima facie clearly constitute matters of public interest and concern. Certain superstitions and traditional practices prevailing among the Hindu devotees of the country naturally fall within the sphere of concern of these citizens. Environmental problems arising from animal and bird sacrifices, as well as impacts on public health are matters of concern for all conscious citizens. The cruel treatment inflicted upon animals and birds during their transportation from various parts of the country to the Gadhimai area cannot be regarded as a concern solely of the local people of the Gadhimai region. The failure to implement an Act enacted by the Legislature more than 17 years ago cannot be regarded merely as a matter of individual benefit, interest, or concern. These issues relate to rights guaranteed by the Constitution, including the right to live with dignity, the right to freedom of religion, the right to a clean environment, the right to health, the right to food, and consumer rights and they also pertain to the proper implementation of the law. This matter is also connected with the principles and policies of a well-ordered state as provided in the current Constitution, as well as in the Interim Constitution of Nepal, 2063, which aim to establish a welfare state. It is indisputable that the writ petitioners include individuals who have been members of Parliament, practicing lawyers, and social activists working in the field of animal welfare. There is no reason to assume that the petitioners are incapable of representing the interests and concerns of the general public. Accordingly, the writ petitioners are entitled to approach the court by filing a writ petition in relation to matters concerning public interest and public concern.

7. With regard to the second question as to whether or not an order should be issued to prohibit or stop the practice of animal sacrifice at the Gadhimai Temple as sought in the petition of writ no. 071-WO-0372, submitted by Ms. Rajalakshmi Golchha et.al. it appears necessary to consider certain religious, cultural, and social aspects. The practice of sacrifice is found to be connected with the religious faith of some individuals. In certain contexts, this practice has also been discussed and considered as a matter of cultural significance. A segment of the Hindu community has been observed to follow the practice of animal sacrifice with considerable reverence. In fact, it has become a social reality, with a section or group within the Hindu society maintaining a deeply vested attachment to the practice of sacrifice. The practice of animal sacrifice continues to exist in Nepali society, and in many temples, and on various religious occasions sacrifices are regularly performed. This is the social reality of our present society. It is desirable that serious consideration be given as to whether or not this social reality and practice should continue.
8. The present era is an era of science and consciousness. The modern age cannot continue to endorse superstitious beliefs. There are numerous examples in society where certain past

practices and traditions, which were irrational, inhumane, and obstructive to social development and progressive change, have already been abandoned. If practices and beliefs that are inconsistent with the science of social change are not abandoned, the destination of the transformation we aspire to will remain difficult or unattainable. For new norms to be established, old beliefs must necessarily be displaced. If all old beliefs, under the guise of customs, traditions, or practices, are blindly followed, the modern transformation of society cannot be realized. It is relevant to cite here the social reality expressed in poetic form by the great poet Laxmi Prasad Devkota: “Man has done so much, consumed the entire universe; our Brahmins are still engrossed and happy in touching their hair (*tuppi*), the sacred thread (*janai*) and waistband (*kandani*).” The expression of the great poet is symbolic and conveys a profound and compelling message about social change. If it is to be assumed that whatever has been done in the past is entirely correct and immutable, progressive transformation of society will not be possible. It is necessary to abandon what is wrong and adopt what is good. This is also one of the principles of human development. From this perspective, it is essential to examine the practice of animal sacrifice.

9. In the present context, it is neither necessary nor practically possible to undertake an analysis of religious scriptures. Matters of religious belief are to be determined by learned authorities in religious texts (*pundits*), and it is not necessary to engage in a dispute here. In fact, the determination of religious beliefs from Vedic scriptures is not a function of the court. However, since the writ petitioners have raised questions concerning religious beliefs, faith, and superstition, and the respondents have, in turn, invoked the context of religious freedom to justify the practice of animal sacrifice, it appears that the central issue of the dispute involves a religious dimension. Accordingly, it becomes necessary to make brief or symbolic reference to certain religious aspects for the purpose of addressing the disputed questions.
10. A study of the major scriptures of Hinduism reveals that a non-violent approach is recognized as the fundamental religious principle. An examination of texts such as the Vedas, Upanishads, Purans, Ramayana, Mahabharata, and the Bhagavad Gita shows no instance of deities, divine beings, or virtuous humans such as sages and rishis engaging in animal sacrifice. On the contrary, these religious scriptures convey the message that the protection of living beings is a human duty. There is no indication that the revered deities of Hindus, such as Ram or Krishna ever performed animal sacrifice or instructed that it must be performed. Nor is there any religious evidence that yogi's, sages, or saints offered animal sacrifices during the performance of yagyas or hom. On the other hand, examples can be found in the scriptures of demonic (*asuri*) figures, such as Ravan or Kansa, who not only offered animal sacrifices but, in some instances, even performed human sacrifices. Even when discussing religion, our reference must be to revered deities such as Ram and Krishna, and not to figures like Ravan or Kansa. Guidance and emulation are to be drawn from the life and conduct of those who are venerated. Characters regarded as villains cannot serve as models for our beliefs or practice. Faith and conduct must not be conflated. Acts such as killing and violence are indicative of demonic

(*asuri*) tendencies. Viewed in this context, it does not appear logical to associate the practice of animal sacrifice with religion. In fact, Hinduism places special emphasis on non-violence. For a large number of individuals who embrace non-violent and vegetarian religious beliefs, animal sacrifice has become an extremely painful issue. This suffering is not linked solely to religious concerns; the practice of animal sacrifice has also become intertwined with matters of social harmony and tolerance.

11. It is observed that some individuals hold the belief that animal sacrifices must be offered for the liberation of the animals being sacrificed. According to religious scriptures, the Goddess Bhagwati is regarded as the “Mother of the Universe” (*Jagat Janani*), wherein *Janani* which signifies a mother. Religious belief holds that the Goddess Bhagwati is the mother of all living beings. A mother inherently possesses boundless love and compassion for all her children. How offering the children of the Goddess in her name as a sacrifice could please and satisfy her is a matter that cannot be understood rationally. It is also observed that some believe animal sacrifices are performed to gain power. In reality, however, many individuals who do not adhere to the practice of animal sacrifice have nonetheless become powerful and have effectively administered the affairs of the state. Examples of individuals who rejoice in performing animal sacrifices have been found to be in a state of poverty, compassion, or weakness in the society. Whether a person attains power or not depends on the alignment of their abilities, effort, diligence, sacrifice, dedication, willpower, circumstances, and chance. The regressive tendency to attribute an invisible or imaginary phenomenon to a divine source of power under the guise of religion obstructs the forward and progressive transformation of society. It is not appropriate to perpetuate superstition or blind faith under the guise of religious belief or devotion. In this regard, it is necessary to raise social awareness.
12. The essence of religion lies in maintaining compassion, mercy, and a spirit of friendship towards every living being. The systematic slaughter of thousands of animals in the name of religion or tradition is not acceptable in a modern, civilized society. Such practices carry the risk of introducing further distortions. As the extreme manifestation of this distortion, there are occasional reports of human sacrifices either carried out or attempted which are abhorrent, reprehensible, and contrary to the principles of humanity. There exists a segment in our society that perceives opposition to the practice of animal sacrifice as an attempt to undermine Hindu religion and culture. In reality, it is neither appropriate to view religion and culture as instruments of cruel violence nor to promote such a perspective. Under the guise of religion, superstition and blind faith should not be allowed to hinder the progressive flow of social change. The practice of animal sacrifice is not compatible with the modern civilization of the twenty-first century. For these reasons as well, it is imperative to regulate, restrict, or prohibit the practice of animal sacrifice.
13. Nepal is the sacred land of numerous sages, ascetics, saints, and great souls. It is the land of virtuous deeds of Janak. It is also the birthplace of luminaries such as Sita and Gautam Buddha.

Our social, religious, and moral values have been guided by the principle that “non-violence is the highest religion.” Our religious and social norms have been established on the foundation of compassion, mercy, love, and harmony. In reality, it is the demonic tendencies such as desire, anger, greed, attachment, and envy that should be sacrificed (renounced). It is not appropriate to believe that one can attain religious merit by committing the gruesome slaughter of millions of innocent animals. Today, sacred Nepal is being portrayed to the world as a country where massive animal sacrifices are conducted. Such a depiction cannot be a matter of pride in a modern society.

14. From an environmental perspective as well, it becomes necessary to examine the justification of the practice of animal sacrifice. This world is the shared habitat of humans, animals, birds, aquatic life, and plants alike. Even from the standpoint of human self-interest or welfare, environmental protection is indispensable for a healthy and prosperous life. If eco-system is disrupted, human life itself becomes arduous and difficult. If hundreds of thousands of animals and birds are sacrificed at a single Gadhimai fair, one can readily imagine the number of sacrifices carried out at the many temples and shrines dedicated to various deities across the country. Even in the absence of precise data, it can be reasonably inferred that the number is very large and alarming. This undoubtedly has a negative impact on ecological balance. Allowing such a situation to continue is not in the interest of humans or any other living beings.
15. It is relevant to consider the appropriateness of issuing an order to immediately halt the practice of animal sacrifice at the Gadhimai Temple. From this perspective, the social context and the objective reality of society emerge as significant considerations. There are hundreds of temples in our country, where thousands of animals are sacrificed daily, which can be reasonably inferred. The Gadhimai Temple is one among such locations where animal sacrifices are performed. From the records attached to the case file, and from the priests of the temple and the officials of the Temple Management Committee during the discussion have stated that during the Gadhimai fair, approximately 25/30 thousand buffaloes along with over one hundred thousand other animals and birds are sacrificed on a single day. This clearly indicates that the faith of thousands of people is invested in this practice. The practice of animal sacrifice has been followed in Hindu society for a long time and continues in many temples dedicated to various goddesses. The act of sacrifice has been carried out not only privately but in some instances also with government funds. Through government agencies and trusts receiving government grants, animal sacrifices have also been conducted as part of certain festivals and rituals. Whether it be right or wrong, the practice of animal sacrifice has taken a deep root in Nepali society and has become a matter of cultural belief. Therefore, without taking into account the full social context and reality, it does not appear appropriate for this court to immediately issue an order to completely prohibit the practice of animal sacrifice. However, this does not imply that the practice must continue. From religious, social, cultural, environmental, moral, and logical perspectives, it is expedient to impose restrictions on the practice of animal sacrifice. For this purpose, it is necessary to promote widespread public

awareness. The primary basis of social change is social awareness, and change accepted by social consciousness is sustainable and enduring. Addressing various aspects such as social structure, individual faith, and cultural beliefs, a strategic plan should be formulated to terminate the practice of animal sacrifice within a specified timeframe, and the program should be implemented in a phased manner. In this way, it may take some time to completely end the practice of animal sacrifice. In the interim, control measures can be adopted. As a means to gradually reduce the ever-increasing practice of animal sacrifice, institutional measures can be introduced to discourage or limit sacrifices, such as collecting an appropriate fee for each sacrifice, establishing procedural conditions, setting a maximum number of animals that may be sacrificed, determining the minimum and maximum age of sacrificial animals, and prohibiting the sacrifice of unhealthy or diseased animals. Given the necessity of serious attention to these matters, it appears appropriate to issue directive orders in the name of the relevant agencies of the Government of Nepal to ensure or cause to ensure compliance with these measures.

16. Now, the third question arises for consideration: as to whether or not an order should be issued to prevent cruel, harsh, or painful treatment of animals and birds for sacrifice, and as to whether or not an order to constitute a committee pursuant to Section 27 of the Animal Health and Livestock Service Act, 2055 should be issued. In order to address this question, it is first necessary to make certain observations regarding animal rights and the practices prevailing in other countries.
17. A study of various national and international legal instruments shows that every living being has a natural right to life, which must be protected by law. Animals also possess a right to dignity and respect, and such rights should not be arbitrarily violated. This principle is increasingly being recognized and established in the contemporary world community. Through the efforts of the World Society for the Protection of Animals, the *Universal Declaration on Animal Welfare* has been issued with the objective of preventing cruelty to animals and promoting their welfare. The World Organization for Animal Health (OIE)³ has been playing an inspirational role in the fields of animal health and animal welfare. This World Organization for Animal Health has established the standard that, “for any animal to be considered in good condition, it must be healthy, comfortable, properly cared for, safe, able to express its natural behavior, and free from any pain, fear, or distress”⁴. Chapter 7.1.2 of the OIE Guidelines mentions that animals are entitled to the following five types of freedoms⁵:

1. Freedom from hunger, thirst and malnutrition

³ The OIE is an intergovernmental organization with its headquarters in Paris, France. Established on 25 January 1924 under the name *The Office International des Epizooties*, the organization was renamed the *World Organization for Animal Health* in 2003. However, its historical acronym, OIE, has been retained due to its historical significance.

⁴ An animal is in good state of welfare if it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress” - World Organisation for Animal Health

⁵ The five kinds of freedom mentioned in “Brambell’s Five Freedoms” is also considered as the basic rights of animals

2. Freedom from fear and distress
 3. Freedom from physical and thermal discomfort
 4. Freedom from pain, injury and disease
 5. Freedom to express normal patterns of behavior
18. There has been a common practice of regarding animals as “property” of humans. However, while some animals fall under protected categories, and others may be privately owned, the responsibility for their health and welfare rests with the State. In essence, even if property is privately owned, its use cannot be exercised arbitrarily by the owner. The use of one’s property must be exercised within the standards prescribed by law. Since animals, like humans, possess life, it is increasingly recognized at the international level that the use or treatment of livestock should be conducted in a manner consistent with humane values such as compassion and mercy.
19. The legal recognition that animals also have a right to live is a development of the twentieth century. Modern constitutions have acknowledged the right to life as a fundamental and inalienable right of humans. This right is inherent, indivisible, and encompasses the entitlement to live with dignity and respect, in a clean and healthy environment. Within the concept of a clean and healthy environment, the rights of animals are also encompassed. In addition, animals possess their own independent rights. In particular, the owner of domesticated animals bears the responsibility to ensure that they live in a clean and hygienic environment, are not subjected to unnecessary suffering by humans, have access to food, and can reside in proper shelters. Therefore, dignity and proper treatment are matters not only concerning humans but also pertain to the welfare of animals and birds. Acts such as beating animals, tail-twisting, overloading, torturing, or subjecting them to cruel and painful treatment are not acceptable; such acts are considered contrary to the norms and laws recognized by modern society. Efforts have also been made to regulate and manage various scientific experiments on animals, keeping them within desirable limits. Society should benefit from these evolving standards; however, considering the present reality, such encouraging conditions have not been observed.
20. According to Jeremy Bentham, when determining the rights of any being, the conclusion should not be based on whether the being can speak or reason, but rather on whether it can experience pain⁶. He emphasized that the capacity to feel pain should be taken as the primary criterion in guaranteeing rights. Just as humans experience pain, animals also feel pain and express it in their own way. An animal’s rights cannot be determined solely based on how useful it is to humans. Animals also possess the capacity and nature to experience pain, pleasure, fear, despair or frustration, loneliness, and maternal affection. On this basis, rights should be determined and must be determined. Although traditional utilitarian and

⁶ In a book titled “Introduction to the Principles of Morals and Legislation” (1789), Jeremy Bentham states When deciding on being’s rights, “The question is not ‘Can they reason?’ nor ‘Can they talk?’ but ‘Can they suffer?’

conservationist approaches have primarily regarded animals as objects for human use, in recent times, proponents of animal rights have advanced the principle that animals also possess fundamental rights, and that humans have a corresponding duty to protect and uphold those rights. Peter Singer, in his book *Animal Liberation*, states that “the basic principle of equality does not require equal or identical treatment; it requires equal consideration.” In matters concerning animal rights, analysis must proceed from this point. Animals, too, must be allowed to live free from pain and exploitation.

21. According to the modern concept of animal rights, non-human creatures also possess the right to live free from suffering and pain. Moral values and the basic protection of life should not be differentiated on the basis of biological differences. This principle has been debated internationally since 1970. In this context, the renowned animal rights author and activist Richard D. Ryder introduced the concept of “Speciesism⁷.” He compares Speciesism to racial, gender, or caste discrimination and emphasizes the need to control it. This concept underscores that animals should not be deprived of their right to live free from pain and suffering merely on the basis of biological differences. The principle is developed on the same foundation as “law of the fish,” which holds that a stronger being cannot exercise cruelty over a weaker one.
22. With regard to the development of animal rights, no separate international treaty specifically addressing the protection, welfare, or rights of animals appears to have been concluded. In the interim, the United Nations has primarily focused on human rights. However, no treaty concerning animal rights has been established. Much remains to be done regarding the rights of animals and birds, which have traditionally accompanied humans in joy and sorrow, assisted in various practical aspects of life, and served as a source of sustenance. Some aspects of animal rights have been addressed in the context of environmental justice. According to environmental justice scholars, the development of international environmental justice in the context of animal rights can be divided into three stages:
23. In the **first stage**, the concept that nature should be protected for the benefit or self-interest of humans was developed. In this context, the *Declaration on the Protection of Birds Useful to Agriculture (1875)*, the *Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900)*, and the *Convention for the Regulation of Whaling (1931)* were issued. The aforementioned conventions and declarations appear to have been primarily focused on guaranteeing humans the right to utilize animals. In the **second stage**, the concept of intergenerational equity began to develop, initiating a gradual shift away from traditional anthropocentrism. For example, the 1946 International Convention for the Regulation of Whaling can be cited. Its Preamble indicates that the protection of whales

⁷ According to Oxford English Dictionary Speciesism means “the assumption of human superiority over other creatures, leading to the exploitation of animals”

was necessary for the benefit of future generations⁸. This statement shows that the purpose of the Convention was to conserve whales to meet the needs of succeeding generations. Similarly, the *Stockholm Declaration* also recognizes that it is the duty of humans to protect the environment for both present and future generations and to manage it carefully and systematically⁹. Subsequently, it has been recognized as a basis for sustainable development, and as a result, the issue of animal protection has also been indirectly addressed to some extent. It is only in the **third stage** that international legal instruments have explicitly treated the rights of nature as a distinct and significant subject, acknowledging its intrinsic value. In the UNEP Biodiversity Convention (1992), acknowledging awareness of biological diversity and recognizing its environmental, biological, social, economic, educational, cultural, recreational and other values, it is proclaimed¹⁰ that every form of life, possessing its own inherent dignity and worth, must be protected without any discrimination.

24. After discussing certain contexts relating to animal rights and protection as mentioned above, it is now pertinent to outline some concepts regarding cruel treatment of animals. Cruelty to animals or inhumane treatment refers to pain intentionally inflicted on animals by humans. Pain is, in fact, pain; merely because it is not expressly prohibited by law does not mean that there is no social or moral responsibility towards preventing such suffering. Suffering, cruelty, and the capacity to be harmed thereby are inherent natural traits of all sentient beings. It is on the basis of this understanding that animal rights must be viewed. Animals should not be regarded merely as consumable objects. It is desirable that humans cultivate a sense of compassion and sensitivity toward the intrinsic nature of animals as living beings¹¹.
25. Animals may be subjected to suffering in two ways—actively and passively. Failing to provide food or water to domesticated animals and leaving them hungry, not arranging shelter or protection according to weather conditions, neglecting to seek veterinary care when they fall ill, and similar conduct are instances of passive infliction of suffering upon animals. The examples of actively causing suffering, however, can be numerous. Such suffering includes pain intentionally inflicted by a person out of anger or impulse, as well as pain caused in the name of religion, tradition, culture, business, or entertainment. Contemporary animal-rights advocates also regard unnecessary scientific experiments or demonstrations conducted on animals as a grave and objectionable form of animal suffering.

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

¹⁰ In the UNEP Biodiversity Convention (1992), it is stated that the Parties are “Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components,” and it further incorporates the notion that “every form of life is unique, warranting respect regardless of its worth to man.”

¹¹ Charles Darwin in his book *The Descent of Man* (1871) wrote “There is no fundamental difference between man and the higher mammals in their faculties.”

In comparison to physical suffering, mental suffering is more painful. Like human beings, animals also have mental feelings and emotions. **Temple Grandin** and **Catherine Johnson** in “**Animals in Transition**” have stressed that suffering inflicted on animals is terrorizing them by inducing fear¹².

26. It necessary to cast a brief glance at the practices and usages prevailing in other countries as well. It is the duty of human beings alone to maintain feelings of love, mercy, or compassion toward every living creature. The Supreme Court of India, while interpreting Articles 48, 48A, and 51A of its Constitution, has propounded the principle that every citizen bears the duty to show kindness or compassion towards animals¹³. Likewise, humanism constitutes another sensitive and significant dimension. The purport of this is that humane sensitivity must extend to the entire animal kingdom. Refraining from inflicting inhuman pain or suffering upon animals and undertaking protective measures for their welfare are, in the present context, regarded as matters of humanism. The Indian courts appear to have approached the subject of animal rights on the basis of eco-centric principles. The interpretation rendered by the Supreme Court of India in several disputes, including *T. N. Godavarman Thirumulpad*, may be taken as an illustration of this approach¹⁴. Modern animal-rights advocates have also drawn attention to the use of animals in activities that are non-essential activities. Events such as bullock-cart races, *Jallikattu*¹⁵ are games conducted solely for human entertainment; they cause fear and suffering to the animals, and therefore fall within the category of “non-essential activities.” Consequently, the Supreme Court of India has adopted the view that such activities ought to be prohibited¹⁶. Pursuant to the provisions embodied in the *Prevention of Cruelty to Animals Act* and the *Animal Welfare Act*, the Government of India has constituted bodies such as the Committee for the Prevention of Cruelty to Animals and the Animal Welfare Board, which have been discharging their statutory functions accordingly. Cruel or inhumane treatment of animals has been expressly rendered punishable. Moreover, numerous instances may be observed in which various programmes have been undertaken not only at the governmental level but also by civil society and the private sector, all directed toward preventing and addressing abusive, ruthless, or cruel conduct perpetrated against animals.

27. It is found that, in various countries, the protection of animal rights has been structured on the basis of eco-centric principles. By an amendment introduced in 2002 to the Constitution of

¹² In his 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 *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534

¹⁴ *T. N. Godavarman Thirumulpad v. Union of India and Others* (2012) 3 SCC 277, *T. N. Godavarman Thirumulpad v. Union of India and Others* (2012) 4 SCC 362 तैय, *Centre for Environmental Law World Wide Fund, India v. Union of India and Others* (2013) 8 SCC 234

¹⁵ A form of tradition practiced in the State of Tamil Nadu, India, wherein bulls are subjected to physical and mental distress and made to participate in games for purposes of entertainment.

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

Germany, the State has been entrusted with the duty to safeguard the “animal dignity.” Germany’s animal welfare legislation provides protection by prohibiting activities such as animal fighting and other acts that inflict pain or cause bodily harm to animals. In several countries including Switzerland, Slovenia, and Austria, constitutional guarantees have been adopted requiring that a balance be maintained between human rights and animal rights, and ensuring that animals are not subjected to unnecessary pain, injury, or fear. Under the law of the United Kingdom, a person who commits acts of cruelty against animals may be subjected to imprisonment for up to 51 weeks and a fine of up to £20,000. The United Kingdom had, more than a century ago, enacted the *Protection of Animals Act* in 1911. The **Royal Society for the Prevention of Cruelty to Animals** has been functioning as an advocacy and pressure group in the field of animal protection. Even those who subject animals to hard or excessive labour are liable to imprisonment and fines. Statutes such as the *London Police Act 1839*, the *Protection of Animals Act 1934*, the *Abandonment of Animals Act 1960*, the *Criminal Damage Act 1971*, and the *Animal Welfare Act 2006* contain provisions designed to protect animals from being subjected to pain or harm. The *Animal Welfare Act 2010* of Norway explicitly states that “animals have an intrinsic value which is irrespective of the 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 may be regarded as welfare-oriented measures aimed at ensuring the protection of animal rights.

28. The law of Egypt renders punishable the acts of beating or killing domesticated animals in an inhumane manner. Through the efforts of the *Egyptian Society for the Prevention of Cruelty to Animals*, established over a century ago under the influence of British initiatives, the country has succeeded in prohibiting the traditional practice of “buffalo fighting”. The Penal Code of South Sudan prohibits acts of cruelty or infliction of suffering upon animals. The law renders punishable the overloading or overburdening of animals, as well as the ruthless exploitation of young, old, or sick animals for labor or service. In this context, it is pertinent to refer to Section 196 of the Penal Code of South Sudan, which contains specific provisions relating to the treatment of animals.

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”

29. Argentina and Canada have also made acts of cruelty against animals punishable. The *Animal Welfare Act, 1966* of the United States contains provisions regarding the treatment of animals, their use in research or experimentation, and measures for ensuring their welfare. Similarly, Japan’s *Welfare and Management of Animals Act, 1973* stipulates that “no person shall kill, injure, or inflict cruelty on animals without due course. This law provides that no pain or

cruelty shall be inflicted upon all types of domesticated animals, including cows, horses, goats, sheep, pigs, dogs, cats, birds, chickens, rabbits, ducks, and similar creatures, and that anyone committing such acts without just cause may be liable to imprisonment for up to one year. In France, provided a person engages in cruelty toward animals may be subjected to imprisonment for up to two years and a fine of up to €30,000¹⁷. In Germany and Italy, the maximum punishment prescribed for such acts is three years' imprisonment. In Italy, the fine ranges from a minimum of €3,000 to a maximum of €160,000¹⁸. In Australia, various legal provisions have been enacted for the protection of animals and the control of cruelty, with certain acts rendered punishable. Under the federal *Animal Welfare Act, 1992*, as well as corresponding provincial legislation, measures have been implemented to ensure the protection and welfare of animals.

30. The foregoing illustrations are merely brief and representative examples. Efforts for the protection of animal rights have been undertaken in many other countries around the world. Acts of cruelty towards animals have been made punishable, and various protective programmes have been implemented. However, our own situation appears to be markedly different. Viewed from both legal and practical perspectives, our efforts seem to be weak and scattered, lacking a firm conceptual foundation. Firstly, the existing laws concerning animal rights are, in themselves, inadequate and incomplete. Secondly, the effective implementation of the laws that do exist has not been ensured. The failure to define acts of cruelty towards animals as criminal offences and to declare them punishable may be taken as a glaring example of this deficiency. While the *Muluki Ain* (Country Code) contains certain provisions relating to animals in the Chapter relating to Cattle (*Chaupayako Mahal*), these provisions appear to be limited merely to prohibiting the beating, injuring, mutilating, or killing of cows and bulls. It appears that this legal provision was enacted under the influence of Hindu religion and customs, which regards the cow as a manifestation of Goddess Lakshmi. The Chapter on Cattle, however, does not make any mention of cruel or inhumane treatment inflicted upon other animals or birds. Even certain acts of cruelty or inhumane treatment directed towards cows and bulls are not adequately covered by this law. Similarly, the *Animal Health and Animal Service Act, 2055* and the *Animal Slaughterhouse and Meat Inspection Act, 2055*, do not appear to declare acts of cruelty or inhumane treatment of animals as punishable offences.
31. Although Section 27 of the *Animal Health and Livestock Service Act, 2055* provides for the prevention of cruelty towards animals, it appears that this provision has not been effectively implemented. Section 27 of the Act, enacted nearly seventeen years ago, stipulates that “the Government of Nepal may, constitute a Committee for the prevention of cruelty to animals by a notification published in the Nepal Gazette and the functions, duties, and powers of such Committee shall be as specified in such notification” However, it appears that no such

¹⁷ Equivalent to three million five hundred thousand Nepali rupees

¹⁸ Equivalent to twenty million Nepali rupees

Committee has been constituted to date. Undoubtedly, this provision is inadequate for the protection of animal rights. Even as a symbolic measure, the failure to implement a law enacted seventeen years ago remains a matter of serious concern and reflects an unfortunate state of affairs.

32. The relationship between human beings and animals and birds is both deep and profound. Animals and birds serve as a source of human sustenance; the supply of milk for daily consumption has long been derived from animals; skins and hides of animals are used as materials for clothing; and numerous medicines essential for the preservation of human life are produced from the organs and parts of animals and birds. In certain circumstances, animals and birds become companions of human beings; they also perform duties such as guarding and protecting human life and property, as is the case with dogs and parrots. Animals and birds serve as sources of entertainment. They are also employed as means of transportation and for carrying loads. In agriculture, animals are used to till barren land, and their dung and urine contribute to enhancing soil fertility. In some cases, the sustenance of certain animals is provided by other animals. To act with brutality, cruelty, or inhumanity towards animals without recognizing this unique environmental cycle amounts, in itself, to a perversion of natural conduct. Human beings are rational creatures, and their exercise of humane judgment must manifest in their actions. Compassion, kindness, and love shown toward animals ultimately serve to advance and nurture human civilization itself. It is necessary that this fact and reality be internalized within the framework of governance as well.
33. Apart from the Gadhimai Mela, acts of cruelty towards animals are widely observed in society in numerous other contexts. Cows and bulls are subjected to prolonged ploughing without adequate food or water, beaten in a cruel manner, and overloaded in carts. Horses, donkeys, sheep, and other animals are made to carry excessive burdens. During the transport of buffaloes and bulls on trucks or tractors, their noses are pierced and tied with ropes, causing bleeding. Instances are also reported where one live animal or bird is placed atop another, preventing them from moving freely. Such acts appear to have become commonplace in daily practice. Examples of chickens being transported in sacks as though they were inanimate objects can be observed everywhere. The practice of animal sacrifice continues indiscriminately, whether the animals are newborn or aged. While some sections of society, influenced by religious sentiments, hold the view that sick animals should not be sacrificed, this principle does not appear to be defined or mandated as a matter of public responsibility. Under the guise of sacrifice, a large number of animals are subjected to ruthless slaughter in public. Acts that instill fear, whether in humans or animals, have become commonplace. Although cruelty towards animals occurs under various pretexts, including religion, culture, tradition, agriculture, trade and commerce, transportation, and entertainment no meaningful efforts appear to have been made to prevent such conduct. It is not appropriate to allow such a state of affairs to persist. It appears desirable that the Government of Nepal take effective measures to guarantee animal rights, ensure animal welfare, and prevent all forms of cruel, inhumane,

ruthless, or barbaric treatment of animals. Accordingly, it is deemed appropriate to issue necessary directions to the respondents to: constitute, without delay, the committee under Section 27 of the *Animal Health and Livestock Act, 2055*; initiate the process of enacting legislation that grants legal recognition to animal rights, defines acts of cruelty, brutality, or inhumanity towards animals, and renders them punishable; and make all necessary arrangements to ensure effective implementation of such laws.

34. The mere existence of law is not sufficient; the true efficacy of a law is realized only through its effective implementation. It is, therefore, necessary to examine the status of the quarantine testing process. None of the respondents have presented the status of quarantine testing based on facts or data. There is no doubt that during the Gadhimai festival, sacrifices are conducted involving animals in the hundreds of thousands. Is there sufficient space to accommodate such a number of animals, and are there necessary technical personnel available to conduct the required testing? Are the tests being carried out regularly? How many animals have undergone quarantine testing and received certificates? To what extent has the entry of animals into Nepal been restricted? Are there any instances of animals being returned to the country from where they were exported? Has the monitoring and control of animals and birds entering through open borders other than customs checkpoints been ensured, or not? These and several other such questions remain unanswered. The objectives of the law cannot be fulfilled through mere formalistic testing. It appears from a 2012 report¹⁹ published by the Veterinary Epidemiology Centre under the Directorate of Animal Health that, in 1995, an outbreak of the contagious disease known as *Peste des Petits Ruminants* occurred in the districts of Dhanusha, Mahottari, Sarlahi, Bara, Rautahat, and Gorkha, originating from animals brought from India for sacrifice at the Gadhimai temple. By the time mass vaccination commenced in 2001, this infection had spread to 52 districts across the country. It may be reasonably inferred that this situation has arisen due to deficiencies and shortcomings in the quarantine testing process.
36. Quarantine testing of animals imported from abroad is a necessary and important function. Due to the existence of open borders, it is essential that the provision under Section 9 of the *Animal Health and Livestock Service Act, 2055*, requiring that any importer importing animals, animal products, or animal production inputs must import through the route of quarantine check post only must be strictly enforced. It cannot be said with conviction and certainty that such services have been provided solely through the Animal Quarantine Office in Birgunj and the Animal Quarantine Check post at Matiarwa in Bara District. From the study of the documents annexed with the case file, it becomes evident that it is necessary to establish the required mechanisms to make the quarantine testing process effective, ensure efficient and reliable management, and make the obtaining of quarantine certificates mandatory.

¹⁹ Status of Animal Disease Outbreak and Identification of Provisional Disease Free Zone / Area, Volume – 2, No. 1, Veterinary Epidemiology Centre, Tripureswor, Kathmandu, February 2012, Page - 13.

37. The fifth question to resolved - As to whether or not an order should be issued to make arrangements for the management of the meat and other products of sacrificed animals and birds, including measures to ensure meat quality, testing, control, and to prevent adverse effects on public health, as well as for controlling environmental pollution? For the purpose of addressing this question, it appears necessary to briefly cite certain facts presented by the petitioners in relation to the Gadhimai festival and animal sacrifice, which are as follows:

In the Gadhimai festival, held once every five years, five species of animals such as goats, buffaloes, ducks, chickens, and rats are collectively sacrificed under the ritual known as “Panchabali.” In each festival, thousands (approximately 25-30 thousand) buffalos and over one hundred thousand animals and birds in total, including other species, are sacrificed²⁰. These animals are imported to Nepal through various parts of India²¹. Although it is stated that there is a check post at Matiarwa in Bara District and an office in Birgunj, the quarantine testing of animals has not been conducted in an effective and reliable manner. During the transport of animals and birds for sacrifice, as well as at the site of sacrifice, indiscriminate slaughter and acts of cruelty occur. At the sacrifice altar, in the presence of priests and others, large crowds of animals are subjected to brutal treatment, and animals are killed through the “indiscriminate use of weapons,” demonstrating acts of cruelty and inhumanity. The State treasury also provides some resources for the conduct of animal sacrifices. The sacrifices are not carried out in an organized location but in open fields. The meat and carcasses of the sacrificed animals and birds cause the area to become putrid and polluted, adversely affecting public health. This, in turn, has a negative impact on the local religious, social, and cultural life. This site has been portrayed and publicized by various media outlets as the location where the largest number of animal sacrifices takes place in the world. No regulatory measures have been effectively implemented regarding the health inspection of animals to be sacrificed, the examination of meat from sacrificed animals, or the prevention of the sale, distribution, or consumption of uninspected meat. Furthermore, no arrangements have been made to ensure proper refrigeration or preservation to prevent meat from decomposing. Arrangements have been made to contract out the sale of meat from sacrificed animals. On 2071/7/16, a tender was announced for the sale of meat from sacrificed animals, with an estimated value of twenty-two million seven hundred thousand Nepali rupee. In some

²⁰ No official data appears to exist regarding the number of animals sacrificed. In the petition submitted by the petitioner, Advocate Arjun Kumar Aryal, it is stated that approximately five hundred thousand animals are sacrificed in a single festival. This figure does not appear to be corroborated by other sources. However, it has been noted during discussions before the court that officials such as Mangala Chaudhary, the priest of the Gadhimai temple, and Ramchandra Sah, the Chairman of the Temple Management Committee, have stated that typically more than one hundred thousand animals and birds are sacrificed in each festival. Accordingly, it may reasonably be presumed that in each festival, at least one hundred thousand animals are sacrificed.

²¹ The Supreme Court of India, in the case of *Gauri Maulekhi v. Union of India & Others*, issued an order on 17 October 1914, directing that animals should not be allowed to enter Nepal through unlawful means.

instances, it has been observed that local residents forcibly take away and consume meat from sacrificed animals.

38. The facts mentioned above are merely illustrative. Nevertheless, even these illustrations appear sufficient to assess the grave situation arising from the animal sacrifices conducted during the Gadhimai festival. It may reasonably be inferred that the indiscriminate performance of such sacrifices adversely affects public health. Due to weaknesses, deficiencies, or gaps in management, the resulting public health and environmental problems have become more complex and sensitive. No specific study appears to have been conducted regarding the extent of the impact on public health due to the absence of adequate arrangements for the determination, testing, and control of meat quality. In brief, there does not appear to be any basis for satisfaction that even the minimum fundamental measures relating to management, which ought to be undertaken by the relevant agencies of the Government of Nepal for the protection of public health and the environment, have been implemented.
39. It appears that the Legislature, through the enactment of law, has sought to regulate certain matters relating to animal slaughter and meat inspection. For this purpose, the *Animal Slaughterhouse and Meat Inspection Act, 2055* was promulgated. This Act contains several useful provisions concerning the management and sale of wholesome meat. Certain provisions relating to the slaughter of animals are also included in the said Act. Section 8 of the Act provides that “*before any animal is slaughtered, it must be inspected at a slaughterhouse in areas where a slaughterhouse has been established, and in areas where no slaughterhouse exists, it must be inspected at a location designated by the Meat Inspector.*” Section 9 of the same Act stipulates that, following inspection, “*animals deemed fit for slaughter must be slaughtered at a slaughterhouse; however, in areas where no slaughterhouse exists, such animals must be slaughtered at the time and place designated by the Meat Inspector.*” Section 16 of the Act contains an exception, providing that “*notwithstanding anything else contained in this Act, the slaughter of animals outside a slaughterhouse and the consumption of meat with skin shall not be deemed to be prohibited when carried out in the context of traditional festivals, religious rituals, feasts, or religious celebrations that have been observed from time immemorial.*”²² It is the duty of the relevant government agencies to manage this matter appropriately. It is not reasonable to set aside the main provisions of the Act and rely on the exception as a pretext. Moreover, invoking the exception of an Act without even implementing the Act itself does not reflect well on the Government.
40. The *Animal Slaughterhouse and Meat Inspection Act, 2055* has, so far, only been implemented in certain parts of Hetauda Municipality and does not appear to have been enforced in other

²² Section 1 (2) of the *Animal Slaughterhouse and Meat Inspection Act, 2055* provides that “this Act shall come into force from the date specified in the area designated by the Government of Nepal through a notice published in the Nepal Gazette.” In accordance with this provision, it appears that, as per the notice published in the Nepal Gazette on 2060/01 08, the Act was set to commence in Hetauda Municipality from 2060 Baisakh 01. Apart from this, the Act does not appear to have been implemented in other areas of the country.

parts of the country²³. The failure to implement the Act even seventeen years after its enactment is, in itself, a matter of concern. It is the responsibility of the executive branch (the Government) to ensure that a law enacted by the Legislature is brought into force within a reasonable timeframe. However, even after seventeen years since the enactment of the Act, the Government does not appear to have fulfilled this responsibility. For the procedural implementation of the Act, the *Animal Slaughterhouse and Meat Inspection Regulations, 2057* were also issued. These Regulations, which provide that “the Act shall come into force in the area from the date the Act is commenced,” likewise remain inactive due to the non-commencement of the Act itself. The provision that the Act shall come into force from the date specified by the Legislature is intended merely to provide the Government with some flexibility of time for preparatory arrangements or administrative measures necessary for the implementation of the Act. Such a provision does not imply that the Act may remain unenforced indefinitely. With regard to the writ petition filed by Advocate Bhojraj Air seeking the prompt establishment of the necessary infrastructure for the implementation of the *Animal Slaughterhouse and Meat Inspection Act, 2055*, this court, in 2062, issued a directive order to the respondents²⁴. The order, issued more than ten years ago, also contained the following details concerning the implementation of the Act:

If the Legislature enacts a law with the intention of fulfilling specific objectives for the benefit of the general public, and the Executive, under the pretext of provisions relating to the date of commencement, remains silent for an extended period and shows no promptness in implementing the law, the very purpose of the Act may be frustrated, potentially creating disorder even in matters concerning humaneness and sensitive humanitarian issues. Even if, after the Legislature enacts a law, it is not possible to implement the law all at once, the Executive must formulate an action plan to implement the law in phases, bringing it into effect as required. Only then can it be said that the objectives of the law have been fulfilled.

41. It is lamentable and unfortunate that, despite the legislation being enacted by the Legislature 17 years ago and an order issued by this court 10 years ago regarding its implementation, the Act has still not been enforced. Such a state of affairs cannot be considered appropriate in any democratic system of governance. The Government’s disregard of matters directed by the Legislature through law and by the judiciary through decisions/orders cannot be construed as an exercise of responsibility or fulfillment of accountability. On perusal of the rejoinders submitted by the agencies of the Government of Nepal, it appears that they claim to be proactive regarding the actions required under the prevailing legal framework and in the interest of the public. However, no notable facts or data have been presented to demonstrate

²³ The *Animal Slaughterhouse and Meat Inspection Act, 2055* has, so far, only been implemented in certain parts of Hetauda Municipality and does not appear to have been enforced in other parts of the country. The failure to implement the Act even seventeen years after its enactment is, in itself, a matter of concern. It is the responsibility of the executive branch (the Government) to ensure that a law enacted by the Legislature is brought into force within a reasonable timeframe.

²⁴ Advocate Bhojraj Air vs. Rt. Hon. Prime Minister and Office of the Council of Ministers et.al., Nepal Law Reporter 2062, Decision No. 7522, pg. 435

concrete or result-oriented action at the implementation level. The court cannot be satisfied with such baseless responses. In this regard, it appears necessary to draw the immediate and serious attention of the concerned agencies of the Government of Nepal.

42. Sections 2 (b) and 2 (c) of the Food Act, 2023 define, respectively, “adulterated food” and “substandard food,” and explicitly include substances derived from animals or birds within these definitions. Section 3 of the same Act provides that “no person shall produce, sell, distribute, export, smuggle, or keep such food for any of these purposes.” The provision prescribes imprisonment and fines for any person acting in contravention thereof. However, it appears that the aforementioned provisions of the Food Act have not been applied in relation to the meat of animals slaughtered during the Gadhimai festival. Consequently, a situation has arisen, or is likely to arise, that could adversely affect public health. It can reasonably be inferred that this also has a negative impact on environmental balance.
43. It has been observed by this court in the Godavari Marble case that, “since a clean and healthy environment forms an integral part of life, the right to a clean and healthy environment is inherently included within the right to life.” Accordingly, it has been established that the right to live in a clean environment is intrinsically embedded within the right to life²⁵. Thereafter, in several other disputes, this court has repeatedly interpreted and reaffirmed the principle that the right to live in a clean environment is included within the fundamental right to life. Even in circumstances where the Constitution does not explicitly mention the right to live in a clean environment as a fundamental right, the court has nonetheless recognized it as part of the fundamental right to life. Sub-article (1) of Article 30 of the prevailing Constitution of Nepal explicitly provides that “Every citizen shall have the right to live in a clean and healthy environment.” Sub-article (2) of the same Article provides that “the victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation” In fact, the right to life inherently includes the right to live with dignity and to enjoy a healthy and respectable life. The antiquated notion of understanding the right to life merely as the mere existence of an animal (*animal existence*) has no legal or practical significance today. In fact, the right to live in a clean and healthy environment is a fundamental right guaranteed by the Constitution, and it is both mandatory and desirable for the State to make necessary arrangements for the protection and promotion of this right. Ensuring the exercise of this right and playing a constructive role in its realization also constitutes a duty of this court. It is necessary to issue orders against the respondents to ensure proper management of the meat and other by-products of animals sacrificed during the Gadhimai festival, to control environmental pollution, and to maintain a clean and healthy environment. This includes determining, testing, and regulating the quality of the meat, implementing the Slaughterhouse and Meat Inspection Act, 2055, and taking appropriate

²⁵ Surya Prasad Sharma Dhungel vs. Godavari Marble Industries Pvt. Ltd. et.al., Nepal Law Reporter 2053, pg. 169 (Some Important Precedents Propounded relating to Public Welfare by Supreme Court, Part – 8, 2063, pg. 7)

measures to prevent any adverse impact on public health in and around the Gadhimai Temple area arising from the blood, meat, hide, or other remains of the sacrificed animals.

44. **Order of Issuance of Writ:**

On the basis of the foregoing discussion and reasons, in order to regulate the practice of animal sacrifice, to prevent adverse effects on the local environment and public health arising therefrom, and to ensure that no cruel, brutal, or inhumane treatment is inflicted on animals or birds, the following order pursuant to Article 107 (2) of the Interim Constitution, sub-article (2) and (3) of Article 133 of the Constitution of Nepal is hereby issued against the respondents:

a) **Directive Order**

From religious, social, cultural, environmental, moral, and logical perspectives, it is not appropriate for the practice of animal sacrifice to continue. Ultimately, the practice of sacrifice must be discontinued. However, efforts at reform and change must be undertaken in an orderly manner and should not destabilize the social structure. Although the practice of sacrifice needs to be stopped, it was not considered prudent at this stage to issue an order of mandamus to prohibit a practice that has long been prevalent in society without taking into account the social context and cultural realities. In view of the fact that it is desirable to prohibit the practice of animal sacrifice and that it is necessary to appropriately address prevailing social and cultural beliefs in this regard, the following directive order is hereby issued against the respondents including the Government of Nepal, the Office of the Prime Minister and Council of Ministers, the Ministry of Home Affairs, the Ministry of Health and Population, the Ministry of Science, Technology and Environment, the Ministry of Culture, Tourism and Civil Aviation, the Ministry of Agriculture and Livestock Development, the Animal Quarantine Office, and other concerned ministries and offices of the Government of Nepal, to undertake the actions specified therein **to restrain or discontinue the practice of sacrifice.**

- i) A directive order is hereby issued to address various aspects, including social structure and context, human beliefs, and cultural values, and to prepare a strategic plan and program to discontinue (end) the practice of animal sacrifice within a specified time frame and to prepare a program and to implement the same in a phased manner, and to make arrangements for the enactment of necessary legislation to bring an end to the practice of animal sacrifice.
- ii) A directive order is hereby issued directing the respondents to conduct and promote extensive public awareness programs for the discontinuation of the practice of animal sacrifice and to disseminate information and messages within a specified time frame announcing the cessation of the practice.

- iii) Until the practice of animal sacrifice is fully discontinued, a directive order is hereby issued to control the progressively increasing practice on a day-to-day basis and gradually reduce its scale. As measures to achieve this, institutions conducting sacrifices shall: collect fees in an institutionalized manner, determine procedural conditions, set a maximum number of animals that may be sacrificed, establish the maximum and minimum age of animals for sacrifice, prohibit the sacrifice of sick or unhealthy animals or birds, and refrain from conducting sacrifices publicly in open spaces. Such necessary and appropriate conditions shall be determined, and preventive measures shall be adopted to discourage the practice of animal sacrifice.
- iv) In view of the desirability of legally defining animal rights and controlling all forms of cruel treatment of animals and birds, a directive order is hereby issued directing the respondents to promptly proceed with the process of guaranteeing animal rights, providing for animal welfare, and enacting suitable legislation that, after studying practices in other countries and adapting to the Nepali social context, criminalizes all forms of cruel, brutal, inhumane, or merciless treatment of animals and birds in Nepalese society.

b. Order of Mandamus

While issuing the directive order to discontinue the practice of animal sacrifice, this court hereby issues the following order of mandamus against the respondents to ensure that the matters referred to above are implemented in a manner that does not adversely affect widely accepted social norms:

- i) An order of mandamus is hereby issued against the respondents to immediately establish a committee in accordance with Section 27 of the Animal Health and Livestock Services Act, 2055, and to implement such other necessary measures and controls, to ensure effective arrangements are in place to prevent any cruel, brutal, or inhumane treatment of animals and birds during the course of sacrifice, their transportation, or other related activities.
- ii) Considering that the Animal Slaughterhouse and Meat Inspection Act, 2055, enacted by the Legislature 17 years ago, was the subject of a directive order by this court 10 years ago regarding its implementation, yet no sensitivity has been shown and indifference persists in initiating the Act which is a lamentable state of affairs and therefore, an order of mandamus hereby issued against the respondents ordering them to make all necessary arrangements in this regard and provided, any amendments are required, they shall be made and the Act shall be brought into full and immediate implementation.

- iii) An order of mandamus is hereby issued to make the quarantine inspection and certification of animals imported from abroad in accordance with the Animal Health and Livestock Services Act, 2055, mandatory, reliable, and effective. For this purpose, quarantine checkpoints shall be established at the necessary entry points, along with other required regulatory mechanisms, to ensure the provision of efficient and prompt services.
 - iv) An order of mandamus is hereby issued against the respondents to control environmental pollution during the Gadhimai festival and to maintain a clean and healthy environment. This includes proper management of meat and other products of the sacrificed animals and birds, ensuring the quality, testing, and regulation of such meat, and taking necessary measures to maintain a clean and healthy environment in and around the Gadhimai Temple. The order further directs that arrangements be made to prevent any adverse impact on local public health from the blood, meat, hides, or other by-products of the sacrificed animals.
 - v) An order of mandamus is hereby issued against the respondents to ensure that no action is taken by the Government, directly or indirectly, that would encourage or facilitate the practice of animal sacrifice, and to take measures to discourage or cause to discourage such activities.
45. The Monitoring and Inspection Division of this court is hereby directed, through this order, to periodically monitor the implementation of this directive and to ensure its full and effective enforcement.
46. A copy of this order shall be sent to the Monitoring and Inspection Division of this court for necessary information and action, and another copy shall be forwarded to the Office of the Attorney General for the information of the respondents. It is hereby directed to submit the case file to the Record Section as per the rules.

Concurring with the above opinion

Honorable Justice Anil Kumar Sinha

Bench Officer: Yam Prasad Baskota

Dated: Year 2073 of the Month of Shrawan Date 20 Day 5

(Corresponding to Year 2016 of the Month of August Date 4 Day 5)