

## Summary of Environment Related Judgments of the Supreme Court of Nepal

### 1) Bhagwati Pahari versus Prime Minister and the Council of Minister (Fewa Lake Case)

NKP 2018 (2075), Decision Number (DN) 10086

**Bench:** Honourable Justice Om Prakash Mishra (Author), Honourable Justice Sapana Pradhan Malla

**Issue:** This writ petition sought to enforce the environmental rights guaranteed in Article 16 of the Interim Constitution of Nepal which as per the claim was violated by the Memorandum of Understanding between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt which planned to construct a Cable Car Service in the periphery of Fewa Lake, Basundhara park and Raniban area. The petitioners sought an order to prevent all construction work that affect the Fewa Lake. This Lake, which also has the Talbarahi temple area, is of archeological significance. Further, Raniban area is the habitat of many protected plants, wild animals, birds and butterflies thus construction and operation there may lead to them being endangered or even extinct. The forest of Raniwan area is of environmental, scientific and cultural importance thus it was claimed that the unlawful act of construction of cable car service in the area it should stopped and it should be declare as protected forest as per Section 23 of Forest Act.

**Ratio:** The fundamental rights guaranteed in the constitution are for the protection of the interests of the citizens. It is the responsibility of the state to create an environment where the citizens can use it easily.

Since living in a polluted environment is bound to have an adverse effect on one's health, living in a pollution-free environment is inextricably linked with one's right to live. The environment must be clean to guarantee this right. To preserve this cleanliness, it is important to protect forests, lakes, ponds, rivers, clean air and water and maintain environmental balance. As the guardian of the interests of the citizens and the principle of *parens patriae*, it seems indisputable that the state has the responsibility to protect the rights and interests of the people.

**Order of Court:** The Court in this regard upheld the claim of the petitioner. It ordered to make policies that harmonize with the construction work that take place within the boundaries of natural and cultural heritage such as the Fewa Lake. The Court also stated that as the land in which

Basundhara Park is situated was acquired with the objective of creating a green belt in the area. Demolishing the Park and building other physical structure in that place will be against that very objective so no construction work should be done in Basundhara Park for the preservation of the Lake. The order of the Court also prevented acquiring lands of the Raniban area for construction work and prevented any work that causes deforestation there. Further, the Court also directed to take necessary initiatives to include Fewa Lake- a major tourist attraction, it in the World Heritage Site list.

## 2) **Khagendra Subedi versus Government of Nepal (Fewa Lake Case-II)**

**NKP 2018 (2075), DN 10087**

**Bench: Honourable Justice Om Prakash Mishra (Author), Honourable Justice Sapana Pradhan Malla**

**Issue:** This writ was filed claiming that the state bodies which are legally responsible for the protection of the Fewa lake have not been able to adequately protect and promote the Lake and thus have not fulfilled their duties and responsibilities as per the provisions of the related Constitutional provisions, Acts and Rules. The petitioners sought for an order to formulate a long term preservation plan for the Fewa Lake and to declare it as an environmentally protected zone in order to protect the lake sustainably (as per Section 10, 10 (1) of the Environmental Protection Act). In addition, the encroachment of the land around the Fewa Lake has been an issue. Thus, such encroached area should be demarcated and it should be declared back to being the area of the Lake itself and not of individuals. Orders should be issued in the name of the respondents to not conduct or allow any construction work against the lake environment or to build any kind of house or hotel, which affects the lake's biodiversity, aquatic life and causes pollution in the water of the lake water.

**Ratio:** It is the responsibility of the present generation to preserve, for the future generation, all natural and cultural heritage, forests, climate, environment and biodiversity that they have experienced. This is the **principle of intergenerational equity**. It is the responsibility of the present generation to hand over the economically, socially, culturally and environmentally important Fewa Lake to the future generation.

In order to meet the needs of the present and to pass on the natural resources, which we are consuming, to future generations, it is necessary to stop uncontrolled exploitation of such natural

resources. The work to be done for the conservation of such resources should be done in a way that **preserves such resources in natural conditions.**

The act of infrastructural development is not bad in itself, but the development that has jeopardized the very existence of nature by uncontrolled and indiscriminate encroachment or exploitation is not sustainable. Sustainable development will be achieved only by striking a balance between natural resources and development, minimizing exploitation of nature and passing on natural gifts to future generations.

**Order of Court:** The Court upheld the claim of the petitioners. It also ordered to take necessary precautionary measures to minimize the additional risks to the conservation of the Fewa Lake including arranging for the removal of houses or hotels constructed within 65 m from the bank of the Lake. As is necessary to maintain the water level in the Fewa lake and the environmental condition around it, and to preserve the dignity of the lake, the Court ordered that Fewa lake be declared as a protected watershed area as per Section 3 (1) of the Land and Watershed Conservation Act. It was also ordered to take any necessary decisions and implement necessary works for the conservation of the Lake and to implement recommendations given in the study reports for the conservation of the lake at different times.

**3) Ram Chandra Simkhada versus Government of Nepal (Chitwan National Park-Hulak Road Case)**

**NKP 2019, (2076) DN 10204**

**Bench: Honourable Justice Ananda Mohan Bhattarai (author), Honourable Justice Tej Bahadur KC**

**Issue:** In this case, the issue was regarding the construction of road that affects the bio diversity and the natural environment of the Chitwan National Park (first national park of Nepal) which is home to many species of flora and fauna including rare ones such as the one horned rhino. No any roads, structures etc. could be constructed within the National Park. However, a roadway (Thori-Bharatpur road) of about 30 km from Parsa district to Triveni of Nawalparasi passing through Chitwan National Park was being approved and designed. It was claimed by the petitioners that the compulsory procedure of EIA and IEE prescribed by the Environment Protection had also not been complied. It was claimed that the construction of such a roadway would result in the loss of

many of our natural resources, destroy our unique resources, increase poaching and also cause serious impacts in the climatic conditions.

**Ratio:** The government is not the owner of public property, it is only the trustee. Natural resources are for the benefit of all people of Nepal, present and future generation. It cannot be said that it used citing the benefit of limited people or community without considering the interest of the whole of the country. The government needs to understand and reflect on the fact that natural resources are the property of all the people of the nation, present and future generations and even the descendants.

Further, the effects of climate change, in recent times, has made protection of environment even more complicated. It is imperative to practice environmentally sustainable development as envisioned by the Constitution and protect the right to a "clean and healthy environment" guaranteed by the Constitution through planned conservation efforts. No work related to road construction should be carried out within the national park unless the environmental impact study conducted in consultation and agreement with the concerned bodies including UNESCO gives permission.

**Order of the Court:** Order was issued not to carry out any work related to road construction within the Chitwan National Park unless the Environmental Impact Assessment conducted in consultation and agreement with the concerned bodies including UNESCO and the Chitwan National Park Office established by law, grants permission.

**4) Tara Bahadur Budhathoki v. Office of PM et.al. (Prevention of cutting down of protected species of trees for commercial use)**

**NKP 2019 (2075), DN 10154**

**Bench: Honourable Justice Meera Khadka (author), Honourable Justice Bam Kumar Shrestha**

**Issue:** 150 Sal trees (*Shorea Robusta*) planted on the private land of the petitioner were in a state of being cut down. The shade of Sal trees fell on the agriculture crops which prevented their growth thus the petitioner had submitted an application to the district forest office of Dang district with the recommendation of the village municipality. Section 38 of Forest Act, 2049 talks about the right of the owner to manage and utilize private forest, and rule 62 of the Forest Regulation provides that the owner of a private forest may use the Forest Products (Timber) for his own purposes after

notifying the District Forest Office (DFO). The District Forest Office Dang rejected his claim of cutting down and selling of trees based on the notice published in the gazette by Nepal Government banning transportation, export and felling of Sal trees. The petitioner sought to quash this decision of the DFO.

**Ratio:** Citizens have the right to enjoy their property subject to law. But, the state can, according to law, regulate even private properties of individuals for public interest. Although trees growing in private forest are private property, they help in preserving biodiversity and protecting the environment. The consumption and use of such items should be done in a way that does not damage the environment and biological diversity.

The country cannot breach its obligations arising from the international conventions it has ratified relating to fauna, flora, natural resources and the environment, protecting wetlands, controlling the international trade of rare plants and animals, and protecting biological diversity. Thus, the government of Nepal can ban the cutting, selling and export of certain types of forest products.

- ❖ This decision also cites another case 070-WF-0003 (not published in the NKP) which states that, "...the notice published in the gazette by the Government of Nepal does not ban the cutting down Sal trees for private use (for consumption by the concerned person) after getting permission from the relevant forest office and following the prescribed condition. Beyond that extent, the Government of Nepal has prohibited transporting or exporting of such forest produce for commercial purposes or in any form of trading through speculative leasing. The petitioner's claim to be allowed to cut trees of the prohibited Sal species for commercial use, sale, distribution, leasing, and transportation did not appear to be in accordance with the law."

**Decision:** Writ claim of the petitioner was quashed.

**5) Hari Prasad Neupane on behalf of Federation of Community Forestry Users Nepal (FECOFUN) v. National Planning Commission (Protection of CFUG rights)**

**NKP 2003 (2060), DN 7184**

**Bench: Honourable Justice Gopal Prasad Khatri, Honourable Justice Raman Gina Singh (Author)**

**Issue:** A group of citizens residing in Madhesh and Chure areas of Terai for years, who had been managing the forests of that area, formed a community forest user group in accordance with Section 41 of the Forest Act, 2049 and submitted an application to the district forest offices seeking registration of their CFUG and handing over of the forest as community forest. Both the claims were refused. It was informed that the Forest Department had instructed the District Forest Offices in this area not to handover the forests and that a separate decision had been taken by the Council of Ministers regarding the forests of this area. The decision provided that only areas other than those falling under government forest management plan and block forest could be handed over to user groups. The petitioners claimed that according to Sec 41, 42, 43 of the Forest Act, users relating to any forest desirous to utilize the forest product by developing and conserving such forest for the collective interest may constitute the Users' Group by submitting an application to the DFO. Refusing to register CFUG violated the legal rights of the petitioners.

The Forestry Department of the Government decided that a separate program related to forests will be implemented only in the districts of Terai, and the registration of groups and the transfer of forests in their name will be prohibited there. As per this decision, citizens who managed community forests in those areas were banned from forming groups and registering and acquiring forests. Similarly, by prohibiting the handing over of areas other than vacant, fallow and undergrown/shrub land areas to forest groups of that area, the Council of Ministers deprived them of their legal right provided by Section 41 of the Forest Act 2049. This action also amounted to discrimination as the rest of the country was not subjected to such restriction thus breaching Article 11(1) of the Constitution of Kingdom of Nepal.

In its decision, the Council of Ministers directs to determine the boundaries of the Chakla Forest in Terai and Inner Madhesh and divide such Chakla Forest into compartments and manage them scientifically. According to Rule 3 of Environment Protection Regulation while preparing and implementing a forest management plan and cutting down of forest more than 5 hectares, environmental impact assessed must be conducted the Ministry of Population and Environment which was not done. In addition, the questions concerning the kind of plan used to manage the forest, the effects of such plan on the environment were not addressed. Making a decision to “scientifically manage forest” without proper planning and environment assessment is bound to destroy the forest and cause environmental crisis.

In relation to the purpose of community forest, Section 2(h), Section 25 and Section 41 of the Forest Act clearly states that through community forest, user groups can develop, protect, use and manage forests and independently determine the price of forest products and sell and distribute them. Contrary to that, the decision of the cabinet misinterpreted the purpose of community forest and decided that the government will take 40 percent of the sale price for other program purposes.

Thus, the aforementioned decisions of the Council of Ministers regarding the forests of the Terai, Inner Madhesh and Chure are against Article 11(1), 12(2) (c), of the Constitution of the Kingdom of Nepal, 2047, Section 2(j), 2(d), Section 25-45 of the Forest Act 2049, Section 3 of the Environment Protection Act, 2053 and Rule 3 of the Environment Protection Regulations. The decisions must be quashed.

**Ratio:** If there is any reason not to implement the plan and program of community forest in areas of Terai, Chure and inner Madhesh, the government should take appropriate steps to resolve such issues. The people of those areas should not be deprived of the benefits of community forestry and must be discriminated against by the state. The decision of the Council of Ministers of his majesty's government to take 40% of the proceeds from the sale of firewood of the community forest is unlawful. The rights of the petitioners are directly affected by this decision so it will be quashed by the order of this Court.

**Order of the Court:** The decisions of the Cabinet were found unconstitutional and unlawful and breaching upon the rights of the petitioners, and were thus quashed.

**6) Nepal Government v. Belbahadur Thapa et.al., (Issue concerning confiscation of vehicle used for illegal transportation of protected trees)**

**NKP 2011 (2068), DN 8629**

**Bench: Honourable Justice Gyanendra Bahadur Karki (Author), Honourable Justice Sushila Karki, Honourable Justice Tarkaraj Bhatta**

**Issue:** Illegal cutting and transportation of protected tree (Sal) from national forest.

**Question before the Court:** Can the vehicle used in stealing and illegal transportation of protected species of tree be confiscated under the circumstance that the owner of the vehicle had no

knowledge of it? (A previous judgment of a similar nature had provided that even if the vehicle owner was not aware of it and has not consented to their vehicle being used in illegal transportation, such vehicle being an object used in crime would have to be confiscated as per Section 66 of the Forest Act)

**Ratio:** Confiscation of carrier vehicle used for illegal transportation in violation of the Forest Act would be lawful only when the vehicle has been used for illegal transportation with the involvement or consent and approval of the owner. When the owner of the vehicle is not involved in the illegal transportation of forest products or has no intention of transporting illegal forest products and he does not have the knowledge that his vehicle is being used for the illegal transportation of forest products, confiscation of his vehicle is not reasonable from any point of view of justice.

**Verdict:** The aforementioned principle was overruled.

**7) Pro Public v. Nepal Government, (protection of rare and endangered species)  
NKP 2011 (2068), DN 8556**

**Bench: Honourable Justice Baram KC (Author), Honourable Justice Mohan Prakash Sitaula**

**Issue:** The National Parks and Wildlife Protection Act has included various wild animals, including one-horned rhinoceros as protected wild animals under Schedule 1. Sections 26, 30, 31 provides for punishment, case investigation officer and case review officer. While Rule 25 of the Chitwan National Park Regulations provides that the head of the park (warden) and assistant warden (assistant warden) and ranger as the designated authorities looking into the case. The overall assessment of the legal arrangements portray that we do not have a separate special law for the protection of rare and endangered wildlife. In this perspective, since judicial intervention is indispensable to make the opponents accountable and responsible for the sustainable protection of rare and endangered wildlife, an order is sought seeking necessary order including the following for the protection of rare and endangered wildlife:

- 1) Re-establish security posts removed from national park areas and patrol for giraffe protection and mobilize anti-poaching units.



- 2) To arrange a separate comprehensive law for the protection of rare and endangered species in accordance with the spirit of the Convention against International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on the Conservation of Cultural and Natural Heritage and the Convention on the Conservation of Biological Diversity,
- 3) Arrange to count the number of rhinoceros every two years and update the statistics
- 4) Arranging proper compensation if wild animals including rhinoceros from the national park devastate the farming of the local community or cause any kind of damage.
- 5) To amend the regulations so that the district court can use the judicial powers exercised by the National Park Office,
- 6) As the hotels, lodges and resorts within the National Park can be a hindrance to the protection of wild animals, taking necessary measures even in terms of transferring such structures to the intermediate area,
- 7) Conducting programs to protect the traditional knowledge and skills of the tribal peoples living around the National Park, encourage them to protect wildlife, and promote self-employment and income-earning opportunities to raise the standard of living.
- 8) To take necessary action to ensure the meaningful participation of the local people in the conservation, enhancement and development of the National Park
- 9) For sustainable conservation of the one-horned rhinoceros, a high-level expert committee should be formed with the representation of experts in the relevant fields and local associations working in the field of conservation and the necessary orders should be issued to implement the recommendations suggested by the committee.

**Ratio:** Rhinos are being killed due to the illegal international trade of the skins, bones, horns, etc. of wild animals. In order to control it, there should be strict punishment and effective implementation of the laws. But preventive measures are more important. For this, strict and effective implementation of Sections 4, 5 and 11 of the National Parks and Wildlife Protection Act, 2029 should be implemented in the wildlife reserve area. The enforcement of these provisions is possible when entry is prohibited in restricted areas, unauthorized persons are prohibited from entering the reservation, hunting is completely prohibited and regular patrolling is done around the reservation area to prevent hunting and unauthorized entry into the protected areas. Immediate and effective action should be taken against hunting activities.

**Order of Court:** The Court ordered to form a Committee to prepare a Report concerning the protection of endangered species including rhino, which gave suggestions on policy reforms, data on the number of rhinos, relation between rhino and local people etc. The concerned authorities for the protection of rhino and other endangered animals were already taking many actions as per these suggestions. Thus, the Court gave the following orders:

- Regarding the data of rhinoceros it is suggested that their number be calculated every 5 years in 2 and regular monitoring be carried out,
- Human made noise not only disturbs the peaceful environment of the reservation but also affects the survival and reproduction of wild animals. Therefore, entry inside the reservation area with any kind of noisy equipment and weapons should be prohibited,
- In relation to the other demands of the writ petition, a directive order was issued in the name of the respondents to effectively implement the recommendations of the said recommendation committee formed in accordance with the prevailing law and the order of this court.

**8) Amarnath Jha vs. Office of PM (disaster management and climate change)**

**NKP 2022 (2078), DN 10743**

**Bench: Honourable Justice Ananda Mohan Bhattarai (author), Honourable Justice Sushmalata Mathema**

**Issue:** A resident of Terai region seeking filed a writ preventive and restorative action from the government for the people/families affected by the yearly flood (specifically in the Khado River) caused by the monsoon rain in Terai. It was claimed that the floods which had become unpredictable in recent times caused massive loss of life and property. The petition sought immediate measures of relief as well as long term solutions from the government including building of resilient dams to ensure that such flood do not cause loss of lives and irreversible physical damage each year.

**Rationale:** Court delved into the notion of environment protection and related the disaster of flood with climate change and other issues of environmental degradation which are in fact the causative factor of disasters. Factors such as unseasonal rain, melting of glaciers (caused due to climate change) were identified as the causative factor of flood in the Southern plain lands of Nepal. The

bench highlights the effect of climate change on a mountainous country like Nepal and puts forth the duty of state to mitigate the factors that cause environmental harm resulting in disasters such as excess sand mining, encroachment of basin areas for settlement or construction, deforestation etc. It invokes various principles of environment law including the principle of sustainable development, common but differentiated responsibility and precautionary principles to highlight the need of environmental preservation.

Regarding disaster management, the bench states that disaster risk management should be looked in conjunction with climate change adaptation in an integrated manner. The practices of early warning, preparation, rescue, relief and rehabilitation are also highlighted as mandatory measures to be adopted for disaster management. Further, for disaster management, the bench finds it important that the land use policy be mindful of the geographical sensitivity and also include concerns related to environmentally sustainable development such as biodiversity protection, environmental protection, maintaining forest areas in the land necessary for environmental balance etc. The plans and programs of the state must keep in mind the state policies provided for in the Constitution.

It talks about the need of proper implementation of environment related laws stating that the rights provided in the Constitution are not just for the sake of it, they are there for actual realization by the people and thus need to be implemented. The fundamental rights enshrined in the constitution can only be realized if sustainable development is implemented and applied in all programs and policies of state in an accountable manner. In the context that our constitution accepts not only clean but also "healthy environment" as a fundamental right of citizens, it is necessary to keep the river systems clean and healthy. The state has to carry out the responsibility of promoting the protection of natural resources, ensuring the enjoyment of fundamental rights and rights, and turning the state's policy principles into action by embracing the concept of intergenerational justice.

It also highlights that the court should take the growing scope and interest in environmental, climate change and human rights law seriously. The right of people to live in a healthy and safe environment should be respected in every way and courts should protect its people from the effects of flood and landslides. Thus, when the government fails to discharge its obligations in protecting the rights of disaster-affected people and communities, the Court has to pave way for judicial activism. When fundamental rights are violated and harm is caused to environment, Court has the duty to prevent it.

**Order:** The Court initially issued an interim order to the government to provide adequate and immediate relief package for the victims of flood of that year. In the final judgment the bench issued an order of mandamus to ensure not just immediate relief packages but also long term rehabilitation to the victims; and, to reduce the damage caused by flooding of the Khado River by constructing dams and embankments in places where there is risk of flood.

As a long-term solution to this matter, the Court provided directive orders to:

- create and implement a National Master Plan related to disaster management,
- prepare and implement land use policies based on river basins and create programs related to land management and include them in periodical plans while also following the policy of conservation, promotion and sustainable use of biological diversity,
- collect detailed data based on information technology and update it timely,
- ensure the right to housing of disaster victims as provided by Article 37 of the Constitution and build sustainable housing with basic facilities and to increase the resilience of other public and private structures,
- address the impact of climate change and disaster on farmers and provide protection measures and compensation,
- ensure easy access to real time data and information about disaster

**9) Advocate Ram Kumar Acharya (Environment Development and Conservation Legal Forum) v. Nepal Government, Office of the Prime Minister**

**NKP 2013 (2070), DN 8942**

**Bench: Honourable Damodar Prasad Sharma (author), Honourable Justice Prakash Wasti**

**Issue:** Reasons like the changes in production and consumption style and increased infrastructural construction caused the over-exploitation of natural resources. This over-exploitation caused the gradual extinction of national resources and the lack of availability of resources for future generations. Sustainable Development was introduced in the realm of protection of the environment and natural resources.

The Precautionary Principle developed in relation to environmental protection and sustainable development emphasizes that before starting any development program, it is necessary to anticipate the negative impact it will have on human health, natural resources, and the overall environment and then take precautions to prevent such impact. According to this principle, it is necessary to anticipate the negative impact and take necessary precautions before any development work is carried out. It is the responsibility of the one proposing the project to confirm that the development works will not have any negative impact on the environment. **Environmental Impact Assessment (EIA) is based on the principle of precaution.** It adopts a precautionary approach to control environmental damage before its occurrence rather than controlling it after it has occurred.

The issue, in this case, is related to whether a road can be constructed for human needs within the Bardiya National Park, which is a haven for a clean environment, diverse biodiversity, and wildlife. If constructing such a road is possible, what would be the relationship between environmental protection and development based on prevailing laws?

**Rationale:** Protecting the environment is a common concern of the entire world. The court has a role of a guardian in the protection of the environment. The organizations and individuals who are involved in its protection are also expected to play an active role.

The question of environmental protection goes beyond the needs of the boundary of a nation and nationality. For a multifaceted issue that is a common concern of the world, it is not just to limit it by narrowing it to the elements of rights and interests.

If there is any other option instead of the proposed project where the environmental damage can be limited following the option, the alternative should get universal priority.

Environmental impact assessment provides that every possible option should be studied. Thus, environmental protection should be considered as the main objective while choosing the option. The question of financial expenditure should not be given importance when taking in consideration of the viable option. Nepalese laws stand in favor of environmental protection. Since Nepal is a signatory of environmental protection treaties and conventions, the question of environmental protection cannot be considered secondary in the name of development.

Environmental impact assessment should be done through the process prescribed by law. The objective basis of the report should be that the option chosen from the various options is the most

appropriate from the point of view of environmental protection. Whether those objective grounds are lawful or not is the subject of the court's examination. It is not possible to agree with the statement that the court should not enter the context of Environmental Impact Assessment (EIA).

It is the duty of this court to enforce the law and see through its proper application. The necessity of the road or lack of it is not to be determined by the court. However, from the point of view of environmental protection, the court only enters into the matter when it comes to examining the legality of the viable options that have opted to construct the road.

**10) Bajudin Miya v Office of the Prime Minister**

**NKP 2009 (2066), DN 8169**

**Bench: Honorable Justice Balram KC, Honorable Justice Krishna Prasad Upadhyaya (author)**

**Issue:** Koshi Tappu Reserve Area has different species of wild animals. It also does not have essential compounds, walls, or any barriers to control the border area from wild animals. Even where there are such compounds, walls, or barriers, the animals destroy such walls and escape the boundary destroying the crops planted on the lands, which are the property of people, like the petitioner, who have their rights vested in it. The petitioners claim that there is a situation where there is no effective law providing compensation for this kind of loss and damages caused by wild animals protected by the state.

The petitioners claim that their sugarcane crop saw damage because of the many wild elephants, deer, badgers, and other wild animals that have come in hundreds of numbers from the wildlife reserve. The animals have repeatedly eaten and trampled the sugarcane crop resulting in irreversible damage.

The petitioners filed the writ seeking the Court to provide them compensation for damages caused to their crops. In addition, they also asked for necessary policy rules or additional legal and budget to be arranged. They claimed to be compensation from the new arrangement along with an order being issued to the defendant to construct a compound around the Wildlife Reserve to prevent damages to the crops.

**Ratio:** The state has the following duties to fulfill the Right of Food Sovereignty given to the citizens by the Constitution:

- a) Citizens should be able to produce their own food and become self-sufficient.
- b) The state should secure and store adequate amounts of food by making food available and supplied to the market so as not to let its citizens suffer from food shortages.
- c) The state should assist in food production, marketing and conservation to achieve the Right of citizens to food sovereignty.
- d) The state should create conditions and an environment where all citizens have easy access to food.

The State should create an appropriate economic environment by making necessary laws and policies and other necessary provisions for access to food for every citizen to enjoy the fundamental right of food sovereignty. This is to not deprive citizens of the right to food sovereignty.

The fact that Nepal is cultivating commercial sugarcane and has helped to save crores of foreign currency that Nepal spends every year on sugar import should be taken into consideration to give special protection to the professional business.

To protect the basic rights of the citizens to be free from hunger i.e. Right to Food and basic rights related to occupation and business, compensation should be arranged.

It is natural for wild animals to move out of the reservation area due to the increased deforestation within the forest. But even though it is natural, the State should fulfill its responsibility towards the people's right to food sovereignty if the property of the citizen that should be protected is damaged by a wild animal protected by the state agency or caused by such an animal.

The state cannot deviate from its constitutional duty by saying that there is no law and no policy on issues such as food sovereignty, health, food problems and security, and the environment for doing business and its proper protection, where the interests and concerns of the citizens are intertwined.

The government, which is also the guardian of the rights and interests of the citizens, should use its inherent right to make policy decisions and follow its constitutional duties and responsibilities by providing compensation.

Wildlife protected according to the law are considered public property, and if these wild animals within the reservation protected by the state destroy the crops of the citizens based on agriculture, even if the State does not cause any direct damage to it, the state is tortuously liable to provide necessary and appropriate compensation. If an animal inside a reservation protected by the state

causes damage to someone's property such as crops, farming, the State, as the keeper of such an animal, should compensate the victim.

In a matter related to the fundamental right of citizens to be free from hunger i.e. Right To Food that is important and sensitive until a directive order is issued to provide compensation and a law or policy is issued, until the protected animals in the reservation destroy the crops or crops of the citizens who come out of the reservation.; the following order will be issued to compensate the relevant people whose crops have been damaged:

- a) In order to address the problems mentioned regularly by the citizens around the national parks or reserves of Nepal, a committee should be formed in the district where the national park or reserve is located. The Committee should form with representation from relevant stakeholders, including experts and farmers.
- b) If the protected wildlife of the park or reserve area damages the crops of the residents outside the reservation, an arrangement for the damaged person to register an application with the said committee should be made.
- c) If the application is registered, the committee, as soon as possible, should investigate whether the protected animals within the reservation caused crop damage. If the evidence shows that the damage was caused by the protected animals within the reservation, an arrangement for a reasonable amount of compensation based on the amount of damage seen should be made.
- d) The committee can decide its own operating procedures.
- e) The work of the committee in accordance with this directive will continue until a law or policy related to punishment is made and it is displaced or replaced. After a law or policy is made and the issue regarding compensation is properly managed, the committee will dissolve automatically.

**Order:** The Court is of the view that animals protected by the state within the Wildlife Reservation should not cause damage to the crops of the citizens. The state should compensate those whose crops are damaged because of these animals. The Court, in this case, observed that both the petitioners and the opponents had mentioned the lack of law and policy to compensate for such damages in the current situation. It is also observed that such damage is seen every year, meaning it is recurring. The Court also observed that there is a dispute in determining the number of damages



and that the state has a constitutional duty to compensate for the damage in such a situation. However, there is a lack of laws and policies providing compensation for such damage.

The Court observed that the matter raised by the petitioner was of sensitive matter related to the fundamental right of citizens to be free from hunger i.e. Right to Food. Thus, it issued a directive order in the name of the defendant to permanently resolve and provide compensation. The directive order issued also ordered the Government to make laws and policies addressing the problem as soon as possible in order to prevent such recurring problems in the future.

**11) Adv. Narayan Devkota v. Prime Minister and the Council of Ministers**

**NKP 2010 (2067), DN 8521**

**Bench: Honorable Justice Balram KC (author), Honorable Justice Bharatraj Upreti**

**Issue:** Writ was filed regarding the issue of use of crushers by Indian companies for extraction of stones and other materials in about 25 districts of Terai region. It was claimed that the crusher industry had no regard for the environmental components and had been damaging forests, the biodiversity while also polluting the residential area around which they are operating. This caused massive environmental and bio-diversity damage in the Chure range and in about 25 districts of the Terai region which have national parks and other protected areas within them.

The petitioner claimed that despite there being clear provisions in the Environment Act and Rules and the Mines and Minerals Act, Water Resources Act, National Parks and Wildlife Conservation Act and the Forest Act, the government is indifferent, inactive and helpless and there is lack of monitoring of such activities.

**Ratio:** The court agreed on the fact that mismanaged crusher industry is extremely detrimental to environment as well as to the lives of people and stated that “Planners and governments should be able to balance economic development and industrial development and environmental protection when planning. Today's 21st century world needs to be conscious of the need and importance of a clean environment. The economic development of the cost of environmental destruction is not acceptable.” The Court here invoked the Public Trust Doctrine and provided that under the Public Trust Doctrine, the Government of Nepal should have access to Nepal's natural resources only as a Trustee and there is no legal basis for allowing Nepal's natural resources to be used in a way that adversely affects the environment just because such act generates some revenue. The court further

went to say that the bad policies of the government are causing pollution and that allowing Indian crusher industries to cause such nuisance is against its constitutional mandate to protect environment. The extraction and use of natural resources should not be viewed only from the point of view of economic benefits. Natural resources should be allowed for commercial use only after ensuring that such use do not adversely impact the surrounding.

**Order:** The Court provided directive order to the responsible agencies of the government form a policy for the prevention of such exploitation of resources and environment and work under the Public Trust Doctrine acting as a trustee and not the owner of natural resources to protect the environment and rights of its citizens. It also ordered the government to formulate a policy to manage and use natural resources in a way that can be used only for the common benefit and public interest of all Nepali people; to conduct EIA while conducting activities that affect the environment; and to make necessary arrangements for the use of natural resources without any adverse effect on the environment as per the law.

## **12) Yogi Narahari Nath et.al. v. Prime Minister and the Council of Ministers**

**NKP 1996 (2053), DN 6127**

**Bench: Honourable Justice Surendra Prasad Singh (author), Honourable Justice Narendra Bahadur Neupane**

**Issue:** Devghat area lies next to the Narayani river and an area of a national park having dense forests. Thousands of old idols were found during excavations in this area. Wild animals come to feed and drink from the Narayani river and rare herbs are also found in this area. The people and the government of this area consider this place as a public property. His Majesty's government had decided to provide 42 acers of this area to an international medical center free of cost. Writ was filed seeking to quash this decision and preserve the natural and religious environment of the Devghat area. At present, this area is a place of reservation for greengrocer and other forest animals. If a medical campus is built at that place, it will lead to unauthorized entry of people and destruction of wild animals and forest and cause adverse effect on the environment. The religious sanctity of the place dignity will be violated. With these claims, a writ was filed to quash this decision of the government.

**Ratio:** Even if the court cannot apply the directive principles and policies of the state arranged by the constitution, if the government decides against the directive principles and policies of the state arranged in the constitution, then it can direct to resolve such a situation.

Natural heritage of the country is the common property of all citizens.

When the government makes a decision on matters of national importance, the decision should be made in a manner that does not conflict with the constitution and the law, keeping in mind the interest of the nation.

**Order:** Taking into account the environmental and cultural importance of Devghat area, the Supreme Court quashed the decision of the government to lease that area to construct an international medical study center which would have destroyed the forest and the environment affecting the habitat as well as the residence around the area.