

Supreme Court, Constitutional Bench

Honorable Acting Chief Justice Deepak Kumar Karki

Honorable Justice Ishwor Prasad Khatiwada

Honorable Justice Dr. Ananda Mohan Bhattarai

Honorable Justice Anil Kumar Sinha

Honorable Justice Prakash Man Singh Raut

Order

Date of Order: 2079/1/7 (corresponding to 20 April, 2022)

Subject: Certiorari

077-WC-0099

Petitioner: Advocate Shailendra Prasad Ambedkar et.al. resident of Kapilvastu district, Shuddhodan Rural Municipality, Ward No. 6, currently residing in Lalitpur district, Mahalaxmi Municipality, Ward No. 5

Vs

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

077-WC-0100

Petitioner: Advocate Ram Bahadur Shahi et.al. resident of Humla district, Kharpunath Rural Municipality, Ward No. 5, currently residing in Kathmandu district, Kathmandu Metropolitan City, Ward No. 32, Koteswor

Vs

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

077-WC-0101

Petitioner: Advocate Dr. Punya Prasad Khatiwada et.al. resident of Okhaldhunga district, former Bhadure Village Development Committee, Ward No. 7, currently residing in Chisankhugadhi Rural Municipality, Ward No. 6

Vs

Respondent: Office of the President, Sheetal Niwas, Kathmandu and others

077-WC-0102

Petitioner: Senior Advocate Dinesh Tripathi, resident of Rupandehi district, currently residing in Kathmandu district, Kathmandu Metropolitan City, Ward No. 31

Vs

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

077-WC-0103

Petitioner: Advocate Hari Ram Lavaju, resident of Bhaktapur district, Bhaktapur Municipality, Ward No. 3, currently residing in ward no. 9

Vs

Respondent: Office of the President, Sital Niwas, Kathmandu, Nepal and others

077-WC-0104

Petitioner: Advocate Aatis Karki, authorized representative of the Nepali Party for Nepal, and residing in his own right in Kathmandu district, Kathmandu metropolitan city, ward no. 2

Vs

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

077-WC-0105

Petitioner: Advocate Vikram Nagarkoti, residing in Kathmandu district, Budhanilkantha municipality, ward no. 11

Vs

Respondent: Hon'ble Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu and others

077-WC-0109

Petitioner: Environment Law Society Nepal, with its office in Anamnagar, Kathmandu district, Kathmandu metropolitan city, ward no. 29, represented by its authorized director and advocate, Dhananjay Khanel

Vs

Respondent: Office of the President, Sheetal Niwas, Maharajgunj, Kathmandu and others

- Considering the country's geographical, geological, and environmental sensitivity, the ongoing activities, their impacts, and the potential challenges, it becomes imperative to recognize the principle of environmental sustainable development as *the most fundamental principle* among the principles of state policy. Embracing this principle, development and

environment must be balanced in a manner that does not come into conflict with it. Furthermore, economic, industrial, and commercial policies should be formulated accordingly, and ensuring the active role of stakeholders would truly align with the words, spirit, and essence of the Constitution of Nepal.

(Para 11)

- No one shall have the right to exploit nature under the pretext of trade deficit, causing it to be stripped bare, irreparably damaged, and left incapable of restoration. Instead, with regard to the factors contributing to the increase in trade deficit, a comprehensive study should be carried out concerning the policies adopted by the State over the past three to four decades, the status of their implementation in relation to the environment, and the actual causes behind the rising deficit. On that basis, efforts should be directed toward offsetting the deficit through the sustainable use of our biodiversity and the development of renewable energy.

(Para 26)

- Although the provisions of the Local Government Operation Act, 2074 grant local levels the authority to impose export fees, charges, and royalties, the same Act also entrusts them with the responsibility of taking environmental concerns into account. Therefore, it cannot be construed that the Act grants rural municipalities or municipalities an absolute right to extract and export stone, gravel, and sand while disregarding environmental challenges.

(Para 28)

- Since stone, gravel, and sand are natural resources, it cannot be claimed in absolute terms that local bodies, by virtue of having the authority to collect sales and export fees or charges, are thereby permitted to excavate, extract, or export such materials in a manner that destroys nature, causes significant adverse impacts on the environment, or devastates the ecological system—without first considering from where riverbeds, forests, private or public lands and in what quantity they are being extracted, as well as the actual or potential effects on the environment and ecosystem.

(Para 33)

On behalf of the petitioner: Learned Senior Advocate Mr. Dinesh Tripathi, Learned Advocates Mr. Shailendra Prasad Ambedkar, Ms. Mohana Ansari, Mr. Pankaj Kumar Karn, Mr. Ram Bahadur Shahi, Mr. Deepak Dube, Mr. Trilok Bahadur Chand, Dr. Mr. Punya Prasad Khatiwada, Mr. Deepak Bikram Mishra, Mr. Manohar Lamichhane, Mr. Khadka Bahadur Rai, Mr. Sonam Moktan, Mr. Kritinath Sharma Paudel, Mr. Aatish Karki, Mr. Santosh Bhandari, Mr. Bishnu Luitel

On behalf of the Respondent: Learned Joint Government Attorney Mr. Hari Prasad Regmi and Learned Advocate Mr. Khem Narayan Sapkota

Precedents Cited:

- Nepal Law Magazine 2053, Decision No. 6127, pg. 33
- Nepal Law Magazine 2056, Decision No. 6391, pg. 312
- Nepal Law Magazine 2056, Decision No. 6789, pg. 700

- Nepal Law Magazine 2061, Decision No. 7394, pg. 731
- Nepal Law Magazine 2061, Decision No. 7453, pg. 1361
- Nepal Law Magazine 2061, Decision No. 8239, pg. 1620
- Nepal Law Magazine 2067, Decision No. 8521, pg. 2053
- Nepal Law Magazine 2067, Decision No. 8616, pg. 812
- Nepal Law Magazine 2069, Decision No. 8942, pg. 47
- Nepal Law Magazine 2070, Decision No. 9030, pg. 868
- Nepal Law Magazine 2072, Decision No. 9577, pg. 688
- Nepal Law Magazine 2073, Decision No. 9575, pg. 612
- Nepal Law Magazine 2073, Decision No. 9686, pg. 1798
- Nepal Law Magazine 2073, Decision No. 9711, pg. 2285
- Nepal Law Magazine 2075, Decision No. 10086, pg. 1626
- Nepal Law Magazine 2075, Decision No. 10109, pg. 1820
- Nepal Law Magazine 2075, Decision No. 10101, pg. 2026
- Nepal Law Magazine 2075, Decision No. 10154, pg. 2251
- Nepal Law Magazine 2076, Decision No. 10204, pg. 1450

Relevant Laws

- Constitution of Nepal
- Water Resource Act, 2049
- Forest Act, 2049
- Mines and Minerals Act, 2042
- Nepal Petroleum Act, 2049
- Local Government Operation Act, 2074
- Export Import (Control) Act, 2013
- Environment Protection Act, 2076
- Land and Watershed Protection Act, 2039

Order

Justice Dr. Ananda Mohan Bhattarai: In the writ petitions filed on various dates before the Constitutional Bench of this court, the main claim in all of them being of the same nature—seeking an order of certiorari including any other appropriate order pursuant to Article 133 (1), (2), and (3) of the Constitution to declare, from the outset, the annual estimate of revenue and expenditure for the fiscal year 2078/79, that is, the annual budget of FY 2078/79 and all actions related thereto, invalid and void - the core issues raised in the writ petitions and in the written replies have been consolidated and considered together. Accordingly, the brief facts and the order relating to the writ petitions submitted before this Bench are as follows:

Factual Contents

Concise Summary of Writ Petitions

On 2078/02/15 (corresponding to 29 May, 2021), the Right Honorable Prime Minister delivered an address to the nation. Based on the policies and programs set out in that address, and on the recommendation of the Council of Ministers, the Right Honorable President on 2078/02/15 issued the Finance Ordinance, 2078; the Appropriation Ordinance, 2078; and the Ordinance on Raising National Debt, 2078. Sub-clause 2 of Clause 2, of the Finance Ordinance, 2078, provides that customs duty shall be levied and collected on exportable goods in accordance with Schedule 2. In Section 1 of Schedule 2, under Heading Numbers 25.05, 25.15, and 25.17, among others, sand, stones, and gravel are listed as goods to be exported from Nepal, along with the applicable export customs duties. Likewise, Section 38 of the same Ordinance amends the Customs Act, 2064, inserting in Section 89(d) a provision for the development of a single-window system for international trade or exports. In the public statement of income and expenditure for Fiscal Year 2078/079, issued by the Honorable Finance Minister on 2078/02/15 (corresponding to 29 May, 2021) it is mentioned in Point No. 2 that the fundamental matters set out in the Appropriation Ordinance, the Finance Ordinance, and the Ordinance on Raising National Debt, as issued by the Right Honorable President, have been incorporated in the income and expenditure statement. Furthermore, Point No. 199 of the same statement specifies that, on the basis of environmental impact assessment, the export of mineral-based stones, gravel, and sand will be carried out to reduce the trade deficit. It has been noted that provisions have been made to exempt customs duties for the construction of ropeways from the industry to the extraction points for the transportation of mineral construction materials. Based on this statement, the press release issued by the Ministry of Finance on 2078/2/19 (corresponding to 2 June, 2021) presented a policy perspective on the extraction of stone, gravel, and sand from the Chure region. Furthermore, it has been reported and made public that the Government of Nepal, through the Department of Mines and Geology, has already planned the extraction and export of stone, gravel, and sand from 92 sites across 14 districts of Nepal, including Morang, Udayapur, Makwanpur, Chitwan, Doti, and Dadeldhura, in the Chure region. The aforementioned details indicate that provisions have been made to extract stone, gravel, and sand from Nepal's Chure region, to allow the operation of processing industries within the Chure region, and to construct ropeway transportation routes from these industries to the points of export. Additionally, customs exemptions have been arranged for the import of all materials required for the construction of such ropeways, thereby facilitating the extraction and export of mineral resources like stone, gravel, and sand from the Chure region. It is evident that the Honorable Prime Minister's address, sub-clause (2) of Section 2 of the Economic Ordinance, 2078, the legal provisions under Schedule 2, Headings 25.05, 25.15, and 25.17, the points 2 and 199 of the public disclosure statement issued by the Ministry of Finance regarding revenue and expenditure, the press release issued by the Ministry of Finance on 2078/2/19 (corresponding to 2 June, 2021) and the plan issued by the Department of Mines and Geology to extract stone, gravel, and sand from the Chure region are all interrelated and form an integral part of the Economic Ordinance, 2078.

According to point no. 199 of the public disclosure statement on revenue and expenditure for the fiscal year 2078/079, if the extraction of stone, gravel, and sand from the Chure region continues at the current pace, especially the fertile agricultural lands of the Terai-Madhesh region will be turned into wastelands. Crops will be destroyed due to lack of irrigation. Furthermore, because of the exploitation of the Chure region, the increased flow of rivers and streams poses a heightened risk of flooding in thousands of villages across the Terai-Madhesh region. Once the topography of any part of the country is altered, it cannot be restored to its original state, and the pain and consequences persist for generations. Furthermore, aquatic life in reservoirs may become extinct,

microorganisms and plants may be destroyed, and their habitats may be lost, thereby affecting the ecological balance. If the Chure region is degraded, the agriculture, livelihoods, culture, traditional knowledge, and settlements of the Terai-Madhesh region will all be put at risk. The Chure cannot speak for itself; it is silent, yet its utility conveys many things on its own. The Chure hills, from biological and geological perspectives, have been fragile, sensitive, and rich in environmental and forest resources, which have been rapidly exploited over the past few decades. The Chure hills serve as a protective shield for the Terai. The people of the Terai face annual problems of floods, landslides, water scarcity, and reduced agricultural productivity. Due to the fragile topography of the Chure region, the extraction of stone and gravel will accelerate river flows, and the sediments carried by these swift currents will almost certainly accumulate in the Terai. The Chure region is not only a source of sand and gravel but is also rich in natural resources. A large portion of forest resources under the jurisdiction of the provincial government is located in the Chure foothills; thus, exploitation of the Chure will inevitably lead to the loss of habitats for all these natural resources. Such a decision by the Government of Nepal will result in the desertification of the entire Terai region, which serves as the country's granary, and will adversely affect the livelihoods of the entire population. Therefore, the government must remain vigilant in protecting against deforestation, maintaining environmental balance, conserving biodiversity, safeguarding water sources, and preventing the desertification of the Terai. Although there are numerous alternative measures available to the government to reduce trade deficits, extracting and exporting the country's soil, stone, gravel, and sand to other countries is extremely regrettable. The introduction of point no. 199 in the budget speech to exploit the Chure region, purportedly to strengthen relations with neighboring countries, will lead to environmental destruction, loss of natural resources, floods and landslides, soil erosion, lack of irrigation, inundation of settlements, desertification of arable land, lowering of water tables, and scarcity of drinking water. Such a decision is not only unconstitutional and internationally problematic but also constitutes a crime against the Terai-Madhesh region and future generations. Bringing a budget through an ordinance without parliamentary debate on matters such as natural resources, means, and the environment and making such a decision is tantamount to an act of treason. There should have been extensive discussion in the House on what actions would serve the country's interest, how to utilize the resources within the nation, and how extraction could be carried out scientifically. Laws should have been enacted to manage these activities in a scientific manner, but instead, the government has undertaken actions for its own political self-interest without taking any such measures.

Sub-article (1) of Article 30 of the Constitution of Nepal, 2072, states: Every citizen shall have the right to live in a clean and healthy environment. However, if the policy under point no. 199 in the budget is implemented, this fundamental right guaranteed by the Constitution will be violated. Furthermore, sub-article (2) of Article 5 of the Constitution states that any conduct or act contrary to the national interest shall be punishable by the federal law. Similarly, sub-article (1) of Article 16 of the Constitution provides that every person shall have the right to live with dignity. If this maliciously introduced policy is implemented, the fundamental rights guaranteed by the Constitution will be undermined, environmental balance will be disrupted, and the country will suffer significant damage. In the past, the President had formed the Chure-Terai-Madhesh Conservation and Development Committee to prevent the exploitation of the Chure region and through the Development Committee established various standards for its conservation. Overriding those policies and decisions and promoting the extraction of stone, gravel, and sand under the banner of reducing trade deficits is pushing the Terai and the entire country toward long-term destruction.

The Preamble of the Environment Protection Act, 2076, itself states that every citizen's fundamental right to live in a clean and healthy environment must be protected, and those affected by environmental pollution or degradation must be compensated by the polluter. If this policy and decision are implemented, the Chure region will be exploited arbitrarily, and its long-term effects will cause significant destruction even in the hills and border areas. This self-destructive policy of the government is therefore capable of being quashed. By adopting a self-destructive policy, the government has disregarded the right to a clean environment, modern human rights, and environmental rights, which are considered the human rights of the fourth generation as well as the policies, laws, judicial precedents, regional agreements, and international treaties that ensure these rights.

No single nation can ensure environmental conservation and protection on its own. Due to industrialization, deforestation, and other factors causing environmental degradation, human health, wildlife habitats, the Himalayas, oceans, rivers, and climate are negatively affected. To safeguard these, the world has established various declarations, proposals, and international treaties, to which Nepal is also a signatory. As a signatory state, these international treaties are also binding in Nepal. This policy could lead to the destruction of the Chure hills, and ultimately, the fertile lands of the Terai may convert into a desert owing to severe floods, erosion, and inundation. Therefore, government policies and directives must serve the interests of the nation and its citizens and must be in accordance with the Constitution and the law. Article 2 of the Constitution clearly states that sovereignty and state authority of Nepal shall be vested in the Nepalese people. If the President and Prime Minister themselves lead such unconstitutional and illegal activities, it will undermine the country's territorial integrity, nationalism, and national security. Therefore, as the policy under point no. 199 of the budget for the fiscal year 2078/079 to facilitate the exploitation of the Chure region conflicts with Article 30 of the Constitution of Nepal, and therefore, pursuant to Article 133 (1), (2) and (3) of the Constitution an order of certiorari should be issued declaring it null and void and an order of mandamus should be issued in the names of the respondents refraining them from performing or cause to refrain them from performing all actions arising from point no. 199 of the budget for the fiscal year 2078/079.

Additional Details of Writ Petition No. 077-WC-0101

On behalf of the Government of Nepal, on 2078/02/15 (corresponding to 29 May, 2021), the Honorable Finance Minister Vishnu Prasad Paudel stated that the budget for the fiscal year 2078/079 should be presented to the joint session of both Houses of the Federal Parliament from the Ministry of Finance, Singha Durbar. However, the budget was made public outside the Parliament without being presented in a parliamentary session and it has not yet been tabled in Parliament. However, under the Constitution of Nepal, promulgated by the Constituent Assembly, there is no provision specifying the procedure or authority through which the annual revenue and expenditure estimates, i.e., the budget which must be compulsorily presented on 15 Jestha each year on behalf of the Government of Nepal should be presented in the event that the House of Representatives is dissolved or does not exist. In such a situation, the annual revenue and expenditure estimates of the government which are directly related to the administration of the state, the implementation of fundamental rights of citizens, and matters of national interest, as well as the implementation of the Constitution and laws have been presented as the full budget of the fiscal year by the Government of Nepal from outside Parliament, rather than as a "supplementary or emergency budget." Consequently, questions arise regarding the constitutional and legal

validity of such estimates if Parliament is unable to convene within the ordinance period; the House of Representatives is not formed; budget implementation is carried out through another ordinance after the expiry of the ordinance period; the budget presented through ordinance is not approved by Parliament; the budget is amended, annulled, or replaced in any manner. There is no provision in the Constitution or existing law regarding what the status or role of Parliament would be under such circumstances, whether the House of Representatives is reestablished or not, or whether Parliament approves the budget or not. If immediate interpretation regarding the validity of the budget declared in this manner is not provided, it will create a serious crisis regarding the legality and continuity of a budget presented or implemented outside Parliament and through ordinance by the federal government and other state units. Such a situation would constitute a continuous violation of the Constitution, undermine the principles of separation of powers, checks and balances, and accountability of the executive and legislative organs of the state, and cause serious and irreparable harm to the citizens and the nation. Given the significance, gravity, and sensitivity of this national public concern, and the absence of any effective alternative remedy, the petitioners pursuant to Article 46 and Article 133 (1), (2) and (3) request that an order of certiorari, mandamus and any other appropriate orders, be issued to provide effective judicial relief concerning the constitutional mandate for presenting the budget.

Pursuant to Article 119 of the Constitution, the Finance Minister of the Government of Nepal is required to present the annual estimates of revenue and expenditure on the fifteenth of Jestha each year, including the necessary amounts for the budgetary expenditures of each fiscal year and the amounts to be spent in accordance with the Federal Appropriation Act. When presenting such annual estimates, a report must also be provided on the amounts allocated to each ministry in the previous fiscal year and whether the targets associated with such expenditures were achieved. Article 120 provides that the amounts to be spent under the Appropriation Act must be specified under the relevant headings and included in the Appropriation Bill. Similarly, under Rule 138 of the Regulation of Procedure of the House of Representatives, 2075 and Rule 130 of the Regulation of Procedure of the National Assembly, 2074, the Finance Minister, in accordance with Article 119 of the Constitution, is required to present the annual estimates of revenue and expenditure to the joint session of the Federal Parliament. Once the annual estimates of revenue and expenditure are presented, the Finance Minister must table a copy of the estimates in the session, and no discussion on the estimates shall take place on the day they are tabled. Further, under Rule 139 of the Regulation of Procedure of the House of Representatives, 2075, before presenting a financial bill in the session, the Speaker, after consulting the Prime Minister or, in their absence, another minister designated by the Prime Minister, shall allocate the date and time for a general discussion on the annual estimates of revenue and expenditure. A general discussion on the estimates shall then take place on the allocated date and within the specified time. Similarly, under Rule 142 of the Rules of Procedure, it is provided that notwithstanding anything contained elsewhere in these rules, the procedure specified in this paragraph shall be followed concerning the Appropriation Bill. Before presenting the Appropriation Bill, the Finance Minister shall submit a proposal for discussion in a preparatory meeting regarding the principles and priorities of the Appropriation Bill (excluding tax proposals). The procedure for such discussion shall be determined by the Speaker in consultation with the Committee on Rules of Procedure and Business, and the discussion must be concluded at least fifteen days before the presentation of the annual estimates of revenue and expenditure in the sitting. Likewise, under Rule 131 of the Rules of Procedure of the National Assembly, 2075, the Chairperson, in consultation with the Prime Minister or, in their absence, another minister designated by them, shall allocate the date and time for a general

discussion on the annual estimates of revenue and expenditure. Such general discussion shall be conducted on the allocated date and within the specified time. Further, under Rule 16, before presenting the Appropriation Bill in a session, the Finance Minister is required to submit a proposal for discussion regarding the principles and priorities of the Appropriation Bill (excluding tax proposals) for budget preparation. While the annual revenue and expenditure estimates or the budget of the Government of Nepal are to be presented to the joint session of Parliament, it is clear that the House of Representatives plays a special role in the budget process. However, in the absence of a functioning House of Representatives, or even if the House exists but is not convened, or in the event of its dissolution, or if the budget is to be presented in only one House, the National Assembly alone, or outside Parliament, there appears to be no legal provision governing such circumstances.

According to the provisions of the Constitution, the details of revenue and expenditure must be presented in the House of Representatives. However, in the event of the dissolution of the House of Representatives, there is no provision in the Constitution, the fundamental law or in other existing laws regarding how the budget should be made public. Furthermore, no ordinance has been issued by the Honorable President in this regard. Therefore, the act of making the budget public under such circumstances appears to be contrary to the provisions of the Constitution. In the current situation, where problems have arisen in the implementation of the Constitution, Article 76 of the Constitution contemplates the possibility of the dissolution of the House of Representatives. However, Article 119 mandates the compulsory presentation of the annual budget on the fifteenth of Jestha each year to the joint session of both Houses of Parliament, without accounting for the possibility of the House of Representatives being dissolved. Consequently, there is a need for judicial interpretation regarding how the budget should be presented or made public in the absence of, or following the dissolution of, the House of Representatives. As per the provisions of the Constitution, there is no clear legal guidance on whether the Government of Nepal, or anyone on behalf of the Government, may present the annual revenue and expenditure estimates outside the Federal Parliament in the absence of the House of Representatives, or outside Provincial Assemblies or local bodies such as Village or Municipal Assemblies. Similarly, there is no clarity regarding the procedure, process, and consequences if such estimates are presented; or regarding what happens if the federal budget is presented or made public on a date other than the fifteenth of Jestha; or whether it is constitutionally mandatory or merely permissible to present the budget in the Provincial Assemblies. Therefore, the writ petitioners pray that an order of mandamus including any other appropriate orders be issued in relation to Article 119, directing the respondents to enact and implement clear legal provisions.

Additional Details of Writ Petition 077-WC-0104

That an order of be issued in the name of respondent nos. 1, 2, 3, and 4, directing them to promptly make arrangements to: conduct or cause to conduct scientific studies on the natural capacity of all rivers, streams, and rivulets within the territory of the State of Nepal to naturally produce such materials prior to granting any approval for, or allowing the carrying out of, excavation activities therein; prevent excavation in excess of such assessed capacity; formulate necessary standards to ensure such prevention; monitor and inspect whether such standards are being complied with; and take necessary action against excavation activities carried out in contravention of the prescribed standards.

That an order of prohibitory mandamus be issued in the name of the respondents, directing them to refrain from permitting or causing the excavation of low-value materials such as gravel, stones, and sand in the hill regions throughout the State of Nepal (including the Chure, Mahabharat, and High Mountain regions); to refrain from permitting or causing the extraction of such materials from hills and their transportation, supply, export, or distribution to domestic or foreign markets; and to promptly make necessary arrangements to prevent such activities, including monitoring and inspection, and to ensure that actions carried out in contravention thereof are proceeded against in accordance with law.

That an order of prohibitory mandamus be issued in the name of the respondents, directing them to refrain from permitting or causing to permit any kind of excavation activities in the hills of the Chure region, to prevent the occurrence of such activities, and to make necessary arrangements for monitoring and inspection, and to take action in accordance with law against any activities carried out in contravention thereof.

That an order of mandamus be issued in the name of the respondents, directing them to publicly publish or cause to publish the Environmental Impact Assessment (EIA) reports to be prepared prior to the operation of any activities, plans, or projects that are likely to have long-term impacts on natural resources and assets such as rivers, streams, hills, mountains, and other natural resources throughout the State of Nepal; to ensure effective regulation, monitoring, and supervision thereof; and to promptly carry out or cause to carry out necessary measures to provide the public with information regarding the same from time to time.

Additional Details of Writ Petition 077-WC-0109

On the basis of Article IV of the Treaty of Trade concluded between the Governments of Nepal and India in the year 2009, it appears that, under Article IV, paragraph (1), clauses (1), (2), and (15) of the Protocol to the Treaty of Trade, an agreement has been made permitting the export from Nepal of forest produce, minerals that have not undergone any processing, and stone aggregate, boulders, sand, and gravel to foreign countries. It is evident that, with the intention of implementing the arrangements mentioned in the said treaty, the same has been incorporated in Point No. 199 of the Budget Speech. At the time the treaty was concluded, Article 156 of the Interim Constitution of Nepal, 2063 was in force, which required that such a treaty be ratified by a two-thirds majority of the Legislature–Parliament; however, to date, the said treaty has not been ratified. In view of the said provision of the Interim Constitution and Article 279 (2) (d) of the Constitution of Nepal, which classifies matters relating to natural resources and the sharing of benefits arising from their use, any treaty or agreement on such subject requires ratification, accession, acceptance, or approval by a two-thirds majority of the total number of the then-existing members of both Houses of the Federal Parliament. Disregarding this mandatory constitutional requirement, and without completing the procedure and process prescribed under Section 5 of the Nepal Treaty Act, 2047, the Government of Nepal does not have the authority to permit export to foreign countries merely by incorporating such provision in the Budget Speech on the basis of a trade treaty that has been implemented without due ratification; consequently, the same appears to be inconsistent with the said constitutional provision. Therefore, in order to prevent the destruction of the overall environmental and natural system of the Chure–Bhawar and Mahabharat regions, to accord high priority to environmental conservation in those areas, and to make necessary arrangements accordingly, it is prayed that the following orders be issued as set out hereunder.

It is prayed that the provisions of Article IV, paragraph (1), clauses (1), (2), and (15) of the Protocol to the Treaty of Trade concluded on 27 October 2009, and Points Nos. 199 and 200 of the Budget Speech dated 2078/03/15 be annulled.

- (a) Considering that the Government of Nepal, by publishing a notice in the National Gazette on 2071/03/16 (corresponding to 30 June, 2014) had declared the Chure–Terai region as an Environmental Protection Area, it is prayed that an order of mandamus be issued in the name of the Government of Nepal, directing it to declare those inner Madhesh and Mahabharat hill regions not covered by the aforementioned notice as environment protection areas under Section 30 of the Environmental Protection Act, 2076.
- (b) It is prayed that an order of mandamus be issued directing the formation of a study committee comprising the President of the Chure Conservation and Development Committee, concerned agencies, and independent experts, to conduct studies regarding the Chure–Bhawar region, inner Madhesh, and Mahabharat region, including their geographical location, human settlement data, water sources and watersheds, identification of wetland areas, biodiversity, areas of government and community forests, protected areas, details of endangered species, and the condition of areas and forests listed as World Heritage Sites.
- (c) It is prayed that a clearly defined Terms of Reference of the said Committee be prescribed to study the Chure–Bhawar region, inner Madhesh, and Mahabharat region with respect to the current status of stone, gravel, and sand quarries and related industries operating therein; the status of industries operating with or without proper authorization; the status of renewal or continuation of such industries; and whether IEE or EIA was conducted, and if conducted, the status of its implementation.
- (d) It is prayed that an order be issued pursuant to Section 44 of the Forest Act, 2076, to establish a special permanent mechanism in the Chure–Bhawar and Mahabharat regions for the management of environmental services, and pursuant to Section 46 to appoint armed forest rangers and environmental inspectors to control illegal logging, unauthorized extraction, and unregulated exploitation and to ensure the protection and conservation.
- (e) Considering that the Environmental Protection Act, 2076, and other prevailing laws do not contain clear legal provisions regarding the excavation and use of gravel, stones, and sand, it is prayed that an order of mandamus including any other appropriate order be issued in the name of the Government of Nepal, directing it to amend the Environmental Protection Act, 2076, to include special provisions regarding the excavation, utilization, and regulation of gravel, stones, and sand, and to implement the same.
- (f) Pursuant to case published in Nepal Law Magazine 2067, Decision No. 8521, a directive order had been issued for the formation of an Environmental Bench, which has not yet been implemented, and therefore, it is prayed that a Environmental Tribunal be established in the honorable Supreme Court and that an order mandamus be issued

in the name of the Government of Nepal, directing it to constitute an Green Tribunal to hear and adjudicate environmental cases at the provincial level.

Order Issued by this Court

Order Issued against Writ No 077-WC-0099 on 2078/03/04 (corresponding to 18 June, 2021)

What has transpired in this matter? Why should the order as sought by the petitioner not be issued? Provided, there are any reasons and grounds for not issuing the order, the respondent no. 1 and 2 are hereby directed to submit their rejoinder through the Office of the Attorney General within 15 days excluding the period of travel and for other respondents it is hereby ordered to submit the rejoinder through the Chief Attorney of the concerned Province. It is hereby directed to provide a copy of the writ petition and this order and execute summon and to submit the case file upon receipt of the rejoinder or upon the expiry of the limitation period.

Upon consideration of an interim order sought by the petitioner, there is no dispute regarding the fact that, after the dissolution of the House of Representatives on 2078/02/8 (corresponding to 22 May, 2021), the budget was presented by an Ordinance 2078/2/15 (corresponding to 29 May, 2021). It appears that the Economic Ordinance, 2078, prepared to implement the Government of Nepal's proposals relating to finance, was certified by the Honorable President on 2078/2/15, and that the statement of public information on the revenue and expenditure for the fiscal year 2078/079 was issued. In Point No. 199 of the said public statement on the Government of Nepal's revenue and expenditure for the fiscal year 2078/079, it is mentioned that: "Based on environmental impact assessment, extraction of quarry-based stones, gravel, and sand shall be carried out to minimize trade deficit. For transportation of the extracted quarry construction materials, arrangements have been made to construct ropeways from the industry to the extraction points, and customs duty exemptions on imports have been provided".

Article 30 (1) of the Constitution of Nepal provides the fundamental right that "every citizen shall have the right to live in a clean and healthy environment." Similarly, Article 51 (f) of the Constitution of Nepal sets out policies concerning the conservation, promotion, and utilization of natural resources, which include various policy provisions aimed at ensuring the conservation and sustainable use of the country's available natural resources in an environmentally compatible manner, while adhering to national interest and intergenerational equity principles. It is also observed that this court has previously issued guidelines regarding the use of natural resources, including their extraction and utilization. Point No. 199 of the Budget Speech indicates that the objective of extracting and exporting quarry-based stones, gravel, and sand, is to reduce the trade deficit. In the use of the nation's natural resources, intergenerational equity and environmental compatibility must be given due consideration. Extraction and export of natural resources such as stone, sand, and gravel can affect the nation's natural resources, cause environmental impacts, and have long-term effects on wildlife, livestock, flora, and overall biodiversity. Such natural resources fall under the permanent sovereignty of the nation, meaning the state holds ultimate authority over their use. In the absence of any law enacted by the sovereign Parliament regulating their extraction and utilization, the provisions in Point No. 199 were implemented through an Ordinance. Under Article 114 of the Constitution of Nepal, the Government is permitted to issue an Ordinance "when immediate action is necessary," which provides the constitutional basis for making such arrangements temporarily. Considering that the action under Point No. 199 involves natural

resources with long-term significance and potentially irreversible impacts, implementing it through an Ordinance would interfere with the legislative authority and its effectiveness, and taking into account the need to maintain a balance of powers, it is deemed inappropriate to implement Point No. 199 at this juncture. Accordingly, pursuant to Rule 19 (4) of the Supreme Court (Constitutional Bench Operation) Regulation, 2072, an interim order was issued in the name of the respondent directing them not to implement or cause to implement the provisions of Point No. 199 of the public statement on revenue and expenditure for the fiscal year 2078/079 and to maintain the status-quo until the final disposal of the present writ petition, and that the respondents be immediately informed of this order.

Order Issued against Writ No. 077-WC-0100, 077-WC-0101, 077-WC-0102, 077-WC-0103, 077-WC-0104, 077-WC-0105, 077-WC-0109

What has transpired in this matter? Why should the order as sought by the petitioner not be issued? Provided, there are any reasons and grounds for not issuing the order, the respondents hereby directed to submit their rejoinder through the Office of the Attorney General within 15 days excluding the period of travel. It is hereby directed to provide a copy of the writ petition and this order and execute summon and to submit the case file upon receipt of the rejoinder or upon the expiry of the limitation period. With respect to the interim order sought by the petitioner, an interim order has been issued today in connection with writ petition no. 077-WC-0099, in which the petitioner Advocate Shailendra Prasad Ambedkar (Harijan), was also associated, concerning the same subject matter. On the same basis and for the same reasons, it is directed that the provisions of Point No. 199 of the public statement on revenue and expenditure for the fiscal year 2078/079 shall not be implemented or allowed to be implemented until the final disposal of the present writ petition, and that the status quo be maintained. This interim order has been issued in the name of the respondents under Rule 19 (4) of the Supreme Court (Constitutional Bench Operation) Regulations, 2072, and the respondents are to be immediately informed of this order. It is further ordered that this petition be kept together with Writ Petition No. 077-WC-0099 and dealt with according to law.

Rejoinders Submitted by the Respondents

Rejoinder of Nepal Government, Ministry of Finance and Minister of Finance (for all writ petition):

Article 110 (1) of the Constitution provides that a money bill shall be presented only in the House of Representatives. Since the House of Representatives was dissolved on 2078/2/8, and the budget could not be presented in that House, in accordance with the constitutional provisions, the Economic Ordinance, 2078, the Appropriation Ordinance, 2078, and the National Debt Raising Ordinance, 2078 were issued by the Right Honorable President. Article 51 (d) of the Constitution, provides policy relating to economy, industry, and commerce and Article 51 (d) (2) provides that the role of the private sector in the economy shall be focused to achieve economic prosperity by way of optimum mobilization of the available means and resources. In line with this, and including the provisions made in the aforementioned Ordinances, the public statement on revenue and expenditure for the fiscal year 2078/079 was issued on 2078/2/15. Article 55 of the Constitution provides that no question may be raised in any court regarding the implementation or non-implementation of the policies set out under Article 51 of the Constitution. Since the public statement on revenue and expenditure was issued in the context of implementing such policy, it

appears that the petitioner has approached the honorable Court challenging this matter, despite the constitutional provision that no question regarding the implementation of such policies can be raised before the court.

The matter provided under Point No. 199 of the Budget Speech relates to granting facilities for the development of infrastructure and operation of ropeways for export management. This is entirely a policy matter, and the extraction and export of stone, gravel, and sand can occur only after the completion of the prescribed legal procedures. Under Schedules 5, 6, 7, 8, and 9 of the Constitution, responsibilities for environmental protection and management are allocated among the federal, provincial, and local levels of government. Likewise, the Fifteenth Plan has formulated policies relating to environmental conservation. Recognizing that sustainable development depends on the interdependent relationship between economic development and environmental protection, and with a view to minimizing adverse impacts of environmental degradation on humanity, wildlife, flora, nature, and physical property, and to ensure citizens' right to live in a clean and healthy environment, as well as to protect the environment through proper utilization and management of natural resources, the Environmental Protection Act, 2076 was enacted and has come into force. The said Act primarily provides for reducing, eliminating, or controlling pollution, and for ensuring that work required under Initial Environmental Examination or Environmental Impact Assessment reports is effectively carried out. It also prescribes the procedure for appointing environmental inspectors, or designating any employee to perform the duties of such inspectors. Environmental protection activities are carried out under the framework of the aforementioned constitutional, legal, and policy provisions. At present, there is no situation in Nepal in which any industry or other activity established contravenes the provisions of the Environmental Protection Act, 2076.

Point No. 199 of the Budget Speech does not mention the Chure region anywhere. Even if extraction of rock, soil, stone, gravel, or sand is permitted from the Chure–Terai region, such extraction shall not occur from locations where over-exploitation would adversely affect the health of humans, animals, or plant life. Extraction and export will not take place from all areas of the country, but only by industries that have obtained permission in accordance with the procedures prescribed under prevailing law. The provisions regarding extraction through ropeways are related to granting facilities and exemptions on the import of materials required for the construction of ropeways. It is clear that to minimize the trade deficit, quarry-based stone, gravel, and sand shall be extracted and exported only on the basis of an Environmental Impact Assessment. The process includes assessing the natural resources and determining the quantity and extent to which they can be collected, exploited, and extracted from each area, publishing this information publicly, and awarding contracts only after conducting Initial Environmental Examination and Environmental Impact Assessment. Extraction and export from intermediate areas of the Chure region, national parks, and reserves is prohibited. For forest- and river-based materials outside these areas, value addition is required, and extraction is permitted only after at least one stage of processing, while the matter of prohibiting the export of unprocessed stone (boulders) abroad was decided by the Council of Ministers of the Government of Nepal in 2070 B.S. The provisions in the present context have been mentioned with the objective of further systematizing the implementation of the decisions already made by the Government of Nepal.

The Government of Nepal is fully committed to the conservation and promotion of the Chure region, and to protecting the lives of citizens and the environment affected by the Chure region.

The Government has made appropriate efforts for the conservation of the Chure region, including the implementation of various programs aimed at its protection, ensuring adequate attention to the preservation of the area. Extraction and export of stone, gravel, and sand will be carried out strictly in accordance with the methods and procedures prescribed under the prevailing laws. Extraction will not occur from anywhere in an arbitrary manner. It will take place only through ropeways. The establishment of ropeways for extraction will be carried out in a manner that ensures environmental protection and reduces pollution. It is necessary to extract a certain quantity of riverine resources accumulated annually due to floods and landslides. Since it is necessary to channel the accumulated materials properly and allow them to flow along the correct course, the collection of riverine materials becomes essential. By using the collected materials to meet domestic needs and allowing the surplus to be exported, the country's annually increasing trade deficit can be reduced.

The Export and Import (Control) Act, 2013, grants the Government of Nepal the authority to impose or not impose controls over export and smuggling. For the purposes set out in Clauses (a) to (d) of Section 3 of the Act, if deemed necessary to control export or import, the Government is explicitly empowered under the same section to prohibit or impose quantitative restrictions on export or import. Thus, the law itself grants the Government of Nepal the authority to permit export. In accordance with this provision, if the extraction of any riverine material becomes unregulated, or if its export would result in over-exploitation adversely affecting the health of humans, animals, or plant life, the Government is required to take immediate control. Therefore, the claim that an order should be issued on a policy matter alleging environmental pollution at this stage, even before the implementation process of the provisions in the Budget Speech has begun, is neither legally sustainable nor logically justified.

The provision in Point No. 199 of the Budget Speech to extract and export stone, gravel, and sand to reduce the trade deficit has been made to implement the Mines and Minerals Act, 2042 and other legal provisions. Such extraction and export will be carried out strictly within the framework of the Mines and Minerals Act, 1985, the Environmental Protection Act, 2076, and other prevailing laws. Therefore, this process does not infringe upon anyone's constitutional or legal rights, neither does it cause any loss or damage to the State; rather, it benefits the State. If an order from this honorable court were to restrain this activity, it would prevent the reduction of the growing trade deficit and have further negative impacts on the economy. Hence, there is no basis to issue any order preventing activities conducted in accordance with law, and the writ petition should therefore be dismissed.

Rejoinder Submitted by Nepal Government Office of the Prime Minister and Council of Ministers (for all writ petitions)

Article 119 of the Constitution of Nepal provides that the Minister of Finance of the Government of Nepal shall, for each fiscal year present to both Houses of the Federal Parliament an estimate of revenue, the necessary amounts to be charged to the consolidated fund, and the amounts required to be spent in accordance with the Federal Appropriation Act, thus submitting the annual estimate of revenue and expenditure on the 15th day of Jestha each year. Article 110 (1) of the Constitution provides that a Money Bill shall be presented only in the House of Representatives. On 2078/2/8, the House of Representatives was dissolved, and the dates for the election of the House of Representatives were announced as 2078/7/26 and 2078/8/3, making it impossible to present the budget in the House of Representatives. Therefore, in accordance with the constitutional

provisions, the budget had to be issued through an Ordinance, and accordingly, on 2078/2/15, the Honorable Minister of Finance publicly presented the budget. Article 114 of the Constitution provides that, except when both Houses of the Federal Parliament are in session, the President may, on the recommendation of the Council of Ministers, issue an Ordinance if immediate action is deemed necessary. Similarly, sub-article (2) of the same Article provides that an Ordinance shall be tabled at the session of both Houses of the Federal Parliament after its issuance, and if not passed by both Houses, the ordinance shall ipso facto cease to be effective. The Ordinance may also be repealed by the President at any time, and if it is neither rendered ineffective nor repealed, it shall cease to be effective at the expiration of sixty days after the day on which a meeting of both Houses is held. Therefore, any question regarding the budget issued under the Ordinance falls within the jurisdiction of the Federal Parliament, and it is not permissible to seek judicial relief in court regarding the provisions of such Ordinances beforehand. Assuming jurisdiction in such a matter would contravene the principle of separation of powers, checks, and balances.

Article 75 (1) of the Constitution provides that the executive power of Nepal shall, pursuant to this Constitution and law be vested in the Council of Ministers. Sub-article (2) of the same Article provides that, the responsibility for issuing general directives, controlling and regulating the governance of Nepal shall, subject to this Constitution and the law, lie in the Council of Ministers. Similarly, sub-article (3) of the same Article provides that all Federal executive functions of Nepal shall be performed in the name of the Government of Nepal. In accordance with the aforementioned constitutional provisions, the budget must be publicly issued in accordance with the Constitution and the law in order to operate the daily administration of the country and meet expenditures from the consolidated fund, and manage revenue. Accordingly, the federal government's budget was issued under the Ordinance, and this was a product of necessity. Once the provisions relating to Ordinances are set out in Article 114 of the Constitution, any matter issued and implemented under such provisions cannot be said to be unconstitutional.

Article 56 (2) of the Constitution clearly provides that the Federation, State and Local levels shall exercise the power of State of Nepal pursuant to this Constitution and law. Accordingly, as the exercise of state power must be conducted within the framework of the Constitution and the law, it follows that the budget must necessarily be publicly issued by the federal government, provincial governments, and local bodies in accordance with the Constitution and the law. The exercise of financial authority by all these bodies occurs in accordance with the law. Since the country has adopted a representative system, the actions of the executive are reviewed by the representative bodies. Accordingly, the federal budget, the provincial government budgets, and the budgets of local bodies can ultimately be examined and assessed for their appropriateness or impropriety by the respective legislative bodies. Articles 207 and 230 of the Constitution provide for the presentation of annual estimates; however, this does not imply that budgets may be withheld from the respective provincial governments and local bodies. An Ordinance issued in situations requiring immediate action carries the force of law, and accordingly, actions taken in accordance with the implementation of these constitutional provisions cannot be deemed otherwise.

The relationship among the federal, provincial, and local levels of government in Nepal is based on the principles of federalism, coordination, cooperation, and co-existence. To regulate and manage the relations among the federal, provincial, and local levels, the Federal, Provincial, and Local Levels (Coordination and Interrelation) Act, 2077, has been enacted. In addition, the Intergovernmental Fiscal Management Act, 2074, the National Natural Resources and Fiscal

Commission Act, 2074, and the Annual Appropriation Acts along with other laws issued yearly have been regulating matters concerning the interrelation of the three levels of government. As coordination and execution of functions proceed in accordance with the Constitution and the aforementioned Acts, there is no need to harbor concerns about any purported deviation in the budget.

The purpose of the provisions of Ordinance under Article 114 of the Constitution is precisely to allow legislative action when the House of Representatives is not in session. Since Ordinances can be issued under this provision, the budget for fiscal year 2078/079 was issued in accordance with the same constitutional framework. Once the Constitution provides that an Ordinance may be issued when both Houses of the Federal Parliament are not in session and immediate action is necessary, any claim by the petitioners that a budget cannot be brought through an Ordinance, or that provisions for the export of materials such as gravel, stone, and sand cannot be included in the budget is contrary to the Constitution. Article 59 (1) of the Constitution provides that the federation, State and Local levels shall make budget and present their respective budgets in accordance with federal law. Accordingly, estimates of revenues and expenditures have been provided for the Province in Article 207 and for the Local bodies in Article 230. Where the budget is being publicly issued in accordance with the constitutional and legal provisions, there is no need for any order prohibiting the conduct of functions on the ground that the budget has not been presented.

Part 4 of the Constitution provides that the directive principles, policies, and obligations set forth in this Part shall be the guiding principles for the governance of the State. Likewise, Article 50 sets out the directive principles, and Article 51 provides for the policies of the State. Under Clause (d) of Article 51, relating to economic, industrial, and commercial policy, Point No. 10 specifically provides for policies related to import substitution and export promotion. Similarly, under Point No. 2 of the same clause, the policy emphasizes the role of the private sector in the economy and the maximization of available resources to achieve economic prosperity. Article 55 further provides that no question may be raised in any court regarding whether the matters set forth in this Part have been implemented or not. The matter provided under Point No. 199 of the Budget for Fiscal Year 2078/079 relates to providing facilities for the construction and operation of ropeways to develop infrastructure for export management. This is strictly a policy matter, and the extraction and export of stone, gravel, and sand can only occur after the completion of the prescribed legal procedures. Therefore, since this involves policy formulation and its subsequent implementation, the court cannot intervene in advance to constrict the executive's actions or issue any order in this regard.

Article 30 of the Constitution guarantees every citizen the right to live in a clean and healthy environment. Within the scope of this right, it provides that a person who suffers harm as a result of environmental pollution or degradation shall be entitled, in accordance with law, to obtain compensation from the polluter. It further provides that necessary legal arrangements may be made to maintain an appropriate balance between the environment and development in matters relating to national development. Article 51 of the Constitution of Nepal adopts the policy of enhancing public awareness on environmental cleanliness; minimizing the risks that industrial and physical development may pose to the environment; and ensuring the conservation, promotion, and sustainable use of forests, wildlife, birds, flora, and biodiversity. It further provides for the adoption of appropriate measures to eliminate or mitigate adverse environmental impacts where

nature, the environment, or biodiversity has been, or is likely to be, negatively affected. The policy also requires that those who cause environmental pollution bear liability for such acts and mandates the adoption of principles of environmentally sustainable development, including the precautionary principle and prior informed consent, in environmental protection. Necessary legal provisions in this regard have already been made under the Environment Protection Act, (2076).

Taking into account that sustainable development is achieved through the interdependent relationship between economic development and environmental protection, the Environment Protection Act, 2076 has been enacted and brought into force in order to minimize, to the extent possible, the adverse impacts of environmental degradation on humankind, wildlife, flora, nature, and physical assets; to ensure citizens' right to live in a clean and healthy environment; and to protect the environment through the proper use and management of natural resources. The said Act primarily provides for the reduction, removal, or control of pollution and further stipulates that, in order to ensure the effective implementation of activities required to be carried out in accordance with an Initial Environmental Examination or an Environmental Impact Assessment report, the prescribed procedures shall be duly fulfilled, and environmental inspectors may be appointed, or any employee may be designated to perform the functions of such inspectors. In compliance with the aforesaid legal provisions, a policy-level arrangement was made under Clause No. 199 of the budget for Fiscal Year 2078/079 to ensure the systematic and reliable export of gravel, stone, and sand as mining-based materials.

Schedules 5, 6, 7, 8, and 9 of the Constitution include environmental protection and management within the respective jurisdictions of the federal, provincial, and local levels. Similarly, the Approach Paper of the Fifteenth Plan has laid down policies relating to environmental protection. Environmental conservation activities have been carried out in accordance with these constitutional, legal, and policy frameworks. Therefore, in Nepal, there is no situation where industries or any other activities are carried out in contravention of the provisions of the Environment Protection Act, 2076.

The budgetary provision challenged by the writ petitioner does not result in the destruction of the Chure region, does not adversely affect environmental protection, nor does it violate the rights guaranteed under Article 30 of the Constitution. Section 3 (1) of the Export and Import (Control) Act, 2013, authorizes the Government of Nepal to impose restrictions on the export or import of any goods by a notified order, and Section 3 (2) further provides that, where the Government of Nepal considers that it is not necessary to maintain any restriction applied on the exportation or importation of any goods pursuant to Sub-section (1), it may, by a notified order, setting out the reason and ground for the same, alter, change or remove such restriction at any time. If the extraction and export of rocks, soil, boulders, gravel, and sand from the Chure–Tarai region to destinations outside Nepal are likely to result in excessive exploitation causing adverse effects on the health of humans, animals, birds, or plant life, exports from such locations shall not be permitted. Exports are not allowed from all parts of the country indiscriminately; rather, only duly licensed industries that have completed the procedures prescribed by prevailing law are permitted to export. In this context, Budget Statement Clause No. 199 provides for concessions and exemptions on the import of goods required for the establishment of ropeways, specifically to facilitate exports carried out through ropeway transportation. The Budget does not, in itself make any provision for the export of river-based materials. The existing provisions of the Export and Import (Control) Act, 2013 are sufficient to regulate such exports. Therefore, the claim that Clause

No. 199 of the Budget is inconsistent with the Constitution is unfounded. The prosperity sought by Nepal can be achieved only through the balanced and sustainable use of available natural resources and means. Prosperity is attainable only by carrying out physical development activities and achieving a high rate of economic growth. The stones, gravel, and sand that flow annually through Nepal's rivers are not only significant natural resources but are also indispensable materials for development and construction activities. Environmental protection can be ensured only if such resources are extracted in an environmentally safe and sustainable manner. Technical assessments indicate that the controlled extraction of riverine materials can yield several times more than what is required for domestic consumption in Nepal. Consequently, the export of such materials must be regarded as a natural outcome of their sustainable utilization. In a developing country like ours, it is imperative to conduct physical development activities while maintaining a balance between development and environmental protection. In such circumstances, a matter that is policy-driven under the full exercise of executive authority and implemented in accordance with prevailing law cannot be challenged merely on speculative grounds. Accordingly, the writ petition presented on such assumptions is not maintainable and should be dismissed.

Rejoinder Submitted by Gandaki Provincial Government, Office of the Chief Minister and Council of Ministers (for writ no. 077-WC-099 and 077-WC-0105)

The petitioners have not been able to substantiate on what basis and actions of this office have violated the petitioners right under Article 30 (1) of the Constitution of Nepal; Sections 2 (j) and (k), 3, 6, 7, 15, and 35 of the Environment Protection Act, 2076; Section 11(d) and (g) of the Local Government Operation Act, 2074; Sections 10 (a), (d), and (e) of the Soil and Watershed Conservation Act, 2039; and Sections 7, 19, and 20 of the Water Resources Act, 2049. Accordingly, as the writ petition does not disclose any ground against this office, it is hereby requested that the petition be dismissed.

Rejoinder Submitted by Bagmati Province Government, Office of the Chief Minister and Council of Ministers (077-WC-0099, 077-WC-0105)

Article 30(1) of the Constitution of Nepal guarantees the fundamental right of every citizen to live in a clean and healthy environment. Similarly, under Article 51(g), the directive principles of the state include the conservation, promotion, and environmentally sustainable use of the country's available natural resources, minimizing the risks posed to the environment by industrial and physical development, and ensuring the protection, promotion, and sustainable use of forests, wildlife, flora, and biodiversity. Similarly, the Environment Protection Act, 2076 and its Regulation, 2077, the Soil and Watershed Conservation Act, 2039, the Water Resources Act, 2049, and the Local Government Operation Act, 2074 all provide for the protection of natural and environmental resources and the promotion of sustainable development. The Province has always been actively engaged and committed to the effective implementation of environmental protection measures as prescribed by the Constitution of Nepal and prevailing laws. The writ petition filed by the respondents seeking to restrain the implementation of Clause No. 199 of the Government of Nepal's Fiscal Year 2078/079 Public Revenue and Expenditure Statement pertains to matters over which this Province has no jurisdiction, as is well-known with respect to the annual budget presented by the Federal Government. The prevailing laws explicitly provide that natural resources must not be exploited and must be protected and promoted, and the Provincial Government has emphasized that it shall not undertake any action contrary to the law. Since no such action has

been undertaken by this office as alleged by the writ petitioners, the writ petition against this office the respondent requests that the writ petition be dismissed.

Rejoinder Submitted Lumbini Province, Butwal Office of the Chief Minister and Council of Ministers (writ no. 077-WC-0099 and 077-WC-0105)

The writ petitioners have implicated the Office of the Chief Minister and Council of Ministers, Lumbini Province, without specifying any action or conduct by this office that has allegedly caused an adverse effect on the fundamental rights of Nepalese citizens guaranteed by the Constitution. Accordingly, the writ petition filed against this office is baseless and frivolous. As regards the extraction and export of quarry materials such as stone, gravel, and sand, pursuant to Schedule 6 of the Constitution of Nepal, mineral exploration and management, as well as the management of national forests, water use, and environmental governance within the Province, fall within the exclusive rights of the Province, while Schedule 8 assigns the protection of mines and minerals to the exclusive authority of local bodies. Accordingly, the management and extraction of such materials are governed by Provincial and local legislation, and cannot be undertaken solely on the basis of provisions in the Federal Government's budget statement. Furthermore, any extraction of quarry materials is carried out only after complying with the procedures prescribed under the Province's Environment Protection Act, and therefore, there is no adverse environmental impact as alleged by the petitioners. Pursuant to the Environment Protection Act, 2076, measures are adopted based on Environmental Impact Assessments to ensure that extraction and export of quarry materials do not cause adverse environmental impacts, while simultaneously contributing to the reduction of national trade deficits. Moreover, the Government has demonstrated heightened sensitivity towards the conservation of the Chure region, as evidenced by the implementation of the "President's Chure-Terai-Madhesh Conservation Program". Accordingly, any extraction or export of stone, gravel, or sand that contravenes the spirit of the Constitution and prevailing laws does not occur and therefore, the respondent requests that the writ petition be dismissed.

Rejoinder Submitted by Province No. 1 Government, Office of the Chief Minister and Council of Ministers, Biratnagar (writ no. 077-WC-0099 and 077-WC-0105):

The allegation that riverine materials from rivers within Province No. 1 have been carried out with or without the approval from the concerned body has not been substantiated and furthermore, the petition fails to specify what act, decisions, or conduct of the Office of the Chief Minister and Council of Ministers of Province No. 1 has resulted in the violation of any constitution or legal rights of the petitioners. No such particulars have been mentioned in the writ petitions. In the context of Point No. 199 of the Budget Statement for Fiscal Year 2078/079, which provides for customs duty exemptions on imports for the construction of ropeways to transport mining and construction materials from industries to the extraction points, it is noted that matters relating to customs, internal taxes, value-added tax, international trade, foreign exchange, ports, and quarantine fall within the exclusive jurisdiction of the Federation under the Constitution of Nepal. Accordingly, in respect of the Federal Government's decision to provide customs duty exemptions on imports for the construction of ropeways to transport mining and construction materials from industries to the extraction points, it is clear that neither the Provincial Government nor this Office has any involvement. Therefore, as there is no basis to name Provincial Government of Province No. 1, the Office of the Chief Minister, or the Council of Ministers, Biratnagar as respondents in relation to matters decided by the Federal Government and mentioned in the Budget Statement, the respondent request that the writ petition be dismissed.

Rejoinder Submitted by Far-Western Province, Office of the Chief Minister and Council of Ministers (for writ no. 077-WC-0099 and 077-WC-0105)

Since the subject matter raised in the writ petition pertains to the provision set out in Clause No. 199 of the Public Statement on Revenue and Expenditure for Fiscal Year 2078/079, presented by the then Honorable Minister for Finance of the Government of Nepal, Mr. Bishnu Prasad Paudel, which provides for exemption of customs duties on imports for the construction of ropeways from industries to exit points for the transportation of mineral-based construction materials, and as the same matter does not appear to fall within the jurisdiction or concern of this Office, the present writ petition is liable to be dismissed.

Rejoinder Submitted by Office of the President (for writ no. 077-WC-0100, 077-WC-0101, 077-WC-0103, 077-WC-0105 and 077-WC-0109)

Therefore, with respect to the promulgation of the “Finance Ordinance, 2078”, which incorporated the issue raised by the petitioner, a decision was duly taken by a meeting of the Council of Ministers of the Government of Nepal, and, pursuant to such decision, a recommendation was submitted by the Right Honourable Prime Minister, upon which the Rt. Honourable President promulgated the “Finance Ordinance, 2078”. As the Rt. Honourable President merely implemented the mandatory provision contained in Article 114 (1) of the Constitution, the act of promulgating the Ordinance is constitutional. Since the actions undertaken by the Office of the President in implementation of the said constitutional provision have been challenged by making this Office a respondent, the writ petition is liable to be quashed and, accordingly the respondent seeks the dismissal of the writ petition.

Rejoinder Submitted by Nepal Government, Ministry of Home (for writ no. 077-WC-0100 and 077-WC-0109)

The Ministry of Home Affairs, Government of Nepal, is committed to realizing the concept of the rule of law by ensuring compliance with the Constitution and prevailing laws, and to safeguarding and promoting the rights and interests of citizens as guaranteed by the Constitution and laws, while upholding and advancing the national interest. Upon examination of the writ petition, it appears that the principal contention raised therein is that the provision contained in Clause No. 199 of the Budget Statement for Fiscal Year 2078/079 is inconsistent with the Constitution of Nepal and, therefore, the petitioner seeks its invalidation and annulment through an order of certiorari. Furthermore, the writ petition does not disclose any basis or reason for impleading this Ministry as a respondent. The writ petition nowhere specifies what act, action, or decision of this Ministry has resulted in the infringement of any rights guaranteed by the Constitution or law. In the absence of any concrete grounds or reasons, the petitioner has nonetheless impleaded this Ministry as a respondent; therefore, the present writ petition, having been filed without any such basis, is liable to be dismissed and is accordingly prayed to be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Law, Justice and Parliamentary Affairs (for writ no. 077-WC-0100, 077-WC-0105 and 077-WC-0109)

Article 30 (1) of the Constitution of Nepal guarantees every citizen the right to live in a clean and healthy environment. Likewise, Article 30 (3) provides that this Article shall not be deemed to prevent the making of necessary legal provisions for a proper balance between the environment

and development, in development of works of the nation, thereby clearly recognizing that available resources may be utilized in a balanced manner for development purposes. Likewise, with respect to environmental protection, the Environment Protection Act, 2076 has been enacted and is in force as a special law. The said Act clearly provides that, in relation to any proposal prepared for the implementation of a plan, project, or program involving development activities, physical works, or changes in land use that may bring about alterations in the existing environmental conditions, the proponent is required to prepare an environmental study report, to conduct an Initial Environmental Examination and an Environmental Impact Assessment, and that no proposal shall be implemented without approval of the environmental study report, along with other explicit legal provisions governing such matters. Insofar as the subject matter of Clause No. 199 of the Public Statement on Revenue and Expenditure for Fiscal Year 2078/079 is concerned, the very opening of the said clause expressly states that the relevant actions shall be carried out “on the basis of an environmental impact assessment.” Accordingly, it is not permissible to file a writ petition on the basis of unwarranted apprehensions with respect to activities to be undertaken only after conducting an environmental impact assessment. Nor can the policy adopted by the Government to reduce the trade deficit through the proper utilization of the resources available in the State be deemed otherwise. Insofar as the apprehension expressed in the writ petition regarding the possible degradation of the Chure region and the resultant desertification of the Terai is concerned, it is submitted that, taking into account the sensitivity of the Chure region, the President Chure–Terai–Madhesh Conservation Development Committee (Formation) Order, 2071 has been issued and is in force for the purpose of formulating policies relating to the conservation of the Chure region and for coordinating and monitoring the implementation of related programs. Therefore, the writ petition is liable to be dismissed and is accordingly prayed to be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Federal Affairs and General Administration (for writ no. 077-WC-0100 and 077-WC-0109)

In order to regulate the excavation of stone, gravel, and sand, ensure their adequate supply for development and construction works without causing scarcity of riverine and mineral-based materials, and discourage their uncontrolled exploitation, this Ministry has formulated standards which were duly approved by the meeting of the Council of Ministers of the Government of Nepal on 2077/4/5 (corresponding to 20 July, 2020). The approved and issued “Standards Relating to Excavation, Sale, and Management of Stone, Gravel, and Sand, 2077” provide, inter alia, that the concerned rural municipality or municipality shall delineate areas for the excavation and collection of mineral-based materials on the basis of an environmental study report, and that excavation activities shall only be conducted after obtaining permission from the authority designated under prevailing law. Similarly, in the Chure region, excavation of stone, gravel, and sand is permitted only on the basis of the approval of the President Chure–Terai–Madhesh Conservation Development Committee and in accordance with the approved standards. Provisions regarding the control of the quantity of stone, gravel, and sand to be excavated or collected are also regulated under the said standards. Furthermore, the standards provide for the establishment of a monitoring committee, chaired by the Chief of the District Coordination Committee, to supervise the processes of excavation, collection, and sale of riverine and mineral-based materials. In this manner, to regulate the excavation, sale, and distribution of mineral-based materials, this Ministry has formulated the standards and has also circulated them to all local bodies. It is thus evident that this Ministry is conscious of and committed to the work of environmental protection. Therefore, as the

allegations made by the petitioner against the respondent appear baseless, the writ petition is liable to be dismissed and is accordingly prayed to be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Culture, Tourism and Civil Aviation (for writ no. 077-WC-0100)

As raised by the petitioners in their petition, there can be no dispute that the conservation and promotion of Nepal's natural resources and assets is the duty and responsibility of all. This Ministry has always remained vigilant and proactive in the work of conserving and promoting Nepal's natural resources. The Ministry has consistently adhered to the Constitution of Nepal and prevailing rules and laws and remains committed to doing so in the future. Contrary to the claims made in the writ petition, no action has been undertaken by this Ministry that facilitates the exploitation of the Chure region. The provision contained in Clause No. 199, published through the Budget Statement for Fiscal Year 2078/079, which the petitioner claims, does not fall within the jurisdiction of this Ministry under the Government of Nepal (Work Division) Rules, 2074, and this Ministry has no role whatsoever in this regard. Furthermore, the subject matter has not been included in any policy or plan submitted by this Ministry. As such, having no concern with the matter, the present writ petition, impleading this Ministry as a respondent, is without merit and is therefore liable to be dismissed and is accordingly prayed to be dismissed.

Rejoinder Submitted by the Office of the Vice-President, Lainchowr, Kathmandu (for writ no. 077-WC-0101)

Article 67 (2) of the Constitution of Nepal provides the constitutional arrangement where the functions to be performed by the President shall be performed by the Vice-President during the absence of the President. There has been no action by this Office that adversely affects the fundamental rights of the petitioner as guaranteed by the Constitution and prevailing laws. The Annual Revenue and Expenditure Estimate for Fiscal Year 2078/079 has been prepared, communicated, and published with the objective of serving the national interest, safeguarding sovereignty, territorial integrity, environmental protection, forests, natural resources, and minerals, and ensuring their proper utilization in the interest of the State. As such, contrary to the claims made in the writ petition, no excavation or export of stone, sand, and gravel has been undertaken in a manner that would affect the Chure region's environment and biodiversity. Implementation of Clause No. 199 of the Annual Revenue and Expenditure Estimate, that is, the Budget Statement for Fiscal Year 2078/079, shall occur only after conducting an Environmental Impact Assessment in accordance with the legal provisions of the Environment Protection Act and associated Regulation, and only where no negative effect or impact on the environment is anticipated. Therefore, the present writ petition, which impleads this Office as a respondent, is liable to be dismissed and the respondent requests the petition to be dismissed.

Rejoinder Submitted by National Assembly Chairperson Ganesh Prasad Timilsina (for writ no. 077-WC-0101)

The petitioner has raised issues regarding whether, in the absence of the House of Representatives of the Federal Parliament or other local assemblies such as the Provincial Assembly, Rural Municipality, or Municipal Assembly, the Government of Nepal or anyone on behalf of the Government of Nepal may present the details of revenue and expenditure estimates, and, if presented, what the procedure, process, and consequences would be; or what would occur if the

federal budget is presented on a date other than Jestha 15; and whether there is a constitutional obligation to present the budget in the Provincial Assembly or merely a discretionary power to do so. Since the Constitution does not provide any clear provisions in this regard, administrative assistance shall be available from me if a corresponding bill drafted by the Government of Nepal is presented to the Federal Parliament and is to be enacted in accordance with parliamentary law and procedure. However, this does not entail that any order in favor of the petitioner's demand must be issued. The respondent therefore, requests that the writ petition be dismissed.

Rejoinder Submitted by Agni Prasad Sapkota, Speaker of the House of Representative (writ no. 077-WC-0101)

The Parliament is the body in which the sovereignty of the people is vested. The principle of no taxation without representation applies, and matters relating to taxation are constitutionally required to be presented in the House of Representatives, whose members are directly elected by the people. Introducing a budget through an Ordinance with malicious intent would establish a wrong precedent and could give rise to a constitutional crisis. Insofar as the petitioner has raised the issue of whether, in the absence of the House of Representatives of the Federal Parliament or other local assemblies such as the Provincial Assembly, Rural Municipality, or Municipal Assembly, the Government of Nepal or anyone on behalf of the Government may present the details of revenue and expenditure estimates, and, if presented, what the procedure, process, and consequences would be; or what would occur if the federal budget is presented or published on a date other than Jestha 15; and whether there exists a constitutional obligation to present the budget in the Provincial Assembly or merely a discretionary power to do so, since the Constitution does not provide clear provisions in this regard, administrative assistance shall be rendered by me if a corresponding bill drafted by the Government of Nepal is presented to the Federal Parliament and enacted in accordance with parliamentary law and procedure. Therefore, there is no requirement for any order to be issued against me as demanded by the petitioners.

Rejoinder Submitted by Nepal Government Ministry of Industry, Commerce and Supplies (for writ no. 077-WC-0102, 077-WC-0103, 077-WC-0104, 077-WC-0105 and 077-WC-0109)

Geologically, studies have been conducted in the Mahabharat mountain range, and the areas designated for mineral excavation do not fall within the Chure region; some areas are located within national forests, and certain portions partially fall within inhabited areas. Therefore, contrary to the petitioner's claims, no adverse activity is anticipated that would impact the environment or biodiversity of the Chure region, and there is no likelihood of damage to the Chure region. In accordance with prevailing laws, when construction-related mineral excavation is undertaken, the conservation of natural resources is given priority. For the purpose of environmental protection, a policy decision has been made through the Budget Statement for Fiscal Year 2078/079, Clause No. 199 of the Public Statement on Revenue and Expenditure, providing that, "on the basis of an environmental impact assessment, mineral-based stone, gravel, and sand shall be extracted and exported to reduce the trade deficit, and a ropeway shall be constructed from the industry to the exit point for transporting such mineral-based construction materials, with exemption from customs duties on imports. Upon the promotion of such construction-related minerals, the establishment of integrated mines and crushers will reduce dependence on rivers located solely in the Chure and Terai regions, allowing for the fulfillment of domestic demand, and only any surplus quantity may be exported externally. In the event of excessive demand for construction-related mineral materials such as stone, gravel, and sand, promotional measures shall

be undertaken on the basis of decisions of the Government of Nepal to discourage, prevent, and control illegal exploitation, and to promote, regulate, and manage the extraction of construction-related minerals in a manner consistent with sustainable development. As the exploration areas do not fall geologically within the Chure region, and mining-related laws are applied with appropriate regulation by the competent regulatory authorities, the extraction of construction-related minerals can be carried out while managing geological and environmental impacts. Therefore, the writ petition is without merit and is liable to be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Forest and Environment, Department of Environment, Babbar Mahal (for writ no. 077-WC-0103 and 077-WC-0109)

The matters referred to in the writ petition, including the Honourable Prime Minister's address, the legal provisions under Section 2(2) of the Finance Ordinance, 2078, headings 25.05, 25.15, and 25.17 of Part 1 of Schedule 2 of the said Ordinance, Clauses 2 and 199 of the Budget Statement for Fiscal Year 2078/079 issued by the Ministry of Finance, and the issues highlighted in the Ministry of Finance's press release dated 19 Jestha 2078, as well as the policy and legal measures based thereon regarding the plan to export stone, gravel, and sand from the Chure region to India, fall within the jurisdiction of the Government of Nepal, the Office of the Prime Minister and Council of Ministers, and the Ministry of Finance in accordance with Rule 5, Schedule 2 of the Government of Nepal (Work Division) Rules, 2074. As these matters do not fall within the jurisdiction of this Department, the writ petition impleading this Department as a respondent is baseless and therefore, the writ petition should be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Physical Infrastructure and Transport (for writ no. 077-WC-0103)

As stated in the writ petition, this Ministry has always remained vigilant in safeguarding the national interest, sovereignty, territorial integrity, environmental and ecological protection, and the proper utilization of forests, natural resources, and minerals in the interest of the State. No action has been undertaken by this Ministry involving the excavation and export of stone, sand, or gravel from the Chure region, causing environmental pollution, or leading to depletion of natural resources. The provision contained in Clause No. 199 of the Budget Statement for Fiscal Year 2078/079 issued by the Government of Nepal is intended to contribute to the country's economic development, prosperity, nation-building, and sustainable development. As the matter of excavating and exporting stone, sand, and gravel from the Chure region does not fall within the jurisdiction of this Ministry under the Government of Nepal (Work Division) Rules, 2074, the present writ petition making this Ministry a respondent is without merit and is therefore liable to be dismissed.

Rejoinder Submitted by Nepal Government, Ministry of Industry, Commerce and Supplies, Department of Mines and Geology (for writ no. 077-WC-0103 and 077-WC-0109)

Pursuant to the decision of the Economic and Infrastructure Committee of the Government of Nepal (Council of Ministers) dated 2071/04/11 (corresponding to 27 July, 2014), the Ministry of Industry, Commerce, and Supplies of the Government of Nepal was entrusted with the responsibility of this Mines and Geology Department to ensure the long-term use of riverine stone and sand, and to arrange for their sustainable supply from areas situated above the Chure region, in the Mahabharat mountain range, as a long-term alternative source of stone, gravel, and sand. In

accordance with the aforementioned directive, this Department initially identified the quality and quantity of construction-related minerals in 16 Village Development Committees across 14 districts of the country. In areas with minimal forest cover, under the exploration and related work plan, field surveys, geological studies, mining schemes, schedules for Initial Environmental Examination, and Initial Environmental Examination reports were prepared. These were submitted for the proposed excavation process of construction-related minerals at 92 designated locations in those areas. For the purpose of obtaining permits for the extraction of these ordinary construction-related minerals, the mining schemes for the 92 identified mining areas were approved by departmental decision, and the Initial Environmental Examination reports were granted approval in accordance with the decision of the Ministry of Science, Technology, and Environment dated 2072/5/17 (corresponding to 3 September, 2015). It is submitted that the areas designated for mineral extraction do not fall geologically within the Chure region; some areas fall within national forests, and certain portions partially overlap inhabited areas. Geological studies have been conducted in the Mahabharat mountain range, and the rocks present in the proposed mining sites are geologically distinct from those found in the Chure region.

Pursuant to Section 4 (2) of the existing Mines and Minerals Act, 2042, this Department has been delegated the authority to carry out mineral activities, including exploration and extraction. Upon the promotion of construction-related minerals, integrated mines and crushers will be established, which will reduce dependence on rivers in the Chure and Terai regions. Demand for construction-related minerals such as stone, gravel, and sand has increased significantly, and the illegal exploitation and trafficking of ordinary construction-related minerals has been occurring. Measures have been undertaken, based on decisions of the Government of Nepal, to discourage, prevent, and control such illegal extraction, and to promote, extract, and regulate construction-related minerals in accordance with sustainable development. The exploration areas do not fall geologically within the Chure region. In light of these facts and the legal provisions, the promotional activities for the aforementioned minerals are being conducted in accordance with the Act and the Rules. Therefore, the present writ petition is without merit and is liable to be dismissed.

Rejoinder Submitted by Nepal Government, Department of Forest and Soil-Conservation (for writ no. 077-WC-0103)

With respect to the contention raised in the writ petition, Chapter 12 (Provisions Relating to Development Projects) of the Forest Act, 2076, which has been enacted with the objective of contributing to national prosperity through the conservation, promotion, and sustainable use of forests, wildlife, the environment, watersheds, and biodiversity, provides that no part of a national forest shall be used in a manner that changes the land-use classification of the forest area. However, this provision shall not apply to forest areas made available to any project pursuant to a decision of the Government of Nepal for the purpose of infrastructure development. Furthermore, where there is no alternative other than the use of forest land for the implementation of nationally prioritized projects, projects whose investment has been approved by the Investment Board, or national pride projects, and where, on the basis of environmental assessment conducted in accordance with the prevailing law, it is found that the implementation of such projects will not cause significant adverse impacts on the environment, the Government of Nepal may, as prescribed, grant approval for the use of any part of a national forest for the operation of such projects. Further, while making forest land available for the implementation of such a project, land suitable for forest development shall be made available, as far as possible, in an area equivalent at

least to the extent of forest land required to be used, for the purpose of plantation of trees. Such land shall, as far as practicable, be located in proximity to the project site, be contiguous to national forest areas, fall within the same geographical and ecological zone, and possess a land structure capable of forest development. Where such land cannot be made available, the project proponent shall provide the funds required for arranging land for forest development. Moreover, while granting approval for the use of any part of a forest, if any individual or community is likely to suffer loss or damage, the Government of Nepal shall make appropriate arrangements for compensation. In view of the legal provisions so made, it is clearly provided under the Forest Act, 2076, that where there is no alternative other than the use of forest land for the implementation of the project, and where, on the basis of environmental assessment conducted in accordance with the prevailing law, it is found that the implementation of such project will not cause significant adverse environmental impacts, the Government of Nepal may, as prescribed, grant approval for the use of any part of a national forest for the operation of such project.

Nepal's prosperity can be achieved through the balanced and sustainable utilization of the available natural resources and means. Prosperity is attainable only if a high rate of economic growth is achieved through the operation of physical development activities. The stone, gravel, and sand available in various parts of Nepal are not only important natural resources but are also indispensable materials for development and construction works. Environmental protection can be ensured only if such resources are extracted in an environmentally safe and sustainable manner. In a developing country such as ours, it is imperative to carry out physical development activities while maintaining a balance between development and the environment. In this context, as the matter in question is a policy decision taken within the ambit of full executive authority and implemented in accordance with the prevailing law, the present writ petition is liable to be dismissed.

Rejoinder Submitted by Department of National Parks and Wildlife Conservation, Babbar Mahal (for writ no. 077-WC-0103)

Pursuant to the prevailing National Parks and Wildlife Conservation Act, 1973 (2029 B.S.), acts prohibited within a national park or reserve include mining, quarrying stone, or removing any mineral substance, stone, gravel, soil, or other similar materials. Where any person commits an offence in contravention of this Act or the rules framed thereunder, if the value of loss or damage is assessed, such person shall be liable to a fine equivalent to twice the amount of such loss and imprisonment for a term of up to one year; and where no loss or damage is assessed, such person shall, depending on the gravity of the offence, be liable to a fine of up to twenty thousand rupees or imprisonment for a term of up to six months, or both. In the present case, the petitioner has failed to specify anywhere in the writ petition as to which act or omission of this Department, and under what circumstances, has resulted in the violation of which of the petitioner's rights. Furthermore, as this Department has no involvement whatsoever in the matter mentioned in Clause No. 199 of the budget for the Fiscal Year 2021/2022 (2078/079), publicly presented by the Honorable Minister for Finance, Mr. Bishnu Prasad Paudel, on 2078/02/15 (B.S.), and as this Department has been impleaded as a respondent without even taking cognizance of the fact that it bears no involvement in the said matter, the present writ petition is liable to be dismissed.

Nepal Government, Ministry of Energy, Water Resources and Irrigation (for writ no. 077-WC-0103)

Contrary to the claims made by the writ petitioner, this Ministry has not made any decision, issued any order, or undertaken any act or omission that would, in violation of the prevailing law, adversely affect the conservation and protection of forests, the environment, biodiversity, natural resources, wildlife, flora and fauna, including through the extraction of gravel and sand from the Chure region, the operation of extraction-based industries, the construction of ropeway transportation routes, or the export of stone, gravel, and sand abroad. The petitioner has also failed to specify which act or omission of this Ministry, by which decision, and in what manner, has caused what kind of infringement of the rights guaranteed to the petitioner by the Constitution and the law. So far as the matter relating to Clause No. 199 of the public budget statement of income and expenditure for Fiscal Year 2078/2079 is concerned, the said subject does not fall within the jurisdiction of this Ministry. Accordingly, the respondent requests that the writ petition should be quashed.

Rejoinder Submitted by Nepal Government, Ministry of Forest and Environment (for writ no. 077-WC-0100, 077-WC-0101, 077-WC-0103, 077-WC-0104 and 077-WC-1009)

The matter provided under Clause No. 199 of the budget for Fiscal Year 2078/2079 constitutes a policy provision relating to the preparation of infrastructure for export management and the granting of facilitation for the operation of ropeways. With regard to such policy provisions concerning the export of stone, gravel, and sand, export may be carried out only upon the completion of the due legal process as prescribed by law. The prevailing Forest Act, 2076, contains legal provisions relating to offences under Section 49, which provide if any person commits, causes to be committed, or make attempt to do any of the following acts shall be deemed to have committed the offence referred to in this Act, except as otherwise provided for in this Act or the rules framed under this Act. Pursuant to Section 49 (i) of the same Act, any person who extracts boulders, pebbles, sand, or soil from rivers flowing through forest areas or burns timber or lime; manufactures other finished products from them or collect them, or extract or collect mineral substance shall be liable to punishment by imprisonment, or fine, or both, on the basis of the assessed loss. Accordingly, the extraction, removal, extraction or collection of stone, gravel, sand, or soil from rivers flowing through forest areas, as well as the extraction or collection of mineral substances, is legally deemed to constitute an offence in contravention of Section 49 of the Forest Act, 2076.

Section 3 (1) of the Export and Import (Control) Act, 2013, provides that the Government of Nepal may, by a notified order, impose a prohibition on the export or import of any goods, and sub-section (2) thereof further provides that, if the Government of Nepal considers it unnecessary to continue such prohibition imposed pursuant to subsection (1), it may, by a notified order and by stating the grounds and reasons thereof, modify, amend, or revoke such prohibition at any time. Under the Export and Import (Control) 2013, matters relating to the imposition or lifting of a prohibition on the export or import of excavated materials such as rocks, soil, stone, gravel, and sand fall within the jurisdiction of the Ministry of Industry, Commerce and Supplies. Accordingly, it is not necessary to make this Ministry a respondent in relation to such matters. Therefore, the respondent requests that the writ petition be quashed in favor of the Ministry.

Rejoinder Submitted by President Chure-Terai-Madesh Conservation Development Committee, Lalitpur (for writ no. 077-WC-0104)

With respect to the matter mentioned under Clause No. 199 of the budget for Fiscal Year 2078/2079, the respondent has failed to state, in a factual, logical, and reasoned manner, what kind of involvement, if any, the President Chure–Terai–Madhesh Conservation Development Committee has, and which specific act or omission of the said Committee has resulted in a violation of the Constitution of Nepal, the prevailing laws, or the international treaties and agreements to which Nepal is a party, as alleged in the petition. The subject provided under Clause No. 199 of the budget for Fiscal Year 2078/2079 appears to be a policy provision relating to the preparation of infrastructure for export management and the granting of facilitation for the operation of ropeways. Any policy provision relating to the export of stone, gravel, and sand may be implemented only upon completion of the due legal process as prescribed by law. So far as the constitutionally guaranteed right to live in a clean and healthy environment and the matter of environmental impact assessment are concerned, it is to be noted that sustainable development is achieved through the interdependent relationship between economic development and environmental protection. With due regard to this principle, and with the objective of minimizing, as far as possible, the adverse impacts that environmental degradation may have on humankind, wildlife, flora, nature, and physical assets, and of ensuring citizens' right to live in a clean and healthy environment, as well as conserving the environment through the proper utilization and management of natural resources, the Environment Protection Act, 2076 has been enacted and brought into force. Pursuant to the said Act, any proposal may be implemented only after preparing an environmental study report and obtaining approval thereof. The Act further primarily provides for the reduction, removal, or control of pollution, and for ensuring the effective implementation of the works required to be carried out in accordance with a Brief Environmental Study, or Preliminary Environmental Examination, or an Environmental Impact Assessment report, by completing the prescribed procedures, including the appointment of environment inspectors or the designation of any employee to perform the functions of such inspectors.

Section 3 (1) of the Export and Import (Control) Act, 2013, provides that the Government of Nepal may, by a notified order, impose a prohibition on the export or import of any goods, and subsection (2) thereof further provides that, if the Government of Nepal considers it unnecessary to continue such prohibition imposed pursuant to subsection (1), it may, by a notified order and by stating the grounds and reasons therefor, amend, modify, or revoke such prohibition at any time. Accordingly, under the Export and Import (Control) Act, 2013, matters relating to the imposition or lifting of a prohibition on the export or import of excavated materials such as rocks, soil, stone, gravel, and sand fall within the jurisdiction of the Ministry of Industry, Commerce and Supplies. Therefore, it is not necessary to make the President Chure–Terai–Madhesh Conservation Development Committee a respondent in relation to such matters and therefore, the respondent requests that the writ petition be quashed.

Rejoinder Submitted by Ministry of Foreign Affairs, Singha Durbar (for writ no. 077-WC-0109)

It cannot be found anywhere in the petition which specific act or omission of this Ministry has allegedly infringed which particular right of the petitioner, or any clear and factual basis in support thereof. As no action has been taken by this Ministry in relation to the matter raised by the petitioner, there is no justification to make this Ministry a respondent and hence the Ministry requests that the said writ petition be quashed in favor of the Ministry.

Rejoinder Submitted by National Planning Commission (for writ no. 077-WC-0109)

Part 4, Article 49 of the Constitution of Nepal provides that “The directive principles, policies, and obligations set forth in this Part shall be the guiding principles for the governance of the State, and the State shall mobilize, or cause to be mobilized, means and resources, as required, to implement the principles, policies and obligations set forth in this Part.” Similarly, Article 50 provides for the directive principles, and Article 51 provides for the policies of the State. Pursuant to Article 51 (d) (2) of policies relating to finance, industry, and commerce, the policy emphasizes the role of the private sector in the economy and aims to achieve economic prosperity by maximizing the utilization of available resources and means. Likewise, Article 51 (d) (10) policies have been formulated concerning import substitution and export promotion in consonance with the national interest. Similarly, Article 55 of the Constitution provides that no question shall be raised in any court as to whether any matter contained in this Part has been implemented or not. The subject provided under Clause No. 199 of the budget relates to the provision of facilitation for the operation of ropeways by preparing infrastructure for export management. This is purely a policy matter, and any extraction or export of stone, gravel, and sand may take place only upon completion of the due legal process. Schedules 5, 6, 7, 8, and 9 of the Constitution of Nepal allocate responsibilities to the federal, provincial, and local levels, including matters relating to environmental protection and management. Extraction and export of stone, gravel, and sand shall be carried out strictly in accordance with the procedures and methods prescribed under the prevailing law. The Export and Import (Control) Act, 2013, vests the Government of Nepal with the authority to impose or not impose control over export and import. For the purposes of achieving the objectives under Sections 3 (a) to 3(d) of the said Act, the Government of Nepal is explicitly empowered to prohibit export or impose quantitative restrictions on export as deemed necessary.

Rejoinder Submitted by Department of Industries, Tripureshwore (for writ no. 077-WC-0109)

The Government of Nepal, in the policy/program and budget for Fiscal Year 2078/2079, has mentioned the extraction and export of stone, gravel, and sand to reduce the trade deficit. The Government is not attempting to carry out such extraction in violation of the Environmental Protection Act, 2019 (2076 B.S.) and its Regulations, 2020 (2077 B.S.), without following the prescribed legal procedures. The extraction, processing, and export of natural resources are to be carried out only after completing procedures such as EIA or IEE, ensuring that no harm or damage occurs. Accordingly, such actions by the Government do not cause adverse effects on the Chure region or its surrounding areas. The petitioner has misinterpreted the Government’s policy to extract stone and gravel in compliance with the prevailing laws to reduce the trade deficit and has filed the present writ petition on a wrong premise. No decision of the Department of Industry has caused any infringement of the petitioner’s rights. Therefore, the writ petition filed against this Department should be dismissed.

Decision

In accordance with the rules, the present writ petitions, which were listed on the daily cause list was submitted before this Bench, and following arguments were presented by the learned Senior Advocates and learned Advocates appearing on behalf of the petitioners, and by the learned Joint Government Attorney and learned Advocates appearing on behalf of the respondents:

On behalf of the petitioners, the learned Advocates Mr. Shailendra Prasad Ambedkar, Ms. Mohana Ansari, and Mr. Pankaj Kumar Karn argued for writ no. 077-WC-0099; the learned Advocates Mr.

Ram Bahadur Shahi, Mr. Deepak Dune, and Mr. Trilok Bahadur Chand argued for writ no. 077-WC-0100; the learned Advocates Dr. Mr. Punya Prasad Khatiwada and Mr. Deepak Bikram Mishra, together with learned Advocates Mr. Manohar Lamichhane, Mr. Khadak Bahadur Rai, and Mr. Sonam Moktan argued for writ no. 077-WC-0101; the learned Senior Advocate Mr. Dinesh Tripathi and learned Advocate Mr. Kritinath Sharma Paudel argued for writ no. 077-WC-0102; the petitioner Advocate Mr. Atish Karki and learned Advocate Mr. Santosh Bhandari argued for writ no. 077-WC-0105; and the learned Advocate Mr. Bishnu Luitel argued for writ no. 077-WC-0109. They submitted that, pursuant to Article 119 of the Constitution of Nepal, the Minister of Finance of the Government of Nepal is required to present the annual estimates of revenue and expenditure before the joint sitting of both Houses of the Federal Parliament on the 15th day of Jestha each year. They further argued that the Constitution does not provide for the presentation of the budget outside the Parliament. However, the budget for Fiscal Year 2078/2079 was issued from Singha Durbar. There is no provision specifying what would occur if the budget is not presented on the 15th of Jestha. Similarly, with respect to the provinces and local levels, Articles 207 and 230 of the Constitution provide that they may present estimates of revenue and expenditure, but there is ambiguity as to what happens if such estimates are not presented. While there is a need for a mandatory provision regarding the budget, the Constitution uses permissive language, stating that the estimates may be presented, and thus requires interpretation. Meanwhile, prior to the presentation of the budget, on 2078/2/8, the House of Representatives was dissolved. Subsequently, on 2078/02/15, Mr. Bishnu Prasad Paudel, the Minister of Finance of the Government of Nepal, made the budget for Fiscal Year 2078/2079 public. Prior to the presentation of the budget, the Right Honorable President on the recommendation of the Council of Ministers issued three ordinances related to the budget. By presenting the budget through ordinances beyond the provisions of the Constitution, the estimates of revenue and expenditure (annual budget) for Fiscal Year 2078/2079 lack constitutional and legal validity. Further, if the matters provided under Clause No. 199 of the budget are allowed to proceed, it would result in exploitation rather than conservation of the Chure region, the export of valuable resources abroad, and desertification of the Terai. Such actions would adversely affect the country's natural resources, environmental integrity, wildlife, livestock, flora, and overall biodiversity, thereby impacting not only the residents of the affected area but also the livelihoods of people residing in other parts of Nepal. Accordingly, the petitioner submitted that, due to the legal complexities arising in relation to Articles 119, 207, and 230 of the Constitution, a declaration on the validity of the budget should be made and an order of mandamus should be issued to enact or cause to enact a clear law and implemented the same with respect to Article 119. Furthermore, the petitioner argued that if the problems of the Chure region are not addressed in the long-term, it would affect not only the residents of that region but also the livelihoods of people living in other parts of Nepal. Such actions would have adverse impacts on the country's natural resources, environment, wildlife, livestock, flora, and overall biodiversity. In view of these concerns, the petitioner prayed that an order of certiorari be issued thereby annulling Clause 199 of the Ordinance.

On behalf of the respondents, learned Joint Government Attorney Mr. Hari Prasad Regmi submitted that the Government of Nepal is itself sensitive to environmental protection. The policy does not permit the extraction of stone, gravel, and sand solely from the Chure range. Rather, studies are conducted to determine from where and in what quantity resources may be extracted and exported. The matter had already been studied in 2070 B.S. and was incorporated into policy and programs through the budget statement. Therefore, there is no basis for issuing the relief sought in the petition, and the writ petition should be dismissed.

On behalf of the respondents from the Office of the Vice President (in Writ No. 077-WC-0101), learned Advocate Mr. Khem Narayan Sapkota submitted that no action has been taken by this office in a manner that adversely affects the fundamental rights guaranteed by the Constitution of Nepal or prevailing laws. The revenue and expenditure estimates for Fiscal Year 2078/2079 were disseminated and published with the sole objective of safeguarding the national interest, sovereignty, territorial integrity, environment and ecology, forests, natural resources, and minerals, and ensuring their proper utilization in the interest of the nation. Accordingly, the Vice President and the Office of the Vice President have no involvement in the extraction of stone, sand, and gravel from the Chure region or their export abroad in a manner that would affect the environment or biodiversity, as alleged in the writ petition. Therefore, the learned Advocate submitted that the writ petition should be dismissed.

Upon consideration of the foregoing facts and submissions presented in the writ petition, and upon hearing the arguments of the legal representatives of both parties as well as the Government Attorney, and upon examining all the documents annexed to the case file, it is evident that the following issues need to be resolved.

- (a) In the context of Nepal's geographical, geological, and environmental conditions and sensitivities, what are the environmental protection and development policies recognized by the Constitution? How should the current challenges be addressed through the implementation of these policies, and in what manner?
- (b) What has been the role of this court so far in balancing development and environmental protection? In particular, how has this court viewed matters relating to the extraction, exploitation, and export of stone, gravel, and sand?
- (c) At present, which areas are under the greatest pressure with respect to riverine and mining-based natural resources, as well as the extraction, utilization, and export of stone, gravel, and sand? What are the legal frameworks and policy arrangements governing such extraction, utilization, and export, and what is the current status of their implementation?
- (d) In the context of Nepal's federal structure, what kind of legal framework is necessary to regulate the extraction of stone, gravel, and sand, as well as to address the impacts arising therefrom?
- (e) In the present dispute, is there any circumstance warranting the issuance of an order in accordance with the relief sought by the petitioners? Is there any circumstance requiring the issuance of any order or directive against the respondents?

In view of addressing the above questions, it appears that all the writ petitions presented before this Bench were registered under Article 133 of the Constitution of Nepal as matters of public right and concern. Most of the petitioners are advocates, and they are engaged in the protection of the environment, human rights, and matters of public interest and concern. Given that they have raised the issue of whether the provision under Clause No. 199 of the budget statement for Fiscal Year 2078/79, regarding the extraction of the country's natural resources, is consistent with the Constitution of Nepal, and that this matter relates to the environmental health of the country, the livelihoods of citizens, and sustainable development, it must be recognized that they have the locus-standi to raise such matters for judicial determination on behalf of the people of Nepal.

The petitioners have contended that, in the context of Articles 16, 18, 30, and 36 of the Constitution of Nepal, as well as provisions related to the directive principles, policies, and duties of the State under Article 51, the provision under Clause No. 199 of the budget for Fiscal Year 2078/79, enacted through an Ordinance should be declared unconstitutional. However, since the extraction sought to be carried out through the Ordinance was restrained by this court's interim order, and the budget statement and the Fiscal Act do not contain such provisions, it may, in a way, be considered that this issue has been effectively settled. However, unless it is examined and determined to what extent the matter brought forward by the Government, with due consideration, is consistent with the Constitution and the law, the question remains as to what would have occurred had the actions sought to be taken through the Ordinance been undertaken under the Fiscal Act or any other statute. Therefore, it is necessary to address and determine the questions raised above.

2. Now, considering the possibility that the issue of extraction of stone, gravel, and sand may arise repeatedly, let us examine the first question: in the context of Nepal's geographical, geological, and environmental conditions and sensitivities, what are the environmental protection and development policies recognized by the Constitution? How should the current challenges be addressed through the implementation of these policies, and in what manner? Nepal is a small country¹ located in the Himalayan region, particularly the Middle Himalayas. Geographically, it is flanked by large countries to the north and south, making it geologically unstable, topographically complex, and environmentally sensitive. Whether it is the high Himalayan region including Dolpa, Humla, Mustang, or Manang with Tibetan plateau-like climates, or the hilly region, the Chure range (hereinafter also referred to as "Chure"), or the southern foothills and the Terai-Madhesh plains, all regions of the country are mutually interconnected and interdependent in terms of river systems, livelihoods, nature, and biodiversity, and are in a highly sensitive state. The geological formation of the Himalayan region, with ever-rising mountains and peaks, leads to frequent large landslides from high and steep slopes. Soil erosion in the Chure range, periodic earthquakes across the country, and rivers flowing rapidly from north to south across short distances (approximately 150 to 250 km) exacerbate annual rainfall-induced floods and landslides, causing serious damage to property, human life, animals, and vegetation. Moreover, in recent times, unplanned road constructions, glacial bursts due to climate change, increased forest fires, rising pressure on vegetation and biodiversity, and frequent landslides have further heightened Nepal's environmental sensitivity. Amidst this vulnerability, the people of Nepal, through the Constitution, have enshrined the aspiration for "development and prosperity," which must be pursued in a manner that simultaneously addresses environmental concerns. This represents the present challenge before the country: to identify pathways for sustainable development while safeguarding the environment.

¹ In fact, the Himalayan region extends in an approximately 1,500-mile arc, bounded in the west by the Nanga Parbat (8,125 meters) in northern Pakistan, from where the Indus River flows southward, and in the east by Namche Barwa (7,777 meters) in Arunachal Pradesh, India, from where the Brahmaputra River flows southwest. Its northern boundary is considered the northern water divide of the Himalayas in Tibet, while the southern boundary is regarded as the northern plains of the Ganga River. Nepal lies within the Middle Himalayas. The Himalayan region to the west of Nepal is referred to as the Western Himalayas, whereas the region to the east, including Sikkim, Darjeeling, Bhutan, Assam, and Arunachal Pradesh, is known as the Eastern Himalayas. **References:** Jack Ives, *Himalayan Perceptions* (London: Routledge, 2004) at pp. 29, 31, S.S. Negi, *A Handbook of the Himalaya* (New Delhi: Indus Publishing Co., 1990) at p. 13

3. Interestingly, the Constitution of Nepal itself lays down the path to fulfill the “aspiration for development and prosperity.” This path, as prescribed by the Constitution, is one based on democracy and rights. In following this path, it is essential to respect the rights of citizens to a dignified life, equality, health, education, food, housing, and the right to live in a clean and healthy environment. Among these rights, in guaranteeing the right to the environment, the Constitution employs the terms “clean and healthy environment,” which are highly significant. This makes it imperative that not only humans but also the environment itself remains clean and healthy. In other words, a clean and healthy environment is the foundation for a clean and healthy life, and the Constitution recognizes access to such an environment as a fundamental and basic right. In this context, it has recently been increasingly recognized that a clean and healthy environment is not only a right of humans but also an inherent right of nature and the environment itself. While some questions may arise when viewed strictly within a Right-Duty framework², the recognition that humans must live in a coordinated relationship with nature implies that nature and the environment possess an independent right to exist. Such recognition aligns with the principles of environmental justice. In the writ petition of Prakashmani Sharma, this Court has observed that “every creation or entity of nature has its own inherent reason and significance for existing. Each entity possesses a distinct value and recognition. It is not permissible to undermine the intrinsic value of nature for someone’s ulterior purpose or economic interest³.” This principle must not be forgotten and remains highly relevant.
4. While the Constitution on the one hand guarantees the right to live in a clean and healthy environment whereas on the other, under the directive principles, policies, and duties of the State, it directs the adoption of a path of “Environmentally Sustainable Development.” In addition, terminology indicating principles such as “inter-generational equity,” “the responsibility of the polluter of the environment to pay,” “precaution,” and “prior-informed consent” has been systematically incorporated into the directive principles⁴. Furthermore, the Constitution explicitly provides for policies aimed at national interest, including: the conservation, promotion, and environmentally sustainable use of the country’s available natural resources; equitable distribution of the benefits arising therefrom; production and development of renewable energy; fulfillment of the basic needs of citizens; control of water-induced hazards and river management; conservation, promotion, and sustainable use of biodiversity; maintenance of forest areas in ecologically necessary regions to ensure environmental balance; and risk reduction from natural disasters through early warning, preparedness, rescue, relief, and rehabilitation. Thus, by adopting a conservation-oriented approach to nature and resources, demonstrating particular sensitivity toward environmental protection for both present and future generations, and embracing the principles of conservation, sustainable use, and equitable sharing of benefits, the Constitution clearly establishes that the means to fulfill the aspiration for development and prosperity is through “Environmentally Sustainable Development”.

² Stockholm Declaration on Human Environment, Principle 1 stating “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality”; Rio Declaration on Environment and Development, Principle 1 stating “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

³ Advocate Prakashmani Sharma et.al., vs. Nepal Government, Secretariat of the Council of Ministers et.al., Nepal Law Magazine 2073, Decision No. 9575, pg. 612

⁴ Article 51 (g) of the Constitution

5. The principle of sustainable development was first used in the Brundtland Commission's report in the 1980s and was subsequently recognized in the 1990s as a fundamental principle of international law⁵. In matters relating to environmental protection, policymakers and courts in Nepal have repeatedly referred to and applied this principle. The courts have also recognized and applied this principle in their orders. The Constitution itself acknowledges sustainable development as an overarching principle, and the use of the adjective "sustainable" in conjunction with "environmental" underscores the need for careful study and contemplation of these and other conceptual terms mentioned above. It is necessary to apply these concepts in a manner that protects citizens' rights and serves the security and interests of the nation.
6. In the context of "environmental sustainable development" the conceptual terminology mentioned in the Constitution, it is also necessary to clarify that this terminology seeks a development process that fulfills the needs of the present generation without compromising the ability of future generations to meet their own needs⁶. We have only one Earth, and it contains limited non-renewable resources. Uncontrolled exploitation of such resources can cause irreparable damage and destruction to the environment. In utilizing natural resources, the environment must not be treated merely as an external element. This is, in fact, the internal basis for the existence and dynamism of nature. Therefore, under the concept of sustainable development, emphasis is placed on accepting only that development which is socially acceptable, economically feasible, and environmentally sustainable⁷. Expounding further on the principle of sustainable development, Professor Edith Brown Weiss has stated:

Sustainability requires that we look at the earth and its resources not only as an investment opportunity, but as a trust passed to us by our ancestors for our benefit, but also to be passed on to our descendants for their use⁸.

In other words, the principle of sustainable development embraces the concept of intergenerational partnership. The nature and environment we have today are a legacy from our ancestors; the principle entails that we should, as far as possible, improve and maintain them in a better condition, and if that is not feasible, at the very least, ensure that they are handed over to future generations in no worse condition than we received them. The popularity of the principle of sustainable development is increasing in response to the crises faced by humanity today and is evolving as a fundamental principle of environmental justice and climate justice. The Johannesburg Principles on the Role of Law and Sustainable Development, adopted at the Judges' Conference in Johannesburg in 2002, declared that sustainable development, human rights, and the rule of law are interrelated. Furthermore, on October 8, 2021, the United Nations Human Rights Council recognized access to a clean, healthy, and sustainable environment as a human right.

⁵ Rio Declaration on Environment and Development, 1992, Principle 1; Paris Agreement Preamble, and Art 2

⁶ Brundtland, G, Report of the World Commission on Environment and Development: Our Common Future. United Nations General Assembly document A/42/427, 1987 ले पर्यावरणीय दिगो विकासलाई "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." भनी परिभाषित गरेको छ।

⁷ See generally, IUCN, *Guide on Preparing and Implementing National Sustainable Development Strategies and Other Multi-Sectoral Environment and Development Strategies* 1993, Bonn, Germany.

⁸ Edith Brown Weiss, *In Fairness to Future Generations and Sustainable Development*, 8 AM. U.J. INT'L L. & POL'Y at 19-20 (1992)

7. Recalling that human rights are inalienable, interdependent, and indivisible, the Council emphasized that all human rights can be fully enjoyed only in a clean, healthy, and sustainable environment. Our food, drinking water, the air we breathe, and our health all depend on a clean environment. Therefore, in the context of increasing challenges to the enjoyment, respect, protection, and promotion of human rights by both present and future generations, the international recognition and endorsement of a clean, healthy, and sustainable environment as a human right has strengthened and supported the implementation of the Constitution of Nepal's guarantee of the right to a clean and healthy environment and the concept of environmentally sustainable development.
8. Just as it is easy to degrade nature and ecological systems, following the path of environmentally sustainable development and enjoying human rights, including the right to a clean and healthy environment, is equally challenging. However, no one can triumph over environmental destruction; the unimaginable consequences it brings ultimately affect everyone. Therefore, it is essential to deeply understand the foresight embedded by our Constitution's framers regarding environmental protection and the path of development. To implement the transformative aspirations of development and prosperity enshrined in the Constitution, it is necessary to follow the model of sustainable development to ensure the protection, respect, and enjoyment of rights.
9. Theoretically, within the principle of sustainable development, in addition to the principles of intergenerational equity⁹, precaution¹⁰, polluter-pays¹¹, and prior-informed consent, the proper protection of the environment also encompasses the flows and benefits derived from ecosystem services. Taking into account the services provided by nature, the principle of sustainable development encompasses maintaining environmental integrity¹² for present and future generations, the non-regression obligation to prevent further environmental degradation, the responsibility of public trust¹³ of the State at all levels in conserving nature and natural resources, as well as the principles of sovereignty over natural resources¹⁴, common but

⁹ See Declaration of UN Conference on Human Environment 1972 Principle 2, Rio Declaration 1992 Principle 3. Weiss explains that there are three normative principles of intergenerational equity. First, each generation must conserve options. Second, each generation should be required to maintain the quality of the planet so that it is passed on in a condition no worse than that in which it was received. Third, each generation should provide its members with equitable rights of access to the legacy of past generations and conserve this access for future generations. See *supra* note 8, p 22-23

¹⁰ Rio Declaration on Environment and Development. 1992, Principle 15

¹¹ Rio Declaration on Environment and Development. 1992, Principle 16

¹² "The integrity of the planet requires proper care of the life support systems of the planet, the ecological processes and the environmental conditions necessary for a healthy human environment." See Weiss, *supra* note 8 at p 21

¹³ The modern interpretation of the public trust doctrine, originally rooted in Roman law, is attributed to Professor Joseph Sax. According to him, natural resources are held in trust for the public interest and must not be misused for the benefit of a few individuals or communities. For detailed reference, see: Joseph Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471 (1970); Joseph Sax, *The Limits of Private Rights in Public Waters*, 19 Env't. L. Rev. 473 (1989); Joseph Sax, *Liberating the Public Trust Doctrine from its Historical Shackles*, 14 U.C. Davis L. Rev. 185 (1980). For judicial application of this doctrine, see: *Advocate Narayan Prasad Devkota v. Office of the Hon'ble Prime Minister and Council of Ministers*, NKP 2067 NIN 8521, p. 2053 (Nepal); *MC Mehta v. Kamalnath and Others* (1997) 1 SCC 388 (India).

¹⁴ General Assembly Resolution 1803 of 14 Dec. 1962 accepts principle of permanent sovereignty over natural resource as a constituent right of self-determination; See also Rio Declaration Principle 2

differentiated responsibilities¹⁵, and principle of ¹⁶regional cooperation in the context of bilateral and regional collaboration. In the present context, where environmental complexity is increasing due to climate change, neither the scientific community, neither policymakers, nor the Government can disregard environmentally sustainable development and the principles encompassed therein.

10. The principle of environmentally sustainable development inherently includes the protection, conservation, and sustainable use of the environment. This does not mean that the use of natural resources is entirely prohibited in the name of conservation. However, where any exploitation of resources is reasonably suspected to cause environmental degradation, the State bears the duty to establish, based on scientific evidence, public hearings, and environmental impact assessments that no environmental harm has occurred or will occur. Moreover, where scientific evidence indicates a real risk of irreparable environmental damage, the State must exercise precautionary measures to prevent such damage. This constitutes both the fiduciary duty of the State and a fundamental principle of constitutional governance. In summary, given Nepal's geographical, geophysical, and environmental complexities, and considering that the Constitution imposes a duty on the State to balance development with environmental protection, it follows that the aspirations of the Nepali people for development and prosperity are fundamentally aspirations for environmentally sustainable development. By following this principle, the State must ensure the protection of a clean, healthy, and sustainable environment while simultaneously respecting and fulfilling the fundamental rights of its citizens.
11. In the context of the present dispute, it is also necessary to take note of certain matters mentioned in the written submission of the Ministry of Finance. The written submission recalls that the State has a constitutional duty to maintain an appropriate balance between development and environmental protection. In this regard, under the principles of state policy, Article 51 (d) of the Constitution provides that, under policy relating to economy, industry, and commerce policy: Clause (2) emphasizes the role of the private sector in the economy and directs that the available resources and means be utilized to their maximum potential to achieve economic prosperity; and Clause (10) provides for the formulation of policies regarding import substitution and export promotion in alignment with national interests. Furthermore, reference is made to Section 55, which provides that no question shall be raised in any court as to whether any matter contained in this Part has been implemented or not. In relation to this, it is necessary to clarify that a careful study of the State's directive principles, policies, and duties may give the impression to some that everything is either obtainable or interpretable in any way. However, this is not correct. In reality, when dealing with fundamental rights or State policies, certain rights and policies may appear to be overlapping, inconsistent, or uncoordinated. This is natural given the multi-faceted scope of rights and policies. In such a situation, it is for the policy-makers to determine which rights are fundamental rights and which policies constitute fundamental policies. For example, the right to a dignified life can be regarded as the most fundamental of all fundamental rights. Similarly, in light of the country's geographical, geophysical, and environmental sensitivities, ongoing activities, their impacts, and potential challenges, the principle of environmentally sustainable development must be recognized as

¹⁵ Rio Declaration, Principle 7; Paris Agreement to UNFCCC, Preamble and Art 2

¹⁶ "No single country or group of countries has the power to ensure a healthy environment for the future. Thus, even when each country cares only about its own people, all nations must cooperate in order to guarantee a robust planet in the future." Weiss *supra* note 7 at p 22; Rio Declaration, Principle 2

the most fundamental principle among the State's policies. By embracing this principle, ensuring that development and environmental protection are appropriately balanced, formulating policies relating to economy, industry, and commerce, and involving relevant stakeholders, the State aligns with the text, spirit, and purpose of the Constitution of Nepal.

12. With regard to the reference in the rejoinder that, under Article 55, no question shall be raised in any court as to whether any matter contained in this Part has been implemented or not, it is true that the Constitution provides that courts cannot entertain questions about the implementation of the directive principles of state policy, and there is no need to dispute this matter. However, the directive principles and policies are not meaningless provisions; they are not written merely for the sake of stating or demonstrating them. These are fundamental provisions intended to guide policy-makers in the conduct of state affairs. Accordingly, these policies cannot be disregarded in the course of governance. They assist in making fundamental rights meaningful, purposive, and effective. Therefore, these principles must be regarded as complementary to fundamental rights¹⁷. In the present context, where the Constitution imposes a duty on the State to enact necessary legal provisions for the implementation of fundamental rights, the court is empowered to issue appropriate directions¹⁸ to ensure a clean and healthy environment, maintain a proper balance between development and the environment, and thereby fulfill the aspirations of development and prosperity. This is necessary to make fundamental rights meaningful and effective. Accordingly, in summary, considering Nepal's geographical, geophysical, and environmental conditions and sensitivities, an examination and analysis of the environmental protection and development policies adopted by the Constitution indicate that the current challenges relating to development and the environment must be addressed through a coordinated interpretation of fundamental rights and state policies, while recognizing the principles of environmentally sustainable development as fundamental guiding principles.
13. Having discussed the policies relating to development and environmental protection that must be followed to ensure the protection, respect, and enjoyment of fundamental rights guaranteed by the Constitution, it becomes necessary to examine the second question What has been the role of this court so far in balancing development and environmental protection? In particular, how has this court viewed matters relating to the extraction, exploitation, and export of stone, gravel, and sand? Some discussion on this matter is warranted. Particularly after the restoration of democracy in 2047, this court has shown a serious approach toward issues of environmental protection. The court has observed that "human life is an end in itself, and development is a means to live a fulfilling life". Without a clean and healthy environment, a human being cannot live in a clean and healthy manner. Therefore, environmental protection is an essential objective and in view of the fact, measures must be implemented to prevent environmental degradation¹⁹." In this context, the court has recognized that both the means of livelihood for

¹⁷ In recent times, Indian courts have treated the State's directive principles of policy as complementary to fundamental rights and have adopted the view that a balance must be maintained between the two. See, for instance, *Minerva Mills Ltd v. Union of India* (1980) 2 SCC 591; *Kasturi Lal Laxmi Reddy v. State of J&K* (1980) 4 SCC 1; AIR 1980 SC 1992, 2000; *Hashmatullah v. State of MP* (1996) 4 SCC 391.

¹⁸ *Yogi Narhari Nath vs. Rt. Honorable Prime Minister Girija Prasad Koirala*, Nepal Law Magazine 2053, Decision No. 6127, pg. 33

¹⁹ *Surya Prasad Sharma Dhungel vs. Godavari Marble Industries Pvt. Ltd. et.al.*, Supreme Court relating to Public Welfare First Part (2015-2062) Part 8 pg. 8

leading a dignified life and the quality of the environment occupy equally important positions. A clean and quality environment is indispensable not only for humans but also for flora and fauna, and there is no alternative to it. In the absence of such an environment, a region cannot be considered habitable²⁰. A clean and healthy environment is an integral and inseparable part of human life. Environmental degradation directly affects human life, plants, and animals. Since the right to a clean and healthy environment is inherent within the fundamental right to life, the world today is deeply concerned about the protection of deteriorating environmental conditions²¹. At present, the environment is no longer a matter confined to a single place or country but has become a global concern. There can be no dispute that environmental pollution affects not only humans but also animals, plants, and flora, with its impact extending across regions. This is the very reason why international environmental treaties and various conferences have emphasized environmental protection²². In fact, the issue of environmental conservation transcends national boundaries and sovereignty. Since it is a multi-dimensional issue and a matter of common concern for the entire world, it would not be just to restrict it within narrow national or local interests. While fulfilling the needs of the present generation, there must be no reduction in the capacity of nature to meet the needs of future generations, and the present generation must not encroach upon the right of future generations to live in a clean environment. The burden of proving that development and construction activities will not adversely impact the environment rests on the proponent of such activities. Rather than attempting to control damage after it has occurred, a precautionary approach must be adopted to prevent harm before it happens. Environmental protection is not an obstacle to development. However, when development and environmental degradation are not properly balanced, it can lead to unimaginable damage. Laws must therefore be crafted to safeguard the entire world. The court has observed that Nepalese law stands in favor of environmental protection, and that Nepal is a signatory to international conventions and treaties on environmental conservation; therefore, under the guise of development, environmental protection cannot be treated as secondary²³. Given that Nepal has ratified international conventions concerning wildlife, flora, natural resources, and the environment, the obligations arising from these treaties, such as the protection of wetlands, regulation of international trade in endangered plant and animal species, and the conservation of biodiversity cannot be neglected. In this context, the court has also observed that the Government of Nepal may impose restrictions on the export of certain forest products²⁴ to fulfill these obligations. From a conceptual perspective, in addition, this court has delivered significant judgments on various issues of environmental protection, such

²⁰ Dharam Bahadur Lamichhane et.al., vs. Ministry of Physical Infrastructure and Transport, Singha Durbar, Kathmandu et.al., Nepal Law Magazine 2075, Decision No. 10085, pg. 1615

²¹ Advocate Tulsi Sinkhada vs. Nepal Government, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu et.al., Nepal Law Magazine 2075 Decision No. 10109, pg. 1820

²² Advocate Padam Bahadur Shrestha vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2075, Decision No. 10101, pg. 2026

²³ Environmental Development and Conservation Legal Forum vs. Office of the Prime Minister and the Council of Ministers, Nepal Law Magazine 2069, Decision No. 8942, p. 47

²⁴ Tara Bahadur Budhathoki vs. Office of the Prime Minister and Council of Ministers, Kathmandu et.al., Nepal Law Magazine 2075, Decision No. 10154, pg. 2251

as the control of pollution²⁵, formulation of pollution standards²⁶, management of waste²⁷, brick kilns²⁸, plastics²⁹, and other hazardous substances³⁰, protection of heritage sites, lakes, pond³¹, and national parks³², as well as addressing superficiality and negligence observed in environmental impact assessments³³, and promoting good environmental governance³⁴.

14. In the present dispute, the issues of exploitation and extraction of natural resources have been placed before this court for adjudication. In this context, Clause No. 199 of the Budget Speech for the Fiscal Year 2078/79 presented by the Honorable Finance Minister through an Ordinance, states as follows: **“Based on environmental impact assessment, mining-based stone, gravel, and sand shall be extracted and exported in order to reduce the trade deficit. For the transportation of such mining-based construction materials from the industry to the export point, provisions have been made to grant exemption on customs duties applicable to imports for the construction of ropeways.”** From the said budget statement, it is evident that its core subject concerns the excavation, exploitation, and export of stone, gravel, and sand, and that environmental impact assessment has been stated as the basis for undertaking such activities. Accordingly, it appears pertinent for this court to examine how these two aspects are been considered by the court.

²⁵ Kedar Bhakta Shrestha vs. Department of Transport et.al., Supreme Court relating to Public Welfare FirstPart (2015-2062) pg. 88, Shatrughan Prasad Gupta et.al., vs. Everest Paper Mill Pvt. Ltd. et.al., Nepal Law Magazine 2061, Decision No. 7427, pg. 1040; Advocate Padam Bahadur Shrestha vs. Office of Kathmandu Metropolitan City, Bag Durbar, Kathmandu et.al., Nepal Law Magazine 2072, Decision No. 9577, pg. 688; Advocate Arjun Kumar Aryal et.al., vs Nepal Government Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2073, Decision No. 9686, pg. 1798; Tulkman Lama vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2061, Decision No. 7394, pg. 731; Bara District Lipnimal V.D.C. vs. Ramagya Sah Kalwar Nepal Law Magazine 2067, Decision No. 8490, pg. 1773.

²⁶ Advocate Thaneshore Acharya et.al., vs. Bhirkuti Pulp and Paper Nepal Limited et.al., Supreme Court Relating to Public Welfare First Edition (2015-2062) Part 8, pg. 108; Bhojraj Air vs. Ministry of Population and Environment, Supreme Court Relating to Public Welfare, First Edition (2015-2062), Part 8, pg. 121; Advocate Prakashmani Sharma et.al., vs. Office of the Prime Minister et.al., Supreme Court Relating to Public Welfare, First Edition (2015-2062), pg. 95; Prakashmani Sharma et.al., vs. Ministry of Population and Environment et.al., Supreme Court Relating to Public Welfare First Edition (2015-2062) Part 8, pg. 371

²⁷ Navindra Raj Joshi vs. Office of the Council of Ministers et.al., Nepal Law Magazine 2067, Decision No. 8616, pg. 812

²⁸ Prakashmani Sharma et.al., vs. Secretariat of Council of Ministers et.al., Supreme Court Relating to Public Welfare First Part (2015-2061) Part 8, pg. 355

²⁹ Prakashmani Sharma et.al., vs. Secretariat of Council of Ministers et.al., Supreme Court Relating to Public Welfare First Part (2015-2061) Part 8, pg. 355

³⁰ Prakashmani Sharma et.al., vs. Ministry of Local Development, Harihar Bhavan Lalitpur et.al., Supreme Court Public Relation Part 2 Second Part (2066) pg. 62; Yogi Narhari Nath vs. Rt. Honorable Prime Minister Girija Prasad Koirala et.al., Nepal Law Magazine 2053, Decision No. 6127, pg. 33; Advocate Prakashmani Sharma vs. His Majesty’s Government, Secretariat of Council of Ministers et.al., Nepal Law Magazine 2054, Decision No. 6391, pg. 312; Advocate Prakashmani Sharma et.al., vs. His Majesty’s Government, Secretariat of Council of Ministers et.al., Nepal Law Magazine 2056, Decision No. 6781, pg. 70

³² Advocate Ramchandra Sinkhada et.al., vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2073, Decision No. 10104; Advocate Ram Kumar Acharya vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2069, Decision No. 8941, pg. 47

³³ Advocate Khagendra Subedi et.al., vs. Nepal Government, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu et.al., Nepal Law Magazine 2075, Decision No. 10086, pg. 1626

³⁴ Bhojraj Air vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2061, Decision No. 7453, pg. 1361

15. In this context, it is observed that the issue of excavation and export of stone, gravel, and sand has repeatedly come before this court. In particular, with regard to the uncontrolled excavation and export of stone, gravel, and sand from rivers in the Chure and Terai regions, a public interest writ petition was filed by Advocate Narayan Devkota³⁵. The writ petition primarily asserted that stone, gravel, and sand were being illegally excavated day and night from the forests and the *Charkoshe Jhadi* of the Chure region, and that such materials were being exported to India through crusher industries established in an unlawful manner. It was contended that if such activities were not restrained in time, there existed a strong apprehension of grave damage in the future to the Terai–Madhesh region as well as to the nation as a whole. In adjudicating the said writ petition³⁶, this court, after examining the studies conducted on the subject³⁷ and, in particular, after studying and analyzing the “*Report on Excavation and Export of Stone, Gravel, and Sand from Chure–Bhavar and Other Regions, 2066*”³⁸ prepared by the Legislature–Parliament’s Natural Resources and Means Committee, interpreted, in the light of the Constitution and laws of Nepal, that the Government of Nepal acts merely as a trustee of Nepal’s natural resources³⁹, and that Nepal’s natural resources cannot be allowed to be exploited in an unrestrained manner without any legal basis merely on the pretext of paying nominal revenue, in a way that causes adverse environmental impacts. The court further clarified that, while excavating and utilizing natural resources, the matter should not be viewed solely from the perspective of economic benefit; rather, such excavation and use must be carried out only in a manner that does not cause any adverse impact on the environment. In the same course, with respect to the issue of excavation and export of stone, gravel, and sand, this court issued a directive order to constitute a technical committee to study the matter⁴⁰.

³⁵ Advocate Narayan Prasad Devkota vs. Office of the Prime Minister and Council of Ministers, Nepal Law Magazine 2067, Decision No. 8521, pg. 2053

³⁶ In the said writ petition, it has been stated that in the Terai districts including Rupandehi, Kapilvastu, Nawalparasi, Bara, Parsa, Rautahat, Sarlahi, Siraha, Mahottari, Dhanusha, Saptari, Makwanpur, Kailali, Kanchanpur, Dang, among others, as well as in approximately twenty-five districts adjoining the Terai, a handful of traders have established crusher industries within forest areas, inside national park zones, and in settlements and river areas located in or near forest regions. It is alleged that such industries have been operating at the head of the Charkoshe Jhadi and in streams flowing through forest areas, deploying dozers, loaders, and tippers to excavate and collect stone and gravel, and to crush or otherwise process such materials, and that stone, gravel, sand, and similar materials have been transported to India for sale and distribution continuously over the past several decades.

³⁷ In the judgment, it is also recorded that the Court examined the on-site inspection report of stone-crushing industries submitted to the Department of Industry by a six-member team, including Sarbajit Prasad Mahato, which had been prepared under the 23rd Executive Development Program of the Nepal Administrative Staff College, Jawalakhel, Lalitpur, on the basis of a field study conducted in Makwanpur District concerning the regulation and management of natural resources, namely stone, gravel, and sand.

³⁸ The decision further notes that the said report made reference to various rivers of the Terai and Chure regions that were being used for excavation, to ten different routes utilized for the transportation and export of stone, gravel, and sand and the dilapidated condition thereof, as well as to matters relating to the revenue accruing to the State.

³⁹ The Court has expressed the view that even the Interim Constitution of Nepal, 2063, incorporates this principle, and that the provisions of Articles 33(n) and 35(4), as well as other laws relating to natural resources, are guided by the *Public Trust Doctrine*. The Court further observed that other Nepalese laws concerning natural resources—namely, Section 3 of the Water Resources Act, 2049; Sections 17 and 18 of the Forest Act, 2049; Section 3 of the Mines and Minerals Act, 2042; and Section 3 of the Nepal Petroleum Act, 2041—do not confer private ownership over the natural resources governed by those Acts, but instead vest ownership in the State. Such provisions, the Court held, are arrangements concerning Nepal’s natural resources that are guided by the *Public Trust Doctrine*.

⁴⁰ In the order, it has been directed that such a committee be constituted under the coordination of the concerned authority of the Government of Nepal, comprising: (1) a representative of the Ministry of Environment, or an environmental expert designated by the Ministry of Environment, as the Coordinator; (2) a geologist; (3) a mining engineer; (4) a representative of the Department of Industry; (5) a representative of the local body; and (6) such other necessary members and environmental experts as may be designated by the Government of Nepal.

Considering that the petitioner had sought an order to stop the export of sand, aggregates, and stone to India, the court held that if such activities pollute the environment or, in the course of extracting natural resources, adversely affect surrounding areas, settlements, roads, water sources, forests, wildlife, ancient monuments, or similar sites, such activities must be restrained. Likewise, holding that extraction in excess of the permissible capacity is not allowable, this court also issued an order directing that *“for the time being, the activity of exporting stone, gravel, and sand shall be stopped, and that export shall be carried out only in accordance with the report of the technical committee constituted pursuant to the order of this court, if such committee determines that the concerned industries possess further capacity to extract aggregates, stone, and sand and that such extraction is feasible from economic as well as environmental perspectives.”*

16. Apart from the aforesaid writ petition filed by Narayan Devkota, this court has also expressed its views on the issue of excavation of stone, gravel, and sand in certain other writ petitions. By way of illustration, in the writ petition filed by Kapil Chandra Pokharel, this court held that *“natural resources, which constitute the primary basis of human life, must be made accessible to and enjoyed by all members of the general public, and the rights thereto must be ensured accordingly. Such resources should not be accessible only to a particular class, region, community, or generation; rather, for the purpose of public use extending across generations, equal access and enjoyment for all must be guaranteed, and the responsibility of conserving such resources must be assumed by the State or the Government in the capacity of a trustee... The State may grant permission to any person to use natural resources only for the purpose of public interest. It is the duty of the State to prevent the exploitation of public resources for private interests.”* The court interpreted that *“preventing the exploitation of such resources is the duty of the State. Where sand industries operating along both sides of the Prithvi Highway are found to be run by private individuals, restraining such industries from excavating sand from public and government land falls within the constitutional and legal obligations of the Government.”* Similarly, in another writ petition filed by Shiva Prasad Paudel⁴¹, this court observed that *“extraction and use of natural resources beyond their capacity, industrialization, haphazard urbanization, deforestation, and development activities carried out without harmony with the environment are the principal factors causing environmental pollution, environmental degradation, and ecological imbalance. Therefore, while utilizing natural resources and pursuing economic development, such development and construction must be undertaken in a manner that maintains a balance between development and environmental conservation, so as to avoid environmental destruction. The establishment and operation of crusher industries engaged in the excavation, exploitation, collection, and export of natural resources such as stone, gravel, and sand must be carried out within the limits of the prevailing law”*. The issue of the State’s trustee obligation has also been examined in a similar manner in the writ petition filed by Khagendra K.C.⁴². Thus, through these decisions, this court has clearly articulated the position that the responsibility of conservation and utilization of natural resources rests with the State in its capacity as a trustee; that such resources must be utilized in the public interest and in a manner that does not cause

⁴¹ Shiva Prasad Paudel and other vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2070, Decision No. 9030, pg. 868

⁴² Khagendra K.C. (Khadka) et.al., vs. District Administration Office, Udaypur et.al., Nepal Law Magazine 2073, Decision No. 9711, pg. 2285

environmental degradation; and that their use must be regulated on the basis of prescribed limits, regulatory mechanisms, environmental impact assessment, technical considerations, and the principle of inter-generational equity.

17. When the provision in Point No. 199 of the budget speech, which states that extraction shall be carried out on the basis of Environmental Impact Assessment, is examined, the experience to date, in light of the disputes concerning Environmental Impact Assessment that have come before this court, has not been satisfactory. By way of illustration, in the writ petition filed by Ram Kumar Acharya⁴³ and others concerning the Environmental Impact Assessment report prepared in relation to the Bhuri Gaun–Telkot Road passing through Bardiya National Park, this court held as follows: *“An Environmental Impact Assessment must be completed in accordance with the procedures prescribed by law. Matters regulated by law cannot be left to subjective discretion. The report must contain objective grounds demonstrating that, among the various alternatives, the option selected is the most appropriate from the perspective of environmental protection. Whether such objective grounds are in conformity with the law falls within the scope of judicial scrutiny. The proposition that the court should not enter into the substantive aspects of an Environmental Impact Assessment cannot be accepted.”* Taking the view that a portion of the proposed Bhuri Gaun–Telpani–Surkhet Road was to be constructed through Bardiya National Park, this court further observed that it was necessary to constitute a committee comprising concerned experts, including representatives of the principal stakeholder authority, namely the Ministry of Forests. However, as it did not appear that the Ministry of Environment had constituted a committee including the relevant experts from the Ministry of Forests and other concerned authorities, nor that it had obtained opinions and recommendations on the Environmental Impact Assessment in relation to the construction of the said road, this court, by issuing an order of certiorari, quashed the decision of the Ministry of Environment approving the Environmental Impact Assessment report relating to the proposed Bhuri Gaun–Telpani–Surkhet Road Project. The court further issued an order of mandamus, directing that, should the road be deemed necessary, the project be reconsidered only after completing the procedures prescribed by law and identifying alternative options in accordance therewith. A similar situation is also seen with respect to the Environmental Impact Assessment conducted in connection with the construction of a road through Chitwan National Park. In the writ petition filed by Advocate Ramchandra Simkhada⁴⁴ et.al., this court found that the Environmental Impact Assessment report had been prepared with a preconceived intent that the road must be constructed, without consultation with the Chief or officials of the National Park, and without even reviewing the responses of UNESCO or the IUCN, despite the Park being listed as a World Heritage Site. Holding that both the Environmental Impact Assessment report so prepared and the ministerial-level decision of the Ministry of Forests and Environment accepting such report were legally flawed, this court, by an order of certiorari, quashed the said decision. The court further issued an order of mandamus, directing that no act relating to the construction of a road passing through Chitwan National Park shall be undertaken or caused to be undertaken unless and until permission is granted pursuant to an Environmental Impact Assessment carried out in consultation with and with the concurrence

⁴³ Ram Kumar Acharya on behalf of Environmental Development and Conservation Legal Forum vs. Prime Minister and Secretariat of the Council of Ministers et.al., Nepal Nepal Law Magazine 2069, Decision No.8942, pg. 47

⁴⁴ Advocate Ram Chandra Simkhada et.al., vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2073, Decision No. 10204, pg. 14509

of the legally established Chitwan National Park Office, UNESCO, and other concerned stakeholder institutions. There are, moreover, numerous instances where, in the name of Environmental Impact Assessment, a report prepared for one project has been transplanted for use in another project, where relevant stakeholders have not been properly consulted, and where public hearings have been conducted merely as a formality. Taking these practices into consideration, this court has sought not to view an Environmental Impact Assessment report as a document intended merely to fulfill a procedural formality in order to reach a pre-determined outcome. Rather, the court has endeavored to treat such a report as one that genuinely examines its core principles and the requirements of the prevailing law, on the basis of scientific evidence identifies those alternatives that would cause no environmental harm or, where harm is unavoidable, the least possible harm, and serves as an effective aid in reaching informed and balanced decisions on complex environmental matters. Environmental Impact Assessment reports, prepared with the involvement of distinguished scholars and experts renowned in their respective fields, must never become mere paper documents that extend an open invitation to environmental destruction. To allow such a practice would run contrary to the principle of environmentally sustainable development embraced by the Constitution of Nepal and would, in effect, infringe upon the fundamental right of all human beings to live a dignified life in a clean and healthy environment. Therefore, in order to discourage the practices presently being carried out, it appears necessary to put in place provisions ensuring that where environmental degradation occurs as a result of the preparation of erroneous or misleading reports, the individuals responsible are subjected to appropriate legal action.

18. After having discussed the approach adopted by this court with respect to environmental protection, it is now appropriate to turn to the present context to the third question as to which areas are under the greatest pressure with respect to riverine and mining-based natural resources, as well as the extraction, utilization, and export of stone, gravel, and sand? What are the legal frameworks and policy arrangements governing such extraction, utilization, and export, and what is the current status of their implementation?
19. Although Point No. 199 does not specify from which regions of the country mineral-based stone, gravel, and sand are to be extracted for the purpose of reducing the trade deficit is not known. However, the reference therein to the construction of ropeways for the transportation of such extractive construction materials from industries to export points allows a reasonable inference to be drawn. It may be presumed that such activities are intended to take place in the Chure or Mahabharat regions, the valleys located therein, or the adjoining gorges, riverbanks, or riverbeds; and the very mention of ropeways suggests that the scale of such operations would be substantial. This inference has not been expressly denied in the rejoinder submitted by the Office of the Prime Minister and Council of Ministers. On the contrary, the written statement characterizes the matter as a purely policy issue, asserting that the extraction and export of stone, gravel, and sand would occur only upon fulfillment of the prescribed legal procedures for export, and further stating that the provision made in the Fiscal Year 2078/079 Budget regarding the export of stone, gravel, and sand is not a novel arrangement. It is further contended that, whereas in the past extraction was carried out on the basis of district-level capacity, the present policy provision has been introduced through the budget with the objective of operating and managing extraction at the national level as a systematic export-oriented industry; that stone and gravel from all locations are not to be exported indiscriminately; that the establishment of ropeways for export purposes would be undertaken

in a manner that ensures environmental protection and reduces pollution; that the measure is not one adopted in disregard of Nepal's domestic needs, as domestic demand would first be met and only the surplus materials would be exported; and that the underlying intent of the provision is to reduce the country's ever-increasing trade deficit. Notwithstanding the extensive assertions set out in the rejoinder, it remains unclear why the Government, having articulated so many details therein, was unable to specify in Point No. 199 itself the precise locations, the manner, and the scale at which extraction and export would be carried out. Nor does it appear that, prior to making such a decision, the studies mandated by the prevailing law such as the Environmental Impact Assessment were conducted, or that the decision was taken on the basis of such studies. A reading of the rejoinder submitted on behalf of the Council of Ministers shows that the matter is characterized as purely a policy issue; that where a policy has been analyzed and is in the process of implementation, the court should not intervene in advance in a manner that would curtail the executive authority; and that the acceptance or rejection of an Ordinance falls within the jurisdiction of Parliament. From these assertions, an indirect attempt appears to have been made either to deny the role of this court or to suggest that the matter does not fall within the court's adjudicatory domain. It is not the purpose of the court to interfere in the domain of the executive or the legislature. The court remains ever mindful of the lines of separation of powers, checks, and balances as enshrined in the Constitution. However, where the provisions of the Constitution are not respected, and as a result, the country is heading toward a dire situation of environmental imbalance, the court cannot remain silent. To do so would be contrary to the oath taken in the name of the Constitution, the nation, and the people.

20. From a perusal of the rejoinder, it is evident that the policy-makers were aware of the activities currently taking place at the district level, and reference is also made to the decision of the Council of Ministers, Meeting No. 17.070, dated 2070/03/27. That decision provides, inter alia, that: "each district shall assess the natural resources and materials within its jurisdiction and publicly disclose the details regarding the extent to which collection, utilization, and extraction may be carried out. Only after such disclosure and following preliminary environmental screening and Environmental Impact Assessment shall contract arrangements be made. Export of stone, gravel, and sand from the Chure region, national parks, and protected areas, including intermediate zones, shall not be permitted. With respect to other forest- and river-based materials outside these zones, value addition shall be applied, and export shall be allowed only after at least one stage of processing; unprocessed boulders shall not be exported." It is further noted that the Government itself, on 2071/03/16, declared the Chure region and its associated watersheds and river systems as sensitive and high-risk geographic areas and established them as environmental protection zones, with this information being made publicly available for awareness purposes⁴⁵. Moreover, the Chure-Terai-Madhesh Conservation and Management Master Plan, 2074, prepared by the President's Chure-Terai-Madhesh Conservation Development Committee, observed that: "If riverine materials are allowed to be exported without restriction, excessive exploitation will occur, causing significant adverse environmental impacts. Further, the costs of repairing physical structures damaged in the process of extraction, processing, and transportation would far exceed the revenue earned by the State. Additionally, regulating such activities has proven difficult. Therefore, it is recommended to prohibit the external export of riverine raw materials." This

⁴⁵ Nepal Gazette, Part 64, Number 9, Section 5, dated 2071/03/16

Master Plan was subsequently approved by the Council of Ministers on 2074/02/04. However, considering the uncontrolled extraction taking place in the Terai and Mahabharat regions, valleys, rivers, riverbanks, and adjacent areas, and the provisions of the “Standards Relating to Extraction, Sale, and Management of Stone, Gravel, and Sand, 2077” approved by the Government in 2077, it is noted that: Section 6 provides that stone, gravel, and sand are generally not to be extracted from forested and Chure areas, except with the consent of the relevant authority and the concerned rural municipality or municipality; and Subsection (1) of Section 19 provides that the Government may arrange for at least one stage of processing of such basic construction materials before export. From these provisions, it cannot be construed that extraction from the Chure region was completely prohibited, despite its declaration as an environmental protection zone and the Master Plan recommendation to prohibit external export of riverine materials. Moreover, the rejoinder submitted by the Office of the Prime Minister and Council of Ministers indicates that the policy envisaged in Point No. 199 allows for meeting domestic demand first and exporting only the surplus, with the objective of reducing the country’s growing trade deficit annually. In sum, the Government is evidently taking a proactive role in facilitating the export of stone, gravel, and sand.

21. In reality, the extraction, collection, and export of riverine or mineral-based stone, gravel, and sand from the Chure or Mahabharat regions is an extremely sensitive issue. These areas are already under intense pressure from exploitation and extraction. As far back as the 2060s, uncontrolled and unauthorized extraction using dozers and excavators along the Chure and Mahabharat ranges from Mechi to Mahakali involved large-scale removal, collection, and sale of stone, boulders, gravel, and sand both domestically and abroad. This activity adversely affected the fertile Terai land and caused ecological damage in the Chure region, resulting in landslides that transformed productive and fertile Terai soils into barren land. In response, on 2066/09/20, the Legislature-Parliament’s Natural Resources and Means Committee directed the Secretariat of the Council of Ministers and the concerned ministries of the Government of Nepal to halt the extraction, collection, and export of stone, boulders, gravel, and sand. Subsequently, taking into account the feedback received, a Subcommittee was formed to conduct field studies and consultations with stakeholders, culminating in a comprehensive report in 2066⁴⁶ on the issue. As the findings of that report have been extensively referred to by this court in the writ petition filed by Narayan Devkota, there is no need for their repetition here. The emphasis here, however, is that the report of the Subcommittee raised serious questions regarding the scale of extraction and export of stone, boulders, gravel, and sand. It noted that the extraction and export activities had serious environmental impacts, that the activities were carried out without conducting the required environmental study or assessment (IEE/EIA). The use of excavators in rivers had caused increased landslides and soil erosion and there was a noticeable lack of coordination among various government ministries and that certain individuals, affiliated with political parties, were organized as partners in the contracting process, which contributed to violations of agreements made at the local level. Furthermore, in light of the uncontrolled and rapid export and illicit trafficking of stone, boulders, gravel, and sand to India, the report expressed concern over the absence of an effective monitoring mechanism. It noted the gaps, complexities, and overlaps in the existing

⁴⁶ This Subcommittee was constituted under the Chairmanship of Member of Parliament Chandradev Joshi. The Committee formed three teams to conduct field studies across various districts: Eastern Region: Dhanusha, Siraha, Saptari, Udayapur, Sunsari; Central Region: Dhading, Makwanpur, Bara, Parsa and Western Region: Rupandehi, Kapilvastu. The teams observed the extraction activities from various rivers as well as the operation of crusher industries in these areas.

legal framework and recommended a comprehensive approach, including: enacting a timely, detailed new law on the subject in the future; amending the existing laws to address deficiencies; drafting an integrated law to consolidate relevant provisions; and seeking long-term solutions to regulate extraction and export effectively. These four types of suggestions⁴⁷ and directives were proposed to address the matter in a sustainable and systematic manner. In the report, Section 13, which deals with recommendations for long-term implementation, provides that: “In matters likely to have long-term impacts on natural resources, any decision at any level must be taken only after considering the fundamental principles of sustainable development and the international principles of natural resource management, and directing the Ministry of Forests and Soil Conservation, Ministry of Environment, Ministry of Local Development, and Ministry of Industry accordingly.” The report further notes that, despite the large-scale extraction of stone, gravel, and sand, the revenue generated has been insufficient. It emphasizes that, in light of parliamentary oversight, steps regarding this issue must be taken with careful consideration of the environmental aspects of the matter and sustainable development, highlighting the need for a thoughtful and well-considered approach.

22. Further, in Annex 9 of the same report, the submission of Secretary Lilamani Paudel states: “stone and soil are truly national resources. Their export cannot be allowed under any circumstances.” It notes that in the Terai, soil, sand, and stones deposited by rivers naturally flow along traditional river paths every year, and that this process is environmentally necessary and essential for flood control. However, the report observes that the extraction currently taking place in the name of this process is highly unnatural, risky, and environmentally unsound. The report therefore recommends that: legal and institutional measures be put in place to prohibit the extraction and export of stone, gravel, and sand, and that such measures be submitted to the Council of Ministers as soon as possible; until such measures are in place, the police, administration, Ministry of Environment, and Ministry of Local Development be directed to halt all extraction and export activities; any removal of stone, sand, or soil must strictly comply with the Environmental Protection Act, including mandatory Environmental Impact Assessment or Initial Environmental Examination procedures. These suggestions were presented to ensure environmental protection and risk mitigation in areas affected by extraction.
23. As noted above, the areas under the highest pressure from irregular and uncontrolled extraction of stone, gravel, and sand are the Chure and the adjoining southern Terai foothills. The writ petition emphasizes that the Chure cannot speak for itself, yet it is inherently vulnerable due to its geo-biological and geographical sensitivity and serves as a protective shield for the Terai-Madhesh region. The petition raises serious concerns that intense exploitation of the Chure is causing the people of the Terai to experience annual floods, landslides, water shortages, and adverse impacts on agriculture. These issues are of grave significance. The ongoing environmental destruction in the Chure and Terai regions—driven both by domestic demand and the lure of export—must be treated with utmost seriousness, and this concern is grounded in geographical, geological, and ecological considerations. The Chure Range, located at the southernmost, lowest, weakest, and most fragile⁴⁸ stretch of the Himalayan mountain system

⁴⁷ Legislature-Parliament, Natural Resources and Means Committee, Report on Extraction and Export of Stone, Gravel, and Sand from Chure and Terai Regions, 2066, page 28.

⁴⁸ The Chure (Siwalik) region is primarily composed of sandstone, mudstone, conglomerate, clay stone, shale, and loosely deposited, gravel-dominated sediments (unconsolidated gravel). As noted in the “Chure-Terai-Madhesh Conservation and

in Nepal, extends nearly 800 km from the Mahakali River in the west to the Mechi River in the east. This range spans 36 districts of Nepal. Within it, there are several river-carved gorges and a few valleys⁴⁹, and in some districts, the majority of the land area falls within the Chure region⁵⁰. The 164 river systems⁵¹ that originate in the Churiya region and flow through it are under immense pressure, and this geologically unstable region has, over the past 40–50 years, faced a combination of stressors: unplanned settlements; unsustainable forest exploitation; soil-unfriendly agricultural practices; free grazing of livestock; forest fires, and environmentally harmful physical infrastructure development. As a result, the environmental condition of the entire Chure⁵² region is fragile, and land cover and land use change (LCLUC) in the Chure and Terai regions has become a major cause of environmental degradation. In fact, in the context of Nepal, the Chure region can be considered an open book of land cover and land use change. Changes in land use and land cover lead to: decline in water and air quality; degradation of watersheds; negative impacts on biodiversity; increase in waste and pollution; adverse effects on agriculture, livestock, and wildlife conservation, and serious consequences for human health and climate patterns. Scientific studies⁵³ have shown that changes in land use are closely linked to climate change. In a country with a predominantly agriculture-based economy, increasing population, poverty, lack of alternatives, and rapid urbanization exert enormous pressure on land. In the absence of good governance, the limited elite's manipulation of land for unsustainable use, combined with climate change, places the country at risk of being trapped in a vicious cycle of poverty, which cannot be ignored. Therefore, in the context of Nepal, land availability is limited, it is under significant human pressure, and our natural, environmental, and ecological systems are highly vulnerable. Any careless interference in this system can cause irreparable damage, and hence actions must be taken with utmost caution and awareness. The entire Chure region is extremely sensitive from natural, geological, and environmental perspectives. Recently, uncontrolled extraction, collection, and export of riverine materials have disrupted the Chure and the entire foothill

Management Master Plan, 2074” prepared by the President’s Chure-Terai-Madhesh Conservation Development Committee (p. 10): “The major geomorphic process in the Churia is rapid fluvial erosion. The weak geology, heavy rainfall, and tropical weathering are the common features of the Churia range. This area consists of a humid tropical climatic zone. During the monsoon period, Churia becomes quite hazardous for landslides and flash floods.” For further reference, see: Dr. B.K. Pokharel, Rabin Raj Niraula, Niroj Timalina, Rakshya Neupane (eds), *Changing Face of the Churia Range: Land and Forest Cover in 1992 and 2014*, HELVETAS/Nepal, Jan. 2015, herefile:///C:/Users/user/Downloads/Changing_Face_of_the_Churia_Range_of_Nep2.pdf.

⁴⁹ For example, Marin gorge and Kamala gorge in Sindhuli, Rangun gorge in Dadeldhura, as well as several valleys such as those in Udayapur (Triyuga, Katari), Chitwan, Dang, Deukhuri, and Surkhet, all fall within the Chure region.

⁵⁰ In some districts, such as Jhapa, Dhankuta, Bhojpur, Kavre, Lalitpur, Tanahun, Pyuthan, and Doti, less than 1% of the total land area falls within the Chure region. In contrast, in districts like Udayapur, Sindhuli, Makwanpur, Chitwan, Nawalparasi, Dang, and Kailali, the Chure area constitutes a relatively larger portion of the district. Specifically, in the case of Chitwan and Dang, approximately 84% and 82.5% of their land areas, respectively, fall within the Chure region (see Supra Note 47).

⁵¹ In Nepal, 164 river systems have been identified, categorized as follows: 27 rivers originating from the High Himalaya and Himalaya, flowing year-round; 76 rivers originating from the Mid-Hills, flowing year-round; 48 rivers originating from the Chure region, flowing only during the monsoon season; and 13 rivers originating from the Terai-Madhesh region, flowing mostly year-round. For reference, see: President’s Chure-Terai-Madhesh Conservation Development Committee, *Chure-Terai-Madhesh Conservation and Management Master Plan, 2074*, p. 15.

⁵² Reference: President’s Chure-Terai-Madhesh Conservation Development Committee, *Chure-Terai-Madhesh Conservation and Management Master Plan, 2074*, p. 12.

⁵³ Basanta Paudel, Yi-Li Zhang, and Narendra Khanal, Review of studies on land use and land cover change in Nepal, *Journal of Mountain Science*, (October 2016) browsed in <https://www.researchgate.net/profile/Basanta-Paudel> See also Zahra Hassan Rabia Shabbir, Sheikh Saeed Ahmad, Amir Haider Malik, Neelam Aziz, Amna Butt and Summra Erum, Dynamics of land use and land cover change (LULCC) using geospatial techniques: a case study of Islamabad Pakistan in Hassan et al. *Springer Plus* (2016) 5:812 DOI 10.1186/s40064-016-2414-z

(Bhavar) and Terai-Madhesh regions, affecting the livelihoods of the people⁵⁴. Although the President's Chure-Terai-Madhesh Conservation Development Committee has formally initiated work through the Master Plan, leading to an increase in forest cover in the Chure region, studies indicate that due to the loss of agricultural land and the continued extraction of riverine stone, gravel, and sand in the foothill (Bhavar) areas, the width of rivers in the Chure region has increased, converting fertile agricultural land into river channels. This indicates that riverbank erosion, soil degradation, and landslides in the river areas have not been effectively controlled⁵⁵. The impacts are being felt throughout the fertile agricultural land of the Terai, including sand deposition, rising land surfaces, and water intrusion into homes. Therefore, it cannot be forgotten that a healthy and intact Chure region is crucial not only for the Chure itself but also for the Terai-Madhesh region and the livelihoods of the entire country. When the Chure is destroyed, the entire country suffers, as the collapse of the Chure makes it impossible for other regions to remain unaffected.

24. Although Clause No. 199 of the Budget Speech does not specify the exact extraction sites, the writ petition refers to media reports indicating that a plan has been made to extract and export stone, gravel, and sand from 52 sites across 14 districts, from Morang to Dadeldhura, and requests that such activities be stopped. The rejoinder has not denied this assertion. In the Ministry of Finance's written response, it is stated that extraction will occur only in areas outside the Chure, selected on the basis of technical, geographical, and environmental suitability, and also based on the Department of Mines and Geology's study reports. Additionally, the rejoinder indicates that a ropeway system will be used for the transport of stone, gravel, and sand, suggesting that the areas intended for extraction are likely located in the Mahabharat region north of the Chure. However, the Mahabharat mountain range, which is geographically, geologically, and hydrologically interconnected with the Chure, cannot be considered safe. The region has been subjected to: road expansions and other developmental structures, including hydropower projects; extraction for more than fifty cement industries⁵⁶; damage in certain areas from recent earthquakes, and additional pressures due to climate change. Given the steep slopes of the Mahabharat region and the rapid flow of rivers originating from it, even minor extraction activities can have serious consequences for rivers, floodplains, and surrounding areas. In such circumstances, the state is obliged to adhere to the principle of precaution to prevent environmental harm. In such circumstances, the state is obliged to adhere to the principle of precaution to prevent environmental harm. Where there exists a high likelihood of significant environmental harm from any activity, the State must exercise precaution and prevent such activity. In neighboring India, whether it is the limestone extraction around Dehradun or mining in the Aravalli Range, adherence to the principle of precaution has been consistently observed to mitigate adverse environmental impacts. In one case, the Supreme Court of India held:

⁵⁴ The Master Plan indicates that riverine material extraction is currently taking place in 242 areas. For reference, see: Master Plan, p. 38.

⁵⁵ Studies indicate that in the Chure region, approximately 20,000 hectares of agricultural land have been lost, and the riverbeds have expanded by 12,300 hectares. For reference, see: Dr. B.K. Pokharel, Rabin Raj Niraula, Niroj Timalina, Rakshya Neupane (eds), *Changing Face of the Churia of Nepal: Land and Forest Cover in 1992 and 2014*, HELVETAS Nepal, Jan 2015, p. 31.

⁵⁶ One report indicates that, over different periods, 65 cement industries in Nepal have obtained permission from the Nepal Standards Board and commenced production. For reference, see: GON/Department of Industry, *Detailed Study of Cement Industry, 2019* (Study conducted by Deepak Neupane et al), Executive Summary, p. II.

“The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. The most vital necessities, namely, air, water and soil, having regard to the right of life under the Constitution, cannot be permitted to be misused and polluted so as to reduce the quality of life of others.... If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest.”⁵⁷

25. We must certainly draw some lessons from the efforts being made in neighboring countries to protect the Mahabharat and Chure regions, as well as river systems
26. In our context, whether the materials are river-based or mine-based, when it has already become difficult to meet the country’s development needs even through low-risk and limited extraction, no data supported by prior assessment has been placed before this Bench on matters such as: what exactly is the national requirement; how much stone, gravel, and sand can be safely extracted annually from rivers and streams; what quantity naturally flows each year; what kinds of damage may occur if such materials are not collected and rivers change their course; how much flows beyond the border or is otherwise wasted; and what the historical trends have been. In the absence of such factual material, it is unclear on what basis the rejoinder of the respondent Council of Ministers states that, through the systematic extraction of river-based materials, it has been technically estimated that quantities many times greater than domestic consumption could be obtained. Likewise, it is not readily understandable how and in what manner natural resources are proposed to be mobilized, and what kind of rapid economic prosperity is sought to be achieved thereby. Yes, stone, gravel, and sand are not only important natural resources of Nepal but also essential materials for development and construction. It is also true that when rivers particularly those originating in the hills and flowing into the Terai are allowed to extract a certain amount of stone, gravel, and sand annually, it helps prevent rivers from changing courses, reduces damage to property, and contributes to the protection of the local environment. However, this too requires credible data. In this age of science and technology, it is certainly possible to conduct such assessments through Geographic Information Systems (GIS), satellite imaging, and other scientific survey methods. Proceeding without any scientific data, without prior planning, and by ignoring the country’s geographic, geological, and environmental sensitivities, and then justifying the ongoing activities merely on the grounds of economic or political interest, or by making the simplistic argument that “whatever is happening locally is acceptable and the same is now being attempted at the central level”, and projecting dreams of reducing the trade deficit through the export of stone, gravel, and sand, serves neither the interests of the present generation nor those of future generations. Nature does not consent to such exploitation for stone, gravel, and sand. In one sense, it evokes an image akin to tearing flesh and bones from a mother’s body and leaving it mutilated. This amounts to nothing less than a rupture of the ecological system an “ecocide”⁵⁸. Therefore, we must all come together to protect our

⁵⁷ M.C. Mehta v. Union of India & Others (March 18, 2004) AIR 2004 SC 4016; See also Rural Litigation And Entitlement vs State Of U.P. & Ors (12 March, 1985) AIR 1985 SC 652, 1985 SCR (3) 169; See also National Green Tribunal, Himmat Singh Shekhawat v. State Of Rajasthan (26 February, 2021)

⁵⁸ Independent Expert Panel for the Legal Definition of Ecocide, June 2021 has defined “Ecocide” as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.” <https://www.stopecocide.earth/legal-definition>.

Himalayas, hills, the Chure region, and our river systems, keeping them clean and healthy. Nature is a heritage entrusted to us by our ancestors for the benefit of future generations. We must never forget the principles of intergenerational coordination and cooperation. It is also the fiduciary duty of the State. Hence, the principle of precaution must be the guiding mantra in all activities that exploit nature. This aligns with the human right of citizens to live in a clean and healthy environment, as guaranteed by the Constitution, and with the policy of environmentally sustainable development. Therefore, no one has the right to exploit nature, strip it bare, and leave it irreversibly damaged simply to pursue a reduction in trade deficit. Rather, in addressing the factors contributing to the trade deficit, the State must undertake comprehensive research into the policies it has pursued over the past three to four decades, the state of environmental implementation, and all other causes that have contributed to the deficit. The focus should then shift towards reducing the deficit through the sustainable use of our biodiversity and the development of renewable energy, rather than through the unsustainable exploitation of natural resources.

27. In the course of the above discussion regarding the excavation, use, and export of stone, gravel, and sand, it is evident that the Government has primarily relied on four key decisions of the Council of Ministers namely the decision of Council of Ministers dated 2070/03/27; the decision of 2071/03/16 declaring the Chure-Terai region as an Environmental Conservation Area; the decision of 2074/11/4 approving the Chure-Terai-Madhesh Conservation and Management Master Plan and the decision to promulgate the Standards on Stone, Gravel, and Sand Excavation, Sale, and Management, 2077. These four ministerial decisions constitute the existing policy framework governing the extraction, utilization, and management of these essential natural resources. These ministerial decisions do not entirely prohibit the extraction and export of stone, gravel, and sand. The legal framework determines the actual restrictions and conditions under which such activities may occur. In examining the legal structure and provisions related to the excavation, utilization, and export of these materials, the petitioners argue that extraction and export activities may violate several laws, including: Local Government Operation Act, 2074, Export and Import (Control) Act, 2013, Environmental Protection Act, 2076, Land and Watershed Conservation Act, 2039. The respondents have through their rejoinder primarily cite provisions from Local Government Operation Act, 2074, Export and Import (Control) Act, 2013 and Environmental Protection Act, 2076. The key questions to examine is what conditions do these laws impose on the extraction, collection, and export of stone, gravel, and sand? Can these laws effectively prevent unregulated or uncontrolled extraction? In the current federal context mandated by the Constitution, are these laws sufficient or inadequate for regulating these resources? Thus, a detailed review of these statutes is necessary to determine whether the legal framework adequately safeguards natural resources and prevents environmental harm while balancing development needs.
28. Without affecting the recognition of the exclusive and concurrent lists provided to local levels by the Constitution, Section 11 of the Local Governance Operation Act, 2074 sets forth the powers conferred upon rural municipalities and municipalities. Under Sub-section (2), Clause (d), entitled “Local Taxes, Service Fees, and Levies,” Sub-clause (6) provides for the authority to collect fees, levies, or charges on the sale and extraction of natural and mineral resources, including stones, gravel, sand, soil, timber, firewood, essential construction materials, slate,

and roofing stones⁵⁹. Similarly, under Sub-section (4) of Section 11, in Clause (d), Sub-clause (2), the authority is vested to collect fees and royalties related to natural resources and services, and to coordinate and regulate the same; under Sub-clause (3), the power to extract mineral resources and collect related royalties is provided. Likewise, under Clause (j), rights and duties concerning royalties derived from natural resources are conferred and assigned. Similarly, under Sub-section (4) of Section 11, in Clause (d), Sub-clause (2), the authority is vested to collect fees and royalties related to natural resources and services, and to coordinate and regulate the same; under Sub-clause (3), the power to extract mineral resources and collect related royalties is provided. Likewise, under Clause (j), rights and duties concerning royalties derived from natural resources are conferred and assigned⁶⁰. Viewed in this context, while the aforementioned provisions of the Local Governance Operation Act, 2074, confer upon local levels the authority to collect fees, charges, and royalties in relation to extraction, they concurrently impose the obligation to consider environmental aspects. Therefore, it cannot be reasonably construed that the Local Governance Operation Act grants an unfettered right to rural municipalities or municipalities to extract and export stones, gravel, and sand without regard to environmental concerns.

29. In the rejoinder submitted by the respondent Council of Ministers, reference has also been made to Section 3, Subsection (1) of the Export and Import (Control) Act, 2013. Section 3 (1) provides that the Government of Nepal may, by a notified order, prohibit the export or smuggling of any item. Subsection (2) provides that if the government deems it unnecessary to maintain the prohibition imposed under Subsection (1), it may, by providing the basis and reasons thereof, through a notified order, modify, alter, or remove such prohibition at any time. Accordingly, under this provision, the Government of Nepal can exercise necessary control over the export of riverine materials if such export leads to disorder, overexploitation, or adverse impacts on the health of humans, animals, birds, or plants. However, it must be clarified that the Export and Import (Control) Act, 2013 is an enactment concerning the export and import of “goods.” This is evident from the definition of “export and import” in Section 2 of the Act. Section 3, as cited by the respondents, similarly deals with prohibiting the export or import of any “goods,” and the term “goods” refers to products or finished products. Therefore, the Act is primarily a regulatory statute designed to control rights rather than confer them. Consequently, it cannot be interpreted that, in the absence of a notified order under this Act, the government has the unrestricted right to extract and export stones, gravel, and sand.
30. On the other hand, under Section 2 (k) of the Environment Protection Act, 2076, any development work, physical activity, that may bring about change in the existing environmental conditions or any plan, project or program which changes the land use falls within the scope of this Act. Similarly, under Section 2 (s), natural resources, any project involving physical activities or land-use changes that may affect the environmental condition requires environmental assessment in accordance with Section 3 of the Act. Further, Section

⁵⁹ Similarly, under Clause (j), Sub-clause (12) of the same Section, provision is made for the formulation of local policies, laws, and standards related to environmental protection and biodiversity, as well as for the planning, implementation, monitoring, and regulation of the same. Furthermore, Sub-clause (13) provides for the management of environmental risks at the local level. Likewise, under Clause (o), provisions are made regarding disaster management, and under Clause (p), various arrangements are made for the conservation of watersheds, wildlife, and mineral and mining resources.

⁶⁰ Further, under Clause (e) of Sub-section (4) of Section 11, provisions are also made concerning forests, woodlands, wildlife, birds, water utilization, the environment, and biological diversity.

7 provides that the environmental assessment report must be approved before proceeding, and Section 35 prescribes penalties for executing any project without an environmental assessment or contrary to the conditions specified in the approved report. Pursuant to Section 30⁶¹, any area considered extremely significant from the point of view of environmental protection or any place of historical or cultural importance may be declared as a natural heritage. Similarly, Section 10 of the Soil and Watershed Conservation Act, 2039 prohibits, without the permission of the Watershed Conservation Officer, any of the following activities on lands within a watershed area designated as susceptible to floods, landslides, soil erosion, or soil cutting, undertaking any works that interfere with the natural flow of rivers, streams, or other watercourses and excavating, removing, or transporting stones, gravel, sand, or any other type of soil.

31. Similarly, Section 19 of the Water Resources Act, 2049 provides that water resources shall not be polluted beyond the prescribed permissible limits. Likewise, Section 20 stipulates that the use of water resources must be conducted in a manner that does not cause significant adverse effects on the environment due to soil erosion, floods, landslides, or similar factors. Furthermore, Section 2 (r) of the Forest Act, 2076 defines boulder, soil, and river and mineral substances originating from forests as “forest produce,” while Section 2 (v) defines areas such as grasslands, pastures, bare hills, whether or not snow-covered, roads, ponds, lakes, wetlands, rivers, rivulet, riverine land, barren or area covered by uncultivated land, which is surrounded by, or situated within the forest as “forest areas.” Section 41 prohibits, the use of forest in a manner to change the land-use of the forest area except for projects authorized by a decision of the Government of Nepal for infrastructure development. Similarly, Section 42 (1) of the Forest Act, 2076 provides if there is no other alternative to using of forest area for the operation of a national priority project, plan of which investment is approved by the Investment Board, project of national pride and it appears from the environment examination referred to in the prevailing law that the operation of such plan does not result in significant adverse effects on the environment, the Government of Nepal may give approval for the use of national forest areas. In such cases, the Government may grant approval for the utilization of a portion of national forest for the project in accordance with the authorization provided. Similarly, the Mine and Mineral Act, 2042 defines minerals as inorganic substances with specific physical properties and chemical compositions. Section 3 provides that ownership of such minerals resides with the Government of Nepal, while Section 4 vests the Government with the exclusive power to carry out mining operations, namely exploration and extraction. Section 5 stipulates that only authorized persons may conduct such mineral operations, and Section 11 (a) further mandates that even authorized persons must carry out these operations in a manner that does not cause significant adverse environmental impacts. Taken together, these legal provisions recognize environmental pollution, environmental degradation, and changes in land use as matters of serious concern. Any development activity, physical intervention, or land-use change likely to alter the existing environmental conditions must not proceed without a duly approved Environmental Impact Assessment report. Activities involving lands prone to floods or landslides, areas susceptible to erosion or cutting, or forest lands must be approached with particular caution, and alterations to such lands are strongly discouraged. Even in the case of projects of national pride, the law mandates that

⁶¹ This provision was also present under Section 10 of the former Environment Protection Act, 2053, and in accordance with this provision, the government, on 2071/03/16, officially declared the Chure region as an Environment Protection Area.

environmental impact assessments be treated as a compulsory condition, reflecting Nepal's legal framework's commitment to balancing development with the protection of the environment.

32. In brief, while one could debate the completeness or adequacy of the existing legal framework concerning the matters raised in the present writ petition, a cursory examination of the laws discussed above indicates that these legal provisions do not permit the exploitation or plunder of natural resources under the pretext of development or commercial gain while disregarding the country's geographical, geological, and environmental sensitivities. In other words, the existing laws of Nepal are, broadly speaking, opposed to uncontrolled or self-serving exploitation of nature. Regarding riverine and mineral resources, and the extraction, use, and export of stone, gravel, and sand, the relevant policy and legal provisions, though they do not impose a complete ban on extraction, contain terminologies such as environmental impact assessment, reflecting a substantive opposition to indiscriminate exploitation. The main challenges of these legal frameworks, however, lie in their fragmented presence across multiple laws, the lack of goal-oriented coordination among different statutes, weak enforcement, redundancy, and existing legal gaps. As a result, the application of these laws has not been executed in a purpose-driven manner in accordance with policies endorsed by the Constitution. Consequently, the absence of effective coordination among responsible authorities, coupled with self-serving activities or dereliction of duty at the local level, has led to a situation where the principles of environmental sustainable development enshrined in the Constitution are not being seriously upheld, and environmental degradation cannot be prevented through governance mechanisms at the national level.
33. Having examined the existing legal and policy framework and the state of their implementation, the next issue for consideration, in the context of Nepal's federal structure, what kind of legal architecture is necessary to regulate the extraction of stone, gravel, and sand, as well as to address the impacts arising therefrom? From the rejoinders submitted by the respondents, it appears that under the Local Government Operation Act, 2074, the matter of stone, gravel, and sand extraction falls within the jurisdiction of local authorities. While preparing the list of powers of rural municipalities and municipalities under this Act, it is observed that Schedule 8 of Section 11 (2) enumerates the subjects under the exclusive powers of the local level, and Schedule 9 of Section 11 (4) sets out the subjects under the concurrent powers of the local level. As discussed above, the authority to levy fees, charges, and royalties on the sale and export of natural and mineral resources, including stone, gravel, sand, soil, timber, bamboo, thatch, slate, and building stones, has been provided under Section 11 (2) of the Act⁶². Since Section 11 of the Local Government Operation Act, 2074, is based on Schedules 8 and 9 of the Constitution, it provides a detailed list of functions that a rural municipality or municipality may exercise. This could give some the impression that any unregulated exploitation of natural resources carried out by them or with their permission is constitutionally permissible. However, it must be understood that Schedules 8 and 9 do not deal solely with such matters; they also include provisions relating to disaster management⁶³,

⁶² Further, under Section 11(4) (d) of the Local Government Operation Act, the authority to collect royalties from natural resources is also provided. Pursuant to Section 11, Schedule 8, serial number (21) of the Constitution—on which the Act is based—provides for the conservation of watersheds, wildlife, mines, and minerals, while Schedule 9, serial number (8) deals with mines and minerals, and serial number (14) deals with royalties derived from natural resources.

⁶³ Schedule 8, Item No. 20, Schedule 9 Item No. 9

environmental protection, and biodiversity⁶⁴. In reality, disaster management and environmental protection are matters that are inherently interconnected with many other provisions listed in the exclusive and concurrent lists of the federal and provincial levels. For example, under Schedule 5, the federal government's domain includes the conservation and multi-purpose use of water resources, policies and standards, large-scale central-level projects such as electricity and irrigation, mining and extraction, national and international environmental management, land-use policy, and related matters. Similarly, under Schedule 6, the province has authority over land management, national forests within the province, water use, and environmental management. Under Schedule 7, which lists concurrent powers of the federal and provincial governments, matters include inter-provincial rivers, environmental protection, biodiversity, preparedness for natural and non-natural disasters, rescue, relief, and rehabilitation, land policy, and related issues. When addressing the extraction of disputed stones, gravel, and sand, or determining where, how, and in what quantity these activities may occur, or whether such extraction may be permitted, all matters listed in the federal, provincial, and local government powers must be considered, and the legal procedure must be followed. Extraction of stone, gravel, and sand can affect land use, the environment, and biodiversity, and taking into account the provisions of these Schedules and Nepal's geographical, geological, and environmental sensitivity, it cannot be regarded as solely a matter of local government authority in accordance with the Constitution. Since stone, gravel, and sand are natural resources, merely asserting that local bodies have the authority to collect sales fees or royalties does not justify unregulated extraction, collection, sale, or removal that causes environmental harm, significant adverse effects, or destruction of ecological systems. In our federal structure, local bodies are the agents and facilitators of peace, development, and service delivery at the community level; they are not corporations for export or smuggling. They are not created to exploit the country's natural resources or cause environmental destruction, and the Constitution does not grant them such a privilege. Accordingly, considering that the Constitution also vests residual legislative powers with the federal government, the extraction, sale, distribution, and removal of stone, gravel, and sand must be controlled and regulated through proper federal-level laws and procedures to ensure compliance with the principles of environmental protection and sustainable development.

34. Finally, the question arises as to whether, in the present dispute, is there any circumstance warranting the issuance of an order in accordance with the relief sought by the petitioners? While examining this fifth question, it is observed that, in brief, the constitutional policies relating to environmental protection and development adopted by the Constitution in view of Nepal's geographical, geological, and environmental setting and sensitivity have been analyzed above under various headings. In that context, it appears necessary to address the contemporary challenges relating to development and the environment by adopting a harmonious interpretation of fundamental rights and the Directive Principles of the State, and by accepting the principle of environmentally sustainable development as a foundational principle, thereby exercising the transformative power of the Constitution. While discussing the fundamental rights and the policies and principles of the State as enshrined in the Constitution of Nepal, just as the right to live with dignity may be regarded, as the most fundamental right among fundamental rights, in view of the country's geographical, geological, and environmental sensitivity, the activities currently taking place, their impacts,

⁶⁴ Schedule 8, Item No. 10

and the potential challenges arising therefrom, it becomes imperative to accept the principle of environmentally sustainable development as the most fundamental principle among the policies and principles of the State. It is constitutionally desirable that this principle be internalized, that a balance between development and the environment be maintained without being inconsistent with it, that policies relating to the economy, industry, and commerce be formulated accordingly, and that the role of stakeholders therein be identified and ensured.

35. In the course of resolving the present dispute, an attempt has also been made to examine, in light of the principles articulated by this court, the role played thus far by the court in matters of development and environmental protection, and, in particular, how this court has viewed the issues relating to the extraction, exploitation, and export of stone, gravel, and sand. In doing so, it has been recognized that a healthy and dignified life is possible only in a clean and healthy environment; that environmental protection is not a matter of concern for a single nation alone but a shared concern and responsibility of the entire global community; and, therefore, that issues of environmental protection must be examined against the touchstone of constitutional principles such as intergenerational equity and the precautionary principle as embraced by the Constitution. It has also been recalled that, in the name of development, the issue of environmental protection cannot, in any manner, be treated as a secondary or extraneous concern. This court has clearly articulated the view that, with respect to the conservation and use of natural resources, the State bears responsibility in the capacity of a trustee; that such resources must be utilized in the public interest and in a manner that does not cause environmental degradation; and that, in determining the extent of their use, due regard must be given to regulation, environmental impact assessment, technical considerations, and intergenerational equity. Bearing these principles in mind, in the writ petition filed by Narayan Devkota⁶⁵ concerning the issue of uncontrolled exploitation in the rivers of the Terai–Madhesh, Chure, and Bhabar regions, this court had issued an order directing that, “for the time being, the extraction and export of stone, gravel, and sand be halted, and that extraction be carried out in accordance with the report of the technical committee constituted pursuant to the order of this Court, if such committee determines that further extraction of aggregates, stone, and sand from the concerned industries is feasible from technical, economic, and environmental perspectives.” However, even after the said decision, it has come to light that neither any technical committee was constituted as indicated by the judgment nor was any study conducted. Consequently, in disregard of even the orders of this court, it is observed that, at present, uncontrolled extraction, use, and export of river-based and mine-based natural resources, including stone, gravel, and sand, are taking place from various rivers across the country, including those in the Terai–Madhesh, Chure, and Bhabar regions. An examination of the policies followed by the Government in relation to the extraction, sale, distribution, and export of stone, gravel, and sand indicates that they are not, in any substantive manner, focused on curbing the presently prevailing uncontrolled extraction and export. Even the scattered provisions contained in various laws do not appear to have been effectively implemented due to a lack of proper coordination. Nor does it appear that such a serious issue has been comprehensively addressed through an integrated or umbrella legislation. A review of the existing laws and policies further reveals a prevailing understanding at the federal, provincial, and local levels that the extraction and export of

⁶⁵ Advocate Narayan Prasad Devkota vs. Office of the Prime Minister and Council of Ministers et.al., Nepal Law Magazine 2067, Decision No. 8521, pg. 2053

stone, gravel, and sand fall within the exclusive domain of local governments. Such an understanding appears erroneous and does not accord with the spirit and intent of the Constitution of Nepal. In view of the various provisions contained in Schedules 5, 6, 7, 8, and 9 of the Constitution of Nepal, and considering the principle of cooperative government adopted by the country as well as the residual powers vested in the federal government, it appears necessary to conduct extensive and objective research and to consult independent experts, with a view to enacting an umbrella legislation. Such legislation should provide that the extraction and exploitation of stone, gravel, sand, and other river-based and mine-based materials be carried out solely for the purpose of constructing and maintaining physical infrastructure, whether public or private, within the country. The exercise of the State's sovereign authority over natural resources must be carried out in the interest of the nation and its people; such exercise must also be respected by other States⁶⁶, and this must be ensured through environmental governance. In the present context, where even the reports of committees of the Federal Parliament have pointed out that lobbies relating to stone, gravel, and sand at the local level are influencing politics, failure to control this issue through law, procedure, and strong institutional mechanisms would result in river systems becoming unregulated. Consequently, Nepal would continue to suffer annual floods and landslides, causing loss of life and property; the Chure, Mahabharat, and other mountain ranges would come under severe threat of landslides and erosion; and the country's environment and ecological systems would be gravely damaged under the pressure of vested interest groups. In such circumstances, it appears imperative to ensure the protection of the rights of present and future generations, as well as the protection and respect of nature's own right to remain healthy. The exercise of the State's sovereign authority over natural resources must be carried out in the interest of the nation and its people; such exercise must also be respected by other States, and this must be ensured through environmental governance. In the present context, where even the reports of committees of the Federal Parliament have pointed out that lobbies relating to stone, gravel, and sand at the local level are influencing politics, failure to control this issue through law, procedure, and strong institutional mechanisms would result in river systems becoming unregulated. Consequently, Nepal would continue to suffer annual floods and landslides, causing loss of life and property; the Chure, Mahabharat, and other mountain ranges would come under severe threat of landslides and erosion; and the country's environment and ecological systems would be gravely damaged under the pressure of vested interest groups. In such circumstances, it appears imperative to ensure the protection of the rights of present and future generations, as well as the protection and respect of nature's own right to remain healthy.

36. Therefore, in the light of all the foregoing considerations, this court observes that, with regard to the matters mentioned in Item No. 199 of the Budget Statement for the Fiscal Year 2078/079, which the Government sought to introduce through an Ordinance, it is necessary to draw the Government's attention to the fact that the provisions of the Constitution and the prior orders of this court must be duly observed when presenting the budget. As far as Item No. 199 of the Budget Statement is concerned, it appears that the subsequent supplementary budget presented by the Government did not maintain continuity of that provision and it has therefore become inactive, and therefore, an order of certiorari to quash it need not be issued. However, in view of the analysis made in the preceding paragraphs, it is clear that, in relation

⁶⁶ Principle 2, 18 and 19 of Rio Declaration on Environment and Development, 1992.

to the exploitation of mine-based or river-based natural resources and the export of stone, gravel, sand, and the like, an order of mandamus is hereby issued in the name of the respondents directing them that no activity shall be undertaken that facilitates such extraction or export from any part of Nepal unless otherwise provided by a law enacted by the Federal Legislature in accordance with the Constitution, its spirit, and intent. Considering the country's geographical, geological, and environmental sensitivity, the administration and security agencies shall be deployed to prevent the currently ongoing export abroad, and effective arrangements shall be made for environmental protection. Further, it is observed that, due to the non-utilization of river-borne materials brought down by seasonal rivers, the river course changes and causes other damage to life and property. Technical studies, Geographic Information System (GIS) analyses, remote sensing, and imaging have clearly identified the locations and areas where, in light of the country's development needs, measures should be taken to ensure that the riverbed does not deepen and the banks are not eroded, and the river maintains relatively a stable flow. Accordingly an order of mandamus is hereby issued in the name of the respondents directing the respondents to construct or cause to cause to construct check dams in such locations and natural resources such as accumulated stone, gravel, and sand shall be used exclusively for domestic infrastructure development. Existing policies shall be reviewed to this effect, and, in the context of environmental protection, an effective mechanism staffed with skilled personnel shall be established to regulate these matters through environmental governance. It is hereby ordered to as per the particulars.

Since the present writ petition is to be issued, it is noted that, at the time of filing the writ petitions, the petitioners Shailendra Prasad Ambedkar (Reg. No. 5717), Dr. Punya Prasad Khatriwada (Reg. No. 5716), Dinesh Tripathi (Reg. No. 5719), Ram Bahadur Shahi (Reg. No. 5720), Hariram Lawaju (Reg. No. 5718), Atish Karki (Reg. No. 5721) on 2078/02/24 B.S., Bikram Nagarkoti (Reg. No. 5723) on 2078/02/25 and Dhananjay Khanal (Reg. No. 5734) on 2078/03/24 deposited a sum of NPR 5,000 (Five Thousand Rupees) as security. In accordance with Rule 15(3) of the Supreme Court (Constitutional Bench Procedure) Rules, 2072, Financial Administration Branch of this court is hereby informed to refund the amount to the petitioners, provided the petitioners pursuant to the rule submit an application thereof.....1

Pursuant to Rule 24 of the Constitutional Bench, it is hereby ordered to provide a copy of this order to the Judgment Execution Directorate 1

Provided, the concerned stakeholder request for a copy of the order, it is hereby ordered to provide a copy pursuant to the rule.....1

It is hereby ordered to provide a copy of this order to the Office of the Attorney General and to upload the order and to remove the petition from the case registry and accordingly submit to the Record Section.....1

Consenting with the above Opinion

Acting Chief Justice Deepak Kumar Karki

Justice Ishwor Prasad Khatriwada

Justice Anil Kumar Sinha

Justice Prakash Man Singh Raut

Bench Officer: Nabin Acharya

Research Assistant: Shreya Sanjel (Section Officer)/Diksha Dhital (Intern)

Dated: Year 2079 of the Month of Baisakh Date 7 Day 4

(Corresponding to Year 2022 of the Month of April Date 20 Day 4)