

# Supreme Court, Division Bench

**Hon. Justice Mr. Ishwor Prasad Khatiwada**

**Hon. Justice Mr. Anil Kumar Sinha**

## **Order**

**071-WO-0371**

### **Sub: Mandamus et.al.**

Advocate Arjun Kumar Aryal, resident of Syanjha District,  
Putali Bazaar Municipality Ward No. 12 currently residing  
at Lalitpur Sub-metropolis Ward No. 1, Kupondole  
and Others .....1 Petitioners

**vs.**

Nepal Government, Office of the Prime Minister and Council of  
Ministers, Singha Durbar, Kathmandu and Others .....1 Respondents

**071-WO-0372**

### **Case: Certiorari, Mandamus, Prohibition et.al.**

Rajya Laxmi Golcha, resident of Moran District Biratnagar  
Sub-metropolis Ward No. 3 and Others .....1 Petitioners

**vs.**

Nepal Government, Office of the Prime Minister and Council of  
Mininster, Singha Durbar and Others .....1 Respondents

**071-WO-0373**

### **Case: Mandamus**

Geeta Prasad Dahal, resident of Kavrepalanchowk District,  
Banepa Municipality Ward No. 11 and Others .....1 Petitioners

**vs.**

Nepal Government, Office of the Prime Minister and Council of Ministers, Singha Durbar and Others .....1 Respondents

The fact and order issued against the petition submitted pursuant to Article 107 (2) of the Interim Constitution, 2063 of Nepal and under the jurisdiction of this Court is as follows:

Content of writ petition no. 071-WO-0371 submitted by petitioner Advocate Arjun Kumar Aryal and Saroj Neupane reads as follows:

1. It has been informed that the Gadimai festival which is celebrated every 5 years will commence from Mangsir 11. The Gadhimai festival is a 2-3 hundred years old tradition. It is believed that a local landlord was captured by the King of Makwanpur and during his captivity, the landlord dreamt that provided a person went to Gadimai temple and offered his blood all wishes would be fulfilled and upon being relieved from captivity, the landlord proceeded to Gadimai temple wherein he punctured his body in five places and offered his blood and thereon the Gadimai festival commenced every five years. With the passage of time, the tradition of offering one's blood slowly changed wherein instead of offering one's blood, the tradition of offering innocent birds and animals commenced that not only contaminated and polluted the surrounding environment but also created possibilities of epidemic. Owing to the superstition inculcated among the general public, the tradition has been deformed, and offering and slaughtering of hundreds and thousands of animals has caused grave problems in the protection of the environment and as such an appropriate order should be issued in the names of the defendants wherein an alternate path should be sought so that people rather than offering animals should offer flowers or any other appropriate measures should be followed. Traditional Hindu principles and philosophy also considers offering of animals as a heinous crime. Owing to this traditional belief of offering animals, Gadimai is considered as one of the largest site in the world that sacrifices animals and this sends forth a negative message worldwide. Experts of India, Nepal and other countries involved in animal rights have been voicing their resentment against slaughtering of innocent animals. This tradition not only attacks the very core of traditional Hindu principles and philosophy but also tends to degrade Hindu religion. Pursuant to a writ petition filed by animal rights activists, the Indian Supreme Court had issued an interim order restricting import of animals from India to Nepal for sacrificial purposes in Gadimai. Pregnant animals and sick animals devoid of any medical examinations and water or fodder are brought in and are slaughtered in a very cruel manner which inter alia pollutes the surrounding environment. It also develops criminal mindset among women, children and the youths and has a negative impact in the society and therefore, the

petitioner requests the honorable court to issue an order of mandamus in the name of the defendants restricting them from offering thousands of animals in the name of sacrifice.

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

2. The tradition of offering buffaloes and other animals every five years in the month of Mangsir at Gadimai located at Bariyarpur of Bara district is a tradition that has been practiced since 260 years ago. Innocent animals brought from Nepal and neighboring India are offered at Gadimai temple. During this festival, resources and means are provided by the various organs of the State. The local administration offers assistance during operation of the festival and also provides security during the period of the festival. The organizers have also made provisions to offer thousands of animals and pursuant to the plan and in coordination with the local administration preparations deemed necessary for the festival are being carried out.

Various national and international organizations and individuals have been raising their voices against slaughtering of animals. This tradition has curtailed the rights of citizens to live in a free and healthy environment. In the absence of any alternative legal remedy to address and protect the rights of the citizens, the petitioner has come before the honorable court with the public interest litigation pursuant to Article 32 and 107(2) of the Constitution has applied the extra-ordinary jurisdiction of the Honorable Court. The petitioner states that offering and slaughtering of animals at Gadhimai during the month of Mangsir should be prohibited.

Article 16(1) of the Interim Constitution of Nepal, 2063 prescribes that every citizen shall have the right to live in a clean and healthy environment and this is a constitutional provision. Section 2(a) of the Environment Protection Act, 2053 (1997) defines environment as the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and their components. Likewise, Section 2(b) defines pollution as the activities that significantly degrade, damage the environment or harm on the beneficial or useful purpose of the environment by changing the environment, directly or indirectly. The remains and carcass of animals offered not only pollutes the area around Gadhimai but also directly impacts the temple and the religious and social premises around the temple. Although, fowls and animals offered in Gadhimai are taken by the worshippers, the dead fowls and animals has a negative impact in the environment. According to prevailing tradition, water buffaloes offered at the temple are taken by the Dalits only after twenty-four hours. Where thousands of animals are slaughtered, large quantity of blood is accumulated

and other fecal matters and waste is generated from the dead animals and where such matters are accumulated for twenty-four hours it would inter alia create an epidemic situation. Provided, the Gadhimai area is not made free from animal slaughter, it will have an adverse effect to the rights prescribed under Article 16(1) of the Interim Constitution of Nepal and as such those activities should be prohibited.

Animal Health and Livestock Service Act, 2055 (1999) prescribes provision for quarantine. However, examination of animals pursuant to the Act is never followed during the Gadhimai festival. Offering and sacrifices of animals at Gadhimai tends to cause negative impact on the psychology of the children. Article 17 on the Convention on the Rights of the Child, 1989 stipulates that activities detrimental to the physical and mental health of the child should not be done. Pursuant to Section 9 of the Treaty Act, 2047, Nepal has to abide by the provision prescribed in the Convention.

Pursuant to the provisions prescribed in the Environment Protection Act, 2055, Nepal Treaty Act, 2047, Animal Slaughter House and Meat Inspection Act, 2055 (1999), Epidemic Act, 2020, Animal Health and Livestock Service Act, 2055, it is evident that activities relating to polluting the environment and activities causing adverse effect to public health by way of slaughtering the animals should not be performed. The act of offering animals is contrary to the constitutional rights prescribed under Article 16(1), 23(1) (2), 29(2) of the Interim Constitution of Nepal, 2063 and in the absence of any effective alternative legal remedy, the petitioner pursuant to Article 32 and 107 (2) of the Interim Constitution of Nepal has brought this public interest litigation before the honorable court. The petitioner through the writ petition requests the honorable court to issue an order of mandamus including any other appropriate order pursuant to Article 107(2) restraining the defendants from causing any violent acts relating to the slaughter of animals in Gadimai.

Content of writ petition no. 071-WO-0373 submitted by petitioner Gita Prasad Dahal and Advocate Ram Krishna Banjara reads as follows:

From among the petitioners, I Gita Prasad Dahal is a Nepali citizen and for the past 10 years I have been involved in the protection of domesticated animals and birds and have been involved in the development of this sector. From among the petitioners, I Ram Krishna Banjara is a student of law and I have been working as an advocate for the past 7 years. Every five years a big festival takes place at Gadhimai temple located in Ward No. 2 of Bariyar of Bara district. The petitioners stated that during the festival, five kinds of animals and birds such as goats, buffaloes, ducks, hens and rats are offered to the temple. With sacrifice of the animals, some newspaper have

reported that the adjoining areas of the temple had become polluted five years ago by the slaughtering of animals and fowls (in particular by calves and buffaloes). Because of the sacrifices carried out at Gadhmai, many national and international media channels have been reporting Nepal as a country having the largest animal sacrifices in the world. For the past 6 months, various national and international media and animal right activists have been voicing their concern in this regard. The Indian Supreme Court in *Gauri Maulekhi vs. UOI and et al* passed an interim order directing the Union of India to prevent the illegal movement of animals other than the licensed one across the border from Indian to Nepal, to be sacrificed at the Gadhimai festival. The interim order reflects the Supreme Court's judicial activism and awareness. Opinions and news on animal sacrifices have been aired through various media and the petitioners in this regard had organized various programs and had requested the concerned Bodies of Nepal Government to reconsider the system of animal sacrifice. On 2071/7/16 (corresponding to November 2, 2014) the government with the purpose of selling the product of the sacrificed animals had opened a tender for approximately 2 crores 67 lakhs and had even nominated a contractor to export meat to China. Likewise, the adjoining land of Gadhimai temple has been designated as a slaughter house and the same has been depicted through various newspapers and magazines. The petitioners further state that they do not as of this date have any information as to whether or not the concerned authorities have any mechanism and programs for medical examination of animals brought for sacrifice and as to whether or not the quality of the meat of sacrificed animals are examined. As to whether or not animals have been quarantined have not been made public. Upon sacrifice of animals, the meat of the animals is sold to the general public that has an adverse effect on human health. The petitioners further state that the defendant have not been able to substantiate as to whether or not the meat sold is hygienic and consumable and in such instances the general public have access to unhygienic and contaminated meat. Pursuant to Food Act, 2023 (1967) and Animal Health and Livestock Services Act, it is the legal responsibility of the Government to declare that the food stuffs are edible and consumable however, the defendants have failed to fulfill their responsibility. The petitioners pursuant to Article 32 and 107 (2) of the Interim Constitution of Nepal, have requested the honorable court to issue an order of mandamus and any other appropriate order in the name of the defendants. The petitioners have requested the court to issue the following orders in the name of the defendants: Quarantining of sacrificial animals, proper management of sacrificed animals, prevention from causing any inhuman behavior towards the animals, constitution of a Committee pursuant to Section 27 of Animal Health and Livestock Service Act, proper management of meat products, prescribing the quality of meat, and to conduct sacrifice symbolically and implementation of Animal Slaughterhouse and Meat Inspection Act, 2053.

**Content of show cause notice and interim order:**

4. An interim order by a Single Bench of this Court had been issued on 2071/8/8 (corresponding to November 24, 2014). The order stipulates the following: In lieu of the petition submitted before the Bench, the Bench hereby directs the defendants to submit their rejoinder. The petitioners through their writ petitions have raised the issue of prohibition against slaughtering of animals that are detrimental to human health, development of human health and environment. They have also sought for prohibition of inhumane behavior and treatment towards animals and consumption of edible and healthy meat and seek for prohibition of transportation of sick and ailing animals and smuggling of animals. The issues that have been raised by the petitioners have been addressed by the Animal Health and Livestock Service Act, 2055, Animal Slaughterhouse and Meat Inspection Act, 2055, Epidemic Act, 2020 and Environment Protection Act, 2053. Where the law has made provisions in this regard, the court rather than issuing additional orders, it is necessary that the local bodies, organizations and the general public and health, administration and police service should all be pro-active to see that acts contrary to the law is not committed and taking cognizance of the Act and law and for proper management of Gadhimai festival and in order to draw the attention of the defendants and interim order is hereby issued in the name of the defendants.

**Rejoinder Submitted by Nepal Government, Prime Minister and Office of Council of Ministers:**

5. The writ petitioners through their writ petitions have failed to state as to what actions, proceedings or decisions made by Nepal Government, Prime Minister and Office of Council of Ministers has infringed their constitutional and legal rights. The petitioners have no locus standi to make this office a defendant for actions and decisions made by other bodies and officials established pursuant to the prevailing laws. Nepal Government, Prime Minister and Office of the Council of Ministers is committed towards the protection and promotion of rights of citizens enshrined in the Constitution and law and is also committed towards abiding by the Constitution and law and turning the concept of legal rule a reality. Right to religion is an individual's fundamental and human right. Pursuant to the prevailing social and cultural norms the Constitution entitles and guarantees each individual the right to profess and practice one's religion. The festival organized in Gadhimai every five years is a festival that is witnessed not only by Nepalese but by the neighboring country India and is a place of religious faith and belief for Hindu followers. Every five-years when the festival is being held, thousands of followers who have faith and devotion towards Gadhimai throng the place and make offerings in lieu of their wishes being fulfilled and also come to the temple to make other offerings and vows. Taking cognizance of the right to religion and in order to prevent any negative impact on human health and environment, and in

order to discourage sacrifice and slaughter of animals, peoples' awareness program with the assistance of the local people has been conducted by the government. The petitioners have raised issues such as inhuman and cruel treatment towards animals, consumption of inedible meat, prohibition against export of sick animals and smuggling of animals. Nepal government fully agrees to the issues raised by the petitioners. In this regard, Animal Health and Livestock Service Act, 2055, Animal Slaughterhouse and Meat Inspection Act, 2055, Epidemic Act, 2020 and Environment Protection Act, 2053 has stipulated various provisions and the Government is committed towards implementation those provisions prescribed in those Acts. Performing rituals, sacrifice of animals in the temple falls within the ambit of religious freedom and since the prevailing laws do not prohibit animal sacrifice, it would not be proper for Nepal government to intervene in this matter. With the conclusion of Gadhimai, it is not necessary for the court to issue any additional orders and hence the writ petition should be dismissed.

### **Rejoinder Submitted by Ministry of Science, Technology and Environment:**

6. The writ petitioners through their writ petitions have failed to state as to what actions, proceedings or decisions made by this Ministry has infringed their rights or the general public's constitutional and legal rights. Likewise, the claim made by the petitioners regarding the actions and proceedings does not fall within the work, duties and jurisdiction of this Ministry and since there is no reason to make this Ministry a defendant, the writ petition should out rightly be quashed. With the effective implementation of the legal provisions prescribed under Food Act, 2023 and Animal Health and Livestock Service Act, 2055, the demands sought by the petitioners could be effectuated through proper management and where alternate measures exists, the petitioners rather than following those alternate measures the petitioners pursuant to Article 107 (2) of the Interim Constitution of Nepal have entered the jurisdiction of the court and hence the writ petition should be quashed.

### **Rejoinder Submitted by Ministry of Culture, Tourism and Civil Aviation:**

7. Sacrifice of animals every five years is a practice practiced at Gadhimai temple. In the context, where animal sacrifice is not prohibited by the prevailing law, it is important raise public awareness so as to discourage such practices and to mitigate and properly manage such practices. The Ministry in coordination with various governmental and non-governmental organizations is making an effort towards proper management of animal sacrifice. Where the petitioners have failed to state as to how their rights have been infringed, the writ petition should be dismissed.

### **Rejoinder Submitted by Ministry of Home:**

8. Provided, any social organization and Bodies seek for security, the Ministry of Home shall provide security to that extent. The petitioners have failed to state as to how their rights have been curtailed by the Ministry. Since, the petitioners have no legal basis for making the Ministry a respondent the writ petition should be quashed.

### **Rejoinder Submitted by Ministry of Home and Population:**

9. Pursuant to the Interim Constitution of Nepal, it is the right of every Nepali to live in a clean and healthy environment. The Constitution also guarantees the right to education and culture, religion and also guarantees the right of child and entitles every Nepali to exercise rights prescribed and protected by national and international laws and there can be no difference of opinion in this regard. Examination of health of animals, prevention of cruel behavior towards animals and prevention of pollution of environment owing to the sacrifice of animals does not fall within the purview and jurisdiction of this Ministry. Since, the issues raised by the petitioners will be addressed by the concerned Ministry or Body, there is no basis and rationality for making this Ministry a defendant and hence the writ petition should be dismissed.

### **Rejoinder Submitted by Ministry of Agriculture and Development:**

10. The Food Act, 2023 has prescribed for a Foodstuff Examination and Quality Control Committee and the purpose of the Committee is to control any person from producing contaminated foodstuff or sub-standard foodstuff, selling, distribution or export and also prescribes the standard of foodstuff. The respondents further state that the Department of Food Technology and Quality Control under this Ministry and its subordinate offices are very active with regards to quality of foodstuff. The petitioners have failed to state as to what kind of damages have they incurred by the action of the Ministry and as such have made the Ministry a defendant without any rhyme or reason. The respondent further states that the Ministry pursuant to Section 5 of the Animal Health and Livestock Services Act, 2055 (1999), has from time to time appointed a quarantine officer and any importer importing any animal product or materials produced through such animals are quarantined for a specified period and are inspected from time to time. Animal Slaughterhouse and Meat Inspection Act 2055 (1999), also prescribes for appointment of meat inspector and prescribes for examination of animals prior to it being slaughtered and the legal provisions prescribed in the Act are being implemented. The Ministry believes that animals offered for sacrifice in religions sites and temples are of sound health. The Ministry states that it would take legal action against persons provided it is proved that unhealthy or ailing animal has been sacrificed. The Ministry states that the writ petitioner has raised imaginative issues and has overlooked the



activities carried out by Temple Operation and Development Committee and hence the writ petition should be quashed.

### **Rejoinder Submitted by Central Animal Quarantine Office:**

11. The rejoinder submitted by Central Animal Quarantine Office reads as follows: Pursuant to Section 6 and 7 of Animal Health and Livestock Service Act, 2055 (1999), animals brought for sacrificial purpose at Gadhimai temple are to be quarantined and that the animals are sacrificed only upon fulfilling the procedures relating to certification of quarantine and for the purpose of quarantining Nepal government has set up an animal quarantine office at Birgunj and similarly an animal quarantine check-post has been set up at Matiarwa of Bara district and both are functional. Department of Animal Service and its subordinates Bodies are working relentlessly towards preventing inhuman treatment towards animals. Pursuant to legal provisions prescribed under Section 7 of the Food Act, 2023 (1963) and Environment Protection Act, 2053, meat products left by worshippers are properly managed whereby pollution to the environment is minimized and hence the respondent requests the writ petition filed by the petitioner to be quashed.

### **Rejoinder Submitted by District Administration Office, Bara:**

12. Rejoinder submitted by District Administration Office, Bara reads as follows: Pursuant to the prevailing Nepal law and rules, the District Administration Office is primarily concerned with management of security during the Gadhimai festival and is focused towards maintaining peace and in this regard coordinates with other concerned Bodies to provide security to the worshippers and calls meeting of security bodies and provides necessary directives. Likewise, in order to properly and efficiently manage the festival and sacrifices carried out therein, the District Administration Office conducts regular monitoring and inspection of the site and also manages the animal slaughter house with the available resources. The District Administration Office in coordination with the priests of Gadhimai temple, Gadhimai Festival Committee, District Administration Office, Bara, Armed Police Force and other concerned Bodies holds periodic discussions and consultations and in order to prevent any unnecessary incidents occurring therein an area of three kilometers around the temple is declared as prohibited zone where selling, distribution and consumption of alcohol is strictly prohibited. Management of Gadhimai festival, security to the worshippers, clean environment, religious and social harmony are issues that are taken into consideration and hence the festival and animal sacrifices are properly managed. The festival has been conducted in a very peaceful manner. Sacrifice of animals is a tradition that has been in practice from a long time and since it is not possible to prevent sacrifice of animals, the writ petition should be dismissed.

### **Rejoinder Submitted by Gadhimai Festival Organizing Committee and Gadhimai Temple Management Committee:**

14. Rejoinder submitted by the respondent states the following: Gadhimai temple holds an important place and is not only famous in Nepal but it is also recognized at the international level and is a religious site that is revered by all. This temple is considered to be a *Devi* (God of Power) and since *devi* holds certain powers, offering of animals to the temple is paramount. From the Vedic period, five kinds of sacrifices are made in this temple. Thousands of worshippers from and outside Nepal throng the temple during the festival. Owing to the influx of internal and external tourists, the festival has been providing considerable support towards development of tourism. Subject to religious belief, animal sacrifices are carried out and provided any prohibition towards such practices may result in religious disturbances and would be considered a direct intervention on the religion and as such the law itself has provided concession to the religious practice that has been practiced from time immemorial. Section 1 under the Chapter of Adal of the Muluki Ain provides for imprisonment for anyone who attempts to undermine any religious place or religious function. For the proper management of sacrifices made at the temple, for the preservation of the temple, its operation, development and promotion of tourism Gadhimai Temple Operation and Development Committee was formed on February 27, 2004. The Committee from its very inception has been managing the sacrifices and offering made at the temple and has also been properly overseeing and managing the health of the local people and the meat left by the worshippers. As of date, no adverse effect has been made to the environment by the sacrifices made at the temple and likewise, no epidemic has spread in the area owing to such sacrifices. The petitioners claim that the environment has been polluted and there has been an outbreak of epidemic owing to such sacrifices but the petitioners have not been able to substantiate their claim. The petitioners vide their petition claim that pregnant animals and other animals have been sacrificed without any medical examinations and that the animals have been denied any water and fodder and have been treated very inhumanly and that the environment has been polluted which inter alia has had a negative impact on the society. However, the petitioners have not been able to substantiate their claims. Animals to be sacrificed at Gadhimai are treated humanely. Therefore, since there is not an iota of truth in the issues raised by the petitioners and where the Committee has been properly organizing the festival and has given due cognizance to management of sacrifices, the writ petition should be out rightly quashed.
  
15. Village Development Committee Office, Bariyarpur, Bara had failed to submit its rejoinder and the period for submission of the rejoinder had lapsed.

**Deliberations made by Learned Advocates:**

16. Learned advocate Ram Krishna Banjara, Mr. Hari Phyuwal and Mr. Kedar Dahal on behalf of the petitioners stated the following: that there should be a social intra-relationship between human beings and animals. They further state that the environment has been polluted and that there has been outbreak of diseases owing to the sacrifices of thousands of animals and fowls during Gadhimai festival. They state that it is a deformed practice and that owing to superstitious belief, Gadhimai has been identified as one of the biggest sacrificial places in the world and this inter alia sends forth a negative message worldwide. They contend that pregnant animals and other animals brought for sacrifice are inhumanly treated and are not medically examined and are deprived of water and fodder and are cruelly sacrificed. They state that animals are not only brought from Nepal but are also brought from neighboring country India and are cruelly sacrificed. Various Bodies of the State provide resources during the festival. Although various national and international organizations and individuals have been raising their voice against such sacrifice nothing has been done to control it. The carcass of animals not only pollutes the area around Gadhimai temple but also has an effect on its neighboring religious areas and society at large. The sacrifice made at the premises of Gadhimai temple has an adverse effect on the environment and there is possibility of outbreak of epidemic in the area. Although, there is a provision of quarantining the animal under Animal Health and Livestock Services Act, 2055 (1999), this provision prescribed in the law is not followed. The petitioners further state that they are unaware as to whether or not any mechanism and programs exist where the animals brought for sacrifice are medically examined, as to whether or not the meat of the animal sacrificed is inspected and as to whether or not the meat is tested for its quality. Inhuman treatment is meted out to the animals. Peoples' fundamental rights have been breached owing to the activities carried out at Gadhimai festival. The petitioners further stated that an order of mandamus should be issued in the name of the defendants directing them to immediately constitute a Committee pursuant to Section 27 of the Animal Health and Livestock Services Act, 2055 (1999), to properly manage animal related materials, to prescribe the standard of meat, to symbolically practice animal sacrifice and to implement Animal Slaughterhouse and Meat Inspection Act, 2053 (1997).
  
17. Joint Attorney Mr. Gita Prasad Timalsena on behalf of various Bodies of respondent Nepal government stated the following: Right to religion is an individual's fundamental and human right. The Constitution has guaranteed every person to profess and practice his/her religion pursuant to his/her social and cultural tradition and norms and also protects these rights. The festival organized in Gadhimai is not only thronged by Nepalese but also by Hindus from neighboring India who has faith and belief in the temple. The petitioners have raised issues such as animals are being inhumanly treated,

that only edible meat should be consumed, and that sick and ailing animals should not be imported and smuggled. The issues raised by the petitioners are addressed through the Animal Health and Livestock Services Act, 2055 (1999), Animal Slaughterhouse and Meat Inspection Act, 2055 (1999), Epidemic Act, 2020, and Environment Protection Act, 2053. The government has from time to time appointed quarantine officer and animal products or produce made from animals imported by importers are quarantined and there is provision for its inspection. The practice of offering sacrifice at the temple is an act that falls under religious freedom and where the prevailing law does not prohibit the practice of animal sacrifice, the government cannot intervene in this matter. Where the rights of the petitioners have not been breached, the writ petition should be dismissed.

18. Learned advocate Mr. Arun Gyawali and learned advocate Mr. Dilli Prasad Neupane on behalf of Gadhimai Festival Organizing Committee and Gadhimai Temple Management Committee pleaded as follows: That the petitioners primarily do not have any locus standi in filing public interest litigation in this matter. That the festival has been contributing to the development of tourism. Acts relating to proper management of sacrifices of animals, preservation of the temple its subsequent operation, development, promotion of tourism is being efficiently managed and carried out. They further stated that sacrifices and offerings made at the temple, health of the local people, and meat left by the worshippers at the temple are properly managed. Sacrifices made at Gadhimai temple have not caused any adverse effect to the environment and there is no outbreak of diseases in the area. They further state that although the petitioners have stated that the festival has caused adverse impact to the environment and possibility of outbreak of diseases however, they have not been able to substantiate their claims. The petitioners' claim that pregnant animals and other animals are treated cruelly and medical examination of ailing animals is not carried out and that the animals are denied of any water or fodder. The claim held by the petitioners does not hold an iota of truth and therefore, the writ petition should be quashed.

### **Issues to be decided:**

19. The Bench has perused the case file of the writ petition submitted before this Bench pursuant to the daily cause list. Taking cognizance of the contents of the writ petition, rejoinder and pleadings of the learned advocates, the Bench hereby needs to render its decision of the following issues:
  1. As to whether or not the petitioners have a locus standi to file public interest litigation in the subject matter?

2. As to whether or not an order to ban or close the practice of sacrifice at Gadhimai temple be issued? What kind of provisions need to be in place in this regard?
3. As to whether or not a ban should be imposed to prevent the animals and fowls from being treated inhumanly and as to whether or not an order to constitute a Committee pursuant to Section 27 of the Animal Health and Livestock Services Act, 2055 (1999) should be issued?
4. As to whether or not an order to issue certification of quarantine for animals brought for sacrifice at Gadhimai festival should be issued?
5. As to whether or not an order should be issued for proper management of meat of sacrificed animals and fowls, as to whether or not an order to test, control and determine the quality of meat and as to whether or not an order to control the pollution of environment should be issued?
6. As to whether or not the order of certiorari, mandamus and any other appropriate orders sought by the petitioners should be issued?

### **Basis and Ground for Issuance of Order and Judgment:**

20. Primarily, the Bench hereby deems it appropriate to decide as to whether or not the petitioners have the locus standi to file public interest litigation, a question that was raised by the respondents learned advocates. The writ petition has been filed pursuant to Article 107 (2) of the Interim Constitution of Nepal. This issue is not the first issue relating to public interest. This court in the context of Article 88 (2) of the 2047 Constitution has entertained various disputes and in the process of dispensing disputes, the court has propounded various principles relating to public interest. Modern jurisprudence relating to public interest commenced with the interpretation made by this court against a writ petition filed by Advocate Radheshyam Adhikari regarding nomination of ambassadors.<sup>1</sup> While resolving various disputes, the jurisdiction relating to public interest, its purpose, objective, limitation or boundaries have been extensively discussed. The provisions prescribed under Article 88 (2) of Constitution of Nepal, 2047, Article 107 (2) of the Interim Constitution of Nepal, 2063 and Article 133 (2) of the Constitution of Nepal 2072 provides equal recognition and philosophy regarding public interest disputes and therefore, pursuant to previous precedents propounded by this court, the court deems it appropriate to resolve the issue relating to locus standi.
21. Public right or public dispute is not limited to personal right of any particular person or persons but rather it is a dispute relating to the collective right

<sup>1</sup> Advocate Radheshyam Adhikari vs. His Majesty's Government, Secretariat Counsel of Ministers et al. Nepal Law Magazine 2048, Decision Number 4430, page 810

or concerns of the general public or particular community.<sup>2</sup> Provided Nepal government or any public Body or officer does not perform any work pursuant to the Constitution or law or performs any work not to be done whereby such action causes adverse effect to the rights and interests of the general public, then such matters are of public interest or concern. As to whether or not a matter is "public" is not determined on the basis of head counts. Provided, the issue represents the rights and interests of the general public, then such an issue can be deemed to be of public interest. Pursuant to the nature or characteristic of the dispute, the dispute can be differentiated as public or personal dispute. Generally, issues relating to security of the country, governance, social harmony, education of the general public, health and morality, economic condition of the country, matters relating to culture and religion, social justice and environmental justice maybe pertaining to the context prevailing therein could be of public interest. In fact, it is not possible to list the areas of public interest. Issue of public interest is resolved on a case to case basis. However, public interest disputes should be resolved pursuant to the Constitution or pursuant to the rights guaranteed by the laws.

22. Public interest or matters relating to public interest could be various. However, all matters or concerns may not be of public concerns that need be dispensed judicially. Provided, any issue that is related to rights and interest guaranteed by the Constitution or law, then such issues can be considered as public interest. Public interest cannot be entertained to satisfy an individual's intellectual curiosity or concerns. Where a dispute cannot be settled judicially or provided any issues relating to social, economic, political, religion, intellectual, moral or any other issues cannot take the form of public interest merely because the general public has an interest to it. One has to cautiously exercise one's judicious mind to find as to whether or not an issue is justiciable. Concerns and interests of the general public can be various. Many errors may have been committed by public institutions or officials. It would not be proper nor would it be possible to provide justice through public interest litigation. Pursuant to the rights guaranteed by the Constitution or the law, the court shall look into the nature of the judicial works and its limitations and shall also look into the public relations of the dispute therein and then only shall a court intervene in such matters.
23. The question of locus-standi arises in any dispute. The general principle of locus-standi is that a person who has a right vested in him has the right to submit a claim. With the development of the concept of public interest litigation, the ground and limitation of locus-standi in public interest litigation has been expanded. In many instances, public interest litigation

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<sup>2</sup> Ibid

is also termed as voice of the voiceless. Public interest has proved to be a boon for the protection of the rights and interest or concerns of those class and community who are socially and economically backward. However, this does not signify that anyone can file a complaint or writ petition in any public interest matters. There has to be a meaningful relation or substantial interest between the disputed matter and the petitioner or the complainant and the petitioner should satisfy the court that he/she can represent the case in a proper manner. This court in a writ petition filed by Radheshyam Adhikari stated the following: "Provided, anybody is allowed to enter the extraordinary jurisdiction of this court in any public interest litigation or matters therein, the court would be flooded with the writ petition which would have an impact on the competency and efficiency of this court and the exercise of the constitutional provision would fail. That is not the intention of the Constitution." Pursuant to the concept of public interest litigation and the precedents propounded by this court in various issues, there is a meaningful relation and substantial interest between the petitioner and the dispute and in order to exercise the rights guaranteed by the Constitution or the law the issue being justiciable and hence the issue can be accepted as public interest. While taking cognizance of the concept of public interest disputes and the precedents propounded by this court in various disputes, there has to be a meaningful relationship between the writ petitioner and the disputed matter and that the matter should be competent for judicial dispensation and where such conditions exist, the petitioner can exercise his right.

24. Pursuant to the above-mentioned conceptual background, it is for the court to decide as to whether or not the petitioners have the locus-standi to submit public interest litigation. Looking at the disputed matter, the petitioners principally raise the issue of animal sacrifice in Nepali society and in particular at Gadhimai festival, they also raise many superstitious beliefs related with this animal sacrifice, inhuman, cruel treatment meted out to the animals and negative impact to the environment and public health due to such sacrifices. They also raise issues relating to quarantine of birds and animals imported from abroad and the possibility of outbreak of epidemic. The subject matters raised therein are by nature and ipso facto issues relating to public interest. Many superstitions exercised by Hindu followers is a matter of concern for Hindu followers who are the citizens of this country; environmental problems arising due to sacrifice of birds and animals and its impact on public health is a matter of concern for all conscious citizens. It would not be proper to state that the inhuman and cruel treatment meted out to animals and birds transported from different parts of the country is a matter of concern only for the local people residing around Gadhimai. Issues regarding non-implementation of the Act promulgated by the Legislature 17 years ago cannot be deemed to be a matter of personal interest and concern. The above matters are rights related to life, right to religious freedom, right to clean environment, right relating to health, right relating to food and right

relating to consumers and is a matter relating to proper implementation of those rights. The present Constitution and the previous Interim Constitution of Nepal, 2063 envisages of a well-fare state and this matter is related in the Directive Principles and Policy of the State. The writ petitioners are former Parliamentarians, advocates and social activists who are involved in the area of animal welfare. As such they cannot be deemed to be incompetent to represent the concerns and interest of the general public. Therefore, the court hereby deems that the petitioners have the locus-standi to present the writ petition in the form of public interest litigation.

25. Another writ petitioner Rajya Laxmi Golcha vide her writ petition 071-WO-0372 request the court to issue an order to prevent or prohibit the practice of animal sacrifice at Gadhimai temple. As to whether or not an such an order should be issued, it is necessary for the Bench to dwell on some religious, cultural and social aspects. The practice of animal sacrifice is related to the religious belief of many people. This practice is also held to be culturally important for some people. One class of people who practice Hindu religion gives importance to the practice of animal sacrifice and follows this practice. This in fact is a social reality and one class or group of Hindu society follow this practice with full fervor. The practice of animal sacrifice is maintained in the Nepali society and the practice of animal sacrifice is regularly followed during many ceremonies and festivals in various temples. This is the reality of our society. It is therefore, expedient to discuss as to whether or not it is appropriate to give continuity to this social reality and the context that lies therein.
26. The present period is a period of science and awareness. The modern era does not give due recognition to superstitious and stereotypical tradition. There are many examples where various illogical inhuman customs and traditions that were a barrier to the development of a progressive society have been abandoned. If we fail to abandon matters that are inconsistent to changes in the society, then we would not be able to reach our destination as expected. In order to establish new principles, old principles have to be replaced. If we are to give due recognition to the old culture, tradition and customs, modern change in the society is not possible. In this context, it is relevant to cite the words of Poet Laxmi Prasad Devkota. In his words, he states “मान्छे ले कति के गर्यो, पिई सक्यो ब्रह्माण्ड नै तनतनी; हाम्रा बाहुन छामी मख्खा छ अझै टुप्पी, जनै, कन्दनी” This statement of Poet Devkota carries a deep and strong message regarding changes in the society. Provided, what we have been doing from the past is to be considered appropriate and irrevocable, then we cannot anticipate a progressive change in the society. We should be able to abandon wrong things and take and accept the right ones. This is one principle in human development. Therefore, the practice of animal sacrifice should also be looked from this aspect.



27. In the said context it is not important nor is it possible to analyse the religious *shastras* (religious text books). It is not appropriate to debate on religious principles. These are issues to be settled by people who are knowledgeable in the religious *shastras*, the Pundits. In fact, religious principles or determining the basis of religious principles does not fall within the ambit of the court. However, since the writ petitioners have raised issues relating to religious principles, belief and superstitions and where the respondents have raised issues relating to religious freedom and have put forward the relevance of animal sacrifice, religious matters have been attached with this dispute and hence for the settlement of the dispute, it is necessary for this court to concisely or symbolically state some matters relating to religion.
28. If we are to peruse through the religious books of Hindu religion, non-violence has been accepted as the mainstream. Through the study of Ved, Upanishad, Puran, Ramayan, Mahabharat, Gita etc. the gods who were endowed with godly features and the sages who were considered to be respectable people never ever practiced animal sacrifice. The religious books have conveyed a message that it is human duty to protect the lives of living beings. Ram or Krishna who were respected by the Hindus did not practice animal sacrifice nor did they preach about animal sacrifice. Even sages and hermits while performing rituals do not talk about animal sacrifice and there is no religious evidence to prove that animal was sacrificed during such rituals. On the contrary, Ravan or Kansa who possessed demonic nature not only practiced animal sacrifice but also practiced human sacrifice. If we are to talk about religion, we consider Ram, Krishna etc. as our gods and not Ravan or Kansa. We follow and are guided by the characters of the people whom we worship. Apart from that, we do not follow nor do we accept the character of people that we consider evil. Belief and practice should not be on the opposite. Acts such as murder, violence are of demonic nature. Therefore, it would not be logical and proper to connect animal sacrifice with religion. The Hindu religion has given special importance to non-violence. For people who follow the path of non-violence, the practice of animal sacrifice is very torturous and painful for them. This pain is not only connected with our religion. Animal sacrifice is connected for maintaining social order and harmony.
29. Many people believe that animal sacrifice is carried out to appease Goddess Bhagwati. The respondent's rejoinder is based on this fact. Many are of the belief that animal sacrifice redeems the animals and frees them from their present state. According to the religious *shastras*, Goddess Bhagwati is considered as "*Jagat Janani*". Janani means mother. According to the religious principles, Goddess Bhagwati is considered as a mother of all living beings. A mother will have undying and unfathomable love and compassion towards her children. How can one sacrifice one's child in the name of the mother to appease and satisfy her? This is a matter where logical conclusion is difficult

to reach. Some opine that animal sacrifice is done in order to attain power. In reality, those people who do not have any interest in animal sacrifice are in fact the most powerful and have been running the state and country. On the contrary, there are many examples in our society where people reveling in animal sacrifice are also seen to be weak and feeble. An individual's capacity, competency, effort, sacrifice, will power are matters that determine his/her capacity to attain power. Stereotypical practices do not contribute to the progressive change in the society. It is not appropriate to favor superstitious practices by recognizing superstitious religious beliefs. It is important that there should be social awareness in this regard.

30. Every religion has a core value and principle which emphasizes on maintaining compassion, benevolence and friendliness with every living being. Sacrifice of thousands of animals in the name of religion or tradition is not palatable to the modern civilized society. This practice entails to bring additional deformities. We have heard of human sacrifice being practiced and this is the ultimate deformed practice which is not only deplorable but also against humanity. There is one group of people prevalent in our society, who on the pretext on animal sacrifice wants to disrupt the Hindu religion and culture. Religion and culture should not be understood as an agent of violence and neither would it be appropriate to advocate in this regard. On the grounds of superstition and stereotypical issues, it would not be appropriate to cause encumbrance to the progressive change in the society. Animal sacrifice does not fall within the mainstream of modern civilization of the twenty-first century. Therefore, it is imperative to control, stop or prohibit the practice of animal sacrifice.
31. Nepal is a holy land for many sages, hermits and learned people. It is the land of Janak. Nepal is also the land of Sita and Gautam Buddha. "Non-violence is the ultimate religion" and our social, religious and moral values are guided by this principle. Our religious and social values are based and grounded on compassion, benevolence and friendliness. In fact we should be sacrificing (abandoning) the demonic characters such as lust, anger, greed, infatuation and jealousy. It is not appropriate to consider that we are practicing our religion by sacrificing thousands of innocent animals. The holy land of Nepal is being picturized before the world as a country that has maximum number of animal sacrifices. This is something that a modern society should not be proud of.
32. Animal sacrifice should also be examined through an environmental lens. The world is a common habitat not only for human beings but also for animals, birds, aquatic animals and vegetation. Provided, if we were to look through the human lens and pursuant to human interest, preservation of the environment is an important part of human health and happiness. Were the eco-system to be dis-balanced it would not only be painful to the lives of the human beings but would also be very arduous. Where thousands of

animals are sacrificed only at Gadhimai festival, then how many animals must have been sacrificed in all the temples in Nepal? Although no exact data is available, we can easily determine that this number is humongous and frightful. This has a negative impact on the eco-system. Provided, this practice is to be continued, it would not be beneficial to the human beings and any living animals in the world.

33. It is now relevant for the Bench to consider as to whether or not it is appropriate to immediately issue an order banning the animal sacrifice at Gadhimai temple? In this respect, due cognizance should also be given to the social context or social realities which are some of the special features attached with this dispute. We have unaccountable number of temples and shrines and we can easily assume that thousands of animal are sacrificed daily. From among these temples, Gadhimai temple is one temple where animal sacrifice is performed. From the documents attached with the case file and pursuant to the statements made by the priest of the temple and officials from the Temple Management Committee, they have stated that during the Gadhimai festival approximately 25/30 thousand buffaloes are sacrificed on that particular day and more than one hundred thousand animals and birds are sacrificed. From the data provided, it can easily been drawn that thousands of people have faith in Gadhimai. Animal sacrifice has been practiced in the Hindu society from time immemorial and many animal sacrifices are carried out in many temples dedicated to Goddesses. Animal sacrifice is not only done on a personal level but even government has been providing funds for such activities. During various festivals, many temples and trusts receive grants and funds from the government institutions and government and animal sacrifice is carried out. Whether it is right or wrong, the culture of animal sacrifice is deep rooted in the Nepali society. Therefore, taking cognizance of the social context and culture, it would not be appropriate to immediately call for a ban on animal sacrifice. However, this does not mean that animal sacrifice should be continued. From religious, social, cultural, environmental or moral point of view, it is expedient to put a ban on animal sacrifice and in order to do this, there has to be extensive public awareness. The main basis of social transformation is social awareness and any transformation that is accepted and recognized by such social awareness is sustainable. Before banning animal sacrifices, one has to take into account and address the social fabrics, people's faith, and cultural recognitions and a strategic plan should be prepared and animal sacrifice should be prohibited within a prescribed time period. Controlling measures could be followed for the time being. In order to control animal sacrifice that is increasing day-by-day, the quantity of animals to be sacrificed should be reduced by levying attractive fees, should determine procedural conditions, should determine the maximum number of animals to be sacrificed, should determine the maximum and minimum age of animals to be sacrificed and should prohibit sacrifice of unhealthy or sick birds and animals. Provided, such prohibitive

measures were to be applied, this would discourage the practice of animal sacrifice. Therefore, taking cognizance of this issue, a directive order is hereby issued in the name of Nepal government to do accordingly.

34. The Bench now dwells on the third issue regarding inhuman and cruel treatment towards animals and to issue an order to set up a committee pursuant to Section 27 of the Animal Health and Livestock Service Act, 2055. In order to resolve this issue, it is imperative to look into the issues of animal right and the practice that is being followed in other countries.
35. Looking at the various national and international legal documents, every living being has the right to life and it is also protected by the law. Animals also have the right to live in dignity and such rights cannot be arbitrarily taken away and this principle has been established in the contemporary world community. World Society for Protection of Animals has issued a Universal Declaration of Animal Welfare in order to ban inhuman treatment towards animals. The World Organization for Animal Health (OIE)<sup>3</sup> has been carrying out commendable work in the area of animal health and animal welfare. The World Organization for Animal Health states that “an animal is in good state of welfare if it is healthy, comfortable, well-nourished, safe, able to express innate behavior and if it is not suffering from unpleasant states such as pain, fear and distress. Chapter 7.1.2 of the OIE Guidelines prescribes 5 kinds of freedom for the animals<sup>4</sup> which is:
  1. freedom from hunger, thirst and malnutrition;
  2. freedom from fear and distress;
  3. freedom from physical and thermal discomfort;
  4. freedom from pain, injury and disease; and
  5. freedom to express normal patterns of behavior.
36. Animals are considered to be a “property” of the people. However, some animals are classified under protective class whereas in some people have ownership over the animals. However, the responsibility towards their health and protection is vested in the State. Therefore, although any property is a personal property of that person, the person cannot exercise that right randomly. One can exercise the right pursuant to the standard prescribed by

<sup>3</sup> OIE is an intergovernmental organization and its office is located in Paris. This organization was initially established in 1924 January 25 under the name of The Office International Des Epizooties wherein the name was changed to World Organization for Animal Health in 2003. However, the acronym OIE has a historical importance and as such this acronym is used.

<sup>4</sup> The five freedoms prescribed in “Brambell’s Five Freedom” is considered as the basic rights of the animals.

the law. Animals and birds have the same life as that of a human being and therefore, while exercising one's right regarding to animal property one has to show human values such as compassion to the animals and this principle is being widely established at the international level.

37. Animals do have a right to life and this legal principle is the product of the 20<sup>th</sup> century. Right to life has been prescribed and recognized as a fundamental right by the modern Constitutions. This is an indivisible right. Under right to life, every person has the right to live with dignity and right to live in a clean and healthy environment. Under clean and healthy environment, matters relating to animal rights are also vested. In addition to this, the animals also have their own right to freedom. In particular, domestic animals have the right to live in a clean and healthy environment, freedom from pain and injury, right to food, right to shelter and it is the right of the animal owner to protect these rights of the animals. Therefore, dignity and good behavior is not only limited to human beings but rather it is also a matter of interest for other livestock. Providing physical discomfort to animals, making them carry excessive load and torturous behavior towards animals cannot be accepted. Such act or activities is contrary to the principles accepted by the modern society and the prevailing laws. Scientific experiments carried out against animals are also being controlled and are being carried out within certain limitations. We should be reaping benefits from the development occurring around but on the contrary our situation is not satisfactory.
38. Jeremy Bentham in his book "An Introduction to the Principles of Moral and Legislation states that "when deciding on a being's rights, the question is not 'can they reason?' nor 'can they talk?' but rather 'can they suffer.'<sup>5</sup> He puts forward the principle that it is the suffering that should be the basis for deciding on the rights. Just like a human being feels the suffering, animals also feel the suffering and express their suffering in their own language. Rights of animals are not determined according to its usefulness to human beings. Animals too have the capacity and nature to feel the pain, happiness, fear, lonesome and maternal love and rights should be determined on this basis. According to the traditional thoughts and conservative concept, animals are seen as consumable items, however, animal right activists have put forward the issue of animal rights and that it is the human beings responsibility to protect those rights. Peter Singer in book *Animal Liberation* states the following: "the basic principle of equality does not require equal or identical treatment; it requires equal consideration." Analysis of animal rights should commence from this very point. Animals should have the freedom to live without any pain and exploitation.

<sup>5</sup> Jeremy Bentham: An Introduction to the Principles of Moral and Legislation (1789)

39. According to the modern concept of animal rights, living beings other than human beings also have the right to live a life free of torture or pain. On the basis of bio-diversity one should not differentiate on matters relating to moral values and basic protection of life. Debate in this regard has been going on at the international level since 1970. Richard D. Ryder a writer and animal rights proponent has put forward the concept of 'speciesism'.<sup>6</sup> He compares 'speciesism' with caste discrimination, gender and color discrimination and puts forward his concept of controlling them. He emphasizes that non-human animals should not be discriminated merely because of their diversity and that even non-human animals should have the right to live without any pain. This concept has been developed on the basis of survival of the fittest.
40. Looking at the development of animal right, no separate treaty or agreement has been drawn in favor of animal protection, advancement or animal rights. The United Nation in the interim has focused on human rights and has performed many works. However, no treaty or agreement has been signed in favor of animal rights. Animals provide companions to human beings in times of trouble and assist them in their practical life and are also diet to human beings and as such there is still a lot to be done in relation to rights of animals and birds. According to the environmentalist, development of international environmental law in relation to animal rights can be divided into three stages:
41. First State: The concept of protecting the environment started with the purpose of protection the interest of human beings. In this regard, Declaration on the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are useful to Man (1900) and Convention for the Regulation of Whaling (1931) was promulgated. The Convention and Declaration that were promulgated guaranteed human beings right to use the animals. Second Stage: In the second stage, concept regarding intergenerational equity commenced wherein reform in the traditional concept of anthropocentrism commenced and in this regard the 1946 Treaty on Whaling is an example. The intention of the Preamble is to protect the whale fish for fulfilling the necessity of future generation.<sup>7</sup> Likewise, the Stockholm Declaration also states that man bears a solemn responsibility to protect and improve the environment for present and future generations, the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management. Later, this was mentioned as a basis for

<sup>6</sup> Oxford English Dictionary defines Speciesism as "the assumption of human superiority over other creatures leading to the exploitation of animals."

<sup>7</sup> It is in the interest of the nations of the world to safeguard for future generations the great natural resources represented by the whale stocks" Preamble on the Whaling Convention, 1946

sustainable development and as a result, matters relating to animal rights have been addressed to some extent. Third Stage: It was only in the third stage that natural rights were accepted as an intrinsic value. The UNEP Biodiversity Convention (1992) recognizes the importance of bio-diversity. The Convention recognizes the value of environment, bio-diversity, social, economic, educational cultural, recreational.<sup>8</sup>

42. Having dealt on animal rights and its protection, it would be relevant that the Bench also dwell on the inhuman treated meted out to animals. Torture or inhuman treatment towards animals signifies human beings intentional pain inflicted towards animals. Pain in any form is pain in reality. Even where this has not been prohibited by law, this ipso facto does not signify that human beings do not have any social and moral responsibility towards pain. It is an animal's natural instinct to suffer pain, injury and torture and therefore, animal right should be looked through this aspect. Animals should not be looked upon and identified as a consumable object. It is expedient to develop humane sensitivity towards animals.<sup>9</sup>
43. Injury and pain is inflicted upon animals actively and passively. Where a domestic animal is deprived of food or water or where an animal is deprived of shelter and is deprived of medical treatment at the time of it being sick can be deemed to be passive injury. Examples of active injury can be in many forms. Active injury arises from a person's anger and can also arise through religion, tradition, culture, profession and recreation. Animal right activists also claim that unnecessary scientific experiments or demonstrations also compromise the rights of animals. Mental injury is more painful in comparison to physical injury. Like human beings, animals to have and experience mental pain. Therefore, Temple Grandin and Catherine Johnson in "Animal in Transition" emphasize that fear is the single worst thing you can do to an animal emotionally.<sup>10</sup>
44. It is also imperative to look into the practices carried out in other countries. It is human duty to show love and compassion towards every living being. The Supreme Court in India while interpreting Article 48, 48 (a) and 51 (a) of the Indian Constitution has propounded a principle and lays down that

<sup>8</sup> UNEP Biodiversity Convention (1992) states the following: "conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components. It also states that every form of life is unique, warranting respect regardless of its worth to man.

<sup>9</sup> Charles Darwin in *The Descent of Man* (1871) states the following: "There is no fundamental difference between man and the higher mammals in their mental faculties."

<sup>10</sup> "The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals. I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear."

it is a duty of every citizen to show love or compassion towards all living beings.<sup>11</sup> Likewise, humanism is another sensitive aspect. This implies that humanism should be shown to all living beings in the world. Humanism is not inflicting inhuman pain or injury but rather being involved in protective acts. The Indian court has been looking at animal rights through eco-centric principles. Interpretation made by the Indian Supreme Court in *T.N. Godavarman Thirumulpad et.al.* are some examples of eco-centric principle.<sup>12</sup> Animal rights activists have also drawn their attention to use of animals in non-essential activities. Bullock-cart race, and Jallikattu are merely for people's recreation and causes fear among animals and causes pain to them and is a non-essential activity and hence the Supreme Court in India calls for prohibition of such activities.<sup>13</sup> Pursuant to the Prevention of Cruelty to Animals Act and Animal Welfare Act, the Government of India has constituted a Committee for the Prevention of Cruelty to Animals and an Animal Welfare Board. Cruel and inhuman treatment towards animal has been declared as a punishable offence. Apart from the government level, private sectors or civil societies have been conducting various programs and activities against inhuman, cruel treatment towards to animals.

45. Based on eco-centric principles, activities relating to protection of animal rights have been carried out in various countries. An amendment had been made in the Constitution of Germany in 2002 and pursuant to the amendment; it is the responsibility of the State to protect the dignity of animals. In Germany, pursuant to laws relating to animal welfare, it is prohibited to inflict pain or physical damage to animals or to conduct any such activities that cause pain and injury. In some countries such as Switzerland, Slovenia, Austria balance has been maintained between human right and animal right and the constitution guarantees that unnecessary pain, fear or injury should not be inflicted upon animals. Pursuant to the law of England, anyone who inflicts cruel treatment towards animals is subjected to 51 weeks imprisonment and 20,000 pound fine. England had enacted the Protection of Animals Act in 1911. The Royal Society for the Prevention of Cruelty to Animals worked as a pressure group and was involved in the protection of animals. Whoever indulged or involved animals to hard labor was subjected to imprisonment and fine. The London Police Act, 1839, Protection of Animals Act, 1934, Abandonment of Animals Act, 1960, Criminal Damage Act, 1971, Animal Welfare Act, 2006 prohibited people from causing pain or injury to animals and had provisions for its protection. Animal Welfare Act, 2010 of

<sup>11</sup> *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC, 534

<sup>12</sup> *T.N. Godavarman Thirumulpad vs. Union of India and Others* (2012) 3 SCC 277, *T.N. Godavarman Thirumulpad vs. Union of India and Others* (2012) 4 SCC362 and *Center for Environmental Law World Wide Fund, India vs. Union of India and Others*, (2013) 8 SCC, 234

<sup>13</sup> Bullock cart race and Jallikattu is a traditional recreational game that is played in the State of Tamil Nadu in India where the bulls are physically and mentally tortured.



Norway has the following provision: “animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain.” Such provisions can be taken as welfare steps towards protecting animal rights.

46. Inhuman behavior, inflicting pain or killing of domestic animals is a punishable offense under Egyptian law. Egyptian Society for the Prevention of Cruelty to Animals was established more than 100 years with England’s effort and this organization has been successful in putting a stop to bull fights. Criminal Code of Southern Sudan prohibits cruel behavior towards animals. Provided, any animal is made to carry excess load or where service is sought from infant, old or sick animals then such acts are punishable under the Sudanese law. Likewise, it is relevant to quote the provision related to animals prescribed under Section 196 under the Criminal Code of Southern Sudan: “Whoever cruelly beats, tortures or otherwise willfully ill-treats any tame, domestic or wild animal, which has previously been deprived of its liberty or arranges, promotes or organizes fights between cocks, rams, bulls or other domestic animals or encourages such acts, commits an offence, and upon conviction shall be sentenced to imprisonment for a term not exceeding two months or with a fine.”
  
47. Ill treatment towards animals is also a punishable offence in Argentina and Canada. The Animal Welfare Act, 1966 of America stipulates provisions regarding the use of animals in research oriented works and also prescribes for welfare management of animals. Japan’s Welfare and Management of Animals, 1973 stipulates the following: “no person shall kill, injure or inflict cruelty to animals without due course.” The law prohibits inflicting cruelty to cows, horses, goats, lambs, swine, dogs, cats, pigeons, fowls, rabbits, ducks etc. and underlines that cruelty should not be meted out to domestic animals and birds without any proper reason and anyone breaching the provisions shall subject to the prevailing circumstances be sentenced to one year imprisonment. In France, any one inflicting cruelty towards animals shall be sentenced to two years imprisonment and a fine up to 30,000 euros.<sup>14</sup> The quantum of punishment in Germany and Italy is three years. In Italy, the minimum fine is 3,000 euro and the maximum 160,000 euro.<sup>15</sup> In Australia, various laws regarding cruelty towards animals have been enacted and many acts are considered to be punishable.
  
48. The matters stated above are merely emblematic cases. Effort towards protection of animal rights has been going on in many countries around the

<sup>14</sup> Equivalent to 3.5 million Nepali rupees

<sup>15</sup> Equivalent to 20 million Nepali rupees

world. Inhuman treatment towards animals has been made a punishable offence. Various programs relating to protection are being implemented. However, our situation and ground reality is different. Primarily, laws relating to animal rights are insufficient and incomplete. Secondly, implementation of existing laws is weak and less effective. Cruel treatment towards animals should be defined as a criminal offence and should be punishable by law but unfortunately we do not have such provisions. Under the Chapter of *Chaupaya* of the Muluki Ain, there are some provisions relating to animals. However, those provisions relate to cows and bulls and stipulate that they should not be beaten, injured or maimed or killed. Cow is revered as a Goddess of Laxmi and this provision has been constructed pursuant to Hindu religion and culture. The Chapter on Chaupaya, only deals with cows and bulls and does not deal with other animals or birds. However, this law in itself is insufficient and does not entertain many cruel or inhuman behaviors that are meted out to cows and bulls. Animal Health and Livestock Act, 2055 and Animal Slaughterhouse and Meat Inspection Act, 2055 also does not declare cruel and inhuman act towards animals as a punishable offence.

49. Section 27 of the Animal Health and Livestock Act, 2055 has a provision relating to prevention of cruelty towards animals. However, this provision remains to be implemented. The Act was promulgated approximately 17 years ago and in Section 27 of the Act, the Act prescribes the following: "For prevention of cruelty to animals, Nepal Government through a notification published in the Nepal Gazette shall form a Committee and the functions, duties and powers of the Committee shall be as specified in such notification." However, no such Committee has been constituted till date. This provision undoubtedly is not sufficient for protection of animal rights. It is very surprising and perplexing to note that a law that was promulgated seventeen years ago still remains to be implemented.
50. Relationship between man and animal is very deep rooted. Birds and animals are diets for human beings. Supply of milk for daily consumption is derived from animals; skin or feathers of animals are used to manufacture clothes to cover the body of human beings and various kinds of medicine to protect the lives of human beings are derived from the bodies of animals and birds. In many instances, animals or birds are friends of human beings and protect the life and property of humans and even dogs and parrots are used to inform them of any imminent danger. Animals and birds are also a medium of recreation and animals are used for transportation and to carry heavy loads. Help of animals are taken to fertilize infertile land. The excreta of animals and birds are deemed to be rich in manure valuable for land that enhances the productivity of the land. In many instances, many animals and birds are diet for other animals. Human beings are rational and human rationality should reflect in one's action. Promotion and preservation of human civilization can

be achieved by showing love and compassion towards animals. This should also be included in the governance system.

51. In addition to Gadhimai, there are many instances in our society where animals are treated cruelly. Bulls and buffaloes are made to plough the land without providing them sufficient fodder and water, they are brutally beaten, horses, donkeys and lambs are made to carry excessive loads and buffaloes are transported in trucks and tractors in a very deplorable conditions and this has become a daily routine. Fowls are bundled together and transported like lifeless animals. Whether it is a matured animal or a baby, animals are sacrificed irrespective of their age. There is a class of people in the society who opine that sick animals should not be sacrificed. However, it has never been defined as a social responsibility. In the name of sacrifice, many animals are publicly slaughtered. Whether it is the people witnessing it or the animal, it terrorizes everyone and this has become normal and ritual. Cruel treatment is meted out to animals in the name of religion, culture, tradition, farming, business, transportation, recreation etc. However, effort towards stopping this has never been made. It would not be appropriate to maintain such conditions. It is expedient that Nepal government take effective measures to guarantee animal rights, to manage for welfare of animals and to stop all cruel and inhuman treatment towards animals. Therefore, the Bench hereby deems it appropriate to issue an order in the name of the government to immediately constitute a Committee pursuant to Section 27 of the Animal Health and Livestock Act, 2055, to provide legal recognition to the animal officer and to initiate a process to draft a law defining acts relating to cruelty and inhuman treatment towards animals and to make such acts punishable by law and to prepare and make any other arrangements deemed necessary for the effective implementation of the law.
  
52. The fourth question raised by the petitioners was related to quarantining and medical examination of the animals and birds brought for sacrifice at Gadhimai festival. From among the respondents, the Central Animal Quarantine Office vide its rejoinder stated that Nepal government had set up an animal quarantine office at Birgunj and an animal quarantine check post at Matiarwa of Bara district and that both offices were functional. The respondents consent to the fact that examination of animals should be done upon their quarantine. Section 3 to 15 under Chapter 2 of the Animal Health and Livestock Service Act, 2055 prescribes various provisions relating to quarantining of animals. Animal Health and Livestock Service Regulation, 2056 has prescribed additional procedural matters relating to quarantining of animals. Establishment of permanent and temporary quarantine check-post, construction of quarantine sites, nomination of quarantine officer, placement of imported animal and animal products in quarantine for a

specified period of time for inspection and issuance of quarantine certificate are some controlling measures adopted by the Act and Regulation. The provisions are principally for inspection of imported animals and animal products that have been quarantined.

53. Law in itself is not sufficient to meet its purpose. There has to be effective implementation of the law. Therefore, it is necessary to look into the status of implementation of inspection of quarantined animals. From among the respondents, none of the respondents have been able to state the status of inspection of quarantined animals with facts and figures. There is no doubt that thousands of animals are sacrificed at Gadhimai. Do they have sufficient space to keep the animals and do they have any technical expertise and manpower to examine the animals? Is the examination done regularly? How many animals were examined after quarantine and how many quarantine certificates were issued? How many animals were prohibited to enter into Nepal? Are there any examples where the animal was deported to its country of export? Other than animals passing through the customs, has there been any monitoring and control of importing animals from other open borders? These and many other questions remain unanswered. The objective of the law is not fulfilled merely by fulfilling its formalities. In 2012 news published by Veterinary Epidemiology Center under the Animal Health Directorate stated that in 1995, Dhanusha, Mahottari, Sarlahi, Bara, Rautahat and Gorkha district suffered from an epidemic called "*peste des petits ruminants*" that was spread by the animals brought from India for sacrifice at Gadhimai temple and later the epidemic had spread over to 52 districts in the country. It can be easily deduced that the epidemic spread due to lapses in carrying out proper testing of animals kept in the quarantine.
54. It is imperative and important that animals imported from abroad and quarantined should be examined. Section 9 of Animal Health and Livestock Act, 2055 stipulates that importer should import animal and animal products only through quarantine check post and this provision should be applied in letter and spirit. The Bench is not convinced that quarantine services are being provided only from Birgunj animal quarantine office and animal quarantine check post located at Matiarwa of Bara district. Upon perusal of the documents attached with the case file, it is deemed necessary that the act of examining the quarantined animals should be made effective and for this an effective mechanism and efficient management needs to be in place and issuance of quarantine certificate should be made mandatory.
55. The fifth issue to be resolved by this Bench is as to whether or not there should a proper management regarding the meat and other products of the sacrificed animals and birds, as to whether or not the quality of meat should be determined so as to control the adverse conditions arising against public

health and as to whether or not there should be proper mechanism for testing and control and as to whether or not an order should be issued to control pollution of the environment? In order to resolve this issue, it is imperative to quote the facts raised by the writ petitioners in their writ petition:

*“Every five years five living beings known as “Pancha Bali” such as goat, buffalo, duck, hen and mouse are sacrificed at Gadhimai festival. Thousands (approximately 25-30 thousand) buffaloes and other birds totaling to about a hundred thousand birds and animals are sacrificed in each festival.<sup>16</sup> Although, there is one check post at Matiarwa of Bara district and one office in Birgunj, these have not been effective and reliable in conducting examination of quarantined animals. While transporting and sacrificing the animals, cruel and inhuman treatment is meted out to them. At the sacrificial altar there is a large gathering of animals and the priests as well as others show cruel behavior towards the animals and are slaughtered mercilessly. Some fund is provided by the State for the purpose of carrying out the sacrifice. Owing to the meat or the carcass of the slaughtered animals, the area gets polluted thereby causing an adverse effect on public health. This has an adverse effect in local religion, social and cultural life of the people. This area has been identified and recognized as a place having the highest number of sacrifices in the world and the information has been disseminated through various media. Controlling measures regarding examination of the health of the animal to be sacrificed, inspection of the meat of sacrificed animal, and prohibition in selling or consumption of inedible meat has never been carried out. There is no provision of refrigeration so as to preserve the meat. For the purpose of selling the meat a contract is made. To sell the meat of animals sacrificed on November 2, 2011 a tender worth 20.67 million rupees had been called. In many instances, the local people would come and forcefully steal the meat and consume them.”*

56. The facts mentioned above are some examples. However, from the examples given above, it is sufficient to presume the horrifying conceptions arising from the animal sacrifice. It can easily be deduced that rampant sacrifice of animals does and will have an adverse effect in public health. Owing to weaknesses and lapses in the management, the problem has become more serious and complex. Owing to lack of proper management regarding determining the quality of meat, testing and control, must have had an adverse effect on public health and no research has been done in this regard.

<sup>16</sup> There is no official data signifying the exact number of animals sacrificed. Writ petitioner Advocate Arjun Kumar Aryal in his petition states that approximately five hundred thousand animals are sacrificed. This number is not substantiated by any other facts. However, during the discussion before the Bench, the priest of Gadhimai temple Mr. Mangal Chaudhari and President of Temple Management Committee Mr. Ram Chandra Sah have stated that generally more than one hundred thousand animals are sacrificed in each festival and therefore, it can be assumed that a more than one hundred thousand animals are sacrificed at the temple during each festival.

In short, we cannot the Bench cannot be contended that Nepal government and its concerned units have been able to perform even the minimum basic activities for the protection of public health and environment.

57. The legislature has drafted laws relating to slaughter of animals and testing of meat and has made an effort to manage many issues. In this regard, Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) has been enacted. The Act has many useful provisions relating to management and sale of healthy meat. Section 8 of the Act stipulates the following: "Provided, any animal to be slaughtered shall be produced for at the slaughter house where such place is established and where slaughter house has not been established, the meat shall be examined at the site specified by the Meat Supervisor." Likewise, Section 9 of the Act stipulates that any animal fit for slaughtering shall have to be slaughtered at the slaughter house and provided there is no slaughter house in the area, the animals shall have to slaughtered at such place and time specified by the Meat Supervisor." Similarly, Section 16 of the Act prescribes that "notwithstanding anything contained elsewhere in this Act, there shall be no objection to slaughtering an animal in places other than a slaughter house or to consume meat with skin on the occasion of traditional festivals, religious rituals, feasts or spiritual ceremonies."<sup>17</sup> The respondent pursuant to these provision in the Act have tried to prove the relevance of open sacrifices at Gadhimai festival. The respondents claim cannot be justified merely because the law does not prohibit open sacrifices of animals and birds. It is the duty of the relevant units of the government to properly manage the slaughtering of animals. It is not logical to sideline the principal provision of the act and take recourse of the proviso stated in the Act. It is not appreciable for the government to take recourse of such proviso without implementing the Act.
58. Animal Slaughterhouse and Meat Inspection Act, 2055 has been implemented in some areas of Hetauda but has not been implemented in other parts of the country.<sup>18</sup> It is surprising that the Act even after 17 years of its promulgation has not been implemented. It is the responsibility of the Executive body (Government) to implement the law framed by the legislature within a reasonable time frame. In order to implement the Act, Animal Slaughterhouse and Meat Inspection Regulation, 2057 had been promulgated. The Regulation had been enacted so as to implement the Act

<sup>17</sup> The Special Court of this Court in *Bikalp Bhandari on behalf Law Students Society, Kathmandu vs. Nepal government, Prime Minister and Council of Ministers, Singha Durbar, Kathmandu* (Nepal Law Magazine 2072, Decision No. 9391, Part 1) has stated that this provision not being contrary to right to equality under Article 16 of the Constitution need not be declared null and void.

<sup>18</sup> Section 1 (2) of Animal Slaughter House and Meat Inspection Act, 2055 stipulates that the Act will come into force at the prescribed area from the prescribed date as notified by Government of Nepal in the Nepal Gazette. Pursuant to this provision, a notification to this effect was published in Nepal Gazette on April 21, 2003 wherein this Act was implemented in Hetauda Municipality area from April 14, 2003. Other than that the provisions of the Act have not been implemented in other parts of the country.

in those areas from the date of the implementation of the Act. However, with the Act not being implementable, the Regulation remains to be ineffective. The date of implementation of the Act prescribed during drafting of the Act provides time and space and flexibility for the government to make suitable provisions for implementation of the law. Advocate Bhojraj Air had submitted a writ petition requesting the court to direct the government to immediately prepare all infrastructure for implementation of the Animal Slaughterhouse and Meat Inspection Act, 2055 and also to direct the government to implement the Act and in this regard the court had issued a directive order in the name of the government in 2062.<sup>19</sup> The order issued ten years ago with regards to implementation of the law contains the following:

*“The legislature with the intent to provide benefit to the general public drafts various Acts and where the Executive taking cognizance of the proviso relating to date of implementation of the Act, remains silent with regards to the implementation of the Act, this would derail the very purpose and objective of the Act and would create chaos in matters relating to human sensitivity. Where the legislature has drafted and enacted the law and where the law cannot be implemented at once, the Executive should prepare a work-plan and implement the law phase-wise and as deemed appropriately. Provided, this can be done, the objective of the Act cannot be achieved.*

59. Ten years ago this court had issued an order to implement an Act drafted by the Legislature 17 years ago and it is unfortunate that the Act has not been implemented till date. Such situations and conditions are not appropriate for a democratic state. The legislature through promulgation of the Act and the court through its appropriate orders/judgments directs the government but where the government fails to fulfill its responsibilities, then it cannot be deemed that the government is fulfilling its responsibilities and duties. The respondents of Nepal government through their rejoinder state that they are very sensitive and conscious towards performing acts pursuant to the law that are of public interest. However, they fail to submit any data and facts to substantiate their claims and neither have they provided any result-oriented works. The court cannot be satisfied on such baseless claims. Therefore, it is expedient that attention of the relevant units of Nepal government be drawn.
60. Section 2 (b) and (c) of Food Act, 2023 defines “adulterated food materials” and “sub-standard food materials”. The definition also includes food materials made from animals and birds. Section 3 of the Act, prescribes prohibition on production, sale or distribution of adulterated food materials or sub-standard food materials and prescribes that no person shall produce, sell,

<sup>19</sup> Advocate Bhojraj Air vs. Prime Minister and Council of Minister et.al. Nepal Law Magazine 2062, Decision No. 7522, p. 435



distribute, export or import adulterated food materials or sub-standard food materials or possess such food materials for any such purposes. Any act performed contrary to the provision is a punishable offence and the person performing such acts is subjected to imprisonment and penalty. However, the court observes that the provisions of the Act are not applied in relation to the sacrifice made at Gadhimai festival. Therefore, as a result, it could have adverse effect on the health of the general public. It can also be easily assumed that this would have negative impact on the environment.

61. In Godavari Marble dispute, the court has propounded the principle that right to life also includes the right to live in a clean environment. The court had propounded the following principle: *"clean and healthy environment is an integral part of life and that right to clean, healthy environment is also an indivisible and integral part of right to life"*.<sup>20</sup> Apart from this, the court in many other cases has repeatedly stated that right to life also includes the right to live in a clean environment and various principles have been propounded by the court in this regard. Although, right to live in a clean environment has not been defined as a fundamental right in the Constitution, the court however considers this to be a fundamental right. Article 30 (1) of the prevailing Constitution prescribes and provides the citizens the right to live in a clean and healthy environment. Likewise, Article 30 (2) of the Constitution provides the victim the right to compensation in accordance with the law for any injury caused from environmental pollution or degradation. Right to live in dignity is also an inherent part of right to life. The old and traditional concept of right to life which is limited to animal existence does not hold any legal and practical importance and value. Right to live in a clean and healthy environment is a fundamental right guaranteed by the Constitution and therefore, it is expedient and mandatory for the State to make necessary arrangements for the protection and exercising of this right and it is also the responsibility of this court to play a creative role in exercising this right. Therefore, it is expedient for this court to issue an order in the name of the respondents directing them to control the pollution of the environment during the Gadhimai festival and to maintain a clean and healthy environment, to properly manage the meat and other materials of the sacrificed animals, to determine the quality of the meat, to test and cause to test and control meat products, to implement the Animal Slaughterhouse and Meat Inspection Act, 2055, to maintain a clean and healthy environment in and around Gadhimai temple and to make proper arrangements so as to prevent any adverse effect on public health that may occur owing to the blood, meat and skin of slaughtered animals.

<sup>20</sup> Surya Prasad Dhungel vs. Godavari Marble Industries Pvt. Ltd. et.al. Nepal Law Magazine 2052, p. 169.



**62. Writ Order Issued:** In order to maintain control on sacrifice of animals, to prevent any adverse effect on the local environment and public health owing to such sacrifices, and to prevent cruelty towards animals and birds, the Bench pursuant to Article 102 (2) of the Interim Constitution of Nepal and Article 133 (2) and (3) of the Nepal Constitution hereby issues the following order in the name of the respondents.

### **1. Directive Order:**

Considering the religious, social, cultural, environmental, moral or logical dimension, the custom of animal sacrifice is not appropriate. In the end, the custom of animal sacrifice should be stopped. However, our efforts towards change and reform should be properly managed and should not disrupt the social infrastructure and fabrics. Although, the custom of animal sacrifice needs to be stopped, it would not be appropriate to issue an order of mandamus calling for ban of such practices without looking into the social fabrics and the cultural contexts.

It is expedient to put a ban on animal sacrifice and in order to do this we need to properly address the social and cultural principles and therefore, in order to ban or cause to ban the custom of animal sacrifice the following directive order is hereby issued in the name of the Prime Minister and Council of Ministers, Ministry of Home, Ministry of Health and Population, Ministry of Science, Technology and Environment, Ministry of Culture, Tourism and Civil Aviation, Ministry of Agriculture, Office of Animal Quarantine and other relevant Ministries and offices of Nepal government:

- a. A directive order is hereby issued to the concerned authorities wherein the concerned authorities are directed to develop a strategic plan and programs addressing the social infrastructure and context, people's faith, cultural recognitions and to ban animal sacrifice within certain time period and to phase-wise implement the plan and to draft and frame laws for the purpose of ending animal sacrifice.
- b. To increase and enhance public awareness regarding animal sacrifice and to conduct activities therein and to prescribe time limitation regarding the end of animal sacrifice and to disseminate information therein.
- c. To control the ever increasing sacrifice of animals and in order to reduce the quantity of animals to be sacrificed shall recover attractive institutional levy from the person sacrificing the animal, to determine procedural conditions, to determine the maximum number of animals to be sacrificed, to determine the minimum and maximum age of animals to be sacrificed, to prohibit the sacrifice of unhealthy or sick animals and birds, to determine conditions deemed appropriate so as to prevent sacrifice of animals in open public places, to follow preventive measures and to discourage the custom of animal sacrifice.

- d. To legally define animal rights and since it is expedient to control all forms of cruel treatment towards animals to guarantee animal rights, to arrange for animal welfare and in order to declare all forms of cruel behavior towards animals and birds as punishable offence shall conduct a study of prevailing provisions of other countries and shall move ahead towards framing a law that is appropriate to our social context.

## **2. Order of Mandamus:**

While issuing a directive order regarding banning of animal sacrifice, the following order of mandamus has been issued in the name of the respondents without causing any adverse effect to the matters stated hereinabove:

- a. An order of mandamus is hereby issued to immediately constitute a Committee pursuant to Section 27 of the Animal Health and Livestock Act, 2055 and to establish any other mechanisms deemed appropriate to prevent any cruel and inhuman behavior towards animals during their sacrifice or while transporting the animals and birds for sacrifice or for any other activities.
- b. Ten years ago this court had issued a directive order to implement the Animal Slaughterhouse and Meat Inspection Act, 2055 that was promulgated 17 years ago but it is surprising that the government has shown reluctance towards implementation of the Act till date. Therefore, an order of mandamus is hereby issued in the name of the respondents directing the respondents to immediately make proper arrangements and provided any amendments or reforms need to be made on the Act the respondents are directed to do the same and to immediately implement the Act.
- c. Pursuant to Animal Health and Livestock Service Act, 2055 to make mandatory, reliable and effective the provision of quarantine of animals imported from abroad and to provide certificate therein, the respondents are hereby directed to make necessary arrangements and establish quarantine check post at various points and to establish controlling mechanisms deemed necessary and make arrangements for quick and efficient services.
- d. An order of Mandamus is hereby issued in the name of respondents to control the pollution of environment during the Gadhimai festival and to maintain a healthy and clean environment and to properly manage the meat and other products of the animals and birds sacrificed, to determine the quality of meat, to test the quality of meat and its subsequent control, to maintain a clean and healthy environment in Gadhimai temple and around its premises and to make arrangements deemed necessary so as to prevent any adverse effect on the health of the local public owing to the blood, meat, skin of the sacrificed animals.

- e. An order of Mandamus is hereby issued in the name of respondents not to perform any acts directly or indirectly or encourage or assist in sacrifice of animals and shall be discourage or cause to be discouraged such act.
- 63. The Monitoring and Inspection Division of this court is hereby ordered to periodically monitor the status of implementation of this order and shall determine and ascertain or shall cause to determine and ascertain the complete implementation of the order and notify the same.
- 64. It is hereby ordered to provide a copy of this order to the Monitoring and Inspection Division of this court for their necessary action and to provide a copy of this order to the Office of the Attorney General and to maintain the case file at the record section pursuant to the rule.

s/d  
(Anil Kumar Sinha)

Judge  
Bench Officer: Yam Prasad Baskota  
Computer Typist: Manjita Dhungana

s/d  
Ishwor Prasad Khatiwada)

Judge  
Consenting with the opinion:

Dated: Year 2016 Month of August 4 Day 5.....