
Supreme Court of Nepal

Gadhimai Verdict

English Translation



Dispatch No. of Notary Public: 5284

Supreme Court,

Division Bench

Honorable Justice Mr. Ishwor Prasad Khatiwada

Honorable Justice Mr. Anil Kumar Sinha

Order

071-WO-0371

Subject: Mandamus et.al.

Advocate Arjun Kumar Aryal, being a permanent resident of ward No. 12 of Putalibazar Municipality of Syangja district currently ward No. 1, Kupondole of Lalitpur Sub-metropolis of Lalitpur district.....1

Saroj Kumar Neupane Being a permanent resident of ward No. 4 of Biratnagar Sub-metropolis of Morang district currently Ward No. 4 of Kathmandu Metropolis of Kathmandu district.....1

Petitioner

Vs.

Nepal Government, Office of Prime Minister and Council Of Ministers Singhadurbar, Kathmandu.....1

Ministry of Science, Technology and Environment, Singhadurbar, Kathmandu.... 1

Gadhi Mai Mela Organizing Committee, Bariyarpur VDC Bara, Gadhi Mai.....1

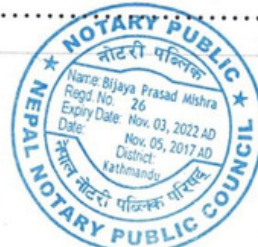
Gadhi Mai Temple Management Committee, Gadhi Mai, Bara.....1

Opponent

071-WO-0372

Subject: Ceritario, Mandamus, Prohibition et.al.

Rajya Laxmi Golchha, a resident of ward No. 3 of Biratnagar Sub-metropolis of Morang district.....1



Manoj Gautam, being a resident of ward No. 6 of Tribhuvan Municipality of Dang district, currently ward No. 9 of Kathmandu Metropolis of Kathmandu district...1
Niraj Gautam, a resident of ward No. 9 of Kathmandu Metropolis of Kathmandu district.....1

Petitioner

Vs.

Nepal Government, Office of Prime Minister and Council Of Ministers Singhadurbar.....1

Nepal Government, Ministry of Culture, Tourism and Civil Aviation, Kathmandu.....1

Nepal Government Home Ministry Singhadurbar, Kathmandu.....1

District Administration Office, Bara, Kalaiya,.....1

District Police Office, Bara Kalaiya.....1

Office of Village Development Committee, Bariyarpur, Bara.....1

Opponent

071-WO-0373

Subject: Mandamus

Gita Prasad Dahal, a resident of ward No.11 of Banepa Municipality of Kavrepalanchok district.....1

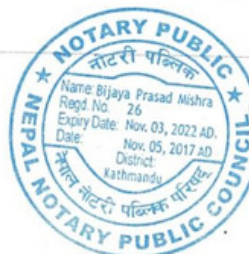
Advocate Ramkrishna Banjara, a resident of ward No. 8 of Panauti Municipality of Kavrepalanchok district.....1

Petitioner

Vs.

Nepal Government, Office of Prime Minister and Council Of Ministers Singhadurbar.....1

Ministry of Health and Population, Ramshah Path, Kathmandu.....1



Ministry of Science, Technology and Environment Singhadurbar, Kathmandu.....	1
Ministry of Agriculture Development, Singhadurbar, Kathmandu.....	1
Ministry of Culture, Tourism and Civil Aviation, Singhadurbar, Kathmandu	1
Central Livestock Quarantine Office, Budhanilkantha, Kathmandu.....	1
District Administration Office, Bara Kalaiya,.....	1
Gadhi Mai Temple Operation and Development Committee.....	1

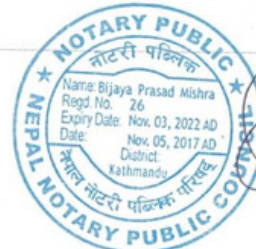
The fact in nutshell and decision order in the present petitions fallen under the jurisdiction as per article 107(2) of the constitution of Nepal 2063 (2007) have been as follows:

Application details of Advocate Arjun Kumar Aryal and Saroj Neupane – applicant to writ application No. 071-WO-0371

1. It has been related that the Gadhimai Mela (festival) as celebrated every 5 years is going to begin from this 11th of Mangshir (27th of November). The tradition of Gadhimai Mela is almost only 2, 3 hundred years old. A local landlord was made captive by the then King of Makwanpur and at that time, the said landlord after seeing a dream that every wish would be fulfilled if blood is offered in Gadhimai temple, had by going to Gadhimai temple offered blood by piercing in five places of his body after being free from captivity and from the same time Gadhimai Mela is being conducted every five years – such is the belief of the public. With the course of time, by degenerating the said tradition, without offering one's own blood where the same should be offered, a serious fear of spreading various diseases is being created by polluting the environment around the said area by the giving of sacrifice to thousands of innocent animals and birds. This practice is a degenerated form of the tradition. Let an appropriate order be issued in the



name of the above-mentioned counterparties by stating do not offer sacrifice of animals and birds, by making arrangement, as a form of alternative to animal sacrifice, the offering of other flowery-gifts or other necessary arrangements as a serious obstacle will also be created in the protection of the environment due to the practice of giving sacrifice to hundreds of thousands of animals by making the tradition degenerated due to superstitions of the common people. From also the viewpoint of Traditional Vedic Hindu philosophy, giving of sacrifice is deemed as a great sin. Because of this superstitious belief, Gadhimai of Nepal is recognized as a place where in the world, the most number of animals are sacrificed. This has disseminated negative information in a world-wide manner. The experts working in the field of animal rights in Nepal, India and other countries have been expressing dissensions in relation to the killing of these innocent creatures. This, by striking on the spirit of Traditional Vedic Hindu Philosophy has created the fear of degenerating also the Hindu religion. By hearing upon the writ of the proponents of animal rights, the Indian Supreme Court has also issued an interim order for not allowing any animal to enter from India into Nepal for being sacrificed in the Gadhimai Mela. The animals are sacrificed in a very barbarous manner without being given water and grain to eat, by not even conducting any examination for pregnancy and disease in the animals. Because of which, the environment is also being polluted. Application detailed to the effect that let an order of mandamus be issued in the name of the counterparties for not conducting or causing not to conduct the sacrifice of thousands and hundreds of thousands of animals as a negative impact will befall upon the society by being developed the criminalistic thought and character towards the common people including women, children and youths.



Application details of Rajyalaxmi Golcha, Manoj Gautam and Niraj Gautam – applicant to writ application No. 071-WO-0372.

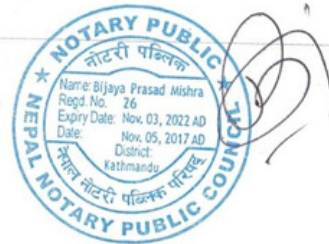
2. The practice of giving sacrifice to other animals including thousands of he buffalos in the Gadhimai Mela as conducted in Bariyarpur of Bara District in Mangshir on every fifth year is ongoing since the last 260 years. In the Gadhimai temple, there is the practice of barbarously giving of sacrifice by bringing many animals not just from Nepal but also from the neighboring state of India. For the giving of animal sacrifice in this Mela, the source and resources are being made available also from the state bodies. By the Mela being operated with the assistance of the Local Administration, there is also the practice of arranging the security. This year also, the organizers have made the plan to give sacrifice to hundreds of thousands of animals and as per the same plan, necessary preparation is being made swiftly in coordination with the Local Administration.

Voice against animal sacrifice is being raised by various national and international organizations and associations and by the people. Whereas the said practice has curtailed the right of the citizen to Live a Healthy Life in a Clean Environment, there being no alternative remedy for the protection and enforcement of the said right, we have appeared before the Honorable Court with the present dispute of public interest by utilizing the extra-ordinary jurisdiction of the Honorable Court pursuant to Article 32 and 107 (2) of the Constitution. In a pious religious Seat of Power (*Shakti Peeth*) like Gadhimai, the animal sacrifice as about to be conducted in the month of Manghsir should not be allowed to happen.



Article 16 (1) of the Interim Constitution of Nepal, 2063 (2007) has made the constitutional provision that every person has the right to live in a clean environment. Section 2 (a) of Environment Protection Act, 2053 (1997) has defined Environment as the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and their components. Section 2 (b) has defined 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 Gadhimai region becomes very much malodorous by the carcass of the animal as sacrificed and this causes direct impact in the religious and cultural aspects of the temple and the surrounding areas. Even though chicken, pigeon, goat as sacrificed in the vicinity of Gadhimai are taken away immediately, these dead birds and animals do negatively impact the environment. But there is the prevalence of the tradition of meat of he buffalo being taken away by the Dalit Caste only after twenty-four hours. Much blood and other filthy substances are expelled from the animals as sacrificed in thousands of quantity and along with the same adopting the form of waste when kept in one place for up to twenty-four hours, there is also the possibility of contagion from the body of the animals as killed. In the event of not making Gadhimai area an animal sacrifice-free zone, an adverse impact will befall upon the rights as conferred by the Article 16(1) of Interim Constitution of Nepal, hence such type of activities should be prevented.

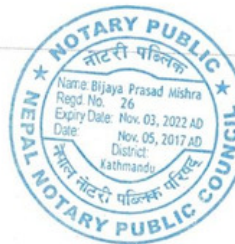
Animal Health and Meat Inspection Act, 2055 (1999) has made provisions of quarantine examination. But in the context of Gadhimai mela, examination is not being made pursuant to the said law.



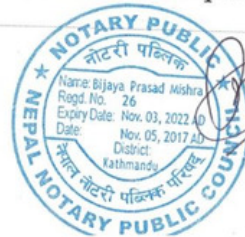
There is the situation of the psychology of the children being negatively impacted due to the reasons of animal sacrifice as happening in Gadhimai. Article 17 of the Convention on the Rights of Child, 1989 has provided that no activity adverse to the physical and mental health of children should be carried out. Pursuant to Section 9 of Treaty Act, 2047 (1990), the provisions as enshrined in the Convention must be followed by Nepal.

From the viewpoint of also the provisions as enshrined in laws including the Environment Protection Act, 2053 (1997), the Infectious Diseases Act, 2020 (1964), the Animal Health and Livestock Services Act, 2055 (1999), Treaty Act, 2047 (1990), the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999), the activities of impacting the public health and of spreading pollution should not be carried out by giving sacrifice to animals. As the act of giving sacrifice is contrary to the constitutional rights as conferred by Article 16 (1), 23(1), (2), 29 (2) of Interim Constitution of Nepal, 2063 (2007), we are present before this Honorable Court with this dispute of public interest under Article 32 and 107(2) of the same constitution as there are no effective alternative legal remedies. Application detailed to the effect that let an order of mandamus including other appropriate order be issued pursuant to Article 107 (2) of the Constitution for not allowing or causing not to allow the violence prone acts such as the animal sacrifice as about to happen in Gadhimai.

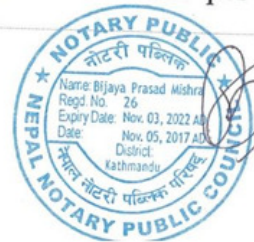
The details of the application as presented from the side of the Gitaprasad Dahal and Advocate Ramkrishna Banjara – applicant to the Writ Application No. 071-WO-0373:



3. Among the applicant, I, Gitaprasad Dahal by being a Nepali citizen, am working in the area related with protection, supervision and development of domesticated animal since the last 10 years. Among the applicant, I, Ramkrishna Banjara by being a student of law, am serving as an Advocate since the last 7 years. In the Gadhimai Temple as situated in Ward No. 2 of Village Development Committee named Bariyarpur in the District of Bara of Nepal, a big Mela is organized every 5/5 years. In the said Mela, five types of animals and birds – goat, he buffalo, duck, chicken and mouse are sacrificed. In this matter, even 5 years ago from now, there appeared in the paper and magazines that by sacrificing in this way of hundreds and hundreds of thousands of animals, foul odor by pollution of the environment circulated to all the places surrounding the said place from the butchered animal and animal-oriented substances (specially, calves of she buffalo and he buffalos). On this matter, from the past, the media, at the national and international level, had by making this a subject of news, done the work, by taking this Mela of Gadhimai temple, of illustrating Nepal as a form of place where the most number of animal are sacrificed in the world. As a continuation of the same, from the last 6 months, the various national and international medias, and animal right activists have been expressing their concern about this. As a sequence to the same, by the filing of the case Gauri Mallekhi v. UOI and Others in the Indian Supreme Court on 17/10/2014 A.D., the Indian Supreme Court, by the order that let other animals except for the animals obtaining license be not allowed to be imported in Nepal, has shown its judicial activism and awareness. In this way, the opinions and news has come in the media about the giving of animal sacrifice and the applicant, by performing various programs about this have been requesting the concerned entities of the counterparty Government of Nepal for the



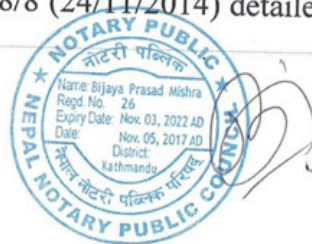
reconsideration in this pattern of offering of the animal sacrifice. By the statement that a contract, by opening a tender of approximately twenty-six million seven hundred thousand on the date 2071/7/16 (2/11/2014), being assigned by prescribing the contractor for importing the meat to foreign-land China for selling the animal-oriented substances of the animals as sacrificed, no work can be found being done by the counterparty towards performing the said animal sacrifice in a symbolic manner. Similarly, for the said animal sacrifice, land around the Gadhimai temple has been separated as a slaughterhouse and photos have started to be published in the papers and magazines by symbolizing as animal's death with illustration of the said area as a form of slaughter land. Notwithstanding that the applicants have called a tender for the management of these animals as sacrificed, when demanded by contacting the counterparty, the information about the performing of health examination of animals brought for these sacrifices, and the performing of meat inspection of the butchered animal, no information up to now could be obtained about having the mechanism and programs for inspecting the quality of the meat and for the performance of the health inspection. The adoption of the process of quarantine for ensuring that the animals offered in Gadhimai are not unhealthy or not befallen into contagious disease has not been made public. Whereas after such animals are slaughtered the same meat reaches to the general public by the meat being sold through contract thereby affecting directly the human health by way of any contagion befallen animal-oriented substance is established from the fact of this public notice of the meat being contracted through the contract. But due to the counterparty not keeping any concern towards such meats should also be healthy, it has come to be seen that the common public might have access to unhealthy animal-oriented substance. As per the



provisions of the Food Act and Animal Health and Livestock Services Act, the responsibility to say that the food products in the public is edible is vested on the Government of Nepal. But there is the situation of non-fulfillment of this responsibility by the counterparty. Hence, the application detailed to the effect that let an order including mandamus be issued in the name of the counterparty pursuant to Article 32 and Article 107 (1) of Interim Constitution of Nepal for performing quarantine examination of the animal being sacrificed, for making arrangements on giving animal sacrifice in a managed way, for not allowing the happening of unkind treatment upon the animals, for forming immediately the committee pursuant to section 27 of Animal Health and Livestock Services Act, 2055 (1999), for making appropriate arrangements of the animal oriented products, for prescribing the standard of the meat, for carrying out animal sacrifice in only a symbolic manner and for commencing the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999).

Details of the Show Cause and Interim Order

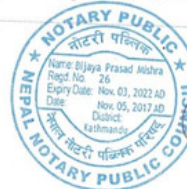
4. In this, submit after taking the written answer from the counterparties. Additionally, the matters like not allowing the animals to be killed in a way which seriously adversely impacts upon the human health, human health development and environment, not allowing the happening of unkind treatment towards the animal, not allowing the happening of animal smuggling as raised by the applicant are known to have been addressed by the Animal Health and Livestock Services Act, 2055 (1999), Animal Slaughterhouse and Meat Inspection Act, 2055 (1999), Infectious Diseases Act, 2020(1964) and Environment Protection Act, 2053 (1997) etc. The order of the Single Bench of this court dated 2071/8/8 (24/11/2014) detailed



to the effect that as in this way rather than this court making additional order in matters as managed by the law, it becomes necessary that readiness be shown by all in the health, administrative and police services and all – the local bodies, organizations, and common people that no act happens contrary to these laws, wherefore by keeping these Acts and laws in the focal point, an interim order is being issued in the name of the counterparties for attracting the attention for managing the Gadhimai Mela.

Written reply of Government of Nepal, Office of the Prime Minister and the Council of Minister:

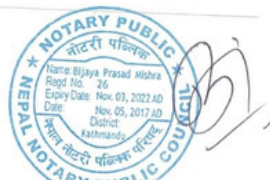
5. Counterparty writ applicant has not been able to mention in a clear way as to what constitutional and legal rights of the applicant has been violated from what work, action or decision of the Office of the Prime Minister and the Council of Ministers, Government of Nepal? Upon the work, action and decision as performed by other bodies and officials as authorized to perform pursuant to the prevailing laws, the writ application cannot be filed by making this office as the counterparty. Office of the Prime Minister and the Council of Minister, Government of Nepal is committed towards respecting, protecting, and promoting the constitutionally and legally conferred rights of the citizen and towards realizing the concept of rule of law by complying with the constitution and law. Right to Religion is the fundamental right and human right of a person. The constitution has, to every person, provided the right to follow practice and protect one's religion as practiced from before by keeping the dignity of the prevailing social and cultural tradition. The Mela that takes place every five years in Gadhimai as situated in the Bara District is not just the center of religious faith and belief of the Nepalese but also of the followers of Hindu religion in the neighboring state of India. In



the said Mela, in every five years, persons having faith and belief towards Gadhimai are present in numbers of hundreds of thousands in the temple to offer the goods they have vowed in the name of the God in the belief that their heart's wish has been fulfilled. With the full protection to the right to religion, the acts of increasing the public consciousness for discouraging the work of killing the animal and for not allowing to befall grave negative impact on the human health and environment are happening with the assistance of the government and the local people. Government of Nepal fully agrees with the matters such as cruel treatment should not happen towards the animals, only the edible meat should come into consumption, non-allowance of importation of sick animals, not to allow animal smuggling to happen – as raised by the writ applicant. In relation to this, Animal Health and Livestock Services Act, 2055 (1999), Animal Slaughter house and Meat Inspection Act, 2055 (1999), Infectious Diseases Act, 2020 (1964) and Environment Protection Act, 2053 (1997) etc. Acts contain the clear provisions, and the Government of Nepal is committed to implement or cause to implement the same. Act of doing worship, recital in the temple, of offering the sacrifice falls within the Right to Religion and as the prevailing laws has not barred the practice of giving sacrifice, intervention from the side of the Government of Nepal cannot be made. The written answer detailed to the effect that let the writ be quashed as upon the background of the Gadhimai Mela being completed, there remains no situation for the issuance of any additional order by the Honorable Court.

Written answer of the Ministry of Science, Technology and Environment:

6. The applicant has not been able to make clarity in relation to what and which work and action of this Ministry has adversely affected the interest and

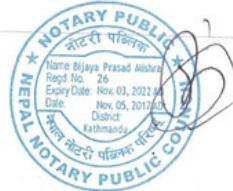


rights of the applicant or the common people and as the Power, Function and Jurisdiction of this Ministry is not attracted in the work and actions as per the application claim taken by the applicant, the application claim is liable to be quashed to the extent of this Ministry being made counterparty where the making of counterparty need not be done. As there exists the alternative remedy of appropriately managing the claim demand as taken by the applicant by the effective implementation of legal provisions as made in the Food Act, 2033 (1967) and the Animal Health and Livestock Services Act, 2055 (1999), the writ application in the present subject-matter as filed pursuant to Article 107(1) of the Interim Constitution of Nepal, 2063 (2007) without following or causing to follow the said path is liable to be quashed.

Written answer of the Ministry of Culture, Tourism and Civil Aviation:

7. There is the practice of giving sacrifice in the Mela as happening in the Gadhimai Temple of Bara District in every 5/5 years. In the context that the prevailing law of Nepal has not barred the sacrifice of animals, there is the important role of increment in public consciousness for discouraging, decreasing and managing the said practice. Hence, in the status of Ministry of Culture, Tourism and Civil Aviation, the ministry is action-oriented towards making managed the practice, of giving sacrifice of animals in upcoming days by coordinating and partnering with the various governmental and non-governmental bodies. The written answer to the effect that as the matter that from which work and actions of this Ministry what interest and rights of the counterparty has been violated, the same having not been confirmed, the writ application is liable to be quashed.

Written answer of the Ministry of Home Affairs:

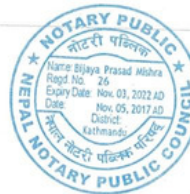


8. In the situation of security being demanded by any social institutions or bodies, the home administration only provides the security. In the matter in which the writ applicant has taken the claim, nowhere in the writ application is mentioned about what works and actions of the Ministry of Home Affairs has violated what rights. The details of the written answer to the effect that let the writ application be quashed as in the matter in which the claim has been taken, the writ applicant has not been able to disclose about the involvement and about the grounds and evidence making for this ministry a respondent.

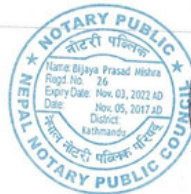
Written answer as submitted from the side of the Ministry of Health and Population:

9. There can be no second opinion as to every Nepali having right of being able to enjoy the Right to Live with Dignity, to Environment and Health, to Education and Right to Culture, Religion and of Children as guaranteed by the Interim Constitution of Nepal, 2063 (2007) including the right as protected through the National and International laws. Works of inspection of health of the animal, non-allowance of the happening of cruel treatment upon animals used for any type of purpose, and the environment related works arising from the sacrifice of animals are not within the jurisdiction of this Ministry. Written answer to the effect that let the writ application be quashed as there exists no reason or justiciability for making this Ministry the counterparty for this matter will be clarified by the concerned ministry or body.

Written answer of the Ministry of Agricultural Development:



10. The Food Act, 2033 (1967) has made provisions for the Committee on the Fixation of Standard and Inspection of Foodstuff for the purpose of prescribing the standard of food stuffs including that no person shall produce, sell, distribute, export or import the adulterated foodstuffs or sub-standard foodstuffs or possess such foodstuff for any of such purposes. In relation to the quality of the foodstuffs, the Department of Food Technology and Quality Control and the subordinate offices within this Ministry have remained active. The writ application has been filed by making this Ministry the counterparty flimsily, without being able to disclose that by such type of work and actions of the Ministry such type of damages happened or are happening in a direct manner. As per section 5 of the Animal Health and Livestock Services Act, 2055 (1999) the ministry can from time to time appoint the quarantine officer, with also the provision being made for the importer to keep imported animal, animal products or animal production inputs in Quarantine for inspection. The legal provisions of appointment of meat inspector, of causing to carry out inspection before butchering the animal pursuant to the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) are also in implementation. The ministry is confident on the matter that in the religious places – monasteries and temples only the healthy animals are given sacrifice. The details of the written answer to the effect that in the event that the ministry is committed also towards taking action if it is proved that anybody is killing sick or unhealthy animal, then let the writ application as filed by disregarding the matter that in a lawful manner the management of giving of animal sacrifice is being done by the Temple Operation and Development Committee, by raising an imaginative matter in an unnecessary way be quashed.

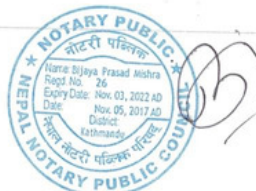


Written answer of the Central Animal Quarantine Office:

11. The animal being sacrificed in the Gadhimai temple are sacrificed only after fulfilling the process of keeping in quarantine and the obtainment of quarantine certificate as per section 6 and 7 of Animal Health and Livestock Services Act, 2055 (1999), for which the Government of Nepal is carrying out the work by establishing Animal Quarantine Office in Birgunj and Animal Quarantine Check post in Metiarwa of Bara District. To prevent the unkind treatment happening towards the animal, as much effort is being expended from the Department of Animal Service and the subordinate bodies. Written answer detailed to the effect that let the said writ application as filed by also making this office as the counterparty be quashed for appropriate management is being made at the local level for not allowing pollution to happen pursuant to the legal provision of the Environment Protection Act, 2053 including Section 7 of Food Act, 2023 (1967) from the meat-oriented substances as left behind by the devotees after the giving of sacrifice.

Written answer of the District Administration Office, Bara:

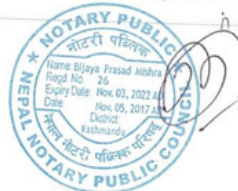
12. The District Administration Office Bara, by staying within the boundary of the prevailing laws and rules of Nepal has, up to that could be managed from the available source and resources, been doing the acts of maintaining the peace and order of Gadhimai Mela, of coordinating with the concerned bodies for the security of the incoming worshippers, of giving direction by calling the meeting of the security bodies, of managing the animal slaughterhouse by making security management as the prime subject of concern. The acts including making informed, making aware and giving



directions to the other concerned responsible bodies about the contagious disease, and pollution that may spread from the animals as sacrificed and the impacts befalling from that, the declaration of prohibited area in order not to allow anybody to sell and distribute the psychotropic substances and its consumption up to 3 k.m. surrounding the Gadhimai temple so that any form of unwarranted activity may not take place in the Mela is being done. Written answer detailed to the effect that let the writ application as filed by the applicant by making this office a counterparty be quashed as this office is aware about the management of the Gadhimai mela and about maintaining the security of incoming worshippers, the clean environment, religious and cultural unity and solidarity and is committed towards the same also in the future.

Written answer of the District Police Office, Bara:

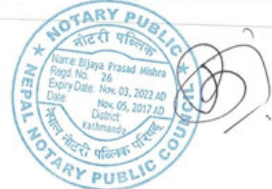
13. From one month before the beginning of the five yearly Gadhimai Mela, this office has been performing the acts of establishing and mobilizing along with the necessary equipment including the communication and resources in the Gadhimai temple, and the security base camp under the command of the Deputy Superintendent of Police for the necessary security of the incoming devotees and for the necessary management of including the giving of sacrifice in an arranged manner, worshipping and causing to worship in a convenient way. The prior preparations such as declaring by coordinating, discussing and consulting with the concerned bodies including the priests of the Gadhimai temple, the Gadhimai Mela Committee, the District Administration Office Bara, the Armed Police Force a prohibitive area up to the 3 k.m. distance around the temple where alcohol may not be sold, distributed and consumed so that any unwanted activities may not happen in



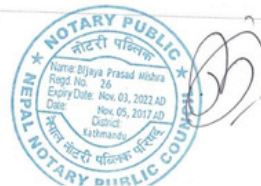
the duration of the Mela are made. By keeping in mind such matters as management of Gadhimai mela and security of the worshippers, maintenance of clean environment, of religious and social unity and solidarity, the worship and animal sacrifice in the Mela has been managed. Without the occurring of any type of unpleasant incident, the Mela has been concluded in a peaceful and managed way. Written answer detailed to the effect that let the writ application be quashed as in relation to preventing the animal sacrifice, there exists no situation for preventing the animal sacrifice as practiced from long custom.

Written answer of the Gadhimai Mela Organization Committee and Gadhimai Mela Management Committee:

14. The Gadhimai temple, by having mythological importance is a form of Seat of Power (*Shakti Peeth*) of religious importance by being famous not just in Nepal but by carrying importance at the international level. As this temple is a form of Goddess power, the Goddess worship is normally sacrificial. From the Vedic age, the worship by Offering of Five Animals (*Panchabali*) is happening in this temple. Including the internal and external tourists, hundreds and thousands of tourist devotees of religious faith participate in this Mela. Because of the internal and external religious tourists of Nepal, this Mela has been fulfilling a great service in the development of tourism. Preventing the animal sacrifice as given as a form of religious faith will disturb the religious faith and due to the reasons that it would directly intervene upon the religion, the law has also provided an exemption to the practiced religious tradition. The No. 1A. of the Chapter on Decency/Etiquette (*Adal*) of the General Code has made provisions for the punishment by imprisonment to anybody who performs any intervention in



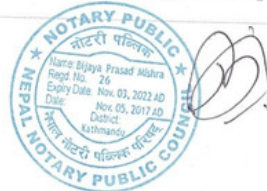
the religious place or the religious work. To lobby for the task of appropriate management of works such as the management of the sacrifice as offered in the Gadhimai temple, the Gadhimai Temple Operation and Development Committee was established on the date 2060/11/15 (27/2/2004). This committee from the time of establishment has been performing the work of management of the sacrifice as offered in the Gadhimai temple, of management of the offering, of the health of the local people and of the appropriate management of the meat of the animal as left behind by the devotees. Up to now the sacrifice as offered in the Gadhimai temple has not made any negative impact on the environment and in this area, no disease has spread due to the sacrifice. The writ applicants have not been able to corroborate the facts such as impact falling on the environment and the spread of disease. Notwithstanding that the writ applicant have made the submissions that the animals are kept without being given the water and grain to eat by not even conducting any examination for pregnancy and disease in the animals, that the animals are sacrificed in a very barbarous manner, that the environment is being polluted, that a negative impact has befallen on the society, etc., the grounds for the said matters has not been mentioned. In the sacrifice as given in Gadhimai, the sacrifice remains as fully managed without the happening of any unkind and animalistic behavior upon the animals. Hence, the written answer detailed to the effect that let the writ application be quashed as there is no truthfulness in the matters as raised by the applicant and as this institution has been giving full focus in the operation of Mela and the management of sacrifice.



15. Without lodging the written answer, the Office of the Village Development Committee, Bariyarpur, Bara, have stayed by expiring the primary summons.

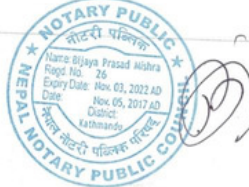
Argument Submissions of the Legal Practitioners:

16. Learned Advocate Ramkrishna Banjara, Learned Advocate Hari Phuyal, Learned Advocate Kedar Dahal from the side of the writ applicant have by arguing - the interdependent social inter-relationship between man and animal should remain maintained. By giving sacrifice to thousands of animals in Gadhimai Mela, various diseases are being spread by the pollution of the environment of the area surrounding the same. This practice is a degenerated form of tradition. Because of the superstitions, Gadhimai of Nepal is recognized as the place where most sacrifice is given in the world. This has disseminated a negative message in a world-wide manner. The sacrifice to animals is given in a very barbarous manner by keeping the animals without giving water or grain to eat by not even conducting any examination for pregnancy and disease in the animals. In the Gadhimai temple, there is the practice of giving sacrifice cruelly by bringing not just from Nepal but many animals also from the neighboring state of India. In this Mela, the bodies of the state have also been providing source and resources for the giving of sacrifice. Notwithstanding that voice is being raised against the animal sacrifice by the various national and international organizations and associations and also by the persons, control has not been maintained upon the same. The Gadhimai area becomes highly polluted by the carcass of the animal as sacrificed and this has been impacting the religious, social aspects of the temple and the surrounding areas. By the birds and animals as sacrificed in the vicinity of Gadhimai, negative impact



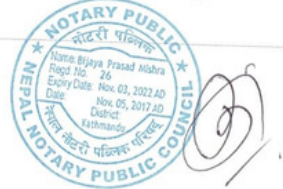
has befallen upon the environment. From the body of the animals as put to death, there is the possibility of contagion. Notwithstanding that the Animal Health and Livestock Services Act, 2055 (1999) has made provisions of quarantine examination, the examination is not being carried out pursuant to the said law. Up to now the information cannot be obtained as to the examination of the health of animals as brought for sacrifice being performed, and as to the existence of mechanism and programs for the examination of the standard of meat and the inspection of the meat of the killed animals. Cruel treatment is dished out upon the animals. Due to the activities as happening in the Gadhimai Mela, there is the situation of being violated many rights of man. Therefore, an order including mandamus should be issued in the name of the counterparties as per the writ application claim including for the immediate formation of the committee pursuant to Section 27 of the Animal Health and Livestock Services Act, 2055 (1999), for the appropriate management of the animal-oriented substances, for prescribing the standard of meat, for carrying out the animal sacrifice in only a symbolic manner and for the commencement of Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) – presented the argument submissions.

17. Learned Assistant Attorney Gita Prasad Timilsina as present from the side of the various bodies of the counterparty Government of Nepal had presented the argument submissions to the effect that the Right to Religion is the fundamental human right of the person. The constitution has provided to all the persons the Right of following, practicing and protecting their religion as continued from the bygone days by keeping the dignity of the prevailing social and cultural traditions. The Mela as taking place in Gadhimai is the



focal point of religious faith and belief of the followers of Hindu religion of not just the Nepali but also from the neighboring state of India. The matters as raised by the writ applicant such as the animals may not be treated cruelly, only the edible meat should come for the consumption, the diseased animal may not be imported, the smuggling of animal should not occur, etc., have also been addressed by the Animal Health and Livestock Services Act, 2055 (1999), the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999), the Infectious Diseases Act, 2020 (1964) and the Environment Protection Act, 2053 (1997) etc. The Government by appointing from time to time the quarantine officer, has also made the provision that the importer should for examination keep in quarantine the imported animal-oriented substance and the animal production units. As the act of offering sacrifice in the temple is happening under the Right to Religion and as the prevailing laws has not barred the practice of animal sacrifice, intervention may not be made from the side of the Government of Nepal. As no right of the writ applicant has been violated, the application should be quashed.

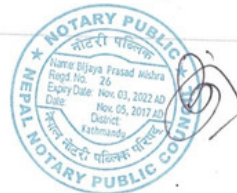
18. The argument submissions as presented by Learned Advocate Arun Gyawali and Learned Advocate Dilli Prasad Neupane as present from the side of Gadhimai Mela Organization Committee and Gadhimai Temple Management Committee by arguing that in the present issue the writ applicants have no right to give a public interest application. This Mela has been making a big contribution in the development of tourism. The work of appropriate management of the acts such as the management of the sacrifice as offered in the Gadhimai Mela, the protection, operation and development of the temple, the promotion of tourism is being carried out. The acts of management of sacrifice as offered in Gadhimai temple, the management of



offerings, the health of the local people, the appropriate management of the meat of the animal as left behind by the worshippers are being conducted. No negative impact has befallen upon the environment by the sacrifice as offered in the Gadhimai temple and no disease due to the sacrifice has spread in that area. The writ applicant has not been able to corroborate the matters like the befalling of impact on the environment and the spreading of disease. The matters that the animals are kept without being given the water and grain to eat by not even conducting any examination for pregnancy and disease in the animals, that the animals are being treated cruelly are not correct. There is no truthfulness in the matters as raised by the writ applicant. Hence, the writ application should be quashed.

Questions to be Resolved:

19. The file of the present case as presented by being enlisted in the daily cause-list as per the Rules has been studied. By doing a re-examination of the writ application, the details of the written answer, and argument submissions of the Learned Advocates, it has come to be seen that in this the decision has to be given in relation to the following questions:-
 - (1) Whether in the present issue the writ applicants have or do not have a *locus standi* to file a public interest application?
 - (2) Whether an order is or is not to be issued to prevent or prohibit the practice of sacrifice as given in the Gadhimai temple? In relation to the same, what immediate arrangement or management is to be made?
 - (3) Whether an order to the effect of preventing the happening of unkind, cruel or painful behavior upon the animals and birds as brought for the giving of sacrifice and for the formation of the committee pursuant to

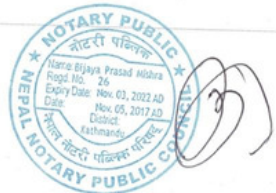


Section 27 of Animal Health and Livestock Services Act, 2055 (1999) shall or shall not to be issued?

- (4) Whether an order is or is not to be issued for bringing mandatorily into implementation the matter of obtainment of certificate by conducting quarantine examination of animals and birds as brought for the giving of sacrifice in the course of the Gadhimai Mela?
- (5) Whether an order is or is not to be issued for controlling the environmental pollution and for making arrangements including the management of the substances including the meat of the animals and birds as sacrificed and for the determination, examination and control of the standard of the meat for controlling the impact befalling upon the public health by this?
- (6) What, an order of certiorari, mandamus including other appropriate order is or is not to be issued pursuant to the demands of the applicant?

Ground, Reasons and Basis of Decision for the Issuance of Order:

20. First of all, it seems necessary to resolve the question as raised by the counterparty that the writ applicant do not possess, in the present issue a *locus standi* to file an application by making a claim of public interest. The present writ application has been filed under sub-article (2) of Article 107 of the Interim Constitution of Nepal, 2063 (2007). This dispute is not the first dispute related to public interest. Specially, in the course of resolving many disputes in the context of Article 88(2) of the Constitution of the year 2047 (1990), principles have been propounded by being interpreted time and time again by this court in relation to the public dispute. The modern journey of jurisprudence related to public interest began with the interpretation as made in the context of a writ application as filed by Advocate Radheshyam

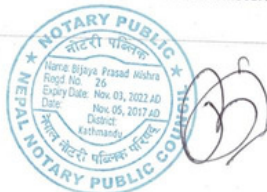


Adhikari in relation to the appointment of ambassadors.¹ In between this, discussion has been made in relation to the scope, usage, objective, limitation, or boundary associated with public interest in the course of the resolution of many a disputes. Summarily, as the provisions as enshrined in Article 88 (2) of the Constitution of the Kingdom of Nepal, 2047 (1990), Article 107 (2) the Interim Constitution of Nepal, 2063 (2007) and Article 133 (2) of the Constitution of Nepal as issued in the year 2072 (2015) have internalized an equal belief and philosophy in relation to disputes of public interest, it seems reasonable to resolve the question related to *locus standi* in light of the principles as previously propounded by this court.

21. Dispute of Public Right or Interest means a dispute not limited to any particular person or to the personal right or interest of person, but gives a semblance of a dispute related with the general public of the Kingdom of Nepal or the collective right or interest of any community.² The issue of being adversely impacted the right, interest or concern of the common public due to reasons of non-performance of any work which need be performed or performance of any work which need not be performed pursuant to the constitution or laws by the Government of Nepal or any public body or official becomes the subject-matter of public interest or concern. When determining whether any issue is or is not “public”, resolution is not to be done by counting the number of people. If the subject seems as representing the common rights and interests of the public, then based only on the ground of counting the person as impacted numerically, such disputes may not be denied as a dispute of public interest. Based on the nature, scope or character

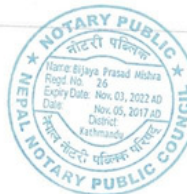
¹ Advocate Radheshyam Adhikari v. His Majesty's Government, Secretariat of the Council of Ministers et.al., N.K.P. 2048, Dec. No. 4430, p. 810.

² Supra. Advocate Radheshyam Adhikari v. His Majesty's Government, Secretariat of the Council of Ministers et.al., N.K.P. 2048, Dec. No. 4430, p. 810.



of the dispute, such dispute should be separated as being of a public interest or a personal dispute. Normally, various issues – security of the country, system of governance, social peace, education of the general public, health and morality, economic situation of the country, cultural or religious issue, social justice, environmental justice etc., as per the context comes about to become an issue of public interest or concern. As a matter of fact, a list cannot be prepared that this much is merely the issue or scope of public interest or concern. This, in every dispute, is an issue which has to be resolved on a case by case basis. Nonetheless, when applying meaning to the dispute of public interest as resolvable by the court, meaning should be applied relative to the rights as conferred by the constitution or laws.

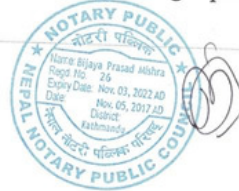
22. The subject of public concern or interest may be many-fold. But, every subject of public concern or interest does not become a judicially resolvable issue of public concern. The issue to be resolved by the court should not be imaginative or assumptive but be a reality-based dispute. If right, interest, or concern conferred by the constitution or laws to the general public is embodied in a dispute of a nature resolvable by the court, then the same can be taken as a form of public interest dispute. A public dispute should not be brought into usage as a form of medium to give satisfaction to any intellectual curiosity, eagerness or concern of anybody. Just upon the basis that there is concern of the general public in any issue of social, economic, political, religious, intellectual, moral or of other such nature which cannot or need not be resolved judicially, the same cannot be taken as a form of dispute of public interest or concern. Judicial mind should be applied with vigilance towards whether an issue is or is not justiciable. There may be many a issue of concern or interest to the general public, there may be



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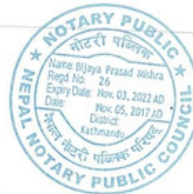
mistakes of various types from the public body or official. In all of such matters, it is neither appropriate nor possible to provide a judicial remedy through the medium of the dispute of public interest. The court may only intervene in matters of public interest by evaluating matters like the rights as conferred to the courts by the constitution and laws, the nature and limitations of judicial work and the public relation of the issue to be resolved.

23. In the context of any dispute, the question of "*locus standi*" is important. The general principle of *locus standi* is that "whosoever has right on whatsoever matter the same may only make a claim on the said issue." In the course of development of the concept related to disputes of public interest, the ground or scope of *locus standi* also became enlarged. In many a situation, disputes of public interest are taken also as a form of voice of the voiceless. In many a situation for the protection of right, interest or concern of sectors or communities back-warded socially and economically, this concept related to public interest has turned out to be a boon. But it does not indicate that any person may file a suit, complain, or writ application in any issue of public concern. The applicant or complainant should have a meaningful relation or substantial interest in the subject-matter of dispute, or it is also deemed essential that he/she should be able to make the court satisfied that he/she can represent the said issue in an appropriate manner. By considering these issues, it was in the context of the previously cited writ application of Radheshyam Adhikari, this court interpreted that "If anybody can enter by the extra-ordinary jurisdiction of this court any dispute of public interest or concern, there is possibility of the usefulness of the said constitutional provision being defeated and also of impacting upon the



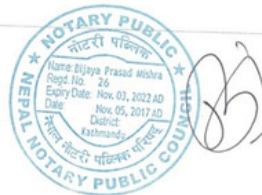
working ability and work capacity of this court by the whirlpool of applications related to the same. Such is not the intention of the constitution.” When reviewing the conceptual framework of disputes related to public interest and the principles as propounded by this court in the context of various disputes, it has come to be seen that if there is a meaningful relationship and substantial interest between the writ applicant and subject-matter of dispute, and in the situation of the issue seen as a judicially enforceable issue for the enforcement of the rights as conferred by the constitution or law, the court may be entered upon with a dispute of public interest.

24. In the conceptual background as mentioned above, consideration shall be made on whether the writ applicant possess or does not possess a *locus standi* to file an application in the subject related to the present dispute of public interest. Re-examining upon the disputed subject-matter, the writ applicant are seen to have entered the court for the judicial resolution by raising questions on various issues – the issue of animal sacrifice as made in big numbers mainly in the Nepali society and specially in the course of Gadhimai Mela; many a superstitious belief or orthodoxy associated with the same; the doing of cruel, unkind, barbarous and inhumane treatment upon the animals; the detrimental effect to the environment due to the reasons of giving of sacrifice; the negative impact befalling upon the public health; the issue of quarantine examination of animals and birds imported from foreign and the problem of the possibility of contagious disease; the issue of Act not being commenced for 17 years after the said Act had been made by the legislature etc. The aforementioned issues look by nature and at prima facie like an issue of public interest and concern. To be a matter of concern some

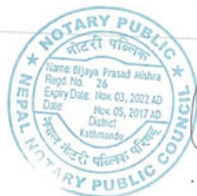


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of the orthodoxy and superstition as maintained between the followers of Hindu religion in the country to the Hinduism following citizens of this country seems natural; the issues of ecological problem, of impact on public health as raised due to the reasons of animal sacrifice becomes a matter of concern to the alert citizens. To consider the issue of barbarous treatment in the course of transporting for the giving of sacrifice, the animals from any part, east or west, of the country as an issue of concern and interest of only the local people of Gadhimai area is not appropriate. The issue of not bringing into implementation of Act as issued by the legislature more than 17 years previously cannot be considered as only an issue of personal benefit, concern or interest. Along with the above-mentioned matters being concerned with the Right to Live a Dignified Life, the Right to Religious Freedom, the Right to Clean Environment, the Right to Health, the Right to Food, the Rights of the Consumer as conferred though the constitution are also a matter of appropriate implementation. This context is also a matter associated with the Directive Principles and Policies of the State as provided by the now prevailing constitution and the previous Interim Constitution of Nepal, 2063 (2007) as made with the intention of maintaining people's welfare-oriented state. There is no dispute as to the fact that some of the writ applicant are persons who have already become Parliamentarian, that some are law practicing advocates and some are involved in the area of animal welfare. There is presence of no reason to consider them not capable of representing the concern and interest of the general public. Hence, it has come to be seen that the writ applicant can enter the court by bringing the present issue related to public interest and concern.

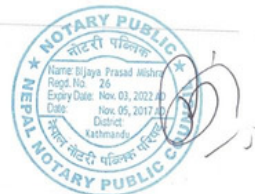


25. Considering in relation to the second question as to whether an order is or is not to be issued for preventing or prohibiting the practice of giving sacrifice in the Gadhimai temple as per the application claim of Rajyalaxmi Golcha et.al. – applicant to the Writ No. 071-WO-0372, a deliberation on some religious, cultural and social aspects seems necessary. The practice of giving sacrifice is found to have been a subject associated with the religious faith of many a people. This practice, in some context has been discussed and debated as a form of culturally important issue. A sector of the society professing the Hindu religion follows with importance the practice of sacrifice. As a matter of fact, this has become a social reality and towards the practice of giving sacrifice, one sector or group of the Hindu community keeps an infatuated attachment. The practice of sacrifice is prevalent in the Nepali society and in many a monastery and temples along with in the special context of various worship, sacrifice is given in a regular manner. This is the present-day reality of our society. Now it is expedient to make a deep reflection on the aspect of whether it is appropriate or not to still give a continuation to this social reality and context.
26. The present age is an age of science and consciousness. The modern age cannot continue to sanction the orthodox superstitions. There are plenty of examples of society abandoning many a practice and customs of the past remaining as illogical, inhumane and as a form of obstacle to social development and progressive change. When matters not in harmony with the science of social change are not abandoned, the destination of change as per our expectation would become difficult or arduous. Dislodgement of old beliefs becomes necessary for the establishment of new beliefs. When everyone is to follow the old beliefs in the name of culture, tradition,

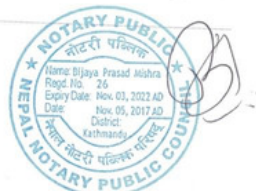


custom, or in such other name, the modern change to society would not become possible. To reiterate here our social reality as expressed in the language of poem by the Great Poet (Maha Kabi) Laxmi Prasad Devkota seems contextual: "What has man done, has drunk fully the universe, our Brahmins are delighted with touching still the tuft of hair (tuppi), sacred thread (Janai) and round rope in the Hip (Kandani)." This expression of the Great Poet (Maha Kabi) is symbolic, and it carries a deep and profound message of social change. That which has been done from the past, when all of them are considered as correct and unchangeable, the progressive change of society would not become possible. One has to leave the wrongful things and assimilate the rightful things. This is a formula of human development. It seems necessary to consider the practice of sacrifice also from this angle.

27. Probably, it is, in the present context, neither necessary nor possible to make an analysis of the Religious Edicts (Dharma Shastra). Presently, it may not be necessary to dispute upon the fact that the matter of religious belief is a subject to be resolved by the experts of Religious Edicts (Dharma Shastra). As a matter of fact, the determination of the religious beliefs or of enemies is also not to be done by the courts. However, because of the reasons that the writ applicant has raised the question related to religious values, beliefs and superstitions and the counterparty has also presented logic to prove the necessity of the practice of animal sacrifice by mentioning the context of religious freedom, it has become necessary to mention some religious context in a summarized or symbolic form for the solution of the disputed question as the subject of religion has come to be associated at the center of the dispute.

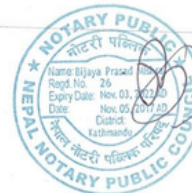


28. When studying the great texts of the Hindu religion, the approach of non-violence seems to have been accepted as the main religious dogma. By the study of the texts – Beda, Upanishads, Puranas, Ramayana, Mahabharata, Gita, etc., examples of animals being sacrificed by any decent person – the Gods, people having divine qualities, or sage and great-sages etc., cannot be found. However, the said religious texts give the message that the protection of animals is a human duty. The Gods worshipped by the Hindus, Rama or Krishna – none whatsoever, have neither given animal sacrifice nor given the message that animal should be sacrificed. Religious evidence cannot be found about yogi, sages, saints, seekers – none whatsoever having given animal sacrifice while performing *Yagya* or *Homa* (Religious acts). On the other hand, examples can be found of not only animal being sacrificed but also humans being sacrificed by the devils possessing demonic nature including Ravana or Kansa. When discussing also about the religion, we consider Rama, Krishna etc. as Gods – not Ravana or Kansa. He whosoever has been considered, guidance is to be obtained from the life character of the same and is to be followed. He whosoever is depicted as a villain, the character of the same cannot become our interest and the subject-matter for our following. Faith being on the one direction and nature on the other cannot happen. The acts such as killing and violence are introductory to the demonic nature. When considering by this meaning, it does not seem logical to consider the practice of giving sacrifice by associating with religion. In reality, the Hindu religion has given special importance to non-violence. For the large number of people who have internalized the non-violent, vegetarian religious belief, animal sacrifice has become a very painful subject. This pain is associated not just with the subject of our religion. The practice of



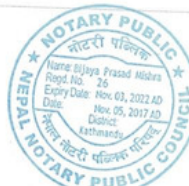
giving sacrifice has come to be associated with the subject of the maintenance of social goodwill and tolerance.

29. A number of people adhere to the perception that sacrifice is being made to please the goddess Bhagwati. The counterparty (presenter of the written answer) seeks to prove the justification of the practice of giving sacrifice by forwarding this same fact. In a number of people, there prevails the perception that sacrifice should be given for the salvation of the animal and birds being sacrificed. According to the Religious Edicts (*Dharma Shastra*), the Goddess Bhagwati is considered as "the Mother of the World". *Janani* denotes mother. According to the Religious Edicts (*Dharma Shastra*), the Goddess Bhagwati is the mother to all the creatures. The mother has towards all her children an in-comparative motherliness and compassion. How can the mother be made happy and satisfied by making sacrifice of her own children in her own name? This is a subject which cannot be understood in a logical way. In some there is the perception that animal sacrifice is made for the obtainment of power. When looking at the reality, many people who do not believe in the practice of sacrifice are found to have become powerful and are operating the state. Here and there everywhere in the society examples can be found of many a people who enjoy the giving of sacrifice as remaining in a state of poverty, sadness and weakness. There is with the obtainment or non-obtainment of power concurrence of matters of the person's own capacity, hard work, perseverance, sacrifice, dedication, will power, circumstances, coincidence, etc.; the orthodox nature of showing as the source of power by giving the coating of religion to the invisible, imaginative subject-matter will not make possible the advancement and progressive change of society. The nourishment of blind notions by giving



the coating of religious faith and belief to orthodoxy or superstitions is not appropriate. In this aspect, there is a necessity for raising the social awareness.

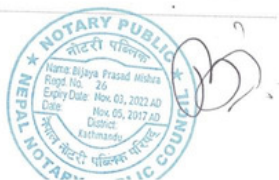
30. The essence of religion lies in the maintenance upon every creature the feeling of mercy, compassion and friendliness. The sequential barbarous killing of thousands of animals in the name of religion and tradition is a matter not compatible with the modern civilized state. By this sequence, there is the possibility of inviting additional distortion. As an extreme form of this distortion, the disgusting, damnable incidents against humanity of giving and of about to give human sacrifice are found sometimes to have been made public. In our society, there is the presence of a band who understands the views against the practice of sacrifice as a form of effort for the disturbance of the Hindu religion and culture. As a matter of fact, to understand religion and culture as a form of causative behavior for barbarous killing and to nourish the same is not appropriate. The progressive influence of social change must not be allowed to be obstructed by giving the matters like orthodoxy, and superstitions the coating of religion. The practice of sacrifice cannot be seen as a matter favorable to the modern civilization of the twenty-first century. Hence, it is necessary to maintain a control upon the practice of sacrifice, by preventing or prohibiting the same.
31. Nepal is the holy land of meditation to many a sages, monks-saints, and great souls. Is the land of *Karma* (action) of Janak. The birthplace of heroes such as Sita, Gautam Buddha is also Nepal. Our social, religious and moral values and beliefs are being directed by the feeling of "Non-Violence, the Ultimate Duty." Our religious and social beliefs have been constructed upon the foundations of mercy, benevolence, love, goodwill. In reality, we must



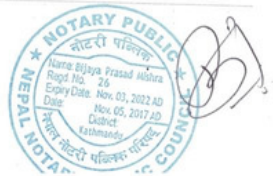
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sacrifice the demonic tendencies such as lust, anger, greed, temptation, jealousy. It is not appropriate to consider that religion is earned by barbarous killing of hundreds of thousands of innocent animals. Today, in front of the world, the holy land of Nepal is being characterized as a form of country giving excessive amount of sacrifice. In the modern society, such a thing cannot become a matter of pride.

32. The rationale of the practice of giving sacrifice should also be tested from point of view of ecology. This world is a common living place of people including all the animals, birds, marines, and botanical life forms. When considering only upon the views of human interest and benefit, the protection of ecology is seen as vital for the human health and happy living. If the balance in the eco-system is disturbed, then the life of humans itself would also become difficult and arduous. When only in one Gadhimai Mela the animals and birds are sacrificed in the number of hundreds of thousands, then in what number is the sacrifice being made in the monastery and temple of various Gods and Goddesses all over the country !! Even in the absence of a determinable statistics, the number can be easily assumed as being very big and frightful. By this an adverse impact has surely fallen upon the balance of the eco-system. To allow this type of situation to remain maintained is not in the interest of any world creature including the humans.
33. Now, it is relevant to consider upon the aspect about how appropriate it is to issue an order for immediately prohibiting the practice of sacrifice as given in the temple of Gadhimai. When considering from this point, the social context or objective social reality remains as a form of special point for consideration. We have hundreds of monasteries and temples, where in a natural manner it can be assumed that animals, in thousands of numbers, are

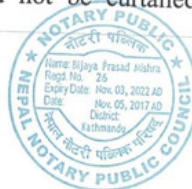


sacrificed in a day to day manner. Gadhimai temple is one place amongst where sacrifice of animal is given. The file attested documents and the priests including the officials of the Temple Management Committee as present in front of the Bench during the course of discussion have mentioned the dreadful statistics that during the time of the Gadhimai mela, animals and birds in numbers in excess of one hundred thousand including approximately 25/30 thousand he buffaloes are sacrificed in a day. From this it is clear – the faith of thousands of people is associated with this. The practice of sacrifice has continued in the Hindu community from a very long time and in many a goddess temple, sacrifices are given. There are examples of the act of sacrifice being given not just in a personal manner but also at the expense of the government. It has been found that the animal sacrifice is being given in the course of some festivals through the governmental body and also through the medium of Trusts obtaining governmental grants. Right or wrong, be what may the practice of giving sacrifice has imbedded roots in the Nepali society and is also a matter of social mores. Hence, by entirely neglecting this social context and reality, the issuance of an order by this court to immediately prevent the practice of sacrifice does not seem appropriate. But, the implications of this does not mean that the practice of sacrifice should remain as maintained. When considering from all angles – the religious, social, cultural, ecological or moral and logical, it seems appropriate to prevent the practice of sacrifice. But for this it is *prima facie* necessary to increase the public consciousness in a comprehensive manner. The main basis of social change is social consciousness and the change accepted by public consciousness is lasting and durable. Programs in a step-by-step manner must be operated by preparing strategic plans for ending the practice of sacrifice within a fixed time frame by addressing the various aspects like



structure of the society, faith of the people, the cultural mores, etc. In this way, the prohibition of the practice of sacrifice might require some time. For the present, remedial measures may be adopted. By maintaining control over the day by day increasing act of giving sacrifice, the practice of giving sacrifice may be discouraged or disheartened by adopting, as a remedial measure, the necessary and appropriate conditions such as the levying of an attractive fee in an institutional manner from the sacrifice giver, the determination of the procedural conditions, the determination of the maximum number that may be sacrificed, the determination of the maximum and minimum age of the animal that may be sacrificed, maintaining a prohibition by disallowing the giving of sacrifice of unhealthy or sick animals and birds. As it is necessary for a serious attention to be directed towards this matter, an issuance of a directive order in the name of the related bodies of Government of Nepal seems appropriate for carrying out as per the same.

34. Now, consideration shall be made upon the third question of whether an order to the effect of preventing the happening of unkind, cruel or painful behavior upon the animals and birds as brought for the giving of sacrifice and for the formation of the committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 (1999) shall or shall not to be issued. For resolution of this question, firstly it seems necessary to mention something about animal rights and the practice prevalent in other countries.
35. It is, from the study of various national and international legal instruments, seen that every living being has an inherent right to life and the same is protected by the law. The values that the animals also possess a right to respect and dignity and that such rights should not be curtailed in an



A handwritten signature in black ink, appearing to be 'Bijaya Prasad Joshi', written over the notary seal.

arbitrary manner is being established in the contemporary world community. By the efforts of World Community for the Protection of Animals, the Universal Declaration of Animal Welfare has been issued with the intention of making welfare provisions by stopping the cruelty upon animals. The World Organization for Animal Health (OIE)³ is performing inspirational acts in the field of animal health and animal welfare. This World Health Organization for Animal Health has determined the standard 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.”⁴ Chapter 7.1.2 of OIE Guidelines has mentioned the following five types of freedom of animals:⁵

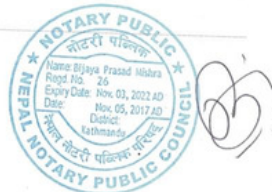
- (1) Freedom from hunger, thirst and malnutrition;
- (2) Freedom from fear and distress;
- (3) Freedom from physical and thermal discomfort;
- (4) Freedom from pain, injury and disease;
- (5) Freedom to express normal patterns of behavior.

36. There is the common practice of considering animals as the “property” of person. Nonetheless, while many an animal fall within the protected category, there is the situation that while even though an individual has ownership upon many an animal, the duty towards its health and protection is vested upon the state. As a matter of fact, even though any property may

³ This OIE is an intergovernmental organization and its office is situated in Paris, France. Though this organization established by the name The Office International Des Epizooties on the 24th of January 1924 was renamed as World Organization for Animal Health on the year 2003, its old Acronym named OIE has been maintained by considering that the same has a historical importance.

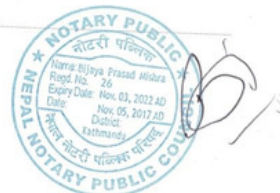
⁴ “An animal is in good state of welfare if it is healthy, comfortable, well nourished, safe, able to express innate behavior and if it is not suffering from unpleasant states such as pain, fear and distress” – World Organization for Animal Health

⁵ In many a context, the five types of freedoms referred to as “Brambell’s Five Freedoms” is considered as the substantive rights of animals.



be the private property of an individual, its utilization cannot be made in a haphazard manner. One's property must be utilized by staying within the standard directed by the law. As there exists also in the animals, life or soul like that of humans, the belief that it is necessary to behave favorably as per the compassionate humanistic values and beliefs such as mercy and love while using or utilizing, in comparison to other property, the property in animal is being established at an international level.

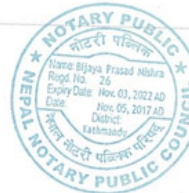
37. The belief that animals also have a right to live is the outcome of the twentieth century. The modern constitutions have accepted the Right to Life of humans as a basic fundamental right. This is a non-derogable, non-divisible right. The right to dignity and respect, to live in a clean and healthy environment are inherent in this right to life. Within the subject of this clean and healthy environment is also associated the subject of animal rights. Apart from this, the animals also have their own independent rights. Specially to protect the right of the domesticated animals to live in a clean and healthy environment, the right against unnecessary suffering from humans, the right to food, the right to live in shelter or shed becomes the responsibility of the concerned animal owner. Hence, dignity and good behavior is not only for the humans but becomes also a matter of concern for the animals and birds. The act or activities such as beating the animal, squeezing (entwining) the tail, making the carrying of excessive load, giving of torture, doing of cruel and torturous behavior, are not acceptable, such type of activities are considered as contrary to the laws and beliefs as adopted by the modern society. It has also been found that effort have been made towards keeping within a necessary boundary the various types of scientific examinations as carried out upon the animals by regulating and



managing them. We should also be able to derive benefit from the dimensions as being developed in this way. But when focusing towards our reality, such type of exciting situation cannot be seen.

38. According to Jeremy Bentham, the conclusion related to somebody's right is to be derived neither on the basis of 'Can they reason?' nor on 'Can they talk?' but on the basis of 'Can they suffer?'⁶ He had forwarded the belief that while guaranteeing the rights, the feeling of suffering should be taken as the main basis. Just as how a person suffers, the animals also suffer in the same way and also makes expressions in their own language. The right of an animal is determined not only on the basis of which animal is how much useful for the humans. Animals also possess the capacity and tendency to feel pain, pleasure, fear, hopelessness or desperation, loneliness and love of motherhood. On this basis the rights are to be determined, must be determined. Notwithstanding that as per the concept of traditional utilitarianism and protectionism, the animals are considered mainly from the view point of a consumable goods, in the later times, the inspirers of animal rights are known to have forwarded the belief that animals also have a basic right and the duty, the protection of which is vested upon the humans. In his book entitled Animal Liberation, Peter Singer has stated that "the basic principle of equality does not require equal or identical treatment; it requires equal consideration." The subject of animal right has to be analyzed from this point of view. Animals should also be allowed to live free from suffering and exploitation.

⁶ "When deciding on a being's rights, "The question is not 'Can they reason?' nor 'Can they talk?' but 'Can they suffer?' has been mentioned by Jeremy Bentham in the book entitled An Introduction to the Principles of Morals and Legislation (1789).



39. According to the modern concept related to animal right, it is deemed that apart from the humans, other creatures also have a right to live free from torture and suffering. The matters of moral values and basic protection of life should not be differentiated on the basis of biological differences. On this aspect, from the 1970s, discourse is being made at the international level. In this context, Richard D. Ryder, the famous writer and activist of animal rights has forwarded the concept of "Speciesism."⁷ He has by comparing "Speciesism" with matters such as racial discrimination, gender or class discrimination, forwarded the notion that the same should be controlled. This notion gives emphasis to the idea that on just the basis that there are differences in biological origins, the animals cannot be denied the right to live in a suffering free manner – so vital for all life forms. This notion has been developed by being based on the beliefs of "Might is Right" that the strong may oppress the weak.
40. When considering upon stages of development of animal right, no separate treaty whatsoever has been concluded at the international level on matters of animal protection, progress or animal rights. In between this, the United Nations Organization is known to have performed acts centered upon matters of human rights. But no separate treaty whatsoever has been concluded on matters of animal rights. There remains a lot of work to be done in the matters of rights of animals and birds, who have existed as a company to the people in their happiness and sadness, are an assistant to various practical life, and are themselves a form of dietary goods. Some aspects of animal rights are being addressed in the context of environmental justice. According to the environmental jurists, the stages of development of

⁷ In the Oxford English Dictionary, Speciesism has been mentioned as "the assumption of human superiority over other creatures, leading to the exploitation of animals."

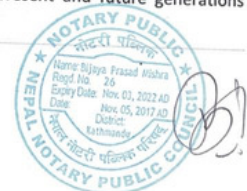


international environmental justice in the context of animal right can be divided into three phases:

41. In the First Phase; the concept that the nature should be conserved for the protection of human interest and benefit was developed. With this intention, 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 or Inoffensive (1900), Convention for the Regulation of Whaling (1931) were issued. The above-mentioned Conventions and Declarations are centered around towards the realizations of man's right of utilization of animals. In the second phase; the sequence of change in the traditional concept of anthropocentrism started with the beginning of the developmental stage of the concept related to intergenerational equity. The Convention related to Whaling of the year 1946 can be taken as an example. The particular that it is necessary to safeguard the Whale for the interest of the future generations has been mentioned in its Preamble.⁸ It has, from this statement, come to be seen that the Convention was made with the intention of protecting the Whale fish for the fulfillment of the necessity of the future generation. Similarly, also in the Stockholm Declaration, it has been mentioned that it is the responsibility of man to protect the environment for the present and the future generation and to manage it in a careful and planned manner.⁹ Afterwards, this has been mentioned as a form of ground for sustainable development and as a consequence, the subject of animal protection was also addressed to some

⁸ "It is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks" – Preamble of the Whaling Convention, 1946

⁹ "man bears a solemn responsibility to protect and improve the environment for present and future generations... the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management" – Stockholm Declaration



extent in a direct manner. Only in the third stage, the intrinsic value of the right to nature was accepted by taking it as a form of separate important subject in the legal instruments. By accepting the awareness towards the Biological Diversity, it was declared in the UNEP Biodiversity Convention (1992) that the self-respect and dignity inherent in every being should be protected without any discrimination by internalizing that they have ecological, biological, social, economic, educational, cultural, recreational, etc. values.¹⁰

42. After mentioning, as per the above, some incidents in relation to animal right and protection, it shall now be contextual to mention some concepts related to the brutal treatment of animals. Cruel or Brutal Treatment of Animals means the intentional suffering as inflicted by a man. Suffering in reality is suffering, because the same has not been prohibited by the law, it cannot be said that there is no social or moral responsibility, whatsoever towards the suffering. To be hurt by pain, brutality, cruelty is the natural tendency of creatures. The animal rights must be considered based on this belief. Animals should not be considered as only a form of consumable good. It is necessary to apply human sensitivity towards the tendencies of life inherent in the animals.¹¹
43. In two ways, active and passive, pain is being inflicted upon the animals. To keep hungry by not giving food or water to eat to the domesticated animals, not to arrange for shed or shelter as per the seasonal adversity, to remain by

¹⁰ By mentioning that "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 consequence" in the UNEP Biodiversity Convention (1992), the particular that "every form of life is unique, warranting respect regardless of its worth to man" has also been included.

¹¹ Charles Darwin, in his book named *The Descent Man* (1871) has written : "There is no fundamental difference between man and the higher mammals in their mental faculties."

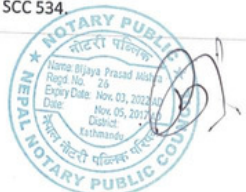


not caring to make treatment from the animal physician in the event of falling sick etc., are situations of inflicting pain upon animals in a passive way. There may be many examples of inflicting pain in an active way. In this falls the pain inflicted from the reasons of the person's anger or provocation to the matters of pain as inflicted from the religious, customary, cultural, professional, recreational perspectives. The contemporary animal rights activist deems the act of carrying out unnecessary scientific experiments or demonstrations upon animals as an objectionable aspect of animal suffering. In comparison to physical suffering, mental suffering is more painful. Like humans, animals also possess mental sensitiveness. Because of this, in their monograph "Animals in Transition" Temple Grandin and Catherine Johnson have emphasized that the greatest painful behavior which could be dished out upon an animal is to make them terrorized by showing them fear and fright.¹²

44. To shed some light upon the usage and practice of other countries also seems appropriate. To show affection, love and compassion towards every creature is the solemn duty of man. The Supreme Court of India by interpreting Article 48, 48A. and Article 51A. of their Constitution has propounded the principle that in every citizen resides the duty to keep affection and compassion towards the creatures.¹³ Similarly, humanism is another sensitive aspect. It means that towards all the creatures of the world there should be the humanistic compassion. In the present context, matters of non-infliction of inhuman pain and hardship upon animals and the performance of conservationist activities are considered as subjects of humanism. The

¹² In their own words – "The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals. I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear."

¹³ See. *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534.



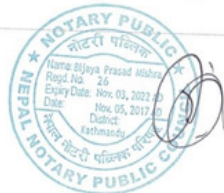
Indian Supreme Court views the issue of animal rights on the basis of eco-centric principles. The interpretation as made by the Indian Supreme Court in the context of T. N. Godavarman Thirumulpad and some other disputes can be taken as an example of this matter.¹⁴ The attention of the modern animal rights activists has also been attracted towards the fact of animals being used in non-essential activities. The Indian Supreme Court has adopted the point of view that the activities like Bullock-cart race, Jallikattu¹⁵ are games played only for the entertainment of people, that from this, in the animals, fear is generated, pain is inflicted and by considering it as a “non-essential activities”, it should be prohibited.¹⁶ The Indian Government has been operating activities by forming Committee for the Prevention of Cruelty to Animals/Animal Welfare Boards etc. as per the provisions of Prevention of Cruelty to Animals Act and Animal Welfare Act. The cruel and inhuman behavior inflicted upon the animals are declared as punishable. There are ample evidences of various programs being operated against the oppressive, brutal or cruel behavior being inflicted upon the animals, not just from the governmental level but also from the civil society or private sector.

45. Arrangements, by being based on the Eco-centric principles, have been made for the protection of animal rights in various countries. In the German constitution, by an amendment as made in the year 2002, the provision was made for the residing on the state the responsibility of protecting the

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

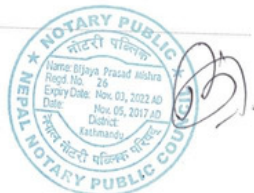
¹⁵ A type of tradition prevalent in the Indian state of Tamilnadu where entertainment is taken by playing of games with the giving of torture in a physical and mental manner to the bullocks.

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



“dignity of the animal.” The law related to animal welfare in Germany have provided protection by disallowing the carrying out of activities of the kind which causes pain or physical damage to the animals including animal fight. In some countries, Switzerland, Slovenia, Austria, and other, constitutional guarantee has been provided for the maintenance of balance between the rights of man and the rights of animal and for non-generation upon the animals of unnecessary pain, damage or fear. According to the laws of Britain, person inflicting cruel treatment upon animals could be imprisoned for up to 51 weeks and fined up to 20,000 pounds. Britain had, a century ago, in the year 1911 had made the Protection of Animals Act. In that place, in the form of a pressure group, Royal Society for the Prevention of Cruelty to Animals has been working in the area of animal protection. The punishment of imprisonment and fine has been prescribed also for those employing animals into hard labor. The laws including London Police Act 1839, Protection of Animals Act 1934, Abandonment of Animals Act 1960, Criminal Damage Act 1971, Animal Welfare Act 2006 have made provisions related to the providing of protection by disallowing the infliction of pain or damage upon animal. The Animal Welfare Act, 2010 of Norway mentions that: “animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain.” Provisions like this can be taken as a form of welfare-oriented steps targeted towards the protection of animal rights.

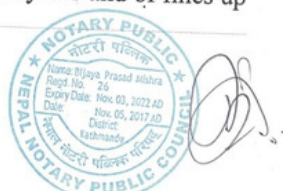
46. The laws of Egypt have made the act of hurting or killing the domesticated animals in an inhuman manner as punishable. In the activeness of the institution named “Egyptian Society for the Prevention of Cruelty to



Animals” as established more than 100 years ago by the British efforts, success has been gained in putting a stoppage upon the tradition of “He buffalo fight.” The Criminal Code of South Sudan has prohibited the act of inflicting cruelty or pain upon criminals. The Sudanese laws have declared punishable the matters of carrying excessive load upon animal, of obtaining services from child, old-aged, sick animal in a brutal manner. Along with this, it seems contextual to reiterate here the provisions related to animals in Section 196 of the Criminal Code of South Sudan:

“Whosoever 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. Argentina and Canada have also made punishable the act of cruelly treating the animals. The Animal Welfare Act, 1966 of America has mentioned about behavior towards the animals, its usage in the acts of thesis or research and in relation to the welfare-oriented management of animals. In the Welfare and Management of Animals Act, 1973 of Japan: “no person shall kill, injure, or inflict cruelty to animals without due course” has been mentioned. This law has made provisions that pain may not be inflicted, cruel treatment may not be done upon cow, horse, goat, sheep, pig, dog, cat, pigeon, chicken, rabbit, duck etc. – all types of domesticated animals and birds, and that punishment of up to one year of imprisonment as per the circumstance may be given to the person doing such acts without any reasonable cause. In France, there is the provision of imprisoning up to two years and of fines up

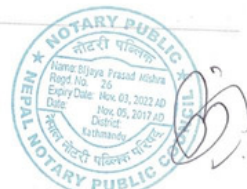


to 30,000 Euro¹⁷ for those inflicting cruel treatment upon the animals. In Germany and Italy, the limit to the said punishment has been prescribed at three years. Italy has prescribed for the fines a minimum ceiling of 3000 Euro and maximum of 1,60,000 Euro.¹⁸ In Australia, by making various legal provisions related to animal protection and to the controlling of infliction of cruel treatment upon animals, many acts have been declared punishable. The activities for the protection of animals is being carried out as per the Animal Welfare Act, 1992 of the Federal level and the laws of the Provincial level.

48. The above-mentioned facts are few representative examples. In various other countries of the world, efforts are being made for the protection of animal rights. The brutal behavior inflicted upon the animals have been made punishable. Various activities of protection have been implemented. But our situation is a bit different. Whether considering from legal or practical, any point of view our efforts seem to have been grounded upon weak conceptual foundation. First of all, the laws related to animal rights are in itself inadequate and incomplete. Secondly, effectiveness could not be maintained as to the implementation of existing laws. Non declaration as punishable by defining as a form of criminal offence the brutal treatment as inflicted upon the animal can be taken as a form of burning example of this fact. Notwithstanding that the Chapter on Animal of the National Code contains some provisions related to animals, the said provisions are limited to the matters that cows and bulls may not be hurt, injured or battered or killed. This legal provision was developed by being inspired by the Hindu religion and culture of worshipping cow as a form of Laxmi. The said Chapter on

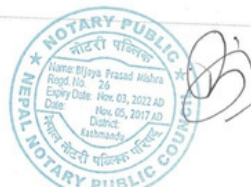
¹⁷ Approximately equals to 35 million Nepali rupees.

¹⁸ Approximately equal to twenty million rupees.



Animal has mentioned matters, none whatsoever related to the infliction of cruel treatment upon other animals and birds except for the cows and the bulls. This law has not been able to include many cruel or brutal treatment as inflicted upon the cows and bulls. Even the laws including Animal Health and Livestock Services Act, 2055 (1999) and Animal Slaughter house and Meat Inspection Act, 2055(1999) have not declared punishable the cruel and brutal treatment inflicted upon the animals.

49. Notwithstanding that Section 27 of Animal Health and Livestock Services Act, 2055 (1999) contains provisions related to preventing the cruel treatment towards animals, the same law has not been implemented. Section 27 of the said Act as issued approximately 17 years ago provides that: "Government of Nepal may constitute a committee for the prevention of cruelty to animals by a notification published in the Nepal Gazette and the functions, duties and powers of such committee shall be as specified in such notification." But up to now the committee of that nature has not been constituted. Undoubtedly, the said provision is inadequate for the protection of animal right. Though made 17 years ago in a symbolic manner, not to bring into usage up to now the law has become a subject of irony.
50. The relationship between man and animals and birds is very deep and profound. Birds and animals become diet to the man; the supply of milk for daily consumption comes from the animals; the skin and fur of animal and birds are bought into usage as a form of clothing for covering the body of man; many a medication for the protection of human life is developed from the organs and nerves of animals and birds. In many a situation, animals and birds becomes the friends of man; the acts of protection of man's body and property, of pre-cautioning for security are performed by animals and birds



such as dogs and parrots. Birds and animals have also become the medium of entertainment. Animals are also utilized as a form of transportation and as a medium of carrying load. The assistance of animal is taken for cultivating the untilled land; the wasted products of animals increases the productive power of the land. Some types of animal also do become the meat of many an animal. Carrying out of barbarous, cruel and brutal treatment upon animal without adopting sensitivity towards this type of magnificent ecological lifecycle becomes itself an animalistic behavior. Man is a wise creature. The human wisdom should be reflected into practice. Mercy, affection, compassion, love shown upon animals will ultimately strengthen and promote the human civilization. It is necessary also to internalize this matter of fact in the system of governance.

51. The infliction of cruel treatment upon the animals in various other contexts can be witnessed everywhere in the society in addition to Gadhimai mela. It feels like incidents such as cultivating for a long time without giving at least adequate diet and food-water to he buffalo and she buffalo, to carry out beating in a cruel manner, to make carry the load by keeping excessive load in the cart, to make horse, donkey, and sheep etc., carry excessive load, to cause bleeding by tying the rope into the nose by making a hole while transporting buffalos in the medium of transportation such as trucks and tractors, to keep in a state of stillness by keeping one on top of the other the living animals or birds have become a normal day to day activity. Examples of transporting chickens by packaging them like some sort of non-living object can be seen everywhere. Be whether newborn or old-aged, the sequence of giving sacrifice without discrimination is also prevalent. By being affected from the psychology of religion, the belief that sick animal



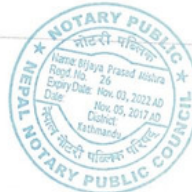
should not be sacrificed is prevalent in some sector of the society. But this has not been defined or directed as a form of social responsibility. In the name of sacrifice, a large number of animals are in a cruel manner killed publicly. Be it whether the viewers or animals, terrorizing all has become a simple issue. Notwithstanding that in the varying name of religion, culture, agriculture, trade-business, transportation, entertainment etc., cruel treatment is being made upon the animal, meaningful effort, none whatsoever is being made towards its prevention. To allow this type of situation to prevail is not appropriate. The taking of an effective step from the side of the Government of Nepal is expedient for guaranteeing the animal right, for managing the animal welfare, and for preventing every type of cruel, brutal, unkind or barbarous treatment inflicted upon the animal. Hence to issue necessary order in the name of the counterparty to the effect that a committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 (1999) be formed immediately, necessary procedure be applied for making necessary laws by making punishable the brutal, cruel and inhumane behavior after defining the same by giving legal recognition to animal rights and also necessary mechanism be prepared for the effective implementation of laws seems reasonable.

52. Considering upon the fourth question related to carrying out of quarantine examination of animals and birds brought for giving sacrifice during the course of Gadhimai mela, it has been found from the written-answer of Central Animal Quarantine Office, one among the counterparty, that work is being carried out by Nepal Government by establishing Animal Quarantine Office in Birgunj and Animal Quarantine Check Post in Metiarwa of Bara district. There is the event of acceptance from the counterparty of the fact



that it is necessary to carry out quarantine examination of animals. Chapter 2, from Section 3 to 15 of the Animal Health and Livestock Services Act, 2055 (1999) contains miscellaneous provisions related to animal quarantine. Animal Health and Livestock Services Rules, 2056 (1999) has also made additional procedural provisions related to quarantine examination. The regulatory provisions including establishment of a temporary or permanent Animal Quarantine Check Post, Construction of Quarantine Places, Appointment of Quarantine Officer, importer to keep imported animal, animal products or animal production inputs in Quarantine for a specified period of time for inspection, Issuing of Quarantine certificate, have been included in the Acts and Rules. The aforementioned provisions have mainly provided that quarantine examination must be carried out on "any animal, animal products or animal production inputs" as imported.

53. Existence of law does not fulfill the utility, only in the event of effective implementation is the meaningfulness of laws reflected into practice. Hence, it is necessary to focus towards the state of implementation of quarantine examination. None whosoever from amongst the counterparty have mentioned about the state of quarantine examination on the basis of facts and statistics. There is no doubt as to the fact that sacrifice is being made in the number of hundreds of thousands in Gadhimai. Whether or not there is ample space to keep animals of this quantity and availability of necessary technical manpower for examination? Whether the examination is carried out or not carried out in a regular manner? How much certificate has been made available by examining what number of animals? What and how much of animal have been prevented to enter into Nepal? Whether there is any example of imported animal being sent back into the related country?



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Whether monitoring and controlling is or is not being carried out for animals and birds entering except by way of the custom office, through the open border by way of theft? This and other such questions remain unanswered. The intention of the law is not fulfilled by the examination of the kind done only for the fulfillment of formality. The fact that the contagious disease named "Peste Des Petits Ruminants" as spread in the district of Dhanusha, Mahottari, Sarlahi, Bara, Rautahat and Gorkha in 1995 A.D. spread from the animals as brought from India for the giving of sacrifice in the Gadhimai temple and afterwards at the time of the beginning of "mass vaccination" in 2001 A.D., this contagion had been seen in 52 districts of the country can be seen from the news as published in 2012 A.D. by the Veterinary Epidemiology Centre falling within the Directorate of Animal Health.¹⁹ This situation came about to happen because of the weakness inherent in the quarantine examination can simply be assumed.

54. To carry out the work of quarantine examination of foreign imported animals is a necessary and important act. Because of the open border, it seems necessary to follow with strictness the provision "An importer shall import the animal, animal products or animal production inputs only through the route of Quarantine check." – as contained in section 9 of Animal Health and Livestock Services Act, 2055 (1999). That such type of service is being provided only from Animal Quarantine Office in Birgunj and Animal Quarantine Check Post in Metiarwa of Bara district does not indicate a trustworthy situation. From the study of the documents attested in the file, it seems necessary that appropriate mechanism should be developed for making effective the act of quarantine examination and for making

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



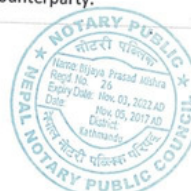
compulsive the act of taking quarantine certificate and for arranging the fast and reliable management.

55. Whether an order should or should not be issued for managing the substance including meat of birds and animals being sacrificed and for controlling the impact befalling from this upon the public health by the making of necessary arrangements including the determination, examination and controlling of the standard of meat? – remains the fifth question to be resolved. For the resolution of this question, a brief reiteration as per the following of some facts as presented by the writ applicant in relation to Gadhimai mela and Animal sacrifice seems necessary:

‘In the Gadhimai mela that occurs every 5 years, 5 types of creatures namely goat, he buffalo, duck, chicken, and mouse are sacrificed as “Offering of Five Animals” (*Panchabali*). In every Mela, sacrifice is given of thousands (approximately 25-30 thousand) of he buffalos including birds and animals in numbers in excess of one hundred thousand.²⁰ These animals are brought from the various places of Nepal and from India.²¹ Notwithstanding the statement that there is one Check Post in Metiarwa of Bara district and one office in Birgunj, the making of an effective and reliable arrangement for the quarantine examination of the animal could not be found. During the course

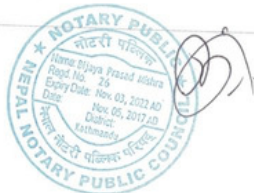
²⁰ No official statistics can be seen about what the number is of animal being sacrificed. In an application of writ applicant Advocate Arjun Kumar Aryal et.al, it was mentioned that in one Mela approximately five hundred thousand animals are sacrificed. This number is not supported by other facts. Nonetheless, as the officials including the priest of Gadhimai temple Mangal Chaudhary, the Chairman of Temple Management Committee Ramchandra Shah have, during the course of discussion, mentioned in front of the Bench that generally in every Mela animals and birds in numbers of more than one hundred thousand are sacrificed, it could be agreed that in the course of every Mela at least more than one hundred thousand animals are being sacrificed.

²¹ In the dispute of Gauri Maulekhi v. Union of India & others, the Supreme Court of India in October 17 of the year 1914 had issued the order saying not to allow animals to enter into Nepal by illegal means. Though the amount of import had somewhat decreased because of this order, the fact that the course of giving sacrifice in the Gadhimai mela by bringing animals from India is still maintained has come to be known from the officials of the Gadhimai Mela Management Committee as present in front of the bench from among the counterparty.



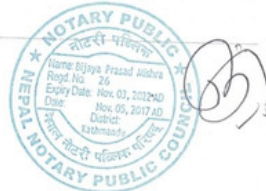
of transportation of animals and birds for giving sacrifice and during the course of giving sacrifice, there occurs haphazard cutting, unkind and cruel behavior. At the place where the sacrifice is given, in the midst of the great crowd of animals as taken, the animals are killed "by blind usage of weapons" in a way that shows including to the Priests cruel behavior upon animals. In the act of giving sacrifice, some resources are made available also from the state fund. Without having a managed place for the giving of sacrifice, the killing is done in an open ground. The said area becomes foul-smelling and polluted because of the meat and carcass of the sacrificed animal and has negative impact upon the public health. From this, a negative impact befalls on the local religious, social and cultural life. This place is publicized by the medium of communications as being illustrated as a place where the sacrifice of animal is given the most in the world. Any regulatory work, none whatsoever such as the health examination of the animal being sacrificed, the examination of the meat of the animal as sacrifice, prohibition in the selling and distribution or in consumption of inedible meat has not been able to take place. No arrangement of cold storage has been made for ensuring that the meat would not go stale. For selling the meat of the animal as sacrificed, arrangement by way of contract has been made. A tender was called by disclosing the amount of twenty-six million seven hundred thousand for the sales of meat of the animal as sacrificed on the date 2071/07/16 (02/11/2014). In some circumstances, the meat of the animal as sacrificed are found to have been taken away and consumed by the local people in a style of forcible looting.

56. The above-mentioned facts are only some examples. Nonetheless, this example is sufficient for assessing the dangerous situation created because



of the reasons of animal sacrifice given in the Gadhimai mela. That the public health is negatively affected by the act of hazardous giving of sacrifice in this way is a matter than can be assumed in a simple way. Because of the weakness, deficiency or vacantness inherent in the managerial aspect, the public health and ecological problem have additionally become complicated and sensitive. The situation cannot be seen of any special study being undertaken in relation to the amount of impact befalling upon the public health because of non-arrangement of sufficient management of including carrying out of determination, examination and controlling of the quality of meat. Stating briefly, the situation cannot be seen of being satisfied to the effect that the basic minimum work has been performed on behalf of the concerned bodies of the Government of Nepal relating to the managing or doing of management for the protection of public health and environment.

57. It can be seen that the legislature has tried to manage some of the issues by making laws related to slaughtering of animal and examination of meat. For this the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) has been issued. This Act includes some useful provisions related to the management of the sales of healthy meat. The above-mentioned Act includes some provision related to animal slaughtering. Section 8 of the Act contains the provision that: "Prior to slaughtering any animal, the animal to be slaughtered shall be produced for ante-mortem examination at the slaughterhouse where such place is established and where slaughterhouse has not yet been established at the site as specified by the Meat Supervisor." Section 9 of the same Act makes the provision that while inspecting "An animal fit for slaughtering shall have to be slaughtered in the slaughterhouse;

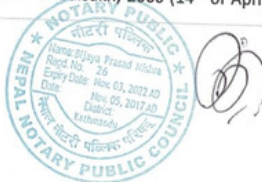


provided that in an area where there is no slaughterhouse animals shall have to slaughtered at such place and time as specified by the Meat Supervisor.” A provision in the form of an exception that “Notwithstanding anything contained elsewhere in this Act, there shall be no objection to slaughter an animal in places other than a slaughterhouse or to consume meat with skin on the occasion of traditional festivals, religious rituals, feasts or spiritual ceremonies” is contained in Section 16 of the said Act.²² By forwarding this provision as contained in the Act, the counterparty, presenter of written answer has tried to prove the rationale of the fact of sacrifice being carried out in an open manner in the Gadhimai mela. Legally, because of the reasons that there shall be no objection, the rationale of the fact that hundreds of thousands of animal and birds are sacrificed in an open manner cannot be substantiated. To manage this in an appropriate way becomes the duty of the concerned bodies of the government. Taking the support of the exceptional provision by setting aside the main provisions of the Act does not seem logical. Apart from this, to take the support of an exceptional provision without even commencing the Act does not seem adorable for the government.

58. Except for some parts of Hetauda municipal area, the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) has not commenced in other parts of the country.²³ Not to commence for up to 17 years after the

²² In the context of the dispute of applicant: Bikalpa Rajbhandari on behalf of Law Students Society, Kathmandu, et.al. v. Government of Nepal, Office of the Prime Minister and the Council of Minister, Singha Durbar, Kathmandu et.al. (N.K.P. 2072, Decision No. 9319, Vol. 1), the interpretation that as the above-mentioned section 16 is not seen to be in contradiction with the provision related to Equality of the constitution, it need not be declared as void was made by the Special Bench of this Court.

²³ Section 1 (2) of Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) contains the provision that “This Act shall come into force at the prescribed area from the prescribed date as notified by the Government of Nepal in the Gazette.” As per the notice published in the Nepal Gazette on the date 2060/1/8 (21/4/2003) in accordance to this provision, it has been prescribed that this Act shall commence from the 1st of Baisakh, 2060 (14th of April,

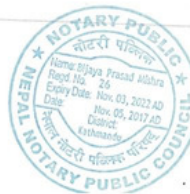


making of the Act seems in itself an astonishing matter. To bring into operation within an appropriate time-limit the Act as made by the legislature is the responsibility of the executive body (government). But the government has not fulfilled this responsibility even after the passage of 17 years from the making of the Act. For making necessary procedural arrangement to bring the said Act into implementation, the Animal Slaughterhouse and Meat Inspection Rules, 2056 (1999) has also been issued. The said Rules as issued by stating "where the Act has commenced shall commence in areas from the date of commencement of the Act", is also in a state of inactiveness due to the non-commencement of the Act. While making the Act, the meaning of the provision as made by the legislature for commencing from the date as prescribed is to provide some flexibility of time to the Government for prior preparation or for managerial arrangement before bringing the said Act into operation. That the Act may not be implemented for an infinite amount of time is obviously not the meaning of such provisions. A directive order has been issued in the name of the counterparty in the year 2062 by this court in the context of a writ application filed by Advocate Bhojraj Ayer by stating "commence the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) by preparing or causing to prepare as soon as possible the infrastructures for implementing the said Act."²⁴ In the said order as issued ten years ago the following details has also been mentioned in relation to bringing the Act into operation:-

"That the legislature goes on making laws with the intention of fulfilling a certain objective for the benefit of the common people and if from the

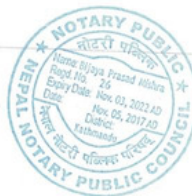
2003) in the Hetauda Municipality area. Apart from that, the said Act has not commenced in other areas of the country.

²⁴ Advocate Bhojraj Ayer v. Office of the Rt. Hon. Prime Minister and the Council of Ministers et.al.; N.K.P. 2062, Dec. No. 7522, p. 435.



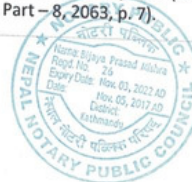
executive readiness is not shown towards commencing the said Act by displaying silence for a long time by the support of the provision as made by the said Act in relation to the date of commencement i.e. operation of the Act, then a state of confusion would be created sensitive human issues by the objective of the Act becoming devoid of purpose. Even if there is the situation of a law not commencing at once after issuance from the legislature by making of the said law, the executive should commence the said law by making an action plan towards commencement in a sequential manner; only then can it be considered that the objective of the Act has been fulfilled.”

59. In this way, not bringing into operation up to now an Act as per the order issued by this court 10 years ago in relation to implementing the Act as made 17 years ago by the legislature is an ironic and unfortunate situation. This situation cannot be considered admirable for any state as organized democratically. The ignoring by the government towards the issues as directed by the legislature through the medium of an Act and by the judiciary through the medium of a judgment/order cannot be considered as fulfilling of responsibility or accountability. When looking at the written-answer of the bodies of Government of Nepal – the presenter of written answer, it can be seen there is aware towards the acts to be performed from the view-point of prevailing legal provision and public interest being mentioned, but have not been able to present substantial facts and statistics about performing solid and result-oriented work at the stage of implementation. The court cannot be satisfied from this kind of baseless answer. Towards this aspect, it seems necessary that a serious attention of the concerned bodies of Government of Nepal be immediately directed.



60. While defining consecutively “Adulterated Foodstuffs” and “Sub-standard Foodstuffs”, section 2 (b) and (c) of Food Act, 2033 (1967) has included the substance as made from the animal and birds. Section 3 of the said Act contains the provision stating, “No person shall produce, sell, distribute, export or import the adulterated foodstuffs or sub-standard foodstuffs or possess such foodstuff for any of such purposes.” By imprisoning and fining the person, acting contrary to the said provision has been declared punishable. But in relation to the meat of the animal as sacrificed in the course of Gadhimai mela, the provision contained in the aforementioned Food Act, 2033 (1967) has not been brought into usage. As a consequence, the state of affairs of impacting/being impacted negatively the health of common people remains maintained. From this, the issue that there remains the situation of befalling negative impact also upon environmental balance can be assumed in a natural way.
61. By stating “As clean and healthy environment is a part of life’s totality, Right to Clean and Healthy Environment is also inherent within the Right to Life”, the principle that Right to Live in a Clean and Healthy Environment is also inherent within the Right to Life has been propounded by this court in the Godawari Marble dispute.²⁵ Even after this, by being interpreted time and time again, the principle that within the fundamental right related to life, the right to live in a clean and healthy environment is also included has been propounded by this court in the context of a number of disputes. Even in the event that the constitution had not labelled in a clear manner as fundamental right the issue of living in a clean environment, the court had viewed it as a fundamental right. Sub-article (1) of Article 30 of the now prevailing

²⁵Surya Prasad Sharma Dhungel v. Godawari Marble Industries Pvt. Ltd. et. al., N.K.P. 2052, p. 169 (Some Important Precedents related to Public Welfare as Propounded by the Supreme Court, Part – 8, 2063, p. 7).

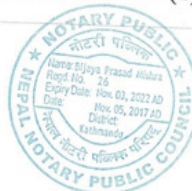


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Constitution of Nepal mentions "Every citizen shall have the right to live in a clean and healthy environment." The provision that "The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation" has been made by Sub-article (2) of Article 30. In reality, the Right to Live with Respect and in a Dignified Manner is also inherent within the Right to Life. The traditional concept of understanding right to life as only a form of animal existence has now no legal and practical importance. As a matter of fact, as the Right to Live in a Clean and Healthy Environment is a fundamental right guaranteed through the constitution, it seems necessary and expedient that necessary arrangement be made from the side of the state for the protection and enforcement of the right. To play a creative role for the enforcement of this right also becomes the responsibility of this court. Hence, it seems appropriate to issue an order in the name of the counterparties to manage appropriately the substance including meat of birds and animals sacrificed in order to maintain clean and healthy environment by controlling the environmental pollution as happening in the course of Gadhimai mela, to determine, examine and control the standard of the meat, to commence the Animal Slaughterhouse and Meat Inspection Act, 2055 (1999), and to make necessary arrangements for maintaining clean and healthy environment in the Gadhimai temple and nearby areas and for not allowing adverse impact to befall upon the rural public health due to reasons including blood, meat, skin of the animal as sacrificed.

62. Writ Order as Issued:

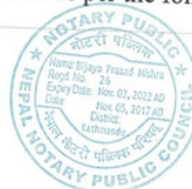
Based on the grounds and reasons as discussed above, the following order is issued in the name of the counterparty pursuant to Article 107 (2) of Interim



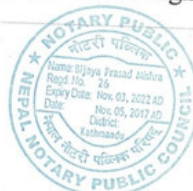
Constitution of Nepal, 2063 presently read as sub-Article (2) and (3) of Article 133 of the Constitution of Nepal for doing as per the following in order to maintain control on the practice of giving sacrifice, to not befall adverse impact on the local environment and public health due to animal sacrifice, to not to allow the happening of unkind, barbarous or cruel treatment upon animals and birds.

i. Directive Order:

Considering from any point of view – religious, social, cultural, ecological, moral or logic, to allow maintenance of the practice of sacrifice is not appropriate. In the end, the practice of giving sacrifice should be prohibited. But, our efforts towards improvements and change should be managed; should not be of a nature that disturbs the social structure. Notwithstanding that the practice of sacrifice should be prohibited, without considering the social context and cultural reality, it does not seem appropriate to issue, right now, an order of mandamus for immediately prohibiting the practice of sacrifice prevalent from long-time in the society. As a matter of fact, as it seems expedient to prohibit the practice of sacrifice and for this, it seems necessary to address in an appropriate way also the prevailing social and cultural beliefs, now therefore for preventing or prohibiting the act of giving sacrifice, a directive order is issued in the name from among the counterparty of the concerned Ministry and Offices of Nepal Government including Government of Nepal, the Office of the Prime Minister and Council of Ministers, the Ministry of Home Affairs, Ministry of Health and Population, Ministry of Science, Technology and Environment, Ministry of Culture, Tourism and Civil Aviation, Ministry of Agricultural Development and Animal Quarantine Office to do or cause to do as per the following:



- a. By addressing the various aspects – the social structure and context, the faith of the people, the cultural beliefs, etc., a directive order to bring into implementation in a sequential manner after preparing strategic plans and programs for ending (for prohibiting) the practice of giving sacrifice of animal within a certain time-limit and also to make arrangement for the making of necessary laws for the ending the practice giving sacrifice to the animal.
- b. A directive order is issued for the operation of acts increasing or causing to increase the public consciousness in an extensive manner for preventing the practice of giving sacrifice as per the above and for disseminating notice/message for ending the practice of giving sacrifice by prescribing a certain time-limit.
- c. For until the situation of being prohibited the act of giving sacrifice as per the above, a directive order has been issued for discouraging the matter of giving sacrifice by adopting as prohibitive measures with the determination of necessary and appropriate conditions such as levying of an attractive fee in an institutional manner, determining of procedural condition, determining the maximum number of animals that may be sacrificed, determining the maximum and minimum age of animal that may be sacrificed, disallowing the giving of sacrifice of unhealthy and sick animals, not to give sacrifice publicly in an open space as a form of solution for decreasing, in a sequential manner, with the maintenance of control on the day to day increasing act of sacrifice.
- d. As it is expedient to maintain control on every form of brutal treatment upon animals by defining in a legal manner the animal rights, a directive order for immediately carrying out the procedure for the making of laws favorable to our social context to guarantee the animal rights, to make



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arrangements as to animal welfare, and studying the laws prevalent in other countries for declaring punishable the all types of cruel, barbarous, unkind or inhumane treatment happening upon animals in the Nepali society.

ii. The Order of Mandamus:

To do or cause to do as per the following in the following matters, this order of mandamus is issued in the name of the counterparty without adversely affecting the universality of the matters mentioned above while issuing the directive order in relation to prohibiting the practice of giving sacrifice to animal.

- a. A order of mandamus has been issued to form or cause to form all necessary mechanisms including the immediate formation of committee pursuant to Section 27 of Animal Health and Livestock Services Act, 2055 (1999) for making effective management for not allowing the happening of cruel, barbarous, unkind treatment upon animals and birds in the context of transportation of animal and birds and other activities in relation to sacrifice or in the course of giving sacrifice.
- b. While a directive order has been issued by this court 10 years previously in relation to the commencing of Animal Slaughterhouse and Meat Inspection Act, 2055 (1999) as made by the legislature 17 years previously, as an ironical situation has come about by the maintenance of indifference without being up to now sensitive towards the commencing of the said Act, now, therefore an order of mandamus is issued to immediately bring the said Act into full implementation by making whatever arrangements that need be made in relation to the same; by making any improvement which need be made in the said Act.

- c. An order of mandamus is issued to make necessary, reliable and effective the acts including the doing of quarantine examination of animals imported from foreign and the obtainment of certificate pursuant to Animal Health and Livestock Services Act, 2055 (1999); by making arrangements as to the availability of effective service by forming necessary regulatory mechanisms including the formation of quarantine check posts in the appropriate check points.
- d. An order of mandamus is issued in the name of the counterparty to make appropriate management of substance including the meat of animals and birds sacrificed, to determine, examine and control the standard of the meat for the maintenance of clean and healthy environment by controlling the environmental pollution as happening during the course of Gadhimai mela, and to make necessary management for not allowing to befall adverse impact in the local public health due to reasons including the blood, meat, skin of the animals sacrificed and for maintaining clean and healthy environment in the Gadhimai temple and the surrounding areas.
- e. An order of mandamus is issued in the name of the counterparty to discourage or cause to discourage the act of giving, causing to give of animal sacrifice by not performing any act from the side of the government which encourages or assists such acts in a direct or indirect manner.
63. Monitoring and Inspection Division of this court is directed through this order to ensure or cause to ensure the state of full implementation and to monitor in a periodic manner the state of implementation of this order.



64. Send one copy of this order to the Monitoring and Inspection Division of this court for the necessary information and action and one copy of duplicate to the Office of the Attorney General for information to the counterparty. Other, by doing as per the rules, submit the file to the Records Section.

S/d

(Ishwor Prasad Khatiwada)

Justice

I concur with the said opinion: S/d

(Anil Kumar Sinha)

Justice

Bench Officer: Yam Prasad Baskota

Computer: Manjita Dhungana

Done on 2073/04/20/05 (Thursday, 4 August, 2016)

Schedule-10

(Related to Sub Rule (5) of Rule 18)

From of Translation Copy of Document

"The Translation copy is true and verified"

Signature :

Name : Bijaya Prasad Mishra

Date : 08 August, 2019

Certificate Number of the Notary Public : 26:

Date of Expiry of Certificate : 03rd November 2022

Seal of the Notary Public :

