

Supreme Court

Full Bench

Hon'ble Justice Sushila Karki

Hon'ble Justice Govind Kumar Upadhayaya

Hon'ble Justice Jagdish Sharma Poudel

068 – WO – 0082

Case: Certiorari

On behalf of Pro Public and on his own behalf, Advocate Prakash Mani Sharma, a resident of Ward No. 14, Kuleshwar, Kathmandu Metropolis, Kathmandu District and Others ----- Petitioners

Vs.

Godavari Marble Industries Pvt. Ltd. and Others ----- Respondents

The facts-in-brief and the order issued thereupon in regard to the present writ petition lodged pursuant to Article 107(2) of the Interim Constitution of Nepal, 2007 under the extra-ordinary jurisdiction of this Court are as follows:

Facts-in-Brief of the Writ Petition

The petitioners had filed a writ petition in 2001 (Chaitra 20, 2058 B.S.) seeking voidance of the decision of Nepal Government to grant permission to Godavari Marble Industry Pvt. Ltd. for quarrying and operating the Marble Industry until 2011 (2068 B.S.) in the Godavari area which is full of biological diversity as the impugned decision and the accompanying activities were inconsistent with the Constitution of the Kingdom of Nepal, 1990 and the prevalent Nepal law. That writ petition resulted in a split decision on Baisakh 10, 2063 (2006) which is currently *sub judice* before a Full Bench. Respondent Department of Mines and Geology, which had been framed as a respondent even in the earlier Writ Petition No.3394 (005 Full Bench), made a decision extending the permission granted to Godavari Marble Industry Pvt. Ltd. for conducting quarrying up to an additional period of 10 years effective from the date of its expiration, even though the above mentioned writ petition was still *sub judice* before the Full Bench. Hence, the petitioners prayed for quashing the impugned decision of Poush 23, 2067 (2010) as it was at once arbitrary, '*mala fide*' and unlawful.

The petitioners further contended that due to the topographical location of Phulchowki hillock, which can be used as the highest hillock for sightseeing of Kathmandu valley, Godavari area is considered to be very significant. 571 species of flowers, 300 species of butterflies, 254 species of birds and 80 species of trees having beautiful leaves, besides the water resources and religious and cultural heritage, are some of the major significant things of Godavari area. But due to the continuing operation of respondent Godavari Marble Industry ever since 1966 (2023 B.S.) in the heart of Godavari area was causing virtual destruction of the environmental, biological, religious and cultural existence of Godavari area.

A study report called 'Kathmandu Valley, Environment and Cultural Heritage: A Protective Inventory' prepared jointly by Nepal Government, UNO and UNESCO had also proposed for declaring Godavari area as a protected area. Even the report called 'Conservation Project For Phulchowki Mountain, Nepal' prepared jointly by Department of National Parks and Wildlife Conservation, which falls under Ministry of Forest and Soil Conservation, and the International Council For Bird Preservation, U.K. has also floated the proposal of declaring Godavari - Phulchowki area as a protected area.

Various national and international experts have made their views and comments available to the petitioner Pro Public regarding the urgency of protection and promotion of Godavari area. Not only national and international experts working in the area of environment conservation, several agencies of Nepal Government have also explained the significance of Godavari-Phulchowki area and pointed out the negative impacts caused on the environment and the flora and fauna by the operation of Godavari Marble Industry in that area. Nepal Government, Department of Forest, Nepal Agriculture Research Council, Fisheries Research Division, Godavari and the Royal Botanical Garden have pointed out the environmental significance and the threat caused to the flora and fauna of this area.

All this shows that the Godavari area, which is full of biological diversity and is being used as a habitat of rare wild life and vegetation, is an invaluable national heritage and its conservation appears to be indispensable for the present as well the future generations. Needless to say, therefore, the impugned decision extending for 10 years Godavari Marble Industry's time period for quarrying made by Department of Mines and Geology was obviously arbitrary and unlawful. Thus the impugned decision was inconsistent with the Constitution and the prevalent Nepal law and the earlier order issued by the apex Court, and it was not only contrary to the principle of rule of law rather it was also made with a '*mala fide*' intention of evading the legal provisions.

On the one hand, the issue of whether or not respondent Godavari Marble Industry should be closed down is under consideration (*sub judice*) before the Court. On the other hand, the Industry has been also closed down following the order of its closure since Ashwin 19, 2065 (2008). Thus as the impugned decision of extending the permission granted to respondent

Godavari Marble Industry for an additional period of 10 years was '*mala fide*', arbitrary and unlawful, the petitioners prayed for the issuance of the following orders pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2007:

(a) To quash by issuing an order of Certiorari the decision of respondent Department of Mines and Geology made on Poush 23, 2067 (2010) to extend the permission granted to respondent Godavari Marble Industry for an additional period of 10 years.

(b) To issue an order of mandamus in the name of respondent Ministry of Industry and the Department of Mines and Geology to declare immediately pursuant to Section 12(1) of the Mine and Mineral Substances Act, 1985 the Godavari area as a prohibited area for mineral activities.

(c) To issue an order of mandamus in the name of respondents Nepal Government, Office of Prime Minister and the Council of Ministers pursuant to Section 10(1) of the Environment Protection Act, 1997 to establish the Godavari area as an Environmental Protection Area.

(d) To issue an order of mandamus in the name of Nepal Government to declare the forest of Godavari area as a protected forest pursuant to Section 23 of the Forest Act, 1993.

(e) To conduct a study to ascertain the truth about the damages suffered by the families on account of Godavari Marble Industry and to issue an order of mandamus in the name of respondent Godavari Marble Industry pursuant to Section 21(3) of the Mine and Mineral Substances Act, 1985 and in accordance with the '*Polluter pays principle*' to provide necessary compensation.

(f) To issue necessary orders including mandamus making respondent Godavari Marble Industry accountable as per Section 11a(2) for paying necessary amount required for restoring Godavari area to its earlier condition prior to the operation of the mines.

(g) To issue a necessary order in the name of the respondents to provide reasonable amount to the lawyers involved in bringing and advocating the PIL petition before the Supreme Court for protection of the Godavari area.

(h) To enclose the case file of Writ No. 3394 of 2001 with the present Writ Petition No. 005 of 2008 being considered by a Full Bench.

(i) To also issue an Interim order pursuant to Rule 41(1) of the Supreme Court Rules, 1991 restraining the operation of the impugned decision extending the lease period of operating respondent Godavari Marble Industry and the other activities related thereto until the final disposal of the present writ petition.

Preliminary Order Issued by the Apex Court

The apex Court issued an order asking the respondents to submit their written replies within 15 days of receiving the order explaining why an order as prayed for by the petitioners ought not to be issued, and also to produce the case file for further hearing after submission of the written replies or expiration of the time limit for producing such written replies. Also, the apex Court issued an order on Shravan 19, 2068 (2011) to summon the respondents to be present before the Bench on Bhadra 1, 2068 (2011) for hearing their arguments about whether or not the Interim order should be issued as sought by the petitioners.

Summary of the Written Replies

Submitting its written reply, the Ministry of Industry contended that the time period of Godavari Marble had been extended in accordance with the due process of law. As the law provided for extending the time period of the big Mines at once for 10 years, the lease period of Godavari Marble Industry was lawfully extended up to 2021 (Ashadh 26, 2078). The Marble Industry operating in Godavari area since more than five decades has been allowed to continue its operation under strict supervision. As the Marble Industry has been able to obtain ISO 14001 on the basis of preparation and implementation of Environment Management Plan(Plant and Mining), and the Marble Industry has prepared an Environment Review Report, 2006 as instructed by a departmental directive and has been conducting some activities relating to minimizing environmental impacts, the Ministry of Industry refuted the petitioners' alleged contention of the Marble Industry causing adverse impacts on the environment, and, therefore, it prayed for rejection of the writ petition.

The Office of Prime Minister and the Council of Ministers contended in its written reply that the petitioners had failed to point out any type of involvement of that office in the alleged matter. The various Ministries, Departments, Offices and bodies were independent and competent to conduct different activities falling under their respective jurisdictions following the process and procedure prescribed by the law. If an order was issued as prayed for by the petitioners, obstacles were bound to emerge in the exercise of the powers granted by law to the bodies or agencies established for the purpose of conducting the activities relating to environment and Mines or it may even result in restriction or prohibition on such activities. As a result, this may raise a question against the establishment or creation of such bodies or agencies. Therefore, as there was no substance in the writ petition, it deserved to be rejected.

In the written reply submitted on behalf of the Ministry of Environment, it was contended that the writ petition seeking invalidation of extension of the lease of Godavari Marble Industry for an additional period of 10 years granted through a decision of Department of Mines and Geology was in no way related to any act of that Ministry. So the Ministry had been framed as a respondent without any rhyme or reason. So far the issue of environment impact assessment of Godavari Marble Industry was concerned, no proposal had been presented so far in that regard in the Ministry. So as there was not at all an issue of whether or not to assess the environmental impacts, the Ministry prayed for the rejection of the writ petition.

The Department of Mines and Geology contended in its written reply that the Department had taken the environmental aspect very seriously in regard to the operation and monitoring of Godavari Marble Industry, and had been issuing from time to time necessary instructions to the Industry Manager. In course of complying with those instructions, the Industry had contributed to forest development by resorting to plantation and substantially reduced the use of explosives in the Mines. Those measures undertaken by Godavari Marble Industry in regard to environmental impacts reduction were in a way exemplary for mineral Industries. As there was valid justification and need of that Industry and because its lease had been extended in a lawful manner, the writ petition should be rejected.

In its written reply, Ministry of Forest and Soil-Conservation submitted that it was requested through a Secretary level decision of Chatra 22, 2067 (2010), received from Ministry of Industr, to take necessary action to reopen and operate Godavari Marble Industry. A decision was made by Nepal Government, Ministry of Forest and Soil-Conservatio, on Shraavan 17, 2068 (2011) allowing Godavari Marble Industry to start immediately the act of quarryin, of course, taking precaution for minimizing the impacts on environment and biological diversity, and to include also District Forest Office in the act of monitoring in accordance with the decision of Natural Means and Resources Committee of the Legislature Parliament made on Shraavan 14, 2068 (2011). As the Ministry of Forest and Soil Conservation had made the decision as per the instruction of the Natural Means and Resources Committee of the Legislature Parliament and forwarded that decision for further implementation, and because the Industry shall be monitored by that Ministry as well as the subordinate bodies as per the instruction of the said Committee, the writ petition should be rejected.

The Forest Department contended in its written reply that development and destruction were interdependent issues. The course of development sometimes may cause some degree of destruction as well. However, destruction may be

stopped or prevented by resorting to proper management. Instead of closing down the Industry, it shall be better to pay attention to making proper management. Therefore, the petition should be rejected.

Submitting the written reply on behalf of respondent Godavari Marble Industry, it was contended that permission had been granted to operate the Mines in 116 hectare of area out of 12000 hectares of Phulchowki area, and as the Mines had been operating since last 80 years only in 6 hectares of that area, there was no possibility of causing adverse impacts on biological diversity. Displaying sensitivity to the environment, the Industry has acquired international standard insignia ISO 14001 and it had got the environment audited from time to time. Besides, the Industry had been also adopting all types of measures for minimizing the impacts caused to the environment on account of operation of the Industry. Moreover, the Study Report (2068, Shravan) prepared by the Natural Means and Resources Committee of the Legislature Parliament and the Study Report (2065, Poush) prepared by Department of Mines and Geology had described that the Industry had been operating within the purview of the prevalent law and it had not caused any adverse impacts on the forest, environment and biological diversity of the area. So both the study Report had recommended for uninterrupted functioning of the Industry.

The Department of Mines and Geology had granted extension of the lease for operating the Industry for an additional period of 10 years only after having conducted thorough enquiries on Poush 23, 2067 (2010), and the decision made by that Department in regard to a matter exercising its power delegated by the law could not be voided until and unless it appeared otherwise. Therefore, respondent Godavari Marble Industry called for rejection of the writ petition.

Submissions made by Learned Counsels

Submissions made by the learned Counsels appearing on behalf of the petitioners and the respondents are as follows:-

Counsels Appearing on Behalf of Petitioners

Advocate Prakash Mani Sharma

Godavari area is highly significant from the viewpoint of environment which is virtually like a living museum. It has got not only tourist and religious significance rather it was also highly sensitive from the viewpoint of biological diversity. This area is also famous for the presence of various rare species of flower, butterflies and birds. In Surya Prasad Sharma vs. Godavari Marble Industries and other, the apex Court had issued an instructive order with clear cut guidelines in the name of the respondents in view of the sensitivity of the

Godavari area. In spite of the issuance of the Court order the lease of the Industry was renewed. Not only that, despite the writ petition challenging the renewal made in 1996 (2053 BS) being *sub judice* before the Court, the lease period of the Industry was further renewed up to 2021 (2078 B.S.). Such an act displayed insensitivity of the respondents towards environment. Such an extension granted to the Industry despite the earlier petition being *sub judice* also appeared *mala fide*. It is clear from the, correspondence made by various organizations like Department of Forest, the National Park and the Department of Wild Animals that biological diversity is being destroyed and there is a need of closing down the Industry. Some foreign experts have also expressed their worries and concern for protection of this area. Marble may be brought from other places as well but if the environment is destroyed it cannot be brought back. The research and studies made by the national and international sectors have pointed out that Godavari Marble Industry has caused damage to the biological diversity of that area, and so recommendations have been made for closing it down. Besides, the Industry has been always presented as running into loss, and it has paid negligible income tax to the State. And indulgence in the transaction of stones and concrete in the name of marble has further contributed negative impacts on the environment. Therefore, the learned Advocate pleaded for issuance of the order as prayed for by the petitioners.

Senior Advocate Dr. Surya Prasad Sharma Dhungel

Although a developing country like Nepal also needs development, an act like destruction of the natural heritage full of biological diversity should not get precedence in the name of development. Environmental protection and development are complementary to each other and, therefore, a program supporting each other ought to be conducted. The more adverse impacts caused on the environment of Godavari area and bringing about development through the operation of Godavari Marble Industry must be taken into consideration. The damage caused by the Industry to the environment so far cannot be compensated in any way. Therefore, the closure of the Industry shall not create any obligation on the State to give any kind of damage rather it is the Industry which should be made liable for providing damage.

Advocate Din Mani Pokharel

The Ministry of Forest has already decided that the respondent Godavari Marble Industry has caused pollution to the environment of Godavari area. In such a situation the decision made by the Department of Mines stating that the Industry does not cause any impact on the environment is simply baseless. So as there is no alternative to the closure of the Industry so as to stop immediately any further destruction of the environment, the writ petition must be issued.

Advocate Kabita Pandey

The biological diversity of Godavari area is incomparable not only for Nepal rather also for the world, and it needs to be protected. The Supreme Court of Nepal has displayed a significant role in regard to environment protection ever since its establishment. Even in the present dispute, the apex Court must display judicial activism and protect the environment of Godavari area.

Submission Made on Behalf of Respondent Nepal Government

Joint Attorney Kiran Poudel

The issue of where to allow operation of an Industry and where to prevent it from such operation is a matter related to the policy and discretionary power of the Executive. Hence, the Court should not interfere in such a matter. Godavari Marble Industry is situated within the lease area of 116 hectare land of which only 5 hectare is being used for mining purpose. 5 hectare of land being a very small area, the activities conducted inside this small area cannot be supposed to cause any adverse impact on the environment of Godavari. The Government is also not at all in favor of environmental pollution. The regulatory authorities including the Department of Mines have been regularly monitoring the activities of the Industry to ensure that it is not causing any adverse impacts on the environment. In case there is any problem, it may be on the management side of the Industry. The demand for proper management of such a problem may be valid. But the call for closing down the Industry instead cannot be held as reasonable.

Besides, no research report has clearly stated that the Industry should be closed down. The act of renewal after expiration of the permit being a normal process, it is not proper to say that the lease period was renewed in spite of the case being *sub judice*. The demand for imposing immediate prohibition on quarrying of minerals as per Section 12(1) of the Mine and Mineral Substances Act, 1985 is not valid because all pre conditions imposed by the Department of Mines have been fulfilled by the Industry and, therefore, the above mentioned Section 12(1) cannot be invoked in this case. The petitioners have also called for declaring Godavari as a protected area in accordance with Section 10 of the Environment Protection Act, 1997. However, because only Nepal Government had got the authority to decide whether or not such a situation exists, the Court cannot issue such an order. Moreover, the extent of damage caused by the Industry to the environment and the amount of comp, 1985 cannot be ascertained through this PIL. On the whole, the claims made in the petition are not based on facts, and also because Nepal Government has been regularly monitoring the Industry and giving necessary instructions, the writ petition should be rejected.

Submissions made On Behalf of Respondent Godavari Marble Industry

Advocate Balkrishna Dhakal

Originally established during the Rana regime, the Godavari Marble Industry has been under the ownership of Mr. Chiranjivi Agrawal since 1976 (2033 B.S.). Although being operated in accordance with the prevalent law, the directives of the Government and prescribed norms and criteria, the Industry has been repeatedly dragged into the Court one after another since last 33 years. Advocate Surya Prasad Sharma Dhungel had filed the first PIL against the Industry in 1989 (2046 BS). Prior to the enforcement of the Mine and Mineral substance Act, 1985 in 1999, the Marble Industry had moved an application in 1995 seeking renewal of the lease for 20 years. As directed by the Department of Mines, the Industry had submitted a comprehensive proposal including details about the activities and the dust control mechanism to be adopted by the Industry in regard to environment planning and management. It was only when the Department of Mines became satisfied after going through the study report and the proposal submitted on behalf of the Industry that the lease was renewed for a further period of 10 years. Subsequently, as the term of the lease was likely to expire in 2011(2068 BS), the Industry applied on time, and after completion of all the due procedures the lease has been already renewed up to 2021(2078 BS). It is not at all reasonable to say that renewal of the lease period should have been stayed only because the writ petition was *sub judice* before the court.

Prior to the permission granted to the Industry, Godavari was simply a bare hill. After the Mines came into operation, nearly one hundred thousand saplings were planted which helped to promote vegetation and greenery on the hill. The Industry has obtained ISO 1400 certificate on its own initiative. There has been no resistance of the Industry at the local level. Rather various community level Committees have expressed appreciation for the Industry. The Industry has introduced Environmental Management System on its own and has also followed the ISO standard. At present both the Department of Mines and the Department of Forest have been conducting regular monitoring of the Industry. In case the Industry is found to be operating in contravention of the law, the concerned department and the authority shall automatically issue necessary directives to the Industry.

Besides, the Industry has also paid substantial amount of income tax to the State. In addition to that, it has also provided employments to hundreds of people. The Industry has not caused any destruction to the environment as alleged by the petitioners. Today there is a need of making a balanced interpretation of economic development, social development and environmental protection. As the Industry has been making

significant contributions to all these areas and also because it has done nothing to cause damage to the environment, the writ petition should be rejected.

Advocate Motikala Subba Dewan

It is not enough only to raise a demand for declaring some area as a protected area. It is equally necessary to show how many and what type of birds and flowers have decreased in number. A look at the modern international practices shows that in case of substantial contributions made to the national income, tolerance has been displayed even in the event of some damage caused to the environment. Also, since the petitioners are not local residents, they have got no *locus standi* to raise this issue.

Advocate Narendra Pathak

Even in the earlier judgment in a PIL petition relating to Godavari Marble Industry, the apex Court did not issue an order to close down the Industry. Only in case a responsible authority finds out violations of prescribed norms or standards, it can order for the closure of the Industry. So as it is not feasible for the apex Court to enquire into or examine such matters, it cannot be possible for the Court to issue such an order for closure of the Industry. The Mine and Mineral Substances Act, 1985 has also provided for some remedial measures to prevent environmental destruction. But without the emergence of any such eventuality, the petitioners have moved the Court simply on the basis of presumption and imagination. Hence, the writ petition should be quashed.

Senior Advocate Shambhu Thapa

An Industry established in accordance with the law and functioning lawfully after obtaining permission from a responsible authority cannot be closed down simply by moving a PIL petition. If the Industry has allegedly not complied with law or violated the prescribed norms, the remedy should be sought only by resorting to a legal recourse. The Industry has been granted permission to operate in accordance with the directive of the Natural Means and Resources Committee of the Parliament. Because the petitioners have not challenged the legality of that directive, the writ petition should be rejected.

Advocate Raman Kumar Shrestha

One must seek any remedy only in accordance with the prevalent law. Whether or not to close down a Mine is not an issue to be decided by the Court. It is rather a subject matter to be decided by the Department of Mines. Hence, the writ petition should be rejected.

Senior Advocate Sushil Kumar Pant

The study Reports submitted on behalf of the State seem to have arrived at the conclusion that the respondent Industry has not caused any adverse impacts on the environment of

Godavari area whereas the Reports prepared by the private sector have mentioned about the damage caused to the environment. However, nothing has been mentioned about what was the source of wisdom of those private reports. As the Industry has not caused any environmental destruction, the writ petition should be rejected.

Senior Advocate Born Bahadur Karki

It is not suffice on the part of the petitioners only to say that the environment of Godavari has been adversely affected. The documents produced by the petitioners regarding pollution have been produced in a personal capacity. Only a study made at the government level should be treated as evidence pursuant to Section 6 of the Evidence Act, 1974. The Parliamentary Sub-Committee has issued a directive to allow the operation of the Industry which has not been voided so far. Therefore, the writ petition should be rejected.

Advocate Sharda Prasad Koirala

The petitioners have not made an objective claim as to what type of unlawful activity had been conducted by the Industry. The issue raised in the petition is not based on any research. It is not proper to draw a conclusion about a technical issue like the alleged pollution caused by the Industry simply on the basis of presumption and mere arguments. No doubt, that there should be a balance between environment and development may fall under the purview of public interest. However, it cannot be just and reasonable to call for outright closure of the Industry. Therefore, the writ petition should be rejected.

Submission made On Behalf of an Interested Party allowed to be included in the Writ Proceedings

Advocate Tank Dulal

It is the local people who may be affected by the Industry. Even in 1996, an agreement had been reached between the local residents and the Industry to let the Industry operate and to take measures for minimizing the impacts caused by the Industry. A letter delivered by a legally constituted Consumers Association has stated that the presence of Godavari Marble Industry in that area has rather contributed to the protection of the forest. Moreover, 500 people of that area have also got employments. The respondent Industry is, in fact, not a polluting Industry.

Order

After listening to the logical arguments of the learned Counsels appearing on behalf of the petitioners and the respondents, and after going through the pleading notes submitted by them as well as the writ petition and the written replies, besides the relevant constitutional and legal provisions, the present writ petition needs to be decided focusing basically on the following issues:

1. How and in which way the international standards maintaining balance between the concept of environmental justice and environment and development activities are evolving?

2. What kind of jurisprudential norms have been developed by this Court in respect of environmental justice?

3. What is the significance of Phoolchowki-Godavari area from biological diversity and environmental viewpoint as well as from religious and cultural viewpoint? Also, whether or not the operation of Godavari Marble Industries has caused any adverse impacts on biological diversity and ecological balance of that area?

4. Whether or not the activities including quarrying conducted by Godavari Marble Industries in Godavari area are compatible with the constitutional provisions and the Nepal law in regard to environmental protection?

5. Whether or not the order as prayed for by the petitioners should be issued? Or what other type of orders shall be appropriate for issuing in this regard?

The petitioners had lodged a writ petition on Chaitra 20, 2058 (2001) seeking invalidation of the decision of Nepal Government and the activities related thereto granting permission to Godavari Marble Industries for carrying out quarrying until 2011 in Godavari area, which is rich in biological diversity, as the impugned decision was inconsistent with the Constitution of Kingdom of Nepal, 1990 and the prevalent Nepal law.

That writ petition was disposed on Baisakh, 2065 (2008) resulting in split opinions, and was still *sub judice* before a Full Bench. Department of Mines and Geology, one of the respondents in the aforesaid writ petition No. 3394 (Full Bench 005), decided on Poush 23, 2067 (2010), during pendency of that writ petition, to extend the period of quarrying granted to Godavari Marble Industries Pvt. Ltd. for an additional period of ten years effective from the date of its expiration and so the impugned decision was arbitrary, *mala fide* and unlawful. Hence, the petitioners prayed for quashing it and declaring the Godavari area as a protected area in accordance with the Environment Protection Act, 1997.

The respondents have contended in their written replies that the Industry should not be expected to halt its activities only because the case was *sub judice* before the Court. The Department of Mines had extended the lease period up to 2021 (2078 B.S.) after enquiring into all the aspects. The Industry has not done any activity causing environmental pollution of Godavari area; it could obtain ISO Certificate only because it had made all necessary arrangements required for environmental protection; it had assisted the local people by providing employments and had paid significant amount of tax to the State; and it had controlled the flight of foreign currency by replacing the import of marble to a limited extent as its permit had been renewed as per the law

on account of its compliance with the requirements pointed out by the regulatory authority following inspection conducted from time to time. Therefore, the respondents pleaded for not issuing the order as prayed for by the petitioners.

Air, water, light, and heat and the flora and fauna which are integrally dependent constitute, in totality, the Nature. The actions and reactions caused by the presence or existence of all those elements existing in the Nature may be described as environment. These five elements are also known as "*Panchtatva*" in the Eastern Philosophy and the issue of retaining the natural form of those elements or components preventing the decay of their quality seems to be related to environmental protection.

According to the United States Environmental Protection Agency (EPA), "Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies."

It has been mentioned in Section 2 clause (a) of the Environment Protection Act, 1997 that "environment" means the natural, cultural and social systems, economic and human activities and their components as well as the interaction and inter-relation among those components. This definition of environment seems to be comprehensive and in accord with the international approach. Actually speaking, it shall be erroneous or incomplete to view only the natural components as environment. In fact, environment in totality is built up by cultural and social systems, the components born of economic and human activities and their intermingling and the relation among such components. The social needs and economic affluence of the people are dependent on the Nature. The human activities are conducted for the fulfillment of those needs. On the other hand the Nature has got its own rule of operation. The Sun rising in the East and setting in the West is a natural rule. The changes in the seasons occur due to natural reasons. The events like birth and death are also related to Nature. Therefore, there is no disputing the fact that the entire environment is built up on the inter-relation and interaction among the natural components and human activities.

Similarly, in clause (b) of the same Section the term 'pollution' has been also defined. According to it, pollution means only the activities causing considerable deterioration in the environment through direct or indirect changes in the environment and causing harm or damage to beneficial or useful propose. The aforesaid definition of pollution is comprehensible. In fact, any activity intended to bring about any type of direct or indirect change causing harm or damage to the environment should be understood as environmental pollution.

Because animals, plants and entire life cycle are interdependent on the Nature, their existence is also connected with the existence of the Nature. Human beings are natural creatures,

and so their life is also directly dependent on the Nature similar to that of other animals and the flora and fauna. If we remember the initial stage of human development, no difference can be found between the State of human beings and other animals or the flora and fauna. It was not simply a fictitious story that human beings also used to live in the lap of Nature being integrated with other animal in the natural form. The primitive condition of a human community still today living a nomadic life in the forests of some countries of the world including Nepal directly testifies to this reality.

The modern human community has changed its identity along with the course of evolution of time. Human beings claim to stand on superior footing in comparison to other animals in the Universe due to their sense of awareness and application of rationality. However, as this respect for superiority has not been given by other independent animals, and it is simply a self declaration of human beings themselves, its final decision shall be made in the future by the Nature itself.

There is no disputing the fact that human beings can be able to stand on a different footing in comparison to other animals. Man has been successful to develop different structures, techniques and methods by making multi lateral use of the Nature. Men created dimensions of development have made human life easier and more comfortable. On the basis of this very development oriented change accomplished by men, man has not only been able to keep other animals in his control rather he seems to be also trying to assert his control over the whole Nature.

Not only the soil and stones and the forest lying on the exterior part of the Earth, other minerals including oil, gas etc. lying inside the Earth have been excessively exploited. Things like operating transportation by building tunnels under the ground or blocking or changing the flow of river for electrification or irrigation have now become ordinary things. Quarrying has been conducted not only under the ground but also reaching even the bottom of the Sea. Also, the chances of accidents in Sky have increased due to man created development.

That with every stage of development the human community is moving towards modernization is a truth. However, on account of the extent of environmental pollution caused by the adverse impacts of uncontrolled exploitation of Nature, not only the human community rather the entire flora and fauna have reached a terrifying level of destruction. On the basis of analysis of the severity and average analysis of the adverse impacts visible in the environment along with the developments and constructions following the Second World War, the Scientists are making public the surveys about the existence of the Earth being exposed to risk in the near future. Not only that, scientific studies are underway regarding the possibility of transferring the human habitation in the space or on other planets.

The belief that the Nature's limit of tolerance is likely to exceed the limits is closer to truth. Big atomic furnaces and chemical plants have been set up because a situation has arisen where the natural means and resources have proved deficient in sustaining the increasing population, increasing consumption and development of solar energy. From time to time, several men and women and animals have lost their lives as a result of explosions or leakage in such furnaces or plants, whereas there is no record at all of the immediate and long term impacts on the environment. The marine life system is experiencing serious impacts in the event of leakage of oil and chemical substances in the sea. As the degree of acid increases in the soil due to excessive use of biological insecticides and chemical substances, the agricultural products have become dependent not on the Nature rather on the insecticides and chemical substances. The traditional seeds of cereal crops are gradually being replaced by the genetically modified (GOM) seeds. So terrible are the impacts on the environment caused by chemical weapons and noise pollution, poisonous smoke and noise pollution emitting from industrial plants and vehicular means of transportation. The degree of harmful green house gas is ever increasing due to those manmade activities and excessive exploitation of natural resources.

On account of the impacts caused by climatic changes the whole earth and air have become heated more than two degree Celsius. Due to yearly increasing temperature, the life of some densely populated cities is becoming affected. Likewise, due to gradual melting, there has emerged increasing danger of white Himalayan ranges getting converted into black and ugly Mountains. On account of early increase in the sea level there appears probability of even habitation being exposed to risks. Ever increasing are the effects caused by untimely floods, landslides and desertification resulting from drought, excessive rain or lack of rain. The sources of water are getting dried up whereas the available sources of water are becoming unusable having become polluted. The existence of marsh area has been exposed to risk, and air pollution and noise pollution have transgressed the limit of natural tolerance.

Some incurable diseases never seen before among the people are becoming visible due to use of chemical substances and insecticides. Not only this, due to ever increasing shrinkage in the size of forests the animals and the flora and fauna have virtually reached the stage of extinction. The wild animals like rhinoceros, elephants, tigers, bears, marine animals and creatures like whale and dolphin, rare birds and butterflies, snakes, frogs and insects may become such commodities which could be seen only in museums in the days to come. Not only that, Scientists and environmentalists seem to be seriously worried at the realization of the fact that the coming generations may be deprived of viewing the white Himalayas and the blue Seas and the air. In short, today due to the destructions caused to the cleanliness of the Nature including water, Earth and air, the eco-system has become disturbed.

The Nature and its environment are regulated by the rule of the Nature. Any activities done against those rules which are also known as the eco-system may cause disturbance to the balance of the Nature. Even through animals and the flora and fauna follow this rule of the Nature knowingly or unknowingly, human beings are trying to transgress its limits. Modern men who boast of having reached the pinnacle of development are becoming dependent on machines. The food and living habits, daily routine and certain activities seem to be unpalatable to the society and thus contrary to the natural rules. In the name of ultra modernism such unnatural and polluted methods are being imported at a swift speed towards an undeveloped and backward society.

Analyzed from another angle, along with the course of development of human civilization the human interest and concerns towards the Nature and environment are getting reflected in a greater or lesser degree. It is believed that the Eastern philosophy is born or has evolved out of the natural rules. It is especially a significant aspect of the Eastern philosophy to worship the Nature treating it as a form of God. Water, earth, air, and light are, in fact, worshipped in the Eastern civilization. Not only that, some animals and plants are still worshipped respectfully being treated as the incarnation or form of God. The significance of Nature has been described in the Vedas and the Scriptures, and it has been also pointed out to protect (worship) them. The expressions like "Peace with the Earth, Peace with the Plants" are indicative of this fact.

Other philosophies and Sects also do not seem to have ignored the Nature. In one way or the other all philosophies, religions and sects are found to have accorded importance to the Nature and to its protection. Thus, there is no disputing the fact that the campaign for environmental protection started together with the course of development of human civilization. However, one should not forget that its degree has existed in accordance with society's relative thought or its level of consciousness.

Following the establishment of the United Nations on the modern global stage, this campaign started getting a tangible form. Especially due to the greater leaps of the Western world in industrial revolution or development in the eighteenth century, this seems to have also caused negative impacts on the environment. On account of environmental imbalance and impacts coupled with competitive race in development are being focused on by the Scientists in their research and enquiry which has resulted in official and scientific outlooks becoming public in this regard.

As world peace being the main objective behind establishment of the United Nations, its initial days were focused in this direction. UNO has gradually raised the issue of human rights and environment as its main agenda. This world organization seems to have tried to address the environmental agenda effectively for the first time expressing concern for the deteriorating

environment through the UN Conference on human environment held in Stockholm of Sweden in 1972.

In the meantime, UNO constituted the World Commission on Environment and Development (WCED) and focused its attention on the issue of environment and development. As ex-Prime Minister of Norway Gro Harlem Brundtland, who had Science and Public Health background, was designated as the Chairperson of that Committee, it is also called Brundtland Commission. This Committee had submitted in 1987 a report called "Our Common Future" which coined and defined the term 'sustainable development'. This report explains environment and development – the subjects which could not be clarified by Stockholm Conference of 1972 as: "the 'environment' is where we live; and 'development' is what we all do in attempting to improve our lot within that abode. The two are inseparable." Similarly, intergenerational equity has been placed at the center point in the definition of sustainable development made by the Brundtland Commission. It has mentioned in the report that the essence of sustainable development is constituted by the requirements that economic development should be able to fulfill the needs of the poor and the affected group of people must have direct participation or ownership in the process, even though economic development is expected for fulfilling social requirements.

That report seeks to arrive at the conclusion that development cannot embrace environmental protection if Human Development Indicator is not linked with poverty alleviation gender equality and redistribution of means and sources. And it also seeks to internalize human feelings and needs. The following things mentioned in the report in regard to sustainable development are worthy of consideration: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." It contains two key concepts:

1. The concept of 'needs' in particular the essential needs of the world's poor, to which overriding priority should be given; and
2. The idea of limitations imposed by the State of technology and social organization on the environment's ability to meet present and future needs."

In essence, economic development, environmental protection and social justice are the three major dimensions of sustainable development.

UNO has taken forward its subsequent programs resorting to the foundation stone laid down by the report of Brundtland Commission which is itself based on the focal point of environmental protection. To further describe it in more clear words, also because the issues of sustainable development and environment pointed out in the report have been accorded a universal form through the official bodies of UNO and larger Conferences of its

members, it has made significant contribution to and occupies a significant place in the evolution of environment justice jurisprudence.

However, even today the benefits generated by the Nature could not be equitably distributed among the people as pointed out by that report. The present level of development as existing between two countries of the world can be hardly compared to each other. Whereas some countries are exploiting excessively the natural means and resources and are also causing harm to the environment in the same proportion, many countries are still trapped in unemployment, poverty, backwardness, gender discrimination and violence. It needs no study to understand that the terrible problems like climate change, increase in the temperature of the Earth etc. have emerged not due to the poor countries of Asia and Africa rather due to the so-called developed and rich European and American countries. 99 percent means and resources have become concentrated in the hands of 1 percent people of the world whereas 99 percent of the people have only 1 percent means and resources at their disposal. The effects and impacts caused by the widening gap between the rich and the poor appear to be causing in some way or other unnecessary pressure on the Nature.

However, 'Our Common Future', that is to say, the issues pointed out by Brundtland Commission, seems to have laid down the basis for organizing the World Conference on Environment in Rio de-Janeiro in 1992. Agenda -21 had been made public as the Rio Declaration in this conference which is also known as the Earth Summit. That Declaration incorporates the strategies and operational policy to be adopted at the global, national and local level in order to make the age (life) of the Earth sustainable. Agenda 21 has also again expressed its commitment in favor of economic development to be made without causing any harm to environment. It has also stressed the need of the developing nations helping the developing and underdeveloped countries to realize this matter.

Similarly, the discussion had been mainly focused on decreasing the production of biological insecticides, petrol containing lead and gas, proper management of poisonous chemical radiological dust and dirt, decreasing the effects caused by the use of alternative energy on climate change, adopting measures for protecting air pollution against the smoke emitting from the use of means of transportation and the problems relating to the increasing use of water and its limited supply.

The agreement for making a Convention on climate change, which was subsequently known as Kyoto Protocol, is a product of the agreement reached at this very Conference. Likewise, the agreement to open the Convention on Biological Diversity for signature was also another achievement of that Conference. On the whole, this Conference had agreed to open for signature the Convention on Biological Diversity, Framework

Convention on Climate Change and UN Convention to Combat Desertification. Moreover, the Conference also adopted Rio Declaration on Environment and Development, Agenda - 21 and the Principles relating to Forest, which have laid emphasis on the need of maintaining balance between environmental protection and sustainable development, as a Declaration.

Article 1 of the Convention on Biological Diversity, 1992 describes protection of biological diversity, its sustainable use and impartial and equitable distribution of its benefits as the main goals of the Convention. Defining biological diversity, it has been mentioned in Article 2 of this Convention, "Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". Similarly, provisions have been made about policies in Article 3, jurisdiction in Article 4, cooperation in Article 5 and methods or measures of protection and sustainable use.

Origin of the Nature and sustaining life on the Earth are the main objectives of this Convention. The Convention recognizes that biological diversity is about more than plants animals and micro organisms and their ecosystems- it is about people and our need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which to live." This Convention has laid emphasis on all these things. Emphasis has been consistently placed on various aspects of biological diversity in the series of Conferences held and Declarations made under this Convention.

Likewise, the Conference on Population and Development, 1997, Millennium Development Goal 2000, Earth Summit, 2002 and the Conference on Sustainable Development, 2012 are also related to environment and sustainable development.

Nearly twenty years after the Rio Conference, Rio-20, that is, Rio Earth Summit, 2012 was organized in the same city of Brazil in 2012. Discussing the developments made and the problems encountered during this period, the world community reaffirmed its commitment to sustainable development and environment.

In the later day, UNO has been advancing its activities by constituting a Task Force in order to transform the millennium development goal into sustainable development goal. In regard to sustainable development goal, issues like hunger and poverty, health and education, climate change and protection of sea and forest have been mainly included in the preliminary Terms of Reference (TOR)

Thus, it appears from the above mentioned activities being undertaken at the initiative of UNO that the modern world has shown main interest and concern regarding

environmental protection. Moreover, the protection of environment and biological diversity has been made obligatory for the member States through the international Conventions and the concept of environment and sustainable development has been simultaneously pushed forward through Conference, Declaration, goal strategies and programs.

In its capacity of a responsible member of UNO, Nepal has been participating in the steps taken by UNO. Nepal has participated in all the important Conferences on environment. Nepal has ratified and signed more than fifteen international Conventions and Declarations relating to environment including the biological diversity convention, 1992. According to Section 9 of the Nepal Treaty Act, 1990, the international treaties and agreements shall be applicable at par with Nepal law.

The right to live in a clean environment has been established as a fundamental right in the Interim Constitution of Nepal, 2007 whereas protection of biological diversity and environment has been incorporated in the main policy of the State. The environmental Protection Act, 2053 and the Rules have provided significant legal basis in this direction. This Court has also made judicial interpretations of environmental justice in accordance with the jurisprudential norms. Right from the Sixth Plan, Nepal has included sustainable development as its development agenda. Similarly, in regard to various issues relating to environmental protection including biological diversity protection, a national strategy and programs have been designed by the concerned bodies of Nepal Government which are under implementation.

Sometimes environment and development are also treated as each other's competitors. Environment is closely related to the continuity of the existence of world of creatures including the human beings. Retaining the existence of life is not at all possible in a polluted environment. On the other hand, development uplifts the standard of life of human beings and widens the basis of economic development. As an answer to the 21st century has been possible only due to the development of modern human civilization and progress, the thought of completely stopping all development activities cannot be acceptable either. It is due to development that today the world society has been classified into the categories like rich and poor, developed and undeveloped, civilized and uncivilized, modern and backward, powerful and weak etc. Whereas the progress and influence of the developed countries could be possible only because of their development, the countries which have been relegated to a state of backwardness in regard to development opportunities are passing through a state of being ignored and inferiority complex.

Therefore, also in order to make proportional and reasonable distribution of the benefits of natural means and resources among the world community, it is not proper to halt the pace of development in the underdeveloped countries. In fact, it is indispensable to make the development activities human rights friendly. In this context it may be effective to adopt the measures ensuring equal participation, equitable distribution of benefits and generational transfer of the means and resources by adopting the measures causing the least possible harms to environment and exploiting the natural means and resources only to a desirable extent.

In short, it seems rational to determine the development activities and their impact on environment in relation to the benefits, and the degree of pollution caused by it. When the volume of adverse impacts on environment caused by development becomes higher in comparison to the benefits accruing from development, it creates a state of imbalance.

Now the second issue - What type of jurisprudential norms has been developed in respect of environmental justice by this Court - needs to be considered and resolved.

As in regard to other issues, different interpretations and analyses have been made by this Court also with respect to biological diversity and environmental protection through PIL writs, and different types of orders and instructions have been issued to Nepal Government and its concerned bodies. Significant orders have been made by this Court regarding miscellaneous issues ranging from the issue of adverse impact caused by respondent Godavari Marble Industries on the whole environment of the area including biological diversity to other issues like biological diversity, protection of marsh area, pollution of Bagmati river, pollution caused by the means of vehicular transportation, brick kiln, paper factory and long term impacts caused by insecticides. Some representative orders made by this Court in this context have been mentioned below;

1. Advocate Surya Prasad Dangol Vs. Marble Industries Pvt. Ltd. and Others (Writ No. 35/2049), Date of Order: 2052/7/14, Full Bench (NKP 2052, Golden Anniversary Special Issue, P. 169)

The Government should pay appropriate attention to finding out a suitable and practical alternative to explosions and take suitable steps. The report shows that instead of marble quarrying, the tendency is more towards production of concrete, and the greater number of explosions creates a situation causing pollution of V, water and air. So if Marble production is given priority, it may render considerable assistance to reduction of environmental destruction.

Human life is the end, and development is a means of leading a happy life. Man cannot live in a clean and healthy manner without clean and healthy environment. Thus

environmental protection is an end and, taking this reality into consideration, measures should be undertaken to protect environment from destruction. Effective and satisfactory work has not been done regarding a sensitive matter like environmental protection of Godavari area which is of human, national and international significance. Also, taking this matter into consideration, as it looks appropriate to issue instructions regarding matters like enforcing the Mine and Mineral Substances Act, 1985, which is yet to be enforced, enactment of necessary laws for the protection of air, water, sound and environment and undertaking measure for effective protection of the environment of Godavari area, an instructive orders is hereby issued in the name of the respondents.

**2. Advocate Prakash Mani Sharma Vs. Cabinet Secretariat and Others (Writ No.2991/2052)
Date of Order: 2054/2/27, Division Bench:**

Besides the matters relating to religious, cultural and historical beliefs, the issues concerning environment and environmental protection raised in the writ petition appear to be necessary, sensitive, humane and of national or international significance. An instructive order is hereby issued in the name of His Majesty's Government, Cabinet Secretariat to conduct monitoring of whether or not any action has been taken by the concerned bodies in accordance with Nepal's commitment expressed in the Convention on the Protection of the world Cultural and Natural Heritage, 1972 and the rights guaranteed by Nepal law, and as there is a need of concrete and effective steps to be taken by His Majesty's Government to maintain uniformity in all sectors by preparing a national policy regarding matters of religious, cultural and historical significance, to take action accordingly.

3. Advocate Prakash Mani Sharma Vs. Ministry of Youth, Sports and Culture (Writ No. 3018/2053), Date of Order : 2056/2/31, Division Bench

If permission is granted to construct the road proposed for construction from Budhnagar to Panchayanghat near Maternity Hospital, there is no disputing the fact that the close interdependent relation existing between Bagmati river and monasteries, temples, and 'ghats' (stepped platform beside a river) shall be finished, and it shall also affect the existence of old *ghats* (stepped platform beside a river), '*bhakarīs*' (thatched huts), monasteries, temples etc. and cast adverse impact on the cultural norms and values of the Hindu Kingdom. Therefore, as the road has been constructed in an unauthorized manner from Budhnagar to Panchayanghat, which is so close to Maternity Hospital, and because an interim order has been already issued by this Court to restrain the construction done in an unauthorized manner and as the UN Park Construction Committee is also likely to construct the road, as mentioned in Writ No 3017, an instructive order is hereby issued

in the name of local administration office and Kathmandu Metropolitan Office not to construct, or cause to be constructed, the above mentioned unauthorized road.

4. Advocate Prakash Mani Sharma Vs. Nepal Drinking Water Corporation and Others (Writ No. 2237/2047), Date of Order: 2057/3/26, Division Bench

As the petitioners have claimed that drinking water has not been regular and clean, and as Drinking Water Corporation has put forward the plea that bacterial examination has been conducted in accordance with the norms of World Health Organization, there seems to be disagreement between both the parties resulting in a dispute and because it is incompatible with the principle of writ to make a decision after evaluating proof and evidence, the writ petition is quashed.

However, in view of the fact that Nepal Drinking Water Corporation cannot get immunity from its vital responsibility towards the people, it should always remain conscious and alert towards its functions, duties and obligations prescribed by the Statute and should conduct necessary study, enquiry and research, and keep trying for getting grants as much as possible for the purpose of supplying clean adequate drinking water on regular basis.

So Correspondence should be made, specially drawing the attention of the Ministry of Housing and Physical Planning, to issue appropriate instructions including whatsoever is deemed necessary to caution the Drinking Water Corporation and its subordinate Drinking Water Corporations about their obligations to distribute clean water as mentioned in the Preamble of the Act.

5. Advocate Prakash Mani Sharma Vs. Prime Minister Girija Pd. Koirala and Others (Writ No. 25/2058), Date of Order: 2058/6/11, Full Bench

The writ cannot be issued as prayed for because the joint Statement does not look contrary to Nepal law. However, in the context of controlling pollution caused by the means of vehicular transportation and the enforcement of Nepal Vehicle Pollution Standard, 2056 internalizing the standards set by Euro-1 for protection of the deteriorating environment, it shall be better not to be convinced that only through certification of pollution standard given by vehicular means production companies of their countries our objectives shall be fulfilled. Taking into consideration the above mentioned fact, an instructive order is hereby issued in the name of respondent Ministry of Population and Environment to make an appropriate mechanism to ascertain whether or not the imported vehicular means conform to the prescribed standards.

6. Advocate Thaneshwor Acharya Vs. Bhrikuti Pulp and Paper Nepal Ltd. And Others (Writ No. 3089/2057), Date of Order: 2058/8/9

There is no dispute that it is a major duty of the respondent Industry to operate without causing any damage to environment. A look at the fulfillment of human needs as well as the indispensability of development requires that the Industry needs to be operated maintaining balance in the environment. In view of the statement of the respondent Industry made in its written reply about its sensitivity in regard to environment and water pollution and also its commitment for not allowing such things to happen, it does not seem appropriate to issue the writ to close down the Industry or to shift it somewhere else as sought by the petitioner. Nevertheless, such a matter cannot be ignored rather it is necessary to be sensitive and more active in this regard. So an instructive order is hereby issued in the name of the respondent Bhrikuti Pulp and Paper Industries to set up immediately a water treatment plant for discharging the water used in the Industry as pure water and to use the dust collector effectively to prevent mingling of dust of husk (chaff) in the smoke.

7. Advocate Bharatmani Gautam Vs. Cabinet Secretariat and Others (writ No.3474/2056), Date of Order: 2059/2/, Division Bench

Treating the issue raised by the petitioners in the petition as an environmental threat and taking into consideration the crisis likely to emerge in the days ahead, even though the respondents appear to be doing necessary works for sorting out the problem, it seems expedient to regulate the management of Methane gas emitting from the landfill site at Gokarna. As it has not been clearly printed out which respondent has got what kind of legal duty, a writ of mandamus cannot be issued on the basis of a generalized allegation regarding failure to comply with public duty as reflected by the documents enclosed in the case file. However, from the written reply it appears that effective and satisfactory preventive action has not been taken for prevention of Methane gas emitting from the landfill site at Gokarna as mentioned in the petition. So as it appears that it shall be appropriate to issue an instructive order in respect of taking action for regulating Methane gas by making relevant law so as to maintain environmental balance in consideration of the sensitivity of this matter, this instructive order is hereby issued in the name of the respondents.

8. Advocate Prakash Mani Sharma Vs. Cabinet Secretariat (Writ No. 3440/2053), Date of Order: 2059/11/27, Division Bench

Generally, nobody shall disagree with the view of the petitioner that environmental pollution should be minimized. Particularly the smoke emitting from different types of means of vehicular transportation plying on the roads in Kathmandu is found to be causing

much negative effects on public health. The reports enclosed in the case file submitted by the study group constituted by concerned bodies of respondent His Majesty's Government also show that necessary action is being taken for the implementation of those reports. In spite of that such pollution does not seem to be controlled or lessened. Therefore, this instructive order is hereby issued in the name of His Majesty's Government, Cabinet Secretariat to carry out necessary study to prevent pollution of environment outside the valley and to enforce effective measures within two years at the maximum for the protection of public health from the smoke emitting from buses, minibuses, tractors, trucks etc. including small tempos and taxis plying inside Kathmandu valley.

9. Advocate Prakash Mani Sharma vs. Office of Prime Minister and the Council of Ministers (Writ No. 3413/2058), Date of Order; 2016/4/12, Division Bench

In spite of necessary provisions made by the Constitution and the law to maintain a pollution free clean environment, it could not be implemented and even though it has been contended in the written reply that His Majesty's Government is cautious about environmental protection, the report submitted by the expert committee shows that respondent His Majesty's Government has not performed its duties in accordance with the law.

As mentioned in the report submitted by the above mentioned expert team constituted as per the order of this Court, the respondent Industry has been found to have operated by mixing the effluent released in the Aaurahi River contrary to the standards. Therefore, an instructive order is hereby issued in the name of the respondents to operate the Industry only after making arrangements for necessary reforms as soon as possible not exceeding the standards mentioned in the aforesaid gazette and to give time to make reforms including installation of necessary equipments by the end of current fiscal year and to allow the operation of the Industry only within the specified standards after inspecting or getting it inspected by the above- mentioned expert committee or another expert committee as required.

10. Bhimsen Thapa and Others vs. Cabinet Secretariat and Others (Writ No. 3024/2056), Date of Order: 2060/10/6, Division Bench

As it has been mentioned in the written replies submitted by Commander-in-Chief of the Army and No. 3 Brigade that, adopting strict provisions about security, firing activities shall be conducted undertaking measures to prevent accidents not at heights but at the plain surface, there does not exist any ground for stopping the activities relating to firing range at present. How the Government wants to utilize any land of any place depends on its policy and program, and so it is not proper to describe any act '*mala fide*' in a casual way. So as the activities of the

respondents cannot be described as unlawful and also because the petitioners have failed to show a case of non-compliance with legal obligation, the contention of the petitioners praying for the issuance of the writs including certiorari and habeas corpus does not have any merit.

However, the State is obligated to protect the life and property of the public and to prevent any adverse impact on environment and thus to secure everyone's right to lead a peaceful life. So an instructive order is hereby issued in the name of the respondents to take into consideration the conclusions pointed out in the report and the recommendations mentioned therein regarding the impacts likely to be caused by the use of the above mentioned firing range, and to conduct the firing practice by the Army after making immediate and long term arrangements for their implementation.

11. Shatrugan Pd. Gupta vs. Everest Paper Mills Pvt. Ltd. and Others (Writ No. 3480/2059), Date of Order: 2064/4/12, Division Bench

As mentioned in the report given by the expert committee constituted as per the order of this Court, the respondent Industry seems to have polluted the Aurahi (Bagle) River by operating the Industries mixing the effluents released in that river contrary to the prescribed standards. Therefore, an instructive order is hereby issued in the name of the respondents to operate the Industry only after making arrangements for necessary reforms not violating the standards prescribed in the gazette and granting time to the Industry up to the end of the current fiscal year and causing inspection of the Industry by the above-mentioned expert committee or by any other expert committee, if so needed, to allow the operation of the Industry only within the prescribed standards. Besides, the following additional orders have been also issued:

- a) To undertake inspection of the respondent Industry including the pollution control machine installed by the Industry and to send compulsorily one copy of the inspection report given by the expert committee to this Court and another copy to Pro Public – 1.
- b) Failure to appoint Environment Inspector till date should be taken seriously. So make arrangements as soon as possible for the infrastructure as mentioned in the Act including the appointment of Inspector, and implement and cause it to be implemented.

12. Advocate Santosh Kumar Mahato Vs. Cabinet Secretariat and Others (Writ No. 3043), Date of Order: 2061/8/4, Division Bench

As there is a need of conducting extensive and serious study and research regarding the impacts caused on environment by the use of plastic bags and arriving at an appropriate decision on the basis of the scientific conclusion so received, it seems expedient to constitute a technical committee for this purpose.

Hence, an order of mandamus along with an instructive order is hereby issued in the name of His Majesty's Government, Ministers and the Ministry of Population and Environment to constitute a technical committee comprising RONAST, a plastic expert and an environmentalist, a Chemist of Tribhuvan University, His Majesty's Government, Ministry of Population and Environment, all Municipalities within Kathmandu valley and a representative of Nepal Plastic Producers Association, and to give a Term of Reference (TOR) to that committee to undertake study and research about all the questions mentioned above except question No. 4 and to submit a report along with its opinion within this very fiscal year and also to submit one copy of that report in this Court.

Moreover, the writ of mandamus is hereby issued in the name of the respondent Municipalities to make a decision on the sale and purchase of consumption of plastic bags in Kathmandu valley based on the report given by the aforesaid technical committee and the concerned residents.

13. Advocate Prakash Mani Sharma Vs. Cabinet Secretariat (Writ No. 2898/2060)

Date of Order: 2061/9/6, Division Bench

It is the duty of His Majesty's Government to implement the provisions of the Act. If not implemented, the provisions shall remain confined only to law. It seems obligatory to fulfill the vacancy of Environment Inspector as per Section 8 of the Environment Protection Act, 1997. An instructive order is hereby issued in the name of the respondent Ministry of Population and Environment to decide what type of qualifications are necessary for the post of Environment Inspector and also to take the advice of concerned experts having coordination with Public Service Commission and Ministry of General Administration, if so needed, and fulfill the post as soon as possible or to make necessary provisions about prescribing functions and duties of Inspector.

14. Advocate Bhojraj Ayer and Others vs. Office of Prime Minister and the Council of Ministers (Writ No. 3180/2061), Date of Order: 2062/2/23, Division Bench.

It appears that animals are slaughtered on the bank of rivers and in open space without examination of their health, and their meat is sold, without examining it, at open shops. Thus whereas unregulated slaughter of animals has increased pollution and due to consuming unhealthy meat being sold without examination, the common people are

not only spending huge amounts for medical treatment of serious types of disease, this has also infringed the fundamental and legal rights of the consumers to live in a clean and healthy way. The Legislature has brought about the Animals Slaughterhouse and Meat Inspection Act, 2055 (1999) for the purpose of getting healthy meat for food. It protects the right of consumers to get healthy meat and meat related objects for consumption through implementation of this Act.

Even if it is not feasible to implement fully the law made and issued by the Legislature at a time, the Executive should make a work plan for phase wise implementation, and start implementing it as per the needs. Only then the objectives of the Act can be deemed as fulfilled. Even though the Animal Slaughterhouse and Meat Inspection Act, 1999 promulgated after the Royal assent on Chaitra 8, 2055 (1998), the concerned Department of His Majesty's Government has not done anything in this regard.

Therefore, an instructive order is hereby issued in the name of concerned organizations of His Majesty's Government to prepare, and cause to be prepared, at the earliest infrastructures for implementing the present Animal Slaughterhouse and Meat Inspection Act, 1999 and to implement this Act as sought by the petitioner, and also to give prior information to the common people about how to implement this Act phase wise.

**15. Advocate Prakash Mani Sharma Vs. Cabinet Secretariat (Writ No. 3027/2059),
Date of Order: 2062/11/3, Division Bench**

If a brick kiln does not install pollution prevention machine or does not operate using the new VSKB technology closing down the old technology, Ministry of Environment and other concerned organizations need to take a tough decision in larger public interest in accordance with the principle of "Private interest must yield to public interest." It is the constitutional duty of Government, which is entrusted with the constitutional duty of governance of the State, to enforce each and every letter of the law so as to protect against the harms caused to public health by polluted environment. Therefore, this instructive order is hereby issued in the name of respondent His Majesty's Government to do as mentioned below:

1. To constitute a team comprising representatives from Ministry of Industries, Commerce and Supply, Ministry of Environment, Science and Technology, Ministry of Labor and Transport, Department of Housing and necessary number of experts and also one representative of petitioner Pro Public to conduct a study about how many brick kilns operating inside Kathmandu valley have installed pollution prevention technology and how many have not done so, and to identify those brick kilns which have caused pollution,

2. To study about the impacts on construction undertaken by the State, development and construction of public houses if brick industries are closed down, and about what can be their alternative,
3. To cause the closure of brick industries located around quality resorts built up in the rural area for tourists who are a source of foreign exchange earnings for the national exchequer, schools where children study and areas of dense habitation,
4. In respect of brick industries located in the areas other than as mentioned in No. 3, this committee must see to it that pollution control equipments are installed by the intervention of the official agency designated by law within required and reasonable time in the brick kilns which have been identified by the aforesaid study as causing pollution, and
5. To complete the requirements mentioned in No. 1, 2, and 3 within six months and send a copy of the report to this Court as well and to grant reasonable time to the respondents to fulfill the requirement mentioned in No. 4.

16. Prakash Mani Sharma vs. Ministry of Population and Environment (Writ No. 3429/2061) Date of Order: 2062/9/4, Division Bench

The writ of mandamus is issued in the name of the respondents asking them to prescribe standard within six months for the Industries specified in the Schedule of the Environment Protection Rules, 2054 in consultation with the experts and also to enforce those legal provisions.

The Constitution of the Kingdom of Nepal, 1990 and the Environment Protection Act, 1997 and the Rules, 1998 have entrusted to the State the responsibility of doing necessary works for environmental protection so as to prevent any adverse impacts on the health of the people. And even though orders have been issued by this Court in several cases even in the past for the enforcement of those laws, there has been delay in the enforcement of the law due to failure to prescribe the standards of sound pollution. As granting permission to operate the Industry distributing temporary license in contravention of the law is contrary to the legal provisions of the Act, it is required to display special caution towards also monitoring the standards prescribed for the Industries mentioned in Schedule-7. Therefore, an instructive order is hereby issued to undertake those works at the earliest.

17. Advocate Dhananjay Khanal vs. the Office of Prime Minister and Council of Ministers and Others (Writ No. 73 of the year 2062 B.S.), Date of Order: 2063/2/25, Special Bench

The present writ petition has been lodged under PIL in the interest of public good and the petitioner has presented with his petition a copy of *Research & Investigation Tear-Gas Harassing Agent of Toxic Chemical Weapon*, Aug 1989 Vol. 262. A copy of the Bulletin presented by the petitioner shows that even today tear gas used in the world, and, if used proper, tear gas is not detrimental to the health. It has been mentioned in the second page of that Bulletin that "if used correctly, the toxic effects of exposure are transient and of no long term consequence." As it appears from the copy of the said Bulletin that there is also a disputable side of tear gas, an instructive order is hereby issued in the name of Office of the Council of Ministers to constitute an expert team comprising a representatives of Ministry of Health, Ministry of Home Affairs, and the Police under the chairmanship of a concerned expert or a Scientist and to complete, and cause to be completed, the study within one year about the issues raised in the petition including questions like - How much is tear gas detrimental to health? What can be its alternative? Or is there no alternative? And if there is an alternative, what is that? And how much effective it shall be on the part of the local administrator to maintain peace and security by exercising the means of other legal measures except the use of tear gas or whether such alternative shall not be effective? And the respondents are also directed to take whatever necessary action shall be required in this regard and to send a copy the study report to this Court as well.

18. Advocate Dhanjanaya Khanl vs. the Office of the Prime Minister and the Council of Ministers (Writ No.3401 of the year 2060), Date of Order: 2063/5/11 Division Bench

Protection of Bishjari Lake and the area surrounding it which is registered in the list of world wetlands is a matter of not only national but also of international significance. So if any Project is likely to be started around Bishjari lake and in its vicinity, an instructive order is hereby issued to prepare a comprehensive Master Plan and make necessary arrangements regarding the protection of the area of wetlands of Bishjari lake and to take actions in that regard taking into consideration Sections 9 and 10 of the Environment Protection Act, 2053, Marsh Land Policy, 2053, Ramsar Convention, 1971, Convention on Biological Diversity, 1992 and also Article 26 (2) of the Constitution.

19. Devi Prasad Gautam vs. District Forest Office Bara and Others (Writ No 0058 of the year 2064), 2067/1/15

Energy is used in the operation of stone mine. Use of energy produces at least noise and dust. Thus if noise and dust are produced in the forest and river, it casts direct effects on the birds and animals living in the forest and in water. Besides, the act of transportation in all those processes contributes all the more to noise

and dust pollution. The report on Environment Impact Study prepared by the Company in English language explains this matter. However, the written reply and the activities of the government bodies are just contrary. If the government agencies get confused in this manner or fail to realize their duty, how the right to a pollution free environment guaranteed by the Constitution and the State Policy shall be realized. The Government must display seriousness in this regard. As the government organizations have erred in this case, attention has been drawn towards a sensitive issue like environment.

The impugned decision of the respondent Department of Industries made on Chaitra 23, 2063 (2006) to grant certificate of registration to respondent Nepal Progressive Construction Pvt. Ltd. Registering it as a Stone Aggregates Production Industry, and also the letter issued on Asadh 29, 2063 (2006) by District Forest Office Bara given on the same ground granting permission to that Industry to collect stones appear to be contrary from the viewpoint of environment impact evaluation, the prevalent legal provisions and the Policy on Environment adopted by Nepal, and , therefore, the impugned decision and the letter are quashed through an order of certiorari.

20. Bhojraj Ayer Vs. Prime Minister and Office of Council of Ministers (Writ No.99 of the year 2061), Date of Order: 2066/12/15

This Court has issued various orders at different stages of the proceedings for protection of environment so as to prevent the Bagmati River from being polluted, and a report on the actions taken by the respondents in regard to implementation of those orders has been submitted. A look at the details of the report shows that a Solid Waste Management Bill, 2065 has been prepared and Bagmati Civilization Development Council Bill is under consideration before the Parliament; Bagmati Work Plan has been approved by Nepal Government, Council of Ministers on Shrawan 27, 2066 (2009), and in course of its implementation budget has been allocated and action is underway; action has been taken to constitute a necessary umbrella organization as per the decision of Nepal Government on Magh 9, 2065 (2008) in order to maintain cleanliness of Bagmati river, and a provision has been made requiring construction of a septic tank while constructing a house within the urban area. Therefore, as there does not seem to be any ground to initiate contempt proceedings, the present petition is hereby closed.

As mentioned in the order issued by this Court on 2058/9/2 regarding conservation of Bagmati river and the various orders issued by this Court regarding the present petition, an order is further issued directing the Verdict Implementation Division of this Court to obtain the implementation status report every four months from the powerful Bagmati Civilization Integration Development Committee,

Kathmandu Metropolis, Lalitpur Sub-Metropolitan City and, if necessary, the respondents framed in other petitions as well as the Secretary of the concerned Ministry summoned by this Court regarding whether or not action has been taken by the respondents in respect of the activities which have been accepted by them in the report and which they have pledged to do as ordered by this Court and whether the work plan has been implemented. And the Division is further ordered to conduct regular monitoring and, if it is found that no progress has been made in the work or no action has been taken as mentioned in the report, to reopen the case file of this petition and present it before the bench for further hearing.

21. Purnabhakta Dangol vs. Office of the Prime Minister and Council of Ministers and Others (Writ No.2891) Date of Order: 2063/3/20, Division Bench

It has been mentioned in the petition that, without paying attention to the environmental aspect and without adopting the procedure prescribed by law and also without having any advice from the experts, the respondents have indulged in felling the trees on either side of the Arniko Highway and also other trees inside the Valley. The written replies submitted by the respondents show that they seemed to have acted lightly sometimes stating that they did not have any responsibility about the issue raised by the petitioners and sometimes saying that the alleged work has been already completed. This shows that the respondents were also not serious about the responsibility entrusted to them by the Act and the Rules.

Thus effective and satisfactory action has not been taken in respect of an issue of sensitive, humane, national and international significance as mentioned above, and as the Council of Ministers has also decided on 2059/1/19 to undertake activities like re-forestation and constructing Garden Parks, an instructive order is hereby issued in the name of the Ministry of Physical Planning and Construction, Department of Roads and the Municipalities to implement, and cause to be implemented, those works and make special arrangements for environmental protection.

22. Bhojraj Ayer and Others vs. Office of the Prime Minister and Council of Ministers and Others (Writ No. 3377 of the year 2060), Date of Order 2061/5/1, Division Bench

In order to set up a fund for pollution control in the context of adverse impacts being caused even on the provisions made in the Environment Protection Act, 1997 for guaranteeing a clean and healthy environment, an instructive order is hereby issued in the name of Nepal Government to prescribe a date for the enforcement of the above mentioned provisions of the Act to make arrangements for setting up a Pollution Control Fund through any other suitable method on the basis of

the present specified price of the petroleum products or without causing any additional financial burden on the consumers.

23. Narayan Prasad Devkota Vs. Office of the Prime Minister and the Council of Ministers and Others (NKP 2067, Volume 12, Decision No. 8521, P. 2053)

While making a plan, the planners and the Government must balance economic development and industrial development. Today's world of the 21st century must be conscious of the needs and significance of a clean environment. Economic development at the cost of environmental destruction cannot be acceptable.

Under the Public Trust Doctrine, Nepal Government can be only a trustee of the natural resources of Nepal, and no one should be allowed to do any act unrestrainedly in regard to Nepal's natural resources which may cause adverse impacts on the environment on the basis of only paying nominal revenue.

Quarrying and utilization of the natural resources should not be viewed only from the angle of economic profit. Rather quarrying and its use should be allowed only if the use of such natural resources does not cause any adverse impacts on the environment. While allowing the business utility of any natural resource, the first and foremost thing to be considered is that such use should be allowed in such a way as not to cause any impact on the sensitive institutions and the people including the human habitation in the surrounding vicinity, forests, environment, schools, hospitals etc.

The above mentioned jurisprudential outlook developed by this Court with respect to environmental protection reflects the worries and concerns of the Court regarding environment. In fact, it cannot be disputed that today the global environment is being badly polluted due to the impacts of pollution resulting in various types of human activities. While on the one hand there is a need of fast industrialization and extensive utilization of natural resources for human community from the viewpoint of economic development, on the other hand such type of activities are likely to expose the existence of the whole Nature to danger. The issue of closing the doors of economic development or allowing the destruction of biological diversity and environmental pollution cannot be considered reasonable from any angle. The indispensability of development for economic progress cannot be denied whereas it is also not proper to look for an alternative to clean environment and protection of biological diversity for the sake of the existence of the whole Nature including the human beings. For this there is no alternative to move forward by maintaining a balance between development and environment.

In fact, several examples can be found where the judiciaries around the world have presented themselves, when required, in a strict manner for

environmental protection. The Supreme Court of the United States of America has displayed judicial activism from time to time in favor of protection of biological diversity including owl protection and environmental protection. As mentioned in the petition, the decision relating to control of pollution of the river Ganges and the decision about the impacts caused by the Industries operating in the vicinity of Taj Mahal, registered in the list of world heritage as an object of historical and cultural significance, are treated as milestones from the viewpoint of jurisprudential development of environmental justice in this area. The above mentioned orders clearly reflect that this Court has also stood firmly on the side of sustainable development and environment.

In some circumstance the Courts are also dubbed as an antagonist to development. However, there can be no separate interest or any hidden vested objective of the Court to obstruct the activities of economic development or to push the society backwards. Similarly, it shall not also be in tune with the judicial responsibility of protecting the larger interests to tolerate the significant adverse impacts on environment in the name of development or to display inaction or a state of dormancy. Therefore, striking a balance between development and environment, the Court must stand in favor of sustainable development prone to wider, inclusive and equitable distribution of benefits of development. This fact should be remembered that this Court is also presenting itself in accordance with the international jurisprudential norms of environmental justice.

Now what is the significance of Godavari area from biological and environmental viewpoint as well as religions and cultural viewpoints, and whether or not the operation of Godavari Marble Industries has caused any adverse impacts on biological diversity and ecological balance of that area are some other issues which need to be considered.

It appears from the study of the writ petition the written replies and the documents which have been produce that various studies have been made from time to time regarding the location of Godavari area. Those studies conducted by responsible agencies of the government, non-governmental sector and researchers have shed light on the religious and cultural significance of Godavari area as well as the significance about its biological diversity and environment.

In this context, it has been mentioned as follows in the Environmental Survey of Godavari Area, 2045 which had been conducted some 27 years back in 2045 B.S. by the then His Majesty's Government, Ministry of Forest and Land and Water Base Protection Department.

Godavari, which is located nearly 15 km south east of Kathmandu, represents ecological system of the mid-hilly region, enjoys religious significance due to the presence of *Nav Dhara* (Nine Streams) and *Godavari Kund* (Pond), known as

plantation ground for special guests visiting Nepal and a research place for the Scientists which has the highest mountain of Kathmandu Valley Phulchwoki, often described as an open living Museum of the flora and fauna, and also famous for the inhabitants of Kathmandu, this well known place of Godavari is slowly getting trapped in environmental distortions caused by destruction of forests and industrial operation, and is awaiting for protection.

Likewise, it has been mentioned on pages 14-16 of the Godavari Area Environmental Condition Enquiry Report, 2049 submitted by National Planning Commission, 2049 about the natural resources, forest resources and water resources as follows:

Natural Resources of Godavari Area

Even though smaller from the viewpoint of area, Godavari area has got special significance as a research place for biological study and research, a place for plantation for the special guests visiting Nepal, the only oldest place of botanical garden having also the location of Phulchwoki *danda*(hill) which can be utilized as the highest hill for sightseeing of Kathmandu Valley.

Forest Resources

Phulchwoki forest is spread over 50 square kilometers. The forest which is located in the North West direction of this forest is famous by the name of Godavari forest, and has got its own religious, historical and natural significance.

On account of its geographical and geological location there are found 571 species of flower trees and 15 species of grass in this area which is located at the height of nine thousand feet. In its higher part are found the plants and trees of *Khasru*, *Katus* (chestnut), *angeri*, *banj*, *Kafal* etc. whereas in the lower part are found *okhar*, *lapsi*, *jhingane*, *chilaune*, *paiyu* etc. Since in this area there have been found three types of red, pink and white colored flowers in the tree of national flower rhododendron arboreum of a single species, this area is also considered to be important for carrying out research. This area is also very rich in the plants of *sungava* (golden orchid) and grass species.

Here butterflies of more than three hundred different species and birds of two hundred different species use to stay. Because of some of the butterflies and birds are of rare and sensitive nature, their protection is all the more significant. *Ratuwa* deer (barking deer), *chital* (spotted deer), *dumsi*, *ban biralo* (jungle cat) etc. are some of the animals found there.

More over, some experts point out that some plants and insects quite new for the world are still being found in this area. Even though it is believed that some of the animals, birds, insects and plants are being extinct due to the activities taking place in this area, many scientists are believed to be convinced that they may be rehabilitated if proper protection and management are put in place.

If fact, even though Phulchwoki forest is small, it can be treated as a living museum of flora and fauna which is full of natural beauty. The destruction of this area may be described as a damage caused to a big store of natural resources.

Water Resources

Godavari-Phulchwoki area is rich not only from the viewpoint of flora and fauna but also from the viewpoint of water resources. The area around *Panch Dhara* (Five Streams) and *Nav Dhara* (Nine Streams), which are famous for unlimited water resources, had been named Godavari *Kund* (pond) in the beginning of 1950's when Godavari School was established.

According to the statistics maintained by Godavari School, on an average, 200 mm of rain takes place there. Godavari is considered to be the area in the southern belt of the valley where highest degree of rain takes place. It is this rain which helps to maintain the flow of water resources of this area.

In the letter attached with that study report and written by Mr. Russell W. Peterson, President of international Council for Bird Preservation, dated July 1988 and addressed to the Prime Minister of Nepal, on the basis of the matters published in the technical study report on the significance of the birds found in Godavari area, it has been mentioned as follows:

“As many as 256 bird species have been found there. Among the 155 breeding birds there are 34 with internationally significant populations in Nepal and 17 which are at risk in the country. Phulchwoki is also of considerable importance for wintering and passage migrant birds. There are 23 winter visitors which have internationally significant breeding populations in Nepal and there are threatened species winters in the mountain.”

Similarly, it has been further mentioned in that letter about the forest resources and biological diversity as follows:

“Phulchwoki's forests are famous throughout the world for the variety of their plants and animals. Numerous animal species, particularly insects, previously unknown to

Science, have been discovered there in recent years. The forests are also of great importance for their flora and are rich in plant species which are endemic or endangered in Nepal. The subtropical forest on Phulchowki's lower slopes is an especially valuable part of Nepal's heritage. Forests of this type...once covered much of central and eastern Nepal, but now virtually all have been converted to agriculture or cut for firewood or animal fodder. None are protected, which is a serious...from Nepal's present protected area system, and the forest on Phulchowki is one of the last examples of this forest type left in Nepal."

Likewise, in Phulchowki-Chandragiri Protected Area Declaration Report, 2062, caused to be submitted by Forest Ministry in the later days, mention has been made on page 14 about the biological diversity of this area as follows:

"This area is highly significant and rich from the viewpoint of biological diversity. In this Phulchowki-Chandragiri area there are 19 types of mammal animals. They need to be protected and managed in their natural condition. As the life system of small mammal animals is highly sensitive, there is a need of protecting them in their wild condition against human and other external influences so as to preserve them for long. Out of the four types of endemic and 99 types of rare and threatened species of plants, 92 species of birds indulge in breeding in this area. That many types of butterflies including the rare Golden Emperor and Kaiset-I-Hind species and many other types of animals and creatures are found in this area displays the importance of this area from the viewpoint of biological diversity."

On page 15 of the same report, quoting from a study report prepared by an international organization of bird preservation, it has been mentioned as follows:

Significance of Phulchowki Forest Area from Bird Preservation Viewpoint (BCN, 2005)

"The Phulchowki hilly forest, situated at 16 K.M south east of Kathmandu, is not only the highest peak of a side of Kathmandu valley; it is also a very important Nepali bird area. This Phulchowki area is an important habitat of the birds of globally threatened and restricted range species. Till date, 297 species of birds have been recorded in this area. The Broadleaved Temperate Forest of this area has provided habitat for the significant populations of the species found in Sino Himalayan temperate Forest Biome. This area is the habitat of highly significant birds called Spiny Babbler, Turdoies Nepalensis found only in Nepal.

Describing the significance and Biological diversity of Phulchowki-Godavari area, the above-mentioned study has recommended declaring this area a protected area. On page 16 of the said study report it has been mentioned under environmental-tourism sub-heading as follows:

“If this area, so close to the Capital city of Kathmandu having the highest population density and the largest population, is made a protected area, it may be valuable for earning foreign exchange by promoting environmental tourism which is considered to be the major source of economic development. If it is turned into an attractive tourist spot due to its various types of significance including biological diversity, it may provide great support to providing employments for the people residing in this area and the increase in their income. The Phulchowki hill has been internationally considered as a very significant bird observation area and vegetation garden. The snow-capped mountains including Sagarmatha can be seen from this highest point of Kathmandu valley, and great entertainment can be enjoyed by viewing various types of flowers including the national flower of Nepal, i.e., *Rhododendron arboreum*. There seem to be adequate prospects of tourism development in this flowers covered hill which is also highly significant from religious viewpoint. Godavari *Kund* (pond), Royal Vegetation Garden, Fisheries Development Center, Godavari River etc. located in Godavari area additional tourist attractions.

In this way, the above-mentioned studies and research got conducted by the Government during a period of nearly 17 years starting from 2045 B.S. to 2062 B.S. shed light on the environmental and biological diversity related realities of Godavari area besides its religious and cultural significance.

Phulchwoki hill, situated at the top of Godavari area, seems to be the highest hill accountable for introducing Monsoon in Kathmandu. And it is also a place of snowfall during the winter season as well as a beautiful sightseeing place. Godavari forest area is located slightly below that hill. The forest of that area is treated as a study and research center for globally threatened different species of trees, plants and grass related vegetation. Similarly, the study reports presented by the teams comprising also some foreign experts show that some birds of rare species including *kande bhyakur* (spiny babbler) which are found only in Nepal are awaiting protection. In addition to this, that area is also famous for butterflies and other small mammal animals. In totality, there is no disputing that this area is a hot spot of biological diversities.

In the lower base of Godavari (where respondent Godavari Marbles Industries is conducting quarrying), there are abundant water resources, famous *Panch Dhara* (Five Streams) and *Nav Dhara* (Nine Streams). The area around that has been also

named as *Godavari Kund*, and the religious Godavari festival takes place after every twelve years. That region harboring Godavari flower garden, fisheries development centre, national herbarium and domestic Centre of ICIMODE also seems to be a wet land. Temples of various Gods and Goddesses, monasteries, Buddhist monasteries are situated in this area, which is also significant from religious and cultural viewpoint. It has been also recommended in the study reports of Nepal Government and UNESCO that this place needs to be protected.

In this way, this region having the Mahabharat range of mountains of 1515 to 2715 meters height seems to be situated like a living museum due to its climate, biological diversity, geographical location, geological condition and ecological system. This region acts as a source of clean water and air for densely populated Kathmandu Valley. Some people also use to visit this place on holidays for taking rest and relief from urban smoke, dust and noise in the vegetation garden and park. The significance of this beautiful and pleasant looking Godavari which is so close to the valley and full of biological diversity can be hardly described in words.

It also looks expedient to analyze whether or not the operation of Godavari Marbles Industries in this area considered significant from the viewpoint of biological diversity, has caused adverse impacts.

Issues like deforestation and massive quarrying of concrete and stones rather than marble due to operation of Godavari Marble Industries, destruction of biological diversity including rare vegetation, wild animals, butterflies and birds, soil erosion and pollution of water sources and impacts caused on the local residents, schools and other research centers have been chiefly raised in the writ petition.

The written reply submitted by Godavari Marble Industries and the learned counsels appearing on its behalf have put forward the pleas that the Industries has not done any activity causing adverse impact on the environment of Godavari region; long term and short term programs including plantation have been conducted for environmental protection of that area; the process of obtaining ISO 14001 certificate has been initiated; 600 persons have been given direct employments; nothing has been done which may cause diversion on the ground level, extinction of wild life, water pollution, noise pollution, diversion in flow of water and damage to the objects of cultural and archaeological significance. Also, after conduction of programs relating to environmental protection and promotion there has been significant increase in the number of wild animals.

In order to be clear about the mutually conflicting claims and pleas of the petitioners and the respondents it will be expedient to analyze the above-mentioned study reports on the environment and biological diversity of Godavari area.

In the conclusion and recommendations section of the aforesaid Environmental Overview of Godavari Area, 2045 (1988), got conducted by the then His Majesty's Government's Ministry of Forest and Soil Preservation and the Soil and Water shed Conservation Department in the year 1988), besides other things, mention has been made about the adverse impacts caused by Godavari Marble Industries on biological diversity and environment of this area as follows:

1. On account of deforestation in the natural environment of Godavari area and due to the existence of Godavari Marble Industries the wild animals found there may face extinction; the significant and rare vegetation may be exposed to extinction and the whole ecological system may be harmed.
2. The expansion of Godavari Marble Industries has not caused harms only to mainly landscape and beauty of Godavari rather it has also exerted adverse impact on its natural environment.
3. It shall be suitable to develop this Godavari area which represents the mid-hilly region as a protected area by stopping the development and construction activities in order to maintain balance of its ecological system

The study report had been completed under Ministry of Forest during the days when even thoughts about environmental protection had not evolved, when constitutional and legal provisions had not been made and special interest had not been displayed as in the present times. Still the issues pointed out in that study report obviously seem to display significant and future-oriented approach towards biological diversity and environmental protection. That report has put forward concrete and objective grounds which show that the operation of Godavari Marble Industries has caused adverse impacts on biological diversity, natural beauty and the entire ecosystem of that area, and has given the suggestion that the development and construction activities should be stopped and that area should be developed as a protected area. There appears no reason to overlook the issues pointed out in that study report conducted by a responsible agency during a time when there was no dispute in this regard.

In the same way, it has been mentioned also in the Godavari Area Environmental Situation Enquiry Report, 2049 (1992) prepared by the then His Majesty's Government, National Planning Commission's Natural and Cultural Heritage Protection Council that the operation of Godavari Marble Industries has impacted on the forest,

tourism, agriculture,, animal husbandry and water resources. Majority of the members of the enquiry Task Force have expressed the opinion to close down the Industries analyzing the impact caused by Godavari Marble Industries on the environment. In the majority opinion of that report the following things, inter alia, have been pointed out:

“Godavari Marble Industries has been directly affecting nearly 100 hectare forest of this area. Floods and landslides resulted from the activities like quarrying of stones and marble and preparation of concrete and marble have caused annual loss of crops worth thirty lakhs of rupees in regard to only the paddy crops of the people of the command sector of the river. Looking at the geographical position of that place, it seems that it is not possible to stop the flowing of *rato mato* (reddish soil) from the mines, notwithstanding any type of endeavors. Godavari area is also important from the perspective of vegetation, animals, birds and butterflies. The reasons like explosions made there are likely to create a situation of extinction of invaluable butterflies and rare birds forever. It needs to be noted that the operation of mines has not only caused the loss of beauty of that place, rather it has turned that area uglier. When the country and the Nepalese people are made to lose millions due to destruction of natural heritage, if the mines are allowed to operate as usual advancing the plea that four hundred laborers have been given employment and nearly twenty lakhs of rupees are annually paid to the government as revenue, the local people shall be required to pay a huge price. Moreover, any program relating to protection which is conducted without halting the activities of Godavari Marble Industries shall not only lack direction rather it also may not create a sense of trust. Therefore, it looks necessary to close down Godavari Marble Industries.

It has been pointed out in the report on mines that, as the marble deposit of Godavari area is not of high quality, good slabs do not come out, stones come out in between and blocks get split and a lot of soil and stones need to be removed regularly, it shall be necessary to expand the area of mines. Thus it is not feasible to operate the Industries without doing business in stones and concrete. The transaction of stones and concrete being conducted there is apprehended to be greater in volume than what has been shown by the entrepreneur. The geological reports have also shown the need of progressing quarrying in the north direction in course of extension of the mines. This shows that the regular transaction of stones and concrete is indispensable for the development of that Industry. Therefore, that Industry should be treated more as a stone mine. On this basis also that mine should not be allowed to operate.”

It has been clearly pointed out in that opinion about the adverse impacts caused by Godavari Marble Industries on the biological diversity and environment of

that area. It is a matter deserving special consideration that especially on account of operation of that Industry, not only biological diversity including rare vegetation, birds butterflies etc. of that area is being gradually destroyed, even the natural beauty is showing getting lost and becoming uglier. Moreover, it has been also mentioned that the flow of *rato mato* (reddish soil) cannot be stopped despite resorting to means of improvements whatsoever due to the geographical condition of that area. As both the storage and quality of marble are not good and more stones than marble have been excavated, it has been pointed out in the report that the Industry should be treated more as a stone Industry rather than as a marble Industry. This does not show any special utility of the respondent Industry as a marble Industry. Besides, the section of the report describing many times more damage caused to environment by the Industry than the employments given to some persons by the Industry and the revenue paid to the State shows that balance between development and environment also could not be maintained.

In the letter written by Russell W Peterson, President of International Council for Bird Preservation, to the Prime Minister of Nepal in July, 1988, which is enclosed with the above-mentioned study report, mention has been made about the impacts caused by the continuous quarrying being carried out in the lower part of Phulchowki, i.e., Godavari area, on the basis of the matters published in the technical study report of International Council for Bird Preservation in the following way:

“The continued quarrying on the lower slopes is a major threat, especially to the vitally important subtropical forest, and this really should be stopped immediately.”

It has been mentioned on page 74 of the study report called Conservation ‘Project’ for Phulchowki Mountain, Nepal as follows:

If Phulchowki’s forests and their wildlife are to continue to survive, action must come soon; the quarries must be closed and Phulchowki designated a protected area. At the present rate of destruction, the stage will be reached in the foreseeable future where many species will disappear. Even if the trees were to recover, some of the forest inhabitants would take many years to recognize and others would never do so.

In fact, it is not possible for the Court to have expertise in every discipline and subject. Therefore, the Court needs to rely on the views of the concerned experts on some technical issues. However those reports use to be reliable only so long as those are not proved otherwise. The respondent Industry could not refute convincingly that the opinions expressed in the aforesaid study report, which formed the basis of the writ petition, were otherwise or they were prejudiced towards the Industry in such way. The

studies got conducted by different agencies through teams comprising national as well as even international experts at different times have also reaffirmed the conclusions of the study conducted in 2054 B.S. Therefore, the Court has to presume that the matters mentioned in the aforesaid study reports prepared in an independent way at a time when there was no dispute are scientific, factual and objective.

Apart from this, the matters of negative impacts caused by the operation of Godavari Marble Industry in that area have been also discussed in the Field Study Report, 2050 prepared by the Public Accounts Committee of the then House of Representatives. The following issues have been pointed out in the aforesaid report on the basis of discussion made with the local residents:

“Godavari area is highly significant from the viewpoint of biological diversity. Various species of vegetation, birds, butterflies and flowers can be found there at one place in abundance. As there were extensive public grievances about the harms caused by human encroachment and environmental pollution caused by the Industries including the marble Industry in this area, the sub-committee had held discussions with the representatives of the local residents, the representatives of the organizations associated with environmental protection and the representatives of the vegetation garden and the school.

In course of the discussions various concerns had been raised, such as, dust raised by the marble Industries, air and vegetation being polluted by the dust, the destruction of forest in Godavari-Phulchowki area on account of various reasons including Godavari Marble Industries, growing extinction of the vegetation, birds, butterflies and flowers found in that area, impacts caused by blasting made in the industrial area, on the surrounding vicinity and *rato mato* (reddish soil) flowing from the quarries entering the fields resulting in decrease in production.”

Directly felt and experienced pains expressed by the local residents before the representative regarding the adverse impacts caused by Godavari Marble Industries on their habitation and the surrounding environment need to be taken seriously. This shows that the plea taken by Godavari Marble Industries in its written reply that the local people had been benefitted by the employments generated by the Industry and that they had positive attitude towards the Industry was not reliable.

Moreover, the same report has pointed out that Godavari Marble Industries has indulged in production of more bricks than marble in the following way:

As regards the issues of the Industry having been registered as a marble producing Industry but indulged in producing more concrete and stones than marble

and the concerned agency remaining silent on that issue and also not realizing revenue for that, that matter becomes clear also from the particulars given by the Industry. As about this issue, there is no law in Nepal for imposing tax on the production of stones and concrete. Even though the Auditor General informed about this matter on time, the concerned Ministry has not displayed readiness for making law. Thus it is an impractical situation where the nation does not get any income even though natural resources of the country are being utilized and individuals alone are getting benefitted by it. Therefore, it is highly necessary to classify the products of mineral Industries into main product and sub-product and to impose revenue even on the sub-product by making timely law and rules for the purpose of imposing revenue.

On the basis of the conclusion of that study report there appears truth in the Statement of the petitioners that the respondent Industry indulged more in the transaction of stones and concrete than in marble and also in evasion of revenue. It cannot be appropriate to allow freedom for production of stones and concrete under the shield of marble for the economic benefit of an individual, and thus exposing the valuable natural resources to danger.

In *Surya Prasad Sharma Dhungel vs. Godavari Marble Industries and Others* (NKP Golden Jubilee Celebration, Special Issue 2052, P.169) also, the above-mentioned study reports have been already analyzed by a Special Bench of this Court. The Court has issued directives for prevention of the impacts caused on the environment by adopting the measures of reform. Nearly ten years after the issuance of that order, again another study had been made by Nepal Government, Ministry of Forest in 2062 about declaring Phulchowki-Chandragiri area as a protected area. In the aforesaid Phulchowki Chandragiri protected Area Declaration Report, 2062 the following analysis has been made regarding preservation of this area:

“This area, being a meeting point of extremely significant metaphysical biodiversity, landscapes and environment, greater importance has been given to its protection by the Biological Diversity Strategy, 2002 and the Biological Diversity Documentation Project, 1996 as well. This area needs to be established and preserved as a National Park to conduct environment friendly programs for the preservation of highly important ecological system and wild life along with protection of their habitation as well as for poverty reduction and preservation of biological diversity. This will help achieve biological preservation, management and community development for long. Moreover, it can be also integrated with the national fundamental policy of poverty reduction. Utilizing regularly and for a longer period the means and resources available almost close to the lap of the national capital Kathmandu, it is the need of today to

preserve the biological diversity and to move forward exploring the prospects of social and economic development, which could not be achieved till today.”

In the context of Nepal’s obligation for preservation of biological diversity created by international treaties and Conventions and the steps taken by Nepal Government for preservation of biological diversity the following grounds have been mentioned in the same report to justify the preservation of this area:

“For the sake of realizing the targeted objectives of preservation of biological diversity, its utility and equitable distribution of the benefits, Nepal prepared and adopted Nepal Biological Diversity Strategy, 2000 in 2002 and His Majesty’s Government, Ministry of Forest and Soil-Preservation has already brought it into implementation. That strategy has the policy of including and managing all the 118 ecological systems (Dobremez, 1972) inside the protected area, and, therefore, it is necessary to manage this area as a protected area for implementation and realization of the targeted objectives of His Majesty’s Government. Presently, 33 out of the 52 biological systems found in the mid-hilly region fall under the protected area. If this Phulchwoki - Chandragiri area is declared as a protected area, it will help to include some additional ecological systems and will further provide support to the endangered species of vegetation, animals, birds, insects, butterflies etc. facing the danger of extinction for lack of preservation.

As dense habitation is developing around the forest area where Godavari Marble Industries is in operation, and as it is a hot spot of the national herbarium, St. Javiers School, other schools, flower garden, deer yard, fish and beer farms of Agricultural Research Centre, Domestic Centre of ICIMODE, natural caves and other types of biological diversity, it does not seem appropriate to continue the operation of the quarries which carry out regular explosions in an area of national importance which is also highly sensitive from social and environmental perspective.”

On the basis of the issues indentified in the aforesaid study reports there is no doubt that adverse impacts have been exerted upon the religious and cultural significance of Godavari area and also on its biological diversity, ecological system and geological position. Not only that, it cannot be said either that appropriate and adequate measures had been taken for preservation of that area in accordance with the directive orders issued by this Court or those types of harms had been minimized or there was such probability. So in view of the biological diversity and environmental sensitivity of that area, it looks necessary to keep it intact as pointed out in the study reports.

Now another question needs to be considered and decided: Whether or not the activities relating to quarrying conducted by Godavari Marble Industries in Godavari area are compatible with the constitutional provisions and the law of Nepal regarding environmental protection?.

It has been contended in the present petition that the operation of Godavari Marble Industries has chiefly infringed the right to live with dignity and the right to live in a clean environment guaranteed respectively by Article 12(1) and Article 16(1) of the Interim Constitution of Nepal, 2007, and nothing has been done to maintain a clean environment by preservation of biological diversity as envisioned in Article 35(5) in accordance with the State Policy. Similarly, the petitioners have further contended that the legal rights granted by Section 12(1) and Section 27(1) of the Mine and Mineral Substances Act, 1985 and Rule 19(b) and Rule 43(d) of the Mine and Mineral Substances Rules, 1999, Section 7 and Section 10(1) of the Environment Protection Act, 1997 and the Preamble of the Forest Act, 1993 and the right expressed in the Preamble and the spirit of the Forest Act, 1993 have been also infringed. However, the respondent Godavari Marble Industries has taken the plea in its written reply that it had not infringed the legal and constitutional rights as claimed by the petitioners.

Article 12 relating to the right to freedom in the Interim Constitution of Nepal, 2007, reads as follows:

“Article 12. Right to Freedom: (1): Every person shall have to right to live with dignity and no law shall be made providing for capital punishment.

2. No person shall be deprived of his personal liberty save in accordance with law.”

Article 12(1) of the Interim Constitution has also incorporated the right to live with dignity under the right to life. It shall be erroneous and incomplete to have a narrow thinking that the right to life is only a matter of sustaining life. Rather it should be understood that all rights necessary for living a dignified life as a human being are included in it. Not only that, it cannot be imagined to live with dignity in a polluted environment rather it may create an adverse situation even exposing human life to dangers.

Similarly, Article 16(1) of the Intern Constitution of Nepal has guaranteed that every person shall have the right to live in a clean environment. This provision of the Interim Constitution establishing the right to live in a clean environment as a fundamental right can be rarely seen not only in the South Asian Region but also in the constitutions of the developed countries of the world. This constitutional provision seems to have provided constitutional immunity from polluted environment to not

only the Nepali citizens but also to every person residing in Nepal. The State does not have any alternative to ensuring availability of this right envisioned as a fundamental right without any precondition or obstruction.

Likewise, the petitioners have also alleged that whereas due to the operation of the respondent Industry the environment of Godavari area is gradually becoming polluted, respondent Nepal Government has not duly executed the State Policies enshrined in Article 35 of the Constitution. Clause (5) of Article 35 provides as follows:

“(5) The State shall make such arrangements as required for keeping the environment clean. The State shall give priority to the prevention of adverse impacts on the environment caused by physical development activities, by increasing the awareness of the general public about environmental cleanliness as well as to the protection of the environment and special protection of the rare wildlife. The State shall make arrangements for the protection and sustainable uses and equitable distribution of the benefits derived from the flora and fauna and biological diversity.”

The aforesaid constitutional provision States that protection of environment should remain under the priority of the State and that the operation of development activities should not impact on the environment. That is to say, it has established the need of taking forward development and environment in a balanced way as the State Policy. Unlike the preceding Constitution, the Interim Constitution of Nepal has widened the concept of environmental justice requiring the State Policy to address the protection of forest and biological diversity and their sustainable uses and equitable distribution of the benefits accruing from them. This approach adopted by the Interim Constitution looks compatible with the provisions of the International Convention on Biological Diversity, 1992.

It has become clear from the analysis of the first issue made above that the concept of environmental justice is not of a stable or static Nature rather it is a dynamic and future centered concept likely to develop and become refined gradually. With the development of Science and Technology, new types of problems and challenges are being accumulated every day, and the latest outlooks are also emerging in the environmental justice sector so as to address them. The developed countries have already started the assessment of environmental impacts which are likely to emerge after hundreds of years.

Right from the enactment of the 1990 Constitution to the time of the promulgation of the Interim Constitution, wide spread changes have emerged in the national and international outlook on biological diversity and the environmental protection sector. It was natural to see a reflection of its impacts in the Interim

Constitution of Nepal. Still more concepts in this regard may be expected to get incorporated in the Constitution to be made in the future.

As it is necessary to have a future centered outlook, while having discussion in the context of environmental justice, it shall not be a proper and rational thought to retrogress from the concepts, constitutional and legal provisions and the national and international practices developed so far.

On the whole, the Interim Constitution of Nepal, 2007 has guaranteed a person's right to live as a fundamental right. Moreover, the Interim constitution has also placed the right to live in a clean environment under the category of fundamental rights. It is in the knowledge of the bench that the State Policies are not the matters which can be directly implemented by the Court. Nonetheless, any type of restriction whatsoever on the uninhibited enjoyment of fundamental rights cannot be acceptable at all. Even the State Policies are also not placed in the Constitution only for a cosmetic purpose. It can be hardly considered proper to go on incorporating one after another major issues relating to the rights in the Constitution but responsible bodies of the State displaying apathy towards enforcement of the fundamental rights and the State Policies specified in the Constitution. Incorporating unenforceable rights in the Constitution detracts from reliability of the State. Therefore, the concerned bodies of the State should sincerely endeavor to implement literally the spirit and provisions of the Constitution. If it is not found so, this Court shall issue necessary order or directive in the regard.

The significance of Godavari area and the adverse impacts caused by the respondent Industry on that area have been adequately analyzed above in course of resolution of the third issue. On the basis of the aforesaid analysis it cannot be stated that the impacts caused by the operation of the respondent Industry on biological diversity and environment of that area have not affected individual's right to live in a clean environment guaranteed by the Constitution.

In Fact, the right to live in a clean environment is an inborn and inherent right of men to live in a clean environment. There can be no dispute that such natural rights relating to life should be enjoyed uninterruptedly. As man is a natural creature, this right of man to live cannot be violated in any condition or circumstance. Besides, it has been also mentioned in the writ petition that the act of quarrying being conducted since long time by the respondent Industries in a sensitive area having biological diversity is contradictory to the Mine and Mineral Substances Act, 1985 and the Mine and Mineral Substances Rules, 1999.

Section 1(2) of the Mine and Mineral Substances Act, 1985 which got the Royal seal of assent on Kartik 14, 2042 (1985), has provided that the Act shall come into force from the date specified by Nepal Government through a

notification published in Nepal Gazette. However, even after 12 years of its promulgation the Act could not come into force. It was only in the writ petition, Surya Prasad Sharma Dhungel vs. Godavari Marble Industries and Others, (NKP, Golden Jubilee Celebration issue 2052, P. 169) that this Court issued an order on Kartik 4, 2052 (1995) for enforcement of the aforesaid Act. After a lapse of four years of the issuance of the said order, the said Act came into force following publication of a notification in Nepal Gazette on Bhadra 13, 2056 (1999) effective from the date of its publication.

The Preamble of the Act also declares about the expediency of developing mines and mineral sources available in the country so as to maintain the convenience and economic interests of the common people and achieve faster economic development of the country. Thus the Preamble is guided by the objective of faster economic development of the country through systematic quarrying and development of mines and mineral resources.

Moreover, Section 3 of the Act has provided that all the mineral resources found beneath private or public land or inside the earth shall be the property of Nepal Government. Section 3(a) has classified mineral substances into Metal and Nonmetal according to their nature and into Highly Important, Important and Precious and Ordinary in accordance with their value. Schedule 1 of the Mine and Mineral Substances Rules, 2056 has placed marble under the category of nonmetal mineral in accordance with its nature and under the category of ordinary mineral along with stone and sand based on its importance.

Section 4(1) of the Act has granted the monopoly of carrying out mineral activities to Nepal Government, and Section 4(2) has made provision that the Department may conduct mineral activities on its own or grant permission to someone else for this work. The process of granting such permission and its duration is also included in the Mine and Mineral Substances Rules, 2056 apart from Section 5 of the Act.

Section 11a of the Act provides that while conducting mineral activities it should be done in a way so as not to cause any adverse impact on the environment. It has been mentioned in the said provision that the mineral activities should be conducted without causing any significant adverse impact on the environment; measures as specified should be adopted for environmental protection; the Department may issue instructions for reform if such adverse impacts are seen; and it shall be the duty of the concerned person to abide by such instruction. The provision to that Section has also provided that such impact shall be as specified.

The grounds which may be treated as causing significant adverse impacts on the environment have been specified in Rule 32 of the Mine and Mineral Substance Rules, 2056 as follows:

- a) Diversion likely to be caused to land use and surface of land in course of developing mine and its basic structure,
- b) Harm likely to be caused to forest development and extinction of wildlife,
- c) Possibility of water pollution due to the water flowing out of the mine and the liquid and defects emitted during purifications ,
- d) Air pollution due to smoke and dust,
- e) Noise pollution and trembles likely to be caused by drilling, blasting and use of huge machines,
- f) Problem of solid change of form emerging likely on account of over burden trailing etc.,
- g) Problems such as soil-erosion, landslide, drifting of steep land, drifting of soil and road blockade likely to emerge,
- h) Likely change in the flow of water and inconvenience in the use of water, and
- i) Harms likely to be caused to the cultural and archaeological places and botanical garden.

A comparative perusal of the various study reports conducted about Godavari area, which have been overviewed above, clearly shows that the conditions mentioned in clauses (a), (b), (c), (e), (g) and (i) of the Rules emerged due to the act of quarrying conducted by respondent Godavari Marble Industries. Thus there seem to be adequate grounds which can be considered to have caused significant adverse impacts on the environment of that area.

Besides, Section 12(1) provides that the Department may even declare from the viewpoint of national security, public good or historical importance any area as a prohibited area for mineral activity or grant permission for performing mineral activity in any area specifying special conditions. Similarly, Section 27(1) grants power to Nepal Government to stop mineral activity and cancel its permission if it appears necessary for national security or public good. Moreover, Rule 43(d) of the Mine and Mineral Substances Rules, 2056 has made a legal provision for cancellation of any Mineral Industry conducting any activity causing adverse impacts on public interest or national security or environment.

It cannot be disputed that Godavari is an area of cultural and historical significance. Moreover, adequate analysis has been already made in the preceding paragraphs in regard to biological diversity, geographical and geological position,

ecological system and environmental sensitivity of this area. This fact has also clearly established that the quarrying activity undertaken by Godavari Marble Industries has caused significant adverse impacts on biological diversity and environment of that area. In such a situation it cannot be said that the destruction of biological diversity and environment of Godavari area, which serves as the ventilator of climate and environment of a densely populated urban area like the Capital having more than three million population, shall not expose wider public good to danger.

Likewise, it has been also contended in the writ petition that the continued functioning of respondent Industries has also infringed the provisions of the Environment Protection Act and the Rules. As per the order issued by this Court in Godavari Marble case, the Environment protection Act, 1997 was enacted and published after getting the royal seal on Magh 17, 2053 (1996). The Preamble of the Act shows that taking into consideration the feasibility of sustainable development only through interdependent relationship between economic development and environmental protection, the aforesaid Act has been promulgated with the objective of maintaining a clean and healthy environment by minimizing as far as possible the adverse effects caused by environmental destruction on human race, animals, vegetation, Nature and physical objects so as to protect the environment through proper utilization and management of the natural resources.

The spirit embodied in the said Preamble states that sustainable development may take place only if there is interdependence between economic development and environmental protection. Thus the spirit of the Preamble seems to have clearly internalized the international jurisprudence that has been developed in the area of environmental justice. Along with this, the Preamble also appears to have imbibed that environmental destruction may cause adverse effects on the human race, animals, vegetation, Nature and physical objects, and this may prevent creation of a clean and healthy environment. Likewise, the Preamble to the Environment Protection Act has also incorporated the equitable assumption that proper utilization and management of natural resources should be made for environmental protection.

Section 2 of the Act has also defined various terms. In clause (a) the term “environment” and in clause (b) the term “pollution” has been defined. In clause (c) the term “protection” has been defined as to mean the acts relating to protection, maintenance, promotion and national heritage. According to clause (d), “proposal” means a proposal prepared in relation to conducting any plan, project or program relating to any development work, physical activity or change in the use of land capable of bringing about changes in the environmental condition Likewise, diversity of eco-

systems, species diversity and genetic diversity have been defined as 'biological diversity' in Section (e) of the Act. According to Section (k), "national heritage" means any object, place, vegetation and animal or insects within Nepal related to environment and considered significant for the human race from natural, cultural, historical, archaeological, scientific, spiritual, aesthetic or social perspectives.

Apart from this, Section 3 of the Act has provided for undertaking preliminary environmental examination or environmental impact assessment of any proposal whatsoever. Section 4 prohibits implementation of any proposal without its approval following enforcement of the aforesaid Act. Sections 5 and 6 included respectively the provisions relating to submission of a proposal for approval.

Exercising the power granted by Section 24 of the Environment Protection Act, 1997, Nepal Government made the Environment Protection Rules, 1997 on Asadh 12, 2054 (1997). Rule 3 of the said Rules has provided for conducting preliminary environmental examination of the proposals mentioned in Schedule 1 and environmental impact assessment of the proposal mentioned in Schedule 2. The proposals relating to Rule 3 which require preliminary environmental examination are related to mines as mentioned section (e) of Schedule 1. Since it has been mentioned in its Serial Number 4 that decorative stones (like marble, granite, amphibolites/polished stone) shall be collected and produced, respondent Marble Industries which is involved in collection and production of marble needs to undertake preliminary environmental impact assessment.

Moreover, a list of the proposals which require environmental impact assessment has been given in Schedule 2. It has been mentioned in Serial Number 2(c) of section (e) of the said Schedule that it shall be required to conduct environmental impact assessment of the proposals relating to quarrying in case of quarrying of more than 200 tons of nonmetal minerals in land quarrying and in case of quarrying of more than 400 tons in surface related quarrying. Apart from this, it appears from the study of those Schedules that preliminary environment assessment shall be required also in case of the proposals relating to the areas having forest and the main sources of supply of public drinking water, and which are of historical and cultural significance.

It cannot be disputed that on account of the act of marble quarrying being conducted by respondent Godavari Marble Industries and the sensitivity and significance of that area where the mine is located, it is necessary to conduct preliminary environmental examination and preliminary environmental impact assessment. But the written replies submitted by the respondent Industries and the concerned government agencies show that so far nothing has been conducted in this

regard. The respondents have taken a plea in their written replies that preliminary environmental examination and preliminary environmental impact assessment had not been done as there was no clarity about whether or not such examination and assessment were required in case of an Industry established before the enforcement of the relevant Act since the clause “after enforcement of this Act” has been mentioned in Section 4 of the Act.

In fact, it is not at all reasonable to say that any Industry established before the enforcement of some Act shall not affect the environment, and only the Industries established after the enforcement of the Act shall affect the environment. That there was no legal requirement for having preliminary environmental examination and preliminary impact assessment during the time of establishing any Industry does mean that one can argue that such immunity continues to permit non compliance with that legal requirement even after enactment of law in this regard. If it is to be interpreted in that way, it would lead to a conclusion that the Industries or mines established before 2053 shall have license to continue polluting the environment. Such a conclusion cannot be just and rational from any perspective. The Act of allowing such immunity to the respondent Industries by a responsible agency like the Ministry of Science, Technology and Environment can be only an indicator of its unaccountability.

Similarly, it has been mentioned in Section 7(1) of the said Act that it shall not be permissible to cause pollution causing significant adverse impact on the environment or causing risk to public life or public health or install any mechanical equipment or Industrial corporation in contravention of the specified norms or to release, or cause to be released, sound, heat, radiological rays and releasing dust from any other place. Sub-Section (2) of Section 7(1) has given power to the concerned agency to prescribe necessary terms and conditions or prohibit any activity if someone is found to be causing significant adverse impact on environment by indulging in any activity in contravention of Sub- Section (1).

Besides, Sub-Section (3) has also made provision about empowering the concerned Ministry to impose restriction on the use of any object, fuel, instrument or mechanism by publishing a notification in Nepal Gazette if their use causes or appears to be causing significant adverse impacts on the environment.

On the basis of the analysis made above in regard to various study reports it appears that significant adverse impacts have been caused by the activities of Godavari Marble Industries on biological diversity and environment of that area, and its prevention seems to be impossible. In such a situation allowing continuity of the

Industries shall be equivalent to allowing the continuation of significant adverse impacts on the environment of that area.

According to Section 10 (1) of the Environment Protection Act, 2053, Nepal Government may specify, through a notification published in Nepal Gazette, any place, which is full of natural heritage considered very significant from the viewpoint of environmental protection or which has aesthetic, rare wild life, biological diversity, vegetation and places of historical and cultural significance as an environment protection area. Similarly, Section 17 of the Act requires the polluter responsible for causing environmental pollution in contravention of the said Act and the Rules or the Manual made there under to pay reasonable compensation to the victim party. Further, Section 18 of the Act makes provisions including immediate stoppage of any act being conducted by any person without getting approval of the proposal or in contravention of the approved proposal and imposing punishment according to the degree of the offence.

There is no disputing the fact that Godavari area is an area of religious and cultural significance endowed with natural beauty, biological diversity, environmental sensitivity, eco-system, geographical and geological status, flower garden, national herbarium, fishery and bee research centre, domestic centre of ICIMODE. Moreover, it has also become established that the activities of the respondent Industry has caused irreparable loss to the whole environment including biological diversity of that area. In such a situation the failure to declare that area as a protected area and allowing freedom to continue causing damage to the environment testify that the aforesaid legal provision relating to environmental protection contained in the Environment Protection Act cannot be viewed as implemented or complied with.

In short, notwithstanding some existing dispute between development and environment, there exists a belief that even if there seems to be any conflict between physical development and destruction, development can be achieved protecting the health of the human race and its right to life by striking a balance between physical development and destruction. In the preceding paragraphs, examples of national and international arena have been discussed above about running campaigns for the protection of rare animals, aquatic animals and birds under the campaign of pursuing development without letting its adverse impacts affect the environment.

There seem to be existing adequate grounds for preventing operation of the respondent Marble Industry in the Godavari area. First of all, there are dense settlements and the continuing expansion of settlements in Kathmandu valley which is

so close to this area. Secondly, the topography of the capital city of Kathmandu valley is like a pit surrounded on all four sides by mountains. Godavari area is located just fifteen kilometers away from the capital. It is necessary to pay serious attention to pollution caused to the environment of this area by dust, smoke, diesel and petrol which serve as biological fuel and the use of various means of modern transportation which emit various types of gas.

Human beings need clean and healthy air for survival. But Kathmandu valley is experiencing gradual reduction of its presence. It is natural that the dust and smoke released from the use of explosive materials and the destruction of forests caused by quarrying of the mountains further exert negative impacts on environmental pollution. The written reply of respondent Godavari Marble Industries has also raised the issue that the writ petitioner has failed to mention the data of how many animals died, or were displaced or became extinct. It is not so easy matter rather it is an issue which can be concluded on the basis of circumstantial facts. In fact, dense forest means an area where wild animals and birds can freely move and roam and also a palace of their habitation where they can live without any fear. It is natural that explosions, unnecessary movements of human beings, big sounds and ramblings in the vicinity of such a forest are likely to cause troubles to those animals. It is also natural that such animals become terrified by the movements of human beings and sounds of machines or they are displaced or become extinct.

It seems established from the study reports enclosed with the case file that the Phulchowki hill situated in Godavari area is the highest peak located in Eastern - Southern part of Kathmandu valley and a significant area which causes rain in the valley. Moreover, such an important hill full of greenery also looks very beautiful. Destruction of forest and excavation of quarries in this area seem to be causing the danger of disappearance of the whole mountain. After causing destruction of such incomparable gift of the Nature and quarrying of minerals conducted by the respondents, it is unnatural in itself to suppress the truth and advance a plea that reforestation and creation of artificial mountains are possible. It is so because something gifted by the Nature cannot be compensated by anything artificial.

The analysis made above shows that the act of quarrying of quarries in Godavari area shall destroy the beauty of Kathmandu valley and result in destruction of biological diversity. So there is a need to maintain environmental cleanliness, remove pollution from Kathmandu and maintain greenery on the bare hills restoring again the destroyed forests.

On the other hand Godavari Marble does not seem to have produced pure marble. It has not been also sold or adequately used either. The marble imported from abroad including India has covered the market. Even the supervision made by the Court as per the earlier order has shown that marble has been produced in a very lesser quantity and mostly broken marble has been produced whereas stones and concrete have been produced in greater quantity.

Similarly, even preliminary environmental examination or environmental impact assessment has not been made prior to starting the operation of the quarry Industry in such a sensitive area. Besides, it also does not appear that the respondent Industries has paid adequate tax, fees and royalty through which the State could receive significant economic benefit. It cannot be deemed proper from any angle to show as if the Industry had suffered loss when it was asked to pay revenue to the State, and thus only a person always getting benefitted by it.

On the other hand every quarry has a definite age for conducting excavation. It is for this reason that the Mine and Mineral Substances Act, 1985 and its Rules have provided for specifying the time period while granting permission for operating a mine. Moreover, it cannot be just and reasonable to grant permission continuously to only one person for a thing like mineral asset of which the State is a trustee. The written reply submitted by the respondent Industry shows that it has been conducting the act of quarrying in the Godavari hill continuously ever since the Rana period. Even from that account, this Marble Industry seems to have already crossed 100 years. The present respondent has also completed thirty years of acquiring ownership of the Industry. Thus when it appears that the term of the Industry has been extended granting permission to the same person for a longer period and, that too, by evading the reality of the existing dispute resulting from the registration of a case in the Court, such an act cannot be deemed proper.

Besides this, there are mutually conflicting opinions among the Parliament, Nepal Government and its bodies about whether or not to grant permission for operating the respondent Industry. The studies conducted by Ministry of Forest and its subordinate departments have also concluded that no quarrying of minerals should be allowed in the forest area of Godavari which is of national importance and full of biological diversity. On the basis of those studies the Ministry of Forest had also made a decision on Ashwin 19, 2065 (2008) to close down respondent Marble Industry. However, that decision could not prevail for long and after sometime it was decided to allow the Industries to operate as per the directive of the Parliamentary Committee. The Ministry of Forest and the Forest Department have contended in their replies for the

closure of the Industries whereas the Ministry of Industries and its subordinate Mines Department seem to be in favor of letting the operation of the mine to continue. The plea advanced in favor of the respondent Industries in the written reply presented by the Department of Mines clearly shows that there is no unanimity of opinions on this matter among the organizations of Nepal Government.

The Legislature and the Executive and the various agencies under the Executive have different viewpoints in regard to whether or not any Industry causing deterioration to biological diversity and environment should be allowed to operate or be closed down. This clearly shows that the biological diversity protection has not been implemented effectively. If there is a conflict of interests between different agencies of the State in this regard, it is sure that it is not the State rather some other person who will derive benefit from. Therefore, there must be only one collective opinion of the State regarding a sensitive matter like environment. It does not look decent that the Parliament and another agency of the Government itself hold one type of opinion about such an important issue and another agency holds quite a different opinion, and thus they indulge in the game of 'hide and seek' regarding opening and closure of the Industries.

In totality, the continued existence of every creation or object of the Nature has its own natural reason and significance. Every object has its own different norms and values. It cannot be acceptable to dismantle the basic norms and values of the Nature for the sake of some body's vested objective or financial interest. The things like air, water, forest and biological diversity which are interlinked to identity and existence of the Nature have not been made only for one generation. They should not be allowed to decay on any pretext. Nobody can claim to have freedom to destroy the basic form and norms of the Nature and its constituents and their norms in the name of development. The benefits resulting from development activities cannot be compared to the value of the gifts given by the Nature. So even if any significant profit is likely to accrue from physical development activities, no activity causing negative impact or destruction of the Nature and environment should be allowed to continue.

As we cannot talk about destroying our snow capped mountains (*Himal*) and hills or filling up the seas for the sake of any development or economic benefit, similarly the value of biological diversity cannot be exchanged with marble or stone and concrete. There can be no price for the religious and cultural heritage, biological diversity, birds, insects, butterflies and vegetation exposed to extinction and eco-system and natural beauty of Godavari area. Because such invaluable natural heritage is worth protecting and worthy of preservation even for the distant posterity, not marble, even if

gold or diamond is to become available, not to talk of destroying a life giving hill like Godavari which is full of biological diversity, one cannot be allowed to even scratch it.

Now, the last question needs to be decided whether or not the order as prayed for by the petitioners should be issued, and if so, what type of order should be issued.

Perusal of the contents of the writ petition shows that the petitioners have contended that since respondent Department of Mines and Geology had made a decision on Poush 23, 2067 (2010) to extend the term of Godavari Marble Industries Pvt. Ltd. for quarrying of minerals for a further period of 10 years effective from the date of expiration of the term despite pendency of the Writ Petition No. 3394 (Full Bench 005), the impugned decision was arbitrary, *mala fide* and unlawful. So the petitioners prayed for the issuance of an order in the name of the respondents to suspended the act of quarrying being conducted by respondent Godavari Marble Industries and cancel its permit for quarrying, to declare it as a prohibited area, to make arrangements requiring the Industries to pay compensation for the damage suffered by the farmers on account of the Industries, and, in order to revert that area to its prior condition, to cause the respondent Godavari Marble Industries to reimburse the expenses incurred in the process in accordance with the recognized principle of 'polluters pay principle'.

In the written replies submitted by the respondents including Godavari Marble Industries, it has been contended that only because the said case was *sub judice* it cannot be said that the Industry cannot carry out its activities. The Industries has been adopting adequate measures in regard to environmental protection. The permit for conducting mineral activities should not be cancelled as the Industry has done nothing to destroy the environment of that area. Section 12 of the Mine and Mineral substances Act, 1985 has granted the power to the Department of Mines to declare some area as a mineral activity prohibited area whereas Nepal Government has been empowered by Section 27 to suspend mineral activity and to cancel the permit, and therefore, such a power cannot be exercised by the Court. Even while cancelling the permit in that way, reasonable damage shall have to be paid to the Industries pursuant to Section 27(2). As the local residents have not approached the Court claiming that the Industry has caused any harm, damage cannot be assessed and paid through a PIL petition, and therefore, the writ petition should be dismissed.

Latest concepts emerging at the international level in the context of environmental justice, the jurisprudential values developed by this Court, the environmental and cultural significance of Godavari area and the impacts caused by

respondent Godavari Marble Industry on that area as well as the relevant existing constitutional and legal provisions have been extensively analyzed above serially in course of addressing the first to the fourth issues.

The learned counsels appearing on behalf of respondent Marble Industry have raised the issue that the Industry should be also allowed to exercise the right to conduct business in accordance with the law, and compensation should be granted in case it is closed down. However, the present writ petition is not the appropriate forum for resolution of that issue. As the Industry is competent to stake claim and seek remedy in this regard as per the law, the aforesaid issue cannot be resolved through this writ petition.

On the basis of an overall analysis of the above discussed theoretical concepts, objective realities and the existing constitutional and legal provisions, there seems to be no dispute that the agenda of pollution control and environmental protection is not an agenda of any specific country rather it is an issue of collective interest, concern and obligation of the world community as a whole. Moreover, to say that the development activities should be totally stopped for the sake of environmental protection is also tantamount to causing obstruction to society's road to economic development. Therefore, there can be also no dispute about moving forward in the direction of sustainable development striking a balance between development and environment. There have been some assumptions that in order to strike a balance between development and environment the harms resulting from environmental pollution should not outweigh the benefits resulting from development activities; the benefits of development should not be confined only to a specific class or individual rather it should be distributed in a wider and equitable manner and the transfer of natural means and resources should be ensured for the future generation without subjecting them to excessive exploitation.

Similarly, right from the time of resolution of the dispute similar to the issues raised in the present petition nearly 27 years back, this Court has been displaying its serious concerns and interest in regard to environmental protection. Different types of orders and directives have been issued in the name of responsible bodies including Nepal Government in respect of various issues relating to environmental protection such as pollution of Bagmati River, smoke and dust emitted from brick kilns, impacts caused on the environment by the means of vehicular transportation including Bikram Tempos, management of the smoke and discharge of dirty water from Paper Industries, protection of the areas of historical and cultural significance, biological diversity and wet lands.

Phulchowki-Godavari area, where the respondent Godavari Marble Industries is located, has remained a living museum on account of its climate, biological diversity, natural beauty, geographical and geological position, eco-system, rare animals, vegetation, birds, butterflies etc. Also on account of the presence of a flower garden, the national herbarium, centers for research and study of fisheries and bees and domestic center of ICIMODE in this area, there is also strategic significance of protection of the biological diversity of this area. Moreover, due to the presence of hermitage and temples, natural caves, Budha monasteries, fountains and *kunds* (ponds) where a fair takes place every twelve years, this area also enjoys great historical and cultural significance.

Moreover, Godavari Marble Industries also seems to have adopted some measures for minimizing the harms. But the efforts for reform have proved colorless in the context of the biological, geographical and geological significance of Godavari area, where the Industry is situated. Moreover, the quality and storage of marbles of that area are not good; excessive quarrying is required for lesser quantity of marbles; and the respondent Industries seems to be functioning more as a stone Industry rather than as a marble Industry. In comparison to the limited employments given by the respondent Industry and the revenue paid by it, the harms caused to that area seem to be irreparable. Hence, since its protection seems to be indispensable in the wider interest of the human race, it does not look reasonable to continue further the development activities.

Article 12(1) and Article 16 (1) of the Interim Constitution of Nepal, 2007 have placed respectively the right to live with dignity and the right to live in a clean environment as fundamental rights. In order to maintain a clean environment, Article 35 (2) of the Constitution has prescribed a State Policy to work for balanced and sustainable development also protecting biological diversity. Section 11a of the Mine and Mineral Substances Act, 1985 has prohibited causing adverse impacts on the environment while conducting mineral works, and such impacts have been specified by Rule 32 of the Mine and Mineral Substances Rules, 1999. The activities of the respondent Industry seem to have also caused significant adverse impacts on the environment of Godavari area. Moreover, as Section 12 of the Act has provided for declaring an area of public good and historical significance as a mineral activity prohibited area, this area needs to be developed in the form of a protected area.

Therefore, in the context of the above mentioned ideological concept of environmental justice, the judicial principles laid down by this Court regarding environmental protection, the relevant constitutional and legal provisions, the biological

significance of Phulchowki - Godavari area and also the adverse impacts caused by the activities of the respondent Marble Industry on the environment of that area, the following orders are hereby issued in the name of the respondents pursuant to clause (2) of Article 107 of the Interim Constitution of Nepal 2007:

- a) The decision made by the Department of Mines and Geology on Poush 23, 2067 (2010), despite the case being *sub judice* in this Court, to extend the term of operating the mine until 2021 (2078 BS) and all the activities related thereto are quashed by an order of certiorari.
- b) Due to Phulchowki-Godavari area's climate, biological diversity, natural beauty, geographical and geological topography, eco-system and historical, religious and cultural significance, conducting mine and mineral work in that area appears contradictory to public good as per Sub-Section (1) of the Mine and Mineral Substances Act, 1985 and Section (d) of Rule 43 of the Mine and Mineral Substances Rules, 1999. So an order of continuous mandamus is hereby issued in the name of respondents Nepal Government, Office of the Prime Minister and Council of Ministers, Ministry of Industries, Commerce and Supply and Department of Mines and Geology to declare, pursuant to Section 12(1) of the said Act the Godavari area as a prohibited area regarding mineral work and to halt and, cause to be halted, mineral work with immediate effect, and not to grant from now on such permission to anybody.
- c) An order is further issued in the name of respondent Prime Minister and the Council of Ministers to constitute a committee comprising the representatives of Ministry of Forest, Ministry of Environment and Department of Mines and Geology and at least two experts to conduct and, to get conducted, research and study within six months of receiving this order in order to identify the accurate and actual status of the adverse impacts on the ground level and the damage caused to the environment and biological diversity as a result of mine and mineral works conducted for long by respondent Godavari Marble Industry and, minimizing the negative impacts caused by it, to declare the activities relating to protection and improvements required for taking this area back to its earlier natural State, and also to declare the said area as a protected area or Reserve or park whatsoever seems appropriate, and to submit its recommendations about making necessary law and policy related provisions, programs and the management of necessary means and resources.
- d) Taking into consideration the recommendations made by the above mentioned Committee, while determining the boundary between the human settlement and the significant Phulchowki-Godavari area which is enriched with climate, biological diversity, natural beauty, geographical and geological topography, eco-system, rare and threatened flora and fauna and its historical, religious and cultural significance, an order of Mandamus is hereby issued in the name of Nepal Government, Office of Prime

Minister and the Council of Ministers, the Ministry of Population and Environment and the Ministry of Forest and Soil Conservation to prepare a map of all this and declare that area as a protected area pursuant of Section 10(1) of the Environment Protection Act, 1996 or Reserve or Park according to any other law or whatsoever it deems appropriate within one year from the date of receiving this order.

- e) Until the Completion of the tasks within the time limit as mentioned in aforesaid columns (b), (c) and (d), the Ministry of Environment and the Ministry of Forest should be instructed to submit updated progress reports every three months.
- f) Let the order be sent to the concerned bodies through the Office of Attorney General, and its continuous monitoring should be done by the Monitoring and Inspection Division of this Court.

S/d

(Sushila Karki)

Justice

We concur with the aforesaid opinion.

s/d

(Gobinda Kumar Upadhaya)

Justice

s/d

(Jagdish Sharma Poudel)

justice

Bench officer: Bishwanath Bhattarai

Computer Typing: Ramsharan Timilsena

Done on April 16, 2015