

Case Study

Conservation of water bodies in Nepal

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Prakash Mani Sharma Vs Nepal Government (2068, Shrawan 13)

Certiorari and Mandamus as per article 32, 107 (2) of Interim Constitution 2063 B.S

- Issue: Solid waste Management of Kathmandu valley (Dumping in the Bagmati Area)
- No permanent and scientific management of solid waste for long time
- No proper management of such solid waste from hospitals and Industry (having chemical like Lichet that contains lead, chromium mercury, cadmium)
- High chance of Ground water contamination

- As per the report prepared by Department of Mines and Geology and Irrigation Department and Federal Institute for Geoscience and Natural Resources, Germany "Hydrological conditions and potential Barriers Sediments in Kathmandu valley" stated that....."The Landfill sites located near the river bed impose high risk to the ground water as well as surface water pollution. High permeable areas such as unconsolidated loose riverbeds and flood plains along the Bishnumati, Bagmati and other rivers are not suitable for disposal of solid and industrial wastes."
- Bagmati and Bishnumati are the place for Ground water Recharge

- “The assessment of ground water pollution in the Kathmandu valley, Nepal, Report on joint Australia Nepal Project, stated that: Our findings indicate that the widespread contamination of the shallow aquifers poses a serious health risk for the people of Kathmandu valley." It is possible that contaminants from the polluted rivers are infiltrating the shallow aquifer and this requires further investigation with excessively polluted rivers and a seriously polluted shallow aquifer system, it is clear that Kathmandu needs major re-development and expansion of its sewerage infra-structure, including sewerage treatment works within the valley."
- State Responsibility
- Constitutional Responsibility
- State policy and Principles
- Concept of welfare state

- Environment Protection Act, 2053 sec-7 (1) prohibits to cause detrimental harm to public health, life and adverse impact on environment.
- Principle of Inter-generation equity and polluter-pay Principle
- EPA, 2053 sec-3 and EPR 2054, Annex-2 provision for IEE and EIA
- Environment standards (Guidelines)
- Solid waste Management and Resource Mobilization Act, 2044 sec 4.9
- (It shall be the duty of solid waste management and resource mobilization Center to control pollution created by solid wastes in human beings, animals, plants and others like air, water, sand etc)

- Local self-Governance Act, 2055 sec 96 (1) Water Resource, Environment and Sanitation chapter: (It shall be the duty of the Kathmandu Metro-politan and Lalitpur sub-Metropolitan to protect and make proper use of various water sources. And it shall be their duty to control pollution and to support for Environment Protection)

Advocate Bharat Mani Gautam Vs. Secretariat, Council of Ministers - Mandamus)

- SC expanded the scope of *right to live* interpreting the Art. 12 of Constitution of Kingdom of Nepal.
- Right to live in pollution free environment is right to freedom under Art. 12(2) of Constitution of Kingdom of Nepal. The court is obliged to enforce it under Art. 88(2) of Constitution.

Yogi Narahari Nath Vs. the then Prime Minister Giriraja Prasad Koirala,

(N. K. P. 2053 Ank 1 P. 3 decision no. 6127)

- Supreme Court's has emerged judgments that government has no absolute right for taking decision regarding destroying natural, religious and heritage property in the name of establishment of international society for medical college at Debghat area in Chitawan. (In this issue the then Prime Minister, Girija Prasad Koirala's government has taken a decision on 2050- 11- 16 B.S. regarding to provide 42 Bigaha land for newly establish medical college in northern part of Bharatpur Nayrayanghat. Whereas, after the above mentioned judgments of the Supreme Court ,the government was failed to implicate her decision in practical level. So it shows that judiciary has a positive attitude regarding environment issues.)

Midevlal Upadhyay V Buddilal Gubhaju

(single Bench, Nepal Pradhan Nyayalaya, sadhak Number 47, Decision on 2010, shrawan 14 B.S)

- This is the first noted case in Nepalese judicial history in regard to environment conservation, where court punished for person engaged in illegal hunting of fishes in river.

Surya Dhungel and others Vs Godawari Marbles and others, 2052 B.S

- This is the landmark decision for environmental justice in which court emphasized that it is very essential to enact the comprehensive environment protection act and to implement it effectively. In view of national and international need and commitment, the enactment of Environment protection laws and enforcement of such act as well as other environment protection laws are urgently needed.
- Court concluded that protection of environment in the Godawari area involves the matter of national and international importance. Court asserted that , person has a right to get relief from environment pollution because environment protection is directly related to human life and body. Specifically, the court stated that if the environment around the Godawari area was not maintained and if the environment would worsen due to the lease given to the Marble industry, the contract has to be canceled in view of the public welfare.

Advocate Thaneshwor Acharya and others V Bhrikuti paper and Pulp Industries Limited and others

(Writ No 3098, 2057 B.S)

- In this case the court stated that if the operation of the industry hampers various species and environment, then there is no evaluation of positive aspect of operation of such industry. Court stated that supreme court has always accepted the Doctine of Judicial commitment, and court has been showing its commitment for the protection of environment and promotion of right of individual to live in good environment.
- Court accepted that the waste from paper industry and environment pollution has been resulting impact on water of river, surrounding habitats and air of the environment.

Rajendra parajuli V Shree Distillary

- In this case court held that clean and healthy environment is necessary for continuation of human generation.

Lipalimal VDC V Ramagya shah Kalwar

- In this case court stressed that it is the duty of the industry that has got exemption from tax to maintain appropriate mechanism to minimize environmental impact and pollution control.

Ram Chandra chataut and others Vs Nepal Government

- In this case court emphasized that "when one gets approval to carry out any project, it does not mean that he/she got immunity for control of environment impact. It is important to make participation of public in process of Impact Assessment. If such participation is not made, such approval can not be final one. Approval of any proposal which uses local resources" can not be accepted from the notion of environmental justice if it has not undergone people's participation in such decision.

Narayan Devkota and others V Nepal Government and others

- In this case court affirmed that , when government approves or makes any project, it should balance industrial development along with environment conservation. Economic development can not be accepted at the cost of deterioration of environment.
- Court also opined that if natural resource is to be given for business purpose, government should give approval only in such a way that particular business does not hamper nearby people, residence, forest, hospital, school and other critical area.

Prakash Mani Sharma and others V Nepal Government (Arsenic case)

- In this case, court gave Mandamus order to government to make arrangement of pure drinking water and make people aware in the area where underground water is arsenic contaminated.
- Court also recognized that it is the duty of the state to provide pure drinking water to people. Supreme court asserted that it is the duty of the state to make regulation for use of natural resource so that resource is managed, sustainably used and can be maintained for unborn generation. Court directed government to arrange legal mechanism for regulation of use of underground water in Kathmandu valley.

THANK YOU