

COURT SEAL

Supreme Court, Division Bench

Hon. Justice Dr. Mr. Ananda Mohan Bhattarai

Hon. Justice Mr. Purusottam Bhandari

Order

075-WO-0843

Subject: Mandamus

Advocate Padam Bahadur Shrestha, a resident of Kathmandu District, Kathmandu Metropolitan City, Ward No 10, Baneshwor, who is representing own self and Snehas Care located at Lalitpur District, Karvinayak Municipality, Ward No 6 and changed Lalitpur Sub-Metropolitan City, Ward No 211

Petitioner
Plaintiff

Vs.

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu.....1

Ministry of Agriculture and Livestock Development, Singhdurbar, Kathmandu1

Ministry of Health and Population, Ramshahpath, Kathmandu1

Respondent

Department of Livestock, Hariharbhawan, Lalitpur.....1

Ministry of Forest and Environment.....1

Ministry of Federal Affairs and General Administration.....1

The brief fact and decision of the petition lodged under the jurisdiction of this court pursuant to

Article 46 and 133(2) and (3) of the Constitution of Nepal, 2072 BS (2015 AD) are as follows:

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Article 9(3) of the Constitution of Nepal mentions cow as the national animal of Nepal. Thus, the cows born or living in Nepal are the animals recognized by the Constitution. We, all Nepalese are religiously, culturally attached to the cow. This being the case, the respondents have the duty to protect, conserve and respect the cows. According to Hindu custom, during *Tihar* (the festival of light) every year, we in Nepal worship cow on the day of *Laxmi Pooja* (worship of the goddess of wealth) and worship oxen on the day of *Govardan Pooja* (*worship of Krishna*), offer delicious foods to them and put garlands around their neck. We use the cow milk for religious, and business and individual purposes. Cow has been customarily recognized as mother since the ancient times. The urine of cow is regarded as auspicious and is used for ablution purposes during religious sacraments. As Hindu religion forbids the hitting or killing of cows or consuming their meat or even touching them with our legs, we have been continuously respecting them since time immemorial. As the law prohibits the killing and murdering cow and ox, cows and oxen are also legally protected animals. This being the religious and legal situation, the respondents have not fulfilled their legal obligation regarding the protection of cow and ox. The cows are left abandoned and helpless and a situation has arisen whereby the respondents have failed in fulfilling their legal obligation to protect and manage them.

The Article 9(3) of the Constitution has clearly mentioned cow as the national animal. Therefore it is the overall responsibility of the respondents to protect all the cows. The responsibility lies with the entrepreneurs, common citizens as well as the respondents not to abandon farm-held and domestic cows and ox. Article 16 of the Constitution has guaranteed every individual a life of dignity while Article 26 has guaranteed the freedom of religion. The cow occupies an exalted

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position and is acknowledged by Hindus as symbolizing *Laxmi* (the goddess of wealth) and is worshipped in *Laxmi Pooja*. Similarly, the ox is worshipped in *Gorupooja*. This custom has been kept continuously. As the respondents have not executed legal provisions in relation to cows and oxen, the condition of cow and oxen in *Ghodaghodi* Municipality in Kailali District is in a sorry state. As such cows, oxen and calves have been abandoned and are facing untimely death due to the lack of food, shed and medical treatment all over the country. This is nothing but a serious blow to the dignity of the believers in Hindu religion and of the entire humanity the value of which cannot be determined in monetary terms.

Article 30 of the Nepali Constitution guarantees every citizen the right to live in clean environment and health. It is the duty of the respondents to guarantee the clean environment to 30 million Nepali citizens. However, those who have been carrying milk business have also been abandoning cows in the road after they stop giving milk. Similarly, there is the practice of abandoning ox in the public places after they stop plugging. Even the calves have been left abandoned in public places. The respondents obviously have the information about such illegal activities carried out by the public. Due to the negligence of the respondents animals are compelled to run here and there in the roads in search of foods. As a result the villages, cities and bazaars look quite unmanaged. Due to scattering of urine and cow dung, the cities, bazaars and roads have become dirty. Everyday bad smell is spreading. Moreover, stray cows have caused traffic jam and road traffic accidents. The sick, hungry and thirsty animals are facing untimely death due to starvation any time at any place.

Section 117 of Muluki Civil (Code) Act, 2074 BS (2017 AD) prohibits leaving animals and birds stray in the property of others and in public place or roads. Section 289 of the same Act prohibits any acts with an intention to cause injury or harm to any cow or ox. Similarly Section 290 of the Act prohibits abandonment of old or sick domestic animal in public place or any cruel behavior to them. According to these provisions of the Act, no one can do anything to leave the cow, ox in any public place or cause to kill or cause injury to the animals. If done so, the opponents may bring such individuals who may do so under the net of legal action.

Apart from the provision of the Constitution and laws, Section 3(L) of Animals Welfare Directives, 2073 BS (2016 AD) considers any act committed against the animal with intention or negligence to cause harm as cruel and treatment. Section 15 of the Directives prohibits practices such as whipping or cutting by knife or ambushing, or causing harm, making them indisposed and not treating, or torturing in while employing animals for useful purposes as cruel acts. A policy has also been adopted in the Directives in section 4 for avoiding hunger, thirst and malnutrition and fear, terror as well as tension. Section 14 of the Directives has also ensured for necessary care and arrangement by the owner of those animals retired from their service or have become old. The liability to execute the provision of the Directives goes to the opponent authorities. As the respondents are not fulfilling their obligations, the cows and oxen are facing untimely death every day in cruel manner.

In an official study conducted by this organization, it found 2800 (two thousand eight hundred) cows, oxen and calves being kept in a fenced compound in the isolated *Chure* forest area, three kilometers from the road head in *Kailali* district. No provision for food, water, shelter or medicine

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was made for keeping them there. In absence of such arrangement, animals were dying every day in absence of foods and shelter or due to attack by wild animals or disease. The death of animals in big numbers has resulted in the spread of bad smell in the vicinity affecting people and the environment. This has affected not only human being but also the wild animals in the surrounding areas. This has occurred due to the failure by the respondents to comply with the law.

While the Constitution, Muluki Criminal Code and Animal Welfare Directives, 2073 BS (2016 AD) have imposed a duty on the respondents to execute the animal welfare provisions of the Directives, and monitor their effective implementation from time to time, they have not taken any initiatives for their effective implementation. Whereas the Constitution of Nepal accepts cow as the national animal of Nepal, one is witnessing a worsening situation of the cows, oxen and calves every passing day due to the weak enforcement of the legal provisions and failure to discharge the duty ordained by the law.

Section 138 of Vehicle and Transportation Management Act, 2049 BS (1992 AD) proscribes leaving any domestic animal or bird in any public place which may create disturbance for vehicle transportation or pedestrians. According to Section 11(O)(3) of Local Government Operation Act, 2074 BS (2017 AD), the local authorities have the responsibilities to control natural disasters and catastrophes. This being so, the defendants have not fulfilled the above mentioned legal provisions Section 117 of Muluki Criminal (Code) Act, 2074 BS (2017 AD) prohibits leaving the domestic animals and birds stray; Section 289 prohibits the killing or beating cow and ox; and Section 290 prohibits cruel and merciless behavior. Similarly Animal Health and Animal Service Act, 2055 BS (1999 AD) and as per Rule 22(A) of the same Rules, 2056 BS (2000 AD) and Animal Welfare

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Directives, 2073 BS (2016 AD) proscribes any cruel behavior against the animals; Section 3(L) prohibits leaving animals in hunger, thirst and in malnutrition and prohibits any situation against fear, terror and tension, requires the protection of animals against cruelty; Section 9 requires for shelter, shed for winter and summer and food and water; Section 14 requires care for retired animals and management; Section 17 requires for fulfilling liabilities; Section 20 specifies the liabilities of the local authorities. Therefore it is the responsibility of the respondents to execute these provisions. As the responsibilities and duties have not been fulfilled, this has created a pathetic situation of the national animals cow and oxen and the other animals in various places in the country. We therefore request for issuance of mandamus order in the name of the respondents for adequate protection of cow and oxen, for properly addressing their problems of hunger, thirst and shelter and for the execution of the provisions of the Animal Welfare Directives for the protection of animals including cows.

Article 26 of the Constitution of Nepal provides that every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or her conviction. "Cow" is not only the national animal but cow and oxen are also worshipped in *Tihar* as per the Hindu religion and culture. Whereas the right to religion as well as the right to live in clean clan environment as provided by Article 30, needs to be protected the opponent have not been fulfilling their legal responsibilities. Due to which cow and oxen have been facing death everywhere. The spread of bad smell from corpse of dead bodies has created negative effect on the health of the citizens and causing environmental harm. Hence, we request for the issuance of mandamus order to bring those who have been abandoning the animals and also been exhibiting

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cruel and merciless behavior under the sweep of the law; to protect and manage properly, protect the religion and culture behavior and escape the society from the environmental pollution by effective implementation of the law and effectively manage the domestic animals as well. Moreover, we pray for the issuance of interim order as per Supreme Court Rules, 2074 BS (2017 AD) to undertake effective actions for ending the problems relating to the sickness, hunger and lack of shelter faced by cows and oxen, and immediately stop the practice of abandoning them to go astray [so said the petition filed by petition filed by Padam Bahadur Shrestha on his behalf and on behalf of Snehas Care].

The order of this Court dated 2075/11/21 BS (March 05, 2019 AD) required the respondents to show cause as to what the issue is? Why the order as demanded by the petitioner should not be issued? Let written reply be submitted stating reason therefor through the Office of the Attorney General within 15 days except the time for travel after the receipt of this order, so let the order be given to the defendant along with a copy of this petition and let the file be submitted for hearing after receiving written replies or after the expiry of the limitation of statute.

Regarding the prayer for interim order, cow is national animal and ox is also related with the category of cow and domestic animal but they are being abandoned whenever they become useless henceforth they get deprived of foods and treatment so they are compelled to live difficult life in absence of shelter, food and treatment and facing untimely death. Thus, for stopping such a situation immediately a stay order is hereby issued for the management and transfer cows and oxen to secured place by managing necessary shelter, food and water required generally and summon the defendants by serving notice asking them to attend for hearing in relation to interim order for

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2075/12/03 BS (March 17, 2019 AD) and submit the case file after their attendance or after the expiry of the limitation of statute.

The written reply submitted by Dr. Bishwonath Oli, on behalf of the Government of Nepal, Ministry of Forest and Environment, stating that the petitioner filed the petition on the basis of various Act and Rules. This Ministry does not have the final authority to implement the Act and Rules. It is not clear why this Ministry has been named as defendant. The opponent could not show any clear, accepted fact or reason. Henceforth there was no ground for issuing order in relation to this Ministry. This Ministry does not have any relation on the matter raised in the petition. Moreover, the Government of Nepal, Division of Business Rules prescribed specific jurisdiction to this Ministry. And this Ministry is always active and committed for fulfilling its rights and duties as prescribed by the Division of Business Rules. Henceforth, would like to request for quashing the writ petition as it is filed against this Ministry without any specific reason.

The written reply of Secretary Chandra Kumar Ghimire on behalf of Ministry of Health and Population stated that the writ petitioner could not specify the reason or grounds as to why this Ministry has been made as defendant. Even though, this Ministry is positive on the matters raised by the petitioner in relation to the clean environment required for the good health. There is no doubt that public should be allowed to live in clean and healthy environment. This Ministry has been making efforts with the same objectives and will continue to do so in the future as well. So far as the matter pertaining to untimely death of the animals, or arrangement of food, shelter and medicine to cow and preventing their untimely death due to the lack of proper management is concerned, or matter pertaining to the serious problem created on the clean environment and public health by

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ineffective protection or abandonment of cow and ox is concerned, the matter would be clarified by the concerned authorities through their written replies. Henceforth this Ministry should not be made as defendant. Obviously his Ministry is always ready for collaboration with relevant Ministries on the protection of animals or their death due to starvation or for the lack of shelter. Henceforth there was no need of issuing order in relation to this Ministry. The writ deserves to be quashed so requested for quashing the writ.

The written reply submitted by Acting Secretary Suresh Adhikary, on behalf of the Ministry of Federal Affairs and General Administration, stated that this matter does not come under the jurisdiction of this Ministry as per Government of Nepal (Division of Business) Rules, 2074 BS (2017 AD). There was no need of filing writ petition against this Ministry on such matter therefore would like to request for quashing the writ petition.

The written reply of Secretary Dilli Raj Ghimire, on behalf of the Government of Nepal, the Office of the Prime Minister and Council of Ministers, stated that the Local Government Operation Act, 2074 BS (2017 AD) empowers the governments at the Local Level to make arrangements for the management of stray animals or protection of environment and preventing road accidents. The local authorities, by invoking provisions of the said law can undertake necessary works for the protection of environment or controlling stray animals by bringing actions against those responsible for abandoning animals. Currently, these works are being undertaken. Similarly, the Government of Nepal has been making efforts for the protection of the animals and birds and arranging foods to them through the annual policies and programs and allocation of the budget as well. This Office is committed for the protection of cow which is a national animal as well as other

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animals and birds or for taking actions according to law against those individuals and organizations abandoning such animals and birds. In order to control such acts, laws such as the Muluki Criminal Code, 2074 BS (2017 AD), Animal Welfare Directives, 2073 BS (2016 AD) and Local Government Operation Act, 2074 BS (2017 AD) have been promulgated and brought into operation. Thus, at a time when sufficient provisions for the protection of animals and for taking actions against those abandoning birds and animals as well as arrangements to implement such provisions are in place, the writ petition has been filed without specifying what action should have been done by this Office. Henceforth the writ petition is baseless and unjustified and deserves to be quashed, and therefore, requested for quashing it.

The written reply of Secretary Prakash Mathema, on behalf of the Ministry of Animal Health and Livestock Development, stated that Sub-Section (1) of Section 290 of Muluki Criminal (Code) Act, 2074 BS (2017 AD) prohibited cruel behavior to animals and birds such as beating, thrashing, compelling to carry goods more than their capacity or compelling them to run against their capacity or for doing work when they become sick or become unable due to wounds or injury or sickness. Similarly, torturing animals by giving unwholesome foods or for any other reason whatsoever is proscribed. Cruel or painful behavior to the animals when they become old or sick is also considered a crime. If anyone continues to do such things he/she can be punished with three months jail sentence or a fine of five thousand rupees or both. The crime relating to animals has been included in Schedule-1(A)(24) of Muluki Procedural (Code) Act, 2074 BS (2017 AD). Section 4, Schedule-1 of the Code provides that any person who witnesses or is in the knowledge that such an offence has been or is being committed should report to the nearest Police Office in

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the form of First Information Report (FIR) in writing or orally or in electronic form in the format of Schedule-5 as soon as possible. In case the police officer does not accept the FIR, such person may file the complaint with the District Government Attorney's Office as per Section 5 or with the Superior Police Office complaining that the subordinate police office did not register the FIR. Whereas the prevailing law clearly provides recourse for filing the FIR in the nearest police office when such offense has been committed, or being committed or likely to be committed the writ petitioner did not follow such recourse, but directly entered with the writ jurisdiction. Therefore the petition is meaningless. The Ministry of Agriculture and Livestock Development of GON is always sensitive, active and committed to the cause of animal welfare. The Ministry is engaged in a number of activities such as conducting a national level seminar, keeping updated record of the agricultural firms, running information oriented livestock programs with the involvement of the concerning stakeholders, and monitoring and evaluating the programs on a regular basis. Similarly, Good Systematic Package is being developed in areas such as livestock farming; cattle promotion; Yak promotion; protection of animal genetic resources and collection, cooling and transportation of milk. As the writ petitioner has also accepted that various Acts, Rules, Directives, Procedures in relation to the welfare of the animals are already in place, and as these legal instruments are being executed by relevant Departments and Offices of the Government of Nepal, therefore, the allegation of the petitioner for not doing anything in regard to the welfare of the animals is false and fabricated.

In the petition submitted before the bench following the publication of the weekly and daily cause lists as per the rules and also submitted for discussion, we heard the arguments of learned senior

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advocates Mr. Harihar Dahal, Mr. Prakash Mani Sharma, Dr. Mr. Narayan Ghimire, and learned advocates Mr Padam Bahadur Shrestha, Shreedhara Kumari Pudasaini, Mr. Khagenra Subedi, Mrs Indira Silwal, Mr. Jujukaji Maharjan, Mr. Krishna Gopal Maharjan, Mr. Natibabu Dahal, Mrs. Shanta Panta, Mr. Yuddhaman Maharjan, Mr. Rabindra Tamang and Mr Raju Phuyal. They submitted that the both individual and the government have the work to stop abandonment of the cow and ox. Whatever the liability has been fixed by the law, the authorities and individuals must fully comply the same. Currently, rather than the protection of cow the tendency of killing them which is on the rise. As the killing of cows and violence against them has increased, it is the submission of the petitioners that such a practice should come to a halt. The public accountability has not been followed. The abandoning of cow is also a tortious matter according to the law. Creating disturbances and effect to others by abandoning cow cannot be accepted. No one should be allowed to cause inconvenience to others by leaving the cattle astray. Unjust enrichment is not acceptable. The liability of individual and the government must be made clear in this matter. Despite that Section 11(2)(O) of the Local Government Operation Act, 2074 BS (2017 AD) vests the powers and responsibilities to the Rural Municipality and the Municipality under different topics such as agriculture and livestock farming, agriculture production and management and animal health and cooperatives, nothing in this regard has been undertaken so far to fulfil the responsibilities. Therefore they submitted for issuance of the order as demanded by the petitioner in the name of the defendant.

Similarly, we heard the argument of learned Government Joint-Attorney Mr. Sanjeev Raj Regmi, who appeared on behalf of the Government of Nepal. He submitted that the written reply of the

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government does not say anything otherwise in regard to the protection of the cow. Various laws have been already enacted. The matter relating to the protection of the cow has been inserted in the provincial and local government schedule and also in the joint schedule. Therefore the both governments have been made equally responsible in the said matter. The legal provision has been made in Section 116, 117, 289, 291 and 292 of Muluki Criminal Code, 2074 BS (2017 AD). The offense relating to cow and ox has been incorporated in Schedule-1. Kanji House have also been made for the protection of the cow and this process is still continuing as per the availability of resources. The writ petitioner has not made the provincial and local government as defendant in the writ petition. As legally responsible authorities for the protection of the cow has not been made defendant, henceforth the writ petition should be quashed.

After studying the documents attached in the case-file and hearing the submissions of the writ petitioner and the learned legal counsels who appeared on behalf of the petitioner and learned Joint-Government Attorney, who attended on behalf of the Government of Nepal, when we turn to deciding the case the following questions come to the fore:

1. Given that the petitioner has entered in this Court by raising the issue of protection of cows and oxen and their management, whether or not it is a matter of public importance, and whether or not the petitioners have the right to enter in this Court to file the writ petition.
2. How should matter relating to the protection of cow be viewed from the constitutional and cultural perspectives?
3. What are the legal perspectives relating to the protection of animals including the cow and ox?

4. Whether or not the respondents have fulfilled their obligations in regard to the protection of cows and oxen
5. Whether or not order should be issued as demanded by the petitioner in regard to this dispute.

Firstly, in consideration on the first question, it seems that the petitioner raised the matter pertaining to abandonment of cows and oxen in the area including Dhangadhi in Far-Western Province. The petition mentions the tendencies of abandonment of cows, oxen and calves by farmers in that area. These animals wander here and there in the street; they are starved, and devastate crops of other farmers. They are also increasingly targeted by wild animals; they create disturbances in the movement of road traffic, leading to occasional road accidents. Their urine and dung spoil the environment. Amidst the chaotic environment, the *Ghodaghodi* Municipality of Kailali District, has created fenced area for some 2800 cows, oxen and calves in an isolated place in the *Chure* jungle around three kilometers from the road head . However, as claimed in the petition cows, oxen and calves have been facing untimely death in big numbers in the absence of appropriate arrangement for food, water, medicine and shelter. It is claimed in the petition that the petitioner organization [i.e. Snehas Care] has also been working for the protection of discarded animals, the claim is also repeated in during the oral hearing. As the matter raised in the writ petition is related with the lack of protection and the negligent attitude shown to the cow which is recognized as national animal, the matter seems to be of public interest and concern. Moreover, it has also been revealed that Snehaj Care, one of the petitioners, is working in the field of animal rights protection, and is currently associated with the protection of cows and oxen left abandoned in Kailali District

and advocate Padam Bahadur Shrestha is an individual with deep interest on the environment who has also been engaged in filing various Public Interest environmental petitions in this Court. Therefore it seems that the petitioners have the proper *locus standi* to bring up this matter in the Court.

Now, with regard to the second question mentioned above: How should the matter relating to the protection of cow be viewed from the constitutional and cultural perspectives, we are of the view that that Article 9(3) of the Constitution declares "Cow shall be the national animal of Nepal". This provision continues to exist in the Constitutions of Nepal since 2019 BS (1962 AD)¹. The cow is associated with our national identity. The killing of the cow and ox is always prohibited by the legal system in Nepal. In this sense, the cow is an important animal in relation to our ancient religion, culture and custom. Therefore, it seems clear that protection of cow is our constitutional duty.

While declaring Nepal as a secular country Article 4 of the Constitution of Nepal in its explanation states: "for the purposes of this Article, "secular" means religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial". This implies that that the protection of religion, culture and heritage is not against secularism but one of its aspects accepted in the Constitution. When religion and culture are protected the existential foundation of society gets protected and secured. In such a secured culture, the individual and community would get the ground to grow and nurture healthily, become strong and freely develop their personality.

¹ Please see Article 7(2) of the Interim Constitution of Nepal, 2063 BS (2007 AD); Article 7(2) of the Constitution of Nepal, 2047 BS (1990 AD) and Article 9(2) of the Constitution of Nepal, 2019 BS (1962 AD). Advocate Padam Bahadur Shrestha Vs Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu and et. al., Case: Including certiorari, 075-WO-0843, Published in Nepal Kanoon Patrika Issue 2075 Vol. 6, Decision No 10299.

Describing the right to religion, the Article 26 of the Constitution provides, "every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or her conviction." From this, it can be construed that acts relating to "adoption, practice and protection" of religion is also a part of the religious freedom. There are some other provisions in relation to the freedom of religion in the Constitution. For example: Article 8 has fixed the flag with the figure of the Sun and the Moon in it as national flag. The Moon symbolizes kindness and the Sun indicates wisdom. While they have classical significance and cosmopolitan value, the Hindus pray both the Sun and the Moon as God; the Hindus pray the Sun as Narayan (Supreme Personality Godhead) and the Moon as the God of Soma (signifying immortality). It is presumed that moon figures in the head of the God Shiva. The terms such as full-moon, half-moon and small moon etc. hold special significance in the Hindu religion and culture. Flags bearing the Sun and the Moon in them have been hoisted high in various temples and other religious places since the ancient times. The practice of worshipping the Sun and the Moon also exists in other religions. Therefore, it is viewed that they hold universal cultural acceptance. Here the context is that of the cow. And, as it is believed in the Hindu religion that the eyes of the cow is the abode of the Sun and the Moon, there exists at least some kind of religious and cultural nexus, interest and concern between the national flag embodying the Sun and the Moon and the National Animal, cow recognized in the Constitution.

There Article 32(3) of the Constitution provides that every Nepalese community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage. Similarly, Article 51(C) of the Constitution adopts the policy, "to build the society

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founded on cordial social relations and develop a healthy and civilized culture." According to the national census of 2068 BS (2012 AD), 81.3 per cent Hindus have been residing in the country. This being the situation, a ground based realistic interpretation of these provisions leads one to hold the protection of religion and culture legated from ancient times as an aspect of secularism and a measure to promote healthy culture and civilization. And that, **cow is** not just constitutionally associated with our national identity, that she also a mascot our religion, culture, civilization and custom, her protection is clearly a national obligation of Nepal.

In consideration to the policy adopted by this Court on secularism and the right to religion and culture, it has been held that secularism means that the State does not have any religion; the State does not discriminate anyone on the basis of the religion, and does not tolerate injustice, discrimination, hate, dishonor, humiliation and discriminatory behavior to anyone in the name of religion. In the same vein, the State also does not tolerate caste-based discrimination or superstition, untouchability and injustice under the guise of religion nor does it tolerate obstacles to the development of personality, or forceful proselytization. The secularism obviously has strong bearing with logic and scientific discussion, but it does not mean that the State remains aloof from protecting religion continuing from ancient times or religious culture or heritage and civilization. In other word, abidance to secularism does not mean opposition to religion. It only implies that decision to be taken by the State should not be influenced by one particular religion or oppress any religious thought, belief and faith. In it, no case implies that the State should not protect the religion prevailing since ancient times. On the contrary, it is the constitutional duty of the State to protect

the religion continuing from ancient times². This Court has held a number of times that secularism in no way means that the State should turn a blind eye on religion.³ Since there is not a single model of secularism in the world, it is in our interest to move forward in the path of modernization and development by protecting the religion and culture appropriate to our tradition, environment, public behavior and public feeling. Such a behavior is compatible with the letter and spirit of the Constitution. This bench, therefore, conclusively holds that the State should perform its duty accordingly.

After analyzing the above provision of the Constitution on secularism and the protection of religion and culture, now let us turn to analyze on the religious and cultural importance of "species of cow"[connoting cows, bull, ox, calves] a bit more deeply. In Hindu religion the cow has been referred by various terms such as *Sarvadevamayee*, *Sarvabhutasambridhidayeeni*, *Sarvalokahitisee punyaswarupa* etc. The sanctity of cow has been accorded very high importance in the Hindu religion and culture. Without the cow milk, curd, urine, dung, and *panchyagabya* -a mixture of these, no religious ceremony of the Hindus would start. In the *Vedas* cow has been referred to by various names such as *Aditi*, *Dhenubhu*, *Anedhya*. Many a times has the cow been referred to in the *Veda*.⁴ In *Atharveda*, cow has been defined "*Basam Deva Upajivanti Basam*

² Tulsi Simkhada Vs. the Office of the Prime Minister and Council of Ministers, N.K.P. 2074, Issue 7, Decision No 9849, Page No. 1291.

³ Bharatmani Jangam Vs. the Office of the Prime Minister and Council of Ministers, N.K.P. 2073, Decision No 9733, Page No. 2323

⁴ According to a study, the name of the cow has been cited 723 times in Rigved; 170 times in Samved; 331 times in Ashwarbved; so the name has been cited total 1331 times. Please see <https://www.dakshinvrindavan.org/cow-in-vedas//>

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*Manushya Upa/ Bashedam Sarwa Bhabatu Yabatu Suryo Bipashyati*⁵ (or both the human being and the God lives with the milk of cow, so long as the Sun exists in the world the cow will live until then; the whole world is dependent on cow). Similarly, *Rigveda*, uses the term "*Gabho Bhago, Ghawa Indro*"⁶. Stating that the Devine power lives in the body of the cow, the *Brihaspatismriti* states:⁷

Sringamulè Sthitou Bramhā Sringmadhya Tu Keshava: |

Sringāgre Shankaram Bidhyat Trayo Devā: Pratisthitā: ||

Srigāgra Sarwatirthani Sthawarani Charani Cha|

Sarwè Devā: Sthitā Dehe Sarwadewamayee Hi Gou: ||

Lalatagra Sthita Devi Nasamadhya Tu Sandhmukha:|

Kambalaswatarau Nagou Tatkaranaabhyam Vyabasthitiou ||

Sthititou Tasyascha Sourabhyouchhyo Shashibhashkarou |

Danteshu Basabaswastau Jibhyaham Barun: Sthith ||

Saraswati scha Hunkare Yamayachhou cha Ghandayou |

Rishayo Romakupeshu Prashtrawe Janhijalam ||

Kalindi Gomaye Tasya Aparā Devatastatha |

Aastambisatidebanam Kotyou Lamasu ta: Sthita ||

Udare Garhapatiyognihridhye Dakshinastatha |

⁵ Atharwaveda 10.10.26

⁶ Or, I think cow is Indra, Rigveda 7.69.9

⁷ Brihaspatismriti 4/31-41

Mukhe Chahabaniyasthu Savyabasthau cha Kukshitu //

Yabam yo Bartate Goshu Tadanakrodhabarjita: /

Mahartim Shriyamapnoti Swargaloke Mahiyate //

Meaning that *God Bramhaji* lives in the root of horns of the cow; *Narayan* in the middle of the both horns and the *Shiva* in the top of the horns. Apart from this, there are all holy places in the forefront of the horns; *Parvati* lives in the forehead, *Kumar Kartikeya* lives in the middle of the nose, *Kambal* and *Aswar* named snakes lives in the both ears; *Sun* and *Moon* live in the right and left eyes; all eight *baasu* in the teeth; *Barun* in the tongue; *Bhagawati Saraswati* in the anger; *Yama* and *Yakshya* in the cheeks; all the *Sages* in the in the whole of hairs; *Gangaji* in the urine of the cow; *Laxmi*, *Yamuna* and all divines in the excreta of the cow; *fire God* in the stomach; and *Savya* and *Apasavya* live in the *Kushiya*. As all the *Gods* live in the body of the cow, therefore, those who love and respect the cow and do not show anger and beat the cow would win the heaven with every prosperity.

An almost similar description of the cow given in *Brihatparasarsmiriti* is found in *Padmapuran*, *Bhabishyapuran*, *Skandapuran* and *Mahabharat* as well.⁸ Various cows such as *Kapila*, *Suravi*, *Nandini*, *Kamadhenu* and *Rohini* have also been described in the *Puranas*. The *Puranas* describe activities such as service of the cow, gifting of the cow and ox as holy acts, while their killing and

⁸ Please see *Padmapuran Shristikhanda* 57/156-165; *Bhabishyapuran Uttarparba* 69/25-37; *Skandapuran Abantakhanda Devkhanda* Aa/ 83; *Mahabharat Ashwamedhikparwa*, *Baishwadharmaparwa* Chapter 92. Even though, the spirit of lines of these holy books have been differently described the places of the *Gods* in various parts of the body of the cow but all the holy books have the similar spirit that the *Gods* live in various parts of the body of the cow including its dung and the dust coming out of its footsteps as well.

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torture have been described as utterly unholy acts (Mahapapa). The donation of a milk giving healthy cow to a genuinely deserving person would rescue the past and upcoming seven generation in the family⁹ The glory of the cow is mentioned in the *Shastras* (Holy books) to the extent that a simple act of touching or *Pradikshina* (making a round the cow) would be considered holy and wash away all sins; *Shastras* are of the view that one who keeps the cow hungry or restless, disrespects her, hits by foot, murders her would go to the hell. *Manav Dharmasastra* describes that if a person kills the offender in order to protect the cow, he/she would be excused.¹⁰ The *Shastras* use the terms "*Sarweshamewa bhutanam gaba: Saranamuttamam*" (meaning thereby that devotion/allegiance to the service of the cow is the best). The *Shastras* describe the importance of many types of fasting such as *Gopadma Brat*, *Gobardan Pooja Brat*, *Towastadwadashi Brat*, *Totriratri Brat*, *Gopastami Brat*¹¹. There are so many hymens in the praise of cows in the *Mahabharata*.¹²

⁹ Mahabharat Paragraph 74/8

¹⁰ Manav Dharmasastra 8/348-349

¹¹ Please see Pundit Hanumanji Sharma, "*Gosambandhi Brat*" in Kalyan special issue on cows, 20th anniversary Special Issue, Geeta Press, BS 2073 Page 90-91

¹² गावो मापुपतिष्ठतु हेमशृङ्गयः पयोमुचः। सुरभ्य सौरभेव्यश्च सरितः सागरं यथा।।गा वै पश्याम्यहं नित्यं गावः पश्यन्तु मां सदा। गावोऽमाकं वयं तासां यतो गावास्ततो वयम्।।महाभारत अनु ७८।२३ २४-Gawo Mapupatisthtu Hemasringya: Payomachu/ Suravya Sauravebyascha: Sagar Yatha/ Ga wai Pashyamaha Nitya Gaba: Pashantu Ma Sada|Gabosmakam Bayam Tasam Yeto Gabastato Bayam| Mahabharat Chapter 78|23-24 its meaning: Similar to the rivers flowing into the sea, let the milk giving *Suravi* and *Sauravey* cows with the curly horns come closer to me. Let the cows give me audience ever, let the blessings of cow be on me; let the cows belong to me and I belong to them; I wish to live there, where the cows live.

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Besides the religious aspects pertaining devotion and surrender to the cows, the Puranas also embody the economics resulting from the utility of cow. In a society based on agriculture nourishment obtained from the cow milk, curd and ghee and also the service provided by oxen to agricultural works and transportation of goods, may be the reason behind the increase in compassion and support to them. The following lines in the Mahabharata which extol the position of cows higher to Gods explain the economic utility of cows. The lines [Slokas] state¹³:

Yagyangam Kathita Gabo Yagya yaba cha basaba /

Yetavischwo Bina Yagyo na bartet Kathayanjana //

Dharayanti Prajaschaiba Payasa Habisa Tatha/

Yetasam Tanayaschwapi Krishiyogamupasate /

Janayanti Cha Dhananyani Bijani Babidhani Cha/

Tayo Yagya: Prabartante Habyam Kabyam Cha Sarbasha: //

Payo Dadhi Ghritam Chaiba Punyashitwa Suradhipa /

Bahanti Bibidhanam Bharan Chhrutishaparipidita: //

Munischa Dharayantiha Prajaschiwapi Karmana /

Basavakutabahinya: Karmana Sukritena Cha//

Uparistatatwomakam Basantetya: Sadeiba Hi /

Yabamte Karanam Sakra Binaskritamaddhya Bai //

¹³ Mahabharat Paragraph 83| 17-22

Meaning: cows are the integral part of *yagya* [the great religious work]. No *yagya* could be successfully performed without cow. Cow gives milk and ghee to upkeep the subjects. Her sons, bull and ox, help in the agriculture, due to which the production of various crops and seeds becomes possible. The agricultural productions used for *habyakabya* [mixture of grains to be offered to the holy fire and oblation of food to deceased ancestors]. Milk, curd and ghee could be produced from the cows. Such cows are purely holiness. The bull and ox do help for transporting various baggage even by forgetting hungriness and thirstiness. In such a way, through their own work, the cow and ox serve the people and the Sages. They don't have any arrogance and trickiness in their behavior. They always remain engaged in holy works. Therefore, it is said that cows do live in the *Golok*, which is higher than the abode of Gods.

From the above discussion, it is clear that due to classical reverence and economic utility, the cow and ox have always assumed the highest importance in the Hindu tradition of not only Nepal but also South Asia. The Cow has been always revered as *Sarbadayinee mata* (mother with life source) while the bull, is not only the gate-guardian to Lord Shankar but also a beast of burden and superior helper in agricultural works.

Mahatma Gandhi considered the failure to protect cows as the reason behind the downfall of India (*Bharatbarsha*)¹⁴. Historical observation suggests that disrespect to the cow was already in place

¹⁴ For rescuing cows, he suggested for A) emphasis on the production cow milk and prohibition of distribution of milk from other animals; B) utilization of every part of the dead body of the cow by not allowing anything go waste ; C) improvement of the breed of cow; D) improvement of the milk yield of cow. See: The viewpoint of Mahatma Gandhi on the protection of cow. *Supra* note 11 P.No. 123-127.

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during the time of Mahatma Gandhi. As a matter of fact, until beginning the rail transportation in the 19th century¹⁵, and until end of that century and the beginning of 20th century when transportation of goods through trucks and small vehicles had not commenced, the bullock carts were the major mode of transportation of goods in the Indian plains. However, with the introduction of modern means of transportation for ferrying goods and the introduction of tractor for tilling agricultural lands, the use of oxen for these purposes began to dwindle. This had a sure impact on the rearing of cows. It is felt that the impact began to gradually surface in Nepal as well. Now, the use of bull driven carts in *Tarai* and Kathmandu has decreased. Similarly, with introduction of hand-tractor in the hilly areas, the need to rear ox for agricultural purposes has gradually declined. This apart, the economic, social and cultural transition witnessed in the rural areas of Nepal has also adversely affected cattle farming and their protection.

Here, a contextual question as to what is the total number of cow and ox, may arise. The Report¹⁶ prepared by the Government of Nepal, the Ministry of Livestock Development in July 2017 reveals the number of cows and oxen as 64,30,397¹⁷ buffalos as 31,74,389 Yak as 48,865 sheep as 6,12,864, goats as 1,12,25,130 and pigs as 8,70,197. Of this, other animals can be killed and used for meat. However, due to religious and cultural reasons, the killing of cows and oxen cannot be even be contemplated; such an act would be a criminal offense. In view of this therefore, the

¹⁵ According to the history of rail, goods carrying rail began in 1832 and rail transportation begin in 1853 in India.

¹⁶ Please see Livestock Statistic of Nepal at:

<https://www.mold.gov.np/downloadfile/Tathanyanka%20Pustika%20final%20for%20print1510132862pdf>

¹⁷ Out of which the number of cow and ox is 10,64,235 in the Mid-Western province of Nepal.

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management and maintenance of the huge numbers of cows and oxen that are reared in Nepal in a balanced way including those which have gone into retirement, or become redundant is found to be a serious question calling for resolution in this case. This said, it is not a situation in which the utility of cow farming in the country has ended absolutely, nor is this a problem that has surfaced across the country. It seems that if we could improve the breed, manage pasture lands, introduce scientific management, and review the food habits of the people, the utility of cow farming and protection and sustenance for religious, cultural and health purposes can go hand in hand.

The relation of animals and birds including cow and ox with the human being and their contribution in maintaining human health needs to be examined also from the perspective of the right to health guaranteed in the Constitution. The right to live in clean and healthy environment has been guaranteed in Article 30 of the Constitution. If the food to be consumed by us is not safe and healthy, and similarly if the environment around us is not safe and healthy, it will have adverse impact on the human health. Even though there exists the practice of consuming boiled milk in Nepal, but most of the virus would be killed only after boiling in high temperature for a long time. In many places, there still exists a practice of consuming milk or making curd without boiling the milk. Besides, due to fact that cow sheds are attached to human dwellings for security reasons, or that people have come into contact with cattle during the process of grazing or other agricultural works, there exists the possibility of transmission of cattle diseases to human beings. About the diseases that may affect the cow and ox, it can be said that they may catch diseases which commonly attack other animals of the same region. It is possible that the cow and ox may catch virus, bacteria and fungus related diseases common to cattle in the Mountain and Terai region. It

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is a common knowledge that diseases such as *Anthrax, Avian Influenza, B. Virus, Brucellosis, E-coli, Leptospirosis, Q-fever, rabbis, tuberculosis, and various pinworm, salmonella infection and HIV/AIDS* may be transmitted from animals. The zoonotic disease has already become an important subject of medical education. This court has already discussed this matter while issuing order to stop the practice of drinking blood of the Yak.¹⁸

Human being will not be safe and secured if he deserts animals or keep them without medical treatment when they become sick. Therefore, even from the perspective of health, the cow and ox should be reared in safe and healthy manner. There is no dispute in this matter. However, it should also clarified that the health and utility is just an aspect of the cow and ox farming, it is not the whole perspective. Ignoring religious or historical importance, or national significance of cow may erode our own fundamental identity, or the identity made by Nepal as a country of *Goraksha* (protector of cow).¹⁹ In view of this therefore, whatever situation of disrespect and neglect or death or killing of cow and ox that is witnessed in the Far-Western region in the Kailali and Kanchanpur region, or other regions of the country for that matter; has badly hit the conscience and religious faith. It has threatened the cultural identity of all the Nepalis. Therefore, the problem needs to be

¹⁸ Please see Achyut Kharel Vs the Government of Nepal, Office of the Prime Minister and Council of Ministers et.all.,N..K..P. 2075, Issue 3, Decision No 9982, Page 592.

¹⁹ According to Yogi Narahari Nath, King Drabya Shah won the throne suddenly due to effect of his service and protection of the cow. Due to the effect of cow protection, Gorakshya have been known as an army with the public as the brave of Gorkhas. Please see Yogi Narahari Nath, “Prasham Pushpanjali[the first bouquet”, published by Shree Brihad Adhyatmik Panishad, Gorakshyapeeth, Mrigasthali 2074|9|27 BS (January 11, 2018 AD)

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properly resolved by keeping in mind the healthy life of Nepali citizens, their lifestyle and religious and cultural civilization. A way out needs to be found in this regard.

Having said this on the second question as mentioned herein above, now let us now turn to the third question on the various legal aspects relating to the protection of animals. The protection of cow and ox is an important part of our legal system. The current *Muluki* Criminal Code has treated the offense against the cow and ox and offence against other animals and birds differently. Such a treatment in some ways reflects that the killing cow and ox is prohibited while there is no such prohibition on killing other domestic animals. Section 190(1) of the Code prohibits killing, damaging organ or injuring the cow or ox. Those responsible for killing cow or ox would face up to 3 years jail sentence as per Sub-Section (2); those responsible for damaging any organ up to 6 months jail sentence as per Sub-section (3) and those injuring them would have to pay a fine up to Rs 50,000.00. However, in case of other domestic animals and birds, the law does not completely ban their killing as such. Section 291 bans only their killing in public glare. There is another provision in Section 227 relating to the cow where up to two years jail sentence and a fine of up to twenty thousand rupees has been determined for those perpetrators responsible in raping cow while the perpetrator for raping other animals other than cow would face up to one year jail sentence and a fine up to ten thousand rupees.

There is yet another provision in *Muluki* Criminal Code in relation to the cruel behavior against animals and birds. This provision similarly situates cows and other animals and prohibits any cruel treatment against them. Section 290 of the Code prohibits activities such as killing, torturing, compelling them for carrying baggage beyond their capacity, compelling them to work when they

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are sick or compelling them to consume unwholesome foods. Besides, this Section clearly reads: "No one should abandon his or her domestic animals or birds in public places for the reason that they have become old or sick or treat them in a cruel or merciless manner whatsoever." Obviously, the act of abandoning helpless and sick domestic animals in public place is a cruel and merciless behavior. The same Section provides for punishing such individuals with three months jail sentence and a fine of up to five thousand or both for such merciless behavior. A similar provision exists in Section 117 of *Muluki Criminal Code* which bans abandoning domestic animals and birds in the house and land of the others, or in place such as road or park or other public places; such acts would invite a jail sentence of up to three months or a fine of up five thousands rupees or both. Defining the loss caused by domestic animals or birds as tortious act, Section 676 of *Muluki Civil Code* imposes the responsibility for compensating such loss on the owner of the animals. Thus, the loss to be caused by the domestic animals in the form of eating or damaging crops have now been made a compensable matter. In this manner, the law has tried to address the situation whereby the lack of remedy would result in cruelty, neglect or irresponsible behavior against animals and birds. When viewed in the backdrop of our religion, culture and tradition, the above mentioned provisions made for the protection of cow and ox are not at all new or unique. The Chapter "Of Quadrupeds" in the old *Muluki Ain* also treated the cow, ox and other animals differently and made provisions for their protection. For instance, section 1 of the Chapter "Of Quadrupeds" prohibited activities such as intentional killing or attempt to kill cow and ox, or exporting them to a foreign country with an intention to kill or sell. Section 12 of the same Chapter provided for punishment of 12 years jail sentence for the person involved in the killing of the cow or ox, and those ordering the

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killing with 6 years jail sentence. Similarly those who took them to a foreign country in order to kill them would face up to six years jail sentence under section 10 of the same.²⁰ Similarly, the law also defined the various acts such as killing cow and ox, ordering their killing, complicity in such acts, damaging organs, and harshly beating them as offenses. These provisions of *Muluki Ain* substantiate the historicity of the provisions made in the current law.

Some interesting provisions are also found in the *Muluki Ain* in relation to the protection of cow and ox signifying their historical, religious and cultural importance. For example, it mentioned that if someone is found making attempt to kill the cow and ox, such person needs to be stopped from doing so. Section 4 of the said Chapter further mentioned: “If such person resorts to arms while being stopped, it is not blameworthy to kill such person in the same place.” Such a provision is compatible with the *Shastras* (holy books)²¹. Similarly, *Muluki Ain* prohibited the buying and selling of the branded bull [branding implies putting a mark by red-hot iron generally on the back of the bull, indicating thereby that it is already offered to God] which is left abandoned after being offered to the God. This is due to the religious belief that such bull should not be brought to work again. The *Ain* clearly mentions: "No one should buy or sell a branded bull. If he or she is found doing such transaction, the amount shall be confiscated and the person shall be punished. However, if the person buys innocently without noticing the branding mark on the body, he or she shall not

²⁰ Not only killing of cow, killing of ox is also equal to the killing of human being. See Ishiyaha 66/3

²¹ Different *Shastras* (holy books) provided that killing perpetrator who attacks woman, *bramhan*, or cow is not blameworthy. For example see: *Manav Dharmashastra* 8.348-8.349; *Bauddayan Dharmasutra* 2.2.80; see also Andrea Gutierrez, Embodiment of Dharma in Animals in HINDU LAW: A NEW HISTORY OF DHARMASASTRA (Patrick Olivelle and Donald R Davis J reds.) OUP 2018 at p466, 474 also.

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be blamed. The purchase money shall be returned to the buyer and the seller shall be punished.”

One finds profuse discussion on the importance of *Brishavdan* or *Brisotsharga* (offering of the bull to God) in the *Shastras*²². As the *Shastras* proscribe the reuse of goods offered to the God, the legal provisions mentioned above thus echo the same classical notion.

Another significant provision of *Muluki Ain* is related with bull or old cow and ox and barren cows. This provision prohibited the export of such animals, probably keeping in mind their killing following export to foreign country.²³ This leads to construe that Nepal was conscious since the very beginning about the possible brutality against cow and ox not only in Nepal but also out of the country. Even though many provisions of the *Muluki Ain* do not exist in the present *Muluki Criminal Code*. However, by prohibiting killings of cow and ox; by prohibiting "cruel behavior on animals and birds," and also by prohibiting "abandonment and causing destruction of properties and life" the Code has also expressed the commitment of Nepal towards all kinds of hate, torture, cruel behavior and neglect against livestock. Therefore, the provisions of *Muluki Ain*, Civil Code and Criminal Code should be collectively seen in the light of current norms and values as well as the tradition, philosophy and culture of our society. Therefore, the bench holds that the protection of the livestock including the cow and ox should be taken as an important issue in the relativity of our religious, cultural and humanitarian values.

²² It has been described in the *Mahabharat* that if any individual offers bull to the God, shall be called Devabarti [one committed to the God] and will get respect in the Heaven. Please see: *Mahabharat Ashwo** 100|12; Paragraph 66|48, 76|20. Offering an ox having one crest is equal to offer ten cows, Please see: Padma *Shrishti* 48|180-181.

²³ Please see: Section 1,8 No. of Chapter on Quadruped of *Muluki Ain*.

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It seems to us that by prohibiting the killing, grievous bodily injuries, torture and cruel behavior to the "species of cow" Nepal law has clearly accepted legal existence and the right to life of this species. The right against killing and torture is guaranteed only in the case of those whose inherent right to life has been accepted by the law. With such acceptance, our law jurisprudentially moves beyond the "welfare model" at least in relation to the species of cow, considered to be a unique creation of nature and respected by our society owing to religion and the way of life. The law embraces the "right model" at least in relation to these animals. Such a model holds the species of cow not just a "thing" but a "being" vested with the right to life. If such acceptance is made in relation to the animal which is accepted as "national animal", this would reflect the national commitment, and also create positive and negative obligations. Under the positive obligation, the state should create conditions whereby the cow as a species can lead a healthy life; make appropriate provisions for their food and medical treatment. Similarly, under the negative obligation, the state needs to stop any type of harm that would be committed against them. We may understand this jurisprudential and legal acceptance of the Nepali law, as a substantial endorsement of the evolving recognition in the realm of environmental justice that mountains, hills, rivers, forests etc. do possess the right to life and that no act should be done that would harm their integrity.²⁴ Through these provisions, the concepts of "inter-generation equity" and "ecologically

²⁴ In our neighboring country, in case of Lalit Miglani Vs State of Uttarkhand & Others (Please see: <https://indiankanoon.org/doc/92201770/>), such an order was issued by Uttarakhand High Court. However, the execution of the verdict of High Court has been postponed. The jurisprudential concept of "the nature also has the right of inherent existence" expanded in other places as well.

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sustainable development" theoretically accepted in the Constitution may be brought into operation, and the eco-centric approach underlined in them begin may to take shape.

Nepal's obligation towards the protection of animals may also be linked with international laws. Basically, the human rights provisions may be relevant here. The Human Rights law is basically a law relating to humane treatment. This law encourages us to consider not only the humans but the entire life of the world humane manner. It is worth recalling here the rights guaranteed in the Human Rights Laws such as the right to dignified life, social security, food, and health²⁵. While making logical interpretation of the human rights provisions, matters pertaining animal health, environment humanity are also could be included. In the humanitarian context, it is worth recalling the Directives relating to Animal Health adopted by the World Health Organization, which embodies the following freedoms as basic principles²⁶:

- * Freedom from hunger, thirst and malnutrition
- * Freedom from fear and pressure
- * Freedom to be secured from physical, winter, heat oriented insecurity
- * Freedom from torture, injury and sickness
- * Freedom to live with general expression

²⁵ Please see: Article 9, 11, 12, 15 of Covenant on Economic, Social and Cultural Rights, 1966 and Article 6 of Covenant on Civil and Political Rights, 1966.

²⁶ See WoAH Guidelines on Animal Health, paragraph 7.1.2 guaranteeing a) freedom from hunger, thirst and malnutrition, b) freedom from fear and distress, c) Freedom from physical and thermal discomfort, d) freedom from pain, injury and disease, e) freedom to express normal patterns of behavior. Internationally, in the field of animal health there are some few important works are also carried out. For example, see: Universal Declaration on Animal Welfare, 2003.

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The above mentioned freedoms are not self-executing. The State should adopt them in the national laws, and should evolve the concept of *loco parentis* at the local and individual's level. It is a welcome measure that the above mentioned principles have gradually been adopted in national laws²⁷. The Courts have also recalled these principles in some way or the other while resolving the disputes relating to animals.²⁸ In our context, the above mentioned freedoms have been stipulated as the basic freedom in the Animal Welfare Directives, 2073 BS (2016 AD)²⁹ from the level of the state³⁰. The Directives cover matters pertaining to the use of animals in work, weather, time of work, working load, shelter management, foods management, casing management, health treatment, infectious disease management, care to retired animals and their management. Besides the Directives also prohibit beating, torturing, damaging organs or injuring and not undertaking

²⁷ For example, please see: Animal Welfare Act of Austria, 2004; Animal Welfare Act of UK, 2006; Prevention of Cruelty against Animals Act of India, 1960; Prevention of Cruelty against Animals Act of Kenya, 1962; Animal Welfare Act of USA, 1966; Welfare and Management of Animals Act of Japan, 1973; and Animal Welfare Act, 2010.

²⁸ Please See Yamuna Kumari Shrestha Vs Prime Minister and Secretariat of the Council of Ministers, 2073-WO-0022, date of decision: 2074/09/12 BS (December 27, 2017 AD); The Supreme Court, in that dispute, analyzed international laws, comparative jurisprudence and legal development with a comprehensive analysis and issued a Directive in the name of the Government. Moreover, please see: Arjun Kumar Aryal Vs. Government of Nepal, N.K.P. 2073, Decision NO 9686, Page No. 1798. (The verdict relating to the cruel behavior and slaughtering against animals in Gadhimai). A. Nagaraj \$ others Vs. Animal Welfare Board of India (2014) 7 SCC 547; State of Gujarat Vs. Mirzapur Motikureshi Kassab Jammam and Others (2005) 8 SCC 534.

²⁹ This Directives seems to be issued in accordance with the letter and spirit of Animal Health and Animal Service Act, 2055 invoking the power granted by Rule 22 (A) of Animal Health and Animal Service Rules, 2056 BS.

³⁰ Please see: Section 4 of Animal Welfare Directives 2073 BS (2016).

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treatment of the sick animals and leaving the animals abandoned³¹. While determining the duties of the various organizations, the Directives impose the duty on the cattle owner to care animals and stop cruel behavior against them. Similarly, the Directives impose the duty on the local government to manage abandoned and the dead animals and call for operating programs in order to create awareness on animal welfare³².

Apart from the Animal Welfare Directives, there are two other Acts in relation to the animals. Of these, the first is Animal Health and Animal Service Act, 2055 BS (1999AD). This Act is related with the import and export of animals. Since the Act deals with import permits and quarantine of the animals while being imported from foreign country, the policy on import can be framed within the ambit of this Act. The second is Animal Slaughter and Meat Inspection Act, 2055 BS (1999 AD). As the cow and ox do not come under group of animals that could be slaughtered, henceforth this Act is not directly related with this matter to be resolved here.

In brief, the Constitution of Nepal has declared cow as the national animal; the law has not only recognized cow and ox as non-slaughtering animals, it has totally prohibited the act of killing, injuring, torture and other cruel behavior, and made such acts punishable. The legal framework has also gradually recognized their rights and freedoms through Animal Health and Animal Service Act and the Animal Welfare Directives. Thus in the light of these legal provisions, there is a need to analyze whether the opponents have fulfilled their responsibilities and which authority needs to perform what responsibility.

³¹ Section 15 of the same Section.

³² Section 20 and 23 of the same Section.

In the above context, now turning to the fourth question as to whether or not the respondents have fulfilled their obligation with regard to the protection of cow and ox, the petition raises the issue of abandonment of cow and ox across the country and more particularly in *Kailali* district where the *Godaghodi* municipality has kept some 28,00 abandoned cows, oxen and calves in a fenced area inside the *Chure* forest where they have been languishing in starvation, sickness, thirst and without shed over their head. When the newspapers carried the news that cow and ox were left abandoned in *Kailali* District and that they have been facing death in absence of care, an on-the-spot study was carried out by former secretary Dr. Krishna Chandra Paudel at the initiative of the non-governmental organization named "Animal Nepal" from Falgun 13 to 15 of 2075 BS (February 25 to 27, 2019 AD) and prepared a report. A copy of this report has been received by this bench. This report states that the process of abandonment of cow and ox has rapidly increased in *Kailali* and *Kanchanpur* districts in the last three years and that such animals have been wandering in the highway, and in the city and rural areas, scavenging crops, creating disturbance to transportation. These animals have also been facing accidents. The report illustrates many reasons behind the rapid increase in the number of abandoned animals. For instance, there is no proper record keeping system of the birth and death of cow and ox at the local level due to which it has become difficult to determine the ownership of the abandoned cows and oxen. Taking advantage of the chaotic situation, the owners have started the practice of abandoning old, unproductive, sick, and disabled cows, oxen as well as calves in the street, the report claims. Besides as the slaughtering of cow and ox has been banned in the neighboring Uttar Pradesh of India the illegal smuggling cow and ox towards that side has stopped, and instead old and

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unproductive cows and oxen have been sent into Nepal from the boarder. Further, the declining importance of ox and stare in the agriculture due to growing use of the tractor, the covert competition among farmers in deserting their old cows and oxen in the street has led to the increase in number. The situation has been exacerbated with the dissemination of the news that *Ghodaghodi* Municipality is taking initiative of managing abandoned cow and ox, states the report. The report also reveals that when the cows and oxen began dying in the four camps located by the *Ghodaghodi* Municipality of Kailali district, these camps were shifted to *Gaudakhola* area where at the time of field visit 188 cows, oxen and calves were kept; similarly, in Geta some 30-35 cows and oxen were kept near the highway; Similarly a local organization called *Gousewa Samrakshan Samiti* had begun keeping 114 cows and oxen by using 14 *Bigha* of wasteland along the bank of Mohana river in western part of Dhangadhi, and had begun storing grass and hay(paddy stems); and petitioner *Snehaj* Care Nepal had also began work for the cow protection. It has also been stated in the report that *Ghodaghodi* Municipality allocated Rs 3 million for the fiscal year 2075/76 BS (2018/19 AD); Cowherd were also appointed; even though all the municipalities of *Kailali* districts have allocated Rs 30-40 million for the protection but it could not become effective due to the lack of transparency and coordination. Briefly, the report also observes that the activities carried out at the local level have not become effective. The report also maintains that it held a consultation meeting of local stakeholders, where a number of suggestions were advanced such as establishing multi-stakeholders mechanism with the involvement of local level and non-governmental organization for recording the number of cow, ox and calves; tagging of animals; planting fodder trees in the bank of the road and canal and in open areas; building cowshed in 3/4 areas with proper

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foundations; framing Animal Welfare Act and Animal Welfare Policy at the federal level and their implementation in coordination with the local levels; effectively implementing existing laws; restricting the import of animals; and effectively stopping smuggling; effectively executing animal quarantine in the boarder; encouraging farmers for cattle farming with breed improvement for easy management of animals; giving permits to the non-governmental organizations to open *Gaushalas* for the protection of cows.; developing computer based chips and tagging system so as to maintain the record system and monitoring the distribution of animals by the Department of Animal Service and monitoring through computer system; improving the management of abandoned animals so as to make it productive and useful. The suggestions advanced in the report are comprehensive and useful; there is no dispute on them nor is there any reason for not accepting them. It seems to us that the report verifies the claim of the petitioners against the opponents that they were not fulfilling their duties, and due to this, the condition created by the abandonment of cow and ox is truly pathetic.

Now, therefore, in the light of the reasons given above we turn to the fifth and the last question as to whether or not an order should be issued as prayed by the petitioner. Based on the detailed discussions and analysis in different parts above, we hold that the constitutional declaration of cow as national animal has reflected the perpetuity of history, culture and the civilization. The protection of cow and ox is a matter associated with our religion, custom, culture as well as our identity. Therefore, the entire Nepali state, government agencies, community, and the individuals cannot shy away from fulfilling their obligation. Our law has prohibited activities such as killing, torture, neglect, and cruel behavior to cow and ox and made such acts punishable. Thus, the law

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has indirectly recognized their right to life. Under the *Muluki* Criminal Code, the offence against animals and the birds has been included in Schedule-1. Therefore matters such as killing of cow and ox, torture, neglect, and other wrongdoing or acts of omission such as intentional abandonment resulting in death or injuries can be investigated and charge sheeted.

In view of the adoption of federal set up by the State, matters such as the central planning, health policy, health service, controlling transmitted diseases, poverty alleviation, international environment management, land use policy, residence development policy have been incorporated under the Federal List (Schedule-5); similarly matters such as health service, agriculture and animal development, land management, environment management are incorporated under Provincial List (schedule-6). Similarly, matters such as local development planning and projects, agriculture and animal farming; agricultural production, management of animal health; basic health and cleaning are included in the power of the Local Level (Schedule-8) while matters such as agriculture, health, environment, biodiversity, social security, poverty alleviation are included in the Concurrent List of the federal, province and the local level (Schedule 9). Therefore, matters such as agriculture, health, protection of environment and biodiversity and the protection of the animals and birds including cow are the common responsibilities of all three-tiers of government. Moreover, since the matter is also related with the security and prosperity of the poor farmers therefore it seems that all three-tiers of government should perform their duty with proper planning and coordination among each other. In view of the fact that animal husbandry is undertaken by farmers at the local level and also that protection works at the local level would be more effective, it seems to us that the government at local level should stand in the forefront with regard to the

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responsibility of protection. Section 11 of the Local Government (Handling of Business) Act 2074 also indicates the same. Taking note of the Federal framework adopted by Nepal and the entries made in different schedules mentioned above, the Provincial and Federal government seem to come at the second and third level respectively. However, in view of the fact that the country has adopted “cooperative federalism” and that federal form of government is at the infancy, and that the federal government still own most of the resources, we hold that the federal government should play the role of inspirer, facilitator, collaborator and leader in the matter of protection of cow and ox.

The problem of abandoned cow and ox that has been shown in this petition does not seem beyond resolution or control. The total population of cow and ox is shown as 10,64,235 in the Far Western Province. This is a number distributed in all nine districts of that province. Keeping in mind the practice of rearing of the cow and ox by the farmers so far as their capacity permits, we can be easily guessed that the problem of abandoned cow in *Kailali* and *Kanchanpur* districts is of only a few thousand animals. It is found that the Municipalities have still been annually allocating budget for bringing the abandoned cow and ox under control. However, as revealed in the report mentioned above, and also claimed by the petitioner and submission made at the hearing, due to the lack of transparency and coordination, the allocated amount has not been spent properly. Henceforth the management of abandoned cow, ox and calves could not become effective. In the writ petition filed by Achyut Kharel and Yamuna Kumari Shrestha this Court has already issued Directive Order in the name of the government to educate the public against cruel behavior to

livestock and to enact law on animal welfare. And hence there is no need to issue order again on the same matter.

It seems that the present dispute is related to the protection of cow which is our national animal and also the protection of ox and calves. From the discussion made above, it seems to us that the protection of these animals is a quite important. It is also a holy work from religious and cultural point of view. It is therefore the constitutional duty of the State to work in all earnestness and with full commitment on the matter. Henceforth, this order is issued in the name of respondents requiring the provincial and the local authorities to act wherever the problem exists, coordinate, cooperate to collect the data from the farmers on domestic animals and the animals left abandoned; tagging all the domestic animals for their identity and make arrangement for taking data of the animals with the support of the computer technology in the problem area in the first phase, and across the country after that; to encourage farmers insure cattle and provide partial support to facilitate farmers to join the scheme; to end the smuggling of cow and ox from the boarder and if the problem still continues and to make diplomatic initiatives to stop it as and when required; to undertake proper arrangement for opening protection center, temporary service center in every Municipality and Rural Municipality in order to protect the cattle; to develop pastures at every local level by protecting public land in scientific manner and make arrangement for easy access of fodder to the farmers for dry season by planting fodder trees in the community forest; to provide necessary support to the farmers for improving the breed and improve their health and inspire farmers for cow farming as well as support them for protecting retired animals; to launch special program at the national level in order to protect genetic diversity of the cows including the endemic

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cows available only in Nepal; since there is possibility taking legal action against the person who is intentionally involved in the killing of cow and ox or is responsible in the untimely death of these animal due to negligent or reckless acts, inform and educate the public about the matter, and where necessary, take action against those responsible for wilful acts. Let the copy of the decision be forwarded to the Office of the Attorney General and send the case-file to the Archive Section as per the rules.

_____ Sd _____

(Dr. Ananda Mohan Bhattarai)

(Justice)

I concur with the above opinion,

_____ Sd _____

(Purusottam Bhandari)

(Justice)

Bench Officer: Dolnath Neupane

Computer: Padma Acharya

Executed on Sunday, the 8th Day of Month of Baisakh of the Year 2076 BS (April 21, 2019 AD)

Translated by:

Advocate Ananta Raj Luitel

Notary Public (Translator)

Licence No: 279

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