

Supreme Court, Division Bench
Rt. Hon'ble Chief Justice Meen Bahadur Rayamajhi
Hon'ble Justice Kalyan Shrestha

Order

Writ No. 2959 of the year 2062

Sub: Mandamus and others.

Petitioners: Advocate Raju Prasad Chapagain and others on behalf of their own and *Janahit Samrakshan Manch* (Pro Public)

Vs.

Respondents: Government of Nepal, Ministry of Agriculture and Cooperatives, Singhadurbar and others

- **For the subjects incorporated in the Policies of the State with a view to promote the rights to life and life in a clean environment, established as the fundamental rights, it is not only desirable but mandatory as well that the programmes of the State address to this issue.**
- **A mechanism has to be set up with enough financial and technical resources so as to compensate the damage done or likely be done to the local community and environment by the consequences of the hazardous pesticides.**
- **The stance of international power centers and economic powerhouses of manufacturing pesticides that are extremely injurious to the flora, fauna and ecology and their propensity to shift this unwanted liability on the poor and underdeveloped nations is condemnable as well as regrettable. The international community should come forward to accept the responsibility of its ghastly mistake.**
- **When the international community is lending a helping hand, Government of Nepal should also leap forward by partnering in the process attentively, for the safe management of these pesticides which are proved to be dangerous from the perspective of welfare of mankind and environment conservation.**
- **The natural right to life has been guaranteed and the right to life in a clean environment also has been accepted as a fundamental right in itself. Hence, the State's responsibility is witnessed in honouring, obeying and fulfilling that right. In the same manner, it is mandatory that the State has to mobilize all channels, political and diplomatic, as espoused responsibility by international treaties and conventions. This equally holds true in dealing with the circumstances induced by international community or foreign nations.**

Kalyan Shrestha, J: The brief facts and conclusion of the writ petition filed under Articles 23 and 88(2) of the then prevalent Constitution of Kingdom of Nepal, 2047- demanding the environment friendly disposal and management of 75 tons of highly harmful and outdated toxic wastes stored insecurely in Amalekhgunj, Bara and other parts of the nation so as to preserve the fundamental birthright of the people to live in safe, fearless and healthy environment- are as follows:

The problem generated by the toxic wastes stored in Amalekhgunj, Bara and other parts of the nation is unequivocally a subject matter of grave public concern. It has posed an imminent threat on the health and ecological balance of the local general public. It has also obstructed on the consummation of the right to fearless livelihood of the local community. Therefore, we, at first, reassert our locus standi to directly represent the victims of this toxic menace and to file the case of public interest before the honourable apex court. Through organizations such as Jagriti Bikash Manch and Janahit Samrakshan Manch, involved in the protection of environmental and health related rights of the people from local to national level under Article 88(2) of the Constitution of Kingdom of Nepal, 2047.

Out of the 75 tons of toxic waste hoarded in Nepal, 50 tons have been stocked in the storehouse of the Old Railway at Amalekhgunj since 2032 BS. A study report, Inventory of Pesticide in Nepal, MOEST, 2005, reveals that among the toxics are some of the Persistent Organic Pollutants (POPs), such as Organomercury, Organochlorines as well as other highly hazardous prohibited pesticides posing far reaching effects.

The state of storage and study of the local scenery also speaks of the voluminous environmental problem created therein. Adjacent to the storehouse where pesticides are unsafely kept, lays a school by name of Nepal Rashtriya Madhyamik Bidyalaya. 800 students of different age groups get education there from. Besides, there is human settlement around the site and the storehouse lies along side of East-West Highway where, naturally, a large number of people shuttle to and fro. This place is also located in the proximity of the biggest petroleum reserve of the nation from where petroleum products are supplied across Nepal. In this scenario, the toxic fumes and stink of the pesticides, stockpiled for years and spreading over the air is denting the health of the local inhabitants. Moreover, it has been spreading wide-scale panic and psychological terror among the local people of the threat posed by probable explosion or accident likely to be induced by seasonal fires, floods, lightening and other natural calamities and the resultant loss of lives and property. In this regard, even the research report named, Inventory of Pesticide in Nepal, 2005, conducted by the respondent Ministry of Environment, Science and Technology, has also highlighted the stockpiling of pesticides in that area as a severe environmental problem.

Similarly, the report of the Health Check-up Camp-2060, conducted by one of the petitioners Jagriti Bikash Manch, too, has exposed the health related problems faced by the local children on account of the toxic wastes. The organization has been raising awareness about the safety measures to be employed so as to minimize the ill-effects of the pesticides faced by school children as well as to be saved from the resultant harm. The report mentions about the health worries such as nausea, vomiting, vertigo and occasional fainting experienced by the teachers and pupils of the school caused by the spread of toxic fumes across the region. Similarly, the report has also drawn attention towards the fact that the patients of skin diseases, respiratory and eye infections constitute a majority of those thronging the local health post. This signals the growing health hazard posed by the said pesticides stored in that locality.

Likewise, the petitioner agency, Janahit Samrakshan Manch had recently collected soil samples of school playground and sent them to the laboratory of Center for Science and Environment (CSE), New Delhi, India to test the chemicals and ascertain the environmental impact imposed upon the region. High amounts of contamination including that of DDT and other pesticides were discovered from the test samples which further throw light on the detrimental impact upon the local environment.

It has been found that apart from Amalekhgunj, pesticides are stored in other parts of the country as well. The latest study by the respondent, Ministry of Environment, Science and Technology itself discloses the various amounts of toxic wastes hoarded across the nation, viz. 6.735 tons in Nepalgunj, 4.761 tons in Khumaltar, 1.66 tons in Biratnagar, 1.65 ton in Hetauda, 1.625 ton in Lumle, 1.485 ton in Khajura, 1.285 ton in Pokhara, 0.85 ton in Birgunj, 0.813 ton in Janakpur, 0.442 ton in Surkhet, 0.37 ton in Banke, 0.214 ton in Kuleshwar, 0.181 ton in Bharatpur, 0.11 ton in Gaighat, 0.09 ton in Lahan, 0.983 ton in Ilam, 0.051 ton in Gulariya, 22 cylinders of Methyl Bromide in NARC, Khumaltar and 21 cylinders of the same substance in Kirtipur-which are kept in insecure position. The plight of the storehouses has been highlighted in the report, cautioning about the threat created by the haphazard storage of pesticides as well as suggesting early disposal of such toxic wastes.

The short-sightedness and wrong policies of the respondents seem to be the culprit behind this plight. Majority of the pesticides are found to be obtained as foreign assistance during the 1970s in the name of reducing poverty by stepping up agricultural production. The failure to assess the deceitful designs of some multinational companies (MNCs) to export the lethal pesticides, banned long back in the 1970s in Europe and America, to the poor countries rather than disposing and managing them in an eco-friendly way has resulted in the stockpiling of such hazardous substances much more than the actual need of consumption in Nepal. The same state of affairs was also conveyed in the briefing paper distributed at a Press Conference convened by the international agency worked against toxic problem, Green Peace, in Katmandu on January 21, 2002.

In 2002, the Green Peace undertook an investigation into the stockpiling of pesticides in Nepal. The study revealed that products of several pesticide companies, viz. Sumitomo Company of Japan, Shell of the United Kingdom, Sandoz and Hile Novartis of Switzerland, Monsanto, Union Carbide, Cynamide and Dupont of the USA, Bayer, Hoechst, Deggetsch and Urnia Spisch of Germany and Rohan Pollens of France (currently Amentice, wire) are dumped in various storehouses across Nepal. Green Peace had also sensitized the Government to make the manufacturing companies responsible either to take back the pesticides lodged in Nepal or to dispose them off and manage them in an eco-friendly manner within Nepal.

Following the efforts of Green Peace as well as from other national and international sectors, the umbrella organization of pesticide manufacturing companies-Crop Life International had made correspondence to the then His Majesty's Government to send back the haphazardly deposited toxic wastes or to dispose them in an environment-friendly way.

At this context, it is shameful and paradoxical that in spite of the readiness showed by the pesticide manufacturing companies and their umbrella agency, the governmental institutions, herein the respondents, remained indifferent towards this acute problem, failed to feel accountability and thereby nurtured the plight. This has brought to light the cold-heartedness of the respondents towards the right of the citizens to live in a healthy environment as well as towards public health and civil interests.

Apart from Green Peace, Crop Life International and pesticide manufacturing companies, we, the petitioners also, time and again, have moved the Government to make it responsible, to sensitize it and to create pressure regarding the issue. In this regard, at the initiation of 12 organizations working in the environment sector including Janahit Samrakshan Manch, correspondence was done with Ministry of Agriculture and the then Ministry of Population and Environment to initiate early action towards solving this problem induced by toxic pesticides. In the same vein, the petitioner agency Janahit Samrakshan Manch, on Falgun 21, 2061 had written to the Ministry of Agriculture and Cooperatives, now a respondent, relating to the safe management of the 50 tonnes of pesticides lodged in Amalekhgunj. Another petitioner agency Jagriti Bikash Manch, on Jestha 26, 2061, had written to the then Prime Minister including the 20,000 signatures of the local people in order for drawing his attention to this menace. Despite all these efforts, the respondents seem not to be taking any steps towards assuming accountability. Resultantly, the helping gesture of Crop Life International to receive back the pesticides or to safely dispose these could bore no fruit.

Since the Preamble of the Constitution of the Kingdom of Nepal, 2047 had assimilated social justice; environmental justice also can be deemed as being integral to the realm of social justice. The objectives of social justice cannot be justified in the absence of environmental justice. In the same vein, the Supreme Court has been adhering to the principle postulated by Article 12(1) of the Constitution which establishes the right of life in clean environment. State responsibility towards safeguarding the lives and liberties of the people is also enshrined in Article 25(1). Similarly, Article 26(4) has laid down the State responsibility to promote environmental cleanliness by restricting possible adverse effects upon the environment. Under this come the precautionary principles to maintain environmental sanitation which form the unanimous principles of environmental justice and which are to be employed by the State to remain watchful and vigilant towards probable environmental degradation in the future. At this juncture, there remains no contention as to the vital constitutional liability on the side of the respondents to avert the physical and environmental damage triggered by the stockpiling of hazardous chemicals.

It is also a matter of liability on part of the respondents even by way of international laws- to protect the citizens from the adverse effects to their health and well-being as well as from the ill-effects of environmental decay by securely doing off with the pesticides in an eco-friendly pattern. Article 25 of the Universal Declaration of Human Rights, 1948 has declared the right to quality health life as a birthright of the entire human race. In the same spirit, Article 12 of International Convention on Economic, Social and Cultural Rights (ICESCR) 1966 also has required the State to take necessary steps in order for meaningfully conserving the rights of people to healthy living. Nepal, as a State, is bound by these

international provisions under Clause 9 of the Treaties Act, 2047. However, we kindly inform that it is unfortunate the respondents have shown no sensitivity towards fulfilling this international obligation.

Since the matters related to pesticides are a grave issue invariably related to public health, separate conventions have also been endorsed in this area. At this premise, Stockholm Convention on Persistent Organic Pollutants (POPs) is considered as instrumental. Article 1 of this Convention, endorsed on May 23, 2001, outlines that this has been ratified keeping in mind the 'Precautionary Principle' embodied in Rio Declaration on Environment and Development. Articles 3, 4, 5 and 6 of this Convention have delegated to the State, the obligation to safe and eco-friendly removal and administration of toxic wastes created by Persistent Organic Pollutants (POPs). Nepal has signed on the Convention on April 5, 2002. But she has shown no discernment towards materializing the commitment towards this Convention and that has prompted us to come at the doorsteps of the honourable Supreme Court.

Therefore, on the basis of the reasons and arguments furnished in the aforementioned instances, we seek mandamus and other orders as required in the name of the respondents to do and make arrangement for doing the following actions/tasks under Article 88(2) of Constitution of the Kingdom of Nepal, 2047 in order to deliver complete justice by preserving public health and environment from the risks posed by the pesticides stored in Amalekhgunj and other different parts of the country:

1. Safely pack the identified outdated pesticides which have run out of date.
2. Safely store such toxic wastes after conducting Preliminary Environment Assessment and Environment Impact Assessment as required by the legal provisions set by Environment Rules 2054.
3. After safe storage of the pesticides as mentioned above, to segregate the toxic wastes according to their low or high intensity. Low intensity pesticides which can be disposed here in Nepal should be separated and the rest to be sent back to the pesticide manufacturing companies or their umbrella organization, Crop Life International by holding them accountable.
4. Replace the polluted soil and toxic wastes from the impact area in an eco-friendly mode and to sterilize the surroundings.
5. Constitute a high level independent committee to ascertain the damages done to the public health due to the storage of pesticides in Amalekhgunj and other places and to provide compensation as suggested by the committee.
6. In the days to come, undertake precautionary measures so as there is no adverse impact on public well-being and ecology due to the reserve of toxic wastes as such, discourage import and use of biocidal pesticides and for that purpose, promote and publicize environmentally proven Integrated Pest Management Technology.
7. Constitute a high level enquiry committee to identify the authorities responsible of putting public health and environment in peril by remaining insensitive even when pesticide manufacturing companies and their umbrella organization, Crop Life International wrote to His Majesty's Government (then) showing readiness to receive back the chemicals or to dispose them safely and initiate necessary action against them as recommended by the committee.
8. Extract the expenses meted out in relation to this case from the respondents-which the petitioners are *Raju Prasad Chapagain and others Vs. Government of Nepal and others* respondent parties.

The petition requests to issue an interim order to relocate the stored pesticides from the vicinity of school premises to a safer location and reach decision the petition by giving priority in its hearing.

The Single Bench had issued an order to bring forth the petition in preferential basis after obtaining written responses from the respondents (within 15 days).

On the order above, the Office of the Prime Minister and Council of Ministers furnished a written reply seeking the dismissal of the writ petition. The standpoint is that the Office and other offices are made respondents by the petitioner parties without any basis or sound reason; the petitioners have also failed to produce a clear stand on which actions of the respondent parties have violated which of their rights.

The reply has also denied the allegation of governmental recklessness and callousness as being fact less. The government has stored 50.9 metric tons of pesticide on a wooden stand, above the contact of

wet floor, in a ventilated facility. The 6 member team formed by Ministry of Agriculture and Cooperatives on Ashwin 12, 2061 conducted an on-site inspection, but could not report any discrepancy that could corroborate the scientific basis as claimed by the petitioner. However, it has been pinpointed that repackaging needs to be done according to the varied lots of the pesticides.

It has also been held in the reply that the claim advanced by the petitioners about the plight of the places of storage is also baseless and untrue since packaging and repackaging of the outdated pesticides amounting to 23.357 metric tons, other than from Amalekhgunj have been done complying with the criteria of Sea Transport Regulation Packaging adopted by GEPAG and IMO\UN. The same process has been followed with regards to 43 cylinders of Methyl Bromide lodged in Khumaltar and Green Peace has provided fiscal and technical assistance in this venture.

Currently, Biocidal Pesticides Act, 2048 and Biocidal Pesticides Rules, 2050 are in force in Nepal. Clause 9 of the Act requires that the pesticides traded and used in Nepal be registered with the concerned authority. The very same provision roots out any chance of presence of outdated pesticides at present times. Eight variants of pesticides falling under the Stockholm Convention on Persistent Organic Pollutants have been prohibited. Likewise, Phosphamidon BHC, Lindane and Organomercury Fungicides also have been banned. So, henceforth, there are no chances of stockpiling of such pesticides.

Green Peace did repackaging of the outdated pesticides and also catalogued them. This spells the need for collaborative efforts in addressing this subject of common concern.

The insistence of the petitioners seems to be baseless and untrue also on account of the various measures undertaken by the Government to address this predicament. Till 1993, 114 tons out of 150 tons of toxic wastes reserved in Nepal was safely disposed with the assistance of the Asian Development Bank (ADB). A vision has been taken to dispose gradually-decomposing pesticides in Nepal itself and to destroy elsewhere the persistent ones who leave residues for a longer period of time. Crop Conservation Directorate has been entrusted with the responsibility for this purpose. Observatory tests have been made by the Directorate at a farm in Saptari to determine the effects of disposing the pesticides under the soil and the tests showed no adverse outcomes. The Government has also been mulling on using its own resources towards the removal of these toxic wastes and correspondence is also going on among donor agencies in this regard.

Regular inspection and on-site testing is also in progress. No leakage or the possibility of it had been found from the metal drums and plastic containers holding the pesticides in an inspection carried out by a taskforce formed by the Ministry of Agriculture and Cooperatives on Ashwin 12, 2061. Similarly, a report from a regular inspection conducted by a 4 member taskforce on Falgun 22, 2061 found the storage area and its status as satisfactory. Likewise, a previous team who visited the site from Chaitra 3 to 5, 2054 had given a report that provided the pesticides are stored in the present condition and if regular monitoring is made, the toxic wastes could not affect public health and environment for at least 10 years to come. That technical team had interacted with the local people, journalists, school, police, and administration, representatives of the Agricultural Tools Corporation, the Village Development Committee and the District Development Committee before reaching to this conclusion. Moreover, a joint meeting of the Secretaries of Ministries of Agriculture and Environment on Baisakh 28, 2062 constituted a taskforce which has recommended on ~~lastha 12, 2062~~ that the pesticides can be relocated to the godown of National Seeds Co. *Raju Prasad Chapagain and others Vs. Government of Nepal and others* this regard.

In order for fulfilling the obligations created by the Stockholm Convention, to which Nepal is a signatory, POPs Enabling Activities Project is functioning in partnership with the Ministry of Environment, Science and Technology, GEF and UNIDO. The Project is scheduled to accurately record the presence of pesticides industrial chemicals and Dioxin/Fuvans gases leaked and littered across Nepal and to prepare an action-plan so as to destroy them. It is also entitled to make an action-plan for the enforcement of the Convention and to search for alternatives against persistent pollutants and pesticides. The Government is also mooting on becoming a party to the Stockholm Convention on POPs as well as Rotterdam Convention on PIC. This will help the Government in strengthening the national capacity on managing

pesticides and chemicals, in transfer of relevant technology and in increasing fiscal and technical assistance. All these measures testify to prove the allegations of the petitioners to be false.

The claim that the Rule of Law has been ridiculed in this case is also baseless in the sense that Environment Protection Act, 2053, formulated to realize the objective of livelihood in a clean and healthier environment, contains numerous provisions in this concern. The Government's each and every step and efforts are directed and will be directed towards the technical, legal, practical and human aspects of life. Nepal has shown its solidarity towards the efforts made in issues related to environment at the international level as well. Periodic amendments to the existing laws are also undergoing. Nepal has also pledged to ban import of Methyl Parathene and Monocrotofus pesticides which come under the PIC list by January 1, 2007 as part of fulfilling WTO's obligation in the agricultural sector.

Target has been set for packaging and repackaging of the outdated pesticides in terms of their sensitivity. In this process, 22 tons of toxic waste has already been repackaged and the remaining pesticides will be stored securely. Local opposition has stopped local disposal of waste which was feasible. Regular supervision of the areas in which the pesticides are kept is being undertaken. In coordination with NARC, investigative analysis is being made to delist Methyl Parathene and Monocrotofus pesticides as per Nepal's commitment. In order to fend off possible dangers to public health and environment posed by specific types of pesticides used in agricultural and health sector, ban of such types of chemicals is enforced which signals Nepal's solidarity towards the efforts in restoring environment at the international level. In this vein, the Ministry has internalized the suggestions made by the respondents regarding the storage and disposal of pesticides currently deposited in Nepal.

Considering the aforementioned arguments, the Ministry of Agriculture and Cooperatives has urged, in its written reply, to quash the writ petition as the claim of the petitioner is baseless and not founded on truth.

The Stockholm Convention on Persistent Organic Pollutants concluded on May 21, 2001 with a view to ban the production, trade and use of Persistent Pollutants which have induced environmental crisis on a worldwide scale. Nepal has also expressed its commitment to the Convention by signing on it on April 5, 2002. In order for fulfilling the obligations created by the Stockholm Convention, POPs Enabling Activities Project is functioning in partnership with the Ministry of Environment, Science and Technology, and UNIDO. The Global Environment Facility is rendering financial assistance to this project.

The writ petitioners in their petition have raised the issue of import and disposal of harmful pesticides after duly performing environmental audit and assessment, as prescribed by Environment Protection Act, 2053 and Environment Protection Rules, 2054. In this sense, it is evident that the Act and the Rules came into force from Asar 10, 2054 and Asar 12, 2054 respectively. First of all, in Nepal, pesticide such as DDT was used in the 1950s eradicate malaria from the Terai region. Since the last four decades, pesticides as BHC, DDT, Aldrin, Dieldrin, etc are being used in a widespread scale with the objective of increasing agricultural output. This tells that the pesticides are being imported from that time and began to deposit ever since. I would like to convince the respected Court that after the enforcement of the above Act and Rules, the administration of such pesticides is being done as specified in the laws and will be so. Moreover, the aforementioned project formed under this Ministry has also aimed to prepare a National Implementation Plan (NIP) in order to facilitate implementation of the Stockholm Convention.

Nepal, after being a signatory to the Stockholm Convention, the condition is such that until a National Working Plan is drawn up after obtaining accurate records of the outdated pesticides financial and technical support from the donor agencies as well as the Global Environmental Facility cannot be mobilized. As per the decision of the first Conference of the Parties to Stockholm Convention, held in May 2 to 6, 2005, in order to obtain financial assistance for fulfilling obligations to the Convention the State should be: a) a developing nation and b) a signatory to the Convention. So, I would like to kindly inform that, in order for being eligible for fiscal aid to dispose outdated toxic waste and to manage the persistent pesticides according to the spirit of the Convention, Nepal has already taken step for the accession to the Treaty and homework has also been initiated to make it a party state.

Disposing and managing the outdated pesticides is an uphill task. To safely dispose these toxic chemicals in an eco-friendly manner, they need to be burned in at least 1200-1500 degree centigrade in an incinerator for 1-2 seconds, failing which, it will result in the production of more lethal gases and their emission in the atmosphere. Furthermore, to check the spread of fumes and gases those are produced after the burning. Air Pollution Control Device needs to be installed in such incinerator so that the poisonous fumes are absorbed therein. The technological arrangement as such is lacking in Nepal and that has created hurdles in timely removal of the outdated pesticides. This calls for the need of sending those chemicals to European or other countries with such incineration plants and technological preparedness. This process amounts to millions of rupees which need to be arranged for.

Besides the mechanism to dispose persistent pesticides, legal basis and guidelines are also needed. Now, when the Stockholm Convention is already in effect, full compliance of the provisions for disposal of pesticides needs to be observed. For this, necessary infrastructure such as Detailed Inventory, institutional and legal frameworks, necessary mechanism is required and a National Implementation Plan should be sketched out incorporating all these elements. So it will be easier only after preparation of the plan, to proceed with the disposal of toxic wastes. The ministry is headed in the same direction. At this point, I would like to assert my commitment towards early and environment-friendly removal of the outdated pesticides which are considered highly injurious to public wellbeing and atmosphere.

The Ministry of Environment, Science and Technology, on the basis of the above arguments, in its written reply, has urged for the dismissal of the writ petition as there is no ground present for issuing mandamus as demanded by the petitioners, since the Ministry is involved towards early and environment-friendly disposal and management of the outdated, hazardous pesticides.

At this, the Court issued an order on Jestha 1, 2063 demanding:

- a) To extract written reply from the Ministry of Environment, Science and Technology on what progresses are made on the issues pointed out by the report of Inventory of Pesticides in Nepal, POPs Enabling Project, April, 2005 by attaching a replica of the inventory.
- b) To extract written reply from the Ministry of Foreign Affairs on what progresses are made on the correspondence done by Crop Life International on October 26, 2001 through the then Nepalese Ambassador to Belgium Mr.Kedar Bhakta Shrestha, to His Majesty's Government (then) expressing its willingness to take back the pesticides indiscriminately deposited in Nepal.
- c) To duly submit the petition to the bench with documents once they are acquired.

On this, since it was not been seen that the Court's order of Jestha 1, 2063 was sent to Ministry of Environment, Science and Technology, the Court ordered to seek reply within 7 days from that concerned Ministry. Likewise, since the Ministry of Foreign Affairs had communicated with the Ministry of Agriculture and Cooperatives regarding the withdrawal of pesticides indiscriminately stored in Nepal, the Court on Baisakh 25, 2065 ordered to furnish reply relating to that episode as well.

The Supreme Court, further, on Mangshir 4, 2065, ordered to write down to the Secretaries of the Ministries of Agriculture and Environment to be physically present on the day of hearing, in order to inform the Bench about the future plan regarding the disposal of the pesticides.

On the writ petition duly submitted before the Bench, learned Advocate Prakash Mani Sharma on behalf of the petitioners presented the case. He mentioned in his arguments that the Interim Constitution of Nepal, 2063 and the former Constitution as well, has granted Nepali citizens the right to life. Similarly, the rights of environment and health are also constitutionally guaranteed. In this regard, the policies and programmes of the respondent, the Government of Nepal should have been oriented towards the consummation and practice of the citizens' constitutional right to live in a clean environment. However, in practice, it is bluntly opposite. Amalekhgunj of Bara district remains as a hub of the East-West Highway, where more than 50 tons of outdated pesticides is arbitrarily stockpiled. Adjacent to the depot where pesticides are unsafely kept, lies a school by name of Nepal Rashtriya Madhyamik Bidyalaya. Besides, there is human settlement encircling the site and the depot lies along side of East-West Highway where, naturally, a large number of people shuttle to and fro. This place is also located in the proximity of the Nepal Oil Corporation's biggest petroleum reserve of the nation. Because of this, health related ailments

have begun to be seen among the local populace including children of the local school. Notwithstanding, it has created a grave threat posed by probable leakage likely to be induced by explosion or accident which may result in large-scale loss of lives and property. This fact has been corroborated by studies carried out by the petitioner agencies as well as other institutions.

Nepal has been a signatory of Stockholm Convention on Persistent Organic Pollutants (POPs) since 2001. Articles 3, 4, 5 and 6 of the Convention lay down the responsibility of the State in managing the pesticides that come under POPs and their resultant wastes. This makes it clear that the duty of safely disposing such types of pesticides rests on the Government of Nepal.

Green Peace, an INGO working in the environmental sector, conducted a study of the stockpiled pesticides in Nepal and sensitized the Government to make the manufacturing companies responsible to dispose them off in a safe manner. Similarly, the umbrella organization of pesticide manufacturing companies-Crop Life International had also committed to withdraw the toxic wastes to the countries of their origin. However, due to the negligence of the respondents, this task is far from being accomplished. Advocate Sharma advocated for the need of issuance of mandamus against the respondents as requested in the petition.

Joint Attorney Mr.Yubaraj Subedi, appearing on behalf of the Government of Nepal refuted the claim that the toxic wastes are being housed in an unsafe manner. All protective measures have been employed in storing the pesticides so that no harm is inflicted to the health of the public. Since those pesticides cannot be disposed in Nepal, the Government is working towards sending them back to the related manufacturing company. Since this process is going to be completed in near future, the condition to issue the order of mandamus does not arise. He pleaded that, therefore, the writ petition should be dismissed.

Secretary of the Ministry of Agriculture and Cooperatives Mr.Braj Kishor Prasad Singh and Secretary of the Ministry of Environment, Science and Technology Mr.Uday Raj Sharma who have appeared at the hearing following a previous order of the Court, briefed the Bench about the technical aspects of the pesticides, ways to dispose them securely and the efforts of the Government in this regard. The bench was informed that pesticide such as DDT was used in the 1950s to wipe out malaria from the Terai region. Since the last four decades, pesticides as BHC, DDT, Aldrin, Dieldrin, etc. are being used with the objective of increasing agricultural output. The pesticides were imported as part of the agricultural loan lent by the ADB and due to lack of their timely use, began to deposit ever since. Out of the date-expired pesticides, 114 tons of easily destroyable pesticides are already disposed off. Currently 50 metric tons out of 74 tons of pesticide across the country, is housed in Amalekhgunj. It cannot be disposed in Nepal. Therefore, it should be sent to the country of its origin. Huge amount of monetary resources is needed for that purpose and Nepal also lacks the technical prowess to send back the toxic wastes. International assistance is indispensable for this purpose. Nepal has already ratified the Stockholm Convention on Persistent Organic Pollutants (POPs), 2001. Even going by its provisions, it is the liability of the manufacturing companies to receive back and safely dispose such chemicals. The Government has been working in this direction. Government of Nepal is also engaged in preparing and submitting a National Implementation Plan as it remains instrumental in enforcing the Convention. The Secretaries also notified that within a year, all these preparations will be met and the pesticides are safely disposed.

After studying the petition and written replies, listening to the arguments presented by the learned lawyers of both sides and after discussion with the secretaries of the concerned ministries, the decision was found to be taken focusing on the following matters:

- a) What is the nature of adverse impact meted out against the environment and public health through the emission, transportation and disposal of such persistent pesticides? And what efforts are underway to minimize such ill-effects?
- b) What liability is formed against Government of Nepal and the international community towards the safe removal of these toxic substances?
- c) Whether or not there is a condition to issue order as requested in the writ petition?

While contemplating on the first question to be decided and on analyzing the instances put forth in the petition, it is clear that the respondents have stockpiled nearly 75 tons of outdated hazardous pesticides in different parts of the nation. Out of them, some belong to the category of Persistent Organic Pollutants (POPs) such as Organomercury, Organochlorines which are highly injurious and have long-lasting effects. Fifty tons of pesticides have been housed in Amalekhgunj at the depot of Old Railway since 2032 BS. Adjacent to the storehouse, lies a school by name of Nepal Rashtriya Madhyamik Bidyalaya. Eight hundred students of different age groups get education there from. Besides, there is human settlement encircling the site and the storehouse lies along side of East-West Highway where, naturally, a large number of people shuttle to and fro. This place is also located in the proximity of the Nepal Oil Corporation's petroleum reserve. The ill-effects of this storage have already been shown in the school children. Moreover, bases have been given to the existence of a grave threat posed by probable explosion or accident likely to be induced by seasonal fires, floods and other natural calamities and the resultant loss of lives and property as well as environmental catastrophe.

Upon going through the written reply of the respondents including that of Ministry of Agriculture and Cooperatives, it is understood that nearly 75 metric tons of outdated POPs are hoarded in Amalekhgunj and other parts of the country. Government of Nepal is undertaking various researches so as to ascertain the impact upon the local population. 50.9 metric tons of outdated toxic wastes are kept in Amalekhgunj while 23.357 metric tons are stored elsewhere in Nepal. 43 cylinders of Methyl Bromide are also housed in. Green Peace International has helped in packaging and repackaging of the pesticides other than that of Amalekhgunj. It has been mentioned in the reply that even the pesticides at Amalekhgunj have been stored on a wooden stand, above the contact of wet floor, in a ventilated facility. There is neither leaking nor the chance of leakage.

From the petition as well as the written replies, the fact is disclosed that the pesticides stockpiled in Amalekhgunj and other parts of the country have run out of date, cannot be destroyed easily, bear far-reaching ill-effects, and are extremely dangerous from the viewpoint of public health and ecology. To add on that, 50.9 metric tons of the toxic waste is lodged in a single place Amalekhgunj. Adjacent to the storehouse where pesticides are kept, lies a school by name of Nepal Rashtriya Madhyamik Bidyalaya. Ailments such as nausea, vomiting, vertigo and occasional fainting experienced by the teachers and pupils of the school caused by the spread of toxic fumes across the region, have come up in a health check-up. Similarly, the patients of skin diseases, respiratory and eye infections constitute a majority of those thronging the local health post. The respondents are unable, in their written replies, to refute this claim on concrete grounds, made by the petitioners on the basis of research. Likewise, One of the petitioner agencies, Janahit Samrakshan Manch, on July 2005, collected soil samples of school playground and sent them to the laboratory of Center for Science and Environment (CSE), New Delhi, India to test the chemicals and ascertain the environmental impact imposed upon the region. High amounts of contamination including that of DDT and other pesticides were found out from the test samples. The respondents are also unable to disprove this fact or tell otherwise, which has been backed by replica of the report submitted together with the writ petition.

One of the respondents, the Ministry of Agriculture and Cooperatives, in its written reply, has stated that the harmful pesticides stored in places other than Amalekhgunj have been packaged and repackaged following international standards. This makes it clear that the pesticides kept in Amalekhgunj are far from being properly and safely stored. Similarly, a 6 member committee constituted by the same Ministry on Ashwin 12, 2061, after on-site inspection, had pointed out the need to repackage the toxic wastes by analyzing their individual lots. However, the written response furnished by the Ministry remains silent on whether that recommendation was met or not. Likewise, a previous 3 member team who visited the site from Chaitra 3 to 5, 2054 had given a report that provided the pesticides are stored in the present condition and if regular monitoring is made, the toxic wastes could not affect public health and environment for at least 10 years to come. Even counting from that, 12 years have passed by. So it seemed clear that now the pesticides have grown to be detrimental from the point of view of civic health and environment.

This way, even the studies and researches carried out from the government side have stressed in packaging and repackaging of the pesticides pursuing international standards and in speedy relocation or

safe disposal of these chemical wastes. This proves beyond doubt that the pesticides are serving as pertinent danger and threat to the lives of the school children, local community and the environment. Even the Secretaries of the Ministries of Agriculture and Environment could not negate this fact. Thus, it has been established unequivocally that the hazardous pesticides stored in Amalekhgunj and other parts of the nation are capable of bringing, at any point of time, terrible and unthinkable peril towards the local human community and the ecology.

Serious apprehensions and concern have been demonstrated from time to time at the international level on the devastating effects on human health and environment cast by persistent pesticides. There could be no argument on the opportunities of better livelihood created by the highest urge of technical and physical advancement which have helped towards making lifestyle easier, well attended and qualitative. Those nations who had been forerunners in the campaign to industrialization are reaping rich benefits too. However, the developing nations are compelled only to bear the brunt of development, in other words, only the adverse effects of environmental degradation.

The moving and never ending nature of development has brought about another indefinite and gloomy outcome with it. Its forgettable aspect is present before us in the form of environmental destruction. Therefore, the developing and underdeveloped countries are faced with a two-way challenge. On one hand, they have to satiate the need of development and on the other, have to check the adverse impact upon environment created as a negative effect of development.

The relentless exploitation of natural resources at the pretext of development has endangered the natural state of Earth itself. As a result, frightful problems such as the climate and weather change have to be faced with. The excessive exploitation of natural resources by the current generation has immediate repercussions on environment and human health. Its long-standing effect is even more disturbing. Much time has elapsed since voices were raised that rights of the upcoming generations over the Earth should also be secured; and not only of the present generation. Since the obligation of safely handing down Earth to the newer generations lies with the current one, the notion of sustainable development has advanced which tells of striking a fine balance between environment and development.

This issue was significantly raised in the Earth Summit held at Rio de Janeiro of Brazil in 1992. This summit attended by almost all the nations of the world, released 21-point declaration commonly known as Agenda 21. It advanced the concept of 'precautionary principles' in addition to other, so as to arrest environmental degradation. This declaration has emphasized on cutting down production of harmful, environment-degrading substances and to maintain special vigil on the trafficking and disposal of such substances. In order for implementing the provisions of the Summit, several international conventions, declarations and commitments have been made and promulgated. This has attracted the attention of the world about the negative impact of hazardous pesticides in an organized way.

As a matter of fact, the concept of environment justice tries to advance the key notions of human rights, public health, ecology and development in a balanced approach. Even more, the right of freedom from pollution has become a subject of primary concern and care. Pollution adversely affects the elements of nature in totality. Not only human beings, pollution seriously dent the spheres of flora and fauna, water resources and air as well. The density of its negative impact is growing geometrically. Due to this, threat is looming upon the safer status of the Earth itself.

Harmful chemical pesticides that group under the persistent pollutants might have been produced to save the human race from the dangers of other animals or to increase the agricultural output. How much mankind had gained from them is altogether a different question. But in course of time, their disastrous side outweighed their beneficial aspect. After this has been proved by scientific facts, even the distant generations have to pay the price of the niceties that mankind had enjoyed for a short time. Therefore, it was all but natural that voices are raised to delimit the production and import-export of such substances. Concurrently, the issue of saving environment and the general public from the hazards of unused, stockpiled and long-affecting pesticides has emerged as a grave challenge before us.

The need for exclusive technology to dispose the pesticides, the involvement of real risks in the process, the requirement of huge amount of sums as well as the repercussions of disposal upon public health and

ecology have tempted the manufacturing countries to export those poisonous substances to the underdeveloped countries in one or the other pretext; and this practice is flourishing. In order to skip the hurdles in disposal at the local level in developed countries due to the high level of awareness in the people, the developed countries have been scheming to export these persistent pesticides to the third world countries where people's level of awareness is relatively lower, in the names of loan, grant, technical aid, etc. This strategy of the developed countries has resulted in the underdeveloped countries becoming warehouses of these toxic products.

Heeding to the same state of affairs, Basel Conference of Plenipotentiaries was convened on March 20-22, 1989 at Basel city in Switzerland, with a view to curb the use and trafficking of these toxic wastes. Consequently, Basel Convention on the control of Trans-boundary movements of Hazardous Wastes and their Disposal was signed upon on March 22. However, countries which produce and export such toxics, like the USA, are still reluctant to ratify the Convention. Apart from other things, the Convention has recognized the differences in fiscal and technical abilities between the developed and developing nations. The Convention has also brought to light, the environmental liability to be shared by both sending and receiving nations since the developing countries find themselves unable of disposing the hazardous wastes in eco-friendly method. The Convention has prohibited the export of toxic substances completely from developed countries to the developing ones with a view of disposing them. In the same vein, it also has earmarked full responsibility on the developed nations to safely dispose such wastes if already sent. In order for realizing the provisions of the Convention, various conferences, declarations, treaties and legal documents have been undertaken at the national and international levels.

Basel Convention has defined several technical terms, viz. wastes, Inter-state relocation, disposal, environment-friendly suitable management, to name a few. Article 1 defines- substances which are defined by national and international laws as hazardous and which are included in Schedule 1 of the Convention- as wastes. Similarly, Article 4(2) envisions to reduce the emission of hazardous and other wastes to minimum point possible, to establish sufficient places for the disposal of wastes, to contain the pollution propagated by toxic wastes, and to minimize trans-boundary movement of wastes, to dispose wastes through fair management by saving mankind from the negative impacts of the movement of such toxic substances among others. Article 8 has attributed special accountability to the exporting nations whereas Article 9 speaks of controlling the illegal movement of such hazardous products. Likewise, Article 10 lays down about the international obligation of rendering technical and fiscal assistance to the underdeveloped nations for the purposes of safe disposal of these wastes. Article 12 has also provisioned for a separate protocol to deal with the arrangement of compensation in case accident arises in the process of relocating or disposing hazardous wastes.

The fundamental principle espoused by the Basel convention seems to be oriented towards reducing emission of wastes detrimental against civic health and ecosystem, not emitting as far as possible and locally disposing wastes produced through clean technology.

In the same vein, the Stockholm Convention on Persistent Organic Pollutants (POPs) 2001 has been brought to effect since March 21, 2001 for the purpose of prohibiting the manufacture, use and transportation of persistent pesticides and to dispose them off in an eco-friendly method. From its preamble, it is obvious that the convention came as a result of common international commitment to protect public health and environment from the effects of persistent pollutants. It has completely prohibited the production and use of 12 extremely injurious POPs. 8 types of Organochlorine pesticides, viz. Aldrin, Chlordane, DDT, Dieldrin, Endrin, Heptachlor, Mirex and Toxaphene, 2 variants of industrial chemicals, viz. PCBs and Hexachlorbenzene and 2 other chemicals produced without any purpose namely Dioxin and Furans have been grouped under the heading of POPs. In this regard, it is a matter of grave worry that the persistent pesticides stored in Nepal largely belong to the Organochlorine category as is revealed by the Inventory Report.

The Convention has expected of the countries, party to it, to ban the production, propagation, use and re-use of such persistent pesticides and hazardous industrial chemicals. Likewise, it also has amalgamated the topics of identification, safe storage and eco-friendly removal of such persistent pesticides on the lines of international laws including the Convention itself. The convention, as well, has assimilated the principle

and concept of partnership between national and international sectors towards detoxifying places, containers and equipments once holding the toxic wastes, after these are securely disposed off.

Article 3 of the Convention warrants the member states to arrange for legal framework and institutional mechanism for enforcing ban on the manufacture, use and export of POPs and chemical substances. Article 4 deals with the recording and listing of such toxics whereas article 5 pertains to the making of action plan for controlling the use of these pesticides. Article 6 has included the measures to be followed of restricting the use of pesticides as per the action plan. Similarly, Article 7 tells of National Implementation Plans to be prepared by the member states in order to fulfill all of the obligations set forth by the Convention.

Nepal has ratified the Basel Convention on January 13, 1997 and the Stockholm Convention on October 13, 2006 and hence has become a party to them. In this scenario, as per Section 9 of the Treaties Act, 2047, the obligation to implement the Convention befalls on the Government of Nepal.

After it has been established beyond doubt that the pesticides stationed insecurely in Amalekhgunj as well as other parts of the country are hazardous and extremely dangerous, now it has become necessary to decide and analyze the 2nd question about ascertaining on whom lies the responsibility to safely dispose those pesticides.

Since the right to live in a clean environment is itself embedded in the right to life granted in Article 12(1) of the formerly prevalent Constitution of the Kingdom Of Nepal, 2047, polluted environment amounts to the infringement of this right. This precedent has been propounded by the Court in leading environmental cases such as the Godavari Marbles and the Bagmati pollution. In other words, this Court has been expressing serious concern and interest for environmental justice since long ago.

While filing this petition, Constitution of the Kingdom of Nepal, 2047 was in force. So claims were made standing on it. However the right to life has also been guaranteed by the current Interim Constitution of Nepal, 2063 as well. Moreover, additional safeguards have been made in the form of Article 16 which relates to the right to clean environment. Therefore, in the wake of unsafe storage of toxic chemicals till now, the obligation of the State to save environment and public health from its hazards is constantly existent. Hence, it is the responsibility of the State to ensure the rights to life and life in a clean environment, conferred to the citizens of Nepal by the current Interim Constitution.

Reading through the provisions of Article 12(1) of Interim Constitution of Nepal, 2063, it has been established that every person shall be entitled to a respectable living and no laws shall be enacted so as to award the capital punishment. Likewise, the right of every person to live in a clean environment has been attributed in Article 16(1). This way, the current Constitution has tried to ensure the right of decent livelihood in more liberal terms as compared to the previous one. To add on that, by assimilating the concept of environmental justice, it has accepted the right to live in a clean environment as a fundamental right in itself.

However, the mere mentioning of decent livelihood in the Article of the Constitution, itself, does not lead to its guarantee. So in order to realize that Right, it is the duty of the State to remove hurdles and challenges on the way to human existence. But, on going through the context raised in the given petition, State responsibility to eliminate the obstacles on the right to life of people- does not seem to be fulfilled. Moreover, the State itself is seen playing with the lives of unsuspecting school-going children and innocent citizens by stockpiling hazardous pesticides unsafely at their premises.

In the same way, the significance of the right to live in a clean environment guaranteed by Article 16(1) of the Constitution also cannot be underplayed. There is no doubt that the awakening towards environmental justice has taken up the present shape only after the assistance and initiative offered by the UN and its specialized agencies. Voices are being raised vigorously since the 1970s in this regard. The tireless efforts and awareness of the countless civilized inhabitants of the world has added boost to the movement for environment conservation. The main aim of this campaign is not only to maintain balance of the world ecology but it also amalgamates the objective of safe handover of Earth to upcoming

successive generations. The founding pillars of our constitutional provisions stem up from the background of concern, worries and interest towards the environment staged in national and international scenarios. Hence, it is an obligation of the State to ensure a person's right to life in a clean environment. If the State, which is entrusted with such responsibility, itself, creates a venomous environment by damaging the environment and violating a person's right to life in a clean environment, then it cannot be construed as the State fulfilling its duty towards the citizenry.

To provide the right to health for Nepalese citizens, according to Article 16(2) of the Constitution is also a responsibility of the State. Still it is seen that the pollution resulting from the insecure storage of harmful pesticides in Amalekhgunj is taking a toll on the health and lives of local students and community. The citizens are compelled to bear health related ailments even for the mistake they have not committed and are forced to cough out monetary resources by themselves for their treatment, apart from being impelled to frequent hospitals by obstructing their daily chores. This amounts to the violation of other fundamental rights endowed to the citizens apart from the right to health. The locals suffering from poverty and scarcity might also be short of adequate sums for the treatment of pesticide-induced diseases. Huge sums of money may be needed as such ailments cannot be treated at the local level and the locals have to visit far-flung, well-equipped hospitals and health centers. Long-going treatment by the people who are dependent on daily wages to make both ends meet may face starvation on account of this.

A parallel risk is that the soil, after being polluted by the chemicals, may adversely affect agricultural production. The effect of the hazardous wastes may contaminate underground water which will produce water unfit for consumption. The contamination can also pollute surface sources of water and thus the source of water for local community is also in the risk of destruction. The matter should be taken with utmost seriousness as, if the fumes of pesticides are blown over in the air, not only the locals, but also a huge population of far-flung places will be in the grip of health hazards and the whole environment shall be contaminated. But it seems only token measures are taken upon studying the written replies of the respondents. From this it is deduced that the State has not only failed in protecting the health of its citizens and the environment, but also the State's role has been seen as retro-productive or negative towards guaranteeing its citizens the fundamental right to health.

Under Article 35(5) of the Constitution, the State has followed the policy of undertaking adequate measures to keep the environment clean and to accord priority in raising awareness among the masses towards environmental hygiene. This subject is incorporated in the policy with a view to promote the rights to life and life in a clean environment, established as the fundamental rights. So it is not only desirable but mandatory as well that the programmes of the State address this issue.

The Environment Protection Act, 2053 which came with the objective of implementing the above-mentioned fundamental right to life in a clean environment, has provided for various steps to protect persons from environment pollution. Section 7 has forbidden pollution which can pose remarkable negative impact on the environment or which can endanger the livelihood and health of public. Besides, in Articles 3, 4 and 5, there is a provision for preliminary environment impact assessment (EIA) to be conducted prior to any works related with development and construction. Meanwhile, on the lines of this arrangement, in Schedule of Environment Protection Rules, 2054, preliminary environment evaluation (PEE) has been prescribed for acts leading to either of the following: a) importing pesticides amounting from 1 up to 10 tons, b) Trading, storing and disposing of pesticides ranging from 200 kgs to 1 ton and c) Using of pesticides ranging from 100 kgs to 1 ton in a single, particular place. Similarly, compulsory environment impact assessment (EIA) has also been prescribed for acts leading to either of the following: a) importing pesticides amounting to more than 10 tons, b) trading, storing and disposing of pesticides amounting to more than 1 ton, c) using of pesticides amounting to more than 1 ton in a single, particular place and d) establishing pesticidal plant or doing other works related to pesticides.

In the same manner, in order for managing and regulating the import, export, trade and use of pesticides, Biocidal Pesticides Act, 2048 is also in existence. Section 2 of the Act arranges for the formation of a Pesticides Committee whereas Section 5 has laid down the powers and duties of the same committee which includes framing policies relating to pesticides. Likewise, Section 7 has separately provisioned for a Pesticides Registrar for laying basis to the appropriate and rationale use of such hazardous chemicals.

But it is not seen from the respondents' side that they have delivered with the legal obligations with which they are endowed upon.

As per the requirements of the Stockholm Convention on Persistent Organic Pollutants (POPs), 2001, National Implementation Plans (NIPs) need to be drafted and submitted by the developing nations, which are unable to dispose the hazardous wastes on their own, after collecting records of such pesticides-for their safe disposal. In the absence of such plans, they cannot avail of the international financial and technical assistance to remove such toxics. Nepal, falling short of such technical and financial abilities, is unable to dispose the wastes on its own, as mentioned in the written replies of the respondents. As such, a POPs Enabling Project is running under Ministry of Science and Technology and a record of the outdated persistent pesticides seems to have been made, following the Inventory Report of that Project. At this premise, the information and commitment communicated by the Secretaries before the Bench that such a National Implementation Plan is being made and that the task of safely disposing the pesticides will be complete within a year are praiseworthy. But this Court wants to see the commitment transformed into reality.

Although the exact what, which, when, where from and how much these hazardous, persistent pesticides were imported unknown. However, it seems that they were imported as per the planning of eradicating malaria and alleviating poverty by increasing agricultural output, as part of the agro-loans, donations and assistance from the international community. The pesticides which are able to devastate mankind and the whole environment were banned in the countries of their origin even by the time of their export to Nepal. Still, they were sent to impoverished nations like Nepal as forced loans. From this predicament, it becomes crystal clear how the developed nations enslave the developing ones in the name of assistance. If all the concerned parties learn lessons from this debacle, then it is expected that the Nepalese people will not have to suffer again in this way.

This quandary can be a shining example of how the rich and technologically strong nations, have, on the pretext of international aid, conspired for the vermin. But, the list of such international support has ever expanded since. A plethora of such identical events in recent times have made it clear that by learning lessons from these incidents, we should accept foreign aid only after going through the details and intent, not only focusing on the cover. The dire need of the developing nations for financial and technical assistance and tendencies as well as plight of the governments and people of such countries, i.e. becoming restless for external grants, accepting virtually anything in the name of aid, trusting on the stated facts without probing and receiving goods and technologies without any skepticism, shortage of knowledge, information and labs if a need arises for the testing of such goods or services, lack of legal, policy and institution back-up to regulate such processes, dearth of knowledge among the decision-makers and their myopic vision of not foreseeing distant interests, absence of sense of accountability, adhoc-ism regarding disaster management and prevention, attaching less priority to allocate financial resources, etc. are at the heart of such predicaments. The outcome of the same has come up in today's shape.

Environmental justice embodies the concepts of preserving sources and means of a nation, establishing judicious reach of the maximal population and the equitable distribution of the benefits caused by the development of natural resources. While talking about the conservation of resources, the freedom from pollution comes at the first leg. However, due to the continual presence of pesticides in Amalekhgunj, it has been found that the State, in the process of importing, using in the name of agriculture or whatsoever and in attempting for disposal, has failed to show up the required concern and accountability as was expected from it. Even when negative effects were inflicted on the standard of living of the local population and even when they were forced to live in an environmentally-deteriorating situation, no program of compensation or damages has been announced. Ever since the import of the toxic pesticides, numerous governments came and went, several changes had been effected in administrative leadership as well, but nobody had to bear the accountability of not heeding to the plight of locals. If such non-obedience, neglect and irresponsible sentiments persist, then not only the current problem will remain unresolved, but nobody can also refute the reprisal of such events in future, Especially, until the bureaucracy does not become honest, competent and accountable, incidents of this nature will continue to happen.

The subject of environmental degradation is such that it affects the poor and disadvantaged class more than the rich and privileged ones because they do not have enough of alternatives. This holds true in cases of both people and nations. Therefore, the State should, in matters like this, design action plan and guidelines at a macro level and guarantee its rigorous implementation. Otherwise, environmental violence will occur from the local to international level and, the environmental culprits shall walk scot-free and they will keep on reinforcing environmental injustice. That is why, to save the present and future generations of human beings from this vicious circle, the need has aroused to implement concrete and result-oriented programmes at the earliest.

While looking at the context of this case, from the written replies of the respondents, it becomes explicit that Nepal truly lacks the ability to safely dispose the chemicals in an eco-friendly manner. Now it has become paradoxical and unfortunate that even an institutional memory is not available on why, when and how the pesticides-resembling the Kala-Kut -a deadly poison mentioned in the mythology- were brought to Nepal. Now the citizens and the school children residing in Amalekhgunj and elsewhere are left with no option than to curse the contemporary Nepalese officials who were responsible of importing such persistent and devastating pesticides without even understanding the needs and uses for the nation.

By realizing the weaknesses and mistakes of the past and by pledging at least not to repeat such flaws in the future that affect public well-being and environment, environmental justice could be deemed to have been made towards the upcoming generation. The worry and concern for the day are to diminish the ill-effects of these toxics and to dispose them securely. There can be no dispute on the fact that this task has to be finished in an environment friendly way and at the earliest. However, it is not the task of the Court to specify the procedure as it is a matter of detailed technicality. The concern of the Court lies on the need of urgent disposal of the hazardous chemicals without damaging on environment and human health, according to the standards set by international conventions and on the protection of mankind and ecology from the hazards of these toxic substances. In the same vein, in the process of disposal of these pesticides, if any harm is to be done to the health of the local community and its environment, the government should arrange for appropriate compensation as well. For this, a survey and recording of the negative effects upon the natural resources, health and agriculture should also be taken up as an indispensable component of disposal and management.

Hazardous pesticides as such are capable of explosion, leakage, and propagation anytime during the processes of packaging, repackaging or disposal. The need to exercise precaution stems from the 25 year old Bhopal Gas Accident in which a storage tank of Union Carbide plant, owned by an American company started leaking that caused enormous damage to the lives and property as well as inducing massive environmental damage. In the Bhopal accident, 15 thousand people lost their lives, several thousand others became crippled for life, environment got severely contaminated and the ill-effects are still emanating. The victims of that tragedy got only nominal compensation, the operating company could not be made wholly responsible and the sterilization and detoxification of the impact area was not done properly. For this, the Indian government still draws flak every now and then from its citizens.

Even in our context, the situation has come to seriously mull over the Indian experience. But, on seeing the written reply furnished by the Office of the Prime Minister and Council of Ministers which stands as the office of the chief executive of the nation, nothing can be found reflecting such caution or alertness. Harmful and persistent pesticides are stockpiled in giant proportions unsafely in various parts of the nation which can prove catastrophic to the health of the general public and the environment. But, there is no institutional memory as to the factual data relating to the purpose, date of import and quantity of the same. Neither there is any vision on how to stock and dispose them securely nor is any pro-activeness on how to mobilize international support. No apprehension is there on the damaging effects of the chemicals upon the local populace, school children and the ecology. The petitioners, on their own initiative, have unraveled this problem and tried to open up the eyes of the government. Notwithstanding this, quite paradoxically, the respondents have demanded to quash the writ petition on grounds of unconcerned parties being made respondents. This brings to light, the ghastly negligence of the state apparatus towards the right to life in a clean environment evoked by the irresponsible thinking, negligence and laxity concerning environment.

Therefore, the Government of Nepal is left with no other option than to sincerely proceed towards the implementation of commitment showed before international community and the Constitution. Rather than evading responsibility and shifting blame on others, it should urgently involve in the process of speedy and eco-friendly disposal of the toxic wastes and its management. For this, besides other considerations, a mechanism has to be set up with enough financial and technical resources so as to compensate the damage done or might be done to the local community and environment by the consequences of the hazardous wastes.

Only bickering about the mistakes done in the past will not contribute to problem solving. The single most vital concern for today is how to save mankind and environment by safely disposing those pesticides. By going through the written reply submitted by the Ministry of Science and Technology, the removal of such pesticides housed across Nepal is very complicated and challenging. To safely dispose these toxic chemicals in an eco-friendly manner, they need to be burned in at least 1200-1500 degree centigrade in an incinerator for 1-2 seconds. Furthermore, to check the spread of fumes and gases that are produced after the burning a device needs to be installed in such incinerator so that the poisonous fumes are absorbed therein. The technological arrangement as such is lacking in Nepal. Therefore, the only option available is to send the pesticides to European or other countries with such incineration plants. Moreover, the technology of packaging and repackaging of the pesticides so that they can be safely moved elsewhere also does not seem to be available in Nepal.

Since there is tradition among the technologically challenged countries to send the pesticides or other toxic substances to more technologically competent nations, there is no reason on Nepal not doing the same. As a matter of fact, it is a subject of primary obligation as well as international liability on the part of exporting country to safely dispose such hazardous substances. Therefore, necessary leverage should be exercised for that.

The petitioners, in their petition, have alleged that despite the interest shown by Green Peace and the umbrella organization of pesticide manufacturing companies-Crop Life International, the Government of Nepal did not give sufficient heed to it. Nepal should cordially invite such assistance. The stance of international power centers and economic powerhouses of manufacturing pesticides that are extremely injurious to the flora, fauna and ecology and their propensity to shift this unwanted liability on the poor and underdeveloped nations is condemnable as well as regrettable. The international community should come forward to accept the responsibility of its ghastly mistake. When the international community is lending a helping hand, Government of Nepal should also leap forward by partnering in the process, for the safe management of these pesticides which are proved to be dangerous from the perspective of welfare of mankind and environment conservation.

Upon deciding the final question of whether or not an order as requested in the petition is to be issued, it came without contention that the outdated, persistent pesticides stored in Amalekhgunj and elsewhere of the nation are hazardous substances capable of causing imminent danger to the human health and environment. The contemporary Constitution of the Kingdom of Nepal, 2047 as well as the current Interim Constitution of Nepal, 2063 have guaranteed the natural right to life and have accepted the right to life in a clean environment as a fundamental right in itself. Hence, the State's responsibility is witnessed in honouring, obeying and fulfilling that right. In the same manner, it is mandatory that the State mobilize all channels, political and diplomatic, to assume responsibility espoused by international treaties and conventions. This equally holds true in dealing with the circumstances induced by international community or foreign nations. Therefore, under the obligations towards helping the developing countries in safe disposal of such pesticides as set by the Stockholm Convention on Persistent Organic Pollutants (POPs), 2001 and Basel Convention on the control of Trans-boundary movements of Hazardous Wastes and their Disposal, 1989, it is liability of the international community as well and in order to garner such support, the State side itself should be actively involved.

At the aforementioned context, in order to safeguard the constitutionally guaranteed rights to life and life in clean environment, to garner relevant assistance from the international community on the lines of Stockholm Convention and Basel Convention, to coordinate and co-work with international non-governmental organizations such as Green Peace International and Crop Life International, to internalize the subject matters espoused in the above mentioned references, the Court issues the order of mandamus in the name of respondents including Government of Nepal, Office of the Prime Minister and Council of Ministers to fulfill the under-mentioned tasks, apart from others, within a period of one year and to submit information in writing to the Court, for the enforcement of this order:

- a) To prepare a profile including the chronology of events depicting when, how, for which purpose, from where, how the pesticides currently stored at Amalekhgunj and other parts of the nation were acquired; how these were used, expended or disposed. It must include the related decisions and should be made in such a way as to help in identifying the decision-makers.
- b) To promptly prepare an inventory which shall include information on the persistent pesticides stored across Nepal.
- c) To classify the pesticides, found according to the inventory, into categories of extremely hazardous, hazardous and less hazardous.
- d) To arrange for secured storage through packaging and repackaging of those pesticides which are extremely hazardous and cannot be disposed safely in Nepal, so that these can be sent back to the countries of origin.
- e) To dispose other pesticides by packaging and repackaging following the same procedure, according to their severity.
- f) To exercise precaution and carry out awareness programmes regarding the possible loss of lives and property or environmental damage in the process of packaging, repackaging and safe, environment-friendly disposal of the toxics.
- g) To arrange for a separate fund for completing a study in order to compensate the damages to the suffered local people due to the ill-effects cast on the local ecology and public health, induced by the impact of pesticides, at present and in future.
- h) To provide for free medical treatment, as required, on government level after studying the effects of pesticides upon the health of local community.
- i) To safely dispose those pesticides in an environment-friendly manner through whichever processes, within one year.

The file should be returned duly after sending notice of this order to the respondents via the Office of the Attorney General.

I concur above decision.

Chief Justice Meen Bahadur Rayamajhi

Done on 4th Kartik, 2066 B.S. (21st October, 2009)