



**REGIONAL CAPACITY DEVELOPMENT TECHNICAL ASSISTANCE  
STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE  
ASIA-PACIFIC: DEVELOPING ENVIRONMENTAL CHAMPIONS  
TRAIN-THE-TEACHERS PROGRAM**

**23 – 26 November 2018**

**Kathmandu, Nepal**



**SESSION 8: FIELD TRIP**

**Tutorial Problem**

**Informea Summary**

Party: *Suray Prasad Sharma Dhungel v. Godavari Marble Industries and others*

Date of text: October 31, 1995

Court name: Supreme Court of Nepal

Seat of court: Katmandu

Justice(s): Trilok Pratap Rana, Laxman Prasad Aryal, Govinda Bahadur Shrestha,

Reference number: Writ, F.B. 35/1992

Glossary term(s): open living museum, standing to sue, constitutional law (fundamental rights, right to life), extra-ordinary jurisdiction, Country Code, Mines and Minerals Act, Industrial Enterprises Act.

**SUMMARY:**

The Godavari region is situated within the Godavari Municipality of Lalitpur district, which is within Kathmandu Valley. It is a protected forest area with rich fauna and flora, and historical, religious and biodiversity importance. It is also known as an open living museum of wildlife and flora, with 571 species of flowers, 300 different species of butterflies, 254 species of birds, 80 species of different trees, water sources (rivulets), as well as religious and cultural heritage. In the lap of Godavari Hills, a marble industry named "Godavari Marble Industry Pvt. Ltd." was established. It had obtained license in 1966 and brought into operation in 1968.

The Godavari Marble Industry had been excavating the whole hill area, resulting in deforestation, floods, silting fertile land, atmospheric pollution and impacting the health of laborers working in the industries as well as local people. It was creating overall adverse impacts on the ecology and ultimately threatening right to life of people.

A writ petition was filed to the Supreme Court of Nepal on 12/06/1989 by Surya Prasad Sharma Dhungel on behalf LEADERS' Inc. to shut down the Godavari Marble Industry. The writ petitioner claimed that the Godavari Marble Industry had been creating atmospheric pollution and thereby impacting the health of laborers working in the industry and the health situation and occupation of local peoples.

The writ petitioner further claimed that the Godavari Marble Industry had seriously damaged the Godavari region, breaching several constitutional and legislative provisions. It was argued that the activities of the respondent were contrary to Articles 2, 10, 11(1) (2), and 15 of the Constitution of the Kingdom of Nepal, 1962.

This case dealt with the questions whether the Constitution guaranteed the right to a clean environment as a part of the right to life and whether there was *locus standi* of NGOs or individuals working for the protection of the environment to bring the case. The petitioners claimed that the respondents' industrial activities had caused environmental degradation to Godavari forest and its surroundings. The respondents' factory excavated marbles and minerals and emitted dust, smoke and erosion of soil / sands, which had excessively polluted the nearby water bodies, land and atmosphere of the said area, thus causing danger to the property, life and health of the people around. Thus the petitioners filed this writ petition seeking mandamus in the name of the respondents, to enforce the right of the people to live in a healthy environment.

The court was of the view that a clean and healthy environment was part of the right to life under Article 11 (1) of the Constitution of the Kingdom of Nepal, 1962. Life was threatened in a polluted environment and it was the legitimate right of an individual to be free from a polluted environment. As the protection of the environment was directly related with life of the human being, it should be accepted that this matter was included in Article 11(1) of the Constitution of the Kingdom of Nepal (1990).

Regarding the *locus standi* the court emphasized that the applicant had a profound interest in the present environmental issue. In fact an environmental problem was a matter of public interest and concern. The petitioner had a strong relationship with the environmental subject of the present dispute. The present Constitution had established public interest as a protectable fundamental right. Also, environmental conservation according to the constitution was one of the basic Directive Principles of the State. Environmental conservation was one of the objectives of the applicant, so the applicant had *locus standi* for the prevention of the environmental degradation.

The court also stressed that it was beyond doubt that industry was the foundation of development of the country. Both the country and society needed development, but it was essential to maintain environmental balance along with industry. However, the petitioner had not been able to clearly point out a specific section of the law that had not been obeyed or followed. For the purpose of mandamus, legal duty had to be definite and fixed. Therefore mandamus could not be issued. Taking into account the sensitive, humanitarian issue of national and international importance such as the protection of the environment of Godavari area, the court decided to issue directives in the name of the respondents to

enforce the Mines and Minerals Act (1985), enact necessary legislation for protection of air, water, sound and environment and to take action for protection of the environment of Godavari area.

Related Website: <https://www.elaw.org/content/nepal-suray-prasad-sharma-dhungel-v-godavari-marble-industries-and-others-wp-351992-19951031>

### **Tutorial Questions**

Based on information received during the Field Trip, consider the following questions:

1. *What do you understand by the concept of an “open living museum” from the point of view of rich biological diversity? Having been to the Garden, do you regard Godavari as an example of an “open living museum”?*
2. *Are there any rights under the Nepal Constitution or other laws which are relevant to protecting “open living museums” from pollution?*
3. *Why do you think the Court ordered enactment of laws for protection of air, water, sound and environment? Do you consider this an example of ‘judicial overreach’?*
4. *If you were the petitioner in this case, would you be satisfied with this judgment or prefer an appeal against it if there is scope to do so? Give reasons for your answer.*