

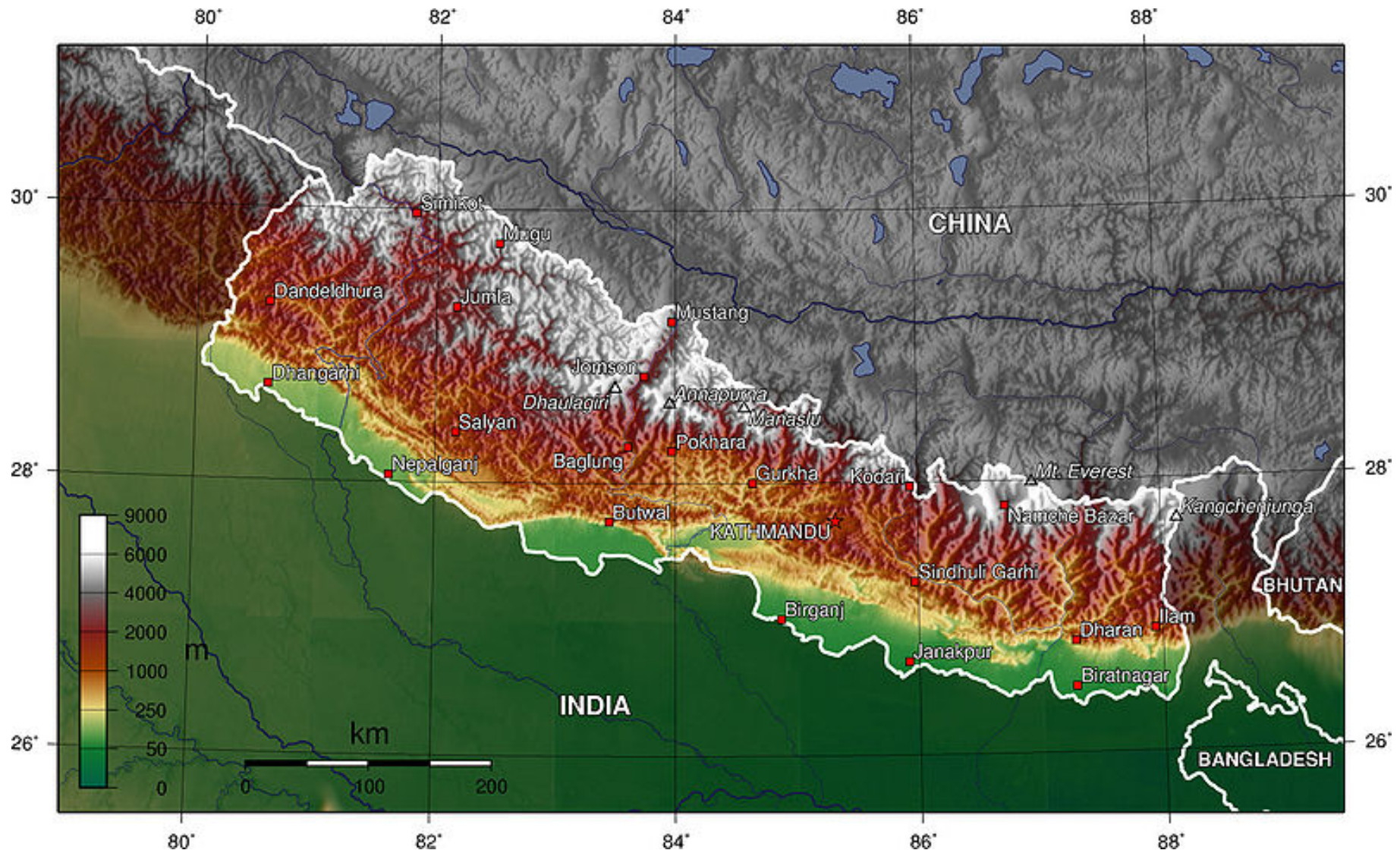


# PUBLIC INTEREST LITIGATION IN MOUNTAINOUS ECOSYSTEM

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# Diverse Ecology



# Himalaya



# Hill



# Terai



# Limitation of the paper

- Not strictly 'Mountainous' Ecosystem
- 'Environment Justice' has been used to connote:
  - Conservation of natural resources including cultural heritage sites
  - Prevention and protection from environmental pollution
  - Access to justice to maintain access to natural resources/ redress from environmental degradation
- Not included ongoing PILs and Public Interest Advocacies

# Mountain

## **Case:** Euro-copter Landing Case

### **Decision:**

- The national heritage and attach to the concern of the World.
- the duty of conserve Mt. Everest.
- enacting law, policy and guidelines that contain necessary preventive, precautionary, compensatory measures in regard to prohibit flights.
- Take measures necessary to redress harms or damages of such sensitive area and to people who have been living with the surroundings.



# Forest Biodiversity

Case : Rape of Godavari

Decision:

Right to life embraces  
right to clean  
environment

Note:

- 25 years
- Myth of Revenue
- Hide and seek
- Judicial Indifference





# Forest Conservation

**Case:** right of CFUG,

Argument:

- Policy of the Government to get deposit 40% of their earning of UG. government office is ultra virus,
- Policy decision not to handover national forest to community in Churia, Terai and Inner Terai.

**Decision:**

- Illegal as it contravenes with taxing power of the Act.
- handing over of national forest to community is against the principle of decentralization enshrined in the Art 26 (4) of the Constitution.

**Note:**

1. Separation of power
2. Inconsistency



# Forest Conservation

**Case:** Conservation of forest and selling of Timber

**Decision:**

- the preservation of the forest to respect and maintain biodiversity and environment protection.
- the forest management only should be done in accordance with bio diversity or environment protection plan of action (if any).

**Note:**

- *Weak wording*



# Forest Conservation

**Case:** Cutting down trees construction road

**Decision:**

Case- 1 : No orders as the municipality cancel the tender notice for licensing

Case-2 : Ordered the Kathmandu Municipality and the road department to respect environment while construction roads

**Note:**

1. No monitoring mechanisms
2. No implementation



# Chure-Siwalik Hills Range

**Case:** Excavation of Sands and Stones from Riverbed. Impacting landslides, changing river course.

**Decision:**

- Exploitation of any natural resources should not adversely affect ecology and should only be exploited in ensuring public interest.
- Constitute monitoring committee to
  - Set standards and
  - monitor the actual work in each district



# Stone and Sand Excavation

## Context:

- The Parliamentary Committee on Natural Resources and Means.
- 500,000 truckloads was taken to India each year.

## Note:

- Revenue 500-1000 Rupees (USD 60-120) per truck
- Myth of Revenue



# Conservation of Heritages

**Case:** Devghat, handing over of forest to U.S. based Medical Uni

**Decision:**

- The government should keep the national interest in the center while deciding about the state function.
- If the court finds out that the government is taking action in contrary to what is written in the Directive Principles, The court cannot restrain its power just because the directive principles are not justiciable.
- Government is under obligation to keep the archaeological, religious and natural sites protected.



# Conservation of Heritages

**Case:** Road damaging heritage sites (cremation river banks)

**Decision:**

- a) Narrowing down the flow of the river will impact on the river ecology.
- b) An obligation to preserve the historical, cultural and archaeological sites.
- c) The government should install the plant to treat the municipality waste
- d) In the name of hospital, no adverse impact to be created on river and other public places.
- e) The court has stated that the court sees itself taking a duty to direct government.

**Note:**

- Another PIL on illegal settlement along the bank of river.
- The government anyway built the link river



# Conservation of Heritages

**Case:** Cutting down the tree under which Buddha was born

**Decision:**

- In any cultural restoration project proper information should be provided to the public

**Case:** Ranipokhari, Medieval Era Pond

**Decision:**

- required the government to monitor whether the existing urban planning legislation which are enacted to regulate expansion of the city
- The court can impose obligation on government referring Directive Principles
- The Court used international Convention to impose duty on government

**Note:**

- Selective enforcement





# Conservation of wetland

**Case:** Bishazari Lake

**Decision:**

- Take appropriate steps to protect the lake which is listed in world's wet land and where thousands of flora and fauna dwells and provides important contribution to maintain the ecosystem.
- The court also required to make a comprehensive master plan if any development project has to be carried out in this area.



# Pollution Control

**Decisions:** (Bharatmani-2, Bhojraj, Jivan)

- Right to clean environment is closely linked with right to life, individual liberty, right to health and social and economic rights.
- Take every step to control pollution of Bagmati River.
- A duty of general public also to maintain cleanliness and prevent a river from getting polluted.
- Preserve ecology of water
- Manage the waste of the Kathmandu Valley in environment friendly manner.

**Note:**

- In Bharatmani, court did not enter into detail analysis



# Industrial Pollution

**Case:** Bhirkuti, Shree Distillery, Everest Paper, Brick Kiln, Stone Quarries

## **Decision:**

- Installation of technology,
- Scientific monitoring mechanism,
- Polluters Pay
- Sustainable Development
- Social Responsibility

## **Issues**

- Justice Delayed Justice Denied
- Consistency: populist or evasive



# Air Pollution

Case: Pollution Standard (2), Monitoring Mechanisms

Decision:

- Set up air pollution monitoring
- Apply preventive measures



# Human Health

**Case:** Arsenic Water, Municipality waste, Bagmati River

**Decision:**

- Right to clean water,
- Duties of Government to provide safe water and aware people
- Disposal of wastes in environment friendly manner, not to the water-source

**Issues:**

- Redress
- Health treatment



# Conclusion

Through PIL Case, Nepalese Judiciary has:

- **Created rights jurisprudence**
  - preservation of environment, heritage, forest, waterbodies, mountains, human health
- **Emphasized on responsibilities**
  - Government's duty of trustee and provider
  - CSR, Polluters' pay
  - Civil society and individual person
  - That of Judiciary
- **Unfortunately, there are the issues of**
  - Consistency
  - Pursuance
- **Unresolved Issues:**
  - Ensuring sustainable development
  - Ensuring environmental governance
  - Ensuring the social responsibility of corporations/companies along with government