**Decision Number:** 8009

**Decision Date:** 2065/05/19 (2008)

**Final Decision:** Supreme Court, Special Bench

**Pre-Decisions:** N/A

**Petitioner:** Advocate Om Prakash Aryal (Chairman of Human Rights Service Center (HURISEC))

**Respondent:** Government of Nepal (Office of the Prime Minister and Council of Ministers)

**Key Words:** Constitutionality, Cow Slaughter, Religious Freedom, Secularism, Fundamental Rights

## Key Points:

1. The court does not have the authority to declare an act as a crime or modify existing punishments.

2. The Interim Constitution of Nepal protects the national animal (cow) and criminalizes offenses against animals.

3. The extent of punishment for a crime is within the legislature's discretion.

## Facts of the Case

The petitioner filed a writ petition challenging the constitutionality of certain provisions of the Muluki Ain (Civil Code) related to cow slaughter. The petitioner argued that these provisions violated fundamental rights such as the right to equality, freedom of religion, and the right to live with dignity. Specifically, the petitioner challenged Clause 4 of the Cow Slaughter section of the Civil Code, which provides impunity to individuals who kill someone in the act of preventing cow slaughter, and Clauses 10, 11, 12, 13, and 14, which criminalize cow slaughter with severe punishments.

## Petitioner's Contention

The challenged provisions are inconsistent with the Interim Constitution of Nepal and international human rights treaties. The provisions infringe upon fundamental rights and the principle of secularism. The state has failed to improve and implement laws in accordance with the principle of secularism.

## Respondent's Contention

The challenged provisions were not enacted under the current Interim Constitution. The constitution declares Nepal a secular state, which may conflict with laws enacted under the Hindu kingdom. Protecting the national animal is the state's responsibility. Punishing cow slaughter is a legislative prerogative.

## Legal Issues

1. Whether the challenged provisions of the Muluki Ain are inconsistent with the Interim Constitution of Nepal.

2. Whether the provisions infringe upon the petitioner's fundamental rights.

## Judgment

The Supreme Court dismissed the writ petition. The court reasoned that the petitioner failed to demonstrate how the challenged provisions violated their fundamental rights, the protection of cows is consistent with the Interim Constitution, which recognizes the cow as the national animal, and the extent of punishment for a crime is a matter of legislative discretion.

## Significance

The decision affirms the state's authority to enact laws protecting the national animal and criminalizing cow slaughter. It also reinforces the principle that the extent of punishment for a crime is a matter of legislative discretion and upholds the importance of protecting the national animal.

## Source:

Nepal Kanoon Patrika (NKP), 2065, Ank 9

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