

IN THE SUPREME COURT OF PAKISTAN

(Original/Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja, CJ
Mr. Justice Dost Muhammad Khan
Mr. Justice Qazi Faez Isa

Civil Petition No.145 of 2015

(Against the judgment dated 02.01.2015 of the High Court of Sindh, Karachi passed in Const.P.No.D-5806/14).

Province of Sindh and others ...Petitioners
Versus
Lal Khan Chandio and others ...Respondents

AND

Constitution Petition No.38 of 2015

Aamir Maroof Akhtar ...Petitioner
Versus
Federation of Pakistan and others ...Respondents

AND

Civil Petition No.253 of 2015

(Against the judgment dated 27.11.2014 of the High Court of Balochistan, Quetta passed in C.P.No.17/11).

Atta-ur-Rehman ...Petitioner
Versus
Muhammad Aslam Bhootani and others ...Respondents

AND

CMA No.1435/15 in Civil Petition No.Nil of 2015

(Application for exemption from the certified copy of the judgment dated 27.11.2014 of the High Court of Balochistan, Quetta passed in C.P.No.347/11).

Federation of Pak. M/o Foreign Affairs thr. Its Secretary. ...Applicant
Versus
Malik Muhammad Saleem and others ...Respondents

For the Petitioners: Raja Muhammad Farooq, ASC
Syed Rafaqat Hussain Shah, AOR
(in Const. Petition No.38/15)
Mr. Adnan Basharat, ASC (in CP.253/15)

On Court's Notice:

For the Federation: Mr. Salman Aslam Butt, AGP
Mr. Aamir Rehman, Addl. AGP
Syed Nayab Hassan Gardezi, Standing Council

For M/o Foreign Affairs: Ms. Rifat Butt, Dy. Legal Advisor
Mr. Naeem Cheema, DCP (P&I)

For Govt. of Balochistan: Mr. Muhammad Ayaz Khan Swati, Addl. AG

For Govt. of KPK: Mian Arshad Jan, Addl. AG
Syed Muhammad Ali, Dy. Conservator
Wild Life, Peshawar.

For Govt. of Punjab: Mr. Razzaq A. Mirza, Addl. AG

For Govt. of Sindh: Mr. Shehryar Qazi, Addl. AG
(also for petitioner in CP-145/15)

Date of Hearing: 19th August 2015.

JUDGMENT

Qazi Faez Isa, J. The Province of Sindh has filed a petition for leave to appeal (CPLA No. 145 of 2015) assailing the judgment dated 2nd January 2015 of a Division Bench of the Sindh High Court, which had allowed Constitutional Petition No. D-6806 of 2014. The petition filed in the High Court had, amongst other things, assailed the permission granted to foreigners to hunt Houbara Bustard and the notification of the Forest and Wildlife Department of the Government of Sindh dated 21st October 2014 (“**the Notification**”) issued under subsection (1) of section 40 of the Sindh Wildlife (Amendment Act) 1993. The Notification took away the protected status of the Houbara Bustard and permitted its hunting; stipulating that, “*The hunting of Houbara Bustard would be allowed only with a special permit supported with a letter from Ministry of Foreign Affairs for allocation of an area*”. At least two letters were issued by the Ministry of Foreign Affairs on 1st November 2014, one addressed to the Embassy of the United Arab Emirates and the other to the Embassy of the Kingdom of Bahrain in Islamabad in favour of fifteen foreign dignitaries, which allocated different areas of Balochistan, Sindh and Punjab to such foreign dignitaries.

2. One of the said letters (the other, except with the name of the country, is identical) is reproduced hereunder:

“The Ministry of Foreign Affairs of the Islamic Republic of Pakistan presents its compliments to the Embassy of United Arab Emirates in Islamabad and has the honour to inform that the following areas have been allocated to the dignitaries of the United Arab Emirates for the hunting of Houbara Bustard for the season the 2014-2015”.

[The names of the foreign ‘dignitaries’ and the respective areas ‘allocated’ to them are then listed]

“The Code of conduct for this year’s hunting session is also attached.”

“The Ministry of Foreign Affairs of Islamic Republic of Pakistan avails itself of this opportunity to renew to the Embassy of United Arab Emirates the assurances of its highest consideration.”

3. The other petition (Const.P.No. 38 of 2014) is filed by a citizen-lawyer of Pakistan, Mr. Aamir Maroof Akhtar, under Article 184 (3) of the Constitution, assailing the licenses/permits issued by the Ministry of Foreign Affairs of the Government of Pakistan and seeks to restrain the Ministry of Foreign Affairs and the Provincial Wildlife Departments from permitting the hunting of Houbara Bustards. The petition further seeks that action be taken against those transgressing wildlife protection laws.

4. In each of the four provinces of Pakistan, similar wildlife protection laws were enacted: the Baluchistan Wildlife Protection Act, 1974, the Sind Wildlife Protection Ordinance, 1972, the NWFP Wildlife Protection Ordinance, 1974 and the Punjab Wildlife Protection Ordinance, 1973; and each of these laws protect the Houbara Bustard from hunting and trapping. These laws, as per their respective preambles were enacted, *“to amend and consolidate the laws relating to the preservation, conservation and management of wildlife”*. Subsequently, the Baluchistan Wildlife Protection Act, 1974 was replaced by The Balochistan Wildlife (Protection, Preservation, Conservation and Management) Act, 2014, the NWFP Wildlife Protection Ordinance, 1974 was replaced by the NWFP Wildlife Protection Act, 1975 and then by the Khyber Pakhtunkhwa Wildlife and Biodiversity (Protection, Preservation, Conservation and Management) Act, 2015, the Punjab Wildlife Protection Ordinance, 1973 was replaced by Punjab Wildlife Protection Act, 1974, however, the law in Sindh province remained the same.

5. That for the purposes of deciding these petitions we need to examine the Balochistan (Wildlife Protection, Preservation, Conservation and Management) Act, 2014 (**“the Balochistan Wildlife Protection Act”**), the Punjab Wildlife Protection Act, 1974 (**“the Punjab Wildlife Protection Act”**) and the Sind Wildlife Protection Ordinance, 1972 (**“the Sindh Wildlife Protection Ordinance”**).

(1) The Balochistan Wildlife Protection Act

(a) The status of the Houbara Bustard in this law is confusing; the bird has been listed in Part D of Schedule I thus permitting its hunting, subject to having a “Houbara Hunting Permit”; the bird is also listed in Schedule III “*whose hunting, killing, trapping, capturing, possession or trade is not allowed*” (section 2 (sss) of the Balochistan Wildlife Protection Act), contravention whereof is punishable by imprisonment, fine or both. However, Part D of Schedule I states that a “dignitary” may hunt up to one hundred Houbara Bustards upon payment of a “hunting fee” of ten million rupees.

(b) Another anomaly with regard to permitting hunting of the Houbara Bustard is that Section 58 of the Balochistan Wildlife Protection Act requires the Government to enforce the Convention on International Trade in Endangered Species of Wild Flora and Fauna (“CITES”) and “*to improve the conservation status*” of this species. Appendix II of CITES lists those species that may become threatened with extinction and includes the Houbara Bustard.

(c) Yet another anomaly with regard to permitting the hunting of the Houbara Bustard is that Section 59 of the Balochistan Wildlife Protection Act requires the Government to enforce the Convention on Migratory Species of Wild Animals (“CMS”) and to provide “*special attention to migratory species the conservation status of which is unfavourable*”. Appendix II of CMS lists those species whose conservation status is unfavourable and includes the Houbara Bustard. CMS attends to migratory species, “*whose members cyclically and predictably cross one or more national jurisdictional boundaries*”. In respect of species having an unfavourable conservation status CMS requires the ‘Range State’ to take, “*necessary steps to conserve such species and their habitats*”. ‘Range State’ is one that, “*exercises jurisdiction over any part of the range of that migratory species*” and ‘range’ “*means all the areas of land or water that a migratory species inhabits, stays temporarily, crosses or overflies at any time on its normal migration route*”. The migratory range of the Houbara Bustard includes Pakistan, and so Pakistan is designated as a Range State of the Houbara Bustard.

(2) The Sindh Wildlife Protection Ordinance

(a) The Sindh Wildlife Protection Ordinance defines ‘protected animal’ to be “*a wild animal specified in the Second Schedule*’ which cannot be hunted, captured, etc. (section 7), contravention whereof is punishable by imprisonment, fine and or both. ‘Game animal’ is defined as ‘*a wild animal specified in the First Schedule*’ and such animals can be hunted by those holding a permit.

(b) Section 40 of the Sindh Wildlife Protection Ordinance enables the Government to, “*add or exclude from the Schedules any wild animal, subject to such conditions as it may impose in each case*”. In exercise of such powers the Government of Sindh issued the Notification, removing the Houbara Bustard from the category of protected animals (listed under the Second Schedule) and placed it in the list of game animals (under the First Schedule), thus permitting it to be hunted by those holding a hunting permit.

(3) The Punjab Wildlife Protection Act

The Houbara Bustard under the Punjab Wildlife Protection Act is listed in the First Schedule as a ‘game animal’ which can be hunted by anyone holding a hunting license.

6. There is also Federal legislation that requires consideration which is the Pakistan Trade Control of Wild Fauna and Flora Act, 2012 (the “**Act**”). The Act was enacted, “*to give effect to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*”, i.e. CITES, and section 27 of this Act provides that, “*the provisions of this Act or rule made there under shall have effect notwithstanding anything contained in any other law*”.

7. A bird’s eye view of the aforesaid laws highlights the contradictions and inconsistencies in the laws of Balochistan, Sindh, Punjab and the Republic of Pakistan. The treatment meted out to this migratory bird (Houbara Bustard) will depend on where it alights in Pakistan. The global population of this specie has, “*recently been estimated between 78,960 and 97,000*”, as reported by the International Union of Conservation of Nature (“**IUCN**”) in the ‘IUCN Red List of Threatened

Species' (<www.iucnredlist.org>. Downloaded on 18 August 2015). Pakistan is a member of IUCN. In the same document IUCN, under the title 'Threats' to the said species, reports that, "*The principal threat is from hunting (primarily using falconry), largely but exclusively on the species's wintering grounds. Large numbers are also trapped, mainly in Pakistan and Iran, and shipped to Arabia for use in the training of falcons.*" And, "*if hunting pressure is not reduced the species could soon warrant uplisting to a higher threat category.*" However, despite the scientific data showing the vulnerability of the species the Governments of Balochistan, Sindh, Punjab and Pakistan, contrary to their obligations, have taken measures that would hasten the decline of the Houbara Bustard, if not pushing it towards the precipice of extinction.

8. The learned Additional Advocate General Sindh ("AAG") and the learned Additional Attorney General for Pakistan in assailing the judgment of the Sindh High Court, and the learned Additional Advocate General of Balochistan in opposing the petition filed under Article 184 (3) of the Constitution have contended:

- (a) That it is the exclusive prerogative of the provincial government to amend the schedule in the wildlife protection laws and exclude any animal from the list of 'protected animals' and that there is no concept for permanent or absolute ban on hunting of any animal or bird;
- (b) That the permission granted by the Foreign Ministry, Government of Pakistan, falls within the exclusive domain of the Federal Government and is binding on the provinces in terms of Article 149;
- (c) "Allocation of Falconry Hunting grounds is the prerogative of the Ministry of Foreign Affairs, and the Sindh Government being Federation Unit is morally and legally based [*sic*] to oblige the authority [*sic*] of Federal Government";
- (d) "The birds do not stay to benefit the civil society and migrates back by March each year. The rights of Civil Societies including the petitioner are not affected";
- (e) "The dignitaries contribute in development of provinces but licences are not issued in return of any development scheme in the province"; and

(f) “In nature the Falcons are predators of Houbara Bustard”.

On the other hand, Mr. Amir Maroof Akhter has supported the judgment of the Sindh High Court and contended that the objective of the international treaties (CITES and CMS) to which Pakistan is a party obliges the country to comply with its provisions, particularly when the laws of the country specifically recognize these treaties. He further stated that the Houbara Bustard is a vulnerable bird and needs protection, and that the governments can only change the status of a protected specie if unimpeachable scientific data leads to the conclusion that it no longer requires to be protected. He lastly stated that governments and foreign dignitaries too must obey the law, and if they don't then others too would violate it.

9. This is not the first time that an attempt has been made by governments to enable the hunting of Houbara Bustards through one or another means; and on such earlier occasions too their actions were successfully challenged before the High Courts. In the reported case of Society for Conservation and Protection of Environment (SCOPE) Karachi v Federation of Pakistan (1993 MLD 230) a Divisional Bench dilated on the discretion vesting in the government under section 40 of the Sindh Wildlife Protection Ordinance. *“Even this power does not appear to be absolute, either as regards space or content, and is presumably to be exercised justly, fairly, reasonably and lawfully and cannot be invoked in disregard of the commitments, which the State of Pakistan may have entered into at an international level, such as those which ensue upon being a member of the IUCN or a signatory to an international convention”*(at pages 234-5). The Federal Government circular which had directed the Sindh Government to allow dignitaries to hunt Houbara Bustards in Sindh was castigated, thus: *“The impugned licence/circular in this case, therefore, is in clear contravention of the aims, objectives, spirit and even the letter of the Sindh Wildlife Protection Ordinance, 1972”* (page 236). Even though in the said case the impugned circular had not been issued under section 40(1) of the Sindh Wildlife Protection Ordinance, the argument that is now advanced, that the government has absolute and unfettered discretion to deprive a species of its protected status was attended to. *“In the event, the intention behind the issuance of such licence/permission*

was to amend the Second Schedule to the Ordinance, so as to exclude there from all protected animals, something which cannot be achieved through section 40(1) ibid, for the specific purpose of the impugned circular neither the same has succeeded in that direction nor may it do so even if a proper notification had been issued, without also apparently inviting violations of the Constitutional safeguards” (page 236). The matter of international treaties was commented upon in the following terms: “One of the objectives of the State is to enable the people of Pakistan to attain an honourable place in the comity of nations and that the impugned action, let alone being conducive to that end, can only be counter-productive” (page 235).

10. Unfortunately, the governments continued to demonstrate their contempt of the law, and of their international obligations, despite the clear pronouncement of the law by the High Court. The issue of permitting the hunting of Houbara Bustards in Sindh by Arab dignitaries arose again in the reported case Tanvir Arif v Federation of Pakistan (1999 CLC 981) where another Divisional Bench of the High Court of Sindh, held that, the previous judgment in the SCOPE case still holds the field and was binding on all the persons in general and the respondents in particular, which included the Federation of Pakistan and the Government of Sindh; however, *“in spite of the aforesaid clear judgment the Respondents issued the impugned letter dated 11.10.1992 granting permission for hunting of Houbara Bustards for the hunting season 1992 to 1993”* (page 982-3). With regard to whether ‘dignitaries’ can be exempted from the application of the law the High Court observed: that, *“It is needless to emphasize that Pakistan is an Islamic State where all persons are equal in the eyes of law and no person including the Caliph is above the law. It is the duty of every member of a Muslim society to obey all laws and ensure that all laws are implemented fully and without any discrimination. This principle of obedience to law and equality before law was preached, practiced and finally declared by the Holy Prophet (p.b.u.h.) in the Khutba-e-Hajatul Wida. These principles have also been incorporated in the Constitution of the Islamic Republic of Pakistan, 1973 and are binding on every citizen and person resident or present in Pakistan”* (page 983).

11. That the only difference in the present case is that the Government of Sindh attempted to change the status of the Houbara Bustard pursuant to the Notification; however, it did so by invoking the wrong law. The Notification was issued, “*in exercise of the powers conferred under Section 40(1) of the Sindh Wildlife Protection (Amendment) Act 1993*”, which enactment does not even have a section 40. However, even if the Government of Sindh had exercised its powers pursuant to section 40 (1) of the Sindh Wildlife Protection Ordinance, where under it could “*exclude from the Schedules any wild animal*”, then too it could not have changed the status of the Houbara Bustard from being a ‘protected’ bird to one that could be hunted because its numbers have deteriorated further and its status is designated by experts as vulnerable and threatened. The Government can only exercise its powers under section 40 (1) of the Sindh Wildlife Protection Ordinance to advance the objective of the law, which was enacted for the “*preservation, conservation and management of wildlife*”; its decision must be based on sound ecological principles and taken after a proper assessment of the population of the species. And needless to state if a government’s exercise of powers is based on ulterior considerations or taken to exacerbate the threat faced by a specie it can validly be challenged under Article 199 (1) (a) (i) of the Constitution because then the government would not be acting in accordance with the law and it would be in disregard thereof. Significantly, the Notification does not refer to a study or any material that may have established that the Houbara Bustard is no longer vulnerable, nor was any material placed before the High Court or even before this court in this regard. The exercise of power under a law which seeks to preserve and conserve wildlife must be reasonably, fairly and justly exercised for the advancement of the purpose of the law (see Airport Support Services v. Airport Manager, 1998 SCMR 2268). This principle (at the Federal level) has been incorporated into the General Clauses Act of 1897 with the insertion in 1997 of section 24-A reproduced hereunder:

“24A. Exercise of power under enactments.—

(1) Whereby or under any enactment a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.”

12. Pakistan became a party member to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and to the United Nation’s Convention on the Conservation of Migratory Species of Wild Animals (CMS); under both these conventions the Houbara Bustard is protected. The Houbara Bustard is listed under Appendix II of CITES, which records those species which may become threatened with extinction. And under CMS the Houbara Bustard is placed in Appendix II, which lists migratory species having an unfavourable conservation status and require international commitment for their conservation. Pakistan became a signatory to these two conventions 39 and 28 years ago respectively. These conventions are also specifically mentioned in our laws, but the Government of Pakistan and of the provinces obdurately persist in the non-observance thereof. Instead we are told that the foreign dignitaries who hunt the Houbara Bustard bring money and spread their largesse in establishing schools, mosques, dispensaries, et cetera. This contention of the Governments is lamentable. The laws of Pakistan, of the provinces and Pakistan’s international treaty obligations are not saleable commodities, and in contending as much the governments debase, degrade and demean the citizens. If we do not abide by and respect our own laws and sovereignty can we expect foreigners to do so?

13. The contention that the Houbara Bustard is the natural prey of falcons is incorrect since scientific papers examined by us state that falcons are in fact trained to hunt the bird. It is unfortunate that without ascertaining facts such an incorrect statement was made in writing by the Government. The referred to IUCN Red List of Threatened Species (above) discloses that the principal threats to the bird are firstly, “large numbers are also trapped, mainly in Pakistan and Iran, and shipped to Arabia for use in the training of falcons” and, secondly, that the “threat is from hunting (primarily using falconry), largely but not exclusively on the species’s wintering

grounds.” The Government also quite amazingly contended that hunting of the bird does not effect the rights of civil society.

14. The matter was relatively simple, which was to ascertain whether the global population of the bird had increased to such levels that would justify changing its protected status. On the contrary the evidence shows that the global population of the Houbara Bustard is declining, despite the fact that the bird is a migratory bird and has been globally determined to be under threat and vulnerable, the Government elected to obfuscate. Paradoxically each government has given a different status to the bird; one permits its hunting, another permits hunting by dignitaries and another proscribes it.

15. That for the aforesaid reasons there is no merit in the challenge to the judgment of the High Court, which had relied upon the previous judgments on the subject that were holding the field, i.e. the SCOPE and Tanvir Arif cases (above). It is regrettable that the Government of Sindh assailed the same, and that the Government of Pakistan supported such challenge, particularly since the High Court of Sindh since 1992 (when the SCOPE case was decided) had already expounded on the parameters of the Sindh Wildlife Protection Ordinance and the matter of exercise of discretion by the Government there under, and the said legal position was reiterated in the case of Tanvir Arif in 1998.

16. The petition filled under Article 184 (3) of the Constitution has sought to prevent the decimation of the Houbara Bustard and save it from the machinations of the Federal and provincial governments. This is a public interest litigation case; the petition has been filed by a citizen-lawyer and seeks to prevent the governments from violating the laws of Pakistan and its international treaty obligations, which have been incorporated into the laws of Pakistan. The learned AAG and Additional Attorney General, in addition to the aforesaid contentions, have assailed this petition on the ground that the petitioner does not have standing (*locus standi*) and that the petition does not seek, “*the enforcement of any of the Fundamental Rights conferred by*

Chapter 1 of Part II of the Constitution, in terms of clause (3) of Article 184 of the Constitution. This case is in the nature of public interest in respect whereof this Court does not require standing. The other objections could be overcome by the petitioner contending that, since a hunting permit can only be granted provided it is, “*supported with a letter from Ministry of Foreign Affairs*”, which is only issued to foreign dignitaries, the law and or the application thereof is discriminatory in terms of Article 25 of the Constitution. However, the petitioner does not want to hunt these birds, but protect them from hunters; can he then state that any Fundamental Right of his has been violated?

17. That amongst the constitutionally guaranteed Fundamental Rights is the right to “life” (Article 9), “dignity” (Article 14) and the right to “profess” and “practice” ones religion (Article 20). The Constitution of Pakistan starts with the *bismillah* – “*In the name of Allah, the most Beneficent, the most Merciful*”, followed by the Preamble, which opens with the following words:

“Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.”

Illuminating the Constitution the Preamble reminds us that Almighty Allah alone is the Sovereign, and the people of Pakistan are to exercise their authority as His trustees. This mirrors the Quranic concept of humans being vicegerents or stewards (*khalifa fil ard* - *surah al-an'am* 6, verse 165, *surah an-naml* 27, verse 62). Stewards, as opposed to absolute owners, cannot use or exploit natural resources with abandon, nor hunt a species till its status becomes vulnerable or extinct. If any species for want of habitat or as a result of hunting or exploitation is endangered or becomes extinct the *khalifah* violates his/her trust.

18. We alone of all of the Almighty’s creation have been bestowed with the responsibility to maintain balance and not to rupture the order of nature; “Do not waste, verily, He [Allah] does not like those who waste (*al-musrifun*)” (*surah al-anam* 6, verse 141) “And do not do mischief on the earth, after it has been set in order”

(*surah al-araf* 7, verse 56). Actions that destroy, devastate or impair “His Creation” (*surah al-araf* 8, verse 54) are prohibited. If a specie were to be hunted till it becomes extinct or vulnerable it would impair a Muslim’s ability to lead his/her life in accordance with religion and to practice it, thus violating Article 20. It is important to heed our duties as stewards of the earth for the preservation and conservation of natural resources and to take care of Allah’s creatures.

“Have you not seen that Allah is glorified
by all in the heavens and on the earth
such as birds with wings outspread?
Each knows its worship and glorification.”
(*surah an-nur* 24, verse 41)

“There is not a thing but hymneth His praise.”
(*surah al-isra* 17, verse 44)

“So every time we destroy a species, we are destroying a prayerful being. It is like murdering someone while he is praying. It is as abominable as that” (Seyyed Hossein Nasr, *The Spiritual and Religious Dimension of the Environmental Crisis, A Sacred Trust, Ecology and Spiritual Vision*’ published by The Temenos Academy, 2002, page 134).

19. At the heart of the Islamic faith is prayer, and the faithful in every prayer repeatedly praises not just the Lord, but the ‘Lord of the worlds’ (*rabul aalameen*), that is Lord of all creation. But humans alone do not pray / praise: “Do you not see that prostrates before Allah what is in the heavens and on the earth; the sun, the moon, the stars, the mountains, the trees, and the animals and also a large number of human beings, but many who do not and upon them is justified the punishment (*al-azab*)” (*surah al-hajj* 22, verse 18). Almighty Allah wants us to reflect upon His creation, to acquire its knowledge and understanding. “Those who remember Allah standing, sitting and lying down on their sides, and think deeply about the creation of the heavens and the earth, (saying): ‘Our Lord! You have not created (all) this without purpose, glory to You!’” (*surah al-Imran* 3, verse 191).

20. In neglecting the environmental teachings of Islam we ignore our duty as His stewards (*khalifah*) towards His creation. The Quranic verses describing nature and natural phenomena number about 750 which is approximately one eighth of the Holy Quran. As Allah's *khalifah* on earth we have a duty to look after the earth and all living things within it. "It is an enormous responsibility since man must eventually give an account of his stewardship of the resources of the planet. It is obviously essential that there should be great emphasis on the scientific study of every detail of natural systems and of the effects of human technology upon them. ... It is equally important for scientists to make proposals for ways in which the resources of the earth, which have been given to us by Allah, should be used with minimum disturbance to the environment and maximum concern for the maintenance of harmony and equilibrium" (Science within Islam; learning how to care for our world by Yunus Negus published in Islam and Ecology, 1992).

21. The fundamental right to life and to live it with dignity (Articles 9 and 14 of the Constitution) is one lived in a world that has an abundance of all species not only for the duration of our lives but available for our progeny too. It has now been scientifically established that if the earth becomes bereft of birds, animals, insects, trees, plants, clean rivers, unpolluted air, soil it will be the precursor of our destruction / extinction. The United Nations World Commission on Environment and Development, chaired by the former Norwegian Prime Minister Gro Harlem Brundtland, published the report "Our Common Future" in 1987 (also known as the 'Brundtland Report') which was the forerunner of innumerable reports and treaties, including CITES and CMS. The issues that were pointed out in the Report over a quarter of a century ago have with the efflux of time attained greater criticality. Under the chapter "Species and Ecosystems: Resources for Development" the Report stated:

"52. The planet's species are under stress. There is a growing scientific consensus that species are disappearing at rates never before witnessed on the planet, although there is also controversy over those rates and the risks they entail. Yet there is still time to halt this process.

53. The diversity of species is necessary for the normal functioning of ecosystems and the biosphere as a whole. The genetic material in wild species contributes billions of dollars yearly to the world economy in the form of improved crop species, new drugs and medicines, and raw materials

for industry. But utility aside, there are also moral, ethical, cultural, aesthetic, and purely scientific reasons for conserving wild beings.

54. A first priority is to establish the problem of disappearing species and threatened ecosystems on political agendas as a major economic and resource issue.

55. Governments can stem the destruction of tropical forests and other reservoirs of biological diversity while developing them economically. Reforming forest revenue systems and concession terms could raise billions of dollars of additional revenues, promote more efficient, long-term forest resource use, and curtail deforestation.

56. The network of protected areas that the world will need in the future must include much larger areas brought under some degree of protection. Therefore, the cost of conservation will rise - directly and in terms of opportunities for development foregone. But over the long term the opportunities for development will be enhanced. International development agencies should therefore give comprehensive and systematic attention to the problems and opportunities of species conservation.

57. Governments should investigate the prospect of agreeing to a 'Species Convention', similar in spirit and scope to other international conventions reflecting principles of 'universal resources'. They should also consider international financial arrangements to support the implementation of such a convention.”

22. Scientific research too has by now incontrovertibly established that nothing in nature was created without wisdom, value and purpose. Our Creator says, “We have not created the heavens and the earth and all that is between them for mere play. We have created them but for truth” (*surah ad-dukhan* 44, verses 38-39). In conclusion it would be apt to quote Shah Abdul Latif, our *sufi* poet:

“The birds in flocks fly
Comradeship they do not decry
Behold, among the birds there is more loyalty
Than among us, who call ourselves humanity.”

(“*Wagar keo watan pirtj na channan paanmein,
Passoo pakhay run maruhaan meath ghannu.*”
From *Sur Dharou, Risalo*)

23. Therefore, for the aforesaid reasons, Civil Petition for Leave to Appeal No.145 of 2015, filed by the Province of Sindh, is dismissed and Constitutional Petition No.38 of 2015, filed by citizen-lawyer Mr. Amir Maroof Akhtar is allowed in the following terms:

- (i) The Notification is declared to be ultra vires the Sindh Wildlife Protection Ordinance and struck down;
- (ii) Neither the Federation nor a Province can grant license/permit to hunt the Houbara Bustard;

- (iii) The Federal Government is directed to ensure that its obligations under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Convention on Migratory Species of Wild Animals (CMS), which have been recognized by Pakistani law, are fulfilled and issue requisite directions to the Provinces in this regard in terms of Article 149 (1) of the Constitution; and
- (iv) The Provinces to amend their respective wildlife laws to make them compliant with CITES and CMS and not to permit the hunting of any species which is either threatened with extinction or categorized as vulnerable.

Civil Petition for Leave to Appeal No.253 of 2015 assails the judgment dated 27th November 2014 of the Balochistan High Court in Constitution Petition No.17 of 2011, however, the petitioner was not a party in the petition before the High Court nor was a necessary or proper party thereto and is also not personally affected by the said judgment therefore CPLA No.253/2015 is dismissed.

CMA No.1435 of 2015 seeks exemption from filing the certified copy of the judgment dated 27th November 2014 of the Balochistan High Court, however, since the CPLA against the said impugned judgment has already been dismissed this CMA has become infructuous and is dismissed.

The above are the reasons for our short order dated 19th August 2015.

Chief Justice

Judge

Judge

Islamabad, the
_____ September 2015
(Zulfiqar)

APPROVED FOR REPORTING