

IN THE HONOURABLE LAHORE HIGH COURT, LAHORE.

W.P NO. 30173/2021

**Sanita Gulzar**

-VS.-

**Province of Punjab etc.**

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REPORT OF THE ‘*AMICI CURIAE*’ APPOINTED VIDE ORDER DATED 06 May 2021

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Respectfully *Sheweth*:

**Section I: Introduction & Preliminary Matters**

1. That the instant report is being submitted in pursuance of the order of this Honourable Court dated 06 May 2021 (the “**Order**”), whereby the undersigned were appointed as Amici Curiae in the above-titled case. In compliance of the Order, the Honourable Court has directed the Amici Curiae to assist the Court on, *inter alia*, the vires of section 12 of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 (hereinafter referred to as the “**1974 Act**”).

*Structure of the Brief*

2. That for the assistance of this Honourable Court, the instant brief is being submitted jointly by the amici curiae. The structure of the brief is as follows:
  - a. Section I (this section) covers introductory and preliminary matters including the main issues covered in the brief and a summary of conclusions.
  - b. Section II provides a brief explanation and reference to the prevalence of mistreatment of wild animals all over the country, and specifically in the province of Punjab.
  - c. Section III introduces the current legal framework governing the import and possession of wild animals
  - d. Section IV covers the state of the law in Pakistan related to the issue of cruelty to animals, especially regarding their protection, integrity, diversity, well-being and unjust suffering due to captivity
  - e. Section V discusses the constitutional and legal protections for animals in other jurisdictions outside of Pakistan including various rights of animals recognized judicially in other countries.
  - f. Section VI introduces the rules that have been framed in the province of Punjab under the 1974 Act and argues that they are insufficient to safeguard the rights and interests discussed in the preceding sections and to fulfill the mandate of the 1974 Act.
  - g. Section VII discusses the power of this Honourable Court to intervene in such matters in the jurisdiction enjoyed by it under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”)

- h. Section VIII proposes the various orders that can be passed in the exercise of its jurisdiction in the present proceedings, should the Honourable Court consider it appropriate to pass such orders in the present matter.
- i. Section IX concludes and brief and provides a brief overview of the submissions.

Questions highlighted by the Court

- 3. Throughout the discussion in the instant brief, the amici curiae seek to shed light on the four main issues highlighted by this Honourable Court in the Order i.e.:
  - a. Whether the issue of cruelty to animals regarding their protection, integrity, diversity, well-being and unjust suffering due to captivity falls within the scope of the Prevention of Cruelty to Animals Act, 1890, the 1974 Act or any other laws or the Constitution? (Sections IV to V)
  - b. Whether this petition is maintainable in as far as whether the jurisdiction of this court is limited to citizens and persons or if the Court can address the protection of animals which are rights bearing beings? (Section VII)
  - c. Whether there are any rules framed under s.46 of the 1974 Act and whether those rules fulfill the mandate of the 1974 Act? (Section VI)
  - d. Whether the Honourable Court can direct the Respondents to issue rules / regulations on the subject? (Section VIII)

Summary of Conclusions

- 4. It is respectfully submitted on behalf of the amici curiae that:
  - a. The 1890 Act and the 1974 Act recognize that animals are sentient beings capable of feeling pain and suffering and aim for the protection of wild animals. Although the 1974 Act does not adequately and explicitly address the question of cruelty to wild animals, the protection of such animals does fall within the object of the 1974 Act and the Respondents have failed to fulfill their responsibility under the said Act.
  - b. The petition pleads a bona fide public interest on behalf of aggrieved parties that are themselves unable to approach this Honourable Court. Therefore, subject to being satisfied that the interest being pursued before this Honourable Court is bona fide and free of vested interest, the instant petition may be considered maintainable.
  - c. Although there are several rules framed under section 46 of the 1974 Act, they are inadequate and do not fulfill the mandate of the 1974 Act
  - d. This Honourable Court has the power to direct the Respondents to amend the existing rules, issue new ones, as well as to initiate legislative measures to afford meaningful protection to the rights of wild animals.

**Section II: State of Animal Mistreatment in Pakistan, especially the Province of Punjab**

- 5. The issues raised in the present petition are extremely important, yet they are often neglected by the state authorities and functionaries throughout Pakistan. Even a cursory review of the news around the country is sufficient to establish the appalling manner in which wild animals are being treated in the country and within the province of Punjab.
- 6. Wild animals are routinely being kept by private persons in unfit conditions where they are subjected to cruelty such as being beaten, tortured, mistreated, and starved. Such treatment

causes adverse effects on the psychological and physical well-being of the animals involved.

*(News report dated 06 August 2020 is appended herewith as **Annexure A**)*

7. Furthermore, wild animals including lions, giraffes, peacocks and birds are often deprived of their natural habitat and are kept in confined spaces unsuited to their physical and ecological characteristics. They are often used as props for the purpose of entertainment in TV shows or for weddings / political rallies / celebratory events, and on certain occasions it is seen that the animals are sedated, drugged, mishandled, food deprived, and severely ill-treated. It has become a growing trend to keep wild animals in captivity and to treat them similarly to domestic animals. Recently, the Pakistan Electronic Media Regulatory Authority (PEMRA) also passed an order dated 29<sup>th</sup> April 2021, censuring the treatment of rabbits as props on national television.

*(The order of PEMRA dated 29<sup>th</sup> April 2021 is appended herewith as **Annexure B**)*

8. That there are videos circulating where people are seen beating and torturing the animals. These include hitting a cub, using cubs in wedding photography, and using fire inside cages in an attempt to move the lions.

*(News reports dated 15 March 2021 and 4 May 2021 are appended herewith as **Annexures C and C/1** respectively)*

9. In May 2021, a “pet” lion kept by a member of the public attacked and injured a ten year old boy in Gulberg, Karachi. There have been other incidents where lions and tigers have been paraded in large political rallies or have been spotted in residential and commercial areas. Being dangerous wild animals, keeping these animals captive in residential houses and backyards can be extremely dangerous for the safety of unsuspecting members of the general public.

*(News reports dated 21 May 2021 and 13 December 2020 are appended herewith as **Annexures D and D/1** respectively)*

10. Unfortunately, in terms of their treatment, wild animals kept in zoos across the country do not fare much better than wild animals kept in private possession. Animals in zoos are often kept in cages or enclosures which do not adequately meet their physical or psychological needs. Resultantly, animals across Pakistan routinely die premature deaths in zoos due to insufficient care, maltreatment or neglect. Specific wild animals, such as bears, are also regularly forced to participate in illegal “bear baiting” activities, where large crowds gather to watch bears battle groups of trained dogs. Despite being thoroughly documented in Pakistan, this illegal bloodsport continues unabated year after year as a recreational activity.

*(News reports dated 9 June 2021, 4 May 2021 and World Animal Protection’s article titled “Ending Bear Baiting” are appended herewith as **Annexures E, E/1 and E/2** respectively)*

11. That the above are neither an isolated list of incidents nor an exhaustive one. In fact, they simply show a persistent and routine trend of significant mistreatment of wild animals prevalent in our society and the question before this Honourable Court is whether such defenseless beings have any remedy against such treatment being meted out to them under the legal dispensation currently in vogue in the province of Punjab.

### **Section III: The Legal Framework Governing Possession / Import of Wild Animals?**

12. That Pakistan is a signatory and has ratified the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) 1975 which regulates international trade in wild animals and plants to safeguard certain species from overexploitation. CITES lists different animal species in three Appendices. Appendix I includes species threatened with extinction trade in which is permitted only in exceptional circumstances. Appendix II

includes species trade in which must be controlled in order to avoid utilization incompatible with their survival. Lions i.e. *panthera leo* are listed in both Appendix I (Indian population) and Appendix II (other populations) of CITES.

*(CITES Appendix I and II are appended herewith as Annexure F)*

13. In order to implement CITES, the federal government has enacted the Pakistan Trade Control of Wild Flora and Fauna Act, 2012 (the “**2012 Act**”). Section 6 of the 2012 Act states that the import into Pakistan of any specimen included in any CITES Appendix shall require *inter alia* an import permit or no objection certificate issued by the Management Authority (Respondent No. 4 in this case).

*(The 2012 Act is appended herewith as Annexure G)*

14. Therefore, the 2012 Act governs the import, export, and re-export of the wild animals in Pakistan.
15. However, once a wild animal is in Pakistan the respective provincial wildlife laws applicable in the province concerned would govern their treatment within the province. In Punjab, the applicable statute is the 1974 Act. Section 12 of the 1974 Act provides that no person can be in possession of a wild animal without being issued a certificate of lawful possession granted in this behalf by an authorised officer.
16. In summary, a person desirous of importing and keeping a wild animal in Punjab would require, *inter alia*, an import permit / NOC from the Federal Government as well as a certificate of lawful possession from the relevant authority in the province.

#### **Section IV: What laws offer rights / protections to animals?**

17. Once a wild animal is in Pakistan, or if it is native to the country, or is bred in Pakistan (despite not necessarily being native to the country), whether it has protection will depend on the applicable wildlife statute in the territory in which the animal is present and whether it is listed in the relevant schedules of the applicable wildlife legislation. Therefore, it is important to review the various statutes and legislation that govern the treatment and prevention of cruelty to (wild) animals. These can primarily be grouped into four categories:
  - a. Specific legislation related to the protection of animals.
  - b. The general criminal laws applicable in the country;
  - c. Constitutional protections;
  - d. International obligations

##### *Specific legislation related to the protection of animals*

18. The main law related to the prevention of cruelty towards animals is the Prevention of Cruelty to Animals Act, 1890 (the “**1890 Act**”). Section 5 of the 1890 Act recognizes an animal’s natural right not to be treated in a manner that subjects it to unnecessary pain and suffering and places a prohibition on killing animals in an unnecessarily cruel manner. Section 3(e) of the 1890 Act also prohibits abandoning an animal in circumstances which will render it likely that the animal will suffer pain by reason of thirst or starvation. It is worth noting that although the 1890 Act applies only to “domestic” or “captured” animals, it recognizes the fact that animals as a species are sentient beings that are capable of feeling pain and suffering. Thus, it discourages behaviour that involves inflicting unnecessary pain or suffering on an animal.

*(The 1890 Act is appended herewith as Annexure H)*

19. Since wildlife is a provincial subject under the Constitution, the main laws that governs the treatment of wildlife are made by the various provinces. The wildlife laws of Sindh, Balochistan and Khyber Pakhtunkhwa contain anti-cruelty provisions in the relevant legislation. In Sindh, the relevant law is the Sindh Wildlife Protection, Preservation, Conservation and Management Act 2020 (the “**Sindh Law**”). Similarly, in Khyber Pakhtunkhwa the relevant law is the Khyber Pakhtunkhwa Wildlife and Biodiversity (Protection, Preservation, Conservation and Management) Act, 2015 (the “**KP Law**”). While in Balochistan the statute governing these matters is the Balochistan (Wildlife Protection, Preservation, Conservation and Management) Act 2014 (the “**Balochistan Law**”).

*(Extracts of the relevant provisions of the Provincial Wildlife Laws of Sindh, Balochistan and Khyber Pakhtunkhwa are appended herewith as **Annexures I, I/1 and I/2** respectively)*

20. It can be seen that each of the provinces has updated its laws related to the prevention of cruelty and treatment of wild animals. These laws either extend the application of the 1890 Act to wildlife<sup>1</sup>, or contain provisions which explicitly prohibit keeping wild animals for fighting or baiting<sup>2</sup>; keeping wild animals in conditions which cause them discomfort<sup>3</sup>; starving wild animals or providing them less food and water than they require<sup>4</sup>; injuring wild animals due to negligence or other reasons<sup>5</sup> or sedating wild animals for longer periods than required<sup>6</sup>.
21. Unfortunately, the law applicable in Punjab, i.e. the 1974 Act has still not been updated and does not contain express analogous anti-cruelty provisions as those found in other provincial wildlife laws.
22. However, despite that fact, it is clear that one of the main purposes of the 1974 Act is to protect wild animals. The preamble of the 1974 Act clearly states that “*it is expedient to provide for the protection, preservation, conservation and management of wildlife in the Province of Punjab*”. Furthermore, section 9 of the 1974 Act also contains various safeguards against hunting wild game animals in cruel or painful ways, such as prohibition against using bombs or projectiles to hunt animals, restriction against poisoning animals, stampeding upon or driving over animals, and prohibition on hunting animals near watering holes or salt licks. It is therefore clear that the 1974 Act also envisions provision of some form of protection that safeguards the welfare of wild animals.

*(The 1974 Act is appended herewith as **Annexure J**)*

23. Unfortunately, sections 16A-20 of the 1974 Act envision various settings in which wild animals may be kept captive (wildlife breeding farms, wildlife park, zoological garden, zoo, safari park, private game reserve, private safari park, private wildlife park, private wildlife breeding farm and circus). However, importantly, nowhere does the 1974 Act allow for a situation where these wild animals are kept captive as domestic household pets, or that they can be kept otherwise captive in conditions that constitute suffering, pain, and cruel treatment.
24. There is no authority under the 1974 Act or any other law for the time being in force which allows private citizens to keep wild animals as pets, or that allows any of the Respondents to issue licenses allowing private citizens to keep wild animals in this manner or in residential areas as household pets. Therefore, it is our view, for the consideration of this Honourable Court, that any licenses or permissions issued by the Respondents which allow captivity of wild animals for the purpose of keeping them as pets is therefore *ultra vires* the 1974 Act, patently illegal, and without jurisdiction.
25. Apart from the provincial laws mentioned above, the federal legislature has also enacted the 2012 Act in order to implement the CITES treaty obligations. Underlying this law is

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<sup>1</sup> S.47(2) of the Sindh Law; S.13(2) of the Balochistan Law and S.16 of the KP Law.

<sup>2</sup> S.47(1)(a) of the Sindh Law and S.13(1)(a) of the Balochistan Law.

<sup>3</sup> S.47(1)(b) of the Sindh Law and Section 13(1)(b) of the Balochistan Law.

<sup>4</sup> S.13(1)(c) of the Balochistan Law.

<sup>5</sup> S.13(1)(d) of the Balochistan Law.

<sup>6</sup> S.13(1)(e) of the Balochistan Law.

also a premise that the animals in question cannot be ill treated. In fact section 6(2)(b) of the 2012 Act clearly states that one of the conditions for the grant of an import permit is that the Scientific Authority (which in Pakistan is also Respondent No. 4) is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it. Therefore, if the animal is being subjected to pain and suffering that clearly violates the condition under section 6 of the 2012 Act. The 2012 Act envisions minimum welfare standards that the Respondent No. 4 must ensure before it allows import of wild animals listed in a CITES appendix (such as lions) into Pakistan.

### General Criminal Laws in the Country

26. The Pakistan Penal Code 1860 (the “PPC”) also contains various provisions designed to prevent abuse against animals. Section 377 of the PPC makes it an offence to have carnal intercourse against the order of nature with an animal. Similarly, sections 428 and 429 of the PPC prohibit committing mischief by killing, poisoning, maiming or rendering useless animals above a certain value. Therefore, the PPC also criminalizes certain conduct that causes harms to animals, including wild animals.

*(Relevant excerpts from the PPC are appended herewith as **Annexure K**)*

### The Constitution

27. It is submitted that the Constitution of Pakistan also envisions protection of animals (including wild animals) as sentient beings that can experience pain, suffering, and cruelty.
28. Article 9 of the Constitution guarantees the fundamental right to life. It is settled jurisprudence of the superior courts of this country since *Shehla Zia v. WAPDA*<sup>7</sup> that the right to life must be construed broadly. In *Kamil Khan Mumtaz v. Province of Punjab*<sup>8</sup> this Honourable Court noted the broad meaning given by the superior judiciary to the right to life guaranteed by Article 9 of the Constitution in the following terms:
22. “The expression ‘life’ has, likewise, received an expansive meaning at the hands of the superior courts in Pakistan and includes the right to protection against adverse effects of electro -magnetic fields (*Shehla Zia case PLD 1994 SC 693*); the right to pure and unpolluted water (*Salt Mines Union case - 1994 SCMR 2061*); the right of access to justice (*Azizullah Memon case PLD 1993 SC 341*; *Al-Jehad Trust case PLD 1997 SC 84*; and *Khan Asfandyar Wali v. Federation PLD 2001 SC 607, 924*).”
29. It is submitted that the right to life includes the right to a natural environment, including the right to ecological balance (Reliance in this regard may be placed on the Indian Supreme Court’s decision in *Virender Gaur v. State of Haryana*<sup>9</sup>. Wild animals play an important role in the ecosystem and are not meant to be held captive or to be forcibly domesticated and inserted into human communities as pets and companion animals. Besides inflicting stress and unnecessary pain on these wild animals, the act of keeping them captive as pets also disrupts the natural environment and ecosystem which in turn directly affects the right to life guaranteed under Article 9 of the Constitution.
30. Article 14 of the Constitution guarantees the inviolability of the dignity of man without any qualification or caveat. To create a society which permits and facilitates (through a licensing regime), human beings to inflict pain and suffering on voiceless creatures is in direct contradiction of the guarantee of a society where the dignity of human beings is considered inviolable. Not only is it beneath the dignity of human beings to conduct and permit such treatment, it is also pointed out that if a society is de-sensitized to the pain, suffering, cruelty being withstood by a sentient being, it will also be de-sensitized to such pain and suffering suffered by human beings.

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<sup>7</sup> PLD 1994 SC 693.

<sup>8</sup> PLD 2016 Lahore 699.

<sup>9</sup> (1995)2 SCC 577).

31. There is copious research indicating that there is a direct link between acts of cruelty to animals and violence towards humans. This includes child abuse, domestic violence, elder abuse and other violent behaviour. Children who witness animal abuse are at a greater risk of becoming abusers themselves. A 2001-2004 study by the Chicago Police Department "revealed a startling propensity for offenders charged with crimes against animals to commit other violent offenses toward human victims." Of those arrested for animal crimes, 65 percent had been arrested for battery against another person.

*(An extract from the Humane Society of the United States website titled "Animal Cruelty and Violence FAQ", an article titled "The Link Among Animal Abuse, Child Abuse, and Domestic Violence" and an article titled "The Link: Cruelty to Animals and Violence Towards People" are appended herewith as Annexures L, L/1 and L/2 respectively).*

32. Therefore, the link between protecting animal rights and human rights is not only an abstract intellectual idea but is also substantiated by research that shows a correlation between acts of abuse of animal rights and a tendency to disregard the sanctity of the human body as well.
33. The state does not protect fundamental rights merely by prosecuting incidents where such rights are violated. In fact, it is the obligation of the state to put in place a legal framework that encourages and ensures behaviour by individuals that is respectful of fundamental rights. Therefore, by failing to protect animals and keeping in place a legal framework where authorities turn a blind eye to animal abuse and cruelty, the state is indirectly encouraging the creation of a society that systemically undermines fundamental constitutional rights. The general population is desensitized to animal cruelty and abuse, which then creates lack of regard for (and may even actively promote violation of) human rights such as the right to dignity and right to life. A society which is predisposed to violence against its weaker members such as nonhuman animals is likely to be more accepting of violence against human beings as well.
34. Furthermore, the keeping animals in artificial conditions away from their natural habitat and mistreating them during captivity violates the inherent dignity an animal has by virtue of it being a living, sentient being. Besides the fact that the removal of wild animals from their natural habitat creates an imbalance of nature, abusing a defenceless animal in captivity violates both the concept of human dignity as enshrined in Article 14 of the Constitution, as well as offends the animal's inherent right to dignity which is recognized by the 1890 Act.
35. In a recent judgment, *Islamabad Wildlife Management Board through Chairman versus Metropolitan Corporation Islamabad through Mayor and 4 others*<sup>10</sup>, the Islamabad High Court recognized the concept of natural rights of wild animals as being guaranteed by the Constitution. The Court held that Article 9 which relates to the right to life when read with the right to dignity as enshrined in Article 14 of the Constitution, establishes that animals have rights which shall not be infringed. In a separate judgment on the same matter<sup>11</sup> the Honourable Islamabad High Court held that animals have inherent rights under Article 9 of the Constitution and that humans have a fiduciary duty to guard, protect, and cater to animals' behavioural, social, and physiological needs so as to save their own species on this planet.
36. Article 31 of the Constitution encourages state functionaries to implement the fundamental principles and basic concepts of Islam. Furthermore, Article 227 states that no law shall be enacted which is repugnant to the injunctions of Islam. The infringement of the rights of wild animals by treating them cruelly, beating, torturing, mistreating, starving them, and unnaturally keeping wild animals in possession/captivity with sanction of the state is against the principles of policy enshrined in the Constitution. Treating animals with cruelty and disrespect is against Islamic principles and hence against the spirit of the Constitution.

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<sup>10</sup> PLD 2021 Islamabad 6

<sup>11</sup> 2021 CLC 262

Islamic Commands regarding animals and their rights

37. Islam enjoins kindness to animals and prohibits inflicting wanton cruelty or suffering on nonhuman animals. The Holy Quran contains many examples and directives about how Muslims should treat animal:

*"There is not an animal that lives on the earth, nor a being that flies on its wings, but they form communities like you. Nothing have we omitted from the Book, and they all shall be gathered to their Lord in the end" (Quran 6:38)"*.

38. The Holy Prophet Muhammad (Peace Be Upon Him) also exhorted upon Muslims to show kindness and compassion towards animals and birds, and repeatedly forbade cruelty towards animals:
- a. Jabir reported that Allah's Messenger (may peace be upon him) forbade (the animals to be beaten) on the face or cauterisation on the face.<sup>12</sup>
  - b. Sa'id b. Jubair reported that Ibn 'Umar happened to pass by some young men of the Quraish who had tied a bird (and this made it a target) at which they had been shooting arrows Every arrow that they missed came into the possession of the owner of the bird. So no sooner did they see Ibn 'Umar they went away. Thereupon Ibn 'Umar said: Who has done this? Allah has cursed him who does this. Verily Allah's Messenger (may peace be upon him) invoked curse upon one who made a live thing the target (of one's marksmanship).<sup>13</sup>
  - c. Jabir b. 'Abdullah reported that Allah's Messenger (may peace be upon him) forbade that any beast should be killed after it has been tied.<sup>14</sup>
  - d. Ibn 'Umar reported Allah's Messenger (may peace be upon him) as saying: A woman was tormented because of a cat which she had tied and thus allowed it neither to eat or drink nor set it free so that it might eat the insects of the earth.<sup>15</sup>
39. That it is most humbly submitted before this Honourable Court, that keeping in view that the wild animals (under adjudication in the present petition) are sentient beings and are created by the Creator carrying emotions and feelings similar to human beings, causing these beings unnecessary pain and suffering is in violation of their statutorily guaranteed rights and should be considered an offence of a serious nature. These rights can only be protected if these wild animals are recognized as sentient beings and are not subjected to pain and suffering due to captivity unless it is absolutely necessary and is in the interest of the animal or some other compelling or unavoidable interest.

International Obligations

40. Pakistan is a member of the World Organisation of Animal Health, also called the OIE — Office International des Epizooties, which is an intergovernmental organisation responsible for improving animal health worldwide. In May 2017, all OIE Member countries adopted the first Global Animal Welfare Strategy. Member states are guided by the five basic freedoms for animals i.e.:
- a. Freedom from hunger, thirst and malnutrition;
  - b. Freedom from fear and distress;
  - c. Freedom from physical and thermal discomfort;
  - d. Freedom from pain, injury, and disease; and
  - e. Freedom to express normal patterns of behaviour relevant to the animal's own kind.

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<sup>12</sup> Sahih Muslim Book 024, Hadith Number 5281.

<sup>13</sup> Sahih Muslim Book 021, Hadith Number 4816.

<sup>14</sup> Sahih Muslim, Book 21, Chapter 13, Number 4817

<sup>15</sup> Sahih Muslim Book 032, Hadith Number 6346.

41. Criteria for animal welfare are also laid down, including sufficient diet, water, comfort, space, hygiene, medical treatment, painless surgical procedures, and mental and emotional security

*(OIE's Global Animal Welfare Strategy and Introduction to Recommendations for Animal Welfare are appended herewith as Annexures M and M/1 respectively)*

42. Unfortunately, Pakistan currently ranks "E" (on a scale of "A" to "G") on the Animal Protection Index, which is an index produced by an international not-for-profit "World Animal Protection" that ranks countries around the globe on their legislation and policy commitments to protecting animals. In 2020, World Animal Protection issued the following recommendations to Pakistan with respect to its treatment of captive wild animals:

*"The Government of Pakistan is strongly encouraged to allocate human and financial resources to create an inspection unit in charge of verifying that animal welfare standards are implemented and enforced for animals living in captive settings. Facilities where animals are kept captive should be regularly inspected, and the results of such inspections should be made public.*

*The Government of Pakistan is encouraged to develop a Positive List of species, specifying which animals can be kept as companion animals, based on clear criteria including animal welfare and other relevant concerns."*

*(The "Pakistan" page from the Animal Protection Index is appended herewith as Annexure N)*

43. It is clear that Pakistan's legal system recognizes the capacity of animals as sentient beings that can feel pain, suffering, happiness, and experience cruelty. Several statutes confer rights on animals, and therefore animals are rights bearing creatures in the legal system. However, the 1974 Act does not make specific provision relating to the cruel treatment and freedom from pain and suffering of wild animals. Yet, even so, one of its core objectives is clearly to "protect" such animals and protection would entail the protection of such animals from unnecessary pain and suffering. In addition the Pakistani constitution also mandates that adequate protection from unnecessary pain and suffering be guaranteed to animals under articles 9 (life, including environment and ecological balance), 14 (dignity and a society that is respectful of dignity), 31 and 227.

## **Section V: Constitutional and Legal Protection of Animals in Other Jurisdictions**

44. That it is pertinent to note that other jurisdictions have stressed on animal welfare both within their constitutional schemes as well as by enacting laws and guidelines which strictly prohibit all forms of animal cruelty.

### Constitutions from Other Jurisdictions and Animal Welfare

45. Internationally, there are several constitutions of other countries that explicitly recognize the rights of animals within their jurisdictions. For the sake of brevity, those provisions are not discussed in detail or reproduced below, but they are annexed with the instant brief. However, a brief overview of these other Constitutions is as follows:
- a. Article 51(A)(g) of the Constitution of India places a duty on all citizens to have compassion for all living creatures.
  - b. Article 45 of the Egyptian Constitution imposes upon the state the commitment to prevent cruelty to animals.
  - c. Article 80 of the Constitution of Switzerland states that the Confederation shall legislate on the protection of animals and then details the areas in which such legislation shall be promulgated including the keeping and care of animals.

- d. Article 20a of the German Constitution enjoins that the state shall protect the natural foundations of life and animals by legislation.

*(Extracts from various constitutions' animal protection provisions are appended herewith as **Annexure O**)*

Statutory Protections in Other Jurisdictions

46. Various jurisdictions around the world have also enacted comprehensive animal protection and anti-cruelty statutes which safeguard the basic natural rights of animals. For instance, the UK Animal Welfare Act 2006 contains detailed provisions against causing unnecessary suffering to animals. Most recently in May 2021, the UK introduced a series of reforms relating to animal welfare including an Animal Welfare (Sentience) Bill which formally recognized animals as sentient beings and ensured that animal sentience is taken into account when developing policy across Government through the creation of an Animal Sentience Committee which will be made up of animal experts across the field.

*(A copy of the UK Animal Welfare Act 2006 is appended herewith as **Annexure P** and a copy of the UK Animal Welfare (Sentience) Bill is appended herewith as **Annexure P/1**)*

47. In India, the Prevention of Cruelty to Animals Act 1960 contains extensive provisions prohibiting cruel treatment towards and infliction of unnecessary pain on animals, including wild animals.

*(A copy of the Prevention of Cruelty to Animals Act 1960 is appended herewith as **Annexure Q**)*

48. In the United States of America, the legislation governing captive wild animals used for exhibitions is the Animal Welfare Act (AWA). The AWA gives authority to the Secretary of Agriculture to “promulgate standards to govern the humane handling, care, treatment, and transportation of animals [that fall within the scope of the Act].” These standards include “minimum requirements for handling, housing, feeding, watering, sanitation, shelter from extremes of weather and temperatures, adequate veterinary care,”<sup>16</sup> and “for a physical environment adequate to promote the psychological well-being of primates.”<sup>17</sup>

49. The relevant department in the US has, under the AWA, promulgated species-specific animal welfare requirements applicable to licensees. These requirements include providing potable water daily, keeping enclosures reasonably free of waste and regularly sanitized, removing feces and food waste daily, assuring appropriate social grouping. These standards require that food be “wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health.”<sup>18</sup> It also requires that animals be housed with compatible animals that do not negatively impact their health or discomfort.

50. Furthermore, the AWA singles out nonhuman primates and requires that licensees provide for requirements regarding their psychological well-being. Specifically, it requires that exhibitors develop, document, and follow an “appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates.” The plan must be in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian.<sup>19</sup>

*(Article titled “A detailed discussion of Welfare Standards for Animals Used in Zoos and Exhibitions” and the relevant excerpts from the Animal Welfare Act are appended herewith as **Annexure R** and **Annexure R/1** respectively).*

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<sup>16</sup> 7 USC §2143(a)(2)(A)

<sup>17</sup> 7 USC §2143(a)(2)(B)

<sup>18</sup> 9 C.F.R. § 3.129(a)

<sup>19</sup> 9 C.F.R. § 3.81

### International Case Law on Animal Welfare

51. Courts in various jurisdictions across the world have also recognized animal sentience and in some cases even accorded the status of legal person to animals. For the sake of brevity, these cases are not being discussed in detail below, but a summary is provided with the detailed judgment (where available) annexed herewith. Some notable examples of such cases are detailed below:
- a. Sandra the Orangutan in Argentina<sup>20</sup> – the Court declared Sandra a legal person with basic rights including life, freedom and the premise of no physical or psychological harm.
  - b. Cecilia the Chimpanzee in Argentina<sup>21</sup> – the Court declared that great apes are nonhuman legal persons, accepted the habeus corpus action in favour of Cecilia and ordered Cecilia relocated to a sanctuary in Brazil.
  - c. Chucho the bear in Colombia<sup>22</sup> – While the Court denied Chucho’s habeus corpus action, an extensive dissenting judgment in the case stated that Chucho is a right bearing entity who holds the right to freedom and hence the habeus corpus should have been allowed.
  - d. Tommy and Kiko the chimpanzees<sup>23</sup> – The New York Court denied Tommy and Kiko’s habeus corpus petition but J. Fahey in his concurring note highlighted that while chimpanzees may not have the same rights and duties as human beings, they do have the right to liberty and protection against arbitrary cruelties and detentions.
  - e. Karnail Singh vs. State of Haryana<sup>24</sup>: The Indian High Court of Punjab & Haryana declared the entire animal kingdom including avian and aquatic as legal entities having a distinct persona with corresponding rights, duties, and liabilities of a living person. The Court further declared that all citizens throughout the state of Haryana are persons in loco parentis as the human face for the welfare / protection of animals.
  - f. Animal Welfare Board v. Nagaraja<sup>25</sup>: The Indian Supreme Court declared that rights granted to bulls under Articles 51A(g) and (h) of the Constitution cannot be taken away or curtailed, except under the relevant provisions of the Prevention of Cruelty to Animals Act. The Court further declared that the five freedoms referred in paragraph 40 above be read into sections 3 and 11 of the PCA Act.

### Courses on Animal Law and Animal Welfare

52. Apart from legislative instruments and case law, law schools and universities around the world have incorporated animal law and animal welfare courses into their curricula. In the United States for example, more than 150 ABA accredited schools offer courses in animal law including renowned law schools such as NYU, Columbia, Cornell and Pace University. Furthermore, law schools such as Harvard, Yale, and Lewis & Clark Law School have created robust animal law programs that offer advanced electives, clinics, and other opportunities for students to learn about the relationship between animals and the law. In Canada, 18 of the country’s 24 law schools have recently offered animal law courses. In 2019, the NALSAR University of Law in Hyderabad in India officially launched a one year long post-graduate diploma in animal law. Animal law is also gaining serious interest in the United Kingdom, China, Africa, Brazil, New Zealand, Australia, and elsewhere.

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<sup>20</sup> Orangutan, Sandra s/ Habeus Corpus – translated abstract available at [www.animallaw.info](http://www.animallaw.info)

<sup>21</sup> EXPTE. NRO. P-72.254/15

<sup>22</sup> Decision STL 12651-2017

<sup>23</sup> 31 N.Y.3d 1054, 100 N.E.3d 846 (2018)

<sup>24</sup> CRR-533-2013 High Court of Punjab & Haryana At Chandigarh

<sup>25</sup> (2014) 7 SCC 547

*(List of animal law courses offered in universities around the world is appended herewith as Annexure S)*

**Section VI: Rules under the 1974 Act and Their Inadequacy**

53. That although the Respondent departments will be able to inform this Honourable Court definitively, to the best of the undersigned's knowledge, the following, *inter alia*, rules have been promulgated by Respondent No. 2 under section 46 of the 1974 Act:
- a. the Zoos and Safari Park Rules, 2012
  - b. the Private Wildlife Breeding Farm Rules, 2016
  - c. the Punjab Urial Conservation, Protection and Trophy Hunting (Committees) Rules, 2016
  - d. the Punjab Wildlife Private Game Reserve Rules, 2016
54. The afore-mentioned rules do not adequately cater to the welfare and well-being of captive wild animals and do not contain sufficient safeguards against cruelty to wild animals, despite the preamble of the 1974 Act envisioning the "protection" of wild animals as being one of its core purposes.
55. For instance, rule 7 of the Private Wildlife Breeding Farm Rules, 2016 (the "**2016 Rules**"), which relates to conditions for establishment of a private wildlife breeding farm, does not contain any requirement relating to the condition in which the animals must be kept in these farms. They do not prescribe conditions such as having a qualified veterinary doctor available on the farm.
56. Similarly, while rule 8(5) of the 2016 Rules states that "*all housing facilities such as cages, enclosures, shelters, medication, feeding and watering shall be managed by the owner as per desired quality and prescribed specification as may be determined by Government*", there are no such specifications that have been prescribed through rules and regulations that govern the conditions in which animals must be kept while in private possession.
- (The Zoos and Safari Park Rules, 2012, the Private Wildlife Breeding Farm Rules, 2016, the Punjab Urial Conservation, Protection and Trophy Hunting (Committees) Rules, 2016, and the the Punjab Wildlife Private Game Reserve Rules, 2016 are appended herewith as Annexures T to Annexure T/3)*
57. Therefore, as the mandate of the 1974 Act is *inter alia* to protect wild animals, the Respondents' exercise of rule making powers to enable the capture and keeping of wild animals while failing to specify the minimum conditions of treatment and welfare necessary is a gross violation of the Respondents' duties and functions under the 1974 Act.
58. Similarly, while section 12 of the 1974 Act refers to the certificate of lawful possession required by any individual, the failure to prescribe adequate conditions for obtaining such a certificate is a gross misapplication of the Respondents' power under the 1974 Act and a clear-cut case of negligence in performing a duty which the 1974 Act clearly places on the Respondents. The whole purpose of requiring licenses and permits is for the Respondents to be able to attach such conditions and necessary requirements as are necessary to ensure that wild animals are protected, managed, and conserved as per the object of the 1974 Act.

**Section VII: Given the gaps and inadequacies in the current legal regime, can this Honourable Court exercise jurisdiction for the purpose of this petition?**

59. The present petition is in the nature of a public interest petition. It is settled law that in such cases, as long as the public interest prayed for is bona fide and not based on any vested interests, the principles of locus standi are to be interpreted liberally by the Courts. Reference in this regard may be made to the cases of *Subay Khan Vs. Secretary, Labour*,

Government of the Punjab<sup>26</sup>, and Sheikh Asim Farooq Vs. Federation of Pakistan and others<sup>27</sup>.

60. In the present case, the interest prayed for i.e. the protection of wild animals and the freedom from unnecessary pain and suffering is clearly a public minded one. Therefore, if the Honourable Court is satisfied that there is no vested interest involved, then it is submitted that the titled Petition may be considered maintainable.
61. That as outlined above, the natural rights of wild (and other) animals have been protected under Pakistani law through statute. The 1890 Act, the PPC, the 1974 Act, the Sindh Law, the KP Law, the Balochistan Law, the 2012 Act, and the Constitution recognize animal sentience, and resultantly afford certain rights to nonhuman animals. These rights include, but are not limited to, the right of freedom from unnecessary pain and suffering, freedom from hunger and thirst, and the right of freedom from injury and pain.
62. Wild animals are the intended beneficiaries of these statutory rights guaranteed by the law. Therefore, when these rights are violated, it is the animals that are truly aggrieved of the violation in question. It is a well-settled principle of law that where there is a right afforded in the law, there is also a remedy. Therefore, it is submitted that where these animals suffer violations of the rights recognized for them under Pakistani law, there must also be a remedy. Although these animals lack capacity to formally bring an action before the Pakistani courts, it is submitted that they may be considered “aggrieved parties” for the purposes of Article 199 of the Constitution and a public-spirited individual who brings a matter on their behalf before this Honourable Court in its constitutional jurisdiction may be granted standing to be heard. Furthermore, subject to the Honourable Court’s satisfaction regarding the genuineness of the interest being protected, the bona fide of the individual or organization bringing the matter, and there being no vested interest involved, petitions such as the titled matter may be considered maintainable.

**Section VIII: Subject to being satisfied on maintainability, what nature of orders can the Honourable Court pass in the present case?**

63. The preamble of the 1974 Act states that the same was enacted to “...provide for the protection, preservation, conservation and management of wildlife in the Province of the Punjab.” It is evident from a reading of the preamble that one of the goals of the 1974 Act is to provide for the protection of wild animals. However, to date no rules have been enacted that provide for minimum welfare standards to protect wild animals and the Government has not acted in accordance with the object and mandate of the 1974 Act by failing to enact subordinate legislation (rules or regulations) for protecting wildlife.
64. As per section 46 of the 1974 Act, the Government has been empowered to make rules for the purposes of the 1974 Act. The rules, as per the 1974 Act, “...in particular and without prejudice to the generality of the foregoing powers” may provide for the form in which and the terms and conditions, on which a license, special licence, a permit or a special permit may be granted...” (Section 46(c) of the 1974 Act).
65. It is evident from a reading of Section 46(c) of the 1974 Act that the Government may impose conditions for the license granted for possession of wild animals. However, as of yet no rules have been enacted to regulate the conditions in which the wild animals are kept or the standard of care required to maintain and keep such wild animals in possession.
66. It is respectfully submitted that there is a need for updated and proper legislation to protect the rights of wild animals in Punjab along with proper measures of enforcement for such legislation. At the very least, it is respectfully submitted that this Honourable Court may direct the relevant Respondent to frame and issue rules and regulations under the 1974 Act to prescribe the minimum standard of treatment of such animals and to prohibit the import or possession of wild animals unless such minimum conditions are met.

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<sup>26</sup> PLD 2019 Lahore 253

<sup>27</sup> PLD 2019 Lahore 664

67. The superior courts of this country have previously held that the judicial arm of the state may issue directions to the executive to enact guidelines, handbooks, policy, legislative measures or to amend existing laws. Reference may in this regard be made to Saddam Hussain v. State<sup>28</sup> and Walid Iqbal vs. Federation of Pakistan<sup>29</sup>.
68. In Province of Sindh vs. MQM<sup>30</sup>, Government of Balochistan vs. Azizullah Memon<sup>31</sup>, Government of Sindh vs. Sharaf Faridi<sup>32</sup>, Al-Jehad Trust vs. Federation of Pakistan<sup>33</sup> and Sharaf Faridi vs. Federation of Pakistan<sup>34</sup> the superior courts have held that the court may issue directions to the executive to initiate both legislative and administrative measures to bring the same in compliance with the mandate of the Constitution.
69. In light of the current circumstances, even though wild animals are entitled to protection under the objects of the 1974 Act, yet no safeguards against their mistreatment have been put in place by the Respondents pursuant to their power under section 46 or under the various licensing and permits regime being implemented by them. This conduct is clearly in violation of the 1974 Act, as well as a violation of the rights of the wild animals as guaranteed by the law and the Constitution (discussed above). Therefore, it is submitted that this Honourable Court may consider:
- a. Issuing relevant directions to the Government to enact rules or regulations to ensure minimum welfare standards for captive wild animals under the 1974 Act within a specified time frame;
  - b. In line with the *Al-Jehad Trust* case, the Court may also direct the Respondents to initiate amendments in the relevant rules already enacted to ensure that they contain provisions ensuring the ethical and humane treatment of wild animals;
  - c. The court may consider directing the Respondents to initiate legislative measures to protect the rights of wild animals to bring them in line with the requirements of Articles 9, 14, 31, and 227 of the Constitution
70. Furthermore, there is no institutionalized mechanism or policy whereby the general public can be better sensitized to the plight of animals or be educated about the fact that animals are sentient beings. Currently, the University of Veterinary and Animal Sciences, Lahore (UVAS) offers a course on Animal Welfare and Ethics as part of its Doctor of Veterinary Medicine (DVM) curriculum. Besides this course offered for a specialized purpose to veterinary students, there are no schools, colleges or universities in Pakistan that offer animal rights, animal law, or animal welfare as a subject or a part of any subject. Thus, the public is unaware of the laws and rights of animals. This Honourable Court may also consider issuing directions to the Respondents to ensure such courses are introduced in primary school, secondary school and university levels in the Province of Punjab, so as to educate the general public vis-à-vis the humane treatment of animals and the rights of nonhuman animals under Pakistani law.

## **Section IX: Conclusions**

71. That, in summary and conclusion the amici curiae submit as follows to this Honourable Court:
- a. That the preamble of the 1974 Act read with the overall scheme of the Act makes clear that one of the purposes of the 1974 Act is to provide for the protection of wild animals.

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<sup>28</sup> PLD 2020 SC 310

<sup>29</sup> PLD 2018 Lahore 1

<sup>30</sup> PLD 2014 SC 531

<sup>31</sup> PLD 1993 SC 341

<sup>32</sup> PLD 1994 SC 105

<sup>33</sup> 1990 SCMR 1379

<sup>34</sup> PLD 1989 Karachi 404

- b. That the 1974 Act does not envision keeping wild animals captive as domestic pets, and any licenses issued by the Respondents for this purpose are *ultra vires* the 1974 Act, patently illegal and without jurisdiction.
- c. That the 1974 Act and the rules and regulations framed thereunder in their current state do not address the welfare of captive wild animals, nor do they put in place adequate safeguards to protect captive wild animals from cruelty and abuse.
- d. That animals have certain natural rights including the right to freedom from unnecessary pain and suffering which rights are protected by statutes such as the 1890 Act, the PPC and various provincial wildlife statutes. Therefore, animals are right bearing beings under Pakistani law.
- e. That subjecting animals to unnecessary pain and suffering or depriving them of their natural environment is in violation of *inter alia* Articles 9 and 14 of the Constitution.
- f. That detailed rules and regulations need to be framed under the 1974 Act to address conditions in which animals must be kept which guarantees protection of their natural rights and safeguards their protection, integrity, diversity and prevents them from unjust suffering due to captivity.
- g. That by virtue of statutory law, animals are right bearing entities and can therefore approach the court through human individuals to have their natural rights protected.
- h. That this Court has the power to direct the state to make regulations under the 1974 Act which cater to the well-being of animals and prevent their unnecessary suffering in captivity.

Respectfully submitted by the Amici Curiae:

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**Barrister Muhammad Ahmad Pansota**  
Advocate Supreme Court

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**Barrister Sameer Khosa**  
Advocate High Court

Assisted by

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**Barrister Scheherezade Shaharyar**  
Advocate High Court

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**Hira Jaleel**  
Advocate High Court

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**Azka Wahid**  
Advocate

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**Barrister Maryam Salman**  
Advocate High Court

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**Jeuni Khan**  
Research Assistant

