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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.63655 of 2021

Muhammad Zawar Hussain V/S Province of Punjab and others

J U D G M E N T

Date of hearings	13.10.2021, 25.10.2021, 29.10.2021, 02.11.2021 and 13.04.2022
Petitioner(s) by	M/s Major (R) Farooq Ahmed Ali, Fazal Abbas Kamyana and Mian S. Fahim Kamyana, Advocates.
Respondent(s) by	Barrister Umair Khan Niazi, Additional Advocate General Punjab, M/s Waqar Saeed Khan, Barrister Tayyab Jan and Muhammad Osman Khan, Assistant Advocate Generals Punjab, Malik Naveed Sohail, Additional Attorney General and Ms. Sadia Malik, Assistant Attorney General alongwith Junaid Nadeem, Assistant Director, Wildlife Lahore Division and Junaid Alam, Assistant Director, Wildlife (Management).
Research Assistance by	Barrister Sameer Khosa, ASC and Barrister Hira Jaleel, Advocates/Amicus Curiae assisted by M/s Maheer Irshad and Momal Malik, Advocates.

“A thing is right, when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong, when it tends otherwise”.¹ Aldo Leopold

JAWAD HASSAN, J. This judgment will decide titled writ petition filed by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”), after

¹ “Aldo Leopold, *The Land Ethic, A Sand Country Almanac*, Oxford University Press, New York.

discussing in detail the ban imposed by the Wildlife and Parks, Punjab (the “**Wildlife Department**”) through notification dated 06.10.2021 (the “**Impugned Notification**”), issued under Section 9(iv) of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 (the “**Act**”).

I. BRIEF BACKGROUND

2. The Petitioner, who is a seasoned hunter/shotgunner, has brought before this Court the issue of hunting waterfowl/upland birds. The Petitioner has challenged vires of the Impugned Notification, imposing certain restrictions on hunting, because the waterfowl hunting season is coming in the Winter (from October to February). The stance taken by the Petitioner is that the gadgets, which have been prohibited by the Wildlife Department, are being used across the globe by water fowl hunters since decades and in Pakistan, the hunters have also been using these gadgets for many years without any interruption from any corner, therefore, putting ban on the same is not justified being against the norms of justice.

3. Notice was issued to the Respondents on 13.10.2021, whereafter the answering Respondents No.3 and 4 filed their report and parawise comments and then on 29.10.2021, the Respondents were directed to submit a detail report by narrating the purpose of the Impugned Notification with scientific evidence to explain the electronic gadgets prohibited for hunting in this season. The said report was also subsequently filed

II. PETITIONER’S SUBMISSION

4. Major (R) Farooq Ahmed Ali, Advocate submitted that through the Impugned Notification the Wildlife Department has imposed ban on use of electronic devises, including gadgets, battery operated decoys/moju and pre-charged pneumatic air guns, which is illegal being beyond the scope of Section 9 of the Act. He further submitted that the wording used in the Impugned Notification regarding use of electronic devises/gadget, including pre-charged

pneumatic air guns, is nowhere mentioned in Section 9 of the Act. He maintained that Section 9 of the Act discusses the restrictions of hunting and Sub-Section (vii) of this Section allows hunting with the help of live decoys or call birds except quail. He vociferously argued that Respondent No.4/Deputy Director, Wildlife, Lahore has issued the Impugned Notification by exceeding his powers and ignoring relevant provisions of the Act. Mr. Fazal Abbas Kamyana, Advocate contended that without usage of the gadgetry banned/prohibited, the waterfowl will not come into the expected shooting range, therefore, they cannot be hunted. He explained that the decoys are replica of waterfowls, which are used to attract birds to a location near the hunters and without this important hunting tool, hunting cannot be successfully done. He next clarified that hunting being a popular game across the globe, is widely enjoyed by the hunters on the rivers/lakes without any prohibition/ban and putting such like bans on this game will adversely affect rights of the hunters, therefore, the Impugned Notification is liable to be set-aside.

III. RESPONDENTS' SUBMISSION

5. Conversely, the Respondents No.3 and 4, in their report, while protecting the Impugned Notification, submitted that due to use of electronic devices, which include live decoys, call birds, PCP, Air guns, the waterfowl counts decreased from 339982 (in year 2016) to 65778 (in year 2021). Junaid Nadeem, Assistant Director, Wildlife Lahore Division explained that though the provision for the use of live decoys or call birds has been given in the Act but only to the extent of quails. He submitted that the purpose of putting ban/prohibition through the Impugned Notification by the Wildlife Department is to promote sustainable hunting whereby the animal/bird has a fair chance to escape whereas the use of electronic devices, as mentioned above, is against the said principle. He maintained that the issuing authority/Respondent No.4 has rightly exercised his powers while issuing the Impugned Notification by considering all the relevant aspects of the matter.

6. Junaid Alam, Assistant Director, Wildlife (Management) next argued that due to violation of certain provisions contained in Section 9 of the Act by the hunters, the restrictions regarding use of electronic devices during the course of hunting/shooting have been imposed by the concerned hierarchy of the Wildlife Department, which is the custodian of wildlife resources of the Province of Punjab and has been established to protect, preserve, conserve and manage the wildlife and the resources under the Act. He contended that the Wildlife Department has a network of field formations working throughout the Province of Punjab and for its smooth running, various policies are formulated and subsequently the said policies also periodically reviewed for implementation purposes by bearing in mind the factum of sustainable conservation and management of wildlife through public participation and liaison with national as well as international organizations.

IV. SUBMISSIONS OF AMICUS CURIAE

7. Since there are certain technicalities in the matter and also the issue of protection of wildlife is involved, the Court has appointed Barrister Sameer Khosa, ASC and Barrister Hira Jaleel, Advocate as amicus curiae. They both rendered valuable assistance to the Court in the matter.

8. Barrister Sameer Khosa, ASC submitted that the Impugned Notification has validly been issued under Section 9 of the Act in order to protect the waterfowl species in Punjab. He submitted that if an open eye glance review is taken on the Preamble of the Act, it will depict that the basic purpose of enacting the Act is to protect, preserve, conserve and manage the wildlife. Barrister Sameer Khosa, ASC maintained that the interim report submitted by the Respondents in this case also speaks about the decrease in waterfowl counts due to usage of electronic decoys and PCP guns, hence, applying a “species best interest standard” to the instant case, it becomes abundantly clear that banning the use of electronic decoys and gadgets in hunting, is in the best interest of the species as a whole. Moreover, it is the

responsibility of the State under the Act to safeguard the right to life enshrined under Article 9 of the Constitution, therefore, the Impugned Notification needs no interference by this Court.

9. Barrister Hira Jaleel, Advocate contended that there is eminent need to regulate hunting for maintaining sustainable animal population in Pakistan because ethical hunting demands a sustainable and respectful approach to “harvesting” game and making sure that there is no unnecessary or frivolous harm to the individual animal being hunted. She clarified that electric decoys and gadgets/devices are considered to be a substitute for basic hunting skills by many as a “shortcut” to hunting and this technique undermines the hunting experience because it becomes difficult to consider hunting a challenge if the entire experience boils down to pressing a button to engage the animals being hunted, besides the fact that this hunting terminology/technology is not deliberated to be in line with the concept of fair chase. Barrister Hira Jaleel, Advocate submitted that many countries around the world, including Finland, Poland, Spain and Scotland, ban the use of electronic decoys, gadgets, PCP guns and other similar devices for hunting in the interest of preserving the concept of fair chase in the hunting of waterfowl. She maintained that in the United States of America, the State Wildlife Commission generally have broad discretion to regulate the time, place and manner of hunting or trapping in order to keep harmony with fair chase principles while in Canada, the legality of hunting regulations based on fair chase and animal welfare considerations has been subject to extensive litigation between the Crown and various parties after a 1999 Government decision to ban spring bear hunting in Ontario to protect bear cubs whose mothers would be killed after emerging from hibernation. She, while highlighting the scope of Article 9 of the Constitution, also referred to the rationale rendered by the Hon’ble Supreme Court of Pakistan in the landmark judgment reported Ms. Shehla Zia and others versus WAPDA (PLD 1994 SC 693) wherein it was held that “the word life is a very significant because it covers

every facet of human existence.” Lastly, she also defended the Impugned Notification and prayed for dismissal of this petition.

10. Arguments heard and record perused.

V. GIST OF THE ISSUE

11. The anchor point in this case is to see the legality of ban imposed by the Wildlife Department through the Impugned Notification issued under the provisions of Sub-Section (vii) of Section 9 of the Act. The relevant portion of the Impugned Notification against which the Petitioner is aggrieved, is reproduced hereunder for ready reference:-

“However, use of Electronic devises/Gadgets, Battery Operated Decoys/Moju and Pre-Charged Pneumatic Air Guns is strictly prohibited in hunting/shooting of wild birds and animals as per law.”

VI. MOOT POINT

12. From the divergent pleadings of the parties, following Constitutional moot point is framed:-

“Whether the afore-quoted additional restriction imposed by the Wildlife Department on hunting/shooting of wild birds and animals by using electronic devises/gadgets, battery operated decoys/moju and pre-charged pneumatic air guns, in addition to the restrictions already given in Section 9(i) of the Act, is in the interest of the species or not.”

VII. OVERVIEW OF THE ACT

13. Before discussing the legality or illegality in the Impugned Notification, it would be advantageous to first take a short overview of the Act. The Preamble of the Act clearly illustrates that the basic purpose of enacting the Act is to protect, preserve, conserve and manage the wildlife in the Province of Punjab. Section 9 of the Act, which describes restriction of hunting and most relevant in this case, is reproduced hereunder for ease of the matter:-

“9. **Restriction of hunting.**_ No person shall:-

- [(i) hunt any wild animal by means of a set gun, drop spear, deadfall, gun trap, explosive, projectile, bomb, grenade, baited hook, net, snare or any other trap, an automatic or a service weapon or ammunition used by Armed Forces of Pakistan, Police Force or any other force, or by means of any drug or chemical substance, likely to anesthetize, paralyze, stupefy or render incapable any wild animal whether partly or totally through a projectile or otherwise;]*
- (ii) hunt any protected animal;*
- (iii) hunt any game animal except under a permit and in accordance with the provisions of this Act or the rules;*

Provided that no person shall hunt any game animal other than bird or hare with a shot gun or with non-magnum rifle of 22 calibers or less;
- (iv) use or have in his possession any net, snare, bhagwa, poison or like injurious substance for the purpose of hunting a game animal;*
- (v) use vehicle of any type to pursue any type to pursue game animal or to drive or stampede game animal for any purpose whatsoever;*
- (vi) shoot any game animal except wild boar and vermin from any conveyance or from within two hundred yards of the conveyance;*
- (vii) hunt with the help of live decoys or call birds except quail;*
- (viii) construct or use, for the purpose of hunting any wild animal, any pitfall, game pit, trench or similar excavation, any fence or enclosure, or use bhagwa or any other similar contrivance except duck blinds:*

Provided that it shall not be an offence to use-

- (a) a motor vehicle or aircraft to drive any wild animal away from an aerodrome or airstrip when such action is necessary to ensure the safety of aircraft using that aerodrome;*
- (b) any one or more of the aforesaid prohibited method; or*
- (c) to hunt any unprotected animal;*
- (ix) hunt except ducks, wild boars and vermin after sunset and before sunrise; and*
- (x) hunt by hiding within two hundred yards of a water hole or salt licks.”*

VIII. VERDICTS/RATIONAL OF THE SUPERIOR COURTS ON THE ISSUE OF HUNTING WILD ANIMALS AND BIRDS

14. There is a plethora of judgments of the superior Courts of Pakistan and other countries on the issue of hunting of wild animals and birds, including waterfowl/upland birds. Here, some of those judgments will be discussed. Firstly, the verdict rendered by the superior Courts of Pakistan is being examined. The Hon’ble Supreme Court of Pakistan in the case of *Government of Punjab and others versus Amir Zahoor-ul-Haq and others* (PLD 2016 SC 421), while highlighting the scope of provisions of various Sections of the Act, discussed powers of the Provincial Government to classify animals as ‘protected’ or ‘game’ species in light of the wildlife legislation, besides considering the importance of statutory object of protecting, preserving, conserving and managing wildlife. Relevant paragraph 24 of the said judgment is reproduced hereunder:-

“24. Having made the foregoing observations, we note that provincial governments exercise discretionary power conferred by respective provincial laws to classify animals as ‘protected’ or ‘game’ species. During the hearing of these petitions, the learned Attorney General and the learned counsel for the Province of Sindh have referred to limitations and checks imposed by the government on hunting of

Houbara Bustard. These are reflected, inter alia, in the terms and condition of hunting permits issued by the provincial governments, the creation of protected areas, the scheduling of different areas for hunting during the season and so forth. The criteria and considerations on the basis of which the provincial governments exercise their regulatory power under their respective wildlife legislation have, however, not been shown to the Court. Ultimately, it is the adequacy and propriety of the regulatory measures that can in a sustainable manner achieve the statutory object of protecting, preserving, conserving and managing wildlife. That statutory object applies not just to the Houbara Bustard but to all endangered, vulnerable or near threatened wildlife. In this context the Court is inclined to examine the legal propriety of the discretionary safeguards applied by the provincial governments for assessing their relevance and reasonableness for attaining the objects of wildlife legislation in respect of all vulnerable and threatened game species including the Houbara Bustard. Therefore, we are setting out the matters for hearing afresh, thus leave the above noted proposition open to be examined by the Bench hearing the cases.”(emphasis is mine)

15. In another judgment cited as Province of Sindh and others versus Lal Khan Chandio and others(2016 SCMR 48), the Hon’ble Supreme Court of Pakistan discussed the powers of the Provincial Government to advance the objective of the law, which was enacted for the preservation, conservation and management of wildlife by observing that “*decision of Provincial Government must be based on sound ecological principles and taken after a proper assessment of the population of the species*” and also held that “*exercise of power under a law, which sought to preserve and conserve wildlife, must be reasonably, fairly and justly exercised for the advancement of the purpose of the law.*” Recently, the Islamabad High Court, Islamabad in the judgment reported as “ISLAMABAD WILDLIFE MANAGEMENT BOARD through Chairman Versus METROPOLITAN CORPORATION, ISLAMABAD through Major and 4 others” (PLD 2021 Islamabad 6) has also discussed in detailed

the law on the subject in light of relevant provisions of the Prevention of Cruelty to Animals Act, 1890 and after laying down much emphasis on the fundamental right to life as per provisions of Article 9 of the Constitution, made certain observations in Paragraph-7 of the said judgment, relevant portion of which is given below:-

“Directly or indirectly the rights of the animals are also acknowledged. Some courts have declared particular animal species as non-human persons while others have gone to the extent of granting them the same rights as those of the human species guaranteed under the constitution. The courts in the United States have gone to the extent of implicitly recognizing animals to be other than a mere ‘thing’ but the relief of habeas corpus was denied on the ground that they could not be treated as humans and that lack of personhood deprived them from having the locus standi to the grant of a writ. No constitution has been framed in the context of ‘life’ and, therefore, it gives rise to a conflict and confusion while granting relief to a form of life other than a human. As already noted, all the constitutions have been framed by humans to organize and regulate their own species. Constitutions refer to either a ‘person’ or a ‘citizen’ but not to ‘living beings’. Consequently, the writs are also with reference to a human or a person. There are writs other than habeas corpus, such as prohibition and mandamus. An infant, a comatose or a mentally challenged person is not different to an animal. It has never been the case of those arguing on behalf of animals to recognize that they have the same rights enjoyed by the human species. **No relief has ever been sought on behalf of any animal to grant it freedom by releasing it from a zoo and thus allowing its free access to public places meant for humans.** In the case in hand it has been argued that the animals in the Zoo are living in captivity and the conditions are such that the treatment has subjected them to unnecessary pain and suffering. **Do the animals have legal rights? The answer to this question, without any hesitation, is in the affirmative.** The Black's Law Dictionary (Sixth Edition) has defined “Legal Right” as “Natural rights, rights existing as a result of contract and rights created or recognized by law”. The Eleventh Edition defines the expression “as a right related to or recognized by law”. The human rights are inherent

because they stem from the attribute of being 'alive'. Life, therefore, is the premise of the existence of a right. Whether human rights or rights guaranteed expressly under the Constitution, they all have a nexus with 'life'. An object or thing without 'life' has no right. A living being on the other hand has rights because of the gift of 'life'. An animal undoubtedly is a sentient being. It has emotions and can feel pain or joy. By nature each specie has its own natural habitat. They require distinct facilities and environments for their behavioural, social and physiological needs. This is how they have been created. It is unnatural for a lion to be kept in captivity in a restricted area. To separate an elephant from the herd and keep it in isolation is not what has been contemplated by nature. Like humans, animals also have natural rights which ought to be recognized. It is a right of each animal, a living being, to live in an environment that meets the latter's behavioral, social and physiological needs. The Act of 1890 in fact recognizes the animals natural right not to be treated in a manner that subjects it to unnecessary pain and suffering. It is the constitutional and statutory obligation of the State and its functionaries to ensure that these rights are not infringed. It is also a natural right of every animal to be respected because it is a living being, possessing the precious gift of 'life'. Humans cannot arrogate to themselves a right or prerogative of enslaving or subjugating an animal because the latter has been born free for some specific purposes. It is a natural right of an animal not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator. Moreover, as discussed above, the right to life of humans is dependent on the welfare, wellbeing, preservation and conservation of all animal species. Any treatment in violation of the provisions of the Act of 1890, or subjecting an animal to unnecessary pain or suffering, is an infringement of the right to life guaranteed under Article 9 of the Constitution. The destruction and loss of habitat also violates the fundamental right to life of a human. The State is responsible to ensure that no animal is treated in violation of the provisions of the Act of 1890 and the Wildlife Ordinance 1979.”(emphasis added)

16. On the point of interpretation of a statute, reference can be made to the judgment reported as “SAIF-UR-REHMAN Versus ADDITIONAL DISTRICT JUDGE, Toba Tek Singh and 2 others (2018 SCMR 1885) in which it has been held by the Hon’ble Supreme Court of Pakistan that interpretation of a statute or Act, which advances the purpose of the said statute/Act, will be preferred rather than the interpretation which defeats its objects/preamble. In the said case, it has also been observed that beneficial provisions in a statute must be interpreted liberally in a manner so that the benefit conferred was advanced rather than frustrated or subverted.

17. Now, a quick glance is taken on the judgments passed by other countries on the issue involved in hand. The Supreme Court of India in the case of Centre for Environment Law, WWF-I versus Union of India & Others (WRIT PETITION (CIVIL) NO. 337 OF 1995) opined that top priority of the State is to adopt measures for protection of the wild animals and birds, as per the scientific studies. The High Court of Uttarakhandat Nainital in **Writ Petition (PIL) No. 43 of 2014** titled as Narayan Dutt Bhatt versus Union of India & others has observed that *every species has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks.*

IX. DETERMINATION BY THE COURT

18. It would be more advantageous to first see the difference between the electronic devises/gadgets being used for hunting purposes and the fair chase policy of hunting the wild animals and birds. The nub of the matter in this case is the impugned notification whereby the Respondents have referred to Section 9(vii) of the Act by prohibiting the use of electronic devises/gadgets, battery operated decoys/moju and pre-charged pneumatic air guns. It is imperative to reproduce the impugned notification which is as under:



No. 1849 /DG(W&P)Mgt-2(12)/2021
 OFFICE OF DIRECTOR GENERAL,
 WILDLIFE & PARKS, PUNJAB,
 2-SANDA ROAD, LAHORE
 Dated Lahore the 06-10-2021

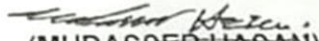
To

All Territorial Deputy Directors Wildlife in Punjab.

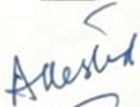
Subject: - BAN ON THE USE OF ELECTRONIC CALLS, DECOYS, PCP AIR GUNS

I am directed to refer to the subject noted above and to state that as per provision of section 9(vii) of Punjab Wildlife (Protection, Preservation, Conservation and Management) Act 1974, no person shall "hunt with the help of live decoys or call birds except quails". However, Use of Electronic devises / Gadgets, Battery Operated Decoys / Moju and Pre-Charged Pneumatic Air Guns is strictly prohibited in hunting / shooting of wild birds and animals as per law.

It has been desired that strict compliance of the law be made and to launch an operation against un-lawful menace / hunting etiquettes which is causing a serious damage to the population of wild birds. In case of any slackness, negligence and involvement of any official strict action shall be initiated.


 (MUDASSER HASAN)
 DEPUTY DIRECTOR WILDLIFE
 HEADQUARTERS, LAHORE

C.C.



- i. PS to Secretary Forestry Wildlife & Fisheries Department.
- ii. P.A to Director General Wildlife & Parks, Punjab.

Major (R)
Farooq Ahmed Ali
 Advocate High Court
 CC P-LH 39903
APEX LAW ASSOCIATES
 Office # 105, 2nd Floor, Fazi-e-Miran Law Chambers
 4-A Mezzang Road, Lahore. 0300-4303988

It is to be noted that the explanation added in Section 9(vii) of the Act is now being determined by this Court.

a. The Cause: electronic devices/gadgets used for hunting.

19. Due to technological advances in hunting scopes (for any lawful hunting device), smart devices are becoming more prevalent in the firearm and hunting industries. These devices are equipped with a target-tracking system or an electronically controlled or computer-linked trigger or release. Through a smart device, a person with little or no experience can easily hit a target at a long distance approximately more than 500 yards away with very high accuracy and once a target is selected, the smart device controls the trigger mechanism and discharges only when the weapon is pointed at the designated target, taking into account dozens of variables, including wind, barometric pressure, elevation, inclination or declination, etc. Normally, it takes years of practice to hit a target at that distance but a smart device can make it an easy hunting exercise for unexperienced person. The newer electronic type waterfowl decoys generally have a spinning wing or blade apparatus that revolve at a high speed, supposedly imitating the movement of waterfowl as they stretch their wings and move about. Other decoy types vibrate in water to imitate the movement of birds feeding. Power sources for these types of decoys are batteries. Some can be turned off and on by remote control. Catalogs also advertise the latest concept, a number of decoys attached together, four or more, that move around a central post and alternately dive and surface to imitate a whole flock of feeding ducks. Robo-ducks are the latest in decoy technology and these ultra-realistic, battery-operated, mechanical ducks are used by hunters to lure real ducks into shooting range.

b. Principles of fair chase for hunting

20. Barrister Sameer Khosa, ASC and Barrister Hira Jaleel, Advocate/Amicus Curiae have produced the material before the Court which concludes that ethical hunting concerns fair chase. To put it in a simpler way, fair chase balances the skills and equipment of the hunter with the abilities of the animal to escape for life. Fair chase

signifies not to take advantage of animals whose natural instincts have been compromised by way of deploying decoying equipment and by this way calling a wary bird into range for hunting.

21. As regards the fair chase policy of hunting wild animals and birds, it is pertinent to note that all significant human activities are conducted under a set of ethical principles that guide appropriate behavior and depending on those activities, the said ethical principles are molded into laws when specific behavior is required. Moreover, without ethics and laws, most activities would become unsafe and unacceptable to both those who participate in them and those who do not. Hunting is no different. It, too, has principles and laws that guide ethical behavior. Both Barrister Sameer Khosa, ASC and Barrister Hira Jaleel, Advocate/Amicus Curiae convinced the Court that in modern, developed societies, there exists a general expectation according to which hunting be conducted under appropriate conditions. The animals are taken for legitimate purposes like (i) food; (ii) to attain wildlife agency management goals; and (iii) to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and the hunters conduct themselves ethically by showing respect for the land and animals they hunt. In other words, it can be said that hunters are guided by a conservation ethic but the most common term used to describe the actual ethical pursuit of a big game animal is called the fair chase, concept of which has been widely promoted for over a century. The term “fair chase” can be defined as “the ethical, sportsman like, and lawful pursuit and taking of any free-ranging wild, big game animal in a manner that does not give the hunter an undue advantage over the game animals. With the passage of time, fair chase has become a code of conduct for new hunters to complete the mandatory certification courses. However, despite its long history and widespread acceptance, fair chase is not as clearly understood by hunters or the non-hunting public as it should be. This is because social values, conservation practices, and hunting technologies are constantly evolving. Furthermore, fair chase is more

a matter of the “spirit of the hunt” than a set of written rules. It is shaped, in part, by an individual’s motivations for hunting and their personal sense of right and wrong. Thus, the meaning of fair chase can vary to some extent from one person to the next. What is most important is that hunters recognize and embrace the ideal of fair chase and use it individually to measure their hunting decisions and experiences.

c. Concept of sustainable hunting

22. After discussing the difference between the electronic devises/gadgets being used for hunting purposes and the fair chase policy of hunting the animals and birds, it is to be noted with grave concern that our society has become increasingly urbanized. More people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, and wildlife conservation becomes more of a global concern, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity. Regulated hunting with the fair chase policy of hunting the wild animals/birds fundamentally supports wildlife conservation efforts being made by the Wildlife Departments. A loss of hunting would, therefore, equate with a measurable loss in conservation efforts. Consequently, the hunting ethics and fair chase policy of hunting are important if we are to maintain a tradition of successful wildlife conservation and management.

23. There is another important legal aspect of the matter which needs to be adjudged for determination of the question raised by the Petitioner through the instant Petition. Since the main controversy revolves around the grievance of the Petitioner which hinges on the validity of the impugned Notification issued by the Respondent Wildlife Department under Section 9(i) of the Act imposing a complete ban on use of electronic devises, including gadgets, battery operated decoys/moju and pre-charged pneumatic air guns, therefore, to begin with, it is a question of fundamental significance to examine

the nature, purport and scope of a Notification and how and under what circumstances and on which ground the same can be put to challenge before this Court within Constitutional Jurisdiction of Article 199. This Court in the case of “CHENAB FLOUR AND GENERAL MILLS Versus FEDERATION OF PAKISTAN and others” (2021 PTD 892) has made a detailed and exhaustive deliberative assessment in the light of the precedents of Superior Courts and held that Notification is a form of delegated or subordinate legislation. Therefore, it can be challenged on the similar grounds upon which such legislation can be challenged and the test applicable for determination that whether a Notification is validly issued or not, the Court has to follow the principles regarding ascertaining the intra-vires and ultra-vires of a delegated legislation. The Court in the above said case further held that:-

The impugned notification in its nature and essence is an expression of subordinate or delegated legislation and so it derives its authority from the primary law and cannot go beyond its scope. However, it is always aimed to further the object and purpose of the law and is deemed as an effective measure to keep the law well abreast with the changes of time and embrace modernism in functional efficiency by exercising mandate provided under the law. The status of a notification being in the nature of subordinate legislation is expressed by the august Supreme Court in Mustafa Impex, Karachi v. The Government of Pakistan through Secretary Finance, Islamabad” (2016 PTD 2269) by holding that “the regulation and issuance of fiscal notifications is in the nature of subordinate legislation.” In “Imtiaz Ahmed and others v. Punjab Public Service Commission through Secretary, Lahore and others” (PLD 2006 SC 472), the Hon’ble Supreme Court held that “a Notification issued in the exercise of executive powers or in the shape of subordinate legislation is not retrospective in operation. Similar opinion was expressed by Sindh High Court in “Muhammad Ibrahim v. Province of Sindh through Secretary Irrigation and Power Department and 3 others” (2017 PLC (C.S.) Note 7) by holding “a 'Notification' is outcome of a

'subordinate legislation'". Whereas Peshawar High Court in "Commissioner Inland Revenue, Regional Tax Office, Peshawar v. Messrs Sheraz Arena Deans Trade Center, Peshawar and another" (2018 PTD 2212) also expressed same opinion by observing that "It is settled law that rules/notification being a subordinate legislation is subservient to the parent statute and issuance of any instrument/notification under delegated authority is aimed to fulfill and advance the aim of the parent statute and cannot nullify the express provision of the Act."

The August Supreme Court in "MUHAMMAD AMIN MUHAMMAD BASHIR LIMITED Versus GOVERNMENT OF PAKISTAN THROUGH SECRETARY MINISTRY OF FINANCE, CENTRAL SECRETARIAT, ISLAMABAD and others" (2015 SCMR 630) also laid down the purpose, object, scope and limitation of delegated legislation in the following manner:-

The principles of delegated legislation are very clear and hardly require any reiteration by us at this late stage. In brief, they entitle the delegate to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation of the law. They are intended to enforce the law, not override it. They can fill in details but not vary the underlying statutory principles. In case of conflict they must yield to the legislative will. They are below and not above the law. The minutiae can be filled in but the basic law can neither be added to nor subtracted from.

Likewise, in SUO MOTU CASE NO.11 OF 2011 (P L D 2014 Supreme Court 389), the Honorable Supreme Court of Pakistan summed up the law pertaining to challenging a delegated legislative instrument while holding as under:-

In Ummatullah's case (supra), it was held that Strong presumption as to constitutionality, legislative competence, legality, reasonableness and intra vires attached to a statute is also attached with full force to

subordinate legislative instruments as well, such presumption though refutable, onerous burden is cast on person challenging validity or vires of legislative instrument, on any count. In order to strike down a subordinate legislative instrument, challenger has to show that any of the disqualification exist namely (a) it impinges upon fundamental rights guaranteed under the Constitution (b) it is in conflict with any Constitutional provision (c) it is beyond the legislative competence of the delegatee making it and or (d) it is violative or beyond the scope of the parent or enabling statute.

It was further held by the Court:-

A subordinate legislation apart from being intra vires the Constitution should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.

24. In a recent Judgment, “D. G. KHAN CEMENT COMPANY LTD. Versus GOVERNMENT OF PUNJAB through Chief Secretary, Lahore and others” (2021 SCMR 834), regarding the Notification of Government of Punjab issued under sections 3 and 11 of the Punjab Industries (Control on Establishment and Enlargement) Ordinance, 1963 to the effect that establishment of new cement plants, and enlargement and expansion of existing cement plants shall not be allowed in the "Negative Area", the august Supreme Court examined and adjudged the impugned Notification on the touchstone of basic legal criterion i.e., lack of statutory authority or if factual grounding of the Notification compromises its legal validity and whether the notification was in line with the objective of the Ordinance/law or not.

X. ANALYSIS

25. Now applying the above-referred dictum to the case in hand, since the purpose and object of the Act has already been dilated upon hereinabove, suffice is to say that the Preamble of the Act clearly

delineate that the basic purpose behind enacting this legislation is to protect, preserve, conserve and manage the wildlife in the Province of Punjab. At the same time, Section 9 of the Act, starts with the title “Restriction of hunting”, which in itself highlights the purpose and underlying object of Section 9 as the basic mandate of the provision is restrictive and prohibitive in essence contrary to be of liberal and expansive and it is there to put a check on unfettered hunting measures to undertake hunting as a sport within the permissible legal domain. The aim and object of the provision of Section 9 is centric to the protection of wildlife animals from being hunt down with unfair means and to chalk a balance between the right to hunt in equilibrium with right of animal to escape and to ensure not to tilt the toe in favor of the hunters in a way that cruelty overshadows the spirit of hunting as a sport. In view of this, the Impugned Notification is well within the statutory mandate of the Act, issued in line with the purpose and object of the primary legislation and in accordance with the spirit of Section 9 of the Act and the Petitioner failed to establish that the same is, in any manner, beyond the scope and mandate of the Act and violative of any of the fundamental rights as provided and protected under the Constitution, which was sine qua non to effectively put a challenge to the impugned notification and thus the question raised by the Petitioner is found to be unfounded and established in accordance with law. Even otherwise, as per Section 20 of the Punjab General Clauses Act, 1956 the Authority which is conferred with power to issue notifications, orders, rules etc. it is competent in the like manner to add to, amend, vary or rescind any notification so issued. It is therefore held that the impugned notification was validly issued by competent authority authorized by law in this behalf and the same was in accordance with the object and mandate of the primary law, the Act.

26. There is another aspect of the matter, the impugned notification was issued by the Respondent as per a policy decision taken in furtherance of the purpose and object of the Act and with

respect to interference in the policy decision of a government department by this Court while exercising its Constitutional jurisdiction under Article 199 of the Constitution, it is observed that under the Constitution a well structured system of trichotomy of power is provided, which serves dual purposes. At one hand, it defines the scope and functions of each organ of the State that it is empowered and required to perform under the scheme of Constitution but most importantly it envisages that the powers and functions of the other limb of the trio must not be interfered and encroached upon by any single limb of the state. The theory of separation of power is thus the hallmark of the Constitution and therefore a policy decision chalked out by the Executive limb of the State must not be interfered with by the Judicature unless it is evident that the same is illegal, unconstitutional, mala fide, discriminatory or in violation of fundamental right as provided and guaranteed under the Constitution. The Honorable Supreme Court in “*SHAHID PERVAIZ Versus EJAZ AHMAD and others*” (2017 SCMR 206) also laid down that the courts should not interfere in the policy matters of government unless it falls within the exception as laid down by the court as a ground to make intervention:-“(t)his Court in a series of judgments has held that policy making is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the fundament rights of individuals, the Courts are obliged to examine such policy in judicial review.” The Honorable Supreme Court of Pakistan in “*GHULAM RASOOL Versus GOVERNMENT OF PAKISTAN through Secretary, Establishment Division Islamabad and others*” (PLD 2015 Supreme Court 6) also expressed similar opinion by holding that:- “it is also a settled law that the Courts should ordinarily refrain from interfering in policy making domain of the Executive.” The Apex Court in “*WATAN PARTY and another Versus FEDERATION OF PAKISTAN and others*” (PLD 2013 Supreme Court 167) examined the rationale behind the doctrine of

non-interfering in policy matters on the basis of well-entrenched rule of trichotomy of power devised by the Constitution and held that:-

“We are afraid that at the instance of petitioners, in order to expedite the progress of the Project, we cannot assume the functions of policy making or determining the priorities of various development projects in the country, which are the exclusive domain and functions of the Federal and Provincial Government, as the case may be, who have their own ministries, departments, commissions and consultants, etc. for policy making, determining the priorities of various development projects and its implementation. It is pertinent to mention here that under the scheme of the Constitution having its structure based on trichotomy of power amongst its different organs i.e. legislature, executive and judiciary, each of its organ has to work and exercise its authority strictly within its mandate, without encroaching upon or usurping the jurisdiction/functions of any other organ of the State.”

The August Supreme Court in “Messrs AL-RAHAM TRAVELS AND TOURS (PVT.) LTD. and others Versus MINISTRY OF RELIGIOUS AFFAIRS, HAJJ, ZAKAT AND USHR through Secretary and others” (2011 SCMR 1621) also came to the same conclusion with respect to general principle and its exception. The Court ruled that *“As regards the jurisdiction of the High Court is concerned, normally the Court cannot adjudicate on Government policy unless the policy, on the face of it, is outcome of mala fide on the part of Executive.”*

27. Recently the Division Bench of this Court in “PROVINCE OF PUNJAB through Secretary Schools Education Department, Punjab Civil Secretariat, Lahore and 2 others Versus MUHAMMAD AMIR HAYAT and 4 others” [2021 P L C (C.S.) 245] laid down the very principle and its exception by observing that:- *“It is settled law that on the decisions of authority with regard to a policy matter, Courts will not ordinarily interfere. However, Courts do not abdicate their right to scrutinize whether the policy has been formulated keeping in mind all relevant facts and whether*

it is beyond the pale of discriminations or unreasonableness on the basis of the material on record. Unless the policy or action is inconsistent with the Constitution and the laws are arbitrary or irrational or there is abuse of power, the Courts do not interfere with such policy matters. The High Court while exercising jurisdiction under Article 199 of the Constitution, does not interfere in the transparent policy decisions of the executive body, aimed to achieve the best possible results in managing its affairs and the Court has very limited jurisdiction for examining such criteria. Such exercise of power cannot be interfered with". Likewise, this Court in "MUHAMMAD KHALID and others Versus PROVINCE OF PUNJAB through Chief Secretary, Punjab and others" [2020 PLC (C.S.) 867] also laid down the sample principle by holding that:-"this court is not inclined to examine or review the policy decisions made, deployment plan prepared and implemented, in the absence of any illegality or violation of any actionable right conferred by statute. The petitioners have no legal right to invoke constitutional jurisdiction.

28. Similar opinion was expressed by this Court in "KHALID HUSSAIN and others Versus The INSPECTOR GENERAL PUNJAB POLICE and others" [2020 PLC (C.S.) 654] and it was held that:-
"As it is a policy matter, this Court cannot interfere into the policy matters of the Department. It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution." In another case of "MUHAMMAD IQBAL SHAH Versus FEDERATION OF PAKISTAN and others" (2019 M L D 1087), this Court while expressing similar opinion laid down the rule that policy decision cannot be interfered unless some illegality or mala fide is established. It was held:-"*this Court in its Constitutional*

jurisdiction is not competent to revisit the policy of the Government or set aside the same unless some illegality, arbitrariness or established mala fides or violation of any law is pointed out". Similar opinion was expressed in "ADVOCATE MIAN ASIF MEHMOOD Versus FEDERATION OF PAKISTAN through Principal Secretary and 2 others" (2019 MLD 1210) by holding that:- *"It is well settled law that policy decision exclusively falls within the domain of the executive and is not open for any judicial review in the absence of any illegality, arbitrariness or established mala fide."*

29. Likewise, this Court in "AWAIS SAEED and others Versus GOVERNMENT OF PUNJAB and others" [2018 PLC (C.S.) 1135] also draw similar conclusion by holding that:- *"it is a settled principle of law that policy decisions are not interfered by the Courts under the constitutional jurisdiction unless found arbitrary, unconstitutional and against the public interest."* Further reliance can also be placed on "PAKISTAN ENGINEERING COUNCIL Versus FEDERATION OF PAKISTAN and others" (2021 MLD 453), "SHER ZAMAN and 4 others Versus GOVERNMENT OF BALOCHISTAN, SECONDARY EDUCATION DEPARTMENT CIVIL SECRETARIAT, QUETTA through Secretary and 2 others" (2021 CLC 532), "LESCO Versus MUHAMMAD SHOAIB and others" [2020 PLC (C.S.) 654], "ASMATULLAH JANEJO Versus FEDERATION OF PAKISTAN through Secretary and others" [2020 PLC (C.S.) 1196], "Malik MUHAMMAD HASHIM AWAN and another Versus CHIEF SECRETARY GVERNMENT OF PUNJAB, LAHORE and 3 others" (2017 PLC (C.S.) 1085], "Messrs BALOCH DISTILLERY AND SUGAR MILLS through Chief Executive Versus SECRETARY INDUSTRIES AND COMMERCE DEPARTMENT, GOVERNMENT OF SINDH and another" (PLD 2017 Sindh 313), "SHARAFUDDIN Versus The EXECUTIVE ENGINEER and 6 others" (2017 CLC Note 227), "MUHAMMAD IQBAL Versus GOVERNMENT OF PUNJAB through Chief

Secretary, Punjab and another” [2015 PLC (C.S.) 1503], “Messrs ALZAIR TRAVEL AND TOURS (PVT.) LTD. through Chief Executive and 10 others Versus FEDERATION OF PAKISTAN through Ministry of Religious Affairs and 16 others” (2014 CLC 1766), “MINISTRY OF INTER PROVINCIAL COORDINATION Versus Major (R) AHMAD NADEEM SADAL and others” (2014 CLC 600), “SAFDAR JAMIL and others Versus VICE-CHANCELLOR and others” (2011 CLC 116), “Syed ALI ABBAS GARDEZI and another Versus GOVERNMENT OF PAKISTAN through Secretary Establishment Division, Islamabad and 3 others” [2010 PLC (C.S.) 478], and “AQSA MANZOOR Versus UNIVERSITY OF HEALTH SCIENCES, LAHORE through Vice-Chancellor and 3 others” (PLD 2006 Lahore 482)

XI. CONCLUSION

30. Keeping in view the submissions made by the learned Law Officers appearing on behalf of the Provincial as well as the Federal Government, including Junaid Nadeem, Assistant Director, Wildlife Lahore Division and Junaid Alam, Assistant Director, Wildlife (Management); the valuable assistance rendered by Barrister Sameer Khosa, ASC and Barrister Hira Jaleel, Advocate/Amicus Curiae based on scientific research as well as the principles enunciated/developed by the Superior Courts of Pakistan and India in the judgments, mentioned above, it can be safely concluded that (i) since the animals and birds have also some emotions and can feel pain or joy, they have legal rights, which also includes the **Right to Life**, and it is the statutory duty of the State to ensure that these rights are not infringed in any manner; (ii) statutory provisions of a statute can be interpreted liberally in a manner so that the purposive approach keeping in mind the legislative intent and purpose of the said statute cannot be discerned from mere recital of the preamble because the whole statute has to be read out to find out the legislative intent; (iii) the main purpose of enacting the Act is to protect, preserve, conserve and manage the wildlife in the Province of Punjab, therefore, the

Provincial Government, under the Act and other respective (related) provincial legislation, has discretionary power to take steps/adopt measures for the protection of life of wild animals and birds, in addition to advancing the objective of the law/Act by (a) basing its decision on sound ecological principles; and (b) taking appropriate assessment of the population of the wildlife; and (iv) as according to the information provided by the amicus curiae, many countries in the world like Finland, France, Italy, Norway, Poland, Spain, Scotland and Sweden have imposed ban on use of air weapons, including the air-guns for hunting purpose, therefore, it would be in the best interest of the animals and birds if fair chase principle is followed, which not only covers under the hunting ethics/skills but also supports the wildlife conservation efforts of the Wildlife Department in promoting sustainable hunting. Even otherwise the matter relates to a policy decision and exclusively falls within the domain of executive authority while this Court cannot assume jurisdiction in such like matters under Article 199 of the Constitution. In this regard, reference can be made to the judgment passed by the Islamabad High Court, Islamabad in “AZRA JAMALI and others versus FEDERATION OF PAKISTAN through Secretary, M/o Commerce and another” [2017 PLC (C.S.) 533] whereby it has been held that the *High Court does not sit as an appellate authority over policy considerations and cannot examine correctness, suitability and appropriateness of policies.*

31. In view of the above, I find no illegality in the Impugned Notification and as regards the additional restriction/condition, which has been imposed by the Wildlife Department about use of electronic devises/gadgets, battery-operated decoys/*moju* and pre-charged pneumatic air-guns, the same is justified because use of the aforesaid electronic devices/gadgets is against the norms of hunting, especially the principle of fair chase whereby the animal or bird has a fair chance to escape. This writ petition is, therefore, **dismissed** being devoid of force.

32. Before parting, it seems quite relevant and appropriate to mention and reproduce the observations of His Lordship Justice Syed Mansoor Ali Shah, Judge Supreme Court of Pakistan while delivering opinion of the Bench in “D. G. KHAN CEMENT COMPANY LTD. Versus GOVERNMENT OF PUNJAB through Chief Secretary, Lahore and others” (2021 SCMR 834) duly and rightly highlighting the significance of environment and ecosystem of the Country for the future generations to come and rightly emphasizing the duty of Court to adopt jurisprudential approach to safeguard the echo system and environment.

19. Another important dimension of climate change is intergenerational justice and the need for climate democracy. The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them?⁴¹ This Court and the Courts around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times. Democracy, anywhere in the world is pillared on the rule of law, which substantially means rights based rule of law rather than rule based; which guarantees fundamental values of morality, justice, and human rights, with a proper balance between these and other needs of the society.⁴² Post climate change, democracies have to be redesigned and restructured to become more climate resilient and the fundamental principle of rule of law has to recognize the urgent need to combat climate change. Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our

Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. Janine Benyus⁴³ suggests we learn from nature's 3.8 billion years of evolution. How is it that other species have learned to survive and thrive for 10,000 generations or more? Well, it's by taking care of the place that would take care of their offspring, by living within the ecosystem in which they are embedded, by knowing not to foul the nest. We must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature. To us there is no conflict between environmental protection and development because our answer would be sustainable development. Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs and it is in step with our constitutional values of social and economic justice.

33. For the sake of reiteration, it is again stressed and insisted that protection of wildlife animal from being hunted down in an unfair manner against the concept of fair-chase principle is certainly a job, which must be done by the relevant department and by the Courts not only to safeguard and uphold the right of life of the wildlife animals but most importantly to preserve and protect the equilibrium of the ecosystem for the sake of present and future generation of the country.

**(JAWAD HASSAN)
JUDGE**

Approved for Reporting

JUDGE