

The Legal Status of Hunting Houbara Bustards by Foreign Dignitaries

Government of Punjab v Aamir Zahoor-ul-Haq
PLD 2016 SC 421

Orubah Sattar Ahmed*

Introduction

For years, dignitaries from Arab countries have traditionally come to Pakistan to hunt the Houbara Bustard, an endangered migratory bird.¹ Whether the notion of hospitality on behalf of Pakistan validates the illegal hunting of a vulnerable animal is a contested matter. This case note looks at the recent judgment of the Supreme Court ('SC') in *Government of Punjab v Aamir Zahoor-ul-Haq*² ('review judgment'), which dealt with the legality of the hunting of Houbara Bustards in Pakistan by foreign dignitaries. This case note analyzes the departure of the SC from the accepted norms pertaining to the review of its own judgments in this case by constituting a larger bench consisting of a majority of those judges who were not hearing the original case. I argue that this amounts to transforming the exercise of review powers, which is reserved for cases where there is an error apparent on the face of the record, into an appeal.

This case note is organized as follows: Firstly, the facts, procedural history and the final ruling of the SC is presented. This is followed by a look at the existing laws, both domestic and international, that the SC paid close attention to when it first gave its judgment in its original jurisdiction, as well as in review. With this background, this case note analyzes the review judgment written by Justice Mian Saqib Nisar, where the arguments put forth is examined in terms of their importance and legal viability through a comparison with the dissenting opinion penned by Justice Qazi Faez Isa and the judgment given by the SC in its original jurisdiction. Finally, a conclusion is drawn on the potential impact this review judgment has both on the status of the Houbara Bustard and the SC's power to review its own decisions.

Facts, Procedural History and Ruling

On 1 November 2014, The Ministry of Foreign Affairs ('MOFA') issued two letters to the Embassies of Bahrain and UAE allowing foreign dignitaries to hunt Houbara Bustards in different areas of Punjab, Sind and Baluchistan.³ This was legitimized, for instance in Sind's case, by the issuance of a notification by the Forest and Wildlife Department of the Government of Sind under section 40(1) of the Sind Wildlife Protection Ordinance 1972, which empowers the government to change the protected status of an animal and allow it to be hunted through a special permit issued by the MOFA. While the Houbara Bustard was previously a protected animal, this notification changed its status, allowing it to be hunted.

* B.A. LL.B (Hons) 5th Year Candidate, Lahore University of Management Sciences (LUMS).

¹ Rina Saeed Khan, 'Houbara Bustard: Seasonal killers' *Dawn* (15 July 2014).

<<http://www.dawn.com/news/1118552/houbara-bustard-seasonal-killers>> accessed on 19 June 2016.

² PLD 2016 SC 421.

³ *Province of Sind v Lal Chandio* 2016 SCMR 48; For the purposes of this case note, this judgment given by the SC will be referred to as the 'original judgment'.

Petitions challenging the legality of both the notifications and the letters were filed before both the Sind High Court and the Baluchistan High Court. The Baluchistan High Court declared the letters issued by the MOFA unlawful, while the Sind High Court both struck down the notification issued by the Forest and Wildlife Department of the Government of Sind and deemed the letters issued by the MOFA unlawful.⁴

The provinces of Sind and Baluchistan filed appeals against these decisions before the SC. At the same time, a lawyer named Aamir Zahoor-ul-Haq also filed a petition under Article 184(3) of the Constitution of Pakistan ('Constitution') to restrain the Wildlife Departments and the MOFA from issuing hunting permits for Houbara Bustards.⁵ On 19 August 2015, a three member bench comprising of Chief Justice Jawwad S. Khawaja, Justice Dost Muhammad Khan and Justice Qazi Faez Isa upheld the Sind High Court's ruling by holding, among other things, the notification *ultra vires* the Sind Wildlife Protection Ordinance 1972, and dismissed Baluchistan's petition on grounds of limitation.⁶ The SC further held that the Federal Government cannot grant licenses for hunting of the Houbara Bustard due to its status as a protected animal.

Aggrieved provinces, including Punjab, which had lost their right to issue hunting permits sought a review of the judgment by the SC ('original judgment') under Article 188 of the Constitution read with Order XXVI, Rule 1 of the SC Rules 1980. For this purpose, a special five-member bench was constituted. Chief Justice Jawwad S. Khawaja of the original bench had retired by this time and Justice Dost Muhammad Khan was not included in the new bench, and only one of the original three judges, Justice Qazi Faez Isa sat in review. The SC made its decision by a majority of four to one, with Justice Qazi Faez Isa dissenting. In its review judgment, the bench found an error apparent on the face of the record, set aside the original decision of the SC, and listed the petitions for fresh hearing.⁷

Background and Prior Law

In order to analyze the merits of the review judgment, it is important to understand the framework of existing domestic laws, international obligations and case law that the SC looked at while assessing the legality of hunting Houbara Bustards by foreigners. Secondly, the relevant laws that describe the constitution of a review bench of the SC will be briefly discussed.

With respect to the status of the Houbara Bustard, all four provinces have enacted specific Acts for wildlife protection, of which that of Punjab, Sind and Baluchistan form the bone of contention in this case. The Sind Wildlife Protection Ordinance 1972 ('Sind Act'), the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act 1974 ('Punjab Act') and the Baluchistan (Wildlife Protection, Preservation, Conservation and Management) Act 2014 ('Baluchistan Act') are relevant here.

⁴ (n 2).

⁵ Ibid.

⁶ (n 3).

⁷ (n 2).

The Sind Act places wild animals in two categories. Animals with ‘protected’ status are listed in the Second Schedule⁸ and cannot be hunted, whereas ‘game animals’ which can be hunted subject to a special license or permit are placed in the First Schedule.⁹ Here it is essential to know that under Section 40(i) of the Sind Act, the government has the power to ‘add or exclude from the Schedules any wild animal, subject to such conditions as it may impose in each case.’ This essentially means that the government has discretion to change the status of a protected animal to a game animal and vice versa through the issuance of a notification. In the present case, while the Houbara Bustard was initially listed in the Second Schedule, the notification issued by the Sind Government later changed the status of the Houbara Bustard to a game animal, thus allowing the MOFA to issue permission letters to Arab dignitaries. Under the Punjab Act, the matter is simpler since the Houbara Bustard is listed as a game animal¹⁰ which means that its hunting is permissible¹¹ if an ordinary shooting license is granted.

However, the Baluchistan Act is a little more complicated. Game animals are listed in Schedule I and can be hunted with a license,¹² while protected animals are listed under Schedule III.¹³ Interestingly enough, Houbara Bustards have been listed under both Schedule I and Schedule III, which gives them the status of game animals and protected animals at the same time. Even while listed as a game animal, however, the issuance of permits allows for one hundred birds to be hunted in a given season, spanning from 15 November to 15 February. The reality of the matter is very different, and instances of overhunting are common. A shocking example was seen when a report prepared by a divisional forest officer of the Baluchistan forest and wildfire department was leaked in 2011. The report described the hunting of 1,977 birds in 21 days by a Saudi Prince on a single permit.¹⁴ All of this also demonstrates that the degree of protection afforded to Houbara Bustards varies greatly between provinces, which is quite troublesome.

The international obligations of Pakistan under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (‘CITES’) and Convention on the Conservation of Migratory Species of Wild Animals (‘CMS’) are equally relevant. CITES has been enacted domestically through the Pakistan Trade Control of Wild Fauna and Flora Act 2012 which ‘give[s] effect to the provisions of the [CITES]’.¹⁵ CITES is also incorporated in the Baluchistan Act. The original judgment stated that the Houbara Bustard is listed in Appendix II of CITES,¹⁶ which lists ‘all species which although not necessarily now threatened with extinction may become so’.¹⁷ However, in reality it is listed as ‘Chlamydotis

⁸ Section 2(j), the Sind Wildlife Protection Ordinance 1972; Section 7(i) of this Ordinance states that ‘protected’ animals cannot be hunted.

⁹ Section 2(d), the Sind Wildlife Protection Ordinance 1972; Section 7(ii) of this Ordinance states that ‘game’ animals cannot be hunted without a permit.

¹⁰ Section 2 (d), the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act 1974 states that game animals are to be listed under first schedule or fourth. Houbara Bustard is listed under First Schedule.

¹¹ Section 9, the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act 1974.

¹² Section 2(pp), the Baluchistan (Wildlife Protection, Preservation, Conservation and Management) Act 2014.

¹³ Section 2(sss), the Baluchistan (Wildlife Protection, Preservation, Conservation and Management) Act 2014.

¹⁴ Bhagwandas, ‘Arab royal hunts down 2,100 houbara bustards in three week safari’ *Dawn* (22 April 2014) <<http://www.dawn.com/news/1101272>> accessed on 19 June 2016.

¹⁵ (n 3) [6].

¹⁶ (n 3) [5] and [12].

¹⁷ Article II (2), Convention on International Trade in Endangered Species of Wild Fauna and Flora.

macqueenii’ under Appendix I,¹⁸ which enumerates those animals that are ‘threatened with extinction’.¹⁹ Thus under CITES, Houbara Bustards are animals currently facing the threat of extinction rather than a foreseeable risk of extinction as stated in the original judgment. It naturally follows that animals that are actually threatened with extinction at present would be categorized as requiring greater protection than those that may in the future be threatened with extinction. At this point, however, it is also pertinent to note that though CITES recognizes the status of the Houbara Bustard as being threatened with extinction, it is in essence a treaty that regulates the trade of the bird to prevent it from being threatened, rather than its active hunting.

Pakistan is a party to CMS, and the Convention is also enacted as part of the Baluchistan Act. CMS lists the Houbara Bustard in Appendix II as part of those ‘migratory species which have an unfavourable conservation status’.²⁰ This also brings into light the possible international obligations Pakistan has towards preserving Houbara Bustards under CMS since migratory species listed under Appendix I (Endangered Migratory Species) invoke different responsibilities than those listed under Appendix II. This will be further analyzed in the next section.

The hunting of Houbara Bustards is not a novel matter for Pakistani courts. In *Tanvir Arif v Federation of Pakistan*,²¹ Saudi dignitaries were granted letters permitting the hunting of Houbara Bustards by the MOFA in Sind and this act was challenged as a violation of the Sind Act since Houbara Bustards were protected animals. The principle enunciated in this case was that of equality before the law under Article 25 of the Constitution, which would not make granting such permission even to dignitaries permissible. In *Society for Conservation and Protection of Environment (SCOPE) v Federation of Pakistan*,²² even though a circular granting permission for hunting Houbara Bustards was not issued under Section 40(1) of the Sind Act, the Sind High Court still limited the scope of this provision. Though this section grants the Sind Government power to change the status of a protected animal to a game animal and vice versa, this power is not unfettered:

[e]ven this power does not appear to be absolute, either as regards space or content, and is presumably to be exercised justly, fairly, reasonably and lawfully and cannot be invoked in disregard of the commitments, which the State of Pakistan may have entered into at an international level, such as those which ensue upon being a member of the IUCN or a signatory to an international convention.²³

Finally, it is necessary to look at the laws governing the review jurisdiction of the SC to see how it has been exercised in this case. According to the Constitution, the SC has the power to review any of its judgments or orders ‘subject to the provisions of any Act of [Parliament] and of any rules made by the Supreme Court’.²⁴ Order XXVI, Rule 8 of

¹⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora Appendices <<https://www.cites.org/eng/app/appendices.php>>.

¹⁹ Article II (1), Convention on International Trade in Endangered Species of Wild Fauna and Flora.

²⁰ Article IV (1), Convention on the Conservation of Migratory Species of Wild Animals.

²¹ 1999 CLC Karachi 981.

²² 1993 MLD Karachi 230.

²³ Ibid.

²⁴ Article 188, the Constitution of Islamic Republic of Pakistan 1973.

Supreme Court Rules 1980 describes the nature of its review jurisdiction. It states that ‘[a]s far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed.’ This means that it is preferred that the same bench which rendered the original judgment should be the one reviewing as well, as far as it is practical for that to happen. Whether this is what happened in the present case where only one judge from the original bench was included in the enlarged bench constituted to review the decision is discussed in the next section.

Analysis

In this section, I primarily focus on whether or not the decision to constitute a larger bench and only allow one of the original judges to sit in review is supported in law. I also examine whether or not the SC adequately dealt with the issue concerning Pakistan’s international obligations under CITES and CMS, and whether courts can order the legislature on matters of legislation or enforce a permanent ban on the hunting of the Houbara Bustard.

Firstly, the scope of a review and the constitution of the review bench in this case needs to be assessed. As previously discussed, under the Constitution, the SC has the power to review its own judgments, which according to Order XXVI, Rule 1 of the Supreme Court Rules 1980 is subject to Order XLVII, Rule 1 of the Code of Civil Procedure 1908.²⁵ The rationale behind having the power to review its own judgment was discussed by Justice Cornelius in *Nawabzada Muhammad Amir Khan v The Controller of Estate Duty, Government of Pakistan, Karachi*.²⁶ He stated that ‘for the doing of “complete justice”, the Supreme Court is vested with full power’ to conduct reviews when there is an irregularity of ‘such a nature as converts the process from being one in aid of justice to a process that brings about injustice.’ In *Suba v Fatima Bibi*,²⁷ it was held that a ‘review petition would also be competent if something which is obvious in the judgment has either been overlooked and that if it would have been considered by the Court, the final result would have been otherwise’. Even though all judgments by the SC achieve finality, this does not bar it from using this extraordinary power to review its own judgment, which is why it is even more important to know the limitations of this power. In *Mian Rafiq Saigol v Bank of Credit and Commerce International (Overseas) Limited*,²⁸ it was made clear that a review did not entail rehearing of a case already decided. Therefore:

[I]f the Court has *taken a conscious and deliberate decision on a point of law or fact* while disposing of a petition or an appeal, review of such judgment or order cannot be obtained on the grounds that the Court took an erroneous view or that another view on reconsideration is possible. Review also cannot be allowed on the ground of discovery of some new material, *if such material was available at the time of hearing of appeal or petition but not produced*.²⁹
(Emphasis provided)

²⁵ Order XLVII, Rule 1, Code of Civil Procedure 1908 states that any person aggrieved by a decree can apply for a review of judgment to the Court which passed the order, if he discovers new evidence that he was not aware of before despite due diligence or if there is some mistake or error apparent on the face of record or for any other sufficient reason.

²⁶ PLD 1962 SC 335.

²⁷ 1996 SCMR 158.

²⁸ PLD 1997 SC 865.

²⁹ Ibid.

Further rules regarding the exercise of review jurisdiction were highlighted in *Abdul Ghaffar v Asghar Ali*.³⁰ The power to review cannot be invoked as a routine matter to rehear cases unless there is a glaring mistake made by the court or an error which is so manifest that if noted earlier, it would have changed the order. Therefore, a review in its limited scope is extremely different from an appeal which has a wider ground upon which contentions can be made regarding the decision itself.

In the review judgment at hand, the line between the scope of a review and that of an appeal seems to have been blurred. This is apparent from the way the review Bench allowed new contentions by counsel such as the non-ratification of CMS and also its statement that the original judgment had wrongfully placed a ban on the granting of hunting licenses. Yet another reason for setting aside the original judgment was that ‘the criteria and considerations on the basis of which the provincial governments exercise their regulatory power under their respective wildlife legislation have... not been shown to the Court’.³¹ Since the SC was ‘inclined to examine the legal propriety of the discretionary safeguards applied by the provincial governments’,³² it was ordered that a fresh hearing should be held on this proposition.

As the case law discussed above denotes, review cannot take place on the basis of new evidence that could have been available at the time of petition but was not presented before the SC (such as evidence of how the government exercises its regulatory powers while issuing licenses). Furthermore, it is not evident that any new evidence would be so manifest and obvious that it would change the verdict had it been brought to the notice of the SC (such as the non-ratification of CMS). In fact, the judge who wrote the original judgment still stood by what he ordered in his dissenting opinion of the review judgment despite being on the newly constituted bench and examining the arguments. A dangerous precedent has been set, thereby widening the scope of the review jurisdiction of the SC, which could lead to this becoming a routine matter rather than a discretionary power. Furthermore, this blurs the line between what constitutes an appeal and a review, which raises the question of whether any judgment of the SC can ever achieve finality. Justice Qazi Faez Isa expresses a similar concern in his dissenting opinion. More specifically, he states that because the review jurisdiction of the SC is being widened in this manner, a judgment would perpetually be open to review, and could be set aside by bringing in a new trial, with the ensuing judgment also exposed to a similar review and so on.

As far as the validity of the newly constituted bench is concerned, the majority of the review bench held that the words ‘as far as practicable’, when describing the circumstances in which the bench formed has to be the same as the original bench, demonstrate that there is flexibility in the principle.³³ If there is a situation that is beyond anyone’s control, such as the retirement of a judge or their health issues, then it is only sensible to change the constitution of the bench and this rule allows that. However, the words ‘as far as practicable’ have been defined differently by Justice Qazi Faez Isa in his dissenting opinion. According to him, no application or even verbal request was made for the formation of a bigger bench and the review judgment fails to provide any justification for it. Furthermore, the fact that Justice Jawwad S. Khawaja had retired by the time review was sought meant that only one member

³⁰ PLD 1998 SC 363.

³¹ (n 2) [24].

³² Ibid.

³³ (n 2) [17].

of the original bench needed replacement. The exclusion of Justice Dost Muhammad Khan from the new bench was not warranted since he had neither retired nor he was ill, and his exclusion could not be justified on the basis of an occurrence that was ‘beyond the control of anyone’.³⁴ Order XXVI, Rule 8 of the Supreme Court Rules 1980 also does not make it necessary for the size of the bench to be increased. He further highlighted an important precedent set in the case of *Reviews on behalf of Justice (Retd.) Abdul Ghani Sheikh*³⁵ in which the wisdom of having the same bench review its judgment has been explained. The rationale stems from the idea that the judges present on the bench already have full comprehension of all the important aspects of the case. The original bench would also be in a better position to see if any new evidence that is brought forward would have affected their mindset and reasoning had it been brought earlier. Therefore, the formation of a larger bench in the present case can only be described as baffling.

Two of the most pertinent issues before the review bench now need to be discussed together since they are interlinked. The first concerned whether through paragraph 23(ii) of the original judgment the SC was enforcing a permanent ban on the government from issuing hunting licenses and whether the SC had the power to do this. The second issue concerned whether the judiciary could instruct the legislature to legislate on particular subjects. It was contended that paragraph 23(iv) of the original judgment where the SC instructed the ‘[p]rovinces to amend their respective wildlife laws to make them compliant with CITES and CMS’ amounted to ordering the legislature on what to legislate. Thus, the review bench had to decide whether the original bench erred in ruling that a permanent ban be placed on the hunting of the Houbara Bustard and that whether the judiciary can actually dictate what the legislature should legislate.

On both counts, the review bench took a cautious view by first examining the domestic laws and international treaties that Pakistan is a party to and concluding that a permanent ban on hunting of the Houbara Bustard is not envisaged by either.³⁶ Section 40(i) of the Sind Act gives the government the discretion to change the status of any animal, and this discretionary power extends to all the provinces, to be exercised subject to the changing status of the animal in the world. It took a similar view regarding the second issue by stating that the Constitution is ‘based upon trichotomy of power’ and the judiciary cannot overstep its boundaries from being an interpreter of law to actually legislating it.³⁷

However, Justice Qazi Faez Isa expressed several concerns regarding the view of the review bench in his dissent. He stated that in the original judgment (which incidentally he is the author of), paragraph 23(ii) does not enforce a perpetual ban on the issuance of hunting permits of Houbara Bustards but rather is applicable only if the provinces do not make their laws compliant with the Pakistan Trade Control of Wild Fauna and Flora Act 2012.³⁸ However, this is confusing since firstly, the paragraph 23(ii) states that ‘[n]either the Federation nor a Province can grant license/permit to hunt the Houbara Bustard’ and does seek to enforce a ban on the federation and the province from issuing hunting permits if amendments are not made to the relevant laws. Technically, until such amendments are made, the SC is ordering the government to not grant licenses or permits and if indeed the

³⁴ (n 2) dissenting opinion Justice Qazi Faez Isa, para [4].

³⁵ PLD 2013 SC 1024.

³⁶ (n 2) [23].

³⁷ (n 2) [22].

³⁸ (n 2) dissenting opinion Justice Qazi Faez Isa, [17].

amendments are not made at all, then such a ban would be permanent. The review judgment correctly points out that such a ban is definitely not what was envisaged by the law. In fact, it would only lead to a power struggle between the judiciary and the legislature, where the former seeks to impose ban on hunting permits unless the law is amended, and the latter argues that such a ban is not compliant with the spirit of the law itself.

Regarding the second issue about whether the judiciary can actually order the legislature to legislate, the dissenting opinion examines a number of cases and alleges that similar calls to amend the law were also made in them.³⁹ Interestingly enough, one of the judgments highlighted was penned by Justice Saqib Nisar, who has also written the review judgment, and according to Justice Qazi Faez Isa, it too directs for ‘immediate steps for amendment in the provisions of Limitation Act, 1908’.⁴⁰ Therefore, according to the dissenting opinion, directing the provinces to make amendments in their laws through Paragraph 23(iv) of the original judgment is not unprecedented. However, this still creates a conflict between the earlier idea posited by Justice Qazi Faez Isa that a ban on hunting licenses would only be active if amendments are not made by governments, since it is not a simple directive to the legislature to make amendments but actively imposes sanctions in case of non-compliance. This poses a serious problem to the maintenance of separation of powers between the three organs of the state. Here, it is pertinent to mention that the relevant portion of the judgment by Justice Saqib Nisar as mentioned by Justice Qazi Faez Isa states that it ‘deem[s] it expedient that a copy of this judgment be sent to the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan to take immediate steps for amendment in the provisions of Limitation Act, 1908.’⁴¹ The judgment therefore did not order for an amendment to be made and enforce a sanction in case it did not happen rather it found it appropriate to send the government a copy of the judgment so that amendments could be made at the prerogative of the legislature.

Furthermore, with respect to the status of CITES and CMS in Pakistani laws, the review judgment makes some important observations which depart from the viewpoint of the original judgment, and it seems rightfully so. Though CITES labels the Houbara Bustard an animal that is ‘threatened with extinction’, it still binds states to preserve them against this threat only if it stems from excessive import and export. Thus the review judgment argues that CITES is not applicable where the point in question is whether Houbara Bustards can be hunted by foreign dignitaries.⁴² With respect to CMS, the review judgment reasoned that the Convention has not been ratified by Pakistan and is not binding. Further, since Houbara Bustards are listed under Appendix II of CMS (migratory species which have an unfavorable conservation status) and not Appendix I (Endangered migratory species), the State’s responsibility towards the bird is different from that mentioned in the original judgment. CMS binds party states to ‘prevent, reduce or control factors that are endangering or are likely to further endanger the species’⁴³ as well as ‘prohibit the taking of animals belonging to such species’,⁴⁴ under Appendix II, which includes Houbara Bustards. They are migratory species which have an unfavorable conservation status and ‘which require international

³⁹ *Government of Baluchistan v Azizullah Memon* PLD 1993 SC 341, *Election Commission of Pakistan v Province of Punjab* PLD 2014 SC 668, *Nadeem Ahmed v Federation of Pakistan* PLD 2010 SC 1165.

⁴⁰ *Mandi Hassan alias Mehdi Hussain v Muhammad Arif* PLD 2015 SC 137.

⁴¹ *Ibid* [7].

⁴² (n 2) [13].

⁴³ Article III 4(c), Convention on the Conservation of Migratory Species of Wild Animals.

⁴⁴ Article III 5, Convention on the Conservation of Migratory Species of Wild Animals.

agreements for their conservation and management' with the aim being that Range States⁴⁵ should work towards forming agreements to benefit such species.⁴⁶ It would then follow that since the Houbara Bustard is listed under Appendix II, Pakistan is only obliged under CMS to form international agreements with other party states to work towards conserving them.

Additionally, an ancillary argument in the review judgment reasoned that the fact that the Baluchistan Act has listed the Houbara Bustard as both a protected and a game animal is not an anomaly. This is because Article IV of CMS, which the Baluchistan Act also recognizes, states that a migratory specie can be listed in both Appendix I for endangered migratory species and Appendix II for migratory species with unfavorable conservation status.⁴⁷ Upon closer inspection, however, this argument in the review judgment is tenuous. Even if a migratory specie is listed as both being endangered under Appendix I of CMS and having unfavorable conservation status under Appendix II of CMS, these two ideas are not contradictory or mutually exclusive. However, if the same argument is made in the case of the Baluchistan Act, it would mean that an animal can be placed in both Schedule I and III at the same time, and be listed as a game animal⁴⁸ and protected animal at the same time. Hence an animal cannot be listed under both Schedules in the Baluchistan Act and not be an anomaly because being a game animal and a protected animal are mutually exclusive and cannot co-exist.

Furthermore, it was argued that the Baluchistan Act has granted statutory protection to trophy hunting, albeit for a limited number of days and under the ambit of a license.⁴⁹ This, it was assumed, could actually help in uplifting the economic wellbeing of the areas where the Houbara Bustard flies to and help in their conservation since only licensees can hunt, which gives an economic incentive to the locals to not hunt. However, research on the migratory pattern of the Houbara Bustard shows that the birds only stay in Pakistan during the winters and spend the rest of the year outside Pakistan.⁵⁰ This somewhat weakens the economic benefit argument since the Houbara Bustard stays in Pakistan for an extremely small period, and granting licenses to foreign dignitaries would not give incentive to the locals to not hunt the Houbara Bustard for the rest of the year since they are not even in Pakistan for the rest of the year.

Conclusion

In light of the discussion above, it would seem that the review jurisdiction exercised by the SC, especially with respect to constituting a larger bench without any overwhelmingly compelling reason to do so, makes for a worrisome precedent, especially in view of the many inconsistencies in the review bench's position. Furthermore, judicial norms dictate that

⁴⁵ Convention on the Conservation of Migratory Species of Wild Animals, Article I 1(h) reads: 'Range State' in relation to a particular migratory species means any State ... that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.'

⁴⁶ Article IV, Convention on the Conservation of Migratory Species of Wild Animals.

⁴⁷ (n 2) [19].

⁴⁸ Game animal here means animals that can be hunted under a valid hunting permit while protected animals are those 'which shall not be hunted, killed, trapped, captured or traded.'

⁴⁹ (n 2) [16].

⁵⁰ Olivier Combreau and others 'Migratory Pathways and Connectivity in Asian Houbara Bustards: Evidence from 15 Years of Satellite Tracking' (2011) PLOS < <http://dx.doi.org/10.1371/journal.pone.0020570> > accessed on 20 June 2016.

during a review, the SC only looks upon matters where there is an error apparent on the face of the record. In the present case, there has been a divergence from this principle. The SC has allowed matters regarding the decision itself to be contested, a practice that widens the scope of a review to that of an appeal, which is hardly a good public policy. With the review judgment finding ‘an error apparent on the face of the record’ and thus setting aside the original judgment which envisioned a protected status of Houbara Bustard, it is unclear how this saga will continue. Meanwhile, the fate of the Houbara Bustard hangs in the balance.