Qazi Faez Isa, J. I have read the judgment authored by my distinguished colleague Justice Mian Saqib Nisar, but with profound respect I cannot bring myself to agree therewith. Before proceeding to highlight the points of disagreement, it would be appropriate to set out the background and certain material facts.

Background - Constitution of a larger Bench

2. The judgment dated 19th August 2015 ("**the judgment under review**") was decided by a three Member Bench. I authored it and the other Members were the then Chief Justice Jawwad S. Khawaja and Justice Dost Muhammad Khan, after which the then Chief Justice Jawwad S. Khawaja retired. When these cases came up before a three Member Bench on 10th December 2015 my distinguished colleagues were of the view that, "*considering the questions involved in the matter, we request the Hon'ble Chief Justice to constitute a larger bench*", without elaborating what such *questions* were or why the determination thereof may require the constitution of a larger bench. I dissented. It would be appropriate to reproduce the following extract from my dissent:

> "The matter is relatively simple and there is hardly any justification for the constitution of a larger Bench. Moreover, no application for the constitution of a larger Bench has been submitted nor even a verbal request has been made in this regard. Therefore, with profound respect, I cannot bring myself to agree with the recommendation for the constitution of a larger Bench. It would also be appropriate to reproduce Rule 8 of Order XXVI of the Rules, which provides that:
>
> > "*8. As far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed*."
>
> I can do no better than to reproduce the following extract from the judgment of my distinguished colleague from the case of Reviews on behalf of Justice (Retd.) Abdul Ghani Sheikh and others (PLD 2013 Supreme Court 1024):
>
> > "*2. There is great wisdom in law, that the review, generally and ordinarily should be heard by the same Court and the **Court** in this context is an interchangeable term with the **Judge**. The object behind the above principle is, that the Court/Judge who has heard and decided the matter has a full comprehension as to what was argued before him; what was debated upon at the time of hearing of the matter (order under review) and what was the understanding of the Judge while adverting and attending to the pleas raised before him at the time of hearing of the matter and passing the order/judgment. It is so because while exercising the review jurisdiction, which otherwise has a limited*

> *scope, the judgment/order under review could be analyzed and heeded to by the Court/Judge, inter alia, in the light of the above considerations.*" *(pages 1032-3)*
>
> "*...the Hon'ble Judge who were not the part of the Bench which heard the matter would not like to sit as a court of appeal, while considering the review matter.*" *(at page 1034)*
>
> In the above cited case there was some justification for the constitution of a larger Bench since the learned judges were not unanimous in their esteemed views and as the matter was of immense constitutional and legal importance, involving as it did the treatment to be meted out to those who had been judges of the superior courts. However, the said judgment of this Court, the review whereof is sought, was a unanimous judgment. Larger Benches may also be constituted when there are conflicting judgments of this Court and such conflict needs resolution, but here we are not faced with conflicting judgments. With utmost respect, the matters to be considered in these review petitions are not of a nature that may have required a departure from the Rules and the longstanding continuous practice of this Court. Therefore, I would humbly request the Hon'ble Chief Justice to let these matters be heard by the same number of judges who had earlier heard the case, i.e. three members, incidentally two of whom (including myself) are still on the Bench."

Despite my abovementioned note, a larger Bench of five Members was constituted to hear these matters. To paraphrase, it was noted, that: (1) no request for the constitution of a larger Bench was made, (2) Rule 8 of Order XXVI of the Supreme Court Rules ("**the Rules**") required review petitions to be ordinarily heard by the same Bench, (3) the reasons (for not constituting larger Benches) were most ably enunciated in the referred to judgment of my learned colleague, (4) it wasn't the practice of this Court to constitute larger Benches to hear review petitions and (5) that a larger Bench hearing a review would be effectively sitting as a court of appeal.

3. Mr. Kamran Murtaza, the learned counsel for one of the respondents, objected to the formation of the Bench, however, my distinguished colleagues over-ruled the objection in the following terms:

> "Rule 8 of Order XXVI of Supreme Court Rules, 1980 stipulates that as far as practical the review will be heard by the same Bench. The Rule provides a flexibility in constitution of the Bench, and rightly so, as there may be situation where the constitution of the same Bench may be impossible for the reason beyond the control of anyone, as in case of retirement of a judge or his indisposition on account of failing health. The objection therefore, is misconceived and accordingly repelled."

4. Article 188 of the Constitution of the Islamic Republic of Pakistan ("**the Constitution**") provides how review of the judgments and orders of this Court are to be attended to, which is reproduced hereunder:

> "**188. Review of judgments or orders by the Supreme Court.-** The Supreme Court shall have power, subject to the provisions of any act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it."

Article 188 makes it clear that the powers of review are subject to Federal law and of any rules made by the Supreme Court. There is no Federal law on the subject. However, the Supreme Court has enacted the Supreme Court Rules 1980 ("**the Rules**") and Rule 8 of the Order XXVI of the Rules ("**the said Rule**" or "**Rule 8**") is in respect of review applications and provides that, "***As far as practicable*** *the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed*" [emphasis added]. Once rules as envisaged under Article 188 of the Constitution have been enacted with regard to the review jurisdiction such rules, that is the Rules, have great sanctity. Since Rule 8 clearly states that the application for review should be posted for hearing *as far as practicable before the same Bench* therefore compliance is required to be made with the said provision, unless there are compelling reasons for not doing so. As Chief Justice Jawwad S. Khawaja had retired before the review petitions were filed / heard another Judge of this Court was required to take his place. Rule 8 however does not envisage the constitution of a larger Bench. It is also the consistent practice of this Court to post review petitions before Benches of the same strength as decided the judgment under review. Another practice is not to unnecessarily disrupt the normal work of the Court, therefore, review petitions are placed before a Bench of numerically the same strength of which the author judge (unless he has retired) is always a Member, though the Bench may not include the other Members of the Bench who had earlier heard the case. Since a larger Bench was specifically constituted to hear the review petition there was no justification to exclude a Member who had earlier heard the case. However, Justice Dost Muhammad Khan, who had earlier heard the case and who by the Grace of the Almighty is not suffering

from "*indisposition on account of failing health*", has been excluded. The objection taken by Mr. Kamran Murtaza reiterated what Article 188 of the Constitution read with Rule 8 provided, therefore in my humble opinion, it would not be correct to categorize it as "*misconceived*" or which merited "*to be repelled.*" Moreover, in the present case, to quote from the majority judgment, a "*situation where the constitution of the same Bench may be impossible*" has not arisen.

5. In my earlier note of dissent I had specifically reproduced the afore-quoted extract from the judgment of my distinguished colleague (Justice Mian Saqib Nisar) however, neither the reasoning contained therein nor the other points noted in my earlier dissent have been attended to. By constituting larger Benches to hear review petitions we venture into unchartered waters. When larger Benches are constituted to hear review petitions this Court would, to borrow the phrase of my illustrious colleague, "*sit as a court of appeal*" falling into the very pitfall that was to be avoided.

6. Before proceeding to consider the merits of the matter there are a few additional legal issues that require attention.

Entertaining the Government of Balochistan's Time-Barred Review Petitions

The majority judgment (in paragraph 21) states that even though the civil petitions for leave to appeal ("**CPLAs**") filed by the Government of Balochistan against the judgment of the learned Judges of the High Court of Balochistan were barred by time they should have been entertained. In this regard the judgment in Mehreen Zaibun Nisa v. Land Commissioner, Multan (PLD 1975 SC 397) has been referred to. It would therefore be appropriate to reproduce the following paragraph from the said judgment, which attends to the matter in hand:

> "Some of these appeals, namely, Civil Appeals Nos. 23, 39 and 40 of 1974, are barred by time in varying degrees but we would condone delay for the reasons stated in the relevant applications, as well as for the reason that they involve substantial questions of law of public importance which have in any case to be decided in the other appeals before us."

In the above mentioned case, applications seeking to condone delay were allowed, as presumably the reasons stated therein were sufficient to do so. However, we had dismissed the said CPLAs because no valid reason for condoning delay was mentioned in the applications submitted in this regard. Our order dismissing the same is reproduced hereunder:

> "**Civil Petition No. 20-Q/2015:-** This petition is time barred. An application seeking condonation of delay has been filed but no valid reason has been given therein to justify late filing of the petition. This petition is dismissed being barred by limitation."
>
> "**Civil Petition No. 21-Q/2015:-**. This petition is time barred. An application for condonation of delay has been filed but the same does not contain any valid ground which would justify late filing of the petition. This petition is dismissed being time barred."

CPLA Nos. 20-Q and 21-Q of 2015 filed by the said Government were barred by time and the applications seeking to condone delay (CMA Nos. 22-Q and 24-Q of 2015) didn't mention a valid reason to justify their belated filing. As per the said applications, the Government of Balochistan had learnt on 17th December 2014 about the judgment which had been announced on 27th November 2014, by the Balochistan High Court. Even if this statement is accepted then too the said Government had more than sufficient time to prepare and file the petitions assailing the judgment of the High Court. Therefore, the applications seeking delay to be condoned were rightly dismissed and nothing has been stated that may justify us to review the said orders.

Merely because petitions on similar matters are to be heard does not mean that other time-barred petitions are automatically entertained too; the judgment in the case of Mehreen Zaibun Nisa (above) does not state so, and if this precedent is established Rule 1 of Order XII of the Rules, which prescribes the period (of sixty days) for filing petitions for leave to appeal, would be made redundant. In addition, the discretion vesting in this Court to condone delay in appropriate cases would be rendered meaningless, if the pendency of a similar matter was sufficient reason to entertain time-barred petitions. There is yet another aspect, once this Court has exercised its discretion not to condone delay the same cannot be subjected to review, because the exercise of such discretion is not within the ambit of review jurisdiction.

Civil Review Petition No. 600 of 2015

7. This petition cannot be categorized as a 'review petition' as it has not been filed by the Additional Advocate General Sindh, who was earlier heard on behalf of the Province of Sindh and two others. Mr. Farooq H. Naek has sought permission to represent the petitioners. The application (CMA No. 6828/2015) submitted in this regard does not disclose why the said law officer of the Government of Sindh could not file a review, consequently, in my order dated 10th December 2015 the following preliminary questions were formulated:

> "Q. Whether (1) The Province of Sindh, through Chief Secretary, Government of Sindh, (2) The Secretary, Forest, Wildlife & Environment Department, Government of Sindh and (3) The Conservator Wildlife Sindh, Wildlife Department, Government of Sindh, Karachi can engage private counsel when the concerned Law Officer of the Province of Sindh is available?
>
> Q. Whether the tax-payers should be burdened further to enable the official respondents the benefit of private counsel?
>
> Q. Whether the petition is maintainable without attaching the certificate of the Advocate Supreme Court / Law Officer (Rules 4 and 6 of Order XXVI) who had been heard?"

Unfortunately, the aforesaid queries remained unanswered. Since the said 'review petition' has not been filed by the learned counsel who had earlier argued the matter nor the requisite certificate (in terms of rules 4 and 6 of Order XXVI of the Rules) of such counsel has been attached, therefore, the 'review petition' is not maintainable and is dismissed.

Civil Review Petition No. 604 of 2015

8. As regards this civil review petition it would be appropriate to reproduce the following extract from my order dated 10th December 2015:

> "This review petition is barred by four days. The application (CMA No. 7491/2015) which seeks that the delay be condoned does not give any reason, save that the petitioner was "*unaware*" of the said judgment. The petitioner was also not a party to the said cases wherein the said judgment was passed. Therefore in this matter too, the following preliminary questions need to be answered:
>
> Q. Whether the petitioner being 'unaware' of the said judgment is a sufficient ground to condone delay?

> Q. Whether the petitioner, who was not a party to the cases that were decided, can seek a 'review' of the said judgment?
>
> Q. Whether the petitioner is adversely affected by the said judgment?"

The learned counsel representing the petitioner in this review petition however did not respond to any of the aforesaid queries. The petitioner has not shown himself to be adversely affected by the judgment and he was also not a party to the case. Moreover, the petitioner being "*unaware*" of the judgment is hardly sufficient ground to condone the delay in filing the review petition. Consequently, the said review petition is dismissed.

Civil Review Petition No. 607 of 2015

9. It would be appropriate to reproduce the following extract from my order dated 10th December 2015 which dealt with this review petition:

> "The petitioner had filed Civil Petition for Leave to Appeal No. 253/2015 assailing the judgment dated 27th November 2014 of the Balochistan High Court (in Constitution Petition No. 17 of 2011), however, the said CPLA was dismissed vide judgment dated 19th August 2015 of this Court for the reason that: "*the petitioner was not a party in the petition before the High Court nor was a necessary or proper party thereto and is also not personally affected by the said judgment, therefore, CPLA No.253/2015 is dismissed*". This review petition is also barred by sixty-one days. The petitioner has filed an application to condone delay on the ground that, "*the delay so caused were neither intentional nor deliberated* [*sic*]". The following preliminary questions need to be answered before the matter is considered on merit:
>
> Q. Whether the delay in filing the petition can be condoned merely because the delay was unintentional?
>
> Q. Whether the petitioner, who was not a party to the cases that were decided, can seek a 'review' of the said judgment?
>
> Q. Whether any fundamental right of the petitioner is violated if Houbara Bustards are not hunted?"

The delay cannot be condoned merely because it was unintentional. In any event the petitioner was not a party to the case and cannot seek review of the said judgment, particularly when he is not adversely affected by it. Consequently, the said review petition is dismissed.

Enlargement of Jurisdiction

10. The majority judgment has also decided to enlarge the scope of the dispute as it wants to examine the "*objects of wildlife legislation in respect of all vulnerable and threatened game species including the Houbara Bustard*" (paragraph 24). The stated objective may be otherwise commendable, but such enlargement of jurisdiction (when hearing review petitions), is not contemplated by the Constitution or the Rules.

Undoubtedly, this Court under Article 184 (3) of the Constitution has jurisdiction, that has come to be categorized as *suo motu* jurisdiction, but even resort thereto cannot be had to expand the scope of a review petition. Whereas new and novel concepts may be welcomed in certain disciplines the legal edifice should not be subjected to such vagaries. We must endeavour to ensure that the interpretation of the Constitution and the laws is long-lasting and sustainable. A constitutional or legal provision once interpreted, explained and elucidated should not be lightly revised. A stable and durable legal system is built upon firm foundations.

Ordering Hearing Afresh

11. The majority judgment concludes as under:

> "25. In such view of the matter there is an apparent error on the face of record. We therefore, allow these review petitions, set aside the judgment dated 19.08.2015. The Civil Petitions and the Constitution Petition shall be listed for hearing afresh."

We had heard these matters for quite a few hours over three days (6th, 7th and 8th January 2016) therefore I am mystified at the aforesaid outcome. If there is "*an apparent error on the face of record*", (in the judgment under review,) and it is "*set aside*" then why are the cases "*listed for hearing afresh*"? Neither the Constitution nor the Rules permit or contemplate this course of action and for good reason. The Bench "*hearing afresh*" could conclude that the judgment under review did not merit a review or negate something which had been 'decided' by the majority judgment. The decision given after the "*hearing afresh*" would also be subject to review. Would the review be heard by the same Bench or yet a larger one? The judgment then under review could also be set aside and the case ordered to be reheard, as has been done by the majority

judgment. As a result the legal certitude and the authoritativeness expected from the decisions of the Supreme Court undermined.

It is also not clear whether the "*hearing afresh*" will include on the Bench the author of the judgment under review.

Review Petition Nos. 568 to 570 of 2015 Filed by the Government of Pakistan

12. These three review petitions have been filed by the Ministry of Foreign Affairs. I enquired from the learned Attorney General for Pakistan, who was representing the petitioners, whether with regard to the Act, the provincial wildlife laws, CITES and CMS the Ministry of Foreign Affairs is the concerned Ministry? In the absence of a response, the learned Attorney General's kind attention was drawn to the Rules of Business, 1973 (enacted pursuant to Article 99 of the Constitution). The said Rules of Business distributes the business of the Federal Government "*in a distinct and specified sphere*" (Rule 2(vi)) amongst the "*Ministries and Divisions shown in Schedule I*" (Rule 3). Matters attended to in the Act, the provincial wildlife laws, CITES and / or CMS do not fall within the domain of the Ministry of Foreign Affairs. These review petitions are therefore filed by an unconcerned and unaffected party, i.e. the Ministry of Foreign Affairs. Such filing also transgresses the Rules of Business, 1973, therefore, as these review petitions are not maintainable they are dismissed. I may observe that it is a matter of grave concern that the Ministry of Foreign Affairs is facilitating the transgression of the Act, which is a Federal law, and the wildlife laws of three provinces.

Code of Conduct for Hunting Houbara Bustard

13. The learned Attorney General and Mr. Farooq H. Naek referred to the "Code of Conduct for Hunting Houbara Bustard" ("**the said Code**") issued by the Ministry of Foreign Affairs to show that considerable care regarding over hunting of the Houbara Bustard has been taken in the said Code. The said Code has been issued by the Deputy Chief of Protocol, Ministry of Foreign Affairs, Islamabad. As noted in the foregoing paragraph the matter did not fall within the domain of Ministry of Foreign Affiars, therefore, an officer of the said Ministry too had no jurisdiction to issue the said Code.

In response to my query it was also confirmed that the said Code had no statutory backing of any law, rule or regulation. The said Code stipulates that only a hundred birds can be hunted, "*through falconry and use of firearm is prohibited*". What would be the consequence if a foreign dignitary hunts double the stipulated number or even ten times the number or uses firearms? Apparently nothing, because the said Code is bereft of statutory cover.

Seasonal Hunting

14. The learned law officers and other learned counsel also stated that hunting of Houbara Bustard is permitted for a very short duration and the rest of the year it is prohibited when the bird remains protected. The Houbara Bustard is a migratory specie and only winters in Southern Pakistan, having flown thousands of kilometers from colder regions. Therefore, to state that its hunting has been made permissible only for a short period is disingenuous at best, and misleading at worst. It is expected that in a technical matter, which counsel may not have requisite knowledge of, they avail basic information about the subject from experts, rather than submitting arguments which are based on incorrect technical information before the highest Court of the land.

Does the Judgment Merit a Review?

15. The review jurisdiction of this Court is a necessary one as it enables the judges to correct material mistakes or errors in their judgments. It provides an excellent opportunity to make amends. The question which needs consideration is whether there was any material error in the judgment under review? My distinguished colleagues thought so and set aside the judgment dated 19th August 2015 for the reasons (as stated in paragraph 23 of the majority judgment) reproduced hereunder:

> *(a)* *"This Court while placing a complete ban on hunting of Houbara Bustard has seemingly overlooked the anomaly created by it",* as *"the laws"* do not envisage a permanent ban on hunting; and
>
> *(b)* *"We also need to examine if a direction can be issued to the legislature by the superior courts to legislate on a particular subject as has been so directed in the judgment under review".*

16. The judgment under review (has been reported as Province of Sindh v Lal Khan Chandio, 2016 SCMR 48) considered the provincial wildlife laws and The Pakistan Trade Control of Wild Fauna and Flora Act, 2012 ("**the Act**") (in paragraph 5). The Act was enacted, "*to give effect to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*" ("**CITES**"). Section 27 of the Act stipulates that, "*the provisions of this Act or rule made there under shall have effect notwithstanding anything contained in any other law*", i.e. it would prevail over the provincial wildlife laws. However, even if the Act did not state this, Article 143 of the Constitution mandates that if a provincial law, or any part thereof, is repugnant to a Federal law the provincial law, or the contravening part thereof, shall be void.

The majority judgment refers to the Act, but discounts it by stating, that it is, "*not applicable to the present controversy*". Even though it provided legal cover to CITES and the Houbara Bustard is listed in Appendix II of CITES. The majority judgment also referred to the, "*Balochistan Act, 2014 and KPK Act, 2015* [and that these two laws] *recognizes CMS*".

The laws of Pakistan and of the provinces specifically recognize both CITES and CMS, which categorize Houbara Bustard respectively as "*threatened with extinction*" and whose conservation status is "*unfavourable*". The judgment under review had however noted that these laws are also backed by both Federal and provincial laws, however, certain provisions of the wildlife laws of the provinces Balochistan, Sindh and Punjab violated / infringed the Act, CITES and CMS. With respect to my colleagues no "*anomaly* [was] *created*" by the judgment under review, but the anomalies (as mentioned in the judgment) were in the wildlife laws of three provinces. In this context it was recorded, that, "*A bird's eye view of the aforesaid laws highlights the contradictions and inconsistencies in the laws of Balochistan, Sindh, Punjab and the Republic of Pakistan. The treatment meted out to this migratory bird (Houbara Bustard) will depend on where it alights in Pakistan.*"

Therefore, (in paragraph 23 (iv) of the judgment under review) it was stated that, "*The Provinces to amend their respective wildlife laws to make them compliant with CITES and CMS and not to permit the hunting of any species which is either threatened*

with extinction or categorized as vulnerable." The need to make the laws complaint with CITES and CMS was eminently justified in view of the fact that Pakistan is a signatory to CITES and to the Convention on Migratory Species of Wild Animals ("**CMS**") and as these two conventions were recognized / incorporated by our laws.

It may be mentioned that the contention of Mr. Farooq H. Naek, recorded in the majority judgment, that CMS is not ratified by the Parliament was wholly inconsequential, so too the reference to the case of Societe Generale De surveillance S.A v. Pakistan through Secretary, Ministry of Finance (2002 SCMR 1964), which is in respect of treaties that did not have any municipal law cover.

17. It is thus clear that this Court did not direct the provincial legislatures to legislate on a particular subject in a vacuum, instead to resolve the prevalent contradictions within the provincial laws and their conflict with The Pakistan Trade Control of Wild Fauna and Flora Act, 2012. If the provinces do not to make the requisite changes in their laws then the direction contained in paragraph 23 (ii) of the judgment under review would remain in the field and, "*Neither the Federation nor a Province can grant license / permit to hunt the Houbara Bustard*". Paragraph 23 (iv) of the judgment under review provided an opportunity to the provinces to permit hunting of the Houbara Bustard provided it was no longer "*threatened with extinction or categorized as vulnerable*" under CITES and CMS, failing which the ban on its hunting would remain in place.

18. The majority judgment however states that the judgment under review had called upon the legislature to "*legislate on a particular subject*". Respectfully this was not the case, instead requisite amendments to existing laws were required to be made. Therefore, the question posed for consideration (reproduced as (b) in paragraph 15 above) did not arise. In any event there are a number of precedents of this Court wherein directions to legislate were issued. In the case of Government of Balochistan v Azizullah Memon (PLD 1993 Supreme Court 341) this Court (the judgment was authored by Justice Shafiur Rahman) unanimously directed to "*amend*" laws relating to the courts, judiciary and its officers "*within a period of six months*." A more recent example includes the case of Election Commission of Pakistan v Province of Punjab

(PLD 2014 Supreme Court 668). The unanimous judgment in this case was authored by the then Chief Justice (Tasssaduq Hussain Jillani, CJ), "*direct*[ting] *the Federal Government to make necessary enactments to empower the Election Commission of Pakistan to carry out the delimitation of constituencies of Local Government. The Government of Punjab is also directed to make corresponding amendments in the Punjab Local Government Act, 2013*." In the very recent case of Mandi Hassan v Muhammad Arif (PLD 2015 Supreme Court 137), is another unanimous judgment, the author of which is my distinguished colleague Justice Mian Saqib Nisar and the Bench included the present Hon'ble Chief Justice. This Court had directed, "*to take immediate steps for* [making] *amendment in the provisions of Limitation Act, 1908*". It is also not too long ago that the Full Court in the case of Nadeem Ahmed v Federation of Pakistan (PLD 2010 Supreme Court 1165) had called upon Parliament to amend Article 175A of the Constitution in certain precise "terms". Since Parliament did the needful the matter concluded.

In view of the aforesaid precedents and whilst exercising review jurisdiction, I may respectfully state that there was no reason to formulate the said question for determination.

A similar case decided by the US Supreme Court

19. In these cases though the Houbara Bustard is not arrayed as a party, who may have articulated its contentions or engaged counsel to represent it, yet we are to determine whether it can be hunted or not. Therefore, extra care is required in deciding such cases. Some of the learned counsel who sought review of the judgment categorized it as a "natural resource". One of God's creations with a beating heart can not be described as a "natural resource". The Supreme Court of the United States of America ("**US**") in the case of (State of) Missouri v Holland (252 U.S. 416), decided in the year 1920, held that the state's "*assertion of title to migratory birds, - an assertion that is embodied in statute*" would not entitle the state to claim title in the birds:

> "To put the claim of the state upon title is to lean upon a slender reed. Wild birds are not in the possession of anyone, and possession is the beginning of ownership. The whole foundation of the state's rights is the presence within their jurisdiction of

> birds that yesterday had not arrived, tomorrow may be in another state, and in a week a thousand miles away."

The Migratory Birds Treaty Act of 1918 was enacted pursuant to a treaty between the US and Great Britain which protected migratory birds. The question before the US Supreme Court was whether it could be enforced as it was contended to be an unconstitutional interference with the reserved rights of the states and which also contravened their statutes. Since the case has certain common features with the cases we heard it will be useful to reproduce the following extract from the decision of the US Supreme Court rendered by Justice Oliver Wendell Holmes:

> "Here, a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the state, and has no permanent habitat therein. But for the treaty and the statute, there soon might be no birds for any powers to deal with."

20. For the aforesaid reasons there is3 no legal or factual justification to review the judgment of this Court dated 19th August 2015. Consequently, all the petitions are dismissed.

Qazi Faez Isa
Judge

APPROVED FOR REPORTING
(Zulfiqar)