

Stereo HCJ DA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.192069 of 2018

Sheikh Asim Farooq

V/S

Federation of Pakistan etc

J U D G M E N T

Date of hearings	05.04.2018, 18.07.2018, 20.07.2018, 24.07.2018, 26.07.2018, 27.07.2018, 28.01.2019, 31.01.2019, 11.02.2019, 19.02.2019, 27.02.2019, 08.05.2019, 21.05.2019, 30.05.2019
Petitioner(s) by	M/s Ahmad Hassan, Anwaar Hussain, Mehr Muhammad Iqbal and Sheikh Asim Farooq, Advocates for the Petitioner No.1. M/s Saima A. Khawaja and Mehnaz Shiraz, Advocate for the Petitioners No.2 to 4. Mr. Mohammad Azhar Siddique, Advocate for the Petitioner No.5. Mr. Sheraz Zaka, Advocate on behalf of Petitioner (Human Voice).
Respondent(s) by	Ms. Sadia Malik, Assistant Attorney General alongwith Dr. Raja Omer, DIG (Forest) and Ali Raza Zaidi, Deputy Director (Legal), Ministry of Climate Change, Govt. of Pakistan. Rai Shahid Saleem Khan, Assistant Advocate General alongwith Cap.(R) Muhammad Asif, Secretary, Shahid Rashid Awan, Additional Secretary, Forestry, Wildlife and Fisheries Department, Muhammad Ashraf, Range Forest Officer, Muzaffargarh. Kiran Khurshid, Registrar Cooperatives, Punjab. Mr. Waqar A. Sheikh, Advocate/Legal

	<p>Advisor of LDA alongwith Ms. Amina Imran Khan, Director General, Lahore Development Authority.</p> <p>Mr. Junaid Iqbal Khan, Advocate for the Respondents-PHA alongwith Dr. Faisal Zahoor, Director General (PHA), Lahore.</p> <p>Khalid Sherdil, CEO, Urban Unit alongwith Muhammad Asif Hayat, Advocate.</p> <p>Muhammad Imran, Company Secretary, Urban Unit.</p> <p>Atta M. Khan, Senior Law Officer, P&D Department.</p> <p>Muhammad Asif Hayat, Respondents (Urban Unit).</p> <p>Mr. Muhammad Riaz, Advocate for the Respondent No.15.</p> <p>Mr. Ahmad Rafay Alam, Advocate for the Respondent No.16.</p>
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JAWAD HASSAN, J. Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "***Constitution***"), the Petitioner has sought directions to the Respondents to, inter alia:

- (a) *appraise as to how the National Climate Change Policy, 2012, the National Forest Policy, 2015 and the Forest Policy Statement, 1999 have been implemented to increase the forest cover in Pakistan and Punjab;*
- (b) *implement the Forest Act, 1927 (the "***Forest Act***") and the Punjab Plantation and Maintenance of Trees Act, 1974 (the "***Trees Act***") by planting trees;*
- (c) *provide reasons for drastic reduction in forest cover in Pakistan particularly in Punjab,*

- (d) increase the forest cover to reach the minimum satisfactory standards of 20-25% necessary for a balanced economy;*
- (e) present a time-line map for the said purposes, and*
- (f) initiate appropriate proceedings against the delinquent officers who have failed to discharge their duties.*

2. At the outset, M/s Saima A. Khawaja and Mehnaz Shiraz, Advocates filed an application for impleading Syeda Zahra Gilani, Ambreen Khurram Zafar and Zonaira Aziz Rathore. Aforementioned ladies are members of civil society and are running a pro bono publico organization under the name of “Go Green Lahore” (GGL). Mr. Mohammad Azhar Siddique, Advocate also filed an application for impleading Abdullah Malik in the array of the Petitioners in this petition; who is also member of civil society and is involved in various public interest issues, including restoration of forests in their original condition. Mr. Sheraz Zaka, Advocate also filed an application on behalf of Human Voice to become as the Petitioner in this petition. The learned counsel for the Petitioner had no objection on acceptance of these applications, and therefore, abovestated applications were allowed.

3. It may also be noted that learned counsel for the Petitioner requested to implead certain government departments including Planning and Development Department; Punjab Environmental Protection Department; Housing & Urban Development Department; Local Government and Community Development Department;

Cooperative Department, Lahore Development Authority (“LDA”) and Defense Housing Authority (“DHA”) as the Respondents in this petition, and his request was allowed. Mr. Ahmad Rafay Alam, Advocate filed an application on behalf of activist namely Amer Azam Bakhat to become as the Respondent in this petition. The Petitioner, therefore, filed amended petition by including the names of these Respondents; and notices were issued to the newly added Respondents to file report and parawise comments.

I. PETITIONERS’ ARGUMENTS

4. The learned counsel for the Petitioner submits that the Petitioner is a practicing advocate and filing this constitutional petition seeking, inter alia, a writ of mandamus to the Respondents for the implementation of the law and the above mentioned policies, and for enforcement and protection of his fundamental rights guaranteed under Article 9 (right of life liberty), Article 14 (right of dignity), Article 26 (right of access to public places of entertainment) and Article 38(b) (provision of available leisure places) of the Constitution. He submits that Government should implement the Forest Act, the Trees Act, the National Climate Change Policy, 2012, the National Forest Policy, 2015, the Forest Policy Statement, 1999, and the Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife) Policy, 1999 because forest area in Pakistan is decreasing rapidly over a year with massive percentage and now as per report, is only 1.9%. He states that trees in forests and other natural resources are covered under the Doctrine of Public Trust and the Government ought to protect them for

the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. He adds that the government's inaction is clearly seen by not protecting the existing forests and trees with massive cutting and also their lack of commitment in planting trees despite of mandatory requirement of Section 3 of the Trees Act. The learned counsel for the Petitioners in their respective petitions also submitted their written arguments and reiterated the contents of the petitions.

5. The learned counsel for the Petitioners further submits that the concept of public trust doctrine in protecting the natural resources has fully been elaborated in "SINDH INSTITUTE OF UROLOGY AND TRANSPLANTATION Versus NESTLE MILKPAK LIMITED AND OTHERS"(2005 CLC Karachi 424), which was upheld by the learned Division Bench in "NESTLE MILKPAK LTD VERSUS SINDH INSTITUTE OF UROLOGY AND OTHERS" (PLD 2007 Karachi 11). Further contends that Hon'ble Supreme Court of Pakistan in "GENERAL SECRETARY SALT MINERS LABOUR UNION (CBA) KHEWRA, JHELUM Versus THE DIRECTOR, INDUSTRIES & MINERAL DEVELOPMENT PUNJAB LAHORE"(1994 SCMR 2061) has held that the right to have unpolluted water is the right of every person wherever he lives. They further argued that it is the fundamental right of every citizen to live in clean atmosphere and relied upon the landmark judgment of Hon'ble Supreme Court of Pakistan reported as "MS. SHEHLA ZIA AND OTHERS Versus WAPDA"(PLD 1994 SC 693). They also relied upon Suo Moto Case

No.13 of 2009 (**PLD 2011 SC 619**) wherein it has been held that “*right to life implies the right to food, water, decent environment, education, medical care and shelter, thus fundamental right cannot be snatched away or waived off pursuant to any agreement*”. They submit that Hon’ble Supreme Court took suo moto action in **NEW MURREE PROJECT (2010 SCMR 361)**, because of grave environmental hazards by destroying 5,000 acres of forest and adversely affecting the annual rainfall in Islamabad, with the result that the supply of water to the nearby dams was depleted. In 2010, the Supreme Court decided the case with directions that need was to sensitize general public to fundamentals of sustainable development so as to achieve goal of healthy environment, not only for present population but also for future generations. As the project had been disbanded, therefore, there was no threat of environmental hazard in the area on account of the project, thus no further action was called for in the proceedings.

6. They further argued that the Respondents are not adhering to their own forest and climate change policies which is in violation of case law reported in “*DEWAN SALMAN FIBRE LTD. Versus FEDERATION OF PAKISTAN AND OTHERS*”(2015 **PTD 2304 Islamabad**), “*NATIONAL BANK OF PAKISTAN Versus IFTIKHAR RASOOL ANJUM AND OTHERS*” (2017 **PLC(C.S.) 453 Lahore**). It was held in “*BAHADUR KHAN AND OTHERS Versus FEDERATION OF PAKISTAN THROUGH SECRETARY M/O FINANCE, ISLAMABAD AND OTHERS*”(2017 **SCMR 2066**) that great importance is attached to government adhering to sovereign

commitments made by it, whether in form of statutory orders or notifications issued by it or in the shape of policies announced by it. Commitment made on behalf of government should neither be lightly disregarded nor deliberately ignored. Orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence on representations which are made by or on behalf of duly constituted governmental authorities. They state that the Forestry, Wildlife and Fisheries Department (the “**Department**”) is duty bound to administer the Trees Act under the Punjab Rules of Business 2011 (the “**Punjab Rules of Business**”), Schedule 2, Item No.18 (vii).

7. The learned counsel for the Petitioners also submits that recently in the Cutting of Trees for Canal Widening Project Lahore (2011 SCMR 1743), the Hon’ble Supreme Court held that green belt around both sides of the canal is a public trust resource and cannot be converted into private or any other use other than public purpose. Thus widening of the road is a public purpose and a minimum area is being affected and the remaining green belt/public park is much larger because said public park has been recommended by the Mediation Committee to be declared as Heritage Park and recommendations of the Committee have been accepted by the Provincial Government in totality.

8. Lastly, it has also been submitted that Respondents have failed in performing their obligations outlined in laws and policies, in safely managing, conserving, sustaining, maintaining, protecting and

growing forests and as a result the current state of affairs is now prevalent, where the forests in Pakistan and in Punjab are close to extinction. Further, for decades, there has been no improvement or enlargement of forest areas or plantation of trees in private areas, and that the Respondents have failed to regulate as to what type of trees are to be planted in a particular locality that would be environment friendly, provide maximum canopy and produce more oxygen.

II. RESPONDENTS' ARGUMENTS

9. At the outset, notices were issued to the Respondents to file report and parawise comments by adverting to the assertions made by the Petitioners in the light of judgments of the superior Courts. The Departments were also directed to state what steps had been taken so far to implement the laws for plantation of the trees.

A. Lahore Development Authority

10. Mr. Waqar A. Sheikh, Advocate/Legal Advisor of LDA appeared along with Ms. Amina Imran Khan, Director General, LDA and stated that LDA has taken some positive steps for plantation of trees under their jurisdiction. He further stated that LDA has already made Rules in year 2014, and they will file detailed reply to show their positive steps on the issue of urban forestry for massive plantation of trees under their jurisdiction. On preceding dates, he submitted that it is a matter of public importance and LDA will fully cooperate for the plantation of trees and implementation of all the relevant laws in this regard.

B. Forestry, Wildlife and Fisheries Department

11. Capt.(R) Muhammad Asif, Secretary and Mr. Shahid Rashid Awan, Additional Secretary of the Department appeared and stated that in pursuance of the previous orders of this Court, positive steps have been taken by the Government of Pakistan and the Government of Punjab: (a) for enhancing the Budget of the Department from almost one billion to twenty eight billion; (b) regarding the Forest Policy, Punjab Forest Policy, Urban and Peri-Urban Forest Policy; and (c) tree plantation campaign and actual tree plantation. They further submitted that they will seek guidance from Annexure-C Page-71 of the Punjab Urban and Peri-Urban Forest Policy, and the Registrar Cooperative and D.G. LDA have also taken action against the Societies as per Urban Policy through CEO, Urban Unit. All the efforts have been acknowledged from time to time by this Court and reflected in the previous orders dated 31.01.2019, 11.02.2019, 19.02.2019, 27.02.2019 and lastly on 08.05.2019.

12. They were further directed to prepare draft of the Urban Tree Plantation Policy as per their mandate and functions laid down in Schedule-2 of the Punjab Rules of Business. They informed the Court that the Department has submitted PC-I titled "Green Pakistan Program, Revival of Wildlife Resources in Punjab" for Green Pakistan Program along with budget of Rs.28.748 billion for eight years which has been approved by the Provincial Development Working Party (PDWP) and is under process to Ministry of Climate Change for approval from Central Development Working Party (CDWP). They

further stated that they have prepared revised Punjab Forest Policy, 2018.

13. Muhammad Tariq Naseem, Deputy Secretary (P) of the Department appeared and affirmed that PC-I has been approved by the Department with total cost of project Rs.28.748 billion for a period of eight years (2016-2024) according to which they will plant 477 million trees across the Punjab in forest as well as on private lands which will cover planting density, and the growth of trees will increase approximately by 6%.

C. The Registrar Cooperative

14. The Registrar Cooperative appeared and stated that in pursuant to the orders of this Court, they, on their own, have planted trees in the Societies and will cooperate with the Urban Unit regarding the GIS Mapping and GS Survey.

D. Environmental Protection Agency

15. Director General EPA also appeared and stated that in compliance of preceding orders of this Court, the department will examine the NOCs of the Factories mentioned in the report of Urban Unit and as per their NOC, will take action against those Factories which are not complying with the conditions of planting trees.

E. Parks and Horticulture Authority

16. Dr. Faisal Zahoor, Director General (PHA), Lahore, appeared and submitted that the department is complying with the directions of this Court passed from time to time and they will further cooperate with the Urban Unit and the Secretary Forest Department for the

plantation of trees and for implementing the above mentioned policies. He assured his commitment for implementing the Punjab Urban and Peri-Urban Forest Policy.

III. CURRENT SITUATION OF TREES AND FOREST

17. The Petitioners have attached several articles and reports showing several threats to forests, trees and environment in Punjab and Pakistan. It is unfortunate, catastrophic and shocking that the forests of the country are now almost extinct or at decreasing rate. The deforestation is leading to increase in the spread of life threatening diseases. Reports from Yale School of Forestry & Environmental Studies at Yale University and School of Public Health: Center of Health and the Global Environment at Harvard University affirm the fact that deforestation is linked with rise of deadly diseases.

18. It may be noted that the National Environment Information System (NEIMS), a project of United Nations Development Programme (UNDP), had published a Research Report in 2010 detailing the environment and biodiversity and ecological zones in Pakistan from forests to mountains and threatened flora and fauna and threatened species of animals. The report suggests that deforestation rate in Pakistan is estimated at 0.2% to 0.5% annually, which is the highest in the world and accounts for 4-6% decline in its wood biomass per annum. The total natural forest cover has reduced from 3.59 million hectares to 3.32 million hectares at an average rate of 27,000 hectares annually. The natural resource is decreasing at such an alarming speed that all the forest area will be consumed within the

next few years. Some of the extracts from the Research Report are as follows:

1. **Pakistan is a Forest Poor Country:** Only 4.72 million hectares or 5.36% of its land mass is covered with forests. Table 1.7 of the Report suggests that there is declining forestation trend during the years 2000-2009.
2. **Environmental Benefits of Trees:** The value of intangible benefits is eight times greater than the tangible value of products and services of forestry sector. Many other “intangible” benefits are derived from forest including oxygen production, watershed value, scenic benefits, ecosystem synergism and flow, and a variety of other values essential for human health and quality of life. Forests also provide a number of crucial ecosystem services, for example, their role in sequestering carbon from the atmosphere, protecting upstream watersheds, conserving biodiversity and gene-pools for future generations and in providing landscape beauty.
3. **Biodiversity Conservation:** 60-90% of all terrestrial species are found in forests having widespread economic and medicinal uses still unknown to mankind.
4. **Forests and Carbon Sequestration:** Forests are both a source of carbon dioxide (CO₂) when they are destroyed or degraded and a sink when conserved, managed or planted sustainably. Forest vegetation and soils hold 40% of carbon stored in terrestrial ecosystems.

5. **Forests and Water Quality:** As population grows, the demand for clean drinking water becomes more acute. Besides this, need of water for agriculture, sanitation purpose, cooking needs and other uses is imperative. In Pakistan, 2 decades ago, no one had ever thought of purchasing water, but now people do purchase it, just because of depletion of forests in watersheds. Forest and plant cover are necessary to slow runoff and filter rainwater. When trees are in place, rainwater, which naturally flows downhill to the nearest stream, is slowed. Once slowed, rainwater seeps down to refill underground storage tanks or aquifers. In addition, water may be absorbed by the roots of trees and transpired by leaves so that it can cycle back for use again as rainwater. Forests prevent non-saline drinking-quality water from running off too quickly to mix with the salt water of oceans. Once salty, water takes much longer to re-enter the fresh water portion of the hydrological cycle, where it is most useful to humans.
6. **Forests and Soil Quality:** The roots of trees hold soil in place. Fertile soil that is needed to grow crops would otherwise be washed away in rainstorms, decreasing the amount of soil available for agriculture. Rich soil transfers nutrients to food, which contributes to human health.
7. **Biodiversity Conservation:** The forests are one of the largest repositories of biodiversity in the world. By some estimates they contain 60-90% of all terrestrial species found on the

planet. Some of these could have widespread economic or medicinal uses that are still unknown to us. The conservation of these valuable genetic resources for future options that are yet undiscovered is thus a valuable service that forests provide.

8. Other Benefits: In addition to the above, the forests provide multiple benefits to environment, people, and animals. The list of some of such recognized benefits is as follows:

- a. *Forest cool air temperature by release of water vapour into the air;*
- b. *At day time trees generate oxygen and store carbon dioxide, which helps to clean air;*
- c. *Forest attracts wild life and offer food and protection to them;*
- d. *Forests offer privacy, reduce light reflection, offer a sound barrier and help guide wind direction and speed;*
- e. *Trees offer artistic functions such as creating a background, framing a view, complementing architecture, and so on;*
- f. *Well managed forests supply higher quality water with less impurity than water from other resources;*
- g. *Forests help in controlling the level floods and soil erosion;*
- h. *Forest provides different kind of wood which are used for different purposes like making of furniture, paper, and pencils and so on;*

- i. Forest help in giving the direction of wind and its speed;*
- j. Forest helps in keeping environment healthy and beautiful;*
- k. Forests also minimize noise and air pollution and;*
- l. Forest helps the scientist to invent new medicine as forest has different kinds of plants and herbs. All benefits quoted above are purely outcome of forests and cannot be derived from agriculture. If cost of these be calculated in terms of money, it will be far above the outcome/benefits of agriculture.*

19. Further, following news articles are available on record to show the plight of forests and tree line in Pakistan:

- 1. A report published in daily "Dawn" dated 1.05.2017 describes how the timber mafia in Gigit-Baltistan operates in collusion with the Federal Government who have continued to increase the upper ceiling limit on felling of trees, resulting in massive damage to the forests. This has led to an apocalypse in the making by increase in landslides; the Attabad Lake was a result of indiscriminate logging in the area. The report states that the National Disaster Management Authority (NDMA) has declared that a mountain in district Nagar has started developing cracks and has begun to sink posing a danger to 380 households in Miacher Village; landslides have already damaged five*

houses and 35 other houses have been evacuated and moved to safer locations.

- 2. As per report published in "Pakistan Today" dated 21.03.2017, Pakistan loses 42000 hectares or 2.1 % of forests every year.*
- 3. A news article published in "The Nation" dated 07.11.2016, based on a study conducted by Asian Development Bank shows the forest area in Pakistan in the year 2015 was 1.9% which is rapid decline from earlier official figure of 5% as per the National Forest Policy, 2015. It further states that according to Food and Agricultural Organization, the country lost 840,000 hectare of forest cover between 1990 and 2010 and the rate of loss of forest per year is 42000 hectares per year.*
- 4. The Express Tribune published on 25.01.2015 states that Gilgit-Baltistan has lost 50% of its forest cover in the last 20 years.*
- 5. A report published in daily "Dawn" on 25.06.2010 suggests that Pakistan has the highest annual deforestation rate in Asia according to the latest findings of the World Wide Fund for Nature. 151,500 acres have been converted to non-forest use since partition in 1947; and 99,711 acres of forest land in Punjab Province has been converted to non-forest use which is the highest in Pakistan. The report also lists the names of the beneficiaries of deforestation*

which include corporations as well as influential individuals.

IV. CONSTITUTIONAL MOOT POINTS

20. In the instant public interest petition, the Petitioners have basically sought directions to the relevant ministries, departments and other authorities of the Provincial or Federal Government under Article 199 of the Constitution to plant, protect, manage, preserve and conserve the trees and forests in Punjab. The Respondents relevant departments and authorities have presented their oral and written arguments; in which they have undoubtedly admitted the importance and need to plant, protect, manage, preserve and conserve the trees and forests in Punjab and Pakistan; and have highlighted their performance in this regard.

21. Following constitutional moot points arise out of the instant petition:

- A. Whether the directions can be issued to the relevant ministries, departments and other authorities of the provincial or federal government under Article 199 of the Constitution to implement the mandatory provisions of law? If yes, whether the doctrine of continuing mandamus is applicable in the instant matter?*
- B. Whether there exists any urban tree policy in Punjab?*
- C. Which authorities in Punjab are under obligation to plant, protect, manage, preserve and conserve the trees and forests?*

D. What are the penalties and offences relating to the trees and forests in Punjab?

V. MAINTAINABILITY OF THE PETITION

22. Public Interest Litigation (“PIL”) is a powerful tool for individuals and groups for combating illegalities, injustice and social ills which promotes and protects the larger public interest in case of violation of any fundamental rights. As long as the public interest prayed for is bonafide and not based on any vested interests, the principles of locus standi /aggrieved person are to be interpreted liberally by the Courts. Reliance in this regard is placed on “PROVINCE OF SINDH and others Versus LAL KHAN CHANDIO and others”(2016 SCMR 48), “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), “ARDESHIR COWASJEE and 10 others Versus KARACHI BUILDING CONTROL AUTHORITY (KMC), KARACHI and 4 others”(1999 SCMR 2883), “Mian SHABIR ASMAIL Versus CHIEF MINISTER OF PUNJAB and others”(PLD 2017 Lahore 597), “DISTRICT BAR ASSOCIATION, RAWALPINDI Verses FEDERATION OF PAKISTAN and others”(PLD 2015 SC 401), “Ms. IMRANA TIWANA and others Versus PROVINCE OF PUNJAB and others”(P L D 2015 Lahore 522), “HABIBULLAH ENERGY LIMITED and another Versus WAPDA through Chairman and others” (PLD 2014 Supreme Court 47), “SALAHUDDIN DHARAJ Versus PROVINCE OF SINDH through Secretary, Local

Government Department and 4 others”(PLD 2013 Sindh 236), “JAVED IBRAHIM PARACHA Versus FEDERATION OF PAKISTAN and others” (P L D 2004 Supreme Court 482), “IQBAL AHMAD DHUDHI Versus FEDERATION OF PAKISTAN and 5 others”(2014 C L C 1348), “MUHAMMAD QAHIR SHAH and others Versus FEDERATION OF PAKISTAN, MINISTRY OF RAILWAYS, through Secretary, Islamabad and others”(2014 Y L R 2571), PLD 2010 SC 759 - Human Rights Case No. 1111 of 2006, 1111 of 2007 and 15283-G of 2010. The Respondents are under a Constitutional obligation to protect the Fundamental Rights of the public at large as per judgment of Hon’ble Supreme Court reported in “MUHAMMAD YASIN Versus FEDERATION OF PAKISTAN through Secretary, Establishment Division, Islamabad and others” (PLD 2012 SC 132). The Superior courts bound to protect the Fundamental Rights of citizens in exercise of jurisdiction conferred via Articles 199 or 184 (3) of the Constitution. Reliance is placed on (2011 PLC (CS) 1076)“In the matter of: SUO MOTU CASE NO. 24 OF 2010(Regarding Corruption in Hajj Arrangements in 2010), hence petition on behalf of public for violation of fundamental rights can be entertained by this Court.

VI. DOCTRINE OF CONTINUING MANDAMUS

23. Continuing Mandamus is a writ of mandamus issued to an authority by the High Court under Article 199 of the Constitution in general public interest asking the officer of the authority to perform its task expeditiously for an unstipulated period of time for preventing miscarriage of justice. The Doctrine of continuing mandamus, at times

also referred to as structural interdict or structural injunction, in other words, is a relief given by a Court of law through a series of ongoing orders over a long period of time, directing an authority to do its duty or fulfill an obligation in general public interest, as and when a need arises over the duration a case lies with the Court, with the Court choosing not to dispose the case off in finality. This happens in a situation which cannot be remedied instantaneously but requires a solution over a long time, at times going on for years. With this procedural innovation of the writ of mandamus or a mandatory order, the Court monitors compliance of its orders, seeking periodic reports from authorities on the progress in implementing them. Therefore, as it has been observed on 28.01.2019 that orders passed by this Court are to be complied with by different Departments, therefore, following the Doctrine of *Continuing Mandamus*, this writ petition was kept pending. Reliance is placed on “MALL ROAD TRADERS ASSOCIATION Versus The DEPUTY COMMISSIONER, LAHORE”(2019 CLC 744).

VII. APPLICABLE LAWS ON TREES AND FORESTS

24. Under the Constitution, the subject of Forestry falls in the provincial domain of the provincial governments. The functions of the Federal Government pertaining to Forestry as per Federal Legislative List (Part-II) are limited to national planning and economic coordination, inter-provincial matters and coordination and matters incidental or ancillary thereof. The Article 151 of the Constitution and Federal Legislative List (Part-I) entitles the Federal Government to

regulate import and export of wood and forest products, inter-provincial trade and commerce, and trade and commerce with foreign countries. Constitutionally, implementation of international conventions and agreements related to forests is the sole mandate of the Federal Government.

A. Statutory Provisions and Fundamental Rights:

Article 9 (Right of Life Liberty):

9. Security of person

No person shall be deprived of life or liberty save in accordance with law.

Article 14 (Right of Dignity):

14. Inviolability of dignity of man, etc.

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

Article 26 (Right of Access to Public Places of Entertainment):

26. Non-discrimination in respect of access to public places

(1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Article 38(b) (Provision of Available Leisure Places):

38. Promotion of social and economic well-being of the people

The State shall—

(a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;

(b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;

Article 151 further provides:

151. Inter-Provincial trade

....

(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the Province of any essential commodity shall not, if it was made with the consent of the President, be invalid.

25. It is essential to note that the Principles of Sustainable Development, Precautionary Principle, Public Trust doctrine, Inter- and Intra- Generational Equity, Water Justice and Food Justice, In Dubio Pro Natura, Polluter Pays, (principles of international

environmental law) are part of our jurisprudence developed by our Supreme Court.

26. Article 9 guarantees the right to life which includes the right to a clean and healthy environment. Our superior courts have interpreted the right to life to include a number of natural and legal rights under the umbrella of Article 9 such as the right to a clean environment, right to form a political party and form government, access to educational institutions and access to electricity in “Ms. SHEHLA ZIA and others versus WAPDA”(PLD 1994 SC 693)(Right to clean environment), “ASGHAR LEGHARI versus FEDERATION OF PAKISTAN and others”(PLD 2018 Lahore 364)(right to environment/ water justice); “General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries & Mineral Development Punjab Lahore” (1994 SCMR 2061)(right to clean water), “GOVERNMENT OF BALOCHISTAN through Additional Chief Secretary Versus AZIZULLAH MEMON and 16 others”(PLD 1993 Supreme Court 341)(right to access to justice), “AL-JEHAD TRUST through Raees-ul-Mujahidin HabibAl-WahabulKhairi, Advocate Supreme Court and another Versus FEDERATION OF PAKISTANand others”(PLD 1997 Supreme Court 84), “KHAN ASFANDYAR WALI and others Versus FEDERATION OF PAKISTAN through Cabinet Division, Islamabad and others”(PLD 2001 Supreme Court 607), “ARSHAD MEHMOOD and others Versus GOVERNMENT OF PUNJAB through Secretary, Transport Civil

Secretariat, Lahore and others”(PLD 2005 Supreme Court 193), (PLD 2011 SC 619)SUO MOTO CASE NO.13 of 2009(*Nexus between Articles 9 and 38*);“FIAQAT HUSSAIN and others Versus FEDERATION OF PAKISTAN through Secretary, Planning and Development Division, Islamabad and others”(PLD 2012 SC 224), 2013 SCMR 1752(right to reputation), “LAHORE DEVELOPMENT AUTHORITY through D.-G. and others Versus Ms. IMRANA TIWANA and others”(2015 S C M R 1739), “SHAHAB USTO Versus GOVERNMENT OF SINDH through Chief Secretary and others”(2017 S C M R 732)(right to clean water and sewerage disposal), “NADIR ALI Versus MEDICAL SUPERINTENDNET, CIVIL HOSPITAL, LARKANA and 9 others”(P L D 2017 Sindh 448) and “Messrs GETZ PHARMA (PVT) LTD. through Authorised Person Versus FEDERATION OF PAKISTAN, through Secretary, Ministry of National Regulation and Services and another”(P L D 2017 Sindh 157)(right to health)

27. The Interpretation of Fundamental Rights has to be dynamic and progressive and not pedantic. Reference is made on “MUNIR HUSSAIN BHATTI, ADVOCATE and others Versus FEDERATION OF PAKISTAN and another” (P L D 2011 Supreme Court 407), “WATAN PARTY and others Versus FEDERATION OF PAKISTAN and others”(P L D 2012 Supreme Court 292), “GOVERNMENT OF BALOCHISTAN through Additional Chief Secretary Versus AZIZULLAH MEMON and 16 others”(PLD 1993 Supreme Court 341)and“Rana AAMER RAZA ASHFAQ and another Versus Dr.

MINHAJ AHMAD KHAN and another”(2012 SCMR 6). Article 25 read with Article 2A, 4, 9, 35 and 38(d) means that the Respondents are bound to formulate policy / law for the protection of the Fundamental Rights of the Citizens, namely the survival, economic and social uplift of the people of Pakistan.

In Dubio Pro Natura

IUCN World Declaration on the Environmental Rule of Law:

This Principle is reflected in Principle 5 of the IUCN World Declaration which states: “In Case of Doubt, all matters before courts, administrative agencies, and other decision makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment. Actions shall not be undertaken when their potential adverse impact on the environment are disproportionate or excessive in relation to the benefits derived there from.”

This Principle has been recognized in the following cases;

- i. *Maple Leaf Cement Factory Limited vs. EPA; PLD 2018 Lahore 255 (Para 19; Page-268)*
- ii. *Shweta Wagh vs. Municipal Corporation (Bombay High Court), 2019 (Para 15; Page 4 & 5)*
- iii. *Hanuman Laxman Aroskar vs. Union of India (SC India), 2019 (Para 130; Page 48, 49)*

28. The international principle, “Indubio pro natura’, meaning, when in doubt matters shall be resolved in favour of protection of the environment. This Principle has recently been incorporated into our law in the judgment cited as “MAPLE LEAF CEMENT FACTORY LTD Versus ENVIRONMENTAL PROTECTION AGENCY and others”(PLD 2018 Lahore 255)wherein Principle 3 of the IUCN Declaration has been referred to:

“In cases of doubt, matters shall be resolved in a way which is most likely to favour the protection and conservation of the environment. Actions shall not be undertaken when their potential adverse effects on the environment are disproportionate or excessive in relation to the benefits derived therein”.

The said principle has also been relied upon in a case from Bombay High Court - Society for Improvement Vs. Municipal Corporation.

Precautionary Principle

This Principle is reflected in Principle 10 of Rio Declaration, 1992 and provides that “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

This Principle has been recognized in the following cases;

- I. *M.C. Mehta vs. Union of India; AIR 1997 SC 734 (At Para 26; Page 760)*

- II. *Shehla Zia vs. WAPDA; PLD 1994 SC 693 (Para 8; Page 708, 709).*
- III. *Adeel-ur-Rehman vs. FOP; 2005 PTD 172 (Para 17; Page 181, 182).*
- IV. *Imrana Tiwana vs. POP; 2015 CLD 983 (Para 24, 25; Page 1026, 1027).*
- V. *Ali Steel Industry vs. Government of Khyber Pakhtunkhwa; 2016 CLD 569 (Para 13; Page 576).*
- VI. *Muhammad Ayaz vs. GOP; 2017 CLD 772 (Para 10, 11, 12; Page 780-782).*
- VII. *Maple Leaf Cement Factory Limited vs. EPA; PLD 2018 Lahore 255 (Para 19; Page-268).*

29. The Precautionary Principle finds mention in the Stockholm Declaration 1972 and is enunciated in Principle 15 of the Rio Declaration 1992:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.”

This international environmental law, namely, Precautionary Principle has been incorporated into our law through the Shehla Zia judgment and is now a settled part of our domestic jurisprudence.

(Reliance: “MS. SHEHLA ZIA AND OTHERS Versus WAPDA”(**PLD 1994 SC 693**),“Haji MUHAMMAD ISMAIL PROPRIETOR OF MUHAMMAD ISMAIL CONSTRUCTION COMPANY Versus DIRECTOR GENERAL EPA and others”(**2019 C L D 80**), “MAPLE LEAF CEMENT FACTORY LTD Versus ENVIRONMENTAL PROTECTION AGENCY and others”(**PLD 2018 Lahore 255**), “PUNJAB HEALTHCARE COMMISSION Versus MUSHTAQ AHMED CHAUDHARY and others” (**PLD 2018 Lahore 762**), “WALID IQBAL Versus FEDERATION OF PAKISTAN and others”(**P L D 2018 Lahore 1**), “MUHAMMAD AYZ Versus GOVERNMENT OF PUNJAB through Chief Secretary and others”(**2017 C L D 772**), “LUNG FUNG CHINESE RESTAURANT through Atiq Ahmed and 2 others Versus PUNJAB FOOD AUTHORITY through Secretary and 6 others”(**PLD 2017 Lahore 545**),“ALI STEEL INDUSTRY through Proprietor Versus GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and another”(**2016 C L D 569**)and“Ms. IMRANA TIWANA and others Versus PROVINCE OF PUNJAB and others”(**PLD 2015 Lahore 522**). The Sustainable Development Principle also finds mention in the Rio Declaration and has entered domestic statute in both the Federal Statute and the Punjab Protection of Environment Act 1997 (PEPA), wherein the concept of “sustainable development” is defined at section 2 (xlii) of PEPA as “development that meets the needs the needs of the present generation without compromising the ability of the future generations

to meet their needs” (Reliance: “PEPSI COLA INTERNATIONAL (PRIVATE) LIMITED through Authorized Officer Versus The PUNJAB ENVIRONMENTAL PROTECTION AGENCY through Director General and others”(2018 C L D 1429), “ASGHAR LEGHARI versus FEDERATION OF PAKISTAN and others”(PLD 2018 Lahore 364), “MUHAMMAD AYAZ Versus GOVERNMENT OF PUNJAB through Chief Secretary and others”(2017 C L D 772), “MAPLE LEAF CEMENT FACTORY LTD Versus ENVIRONMENTAL PROTECTION AGENCY and others”(PLD 2018 Lahore 255), “ALI STEEL INDUSTRY through Proprietor Versus GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and another”(2016 C L D 569), “KAMIL KHAN MUMTAZ and others Versus PROVINCE OF PUNJAB through Chief Secretary, Government of Punjab, Lahore and others”(PLD 2016 Lahore 699), “ABDUL SATTAR and another Versus The STATE”(2016 P Cr. L J 396), “Messrs UNITED ETHANOL LIMITED and 6 others Versus ENVIRONMENTAL PROTECTION AGENCY, PUNJAB”(2015 C L D 1079), “Ms. IMRANA TIWANA and others Versus PROVINCE OF PUNJAB and others”(PLD 2015 Lahore 522), “YOUNG DOCTORS ASSOCIATION and others Versus GOVERNMENT OF PAKISTAN and others” (PLD 2015 Lahore 112), “MUMTAZ KHAN and others Versus GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Forest Department and others”(2014 C L C 985), 2011 S C M R 1743(Cutting of trees for canal widening project, Lahore),

“GHULAM MUSTAFA and 189 others Versus PROVINCE OF SINDH through Secretary, Education Department and 6 others”(2010 C L C 1383), “SHEHRI C.B.E. Versus GOVERNMENT OF PAKISTAN and others” (2007 C L D 783), Supreme Court of India - Hanuman Laxman Aroskar Vs. Union of India; Supreme Court of India – Arjun Gopal Vs. Union of India; Thybaut V. Region Wallonne Case C-160/17 - European Union Cases; [2019] Env. L.R. 8 - Thybaut v Région Wallonne).

30. The international environmental law concept of Environmental Justice has been incorporated into our law via the Asghar Leghari case (Reliance: **PLD 2018 Lahore 364**, Maple Leaf Cement case (**PLD 2018 Lahore 255**) and Muhammad Ayaz case (**2017 CLD 772**).

31. The Public Trust Doctrine has been part of the international environmental law since the Stockholm Declaration, 1972 and has entered our law through the Cutting of Trees for Canal Widening Project Lahore case reported at 2011 SCMR 1743; PLD 2018 Lahore 364 – Asghar Leghari Case; 2017 PLD 545 Lahore - Lung Fung Chinese Restaurant Vs. Punjab Food Authority; 2015 SCMR 1520 - Lahore Bachao Tehrik Vs. Dr. Iqbal Muhammad Chauhan; 2015 PLD 522 Lahore – Imrana Tiwana Vs. Province of Punjab; 2015 PLD 112 Lahore - Young Doctors Association Vs. Government of Pakistan; 2011 SCMR 1743 - Cutting of Trees for Canal Widening Project Lahore; 2007 CLC 1358 Lahore - Muhammad Tariq Abbasi Vs. Defence Housing Authority).

B. The Forest Act, 1927

32. The Provincial Forest Act, 1927 consolidates the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce etc in Punjab. Section 2(c) defines the “forest” as “*a reserved forest, protected forest, unclassed forest and village forest and includes wasteland or rangeland*”. It may be noted that in the above definition, following four (4) types of forests have been described:

- (a). *Sections 3 and 4 empower the Punjab Government to constitute any government forest-land or waste-land a “reserved forest” by issuing notification in the official Gazette.*
- (b). *Under Section 29, the Provincial Government may, by notification in the official Gazette, extend the applicability of provisions to any government forest-land or waste-land which is not included in a reserved forest, which is called a “protected forest”. Section 32 empowers the Provincial Government to make rules for protected forests.*
- (c). *The Provincial Government may also declare a wasteland, not being a reserved forest or protected forest, as “unclassed forest”; and may also direct that all or any provisions of the Forest Act relating to a reserved forest or protected forest, shall apply to an*

unclassified forest; and may make rules for management of an unclassified forest (Section 28-A).

(d). Section 28 empowers the Provincial Government to assign to any village-community the rights of Government over reserved forest, which are then called “village forests”. It further empowers the Provincial Government to make rules for management of a village-forest; and to prescribe conditions under which the village community may use the forest produce other than timber and pasture and duties of the village community for the protection and improvement of the forest (Section 28). It may be noted that the provisions relating to the reserved forests are also applicable to the village forests.

33. Interestingly, the Punjab Government cannot: (a) declare or notify a reserved forest or any part of the reserved forest as being “no longer reserved forest” without the approval of the Provincial Cabinet, (b) allow change in land use of a reserved forest, except for the purposes of right of way, building of roads and development of a forest park, and (c) allow construction of concrete building or permanent structure in the reserved forest (Section 27).

34. On the other hand, the Forest Act also authorizes the Provincial Government to (a) declare any trees or class of trees in a protected forest to be reserved; (b) declare, subject to conditions, that any portion of such forest specified in the notification shall be closed for

such term, not exceeding thirty years, and (c) prohibit the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest (Section 30).

35. The Provincial Government also has power to declare forest no longer protected subject to certain restrictions (Section 34-A); to protect forests for special purposes (Section 35); to assume management of forests in case of neglect of, or willful disobedience to, any regulation or prohibition under Section 35, or if the purposes of any work to be constructed (Section 36); for expropriation of forests in certain cases (Section 37); for protection of forests at request of owners (Section 38); to impose duty on timber and other forest-produce (Section 39); to make rules to regulate transit of forest-produce (Section 41); and to movements of timber across Customs frontiers (Section 41-A).

36. Section 78-A empowers the Provincial Government to establish a forest company to oversee the implementation of public private partnership on the assigned forest land or wasteland to a forest company. Further, the Board of Directors of a forest company may be constituted with equal representation from public and private sectors to manage its functioning. The forest company is required to invite applications of eligible persons through a public notice, published in at least two national daily newspapers, for public private partnership for

the development of forest on the forest land or wasteland (Section 78-B). Similarly, the Provincial Government is also authorized, itself or through a forest company, to invite proposals for the development of a forest land or wasteland, and to enter into public private partnership for the development, preservation and conservation of a forest land or wasteland, for increase in the productivity of the forest (Section 80-A).

C. The Punjab Plantation and Maintenance of Trees Act, 1974 (the “Trees Act”)

37. The Trees Act has been enacted in the public interest to provide for plantation of more trees and maintenance of the same in Punjab. Section 2(c) of the Trees Act, defines “land” as the “*land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land*”. Section 2(d) defines the “occupier” as “*a person in actual physical possession of the land and shall also include an owner*”.

38. Section 3 requires the occupier to plant three (3) trees per acre by the occupier in the prescribed manner, and maintain the same. Section 4 imposes the penalty, in case of contravention of Section 3, of rupee one per tree, after giving an opportunity of hearing to the person concerned. Section 5 empowers the Punjab Government to make rules to carry out the purposes of the Trees Act, to provide for, among others, (a) the manner in which trees may be planted and maintained; (b) kind of trees to be planted in different areas and the period within

which the trees are to be planted; and (c) the procedure for maintaining the record of trees.

D. The Parks and Horticulture Authority Act 2012 (the “PHA Act”)

39. The PHA Act establishes the Parks and Horticulture Authority (“PHA”) to (a) develop and maintain public parks, green belts and green areas; (b) regulate the use of public parks, green belts and green areas; (c) regulate the installation of billboards, sky signs, out-door advertisements on private or public property; (d) establish and maintain botanical gardens; (e) organize shows and exhibitions pertaining to horticulture, aviculture and cultural entertainment; (f) protect trees and other vegetation; (g) create awareness about horticulture and promote gardening; (h) acquire land for the development of any public park, green belt, or green area; (i) procure machinery, equipment or material as may be required for the proper discharge of its functions; (j) grant a service contract for the maintenance of public parks, green belts or green areas to a company owned by it or to any other private or public limited company; (k) constitute committees for performing specific functions of PHA; and (l) perform such other functions as may be ancillary, or as may be prescribed (Section 4).

40. PHA is required to determine the extent of a planned area to be reserved and maintained as a public park, green belt or green area, and a public land authority or a private land authority is required to obtain prior sanction of PHA for any development plan (Section 14). PHA is required to undertake beautification and maintenance of areas required

to be kept green by a public land authority, or may require the private land authority to maintain and beautify the same (Section 15). Similarly, PHA may require the resident or owner of a property to maintain a green belt between his property and the public road, and may remove a construction from a green belt or bring the level of a green belt to the prescribed level at its own cost (Section 16).

E. Punjab Environmental Protection Act, 1997 (“PEPA”)

41. PEPA provides for the protection, conservation, rehabilitation and improvement of the environment. Section 12 states that no proponent of a project shall commence construction which is likely to cause an adverse environmental effect which is defined under Section 2(i).

F. Lahore Development Authority Act, 1975 (the “LDA Act”)

42. Section 20 confers power on LDA to undertake improvement of environment in Lahore Division and to check, eliminate, replace or relocate sources of environmental pollution. Further, Section 21 empowers LDA to undertake beautification of Lahore Division, prescribed environmental standards to be adopted by government agencies or to direct any government agency to make improvements in beautification of Lahore Division. According to Second Schedule, causing harm to the environment is an offence punishable under Section 35.

G. Punjab Development of Cities Act, 1976

43. Section 4 of this Act has created the Multan Development Authority and Faisal Development Authority. Section 19 confers

power on MDA and FDA to undertake improvement of environment in the Area and to check, eliminate, replace or relocate sources of environmental pollution. Section 20 empowers MDA and FDA to undertake beautification of the Area, prescribed environmental standards to be adopted by government agencies or to direct any government agency to make improvements in beautification of the Area. According to the Schedule; Part-A, causing harm to the environment is an offence punishable under Section 34.

H. Punjab Local Government Act, 2019

44. Section 150 (1) (j) states that all trees, plants and flowers on roadsides and other places maintained by the local government constituted under Section 15 shall vest in a local government. Further, following two entries are present in Part II of the Third Schedule of this Act stating functions of a Metropolitan Corporation, Municipal Corporation and Municipal Committee: *(dd)* Environmental Health, awareness and services *(ee)* Parks and landscape development. Similarly, following two entries are present in Part II of the Fourth Schedule of this Act stating functions of a Town Committee: *(z)* Environmental health, awareness, services, *(aa)* Parks and landscape development. Moreover, following two entries are present in Part II of the Fifth Schedule of the Act stating functions of a Tehsil Council: *(dd)* Environmental Health, awareness, services *(ee)* Parks and landscape development.

I. Punjab Village Forest Rules, 2013

45. Under Rules 3 and 4, a Village Forest Committee is formed which shall suitably demarcate the boundaries of Village Forest. Under Rule 4(b), no person shall collect, cut or remove wood or other forest produce from the Village Forest. Rule 4 (2) prohibits to collect, cut or remove wood or other forest produce from the Village Forest. Rule 5 prohibits a person to cut, injure, and remove any tree grown in a Village Forest.

J. The National Climate Change Policy, 2012

46. The National Climate Change Policy provides a framework for addressing the issues that Pakistan faces or will face in future due to the changing climate. The policy provides a comprehensive framework for the development of Action Plans for national efforts on adaptation and mitigation. Clause 3 provides the important climate change threats to Pakistan, which include “further decrease in the already scanty forest cover, from too rapid change in climatic conditions to allow natural migration of adversely affected plant species”. This Policy has also constituted the National Climate Change Policy Implementation Committee, with the Minister of Climate Change at the Federal Level as its Chairperson; and the Provincial Climate Change Policy Implementation Committee, with the Provincial Minister for Environment as its Chairperson.

47. Before going any further, it is essential to describe the climate change effect on the Forestry, as described in the National Climate Change Policy:

4.4. Forestry

Climate change is likely to have multi-faceted adverse effects on the ecosystem as a whole, particularly on the already vulnerable forestry sector in Pakistan. The most likely impacts of climate change will be decreased productivity, changes in species composition, reduced forest area, unfavorable conditions for biodiversity, higher flood risks and the like, as portrayed in the Planning Commission Task Force on Climate Change (TFCC) Report. Adaptation in the forestry sector entails the need to restore and enhance Pakistan's forests under sustainable forest management, with particular focus on how these are affected by climate change. This will not only benefit state forests but forest dependent communities and society as a whole.

This policy suggests the Policy Measures relating to the Forestry, which includes (a) the Awareness Raising, (b) Research on adaptation of forests, biodiversity and forest management systems to climate change, (c) Reforms in Governance, (d) Enhancing Adaptive Capacity, (e) Forest Management with afforestation and reforestation programs with plantation suited to the effects of climate change, (f) Arresting Soil Erosion, and (g) Reducing Forest Fires, Disease Outbreaks and Other Damage.

48. Similarly, this Policy requires the Government to take the following policy measures to conserve, restore and protect the biological diversity of Pakistan: (a) encourage empirical research on

flora and fauna in the context of their responses to current and historical climatic changes; *(b)* set National Biodiversity Indicators and provide the requisite financial resources for implementation of the Biodiversity Action Plan (BAP); *(c)* establish gene banks, seed banks, zoos and botanical gardens to conserve the biological diversity of valuable species; *(d)* Integrate conservation and protection of biological diversity into various disciplines such as forestry and marine and pastures; *(e)* encourage involvement of local communities in conservation and sustainable use of biodiversity; *(f)* take necessary measures to establish nature reserves in areas that are rich in biodiversity to preserve their existence; *(g)* establish protected areas in all vulnerable ecosystems, particularly in coastal and marine areas; *(h)* ensure that ‘ecosystem based adaptation’ is part of an overall climate change adaptation strategy at all levels (national to local); and *(i)* assist genetically impoverished species or those that have important ecosystem functions by providing natural migration corridors as well as assisted migration.

49. Similarly, in Clause 4.6.5, this Policy prescribes the importance of wetlands and requires the Government to ensure control of siltation of wetlands by reducing deforestation and felling of timber in catchment areas. Further, in Clause 5.7, this Policy requires the Government of Pakistan, in collaboration with national entities and support from multilateral agencies, to take the following policy measures in the forestry sector to sequester atmospheric carbon, thereby mitigating climate change: *(a)* set annual

afforestation and reforestation targets to increase the country's forest cover; **(b)** strictly prohibit illegal forest cutting and conversion of forest land to non- forest uses; **(c)** enact and enforce laws and regulations required for addressing illegal trade in timber and deforestation; **(d)** use the vast mass of cultivable wasteland as a carbon sink and to build up organic soil matter; **(e)** provide incentives and alternative fuel and livelihood options to forest dependent communities to prevent deforestation; **(f)** promote farm forestry practices by planting multipurpose fast-growing species to meet the needs for timber, fuel wood and fodder for livestock; **(g)** encourage and support forestry personnel in carbon forestry project development; **(h)** establish linkages with regulated and voluntary carbon markets to promote and encourage forestry mitigation projects in Pakistan; **(i)** secure financial assistance from the World Bank's Forest Carbon Partnership Facility (FCPF) and UN-REDD (Reducing Emissions from Deforestation and Forest Degradation) program as well as from other international sources to formulate a national program for avoiding deforestation and promoting forest restoration; **(j)** prepare the framework for a national REDD strategy on priority basis and ensure its implementation in accordance with international conventions/ processes; **(k)** develop the legal and institutional framework for improved forest management, investment clearly specifying rights to REDD+ credits; and **(l)** restore and establish the blue carbon sequestration capacity of mangroves, sea-grasses and tidal marshes.

50. In relation to the Awareness Raising in Clause 7(c), the Government of Pakistan, in collaboration with the relevant entities, is required to ensure advocacy and mass awareness regarding the importance of water and energy conservation, the impact of climate change on various sectors including forest ecosystems, biodiversity and so on, using mass media, public- private partnerships, students and community mobilization; and incorporate these issues into the formal education systems at all levels.

K. The National Forest Policy, 2015

51. Keeping in view certain facts, this Policy has following three (3) pronged approaches: (a) conserving the existing forests by curbing deforestation and promoting conservation, (b) bringing more trees in and outside forests by mass afforestation, involving all sections of the society, particularly on communal lands, shamlats and guzara forests, and (c) meet International Obligations and Opportunities through scientific planning, legal reforms and capacity building.

52. These approaches are required to be met through the strategic actions, including (a) Expand Forest Cover; (b) Mass afforestation Programme; (c) Integrating Forests with Economic Sectors; (d) Ecological Corridors; (e) Curb Deforestation and Promote Conservation; (f) Regulating Inter-Provincial Timber Movement, Commerce & Trade; (g) Reducing Emissions from Deforestation & Forest Degradation under the UNFCCC Agreements on Reducing Emissions from Deforestation and Forest Degradation (REDD+);

(h) Forest Ownership and Rights; **(i)** Promote Integrated Approach of Forests, Wildlife and Biodiversity Management; **(j)** International Obligations and Opportunities under the three Rio Conventions viz: the United Nations Framework Convention on Climate Change UNFCCC, United Nations Convention to Combat Desertification UNCCD, and the Convention on Biological Diversity CBD; **(k)** Scientific Planning, Policy & Legal Reforms; **(l)** National Institution for Research, Education, Training and Monitoring; and **(m)** Economic Coordination and Sustainable Financial Support.

This Policy requires the following logical steps for its effective implementation:

- (a). Ministry of Climate Change shall develop, in consultation with all stakeholders, an action plan for implementation of the National Forest Policy. The action plan will assign specific responsibilities to stakeholders with quantifiable targets to be achieved within a given timeframe.*
- (b). The Federal Forestry Board shall be reactivated under the chairmanship of the Minister for Climate Change with a renewed mandate, composition, and functions.*
- (c). The Federal Forestry Board shall report to the Government on the progress of National Forest Policy NFP on a six-monthly basis.*

- (d). *Provinces shall constitute inter-departmental NFP implementation committees and report their decisions to the Federal Forestry Board.*
- (e). *The Federal Government shall undertake preparation of necessary legislation for implementing Federal components of this Policy, including for creation of new national institution and authority.*
- (f). *The Policy shall be reviewed after 5 years of its implementation and strategic decisions shall be taken accordingly.*

L. The Forest Policy Statement, 1999 and the Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife) Policy, 1999

53. This Statement requires that: (i) the tree and vegetation cover shall be increased on farmlands, marginal and sub-marginal lands to make up the deficiency of forest resources in the province; (ii) a proper land use planning Programme based on land capability classification, shall be formulated; (iii) these rights shall be rationalized on the basis of carrying capacity of the public forests for sustained and perpetual benefit to the right holders; (iv) land and irrigation water shall be utilized to their maximum productive potential through on-farm water management, appropriate agroforestry practices and Joint Forest Management (JFM) of the land resource in the public sector irrigated plantations; (v) the resource use shall be regulated according to their capability and carrying capacity; (vi) the participation of stakeholders in

resource management shall be encouraged and ensured; *(vii)* such areas shall be rehabilitated, besides adopting other measures, through biological drainage programme involving plantation of suitable tree species at the farms, also to check the trend and maintain their productive potential; *(viii)* appropriate measures shall be adopted to combat and arrest the desertification process and maintain the areas for their productive use such as range management, dry afforestation, rainfed agriculture wherever possible etc; *(ix)* communal and private forests shall be covered by a tenable scientific management and appropriate legal cover, for meeting the needs of the rural communities on sustained basis; *(x)* the management of watersheds shall be streamlined to ensure their sustainable development and conservation, according to their capability for perpetual use. Land capability classification shall, also, be carried out to assess their capability for various uses and to evaluate the carrying capacity for sustained benefits. The legislative cover shall also be provided to encourage participation of the stakeholders; *(xi)* maximum private investment shall be encouraged in forestry production, especially in wood based industries like Pulp and Paper, Sports, Furniture, Livestock etc. through Joint Forest Management (JFM), joint ventures and long term leases under supervision of Punjab Forestry, Wildlife, Fisheries and Tourism Department; *(xii)* suitable incentives (inputs or market oriented) shall be provided to encourage large scale afforestation on farms through appropriate Agroforestry (AF) systems; *(xiii)* mass awareness and public education in respect of

forests, environment, wildlife, biodiversity, watershed values, other intangible benefits and need for effective protection of these resources, through electronic media and farm level research shall be undertaken; *(xiv)* suitable habitat shall be developed and maintained for conservation and propagation of wild flora and fauna of the province also to entertain the migratory species visiting the Punjab province; *(xv)* wildlife farming and ranching shall be encouraged in the private sector; *(xvi)* legislative reforms shall be carried out to improve enforcement of laws through improved legislative provisions; *(xvii)* in-situ and ex-situ measures shall be adopted to maintain biological diversity, through establishment of breeding centres, game reserves, game sanctuaries, zoological gardens etc. to conserve the species and gene pool; *(xviii)* appropriate measures shall be taken to develop and exploit this potential for expanding recreational facilities for the public; *(xix)* a system shall be evolved to value such non-consumptive use and intangible benefits of the forestry sector resources; *(xx)* solid steps shall be taken to maintain pollution free livable environment and stand firmly by the international commitments for the betterment of humanity, masses in Pakistan and province of Punjab; *(xxi)* suitable measures shall be taken to conserve natural ecosystems in various agro-ecological zones of the province through establishment of Protected Areas scientific management plans; *(xxii)* it shall be made mandatory to undertake screening and EIA of all the projects to safeguard against environmental degradation and ensure sustainable development;

(*xxiii*) the communities shall be actively involved in decision making, considering their bonafide needs on top priority basis in planning, development and management of resources; (*xxiv*) the marketing system and efficiency of utilization by the wood based industries and other end users shall be improved. A continuous marketing and utilization surveillance and elaborate information system required for a free capitalistic marketing system for the farmers and department to realize true price for their products and services, shall be introduced, in addition to exploring the possibility of producing and exporting value added goods. The marketing system and utilization efficiency shall be organized on modern scientific lines; (*xxv*) there is dire need for introducing efficient exploitation and utilization of the scarce forestry products and services. Appropriate research and mechanization shall be introduced in this important discipline of forestry sector; (*xxvi*) the departmental planning and development process shall be recognized, linked with the planning process of the P&D Department and Planning Commission of Pakistan to make applicable to Forestry, Wildlife, Fisheries and Tourism Department; (*xxvii*) the existing monitoring and evaluation facilities shall be updated on modern lines and decentralized to make it effective and purposeful at different levels; (*xxviii*) the forward planning process shall be introduced in forestry sector, on the modern lines; (*xxix*) the Punjab Forestry Research Institute, Faisalabad and Punjab Wildlife Research Institute, Faisalabad shall be amalgamated, reorganized and upgraded to

deliver the goods and help in addressing the emerging challenges in forestry sector development; **(xxx)** a modern, well-equipped database centre shall be established at the Punjab Forestry and Wildlife Research Institute Faisalabad to cater for the requirement within and outside the department; **(xxxi)** the capacity and financial inputs in research in Forestry, Wildlife and Range Management shall be enhanced and strengthened in accordance with the increasing needs; **(xxxii)** inconsistencies shall be removed and the conflicts shall be resolved for smooth implementation of forestry sector policy; **(xxxiii)** it is necessary to revise, update and consolidate all enactments to cater for natural resource management in accordance with the modern concepts of participation of stakeholders, Joint Forest, Wildlife and Range Management, Joint Ventures with wood based industries and Ecosystem Management. The legislation shall be revised and all enactment shall be consolidated and updated to address the current challenges; **(xxxiv)** the forest policy shall be reviewed periodically and revised every five years to accommodate the changing demands on resource use; **(xxxv)** the Punjab Forestry and Wildlife Research Institute, Faisalabad shall be upgraded and strengthened to cater for the continuous requirement of the capacity building and human resource development; **(xxxvi)** an extensive mass awareness programme shall be launched for education and extension at various levels, including policy makers to enhance awareness and political commitment for development and conservation of natural resources in the province; **(xxxvii)** Government of the Punjab shall

stand by all these commitments and shall seek international collaboration in funding the management and conservation of natural resources in the global perspective; **(xxviii)** a workable forest protection strategy shall be formulated with the participation of stakeholders by formulating the Community Organizations (CO) for the public, communal and private forests. Various forest enactments and rules shall be revised and consolidated; **(xxix)** ecosystem reserves shall be developed in various agro-ecological zones of the province to preserve the original flora and fauna and maintain Biodiversity; and **(xxx)** there shall be complete ban on change of land use of the forestlands. In case it is inevitable to transfer any forest area, at least an equal area shall be transferred to forestry sector in lieu of the land so transferred.

M. Policy on Controlling Smog, 2017

54. Paragraph 7 of the Policy EPA has to closely work with Board of Revenue to identify an air mark state land in the vicinity of large cities/town for tree plantation. Furthermore, EPA has to work with forest department to identify suitable tree species and maintain wood lands on indicated pieces of land. Under Paragraph 10, Environmental Protection Department is obligated to conceive and implement projects for greening of industrial existing units. Paragraph 11 of the Policy states that the Provincial Environmental Committee (PEC) shall oversee the implementation of this policy while coordination shall be the responsibility of Environmental Protection Department.

N. Punjab Environment Policy, 2015

55. Paragraph 3 of the Policy sets out the goal of the Policy to protect, conserve and restore Punjab Environment to improve quality of life of citizens. Paragraph 4 of the Policy sets out its objectives which, inter alia, includes protection, conservation and improvement of environment, prevention and control of pollution, development and management of environmental resources. Paragraph No. 7.2 recognizes that the desertification is a type of land degradation whereby lands are becoming arid losing water, vegetation and wild life. The Policy states that action is required to formulate and implement a policy for restoring the desertification at provincial and district level. Paragraph 7.9 of this Policy prescribes following actions, amongst others, to ensure sustainable management of natural forest of Punjab and increase tree cover for safeguarding the economic growth, environment, bio-diversity and food security in Punjab province: *(a)* Formulate and implement the Punjab Forest Policy to enhance forest cover up to 25% of the area of the Province to take corrective action to stop deforestation parade; *(b)* Formulate regulatory to prevent forest cutting; and *(c)* Carry out intensive institutional and legal reforms to promote good forest governance.

56. Paragraph 7.10 of the Policy sets out certain actions for conservation and sustainable views of bio-diversity and protected areas: *(a)* To create new national parks and protected areas; *(b)* Develop a comprehensive Provincial Wet Land Policy; *(c)* Develop Policy for conservation and cultivation of

medicinal/economic plants; *(d)* Towns of low park/green belt should be converted into any other activity area; *(e)* Parks and green belt and urban areas should be improved to enhance bio-diversity.

57. Paragraph 7.12 requires that in order to address challenges pose by climate changes and to protect the ozone layer, the Government should identify areas affected by climate change and its impact on water resources, forests and agricultures. Paragraph 8.5 states that promotion of environmental education is vital to sensitize the public at large for prevention of pollution and preservation of the environment. It proposes the following actions: *(a)* Incorporate subjection of Environment Size in all classes from primary to higher education; *(b)* Induction of “Environment Teacher” at school and college levels; *(c)* All public sector universities should launch Ph.D. and M.Phil programs in subject of environment; *(d)* Introduction of short course/diplomas in public and private universities in subject of environment; *(e)* Educational Institutions should provide barriers on road sides through tree plantations; *(f)* Establishment of “Environment Clubs” in all educational institutes.

58. Paragraph 11 states that “Provincial Environment Policy Implementation Committee” would be established at the provincial level for effective coordination of this policy. Provincial District and Tehsil Governments would also constitute “Policy Implementation Committee” to ensure implementation of the Policy

O. The Punjab Forest Policy, (Draft) 2018

59. Secretary Forestry, Wildlife and Fisheries Department state that pursuant to orders of this Court dated 31.01.2019, they convened a meeting and prepared draft of Punjab Forest Policy, 2018 (the “Draft Policy”).

60. Deputy Director, Ministry of Climate Change states that Draft Policy has been approved by the FW& FD will be approved by the Cabinet in its next meeting.

61. Additional Secretary, Forestry, Wildlife and Fisheries Department stated that they have prepared draft Policy pursuant to orders of this Court after conducting various meetings with all relevant stakeholders and prepared a summary for Chief Minister on 06.05.2019 to allow the draft policy to be placed before Standing Committee of Cabinet on Legislative Business for its approval. He further states that due to massive tree plantation campaign and efforts of Urban Unit, Forest Department has received the demand for tree plantation from various divisions across Punjab in which 5.3 million plants were sold. He points out that on the eve of Forest Day, they have planted more than 7,75,836 trees throughout Punjab

62. Mr. Shahid Rashid Awan, Additional Secretary, Forestry, Wildlife and Fisheries Department appeared and stated that the Draft Policy has been finalized pursuant to orders of this Court after conducting various meetings and consultative sessions on 14.02.2019, 06.03.2019, 15.03.2019 and 25.03.2019 and receiving comments from all stakeholders, government departments, authorities, civil societies

as well as the counsel for the Petitioners. He stated that Forest Department has prepared a summary for Chief Minister on 25.04.2019 to allow the draft policy to be placed before Standing Committee of Cabinet on Legislative Business for its approval.

63. Capt.(R) Muhammad Asif, Secretary and Mr. Shahid Rashid Awan, Additional Secretary of Forestry, Wildlife and Fisheries Department stated that pursuant to this Court's order, they have prepared Draft Policy with consultation of Parks and Horticulture Department (PHA), Local Government and Community Development Department, Cooperative Department as well as Urban Unit of P&D Department but Environmental Protection Department could not join the meeting. The Secretary Environmental Protection Department was directed to join the matter for finalization of the Draft Policy.

P. The Punjab Urban and Peri-Urban Forest Policy, (Draft) 2019

64. In Pursuance of order of this Court dated 11.02.2019, Khalid Sherdil, CEO, Urban Unit, P&D and Shahid Rashid Awan, Additional Secretary (Technical) FW&F Department, appeared and stated that on 14.02.2019 they convene a meeting on the draft of "*the Punjab Urban and Peri-Urban Forest Policy, (Draft) 2019*" (the "Draft Policy") which was attended by various Government Departments. They said that they are also in contact with the other stakeholders and relevant Departments before finalizing the said Draft Policy. In this regard they produced before the Court a booklet containing detailed revised Draft Policy and stated that they will circulate the same amongst the concerned Departments before finalizing the Draft Policy

consisting of land/soil for the plantation of the trees, species of the trees, time of the plantation, stock of the trees, responsible executing Departments/Agencies/Persons.

65. Mr. Khalid Sherdil, CEO, Urban Unit, P&D was directed to convene a meeting on 14.02.2019 and all the concerned departments as well as the Petitioner and other applicants were directed to join the meeting for finalization of draft policy.

66. Pursuant to orders dated 31.01.2019, 11.02.2019 and 19.02.2019, Khalid Sherdil, CEO, Urban Unit, P&D appeared and stated that after revising the Draft Policy, they have prepared a comprehensive document after meetings with stakeholders on 20.02.2019 and 25.02.2019. He further stated that they have taken comments from all stakeholders and circulated comprehensive policy to thirty-six (36) departments in order to obtain their comments and inputs for the Draft Policy and in this respect they have also scheduled a meeting of Stakeholders Consultative Sessions on 05.03.2019 to have discussion and receive input from the government and other stakeholders. He further informed the Court that they are also seeking information from all the stakeholders regarding the area designated for forests, location of area, number of trees to be planted, types of trees, responsible officers and date of plantation.

67. Khalid Sherdil, CEO, Urban Unit, P&D appeared and filed progress report dated 06.05.2019 on Punjab Urban & Peri-Urban Forest Policy. He states that pursuant to orders of this Court, the Urban Unit alongwith Forest Department and other departments of

government of Punjab has prepared revised draft and presented the same to various stakeholders.

Khalid Sherdil further states that as per directions of this Court, the Urban Unit started Urban Tree Plantation Campaign, 2019 with industries, housing societies and has identified 270 societies in Lahore which are mentioned in Annex-I of the report alongwith list of industries (Annex-H of the report). He next states that under GIS Mapping, most of the areas are not made part or cover the trees however, the Urban Unit is constantly in touch with Director General, LDA, Director General, PHA and Registrar of the Societies to take action therefore Director General, LDA, Director General, PHA and Registrar of the Societies were directed to appear in person, in order to conclude this case by giving certain directions under writ of mandamus under the respective laws. He points out that in order to implement the policy, Urban Unit needs certain budget from the Planning and Development Department for which they have written letter to the Secretary, therefore, Secretary P&D was directed to appear in person in order to conclude the case. He further points out that Urban Unit has identified 650 industries but they have not planted trees which is in violation of their own undertaking given to Environmental Protection Department when NOC was issued to them under Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000 read with Section 12 of the Punjab Environmental Protection Act, 1997 therefore, the Secretary Environmental Protection Deptt was also directed to appear in person

alongwith permission/NOC granted to industries under the Regulations.

Q. Punjab Clean Air Action Plan (Draft)

68. Paragraph No. 4 of the Draft Policy shows that there is a 72% loss of tree cover in the Province in just 8 years from 2007 to 2015. The Draft Policy mandates transplanting of trees rather cutting of trees for development projects. It further states that projects will be implemented for three fold increase in trees cover in an around six major cities (Lahore, Faisalabad, Rawalpindi, Gujranwala, Multan and Sialkot).

VIII. URBAN FORESTRY:

69. Lahore is facing dangerous air pollution, resulting in deaths to citizens. High air pollution and smog are admitted in the Policy, at page 15, wherein it is admitted that afforestation is highly required to combat air pollution, mitigate carbon and improve precipitation. The city is choking and the need for more than 10 million people is urban forestry based on international best practices, urban forestation which makes the cities in Punjab healthier not for beautification.

70. At the moment, there is no Urban Trees Plantation Policy regarding plantation of trees at urban areas because the Policies only refer forest land and other urban, private and agricultural land are not covered under the issue in hand. Nevertheless, under the Punjab Development of Cities Act, 1976 as well as Lahore Development Authority Act, 1975 and other laws regarding development of societies, there is no clear cut provision for plantation of trees as

already held by this Court in “ANJUM IRFAN versus LAHORE DEVELOPMENT AUTHORITY through Director-General and others”(P L D 2002 Lahore 555).

IX. PUBLIC FUNCTIONARIES AND THEIR DUTIES:

A. PUNJAB RULES OF BUSINESS, 2011

SR. #	Department/ Authority	Administration of law/rule/policy	Relevant Provisions
1.	Environment Protection Department	Punjab Environment Protection Act, 1997	Section 12 states that no proponent of a project shall commence construction which is likely to cause an adverse environmental effect which is defined under Section 2 (i) of the Act, 1997.
		Policy on Controlling SMOG, 2017	Already discussed herein above.
		Punjab Environment Policy, 2015	Already discussed herein above.
		Punjab Clean Air Action Plan [Draft]	Already discussed herein above.
2.	Forestry, Wild Life & Fisheries Department	Punjab Plantation and Maintenance of Trees Act, 1974	Already discussed herein above.
		Forest Act, 1927	Already discussed herein above.
		Punjab Village Forest Rules, 2013 (Made	Already discussed herein above.

		Under Section 76 of Forest Act, 1927)	
		Punjab Forestry Sector (Forests, Watershed, Rangelands and Wild Life) Policy, 1999	<p>This Policy issued by Respondent No.2 in the year 1999 states that only 3% of land in Punjab Province is under tree cover whereas for a balanced economy an area of 20-25% should be under forests. The said Policy Statement sets out the obligations to be performed by Respondents No.2 to 7 as follows:-</p> <ul style="list-style-type: none"> (i) Tree and vegetation cover shall be increased. (ii) Proper land use planning programme based on land capability classification shall be formulated. (iii) User rights in public forests shall be rationalized. (iv) Land and irrigation water shall be utilized through on-farm water management, appropriate agro forestry practices

			<p>and Joint Forest Management of the land resource in the public sector irrigated plantations.</p> <p>(v) Land under water logging and salinity shall be rehabilitated through plantation of suitable tree species.</p> <p>(vi) Appropriate measures to be adopted to combat and arrest desertification process by planting trees.</p> <p>(vii) Communal and private forests shall be covered by a tenable scientific management and appropriate legal cover.</p> <p>(viii) To ensure maximum private investment is encouraged in forestry production through joint ventures and long term leases etc.</p> <p>(ix) To provide suitable incentives to encourage large scale afforestation on farms.</p>
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			<p>(x) To undertake mass awareness, public education in respect of forests, environment, wildlife, watershed values etc. through electronic media and farm level research.</p> <p>(xi) Development of suitable habitat and maintenance for conservation and propagation of wild flora and fauna of the province.</p> <p>(xii) Legislative reforms shall be carried out to improve enforcement of laws through improved legislative provisions.</p> <p>(xiii) To undertake solid steps to maintain pollution free livable environment and stand firmly by the international commitments as enshrined in various international treaties for the betterment of humanity, masses in</p>
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			<p>Pakistan and province of Punjab.</p> <p>(xiv) Establishment of Protected Areas scientific management plans to conserve natural ecosystems in the province.</p> <p>(xv) Mandatory Environmental Impact Assessment for forestry and other projects.</p>
3.	Housing, Urban Development and Public Health Engineering Department	Lahore Development Authority Act, 1975	Already discussed herein above.
		Lahore Development Authority Private Housing Scheme Rules, 2014	<p>a) Rule 2 (q) defines “landscape plane” to mean a plan showing visible feature in an open space in a scheme such as walk way, green area, fountain, flower belt, grass and trees.</p> <p>b) Rule 15 provides that a sponsor shall, submit to the Authority, a landscape plan for parks, open spaces, including tree plantation on both sides of a road and in open spaces.</p>

		Punjab Development of Cities Act, 1976	Already discussed herein above.
		Parks and Horticulture Act, 2012	Already discussed herein above.
		Lahore Canal Heritage Act, 2013	Section 3 (5) (b) prohibits felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree situated on the Lahore Canal except with prior permission in writing from the PHA Lahore. Section 9 prescribes punishment with imprisonment of not less than 1 year and not more than 5 years or with fine.
4.	Local Government and Community Development Department	Punjab Local Government Act, 2019	Already discussed herein above.
		Walled City of Lahore Act, 2012	Section 2 (xl) define “urban open space” to include gardens, parks, playgrounds available to public. Section 7 (2) (viii) empower the Walled City of Lahore Authority to develop and

			<p>maintain an open urban space.</p> <p>Section 2 (xii) defines “environment” to mean air, physical space, urban farms, sensory qualities including vistas, views and sights.</p> <p>Section 7 (2) (ix) and (xi) empower the Walled City of Lahore to conserve and upgrade the environment as well as to prepare, implement and enforce schemes for environmental improvements.</p>
5.	Planning and Development Department	Cholistan Development Authority Act, 1996	<p>Section 15 (k) of the Act prescribes the conservation, preservation of forests and multiplication of wild life and natural vegetation to be a function of the Cholistan Development Authority.</p> <p>Section 16 (2) (iv) (e) empowers the Authority to regulate the falling, girdling or burning of any tree or timber.</p> <p>Section 16 (2) (v) empowers the Authority to undertake breaking up of land, construction of water courses and tree plantation.</p>

6.	Services and General Administration Department	The Infra-Structure Development Authority of the Punjab Act, 2016	Section 2 (j) defines the term “road” so as to include express ways, highways, motorways, public roads, cart-ways intended to use for general public and includes culverts, bridges, site drains, fences, posts and trees on any road. Section 6 (2) (q) empowers the Infra-Structure Development Authority of the Punjab to develop and maintain green areas including parks along the roads.
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B. The Forest Act, 1927

71. Under Section 4(1)(c), the Provincial Government is required to appoint the Forest Settlement Officer (the “**Forest Officer**”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same. To preserve the forest, the Forest Settlement Officer is empowered to not allow the fresh clearings for cultivation or for any other purpose except in accordance with the prescribed rules (Section 5); to stop, with previous sanction of the Government, any public or private way or watercourse in a reserved forest, provided that a reasonably convenient substitute for it already exists, or has been provided or constructed by the Forest Officer (Section

25); and to seize the forest produce in respect of which an offence is committed together with any tool, carriage wagon, cart or other vehicle for transport and anything used in the commission of the offence (Section 26(8)).

72. Under Section 72, the Provincial Government may invest any Forest Officer with powers *(a)* to enter upon any land and to survey, demarcate and make a map of the same; *(b)* of a Civil Court to compel the attendance of witnesses and the production of documents and material objects; *(c)* to issue a search-warrant under the Code of Criminal Procedure, 1898; and *(d)* to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence. Further, any evidence recorded under above (d) is admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

C. Punjab Local Government Act, 2019

73. Section 150 (1) (j) states that all trees, plants and flowers on roadsides and other places maintained by the local government constituted under Section 15 shall vest in a local government. Further, following two entries are present in Part II of the Third Schedule of this Act stating functions of a Metropolitan Corporation, Municipal Corporation and Municipal Committee:....(dd) Environmental Health, awareness and services (ee) Parks and landscape development. Similarly, following two entries are present in Part II of the Fourth Schedule of this Act stating functions of a Town Committee: (z) Environmental health, awareness, services,

.... (aa) Parks and landscape development. Moreover, following two entries are present in Part II of the Fifth Schedule of the Act stating functions of a Tehsil Council: (dd) Environmental Health, awareness, services (ee) Parks and landscape development

X. OFFENCES AND PENALTIES

74. To ensure protection and safety of forests, Section 26 of the Forest Act provides for offences and penalties relating to reserved forest. Under this section, a person, who in a reserved forest:

(a) makes fresh clearing which is prohibited under Section 5;

(b) kindles fire or burns fire in the manner which endangers the forest or sets on fire any plant or tree; (c) causes damage by negligently felling a tree, cutting or dragging any timber; (d) cuts or damages any plant; (e) fells, girdles, lops, taps or burns a tree or strips off a bark or leaves of a tree or otherwise damages the same; (f) quarries stones, mines, minerals, burns lime or charcoal, or collects or removes any forest produce; (g) constructs any building, structure, hutment or cattle pen; (h) clears or breaks up any land for cultivation or any other purpose; (i) encroaches upon the forest land; (j) causes damage or tempers with barbed wire, or fence erected in or around the forest;

(k) contravenes any rules relating to hunting, shooting, fishing, or setting up traps or snares; (l) kindles, keeps or carries any fire except during such season as the forest officer may notify in this behalf;

(m) trespasses or pastures cattle, or permits cattle to trespass;

(n) removes or causes damage to the soil, water, natural vegetation (shrubs, herbs and plants), fish, wild animals and wild birds;

(o) damages any structures such as water channel, check dam, embankment, reservoir or pond; (p) changes the land use for the purpose other than development, preservation or conservation of the forest or park; and (q) installs a saw mill, charcoal kiln or establishes timber or firewood depot or operates any mechanical aid designed to cut, fashion or convert a tree or timber or fabricates wood into articles of furniture, building materials, joinery or articles of domestic or commercial use in or within five mile radius of the forest; is liable for punishment of up to six (6) months or with fine, calculated on the basis of value of the damage caused due to such offence, or with both. Section 26(4) of the Forest Act further extends this punishment to one (1) year or double of the fine or with both in case the offence is committed after sunset and before sunrise, or where the person has been previously convicted for a forest offence.

75. The only defence/exception to these offences is the permission in writing of the Forest Officer, and any existing right under the Forest Act, rules, grant or contract made by the Government (Section 26(5)). Further, the Punjab Government is empowered to suspend the exercise of any right of pasture or to forest produce for such period as it may determine, in case the fire in a reserved forest is caused willfully or by gross negligence (Section 26(6)).

76. Section 33 of the Forest Act provides the offences relating to the “protected forests”, and states that a person, who in a protected forest (a) fells, girdles, lops, taps or burns a tree reserved under section 30, or strips off the bark or leaves from, or otherwise

damages, the tree; **(b)** contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest produce; **(c)** contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land of the forest; **(d)** sets or kindles fire without taking reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of the forest; **(e)** leaves any fire burning in the vicinity of any reserved tree or closed portion of the forest; **(f)** fells any tree or drags any timber and damages any reserved tree; **(g)** permits cattle to damage any reserved tree; and **(h)** infringes any rule made under section 32; shall be liable for punishment – which are similar to the punishments provided for the “reserved forests” in Section 26 (2) to (6).

77. Section 3 of the **Trees Act** requires the occupier to plant three (3) trees per acre by the occupier in the prescribed manner, and maintain the same. Section 4 imposes the penalty, in case of contravention of Section 3, of rupee one per tree, after giving an opportunity of hearing to the person concerned.

78. Section 21 of PHA Act prohibits any person to **(a)** use any green belt or green area for any purpose except casual use without prior permission in writing of PHA, **(b)** discharge any waste water or sewage on any public park, green belt or green area, **(c)** throw or dispose of any litter or garbage in any public park, green belt or green area, **(d)** install or exhibit any billboard, sky sign, outdoor

advertisement or advertisement or allow the installation and exhibition of any billboard, sky sign, outdoor advertisement or advertisement in any property under his control without the permission of PHA, (e) cut, damage or remove any tree on public land or any place outside a private premises without prior permission in writing of PHA, except the routine or reasonable trimming of a tree outside the private premises by the occupant himself or under intimation to him, and (f) take any part in the publication, installation or display of any billboard, sky sign, outdoor advertisement, advertisement, or which is indecent or against public morality or which may incite public disorder.

79. Section 23 of PHA Act provides the offences, penalties and procedures, and makes an offence under the PHA Act as “non-bailable” but the police shall not take cognizance of the offence except on the information received from an authorized officer of the Authority. Further, PHA may instead of filing information before the police, file a complaint before a Magistrate authorized to take cognizance of an offence under the PHA Act. The procedure for the trial of offences under the PHA Act is the same as is laid down in the Code for summary trial. Similarly, under Section 24, any person may file a complaint in the prescribed format to PHA regarding the illegal use of any public park or green belt or green area or any other violation of the PHA Act and PHA on receipt of such a complaint is required to inquire into the same and shall take such action as may be necessary under the PHA Act. Any officer authorized by PHA may

take all such actions as may be necessary for enforcement of the PHA Act, rules or regulations including removal of encroachments, cessation of hazardous or unauthorized trade in a public park, green area or green belt, removal of unauthorized billboards, sky signs, outdoor advertisements or advertisements, and removal or cessation of unauthorized construction or stoppage of unauthorized land use in or on a public park, green belt or green area (Section 25). Further, any person authorized by PHA may enter and survey any premises or land at a reasonable time and after due notice of inspection and survey for the purposes of the PHA Act, rules or regulations. The police is also required to render such assistance as PHA may require in the discharge of its functions under the PHA Act (Section 28).

80. According to Second Schedule, of LDA Act causing harm to the environment is an offence punishable under Section 35. According to the Schedule of Punjab Development of Cities Act, 1976; Part-A, causing harm to the environment is an offence punishable under Section 34.

X. DETERMINATION BY THE COURT

81. This petition was filed in order to highlight inactions of the Respondents Department for not implementing the laws, policies and strategies regarding protection of forest of Pakistan and to implement them by passing certain directions to the concerned quarters to perform their duties as per law. Since Superior Courts of Pakistan, in various judgments, have protected the fundamental rights of citizens of Pakistan regarding protection and conservation of natural

resources including forest therefore, this Court has noted above about the laws and mandatory duties of the Authorities/Departments mentioned under respective laws that should be taken seriously while implementing the policies including National Climate Change Policy, 2012, the National Forest Policy, 2015, the Forest Policy Statement, 1999 and Punjab Environment Policy, 2015. Had above-mentioned laws and polices properly been implemented by the Respondents Departments in letter and spirit with proper mechanism and procedure, the forest of Pakistan could have been saved for further depletion and deforestation. Since the Pakistan is signatory of various international laws, environmental treaties and conventions and due to that various laws and policy have been made to protect the environment, conserve and preserve the forests but in this regard these policies/laws have not been implemented which the Respondents are duty bound to adhere to their own policies under the doctrine of sovereignty in the light of case law reported “DEWAN SALMAN FIBRE LTD. v. FEDERATION OF PAKISTAN and others” (2015 PTD 2304), “NATIONAL BANK OF PAKISTAN Versus IFTIKHAR RASOOL ANJUM and others” (2017 P L C (C.S.) 453) which was upheld by the Hon’ble Supreme Court of Pakistan in “BAHADUR KHAN and others versus FEDERATION OF PAKISTAN through Secretary M/o Finance, Islamabad and others” (2017 SCMR 2066) in which it has been held that *great importance is attached to government adhering to sovereign commitments made by it, whether in form of statutory orders or notifications issued by it*

or in the shape of policies announced by it. Commitment made on behalf of government should neither be lightly disregarded nor deliberately ignored. Orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence on representations which are made by or on behalf of duly constituted governmental authorities. The aforesaid case laws have binding effect on the Respondents Department to follow if they are read with relevant laws and to this effect, action could be taken to preserve the trees and forest across Pakistan.

82. This Court noted that earlier there was no policy for plantation of trees in urban cities, towns and under the directions of this Court, concerned Departments prepared Urban Trees Plantation Policy which is being followed in letter and spirit resulting into massive plantation of trees across the Punjab and that has also been highlighted in various daily publications/media to show progress made so far. This has been much appreciated under aforementioned doctrine, Urban Plantation Policy shall also be followed and implemented by the concerned authorities and housing societies without any fail for plantation of trees outside houses because commitment made under the doctrine of sovereignty should neither be lightly disregarded nor deliberately ignored. The principles and doctrines of Public Trust and Dubio Pro Natura have to be kept in mind while making further policies in this regard. While deciding this case, this Court mentioned relevant laws, policies, principles and judgments but they need to be followed by the respective authorities

which are binding on them under Article 189 and 201 of the Constitution because the principles annunciated by Superior Court of Pakistan are binding on all the courts and authorities in Pakistan.

XI. DIRECTIONS:

83. In view of the above, this Court allows this writ of *mandamus* under Article 199(1(a)(i) of the Constitution and direct the Government Departments performing their functions within jurisdiction of this Court in connection with the affairs of Federation and Province of Punjab and other local authorities under the respective laws, mentioned in this judgment to do anything, they are required by law to do **IN ORDER TO SAFELY MANAGE, CONSERVE, SUSTAIN, MAINTAIN, PROTECT AND GROW FORESTS AND PLANT TREES IN URBAN CITIES** which are as follows:

- (1) All the applicable laws and the relevant directions and judgments of the Hon'ble Supreme Court and High Court mentioned herein above, shall be implemented in letter and spirit in order to plant, protect and preserve the forest.
- (2) All the Respondents shall take steps to protect, manage and conserve the forests and trees in the Urban Areas, in fact make manifest and obvious efforts, to enlarge the forests and trees in Pakistan and the Punjab.
- (3) The requirement for planting three (3) trees per acre by the occupier of a land (Section 3 of the Trees Act) and the

penalty of one (1) rupee per tree (Section 4 of the Trees Act) may be revised.

- (4) Every responsible Ministry, Division, Department and Authority etc. shall publish the yearly report in which it shall highlight the expansion of the forest area, tree plantation campaign in the Urban Areas and also the action taken by them in compliance of the said laws.
- (5) The competent authority is directed to impose the penalty against the relevant officers for omission of their duties, if any, under the respective laws as well as the disciplinary laws and also against the public for cutting the trees.
- (6) The Secretary Cooperative and Registrar Cooperative shall issue directions to the housing societies and authorities for (i) planting at least two (2) trees in the green belt in front of each house mentioning in their allotment letters and bye-laws of the society (ii) impose heavy penalties and punishments for cutting the same at least Rs.25,000/- per tree and to (iii) monitor the trees through respective officers of the society/authority. The treatment and maintenance of the trees will be the sole responsibility of the society/authority concerned.
- (7) The Punjab Government is also directed to revise and amend such laws where clear direction and command is not entrusted to any authority as under the Punjab Rules of Business, the Secretary Forest, the Secretary

Cooperative and the Local Government etc. have clear mandate to make laws and policies, under Schedule-II of the Punjab Government Rules of Business.

- (8) It was noted during the hearing that due to the efforts of the Government and other Departments, this year massive tree plantation took place. The same or more effort must be done and monitored by the relevant authorities each year through proper book logging and designated officers of the area to count, monitor, manage trees every week and submit report and status of the same to the Head of the society/authority for publishing in their annual report. The relevant authority should also number the trees to keep the track of each tree in urban areas (streets, road, parks, market and green belts).
- (9) The Department shall, through the media and other means, inform the public and create awareness, including lodging a complaint for any violation of the law for cutting of the trees to the concerned person who maintains data and manages trees and they will take strict action through respective laws. Every area shall have a person to file complaint depending on the jurisdiction of the area and duties of the officers. The Urban Plantation Policy shall be consulted by all the departments.
- (10) The Local Government, PHA, DHA, LDA and all others authorities/societies, Secretary Forest and other relevant

authorities are directed to define a mechanism for urban forestation by learning from Urban Plantation Policy.

(11) A specific officer may be appointed in a designated area to deal with the issues related to the trees and forest, as the case maybe. If any citizen in their societies or locality feel the need of plantation of trees, such relevant officer may address grievance of the citizen by planting the requisite number of trees by the required authority otherwise they will contact PHA which shall have designated officers for doing such alongwith Forest Department. These trees then shall be again monitored and managed by the said authority.

(12) All the authorities, including DHA, LDA, MDA, FDA and other relevant authorities, are directed to make and adopt comprehensive policies with respect to plantation of trees in urban areas with experience of Urban Plantation Policy and make their own policy under respective laws and immediately start planting of trees with the request to PHA and other departments and maintain the same by imposing fine and penalty to the officers of the area or any citizen.

(13) The school, colleges, higher education institutes, hospitals, parking sites etc. are specifically directed to make policy for planting the trees in open spaces and waiting areas/car parks.

(14) The Government of the Punjab through its respective departments shall make laws in imposing penalty and

heavy fine for cutting, removing and damaging any tree with permission of the concerned authority including EPA, PHA and consider all mitigating measures at the time of public hearing of any project such as Initial Environmental Examination (IEA) and Environmental Impact Assessment (EIA).

84. Before parting with this judgment, I appreciate the efforts of all Government Departments whose representatives appeared before this Court from time to time and complied with orders under doctrine of *continuous mandamus* and prepared first ever Urban Trees Plantation Policy for plantation of trees in urban areas including roads, streets, markets, parks and car parks etc. I would also appreciate the efforts of Law Officers, learned counsels, social activists, who played important role for protecting future of citizens of Pakistan regarding massive forest cover and implementation of Urban Trees Plantation Policy throughout the Province of Punjab to have healthy life free from pollution as provided under Article 9 of the Constitution which was introduced by the Hon'ble Supreme Court of Pakistan in "MS. SHEHLA ZIA AND OTHERS Versus WAPDA"(PLD 1994 SC 693).

**(JAWAD HASSAN)
JUDGE**

Announced in open Court on the 30th day of August 2019.

APPROVED FOR REPORTING

JUDGE

