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Suo Moto Action and Judicial Discretion in Pakistan: A Comparative Legal Framework Analysis

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ABSTRACT

This paper critically analyzes the concept of inherent jurisdiction and suo motu powers of the Supreme Court of Pakistan, particularly under Article 184(3) of the Constitution of 1973. The study explores how the judiciary has expanded its powers beyond the constitutional text, enabling itself to hear matters of public importance involving fundamental rights, often without a formal petition. It further examines Section 151 of the Civil Procedure Code (CPC) 1908, which recognizes inherent powers to prevent abuse of court process and ensure justice, and draws parallels with the Criminal Procedure Code (CrPC). The analysis highlights how these powers, although unwritten, serve as essential judicial tools, while also cautioning against their potential misuse and judicial overreach. By comparing statutory interpretation with textual provisions, the paper questions the legitimacy of the expansive use of suo motu powers and proposes procedural safeguards to ensure accountability and respect for the separation of powers principle in Pakistan's legal system.

Keywords: Constitution, Criminal, Civil, Inherent Power, Judicial Overreach, Separation Of Power, Article 184(3).

INTRODUCTION

In the context of the above topic the root word is "inhere", meaning, "To exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something." The Black's Law Dictionary as "A COURT's power to decide a case or issue a decree" has defined the term "jurisdiction". The Court has an inherent jurisdiction to make an order for the purpose of preventing abuse of its procedures. This jurisdiction is a fertile source for procedural development. It was also held that the High Court has jurisdiction to make an order (which may, perhaps, properly be described as an order for an "interim remedy") restraining a person from initiating civil proceedings without the permission of the Court, where the proceedings will be vexatious.

The court emphasized the element of the overriding objective that speaks of the need to ensure that, in dealing with a case justly, so far as practicable the case is allotted an appropriate share of the court's resources whilst taking into account the need to allot resources to other cases. In this case, the Court re-classified "traditional" and "extended civil restraint" orders, where a court was persuaded that a solicitor had not acted negligently in continuing to act for a company which

had been struck off the register, nonetheless the Court was able to make an award of costs against the solicitor from wasting the time of Court staff and that the defendants were clearly in a position to know the status of the company. The inherent jurisdiction was originally conferred on the superior courts. According to accepted standards of statutory construction the very term, "inherent jurisdiction" clearly exhibits that it requires no authorizing provision, hence, the term "inherent". In determining the term "inherent jurisdiction" number of judges and jurists have resorted to the definition from "Halsbury's Laws of England".

Justice Fazal Karim, a former judge of the Supreme Court of Pakistan, and a distinguished constitutional law scholar, refers to suo motu, the power of the Supreme Court to hear cases on its own accord, to be one that is "self-created" in the Pakistani constitutional context. While recommending changes to the constitutional framework of the country, the retired judge argues that the Supreme Court has extra-constitutionally assumed the power of suo motu and certain judicial celebrities have vastly expanded it. Before recommending a constitutional amendment to disarm the Court of this power, Justice Fazal Karim highlights his disapproval for the judicial practice of suo motu by labeling it "wholly inconsistent with the constitutional concept of Judicial Power." However, it is essential to note that the Justice's critique of suo motu powers is embedded primarily in its facilitation of judicial over-reach, subversion of procedure, and violation of the constitutional doctrines such as that of separation of powers .

Article 184 of the Constitution of Islamic Republic of Pakistan confers original jurisdiction, the authority to hear a case at its initiation, often referred to as Public Interest Litigation, in the form of judicial review to Pakistan's Supreme Court. Clause (3) of Article 184, however, it is cited as the source of suo motu powers by those who employ it. The text of this constitutional provision is as follows: Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.

A perusal of the provision, as mentioned above, highlights three main features. Firstly, it contains a "without prejudice" clause. This, according to Chief Justice Muhammad Haleem, in the Wukala Mahaz case, preserves the High Courts' power to conduct judicial review and allows affected petitioners to choose between either the Supreme Court or the High Courts for remedy. The next two features of this constitutional provision pertain to two procedural requirements that need to be met if a claim raised under this provision is to succeed. The text of Article 184 (3) stipulates that for the Court to have original jurisdiction on an issue, it first needs to be of public importance. Secondly, that issue must involve a violation of fundamental rights that are enshrined within the first chapter of the second part of the Pakistani Constitution. A perusal of the text of the constitutional provision makes it abundantly clear that the two conditions must be met for a petition of Public Interest Litigation to be maintainable. More importantly, the text of 184 (3) does not hint at even the slightest exemption of Public Interest Litigation cases from the conventional rules of procedure, such as those of locus standi, and the Supreme Court being the forum of last resort, to name a few.

The application of Article 184 (3) is where the text becomes irrelevant, and statutory interpretation dominates. The most recent interpretation of Article 184 (3) depicts a clear divergence from the text. Currently, the Supreme Court of Pakistan, as mentioned above, interprets the provision,, such that it allows the Court to exercise suo motu powers despite its textual nonexistence, in the provision or anywhere else in the Constitution. The Supreme Court has unilaterally chosen to read a judicial phenomenon, which has no vestige in the Constitution, and thereby empowered itself with the means to exert judicial will under the garb of enforcing

fundamental rights. It is, however, essential to note that the Constitution does mention suo motu powers, but only concerning the jurisdiction of the Federal Shariat Courts in Article 203 (D).

This interpretation was first made in 1990 in the case of *Darshan Masih v The State* when the Supreme Court empowered itself by holding that it has the authority to take up matters addressed to it through informal complaints and on their motion. Before this, Article 184 (3) only allowed for cases to be heard under the larger umbrella of Public Interest Litigation, which had to be filed by an aggrieved party to be heard. Now, because of this arbitrary and over-reaching interpretation, rules were made lax for such cases. Parties were no longer classified as complainants, petitioners, or respondents, and the Court was empowered to make general recommendations to public bodies to enforce remedies. Several cases followed in which this newly invented jurisdiction was affirmed, and the Court has continued to assume the role of a benevolent guardian who conducts fact-finding missions and inquisitorially passes general orders for all stakeholders.

The event of a constitutional body originally devised to read the law for the adjudication of disputes, reading textually absent powers into existence, is of profound importance in Pakistani context. Not only does it signify the Court's ability and penchant to create and extend its powers, but it also establishes the Constitution as a being that survives far beyond its physical manifestation – the text. More importantly, it distinguishes textual interpretation as a separate source of law, extending it far beyond its conventional role of being the process through which the law is derived. The vast and increasingly expanding gap between the text and the interpretation of Article 184 (3) of the Pakistani Constitution is the focal point of interest of this paper. This paper aims to scrutinize an oft-made assumption in the literature about Article 184 (3) powers in Pakistan – the Supreme Court's power to hear cases suo motu, is constitutionally guaranteed despite its textual absence. To achieve this aim, this paper will primarily focus on the two textual requirements stipulated in Article 184 (3) of the Constitution – public importance and violation of fundamental rights.

This article is deal of inherent power of superior court by exercising different articles and sections of civil procedure code, criminal procedure code and constitution of Pakistan. The 1973 Constitution of Pakistan has given sumoto power to superme court. In this has described article power and its consequences of judicial system. There are also certain drawbacks of using inherent power of courts. There is also pointed out the draw backs of using inherent power by the higher courts and also give alternate solution of it. The power of using suo moto action is analysis critically for the purpose of to analyse the excise use of power for the justice. Supreme Court by using inheret power under constitution article 184(3) is supplement of judicial review. Courts is duty to do justice in all cases, whether provided for or not, carries with it the necessary power to do justice in the absence of express provision. This power is referred to as the inherent power possessed by the court, though not conferred. Sec 151 of the Civil Procedure Code deals with the inherent powers.

The Code of Civil Procedure acknowledges the powers along with limitations on the courts but there are some powers, which are vested in the court but not prescribed in the code, and those are the Inherent powers. The inherent powers of the court are in addition to the powers specifically conferred by the code on the court. They are complementary to those powers. The court is free to exercise them for the ends of the justice or to prevent the abuse of the process of court. The main aim of this study is to find out the relevant sections dealing with inherent powers of court under CPC, to analyse how the court exercise its inherent powers, to find out the scope of inherent powers exercised by the court under section 151 of the CPC, to understand what are the limitations of the inherent powers of the court.

BACKGROUND

The, Justice Umar Ata Bandyal, has taken his first Suo moto action on the constitutional crises in the country. In this Suo moto case, the Chief Justice initiated court proceedings on its own motion against the act of the Deputy Speaker of National Assembly, who had dismissed the Motion of No Confidence for being a foreign conspiracy and interference against the then Prime Minister of Pakistan, Mr. Imran Khan. As a result, Imran Khan immediately advised the President of Pakistan to dissolve the National Assembly. The President of Pakistan on the advice of the Prime Minister of Pakistan dissolved the National Assembly immediately. Although the Suo moto action of the Chief Justice in this case is related to a Constitutional crisis in the country, this act of the Court is still questionable, as the due process of law should have been followed. The due process of law provides that there has to be a person or body who invokes the original jurisdiction of the Supreme Court and then the court is capable of granting relief to a person, given that his petition is maintained and his petition has satisfied the court in fulfilling the procedural requirements of article 184(3). There are only a few countries in the world where Suo moto action is still exercised. These countries include Pakistan, India, Bangladesh and Nigeria. The rest of the world has adhered to the due process of law. Suo moto action is a result of judicial activism and constitutional law scholars and lawmakers largely detest it as it is always considered interference in the function of the executive and legislative branches. Suo moto action is also against the doctrine of *locus standi* and also the due process of law. The decision of the Supreme Court in this case has although buried the Doctrine of Necessity, it has also simultaneously buried the due process of law.

EVOLUTION OF SUO MOTO ACTION IN PAKISTAN

Suo Moto or *Sua Sponte* is a latin term which means 'on its own accord/motion'. It is a property referred to describe an act of authority taken without formal prompting from another party. In law, this term is mostly applied in a situation where a judge takes action against any individual or official upon violation of any rights without any prior application or request from the parties made before the court. Suo moto action is considered to be a result of 'judicial activism'. Judicial activism emanates from the judgment of the Chief Justice of the US Supreme Court, John Marshal, in the early 19th century in the landmark case *Marbury vs Madison*. It was declared in this case that an act of another branch of government repugnant to the Constitution is void. Judicial activism is invariably expressed in cases of judicial review where an aggrieved person or group seeks the court's intervention against the action of the State. Exercise of suo moto action can be classified as an extension of the doctrine of judicial review but this concept also has ancient roots in England under Chief Justice Edward Coke's opinion in *Dr. Bonham's Case* in 1610. In Pakistan, Article 184(3) of the Constitution confers power to the Supreme Court to have original jurisdiction on an issue that is of public importance and involves a violation of fundamental rights, which are provided in Chapter 1 part II of the Constitution. Article 184 and its clause (3) of the Constitution are present in the text since its enactment in 1973. At this stage, this Constitutional provision only provides a mechanism to pursue a claim under the umbrella of public interest litigation but with the passage of time, this provision has been misinterpreted and hence, as a result of this misinterpretation, in 1990, the power of suo moto action was evaluated. In 1975, Article 184(3) was invoked for the first time in the case of *Manzoor Elahi v Federation of Pakistan*. The Supreme Court of Pakistan heard this case and the bench was led by Chief Justice Hamoodur Rehman. The Court held that the procedural requirements be conjunctively met but it also required that the same matter shall not be made an issue at another court. It is important to note that none of the judges on the bench made even a tangential reference to suo moto power or the subversion of standard rules of procedure. In the case of *Benazir Bhutto vs*

Federation of Pakistan, the issue of procedural requirements under Article 184(3) was directly in question. Chief Justice Muhammad Haleem mentioned that an issue that concerns the political representation and the electoral process is a matter of public importance under the meaning of Article 184(3) of the Constitution. Hence, the Court's interpretation of the constitutional provision was in harmony with the text and precedent set by the *Manzoor Elahi* case.

In the cases of *Noor Muhammad vs Federation of Pakistan* and *Kabir Ahmed Bukhari v Federation of Pakistan*, the Supreme Court narrowed the scope of Article 184(3) and held that the petitions filed under Article 184(3) were liable to be dismissed as the petitioner could not establish the violation of fundamental rights, thus failing to satisfy the procedural requirement of public interest litigation. In the aforementioned cases, it is crystal clear that the intention of the judiciary is to emphasis the fulfillment of the prescribed criteria of procedural requirements under Article 184(3) of the Constitution.

For the period of 25 years i.e 1973-1988, the Supreme Court continued to develop the procedure for invoking the claim under Article 184(3) of the Constitution. The general trend was that the court exercised its power in a restrictive manner and entertained only those petitions, which met the standards of public interest litigation.

There are many sections in the CPC that provides for the same.

Section 148 of CPC

Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.

Section 149 of CPC reads:

Power to make up deficiency of Court-fees:- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Section 150 of CPC reads:

Transfer of Business:- Save as otherwise provide, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Section 151 of CPC reads:

Saving of inherent powers of the code:- Nothing in this code shall be deemed to limit or otherwise effect the inherent powers of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court.

Section 152 of CPC reads:

Amendment of judgments, decrees or orders:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Section 153 of CPC reads:

General powers to amend:- The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made of the purpose of determining the real question or issue raised by or depending on such proceeding.

EXERCISE OF INHERENT POWERS BY THE COURT

The section confers on the judges to make such orders that may be necessary to make justice achievable. The Power can be invoked to support the provisions of the code but not to override or evade other express provisions as C.P.C. is the basic law which governs the functioning of the courts. No Powers over the Substantive Rights:

The inherent powers saved by s. 151 of the Code are not over the substantive rights In *Ram Chand and Sons Sugar Mills v. Kanhayalal* : the SC held that the Court would not exercise its inherent power under S.151 CPC if it was inconsistent with the powers expressly or impliedly conferred by other provisions of Code. It had opined that the Court had an undoubted power to make a suitable order to prevent the abuse of the process of the Court.

Restoration of Money Suit–

Bahadur Pradhani v. Gopal Patel. In this case the plaint of a Money Suit was rejected for non-payment of deficit court fee within the time granted by the court. The plaintiff filed a petition under Section 151, C.P.C. for restoration of the suit in the ends of justice. The court allowed the petition and the suit was restored to file. This Court examined the scope of the inherent powers of the Court and expressed that the provisions of the Code do not control the inherent powers of the court by limiting it or otherwise affecting it. It is a power inherent in the court by virtue of its duties to do justice between the parties before it.

Payment of Court Fees: Section 149

The Section 149 of the Code authorizes the court to allow a party to make up the deficiency of court fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for filing of such suit, appeal etc. Under the provisions of S. 149, C.P.C., as a practice, the courts grants time for payment of the court-fee on coming to an adverse conclusion on a pauper application. Section 4 of the Court Fees Act, 1870 provides that no document chargeable with court fee under the act shall be filed or recorded on any court of justice, unless the requisite court fee is paid.

Inherent Powers, Quashments, Acquittals**[Sections 561-A, 249-A, And 265-K, Cr.P.C.]**

Inherent powers of High Court are very wide and indefinable. High Court can make all such orders, which may do real and substantial justice. (SC) 1969 P.Cr.LJ Shahkot Bus Service.

Quashment principles. Whether examining a complaint without being influenced by any extraneous material makes out offence. High Court can quash proceedings if satisfied from cogent material that the prosecution was launched for improper motives merely to harass the accused or its continuance would be an abuse of the process of the Court or for other reasons which impel the Court to conclude that it would not be in the ends of justice to allow the prosecution to continue. 1981 SCMR 315. *Naseem Beg v. Muhammad Iqbal* etc.

Quashment is when no other procedure for redress. Power under Section 561-A is neither alternative nor additional; and is to be invoked only in the interest of justice for redress of grievance having no other procedure. The provision is not to be used to divert the ordinary course of criminal procedure. (SC) PLD 1976 SC 461. *Khaja Fazal Karim*.

Resort or provisions of Sec. 561-A, Cr.P.C. should not be lightly made. Normally every case should be allowed to proceed according to law, otherwise it would tend to circumvent the process of law. 1996 SCMR 839, *Sheikh Masood Saeed v. Amir Nawaz Khan*.

Quashment of proceedings u/S. 561-A Cr.P.C. the Application is liable to be rejected when it is made before the facts and circumstances of the case are revealed during the trial. Determination of the guilt or innocence of the accused depends on totality 647, *Muhammad Khalid Mukhali*.

Quashing of proceeding not maintainable where remedy under Section 435 or 439, Cr.P.C. is available. (SC) 1968 SCMR 62. Sher Khan. (SC) PLD 1967 SC 317, Ghulam Muhammad v. Muzammal.

Quashment of proceedings at investigation stage, held, u/S. 561-A, Cr.P.C. High Court is competent to quash proceedings even at the stage when challan has not yet reached Court and is under scrutiny with the prosecution branch. 1990 P.Cr.LJ 798. Falak Naz.

Investigation cannot be quashed by the High Court under Section 561-A or 491, Cr.P.C. It is the duty of the police to investigate the case and see whether any offence has been committed or not. 1975 P.Cr.LJ 41. Ahmed etc. v. Nasimul Hassan etc. Also see investigation.

Quashment. Mere fact that a person has been formally charged under certain provisions of law does not necessarily mean that he stands convicted or condemned. Accused has nothing to fear if no credible evidence is forthcoming against him. Some evidence produced by prosecution to show complicity of person in crime. Case held not one of total want of evidence. Interference refused by Supreme Court. (SC) 1973 SCMR 622. Sh. Muhammad Yamin.

Without evidence. Proceedings can be quashed at initial stage without recording of evidence when no case is made out. 1976 P.Cr.LJ 1325. Muhammad Anwar etc.

"At any stage" in sec. 265-K Cr.P.C. indicates clearly that the power to acquit the accused can be exercised by the Court even before the charge is framed and also without hearing the complainant. 1995 P.Cr.LJ 1424 Yasin Khan Babar.

Distinction Between Sec-151 C.P.C, Section 561-A Cr.P.C & Inherent Powers.

Powers u/s 151 CPC and under section 561-A Cr.P.C are saving clauses arise out of statute while Inherent Jurisdiction which does not arise out of statute. The purpose of Inherent Powers is:-

- a) To ensure convenience and fairness in legal proceedings;
- b) To prevent steps being taken that would render judicial proceedings inefficacious;
- c) To prevent abuses of process; and
- d) To act in aid of Superior Courts. The inherent powers are intrinsic in stem and in aid or control of inferior Courts and tribunals.¹¹ The power stems not from any particular statute legislation, but rather from "inherent" powers vested in a court to control the proceedings brought before it.

Limitation On The Exercise of Inherent Jurisdiction

I. This doctrine cannot be used to override statute or rule. The clearest articulation of such restriction is set out in the Supreme Court of Canada decision. The Supreme Court of Canada held that, "Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or rule. Moreover, because it is a special and extraordinary power it should be exercised only sparingly and in a clear case."

II. Another restriction on the doctrine of inherent jurisdiction is that, it cannot be used to create new rules of substantive law. In the case of Re Regina and Unnamed Person Zuber j. of the Ontario Court of Appeal stated that "the limits of this power are difficult to define with precision but cannot extend to the creation of a new rule of substantive law".

CRITICAL ANALYSIS OF SUO MOTO ACTION IN PAKISTAN

Suo moto action is considered an extension of the power of judicial review conferred as original jurisdiction to the Supreme Court under Article 184(3) of the Constitution of Pakistan. Although the Supreme Court has interpreted Article 184(3) and bestowed itself with a powerful legal tool of suo moto, this exercise of power by the Supreme Court always stands questioned. Several law students and scholars have critically analysed the power of suo moto action and they are of the view that this development is influenced by judicial activism and it should be restrained. Some of these critical views are as follows.

Justice Fazal Karim, a former judge of the Supreme Court of Pakistan and a prominent law scholar referred to suo moto action as “*self created*” in a Pakistani constitutional context. He further labelled it as “*wholly inconsistent with the constitutional concept of judicial power*”. While recommending a constitutional amendment to disarm the court from its suo moto power, he highlighted his disapproval for judicial practice of suo moto action by a court.

Former Additional Attorney General and Senior Advocate of the Supreme Court of Pakistan, Mr. Muhannad Waqar Rana regarded suo moto jurisdiction as a threat to the rule of law. It generates populous trends and competition among judges, and is a bar in the way of the fair administration of justice. A judge becomes an arbiter of its own cause. It deprives the right to a fair trial and due process. It takes a toll on the court’s precious time. The bench, which is headed by the Chief Justice, generally heads this jurisdiction and thus it has the potential to generate envy and discord among other judges. Finally, he concluded that the court, while interpreting the scope of its jurisdiction, arrogates to its own jurisdiction, which is neither conferred nor meant to be given to it.

The legal advisor to the International Commission of Jurists, Ms. Reema Omer in her article criticised the suo moto action of the Supreme Court and stated that Article 184(3) is an important and powerful mechanism that, if exercised judiciously and in a manner that respects the separation of powers, can be used to combat impunity, enhance protection of human rights, and advance respect for the rule of law. She further emphasised on a report published by the International Commission of Jurists (ICJ) about the exercise of suo moto action by the Supreme Court in Pakistan. The report found that an inappropriate exercise of Article 184(3) would have dire consequences in the future. The report highlighted concerns related to an accused’s right to a fair trial, denial of the right to an appeal and roles of other institutions and branches of the State.

A prominent author, Mr. M. K Jamshed, in his article, analysed the exercise of suo moto action and mentioned that there are very few countries, which use suo moto action, and Pakistan is unfortunately included in those countries. Suo moto action should be used as an instrument to deliver justice rather than as a tool used by unelected authorities to capture and consolidate power. This action of the court brings frustration into the system as there are a huge number of cases pending before the court and the judges are willing to hear such suo moto cases on priority instead.

Barrister Ahmed Uzair, in his article, described several grounds due to which suo moto action is restrained by a large number of jurists in Pakistan. It conflicts with the jurisprudence of the last five decades. Secondly, they argue that by taking suo moto action, the courts discouraged people from following the due process of law i.e the right of an aggrieved person to approach the court when his/ her right is being infringed. Furthermore, the cases that are already pending before the courts are delayed even further. The litigants want to adopt this shortcut, as they do not want to spend long and arduous years in courts following the procedure prescribed by law. Additionally if the justification for suo moto action is that “justice delayed is justice denied”, it is questioned whether those litigants whose cases are already pending before the courts have any lesser rights. Finally, they argue that an unrepresentative and unaccountable body or person cannot decide on policy matters that should be the exclusive purview of elected officials. Clearly it is an inherent contradiction to the concept of democracy that the judiciary determines policy.

5. GUIDELINES FOR EXERCISING THE POWER OF SUO MOTO ACTION

The International Commission of Jurists published a report, which deals with the study of the exercise of power of suo moto action as an original jurisdiction of the Supreme Court. This report highlighted several adverse consequences, which result from the inappropriate use of this power

by the Supreme Court. In relation to these consequences, the report also provides several recommendations, which can serve as guidelines to the courts to enhance their efficiency and help remove all irregularities that exist in the system. The report states that with a view to encourage the Supreme Court to continue exercising its original jurisdiction in a transparent manner that upholds and promotes judicial independence, rule of law, accountability and human rights, the International Commission of Jurists (ICJ) offers these recommendations:

- 1) The Supreme Court should exercise its power under Article 184(3) of the Constitution in a manner that complies with Pakistan's obligations under international law to promote, protect and respect human rights, maintain the rule of law and uphold separation of powers. ^[L]_[SEP]
- 2) The Supreme Court should adopt transparent yet flexible criteria to govern how cases are selected under Article 184(3), in particular when the court invokes suo moto jurisdiction, and develop criteria to guide how "public importance" and fundamental rights are interpreted. Such criteria should take into account that suo moto is an exceptional exercise of power. ^[L]_[SEP]
- 3) The Supreme Court should adopt transparent rules to determine the order in which cases under article 184(3) are heard and the bench is composed to hear the case. ^[L]_[SEP]
- 4) The Supreme Court must ensure that parties who may be affected by the court's exercise of its 184(3) jurisdiction have an adequate opportunity to request to intervene in the case before the decision is rendered or the matter is disposed of. ^[L]_[SEP]
- 5) The Supreme Court should ensure that all dispositions or orders in cases taken up under Article 184(3) are themselves consistent with the rule of law, separation of powers and human rights and do not leave persons whose rights are foreseeably likely to be directly and adversely affected without redress or remedy.

CONCLUSION

It cannot be expected that the legislator will be capable in forming of the Code of Civil Procedure of foreseeing every possible situation, which may arise, or of creating an exhaustive list of circumstances in which an existing provision may apply. To counter the situations of abuse of the process of the court, certain inherent powers have been recognized to be vested with the courts. This is to meet the ends of justice and equity in cases where provisions of law are not explicit or applicable. Such powers have also been granted to the court to assist in obtaining the motive of avoiding the abuse of the process of the court as it one of the most substantial duties of the court. Though, this power of the court is not unduly far-reaching and unrestricted. S.151 which gives legislative recognition to inherent powers is restricted by certain construction the section where the court cannot exercise its powers when provision for any action or matter is explicitly prohibited by the Code or any other statute; or where there exists a provision of the Code applicable to the matter at hand. Through an analysis of the various case laws it has been established that inherent powers must be exercised only for the ends of justice or to prevent abuse of the process of court as long as it is not in contravention of any other existing law or provision. Under the Indian judiciary, a codified statute such as the Code of Civil Procedure aims at making the judicial process uniform and unbiased. Working in this view the legislative process takes due cognizance of the fact that not all situations can be pre-empted and it holds good for even for their procedures to be followed. S.151 is in essence validates this fact by recognising the courts

In view of the above-mentioned arguments, it can be concluded that suo moto action is a precious legal tool, which should only be used to protect the fundamental rights enshrined in the Constitution. It is clear that the Constitution is the Supreme Law and its text and jurisprudence must be preferred over all other laws. In addition to this, the Supreme Court while expanding its suo moto jurisdiction under Article 184(3) had bypassed the procedural requirements of the said

article and deemed its act an award of legitimacy only on the ground of “matters of public importance”. In this event, the Supreme Court was bound to satisfy the procedural requirements of Article 184(3) according to the spirit of the text of the constitutional provisions like its predecessors’ rulings before 1988 but the Supreme Court was unable to comply with the procedural requirements of Article 184(3). This resulted in unfavorable consequences which included bypassing the *locus standi* requirement, bypassing the due process of law, unaccountability, apprehension to right of fair trial, apprehension to rule of law, unavailability of speedy justice and interference with the authority of the executive and the legislative branches. It also influenced the basic principle of the separation of powers. Thus, these consequences show that judicial activism should be restrained as it does not give any fruitful results and lacks speedy justice. One of the renowned foundational principles of constitutional law is that no court has jurisdiction unless the constitution or law expressly conferred it to it. Thus, the Supreme Court should bind itself to act in accordance with the spirit of this constitutional principle and also utilise the recommendations of the International Commission of Jurists report as guidelines to enhance the efficiency of the court.

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