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Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973

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Abstract: *The Supreme Court of Pakistan, under article 184 (3) of Pakistan, can act on its own or on the application of any person with the condition that if the SC considers that any of the rights mentioned in the Fundamental Rights Chapter, is violated and that rights involve the public importance. The invocation of the original jurisdiction of the Supreme Court, also known as Suo Motu under article 184 (3), is a buzzword known to all and sundry in the country. The excessive invocation of this article 184(3) generates a debate in the legal community about whether Apex Court is encroaching on the legislature and executive functions. The debate involves judicial activism and judicial restraint. One common objective exists that by taking excessive Suo motu, there is no appeal against the order of SC; hence fundamental rights of access to justice are violated, and on the other hand, the doctrine of separation of power though not expressly embodied in our Constitution but exist; that every organ of the State should remain within its sphere and mutual respect be given to every other organ of the State. Another restriction in taking Suo motu is the express word of article 184 (3) says that without the prejudice of the provisions of article 199, the SC can act.*

Introduction

The Supreme Court has original jurisdiction under the Constitution that it can take up a case on its own or on the application of any person if any issue is found to be of public importance and involves enforcement of any of the Fundamental Rights. The jurisdiction means that the Supreme Court has the power to adjudicate and decide the case. This jurisdiction excludes all the Courts in the country. Article 184 (3), which vests this power to SC, also places some limitation on it, i.e., without prejudice of Article 199, meaning that if the case is already seized is being heard by the

High Court, then taking up the case by Supreme Court under Article 184 (3) will jeopardize the functioning of the High Courts (Justice Shah, 2023). The Original jurisdiction of SC is also commonly knowns as suo motu, and in the last two decades, almost all and sundry have been familiar with this legal term. Till today Chief Justice of Pakistan is exercising to take up suo motu by this Article 184 (3). The article is a frequently used constitutional article by the SC, as Article 199 is frequently applicable in High Court. The difference between Articles 184 (3) and

199 is that SC can take action on its own and also through the application by any person but under 199, someone has to file the petition in the High Court.

Article 184 (3) has never come under the axe of amendment either by any military dictator or by any civilian government. The excessive exercise of this article produced the wrath of the opponent in political and bureaucratic circles, and a well-reasoned dissenting note (probably becoming a majority decision) written by Mr. Justice Syed Mansoor Ali Shah has criticized it and equated its application by the Chief Justice with Imperialist Supreme Court, (Judicial Imperialism, 2018) and dubbed it as One Man Show. (Khawar, 2023) In the recent past, Bar Councils and Bar Associations have also vehemently raised their voices against its use blindly and, in particular, in dealing with political questions (Hussain, 2023). The first ever case which was taken by Article 184 (3) was the Manzoor Elahi case of 1975. The Chief Justice took the case when the case was being heard by Sindh and Balochistan High Courts, and SC developed rules for the application of Article 184 (3), and rules were accepted subsequently in of Benazir Bhutto case. (Benazir Bhutto v President of Pakistan, 1988) The balanced exercise of this article had never been opposed, but whenever this article is excessively used in all and sundry case, it creates problems politically, legally, and constitutionally, so much so that it also negated in providing justice to the person whose case is heard, because there is appeal available once the case is decided under this article 184 (3) or suo motu and violates Article 10A – the right of Fair Trial a right added in the Fundamental Rights Chapter through 18th Amendment of 2010. Recently, a Joint Sitting of both houses passed a Bill, SC (Practice and Procedure) Bill 2023, to exercise suo motu powers through a committee of 3 members of the senior judges of the SC and create appeal. But Chief Justice leads an 8-member bench that has unprecedentedly granted injunction anticipatory because this Bill was not assented to by the President. Therefore, there

was a mixed response regarding the application of this article. There are cases where original jurisdiction was right applied, like the Shehla Zia case, (Shehla Zia v WAPDA -, 1994), and there are also cases that caused criticism on application, like disqualification of members of parliament, even in some cases Prime Ministers. (Syed Yousaf Raza Gilani v Assistant Registrar, 2012)

In this background, the politicians and legal community have been raising voices to bring changes in this article, at least rules to invoking this jurisprudence; the reasons behind amending this article or rules in SC Rules (Sukhera, 2023) is that SC has become One Man Show, and Chief Justice of Pakistan Haleem Siddiqi in Benazir Bhutto Case, also expressed caution similarly that this jurisdiction should be invoked carefully (Khawar, 2023). The former Chief Justice of Pakistan, Asif Saeed Khan Khosa, also expressed the same views while making his Farewell Speech in Full Court Reference (Khosa, 2019). Mr. Justice Syed Mansoor Ali Shah has beautifully compared the functioning of the Federation and Provinces in smooth and harmony; he used the word “Judicial Federalism” and said that SC must respect its lower forum High Court and avoid exercising 184 (3) when High Court hears the case. There are inherited restrictions in this Article 184 (3); therefore, it is required that its application should be exercised carefully. After the insertion of Article 10A in the Constitution by the 18th Amendment Act of 2020, in Fundamental Rights Chapter, it has become more important than its application be made carefully. There are pre-conditions to invoke this extraordinary jurisdiction as; SC must satisfy itself before invoking and should see what the aspects by which SC can be satisfied are. The issues for which this is invoked must be of public importance issue, meaning thereby that issue involves many peoples or of the community at large, and secondly, the issue must be the enforcement of any of the Fundamental Rights. (Khosa, 2019).

Another important limitation on its application is that if the case is already being heard in any of the High Court under Writ Petition by Article 199, then it would be tantamount to usurping or bulldozing of High Court, which does not mandate by Law or Constitution. In this brief paper, we will divide this study into two parts, i.e., the situation of exercising Article 184 (3) before Iftikhar Muhammad Chaudhry and during or by Iftikhar Muhammad Chaudhry and then afterward. The balanced and careful use of this article before the Chaudhry court was always appreciated by the legal community and people at large, but unfortunately, the excessive use of this magic wand (so-called) created problems in the political and legal system of the country and earned a lot of disrespect. (Yasser, 2010)

The SC has exclusive jurisdiction to adjudicate disputes between Federal and Provincial Governments or between two Provincial Governments, the dispute may be of the law, or fact must be determined by the SC. It is not suitable and desirable that Federal and Provincial fight with each other in lower courts. The respectable forum for such dispute is, of course, the SC. The jurisdiction under Article 184 (3) does not empower the SC to strike down the Constitutional Amendment, duly enacted, because this power is not and cannot be given to the unelected Judges, as against the elected representatives of peoples. (PLD,1956)

The excessive exercise of extraordinary jurisdiction has given birth to legal phrases such as Judicial Activism and Judicial Restraint. That means the excessive application of jurisdiction and balanced application of this jurisdiction. In Judicial Activism, political issues are frequently heard by the Judiciary that is meant to be resolved by the political process in Parliament or by dialogue. In Judicial Activism, the excessive exercise of Article 184 (3) defuses the political and democratic spirit and causes disappointment in democratic circles. The well-defined Separation of Powers Theory, whereby every

Organ of the State has to work in its domain and in mutual respect and coordination with each other (Karim, 2018). The Legislation, Executives, and Judiciary are Organs of the State, and each Organ has been entrusted with a Core function to perform. For example, the Legislature has to make the laws, whether statutory or constitutional. The Executive is to implement the law promulgated by the Legislature and policies formulated by the Government, and the Judicial Organ has been given the responsibility of interpreting the laws made/legislated by the Legislature. It is pertinent to mention here that Legislation can make laws but cannot interpret them, and this task is solely entrusted to Judicial Organ. In the modern age, there has been exponential growth in judicial review of administrative actions, and the grounds on which this action is taken are expanded with every passing day. The Court has expressed its concern that if the balance has not been struck, then people will be victims because, in such a situation, people's confidence is shaken, which is not good for the administration of justice. The separation of powers theory was explained as under: (Rawalpindi Bar Association v Federation, 2014)

“Underlying this faith in judges also is the expectation that in exercising their power to keep the political organs of the State within their limits, they will not exceed their own limits and that if there is a momentary lapse, the judges will not hesitate to make amends.”

There is another issue attached to the application of this Article 184 (3); the constitution of Benches to hear this case. It has become a practice of successive Chief Justices of Pakistan that after taking *Suo Motu* or on the application of any person, a few selected judges hear the important cases. Initially, this objection was raised by the political parties and their lawyers, but in recent months these dissenting voices have been heard within the Supreme Court itself. The recent strong and smashing dissenting note (that is claimed to become the majority

judgment – this controversy is to be resolved now) by Honorable Mr. Justice Syed Mansoor Ali Shah, that had rocked the judiciary; the unprecedented and naked dissenting note has demanded rules-based Supreme Court where constituting the benches and allocation of the cases be regulated, and democratic values be initiated and followed by dissenting notes of Mr. Justice Yahya Afridi and Justice Athar Minallah. (Akhtar, 2021).

Historical Background of Article 184 (3)

The power of original jurisdiction was given in the 1956 Constitution under corresponding Article 22, by which a person has the right to move SC for the enforcement of any Fundamental Rights guaranteed in the Constitution, to direct order or Writs, including the Writ of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, in an appropriate manner. Further, rights guaranteed by this Part shall not be suspended except as enumerated in the Constitution. Article 22 seems to be similar to Article 32 of the Indian Constitution. The subtitle of both articles is the same as “Remedies for enforcement of right conferred for enforcement of rights by this Part.” Articles 32 and 22 are, therefore, *Pari Materia*, meaning both supplement each other. (Karim, 2018)

The 1957 Martial Law abrogated the Constitution of 1956, and it was replaced with the 1962 Constitution, which did not carry the Article 22 powers. No one can invoke the original jurisdiction of SC for the enforcement of Fundamental Rights by the 1962 Constitution. The 1962 Constitution was once again abrogated by the Martial Law of 1969. The general election was held under the 1969 Constitution – resultantly, East Pakistan was severed. In this politically tense situation, the city government enacted an Interim Constitution in 1972, and the present permanent Constitution of 1973 had been framed by the Government of Pakistan Peoples Party under its Chairman, Zulfikar Ali Bhutto. In this Constitution, Article 184 (3) vests SC power

of original jurisdiction, to its citizen, for the enforcement of Fundamental Rights having public importance. SC has the power to make an order of the nature of the High Court can do. Article 184 (3) starts with the sentence without prejudice to the provision of Article 199 if the SC considers the question of public importance, which involves any of the Fundamental Rights guaranteed under Chapter 1, Part II. Article 184 (3) and 199 (1)(c) have the same jurisdiction of Judicial Review, which means to enforce the right guaranteed in Fundamental Rights. In the Benazir case, Chief Justice Muhammad Haleem has elaborated that if two articles provide the same relief. Then it is unto the parties to choose whichever forums they want to choose. But categorically opined that once a forum has opted, it bars the other forum from being invoked, particularly the forum that frustrates the right of appeal. In another case, if any party has already chosen the High Court, then invoking Article 184 (3) will prejudice the jurisdiction of the High Court. In the Wukla Mahaz case, Chief Justice Ajmal Mian had agreed with the Attorney General that parties are in the practice of invoking Article 184 (3), and it defeats the High Court jurisdiction that is not warranted to be practiced. (Benazir Bhutto v President of Pakistan, 1988)

The situation of Article 184 (3) before the Lawyers Movement

Manzoor Elahi Case – PLD 1975 SC 66

The first-ever case was taken up under Article 184 (3) in 1975. Ch. Zahoor Elahi, a sitting Member of the National Assembly, was arrested from Lahore and was transferred to Balochistan. His detention was challenged under Article 199 in Balochistan and Sindh, and during the pendency of these petitions, Ch. Manzoor Elahi, brother of Ch. Zahoor Elahi had filed another petition before the SC under Article 184 (3) – the original jurisdiction of the SC. This was the first case under Article 184 (3) of the Constitution of Pakistan 1973 though there was another case of the Zebunisa case under a corresponding Article 22 of the 1956 Constitution. The SC in Manzoor

Elahi Case had given a well-reasoned judgment by which it was decided that once a case is already under adjudication in High Court under Article 199, then filing a petition under Article 184 (3) should not be entertained in normal circumstances. The concept of concurrent jurisdiction has also been applied and explained in this case. In reason, two principles were explained. One, when the parties have the choice to elect the forum, then the parties are free to choose anyone. But once they choose one lower forum, they cannot invoke the higher forum during the pendency of adjudication. The second principle is that in case of concurrent jurisdiction, a higher forum, which is also an appellate forum, must not be deprived to the aggrieved party – the right to appeal before a higher forum in this case under Article 184 (3).

In this petition, every condition of invoking Article 184 (3) was present, like the matter was of public importance and fundamental rights No.9 was involved – right to life and liberty but another condition rather limitation “*without the prejudice of Article 199*” was also involved meaning the case was pending before the High Courts. Hence created another substantive right of Appeal under Article 185. The petition No.61-P of 1973 was directed to pursue petition No.1143 of 1973, which was filed under Article 199 and was pending adjudication, and expeditious adjudication was also urged by the SC, as held under:

“In the present case, as pointed out by my learned brethren, the other conditions are amply fulfilled. The violation of Fundamental Rights No.9 is alleged, and the other questions raised are, without any doubt, questions of great public importance as enumerated in the opinion of my learned brother S. Anwarul Haq, J. Nevertheless, since a constitutional petition under Article 199 of the present Constitution, being No.1143 of 1973, is still pending adjudication on merits before the Sind & Balochistan High Court, I agree that no order should be passed on this Petition No.61-P of 1973 and the petitioner should be left

to pursue his Petition No.1143 of 1973 in the said High Court. (Ch. Manzoor Elahi v State, 1975)

Benazir Bhutto Case – PLD 1988 SC 416

Ms. Benazir Bhutto's case, decided by Muhammad Haleem, Chief Justice, has opened the way for Public Interest Litigation in Pakistan and loosened the requirement of locus standi for involving original jurisdiction under Article 184(3). (Cheema,2022) Ms. Benazir Bhutto, who was co-chairperson of the Pakistan People's Party, had challenged the amendment brought in the Political Parties Act, 1962, which primarily was violative of Articles 17 and 25 of the Constitution 1973. The amendments were challenged by invoking Article 184 (3). The then Attorney General for Pakistan, Mr. Sharfuddin Pirzada, vehemently opposed the petition on the grounds that she did not have locus standi or standing for invoking Article 184 (3) because it has similarities to Article 199. But Chief Justice Muhammad Haleem, by examining the text of Article 184 (3) and precedents, said that under Article 184 (3), this Court has wide powers to protect the Fundamental Rights guaranteed in Chapter 1, Part-II of the Constitution 1973. Chief Justice Muhammad Haleem adopted the purposive interpretation, where the purpose of the provision is considered prime and cannot be left on the altar of precedent and on the question of locus standi. The conditions of the aggrieved person though required under Article 199, SC is not bound by such procedural trappings and the requirement of the order of the nature of Article 199, that is, to ensure the enforcement of Fundamental Rights. The Chief Justice also pointed out an issue that if an adverse party to the matter is to undergo a procedural length which can be a denial of justice, then the SC is empowered to take matters for Judicial Review so that the very purpose of enactment cannot be defeated.

“The law cannot stand still, nor can the Judges become mere slaves of precedents. The rule of Stare Decesis does not apply with the same strictness in criminal, fiscal, and constitutional

matters where the liberty of the subject is involved or some other grave injustice is likely to occur by strict adherence to the rule. (Asma Jilani v The State , 1972) The honorable Chief Justice, Muhammad Haleem, in the Benazir case. Has provided a relation between the question of locus standi and the rules of Precedent and accepted her right to form a political party and be a member thereof as a fundamental right. Hence open the door of Public Interest Litigation by invoking Article 184 (3) of the Constitution to enforce and protect the Fundamental rights guaranteed by the Constitution. (Asma Jilani v The State , 1972)

“In this milieu, so said Chief Justice Muhammad Haleem, the adversary procedure, where a person wrong is the main actor if it is rigidly followed, as contended by the learned Attorney General, for enforcing the Fundamental Rights, would become self-defeating as it will not then be available to provide “access to justice to all” as this right is not only an internationally recognized human right but has also assumed constitutional importance as it provides a broad-based remedy against the violation of human rights and also serves to promote socio-economic justice which is pivotal in advancing the national hopes and aspirations of the peoples permeating the Constitution and the basic values incorporated therein, one of which is social solidarity, i.e., national integration and social cohesion by creating an egalitarian society through a new legal order.” (Benazir Bhutto v President of Pakistan, 1988)

It was further held that the rule of Locus Standi could be dispensed with if the case brought before SC relates to the enforcement of Fundamental Rights, no matter what. It is between parties, between the party and Government. If the purpose is to enforcement of Fundamental Rights, then the standing of a person can be done away if no personal mala fide involves invoking this jurisdiction. The Supreme Court asserted that it has abundant powers to enforce the Fundamental Rights of an individual or group of persons, or class of persons, and it is

upto SC to regulate its functioning while exercising its original jurisdiction. After discussing the scope and all other related objections raised by the Attorney General against the maintainability of this petition under Article 184 (3), it has held that it is a misconception to restrict the SC’s application of original jurisdiction under Article 184 (3), are as follows:

“That it is only an aggrieved party who can activate the proceeding for the enforcement of Fundamental Rights under Article 184 (3) of the Constitution as by reason of the fact that the two provisions are co-terminus.” (Benazir Bhutto v President of Pakistan, 1988)

Darshan Masih Case – PLD 1990 SC 513

Darshan Masih's case is another important one which opens the door for public interest litigation in Pakistan related to the poor community of society (Khan, 2018) who do not have any source for pursuing litigation. A brick-kiln laborer sent a letter to the Chief Justice of Pakistan (Mr. Afzal Zullah) to get free from the clutches of the Bhatta-Owner. Darshan Masih was working at a brick kiln, and he felt he was under some sort of detention. Mr. Afzal Zullah, the then Chief Justice, after reading the letter, called Advocate General Punjab, Bar Members, Police, and Civil Society and constituted a committee to probe the issue. On receiving the findings of the Committee, the appropriate order was issued under Article 184 (3) for releasing Darshan Masih. This was the first case wherein the Chief Justice invoked Article 184 (3) on receiving a letter/telegram and treated it as a fit case for invoking the original jurisdiction of the SC – for the enforcement of Fundamental Rights where a matter of public importance is involved. He issued interim order with the instructions that this was not the final order but would follow more interim orders. (Khan,2018) Further, the phrase public importance is defined, with caution it is not an exhaustive definition, in the Public Interest Litigation book as under:

“In principle, matters related to any of the Fundamental Rights in the Constitution,

common to a group of people, or to an individual, if the breach of Fundamental Right is great, or of interpretation of Constitutional provision that has a general effect or specifically relating to the independence of the Judiciary, should fall under the jurisdiction of Article 184 (3).”

Nawaz Sharif Case – PLD 1993 SC 473

The President of Pakistan has dissolved the National Assembly and Government of Mian Muhammad Nawaz Sharif by invoking the infamous Article 58(2)(b) of the Constitution, once considered a safety valve, as a justification to preserve democracy, but it was proved exactly the opposite. (Siddique, 2018) Mr. Nawaz Sharif approached the Supreme Court under Article 184 (3) and contended that his Fundamental Rights granted under Article 17 were violated. On the jurisdictional scope of 184 (3), the then Attorney General, Aziz A. Munshi, and Senior Advocate of Supreme Court S. M. Zafar adopted the same arguments that Article 17 provides that a person can form and be a member of any political party but did not infringe any Fundamental Rights of forming the Government. But Justice Nasim Hassan Shah, then Chief Justice, speaking for the SC, had expanded the meaning of Article 17 and added in the right to form a political party and become a member of any political party, a fundamental right, including the right to form Government if a political contest the polls and wins, has right to form Government and also enjoys the rights to complete its terms for materializing its program/manifesto. (Nawaz Sharif v Federation of Pakistan, 1993)

Shehla Zia Case – PLD 1994 SC 693

This case involves an environmental issue. The residents of the Islamabad vicinity filed petitions in the Supreme Court against WAPDA, which was constructing Grid-Station in the residential area, which can cause electromagnetic radiation and can be detrimental and hazardous for human life. The SC, while interpreting Article 9 of the Constitution 1973, has given an expansive and progressive meaning to the word *life* used in

Article 9. The SC said that life does not mean a restricted and limited meaning of vegetative or animal life as opposed to conception to death. Now onward, life has expanded meaning. “Right to life mean includes all the amenities which are important for a decent life, clean water, clean pollution, access to justice, and all those rights and facilities which are necessary for maintaining life. The word life has not been defined in the Constitution of Pakistan under Article 9 or elsewhere. The SC has given the word a progressive and expansive meaning as under:

“The word "life" is very significant as it covers all facts of human existence. The word "life" has not been defined in the Constitution, but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to the protection of the law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations.” (Shehla Zia v WAPDA , 1994)

“...Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case, this is the complaint the petitioners have made. In our view, the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge the fundamental rights of a citizen. In this view of the matter, the petition is maintainable.

The SC had referred the matter to NESPAK for further examining whether electromagnetic radiation can be detrimental to the life of the people. International environmental experts were also requested to provide ecological reports. Dr. Parvez Hassan, a renowned Corporate Lawyer, and Environmentalist, appeared for the petitioner had placed reliance on precedents of international jurisdiction and particularly of

India, wherein ecological issues were discussed in detail, and SC assumed authority for the enforcement of Fundamental Rights. He also brought the attention of the SC to Rio Declaration on Environmental and Development required us to take precautionary measures for the safety of the people and take all required measures to avoid pollution. He has referred the Principle No.15, which is reproduced hereinunder:

“Principle 15--in order to protect the environment 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.”

Sou Motu during Iftikhar Muhammad Chaudhry Steel Mills Case

There are hundreds of sou motu cases taken by Chief Justice Iftikhar Muhammad Chaudhry. It would be pertinent to say that he has introduced misusing or opening the door of exercising article 184 (3) in the country. Owing to the paucity of space, we are discussing only a few of them. The Pakistan Steel Mills Corporation is a private limited company, and the Government of Pakistan retains a 100% share. It was incorporated in 1967 with a total cost of Rs.24.7 billion. It is the largest steel-producing mill in the country which was started with the help of the Russian Government in the 1960s and the Ministry of Industries & Production and Special Initiatives. The total area of Steel Mills is 19000 acres, out of which 4457 consist of plants and machinery. Initially, it could not produce profit owing to many reasons like lack of management skills, overstaffing, no maintenance operation to the machinery, and no investment, etc. Resultantly, the privatization process was started in 1997 but could not materialize, and during Gen Pervaiz Musharraf's rule in 2000, the initiative was taken to restructure it enabling to enhance its production; financial, manpower, maintenance restructuring was the aim of the

then-Chief Executive of Pakistan. (Watan Party v Federation of Pakistan, 2006) Watan Party invoked the original jurisdiction of the SC under Article 184 (3) of the Constitution, which was accepted, and the process of privatization of Pakistan Steel was stopped on the pretext that privatization commission did not get the approval of Council of Common Interest (CCI) – a requirement constitutional provision. (Watan Party v Federation of Pakistan, 2006)

Disqualification of Syed Yousaf Raza Gilani, Prime Minister

General Musharraf, in his last days of presidency, had issued the National Reconciliation Ordinance, by which a lot of criminal cases were dropped. One of these cases was of Asif Ali Zardari, who subsequently became President, and Syed Yousaf Raza Gilani was elected as Prime Minister. SC struck down the NRO, and the cases were reopened. SC ordered PM Gilani to write a letter to the Swiss Government to reopen the cases against Zardari, but he did not comply on the pretext that President enjoyed immunity during his presidency. On refusal to comply with the order of the SC, contempt proceedings were initiated against the PM, and he was convicted and sentenced till the rising of the bench and hence disqualified to remain as Prime Minister of Pakistan. Thus, an elected prime minister was ousted through the invocation of Article 184(3). SC revived article 58(2)(b) through article 184(3), which does not provide an appeal and right to appeal that his substantive rights have been snatched and the norms of justice were bulldozed by exercising the original jurisdiction of the SC. (Khan, 2018)

Sonami of Sou Motu – CJP Mian Saqib Nisar Dam-Construction, Disqualification of PM Nawaz Sharif, Hospital Management, et al.

Chief Justice Mian Saqib Nisar, before becoming CJP, was not in favor of Judicial Activism, but after becoming CJP, he surpassed all his predecessors in the manner of exercising the original jurisdiction or taking sou motu. He had

established a Sunday bazaar of sou motu. (Imran, 2019) He has established the Dam Construction Fund – the exclusive power of the executive to take such steps as a policy matter. Despite a hectic campaign, he could not collect 20 billion rupees. The PTI government has allocated 300 billion rupees for constructing the Dam. This is an abuse of original jurisdiction under Article 184(3). So much so litigant parties were asked to deposit funds for Dam and get away. (Kureshi, 2022)

One of the demerits of Article 184(3) is it deprives the right of appeal. The Panama case was started by the SC, and on the recommendations of the JIT, Prime Minister Nawaz Sharif was disqualified on the grounds that were not raised in the case, i.e., he did not take a salary from his own son. The sword of Article 184(3) was used to oust the elected prime minister of Pakistan, and he was not provided the right to appeal – the total negation of justice. (Imran Ahmad Khan Niazi v Muhammad Nawaz Sharif, 2017) During the CJP-Ship of Mian Saqib Nisar, he used to visit hospitals and police stations to check the governance of hospitals and the miserable conditions in the police stations. Even he entered the courtroom of an Additional Sessions Judge in Sindh, where he misbehaved with the Additional Sessions Judge during court proceedings. – unprecedented in the political and constitutional history of Pakistan.

Last Nail into the Coffin of Unbridled Taking Suo Motu

The latest controversy on the application of original jurisdiction under article 184 (3) of the Constitution 1973 has been the bone of contention even among the SC judges. The dissenting notes (become majority judgment claims all the authors), Mr. Justice Syed Mansoor Ali Shah, has exposed the rift among the SC Judges on the application of Article 184 (3) and the constitution of Benches in SC Court. Mr. Justice Shah has equated with Judicial Imperialism and the One-Man-Show of the Chief

Justice. Justice Shah has emphasized running the SC through the rules so that One-Man-Show can be ended. He has asked to stop the bulldozing of the function of the High Court. So, when the case is already seized by High Court, then the application's original jurisdiction is restrained because of various reasons, viz; SC is the appellate forum – destroy the substantial right of appeal.

Ap per the opinion of Justice Shah that under the Constitution, the country is being run as a federation and federating unit, and the Federal Government cannot encroach on the provincial power and authority. Similarly, the SC should behave like a Judicial Federalism and avoid encroaching on the power of a provincial High Court, meaning thereby restraining invoking its original jurisdiction when the case is being heard by any High Court – Lahore High Court in this instant case. Under para 37, the opinion of the court felt to strengthen the Court. It is necessary to regulate the Suo Motu powers and constitute the bench for hearing the Suo Motu action. Consequently, in this opinion, Parliament passed a Bill *SC (Practice and Procedure) Bill 2023* to regulate the Suo Motu and the constitution of Benches. Resultantly, the 8-member Bench headed by CJP halted the operation of his Bill and granted anticipatory Injunction unprecedentedly. The relevant para of Justice Shah's judgment is as under:

“In order to build a strong, open, and transparent institution, we have to move towards a rule-based institution. The discretion of the Chief Justice needs to be structured through rules. This Court has held that structuring discretion means regularizing it, organizing it, and producing order in it, which helps achieve transparency, consistency, and equal treatment in decision-making – the hallmarks of the rule of law. The seven instructions that are usually described as useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open

reasons, open precedents, and fair procedure. Our jurisprudence must first be applied at home.”

Another dissenting note of Mr. Justice Athar Minallah has also expressed similar views, requiring that SC avoid indulging in political questions. He also wished that political parties must not bring their problems to the SC and should resolve these issues through political dialogue in the parliament or outside the parliament and concluded his opinion as:

“All the institutions, including this Court, need to set aside their egos and strive towards fulfilling their Constitutional obligations. Speaking for my institution, it is obvious that we may not have learned any lessons from our past bleak history. We cannot erase the judgments from the law reports, but we at least endeavor to restore public trust and confidence so that the past is forgotten to some extent. When politicians do not approach the appropriate forums and bring their disputes to the courts, the former may win or lose the case, but inevitably the court is the loser.”

Conclusion

With the unbridled application of Article 184(3) of the Constitution (1973), the political movement and democracy in the country are suppressed, and because of this, institutions do not flourish. The SC must invoke its original jurisdiction, but a balance be struck so that the rightful application of Article 184(3) is ensured. The SC must devise the rules for the invocation of the Article and constitute the Benches. THE CJP must not act unilaterally because SC is an institution comprising judges of the SC, and the Chief Justice is not only the Supreme Court of Pakistan. Therefore, CJP should perform his administrative function judiciously and in consultation with all the judges of the SC, and it is prime time for CJP to shun his ego in taking suo motu and constituting benches for the sake of strengthening the SC and enabling to enhance the confidence and trust of the peoples in SC.

Original jurisdiction of the SC should be exercised with full caution and be used for the poor, less privileged, and marginalized segments of society, and privileged class and politicians must be kept away from these benefits – the invocation of Article 184 (3). The political questions must not be decided by the SC, and this question should be left to be decided and resolved by the political class through parliament or outside the parliament. Article 184 (3) has been included in the Constitution of Pakistan for the extraordinary situation, and this should be exercised in the extraordinary case, and its routine invocation is not good for the Institutions, including SC. The relevant portion of the judgment is as follows:

“One of the negative impacts of unbridled exercise of Article 184 (3) is that it snubs political movement when the government or its prime ministers are dismantled. As a result, the role of political parties becomes non-existent in society because the opposition parties feel good to take the case against any government in the supreme court under Article 184 (3) to achieve the desired political objectives. Therefore, the Supreme Court, once and for all, has to devise a rule of business for exercising Article 184 (3) in such a manner that can ensure the maintenance of balance. Doing so will guarantee that this article is used carefully for protection of the fundamental rights of the Pakistani citizens as enshrined in the Constitution of Pakistan, and not let their political rights bulldozed.”

References

- Asma Jilani v The State , PLD 1972 SC 139, (supreme court 1972).
- Benazir Bhutto v President of Pakistan, PLD 1988 SC 416 (Supreme Court. 1988).
- Ch. Manzoor Elahi v State , PLD 1975 SC 66. (The supreme court 1975).
- Cheema, M. (2022). *Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan: Public Interest Litigation and a*

- Dramatic Expansion in Judicial Review* (1st ed.). Cambridge University Press.
- Hussain, Z. (2023, March 29). 'A wake-up call'. DAWN. Retrieved from <https://www.dawn.com/news/1744751/a-wake-up-call>
- Imran Ahmad Khan Niazi v Muhammad Nawaz Sharif, PLD 2017 SC 265 (supreme court 2017).
- Imran, M. (2019, June 29). Article 184 (3) and its Impact. *The Nation*. <https://nation.com.pk/E-Paper/karachi/2019-06-20/page-6>
- Justice Mansoor Shah, Jamal Mandokhail of SC call for revisiting CJP's 'one-man show' power. DAWN. <https://www.dawn.com/news/1744500>
- Justice Shah, S. M. A. (2023, March 27). Judgment by Mr. Justice Syed Mansoor Ali Shah.
- Karim, F. (Retd. Justice 2018). *Judicial Review of Public Actions* (2nd ed.). Karachi, Pakistan
- Khan, M. S. (2018). Genesis and evolution of public interest litigation in the supreme court of Pakistan: Toward a dynamic theory of judicialization. https://ideaspak.org/wp-content/files_mf/1536145568PublicInterestLitigationintheSupremeCourt.pdf
- Khawar, U. (2023, March 29). 'One Man Show: Is Parliament's move to curtail the CJP's power justified? DAWN. <https://www.dawn.com/news/1745392>
- Mr. Justice Asif Saeed Khan Khosa. (2019, December 20). Farewell Speech. https://www.supremecourt.gov.pk/downloads/judgements/press_release/speech_of_mr_justice_asif_saeed_khan_khosa_hcjp_dated_20.12.2019.pdf
- Nawaz Sharif v Federation of Pakistan , PLD 1993 SC 473. (supreme court 1993): Pakistan Law House.
- Shehla Zia v WAPDA -, PLD 1994 SC 693 (supreme court 1994).
- Shehla Zia v WAPDA , PLD 1994 SC 693, para 12. (The supreme court 1994).
- Sukhera, J. (2023, March 30). What are the Judicial Reforms About? The News. <https://www.thenews.com.pk/print/1055320-what-are-the-judicial-reforms-about>
- Syed Yousaf Raza Gilani v Assistant Registrar , PLD 2012 SC 466 (the supreme court 2012).
- The News. (2018, February 24). Judicial Imperialism? The News. <https://www.thenews.com.pk/print/284818-judicial-imperialism>
- Watan Party v Federation of Pakistan , PLD 2006 SC 697, (Supreme court 2006).