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The Changing Constitutional Landscape of Suo Motu Jurisdiction in Pakistan: Judicial Authority, Separation of Powers, and the 26th Constitutional Amendment

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Abstract

This article examines the Suo motu jurisdiction associated with Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, and compares its exercise before and after the Constitution (Twenty-sixth Amendment) Act, 2024. It argues that Suo motu power was never a freestanding clause of the Constitution. It grew out of a judicial reading of original jurisdiction, relaxed standing, and the administrative authority of the Chief Justice. This study served constitutionalism where it enforced fundamental rights against state inaction. It strained constitutionalism where it concentrated agenda-setting in one office, displaced ordinary forums, and left no appeal. Parliament first responded through the Supreme Court (Practice and Procedure) Act, 2023, which the Court largely upheld. The 26th Amendment then constitutionalized a sharper limit: the Court may not make an order, direction, or declaration on its own, or in the nature of Suo motu, beyond the contents of an application under Article 184(3). It also confined Article 184, specified constitutional appeals, and advisory jurisdiction to Constitutional Benches nominated by a reconstituted Judicial Commission of Pakistan. The amendment realigns constitutionalism toward parliamentary control, procedural legality, and a thinner model of judicial activism. It simultaneously raises classic risks to judicial independence and to access to justice. The article maps those principles and concludes that the post-amendment order is more textually constrained, but not yet settled in practice.

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1. Introduction

Few features of Pakistani public law have been as visible, and as contested, as the Supreme Court's practice of taking up matters on its own motion. Newspapers, letters, and televised controversies have, at different times, become the starting point of constitutional adjudication (Munir, 2007).[3] Hospitals, bonded labour, missing persons, environmental harm, electoral calendars, and the conduct of other state institutions have all passed through that door. Supporters have treated this practice as the last workable remedy when ordinary institutions fail. On other side, critiques argue, it as a self-conferred power that lets the Court choose its docket, write policy, and sit above the separation of powers (Shah et al., 2007).[4]

The Constitution (Twenty-sixth Amendment) Act, 2024, which commenced on 21 October 2024, is the sharpest legislative answer yet to that controversy (Constitution [Twenty-

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[3] Munir, Muhammad Amir. (2007), *Public Interest Litigation in Supreme Court of Pakistan.* https://ssrn.com/abstract=1984583 or http://dx.doi.org/10.2139/ssrn.1984583
[4] Shah, A. A., Khan, M. S., & Farid, N. (2020). *The Role of the Supreme Court of Pakistan and Constitutional Parameters of Judicial Activism.* Global Political Review, V(III), 208-217. https://doi.org/10.31703/gpr.2020(V-III).20

sixth Amendment] Act, 2024). It does not repeal Article 184(3). It adds a proviso that the Supreme Court shall not make an order, give a direction, or make a declaration on its own, or in the nature of Suo motu, beyond the contents of an application filed under that clause (Pakistan, 2024).[5] A parallel limit was placed on High Courts under Article 199. At the same time, a new Article 191A created Constitutional Benches, nominated by the Judicial Commission of Pakistan, with exclusive authority over original jurisdiction under Article 184, specified constitutional appeals under Article 185(3), and advisory jurisdiction under Article 186 (GoP, 2024).[6]

This article asks what changed, and what that change means for constitutionalism. Constitutionalism, as used here, is not a slogan for judicial supremacy or for parliamentary supremacy. It is the set of principles by which public power is authorized, limited, and made accountable: supremacy of the constitution, the rule of law, separation of powers, judicial independence, protection of fundamental rights, and procedures that keep discretion from becoming personal rule (Barendt, 1998).[7] Suo motu jurisdiction sits on the fault line between two of those principles. Rights enforcement pulls the Court toward intervention. Separation of powers and judicial independence pull it toward restraint, and toward insulation from political control of who hears constitutional cases (Fallon 2001).[8]

The comparison is organized in four movements. The first recovers the textual basis of Article 184(3) and the principles that justify, and limit, original jurisdiction (Awan, 2025).[9] The second traces how Suo motu practice developed before 2024, including the intermediate reform of 2023. The third sets out the 26th Amendment and reads it against that history. The fourth tests both regimes against constitutionalism and offers a concluding assessment (Daudpota 2025).[10]

2. Article 184(3) and the Idea of Original Jurisdiction

Article 184(3) provides that, without prejudice to 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 Article 199. Two conditions are textual. The question must be of public importance. It must be preferable to the enforcement of a fundamental right. The word "considers" gives the Court a margin in deciding whether those conditions are met. It does not, on its face, authorize the Court to legislate new rights, to supervise the executive as a ministry, or to initiate litigation without a moving party (Baig et al., 2023).[11]

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[5] Pakistan. (2024). *Constitution (Twenty-sixth Amendment) Act, 2024 (Act No. XXVI of 2024*). Gazette of Pakistan, Extraordinary, October 21, 2024. Official Gazette PDF

[6] Government of Pakistan, Ministry of Law and Justice. (2024). *The Constitution of the Islamic Republic of Pakistan* (as amended up to the Twenty-sixth Amendment).

[7] Barendt, E. (1998). *An introduction to constitutional law*. Oxford University Press. ISBN: 9780198762546

[8] Fallon, R. H., Jr. (2001). Implementing the constitution. Harvard University Press.

[9] Awan, H. (2025). *Sacred Semantics, Secular Substance: Article 184(3), Suo Moto, and the Expansion of Original Jurisdiction in Pakistan* Volume 66, Number 2, Spring, Harvard Law Journal

[10] Daudpota, Faisal. (2025) *Supreme Courts of Pakistan and India: Comparison of their Powers to Enforce Fundamental Rights Under Article 184(3) and 32 of their Respective Constitutions* Available at SSRN: https://ssrn.com/abstract=5423774 or http://dx.doi.org/10.2139/ssrn.5423774

[11] Baig et al., (2023) *The Analysis of Article 184(3) of the Constitution of the Islamic Republic of Pakistan regarding Cases is Pending or Decided by High Courts* Vol. 3 No. 1

The clause is also expressly "without prejudice" to Article 199. High Courts remain the ordinary constitutional forums for writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto. The Supreme Court's original jurisdiction was designed as concurrent and exceptional, not as a substitute for trial, appeal, or the High Court writ (Khan, 2016).[12] In Benazir case 1988, a Full Court examined the scope of this jurisdiction and accepted that traditional rules of standing should not defeat a genuine public-interest claim where the two constitutional conditions are present. That judgment opened the door to public interest litigation. It did not, by itself, invent a Chief Justice's power to pick cases from the press.[13]

Justice Fazal Karim later described Suo motu, in the Pakistani setting, as a power the Court had in substance created for itself (as discussed in Cheema, 2021).[14] The constitutional text speaks of the Court considering that a question is involved. It does not name "Suo motu," and it does not vest agenda-setting in the Chief Justice alone. The practice grew from three sources that were allowed to merge. First, relaxed standing after *Benazir Bhutto* treated a letter, a newspaper report, or a communication from a person without a personal cause as enough to move the Court, most famously in Darshan 1990,[15] concerning bonded labour. Second, the Court's rule-making and administrative practice allowed the Chief Justice to constitute benches and to fix cases. Third, a rights-protective reading of Articles 9, 14, 25, and related provisions treated inaction by the state as itself a constitutional wrong. In Shehla case,[16] the emblem of that third move: the right to life was read to include protection from environmental hazards, and the Court supervised a technical controversy that ordinary private law would have left elsewhere.

Those developments can be defended in constitutional terms. Where bonded labourers cannot instruct counsel, a letter jurisdiction is a form of access to justice. Where a fundamental right is being violated on a scale that no single plaintiff can capture, public importance is not a fiction. Where the executive will not enforce its own law, a direction in the nature of mandamus is what Article 199 already contemplates, and Article 184(3) borrows that remedial vocabulary. The difficulty is that the same doctrinal path can detach the Court from the two textual gates. "Public importance" becomes whatever the bench, or the Chief Justice, is willing to call public. "Fundamental rights" becomes a label for good governance, price control, urban planning, or political morality. Once that happens, suo motu is no longer a procedure for enforcing Chapter 1. It is a general supervisory power (Umar et al., 2025).[17]

3. Constitutionalism Before the Amendment: Principles in the Older Practice

Several principles of constitutionalism were visibly at work in the pre-2024 case law, sometimes in tension with one another. Constitutional supremacy and rights enforcement. The

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[12] Khan, H. (2016*). Constitutional and political history of Pakistan* (3rd ed.). Oxford University Press.
[13] *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416),
[14] Cheema, M. H. (2021). *A concoction of powers: The jurisprudential development of Article 184(3) and its procedural requirements*. LUMS Law Journal, 8. https://sahsol.lums.edu.pk/node/12896
[15] *Darshan Masih v. State* (PLD 1990 SC 513)
[16] *Shehla Zia v. WAPDA* (PLD 1994 SC 693
[17] Umar et al., (2025), *The Role of the Supreme Court of Pakistan in Protecting Fundamental Rights: A Study of its Jurisprudence,* Vol. 3 No. 3 JOURNAL OF POLITICAL STABILITY ARCHIVE

1973 Constitution is supreme law. Fundamental rights in Articles 8 to 28 are not exhortations. Article 8 renders laws void to the extent of inconsistency with those rights, subject to stated exceptions. A Court that refuses to hear a systemic violation because no affluent petitioner has filed a perfect pleading can fail that supremacy in practice. The early public-interest cases treated jurisdiction as a means of making rights real. That is a constitutionalist use of judicial power, provided the Court stays inside the right it invokes and the remedy Article 199 actually allows.

The rule of law and legality. The rule of law requires that public power be exercised according to law, not according to status or convenience (Dicey, 1915/1982;).[18] Suo motu proceedings sometimes enforced legality against officials who treated statutes as optional. They sometimes undermined it. Proceedings without a defined petitioner, without pleadings that frame the issues, and without a stable record make it hard to know what norm is being applied, to whom, and with what opportunity to answer. A constitutional court that issues rolling directions in a continuing suo motu case can itself become a source of uncertain law. Legality cuts both ways (Raz, 1979).[19]

Separation of powers. Pakistan's Constitution does not adopt a rigid American separation, but it does distribute legislative, executive, and judicial power, and it does not authorise the judiciary to run departments. When suo motu orders fixed prices, directed recruitments, or managed projects, the Court crossed from review into administration (Kalhan, 2013).[20] Even a benevolent crossing is constitutionally expensive. It weakens the accountability of the organ that is supposed to govern, and it exposes the Court to the charge that it governs without election or budget responsibility.

4. Judicial independence, internal and external. External independence requires that other branches not control the outcome of cases. Internal independence requires that individual judges not be subject to arbitrary assignment of work by a single administrative head. Before 2023, the Chief Justice's authority to take suo motu notice and to constitute the bench that would hear it concentrated both functions. Critics inside the Court said as much. In the order disposing of Suo Motu Case No. 1 of 2023, concerning delay in provincial elections, members of the bench recorded that unbridled power in the Chief Justice to take up any matter as a suo motu case, and to constitute special benches, had undermined the Court's credibility (Supreme Court of Pakistan, 2023).[21] That is an internal-independence critique. It does not deny that the Court may enforce rights. It denies that one judge should be the gate.

Access to justice and the hierarchy of forums. Constitutionalism also protects the ordinary path of litigation. A direct leap to the Supreme Court under Article 184(3) bypasses evidence-taking in the High Court and, until 2023, bypassed any appeal. The Court itself has repeatedly said that private disputes, service matters with a statutory forum, and cases that are

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[18] Dicey, A. V. (1982). *Introduction to the study of the law of the constitution* (E. C. S. Wade, Ed.). Liberty Fund. (Original work published 1915)

[19] Raz, J. (1979). *The authority of law: Essays on law and morality*. Oxford University Press.

[20] Kalhan, A. (2013). *"Gray zone" constitutionalism and the dilemma of judicial independence in Pakistan.* Vanderbilt Journal of Transnational Law, 46(1), 1–96.

[21] Supreme Court of Pakistan. (2023, March 27). Suo Motu Case No. 1 of 2023 [Order]. https://www.supremecourt.gov.pk/downloads_judgements/s.m.c. 1_2023_27032023.pdf

not of public importance should not be entertained in original jurisdiction (see, for example, the approach in Human Right Case No. 8157-P of 2023; Supreme Court of Pakistan, 2023). The principle is subsidiarity: the highest court is not the first court. Suo motu practice often ignored that subsidiarity because the initiating act was not a party's choice but the Court's.[22] The Supreme Court balanced protecting citizens' rights with respecting institutional integrity by emphasizing alternative legal remedies and judicial restraint in misconduct allegations against military officials. Brief details of case as, petitioner, Moeez Ahmed Khan, alleged misconduct by General (retired) Faiz Hameed, including raids, detention, and property seizures. Court considered whether the petition under Article 184(3) was maintainable, highlighting caution due to available remedies. Emphasized the importance of following established legal channels like the Ministry of Defence. Dismissed petition, instructing the Ministry to investigate and address grievances. It recognized the investigation process through the Ministry and military law, referencing the Pakistan Army Act, 1952, Section 92. It also provided the reference of Montesquieu's separation of powers, emphasizing balanced governance and highlighted that accountability must adhere to formal legal procedures. Cited Madison's concerns on power concentration, underscoring the need for checks and balances. Reinforces judiciary's role in safeguarding rights while respecting executive independence. Military accountability examples, including proceedings against General Hameed, demonstrate ongoing institutional checks. [23]Court's measured stance aims to prevent overreach and maintain institutional harmony.

Accountability and finality. Article 189 makes the Supreme Court's decisions on questions of law binding on other courts. Before the Practice and Procedure Act, an order under Article 184(3) was, in practical terms, final, subject only to a narrow review. A power that is original, discretionary, and unappealable is the hardest power to reconcile with accountability. Constitutionalism does not require that every judicial act be appealable to a higher court; there is no court above the Supreme Court. It does require that extraordinary original power be procedurally disciplined, collegial, and reasoned. The absence of an appeal was a structural defect, not a mere inconvenience. Taken together, the pre-amendment regime was constitutionalist in aspiration and uneven in structure. It could rescue rights that no other institution would touch. It could also personalise constitutional adjudication. The debate that produced the 2023 Act, and then the 26th Amendment, was a debate about which of those tendencies should be treated as the defining one (Falki, 2022).[24]

5. The 2023 Act as a Halfway House

The Supreme Court (Practice and Procedure) Act, 2023, was Parliament's first sustained attempt to proceduralise Article 184(3) without amending the Constitution (Supreme Court [Practice and Procedure] Act, 2023).[25] Section 2 constituted benches through a committee of the Chief Justice and the two next most senior judges, deciding by majority.

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[22] Supreme Court of Pakistan. (2023, November 8). Human Right Case No. 8157-P of 2023 [Order]. https://www.supremecourt.gov.pk/downloads_judgements/h.r.c._8157_p_2023.pdf

[23] 2024 SCMR 40

[24] Sadia Mahmood Falki, (2022) *Paradoxes of Judicial Independence: Issues and Challenges of Constitutionalism in Pakistan,* A Research Journal Of South Asian Studies, Vol 37 No.2, Pp 271-286

[25]Supreme Court (Practice and Procedure) Act, 2023 (XVII of 2023). (2023). https://na.gov.pk/uploads/documents/6424209d648ed_306.pdf

Section 3 required that any matter invoking Article 184(3) first be placed before that committee, which was to examine whether a question of public importance relating to enforcement of fundamental rights was involved. Section 5 created an appeal, within thirty days, from an order of a bench that had exercised Article 184(3) jurisdiction, to a larger bench, to be fixed for hearing within fourteen days.

The Act was attacked as an invasion of judicial independence and of the Court's rule-making power under Article 191. On 11 October 2023, a Full Court sustained the Act as being in accordance with the Constitution, with dissents (Dawn, 2023).[26] The majority's acceptance matters for constitutionalism. It treated Parliament as competent to structure the procedure of original jurisdiction, including by requiring collegial initiation and by creating an intra-court appeal. It rejected the claim that the Chief Justice's historical practice was itself a constitutional entitlement. In that sense, 2023 already marked a shift from judicial self-regulation to statutory regulation.

The Act did not abolish suo motu cognizance. A matter could still reach the Court without a conventional petitioner, but the committee, not the Chief Justice alone, was the filter. That design tried to keep the rights-enforcing virtue of original jurisdiction while repairing the internal-independence defect. It is the baseline against which the 26th Amendment should be read. The amendment did not arrive in a vacuum. It arrived after the Court had already accepted that Article 184(3) procedure could be regulated by law.

6. The 26th Amendment: What the Text Does to Suo Motu

The Constitution (Twenty-sixth Amendment) Act, 2024, is broader than the suo motu question. It reconstitutes the Judicial Commission of Pakistan under Article 175A so that parliamentary members sit alongside judges, alters the method of appointing the Chief Justice, fixes the Chief Justice's term at three years, and creates Constitutional Benches. This article isolates the provisions that bear directly on suo motu and original jurisdiction, and then notes the institutional provisions that change who exercises what remains.

The amendment to Article 184(3) substitutes a colon for the full stop and adds a proviso. The proviso states that the Supreme Court shall not make an order or give a direction or make a declaration on its own, or in the nature of suo motu exercise of jurisdiction, beyond the contents of any application filed under the clause (National Assembly of Pakistan, 2024). Three features of that sentence deserve emphasis.

First, the prohibition is remedial as well as initiatory. It is not only that the Court should not open a case with no application. It is that the Court shall not make an order, direction, or declaration of its own, or in the nature of suo motu, beyond the contents of the application that was filed. A bench that is properly seized of a petition may not wander into adjacent controversies and dispose of them by declaration. That is a significant tightening. Much of the

[26] Dawn. (2023, October 11). *Law aimed at clipping CJP's wings 'sustained as being constitutional':* SC rules in majority verdict. https://www.dawn.com/news/1780502

older criticism was not that a petition had been filed, but that the proceeding expanded, once opened, into whatever the bench considered urgent (Akhtar et al., 2025).[27]

Second, the phrase "in the nature of suo motu" is deliberately wide. It catches formal suo motu cases and informal equivalents: a notice taken on a news item, a direction issued because a judge has read a report, a declaration that no party sought. The drafters were responding to practice, not to a single case number (Ahsan et al., 2024).[28]

Third, the proviso assumes an application. Original jurisdiction under Article 184(3) survives as a party-invoked, or at least application-invoked, jurisdiction. Public interest litigation is not abolished. A person, a non-governmental organisation, or a bar body may still file. What is abolished, on the face of the text, is the Court's power to be the applicant and the respondent's judge in the same breath. High Courts received a matching limit. A new clause in Article 199 provides that a High Court shall not make an order, direction, or declaration on its own in the nature of suo motu exercise of jurisdiction. The amendment is therefore a judicial-system reform, not a Supreme Court reform alone.[29]

Article 191A then reallocates who may exercise the jurisdiction that remains. Constitutional Benches, comprising such judges and for such term as the Judicial Commission nominates, have exclusive authority over Article 184, over Article 185(3) appeals where a High Court judgment involves constitutionality of a law or a substantial question of constitutional interpretation, and over Article 186 advisory jurisdiction. No other bench of the Supreme Court may exercise those jurisdictions. Pending matters of that character stood transferred to the Constitutional Benches. The Supreme Court (Practice and Procedure) (Amendment) Act, 2024, aligned the 2023 committee structure with this new architecture, with effect from the commencement of the 26th Amendment (National Assembly of Pakistan, 2024).[30]

Early commentary split on what the proviso actually achieved. Much of the press and several international observers described the amendment as taking away the Supreme Court's suo motu powers (Dawn, 2024; International Commission of Jurists, 2024).[31] In November 2024, during hearings before a Constitutional Bench, Justice Muhammad Ali Mazhar was reported as observing that the power still rested with the Court and that only the procedure had changed, in the sense that such matters would now be fixed before the Constitutional

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[27] Akhtar, T. ., Soomro, A. ., Ahmed, S. ., & Jagirani, K. A. . (2025). The Impact of the 26th Constitutional Amendment on the Doctrine of Separation of Powers in Pakistan: A Constitutional Analysis. Research Journal for Social Affairs, 3(6 (s1), 335-341. https://doi.org/10.71317/RJSA.003.06(a).0921

[28] Ahsan Muhammad , Uzma Khan ,Anum Shahid, 2024**,** *"The Intersection of Legal Reforms and Judicial Crisis: A Study of Pakistan's 26th Constitutional Amendment and the Black Day for Judiciary"* Vol. 1 No. 2, Critical Review Of Social Studies

[29] Dr. Saifulislam, Dr Miraj Muhammad, & Mr. Sajjad Ali. (2025). The 26th Amendment to the Constitution of Pakistan: Implications for Judicial Independence. Social Science Review Archives, 3(2), 148–153. https://doi.org/10.70670/sra.v3i2.602

[30] National Assembly of Pakistan. (2024). The Constitution (Twenty-sixth Amendment) Act, 2024. https://www.na.gov.pk/uploads/documents/671f74b8da9e0_263.pdf

[31] International Commission of Jurists. (2024, October 21). Pakistan: 26th Constitutional amendment is a blow to the independence of the judiciary. https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary

Bench (The News International, 2024).[32] Those statements are not a judgment settling the proviso. They do show that the text and the institutional reaction were not identical in the first weeks. A careful reading should prefer the enacted words. Procedure has changed, and so has the substantive outer limit: orders beyond the contents of an application, made on the Court's own motion, are textually barred. Whether a letter is still an "application," and whether a bench may frame questions the applicant did not plead, are questions the Constitutional Benches will have to answer. They are not questions the amendment left untouched.

7. Comparative Analysis

A comparison is useful only if it holds the object of comparison steady. The object here is not "judicial review" in general. It is the power to initiate, expand, and remedy a fundamental-rights controversy of public importance without being confined to a party's application, and the institutional path through which that power is assigned.

Initiation. Before 2023, initiation could be personal to the Chief Justice. A report, a letter, or a televised event could become a suo motu case. Between the enforcement of the 2023 Act and the 26th Amendment, initiation of Article 184(3) matters was filtered by a three-judge committee. After 21 October 2024, initiation by the Court itself, beyond an application, is prohibited. The moving party must file. Collegial and commission-based structures still decide which judges hear the case, but they are no longer a substitute for an application. This is the clearest before-and-after difference (Ullah et al., 2025).[33]

Scope of the proceeding. Before the amendment, even a formally instituted petition could swell. The Court treated the public importance it had found as a licence to address related failures of governance. The new proviso ties relief to the contents of the application. Comparative constitutionalism would call this a pleading discipline. It reduces surprise. It also reduces the Court's ability to reach a violation that becomes visible only after evidence is heard. If the application is narrowly drawn, a grave adjacent violation may now go unremedied unless someone amends or files afresh. That is a predictable cost of textual restraint.

Who hears the case. Before 2023, the Chief Justice constituted benches. After the 2023 Act, a committee of the three senior-most judges did so for the Court's work, including original jurisdiction. After the 26th Amendment, Article 184 cases go only to Constitutional Benches nominated by the Judicial Commission, whose membership now includes parliamentarians as well as judges (International Commission of Jurists, 2024). The comparator is not merely "committee versus commission." It is judicial control of the docket versus a mixed body, open to political members, deciding which judges hold constitutional jurisdiction and for what term. That shift is larger, for judicial independence, than the suo motu proviso taken alone.

Appeal and review. The 2023 Act's appeal to a larger bench was a gain for accountability. The amendment's transfer rules preserve a path for challenges to pre-

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[32] The News International. (2024, November 16). Suo motu power still rests with SC: Justice Mazhar. https://www.thenews.com.pk/print/1251616-suo-motu-power-still-rests-with-sc-justice-mazhar

[33] Misbah Ullah 2025, *The Independence Of Judiciary In Pakistan: An Analytical Study In The Context Of The 26 Amendment*, Journal of Media Horizons ISSN:2710-4060 2710-4052 Volume 6, Issue 6, 202 5https://jmhorizons.com| |Page 889

amendment Article 184(3) orders by sending them into the new structure. Finality is no longer the distinctive feature of original jurisdiction that it was in the 1990s and 2000s. Constitutionalism is better served by that appeal than by an unreviewable original decree. The remaining concern is whether the appeal lies to a bench constituted by the same politically inflected nomination process that constituted the bench below. An appeal that is independent in form can be dependent in composition.

High Courts. Before the amendment, High Courts also developed notice practices in writ jurisdiction, though the national controversy centred on the Supreme Court. After the amendment, High Courts likewise may not act on their own in the nature of suo motu, and constitutional work in the provinces is channelled toward constitutional benches nominated through the Judicial Commission. The comparative point is uniformity. A limit that applied only in Islamabad would have pushed activism downward. The amendment chose system-wide restraint.

Remedial ambition. The older jurisdiction was famous for continuing mandamus: committees, reports, and repeated hearings until the bench was satisfied. The new text does not ban supervision of an application that is properly filed. It does ban declarations the application did not seek. Remedies should become more party-shaped and less managerial. Whether that happens depends on how strictly "contents of any application" is read. A generous reading will treat implied relief as within the contents. A strict reading will require the applicant to plead the declaration. Constitutionalism can live with either reading if it is consistent. It cannot live with a reading that restores suo motu under another name while claiming the proviso has been honoured (ICJ, 2024).[34]

Political salience. Many celebrated suo motu cases were also cases about the boundaries between elected governments, the military-bureaucratic establishment, and the Court. The amendment's supporters describe it as a restoration of parliamentary sovereignty over a Court that had become a political chamber. Its opponents describe it as a capture of the constitutional court by the political majority that the Court might have checked (International Commission of Jurists, 2024; Jurist, 2024). Both descriptions can be partly true. A jurisdiction used to unsettle elected governments is a weak candidate for unlimited preservation. A reform that lets the government help choose the bench for cases against the government is a weak candidate for unqualified trust. Comparative analysis should

8. Principles of Constitutionalism in the Comparison

The user's question is not only historical. It is whether the shift tracks constitutionalism. The answer is that it tracks some principles and endangers others. Naming them separately avoids the error of treating "constitutionalism" as a synonym for whichever institution one prefers.

[34] Pakistan: 26th Constitutional amendment is a blow to the independence of the judiciary
21 Oct 2024 | News, Web Stories, https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/

Limited government. Constitutionalism begins from the premise that all public power, including judicial power, is limited (Barendt, 1998).[35] The proviso is a limitation clause. It tells the Court what it may not do even when it believes the public would benefit. In a legal culture where Article 184(3) had been stretched by interpretation, writing the limit into the Constitution is more secure than hoping for self-restraint. On this principle, the amendment is a gain. A Court that can do whatever it considers to be in the public interest is not a limited court.

Separation of powers. The older suo motu practice blurred adjudication and administration. Requiring an application, and confining relief to its contents, returns the Court toward the judicial function: deciding a controversy brought to it. That is a separation-of-powers improvement. The creation of Constitutional Benches by a commission that includes legislators pulls in the opposite direction. Separation of powers is not only about what courts refrain from doing to the executive. It is also about what the legislature refrains from doing to the composition of the court that reviews the legislature. Article 191A gives a mixed political-judicial body the power to decide which judges exercise the power of constitutional review, and for how long. A bench constituted for a term, by a body that may be dissatisfied with last term's judgments, is a structural temptation. The International Commission of Jurists (2024)[36] warned that this design subjects the judiciary to executive and parliamentary control and allows tailored benches for politically significant cases. That warning is a separation-of-powers objection, and it is well founded as a risk even if one supports the suo motu proviso.

Judicial independence. Independence has an individual limb and an institutional limb. The individual limb is security of tenure, salary, and decisional freedom, reflected in Articles 209 and related protections. The 26th Amendment does not, on its face, allow removal of a judge for an unpopular judgment. The institutional limb is the Court's control over its constitutional docket and the appearance that constitutional cases are not assigned in order to secure a result. Nomination of Constitutional Benches by the Judicial Commission, as reconstituted, weakens that limb. So does the new method of selecting the Chief Justice from among the three senior-most judges through a parliamentary committee, rather than by automatic seniority, together with a fixed three-year term (Dawn, 2024; Jurist, 2024).[37] Seniority was never a guarantee of courage or competence. It was a guarantee against selection. Selection is the point at which independence is most easily lost, because the power to choose the judge is the power to predict the bench. Constitutionalism can accept parliamentary involvement in appointments, as many democracies do. It struggles to accept parliamentary involvement in choosing, case-category by case-category, who will exercise fundamental-rights jurisdiction.

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[35] Barendt, E. (1998). *An introduction to constitutional law*. Oxford University Press. ISBN: 9780198762546

[36] International Commission of Jurists. (2024, October 21). Pakistan: 26th Constitutional amendment is a blow to the independence of the judiciary. https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary

[37] Jurist. (2024, October 22). *Pakistan dispatch: The new 26th Amendment's drastic impact on Pakistan's courts.* https://www.jurist.org/news/2024/10/pakistan-dispatch-the-new-26th-amendments-drastic-impact-on-pakistans-courts

The rule of law. Raz (1979)[38] emphasised that the rule of law requires prospective, clear, and stable norms, and that courts be available to apply them. The proviso improves clarity. Litigants can now point to a sentence that forbids own-motion declarations beyond the application. The older law on when a news report could found jurisdiction was a matter of practice, not of text, and it varied with the Chief Justice. Clarity is a rule-of-law virtue. Stability will depend on whether Constitutional Benches apply the proviso consistently, or whether "application" is construed so loosely that the old practice returns in documentary form. A one-paragraph letter styled as an application, followed by judicial expansion, would defeat the amendment's rule-of-law purpose.

Fundamental rights and effective remedies. Constitutionalism is not only negative. A constitution that declares rights and then withholds every practical remedy has failed. Article 184(3) existed because Article 199, standing alone, did not always reach systemic violations, and because some applicants could not realistically begin in a High Court. The amendment preserves the remedy for those who can file. It removes the remedy for those who cannot, unless some other person files for them. Bonded labourers, detainees in undeclared custody, and communities without counsel were the moral core of *Darshan Masih* and of later missing-persons proceedings. A constitutionalism that cannot see them is incomplete. The answer, within the new text, is not to ignore the proviso. It is to build applications: bar associations, statutory human-rights institutions, and legal-aid bodies must file where the Court no longer may begin. If those intermediaries do not exist in practice, the rights principle will have been formally saved and practically thinned.

Democracy and constituent power. Parliament, acting with the special majority the Constitution requires for amendment, is the organ through which the people revise the judicial structure. Constitutionalism does not freeze the 1973 text against every later majority. It does impose limits on how amendments may rearrange the constitution's basic architecture, a question Pakistani jurisprudence has long associated with the basic-structure debate, even where the Court has been cautious about invalidating amendments. This article does not decide whether the 26th Amendment is vulnerable to that doctrine. It notes only that democratic authorship of the amendment is a constitutionalist credential, and that democratic authorship does not answer the independence objection. A large majority can amend a court out of its checking function. The credential and the danger are simultaneous (Saleem, 2025).[39]

Accountability and reason-giving. Both regimes can satisfy accountability if they give reasons tied to the two gates of Article 184(3): public importance, and enforcement of a fundamental right. The older suo motu practice often stated those gates and then proceeded as if stating them were enough. The new regime will be accountable only if Constitutional Benches explain why an application crosses the gates, why the relief is inside the application's contents, and why the High Court was not the proper first forum. Reason-giving is the cheapest safeguard the amendment leaves intact. It requires no further constitutional change.

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[38] Raz, J. (1979). *The authority of law: Essays on law and morality*. Oxford University Press.

[39] Saleem, M. M.. (2025). Constitutional Amendments Process in Pakistan: Limits and Scope of Parliaments Power to Amend the Constitution. *ACADEMIA International Journal for Social Sciences*, *4*(4), 3463-3481. https://doi.org/10.63056/ACAD.004.04.1195

Equality before the law. Article 25 is both a fundamental right and a constitutionalist principle. Suo motu practice was sometimes egalitarian, in that it heard the unheard. It was sometimes inegalitarian, in that access depended on what reached a Chief Justice's attention. Media salience is not a neutral distributor of justice. An application-based system is more equal if filing is cheap and if the Constitutional Bench does not prefer famous petitioners. It is less equal if only well-organised litigants can frame a constitutional application. Equality, here, is an institutional question about legal aid as much as a doctrinal question about Article 184(3).

Federalism and forum integrity. Pakistan is a federation. High Courts are not inferior copies of the Supreme Court. The "without prejudice" clause in Article 184(3) was a federalist and hierarchical safeguard. Suo motu at the apex short-circuited it. The amendment's matching limit on Article 199, and its provincial constitutional benches, try to rebuild forum integrity. They also reproduce, at provincial level, the independence risk created at the centre. Federalism is protected against judicial centralisation and exposed to commission-based selection of provincial constitutional judges. Again, the principles do not all point the same way.

Proportionality of the reform. Constitutionalist reform should fit the mischief. The mischief, as the Court's own judges described it in 2023, was concentration of suo motu initiation and bench-making in the Chief Justice, and the absence of an appeal. The 2023 Act was a proportionate response to that mischief, and the Court upheld it. The 26th Amendment goes further. Abolishing own-motion relief is proportionate to the initiation problem. Handing nomination of all constitutional benches to a politicised commission is proportionate only if one believes the deeper mischief was the identity of the judges, not the procedure they used. Those are different mischiefs. Conflating them is the amendment's constitutionalist weakness. A parliament that distrusted a procedure rewrote the procedure and the court.

9. What Survives, and What Should Be Built

It would be a mistake to announce that public interest jurisdiction is dead. Article 184(3) still exists. The two gates still exist. An application that presents a question of public importance with reference to a fundamental right may still be heard, and the Court may still make an order of the nature mentioned in Article 199, so long as it does not travel beyond the application in a Suo motu fashion. Environmental harm, custodial abuse, discrimination, and unlawful restraint remain within the clause if they are pleaded. The Constitutional Bench is a forum, not a repeal (Nawaz & Bexci, 2025).[40]

What does not survive, if the text is applied in good faith, is the symbol of the post-2007 Court: the Chief Justice as initiator of national controversies. That symbol did real work. It also did real damage to the idea that jurisdiction is a matter of law rather than of personality. Constitutionalism is better off without it.

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[40] Haq Nawaz and Dr. Manual Selvaraj Bexci, (2025), *"The Suo-Motu Jurisdiction Of The Supreme Court Of Pakistan, A Comparative Analysis Before And After The 26th Constitutional Amendment."* International Journal of Social Sciences Bulletin, 3(8), 923-936. https://ijssbulletin.com/index.php/IJSSB/article/view/1091

What should be built, if the rights principle is to survive the proviso, is a practice of responsible applications. The Human Rights Cell of the Court, bar councils, the National Commission for Human Rights where its statute allows, and provincial legal-aid structures need a clear route to file tightly pleaded Article 184(3) applications when a violation is systemic and High Court relief is structurally unavailable. Judges should not coach those applications from the bench. They may, consistently with the proviso, dismiss applications that are private disputes in constitutional costume. The 2023 appeal should be preserved in spirit: an original constitutional decree should not be harder to challenge than an ordinary civil decree (Khan, 2025).[41]

Constitutional Benches should also publish, in their orders, a short jurisdictional paragraph that a reader can test. Does an application exist? What are its contents? Which fundamental right is engaged? Why is the question of public importance? Why is the relief inside those contents? Why is Article 199 not the prior remedy? That paragraph would do more for constitutionalism than any further amendment. It would make the new limit operational rather than rhetorical.

Scholars and courts should resist two equal and opposite errors. The first error is nostalgia: treating every pre-2024 suo motu order as a golden age of rights. Some of those orders saved people. Some of them were unreasoned, overbroad, and impossible to appeal. The second error is triumphalism: treating the 26th Amendment as a completed restoration of constitutional balance. A limit on suo motu can coexist with a serious loss of independence if the bench that applies the limit is chosen for the occasion. Constitutionalism fails in either direction. It fails when judges govern. It fails when politicians choose the judges who may no longer govern.

10. Conclusion

The Suo motu jurisdiction of the Supreme Court of Pakistan was a judicial construction on top of Article 184(3), not a clause the framers wrote under that name. It drew its legitimacy from constitutional supremacy and from the enforcement of fundamental rights, especially for people who could not file. It lost legitimacy when initiation and bench formation gathered in one office, when proceedings ignored the contents of any recognizable dispute, and when original orders were effectively final. Those failures are principles of constitutionalism inverted: separation of powers, internal judicial independence, legality, and accountability.

The 2023 Act was a proportionate statutory correction, and the Court accepted it. The 26th Amendment, with effect from 21 October 2024, went further and wrote the correction into the Constitution. The Court may not order, direct, or declare on its own, or in the nature of suo motu, beyond the contents of an application under Article 184(3). High Courts are under a parallel bar. Article 184, specified constitutional appeals, and advisory jurisdiction belong exclusively to Constitutional Benches nominated by the Judicial Commission. That is a real before-and-after. Initiation, scope, forum, and institutional control have all changed.

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[41] Samra Khan. (2025*). Twenty Sixth Constitutional Amendment, fall of Judicial Independence, And Executive Influence over the Judiciary in Pakistan.* `, 4(02), 2349–2357. Retrieved from https://assajournal.com/index.php/36/article/view/1167

Judged by limited government, clarity, and separation of the judicial function from executive management, the proviso is a constitutionalist reform. Judged by judicial independence and by the practical enforcement of rights for those who cannot apply, the surrounding architecture is a constitutionalist risk. The comparative lesson is therefore double. Pakistan has ended the era in which suo motu could be a personal prerogative. It has not yet shown that constitutional adjudication will be independent of the majority that redesigned it, or that fundamental rights will still reach the people for whom own-motion jurisdiction was invented. Those two tests, not the repeal of a Latin phrase, will decide whether the 26th Amendment is remembered as a restoration of constitutionalism or as its rearrangement in favour of the political branches.

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