

## **Constitutional Manacles on Superior Court's Jurisdiction and Recent Scenario on Public Interest Litigation in Pakistan**

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### **ABSTRACT**

Good governance and Rule of Law are inter-connected phenomenon. Good governance is required at all levels. To uphold the good governance it is the collective duty of the state institutions to perform efficiently under the umbrella of the Supreme Law of the land. "The existence of massive corruption, institutional clashes, Constitutional crisis and lack of accountability, poor law and order conditions may harm the good governance in the country". To strengthen the good governance is the prime responsibility of the Executive and when the Executive failed to take measures to uphold the governance, resultantly, the Rule of Law will be in danger. Ultimately the Judiciary has to come forward to take action for the promotion of "Good Governance", "Rule of Law" and enforcement of the "Fundamental Rights" of the people like health and education, because the Judiciary is the custodian of the Constitution and the fundamental rights of the masses. A debate in country has aroused in these days, that whether the Courts are exercising their powers beyond their Constitutional domain or not? In the response of this debate, the recent case law study and Constitutional provisions depicts that in all recent suo-moto cases the "Supreme Court of Pakistan" has exercised its power in Constitutional Jurisdiction as envisaged in "Article 184(3) of The Constitution of Islamic Republic of Pakistan, 1973", Moreover, after the analysis of the Constitutional provisions the author is of the view that, in the current regime the Honourable Chief Justice of Pakistan has not transgressed his powers beyond the Constitutional provisions which are explained in this Article as Constitutional manacles on the jurisdiction of the superior Courts of Pakistan. Most of the recent suo-moto cases on health and education issues come under the preview of the matter of public importance.

**Key Words:** **Good Governance, Suo-Moto, Rule of Law, Constitutional Manacles, Public Interest Litigation**

### **Introduction**

In judicial system of Pakistan the supreme judicial authority is the Supreme Court. Its jurisdiction and powers are defined by the "Pakistan's Constitution 1973". Constitution of Pakistan is a document which has the superlative authority present in the state which has to be respected at every instance. All the organs of the states are meant to be the custodians of this sacred document as Pakistan being the democratic state works according to its Constitutional requirements. No doubt Superior Courts have jurisdiction to resolve the constitutional issues and to

interpret the constitution but the primary Constitutional structure cannot be changed by the Courts. The Court must have authority to hear a particular case to decide on it. However, the constitution experts highlighted the certain areas where the court has no authority to hear a case such as advisory opinion, moot-ness, collusive suit, ripeness and political questions etc. The Constitutional concept of judicial power was elucidated by the Hamilton, that the courts would have the authority to determine whether laws passed by the legislature were consistent with the fundamental and superior law of the Constitution. If a law was contrary to the Constitution, then it was void. Not surprisingly, the Supreme Court agreed, famously announcing its authority to rule on the validity of laws known as judicial review in the case of *Marbury v. Madison* (5 U.S. (1 Cranch) 137 (1803)). In weighing the validity of a provision of the Judiciary Act of 1789, Chief Justice John Marshall declared that “It is emphatically the province and duty of the judicial department to say what the law is?”

## **I. Applicable constitutional provisions and case law analysis**

After analysis of the various provisions of the Constitution of Pakistan, 1973 there are express provisions which elaborate that the courts cannot interfere in certain cases. The brief discussion in the light of relevant provisions and case laws are given as under:

In constitution of Pakistan article 6 is about “*High Treason*” which envisages that any attempt to abrogate the Constitution through unconstitutional means will amount to High Treason including any person aiding or abetting (or collaborating) in the subversion, held in abeyance, or suspend or attempts or conspires to abrogate the Constitution. Clause 2-A imposes restrictions that an act of High Treason shall not be validated by any court including Supreme Court and High Courts of Pakistan. Articles 29 to Article 40 deal with the “*Principles of Policy*”, these provisions included 2<sup>nd</sup> chapter of the Constitution are merely directory and are not judicially enforceable. In clause 2 of the Article 30 it is incorporated that “the validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the principles of policy, and no action shall lie against State, any organ or authority of the State or any person on such ground”. In “*Muhammad Saddiq v. Commissioner, Lahore Division*” the court elucidates that “These principles are not rules of law, their true position have been determined by Article 30 which provides that the responsibility of deciding whether any action of an organ or authority of the State or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the principles of policy is that of the organ or authority of the State and that the validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the principles of policy and no action shall lie against the state, any organ or authority of the State or any person on such ground”. Clause 6 of article 41 of the Constitution, 1973 states that: “The validity of the “*election of the President* shall

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not be called in question by or before any court or other authority". Whereas the Article 48 of the Constitution relates to "the president to act on advice of the cabinet or the prime minister", etc. clause 4 of this Article states that "The question whether any, and if so what, advice was tendered to the President by the cabinet, the prime minister, a minister or minister of the state shall not be inquired into in, or by, any court, tribunal or other authority". Article 66 is relevant with the "privileges of Members of Majlis-e-Shoora" (Parliament). "This Article expressly safeguards freedom of speech in parliament and its members are immune from any action or proceedings in any outside forum whatsoever in respect of what they have said or voted in the parliament. No civil or criminal action will, therefore, lie against a member for defamation or any other proceedings of a like nature, in neither a court of law nor any action can be initiated in respect of thing said in parliament or before its committees. The immunity is not limited to mere spoken words. Though not so expressly stated, it by implication extends to other acts also done in connection with the proceeding of each house. Moreover, this protection only is available to the extent of within the house and not what a member of a parliament may say outside the house" In case *Jatish Chandra Ghosh v. Harisadhan Mukherji* (AIR 1956 Cal 433, 60 CWN 971)" Indian Supreme Court held that "if a member publishes his speech outside parliament he will be held liable if the speech is defamatory" in another case of "*K. AnandanNambiar v. Chief Secretary, Government of Madras* (1966 AIR 657, 1966 SCR (2) 406)" Supreme Court of India held that "the protection of freedom of speech, thus would be available to the member only when he attends a session of Parliament". Article 69 is related to the "*Courts not to inquire into the proceedings of Majlis-e-Shoora*". The proceedings of parliament are absolutely immune from the scrutiny of Courts. If a proceeding is an internal proceeding of a parliament and relates to its proper business, then it must be recognized by the Courts as such and they must refrain from interfering with it even if the proceeding were irregular. However, where the so called proceedings are really outside the purview of the Constitution, they cannot be described as the proceeding of the assembly and in that case the Courts jurisdiction to interfere is beyond question. Lahore High Court, Lahore in "*Wasi Zafar v. Speaker Provincial Assembly* (P L D 1990 LAHORE 401)" case, observed that: "Irregularities in procedure, in view of the provisions contained in Articles 69 and 127 cannot be noticed by the Court as the parliamentary practice authorizes legislature to decide what it will discuss and how it will settle its internal affairs and what code of procedure it intends to adopt. Assembly may even depart it is so compulsive from the rules of procedure and down by itself, and this is can do at its discretion. Such a departure will not render its responsibility to be scrutinized by any external authority for not following the rule, which is laid down by it. These principles point out the independence of the legislature and the assemblies. Such plenary powers are contemplated in various Articles of the Constitution including Article 127. These powers and the collective privileges

contemplated by the provisions of Constitution which are to be liberally interpreted, leads to the conclusion that the procedural irregularities if any in the proceedings of the Assembly cannot be scrutinized by High Court in exercise of its Constitutional jurisdiction". It is worthwhile to note that officers of the parliament are not amenable to the jurisdiction of Courts for acts done in the exercise of their power. In case of "*Ham Chandra Sen Gupta v. Speaker (AIR 1956 Cal 378, 60 CWN 555)*" it was held that "a court cannot issue a writ prohibiting the speaker from presiding over sittings of the house. And moreover no writ lies to stop the passage of a will in parliament" Article 99 relates with the "*Conduct of Business of Federal Government*" this Article elucidates that all government actions of the Central Government shall be expressed to be taken within the name of the president shall by rules specify the way within which orders and different instruments enforced in his name shall be attested which shall make them immune from challenge in any court on the ground that they were not made by the President of Pakistan. In an important case of "*Al-Jehad Trust (P L D 1996 Supreme Court 324)*" apex court of Pakistan held that: "the appointments of the Judges of the Supreme Court and the High Courts are to be made by the President after consultation with named Constitutional consultees. It appears prima facie that the power to make these appointments after such consultation is within the ambit and scope of Article 48(2) of the Constitution". Article 155 is relevant to "*complaints with regard to distribution of water from any natural source of supply*". In the light of this Article if there is accusation by a province, the federal area or the FATA as to the interference with water supplies. The Federal Government or the Provincial Government concerned may make a complaint in writing to the council of common interest to this effect. The council may consider the matter and decide but if the matter is intricate or technical it may appeal the head of state to constitute a commission having expertise in the matter. The commission, so appointed will submit its report to the council, who, after considering the same will, record its decision. If the concerned parties are satisfied with decision of the council, the Central Government or the provincial government, is concerned its obligation to implement and carry out the decision faithfully. The proceeding of the council, whatsoever, is not be in question in any court of law. Article 165-A empowers the "*parliament to levy taxes on the income of certain corporations*", whereas sub clause 2 of the Article 165-A validates all acts and proceedings taken in exercise of the powers derived from any law referred to in clause (1) or in execution of any orders passed by any authority in purported exercise of the aforesaid powers,..... shall not be called in question in any court of Pakistan on any ground whatsoever. Article 175 of the Constitution of Islamic Republic of Pakistan, 1973 enshrined with "*establishment and jurisdiction of Courts*". Article 175-A relates with the "*appointment of judges in superior courts of Pakistan including Federal Shariat Court*". Sub Clause 14 of Article 175-A stated that "No action or decision taken by the Commission or a Committee shall be invalid or called in question only on the ground of the existence of a

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vacancy therein or of the absence of any member from any meeting thereof". In another case of, Supreme Court held that: "Names of the judges recommended by the judicial commission for appointment shall be prevail over the decision of parliamentary committee and proceeding of the commission shall not be called in question on any ground". Article 203-G provides the *Bar of jurisdiction*. This article confers on the Shariat court the exclusive power and jurisdiction in respect of matters which fall within its jurisdiction i.e. matters enumerated in Articles 203-D, 203-DD and 203-E except the matters which are brought to the supreme court in appeal before its Shariat Appellate Bench. In "*Mst Kishwar Sultana v. Municipal Corporation, Faisalabad*" the court held that: "the question regarding the repugnancy of any law to the injunction of Islam is in the exclusive Jurisdiction of the Federal Shariat Court and after that it falls within the Jurisdiction of Shariat Appellate Bench of the Supreme Court under Article 203-F of the Constitution". In another important case of "*Muhammad Irshad Khan v. State*" court observed that: "jurisdiction of Superior Courts and Tribunals to entertain proceedings or exercise power of jurisdiction in respect of matters falling within powers and jurisdiction of Federal Shariat Court are barred under Article 203-G of the Constitution". Article 203-H explains the principles relating to "*proceedings pending in any court or tribunal*". Clause 3 of this Article places restrictions on the powers of "Federal Shariat Court or the Supreme Court" to the effect that while exercising their jurisdiction under chapter 3A part VII of the Constitution of 1973 they shall have no authority to grant any interim order or injunction in any proceeding. The proceeding in any other court or tribunal shall continue unhampered and unhindered even though the point at issue before them is the same which is under examination before the Federal Shariat Court or Shariat Appellate Bench of the Supreme Court. Article 209 deals with the "*Composition, Functions and Mechanism regarding the removal of the Judges of the superior Courts on the ground of misconduct*", Whereas, Article 211 grants absolute immunity to Supreme Judicial Council for its proceedings and report to President with respect to the removal of judges. Therefore, this Article supplies blanket cover to all matter enumerated in Article 209 of the Said Constitution. In an important case of "*Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 Supreme Court 61)*" Supreme Court held that "Judges (Compulsory Leave) Order, 1970 which gave unbridled powers to the executive to require a Judge to proceed on leave only because a reference had been made by the President calling upon the Supreme Judicial Council to enquire into the capacity or the conduct of such a Judge, was ultra vires of the Constitution--- Order of the President of Pakistan commanding the Chief Justice of Pakistan to be on compulsory leave till submission of the report of the Supreme Judicial Council and the President's order thereon was set aside as being illegal and of no legal effect". Article 212-B (8) enshrines that "A court, including High Court or Supreme Court cannot interfere in proceeding pending in any special Court or

Supreme Appellate Court”. In “*Liaqat Ali and others v. The State*” court held that: “Supreme Appellate Court while exercising the powers and jurisdiction could not hold any of the provision ultra-vires to Article 212-B of the Constitution”. Article 225 states that “All disputes relating to either of the house of parliament or a provincial assembly can only be questioned by an election petition presented to such tribunal and in such a manner as may be determined by the Act of Parliament”. Therefore, the adjudication of disputes with regard to the validity of election is taken away from the jurisdiction of the ordinary Courts and a special procedure has been prescribed to which alone the elections, in the first instance, can be called in question. In case of “*Malik Javed Akhtar v. Returning Officer Constituency No.PP-157*” Court held that: “once Election scheduled has been announced by the competent authority Constitutional petition is not maintainable in view of Bar contained in Article 225 of the Constitution, which excludes the jurisdiction to entertain any matter relating to the election which can be questioned only by an election petition under the law passed by the appropriate legislature i.e. representation People Act, 1976, Article 225 of the Constitution does not permit interlocutory hold-ups in the process of election It was further held that power to decide the dispute regarding recognition of political party and allotment of the symbol....., is conferred on the election commission by the virtue of Article 218, and 219 of the Constitution”. Article 232(4) of Constitution envisages that “Parliament shall have power to make laws for a province, or any part thereof, with respect to any matter enumerated in Part II of the legislative list, court cannot interfere”. Article 233 of Constitution, 1973 relates with the “*Power of the president to suspend fundamental rights during the emergency period*”. Clause (2) of this Article envisages that the right to move the High Court or Supreme Court for the enforcement of fundamental rights specified in an Order by the President is suspended. No Court can question the proclamation or the Order suspending the enforcement of Fundamental Rights. Therefore, the President is competent under Article 233(2) to make an Order declaring suspension of Fundamental Rights i.e right to move as conferred by Chapter 1 of Part II of the Constitution. In “*Farooq Ahmad Khan Leghari v. Federation of Pakistan (P L D 1999 SC 57)*” case, Court held that “Jurisdiction of the Court is barred from examining the validity of Proclamation; however the Court may examine the proclamation which is without jurisdiction, Coram non judge and malafide”. In another case of “*Messrs Iqbal and Company v. Government of Punjab etc*” a significance difference is enunciated by Lahore High Court in these words: “It is to be noted that clause 1 of the Article 233 is independent of its clause 2. Clause 1 shall take effect automatically as soon as Emergency is proclaimed, however, it is not so with clause 2. Suspension of citizen’s right to move Court for the execution of Basic Rights under clause 2 is not automatic and such rights can be suspended only by Order made by President”. In a land mark case of “*Wajihuddin v. Chief Election Commissioner (PLD 13 SC 2008)*” Court held that “the proclamation of emergency including other provisional Constitutional Orders issued by the General

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Pervaiz Musharraf declared to be illegal, malafide, Coram non iudice and void-ab initio". Article 236 (2) envisages that the "validity of any proclamation issued or Order made..... Shall not be called in question in any court" the true interpretation of this clause has been enunciated the Honourable Supreme Court in "Pir Sabir Shah v. Federation of Pakistan and others (PLD [1994] SC 738)" case held that: "Clause (2) of Article 236 of the Constitution of Pakistan will not cover a Proclamation which is without jurisdiction, Coram non iudice or mala fide and the superior Courts will have jurisdiction to examine a Proclamation from the above three jurisdictional legal aspects". Article 239 relates with the "Constitution Amendment Bill" which empowers the Parliament to make amendments in the Constitution, however, Clause 5 of the present Article completely bars Courts from adjudicating any matter regarding amendment of the Constitution. No amendment to the Constitution can be called in question in any Court in any ground whatsoever. The power to amend the Constitution does not mean that it is its very foundation of principles and norms should be demolished. The Court laid down certain criteria in Pakistan regarding the amendment in the Constitution in "Darwesh M. Arbey v. Federation of Pakistan (PLD [1980] Lah. 684)" case in these words "no sweeping change can be brought about in the Constitution and no such addition can be introduced which travel beyond the scope of the relevant provisions of the Constitution. Any addition or change in any of the provisions of the Constitution shall have, necessarily, to be within the broad contours of the objectives resolution and essential features laid down in the Constitution". The case law study of India and Pakistan's Courts showed that the parliament can amend the Constitution but, the basic structure/features of the Constitution cannot be amended by the Parliament and in this connection the Supreme Court is empowered to review and examine the amendment in the Constitution in the light of basic structure of the Constitution. In "Mahmood Khan Achakzai Vs. Federation of Pakistan (P L D 1997 SC 426)" case, Supreme Court held that: ".....bestowed upon the parliament in clause (6) of Article 239 after amendment does not include power to amend those provisions of the Constitution by which would be altered salient features of the Constitution, namely federalism, parliamentary form of government blended with Islamic Provisions". In another case of "Syed Zafar Ali Shah V. Federation of Pakistan (PLD 2000 SC 869)" Court held that "the Constitution of Pakistan is the supreme law of the land and its basic features, i.e., independence of judiciary, federalism and parliamentary form of government blended with Islamic Provisions, cannot be altered even by the Parliament". In "Wukula Mahaz Barai Tahafaz Dastoor Vs. Federation of Pakistan (P L D 1998 SC 1263)" the Court held that "when an impugned Constitutional amendment is of such a nature, which tends to destroy any of the basic features of the Constitution without which the State could not have been run as was originally mandated by the framers of the Constitution cannot be upheld as it destroy the basic feature of the Constitution". In another case of "Pakistan Lawyer's Forum V. Federation of

*Pakistan (PLD 2010 SC. 1165)*”, the Supreme Court while deciding the constitutionality of 17th Amendment to the Constitution decided that “The Basic Structure Doctrine is acknowledged to be in existence in the Constitution however, there are limitations on the power of Parliament to make amendments. It had been afore said that this can’t be exercised by the judiciary however by the body politics of the country”. It had been discovered that this Court will solely put aside a constitutional modification if it's not passed in accordance with the procedure of passing associate degree modification as arranged down within the Constitution. Finally the court concluded that “the theory of basic structure or salient features, insofar as Pakistan is concerned, has been used only as a doctrine to identify such features”. In the light of these cases the author is of the opinion that the Parliament is empowered to amend the Constitution but, cannot cross the limits which are the basis of the “Constitution of Islamic Republic of Pakistan, 1973”, in case of non compliance of the principles laid down by the Supreme Court of Pakistan in its various judgments then the Court may intervene and examine the Constitutional legality of the proposed amendment to the Constitution. Article 245 (2)(3) of Constitution of Pakistan also portrays a jurisdictional ouster on Courts, clause (2) and (3) of Article state that neither the functions performed by the Armed Forces in aid of civil power under the directions of Federal Government can be called in to question nor the validity of these directions of Federal Government can be called in to question in Court. In “*Darvesh M. Arbeyvs Federation of Pakistan (PLD 1980 Lahore 206)*” it was held that “validity of the directions issued by the Government under clause (1) of Art.245 cannot be called in to question under Art.199”. In another case of “*Asghar Khan*” it was held that “any action of the Armed Forces undertaken without a direction by the Federal Government is unconstitutional, illegal, *void ab-initio* and consequently of no legal effects”. Clause 7 of Article 247 enumerates another manacle on jurisdiction of Superior Judiciary as it envisages that “*neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to tribal area, unless by law otherwise provides*”. Supreme Court or High Court is not empowered to exercise its jurisdiction in relation to matters of Tribal Areas, as it can be seen in case of *Mst. Rohaiifa* Supreme Court held that “Conviction and sentence awarded by Assistant Political Agent of a Tribal Area, the Supreme Court could not take cognizance of the same because of the bar provided by 247(7)”. Article 248 of Constitution and its clauses (1) (2) (3) also impose bar on the jurisdiction of Apex Court by giving “protection to President, Governors and Ministers from any legal proceedings”. The aforementioned public officers are exempted from any criminal or civil proceedings in any Court of law in terms of the exercise of functions and power of the office they hold. In case of *LT.General (Rtd) Jamshed* court held that “The President has validly promulgated the amending Ordinance; vires whereof cannot be subjected to judicial review; the Amending Ordinance is not ultra vires of any of the provisions of Constitution; it cannot be assailed on the ground of mala fide;

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the same is valid piece of legislation and it cannot be struck down". Article 270 (2) (3) (4) of Constitution state that "Any law, order, proceeding or act done in exercise of president's powers, orders, marshal laws, regulations, enactments, notifications, rules order or bye-laws, but even those purported to have been so made taken or done and all laws made in exercise of such powers or proceeding or judgment of any court cannot be called into questioned in any court". Article 280 of the Constitution of Pakistan lays down that in proclamation of emergency, government or parliament can suspend any rights provided in chapter I and II of the constitution and it cannot be challenged in any court.

**Public interest litigation and jurisdiction of Supreme Court**

At some instances where wrong is apparent at its face and no substantial remedy is available for the aggrieved, it became the responsibility of the Apex Court to invoke its jurisdiction for the speedy remedy which otherwise can bring fatal result. In 8<sup>th</sup> Judicial Conference held at Federal Judicial Academy Islamabad on 04-05 May, 2018, in concluding session the "Chief Justice of Pakistan Mian Saqib Nisar" explained that " they were custodians of fundamental rights of the people, and were thus duty-bound to secure such rights at all cost. Whenever fundamental rights like health and education were violated by the executive or the legislature, the Courts had powers of judicial review to intervene, he explained. If fundamental rights are violated, we as judges are left with no choice but to interfere". Now in the light of above logical arguments it can be construed that actions taken by honorable chief justice are according to the soul and spirit of the Constitution because the sole legal purpose behind it was to remedy a legal wrong and to avoid the illegal encroachments by the authorities. "Public Interest Litigation" is now considered a key feature of legal jurisprudence. It has become a sharp path for social justice. If we analyze in a broader spectrum public interest litigation has more than one aspect and function. In one view it is solidifying the base for a true democracy and another point of view is that; it is nurturing and fulfilling the heart and soul of the Constitution of the state. The objective struggle of judiciary 'justice to all' can only be achieved if we respect the actions and jurisdiction of the superior courts which are already enshrined in the Constitution itself. It will not only strengthen the judiciary as an independent institution but it will also boost the writ of the state over other institutions. While exercising Constitutional Jurisdiction for public interest litigation matters court give a liberal interpretation to the word aggrieved party to ensure the enforcement of fundamental rights of the individual as the court did in the first case of PIL "*Darshan Mash iVs. the State*". The seeds of the concept of "public interest litigation" were initially sown in this case when the people from weaker and unprivileged section of the society knock the door of the Supreme Court through a telegram requesting an action for the release of bonded labor in the brick kiln industry. Chief justice took cognizance of

the matter to remedy a legal wrong as it was a serious breach of the fundamental right. Another prime feature of public interest litigation is the enactment of the “Pakistan Environmental Protection Act, 1997 (PEPA)”. Before passing the legislation a number of environmental issues related PIL cases were filed. Superior courts in some instances took suo moto notices and as a result, a great debate was initiated in the National Assembly for the regulation of the environment and PEPA was enacted. Another famous case of PIL is “*Shehla Zia vs. Wapda etc (PLD 1994 SC 693)*” in which action was taken against the authorities as the breach of article 9 was apparent and the matter was of public importance. Suo Moto action can be taken under Article 184(3) of the Constitution regarding original jurisdiction of the Supreme Court which states 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 I of Part II is involved have the power to make an order of the nature mentioned in the said Article.” In a landmark judgment of Supreme Court in “*Munir Hussain Bhatti VS Federation of Pakistan 2011(PLD 2011 SC 407)*”, SC held two core principles and empowered the court to exercise jurisdiction under article 184(3). (a) The matter is of public importance. (b) It pertains to the enforcement of the fundamental rights.

Some of the most recent and remarkable actions taken by the “Chief Justice of Pakistan” under the umbrella of suo moto are murder and rape of Asma and Zainab, order against SSP Rao Anwar, action against contaminated water, poor and miserable condition of the Government hospitals in Lahore and Karachi, eatable products and against traffic blockade for special treatment of VVIPs, appointment of vice-chancellors in public sector universities, and overcharging issue by the mobile service providing companies. Here the point of consideration is, all the above-stated cases are on account of public importance. And before the suo-moto action, a number of reports and incidents are already reported against the authorities and public. Such aggrieved and deprived section of the society remains injured leaving the matter at the door of the Supreme Court. There are a number of instances which highlights the fraudulent and negligent actions of the authorities particularly law and enforcing agencies which in return make people to lost faith in judicial setup. Suo Moto in such prevailing condition is thus a mean to regain the lost confidence of the judiciary. When the harm is obvious, it becomes compulsory on the part of apex courts to expand the horizon of the articles of the constitution. So that no substantial harm could be done to any individual of the state. While exercising the jurisdiction in PIL cases Apex courts relax the strict nature of locus-standi and initiate the suo moto action.

## **Conclusion**

The jurisdiction of the Supreme Court under 184(3) of the present Constitution can be invoked only when a question of public importance with reference to the

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enforcement of any of the fundamental rights is involved. If the question involved in the opinion of the Court is not of the public importance, the Supreme Court may refuse to entertain the petition, in order to advance cause of justice and public good the power conferred under Article 184(3) has to be exercised liberally unfettered by technicalities. In today's world the role of the Apex Court has become inevitable, multidimensional, and decisive. Supreme Court has not only to resolve the disputes but has to act as a caretaker and upholder of the fundamental rights of the people. It is pertinent to mention here that, as a guardian of the Constitution it is also the prime responsibility on the shoulder of the Apex Judiciary to maintain the rule of law and good governance including to "preserve, protect and defend" this Constitution. In this context, in present regime, Supreme Court has taken suo-moto notices in number of cases relating to law and order, health and education and treatment of VVIPs etc. and useful directions were issued to the authorities concerned in the interest of justice and passed orders for the eradication of violation of fundamental rights and recommended indispensable enactments and other administrative steps in this regard. This paper explained that, the Honourable Supreme Court acted in accordance with law and Constitution and did not contravene its powers with the Constitutional provisions as envisaged in various Articles of the "Constitution of Islamic Republic of Pakistan 1973". Last but not least "Law does not stand still. It moves continually. Once this is recognized, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time" (*Lord Denning*).

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