

THE SUO-MOTU JURISDICTION OF THE SUPREME COURT OF PAKISTAN, A COMPARATIVE ANALYSIS BEFORE AND AFTER THE 26TH CONSTITUTIONAL AMENDMENT

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ABSTRACT

This study critically examines the evolution of *Suo-Motu* jurisdiction under Article 184(3) of the Constitution of Pakistan, with a particular focus on the reforms introduced through the 26th Constitutional Amendment of October 2024. Historically, *Suo-Motu* powers allowed the Supreme Court to act “on its own motion” in matters of public importance involving fundamental rights, often expanding access to justice for marginalized groups and filling governance vacuums. However, this broad discretion also raised concerns of judicial overreach, unpredictability, and imbalance in the separation of powers. The 26th Amendment recalibrated this jurisdiction by prohibiting unilateral action, requiring petitions from aggrieved parties, mandating collective decision-making through benches, and introducing appellate remedies. Employing a qualitative doctrinal analysis supported by a comparative framework, the research traces the trajectory of *Suo-Motu* powers before and after the amendment and evaluates their implications for judicial independence, institutional balance, and access to justice. Findings reveal a dual outcome: while the amendment curtails judicial populism and strengthens procedural transparency, it also narrows the Court’s capacity to act as an immediate guardian of rights, particularly for diffuse or unrepresented grievances. The study concludes that the reform represents neither a complete curtailment nor an unequivocal strengthening of judicial powers but rather a constitutional recalibration that prioritizes institutional balance over judicial activism. This research contributes to scholarly and policy debates on constitutionalism and judicial reform in Pakistan and recommends further empirical and comparative studies to assess the long-term effects of these reforms on governance, public trust, and the protection of fundamental rights.

INTRODUCTION:

The Constitution of the Islamic Republic of Pakistan, 1973, provides the foundational structure of the state, ensuring the protection of fundamental rights and the separation of powers among the main three pillars of the state i.e., legislature, executive, and judiciary. Within this constitutional structure, Article 184(3) assumes a distinctive role by empowering the Supreme Court of Pakistan to exercise *Suo-Motu* jurisdiction a doctrine derived

from the Latin term meaning “on its own motion.” This jurisdiction allows the Supreme Court of Pakistan to intervene in matters of public importance without requiring a formal petition from an aggrieved party, particularly in cases involving the enforcement of constitutional provisions and the protection of fundamental rights before 26th constitutional amendment, 2024. The scope and practice of *Suo-Motu* jurisdiction underwent a major shift with the enactment of the

26th Constitutional Amendment in October 2024. This amendment introduced significant reforms by restricting the Court's ability to act solely on its discretion and requiring that *Suo-Motu* proceedings be initiated only on the basis of an application or petition filed by an aggrieved party. These changes reflect an attempt to balance judicial independence with procedural safeguards, addressing long-standing concerns of unregulated power while still preserving the judiciary's role as a guardian of fundamental rights.

The historical trajectory of *Suo-Motu* powers in Pakistan underscores their significance in constitutional and political development. Initially designed to expand access to justice and provide swift remedies for violations of fundamental rights, the powers under Article 184(3) evolved dramatically over time. From periods of executive dominance and constitutional instability to the heightened judicial activism of the 1980s, 1990s, and the post-2007 lawyers' movement, the use of *Suo-Motu* jurisdiction has reflected the judiciary's changing role in society. While these powers have advanced accountability and protected marginalized groups, they have also raised enduring questions about institutional boundaries, judicial impartiality, and constitutional predictability. The 26th Constitutional Amendment represents a recalibration of these powers. By mandating procedural requirements, promoting collective decision-making through benches, and introducing

safeguards against unilateral action, the amendment seeks to enhance transparency and align *Suo-Motu* jurisdiction with principles of judicial independence and due process. Yet, it also provokes critical questions: Has this reform strengthened judicial accountability and procedural fairness, or has it diminished the Court's ability to act decisively in times of constitutional and human rights violations? Against this backdrop, this research seeks to undertake a comparative analysis of *Suo-Motu* jurisdiction before and after the 26th Constitutional Amendment. The study aims to trace the constitutional and judicial evolution of Article 184(3), evaluate its scope and implications prior to the amendment, and assess the reforms introduced in 2024. It further seeks to analyse their impact on judicial independence, access to justice, and the balance of powers among state institutions.

This research is significant as it contributes to the broader discourse on constitutionalism, judicial activism, and the separation of powers in Pakistan. By examining the doctrinal foundations, judicial practices, and recent reforms, the study highlights the evolving role of the Supreme Court of Pakistan as a protector of fundamental rights and an actor within the constitutional order. The findings will help us to clarify whether *Suo-Motu* jurisdiction continues to serve as a necessary tool of justice or whether its transformation marks a limitation on judicial power in the interest of institution.



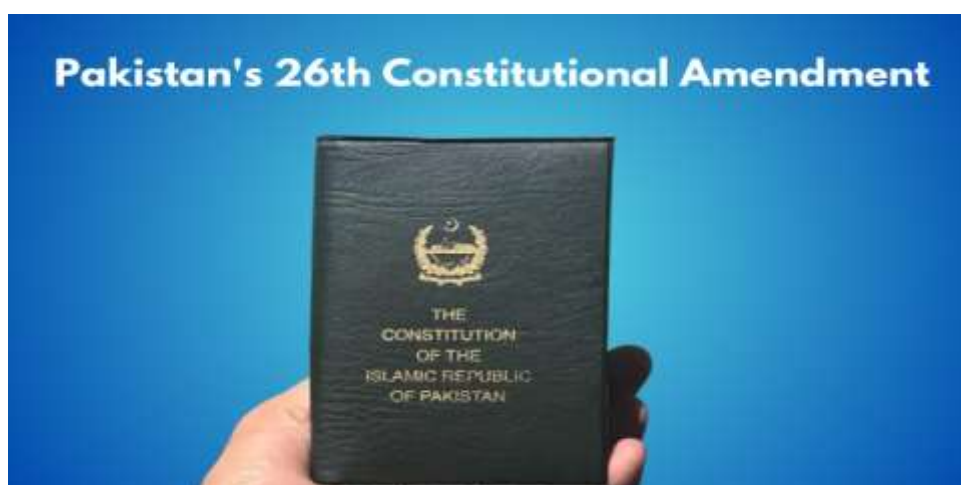
Background of the Study: The concept of *Suo-Motu* jurisdiction occupies a significant place in constitutional law, particularly in jurisdictions where superior courts are entrusted with the

responsibility of safeguarding fundamental rights and ensuring constitutional supremacy. It derived from the Latin term meaning "on its own motion," *Suo-Motu* jurisdiction empowers a court to initiate

proceedings without a formal petition from an aggrieved party before 26th constitutional amendment. This extraordinary jurisdiction is rooted in the idea that access to justice should not be limited to those having resources, legal knowledge, or immediate standing, but must extend to the general public in cases of grave constitutional or human rights violations. Within this context, courts act not merely as arbiters of disputes but as guardians of public interest.

In Pakistan, the scope of *Suo-Motu* powers has been primarily exercised under Article 184(3) of the Constitution of Pakistan 1973, which authorizes the Supreme Court to intervene in matters of public importance relating to the enforcement of fundamental rights. Historically, this provision was intended to strengthen constitutional democracy by enabling the judiciary to provide swift remedies in situations where legislative or executive actions are threatened the fundamental rights of citizens. Over time, the exercise of this jurisdiction has evolved significantly, reflecting broader political, judicial, and constitutional developments in the country. The post-independence era marked by executive dominance and constitutional instability, to the judicial activism of the 1980s and 1990s, and the assertive role of the judiciary following the lawyers' movement of 2007, *Suo-Motu* powers have remained a defining feature of Pakistan's legal landscape. They have been hailed as a tool for protecting vulnerable groups and promoting accountability, yet equally criticized for enabling judicial overreach, undermining separation of

powers, and fostering unpredictability in constitutional governance. The 26th Constitutional Amendment introduced an important recalibration of these powers, reflecting ongoing debates about the appropriate balance between judicial autonomy and institutional accountability. Enacted in response to growing concerns about the unregulated and sometimes inconsistent exercise of *Suo-Motu* powers, the amendment sought to formalize procedural safeguards and limit unilateral decision-making by the Chief Justice. By mandating collective decision-making through benches, ensuring greater transparency, and attempting to align *Suo-Motu* practice with principles of judicial independence and due process, the amendment represents a pivotal moment in Pakistan's constitutional development. However, it has also raised questions about whether such reforms enhance or weaken the judiciary's ability to function as a bulwark against executive and legislative excesses. Against this backdrop, examining the comparative exercise of *Suo-Motu* jurisdiction before and after the 26th Constitutional Amendment is crucial to understanding its implications for constitutional governance, judicial independence, and access to justice in Pakistan. This study situates the evolution of Article 184(3) within its historical, political, and legal context, and evaluates how the recent reforms reshape the doctrine's role in safeguarding fundamental rights while balancing institutional legitimacy.



Judicial Activism and *Suo Motu* Jurisdiction under Article 184(3):

Judicial Activism, Article 184(3), *Suo Motu*, or “notice by its own motion” are different terms often

used interchangeably in Pakistan's legal and political discourse. Although they all relate to the same constitutional mechanism, in contemporary debates the term *Suo-Motu* has become the most widely

discussed. The question that arises is: *Why is Suo-Motu so frequently debated, and what impacts has it created on Pakistan's legal and political landscape?* The phrase *Suo-Motu* originates from Latin, meaning "on its own motion." It refers to circumstances where a government authority, especially a court, initiates proceedings based on its own knowledge or concern rather than waiting for a formal complaint.

Historically, the practice of judicial intervention without petition emerged in jurisdictions influenced by common law. Legal historians trace its broader recognition back to the 19th century, particularly to the U.S. Supreme Court under Chief Justice John Marshall. However, legal scholars often describe *Suo-Motu* powers as a distinct and unique characteristic of South Asian judicial systems. In South Asia particularly in Pakistan, India, and Bangladesh *Suo-Motu* jurisdiction has been exercised frequently and has become part of judicial tradition. In contrast, courts in countries like Canada, Austria, South Africa, and many Caribbean nations generally lack such powers. In the United States too, courts do not allow *Suo-Motu* action in matters of political or ideological nature.

In Pakistan, *Suo-Motu* jurisdiction is constitutionally grounded in Article 184(3) of the Constitution of 1973. This provision empowers the Supreme Court to take cognizance of matters on its own motion if they involve questions of public importance relating to the enforcement of fundamental rights. An article published in daily *DAWN* newspaper on 30th March 2010, written by an advocate of the Supreme Court of Pakistan, stated that as early as 1958, the Supreme Court had declared that the High Courts did not possess *Suo-Motu* powers under the 1956 Constitution. A similar declaration was made in 1971 regarding the 1962 Constitution. The judiciary's central role in Pakistan's governance was notably acknowledged in the 1990s, when Chief Justice Afzal Zullah emphasized that the Chief Justice of Pakistan is not merely the head of the Supreme Court but also the Chief Justice of Pakistan as an institution. Drawing strength from the Objectives Resolution, he underscored judicial independence as a constitutional principle, thereby laying the foundation for the expansion of *Suo-Motu* powers.

Between 2000 and 2023, the Supreme Court of Pakistan took approximately 204 *Suo-Motu* notices, often in cases concerning governance failures,

corruption, human rights violations, and matters of urgent public interest. While these interventions were sometimes hailed as a safeguard of rights, they also sparked debates about judicial overreach and imbalance in the separation of powers. To address concerns of unchecked authority, the Supreme Court (Practice and Procedure) act, 2023 significantly curtailed the unilateral powers of the Chief Justice. Under this law, *Suo-Motu* powers are no longer exercised solely by the Chief Justice; instead, a committee consisting of the Chief Justice and the two most senior judges of the Supreme Court now decides whether a *Suo-Motu* case should be initiated on application or petition of party/person. The committee's decisions are taken by majority vote, and cases are then referred to benches formed accordingly. For constitutional or legal questions, a minimum of five judges must hear the matter. Importantly, the act also introduced the right of appeal against *Suo-Motu* judgments, which must be filed within 30 days and fixed for hearing within 14 days. Pending cases also benefit from this appellate right, and parties are entitled to engage advocates of their own choice. Thus, *Suo-Motu* jurisdiction in Pakistan represents both the judiciary's proactive role in safeguarding rights and the ongoing struggle to balance judicial independence with constitutional limits. Its evolution continues to shape Pakistan's political and legal order, reflecting the dynamic relationship between law, democracy, and institutional accountability.



Research Questions:

- What changes has the 26th Constitutional Amendment made to the *Suo-Motu* jurisdiction of the Supreme Court?
- What differences exist in its scope, application, and outcomes before and after the amendment?

Article 184(3) of Constitution 1973: Without prejudice to the provisions of Article 199, the

Supreme Court shall, if it considers that question of public importance with reference to the enforcement of any of the Fundamental Rights

conferred by Chapter 1 of part II is involved, have the power to make an order of the nature mentioned in the said Article. (Qazi, 2024)

Article 184(3) by 26th Amendment:

In the Constitution, in Article 184, in clause (3), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely: "Provided that the Supreme Court shall not, on its own motion, pass any order, give any direction, or make any declaration in the exercise of *Suo-Motu* jurisdiction beyond the scope of *an application* duly filed under this clause."

The objectives of study:

The objectives of this study are to trace the constitutional and judicial evolution of *Suo-Motu* jurisdiction in Pakistan, while also analysing the scope, use, and implications of Article 184(3) prior to the 26th Constitutional Amendment. It further seeks to evaluate the changes brought about by the 26th Amendment and assess their impact on judicial independence and access to justice. In addition, the research aims to provide a comparative analysis of the effectiveness, challenges, and constitutional balance of *Suo-Motu* powers before and after the amendment.

Significance of the Study:

This research is significant as it contributes to the broader discourse on constitutionalism, separation of powers, and the rule of law in Pakistan. By examining the doctrinal and practical dimensions of *Suo-Motu* jurisdiction, it seeks to highlight the evolving relationship between the judiciary and other organs of the state, as well as its implications for the protection of fundamental rights.

Scope of the Study:

The scope of the study is limited to the Supreme Court's exercise of *Suo-Motu* powers under Article 184(3), with special reference to judicial precedents, constitutional provisions, and the reforms introduced through the 26th Constitutional Amendment. Through this analysis, the research aims to provide insights into the balance between judicial activism and judicial restraint, and to propose recommendations for ensuring that *Suo-Motu* jurisdiction continues to serve as a tool of justice rather than controversy.

LITERATURE REVIEW

Munir and Khalid (2018), in their study *Judicial Activism in Pakistan: A Case Study of Supreme Court Judgments 2008-13*, examine the proactive role of Pakistan's judiciary, particularly under the *Suo-Motu* jurisdiction of the Supreme Court. The authors trace the origins of judicial activism from landmark U.S. cases such as *Marbury v. Madison* to its development in Pakistan, emphasizing its expansion after the restoration of judges in 2009. They argue that while judicial activism often protected fundamental rights and checked executive excesses through Public Interest Litigation (PIL), it also raised concerns about separation of powers and judicial overreach.

Key cases such as the Pakistan Steel Mills privatization, Rental Power Plants, and the Hajj corruption case demonstrate how the Supreme Court intervened in economic and political matters, sometimes yielding positive accountability outcomes but also contributing to economic instability and political tension. The article highlights scholarly debates on interpretivism versus non-interpretivism, and the balance judges must strike between legal stability and societal change. It also references Pakistan's constitutional 18th and 19th amendments, which reshaped judicial independence and appointments. The authors conclude that although judicial activism enhanced public trust in the judiciary by addressing corruption, human rights, and governance failures, excessive use of *Suo-Motu* powers risks undermining democratic institutions and violating the doctrine of separation of powers. They recommend judicial self-restraint to strengthen Pakistan's democratic framework.

The article critically examines the constitutional debate surrounding the Supreme Court (Practice and Procedure) Act, 2023, a law upheld by the Supreme Court of Pakistan on 11th October 2023 by a majority of 6 out of 10. The legislation regulates bench formation, review of *Suo-Motu* powers under Article 184(3), and provides an appellate remedy to parties aggrieved by Supreme Court judgments. While the Act aims to introduce transparency and collective decision-making, its passage has raised

profound constitutional questions regarding the separation of powers, parliamentary competence, and judicial independence. (Madni, 2023)

Two gaps recur: (a) systematic outcome studies comparing pre- and post-reform case trajectories (time-to-relief, compliance, rights vindication); (b) effects on access to justice whether petition-dependence deters diffuse/public-interest claims absent organized civil-society litigants. With the 26th Amendment now operative and appellate pathways in place, researchers can test whether procedural fairness gains trade off against speed/scope of relief in high-salience rights disputes. (Iqbal, 2023)

The research article of Sarwar, Azhar, & Baig, 2024 critically explores “Article 184(3) of the Constitution of Pakistan: Remedy or Judicial Activism?” and discussed the dual nature of Article 184(3) as both a constitutional safeguard and a potential avenue for judicial overreach. It situates judicial activism within the broader context of constitutional adjudication, separation of powers, and governance in Pakistan, highlighting the judiciary’s evolving role in protecting fundamental rights and addressing governance shortcomings. The authors further, trace the historical evolution of Article 184(3), which empowers the Supreme Court to exercise original jurisdiction in matters of public importance involving fundamental rights. Originally designed as a remedial tool, its broad interpretation has expanded judicial intervention into political, administrative, and governance-related matters. Landmark cases such as *Darshan Masih v. State* (1990), *Shehla Zia v. WAPDA* (1994), and the disqualification of Prime Ministers Yousaf Raza Gillani and Nawaz Sharif illustrate how the Court has reshaped Pakistan’s political order. While these interventions strengthened judicial accountability and public trust, they also raised concerns about encroachment on executive and legislative authority. Comparative analysis reveals parallels with judicial activism in the U.S., Canada, and India, where courts have influenced public policy and rights enforcement. However, Pakistan’s case is distinct for its extensive use of *Suo-Motu* powers, especially under the Chaudhry Court, where activism extended beyond rights protection to governance, regulation, and constitutional amendments, including the controversial review of the 18th Amendment. This assertiveness has powered debates over whether Article 184(3) enhances democracy by safeguarding rights or undermines it by disturbing institutional balance. The study

underscores both the positive and negative consequences of judicial activism. Positively, it has reinforced the rule of law, safeguarded fundamental rights, checked executive arbitrariness, and driven policy reforms in areas like corruption, environment, and human rights. Negatively, it has contributed to political instability, weakened parliamentary sovereignty, and fostered perceptions of judicial monopoly. Scholars such as Hussain (2018) and Waseem (2012) argue that excessive reliance on Article 184(3) has harmed Pakistan’s political and economic stability, while others defend it as a corrective mechanism against governance failures.

Ultimately, the above cited research article concludes that constitutional Article 184(3) embodies both promise and peril: it serves as a vital constitutional remedy but risks degenerating into judicial activism when overused. The authors emphasize the need for clearer procedural limitations and accountability frameworks to recalibrate judicial powers, ensuring that remedies do not devolve into unchecked activism and that the trichotomy of powers is preserved for sustainable governance.

Pakistan’s Supreme Court has undergone a significant transformation in its role and powers, particularly during the “Chaudhry Court” era (2009–2013), which marked the peak of judicial activism. While popularly perceived as a sudden shift from subservience to activism, this evolution was long in the making, rooted primarily in the gradual expansion of administrative law and judicial review of executive action. Article 184(3) of the 1973 Constitution became central to this process, enabling the Court to exercise original jurisdiction on matters of public importance relating to fundamental rights.

The Court’s activism emerged in two distinct waves: the first in the 1990s, marked by the introduction of public interest litigation (PIL) through cases like *Benazir Bhutto v. Federation of Pakistan*, where locus standi was relaxed, and fundamental rights such as freedom of association were expanded; and the second during the Lawyers’ Movement and Chaudhry Court era, which consolidated judicial authority through *Suo-Motu* powers, rolling review, and expansive interpretations of rights. The Chaudhry Court notably invalidated the National Reconciliation Ordinance (NRO), challenged executive control over accountability bodies, and

scrutinized appointments in bureaucracy and regulatory institutions, thereby extending its oversight into governance and policy domains. (Cheema, 2018).

In the last two decades, the Supreme Court of Pakistan has taken 204 Suo-Motu notices, reflecting significant variation in judicial activism across successive chief justices (Dunya News, 2023). Former Chief Justice Iftikhar Muhammad Chaudhry accounted for the highest number with 79 notices during his two terms (2005 to 2007 & 2009 to 2013), followed by Saqib Nisar with 47 and Anwar Zaheer Jamali with 25. In contrast, some chief justices, such as Bashir Jahangiri and Asif Saeed Khosa, did not exercise this power at all. Others, including Gulzar Ahmed (9 notices) and Umar Ata Bandial (5 notices), demonstrated moderate use. This data highlights the discretionary nature of Suo-Motu jurisdiction and the fluctuating intensity of judicial activism within Pakistan's constitutional framework. (Dunya News, 2023)

Judicial hyper-activism in Pakistan has intensified since 2020, primarily due to political instability, governance failures, and weak executive performance, which have shifted public reliance toward the judiciary. (Faisal & Arshad, 2023) The Supreme Court has increasingly intervened in executive domains such as healthcare, water management, housing, taxation, and corruption, a practice applauded by the public but criticized for undermining executive authority and democratic processes. This trend reflects a judicial inclination toward populism and authoritarian tendencies, exemplified by cases like *Allah Wasaya* (PLD 2019 ISB 62), where the judiciary's decisions reinforced majority views at the expense of minority rights.

Scholars note that judicial activism, though historically defended as a safeguard of rights, often leads to judicial overreach and imbalance between state institutions (McLachlin, 2000; Waseem & Aslam, 2022). Pakistan's experience under Chief Justice Iftikhar Chaudhry illustrates how Suo-Motu powers expanded judicial influence but blurred boundaries between law and politics. Comparative perspectives highlight that, while judicial activism exists globally, in Pakistan it has been deeply politicized, with courts frequently shaping policy, intervening in economic decisions (e.g., sugar pricing, Pakistan Steel Mills case), and even disqualifying prime ministers (Gilani, 2012; Nawaz Shraf, 2018).

Despite its role in advancing public interest litigation and exposing corruption, judicial hyper-activism has raised concerns about separation of powers, constitutionalism, and the judiciary's increasing role as a political actor. Empirical gaps remain regarding its impact on civil society and media, whose perspectives are crucial for understanding how hyper-activism influences governance, transparency, and democratic accountability. (Faisal & Arshad, 2023)

Over the last two decades, Pakistan's Supreme Court has transitioned from a traditionally cautious institution to one that actively challenges both elected and unelected regimes, asserting a central role in policy-making. This shift is tied to the emergence of judicial populism, whereby judges claim to act as direct representatives of the people, often bypassing legal norms, procedural safeguards, and institutional boundaries. Unlike conventional populist leaders who are political outsiders, unelected judges become populists by invoking the Constitution as the embodiment of the people's will and positioning themselves as superior guardians of the public interest against corrupt or illegitimate elites. Critical scholarship warns of judicial populism, relaxed procedure, and case management that can displace legislative/executive prerogatives, generate uncertainty, and personalize institutional power. These accounts highlight media-driven agendas, ad-hoc bench constitution, and limited appellate correctives (before reforms), arguing that "strong-form" 184(3) strained separation of powers. (Kureshi, 2024)

The 26th Constitutional Amendment to the Constitution of Pakistan, 1973 has introduced sweeping changes to the judicial structure and balance of power within the state. One major reform concerns the appointment of the Chief Justice of Pakistan (CJP). Previously appointed on the basis of seniority, the CJP will now be chosen from among the three most senior judges through the recommendation of a Special Parliamentary Committee (SPC) with proportional party representation, though the ruling party retains dominance. This move effectively transfers substantial influence from the judiciary to the legislature in judicial appointments.

Equally significant is the removal of Suo-Motu powers from both the Supreme Court under Article 184 and the high courts under Article 199, limiting their ability to act independently without a formal

petition. Furthermore, the creation of a Constitutional Bench under Article 191A, tasked exclusively with constitutional matters, centralizes judicial authority within a specialized forum. Its presiding judge, rather than the CJP, holds extensive powers including *Suo-Motu* jurisdiction, raising concerns about a “court within a court”. (Khan, 2024)

The 26th Constitutional Amendment in Pakistan has been widely criticized by the International Commission of Jurists (ICJ) for undermining judicial independence, the rule of law, and human rights protections. The amendment altered the composition of the Judicial Commission of Pakistan (JCP) by introducing parliamentary members, thereby reducing judicial representation and opening avenues for political influence in judicial appointments. The amendment also shifted the appointment of the Chief Justice of Pakistan from a seniority-based system to selection by a Special Parliamentary Committee, with no transparent criteria, and expanded grounds for judicial removal by undefined term “inefficiency,” beyond incapacity or misconduct. These provisions contradict international standards, for examples Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10A of Constitution of Islamic Republic of Pakistan 1973, which guarantee judicial independence and fair trial rights. According to the International Commission of Jurists (ICJ), instead of promoting accountability and transparency, the amendment subjugates the judiciary to executive and parliamentary control, eroding the principle of separation of powers. (International Commission of Jurists, 2024)

Theoretical Framework:

The study adopts a multi-dimensional theoretical framework to critically examine the *Suo-Motu* jurisdiction of the Supreme Court of Pakistan, particularly in light of the 26th Constitutional Amendment. Three interrelated approaches guide the analysis: doctrinal legal analysis, comparative framework, and institutional balance theory.

Doctrinal Legal Analysis:

The study relies on doctrinal legal analysis as its foundational approach, focusing on constitutional provisions, judicial precedents, and case law that shape the exercise of *Suo-Motu* powers. Article 184(3) of the Constitution of Pakistan, 1973, serves as the primary legal anchor, enabling the Supreme Court to assume jurisdiction in matters of public

importance concerning the enforcement of fundamental rights. Through a detailed review of landmark cases such as *Benazir Bhutto v. Federation of Pakistan* (1988), *Mubashir Hassan v. Federation of Pakistan* (2010), and subsequent cases of judicial activism, this analysis evaluates how the Court has interpreted and expanded its jurisdiction over time. Doctrinal analysis, therefore, facilitates an understanding of both the legal justifications and controversies surrounding the Court’s autonomous role before and after the 26th Amendment.

Comparative Framework (Before vs. After the 26th Amendment):

A comparative framework is essential to distinguish the pre-amendment and post-amendment trajectories of *Suo-Motu* jurisdiction. Before the 26th Amendment, the Court enjoyed relatively unfettered discretion in invoking Article 184(3), often criticized as a tool of judicial overreach. The amendment introduced structural reforms to limit discretionary power by embedding procedural safeguards, collegial decision-making, and checks on unilateral judicial authority. This comparative lens highlights shifts in judicial philosophy, procedural legitimacy, and the broader constitutional balance. By juxtaposing the two phases, the framework underscores whether the amendment successfully addressed concerns of judicial populism, arbitrariness, and excessive intrusion into domains of other state organs.

Institutional Balance Theory (Judiciary vs. Legislature vs. Executive):

The theoretical lens of institutional balance situates the *Suo-Motu* jurisdiction within the broader constitutional design of separation of powers. Historically, Pakistan’s judiciary has oscillated between judicial restraint and judicial activism, often stepping into policy-making domains when other institutions faltered. The 26th Amendment, therefore, can be analysed as a structural attempt to recalibrate the power equilibrium between the judiciary, legislature, and executive. Institutional balance theory helps to assess whether the amendment preserved the judiciary’s vital role as a guardian of rights while preventing it from undermining the democratic legitimacy of elected institutions. This theoretical grounding illuminates the dynamic tensions among the three branches of government in shaping Pakistan’s constitutional order.

Synthesis: By combining doctrinal legal analysis, comparative assessment, and institutional balance theory, this framework provides a structured lens to evaluate not only the legal evolution of Suo-Motu jurisdiction but also its implications for Pakistan's

METHODOLOGY

Research Design: This study adopts a qualitative and doctrinal legal research design, focusing on the interpretation of constitutional provisions, judicial precedents, and the evolving practice of Suo-Motu jurisdiction under Article 184(3) of the Constitution of Pakistan, 1973. The design emphasizes doctrinal analysis to examine how the Supreme Court's discretionary powers have been shaped through legal texts and case laws. In addition, a comparative case study approach is employed to evaluate the scope, application, and impact of Suo-Motu jurisdiction before and after the enactment of the 26th Constitutional Amendment (2024). This dual design allows the research to address both the normative legal framework and its practical implications for judicial independence, access to justice, and the balance of powers among state institutions.

Nature of Study: The research is exploratory, analytical, and comparative. It is exploratory in tracing the historical development of Suo-Motu powers within Pakistan's constitutional structure; analytical in assessing their practical operation, judicial interpretations, and implications for judicial independence; and comparative in evaluating the differences in scope, application, and outcomes of Suo-Motu jurisdiction before and after the 26th Constitutional Amendment of October 2024.

Sources of Data: The research draws on both **primary** and **secondary sources**:

- **Primary Sources:** The Constitution of the Islamic Republic of Pakistan, 1973 (particularly Article 184(3) before and after the 26th Amendment); relevant constitutional amendments, the Supreme Court (Practice and Procedure) Act, 2023; landmark judgments of the Supreme Court such as *Benazir Bhutto v. Federation of Pakistan* (1988), *Shehla Zia v. WAPDA* (1994), *Mubashir Hassan v. Federation of Pakistan* (2010), and post-2007 judicial activism cases; as well as parliamentary debates and official reports.

democratic governance and constitutionalism. It ensures that the research remains anchored in law while also addressing broader institutional and political considerations.

- **Secondary Sources:** Scholarly articles, law review publications, academic books, reports by legal think tanks (such as the International Commission of Jurists), and news analysis by platforms such as JURIST, DAWN, Courting the Law, and other recognized sources of constitutional commentary.

Method of Analysis: The analysis follows three interrelated approaches:

1. **Doctrinal Legal Analysis:** Examining constitutional provisions, judicial precedents, and statutory reforms to trace the evolution of Suo-Motu powers.
2. **Comparative Framework:** Comparing the scope, discretion, and institutional consequences of Suo-Motu jurisdiction before and after the 26th Constitutional Amendment. The comparative analysis emphasizes procedural safeguards, judicial independence, access to justice, and the separation of powers.
3. **Institutional Balance Theory:** Applying this theoretical framework to evaluate how judicial intervention, legislative reforms, and executive authority interact to shape Pakistan's constitutional order. This lens highlights whether the amendment strengthens institutional equilibrium or weakens the judiciary's ability to act as guardian of rights.

Delimitations of the Study: The scope of this study is confined to the Supreme Court's exercise of Suo-Motu jurisdiction under Article 184(3). It does not extend to High Court jurisdictions under Article 199 except for contextual references. The temporal focus is on the period from the introduction of Article 184(3) in 1973 to the enactment of the 26th Amendment in 2024, with particular emphasis on judicial activism between 2000 and 2023.



RESULTS AND ANALYSIS

Historical Exercise of Suo-Motu Jurisdiction (Before the 26th Amendment): Prior to the 26th Constitutional Amendment, the Supreme Court of Pakistan exercised Suo-Motu powers under Article 184(3) with broad discretion. From the year 2000 to 2023, the Court initiated more than 200 Suo-Motu cases, many of which addressed governance failures, human rights violations, and corruption scandals. This era especially under the then Chief Justices Iftikhar Muhammad Chaudhry and Saqib Nisar saw judicial hyper-activism, where the Court assumed the role of arbiter not only of rights but also of executive and administrative policies. Landmark cases, such as the Steel Mills privatization and disqualification of Prime Ministers Yousaf Raza Gillani and Nawaz Sharif, expanded the Court's visibility as a political actor. While these interventions enhanced access to justice for marginalized groups, they also raised serious concerns about judicial overreach, unpredictability in constitutional governance, and imbalance between state institutions.

Reforms and Structural Changes Introduced by the 26th Amendment: The 26th Constitutional Amendment of October 2024 fundamentally restructured the scope of Suo-Motu jurisdiction. The amendment inserted a proviso in Article 184(3), explicitly barring the Supreme Court from initiating proceedings on its own motion without an application or petition filed by an aggrieved party. Furthermore, it mandated collegial decision-making by benches rather than unilateral action by the Chief Justice, and introduced appellate remedies to challenge Suo-Motu judgments. Parallel reforms in judicial appointments such as parliamentary influence in selecting the Chief Justice raised

concerns about political interference, but were justified by proponents as enhancing accountability and transparency. Collectively, these changes aimed to recalibrate judicial independence with procedural safeguards and strengthen institutional balance.

Trends in Suo-Motu Cases Post-Amendment: Early evidence from post-amendment practice suggests a significant decline in the frequency of Suo-Motu cases. Matters once taken up directly by the Supreme Court now require formal petitions, thereby filtering claims through procedural thresholds. While this has curtailed judicial populism and unchecked discretion, it has also slowed the Court's ability to intervene in urgent human rights crises. Civil society organizations and organized litigants have become the primary channel for initiating public-interest cases, while diffuse or unrepresented grievances once the hallmark of Suo-Motu relief face barriers in accessing the Court. This trend indicates both a procedural refinement and a potential narrowing of the Court's constitutional role as a proactive guardian of rights.

Change in Frequency, Scope, and Impact of Suo-Motu Actions: Before the amendment, Suo-Motu actions were frequent and expansive, ranging from environmental regulation to political accountability. Their impact was immediate but often inconsistent, generating both public trust and institutional friction. After the 26th Amendment, the frequency of cases dropped, the scope was narrowed to petition-dependent matters, and the impact became more predictable but less sweeping. This shift reflects a transition from a populist, interventionist judiciary to a restrained, procedurally bound institution.

Assessment of Judicial Independence Post-Amendment: The amendment produced a paradoxical outcome. On one hand, judicial independence was weakened institutionally by increasing legislative influence in judicial appointments and limiting the Chief Justice's unilateral powers. On the other hand, independence in adjudication has arguably been enhanced by requiring collective decision-making and appellate review, reducing the concentration of power in one office. Thus, independence now operates within a framework of procedural accountability, though critics argue that political oversight risks subordinating the judiciary to parliamentary control.

Did the 26th Amendment Curtail or Refine Sua-Motu Powers? The findings suggest that the 26th Amendment both curtailed and refined Sua-Motu powers. Curtailment is evident in the prohibition of unilateral, self-initiated proceedings. Refinement lies in the institutionalization of procedures, collective bench decision-making, and appellate remedies, which enhance transparency and predictability. While the amendment reduces the judiciary's immediate capacity to respond to crises, it aligns Sua-Motu jurisdiction more closely with constitutional norms of separation of powers and due process.

Implications for Judicial Oversight and Constitutionalism: For constitutionalism, the amendment represents a recalibration of institutional balance. Judicial populism and dominance in governance have been checked, but at the cost of diluting the Court's proactive role in rights protection. Access to justice for vulnerable and unorganized groups is now contingent upon their ability to petition through formal channels, potentially undermining the egalitarian promise of Article 184(3). However, from the perspective of institutional balance, the amendment strengthens parliamentary sovereignty and restores a measure of democratic legitimacy. The central challenge remains whether this recalibration promotes sustainable constitutionalism or risks enabling executive and legislative excesses in the absence of a robust, activist judiciary.

Synthesis: The results reveal a complex transformation of Sua-Motu jurisdiction in Pakistan. Historically, it empowered the judiciary as an assertive guardian of rights but generated institutional imbalance. The 26th Amendment redefines these powers, embedding safeguards to prevent excess while constraining judicial activism. The overall trend indicates a movement toward procedural constitutionalism, where access to justice is mediated by rules and petitions rather than judicial discretion. Whether this transition ultimately strengthens or weakens Pakistan's constitutional order depends on how effectively courts, legislatures, and civil society navigate this recalibrated framework.

DISCUSSION: The findings of this research reveal a complex and evolving trajectory of Sua-Motu jurisdiction in Pakistan, reflecting its dual identity as both a remedial constitutional mechanism and a contested site of judicial overreach. The historical

analysis of Article 184(3) demonstrates that prior to the 26th Constitutional Amendment, Sua-Motu powers were exercised with broad discretion, often positioning the judiciary at the centre of political and constitutional controversies. By contrast, the 26th Amendment sought to recalibrate this jurisdiction through structural safeguards, narrowing its scope and embedding procedural accountability. The implications of these changes must be understood within the broader framework of constitutionalism, judicial independence, and institutional balance. Before the amendment, Sua-Motu jurisdiction was emblematic of judicial activism, enabling the Court to fill governance vacuums and expand access to justice. Landmark interventions in privatization, corruption, and rights-based cases illustrated the judiciary's proactive role in safeguarding public interest. However, this unrestrained exercise often blurred the boundaries between law and politics, undermining the principle of separation of powers. As highlighted in prior scholarship (Munir & Khalid, 2018; Sarwar, Azhar & Baig, 2024), judicial activism under Article 184(3) simultaneously enhanced accountability and destabilized institutional harmony. The 26th Amendment represents an institutional response to these concerns, shifting the judiciary toward restraint and procedural compliance.

The amendment's requirement that Sua-Motu proceedings be initiated only by petitions and adjudicated collectively reflects a significant move toward procedural transparency. This change reduces the unilateral authority of the Chief Justice, a reform consistent with comparative constitutional practices and institutional balance theory. While critics argue that parliamentary influence in judicial appointments risks politicization (ICJ, 2024), the shift from individual to collective adjudication strengthens independence at the level of judicial reasoning by dispersing power. The findings therefore highlight a paradox: independence as an institution may have been diluted by legislative encroachment, but independence in adjudication has arguably been enhanced by procedural reforms.

One of the most critical findings relates to access to justice. Historically, Sua-Motu jurisdiction expanded the reach of the Court to vulnerable groups who lacked resources or formal standing, thereby operationalizing the constitutional promise of equality before the law. Post-amendment, this inclusive character has been curtailed as cases must

now pass through procedural thresholds of petitions and organized litigation. While this ensures predictability, it risks marginalizing diffuse grievances and weakening the judiciary's role as a first responder in human rights crises. This finding resonates with Iqbal (2023), who identified the risk that petition-dependence could deter diffuse public-interest claims in the absence of strong civil society litigants.

From an institutional perspective, the 26th Amendment reflects an attempt to restore equilibrium among the three branches of government. By limiting judicial overreach, it arguably strengthens democratic legitimacy of the executive and legislature, ensuring that the judiciary does not substitute itself for elected institutions. However, the costs of this recalibration are significant. In moments of constitutional crisis, where executive and legislative institutions fail, the judiciary's capacity for swift intervention is now constrained. Thus, while the amendment promotes structural balance, it reduces the elasticity of the constitutional system in responding to governance breakdowns.

The findings suggest that *Suo-Motu* jurisdiction has shifted from a dynamic but unpredictable tool of justice to a more restrained, procedurally bounded mechanism. Whether this transition strengthens or weakens constitutional democracy remains contested. On one hand, the refinement of procedures promotes due process, transparency, and predictability, addressing long-standing critiques of judicial populism and arbitrariness. On the other, the curtailment of judicial discretion risks leaving systemic rights violations unaddressed when political institutions are either complicit or ineffective. The tension between curtailment and refinement underscores the need for further empirical assessment of post-amendment cases to determine whether the balance struck by the amendment genuinely advances constitutionalism.

The study faces certain limitations. First, limited access to unpublished judicial records and internal court deliberations constrains a deeper assessment of how collective adjudication operates in practice. Second, the reliance on reported case law, parliamentary debates, and secondary commentary may not capture the full spectrum of post-amendment judicial trends. Finally, given the evolving nature of jurisprudence under Article 184(3), it is premature to make definitive judgments

on the long-term implications of the 26th Amendment. Future research should include longitudinal studies of post-amendment cases to provide empirical clarity on whether the reforms genuinely advance constitutionalism in Pakistan

The evolution of Article 184(3) illustrates broader trends in Pakistan's constitutional development: the oscillation between judicial activism and judicial restraint, the politicization of institutional reforms, and the struggle to entrench rule of law in fragile democratic structures. The 26th Amendment is not simply a procedural reform but a constitutional moment that reflects competing visions of governance one prioritizing judicial intervention as a safeguard of rights, and the other emphasizing institutional balance and democratic accountability. This study suggests that the future of *Suo-Motu* jurisdiction will depend not only on constitutional text but also on how the judiciary interprets its redefined powers in practice, particularly in cases of human rights and governance failures.

CONCLUSION: This research reveals that *Suo-Motu* jurisdiction in Pakistan has undergone a profound transformation before and after the 26th Constitutional Amendment. Historically, Article 184(3) empowered the Supreme Court to exercise vast discretionary authority, often positioning it as an activist institution intervening in governance crises, corruption scandals, and rights violations. While this judicial assertiveness expanded access to justice for marginalized groups, it also generated institutional imbalance and blurred the separation of powers.

The 26th Amendment of October 2024 restructured this jurisdiction by prohibiting unilateral *Suo-Motu* action, mandating collective decision-making, and introducing appellate review. These reforms curtailed judicial populism and unchecked discretion but simultaneously refined procedures, promoting transparency and predictability. Post-amendment trends indicate a decline in the frequency and scope of *Suo-Motu* cases, shifting the judiciary from a proactive political actor toward a restrained constitutional arbiter. However, access to justice for diffuse or unorganized groups now faces significant procedural barriers.

Contributions to the Field: This study makes two important contributions. First, on a scholarly level, it enriches constitutional and judicial studies in Pakistan by providing a comparative analysis of *Suo-*

Motu jurisdiction across two distinct constitutional phases. It highlights how judicial powers evolve in response to institutional tensions, thereby contributing to broader debates on judicial activism, independence, and constitutionalism in fragile democracies. Second, on a policy level, the findings offer critical insights for future constitutional amendments and judicial reforms. By identifying the paradox of enhanced procedural independence but weakened institutional autonomy, this research provides a foundation for balancing judicial accountability with effective protection of fundamental rights.

Recommendations for Future Research: The evolving nature of Article 184(3) underscores the need for continued inquiry. Future research should focus on three dimensions:

1. **Empirical studies** assessing public trust in the judiciary post-amendment, particularly in terms of perceptions of independence, accessibility, and legitimacy.
2. **Comparative research** with other South Asian jurisdictions, such as India and Bangladesh, where judicial activism and restraint have followed different trajectories, to contextualize Pakistan's reforms in a regional constitutional framework.
3. **Longitudinal studies** examining the long-term institutional impact of the 26th Amendment on the separation of powers, governance stability, and protection of rights.

In conclusion, the 26th Amendment neither wholly diminished nor wholly strengthened the Supreme Court's role; rather, it redefined *Suo-Motu* jurisdiction within a legal system of procedural accountability. The amendment represents a constitutional recalibration that favours institutional balance over judicial populism, yet it also narrows the Court's capacity to act as an immediate guardian of fundamental rights. The enduring question remains whether this shift will cultivate sustainable constitutionalism or risk leaving systemic injustices unaddressed when political institutions falter.

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