**Exercise powers**

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The jurists and legal experts are of the considered opinion that the exercise of suo-motu power is only justifiable as an extraordinary measure to rectify injustices which other institutional structures of the state are incapable of addressing. Such exercise will be beneficial and desirable only if it is employed by the Supreme Court to throw its weight behind traditional institutions to strengthen them. The bottom line is that SC needs to be very discreet in exercising this power. It is significant to point out that Article 184 (3) confers the Suo-motu power on the court and not the CJ as an individual. The Article says “Without prejudice to the provisions of Article 199, the Supreme Court 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.” The rationale of conferring this power on the court as a whole by the constituent assembly in all probability was meant to prevent the misuse of this power by an individual judge. However, the history of suo-motu notices taken reveals that this power has been exercised by successive CJs individually without consulting the other judges against the spirit of the said Article.

[Four rescue workers die due to collapse of factory building](https://www.nation.com.pk/13-Apr-2023/four-rescue-workers-die-due-to-collapse-of-factory-building)

Mr Babar Sattar who is now an honourable judge of the Islamabad High Court used to write for daily The News on political and legal issues. In an article published in that paper on 19 April 2020 in the backdrop of a suo-motu notice taken by CJ Gulzar Ahmed regarding the Covid-19 policy of the PTI regime in which he hurled scathing criticism on the then health Advisor Dr Zafar Mirza observed, “It was not well received for three reasons. One, it brought back haunting memories from the tenures of CJPs Iftikhar Chaudhry and Saqib Nisar who used suo-motu powers to usurp executive authority and subjected those appearing before the SC to ridicule while aggrandizing personal power. Two, with the perch of populism already occupied by the PTI regime, there is no public space for a populist court at this time. And three, with a decade of judicial overreach with no visible benefit accruing to the people in whose name the power is exercised, the need to structure suo-motu power is writ large. CJPs Chaudhry Iftikhar and Nisar did tremendous damage to the majesty of law, to certainty as an ideal of rule of law, to the idea of judges being neutral arbiters of the law and to basic civility during judicial proceedings. Their imperious ways hurt the trichotomy of power in Pakistan, public support for elected institutions and democracy, our jurisprudence and the economy. Article 184(3) vests powers in the SC. Why then do they end up being driven by an incumbent CJP’s beliefs, interests or whims?”

[Committee formed to probe 'undercounting' in big cities during census 2023](https://www.nation.com.pk/13-Apr-2023/committee-formed-to-probe-undercounting-in-big-cities-during-census-2023)

Justices Mansoor Ali Shah and Jamal Mandokhel in their orders in the case concerning dates for elections in Punjab and KP have said, “Court cannot be dependent on the solitary decision of one man. Unbridled power enjoyed by CJP has brought severe criticism and lowered honour and prestige of SC.” Viewed in the backdrop of the foregoing, it is quite evident that all the CJs who exercised suo-motu powers actually vitiated the spirit of Article 184(3). It was incumbent upon the SC to make rules for regulating the exercise of suo-moto power. Qazi Faiz Isa was right on the money to have ordered that all proceedings under Article 184(3) must be suspended till the formulation of rules concerning the use of suo-motu powers. Taking suo-motu notice in regards to the election date in Punjab and the verdict given by the squeezed three-member bench lacks constitutional legitimacy. The verdict itself constitutes a breach of the law i.e. Election Act 2017 which is an enactment of the parliament and whose validity and standing have never been questioned. The contention in the verdict that ECP did not have the power to change the date of elections is absolutely misleading. Section 58 of the Election Act 2017 reads, “Notwithstanding anything contained in section 57, the Commission may, at any time after the issue of the notification under sub-section (1) of that section, make such alterations in the Election Programme announced in that notification for the different stages of the election or may issue a fresh Election Programme as may, in its opinion to be recorded in writing, be necessary for the purposes of this Act.”

[British envoy offers 'all possible help' to overcome economic crisis](https://www.nation.com.pk/13-Apr-2023/british-envoy-offers-all-possible-help-to-overcome-economic-crisis)

That is exactly what the ECP did after briefings by the Ministry of Finance and Defence in regard to financial provisions and the non-availability of security personnel to perform election duty. Article 254 of the constitution covers the action of the ECP in these words “When any act or thing is required by the constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period “ So what the ECP did was in accordance with the law and the constitution. Actually, the judges are guilty of pummelling the Election Act 2017 and ignoring Article 254. Article 224 prescribing a limit of ninety days needs to be read with Article 254 and Section 58 of the Election Act 2017. The verdict, therefore, is a manipulative justice.

Interestingly the SC in its verdict emphasized strictly going by Article 224 (2) which prescribes holding of elections within 90 days after the dissolution of the Assembly but has itself violated it by giving 14 May as the date for the election in Punjab. The assembly was dissolved on 14 January and according to Article 224(2) the elections should have been held by 14 April. Another glaring wrong committed is that while the three-member bench in its delivered judgment clearly said that the order given by the Qazi Faiz Isa bench was not relevant, the CJ immediately after delivering the verdict formed a six-member bench as an after-thought which quashed the order of the bench headed by Qazi Faiz Isa within five minutes raising a myriad of questions about the propriety of the action taken by the CJ. The verdict has not added to the prestige of the court. I am afraid it would have serious political implications. When the courts themselves defy the constitution and law it has consequences. It would have been better for the CJ to have constituted a full court bench to resolve all the contentious issues including the exercise of suo-motu powers.