IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, HACJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Munib Akhtar
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Muhammad Ali Mazhar

SUO MOTU CASE NO.4 OF 2021

In attendance:

Mr. Khalid Javed Khan,
Attorney General for Pakistan.
Mr. Aamir Rehman, Addl. AGP.

Mr. M. Latif Afridi, President SCBAP.
Mr. Khushdil Khan, Vice Chairman, PBC.

Mr. Jehangir Khan Jadoon, ASC.
Mr. Amjad Nazir Bhatti,
President, Press Association of Supreme Court

Dates of hearing: 23, 25 and 26.08.2021.

ORDER

Munib Akhtar, J.: This matter was disposed of by a short order on 26.08.2021 (reported as *In the matter of Suo Motu Case No. 4 of 2021 [No.3]* 2021 SCMR 1612), which was in the following terms:

> "For detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise:
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> 1. It is declared that the invocation/assumption of the suo motu jurisdiction of this Court under Article 184(3) of the Constitution is based on, and shall be guided by, the following principles:
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> a. The Chief Justice of Pakistan is the sole authority by and through whom the said jurisdiction can be, and is to be, invoked/ assumed.
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> b. The Chief Justice may invoke/assume the said jurisdiction in his discretion and shall do so if so requested or recommended by a Bench of the Court.
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> c. No Bench may take any step or make any order (whether in any pending proceedings or otherwise) as would or could constitute exercise of the suo motu jurisdiction (such as, but not limited to, the issuance of

any notice, making any enquiry or summoning any person or authority or any report) unless and until the Chief Justice has invoked/assumed the said jurisdiction.

2. All matters already pending in respect of, or involving, the suo motu jurisdiction of the Court shall, notwithstanding para 1, continue to be heard and disposed of by such Benches as are constituted from time to time by the Chief Justice.

3. In view of the above, the order dated 20.08.2021 stands recalled. SMC No.4 of 2021 and all filings therein shall stand disposed of.

4. The substantive claims made by the Press Association of Supreme Court and others in the application presented in Court on 20.08.2021 shall be placed before the Chief Justice of Pakistan for consideration."

Those reasons are given below.

2. On August 20th, a Friday, the judicial day started with a ceremony: the oath taking of Justice Umar Ata Bandial as the Hon'ble Acting Chief Justice of Pakistan ("HACJ"). The oath was administered by Justice Qazi Faez Isa. That day three Benches held court. The first ("Bench-I"), comprising of three members, was headed by the HACJ. The second ("Bench-II"), comprising of two members, was headed by Justice Qazi Faez Isa. The third ("Bench-III"), comprising of three members, was headed by Justice Ijaz Ul Ahsan. By all accounts, the day proceeded in the normal and ordinary course insofar as the cause list of each Bench was concerned. However, as the day drew to a close, something quite extraordinary—indeed unprecedented—occurred, that triggered a chain of events that has culminated in this judgment.

3. In Bench-II, it appears that the learned Judges had finished with their work as per the cause list but had not yet risen for the day. It was apparently at that moment that a group of journalists/vloggers, who either were already present in the courtroom or entered at that time, came forward and presented a remonstrance—an application of grievances—to the learned senior member of the Bench. The said document, referring to Article 184(3) of the Constitution, set out in some detail their grievances as regards stated serious, persistent and continuing violations of their fundamental rights as such by various agencies and actors, named and unnamed. The remonstrance (herein after the "Application") was signed by five journalists/vloggers, who

included the then present and a former President of the professional body, the Press Association of the Supreme Court (herein after the "Association"). The Application was perused by the learned senior member. It appears that also present in the courtroom was a vlogger who had not signed the Application. It seems that the learned senior member queried from him as to why he was not a signatory. It appears that the vlogger stated that he did not agree with the presentation of the Application. This was apparently for the reason that there was one (or perhaps more) petition(s) under Article 199 of the Constitution pending in the Islamabad High Court, the subject matter of which at least partially overlapped with what was set out in the Application. (In vlogs posted thereafter, this vlogger expressed the view that it was his understanding that the applicant-journalists/vloggers were only interested in presenting their Application to Bench-II, i.e., as headed by the learned senior member thereof.) Be that as it may, in the event a detailed order was made by the learned Bench. The order has since been reported as *In the matter of Suo Motu Case No. 4 of 2021 [No.1]* 2021 SCMR 1602. The last paragraph stated as follows (emphasis in underling supplied):

> "13. The office is directed to number this petition and to array the *Press Association of the Supreme Court* as petitioner No. 1 and the other signatories as petitioner Nos. 2 to 5. And, to array the aforementioned Ministries, FIA, PEMRA, IG Police Islamabad, PTC and PBC as respondents. **Adjourned to 26 August 2021** by or before which date all replies should be filed. Since this Bench of the Supreme Court has taken notice pursuant to Article 184(3) of the Constitution and has heard the applicants at some length let this case be fixed before the same Bench."

4. This order, and especially the portion thereof where emphasis has been supplied, were unprecedented and prima facie flew in the face of both the law and practice of the Court. The office therefore felt it appropriate (in our view quite correctly) to place the matter before the HACJ. A detailed note was put up, which inter alia referred to past precedents and traced in some detail the history and manner in which the suo motu jurisdiction of the Court had hitherto been invoked. The HACJ was pleased to make the following order thereon on 21.08.2021 (emphasis supplied):

> "14. The order of the learned Bench dated 20.08.2021 directing registration of application now numbered as SMC

> No.4 of 2021 takes Suo Motu notice of the said application submitted in the Court room. It orders notice to a number of Federal Government authorities as well as the Law Officers of the Federation and Provinces. The order proceeds to fix a date for next hearing of the matter, namely, 26.08.2021 and further directs that such matter be listed before the same Bench that has passed the order.
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> 15. *This office note has put up a number of orders passed by learned Benches of this Court which demonstrate a clear practice to refer each of the foregoing aspects, namely, notice, date of hearing and composition of Bench to the Chief Justice. A circular dated 19.07.2005 on the subject has also been placed on record.*
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> 16. *The order dated 20.08.2021, prima facie, deviates from the established practice of the Court in respect of invocation of its Suo Motu jurisdiction. Therefore, what action may be taken pursuant to the said order dated 20.08.2021 requires clarity for which it would be appropriate that the matter is addressed on the judicial side*. Accordingly, a larger Bench comprising:
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> Mr. Justice Umar Ata Bandial, HACJ
> Mr. Justice Ijaz ul Ahsan
> Mr. Justice Munib Akhtar
> Mr. Justice Qazi Muhammad Amin Ahmad
> Mr. Justice Muhammad Ali Mazhar
>
> is constituted to hear the matter on Monday 23.08.2021."

5. On August 23rd, the immediately following Monday, when the larger Bench took up the matter, Mr. M. Latif Afridi, the President of the Supreme Court Bar Association of Pakistan sought permission to make some submissions. Permission was granted and after hearing the learned President an order was made, since reported as *In the matter of Suo Motu Case No. 4 of 2021 [No.2]* 2021 SCMR 1609. Notices were directed to be issued to the learned Attorney General for Pakistan, the learned President SCBA, the learned Vice Chairman of the Pakistan Bar Council and learned counsel, if any, who wished to appear on behalf of the journalists/ vloggers who had filed the Application. The order, inter alia, stated as follows (emphasis in underlining supplied):

> "3. It is important that the original constitutional jurisdiction of the Court under Article 184(3) read with its powers under Article 187 of the Constitution of Islamic Republic of Pakistan ('**Constitution'**) is invoked under a procedural scheme that lends credibility, certainty and consistency to the substantive proceedings that follow in the exercise of that jurisdiction. The Court has a discernible settled practice regarding the procedural issue of how Suo Motu motions may be entertained by the Court. In contrast, however, the

> order dated 20.08.2021, *prima facie,* makes a departure from the norms of the applicable procedural practice. Taking into account the distinction between the invocation of the jurisdiction of the Court on the one hand and the exercise thereof on the other, the question arises: How is the Suo Motu jurisdiction of the Court under Article 184(3) of the Constitution to be invoked? In the light of the answer to this question the propriety, manner and extent to which the order dated 20.08.2021 can be implemented by the office is another question that needs to be addressed.
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> ...
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> 5. At the moment, the judicial order dated 20.08.2021 directing notice to and reports from several Federal Government authorities is in the field. On account of the question now before the Court which goes to the root of the jurisdiction, it is inappropriate to implement the said order because that may obscure and unsettle the practice of the Court for invoking its Suo Motu jurisdiction resulting in needless uncertainty and controversy with attendant consequences. Therefore, the resolution of the question raised before this Court at an early date is essential. Accordingly, the parties and the learned Law Officer named above shall come prepared with their submissions on **25.08.2021**. Meanwhile, the order of the learned two Member Bench dated 20.08.2021 shall remain in abeyance."
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> It was also clarified as follows (emphasis supplied):
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> "4. ... However, it must be borne in mind that notwithstanding an important question raised before the Court by the applicant journalists, we are neither in a position nor intend to consider their substantive grievance in the exercise of our Suo Motu jurisdiction at this stage. The only aspect of the case that is presently under our consideration is the manner and procedure whereby the Suo Motu jurisdiction is to be invoked and in particular whether, and if so how, such action may be initiated at the instance or on the recommendation of a learned Bench of this Court."

6. On August 25th, when the matter was taken up, the learned Attorney General led in making submissions. He began with what was called a clarificatory submission. It was submitted that it was being said in some quarters that the Larger Bench was a "monitoring" Bench that had been constituted over and above Bench-II. The learned Attorney General strongly dispelled this impression. It was submitted that the Larger Bench was not in any manner a "monitoring" Bench, but rather an enlarged one to consider the important question (as set out in the order of 23.08.2021) raised by the making of the order of 20.08.2021 by Bench-II. It was submitted that the latter order was not final; it could be recalled or modified at any time. There was no

requirement that the matter initiated in terms of the order of 20.08.2021 had to be heard by the same Bench and, in particular, nothing therein that placed a clog on the power of the Chief Justice (here the HACJ) to constitute a larger Bench for the hearing. Pending proceedings were routinely heard by different Benches as constituted from time to time.

7. We pause to state that in our view the learned Attorney General correctly set out the legal position. As explained in detail in the paras below Benches of this Court are constituted by the Chief Justice and they cannot (and specifically in the context of invoking suo motu the jurisdiction under Article 184(3)) self-constitute or self-propagate or self-perpetuate. As we conclude below, that, with respect, was a fundamental error made by the learned Bench-II in making the order of 20.08.2021, which was in any case not a final order dispositive of anything said therein or done thereby. It was fully within the power of the HACJ to constitute a larger Bench to consider the question raised in para 3 of the order dated 23.08.2021. This Bench is not in any sense or manner a "monitoring" Bench set up over and above the learned Bench-II. It is so held.

8. Continuing with the submissions of the learned Attorney General, it was submitted (relying on a written synopsis placed by him before the Court) that the jurisdiction of the Court under Article 184(3) was invoked through various methods. These were (a) the formal filing of a petition, in compliance with the various procedural and other requirements as set out in the Supreme Court Rules, 1980 ("1980 Rules"), (b) an order by a Bench hearing a matter (i.e., petition, appeal, etc) that it be regarded as one under Article 184(3), (c) a Bench invoking the said jurisdiction in respect of any matter arising from a matter being heard, though distinct and separate from it, (d) the Chief Justice suo motu invoking the jurisdiction under Article 184(3), (e) one or more Judges as such (i.e., not while sitting as a member of a Bench) taking notice of a matter and referring it to the Chief Justice and (f) a singular situation where a Bench suo motu invoked the jurisdiction and did not refer it to the Chief Justice, but the matter was on an office note so brought to the latter's attention and the matter was ordered to be listed separately as a suo motu case (SMC). The

learned Attorney General referred to various examples in this regard, which were placed before us in the paper book, taking us in detail through the same. The learned Attorney General referred to various judgments and further submitted that it was well settled that the Chief Justice was the master of the roster and the constitution of Benches for the hearing of cases was a power that vested solely in him. It was submitted that although the approach of the Court for invoking of the jurisdiction under Article 184(3) showed great flexibility, a Bench constituted for the hearing of cases could not purport to act independently and entertain matters under or with reference to the said Article and hear and decide the same without any reference or recourse to the Chief Justice. This, it was submitted, would not be conducive to the public good and may in fact lead to conflicting decisions and administrative and judicial contradictions. It was also specifically submitted as follows (para VI of the written synopsis):

> "An even more compelling consideration which calls for regulating the procedure for invoking the jurisdiction is that if individual parties or litigants are allowed to pick and choose benches of their preference, this may result in complete chaos which would seriously undermine the system of administration of justice in the country. This may also result in allegations of nepotism and favouritism, which though will invariably be frivolous and unwarranted, yet it will shake the public confidence in the institution of Judiciary."

This was characterized by the learned Attorney General as being, or leading to the possibility of, "forum shopping" which ought to be condemned in no uncertain terms and firmly stamped out. The learned Attorney General concluded by making specific recommendations with regard to the invoking of the suo motu jurisdiction (in, especially, para IX of the written synopsis). He also, at the conclusion of the hearing, drew attention to the position with regard to the Indian Supreme Court and placed before us the relevant extract from the rules of procedure of that Court.

9. The learned Vice Chairman of the Pakistan Bar Council ("PBC") read out the orders of 20.08.2021 and 23.08.2021 and a circular that had been issued in 2005 by the then Chief Justice. Referring to Article 184(3) and the constitution of Benches in terms of Order XI of the 1980 Rules, the learned Vice Chairman

submitted that the learned Bench-II had acted well within the jurisdiction of the Court when it entertained the Application. Such was permissible and not contrary to law. Strong reliance was placed on *Watan Party and others v Federation of Pakistan and others* PLD 2012 SC 292, 327-8. Referring to the circular aforesaid, it was submitted that it duly recognized that a Bench of the Court could invoke suo motu the jurisdiction under Article 184(3). If at all (although that was not accepted) the consideration of the Application and the making of an order on the basis thereof or with reference thereto was a lapse it was only procedural in nature and nothing more. Reliance was placed on *Suo Motu Case No. 17 of 2017* 2019 SCMR 318. Reference was also made to the inherent powers of the Court under O. XXXIII, Rr. 6 and 7 of the 1980 Rules. It was submitted that the order of 20.08.2021 was valid and proper and called for no modification or recall.

10. Learned counsel appearing for one applicant-vlogger (Mr. Aamir Mir) supported the order of 20.08.2021. Learned counsel referred to Article 175(2) and 184(3) and a judgment of this Court reported as *Brother Steel Mills Ltd. and others v Mian Ilyas Miraj and others* PLD 1996 SC 543 at 547. It was submitted that when the order of 20.08.2021 was considered, it was not at all a suo motu invocation of the jurisdiction. Rather, it was simply that the learned Bench-II, on an examination of the Application, considered it a proper matter for consideration and disposal under Article 184(3) and directed the office to register it as such. It may be noted that on a query from the Court, learned counsel made a remarkable statement: that the applicant-vlogger whom he represented had simply received the Application via WhatsApp and had signed it as such. The source from whom the Application was received was not disclosed by learned counsel. The President of the Press Association of Supreme Court filed a statement before the Court which, inter alia, stated that the questions raised were those of law in respect of which he was not in a position to be of assistance. Full confidence was reposed in the Court and all the Judges thereof.

11. The learned President of the Supreme Court Bar Association (“SCBA”), relying on Article 176, submitted that Article 184(3) referred to the “Supreme Court”. It was submitted that all Benches

of the Court were the "Supreme Court" and exercised the various jurisdictions vesting in the Court. Such was also the case with the learned Bench-II when it was presented with the Application, and considered it and made an appropriate order in relation thereto with reference to, and in terms of, Article 184(3). If any matter came to the knowledge of any Bench with reference to Article 184(3) it could formulate an appropriate question in relation thereto and refer the matter to the Chief Justice. The learned President also relied on the cases referred to by the learned Vice Chairman, PBC and submitted that the order of 20.08.2021 by the learned Bench-II was valid and proper. The learned President submitted that the question posed in the order of 23.08.2021 was important and required resolution, but that that ought to be done by the Full Court and prayed that the question be so referred to the whole of the Court and decided accordingly. We may note that the learned President had earlier also made the same request on 23.08.2021.

12. We have heard learned counsel as above and considered the record and case law cited. Before we address the question raised three points may be made. Firstly, we are concerned, in relation to Article 184(3) of the Constitution, with the suo motu invoking of the jurisdiction of this Court. At least some, and probably many, of the observations made in this judgment will be found to apply not merely to that jurisdiction but also to the others that inhere in this Court and even to the jurisdictions of courts at large. This is inevitable. However, strictly speaking, we are concerned with a limited and specific question of law. Secondly, some (and, again, perhaps many) of the observations made may appear to be unqualified and cast in absolute terms. However, rules and principles of law both substantive and procedural, howsoever broadly stated and general they may appear to be, invariably become encrusted in provisos, qualifications, limitations, exceptions and the like. Likewise, the various Articles of the Constitution here considered have been before the Court earlier as well, and a rich, multilayered, nuanced and complex jurisprudence has developed in relation thereto. To set out all of that in relation to what is said in this judgment would be needlessly burdensome. Therefore, the apparent absoluteness of what is said here both in relation to specific Articles of the Constitution and principles of

constitutional law should not mislead. The qualifications, provisos, etc are to be taken as read. Finally, a point of nomenclature. The point in issue—and the question to be addressed here—relates to what is generally referred as the "suo motu jurisdiction of the Court". That, really speaking, is nothing but convenient shorthand for the "suo motu invocation of the jurisdiction of the Court under Article 184(3)". In other words, "suo motu jurisdiction" is not some substantive jurisdiction separate from, or independent of, Article 184(3). Rather, it is but a way of how that jurisdiction is invoked. These expressions are therefore understood to be the same and are used here interchangeably.

13. The precise question before us, set out in para 3 of the order of 23.08.2021, is narrowly shaped and tightly focused. It relates to the judicial process for a certain jurisdiction of this Court. In order to provide the necessary context and analytical framework that process can be thought of as comprising three "categories". By way of a starting point the categories can be set out as follows:

> Firstly, a court must have jurisdiction; secondly, that jurisdiction must be properly invoked; and, thirdly, the jurisdiction must be properly exercised.

It is to be kept in mind that the categorization is sequential. The first category is a *sine qua non* for the other two. And, for jurisdiction to be exercised it must first be invoked. The first category requires that the court must have the legal power to decide (since that, in its essence, is what it means to have jurisdiction) whatever it is that it is called upon to decide. In the common law tradition that, in the vast majority of cases, is a dispute of the sort that is regarded as susceptible to determination by a court of law, cast in adversarial terms between two or more parties. The second category raises, in the present context, questions of "who" and "how", i.e., who can bring a dispute before a court (a question of standing) and the manner in which the dispute is to be so brought (e.g., by filing a plaint or presenting a petition etc). The third category, subject to the first two, is the actual exercise of the power to decide.

14. While we are concerned with the second category it must be kept in mind that it is but one among three. There is also, as we

will see later, a fourth "element" involved, which serves as a link or bridge between the second and third categories, and can be regarded as raising a "how" issue, though of a nature different from that posited above. But, the essence of the matter is contained in the tripartite formulation. Conceptually, each category is distinct and separate from the others and as will be seen it was an absence and loss of clarity in this regard that, with respect, led to error on 20.08.2021. But this does not mean that each category operates independently of the others. There are many instances of linkages between the three. Most importantly, as the jurisdiction continues to be exercised as cases come before the Court (the third category) that can, and does, alter judicial understanding of what the jurisdiction means. That obviously affects the first category, i.e., what it means to "have" jurisdiction. And that can affect who can invoke the jurisdiction and how it can be invoked, i.e., the second category. Likewise, the question whether the court has jurisdiction and/or that the jurisdiction has been properly invoked, if raised (e.g.) by way of an objection or when considering a threshold requirement, can only be resolved by the court exercising jurisdiction. However, even though it may not be possible to describe the relationship between the three categories exclusively in linear terms, the sequencing already referred to is nonetheless an integral aspect of the judicial process. That the relationship is dynamic and interactive (and may even to a certain extent be iterative) ought not to be ignored. But at the same time it must be clearly understood that linkages and "spillovers" do not affect, and certainly cannot destroy or deny, the conceptual categorization into which the judicial process is arranged.

15. It is also important to note that this tripartite arrangement is not simply a matter of merely classificatory convenience. The three categories are a blend of matters substantive and procedural. Certainly, the one with which we are concerned is the one most procedural in nature and operation. But, as we now intend to show, taken as a whole the three categories constitute the very essence of judicial power. This point is important for achieving conceptual clarity, so as to enable the question before us to be properly addressed. For this however a constitutional digression is required, to which we turn.

16. The constitutional doctrine of separation of powers between the three organs of the State, i.e., the legislative, executive and judicial branches is not expressly set out in our Constitution but it is by now well established that it is an important and fundamental aspect of constitutional law. The doctrine infuses and informs constitutional structures, is indispensable for a proper understanding of the organs of governance and is vital for a proper delineation of their functions and interactions, whether in apposition or opposition. In our jurisprudence the doctrine is usually referred to as the trichotomy of powers. It is established by, and attested in, any number of judgments of this Court. Thus, in *Jurists Foundation v Federal Government and others* PLD 2020 SC 1 it was stated to be "a fundamental principle of our constitutional construct" (pg. 40). The Full Court, in *Dr. Mobashir Hassan and others v Federation of Pakistan and others* PLD 2010 SC 265 referred to a number of decisions and set out the doctrine in its traditional form, as follows (pg. 347):

> "It is also to be borne in mind that Constitution envisages the trichotomy of powers amongst three organs of the State, namely the legislature, executive and the judiciary. The legislature is assigned the task of law making, the executive to execute such law and the judiciary to interpret the laws. None of the organs of the State can encroach upon the field of the others."

And in the leading case of *State v Zia-ur-Rehman and others* PLD 1973 SC 49 (herein after "*Ziaur Rehman*") the following general description is to be found (pg. 66, emphasis in original):

> "...in the case of a Government set up under a written Constitution, the functions of the State are distributed amongst the various State functionaries and their respective powers defined by the Constitution. The normal scheme under such a system, with which we are familiar, is to have a *trichotomy* of powers between the executive, the Legislature and the judiciary. But each of these organs may itself be fashioned in a variety of different shapes and forms. Thus the Legislature may be unicameral or bicameral; the legislative subjects may be divided between the federating units and the federation in a federal system or even the legislative power may be divided between the executive and the Legislature as in our present system. The executive, Legislature takes the Presidential or the Parliamentary form. The judiciary also may consist of various types and grades of Courts with the highest at the apex either as an ultimate Court of Appeal or a Court of Cassation. There may also be other administrative tribunals outside the judicial pyramid.

> In all such cases, it will also be the function of the constitution to define the functions of each organ or each branch of an organ, as also specify the territories in which, the subjects in respect of which and sometimes even the circumstances in which these functions will be exercised by each of these organs or sub-organs. Limitations would, therefore, be inherent under such a system so that one organ or sub-organ may not encroach upon the legitimate field of the other. Thus, under a written Constitution, the Legislature of a federal unit will not be able to legislate in respect of a subject which is within the field of the federal Legislature, nor will a federal Legislature be able to legislate upon a subject which is within the exclusive field of the Legislature of the federating units. It cannot, therefore, be said that a Legislature, under a written Constitution, possesses the same powers of "omnipotence" as the British Parliament. Its powers have necessarily to be derived from, and to be circumscribed within, the four corners of the written Constitution."

17. The position under our Constitution—i.e., where the doctrine is not expressly set out in the text but is nonetheless firmly entrenched in, indeed is deeply woven into the very fabric of, constitutional law—may be contrasted with, e.g., the US Constitution. There, as is well known, the doctrine is expressly set out in the text. Thus, Article I expressly vests "all" legislative powers of the United States in Congress, Article II vests executive power in the President and Article III vests the "judicial Power" in the Supreme Court and such "inferior" courts as may be created by Congress. The point is reinforced by the adoption of the Presidential form of government. Our Constitution, in contrast, sets up a polity that is generally described as a Westminster style parliamentary democracy. Here the division between the executive and legislative branches is much less rigid, with accompanying overlapping. Thus, to take but one example at the federal level (the provincial position being equivalent), our Constitution allows for the promulgation of Ordinances by the executive branch. Article 89(2) expressly provides that an Ordinance is to have the same force and effect as an Act of Parliament, and Article 260(2) states that whenever the Constitution speaks of an Act of Parliament or a federal law, that is to be taken to include an Ordinance. However, the distinction between these branches on the one hand, and the judicial branch on the other, is much more rigid and strictly enforced. This is so, among other reasons, in order to ensure and protect the vital constitutional principles of the independence of

the judiciary and access to justice, which are now regarded as fundamental rights in and of themselves. The intermingling and overlapping of executive and legislative powers is thus to be contrasted with their rigid separateness from the judicial power.

18. While the Constitution does not, as such, use the term "judicial power" it does say something, in Article 175, of the judicial branch in general terms. Clause (1) provides that there shall be a Supreme Court, a High Court for each Province and for the Islamabad Capital Territory and "such other courts as may be established by law". Clause (2) provides as follows: "No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law." Cast though it is in negative terms, this provision ought not, in our view, be read in minimalist and literalist terms notwithstanding, with respect, some observations in the case law that might suggest otherwise. For one thing, this may seriously jeopardize or compromise the independence of the judiciary and result in a substantial erosion (and even denial) of access to justice. Further, such an approach would, among other consequences, divest the courts of jurisdiction that is regarded as inherent. To take but one example, it is well established that s. 151 CPC does not invest the court with any powers but only saves its inherent powers. A literal and minimalist reading of Article 175(2) may cast doubt on this (and equivalent) provisions, which would clearly be incorrect. In our view, the conferring of jurisdiction on courts by the Constitution and the law (and since the law must ultimately find repose in the Constitution, the former in particular) does not mean only such as is expressly so conferred. It includes also, but is not limited to, all such jurisdiction as by intendment or necessary implication (especially including, on the constitutional plane, such as may be required to give full expression to constitutional provisions and principles) must be held to vest or inhere in courts of law. Perhaps a better appreciation of Article 175(2) can be obtained by inverting its language: "all courts shall have only such jurisdiction as is or may be conferred on them by the Constitution or by or under any law". When so viewed, it becomes clearer that Article 175 does tell us, albeit indirectly, something about the "judicial power" of the State. On a combined reading of clauses (1) and (2) it can be concluded that, by application of the doctrine of separation of powers, the

judicial power does vest in the judiciary but that the actual allocation of this power among the various components of the judicial branch (i.e., the jurisdiction of a particular court) is to be as is conferred (either directly or otherwise) by the Constitution or law. Clause (3), in requiring the separation of the judiciary from the executive, provides further confirmation that the judicial power vests in the judicial branch. We pause here to note the Constitution also recognizes, in addition to Courts of law, the existence and jurisdiction of what are called Administrative Courts and Tribunals. This is not only under Articles 212 and 225 but also in terms of entry No. 14 of the Federal Legislative List (and a corresponding legislative competence that, though not enumerated, is available also to the Provinces). Quite how the Constitution seeks to establish and balance the interaction and interplay between Court on the one hand and Tribunals on the other in relation to judicial power is a matter not before us and hence outside the scope of what is said here.

19. The distinction between judicial power on the one hand and jurisdiction on the other was also noted in *Ziaur Rehman* in the following terms by the learned Chief Justice, who gave the judgment of the Court (pp. 69-70, emphasis in original):

> "... I should make it clear that I am making a distinction between "judicial power" and "jurisdiction". In a system where there is a *trichotomy* of sovereign powers, then *ex necessitate rei* from the very nature of things the judicial power must be vested in the judiciary. But what is this judicial power. "Judicial Power" has been defined in the Corpus Juris Secundum, Vol. XVI, Paragraph 144, as follows:-
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> > "The judiciary or judicial department is an independent and equal coordinate branch of Government, and is that branch thereof which is intended to interpret, construe, and apply the law, or that department of Government which is charged with the declaration of what the law is, and its construction, so far as it is written law."
>
> This power, it is said, is inherent in the judiciary by reason of the system of division of powers itself under which, as Chief Justice Marshall put it, "the Legislature makes, the executive executes, and the judiciary construes, the law." Thus, the determination of what the existing law is in relation to something already done or happened is the function of the judiciary while the pre determination of what the law shall be for the regulation of all future cases falling under its provisions is the function of the Legislature.

> It may well be asked at this stage as to what is meant by "jurisdiction"? How does it differ from "judicial power"? Apart from setting up the organs the Constitution may well provide for a great many other things, such as, the subjects in respect of which that power may be exercised and the manner of, the exercise of that power. Thus it may provide that the Courts set up will exercise revisional or appellate powers or only act as a Court of [Cassation] or only decide constitutional issues. It may demarcate the territories in which a particular Court shall function and over which its Writs shall run. It may specify the persons in respect of whom the judicial power to hear and determine will be exerciseable. These are all matters which are commonly comprised in what is called the jurisdiction of the Court. It expresses the concept of the particular *res* or subject manner over which the judicial power is to be exercised and the manner of its exercise. Jurisdiction is, therefore, a right to adjudicate concerning a particular subject-matter in a given case, as also the authority to exercise in a particular manner the judicial power vested in the Court."

20. Thus, on the constitutional plane "jurisdiction" as used in Article 175(2) refers to or indicates that part of the judicial power that is allocated to a particular court. To the crucial question, what is meant by "judicial power", one answer has been given in *Ziaur Rehman* in the passages just extracted above. However, with respect, it is only a partial answer. It accords with the traditional description of the trichotomy of powers, which has also been noted above. It no doubt sufficed for purposes of the issues raised by the facts and circumstances of the appeals that were before the Court. It is also pertinent to note that the extract taken in *Ziaur Rehman* from *Corpus Juris Secundum*, Vol. 16, §144, is from the commentary to that section. The section contains, in its opening paragraph the following statement of the law (emphasis supplied):

> "The term "judicial power" as employed to designate one of the three great branches or departments in which the powers of government are divided may be broadly defined as the *power to hear and determine* those matters which affect life, liberty, or property, and the judiciary, or judicial department of the government as that branch thereof which is intended to interpret, construe, and apply the law."

The question with which we have to contend is different from the issues before the Court in *Ziaur Rehman* and necessitates a deeper analysis, at a more fundamental level. This requires us, for reasons that will become clear shortly, to take a look at the Australian Constitution.

21. Now, the constitution just mentioned, like the US Constitution, provides expressly for the separation of powers. Section 1 vests the legislative power of the Commonwealth in the Federal Parliament and s. 61 vests the executive power in the Queen (exercisable by the Governor-General acting on the (binding) advice of the Federal Cabinet). Most relevantly for our purposes s. 71 (found in Chapter III of the Constitution) vests the "judicial power" of the Commonwealth in a "Federal Supreme Court to be called the High Court of Australia", such other federal courts as may be created and also other courts as may be invested with the federal judicial power, in both instances by Parliament. However, like Pakistan and unlike the position in the United States, the polity set up by the Australian Constitution is also a Westminster style parliamentary democracy (also referred to as the cabinet form of government). What that means in the context of the doctrine of separation of powers was explained by the High Court of Australia in *Wilson v Minister for Aboriginal and Islander Affairs* (1996) 189 CLR 1, [1996] HCA 18 as follows (internal citations in this and other judgments quoted below are omitted):

> "10. ... The functions of the judicial branch are constitutionally separated from the functions of the Legislature and the Executive - the political branches of government: "The Constitution of the Commonwealth is based upon a separation of the functions of government, and the powers which it confers are divided into three classes - legislative, executive and judicial". In each branch of government, its proper powers are vested: ss 1, 61 and 71. The Constitution reflects the broad principle that, subject to the Westminster system of responsible government, the powers in each category - whose character is determined according to traditional British conceptions - are vested in and are to be exercised by separate organs of government. The functions of government are not separated because the powers of one branch could not be exercised effectively by the repository of the powers of another branch. To the contrary, the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which the powers are reposed.
>
> 11. Harrison Moore wrote that under the Australian Constitution there was, between legislative and executive power on the one hand and judicial power on the other, "a great cleavage". The function of the federal judicial branch is the quelling of justiciable controversies.... The institutional separation of the judicial power assists the public perception, central to the system of government as a whole,

> that these controversies have been quelled by judges acting independently of either of the other branches of government.
>
> 12. The separation of the judicial function from the other functions of government advances two constitutional objectives: the guarantee of liberty and, to that end, the independence of Ch III judges....
>
> 13. The separation of the judiciary is no mere theoretical construct. Blackstone rightly perceived that liberty is not secured merely by the creation of separate institutions, some judicial and some political, but also by separating the judges who constitute the judicial institutions from those who perform executive and legislative functions....
>
> 14. The separation of judicial function from the political functions of government is a further constitutional imperative that is designed to achieve the same end, not only by avoiding the occasions when political influence might affect judicial independence but by proscribing occasions that might sap public confidence in the independence of the Judiciary. That independence is especially important in a federal system...."

The Privy Council emphasized the importance of the independence of the judiciary in *Attorney-General (Cth) v The Queen* [1957] 2 All ER 45, [1957] UKPC 4 (also known as the *Boilermakers'* case):

> "...in a federal system the absolute independence of the judiciary is the bulwark of the constitution against encroachment whether by the legislature or by the executive. To vest in the same body executive and judicial power is to remove a vital constitutional safeguard."

The foregoing observations well apply, mutatis mutandis, to the position under our Constitution to the relationship and interaction between the executive and legislative branches on the one hand and the judicial branch on the other.

22. It will be seen from the foregoing that, notwithstanding the express enunciation of the doctrine of separation of powers in the Australian Constitution and the absence of such textual statements in ours, the actual position under the two constitutions is not dissimilar. It follows that what the High Court of Australia has said of the meaning of "judicial power" in terms of s. 71 can be usefully applied to what that means in relation to our Constitution. And this brings us directly to the nub of this constitutional digression: that the tripartite categorization of the judicial process

described earlier is not a matter of mere procedure; it is part of the very essence of the judicial power.

23. In the early case of *Huddart, Parker and Co. v Moorehead* (1909) 8 CLR 330, [1909] HCA 36, Griffith, CJ formulated a definition of "judicial power" that has proved enduring and is to this day the leading statement of law in Australia. The learned Chief Justice defined the expression as follows (at pg. 357):

> "...I am of opinion that the words "judicial power" as used in sec. 71 of the *Constitution* mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

The Privy Council has at least twice paid tribute to this formulation. In *Shell Company of Australia Ltd. v. Federal Commissioner of Taxation* [1931] AC 275, [1930] UKPC 97, the formulation was set out *in extenso* and described as "one of the best definitions". And in the *Boilermakers'* case (supra) it was called a "classic and widely accepted" definition. The High Court itself has regarded it as seminal. In *Private R v Cowen* [2020] HCA 31, Edelman J in his concurring judgment recalled the many earlier decisions where Griffith, CJ's formulation was described as "a classic statement of the characteristics of judicial authority" and (echoing the Privy Council) "one of the best definitions of judicial power" (see para. 172, and the authorities gathered in fn 296 and 297).

24. The definition put forward by Griffiths, CJ has also found mention in our case law, albeit indirectly and as part of a general consideration of Australian decisions as to the meaning of judicial power: see *Dr. Mubashir Hassan v Federation of Pakistan* PLD 2010 SC 265 at 431 (para 132) and *District Bar Association Rawalpindi v Federation of Pakistan* PLD 2015 SC 401 at 893 (judgment of Mian Saqib Nisar, J. (as his Lordship then was) at para. 180). It has also been considered and applied in other common law jurisdictions. In India it has been cited many times, e.g., in *Dr. Subramanian Swamy v Arun Shourie* (2014) 12 SCC 344, where among others the earlier decision of *Bharat Bank Ltd. v. Employees of the Bharat*

Bank AIR 1950 SC 188 was referred to. In the latter decision, Mahajan, J in his concurring judgment called Griffith, CJ's formulation as the "best definition" on "high authority". In Ireland, it has been cited in *Akpekpe v The Medical Council and others* [2013] IEHC 38, [2014] 3 IR 420, where the earlier "landmark" judgment of *M v The Medical Council* [1984] 1 IR 485 was relied upon, in which the "*Huddart Parker*" principles were expressly adopted. In Sri Lanka, it was cited, among other cases, in *Farooq v Raymond and others* [1996] LKSC 5, (1996) 1 Sri LR 217, and in Canada one aspect of it was applied by the Supreme Court in *Dupont v Inglis* [1958] SCR 535.

25. The foregoing survey of multi-jurisdictional authorities shows that Griffith, CJ's formulation has stood the test of time and is regarded as virtually a judicial definition, and certainly as an authoritative statement as to the legal meaning of judicial power. It is not of course to be regarded as the absolute last word, as the ins and outs of the Australian jurisprudence itself show. For example, in *R v Davison* [1954] HCA 46, (1954) 90 CLR 353 it was said that "[m]any attempts have been made to define judicial power, but it has never been found possible to frame a definition that is at once exclusive and exhaustive", and in *Attorney General (Cth) v Alinta Ltd.* [2008] HCA 2 Hayne J said (at [93]) that "no single combination of necessary or sufficient factors identifies what is judicial power". Even the Privy Council, despite the tributes noted above, did say in *Labour Relations Board of Saskatchewan v John East Iron Works Ltd.* [1948] UKPC 75, [1949] AC 134 (an appeal from Canada) as follows:

> "Without attempting to give a comprehensive definition of judicial power, they accept the view that its broad features are accurately stated in that part of the judgment of Griffith C.J. in *Huddart, Parker & Co. Pty. Ltd. v. Moorehead* (1909) 8 CLR, at p 357, which was approved by this Board in *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation* (1931) AC 275. Nor do they doubt, as was pointed out in the latter case, that there are many positive features which are essential to the existence of judicial power, yet by themselves are not conclusive of it, or that any combination of such features will fail to establish a judicial power if, as is a common characteristic of so-called administrative tribunals, the ultimate decision may be determined not merely by the application of legal principles to ascertained facts but by considerations of policy also."

Notwithstanding the foregoing, there can be no doubt that Griffith, CJ's formulation certainly captures the essence of the concept and, in our view, illumines very well the nature of judicial power under, and in relation to, our Constitution. We may also note that the description of judicial power given in the opening paragraph of § 144 of Vol. 16 of the *Corpus Juris Secundum*, noted above (see para 20), accords with Griffith, CJ's formulation inasmuch as it likewise emphasizes that the essence of the power is to "hear and determine" matters that "affect life, liberty, or property". Indeed, these three categories are found verbatim in what was said by Griffith, CJ.

26. For present purposes, our immediate interest in Griffith, CJ's formulation is that the tripartite categorization of the judicial process noted above can be clearly discerned in it. The formulation comprises of two sentences. The first sentence ("the *power* which every sovereign authority [i.e., courts which exercise this power in terms of the doctrine of separation of powers] must of necessity *have* to decide controversies...") is equivalent to the first category, of the requirement that the court must have jurisdiction to decide whatever it is that it is called upon to decide. The second sentence encapsulates the second and third categories. This sentence may be recast as follows: "*The exercise of this power does not begin* until [a court] is *called upon to take action*". The apparent reversal of the two categories is of course merely a textual device; the sequence is established by the bridge provided by "until". The tripartite categorization thus lies at the heart of judicial power, as an integral part thereof. Conceptual clarity with regard thereto, and careful adherence to the sequencing, are not merely an aid to better understanding; they are essential for a proper application of the judicial power itself.

27. Griffith CJ's formulation was, as is to be expected, cast in orthodox, even classical terms squarely in line with the common law tradition. There must be a dispute ("controversy") relating to legal rights or claims, disputants (whether all in the private sphere or involving both the public and private spheres), one or more claimants who come knocking at the door of the court (calling upon it to take action) and an exercise of judicial power (jurisdiction) by the court to resolve the dispute. This traditional

approach works well enough in the vast majority of cases and the tripartite categorization has been set out along similar lines. But, things have moved on since 1909 and we have to address the suo motu jurisdiction of this Court under Article 184(3), a late twentieth century development that (if we may respectfully conjecture) would perhaps have baffled Griffiths, CJ and may even have been alien to him. But, however it might have fared with the learned Chief Justice, there can now be no gainsaying that the suo motu jurisdiction is an expression of the power that vests in the judicial branch, and is a jurisdiction that stands allocated to this Court alone in terms of Article 184(3). The question therefore becomes as to how Griffith CJ's formulation needs to be adapted and restated in order to attain conceptual clarity with regard to the tripartite categorization, specifically in the context of the suo motu jurisdiction. To this we therefore turn.

28. Viewed analytically, the adaptation can be regarded as being articulated in two "modes", though three are given here, with the first serving as a point of comparison and departure. The "modes" are presented in a form suited for analytical purposes, and that does not necessarily track the case law chronologically. The "modes" did not develop linearly, neatly following one from the other in the sequence set out below. In actuality they emerged in a manner best described as interactive, iterative and interdependent. Nor are the "modes" exclusive in the sense that the existence of one precludes the others. The law, as it has developed, allows all to co-exist. However, the aim of the present exercise remains, as always, to attain conceptual clarity. The first "mode" of Article 184(3) is in substance no different from Griffith CJ's formulation. For, this involves one or more petitioners formally filing a petition under the provision, that complies with all procedural requirements (such as are, inter alia, set out in Order XXV of the 1980 Rules) and in which the former claim (against identified/ specified respondents) a denial, abridgement or curtailment of, or interference with, one or more fundamental rights that are both personal to them (i.e., inhere directly, immediately and specifically, though not necessarily exclusively, in the claimants) and also raise questions of public importance with reference to their enforcement. Such petitions are eventually (after going through the normal processes of the office) fixed for hearing and disposal before

Benches of the Court as constituted from time to time by the Chief Justice, i.e., for the exercise of the jurisdiction conferred by Article 184(3). As is clear from this brief description, the entire matter moves from start to finish along orthodox lines. In principle, in this "mode" the Court is a passive recipient. It springs into action (as it were) only once, and when, called upon to act by claimants, by (and on) presentation of their petition and then resolving the dispute under Article 184(3) in adversarial terms. In practice, as a result of experience with the other "modes" discussed below, matters have developed along somewhat different lines. However, this aspect need not detain us here.

29. In the second "mode" (i.e., the first requiring adaptation of Griffith CJ's formulation), the Court's evolving understanding of Article 184(3) caused its attention to focus more tightly (and in a sense perhaps even exclusively) on what this provision enables it to do, namely, enforce fundamental rights (subject to the requirement that a question of public importance be involved). This involves a shift in how the jurisdiction is viewed: not so much (or only) as a power to decide a dispute in terms as outlined in the first "mode" (important though that certainly is) but rather as a constitutional duty to enforce fundamental rights, in particular of those segments of society as are perceived to be marginalized, disempowered or disadvantaged, especially including those who can be regarded, in that powerfully evocative phrase from a bygone era, as "the wretched of the earth". Issues relating to minorities are another area of concern. But not only that. In this changed perception of the Court's function, the jurisdiction is also regarded as a duty to "cleanse" the constitutional structures, organs and institutions and stand guard over them. The constitutional duty so conceived may extend not only to identified or identifiable groups but even, more diffusely, simply to the nation as a whole. Clearly, this shift from power to duty alters perceptions as to the nature of the jurisdiction that the Court "has" (i.e., the first category of the tripartite formulation). It states the jurisdiction much more expansively, inclusive as it now is of both a power and a duty, with focus shifting (some might say decisively) from the former to the latter. In terms of Griffith, CJ's formulation the Court may not now (especially when fulfilling its perceived duty) be seen as deciding a dispute *stricto sensu*, but rather, more broadly, as resolving a

"controversy" with regard to the enforcement of fundamental rights. This adaptation, while necessary to accommodate the more diffuse perception of what it is that the Court can do under Article 184(3), is nonetheless within the scope of any modern understanding of what the learned Chief Justice said in the first sentence of his description of the judicial power.

30. This change in perception also, among other things, inclines the Court to adopt a more activist stance. After all, if the Court has a duty to perform under Article 184(3), and one that is set on a high (even exalted) constitutional pedestal, it cannot (as it were) just sit around and wait for a case to drop in its docket that is not merely a dispute *stricto sensu* but also has aspects and features that comport with said duty. But the activist approach so engendered requires a rethinking of the second category of the tripartite formulation. Who it is that can now invoke the jurisdiction of the Court (i.e., call upon it to take action) and how that can be done? The changing perceptions of the second "mode" require a loosening of standing requirements and the manner in which the matter can be raised. And that is, in fact, what happened. Thus, in the case cited by the learned Vice Chairman of the PBC, *Watan Party and others v Federation of Pakistan and others* PLD 2012 SC 292, petitions were formally filed under Article 184(3) raising issues said to be of public importance and involving enforcement of fundamental rights which did not, as such, involve directly, immediately and specifically any grievance or claim personal to the petitioners; rather, they involved what might be called the fundamental rights of the nation at large. The issue of maintainability (which was raised by the Court itself: see at pg. 309, para 8) was answered in the affirmative, in terms of observations made, inter alia, at pp. 327-8 (para 35) (which were relied upon by the learned Vice Chairman). It is to be kept in mind that this was not a case of suo motu jurisdiction. Rather, it was one that, in our view, constitutes an important milestone in the shaping and crystallization of the second "mode". In this "mode" then the person(s) who raise the matter under Article 184(3) (i.e., call upon the Court to take action) need not be claimants or disputants *stricto sensu*, although of course they can certainly be that as well. The petitioners can even be only informants, simply laying certain facts before the Court as are regarded by them to

involve questions of public importance for the enforcement of fundamental rights of an identified or identifiable group (not including the petitioners) or even, much more generally, of the nation as a whole. Accompanying this loosening of the standing requirement is also a relaxation of procedural requirements as to how the matter is presented (but it is to be kept in mind that the matter must still be presented formally in, or at least pass through, the office). These adaptations, reflecting as they do the idea the Court is now performing a constitutional duty, also mean that the Court is not now to be regarded as proceeding only in adversarial terms; there is a shift to what is called the inquisitorial mode. As in the first "mode", the matters that are to be regarded as falling in the second "mode" are placed for hearing and disposal before Benches of the Court constituted from time to time by the Chief Justice for the exercise of the jurisdiction.

31. This brings us to the third "mode" (i.e., the second adaptation to Griffith CJ's formulation), which involves the suo motu jurisdiction. Here, the view as regards the first category of the tripartite formulation—i.e., what is the nature of the jurisdiction that the Court has—remains the same as in the second "mode". Indeed, if anything there is an intensification of the perception that Article 184(3) imposes a constitutional duty, and hence a strengthening of the activist stance and a deepening of the inquisitorial approach. Concomitantly, there are changes in thinking as to the exercise of the jurisdiction (i.e., the third category). The real change however is as regards the second category, the invocation of the jurisdiction—and this is of course the very question with which we are confronted. The invoking of the jurisdiction suo motu is, in essence, recognition that what is crucial is the information (i.e., the set of facts, howsoever briefly or sketchily articulated) that constitutes the basis on which the jurisdiction is to be exercised. As is clear from the second "mode" the focus has shifted from the source of the information to the information itself. Now, issues, if any, regarding the source in a sense become almost wholly eclipsed. It will be seen that in the first and second "modes", the source is external to the institution. (It may be noted that we have deliberately used the term "institution" and not "Court".) In the first "mode" the source is a petitioner who is also directly, immediately and specifically a

disputant/claimant. In the second "mode" the rules of standing have been relaxed to the point that the petitioner need only be an informant and nothing else. Yet, in both "modes" there is formally someone who stands outside the institution. The third "mode" is recognition that there need not be a petitioner at all as long as the information is, or can become, available. However, there must still be someone who brings forth the information. For, the requirement that the jurisdiction has to be invoked (the second category), i.e., that the Court must be called upon by someone to take action (in terms of Griffith CJ's formulation) remains: it is, after all, part of the essence of the judicial power. Who then is now to be that someone? To this there can be only one answer: that someone must be internal to the institution. Of course, the "someone" (to whom we turn in a moment) would inevitably have some external source for the information, e.g., a newspaper report or a complaint or letter (anonymous or otherwise) or some other basis for the relevant facts. But now, and this is the crucial difference from the other two "modes", there is no petitioner as such. It is someone from within the institution itself who invokes, i.e., calls upon the Court to exercise, the jurisdiction under Article 184(3).

32. Who can that "someone" be? In our view, realistically the following possibilities present themselves:

a. it can be a Bench of the Court when acting judicially as such; or

b. it can be one or more Judges as such, and here two sub-possibilities exist: (i) it can be any one of the Judges; or (ii) the Chief Justice alone;

It will be seen that these possibilities are internal; one involves the Court exercising jurisdiction as such and the other the institution, i.e., either a Judge (which would include the Chief Justice) as such or the Chief Justice alone. It now remains to be determined which of these possibilities is conceptually viable and constitutionally permissible. We proceed *seriatim*.

33. In order to consider whether a Bench of the Court when acting judicially as such can invoke the suo motu jurisdiction, we need to consider the constitution of Benches and the allocation of

work whereby the Benches exercise the jurisdiction of the Court. This is indeed the fourth "element" which was alluded to in para 14 above, which serves as the link or bridge between the second and third categories of the tripartite formulation. For, as is well known, in the ordinary course this Court does not sit *en banc* (as does, e.g., the US Supreme Court) but in Benches. And the Benches do not, and cannot, self-constitute or, once constituted, self-propagate or self–perpetuate. Rather, it is settled law that it is the Chief Justice alone who is the master of the roster and who, from time to time, constitutes Benches for the exercise of the various jurisdictions of the Court. This applies (to take the language of Order XI of the 1980 Rules) to "every cause, appeal or matter" to be heard and disposed of by the Court. Now, the Benches constituted by the Chief Justice are, each of them, the Court when they are so exercising the various jurisdictions that inhere in the Court. However, even here there are limitations and qualifications. The most important for present purposes is that a Bench cannot self-select the causes, appeals or matters that are to be taken up and decided by it. It cannot pick and choose whichever case it wants from those on the docket. That too, ultimately, is within the power of the Chief Justice. In everyday terms, as per current practice, the Chief Justice constitutes two- and three-member Benches on a weekly basis and a cause list is issued which earmarks the cases which are to go before each Bench. Special benches (including those comprising of a larger number of Judges than just indicated) may also be constituted from time to time for a variety of different reasons, for whom, again, a cause list is issued. Now, what are those cases? *They are the ones in which the jurisdiction of the Court has already been invoked*. The exercise of the jurisdictions that inhere in the Court is therefore controlled and regulated by (among others) the following factors, as relevant for present purposes. Firstly, it can only be exercised by Benches duly constituted by the Chief Justice. Secondly, the Benches can only take up such cases as are listed before them and cannot self-select. Thirdly, the cases that are listed before the Benches are those where the jurisdiction of the Court has already been invoked. In other words, the constitution

(and existence) of Benches presupposes the existence of causes, appeals or matters in relation to which the Benches will exercise the jurisdictions of the Court. Conceptually, the two are distinct, separate and independent one from the other. These two aspects of course relate to nothing other than the third and second categories, respectively, of the tripartite formulation.

34. It follows from the foregoing that the Benches are constituted only for the purposes of exercising the jurisdictions of the Court in relation to what is already on the docket. Can such a Bench invoke suo motu the jurisdiction of the Court under Article 184(3)? In our view the answer has to be in the negative. For a Bench, constituted as above, to be able to do so would mean that a Bench can both self-constitute and self-propagate. But that is neither possible nor permissible. In such a situation, the second and third categories of the tripartite formulation would collapse, and merge to become one. That would be absolutely counter to the essence of the judicial power. Furthermore, the invoking of the jurisdiction suo motu, i.e., the calling upon the Court to take action, brings forth a fresh or new "controversy" (i.e., cause or matter) to be decided by the Court. Can a Bench, that cannot self-select cases for its consideration even from the existing docket, add a fresh cause thereto? The question, surely, answers itself. Put differently, if a Bench constituted as above suo motu invokes the jurisdiction of the Court in relation to any matter, then *in respect thereof* it would have self-constituted. And if it requires that the matter be fixed before it (and, explicitly or implicitly, before it alone), then *in respect thereof* the Bench would have self-propagated and self-perpetuated.

35. Our conclusion therefore is that the first possibility identified in para 32 above is both conceptually non-viable and constitutionally impermissible, being in negation and violation of the judicial power itself, as encapsulated in Griffith CJ's description and set out in terms of the tripartite formulation.

36. We turn to the second possibility. Can the "someone" within the institution, who can invoke suo motu the jurisdiction of the Court under Article 184(3), be any one (or more) of the Judges, or can it be the Chief Justice alone? It is of course not in doubt that

the Chief Justice can invoke the jurisdiction suo motu. The innumerable times that Chief Justices have done so, and continue so to do, suffices to establish this. The only question therefore is whether, in addition to the Chief Justice, any Judge or Judges as such may do so. As will be seen below, while there have been some examples where the jurisdiction was invoked suo motu at the instance of an individual Judge other than the Chief Justice, there is not any consistent or sustained practice in this regard. Now, the learned Attorney General, at the conclusion of his submissions, drew attention to the position in respect to the Supreme Court of India. There, applications for the enforcement of fundamental rights under Article 32 of the Indian Constitution are dealt with in Order 38 of their Supreme Court Rules, 2013. This Order is divided into various parts, the last of which (comprising of Rule 12) relates to "public interest litigation" (or PIL as it is known). This Rule provides in its sub-rule (1) as follows:

> "A Public Interest Litigation Petition may commence in any of the following manners:
>
> (a) as a *suo motu* petition in pursuance of the order of the Chief Justice or Judge of the Court.
>
> (b) in pursuance of an order of the Chief Justice or a Judge nominated by the Chief Justice on a letter or representation.
>
> (c) by an order of the Court to treat a petition as a Public Interest Litigation Petition.
>
> (d) by presentation of a petition in the Court."

Thus, in India it seems that, as expressly provided in the rules themselves, the answer to the possibility now under consideration would be that the jurisdiction can be invoked suo motu by any of the Judges of the institution. However, it is interesting to note that the suo motu label is used exclusively to the situation where the source of the information is the Judge himself (clause (a)). If the source of the information is "external" to the Judge, more specifically being a letter or representation (clause (b)), then the PIL petition can only commence on the order of the Chief Justice or a Judge nominated in this regard by the former. As should be clear from the discussion above, the situation envisaged in clause (b) would here be regarded as more flexible. It could, depending on how and by whom the letter or representation

is received and dealt with, be regarded as falling in either the second or the third of the "modes" identified above.

37. Looking at the matter conceptually, and with all due respect to the position in India, in our view it is the Chief Justice alone who is that "someone" within the institution who can suo motu invoke the jurisdiction of the Court under Article 184(3). The position of the office of the Chief Justice, in particular vis-à-vis the other Judges, is complex and perhaps ultimately not susceptible to what might be called "black letter" enunciation. For present purposes, two contrasting perspectives are relevant. One is where the Chief Justice is a member of a Bench constituted as such, to act (i.e., exercise jurisdiction) in terms as described above. Here (subject to what is said below) he is one among equals, this being without prejudice to the special responsibilities that fall on him (and the deference which is his due) as the senior member of the Bench (though these are, in substance but not in entirety, the same as to those that fall on any Judge who is the senior member of any Bench so constituted). The other is in relation to other responsibilities, duties and powers, especially but by no means exclusively as regards administrative matters, which inhere in the office and are exclusive to the Chief Justice. One such has already been noted above, i.e., his position as the master of the roster. The office of the Chief Justice is, in non-judicial settings, the repository of important functions and powers, many of which of course impact directly on judicial powers and functions also. These functions, powers and responsibilities are not susceptible to precise and exhaustive delineation. It is an aspect of the common law tradition that many have accrued to the office over time, and not in the same manner or to like extent in all common law jurisdictions. Different and divergent paths are available, which can and have been taken. All may be conceptually viable and yet, in the peculiar circumstances of a particular jurisdiction, one or the other may crystallize, to be uniquely adopted and applied. In our view, it is in this perspective that the proposition now under consideration is to be treated. In India, as seen above, the pathway adopted is for the jurisdiction to be invoked suo motu by any Judge in one particular situation, but only by the Chief Justice or a Judge nominated by him in another. In this country, the choice has been different: it is the Chief Justice alone who is that

"someone" within the institution who can suo motu invoke the jurisdiction.

38. The statement just made follows from how the practice has settled, especially since the issuance of the circular dated 19.07.2005, alluded to in the order of the HACJ dated 21.08.2021 (herein after referred to as "the Circular"). As noted above, there have been some instances where the jurisdiction was invoked suo motu by Judges other than the Chief Justice. Thus, in the 1990's, Saleem Akhtar, J. both invoked and exercised suo motu the jurisdiction under Article 184(3): see *In re: Human Rights Case (Environmental Protection in Balochistan*) PLD 1994 SC 102 and *In re: Pollution of Environment caused by smoke, emitting vehicles, traffic muddle* 1996 SCMR 543. Moving forward, on or about 28.09.2004 Rana Bhagwandas, J. noticed a news report in the daily press and, after directing that notices be issued to various functionaries, ordered that "the case be registered as suo motu direct petition under Article 184(3) read with Article 187". It was further directed that after issuance of notices the matter be placed before the Chief Justice "for appropriate orders as to its marking to an appropriate Bench". In the second matter, on or about 21.12.2004 Hamid Ali Mirza, J. noted an incident which had been widely reported in the press, and in respect of which a complaint had been received for suo motu action. It was ordered that notices be issued to various functionaries and that the "case shall be registered under Article 184(3) read with Article 187" and thereafter placed before the Chief Justice "for appropriate orders as to its marking to appropriate Bench". In each case the Chief Justice ordered that the cases be placed before Benches of which Rana Bhagwandas, J. and Hamid Ali Mirza, J., respectively, were members (SMC Nos. 2 and 3 of 2004). On or about 04.07.2005, Rana Bhagwandas, J. noticed another news report and after issuing notices to concerned functionaries directed that "this reference" be registered as a "Suo motu case", directing the office to "put up the reference as well as report of Inspector General of Police before Honourable Chief Justice for constitution of a Bench" (SMC No. 8 of 2005). It should be noted that each of the two Judges concerned invoked suo motu the jurisdiction of the Court but did not exercise it; for that, the matter was referred to the Chief Justice. On or about 30.10.2007 Syed Jamshed Ali, J.

forwarded a news report to the Chief Justice regarding a certain matter and recommended that "it appears to be a fit case for suo motu exercise of jurisdiction of this court under Article 184 of the Constitution to examine the legality and validity of the actions on banks in public sector in writing off loans". On this recommendation the Chief Justice directed the registration of a suo motu case (SMC 26/2007). However, it is pertinent to note that the learned Judge did not, as had been the situation in the earlier instances noted, suo motu invoke the jurisdiction. Rather, only a recommendation was made.

39. It seems therefore (and this point is again taken up below) that individual Judges have not, as a matter of sustained practice, sought to suo motu invoke the jurisdiction of the Court. That has been left in the hands of the Chief Justice. However, that does not end the inquiry. In matters proceeding before Benches constituted in terms as described above to act judicially (i.e., matters already on the Court's docket and placed before the Benches) the suo motu jurisdiction has also been involved. For reasons that will become clear later, a distinction has to be made between Benches headed by the Chief Justice and those of which the Chief Justice was not a member. We first look at a sampling of instances from the latter category.

40. On or about 02.09.2016, a learned two member Bench (Amir Hani Muslim and Mushir Alam, JJ.), while hearing CA 82-K/2016, recommended invoking suo motu the jurisdiction of the Court and directed that "[if] the Hon'ble Chief Justice of Pakistan approves the recommendations of the Bench" then notices be issued to the concerned authorities (reported as *State through Chairman NAB v Hanif Hyder and another* 2016 SCMR 2031). The Chief Justice ordered that the matter was to be treated as a Suo Motu case (SMC 17/2016). On or about 19.01.2017, a learned three member Bench (Dost Muhammad Khan, Qazi Faez Isa and Faisal Arab, JJ.), while disposing of Crim. P. 1177/2016 directed in respect of a certain matter that "a separate file be opened with a copy of this order" and that notices be issued to specified functionaries, and that "this may be placed for approval before the Hon'ble Chief Justice for exercising suo motu jurisdiction". The Chief Justice accorded his approval (SMC 1/2017). On or about 08.05.2017, a learned two

member Bench (Gulzar Ahmed and Dost Muhammad Khan, JJ.), while dealing with CPLA 1331/2017 etc directed certain specified functionaries to, inter alia, prepare a report in respect of a stated matter. An interim report was subsequently submitted and further time was sought, the matter being placed (it seems) before the learned Judges in Chamber. One of the learned Judges (Gulzar Ahmed, J.) was inclined to grant the extension sought. The other learned Judge (Dost Muhammad Khan, J.) however was of the view that since the matter was of "vital public importance requires to be taken into cognizance under Article 184(3) of the Constitution and to be placed before Hon'ble Chief Justice of Pakistan". The Chief Justice was pleased to direct that the matter may be registered as a suo motu case (SMC 6/2017).

41. On or about 21.11.2017 a learned two member Bench (Mushir Alam and Qazi Faez Isa, JJ.), when dealing with CP 2983/2016 and, in particular, while considering an application for adjournment moved on behalf of counsel for the petitioner issued notices, in relation to a *dharna*, to specified functionaries and directed for the re-listing of the matter two days later. (It may be noted that the adjournment had been sought on the ground that counsel could not attend to the matter as the route was being blocked by the *dharna*.) On 23.11.2017 the matter was re-listed before the same learned Bench. It was, inter alia, ordered (while adjourning the matter to 30.11.2017) that the office "prepare a separate file with regard to this matter so that Civil Petition No. 2983/2016, which could not proceed on the last date of hearing on account of the illegal actions of the protestors, can be separately heard". The office sought orders from the Chief Justice, asking for approval for the registration of the matter as a suo motu case. The Chief Justice accorded his approval (SMC 7/2017). This suo motu case was ultimately disposed off by a judgment reported as *Suo Motu Case No. 7 of 2017* PLD 2019 SC 318.

42. On or about 05.08.2020 a learned two member Bench (Mushir Alam and Qazi Faez Isa, JJ.) while disposing off Crim. P. 650/2020 directed that in respect of a specified matter as identified therein a separate file be prepared as a suo motu case. The office (relying on the Circular) sought orders from the Chief Justice, pointing out that a similar matter had already been

considered in earlier suo motu proceedings (SMC 13/2016) which had since been disposed of vide order dated 31.03.2017 by a learned three member Bench, and that certain proceedings emanating from that (by way of compliance) were also disposed of by a three member Bench on 12.03.2020. The Chief Justice directed that the matter be registered as a suo motu case (SMC 2/2020).

43. On or about 12.10.2020 a learned two member Bench (Qazi Faez Isa and Amin ud Din Khan, JJ.) while dealing with an adjournment application filed in CP 3998/2016 took up a matter and directed that in relation thereto "a separate file be prepared and numbered in respect of this matter by the office and to place it before the Hon'ble Chief Justice for constitution of an appropriate Bench to hear the case". The matter was registered as directed by the Chief Justice (SMC 3/2020) and it was further directed that it be placed before a three member Bench headed by the Chief Justice.

44. On or about 03.02.2021 a learned two member Bench (Qazi Faez Isa and Maqbool Baqar, JJ.) took notice of a news report and directed, with reference to CP 20/2013, for the issuance of notices to specified functionaries for 10.02.2021. The order was then listed as a miscellaneous application (CMA 490/2021). CP 20/2013 had already been disposed of (the judgment being reported as *Action against distribution of development funds by Ex Prime Minister Raja Parvaiz Ashraf: In the matter of* PLD 2014 SC 131). It is to be noted that the said disposed of matter was not listed before the learned Bench on 03.02.2021 nor was there any CMA pending therein. The office, after recounting the history of the disposed of case and various reviews and contempt applications filed in relation thereto (all already disposed of), sought the orders of the Chief Justice. The Chief Justice directed that the matter be placed before a five member Bench, which disposed of the CMA on 10.02.2021 (judgment reported as *Action against distribution of development funds to MNAs/MPAs by Prime Minister: In the matter of CMA No. 490 of 2021 in Constitution Petition No. 20 of 2013* PLD 2021 SC 446).

45. It will be recalled from para 39 above that a distinction was drawn between Benches headed by the Chief Justice and those of

which he is not a member, and the discussion so far has been in respect of the latter category. It is time to look at the reason for this distinction. Now, Benches headed by the Chief Justice do invoke the suo motu jurisdiction of the Court. However, there is a crucial distinction between such Benches and those of which the Chief Justice is not a member. When a Bench headed by the Chief Justice seems to invoke the suo motu jurisdiction that, in law, is not an act of the Bench. The reason is that what appears to be one act is, when analyzed conceptually, found in law to be a combination of three distinct steps. The first is where the Chief Justice, acting as such, invokes suo motu the jurisdiction of the Court in respect of a matter. The second is where, *in respect thereof*, he constitutes the Bench headed by him to exercise the jurisdiction so invoked. And the third is where the Bench does exercise said jurisdiction. Since it is all happening together the three steps, each distinct and separate in law though it is, become conflated. Thus, what seems (and in a practical sense is) one act is shown, when unraveled and examined conceptually, to comprise in law of three distinct elements. Each of the elements is perfectly legitimate within its own scope and the fact that they have, as it were, been rolled into one act on account of the Chief Justice heading the Bench should not confuse. As a matter of law the invoking of the suo motu jurisdiction by such a Bench is equivalent to nothing other than an invocation by the Chief Justice alone.

46. The position as regards the suo motu invocation of the jurisdiction can also be examined by looking at the data in more general terms, for the period from the issuance of the Circular (19.07.2005) to end 2021. It appears that such cases are registered as either Human Rights Cases (HRC) or Suo Motu Cases (SMC). In all HRC cases the suo motu jurisdiction is invoked by the Chief Justice alone and is then directed to be placed before a Bench constituted in terms as described above (i.e., fixed in Court). We are informed that over the relevant period 1028 cases were so registered (this includes cases for the whole of 2005.) Over the period from the Circular to end 2021 243 cases were registered as SMC cases (this includes the one case, referred to in para 44 above, where it was registered as a CMA). Of these 28 cases appear still to be pending. An analysis of the SMC cases shows that in 158

cases (65%) the suo motu jurisdiction was invoked by the Chief Justice alone (and of these, in 20 cases it was done on the recommendation of an individual Judge). Seventy seven cases involved Benches of the Court, but of these in 52 cases (21.4%) the Bench was headed by the Chief Justice. As explained above, as a matter of law, the suo motu jurisdiction was here also invoked by the Chief Justice. The balance 25 cases involved Benches of which the Chief Justice was not a member. But even here in 6 cases the matter was simply referred to the Chief Justice. Thus, in only 19 cases (7.8%) was the suo motu jurisdiction invoked by a Bench of which the Chief Justice was not a member. Finally, in eight cases (3.3%) the suo motu jurisdiction was invoked by an individual Judge as such (the last such instance, it appears, being SMC 6/2015 on 09.07.2015). The position that emerges is clear.

47. When the data for the HMC and SMC cases are combined (giving a total of 1271 cases), the position becomes even clearer. The Chief Justice alone invoked the jurisdiction suo motu in 1186 cases (1028 plus 158), i.e., 93.3% of the total. The cases where the jurisdiction was so invoked by a Bench headed by the Chief Justice constitute 4.09% of the total. Thus, in 97.39% of the cases the suo motu jurisdiction was invoked by the Chief Justice either directly or as a matter of law. The cases where this was done by a Bench not headed by the Chief Justice constitute a miniscule 1.5% and those where this was done by individual Judges were a vanishingly small 0.6%. (The balance 0.5% represents the cases where the matter was simply referred to the Chief Justice by the Benches concerned.) These figures speak for themselves. The pathway adopted in this common law jurisdiction is clear. The settled practice is that the suo motu jurisdiction is to be invoked by the Chief Justice alone and not by any other Judge as such. The few cases where Benches not headed by the Chief Justice invoked the jurisdiction was, for reasons already stated, with respect, a conceptual error that was constitutionally impermissible.

48. One other point may be made. It will be noted that in terms of the short order whereby this matter was disposed of (set out at the beginning of the judgment) it was stated that the Chief Justice "shall" suo motu invoke the jurisdiction "if so requested or recommended by a Bench of the Court". The reason for this is that

if the practice up to now is considered it seems that Chief Justices have not turned down any such request or recommendation, emanating as it does from Judges ensconced in the formal setting of a Bench constituted as such. It is only in this sense that a Bench has been referred to, and not by way of any recognition that it can itself invoke suo motu the jurisdiction of the Court. However, it is of course entirely for the Chief Justice to decide the time and manner in which the jurisdiction is to be suo motu invoked and the Bench by whom it will be exercised.

49. The above analysis with regard to the suo motu invoking of the jurisdiction of the Court under Article 184(3) may therefore be summarized as follows: (i) it is constitutionally impermissible and conceptually non-viable for a Bench of the Court, constituted and acting judicially as described above, to suo motu invoke the jurisdiction; and (ii) it is the Chief Justice alone who may do so.

50. Insofar as the Circular is concerned, it also in certain aspects and respects, suffers from a lack of conceptual clarity. In order to fully rationalize the position we recommend that the office may place the Circular before the Hon'ble Chief Justice for such reconsideration as may be deemed appropriate.

51. This brings us to the order dated 20.08.2021 (2021 SCMR 1602) made by the learned Bench-II, for its consideration and examination in light of the foregoing discussion and analysis. The attendant facts relating to the making of the order have already been set out above. In our view, there can be no doubt that, with respect, the learned Bench erred materially in law in making the order. The learned Bench suo motu invoked the jurisdiction of the Court under Article 184(3). This is absolutely clear from a perusal of the order as a whole and, in particular, para 11 thereof where the learned Bench clearly stated that "*We have decided* to treat this application as one under Article 184(3) of the Constitution...." (emphasis supplied) read with para 13, where a direction was given to the office "to number this petition", with parties arrayed as ordered. In this para also it was specifically asserted that "... this Bench of the Supreme Court has taken notice pursuant to Article 184(3) of the Constitution...." This, with respect, it could not do. There was a failure to properly abide by, and to apply, the judicial power as explained above. This failure was, with respect, the result

of a lack of conceptual clarity. In respect of the subject matter of the Application not only did the learned Bench self-constitute but, in directing that notices be issued to named functionaries (and directing that replies be furnished before the next date of hearing) and that the matter be listed before it, the learned Bench also self-perpetuated and self-propagated. As explained above, this simply could not be done. With respect, the learned Bench acted in a constitutionally impermissible manner. The office quite correctly sought orders from the HACJ and it was well within the relevant powers (and, in our respectful view, duty in the facts and circumstances of the present case) of the Chief Justice (which for the time being vested in, and fell upon, the HACJ) for an authoritative pronouncement to be sought on the question posed in the order of 23.08.2021. That question stood answered in the short order of 26.08.2021, as explained and amplified in terms of what has been set out in this judgment. We are, with respect, unable to subscribe to the action taken by the learned Bench-II. The order of 20.08.2020 could not be allowed to stand. Attendant consequences necessarily had to follow, as set out in para 3 of the order dated 26.08.2021.

52. We are now reaching the end of the judgment. Before the coda there is one onerous duty that, regrettably, must be performed. While the matter was being heard by this Bench, another extraordinary event occurred. The learned senior member of Bench-II, on 25.08.2021, filed an application ("CMA") in this matter. The text of the CMA ran to 15 pages. In it, the learned Judge sought, inter alia, to justify the order dated 20.08.2021 and to criticize and attack the formation of the Larger Bench by the HACJ and the order of 23.08.2021 made by the Larger Bench. Indeed, the order last mentioned was referred to as a "purported order" passed by a "monitoring Bench". A wholly unwarranted attack ostensibly directed at the Registrar of the Court was also launched. This was an extraordinary and unprecedented intervention in pending proceedings. We say no more. While we chose, in order to maintain the dignity of the Court, not to draw attention to the CMA during the course of the hearing, it is necessary, as a matter of law, to give quietus to it. It is hereby declared, and directed to be, expunged from the record.

53. While the question before us has been addressed, there is nonetheless something additional that we would like to say. The suo motu invoking of the jurisdiction of the Court under Article 184(3) has, over the years, come in for its share of analysis, debate, discussion and, indeed, criticism. It must be acknowledged that this is not something confined just to the Bar but extends to the Bench also. That the jurisdiction can be so invoked cannot now be gainsaid. But the time has come to recognize that there is a certain imbalance, which ought to be corrected. The imbalance lies in what has been called the "fourth element" above, i.e., the link or bridge between the invoking of the jurisdiction and the exercise of it. As has been explained above, law and practice require that the suo motu invoking of the jurisdiction lie solely with the Chief Justice. As also seen the law mandates that the constitution of Benches for the exercise of the jurisdiction lies with the Chief Justice alone. It is this that creates an imbalance, and we need not dwell on whether this is a matter of perception only, or both perception and reality. Either way it is something that, it must be fairly conceded, ought to be addressed.

54. How is the balance to be achieved? To this different answers can be given. However, the one that seems to us to be most readily capable of application is for a suitable practice to develop and crystallize in relation to the "fourth element". Since both the suo motu invocation of the jurisdiction and the constitution of a Bench to exercise that jurisdiction lie in the same hands, it is for those hands, in our respectful view, to act in a manner that dispels any perception of the imbalance.

55. The foregoing are the reasons for the short order of 26.08.2021.

Acting Chief Justice

Judge

Judge

Judge

Judge

Islamabad, the
26th August, 2021