

Has the Suo Motu undermined the Democratic Process

By M. K. Jamshed

In law, Suo Motu or Suo Sponte (Latin for "of his/her/it's or their own accord.") as it is properly referred to, describes an act of authority taken without formal prompting from another party. The term is usually applied to actions by a judge taken without a prior motion or request from the parties made to the court. There are arguments for and against the application of Suo Motu within the state that is Pakistan. For the purposes of this article we shall analyze both sides of the argument in order to determine whether the democratic process is being derailed via the application of the suo motu.

The use of the suo motu as a form of judicial review by the court has arguably helped bring forward issues that have been at times ignored by elected institutions. Though it has to be said, that without a particular form of accountability in respect of its application or rather an objective scale upon which to decide at what times the application of the suo motu could be deemed to be appropriate, it could be argued that the use of suo motu by the courts may destabilize the element of due process which can be understood to be essential towards the development of a truly democratic society. This is given further credence by the fact that Pakistan is one of the very few countries where the Suo Motu has been as actively utilized as a doctrine by the courts; the only other country where it is far more active is in the Nation State of India. While there has been exercise of the doctrine in other common law realms, such as Bangladesh and Nigeria, the use of Suo Motu in these territories has been less than minimal.

Under Article 184 (3) of the Constitution, the Supreme Court may take suo motu action if there has been a violation of fundamental rights, which are listed under Chapter 1 of the constitution. And there have been a myriad of cases the Supreme Court (SC) has been taking up with the suo motu, which range from imposing price ceilings on consumer goods all the way to regulating utility tariffs. The SC has been doing so in the name of providing justice for the average Pakistani citizen but one begs to ask the question of how far is SC really willing to go and furthermore, why? The answers to these questions may then have to be gleaned from past action. The current Chief Justice Iftikhar Muhammad Chaudhry has been taking up various cases via the use of Suo Motu, but most if not all of those cases have had a single defining feature; they were under intense media scrutiny and were subject to acts of sensationalization in the press. As has been argued by many an analyst the current chief justice seems to be using the suo motu to pick up populist causes and cases which were already highlighted by the media. This "popularity contest" approach has given critics of the Chief Justice quite the tools for argumentation as was aptly put by Abid Saqi the president of Lahore's high court bar association "He has destroyed the judiciary as an institution and destroyed the constitutions as a sacred document for his own personal aggrandizement". The suo motu then again comes under the limelight, not as an instrument to deliver justice but rather as a tool used by an unelected institution to capture and consolidate power. This then in turn also leaves citizens following process a lesser priority as compared to cases taken up via a suo motu notice. This could breathe frustration into the system which already has a case backlog of 1.5 million cases pending in the courts nationwide.

In essence the argument boils down to whether short term achievements are worth chasing at the cost of injuring long term goals. Pakistan needs to have stronger institutions, and more importantly independent institutions. For those institutions to then flourish there need to be "reasonable" checks and balances to ensure not only compliance but also certainty. The Suo Motu and its application at least in its current form is unpredictable and undefined, with the courts not adhering to specific jurisdictions the suo motu can then have over reaching effects possibly then coming into conflict with those institutions. Future Chief Justices may need to have a certain level of foresight in judging the use of the suo motu along with its merits. The concept stands to be seen as necessary in the current legal and political environment but not in the unchained form it currently resides.