Athar Minallah, J.-The reasons in support of orders dated 23.02.2023 and 24.02.2023 respectively, whereby the petitions and the assumption of *suo motu* jurisdiction were dismissed are as follows:

2. There are three fundamental grounds for dismissing the petitions and the assumption of *suo motu* jurisdiction. Firstly, the 'salutary principles' expounded by the Full Court regarding the assumption of jurisdiction under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") are binding on this bench; secondly, in matters which involve the interests of the political parties, utmost caution must be exercised so as not to prejudice the appearance of impartiality of the Court, particularly when jurisdiction is invoked *suo motu;* and lastly, the conduct and *bona fides* of the political stakeholder who has approached the Court. As will be discussed later, public trust and confidence is sacrosanct for the ability of the judicial branch to perform its functions effectively as the guardian of the Constitution and the fundamental rights enshrined in it by its framers. The legitimacy of the Court's verdict solely depends on the public's belief that the Court is an independent, impartial, and apolitical arbiter of disputes between political stakeholders. The matter placed before us has arisen from a dispute which is essentially political in nature and one of the High Court's has already adjudicated upon it. My learned brother Yahya Afridi, J. has correctly observed in his note, dated 23.02.2023, to show restraint so as to ''avoid any adverse reflection on this Court's judicial pre-emptive eagerness to

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decide''. Preserving public trust and confidence in the Court's independence and impartiality is crucial. This Court has been dragged into controversies of a political nature for a third time in quick succession.

3. The petitions and assumption of *suo motu* jurisdiction under Article 184(3) of the Constitution stem from an unceasing political turmoil. This Court has remained at the centre stage of an unprecedented charged and polarised political milieu. The first indulgence of this Court was when the voting on the resolution of no-confidence motion was stalled by the Deputy Speaker followed by dismissal of the National Assembly by the President. The latter had acted in pursuance to the advice tendered by the then-Prime Minister, Mr Imran Khan. The Chief Justice had assumed *suo motu* jurisdiction under Article 184(3) of the Constitution on the recommendation of twelve Judges of this Court and the proceedings had culminated in the rendering of the judgment reported as *Pakistan Peoples Party Parliamentarians v. Federation of Pakistan* **(PLD 2022 SC 574)**. The unanimous verdict handed down by a bench consisting of five Judges had set aside the act of the Deputy Speaker and had declared the dissolution of the National Assembly as 'extra-constitutional'. The resolution of no-confidence was revived and consequently the National Assembly was restored. The request of the Attorney General to continue with the process of elections was turned down and the action of the Deputy Speaker was declared as biased. Subsequently, the resolution was carried by a majority and resultantly the Prime Minister, Mr Imran Khan, ceased to hold the office under Article

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95(4) of the Constitution. The political crisis escalated when, after losing the vote of confidence, Mr Imran Khan chose not to take the exalted seat of leader of the opposition and decided to resign from the membership of the National Assembly along with other members belonging to the political party Pakistan Tehreek-e-Insaf. The resignations were tendered but their acceptance by the Speaker was delayed. The strategy had profound consequences for the political process and constitutional democracy of Pakistan. This Court was called upon to become an arbiter in resolving yet another political quagmire created by the political stakeholders. The advisory jurisdiction of the Court was invoked by the President who had sought interpretation of Article 63A of the Constitution. By a majority of three to two, the bench of this Court, in the judgment reported as *Supreme Court Bar Association of Pakistan v. Federation of Pakistan* **(PLD 2023 SC 42)**, interpreted Article 63A and, *inter alia*, held that "the vote of any member (including a deemed member) of a Parliamentary Party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded". The political ramifications of this declaration were profound in a highly charged and polarised political atmosphere. A review against the judgment was sought and the petitions are pending before this Court.

4. The effects of the interpretation of Article 63A on the ensuing events were far-reaching for the polarised political stakeholders. After the government was formed in the province of Punjab, the major coalition partner, Pakistan Tehreek-e-Insaf,

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decided to dissolve the legislatures of the provinces of Punjab and Khyber Pakhtunkhwa (KPK) respectively. The Assemblies of the provinces of Punjab and Khyber Pakhtunkhwa ("**KPK**") stood dissolved on 14.1.2023 and 18.1.2023 respectively, pursuant to advice tendered by the respective Chief Ministers. In the case of the provincial Assembly of Punjab, the Governor had chosen not to act upon the advice and, therefore, it stood dissolved upon the lapse of the period prescribed under the Constitution, while the Governor of KPK decided otherwise and, therefore, the assembly was dissolved through his order passed on 18.1.2023.

5. While the competent authorities were yet to announce a date for elections, one of the political stakeholders, Pakistan Tehreek-e-Insaf, invoked the jurisdiction of the Lahore High Court, vested in it under Article 199 of the Constitution. Some other citizens had also filed petitions. They were aggrieved because they felt that the inaction on the part of the competent authorities was likely to delay the elections, resulting in a violation of the Constitution. They had urged the High Court to issue appropriate writs to compel the responsible authorities to hold the elections within the timeframe explicitly prescribed under Article 224 of the Constitution. Likewise, petitions were also filed before the Peshawar High Court seeking appropriate writs with respect to the announcement of a date and the holding of elections in KPK.

6. The proceedings relating to the petitions filed before the Lahore High Court were diligently concluded and they were adjudicated *vide* judgment dated 10.2.2023 passed in *Pakistan Tehreek-e-Insaf through its General Secretary v. Governor of Punjab*

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and another **(Writ Petition No. 5851 of 2023)**, *Munir Ahmad v. The Governor of Punjab and others* **(Writ Petition No. 6118 of 2023)**, *Zaman Khan Vardag v. Province of Punjab and another* **(Writ Petition No. 6093 of 2023)**, and *Sabir Raza Gill v. Governor of Punjab* **(Writ Petition No. 6119 of 2023)**. The High Court had allowed the prayers sought in the petitions and appropriate writs were granted under Article 199 of the Constitution in the following terms:-

> "In view of the constitutional provisions mentioned above and the judgments of the Supreme Court of Pakistan, the prayer made in the "*consolidated petitions*" is allowed and the "*ECP*" is directed to immediately announce the "*date of election*" of the Provincial Assembly of Punjab with the Notification specifying reasons, after consultation with the Governor of Punjab, being the constitutional Head of the Province, to ensure that the elections are held not later than ninety days as per the mandate of the "*Constitution*".

7. The above judgment was assailed by preferring intra court appeals which are pending before a Division Bench of the High Court. The appeals have been taken up for hearing and they are being heard. Admittedly, the writs granted by the single judge of the High Court *vide* the aforementioned judgment have not been interfered with since no injunctive order has been passed by the Division Bench. The judgment of the Lahore High Court is, therefore, validly subsisting and binding on the public authorities who are saddled with the responsibility to enforce it. Petition(s) have also been filed seeking implementation of the judgment by

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way of initiation of contempt proceedings. This Court has no reason to doubt the ability and competence of the High Court to enforce its judgment because, by doing so, the competence and independence of a provincial constitutional court would be unjustifiably undermined. The enforceable writs granted by the High Court are binding and any attempt to impede its implementation could expose the delinquent authorities to grave consequences. On the other hand, the Peshawar High Court has assiduously taken up the petitions and there is no reason to assume that the proceedings and adjudication of the petitions would be delayed. The High Court has taken effective steps and any assumption regarding its competence or ability would be unwarranted and unjustified.

8. While the Lahore High Court had already rendered an authoritative judgment and it was in the process of being enforced, petitions were filed before this Court urging assumption of jurisdiction under Article 184(3) of the Constitution regarding the same matter: holding of elections within the time prescribed under the Constitution. One of the petitions was filed in the name of the Islamabad High Court Bar Association by its President while the other by the Speakers of the two dissolved legislatures and former elected members. It is noted that the petitioners in the latter petition are associated with the same political party, Pakistan Tehreek-e-Insaf, which had invoked the jurisdiction of the Lahore High Court and its prayers were granted by issuance of appropriate writs. Simultaneously, a two-member bench of this Court, while seized with a service matter relating to the transfer of

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a police officer, had summoned the Chief Election Commissioner and, after hearing him, had passed the order dated 16.2.2023 in the case titled *Ghulam Mehmood Dogar v. Federation of Pakistan through Secretary Government of Pakistan and others* **(Civil Petition No. 3988 of 2022)**. It was observed by the bench that elections to the Provincial Assembly of Punjab were required to be held within the period prescribed under Article 224(2) of the Constitution. The learned Judges were of the opinion that "no progress" had been made. It was further observed in the order that lack of progress had given rise to a "real and imminent danger of violation of a clear and unambiguous constitutional command". The bench also observed that since this question was not involved in the *lis* before it, therefore, it was fit to refer the matter to the Chief Justice for invoking *suo motu* jurisdiction under Article 184(3) of the Constitution on the touchstone of the principle highlighted in the judgment reported as *Suo Motu Case No.4 of 2021* **(PLD 2022 SC 306)**. The Registrar, acting pursuant to the order passed by the two Judges, placed a note before the Chief Justice on 17.2.2023, recommending fixation of the petitions and consideration of invocation of *suo motu* jurisdiction. The Chief Justice, through the administrative order dated 22.2.2023, constituted a bench consisting of nine Judges of this Court. The petitions and *suo motu* assumption of jurisdiction were ordered to be fixed before the special bench and the following questions were framed:

> "a) Who has the constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly

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upon its dissolution in the various situations envisaged by and under the Constitution?

b) How and when is this constitutional responsibility to be discharged?

c) What are the constitutional responsibilities and duties of the Federation and the Province with regard to the holding of the general election?"

9. The reasons recorded by the Chief Justice in his administrative order dated 22.02.2022, referred to the adjudication of the petitions by the Lahore High Court but apprehensions were recorded regarding the likely delay in the holding of the elections. The *suo motu* invocation of jurisdiction along with the petitions was fixed before the special bench on 23.02.2023. In my opinion the questions framed by the Chief Justice had already been adjudicated upon by the Lahore High Court and it was competent to enforce the writs granted by it. The legitimacy of the dissolution of the Provincial Assemblies before the lapse of time prescribed under Article 107 of the Constitution was raised during the hearing held on 23.02.2023 and the following questions were further framed:

"(a) Whether the power of a Chief Minister to make advice for the dissolution of the Provincial Assembly is absolute and does not require any valid constitutional reason for its exercise?

(b) Is a Chief Minister to make such advice on his own independent opinion or can he act in making such advice under the direction of some other person?

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(c) If such advice of a Chief Minister is found constitutionally invalid for one reason or another, whether the provincial assembly dissolved in consequence thereof can be restored?"

10. The written order relating to the hearing held on 23.02.2023 included a separate note of Yahya Afridi, J, who had dismissed the petitions on the ground of maintainability. The reasoning recorded in the short order was persuasive and I had no hesitation in concurring with the decision regarding dismissal of the petitions. I had reiterated my decision by recording my note in the order dated 24.02.2023. I have had the privilege of reading the detailed reasoning recorded by my learned brothers, Syed Mansoor Ali Shah and Jamal Khan Mandokhail, JJs and I agree with their opinion, particularly regarding the final outcome of the petitions and the *suo motu* assumption of jurisdiction by a majority of 4 to 3 because this was the understanding in the meeting held in the anteroom on 27.02.2023. It is noted that I had not recused nor had any reason to dissociate myself.

JURISDICTION UNDER ARTICLE 184(3) AND THE BINDING SALUTARY PRINCIPLES

11. The Supreme Court is the creation of the Constitution. Article 175(1), *inter alia*, declares that there shall be a Supreme Court. Article 176 explicitly provides that the Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Pakistan, and so many other Judges as may be determined by the Act of the Majlis-e-Shoora (Parliament) or, until so determined, as may be fixed by the President. The Chief Justice and the Judges collectively constitute the Supreme Court. The powers exercised

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by the Chief Justice have been conferred by the Supreme Court *vide* the rules made under the Constitution. Article 191 provides that, subject to the Constitution and the law, the Supreme Court may make rules regarding the practice and procedure of the Court and, pursuant to the power conferred thereunder, the Supreme Court has made the Supreme Court Rules, 1980 ("**Rules of 1980**"). The powers enjoyed by the Chief Justice as Master of the Roster are derived from these rules and have been delegated for administrative convenience.

12. The framers of the Constitution have conferred three distinct categories of jurisdictions on the Supreme Court: original, appellate, and advisory. The original jurisdiction is vested under Article 183(4). It is extraordinary and its exercise is subject to two limitations; firstly, that it must involve questions of public importance and secondly, that such a question must be with regard to the enforcement of the fundamental rights conferred by Chapter 1 of Part II of the Constitution. This jurisdiction is not subject to the procedural trappings and limitations provided under Article 199. The exercise of jurisdiction under Article 184(3), therefore, is not dependent on its invocation by an aggrieved party. The assumption of jurisdiction will be justified when both of the aforementioned conditions are met. This Court, in *Manzoor Elahi v. Federation of Pakistan* **(PLD 1975 SC 66)** set out the salutary principles for the assumption of original jurisdiction vested in it under Article 184(3). These salutary principles were later reaffirmed by a bench consisting of eleven Judges of this Court in the case *Benazir Bhutto v. Federation of*

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Pakistan **(PLD 1988 SC 416)**. It was explicitly observed that the power conferred under Article 184(3) of the Constitution must always be exercised with circumspection and utmost caution. It has been held that if the two conditions stipulated under Article 184(3) are satisfied, even then this Court may not exercise the jurisdiction if sufficient justification has not been shown for failing to invoke the wider concurrent jurisdiction vested in a High Court under Article 199 of the Constitution. The jurisdiction vested in the Supreme Court and the High Courts under Article 184(3) and Article 199, respectively, is coterminous and concurrent. The deference shown by this Court is premised on the established principle that the lowest court or tribunal must be approached in the first instance when the jurisdictions are concurrent. The High Courts have extensive jurisdiction and powers under Article 199 of the Constitution and a High Court is as competent as the Supreme Court to deal with matters of public importance involving interpretation of the Constitution and the enforcement of fundamental rights. The Judges of both the courts have sworn a similar oath to 'protect, defend and preserve the Constitution'. Moreover, when two courts have concurrent jurisdiction and one of them happens to be a superior court, to which a remedy of appeal lies, then normally the latter will not entertain a similar matter pending before the lower court. No party can be deprived of its vested right of appeal provided under Article 185 of the Constitution. In the *Benazir Bhutto* case, this Court held that although ordinarily the forum of the court lower in the hierarchy must be invoked but such a principle is not inviolable and assuming jurisdiction in exceptionally genuine cases is not

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barred. In the case the jurisdiction was assumed because the High Court had not admitted the petition for regular hearing despite the lapse of more than eighteen months. This Court, in that case, had therefore assumed jurisdiction because of the inordinate delay and the fact that the High Court was not seized of the matter. In *Suo Motu Case No. 7 of 2017* **(PLD 2019 SC 318)**, this Court has stressed the need for taking all possible care before entertaining or making an order under Article 184(3) of the Constitution since there was no right of appeal against such an order. The salutary principles expounded in the *Manzoor Elahi* case are binding since they were reaffirmed by a bench consisting of eleven judges of this Court in the *Benazir Bhutto* case. In the case in hand, one of the High Courts has already adjudicated the matter while the other is competently seized with it. It does not qualify to be an exceptionally genuine case so as to cross the bar set out in the *Benazir Bhutto* case. The independence and competence of the High Courts is likely to be undermined by assuming that the questions raised before us cannot be resolved or answered by them.

THE DUTY OF THE COURT TO PRESERVE PUBLIC TRUST WHEN ENTERTAINING AND EXERCISING POWERS CONFERRED UNDER ARTICLE 184(3) OF THE CONSTITUTION

13. The original jurisdiction vested in this Court under Article 184(3) is extraordinary and its language manifests that the framers of the Constitution had intended that the authority will be exercised only when the two conditions expressly stated therein are met. The legitimacy of this monumental authority and the verdicts handed down pursuant thereto solely depends on public

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trust. Courts have no control over the sword nor the purse. Public trust and confidence cannot be taken for granted nor would judges be justified in expecting others to have faith in their independence, fairness and impartiality without a continuous pursuit to earn it through judicial conduct, institutional standards, transparent procedures and propriety. Appearances and public perceptions are as important as the reality because they give legitimacy to the proceedings and the verdicts of the courts. It is public trust which enables the courts to effectively discharge their functions. Even unpopular decisions are respected when people have faith in the independence, fairness and impartiality of the adjudicatory process. This Court has consistently held that it will not refuse to exercise judicial review if a question raised has political content, provided that it involves a legal or constitutional issue. But in doing so, the Court will always be mindful of its duty to ensure that it is not only an apolitical, independent, fair and impartial arbiter but also appears to be so. This duty becomes far more challenging when the controversy brought before the Court involves the interests of the political stakeholders. Each one must believe that the court and judges hearing the *lis* are fair, independent and impartial. The institutional processes and procedures, whether administrative or judicial, must appear to be transparent and based on decisions which are an outcome of the exercise of structured discretion. No political stakeholder should have the remotest doubt regarding the impartiality, integrity and fairness of the adjudicatory process. Ironically, the frequent invocation of the jurisdiction under 184(3)

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in matters which were of a political nature must have had profound consequences in moulding public trust.

14. It is manifest from the language that the framers of the Constitution had intended to confer the power under Article 184(3) to be exercised for protecting the fundamental rights of the vulnerable, marginalised and depressed classes of the society. The phenomena of enforced disappearances is probably one of the gravest and most atrocious examples of violation of fundamental rights and it is no less than a subversion of the Constitution. The appeals against the Peshawar High Court judgment relating to extra-judicial detention in internment centres are pending before this Court. The inhuman, harsh and life-threatening conditions in prisons, custodial torture, extra-judicial killings, violence against journalists, and arbitrary restrictions on freedom of expression are other instances which should have had priority in the context of the jurisdiction conferred under Article 184(3) of the Constitution. The power was intended and ought to have been exercised to alleviate the plight and distress of such sections of society. The framers had inserted Article 184(3) intending that the jurisdiction shall be exercised to ensure that the fundamental rights of the weak, vulnerable and marginalised classes are protected. Instead, the jurisdiction was exercised to legitimise the removal of elected Prime Ministers and endorse military takeovers. This Court handed down the judgment in *Begum Nusrat Bhutto v. Chief of Army Staff and Federation of Pakistan* **(PLD 1977 SC 657)** to validate the imposition of Martial Law, based on the doctrine of necessity, while exercising its original jurisdiction and it lasted for

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a decade despite the time frame committed to it. The deposed Prime Minister was convicted and sent to the gallows after his appeal was dismissed by this Court by a majority of 4 to 3. During the trial the appellant had filed an application because he had reservations on the constitution of the Bench. The application was dismissed *vide* judgment reported as *Zulfiqar Ali Bhutto v. The State* **(PLD 1978 SC 125)** and it was observed as follows by the then-Chief Justice:

> "One other important aspect may also be mentioned. The appellant not only wants me not to sit on this Bench, but also wants me to refrain from nominating the Judges for hearing this case. Under the constitution and the law regulating the practice of the Supreme Court, it is not only the privilege but the duty and obligation of the Chief Justice to personally preside over all important cases, and to nominate Judges for hearing cases which come up before the Court. No person has the right to ask me to abdicate this responsibility, nor has he the right to demand a Bench of his own choice. This would be contrary to the well-established norms regulating the functioning of the superior Courts of this country. Any objection, if raised, must be left to be decided according to my conscience and sense of duty in the light of all the surrounding circumstances of the case, including any possible repercussions on the capacity of my other colleagues to continue on the Bench if similar objections are raised against some of them as the appeal proceeds."

It is a matter of record that one of the Judges on the bench had later publically indicated that the proceedings may have been

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influenced. The advisory jurisdiction of this Court was invoked in 2012, questioning the legitimacy of the verdict and the reference has not been decided as yet.

15. The Constitution suffered another setback in 1999 when the then Chief of Army Staff forcibly removed the elected Prime Minister and the legislatures were dissolved. The jurisdiction of this Court under Article 184(3) was invoked and the takeover was validated through the judgment in *Zafar Ali Shah v. General Pervez Musharraf* **(PLD 2000 SC 869)** despite having discarded the doctrine of necessity in the case of *Miss Asma Jilani v. The Government of the Punjab and another* **(PLD 1972 SC 139)**. The power to amend the Constitution was also granted. When Judges of this court were unconstitutionally removed on 3rd November 2007 the act was validated through judgment titled *Tika Iqbal Muhammad Khan v. Pervez Musharraf* **(PLD 2008 SC 178)**. In a first, the usurper was tried and convicted by a special court for the offence of high treason. The conviction and sentence were set aside by a High Court and the verdict was challenged before this Court, but the petitions and appeals have not been heard as yet. In the meanwhile, the usurper has passed away. The original jurisdiction under Article 184(3) was exercised which disqualified two elected Prime Ministers and they were removed from their office *vide* judgments reported as *Muhammad Azhar Siddiqui v. Federation of Pakistan* **(PLD 2012 SC 774)** and *Imran Ahmed Khan v. Muhammad Nawaz Sharif* **(PLD 2017 SC 692)** respectively. Several elected representatives were disqualified for not being '*sadiq*' and '*ameen*' under Article 63(f) while some were

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declared otherwise. The role of the Court in the realm of politics has moulded public perceptions which were indeed not favourable for public trust and confidence. Public trust can only be preserved when utmost restraint is exercised in entertaining questions and issues which involve political content. Public trust is eroded when the Court is perceived as politically partisan and the judges as 'politicians in robes'.

16. The unregulated invocation of *suo motu* jurisdiction has been a subject of debate and has invited criticism. The first reported case of *suo motu* invocation was *Darshan Masih v. State* **(PLD 1990 SC 513)**. The Rules of 1980 are silent about *suo motu* jurisdiction and only refer to Article 184(3). When the rules were framed the jurisdiction in this mode had not been invoked as yet. The cases of Steel Mills and Reko Diq were decided *vide* judgement reported as *Wattan Party v. Federation of Pakistan* **(PLD 2006 SC 697)** and *Abdul Haque Baloch v. Government of Balochistan* **(PLD 2013 SC 641)** respectively. Both the cases were the outcome of the invocation of *suo motu* jurisdiction and they were perceived to be judicial overreach in the domain of economic policies of the State. The indulgence has had financial implications and in the latter case the State was exposed to international litigation. The collection of funds for building dams through *Zafarullah Khan v. Federation of Pakistan* **(2018 SCMR 1621)** had also raised public concerns. This Court has recognised in *Suo Motu Case No.4 of 2021* that "the suo motu invoking the jurisdiction of the Court under Article 184(3) has over the years come in for its share of analysis, debate, discussion and, indeed,

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criticism. It must be acknowledged that this is not something confined just to the Bar but extends to the Bench also. But the time has come to recognise that there is certain imbalance, which ought to be corrected." Commentators, legal experts and representative bodies of the lawyers have been consistent in urging regulating the exercise of *suo motu* powers conferred under Article 184(3). This Court, in the case of *Suo Motu Case No.4 of 2021* has described how and by whom it is to be exercised. It has been held that the power exclusively vests in the Chief Justice who is the 'Master of the Roster'.

17. The Chief Justice enjoys the status of the Master of the Roster by virtue of the powers conferred under the Rules of 1980. The jurisdiction under Article 184(3) exclusively vests in the "Supreme Court", which collectively means the Chief Justice and the Judges of the Court. The Chief Justice is first among equals. The Rules of 1980 have been made by the Supreme Court i.e., the Chief Justice and the Judges for administrative convenience. The power under Article 184(3) is inherent and exclusively vests in the Supreme Court. The Chief Justice exercises the powers conferred under the Rules of 1980 as a delegatee, trustee or an agent. The Master of the Roster, therefore, owes a fiduciary duty of care towards the Supreme Court. As a fiduciary it is the duty of the Master of the Roster to preserve good faith and exercise the discretion with utmost care and in the best interest of the Supreme Court. The discretion under the Rules of 1980 is not unfettered nor can it be exercised arbitrarily. It is settled law and consistently affirmed by this Court that powers conferring

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discretion, no matter how widely worded, must always be exercised reasonably and subject to the existence of the essential conditions required for the exercise of such powers within the scope of the law. The discretion ought to be structured by organising it and producing order in it. The seven instruments of structuring of discretionary power – open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedures – are by now embedded in our jurisprudence. These principles are binding in discharging the functions and exercising jurisdiction under the Rules of 1980. The discretionary powers of the Master of the Roster are, therefore, not unfettered nor can be exercised arbitrarily or capriciously. As a corollary, it is the duty of the Master of the Roster to exercise discretion in a manner that preserves and promotes public trust and confidence. It is also an onerous duty of the Chief Justice to act in the best interest of the Supreme Court. Moreover, the Chief Justice and Judges are jointly and severally responsible to ensure that the jurisdiction under Article 184(3) is exercised to promote and preserve public trust. In case of breach of this duty the responsibility would rest with the Chief Justice and all the Judges, because they collectively constitute the Supreme Court. The Court is accountable to the Constitution, the law and the people of this country, who are our sole stakeholders. No one is above the law and every public office holder is accountable for the authority exercised under the Constitution and the law. The 'imbalance' referred to in the aforementioned judgment requires review of the Rules of 1980 in order to protect judicial integrity and impartiality in relation to constitution of the

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benches and allocation of cases. The Basic Law, the constitution of the Federal Republic of Germany, recognises the right to a 'lawful judge'. The right prevents ad hoc and personam allocation of cases. The selection of judges and allocation of cases is made on the basis of objective criteria. If public trust is to be restored, the Court has to assume that each litigant has a right to a lawful judge.

18. In a nutshell, the invocation of jurisdiction under Article 184(3) and the exercise of discretion relating to the constitution of benches and fixation of cases are crucial in the context of preserving public trust and confidence. The process of constitution of benches and allocation of cases must be transparent, fair and impartial. The Court must always show extreme restraint in matters which involve the political stakeholders, having regard to the past practice and precedents as discussed above. The Court must not allow any stakeholder to use its forum for advancing its political strategy or gaining advantage over other competitors. It is the duty of the Court to ensure that political stakeholders are not encouraged to bring their disputes to the courts for judicial settlement by bypassing the institutions and forums created under the Constitution. It weakens the Majlis-e-Shoora (Parliament) and the forums meant for political dialogue and, simultaneously, harms the judicial branch of the State by prejudicing public trust in its independence and impartiality. It also encourages the political stakeholders to shun the democratic values of tolerance, dialogue and settlement through political means. This Court owes a duty to more than fifty thousand

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litigants whose cases on our docket are awaiting to be heard and decided. They ought to be given priority over the political stakeholders who are under an obligation to resolve their disputes in the political forums through democratic means. This Court has a duty to preserve public trust and confidence and not to appear politically partisan. This is what the Constitution contemplates.

Conclusion.

19. It is not disputed that the Lahore High Court has already allowed the petitions and rendered an authoritative judgment and its competence to have it implemented cannot be doubted. The Peshawar High Court is also seized of the matter. In the light of the binding 'salutary principles' discussed above, the petitions and the *suo motu* jurisdiction must not be entertained lest it may interfere with the implementation of the judgment of the Lahore High Court and the proceedings pending before the Peshawar High Court. The premature and pre-emptive proceedings before this Court at this stage is likely to delay the enforcement of the judgment of the Lahore High Court, leading to infringement of the Constitution by exceeding the time frame prescribed ibid. This is also obvious from the opinions of my learned brothers Syed Mansoor Ali Shah, Yahya Afridi and Jamal Khan Mandokhel, JJs who have also dismissed the petitions and on this ground, i.e., pendency of the same matter before two competent High Courts. Moreover, any person who would be aggrieved from the judgments of the High Courts will have the option to exercise the right to invoke this Court's jurisdiction under Article 185 of the Constitution. In the facts and

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circumstances of the case in hand, it is not a 'genuinely exceptional' case to deviate from the binding salutary principles. By entertaining the petitions and *suo motu* jurisdiction, the Court would be unjustifiably undermining the independence of two provincial High Courts. The indulgence at this stage would be premature and it would unnecessarily prejudice public trust in the independence and impartiality of this Court. This Court has no reason to apprehend that the High Courts are less competent to defend, protect and preserve the Constitution.

20. The manner and mode in which these proceedings were initiated have unnecessarily exposed the Court to political controversies. It has invited objections from political stakeholders in an already polarised political environment. The objections have also been submitted in writing. This obviously has consequences for the trust the people ought to repose in the impartiality of the Court. The Court, by proceeding in a premature matter, will be stepping into already murky waters of the domain of politics. It is likely to erode public confidence. The assumption of *suo motu* jurisdiction in itself may raise concerns in the mind of an informed outside observer. In the circumstances, the rights of litigants whose cases are pending before us would be prejudiced, besides eroding public trust in the independence and impartiality of the Court. This could have been avoided if a Full Court was to take up these cases. It would have ensured the legitimacy of the proceedings. The legitimacy of the judgment rendered in the *Pakistan Peoples Party Parliamentarians* case was solely based on the invocation of the *suo motu* jurisdiction on the recommendation

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of twelve Judges of this Court. Every Judge has sworn an oath to defend, protect and preserve the Constitution. The constitution of a Full Court, as was suggested in my note dated 23.02.2023, was imperative to preserve public trust in this Court. There is another crucial aspect which cannot be ignored; the conduct of the political stakeholders. The political climate in the country is so toxic that it is inconceivable that political parties will even agree to having a dialogue, let alone arriving at a consensus. As a political strategy, resignations en masse were tendered from the National Assembly, rather than discharging their constitutional obligations as members of the opposition. The constitutional courts were first approached to compel the Speaker to accept the resignations and when they were accepted the courts were again approached to have the decision reversed. The dissolution of the provincial legislature as part of the political strategy of the stakeholders raises questions. Is such conduct in consonance with the scheme of constitutional democracy? Is it not in itself a violation of the Constitution? Should this Court allow its forum to be exploited for advancing political strategies or appear to be encouraging undemocratic conduct? Should this Court not take notice of forum shopping by political stakeholders by invoking the jurisdictions of High Courts and this Court simultaneously? This Court cannot and must not appear or be seen as advancing the political strategies of political stakeholders. The public trust will be eroded in the independence and impartiality of the Court if it appears or is seen to encourage undemocratic norms and values. The Court would be unwittingly weakening the Majlis-e-Shoora (Parliament) and the forums created under the Constitution by

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encouraging political stakeholders to add their disputes to our dockets. The political stakeholders must establish their *bona fides* before their petitions could be entertained. The conduct of the stakeholders has created an unprecedented political instability by resorting to conduct that is devoid of the democratic values of tolerance, dialogue and debate. The conduct of the stakeholders does not entitle them to invoke the jurisdiction of this Court under Article 184(3) of the Constitution lest it is seen or appears to facilitate or promote undemocratic values and strategies.

21. Before parting with the above reasoning in support of my orders dated 23.02.2023 and 24.02.2023, I feel it necessary to record my observations regarding the hearings. It is ironic and unimaginable for the political stakeholders to involve the Court in resolving political disputes which ought to have been settled in the forums created for this purpose under the Constitution. It is also alarming that the conduct of the political stakeholders and their political strategies would create unprecedented political turmoil and instability in the country. Political stability is a precondition for economic progress and prosperity of the people. The power struggle between the political stakeholders is undermining the welfare and economic conditions of the people of this country. The people of Pakistan have been made to suffer for a long time by depriving them of their fundamental rights. The long spells of undemocratic regimes validated by this Court have caused irretrievable loss to the country and its people. The institutions which represent the will of the people were not allowed to take roots. Even today, seventy-five years after the creation of Pakistan,

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the institutions remain weak. The country is on the brink of a political and Constitutional crisis and it is high time that all those responsible take a step back and resort to some introspection. All the institutions, including this Court, need to set aside their egos and strive towards fulfilling their Constitutional obligations. Speaking for my institution, it is obvious that we may not have learnt any lessons from our past bleak history. We cannot erase the judgments from the law reports but at least endeavour to restore public trust and confidence so that the past is forgotten to some extent. When politicians do not approach the appropriate forums and bring their disputes to the courts, the former may win or lose the case, but inevitably the court is the loser.

(Justice Athar Minallah)

APPROVED FOR REPORTING

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