CHAPTER VIII

INHERENT POWERS OF HIGH COURTS AND THE SUPREME COURT - A COMPARISON

The preamble to the Constitution of India states that the republic is committed to secure justice, liberty and equality, to all citizens. Securing ends of justice means, realising justice in its social, economic and political dimensions. Added to this is the assurance to secure the dignity of the individual also. The Supreme Court of India by virtue of its commanding position, oversees this preambular pledge. This makes the court assume the role of not merely an adjudicator, but something more. This extra responsibility of the Supreme Court is to secure the ends of justice by discovering juristic devices. In *Kesavananda Bharati v. State of Kerala*¹ an advancement was made in this direction. Then came the decision in *Maneka Gandhi v. Union of India*.² It was followed by a period in the history of Indian judiciary which witnessed a remarkable achievement with its major contribution coming from the Supreme Court. This has given the Supreme Court the position of a dynamic, innovative, social institution capable of feeling the pulse of the society. This achievement is in the background of the power wielded by the Supreme Court. The inherent power is one component which has enabled the Supreme Court to break the ground of judicial creativity as well as make the judiciary command respect from one and all.

1. AIR 1973 SC 1461.
2. AIR 1978 SC 597
The Supreme Court was initially viewed with scepticism by those who had placed it amidst the thicket of constitutional powers and prerogatives. Even before the inauguration of the Court several national leaders who had participated in the drafting of the constitution expressed their halfheartedness. But all these proved to be hindsight of the politicians rather than the sagacity of statesmen because the Supreme Court has proved the apprehensions as misplaced. Today the only institution to enjoy universal respect of the society is the judiciary atopped by the Supreme Court. The court as the pioneer judicial institution has contributed to the social revolution envisaged through the constitution.

Inherent powers of the High Court under section 482 of Cr.P.C. are also with the philosophical objective of securing the ends of justice. The Code gives procedure for administration of justice. Orders passed under the Code are to be put into action. The process of the court is to keep itself free of being abused. Thus, the inherent powers of the High Court are employed as a means to secure the ends of justice. In the Indian context both the Supreme Court and the High Courts have inherent powers in the administration of justice. Thus, inherent powers included in the administration of criminal justice have the power to ascertain the freedom and liberty of individuals. The Supreme Court derives its power directly from the Constitution of India. The High Court derives power from the Constitution as well as the Code of Criminal Procedure. The Supreme Court while invoking inherent powers, stressed more on the constitutional dimensions. This is translated into reality through the High Courts. The distinction between the constitutional and statutory powers is

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3. Ref. supra Chapter III n.12.
thin and obliterated with the forays made through judicial creativity. The Supreme Court of India sets the agenda and the High Courts try to implement it.\(^4\)

i. **Similarities and Dissimilarities**

There are similarities as well as dissimilarities in the nature of inherent powers of the High Court and the Supreme Court. The following is an endeavour to bring under a clear perspective the inherent powers of the High Court and the Supreme Court. Inspite of dissimilarities and different levels of existence the discussion sheds light on the fact that the legal concept of inherent powers of the court has come to stay and is quite relevant in a system of administration of justice as ours. When a comparison of the inherent powers of the Supreme Court and the High Court is attempted, it does not mean that these are two entirely different varieties of power. Expansion of the inherent powers of the Supreme Court, has got simultaneous effect on the inherent powers of the High Court. The High Court has got an added advantage in the sense that it has a longer history of exercising inherent powers.

ii. **Where the Supreme Court Failed to Exercise Inherent Power**

In the context of judicial review also, inherent powers play active role. *A.D.M. Jabalpur v. Shivakant Shukla*,\(^5\) was a decision which demonstrated the failure of the Supreme Court to act where the High Court could have acted and in fact had passed interim orders under inherent powers or under Article 226 of the Constitution in the inter-

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4. Ref. Chapter VII for the details of Extent and Reach of inherent powers in criminal justice system.

5. AIR 1976 SC 1207.
est of justice. The Supreme Court in Shivakant Shukla's case put things in an unreasonable and unhelpful attitude, by saying that powers of the Supreme Court under Article 32 and the High Court under Article 226 suffer shrinkage when the President issues an order proclaiming the imposition of emergency. But, what happened was that the High Courts exercised the power and ordered the release of detenues in such circumstances. Since, power was exercised under Article 226, of the Constitution, even statutory rights could be enforced. But, the Supreme Court lacked unanimity of decision, because of dissent from the benches.

"A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error in to which the dissenting judge believe the court to have been betrayed"\(^6\)

The above case was an instance where the Supreme Court had failed to exercise its inherent powers in tune with the constitutional mandate it had. The decision in Shivakant Shukla's case generated much heated discussion and the judiciary came under a shadow of criticism. This was a retrogressive step from the positive stand taken earlier in Kesavananda Bharati's case.

iii. **Where the Supreme Court Asserted the Power**

But, the Supreme Court's attitude to similar issues of rights and liberties in the light of judicial review, has often led to positive assertion of Rule of Law. In Kesavananda Bharati v. State of Kerala,\(^7\) the inherent power of the Supreme Court in interpreting the constitution

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6. *Id* at p. 1277.
7. AIR 1973 1461.
and laws led to the invention and application of the doctrine of basic structure. Through such epoch making decisions, the Supreme Court was gradually preparing the ground for judicial supremacy which we witnessed during post Kesavananda Bharaty period.

It can be noted that the Supreme Court on occasions takes us to higher levels of thinking while exercising the powers, even though it does not have any inherent powers similar to one conserved and preserved under section 482 Cr.P.C. 1973, in the interest of justice. The Supreme Court exercises even powers akin to the inherent powers under section 482 of the Cr.P.C. In Delhi Judicial Service Association v. State of Gujarat, the Supreme Court demonstrated its power to quash proceedings pending before trial court.

The Supreme Court considered the scope of contempt and inherent power jurisdiction under Articles 32, 136, 142, 141 and 129 to take action against contempt of court cases against insubordination also. Such an action is likely to have repercussion throughout the country. The Supreme Court resorts to such powers only sparingly. In this case a controversy erupted when the police misbehaved to the Chief Judicial Magistrate of Nandiad, where the police officers assaulted and arrested him on flimsy grounds, handcuffing and tying with a rope a Chief Judicial Magistrate to wreak vengeance and to humiliate him. The Supreme Court decided to punish the contemners with quantum of punishment to be awarded to each on the basis of the contribution to the incident.

iv. Power to Punish for Contempt

The Delhi Judicial Service Associations case was an occasion
for the Supreme Court to explain a Court of Record. It had power to summarily punish for contempt. The same was derived from Article 129 and 142, of the Constitution. For this Power, the Supreme Court did not rely on any statute. Under Articles 32, 136 and 142 the court has power to quash proceedings against a person, in order to do complete justice, once it had taken note of the matter. It was held that the Supreme Court enjoyed power to quash the criminal procedure, to do complete justice and to prevent abuse of the process of the court. In this context, the Supreme Court quashed a criminal proceedings pending against the Magistrate. It is ideal to suggest that in such a situation the Supreme Court should not be a helpless spectator, Article 142 provides for the Supreme Court to do complete justice. There is no provision like section 482 of Cr.P.C. with express power of the Supreme Court to quash or set aside any proceedings pending before a criminal court, to prevent abuse of the process of the Court. But, the inherent power of Supreme Court under Article 142 coupled with special and other powers under Article 136, embraces powers to quash criminal proceedings pending, with any court to do complete justice in the matter. If the Supreme Court is satisfied that the proceedings in a criminal case is being protracted or if no case is made out of admitted facts, it would need to secure the ends of justice to set aside or quash the criminal proceedings. Once, the Supreme Court is satisfied, that the criminal proceedings amount to abuse of the process of the court, it would quash such proceedings to ensure justice. A Chief Judicial Magistrate is an important functionary in the body of the machinery of the administration of justice. Police, instead of controlling the Chief Judicial Magistrate must cooperate. This decision goes a long way in resolving the
enigma of jurisdiction of the Superior court to exercise inherent powers in criminal proceedings pending before the subordinate courts.

v. **Modifying its own Decisions**

In *Union Carbide v. Union of India*, the Supreme Court opened yet another leaf of inherent powers. The Supreme Court had an occasion in 1990 to consider the matter, which was considered again in this case. Even going to the extent of reviewing its earlier order, the Supreme Court issued directions to the Magistrate. The Supreme Court modified its own earlier order.

vi. **In the Light of Equity**

In *Gurbax Singh v. Financial Commissioner and another*, the Supreme Court considered inherent power in the light of the principle of equity. The Supreme Court is in a position to consider any situation arising in the administration of justice. Even when a matter is pending before the legislature, the Supreme Court is not devoid of inherent powers to interfere. This was so held in *Mrs. Sarojini Ramaswami*.

A constitution bench of the Supreme Court considered the aspect of the judicial review with respect to a motion moved against a Judge on the basis of a Committee report. Here also, the court held that it would depend on the facts and circumstances of the particular case. Judicial Review is the exercise of court's inherent powers to determine the legality of an action tested against the Rule of Law. The contention that the remedy of the review would not be available

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9. 1996 (3) SCALE (SP) 64.
to the Judge when a motion is adopted, because finding of the fact is made in the report of the Enquiry committee, was rejected by the Court.

vii. In the Context of Judicial Review and Rule of Law

Judicial review has come to be recognized as synonym for Rule of Law, because inarticulate meanings of legislation can be gathered only through judicial process and the system of judicial review is the most efficacious and time tested in this context. The Constitution has provided only for the High Courts and the Supreme Court the power of judicial review. An area where the Supreme Court's inherent powers came into play, is in the interpretation of Article 21 of the Constitution. In A.R. Anthulay v. R.S. Naik and another,12 the Supreme Court issued some guidelines forming broad proposition in the exercise of inherent powers. The Supreme Court held that right to speedy trial is an incident of Article 21 of the Constitution. In such circumstances, the High Court should not entertain a petition and thus stay the proceedings, the Supreme Court held that if right to trial is not recognised, it is for the High Court to pass appropriate orders if inordinate delay in the conclusion of the proceedings is occurred. The High Court has jurisdiction and discretion under section 482 of Code of Criminal Procedure having regard to the attendant and relevant factors and circumstances. The Supreme Court enumerated these relevant factors. The relevant factors are in consonance with the requirement of justice, under Article 21 of the Constitution of India.

viii. To Minimize the Abuse of the Process of the Court

A.R. Anthulay's decision was aimed at minimising the abuse of

the process of the Court of trial of criminal cases. Similarly, in the
case of exercise of inherent powers the Supreme Court had an oc­
casion to invoke special categories of rights which are not specifi­
cally administered.\textsuperscript{13} The Constitutional mandate helps the Supreme
Court to make the presence of inherent powers felt. In \textit{All India Judges
Association v. Union of India}\textsuperscript{14}, in a petition filed in respect of Article
32 of the Constitution, the Supreme Court held, that where legisla­
ture and executive fail to perform their duties and where is absence
of law, the Supreme Court has to issue directions.

In \textit{R.K. Jain v. Union of India \& others}\textsuperscript{15}, also, the Supreme Court
held that Article 142, the Court has power to subject even an execu­
tive decision to review. In \textit{Maniyeri Madhavan v. Sub Inspector of
Police},\textsuperscript{16} the Court invoked its inherent power even in matters of
investigation by the State agencies. But, in all these circumstances,
there is the possibility of abusing the powers.

In \textit{Amitabh Bachan Corporation Ltd. v. Mahila Jagran Manch},\textsuperscript{17}
the Supreme Court castigated the High Court for its indulgence in
abuse of the process of the court. When instances which warrant
interference was called for, the Supreme Court held that the High
Court has no jurisdiction to entertain a writ petition under Article
226, only because of an agitation by a section of the people. The
power is to use for constructive purpose and not for unreasonable
purposes. The Supreme Court's decision in this regard, sheds light
on the dark area of administration of justice. In \textit{D.K. Basu v. State of

\textsuperscript{13} State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 71.
\textsuperscript{14} (1993) 4 SCC 288.
\textsuperscript{15} (1993) 4 SCC 119
\textsuperscript{16} (1993) 1 SCC 501.
\textsuperscript{17} (1997) 7 SCC 91.
West Bengal, the Supreme Court exercised its power under Articles 21, 22, and 32 issuing direction to authorities in the matter of arrest of persons. Resort to jurisdiction of inherent powers by the High Court is considered as an effective remedy in the administration of criminal justice. Those who are charge-sheeted for offences triable by ordinary criminal courts get an opportunity to test the veracity, reliability and verifiability of the charge, complaint or information. This power is vested in the High Court. It is not accidental or coincidental. It has relevance. The High Courts were for a long time, the court of Record with only Privy Council in England having superior jurisdiction. The High Court is a court of law, as well as a court of justice. So when a controversy or allegation, which is ordinarily to be examined in the light of evidence, is subjected to a scrutiny of a superior court this court exercises inherent powers.

ix. Judicial Review of Criminal Proceedings

Now, time has come when the Supreme Court of India has held that inherent powers give scope for judicial review of criminal proceedings. For a scholar of conventional jurisprudence, criminal justice administration and judicial review may be irreconcilable jural opposites. But, today under the impact of the Constitution and the functioning of the Supreme Court, which has power to do complete justice, the seemingly irreconcilable jural opposites are brought on a compatible plane of action. Principles invoked for judicial review are invoked for testing the correctness of criminal proceedings. Provisions in the Constitution which are ordinarily used for the purpose of judicial review of administrative quasi-judicial actions are made available for adjudicating the legality of the proceedings pending

18. AIR 1997 SC 610.
before the subordinate criminal courts. With the Constitution of India, the Supreme Court came to the scene. The way was prepared for this, by the Federal court, and legislation like the privileges and jurisdiction of Privy Council Act, in 1948. The establishment of the Supreme Court in no way diluted or reduced the prestige or prominence of the High Court. On the other hand, the Supreme Court's existence enhanced the relevance of the High Courts. And the Supreme Court came to have inherent powers in the administration of justice. As a result, rigid compartmentalisation of various jurisdictions became impossible. Principles of one branch came to be applied with equal efficacy in other branches through the medium of common law and principles of justice.

x. **Inspiring Confidence in the administration of Justice**

Contribution of judiciary in this context has been substantial. Certain decisions came to occupy a symbolic status which could inspire confidence in the administration of justice.

The *House of Lords decision in Anisminic Ltd. v. Foreign Compensation Commission*,19 paved the way for legislation relating to judicial review in England. The trend setting is aptly put by an author in the following words.

"The courts have been enabled to demonstrate over the past decade, their willingness to grant reliefs, in areas which hitherto they would not go".20

Invitation to enter on new areas continued to be extended in

particular to areas which are governed by disciplinary, regulatory, and visitorial bodies. In addition, invitation to grant relief where none could even contemplate a short-while ago are now extended so as to raise perplexing constitutional issues.\textsuperscript{21}

A particular instance of the above generalisation is the system of mareva injunctions and relator actions.

In India, the basic structure theory postulated by the Supreme Court of India, promoted judicial creativity and it was an occasion for the judges to have "free scientific research" postulated by continental jurists like 'Geny'. In their effort to expose the content and conjures of basic structure, the Supreme Court devised multiple categories of references. This is done through interpretation and for interpreting in a purposeful and result-oriented manner the court had the assistance of its inherent powers.

\textbf{xii. Areas of Inherent Powers}

When comparison of inherent powers of High Courts and the Supreme Court are attempted, the following areas can be projected.

A. Inherent Powers of the High Court in civil jurisdiction. This is provided under Section 151 of the Code of Civil Procedure.

B. Inherent powers of the High Court in criminal jurisdiction as provided under section 482 of the Code of Criminal Procedure.

C. Inherent powers of the High Court under Articles 226 and 227 of the Constitution of India which are interchangeable with power under section 482 of the Code of Criminal Procedure.

\textsuperscript{21} Ibid.
D. Inherent powers of the High Courts under Article 215 of the Constitution to punish for its contempt including criminal contempt.

E. Inherent powers of the High Court gathered from decisions of the Supreme Court on the subject.

F. Inherent powers of the High Court emanating from provisions in Statutes, eg. High Court Act, and other legislations.

G. Inherent powers available to the High Court which are variations of powers under Section 482 of Code of Criminal Procedure. eg: sections 397, 401, 483 of Cr.P.C.

The areas of inherent powers of the Supreme Court are also identified.

A. Power under Article 142 to do complete justice.

B. Power under Article 129 to punish for its contempt.

C. Power under Article 136, to consider the legality of any order passed by any court or tribunal in India.

D. Power under Article 32 of the Constitution which is available to those citizens as a fundamental right to controversial remedies.

E. Power under Article 141 and 143 of the Constitution.

The Supreme Court's inherent powers are a class by itself, because the notion created by the term inherent powers when used in the context of the High Courts, is changed when the same is used in the context of the Supreme Court. The Supreme Court's power is not at all structured. Only the Supreme Court can correct itself, if there is a dominant opinion that the Supreme Court has gone wrong. Unless the attitude of the Supreme Court is so drastic and creating
an incongruent situation for the Parliament and the executive, the Supreme Court has got inherent powers to do anything under law. Even if limitations are effected on the power it is self imposed.

xii. Courts of Record and Contempt Proceedings

It is one thing to have inherent powers and another to use it arbitrarily, summarily and capriciously. The stature of the inherent power has increased since it is discussed in the context of the inherent powers of the Supreme Court and the High Court under the Constitution. On the inherent powers an important aspect which contributes to the relevance is the fact that the courts are Courts of Record. Articles 129, and 215 recognises the Supreme Court and High Court respectively as Courts of Record. Constitution does not define a Court of Record. A Court of Record has inherent powers and one feature of a Court of Record is that its contempt can be punished by itself.\(^22\) The incidence of inherent powers in a Court of Record is explained by the Supreme Court. In *Supreme Court Bar Association v. Union of India*,\(^23\) the contempt jurisdiction and the prominence of a Court of Record are discussed together to give inherent powers a constitutional status.

"12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law, in a regular, orderly and effective manner and to uphold the majesty of law and

\(^{22}\) Art. 215 and 129 of the Constitution of India.

prevent interference in the due administration of justice"\textsuperscript{24}

The Supreme Court consults the reputed law dictionaries, to gather a definition of a Court of Record. While consulting, the Supreme Court goes through the Books like Jovitt's Dictionary\textsuperscript{25} and Warten's\textsuperscript{26} Law Lexicon.

Warten's Law Lexicon explains a Court of Record as:-

"Record, courts of, those which judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony, which rolls are called the records, of the court, and are of such high and Superintendent authority that their truth is not to be called in question. Courts of record are of two classes - Superior and Inferior. Superior courts of records includes the House of Lords, The Judicial Committee. The Court of Appeal, the High Court and a few others. The Mayor's court of London, the County courts, Coroner's courts, and other are inferior courts of record, of which County's courts, are the most important. Every superior court of record has authority to fine and imprison for contempt of its authority, an inferior court of record can only commit for contempts committed in person court, in facie curiae"\textsuperscript{27}

The contempt jurisdiction as a manifestation of the inherent power is explained.\textsuperscript{28}

\textsuperscript{24} Id. at p. 419.
\textsuperscript{25} Jowitt's Dictionary of English Law, 1st Edn.
\textsuperscript{26} At p. 526, a court of Record has been defined as: "A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority".
\textsuperscript{27} Ibid.
The contempt jurisdiction of courts of record forms part of their inherent jurisdiction. The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridicial basis of the inherent jurisdiction has been well described by Master Jacob as being. The authority of the judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner. Such a power is not derived from Statute nor truly from the common law but instead flows from the very concept of a court of law. All Courts of Records have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the court resides exclusively in superior courts of record. Superior courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior courts.

The prestige of the Supreme Court and the High Court in the matter of contempt jurisdiction is that the power to punish for the contempt is constitutionally mandated and not the grace of a statute like the Contempt of Court Act, 1972. Power to punish contempt is therefore a source of inherent powers. Orders and judgments of the court are to be held in high esteem, where there is Rule of Law. The courts of Record being the centres from which commands of law emanate, the judicial institutions must enjoy confidence and esteem, obedience and obligation from all who are under it. In the Indian scenario, quantum of inherent powers so far as the High Court is concerned is in no way inferior to the power of the Supreme Court. The provisions of the Contempt of Court Act, 1971, makes explicit provision in this regard, in addition to the constitutional provisions.
In S.K. Sarkar, Member, Board of Revenue v. V.C. Mishra, the Supreme Court held that:

"Articles 129 and 215 preserve all the powers of the Supreme Court and High Courts, respectively, as a Court of Record which include the power to punish the contempt of itself."

In Supreme Court Bar Association v. Union of India, the Supreme Court displaying a rare sense of reality asserted its inherent power as well as that of the High Court to punish for contempt and at the same time accepted the limitations of jurisdiction. While dealing with a subject covered by a Statute and the authority created thereunder, an advocate who was guilty of contumacious behaviour in a court, was held liable to be punished for contempt.

The finding of criminal contempt of court was for "obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language".

Taking the gravity of the contumacious conduct of the contemner, the Supreme Court sentenced him to undergo simple imprisonment for a period of six weeks. The court also suspended him from practising as an Advocate for a period of 3 years. In Supreme Court Bar Association v. Union of India, in a petition filed under Article 32

30. Id at p. 441. The Halsbury's Law of England 4th Edition holds that, there is no statutory limit to the term of imprisonment imposed for contempt.
31. Supra n. 22
33. Supra n. 23 at p. 417
34. Ibid.
of the Constitution the Supreme Court considered the logic behind its earlier decision in *Re V.C. Mishra*’s\(^{35}\) case. A constitution Bench of the Supreme Court considered the issue as it had great bearing on the power and prestige of the judiciary, as well as the privilege and position of the lawyers. After making a threadbare discussion, of facts and law, the Supreme Court came to the conclusion that the plenary inherent powers of the Supreme Court and High Court to punish for contempt is unlimited. There is an inherent power to punish for contempt independent of the Statutory provision contained in the contempt of Court Act. This inherent power accompanying the very institution, is not conferred nor vested. It is there so far as the court is there. The Court being a Court of Record, the saving of the inherent powers is all the more important. A glance at the legal history of India would show that the concept of a Court of Record came into being from 1726 when the judicial charter was issued and Mayor's Court and Court of Record were introduced in the Presidencies. So, the power to punish for contempt is an inherent, inalienable, irreducible power.

**xiii. Power to do Complete Justice**

In the context of Article 142 of the Constitution, a still finer variety of inherent power of the Court is recognized. It is the power to prevent injustice and to do complete justice, between the parties. The Supreme Court has diagnosed the dynamics of this power, through various decisions.

"The plenary powers of this Court under Article 142 of the Constitution are inherent in the court and are complementary to those

\(^{35}\) Ref. *supra* n. 32
powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the Statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the Statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent 'Clogging or obstruction of the stream of Justice. It however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature, cannot be construed as powers which authorise the court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to 'supplant' substantive law applicable to the case or cause under consideration of the Court, Article 142, even then with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practise,
a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The Construction of Article 142 must be functionally informed by the parties. It cannot be otherwise. As already noticed in a case of contempt of Court, the contemner and the Court cannot be said to be litigating parties"36.

xiv. **Limits of Articles 129 and 142- to Exercise Self Restraint**

After explaining the inherent powers of the Supreme Court under Article 129 read with Article 142, the Supreme Court addressed the other questions that is, the inherent power of the Supreme Court or the High Court to assume the jurisdiction of a statutory authority like the Bar Council. In the given case after punishing the contemner for his contumacious behaviour in the court, the Supreme Court has also punished him as an Advocate for professional misconduct. This 2nd limb of the action of the Supreme Court has raised eyebrows in the judicial parlance, because the question is whether the Supreme Court could in the name of doing complete justice deriving its inherent powers under Article 129, and 142, usurp the jurisdiction of a Statutory body like the Bar Council. The court decided in the negative holding that:

"To conclude, We are of the opinion that this court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of Court, also impose a punishment of sus-

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36. *Supra* n. 22 at p. 431.
pending his licence to practice where the contemner happens to be an advocate". 37

The inherent powers are not to be invoked under circumstances where there is no occasion or relevance for it. In a display of magnanimity, and judicial discipline, the Supreme Court set its record straight by over ruling In Re. V.C. Mishra's case, to the extent that the judgment arrogated the power of the Bar Council to punish an advocate for professional misconduct. In the name of inherent powers, the court cannot initiate actions illegal, illogical and unreasonable. To quote the words of the Court:-

"It must be remembered that under Article 142, the greater is the need of care for this court to see that the power is used with restraint without pushing back the limits of the constitution so as to function within the bounds of its own jurisdiction." 38

The above discussion of the inherent powers of the Supreme Court under Article 129, read with 142, creating a dichotomy of sorts in the matter of inherent powers by limiting its application to its own occupied field, rather than extending it to the fields occupied by statutory authorities is an instances of judicial discipline and restraint, which the Supreme Court retains when inherent powers are exercised. In Pepsi Food Ltd. & others v. Special Judicial Magistrate, and others, 39 the Supreme Court has opined there could not be any inflexible or rigid formulae to be followed by the Court while exercising inherent powers. 40 But the question remains whether the apex

37. Id. at p. 444.
38. Id. at p. 446.
40. Ibid.
court can be said to be devoid of the inherent powers to do justice in all its ramifications. Once, the superiority of the inherent powers is established, the statutory powers and statutory authority shall not be a reason for the Supreme Court to take an application of the inherent powers to a logical conclusion. This prompts one to look at the decision of the Supreme Court in *Supreme Court Bar Association v. Union of India*,\(^\text{41}\) with some scepticism.

The question is not of the relevance of the inherent power of the Supreme Court in the context of statutory powers of the Bar Council, but, a larger concept of Rule of Law, where a person or an individual, confronts an institution, that is the judiciary, with utmost misdemeanors. This itself is an act violating not only law, but also, ethics. It is ex facie contempt. That is, contempt at the face of the Court. It is as contemptuous, as throwing a chapel on the face of the Court. Therefore, the inherent powers of the Supreme Court, ought to be open to give the contemner a complete penalty for his behaviour. The Advocates Act deals with professional misconduct of the lawyers, but it does not deal with the contempt of Court by advocates. Therefore, the decision of the Supreme Court in *Supreme Court Bar Association v. Union of India*,\(^\text{42}\) is criticised to that extent. Some jurist hold that the reasoning of the decision of the three judges Bench\(^\text{43}\) in V.C. Mishra's case was more balanced and pragmatic than the ruling given in the decision in *Supreme Court Bar Association v. Union of India*. But this equalling strong contrary view sounding alarm calls for the judiciary crossing its limit.

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41. Ref. supra n. 22
42. Ibid.
xv. **Process of the Court not to be Obstructed**

This criticism is due to the reasoning of the Supreme Court that inherent powers under Article 142 is accessible only when the parties are before the Supreme Court in a pending proceedings. But, the inherent powers are believed to be more superior, and more pervasive than statutory powers of statutory bodies. The process of the court cannot be obstructed by any person and if it is done, the court must not be powerless to punish him.

The inherent powers provided are to see that the course of justice is not impeded by any action of private persons. The criminal justice system shall not be bogged down by unnecessary proceedings delaying administration of justice. If, the High Court is to press the application of the inherent powers into operation, for preventing the abuse of the process of the court, and to secure the ends of justice, criminal justice system could be purified to a great extent. For this, the constitutional principles are used as catalysts to enhance the reputation of the inherent powers of the High Court.

xvi. **Impact of the Constitution- Expeditious Trial**

The constitutional developments have made its impact in the process of exercising inherent powers. The Supreme Court has displayed an instance in the decision *Common Cause v. Union of India*. The weight of the decision is in the direction of the constitutional principles contained in Article 21. The petitioner was a registered society espousing public causes. The petition was filed under Article 32 of the Constitution of India. The main thrust of the petition was aimed at causing an imprint in the administration of criminal justice.

44. AIR 1996 SC 1619.
The Supreme Court was called upon to exercise its inherent powers under Article 32 which includes the power of judicial review. Going through the judgment, it is seen that the petitioners wanted the Supreme Court to do exactly the same thing, a High Court is asked to do in a petition under Article 226/227 or section 482 Cr.P.C. The motivating factor behind the petition was delay in criminal trial, due to the laxity of the State. It is an abuse of the process of law and it leaves the ends of justice as distant as ever for the common man. Under the rubric of administration of criminal justice, the accused is asked to traverse a labyrinthine procedure involving remand, release on bail, cancellation of bail, examination, arguments and all paraphernalia available to an ordinary criminal trial to which a humdrum mortal is subjected to. The decision of the Supreme Court attracted attention.

The petitioners wanted to quash all proceedings against persons accused of offences under the Motor Vehicle Act, where proceedings had been initiated more than one year ago and were still pending in court. The petitioners wanted unconditional release of the accused and dismissal of the proceedings involving offences for which maximum sentence is not more than six months. It was also prayed for unconditionally releasing the accused and dismissing the criminal proceedings where persons had been in police or judicial custody for a period of more than 3 years involving offences not punishable with more than 7 years. Also, the prayer for unconditional release and dismissal of proceedings, against persons accused of offences under section 309 I.P.C., where proceedings have been pending for more than one year. The Supreme Court appreciated the prayers in the light of the consistency they had with the spirit
underlying in the constitution of India, and the criminal justice sys-
tem. According to the Court, the issues raised merited serious at-
tention. Several persons languish in Jail and in custody without see-
ing day light, being treated like mere animals. The Supreme Court
realised the necessity for issuing appropriate directions. About nine
specific directions were issued in this context which were made valid
for all the States and Union Territories. The first direction involved
the release of accused on bail or on personal bond in case where
the accused was in custody and the punishment did not exceed three
years. Secondly, release was ordered on bail or on personal bond in
criminal case, where punishment does not exceed 5 years imprison-
ment. Direction was issued to discharge the accused and close
the case where criminal proceedings were pending regarding traffic
offences. Regarding cases where the offence was compoundable,
acquittal was ordered. As for the non-cognizable and bailable of-
fences pending for more than two years, without commencement of
trial, the accused were acquitted and discharged from the trial and
closed the cases. The directions issued in this decision were not to
be applicable in certain categories of offences explained by the Su-
preme Court.

"Directions 1 and 2 made herein above shall not apply to
cases of offences involving

(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Cor-
ruption Act or any other statute,

(b) Smuggling, foreign exchange violation and offences un-
der the Narcotics Drugs and Psychotropic substances Act,
(c) Essential commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offence,

(d) Offences under Arms Act, Explosive substances Act, terrorists and Disruptive Activities Act,

(e) Offence under Arms Act, explosive substances Act. Terrorists and Disruptive Activities Act,

(f) Offences relating to the Army, Navy and Air Force,

(g) offence against public tranquility,

(h) offences relating to public servants,

(i) Offences relating to coins and Government Stamp,

(j) Offences relating to election,

(k) Offences relating to giving false evidence and offences against public justice

(l) Any other type of offences against the State,

(m) Offences under the Taxing enactments and

(n) Offences of defamation as defined in section 499, IPC

xvii. Humanism in the Administration of Criminal Justice

The above attitude of the Supreme Court displays the relevance of the inherent powers in the administration of criminal justice. The doze of humanism injected into the administration of criminal justice is made possible because of the impact of the Constitutional law principles in the administration of criminal justice. The decision affects every accepted principle of the practice and procedure adopted by the Courts in India. It ignores the principle of locustandi in criminal law, it ignores the normal procedural aspect of law in the adjudi-

45. Ref. supra n.44 at p. 1621.
cation of criminal justice. But, the spirit of the judgment is universally welcomed as in the name of administration of justice, thousands are put to peril through gross abuse of the process of justice. One may not find fault with the Supreme Court for overlooking the other various interests involved in the criminal trial. The decision of the Supreme Court is likely to be misinterpreted as a premium announced on crimes in the society. Probably due to the discussion which generated, subsequent to the decision, Supreme Court modified the same.

xviii. Supreme Court- the Last Word in Justice Administration

While not adhering to the controversy created the decision is illustrative of the dynamics of the inherent powers of the Supreme Court under the liberal interpretation of Constitutional principles of Articles 14, 19 and 21. The Supreme Court of India has the last word on all aspects of administration of justice. The Constitutional provisions relating to the High Court and the Supreme Court give the necessary impetus to judiciary to work out the cause of the judicial process. While discussing the inherent powers of the Supreme Court and High Court, the legal literature available shows that a jurisprudence of inherent powers is developed with the contribution of the Supreme Court and the High Courts. The inherent powers of High Court and Supreme Court provide a dichotomy of sorts. The Supreme Court exhibits a dualism in respect of its attitude towards inherent powers. While interpreting the inherent powers of the High


Court there is an alliteration of sounding caution and reticence by the Supreme Court. Where as, while asserting its own inherent powers the Supreme Court is at its versatile best. Viewed dispassionately and objectively this style of the Supreme Court is appreciated, as the apex court is to play a key role in India's social revolution envisaged through the constitution. It is the duty of the Supreme Court to see that no institution under the Constitution, including judiciary, crosses the Line of Control of permissibility, legality or rationality, to take justice to inhospitable and vulnerable terrains. Here, the decisions of the Supreme court give vent to the dialectics of inherent powers of the High Court which assume jurisprudential value.

The Supreme Court, over the years, has attempted to give shape and meaning to the otherwise amorphous and inscrutable concept of inherent powers. A random glance into the Supreme Court's almanac of the last 40 and odd years provides us with the "free scientific research' or "extraversion" done by the court. With no ego, with no motive, with no preconceived notion, the Supreme Court gives appropriate configuration through the Kaleidoscope of inherent powers to each factual situation brought before it. In the Course of this the Supreme Court may endorse the view of the High Court. It may repudiate the High Court's opinion. It may substitute the High Court's opinion with its own. It may send back the matter to the High Court for fresh disposal. It may modify the High Court's reasoning. It may rehabilitate the trial courts opinion. It may infuse dynamism into the system through innovative strides by issuing positive directions quashing bail, ordering compensation, ordering investigation, framing charges, striking down charges, awarding costs, granting stay of
proceedings, extending alternate remedies, reviewing its own decisions, convicting, acquitting all with the aid of a conscious proselytizing zeal.

xix. Expunging Remarks

The above being the position the Supreme Court can endorse the High Court decision to cancel bail granted to the accused in a bailable offence.\(^{48}\) The Supreme Court can declare a ban on using inherent power in matters specifically covered by other statutes.\(^{49}\) The Court prohibits invoking inherent powers to do things expressly barred in the Code.\(^{50}\) The Supreme Court refrains the High Court from interfering with investigation.\(^{51}\) The Supreme Court can opine on the applicability of inherent powers to expunge remarks,\(^{52}\) and on the remarks made by the High Court on an investigating officer\(^ {53}\) The court can cancel order suspending sentence and granting bail.\(^ {54}\) can quash the trial dogged by delay.\(^ {55}\)

xx. Review of Bail Orders

In *Ratilal Bhanji Mithani v. Asst. Collector of Customs, Bombay*\(^ {56}\) the Supreme Court held that High Court is empowered to cancel bail granted by the trial court invoking inherent powers. In the interest of justice, if the High Court is convinced that accused is to be

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55. *State of U.P. v. Kapil Deo Shukla*, (1972) 3 SCC 504
56. AIR 1967 SC 1639
committed to custody. It was also held that inherent powers of the High Court when exercised is not to be violative of Article 21 of the Constitution, instead the inherent powers are vested in the High Court by 'law' within the meaning of Article 21. This view may sound novel since the inherent powers are not vested in the court but, preserved and saved only. Then it can be said of the rights under Article 21 of the Constitution that no new rights are conferred on anybody, it only preserves and saves the already existing rights of every person. The Supreme Court was reiterating the above decision in *Talab Haji Hussain v. Madhukar Purushottam Mondkar*,57 In this decision, one gets the perception of the Supreme Court regarding the inherent power of the High Court. In *State of U.P. v. Kapil Deo Shukla*,58 the High Court quashed charge-sheet and further proceedings for inordinate delay. The trial was protracted for 20 years. According to the Supreme Court, it was neither expedient, nor in the larger interest of justice that trial with all such possible deficiencies could be followed. Delay defeats equity and in the Indian context, it is violation of the fundamental rights of the accused also.

xxi. **Abuse of the Process should be Manifest**

In *L.V. Jadhav v. Shankerrao Abasaheb Pawar & others* 59 the Supreme Court expressed caution in exercising inherent powers. Only when the High Court is convinced of the reason to believe that the process of law is misused to harass a citizen, inherent power shall be exercised. In *State of West Bengal & others v. Swapan Kumar Guha & others*60 the High Court quashed the proceedings

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57. AIR 1958 SC 376
58. AIR 1973 SC 494
59. 1983 SCC (Cri.) 813
60. AIR 1982 SC 949
under Article 226 of the Constitution. This is an indication of the impact of the Supreme Court's attitude. It was held that FIR and criminal proceedings, not disclosing the commission of cognizable offences, could be quashed under Article 226 of the Constitution. In such cases, it was held that the court had a duty to interfere with in investigation and to stop the same, to prevent any kind of uncalled for or unnecessary harassment to an individual. Yet another case in which the Supreme Court's version of inherent powers is reflected is: Delhi Judicial Service Association v. State of Gujarat & others. Even though, the Supreme Court was not vested with power similar to section 482 Cr.P.C., it was held that the Supreme Court itself could quash the proceedings in exercise of its plenary and residuary powers under Article 136 of the Constitution of India. This shows the quality of justice to be maintained as envisaged by the Supreme Court in respect of invoking inherent powers.

High Courts draw a lesson or two from the attitude of the Supreme Court, in Captain Subhash Kumar v. The Principal Officer, Mercantile Marine Dept. Madras. The High Court had dismissed the petition to quash the proceedings. The complaint was against the master of a ship by the principal officer, Mercantile Marine Department. Proceedings were initiated for enquiry under section 363 of the Mercantile Marine Shipping Act, it was in respect of a shipping casualty occurred on board a foreign ship at a place beyond the territorial water boundary of India. The complainant was incompetent to file the complaint. Central Government is the proper authority. The inci-

61. AIR 1991 SC 2176
62. (1982) 1 SCC 561
63. AIR 1991 SC 1632
dent being taken place beyond the territorial waters of the India, the Act itself was not applicable. The complaint was held liable to be quashed.

xxii. **Enforcing Civil Rights**

The fact that inherent powers of the High Court and the Supreme Court meet in the context of enforcing civil rights of the citizen as evidenced by the decisions of the apex court. In *A.R. Antulay & others v. R.S. Nayak and another*, it was held that the court has discretion under section 482 of the Code. The Court may advert to relevant factors. If charges cannot be quashed in the light of fact, the court may fix a time limit for concluding the proceedings. This is a pragmatic dimension earned to the inherent powers by the Supreme Court.

In *S.G. Nain v. Union of India*, the High Court had dismissed the petition. Prosecution was initiated without necessary sanction under the CRPF Act. The case was pending already for 14 years, the Supreme Court found that such proceedings would create mental agony and a fair trial would become impossible. Hence, the proceedings were quashed without going into the material questions. This shows the summary way in which the inherent powers are applied. Therefore, it requires great sagacity to envisage a correct situation for applying inherent powers.

In *Dr. Dhanwanti Vaswani v. State and another* the High Court had quashed the proceedings against one of the accused even though complaint was against seven persons. It was held that, even

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64. 1992 SCC (Cri) 93  
65. AIR 1992 SC 603  
66. AIR 1993 SC 1206
on taking the allegation in the complaint as correct on its face value the proceedings against the petitioner would not stand.

In *Punjab National Bank v. Surendra Prasad Sinha*\(^{67}\) the High Court had dismissed the proceedings. It was a case where the illegality was so patent on the order issued by the Magistrate without complying with the section 204 Cr.P.C. Process was issued mechanically. The complaint was filed on vendetta to harass persons needlessly. The Supreme Court held that the High Court committed gross error in declining to quash the complaint. This shows that inherent powers go both ways. Injustice can occur when power is exercised or power is declined to be exercised. The Supreme Court annotates the situation to come to a conclusion regarding the infrac­tion done on justice.

*Ganesh Narayan Hegde v. S. Bangarappa & others*,\(^{68}\) the Supreme Court's reasoning did not match that of the High Court. Quashing the proceedings against the respondents was held to be uncalled for. Delay caused by the accused cannot be a ground for quashing the proceedings. The Supreme Court took exception to the fact that the High Court had acted as a second revisional court. When persons with unusual clout come to the court, the High Court must be very vigilant to see that norms of justice do not get a goby. The court also held that on the sole ground that revision petition was dismissed by the Sessions court, High Court's inherent jurisdiction is not barred. The only thing is that the High Court shall not act as a second revisional court. If a case comes to the judicial scrutiny of the Su-

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67. AIR 1992 SC 1815
68. (1995) 4 SCC 41
preme Court, in an earlier case, the High Court is to decide according to the reasoning of the Supreme Court.

In *P. S. Rajya v. State of Bihar*, the Supreme Court set aside the orders of the High Court and quashed proceedings by applying the dictum in *Bhajanlal's case*. The charge impugned had alleged offences under section 502 and section 51E of the Prevention of Corruption Act 1947. The Supreme Court set aside the order and quashed the proceedings. Prosecution was for earning disproportionate to income. There was exoneration in departmental proceedings in the light of the report of Central Vigilance Commission. The High Court was of the opinion that the issue raised had gone into the finalisation of proceedings. But, the Supreme Court held that the case falls under the guidelines of *Bhajanlal's* case and hence inherent powers could be exercised.

xxiii. **Concurrence of the Powers of the Supreme Court and the High Court to Preserve the Rule of Law and Justice**

When inherent powers of the High Court and the Supreme Court are compared, the effect it produced in the administration of justice is the same. The Supreme Court stands head and shoulders above all in supervising the prevalence of Rule of Law and Justice. If the Constitution does not expressly provide for a contingency it is for the Supreme Court as the pioneer institution to supply the necessary infrastructure. The Supreme Court has been doing the above duty ever since its installation under the Constitution. In the 1950s,

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69. *Supra* n. 70
70. 1992 Supp (1) SCC 335.
71. Ref. *supra*
and 1960s the Court's attention was engaged to the Fundamental Right of the citizen in respect of their property. From 1970s the attention of the Court came to be gradually drawn to the personal liberty and freedom of the individual. The post-emergency period witnessed a scene where the Supreme Court displayed the courage to take up issues which were not conventionally in its domain. By 1980s, the activist posture of the Supreme Court led to the precipitation of a human right where administration of justice came to occupy the central slot in the Supreme Court's reasonings. The Supreme Court liberated the system from the shackles of several conventional bottlenecks like rules of *locus-standi*, estoppel etc. The Supreme Court displayed great vision in articulating the unheard melodies of the rights of the citizen. Under Rule of Law, the Supreme Court is also bound by constitution. But armed with doctrine of judicial review and inherent powers the Supreme Court has the unique position to declare what is constitution. This achievement of the Supreme Court is engaging the minds of the people as an institution patronising justice and protecting their rights and liberties, is to a great extent due to the inherent powers of the court.

The contribution from the Judges in filling the gaps in the body of law has been substantial. The occasion provides for an expression of the personality of the judges. The work of the Indian Judges has been more than fulfilled the expectations of Sir Charles Wood, Secretary of State for India, in his Despatch dated 14-5-1962, after the Indian High Court of 1861. The Despatch accompanies the letters patent for High Court of Calcutta.

72. Indian Judges as Law Makers; some glimpses of the past, by Mr. Justice M.N. Venkata Chellaya, (1995) 1 SCC (J) 1
"The crown by its Letters Patent has sanctioned the establishment of a tribunal as the Chief Justice in India, which in the trained learning of the Judges selected from the Bar and in the knowledge of the language, feelings and habits of that country possessed by other members of the Court, combines the most material elements of success".73

The author, quotes Prof. Wade and other thinkers, to reinforce his view that it is the result of judicial activism, in the common law tradition. The Judges by their ingenuity and scholarship, enter into areas traditionally reserved for the legislation. With a vision and farsight, they go on extending the jurisdiction.

"Critics say that there is too much learning on the side of social reform of social consensus, and that there is an erratic subjectivity of judgments, an analytical laxness, an intellectual incoherence and of imagining too much history. Judicial activism in America is criticised for its infidelity to the Constitution"74

This is a very volatile area. Judiciary has to face the criticism for transgressing into the field which it is not entitled to occupy. The justification is that if the courts, in the absence of specific laws can decide cases ex-debitio justitiae; the reasons for such decisions can become norms for similar subsequent cases. Such norms cristalizes to rules.

"This debate involved profound issues of the nature and scope of judicial power. But, we do not believe fairy tales any more. Judges

73. Id. at p. 2
74. Id. at p. 9
do make law. The Judge cannot make it merely by virtue of label that he as a Judge. But it takes great erudition and scholarship to take law.\textsuperscript{75}

The author draws similarity between American and Indian thoughts and the two having similarity with British system. The author quotes Rosenberg,

"Any thing legislation can do, courts can do better. It is the privilege of the court of the last resort".

According to Theobold Mathew, "the duty of the Judge of the first instance is to be quick, courtious and wrong. That is not to say that duty of the court of appeal is to be slow, rude and right. That would be to usurp the functions of the House of Lords.\textsuperscript{76}

\textbf{xxiv. Judicial Activism and Creativity}

The areas of judicial activism and development of law by Judges of the past have greatly aided the development of law in the right direction. In this process the inherent powers of the High Court also got a dramatic significance. When justice is proclaimed to be administered through the courts the proceedings shall not be allowed to degenerate into the level of victimization. In \textit{R.N. Singh v. Prem Singh}\textsuperscript{77} the facts of the case disclosed quality to be called atrocious. A child was brought to the hospital with high fever. The Doctors and the nursing staff failed to attend the patient. There was gross negligence. When the child needed emergency care the nurses asked the father of the child to bring 'mirchibada' and tea for them. The

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{75} \textit{Id.} at p. 10
\item \textsuperscript{76} \textit{Ibid}
\item \textsuperscript{77} 1987 \textit{Cri.L.J.} 762 (Raj.)
\end{itemize}
\end{footnotesize}
filial considerations prevented him from leaving the child alone. The nurses declined to take injunction. The child was dead soon. While disposing of the petition challenging the action against the hospital staff the High Court held that Dr. R. N. Singh, the Superintendent was not on the scene and the action against him only could be quashed. The attitude of the High Court highlights the strong moral content expected in criminal justice system.

In *O.P. Lamba v. Tarun Mehta*, the court addressed a moral question. The Magistrate issued summons to the petitioner and General Manager of the Daily, 'Tribune'. The allegation was in respect of a picture printed in the news paper which would excite impure thoughts in the minds of ordinary people of normal temperament. The photograph was totally smudged and vague. It was also held that the picture was in no manner lascivious and obscene and it did not tend to deprave or corrupt. Its proceedings were only abuse of the process of the court, and hence quashed by the High Court. These instances show the High Court under section 482 Cr.P.C. get opportunity to consider matters of moral and social relevance.

**xxv. Caution to be made**

The greatest caution to be made while invoking inherent power is to guard against the possible misuse of the provision. The power is envisaged to get over specific situations threatening the security of justice. In *Amudha & others v. Inspector of Police*, the High Court declined to issue a blanket order. A woman alleged to be missing by her family members approached the High Court. She apprehended arrest and detention. The court held that she had alternate

78. 1988 Cri.L.J. 610 (P&H)
79. 1994 Cri.L.J. 404 (Mad.)
remedy to quash the proceedings initiated by the respondents.

A conventional understanding of the discretionary nature of inherent powers persuades one to think that discretion conferred on a trial court cannot be substituted by the discretion of the High Court. But, the interest of justice can take exception to this rule also and inherent power cannot be totally excluded. An instance is that of granting of bail by the trial court. It is an area requiring a high degree of acumen, as the High Court is to be conscious of the serenity of criminal justice system on the one hand and the dynamism of the inherent powers.

In State of Orissa v. Mohd. Abdul Karim,\textsuperscript{80} Additional Sessions Judge had granted bail. The wife of the deceased moved application before the same court for cancellation of bail. It was dismissed. The State moved application before the High Court for the same relief. The court held that on the facts and circumstances of the case, and in the absence of compelling and substantial reasons, the High Court did not consider it proper to cancel the bail already granted to the accused. The Additional Sessions judge had exercised discretion for trial. The demands or credibility of the system compels the High Court to restrain from invoking inherent powers. In Praveen Malhotra v. State\textsuperscript{81} the High Court declined permission to the father of the deceased woman and some woman organisation to interfere in a bail application filed by the husband in a bride-burning case. The court held that grant of such permission would amount to extending the creed of populism in the judicial actions. Adjudication cannot be converted into a farce with different scripts and strange

\textsuperscript{80} 1984 Cri.L.J. 905 (Ori.)
\textsuperscript{81} 1990 Cri.L.J. 2184 (Delhi)
voices. This does not mean that the High Court never exercises its discretion to correct the waywardness of the proceedings which drifts away from the normal and expected line. If the trial court makes manifestly erroneous order the High Court can issue necessary direction except granting bail. In **Sampathmal Jain v. State of Assam**, the court considered the order of remand under section 19 of the TADA. As the order suffered from legal flaws the High Court allowed the petitions and impugned orders were set aside. The petitioner accused were given bail on furnishing a bail bond of Rs. 2,000/- and Rs. 3,000/- and for solvent sureties of like sums. The court examined powers in addition to those under Articles 226 and 227 of the Constitution. The scope of writ jurisdiction is limited in such circumstances. In **Chamanlal Jain v. State of Rajasthan**, also the High Court held that the power under Sec. 482 Cr.P.C. can be invoked to correct the mistake committed by the Chief Judicial Magistrate. The extraordinary jurisdiction cannot be invoked when the remedy is available in the Code. This shows that the design of inherent power is such that it can even supplement the constitutional provisions expressing the court to administer justice. But, there is no uniformity in the views held by the High Courts.

In **D. Veerasekaran v. State of Tamil Nadu**, it was held that High Court had no jurisdiction to entertain application for bail in TADA cases under section 482 Cr.P.C. But, it was held that High Court could act under Article 227 to grant bail when the designated court rejected the bail application.

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82. 1992 Cri.L.J. 919 (Gau)
83. 1992 Cri.L.J. 955 (Raj.)
84. 1992 Cri.L.J. 2168 (Mad.)
The inherent powers are not exercised to be substitute for any statutory provisions. But, in order to do substantial justice, the powers could be invoked. In *Assistant Collector, Customs v. Madam Ayaboatenda Ciadipo*,\(^{85}\) inherent powers were invoked to cancel the bail order. In an N.D.P.S. case a foreign lady was granted bail by the subordinate court improperly. The trial court had overlooked the technicalities and important issues involved in the matter. When inherent powers are in force the process of the court shall not be abused for oblique purpose. In *Ashok Kumar v. State*,\(^{86}\) the High Court cancelled the bail obtained in violation of equity. Affidavits of the sole eye witness was produced in favour of the accused. There was misrepresentation and concealment of facts. The same witness had appeared in the court and submitted that the affidavit was obtained from him by coercion. The High Court cannot be powerless to correct such aberration in the administration of justice. That is to say the power of the High Court is never in doubt when intent of justice is jeopardised. In *Court on its own motion v. Vishnu Pandit and another*,\(^{87}\) the High Court cancelled the bail granted by the trial court. It was only held that the power to suspend the bond which is ancillary to the powers to cancel is inherent in the High Court and can be exercised under section 482 Cr.P.C. The dispensation of inherent powers are envisaged as a disciplinary force also. At trial the administration of criminal justice become a traversity of sorts, at the hands of the trial courts. The High Court's inherent powers are

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85. 1992 Cri.L.J. 2349 (Bom.)
86. 1992 Cri.L.J. 3821 (Delhi)
87. 1993 Cri.L.J. 2025 (Delhi)
presumably to regulate this through the correct path. In *Kum. Anju Khatri v. Gyanchand and others*, the Sessions Judge granted bail after the bail application was rejected by the High Court. It was held to be arbitrary exercise of power by the Sessions Judge, as there existed no fresh ground to the accused to get bail. It was held that the Sessions Court's order amounted to arbitrary exercise of judicial discretion and order suffered from serious infirmity. So, the High Court could in suo-motu exercise of inherent powers interfere with such order of grant of bail. In *Jodha Ram v. State of Rajasthan*, it was held that the refusal to grant anticipatory bail could be challenged under section 482 Cr.P.C. if the order is perverse and illegal. The reason for rejecting the application for anticipatory bail was that the offence was committed beyond the territorial jurisdiction of the Court. The position is that the courts at place where the offender apprehends arrest has jurisdiction to grant anticipatory bail. The suggestion to file application before the court having jurisdiction is not an alternate remedy.

**xxvii. Justice not to Suffer due to Wrong Exercise of Discretion**

When justice is made to suffer through wrong exercise of discretion by the trial court only inherent powers can administer adequate corrective measures. In *Ashok Kumar Kabra v. Kamala Devi Shaw*, the order granting anticipatory bail was found to be based on suppression of material facts and incorrect statements in affidavits. It was held that the order could be set aside by the High Court.

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88. 1993 Cri.L.J. 2274 (M.P.)
89. 1994 Cri.L.J. 1962 (Raj.)
90. 1996 Cri.L.J. 876 (Cal.)
by invoking inherent powers. In *State of Maharashtra v. Walchand Hiralal Saha*, order granting bail in a murder case was declared to be a nullity in law. The injured eye-witness had assigned a specific role to the accused and their testimony was corroborated by the medical evidence. Accused had also made a false statement in the affidavit that no application for bail was pending in any other court. There is blatant violation of equity and the High Court had no other option but to cancel the bail. Through inherent powers, the court has the power to quash an order cancelling bail already granted by the trial court. In *Babulal Chottelal Shah v. State of Maharashtra*, the trial court cancelled the provisional bail. The ground for cancellation was that in further investigation it was revealed that the accused was arch conspirator in an assault case. But no grounds of apprehension about the accused absconding or tampering with prosecution witnesses were raised.

While exercising every type of procedural formalities contemplated in the Criminal Procedure Code, the trial court is to keep its options within the limit of that statutory provision. Even in such case, if there is arbitrariness or illegality writ large, the High Court has power under section 482. The interlocutory or final nature of the order is not material. What is material is interest of justice.

In *Bhola v. State*, order cancelling bail was in question. It was an interlocutory order. Therefore, revision under section 397(2) Cr.P.C. was barred. But, the court held that if abuse of the process of the court is patent, High Court can invoke inherent powers to remedy the mistake.

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91. 1996 Cri.L.J. 1102 (Bom.)
92. 1996 Cri.L.J. 3145 (Bom.)
93. 1979 Cri.L.J. 718 (All.)
In *Re. Peer Mohammed*, the court held that High Court under section 482 cannot give any specific direction regarding the disposal of bail application. But, the court observed that it is the general principle that bail application should be disposed of expeditiously and Magistrate will have to follow the precedents and an act according to the law in the interest of justice. Since, bail is so crucial in the process of a trial, High Court normally declined to interfere.

In *Santhosh Bhaurao Raut v. State of Maharashtra* it was held that after considering the gravity of the offence committed and necessity to ensure the presence of the accused during trial, and to avoid tempering of evidences, it was better not to exercise power under section 482. The High Court do not allow its forum to the petitioners to substitute jurisdiction.

**Radhey Shyam v. State of U.P.** order refusing bail was challenged. Order granting bail, as well as refusing bail are interlocutory in nature. Therefore, neither revisional jurisdiction nor inherent jurisdiction can ordinarily be invoked. It was held that, if the remedy was an illegal one proper remedy is a writ of habeas corpus. In this decision, one aspect which raises the pointer of doubt is regarding the amplitude of inherent powers in matters affecting constitutional significance. If the order rejecting bail is an illegal one, there is no question of it being considered as an interlocutory order. The illegal order, if it perpetuate injustice can be set aside by invoking inherent powers. In such circumstances, it is only a perfunctory exercise of

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94. 1979 Cri.L.J. 429 (Mad.)
95. 1989 Cri.L.J. 205 (Bom.)
96. 1995 Cri.L.J. 556 (All.)
power. If the High Court is of the opinion that remand order is illegal, instead of suggesting writ jurisdiction, under inherent power it can straightaway interfere. One can state with precision to the development of law today, especially after Pepsi Foods' case.\textsuperscript{98}

xxviii. \textbf{Inherent Power only to Prevent Abuse and Not to Meddle with Trial}

The High Court's inherent powers are to prevent abuse of the process of the court. It is not to meddle with the trial. Nor is it to interfere with the free exercise of judicial power vested in the trial courts.

In \textit{Hareram Satpathy v. Tikkaram Agarwala and others},\textsuperscript{99} the Supreme Court held that the High Court was not justified in making a detailed analysis of the merit of the case and setting aside the order of the Magistrate. Here, the Magistrate issued process to persons not mentioned in the police report. The Supreme Court held that the Magistrate had power to issue process to persons not mentioned in the Police report provided he is satisfied that a \textit{prima-facie} case is made out against the accused.

In \textit{Drugs Inspector, Bangalore v. B. Krishnaiah and another},\textsuperscript{100} the Supreme Court held that the High Court erred in holding that there was no allegation fixing responsibility on the respondents. This was regarding the management and conduct of the firm. The Supreme court was of the view that these aspects would have been established by evidence during trial.

\textsuperscript{98} Supra n.39
\textsuperscript{99} AIR 1978 SC 1568
\textsuperscript{100} 1982 SCC (Cri) 487
In Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi, the High Court quashed the proceedings with cost of Rs. 5,000/- The Supreme Court had a word of caution, because the High Court had ventured too far into the territories which are out of bound for inherent powers. In this case, documents annexed to the complaint, prima-facie made out a case of cheating, breach of trust, and forgery. But, the High Court proceeded to consider the version of the accused given out in the petition filed under section 482 Cr.P.C. vis-a-vis that of the version in the complaint. The High Court entered in to the debatable area of finding which of the version was true. This, according to the Supreme Court was not permissible under section 482 Cr.P.C. The Supreme Court referred State of Haryana v. Bhajanlal.

These views of the Supreme court regarding the operation of inherent powers show that one area which is to be strictly viewed while exercising inherent powers is the matter of appreciation of evidence. Anything that is the work of the trial court must be left to the trial court and the High Court should be loathe to exercise its discretion.

The jurisdiction under section 482 of the Code of Criminal Procedure has a supervening authority. It is a unique phenomenon in the criminal justice system. The power is not to be exercised for futile purpose. It cannot be invoked by a person who is not aggrieved in a case. In Ram Lal v. Delhi Administration and others, a person not aggrieved by the pendency of a proceed-

101. AIR 1996 SC 2982
102. Supra n. 70
103. 1980 Cri.L.J. (NOC) 82 (Delhi)
ings filed an application invoking inherent powers to replace the public prosecutor. The High Court declined to interfere as the person who filed the application had no business to meddle with the prosecution. In criminal jurisprudence it is a basic tenet that any person can cause the law into motion, but that is not in respect of invoking power of the High Court to see that justice is done. A judicial officer even if not an aggrieved party, cannot be called a busybody. A complaint filed by a Munsiff against a person who is meddling with the process of the court, can be entertained under inherent powers. In Premlatha and others v. State of Punjab104 the High Court dismissed the writ petition to quash the proceedings. Accused persons obstructed the process server from serving summons of a suit - Suit settled and parties living amicably - 15 years old incident - proceedings against accused liable to be quashed as no useful purpose would be served by continuing them.

The guiding factor before the Supreme Court was that no interest of justice would be served by continuing the proceedings further since the suit itself, in which the summons was proposed to be served, came to an end and the matter is being protracted for about 15 years. However, the subject matter of the criminal prosecution and the suit are distinct and separate and not emanating from the same cause of action; hence there seems to be some impropriety in clubbing together of these proceedings, especially when the delay is due to proceedings begun by the accused.

104. AIR 1991 SC 69
In *Mohammed Umer & others v. State and another*, a Munsiff filed a complaint against a person for obstructing the Amin in executing the decree of the court. It was held that the complaint was maintainable. The court did not accept the plea that the complaint was time barred and that it was raised for the first time. So, the subject matter of the complaint under section 482 Cr.P.C.exerts a considerable clout in persuading and dissuading the High Court in invoking inherent powers. Merely because a person was a partner of a business firm, such a person need not be fastened with criminal liability for the act done by persons who were in charge of the firm on the date of the offence. In *Ramesh Babu v. State of Karnataka*, it was held that proceedings against the petitioners could be quashed because they were not responsible for the conduct of the business of the firm on the date of occurrence of the alleged offence. The Economic offences alleged against the petitioners would not stand.

Criminal Liability cannot be conjured up through narration of events. It is guided by laws in force. As explained in the above case, the partner of a firm cannot be proceeded against for the lapses of the firm. In *Unneerikutty v. Dy. Commissioner*, proceedings were initiated against petitioner as per the provisions of the Income Tax Act. But, section 2(35) of the Act provides that partners do not come within the definition of the 'principal officer' unless the Income Tax Officer had served notice of his intention to treat them or any of them, as the Principal Officer. A

105. 1982 Cri.L.J. (NOC) 44 (All.)
106. 1992 Cri.L.J. 1963
107. 1994 (2) KLT 70
mere allegation to that effect is not sufficient. In *Madras Spinners Ltd. v. Dy. Commissioner of Income Tax,*\(^{108}\) it was held that a complaint filed on the basis of the orders passed under the Income Tax Act were not sustainable. The Income Tax Tribunal had already set aside those orders. That action has knocked down the bottom of the case against the petitioners. As the very basis of the prosecution was taken away by the tribunal the criminal court cannot come to a contrary conclusion and hence continuance of the procedure would be an abuse of the process of the court. It would also be against procedure established by law. In an identical case, in *Mohammed Unjawala v. Assistant Commissioner of Income Tax,*\(^{109}\) the Madras High Court quashed the proceedings against the petitioner. A complaint was filed by the Income Tax Officer under the Income Tax Act and Penal Code for concealment of income. Proceedings were pending before the Income Tax Appellate Tribunal. The Tribunal found that there was no concealment of income. The discrepancy of income in assessment was a bonafide mistake. The High Court held that the Tribunal is a fact finding authority under the Act and its finding was to be given due regard by the Court.

**xxix. Power is to Secure the Ends of Justice**

The above discussion shows that inherent powers of the High Court can be deployed for positive purposes to secure the ends of justice. When a person is caught in the web of multiple legal proceedings, inherent powers can help him steer clear of abusive judicial process and restore the valuable rights to the per-

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108. 1993 (1) KLT 482
109. 1995 Cri.L.J. 1949 (Mad.)
son. This dimension of inherent powers, tallying with the observation of the jurist that some dimensions of inherent powers are of "constitutional weight".\textsuperscript{110} In a society permeated by Rule of Law, unruly proceedings against the citizens must be effectively checked by the positive application of inherent powers. This can be discussed under the light of the accepted principle of constitutional law. Where a Constitution enshrines the Fundamental Rights for the citizens and Directive Principles for the States Policy making process, there is ample opportunity for protecting the interest of the citizens. In this respect, the impact of the Constitution on inherent powers gain significance. The very atmosphere of adjudication is illuminated by the cardinal principle of Constitutional law. The Supreme Court and the High Courts deriving powers from the Constitution as well as from the ordinary statutes play a crucial role in translating the ideals contained in the Constitution and intention of the legislature contained in the legislations into practice. An examination of the functioning of the Supreme Court and the High Courts over the years show that several general principles of governance have been articulated through the decisions having public and permanent importance. Through interpretation given to the provision of the Constitution and construction of legislative intention in the Statute in the light of the above interpretation a Romantic idealism is given to right to life and personal liberty. The eternal principle of law contained under Article 21 of the Constitution of India, wherein State and its agency are prohibited from depriving any person of his right to life and personal liberty except

\textsuperscript{110} M.S. Dokray, "The Inherent Jurisdiction to regulate civil proceedings", (1997) 113 L.Q.R. 120
through procedure established by law has developed a positive culture favourable to Rule of Law. This is reflected under the application of inherent powers of the High Court also. In addition to this, the remedies available to the individual through actions initiated before the High Court and Supreme Court drawing power from the provisions of the Constitution have also encouraged the enhancement of the prestige of inherent powers. For instance, the *modus-operandi* under Articles 226 and 227 of the Constitution, the High Court has got several close similarities to that of section 482 Cr.P.C. In fact, there has been a meeting and mingling of these jurisdictions resulting in common grounds and common basic principles. The climax of this transformation reached in *Pepsi Food*¹¹¹ case where the Supreme Court has held that, the name of a particular petition being filed under a particular provision is not material when questions of basic justice are answered by the judiciary. The court has the inherent power to do substantial justice and when justice is in peril, the court cannot waste its time ruminating over the provision of law under which its jurisdiction is invoked.

¹¹¹ 1998 SCC (Cri) 1400