CHAPTER - X

FINDINGS, CONCLUSIONS AND SUGGESTIONS

The thrust given to the concept of justice through application of inherent powers is an achievement of Indian jurisprudence. In the previous chapter, while summing up the concept and application, major areas covered by this research programme are enumerated. Aspects of inherent powers are expressed through questions which are declarations of various ingredients of the concept.\(^1\) The findings of this research programme are founded on the above ingredients.

The generality of acclaim given to inherent powers is striking. For a careless onlooker the concept of inherent powers is just another provision in the Criminal Procedure Code. A closer view presents an enigmatic picture, something like the 'inscrutable face of a sphinx'. From one angle, the individual's viewpoint, it is an effective remedy against unjust proceedings. From another angle, the State's viewpoint, inherent powers are to clean the stream of administration of justice by keeping away all malignant and polluting influences. It is also regraded as a protective covering for the court to make itself invulnerable to extraneous strokes. This dichotomy of sorts is maintained while the inherent powers are on action. Every decision of a court in this context generates confidence on the one side and poignancy on the other. If the proceedings are quashed by the court the action

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1. Ref. supra, "Some question emerging on summing up", at p. 492
is negative but the effect is positive. The pending proceedings are uprooted. The accused goes scot-free. If the High Court declines to exercise inherent powers the proceedings survive. The accused is to face trial. These two effects always accompany inherent powers.

The State as the guardian of the society's interest prosecutes the offender. This is paternalism. The same State through its judicial branch while invoking inherent powers protects the rights of the accused. This is maternalism. Viewed in this context inherent power is a two edged sword. The parameters identified are to fit with the case. Otherwise inherent powers do not respond. Since it is a doctrine associated with procedure it looks after the interest of the entire system. Inherent powers offer fair trial. The frequency with which the provision is invoked shows its success. The inherent powers empower the courts to give effect to orders passed under the procedural law.

The nature of inherent powers convey the presence of a strong weapon in the hands of the judiciary. There is chance for abuse, misuse or disuse. But the enlightened opinion is in favour of giving inherent powers to the judge. The judge conducts research so that situations which do not fit in the 'strait jacket' of rule or order are overcome. Thus inherent power occupies a permanent slot in criminal justice system.

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2. Ref. supra ch. IV, n. 3
3. Ref. supra, introduction, n. 1&2
4. Ref. supra, introduction n.9
5. Ref. supra, n. 12&13
6. Ref. supra, ch. IX, n. 194
The permanency advocated above has supplied the inherent powers with a theory and philosophy.\(^7\) The jurisprudence of inherent powers is evolved from its association with doctrines of equity, fair play, Rule of Law, constitutionalism, judicial review and such paradigms of law. The jurisprudence has given inherent powers a theoretical base. Among the recognised theories Legal Realism has optimum compatibility to inherent powers. Like Realism inherent powers have brought justice out of the ivory tower of jurisprudence to dwell amidst the society. The Realists believe in the power of the court and the performance of the court. They are pragmatists\(^8\).

The High Court happened to be the apt candidate for being the repository of inherent powers. Reasons are historical, philosophical, juridical and juristic. It was the first successful superior court in India\(^9\). It was born before the Supreme Court\(^10\). It had occasionally gone before the Supreme Court in securing ends of justice.\(^11\)

The most striking character of inherent powers is the element of discretion it carries. The judge is supreme. But a judge cannot ride on inherent powers as if on an 'unruly horse'. There must be restraint, equipoise and magnanimity\(^12\). A judge should not be so

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7. Ref. supra, introduction, n.17& n. 33; ref. ch. II generally; ref. ch. V n. 14
8. Ref. supra, ch. IX "vi" Application of inherent powers as illustrative of an Indian Realism
9. Ref. supra, ch. I n. 10 and n. 20
10. Ref. supra, ch. I n.36
12. Ref. supra, introduction, n. 9
uncouth as to issue notice of contempt to the Chief of the same
court. The judges shall not be emotive with the parties and bring
in images of sentiments. No unnecessary word shall be uttered.\textsuperscript{13}
At the same time giving power to the judges is indispensable
because rules and laws are not always there when justice is in
jeopardy.\textsuperscript{14}

The function of the Supreme Court in the above context be­
comes onerous. It has to control, confine and limit the inherent
powers of the High Court within the permissible limits. So there
has been interaction between two varieties of inherent powers —
that of the High Court and that of the Supreme Court. There has
been a reciprocation also\textsuperscript{15}. The Supreme Court has, even with­
out having inherent powers to quash criminal proceedings, dem­
onstrated that the same can be done in the interest of justice\textsuperscript{16}.
On the other hand the High Courts have shown how application
of inherent powers can be developed along the lines of inter­
pretation of the Constitution. Supreme Court's construction of Ar­
ticle 21 has enabled the High Courts to structure inherent pow­
ers in the mould of constitutional principles. This symbiosis has
helped new contours of jurisprudence.

Section 482 Cr.P.C. is only the vessel containing inherent
powers. The ambit of the powers is developed by the High Court
according to the facts of the case. So the three principles in sec­
tion 482, Cr.P.C. are only general ideas to particularise given

\textsuperscript{13} Bhajan Lal's case, 1992 Supp. 1 SCC 335; Judges tell the story of Porus,
the vanguished king brought before Alexander.

\textsuperscript{14} Ref. supra, introduction n. 17

\textsuperscript{15} Ref. supra, ch. VIII n. 44, 45

\textsuperscript{16} Ref. supra, introduction, n. 64 and ch. III, n. 30
situations. "Giving effect to orders", "preventing the abuse of the process of the court", and "securing the ends of justice", are expressions capable of producing a spectrum of possibilities. They are materials for testing the veracity of the facts of the case. Abuse can be of a wide range\(^{17}\), inherent powers can be subjected to abuse. The High Courts may proceed on a tangent and instead of leading justice mislead it to inhospitable terrains\(^{18}\).

There are principles which go to check the unbridled nature of the inherent powers\(^{19}\). Revision and review have for some time retarded the scope of inherent powers. An aura of conservatism surrounding the judicial thinking, for a time, even subordinated inherent powers to revision and review. But the Supreme Court freed the powers from the shackles of unrealistic interpretations. Inherent powers are restored with the celestial status\(^{20}\).

One area where inherent powers have been contained is in the context of evidence. The law of evidence is the life of law. If evidence is assumed or presumed it is justice that is doomed. It compels the High Court to be very cautious. When, at the threshold, a proceeding is challenged, there is no evidence for evaluation and no scope for evaluation of evidence. If this is violated the High Court abuses the inherent powers. High Court gets opportunity to study evidence when it disposes an appeal or a revision. It may be the same judge; but if inherent powers are invoked judge should not draw from his own credit of evidence.

\(^{17}\) Ref. supra, ch. VI, generally

\(^{18}\) Ref. supra, ch. IX, n. 168; also refer n.150

\(^{19}\) Ref. supra, ch. V, generally

\(^{20}\) Madhu Limaye, 1978 SCC (Cri) 10; Raj Kapoor 1980 SCC (Cri) 72; Pepsi Foods 1998 SCC (Cri) 1400; Krishnaveni, AIR 1997 SC 987.
This is the one area where judges must display professionalism and this is also an area, most of the judges, when fail in this respect, fail miserably\textsuperscript{21}. A judge is deemed every inch a judge for his dexterity to use evidence\textsuperscript{22}. Failure here is failure of justice\textsuperscript{23}. Through a catena of decisions the Supreme Court has criticised almost all High Courts for treading through the slippery field of evidence\textsuperscript{24}. This has its reverse effect also, when the High Court is to interfere, fearing the wrath of the Supreme Court, act shy.\textsuperscript{25} Thus this is an area requiring attention and discipline. High Court, if not alert to the seriousness of the situation, can risk the credibility of inherent powers; and thereby risk the credibility of justice system.

Notwithstanding the worth of inherent powers in criminal justice system, High Court must choose situations very carefully. As cautioned by the knowledgeable voice, it is one thing to have a giant's power, and another to use it like a giant. The power is preserved. Therefore, it must be used only when patent injustice stare at the court. Such occasions are aplenty.\textsuperscript{26} The obverse of the coin shows still more plenty of occasions where the High Court attempts to extent its power to unimaginable reaches only to draw flak from the Supreme Court.\textsuperscript{27}

Concept of inherent powers reaches areas of Constitutional

\begin{enumerate}
\item Ref. \textit{supra}, ch. III, n. 100
\item Ref. \textit{supra}, ch. VI, n. 13&14
\item Ref. \textit{supra}, ch. VI, n. 22
\item Ref. \textit{supra}, ch. VI, n. 26 and n. 36, 41, 42, 59
\item Ref. \textit{supra}, ch. VI, n. 29
\item Ref. \textit{supra}, ch. VII, n.25, 28, 29
\item Ref. \textit{supra}, ch. VII n. 48, 51, 52
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background when we discuss the inherent powers of the Supreme Court. What is inherent in the inherent powers is decided by the Supreme Court. In one voice the Supreme Court castigates High Courts, and then without much ado exercises power far in excess of the High Court. The fact of a case is narrated in the introduction of this thesis to show the course a case could take with a little measure of inherent powers employed by the High Court. Even though areas of exclusive operation for the High Courts and the Supreme Court's are discernible the Supreme Court power greatly influences the High Court's inherent powers. The Supreme Court has developed a jurisprudence of inherent powers for its own use. Article 142 of the Constitution gives the power. At times strong sentiments are expressed regarding the way in which Supreme Court decides cases. Opinions vary from allegation of failure to understand the precedents to being oblivious of Rule of Law on the one hand, and accolades for transforming itself to a powerful court, and also a sense of failure for vacillations.

Inherent power jurisdiction is neither to be played in an amphitheatre nor to be staged in a theatre of the absurd. Judges get opportunity to express their personality. But it should not be an expression of a larger than life personality. This will induce a devastating paralysis into justice administration. The sum to-

28. Ref. supra, Introduction, n. 35
30. Ref. supra, ch. IX, n. 122
31. Ref. supra, ch. IX, n. 148
32. K.N. Chandrasekaran Pillai, 1997 Ac.L.R.
33. State of Rajasthan v. Prakash Chand, AIR 1998 SC 1344
tal of personalities of the individual judges should produce the unified personality of the court and justice. There is only one species of power, inherent powers. It is used by judges who are also human beings. There may be persons with the proverbial "Chancellor's Foot". But such "Foot" does not measure up to the expectation of justice. Justice is impersonal and impartial. Justice administered by the Supreme Court and by the High Court do not differ in quality or texture. There is no superior-inferior, or superordinate-subordinate relationship between the Supreme Court judges and the High Court judges, in this respect, both derive power from the Constitution. Both are subordinate to Rule of Law. A case decided by the High Court can be reversed and remanded to it by the Supreme Court and it can again be decided by the High Court as it had decided at the first instance.

Inherent powers of the High Courts under section 482, Cr.P.C. is in an evergrowing state. High Court itself must find leeways by doing "free scientific research" to test the possibilities. Only then can this power assume still greater significance in the administration of justice. Such a vast power is reserved only for a single judge bench of the High Court. There is no scope for appeal to a bench of two judges. Attempts to develop this have been foiled at the outset. Among the thousands of cases decided by the High Court applying inherent powers or declining to apply inherent powers there may be erroneous decisions. There is no opportunity for correction, except before the Supreme Court.

33A. Ref. supra, ch. I, n.
34. Ref. supra, K.M. Mathew v. Nalini cases, 1988 (2) KLT, S.N. 21 at 13; 1988 (2) KLT 832
35. Abubaker Kunju v. Thulasidas, 1994 (2) KLT 987
with a special leave petition. Only a fraction of cases come before the Supreme Court after the consideration by the High Court. In writ jurisdiction under Article 226 there is provision for a writ appeal before a bench of two judges. The High Court Act and Rules permit it. It permits an appeal before a Division Bench from the decision of a single judge. One can hope that the benefit of section 5(1) of the Kerala High Court Act and similar provisions in respect of other High Courts would accrue on the inherent power jurisdiction also. Other areas are brought under this facilities.

The inherent powers of the High Court in criminal justice administration thus offers a panoramic view of criminal jurisprudence. In India it has been a catalyst for advancing the achievement of judicial precedent. In the absence of a predictable structure for the inherent powers High Court have only good sense of the judges and the oracular utterances of the Supreme Court. There has been positive judicial creativity in this area. There are milestone decisions of the Privy Council, the Supreme Court of India and the High Courts, which have been used repeatedly by the High Courts for deciding cases. Khwaja Nazir Ahammed, R.P Kapur, V.C. Shukla, Madhu Limaye, Kurukshetra University, Muniswamy, Raj Kapoor, Rohtagi, Jhunjunwalla, A.R. Antulay, Bhajan Lal, Keshab Mahendra, Mangi Lal, Re V.C. Mishra, Pepsi Foods, Krishnaveni, Supreme Court Bar Association, Mary Angel, O.C. Kuttan, etc. supra, are monuments of judicial activity centering the fulcrum of inherent powers.

36. Section 5(1) Kerala High Court Act, 1958
The above mentioned findings of this research work in respect of inherent powers of the High Court in criminal justice system can further multiply to obtain other combinations. Julius Stone's concept of indeterminate category of illusory reference can be studied in comparison\textsuperscript{38}. This prompts one to make some significant suggestions in the exercise of the inherent powers.

High Court while using this jurisdiction must obviously be aware of its limitations as well as its potential. In the introductory chapter a few questions were raised regarding the pertinence of inherent powers in the administration of justice\textsuperscript{39}. In chapter IX, while summing up certain possible questions also emerged. The thoughts evoked thus compels one to believe that there must be great circumspection in the use of inherent powers.

It can be admitted that inherent powers cannot be properly structured. But there can be some agreed norms in usual and common areas like expunging remarks, interference at the initial stage and appreciation of evidence.

The core of inherent powers contains power to give effect to the orders, preventing abuse of the process and securing justice. The endeavour of the Supreme Court in cases like \textit{Mohammed Naim, Muniswamy, Bhajan Lal etc supra}. can be carried forward with greater vigour so that we get a number of touch stones to study the situation and take decisions.

There can be greater scientific approach while applying inherent powers. One can speak of litmus test conducted by the

\textsuperscript{38} Ref. \textit{supra}, ch. II, n...

\textsuperscript{39} Ref. \textit{supra}, Introduction, after n.30
High Court with the help of the ingredients of section 482, Cr.P.C. to detect use and abuse or securing or insecuring justice. But the ratiocination of Physical Science is chimera in jurisprudence where human minds act as the crucibles for the action and reaction. An ordinary litmus test conducted by not only scientists but even an average or below average person anywhere at any time will produce the same result. But a 'judicial litmus' test conducted by men of judicial training and extra ordinary capacity produces varying result. The judicial litmus changes from place to place, from court to court, from judge to judge, from case to case, from facts to facts.

The appeal provision mentioned earlier can be a future reality. The single judge can go wrong. In the interest of justice the High Court itself should get an opportunity to correct any error in the decision. It can at least save three things. One, the interest of justice, two the situation where the Supreme Court comes down heavily on the High Court, three, the precious judicial time of the Supreme Court. It has an additional advantage of making justice more accessible. The attitude of the Kerala High Court when a situation had arisen is negative.40

The question of conceding inherent powers to subordinate courts does not arise in the present context of the doctrine41. The objective behind inherent powers is not for use by trial magistrate as a course of conduct but to be preserved at the higher level of judiciary for effective use. In the event of giving inherent powers to the subordinate courts, the concept of inherent powers being used rarely and in patently unjust occasion would vanish.

40. Ref. supra, ch. II n. 135
41. Ref. supra, ch. II n. 52
It is more necessary to stabilise the constitutional and jurisprudential foundations of inherent powers, so that there is a *non jus scriptium* for all concerned to follow the application of the power. There must be a standard to keep the independence of judiciary. It must be a means to maintain the majesty of Rule of Law. It must be a support for keeping the interest of justice alive.

The case law shows that the power is more extensively used. The modern technological advancements can be utilised for circulating the decisions of all High Courts aiming at consistency.

Of the *enumerable* cases filed before the High Courts invoking inherent jurisdictions decisions of only very few cases are available for reference. The unreported cases can also be compiled and published for reference.

As structuring is not possible a committee of judges could be constituted to study the ramifications of the inherent powers on a pragmatic level and the findings of the study could be discussed. So that there is a rational atmosphere invoking the inherent powers.

In this thesis various contours of inherent powers are discussed. It is of great jurisprudential value. The doctrine belongs not merely to the criminal justice system, but to the entire province and functions of jurisprudence. The complexity and multilateral, multifarious, multidimensional, character of inherent powers encapsulated under section 482 of the Code of Criminal Procedure 1973 is a valuable input for "free scientific research" and "lawyers extra version".