PART - I

STATEMENT OF THE THEME
INTRODUCTION

Administration of justice through courts is institutionalized in modern times. Courts are established under laws. Laws are administered through courts. Laws confer power on the courts. Courts apply that power to administer justice. Courts also have powers not expressly conferred through laws. Such powers are called inherent powers.

i. Inherent Powers in Criminal Justice System

Inherent powers are those ingrained in a court of law. In civil jurisdiction as well as criminal jurisdiction courts have inherent powers. This thesis is the result of the research work on the inherent powers of the High Court in criminal jurisdiction. The criminal justice system in India recognizes inherent powers only of the High Court. Section 482 of the Code of Criminal Procedure is specific about it. So the research work largely centres around the operational dynamics of the High Court in the application of inherent powers. So far as the Theory and Philosophy of inherent powers are concerned the distinction between civil and criminal laws is of very little consequence. The research programme has chosen as its premier theme the inherent powers of the High Court under section 482 of the Code of Criminal Procedure, 1973. The case law analysed is largely from this area. In laying the philosophic and juristic foundation to the study, an analysis of the inherent powers of the Supreme Court, impact of the Constitution on the inherent powers, and analysis of the phenomenon of inherent powers in the light of the doctrines, dogmas and teachings of the doyens of jurisprudence are made.
ii. **Inherent Powers an Enigma**

In formulating the research programme the confusion created by the concept of inherent powers and its application by High Court form the central point. How fully the concept is understood, how correctly the power is used, how far it has enhanced the rationale of the administration of criminal justice, what is its importance and what are the solutions for the inherent power to earn a permanent status in the province of criminal jurisprudence are the themes of this study.

Eventhough the term 'inherent powers' is in constant use in the adjudicatory process there is no consensus regarding its full impact. The terms 'inherent power', 'inherent powers', 'inherent jurisdiction' are often used to mean the same thing. The concept of inherent powers, according to jurists,

"is the foundation for a whole armoury of judicial powers, many of which are significant and some of which are quite extraordinary and are matter of constitutional weight"\(^1\)

The above view of the writer sounds the opinion of Prof. Keith Mazon, who opined

"faced with the limitless ways in which the due administration of justice can be delayed, impeded or frustrated judges have responded with a vast armoury of remedies claimed to be part of their inherent jurisdiction.\(^2\)

The above views endorse the ideas expressed on the subject by I.H. Jacob. According to him,

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'in many spheres of the administration of justice, High Court of Justice in England exercises a jurisdiction which has the distinctive description of being called 'inherent'.

The inherent power as understood and applied in India is on the line of thinking reflected in the opinion of the above jurists. The Supreme Court of India through a series of decisions, has been the chief exponent of the inherent powers. The Supreme Court has dealt with the inherent power of the High Court as well as its own inherent powers. In *Supreme Court Bar Association v. Union of India*, the apex court discusses the inherent powers of the Supreme Court for punishing contempt of the court. In the judgment reference is made to the *'Treatise on the Law of Contempt'* by Nigel Lowe and Brenda Suffin who relies on the ideas of I.H. Jacob.

To secure the ends of justice courts must have inherent powers. This is so well articulated that the Court of Appeal in England referring to I.H. Jacob's views in *Re M and Others (Minors)* deals with aspect of controversy whether a trial judge has inherent powers to deal with contempt.

This is because the inherent power to punish for contempt is believed to be available to the court from time immemorial. It is more a power to remove obstruction of justice and not merely to save the dignity of the judge.

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5. *Id.* at p. 420
6. Refer *Infra.* n. 7, n.q. n.10.
It is not easy to define inherent powers in a precise and scientific manner.

"For a concept in common currency and one which doing important work, "inherent jurisdiction" is a difficult idea to pin down. There is no clear agreement on what it is, where it came from, which courts and tribunals have it and what it can be used for."\(^8\)

iii. Background setting

It is to unravel this mystery of jurisprudence caused by the operation of the concept of inherent powers this research work gives emphasis. Its significance is all the more relevant when the power is exercised in the administration of criminal justice. Application or non-application of inherent powers in a given case would tell upon the maturity and perfection of the standard of justice.

The adjective law or procedural law defines the power and jurisdiction of Courts. The positive law or substantive law defines the equations of human relations. Disturbances in the equation are set right through courts. This is the core of the judicial process. There shall be no hiatus to this process. Justice shall be administered by the courts unhindered by any clog, untainted by any vice, or unpolluted by anything malignant.

In the earlier periods when there were no courts and no laws justice was administered, man's intuitive sense guided it. It was conscientious and commonsensical. In the modern period enacted laws came into being, and courts came into existence. Man's position improved. Administration of justice has become efficacious. But the

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8. Ref. *supra.* n. 1
system could not attain any rounded perfection. Not a piece of legislation is exhaustive. Intuition, commonsense, character, erudition, and all positive human qualities matter considerably. It is here that one is reminded of inherent powers. Any probability for miscarriage of justice must be minimised. Justice B.N. Cardozo, considering the pivotal role of the Court and Judges, makes the pertinent observation.

"The Power thus put in their hands is great, and subject, like all power, to abuse, but we are not to flinch from granting it. In the long run, there is 'no guaranty of justice', says Ehrilich, 'except the personality of the Judge'. "

iv. Enacted Laws not Exhaustive

The enacted laws are not of consummate perfection. Most of the times the facts match the law. In the modern period with its litigation explosion, with the society afflicted by social tension, social deviance, social evils and other maladies, legislature does not foresee all the possible situations which would crop up in future. When facts and law are compatible, the Judge has only limited option. Under such circumstances, says Cardozo:-

"There are times when the course is obvious. The rule that fits the case may be supplied by the constitution or by statute. If that is so, the judge looks no farther. The correspondence ascertained, his duty is to obey".  

Such smooth sailing cannot be expected at times when the stream of judicial process acts on troubled waters. Uncertainty, ambiguity,

10. Ibid.
ambivalence, or dilemma can put a judge in an unenviable position. The code or statute may not provide for the situation at hand. Justice Cardozo suggests that even in such a situation, a judge should decide. For this the judge must have power. We may call it inherent powers. Justice Cardozo explains further,

"It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided".¹¹

Even if an attempt is made to limit the scope of the judge's powers it would prove futile. Julius Stone while discussing such a situation refers to the system prevailed in France on the anvil of the Code. The object was to minimise the judicial activities. Judges were not permitted to interpret the code. Doubts were referred to the legislature. This system was bound to fail.¹² Quoting from the French Jurist Francois Geny, Prof. Stone asserts,

"Whatever is done, positive laws can never entirely replace the use of natural reason in the affairs of life. The needs of society are so varied., social intercourse is so active, men's interest are so multifarious, and their relations so extensive, that it is impossible for the legislature to provide for everything"¹³

What the legislature cannot supply the judge must "strive, to seek, to find," and, "not to yield" to uncertainty. As Prof. Stone continues,

¹¹. Ibid.
¹³. Id. at p. 214
"It is for experience to fill progressively the gaps we leave. The Code of a people makes itself with time: properly speaking it is not made".\textsuperscript{14}

The judge, while deciding cases, is to feel the driving force of social changes by absorbing the experience of the entire society. Then the absence of a specific provision cannot be a reason for being diffident. The judge has to decide by making a rule where none exists, applying discretion where justice demands it. The legitimacy of such judicial enterprise depends on it being "incremental rather than sweeping".\textsuperscript{15}

The view expressed by the jurists mentioned above makes the position clear. If a statute reflects the legislature's will there is every likelihood that a judge may be called upon to decide a case, the circumstances of which never occurred to the legislature. This leaves the position clear for the judge and the court to refer to the outskirts of the statute. For this the courts must have power. The power exercised under such circumstances is inherent in the court.

"We find it suggested that, logical deduction must be tempered by consideration that the legislator could not have willed a rule which ignores the practical necessity of life or obvious equity".\textsuperscript{16}

Thus the attention is with the judge and his power. Judge has a fundamental role and a prominent place in the application of law. And this is because law is not always clear, unequivocal and there may not be any law at all. According to Polish jurist Jerzy Wroblewski,

\begin{itemize}
\item 14. \textit{Ibid.}
\item 16. \textit{Ref. Supra.} n. 12, at p. 216
\end{itemize}
"There is no need of a judge where the rule lead everyone, provided no errors are committed, to the same solution, and where correct rule of reasoning from indisputable premises exist. We need judges when those rules are equivocal when reasoning does not end in a conclusion, but justify a decision".17

It is the character of the judge that determines whether and what decision is made, and any ideology or theory of judicial activity cannot neglect this. The focal point of the role of the judges is whether they apply or create the law and in what sense judging is immanent in law.

The "practical necessity" referred to by the above thinker is about rights or interests of the judge. In some cases, notwithstanding, the legal provisions, the moral aspects may come to the fore. While securing the ends of justice the court cannot leave everything to the government. The government and its agencies have a propensity to arrogate the rights of the citizen rather than acknowledging them. In such cases morality comes to play as suggested by Ronald Dworkin.18

"In practice the Government will have the last word on what an individual's rights are, because its police do what its officials and courts say"19

If the government and its agencies overstep the limits the courts may have power inherent in them to regulate the conduct of the go-

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19. id. at p. 203
ernment and rectify the errors. It is in the interest of the society that those who break law should be punished. But as Dworkin persists,

"(But) that does not mean that the Government's view is necessarily the correct view; anyone who thinks it does must believe that men and women have only such moral rights as government chooses to grant, which means that they have no moral rights at all"\(^{20}\)

v. The Indian Context

The inherent powers of the Court is made more meaningful in the above context. When valid rights of the parties are at stake, the court cannot be an idle spectator. In the Indian context, the Supreme Court has got inherent power under Article 142 of the Constitution. Together with Articles 21, 32, 129, 136, the Supreme Court has evolved a jurisprudence of inherent powers. The felicity of judicial review acts as an impetus. This is required in the interest of justice. In Delhi Judicial Service Association v. State of Gujarat and Others,\(^{21}\) the Supreme Court asserted the various dimensions of inherent powers of the Courts. The Court also assumed the inherent power to quash the criminal proceedings pending in a lower court, to do complete justice and to prevent abuse of the process of the Court.

The civil and criminal courts have inherent powers. Inherent Powers of the High Court under section 482 of the Criminal Procedure Code is the subject of this study. The ideas expressed by B.N. Cardozo, and Julius Stone, would be relevant in the context of the High Court's inherent powers under section 482 of Cr. P.C. The Code asserts that High Courts have inherent powers. It is unaffected and

\(^{20}\) ibid.

\(^{21}\) (1991) 4 SCC 406
unlimited by any other provision. Such high voltage power is given to the High Courts, in the interest of justice, section 482 of Cr.P.C. provides that inherent powers are to give effect to orders passed under the Code or to prevent the abuse of the process of the Court or otherwise to secure the ends of justice.

vi. **Attitude of the Supreme Court**

The pervading nature of the power is recognised by the Supreme Court of India, in *Raj Kappoor and others v. State and others*,\(^\text{22}\)

"The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power of the High Court under section 397 overlaps. The opening words of Sec. 482 contradict this amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."\(^\text{23}\)

The above opinion of the Supreme Court tallies with the Court's opinion in the earlier decision of *Madhu Lemaye v. State of Maharashtra*,\(^\text{24}\)

"Then in accordance with one or the other principles enunciated above, the inherent power will come into play,

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\(^\text{22}\) 1980 SCC (Cri) 72.
\(^\text{23}\) Id. at p. 76
\(^\text{24}\) (1977) 4 SCC 551
there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But, in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But, such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceedings initiated illegally, vexatiously or as being without jurisdiction".25

Administration of criminal justice is an important incident of the legal system. Having the Anglo-Saxon legacy our courts are not powerless to give effect to orders passed under the Code, or to prevent abuse of the process of the Court or to secure the ends of justice. This contingency is faced by inherent powers.

vii. The code preserves the Inherent Powers

The principle contained in section 482 of the Code of Criminal Procedure, 1973, is the reproduction of the principle contained in section 561-A of Cr. P.C. 1898. In these provisions, the emphasis is given to the preservation or conservation of power in the High Court.

25. Id. at p. 551
The section heading runs thus, saving of inherent powers of High Court.

Inherent powers existed even before the High Courts came into existence in 1861. It is rooted in the pristine concept of justice, equity and good conscience which act as the bulwark on which administration of justice is rested. The courts of justice require more power than is provided in the statute. Jus scriptum or Jus-non-scriptum, justice is to be administered. In a Rule of Law society the administration of justice is the premier function of the Courts. In India the High Courts act as a nodal institution in the ageless and endless process of adjudication where all jurisdictions meet.

The inherent powers' concept has proximity to the Rule of Law concept. The concept of Law understood in its philosophical and sociological sense respects no barriers to criminal justice or civil justice. It is underlined by the pressure of a written Constitution "which serves as an Aorta in the anatomy of our democratic system". Law is a weapon against the evils of society. Corruption is an octopus, if not overreached it will destabilize and debilitate the very foundation of democracy, wear away the rule of law through moral decay and make the entire administration ineffective and dysfunctional.

A strong concentration of power in the High Court having a great bearing on the entire administration of Criminal justice is contained in Section 482 of the Code of Criminal Procedure, 1973. A scrutiny of the contents of the section and an examination of the attitudinal responses of the High Courts offer scope for an in-depth study. The

27. Ibid.
 provision of law in Section 482 Cr.P.C. reads as follows:-

482. Saving of Inherent Powers of High Court

"Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

The clothing of the section in absolute terms in a non-obstante sense suggests the dimensions of power made available to the High Court which is the highest judicial institution of the longest pedigree. The phraseology of the section has the colour of a super code. Whether it has the overbearing force is to be examined. Justice is the chiefest interest of man. In the administration of criminal justice High Court ensures to give effect to any order passed under the Code., and prevents abuse of the process of any court. Thus the powers of the court are extensive and intensive.

viii. Questions Pertaining to the Application of Inherent Power

In the context of personal freedom of individuals, an offence committed is an act against the society. Personal freedom is pitted against Society's rights.

A noted jurist once said:

"......... where there is any conflict between the freedom of the individual and any other rights or interests, then no

28. Corresponding old law- Section 561-A of the Code of 1898 read as follows:561-A:- Nothing in this code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
matter how great or powerful those others may be, the freedom of the humblest citizen shall prevail over it"\(^{29}\)

But, the individual must remember that other individuals are there, individuals collectively called society. Therefore, a balancing of the interests is imperative. Therefore, the author again said:

"the task is one of getting the right balance. The freedom of the individual which is so dear to us has to be balanced with his duty, for to be sure everyone owes a duty to the Society of which he forms part. The balance has changed remarkably during the last 100 years"\(^{30}\)

How far with inherent powers does the High Courts' attitudinal pattern lead to a spectrum of powers in the administration of Criminal Justice in the above context? Is it a summary power to quash only? or, by applying the power under section 482 of Cr.P.C., do the High Courts achieve judicial creativity? What is the position of the lower courts in the context of inherent powers? Is the power under section 482 of Cr.P.C., only a procedural remedy? or, is it a collateral course? How does the Supreme Court respond? Does the Supreme Court recognise inherent powers as a necessary incident in the judicial process? What is its effect on the criminal jurisprudence? Has the inherent jurisdiction expanded? Is there any jurisdictional contraction? How effective an instrument it is in the hands of the High Court? How do different judges see identical situations? Do they bank on their intuition? Or, do they borrow impulses from one another? How does it affect the society, social values and mores?


\(^{30}\) *Id.* at p.4
Whether section 482 of Cr.P.C., could be used as a second revision? Whether additional evidence can be taken? If so, whether it can be like writ of certiorari? These are some of the different dimensions of the problem that are to be pondered over.

ix. Justice as a Universal Concern

Administration of criminal justice is probably the topic which evinces acute interest of all and sundry. It is the citizens' immediate concern.

"Whatever views one hold about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual."31

Code of Criminal procedure is the key to open the substantive criminal law. The substance is crystallised in the major and minor criminal acts of the land such as the Indian Penal Code and other special statutes. A sound procedure is the sine qua non for meaningful administration of justice. Absence of a specific procedure already laid down is no excuse for miscarriage of justice.

A superior court is not only a court of law, but a court of justice

too. This does not mean that judges should let passion and emotion take advantage over reason and commonsense; that qualities of heart should eclipse the qualities of head. On the other hand, it means that the wisdom of justice should not be blighted by deficit of power. The comprehension of the draftsman of a code or the aptitude of legislature cannot be and need not be all-encompassing to state the principles of law tersely and meticulously to provide for every contingency. There could be unforeseen exigencies and emergencies. A judge cannot look askance at such a situation. He should act judicially and overcome the contingency. For this a judge must have ample power. Such power is ready for use; such power remains despite the Code and its provision; such power is inalienable, and inextricable. They are inherent powers. This power of the High Courts in India under the dispensation for the administration of criminal justice is laid down in Section 482 of the Code of Criminal Procedure.

x. High Courts Power to Guard the Honour of the Courts

Section 482, Cr.P.C. saves the inherent powers of the High Court. It is identification and acceptance of the status and prestige of the High Court. It saves the power which was there prior to the Code of Criminal Procedure, prior to even the institution of the High Court. It coexists with the concept of justice, it has contributed to the forming of the courts of criminal justice system.

The intention of the draftsman of the Code and the legislature which passed it was to preserve the prestige and power of the High Court. This power of the High Court enhances the majesty of the justice. It guards against miscarriage of justice ensuring against the abuse of the process of all courts. The present Code of 1973
verbatim reproduces section 561-A of the Cr.P.C. 1898. The Code of 1898 uses the phrase 'inherent power'. The Code of 1973 uses the phrase 'inherent powers'. Whether there is any distinction meant in 'Power' and 'Powers' is not stated. But, it can be presumed that the word, 'powers', signifies an empirical dimension of the concept. This power is rooted in the beginning of the administration of justice in India in the modern period. It is founded on the bedrock of the principles of common law and equity concept. This principle served as a lighthouse for those sailed along the High Seas of jurisprudence in the administration of justice.

The concept of inherent powers is not specific to the High Court. The power was there even before the High Court's birth and even before the development of the legal system. It is a part of the natural law in as much as it appealed to the sense of justice of all human minds. To the Indian mind, tutored under the ritualistic Varna based pollution prone Hindu system of justice and the polity, exclusivist, absolutist and intolerant Islamic fundamentalistic system, the principles of justice, equity and good conscience signalled the dawn of a new era. The principle gave a human face to the administration of justice. This principle is embodied in the catch phrase of inherent powers enshrined in Section 482 of the Code of Criminal Procedure, 1973.

Inherent powers in section 482 of Criminal Procedure Code is available to High Court only. But, in practice it is comparatively available to all courts including subordinate courts as the power is exercised to "prevent abuse of the process of any court". 'Any court' includes subordinate courts, (Civil Courts or any authority having the jurisdiction of a court and also the Supreme Court). An identical
provision is available to the civil Courts under Section 151 of the C.P.C. The inherent power under Section 151 C.P.C. is directly available to all courts and is less controversial as the plethora of application in a civil litigation finds entry into the courts under Section 151 C.P.C. The inherent powers is the expression of a power of the court preserved over the past several phases of progress of administration of justice. It was preserved by judges and courts. It was named inherent powers long after it came to be recognised as part and parcel of jurisprudence.

"Terms such as "general jurisdiction" or "original powers" or simply "jurisdiction" were used at the time to refer to powers of this sort. All these powers are today said to be examples of inherent jurisdiction"\textsuperscript{32}

It is the incarnation of the principle of justice, equity and good conscience; it is in \textit{Noscitur A Sociis} with fairness in action, rule of law, due process of law, procedure established by law etc.

"The section gives no new powers: it only provides that those which the court already inherently possesses shall be preserved and is inserted lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power has survived the passing of the Act"\textsuperscript{33}

This is the quintessential view understood from a catena of decisions of the Courts.\textsuperscript{34}

\textsuperscript{32} Ref. supra n. at p. 23
Inherent powers of High Court guaranteed through Section 482 of Cr.P.C., are in the countenance of Article 21 of the constitution of India-

xi. **Supreme Court on High Court's Power**

An analysis of the attitude of the Supreme Court towards the inherent powers under Section 482 of Cr.P.C. with reference to a few decided cases makes it clear.

Inherent Powers under section 482 of Cr.P.C. are clothed in a *Non Obstante* language. In this context, the attitude of the Hon'ble Supreme Court of India is relevant. The Supreme Court as the guardian of interests of justice is equipped with the all pervasive and prerogative power of special leave jurisdiction under Article 136 of the Constitution of India. The Supreme Court acts as a corrective force. It never fails to remind that inherent powers are to be very cautiously exercised. It is to be sparingly used and that it has only limited application. The High Court is to get convinced that the charge or complaint or F.I.R. does not disclose any offence prima-facie, before invoking inherent powers.

The requirement of criminal justice system makes it imperative to have inherent powers preserved with the High Courts. It is a superior power with which the High Court can examine whether charge framed is frivolous, vexatious or motivated on extraneous grounds. Mere recital of the ingredients of the offence in F.I.R./Charge-sheet/Complaint/Charge is not sufficient. There should be material to show that the charge is framed on a strong foundation of cogent and relevant facts and not on evanescent and easily dissoluble grounds. The High Court and the Supreme Court are to consider the social
factors and levels of public opinion while examining the correctness of the charge framed.

Bhopal Gas Tragedy is an event which chokes our minds with the memory of death, decrepitude, destitution and disease. The orgy of horror and terror still reverberates in us. Thousands of persons, in their sleep on 3-1-1985 went to eternal sleep smothered by the deathly and highly toxic MCC gas. Thousands were sent sleepless having been subjected to the enormity of the disaster. Our sense of justice craves for nemesis. All who were culpable, wreckless and wanton in their acts were to be booked. But, the Bhopal Gas Tragedy cases presented a situation when everything is said and done more is said than done. There was a protracted juristic diagnosis to fix the liability. In the Course of which the Madhya Pradesh High Court had occasion to examine the scope of its own inherent powers, under Section 482 of Cr.P.C. Where the conscience of the High Court hesitated or declined to tread the Supreme Court not only treaded but also stamped its pressure.\(^{35}\)

A sessions trial of 1992 was pending before the 9th Additional Session Judge, Bhopal. There were 12 accused, including some corporate entities. The Sessions Judge by order dated 8-4-1993 framed charges against the accused under sections 304 II I.P.C read with Section 34 I.P.C, Sec. 326 read with S. 34 I.P.C., Section 324 read with Sec. 34 I.P.C. The accused challenged this under sections 347 and 482 of Cr.P.C. before the High Court, M.P. Jabalpur. High Court dismissed all the petitions. It declined to invoke the inherent powers and quash the charges. Probably to the High Court it did not occur to invoke inherent powers as the case at hand pertained to the

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most bleak and gruesome toxic tragedy. As also the issue had already had a round of litigation upto the Supreme Court. The Hon'ble Supreme Court had earlier by order dated 14-2-1989 and 15-2-1989 had quashed all criminal proceedings relating to and arising out of Bhopal Gas Disaster.\textsuperscript{36}

That order was reviewed by the Supreme Court by order dated 3-10-1991 and all criminal proceedings were restored. When charges were framed subsequently the next round of litigation also started ending with the important judgment of the Supreme Court. The Supreme Court did what the High Court had declined to do. It did invoke the inherent powers under Section 482 of Cr.P.C. after a detailed discussion of the same. Any attack on the charges framed in a case would relate to the insufficiency of the material to support the trial judge's, decision. The appellants who were accused, contended,

"\ldots\ldots\ldots \textit{vehemently contented that taking the case of the prosecution at the highest as reflected by the contents of the charge-sheet and the supporting material it could not be even prima-facie said that the accused concerned were guilty of offence......}"\textsuperscript{37}

That there was no 'proximate act of negligence on the part of the accused'.

"That if at all it was an unfortunate accident which had taken heavy toll of human lives and cattle wealth, however, none of the accused could be held criminally liable for the said accident. It was, therefore, contended that the charges as framed
against the accused concerned are required to be quashed and the High Court had erred in not exercising its jurisdiction in that behalf".\(^{38}\)

Equally efficacious contention was made on behalf of the prosecution:

"That the report of the scientific and industrial research team had clearly indicated the causes of this tragedy and the defects found in the running of the plant at the relevant time. That this material indicated that all the accused were properly charged for the offences alleged against them and that the Court at this stage was not concerned with the truth or falsity of the allegations with which the prosecution has charged them. That at this stage only enquiry into the prima facie nature of the allegations supporting these charges has to be made and if there is any material to prima facie indicate that the accused concerned were liable to be prosecuted for the charges with which they are indicated the trial is required to be permitted to proceed further and should not be nipped in the bud as the appellants would like to have it"\(^{39}\)

Thus, caught between the vociferous contention of the accused appellants and the vehemence of the prosecution, the Supreme Court applied itself, its jurisdiction, vision, verve and veracity. It included interpretation of Statutes, appreciation of evidence, consideration of arguments etc. The trial court had its work cut out, the Hon'ble High Court had its conviction of the amplitude of inherent powers. The Supreme Court speaks of the limited jurisdiction under section

\(^{38}\) Ibid.
\(^{39}\) Id. at pp. 140-141.
227 Cr.P.C. available to the 'trial' court, for deciding whether charges framed are legally sustainable.\textsuperscript{40}

The court also refers to the equally limited jurisdiction under section 228 Cr.P.C. for framing the charge. It adverts to authority where the court is required to evaluate the material and documents on record.\textsuperscript{41} In one breath the court says the jurisdiction is limited and in the court it cannot be expected at all that the prosecution states as gospel truth even if, it is opposed to common sense or the broad probabilities of the case.

The framing of charge is a judicial exercise. Even if, the jurisdiction is limited or requirements scant a Judge cannot apply the power under section 227 and 228 half heartedly. It is the function of a judge at one of its supreme moments when the judicial mind, on perusal of reasons, recitals in the charge sheet, and the arguments advanced decides to charge a person with an offence or not. A Judge cannot have the procrastination of prince Hamlet, and be in a "to be or not to be" disposition. According to the Supreme Court, the High Court while exercising the inherent powers under section 482 Cr.P.C. is not to be circumspect because the power is also very limited and to be used only in rare cases. What the High Court can do is only a 'prima-facie' appraisal of the allegations made in the complaint and the material in support thereof has to be done and the court has no jurisdiction to go into the merits of the allegations as that stage would come when the trial proceeds. This does not mean that the High Court cannot sift the evidence and allowance given to the trial judge, as it

\textsuperscript{40} Id. at p. 141

\textsuperscript{41} Niranjan Singh Karam Sing v. Jitendra Bhimraj Bijjaya & Others., (1990) 4 SCC 76.
cannot be expected of the High Court also to take, all that the prosecution states as truths. To project the rightness and correctness of the High Court exercising inherent powers under section 482 of Cr.P.C. reference is made to other authorities. In *State of U.P. v. O.P. Sharma*, inherent powers were invoked. This was found unwarranted. The Supreme Court citing *Prithichand* narrow down the scope of inherent power saying that it is settled law. Inherent Power is exercised in exceptional cases only. High Court is given instructions to take great care while scrutinising FIR/Charge Sheet/ Complaint, High Court is to see whether the case is the rarest of rare cases. For this, the gist of the matter is to be gone into. To see whether an allegation constitutes offence, the Court has to weigh the pros and cons while examining the charge-sheet, statement of witnesses etc. The Court shall not evaluate evidence, because it is the function of the trial court. A prima-facie consideration is sufficient. If the conclusion is that no cognizable offence is made out, High Court can quash the charge-sheet "But, only in exceptional cases". That is in the rarest of rare cases of malafide intentions of the proceedings to wreak private vengeance, process of criminal law is availed of on laying a complaint/FIR/Charge, itself does not disclose at all any cognizable offence. The court may embark upon consideration therefore and exercise power".

Here also, the High Court cannot view the matter in isolation. It has all the power of the trial court while framing charges. It was more than the power of the trial court with the inherent powers available to

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44. (1996) 7 SCC 705.
ensure the ends of justice. In *Rajendra Agarwalla*\(^45\) case also the Supreme Court held that Powers under section 482 Cr.P.C. should be very cautiously used. Only when a court comes to the conclusion that there would be manifest evidence and came to the conclusion”.

This sounds paradoxical. The Hon'ble Supreme Court while settling that a trial court can sift the evidences available before it while framing charges, the High Court cannot do so, with the same materials. Power used sparingly and cautiously does not mean the power used unwillingly and shirkingly. But, the intention of the interpretation of the Hon'ble Supreme Court is to make it well settled that High Court has only very limited jurisdiction regarding the scrutiny of the prosecution case. Ironically, Supreme Court proceedings with the instant case and customs the available materials on record which is the result in the framing of the charges, and which upheld by the High Court by not invoking the power under section 482 Cr.P.C. The Supreme Court went through the report of the Scientific and industrial Research Team, and all the documents relied on by the Prosecution in a somewhat very lengthy manner. Scientific, Technical, Physiological, Psychological, and legal implications were discussed. And there was reason for the Supreme Court to believe that sufficient materials were there before the trial court and the High Court to come to the conclusion which they reached. But, after making all high talk on judicial reticence and limited power available to the trial court and High Court, the Supreme Court settled down to rewrite the destiny of the case itself. The result is that the wind is taken out of the sail. The punch provided to the prosecution of the accused in *Bhopal Gas Tragedy case*\(^46\) stood eroded. The Supreme Court made fresh

\(^{45}\) (1996) 8 SCC 164.

direction to file appropriate charges. The charges framed against the accused under sections 304 part II, 324, 326 and 429 I.P.C read with or without section 35 I.P.C. were quashed and set aside. The Inherent Power of the High Court was invoked by the Supreme Court here.

But what the High Court failed to do, the Supreme Court is shown performing with reasons of its own. It once again proved the felicity of power under section 482 Cr.P.C., it was decided that the material provided by the prosecution prima-facie supported charges under section 304-A IPC even though in the charge sheet this section was not included. As a corollary to it, the Supreme Court directed the appropriate trial court to frame charges and the Bhopal Gas Tragedy case stood transferred judicially by the Supreme Court from the Sessions Court to the Chief Judicial Magistrate Court, 1st class, Bhopal. This too is a requirement of justice because the High Court can only quash the proceedings only.

xii. Power as Means to an End

The above narration of the chief events of litigation in respect of Bhopal Gas Tragedy case is to show the ramifications a particular case can assume. The social factors and the levels of public opinion mentioned above takes note of the temperament of the judiciary. It invites our attention to the discretion enjoyed by the judges of the High Court and Supreme Court. The sovereign function of law is to achieve social harmony, social peace and social security. Put in other words as Prof. RWM Dias did, law is a "means - to - an - end". The 'end' is justice. Dias elaborates the relevance of justice in res

47. RWM Dias Jurisprudence, Butterworth & co, First Indian Reprint (1994), p. 44
disputes. The position of British High Court is strategic in this respect. The decision of the High Court is law and are binding on subordinate authorities.

"Only decisions of the High Court and above are quotable as 'law'. With regard to the binding force of decisions, the rule is that higher courts bind lower courts; courts of co-ordinate authority do not bind each other. The High Court does not bind itself".48

Dias examine the scope of discretion for judges. Even when the ratio of a previous decision is applied in a subsequent case, the fact remains that there is no fixed ratio for a particular case. So discretion gets into the way. This factor is significant in the matter of completeness in structuring the inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure.

"Since there is no fixed ratio of a case, there is an element of choice in determining it. The orthodox Blackstonian view, however, is that Judges do not make law, but only declare what has always been law. This doctrine is the product of many factors. It would appear to result from thinking exclusively in the present time-frame, which gives rise to the belief that there must be some rule which is always there at any given rule of trial to be applied".49

The very nature of inherent powers display its hallmark having a high degree of discretion for the judges. This is preserved and saved in the interest of justice. It is done on the presumption that a Judge is

48. Id. at p. 127.
49. Id. at p. 151.
the embodiment of reason, commonsense, wisdom, memory, intelligence, morality, knowledge and all ingredients of virtue which helps him to command confidence and respect not only to himself, but also to the institution and the system of administration of legal justice.

The *modus-operandi* of the High Courts in India offers a heterogenous scenario in application and effect so far as inherent powers are concerned. Even today, after Supreme Court's several landmark decisions and that of the various High Courts from 1923 onwards, the inherent jurisdiction of the High Court is caught in a web of inconsistency, irreconcilability, in the method and matter of application of the powers. One can very well subscribe to the view expressed by Prof. M.S. Dockray about the enigma of inherent jurisdiction.

"The law reports are full of apparently contradictory statements on these questions. In this area, there is little which can be said with complete confidence. The uncertainty of the law is almost the only thing which is never in doubt"50

One reason for this uncertainty is the high doze of discretion available to the Judge of the High Court who examines a complaint, an FIR or a charge-sheet, or any process of the Court, to see whether a *prima-facie* case is made or not. There is no algebraic formulae for resolving problems cropping up in the administration of justice. The scene of jurisprudence in this region offers situations even incomprehensible to a Kaleidoscope. The premises postulated in the

yester years need not be applicable as such today. One can glorify the rules and principles embodied in Codes and Acts. Drawing inspiration from the age of automatic machinery, the author talks of a machinery of law created by the ingenuity of the civilised man. A uniform and consistent style is envisaged in the administration of justice. The author's confidence is brimming to the full, when he states that in such a situation.

"To administer the law for a judge in the present day, or atleast should be merely to solve a problem of mathematics. If two is added to two, the result if four".

The author sounds Utopian when he states that;

"The legal rights of every individual are as safe as a balance in a Bank of England Pass Book. If a judge falls in error, in solving a problem, he must be taken to task, the problem must be solved again by a still more competent brain employed by the community as its agent - over appellate court - and justice done".

These views are ideal and great expectations but what followed in reality is part of the history of judicial process. Operation of inherent powers of the High Court, is a fitting reply to the unrealistic estimate done by the author. In administration of justice, algebraic precision will be a chimera. The suggestion that:

"There is not a case which our court and our case law would not give a suitable reply, and the business of the judge is only to find out

52. *Id.* at p. 30.
an answer and announce the way he has reached it"54

Such a view runs counter to the enlightened and esteemed opinion of the jurist that any quantity of enacted law, with whatever meticulous care, precision and finish, draftered and implemented, there will be creases to be ironed out, gaps to be filled, unforeseen exigency to be tackled. An instance to this is, inherent power of the High Court under section 482 Cr.P.C. which abundantly and enchantingly arm the High Court with the power to administer justice where there is no law, where there is no rule, where there is no precedents, where there is no custom.

The ideas mooted by the above referred author were prosaic and not pragmatic. Very soon it invited responses from the legal fraternity repudiating the contentions55. The response was to the tune that enactment of codes and laws are not a panacea for all problems arising in the administration of justice. The author is perturbed by the statement that before the advent of British Rule, the law that prevailed in this country for thousands of years did not consist of a Code, or even any definitely laid down principle. This according to the latter is an affront to the Indian History and tradition. To say that whatever we have today as good as is exclusively the gift of the Westerners is to ridicule India’s past heritage, including those relating to jurisprudence.

Even when acknowledging the courtsey to the Anglo-Saxon jurisprudence one can without hesitation say that the hallmark of Indian Jurisprudence is its indigenous character. The judiciary in

54. Ibid.
India has assimilated many things alien, but all that forms raw materials, as in put, to get unique results. Only the hardware is from the west; we have developed our own software which can equal other systems in proficiency and proliferation. The province of inherent powers is one such remarkable area. It has given to new meaning to the concept of justice.

The new dimensions of justice are realised through the dynamism of judiciary. Inherent powers having assigned a status tantamount to Constitutional powers is capable of realising new dimensions of justice. If the decision of the Supreme Court are examined, in the context of dynamism and judicial activism, it is understood that inherent powers vested in the Supreme Court and High Courts have given a fillip to the role of judiciary.

"Justice is the ideal to be achieved by Law. Justice is the goal of law. Law is a set of general rules applied in the administration of justice. Justice is in a cause on application of law to a particular case. Jurisprudence is the philosophy of law. Jurisprudence and Law have ultimately to be tested on the anvil of administration of justice. Law as it is, may fall short of 'Law as it ought to be' for doing complete justice in a cause. The gap between the two may be described as the field covered by Morality. There is no doubt that the development of the law is influenced by morals. The infusion of morality for reshaping the law is influenced by the principles of Equity and Natural Justice, as effective agencies of growth. The ideal State is when the rules of law satisfy the requirements of justice and the
gap between the two is bridged. It is this attempt to bridge the gap which occasion the development of New Jurisprudence."56

The examination of the application of inherent powers by the High Court and Supreme Court drives home the idea that the gap between law and justice is filled through the medium of inherent powers.

"Existence of some gap between law and justice is recognized by the existing law itself. This is the reason for the recognition of inherent powers of the court by express provision made in the Code of Civil Procedure and the Code of Criminal Procedure. The Constitution of India by Article 142 expressly confers on the Supreme Court plenary powers for doing complete justice in any cause or matter before it. Such power in the court of last resort is recognition of the principle that in the justice delivery system, at the end point attempt must be made to do complete justice in every cause, if that result cannot be achieved by provisions of the enacted law. These powers are in addition to the discretionary powers of courts in certain areas where rigidity is considered inappropriate, e.g., equitable reliefs and Article 226 of the Constitution".57

The requirements of justice gives an occasion for the development of new dimension of justice by evolving juristic principles within the framework of law for doing complete justice according

57. Id. at p. 4
to the current needs of the Society. The quest for justice in the process of administration of justice occasions the evolution of new dimensions of the justice. The author explains the concept of new dimension of justice.

The decision must provide the bedrock of new juristic principles, or for application of all similar situations. That is the beginning of a new dimension. It is based conceptually on a new dimension. This principle enriches the existence of law and advances towards the goal of law as it ought to be. The decisions of the Supreme Court in Bhajan Lal's case,\footnote{AIR 1992 SC. 604} Pepsi Foods\footnote{1998 SCC (Cri.) 1400.} etc. belong to this category where, pressing inherent powers in to action, court has evolved a new dimension to the administration of justice. There are different facts involved, they include interpretation of statutes, interpretation of constitution, guidelines for exercise of discretion etc. Among the above, the guidelines for exercise of discretion is relevant in the matter of inherent powers. When vast power like inherent powers are applied in different High Courts there must be consistency and uniformity. But, it is difficult to achieve this quality. But, the Supreme Court as the summit court, can lead the thinking of the High Court through decision like Madhu Limaye,\footnote{AIR 1978 SC. 47} R.K. Rohtagi,\footnote{AIR 1983 SC. 67} Bhajanlal,\footnote{Ref. supra n. 58} Common cause,\footnote{(1996) 4 SCC 33 & 1996 (8) SCALE 557} D.K. Basu\footnote{AIR 1997 SC. 610} etc. This will help to reduce the Babel of voices heard from among the High Courts being converted to
intelligible sounds of justice.

"The evolution of guidelines for general application to regulate exercise of discretion reduces to the minimum the area of individual discretion. The underlying principle in the guidelines is based on a juristic concept. This is true also for the sphere of inherent powers of the court. Framing of guidelines to regulate exercise of executive discretion to reduce possibility of arbitrariness has also gained roots in the system. There are some obvious methods for the progression of law towards justice by the judicial process".  

Without disciplining the discretion of High Courts, inherent powers cannot be used as a medium for achieving new dimensions. This is the function of the doctrine of judicial review also. The growth of new, jurisprudence is possible only through the above process. Justice P.B. Mukherjee, sounded this way back in 1970, advocated the means to the new jurisprudence. The true impact of the inherent powers of the Supreme Court is felt in this respect. The effect is summarised as follows:

"Rule of law in developing countries with new political philosophy in a welfare State is significant to influence the trend of modern jurisprudence. Judiciary's role in giving expression to the Constitution and the laws for doing justice in the cause is instrumental in the development of new dimensions of justice. Judicial process as a mission seeks justice and tries to do justice. It is a function of balancing interests."  

65. Ref. supra n. 56 at p. 5  
66. Id. at p. 10
The judges of the High Court and Supreme Court have a duty to perform, to keep judicial ship afloat on an even keel. It must avoid making adhoc decision without the foundation of the juristic reasoning. The judges must be logical, precise, clear, sober and render justice with restrain in speech avoiding to say more than that is necessary in the case.67

"It must always be remembered that a step taken in a new direction is fraught with the danger of being a likely step in a wrong direction. In order to be a path-breaking trend it must be a sure step in the right direction. Any step satisfying these requirements and setting a new trend to achieve justice can alone be a New Dimension of Justice and a true contribution to the growth and development of law meant to achieve the ideal of justice".68

In the Indian context while the High Courts have Articles 226, 227 and section 482 Cr.P.C., Supreme Court with the perennial power in Article 142, is ever involved in the process of evolving new dimensions of justice. The precipitation of new dimensions is the yardstick to acknowledge the inherent powers of the High Court and Supreme Court. It is of instant value in criminal justice system. This innovativeness provided by the inherent powers has helped the justice administration draw inspiration from the Constitution. A jurisprudence of inherent powers have developed with the wielding of inherent powers of the Supreme Court and the High Court.

68. Ref. supra. n. 56 at p. 10