CHAPTER - II

JURISPRUDENCE OF INHERENT POWERS OF HIGH COURTS

The term jurisprudence evokes a sense of philosophy. Inherent powers of the courts in the administration of criminal justice have a long history. That this power is open to the courts today in the midst a plethora of enacted laws is a proof of its transcendental merit. To search for the philosophy of such power, therefore, is to find its rational and scientific character. Perhaps it is difficult to define inherent powers. So is the endeavour to define law. Through a sort of "free scientific research" the inherent powers are applied to situations tested by the High Court and retested by the Supreme Court. This process goes on. The Supreme Court being the torch bearer of the judicial process the philosophy of inherent powers is also developed around the wisdom of the apex court. In this process, certain patterns evolve or an attempt is made to discern some patterns, the explanation of which forms the philosophy.

The philosophy of inherent powers is to be titrated from the continuous process of the blending done by the Supreme Court and High Courts in the alchemy of adjudication. The Supreme

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Court of India in this context is appraised as embedded with in a dynamic historical milieu. It has its rules primarily in the jurisprudence theory of Legal Realism. The Supreme Court is thus held to be 'half judicial tribunal and half political preceptor'. The Supreme Court negotiates with dominant yet shifting public opinion. It is the first political court of the nation and demands examination in political terms. This Political Jurisprudence compels the judges being acted upon by prevailing forces.

i. **Inherent Powers of the Supreme Court as the Custodian of Justice**

Further explanation of the position of the Supreme Court in Indian context is that the contours of jurisprudence are drawn by the Supreme Court. It may be true that every idea, technique and principle is borrowed. But, it is given an Indianess by the Supreme Court, says Shri. Gobind Das,

"The Supreme Court of India has no jurisprudence of its own, no language of its own. Each concept is borrowed, every doctrine adopted. There is nothing Indian about the court, not even the architectural design. It is a credit to Indian genius that it has assimilated such an institution, made it its own and has nourished it with trust, faith and reverence during the last 37 years."  

Such vast powers are vested in the court to be used for securing the ends of justice.

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3. Ibid.
4. See ch.1
"The Constitution expressly stated this position. In its judicial activities it is accountable to none. It is the ultimate. It is final. It is infallible. The exercise of judicial power in the hands of the court manned by a chosen few is patently undemocratic. Yet in India, as in America, vital problems are entrusted to the court for a solution."  

Inherent power is one component constituting the all pervasive character of the court. The Supreme Court has at its command tremendous power. It has the power to nullify the acts of the executive, and the will of the legislature. This reality of the prestige of the Supreme Court is despite the fear and apprehensions expressed by the political leadership at the time of the drafting of the constitution and on the occasion of inauguration of the Supreme Court.  

ii. **Code not exhaustive - Courts Supplemient and fill up Gaps**  

The provisions contained in the Code of Criminal Procedure 1973, are not exhaustive. Since the code is not exhaustive, the legislature has preserved or recognised the inherent powers of the High Courts. No new power is invested. Only a declaration of the power already existed is made by the legislature. Legislature has its own limitations. It cannot foresee all the contingencies. The incompetency of the legislature cannot be a justification for the courts to feign helplessness. Courts must have powers over and above the provisions of law provided by the legislature. Such powers must be unaffected or unlimited by anything
contained in the legislation. Having discovered the inherent powers and stated its unlimited and unaffected character one asks the question, What exactly is the inherent power? Legislature has not defined it. In section 482 Cr.P.C., it is stated in very broad and abstract style that the inherent powers are to be used in the administration of criminal justice. High Courts have to use it 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. The generality of the provision explains the limitations of the legislature and the opportunity open to the judiciary to have mutations and permutations. According to Julius Stone, it is the duty of the Courts to see that this divine function of filling the gaps or ironing out the creases in the body of the enacted law.

"This unavoidable duty, in many cases, to evaluate the interests at stake by reference to a standard of justice or utility, must be consciously recognised. The use of conceptions and deductive logic must become merely a technique in aid of the execution of this duty by exposing various hypothetically possible solutions". 7

iii. **Courts' Inherent Powers to Clear the Path of Justice**

This is the justification for the inherent powers of the High Court. High Courts exercise this power owing to historic and juristic reasons 8 High Courts must, therefore, use this power within the limits of prudence because, as Lord Denning says, it is

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8. See *supra*, Ch. I
"to keep the path of justice clear of obstructions which would impede it" ⁹

When we think of the purposes for which inherent powers are to be used by the High Court, it becomes clear that justice is at the centre of it. Securing the ends of justice is the staple function of inherent powers. It is as the weapon to secure justice that inherent powers under section 482 Cr.P.C. gets a respectability over and above the provisions of the Code. Even the Supreme Court at times, though it does not have inherent Powers similar to that described in section 482 Cr.P.C., resorts to the use of inherent powers. In *Delhi Judicial Service Association v. State of Gujarath,*¹⁰ the Supreme Court considered the scope of its contempt jurisdiction and inherent powers. In this case, a controversy erupted when the police misbehaved to the Chief Judicial Magistrate of Nadiad. The police assaulted and arrested the magistrate on flimsy grounds. The Chief Judicial Magistrate was handcuffed and tied with a rope, 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. This case was an occasion for the Supreme Court to demonstrate that a court of record had power to summarily punish for contempt. The power was derived from Articles 129 and 142 of the Constitution. For this power, the Supreme Court did not rely on any statutes.

It was held that the Supreme Court enjoys the power to quash the criminal proceeding, to do complete justice and to prevent

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abuse of the process of the court. In this context, the Supreme Court quashed a criminal proceedings pending against the Magistrate because it is not ideal to suggest that in such a situation the Supreme Court should 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. for its express power on the Supreme Court to quash or set aside any proceeding pending before a criminal court, and to prevent abuse of the process of the court. But, the inherent power of the Supreme Court under Article 142 coupled with special and other powers under Article 136, empowers the Supreme Court 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 based on vendetta or if no case is made out of admitted facts, it would need 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 should quash such proceedings to ensure justice. In the above case, punctuated by dozes of judicial activism the Supreme Court made short shrift of a conspiracy between police and other agencies of the State. A Chief Judicial Magistrate is an important organ in the body of the machinery of administration of justice. Police, instead of controlling the Chief Judicial Magistrate must co-operate with him.

This decision goes a long way in resolving the enigma of jurisdiction of the superior courts to exercise, inherent powers in criminal proceedings pending before the subordinate courts.
iv. **Juristic Views on Inherent Powers**

To draw support to this judicial activism it is worthwhile to refer to Lord Denning again. In his book *The Due Process of Law*, Lord Denning cites instances which occurred to assert the inherent powers of the Court. Despite constitutional convention and statutory provisions, the court is empowered to keep the stream of justice clear and pure.

Punishment of contempt is an effective remedy for keeping the process of the Court respected. Lord Denning refers to the pronouncement by Lord Hardwok in *The St. James Evening post case*,

"There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters".\(^\text{11}\)

Lord Denning adds:

"There is not one stream of justice. There are many streams. Whatever obstructs their courses or muddies the waters of any of those streams is punishable under the single cognomen 'Contempt of Court'. It has its peculiar features. It is a criminal offence but it is not tried on indictment with a jury. It is tried summarily by a judge alone, who may be the very judge who has been injured by the contempt." \(^\text{12}\)

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The above reference made in the book and the subsequent comments of the author show that the court has an inherent power to deal with contempt. It can be called by other names, summary power, plenary power or prerogative of the Court. Abuse of the Process of the Court is to be warded off. Ends of justice include the credibility and respectability of the courts also. This can be preserved only with inherent powers. The court cannot be powerless to do complete justice. Sometimes there can be contempt on the face of the court. An advocate, a senior member of the Bar may behave in a contemptuous and contumacious manner to evoke not only judicial ire but also public scorn. In Re V.C. Mishra's decision, the Supreme Court of India examined this and punished the contemner by awarding a sentence of imprisonment and suspending his licence to practise as an advocate. The gravity of the occasion is evident that under Article 129 read with Article 142 the Supreme Court effectively gave vent to its inherent jurisdiction. It was an occasion for the Court to ponder over the limits or restraint to be put on the inherent powers. So very soon Supreme Court Bar Association v. Union of India, overruled the holding in Re V.C. Mishra regarding the punishment for professional misconduct. In the academic parlance there is anxiety expressed in this attitude of the Supreme Court. The contempt of court on the face of it is so serious and when the contemner is an advocate holding responsible position of the Chairman of the Bar Council of India, the situation is quite alarming:

"An advocate is an officer of the Court and if he commits any contempt, that is not to be equated with the contempt by an ordinary citizen. In fact it could be treated as a separate and distinct violation of both ethics and law".\textsuperscript{15}

In such circumstances, no mitigation in the attitude is expected.

The Supreme Court ruling in \textit{Supreme Court Bar Association} does not seem to be on firm grounds. Here the Supreme Court seems to think that the major punishment of removal of name from the rolls cannot be imposed for contempt as it involves only a summary procedure and that this punishment is proposed to be imposed under the Indian Advocates Act 1961, only after following a detailed procedure affording opportunity to the accused to be heard. In this connection it is pertinent to note that it is under Article 129 that the Supreme Court has been given power to punish for its contempt. And it is under Article 142 that the court has been given power to impose punishments. Advocates Act is not a legislation dealing with contempt of court. As such the above argument of the Supreme Court does not hold water. Being aware of this criticism, the court tries to circumvent the Constitutional provision thus:

Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.

\textsuperscript{15} Dr. K.N. Chandrasekharan Pillai, \textit{Contempt of Court by Advocates’}, 1997 Ac. L.R. 213
With respect it may be pointed out that the statute, Advocates Act does not deal with contempt expressly: in a sense the court seems to say that contempt and misconduct are the same and since removal from the rolls has already been provided in the Statute governing misconduct cannot be there as punishment for contempt. This seems to be misleading. The crux of the court's reasoning becomes clear when it rules out the application of Article 142 thus:

Article 142, even 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. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, 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 Court buttressed its arguments by saying that Article 142 can be invoked to do complete justice between the parties and that in the contempt case contemner and court cannot be said to be litigating parties and therefore in a contempt case Article 142 cannot be invoked".16

The views are concluded by the writer thus:

"In sum, it may be stated that the reasoning of the decision of the three Judge bench in V.C. Mishra's case was

16. Id. at pp. 215-216.
more balanced and pragmatic than the ruling given in the decision in *Supreme Court Bar Association v. Union of India*. 17

The view expressed is not to say that the Supreme Court went soft on the matter but to say that the power of the Court was to be used against contempt *ex facie*. Lord Denning refers the attitude of the Court when he cites the case of the Welsh Students case, *Morris v. Crown office*,18 which was the first case in which the Court of Appeal considered the contempt on the face of the Court.

"In sentencing these young people in this way the judge was exercising a jurisdiction which goes back for centuries. It was well described over 200 years ago by Wilmot, J in an opinion which he prepared but never delivered. It is a necessary incident; he said, to every court of justice to fine and imprison for a contempt of the court acted in the face of it. That is *R v. Almon* (1765) Wilm 243, 254".

"The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the Judges have, and must have power at once to deal with those who offend against it".19

The heat generated in such circumstances is due to the bearing it has in the administration of justice. C.K. Allen, in his book

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17. *Id.* at p. 217.
19. *Id.* at pp. 8-9.
'Aspects of Justice' dialates on this universal aspect of justice. He gives a philosophic overview of the concept of justice. Our craving for justice at all levels of existence makes it at once the ideal in life as well as the enjoyment of life. This being the position, there cannot be a situation where injustice prevails. Justice appeals to the moral, material physical, metaphysical, natural, legal, social and artistic dimensions of human life. In Criminal law it is imperative as injustice leads to suffering, pain and penalty, deprivation, deprecation, death, destitution, destruction and doom. In love, in hatred, in war, in peace, in isolation, in company, all men are guarded by justice. Drawing profoundly from the Roman, Greek, Anglo-Saxon, Anglican and Eastern philosophy, all tried to break the ground to strive together.

C.K. Allen begins his treatise with the Universal appeal to the concept called justice:

"Ever since men have begun to reflect upon their relations with each other and upon the vicissitudes of the human lot, they have been preoccupied with the meaning of justice".\(^{20}\)

There is not a thinker or philosopher who has never ruminated over the throne of justice. When the behavioral sciences were not disciplined into separate branches of knowledge all human intellectual activity touched the necessity for justice. When philosophy was at antique best, justice was a content there. Now, justice or injustice being the question for human conduct, C.K. Allen finds a lot of adjectives referring to different categories of justice.

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"I choose at random a miscellany of the adjectives which, in my reading, I have found attached to different kinds of justice - distributive, synallagmatic, natural, positive, universal, particular, written, unwritten, political, social, economic, commutative, recognitive, juridical, sub-juridical, constitutional, administrative, tributary, providential, educative, corporative, national, international, parental. 21

At all stages of human development justice is a prime player. Administration of justice is the cynosur of all eyes in the society because, "there is scarcely a single relationship of life into which the question of justice does not enter".22

Justice has reached new hights that today man is not the only true subject and object of justice. There is question of justice done to animals, to flora and fauna, to environment, where the possibility of doing injustice is very much. Acts of injustice masqurad as justice as justifications are there aplenty. Marcus Brutus justifies the betrayal and assassination of Julius Ceaser who says: "Not that I loved Ceaser less, but that I loved Rome more".22A Hitler had justification for his "final solutions". Naepolian had justification for his reign of terror. Law provides every offender with a choice of justification.

"Abominable injustice have been done in the name of justice, even as terrible oppressions have been done in the name of liberty, because when men sink to the lowest they

21. Ibid.
22. Id. at. p.4
22A. William Shakerspeare, Julius Ceaser Act III Scene 2 Line 19
clutch for excuse at the highest".23

In criminal law, justice is like the inscrutable face of a sphenix. The injured party gets justice only through penalty to the wrong doer. The wrong doer is presumed innocent until his guilt is proved beyond reasonable doubt. The State is the guardian of justice. A person can be charge-sheeted for nought. Expecting him to undergo the trial is unjust. Thus jurisdiction of the inherent powers of the Court to quash the proceedings. The concept of justice addresses to the moral instincts of man rooted in natural justice, justice as a virtue and a social rectitude.

C.K. Allen dialates that the concept of justice is attributed to all abstract aspects:

Inherent Powers enable the High Court to reinforce the administration of justice. The concept of justice is elastic and imprescriptible. It can be 'distributive' and 'corrective' justice.24

The inherent powers, under Section 482, Cr.P.C., with its three dimensional play, has intimations of justice in all its forms - particular, and universal, distributive and corrective.

While justice is administered, it should strike a note of equality. Where there is disturbance it should be corrected. Orders passed under the laws must, therefore, be given effect to. Imbalances are corrected, inequalities rectified, disobedience banned through orders passed under law. No one shall be allowed to take law into his hands. Wrongs which are punitive in nature are not

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23. Ibid.
remissible by any private persons, it is remissible by State, if remissible at all.\textsuperscript{25} So abuse of the process of any court is to be prevented. A court of law is the citadel of public trust and public conscience. As far as possible, the stream of justice must flow unpolluted by the jetsams and floatsams of abuse, injustice, and inequality.

A Socrates while wrongly judged might have consumed 'hemlock' with smiles, a Jesus Christ wrongly judged might have ascended the cross with fortitude. But, what followed is history. The horror of injustice would last so far as human history lasts. So while giving power to the Court, one legitimately expects justice to be done. The dynamics of inherent powers is to be realised in this context.

The concept of inherent powers of the court of justice would be intelligible, only if we accept the proposition in the earlier chapter\textsuperscript{26} that its origin is to be traced back to the immemorial past. Even before man began to administer justice the inherent power was there in operation. To the question which of the two came into existence first - the inherent powers or the courts - the answer is that the power was there all along the history of administration of justice. Even when the body of laws was frail the concept of inherent powers ruled the decision making process. What gave the rhythm and life, direction and motive to the administration of justice was the continuity in the method of functioning of the courts. Even with the judicial charter of 1726, when courts

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\item \textsuperscript{25} Kenny's definition improved by Austin, referred P.S. Atchuthan Pillai, 'Criminal Law' (1979) p.9.
\item \textsuperscript{26} Ref. supra. Ch. I.
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with definite jurisdiction came into existence, the body of laws was ill-defined. In criminal law probably because of the prevalence of Islamic law no attempt was made to normalise, modernise or rationalise the criminal laws. Administration of criminal justice was really based on a sense of fairness and conscience. Even when Sir Warran Hastings introduced the much applauded Adalath system in 1772 he had left out the criminal justice administration to the caprices of the indigenous law officers. While the power and jurisdiction of Diwani Adalaths were precisely defined, (the institutions of civil justice), Mofussil Nizzamath Adalath and Sadar Nizamat Adalaths, the criminal courts were left in the hands of the so called Islamic criminal law officers. The truth is that the legal system prevailed was anything but Islamic. It never had the purity or authority of Islamic law. Moreover, the Sulthans and the Mughals from whom the Islamic jurisprudence is said to have passed on to the Indian polity were guided by expediency rather than religious vision.28

So, in the absence of definite laws inherent powers emerge as a force of legality and authority for the administration of justice. The Supreme Court of Calcutta of 1774 also was guided by inherent powers rather than specific laws to be enforced.29

In such situations, justice itself can be the casualty. Thus we have Nanda Kumar's case, Cossijurah case, Patna case etc. The patent contradiction in the administration of justice existed

27. Refer supra Ch.I. In 1772 Warran Hastings introduced hierarchy of Criminal and Civil Courts, called Nisamath and Diwani Adalaths.
28. Ibid.
29. Ibid.
all these periods. With the appointment of Law Commission in 1833, the agenda for codification initiated there. It initiated the supply of law to the requirement of society. The Mutiny and the aftermath cleared the deck for progress in legislative activity. The Civil Procedure Code, Criminal Procedure Code, Indian Penal Code, Contract Act, Property Act, Specific Relief Act, Negotiable Instruments Act, etc. opened the way for intense legislative activity. But, the body of laws which came into existence was not foolproof. It had lacunae: codification and recodification, enactment and re-enactment would not make legislation self-sufficient. The more the laws, the more the lacunae. The Criminal Procedure Code was enacted in 1898 in a comprehensive manner. It had about 565 sections containing every conceivable eventuality in the administration of criminal justice for which procedure was to be laid down in advance. When the Code was put into action, in a matter of 20 odd years a situation cropped up warranting the interference of the court even when the proceedings were in its initial stages. The High Courts occupied a proud place in the absence of an Apex Court, like the Supreme Court or the Federal Court. The power which was available to the High Court going by its eminence and majesty, was total and absolute. The High Court had plenary and fundamental power or original, inalienable or irreducible powers. So, the legislature through the Criminal Law Amendment Act, of 1923, inserted section 561-A and saved the inherent power of the High Court. Inherent power was explained though not defined. The power of the High Court to give effect to any order under the Code or to prevent the abuse of the process of any court and secure the ends of justice was
The catch phrase 'inherent powers' is a paradigm or a touchstone. It is the basic norm of administration of criminal justice, something like Hans Kelsen's 'Grundnorm', or American Sociologist, Talcot Parsons' 'paradigm' Maxe Webber's 'ideal type' or 'the basic structure concept' evolved in the Indian Jurisprudence in Kesavananda Bharathj's case. Inherent powers are there, though not tangible. The inherent powers permeate the adjudicatory process. Any proceedings or actions pending before any subordinate court can be subjected to the litmus test of inherent powers. The court in a given situation can exercise inherent powers or decline to exercise inherent powers. In both cases inherent powers are put to play and a criminal proceedings is either ratified or repudiated. Therefore, the concept of inherent powers requires a jurisprudencial evaluation. It is a means
for judicial independence, it is an example of judicial integrity. The words 'power' and 'jurisdiction' are used in an interchanging manner forgetting for a moment their etymological differences and juristic distinctiveness.

Inherent Power is an authority possessed, without being derived from another. A right, ability or facility of doing a thing without receiving that right, ability or faculty from another.\textsuperscript{30} Inherent powers of courts are those reasonably necessary for the administration of justice.\textsuperscript{31}

Inherent powers of courts provide them with a recognised although limited means of defending themselves against any interference with the performance of their functions.\textsuperscript{32} It is suggested by Scholars that inherent jurisdiction is capable of further expansion and development so that in addition to providing the court with an effective means of self-defence against any attack upon their independence, it could also furnish them with means of increasing their capacity to perform their functions.\textsuperscript{33}

"Although the nature and the extent of the inherent powers of the courts and the reach of the law of contempt have only been defined and enlarged by decisions reached in particular cases, there is no justification for concluding that the categories are closed or that the law in these areas is not capable of further expansion. It is true that the

\textsuperscript{31} John Bouvier, \textit{Bouvier's Law Dictionary and Concise Encyclopedia}, 3rd revision (8th edn.) by Francis Rawle 1914, p. 1568.
\textsuperscript{33} \textit{Ibid}.\}
development of the law relating to the inherent jurisdiction of the courts, and perhaps more especially the law of contempt, has resulted in a multitude of particular instances and special rules being built up which have been the subject of the usual common law processes of systemisation and classification. But, there is no justification for concluding that the law in this area is now incapable of further growth, or that it should be confined to those rules and instances as they presently exist. The generality and the extent of the inherent jurisdiction of superior courts which include the power to punish for contempt, has been emphasised in many cases. In 1912, Griffith C.I. confirmed in wide terms the existence of the jurisdiction which every superior court possesses to protect itself from any action tending to impair its capacity to administer impartial justice.34

In the Queen v. Forbes, Exprate Bevas35 Menzies J. described the Inherent Power of courts as "the power which a court has simply because it is a court of a particular description". Thus, the courts of common law without the aid of any authorising provision have inherent jurisdiction to prevent abuse of their process and to punish for contempt. In Connelly v. D.PP, Lord Morris said:

"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are neces-

35. (1972) 127, C.L.R 1 at p. 7.
sary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempt at thwarting of its process". 36

The Judicial basis of this jurisdiction is 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.

The words of the Tasmanian Chief Justice may again be quoted as follows:-

"I am not suggesting, of course, that the inherent jurisdiction is unlimited. Particularly in respect of the law of contempt, courts have rightly emphasised its limitations and the need for restraint in its services. It cannot be used to defeat the will of parliament and it must be exercised with due regard to other values which the law upholds, such as freedom of speech and the liberty of the subject. As Lord Reid said in Attorney General v. Times News Papers Ltd., (1974) A.C. 273, at 294) in a passage in which he was referring to contempt, but which is applicable to the inherent jurisdiction generally. The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the

administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interests which may conflict."  

The essential limitation upon the scope of the inherent jurisdiction is that it may only be exercised to the extent that it is necessary to do so in order to ensure that the court can properly perform its function both in particular cases and generally. However, the delimitation of that constraint should reflect the fact that the role of judiciary is not confined to providing a mechanism for resolving disputes, but also extends to acting as the custodian of the rule of law and fundamental rights and values. It is suggested that as the Courts cannot properly fulfill that role unless they are independent, the courts have an obligation to give full force and effect to their inherent jurisdiction by holding that it confers the power to make any orders against any persons or authority, whether private or Governmental, which it may be necessary for the courts to make in order to protect their independence and to ensure that they can properly perform their constitutional function. It follows as a corollary that any attempt to any extent made to the same is specifically curtailed by Parliament, it is most important that the courts continue vigorously to assert and protect the principle that the definition of the scope and nature of their inherent powers should be a matter solely for the courts.

A dramatic illustration of the use of the court's inherent power

37. Ref. supra n. 32
to uphold the rule of law and protect itself against what could arguably be said is a calculated attempt to prevent the court from performing its function is to be found in *Tait v. The Queen*. 38

Tait had been convicted of murder and was due to be executed on the morning of the 1st November, 1962. On October 31, 1962, Applications for Special Leave to appeal to the High Court against judgments given in proceedings calling Taits' sanity came on for hearing, after hearing some submissions the Justice left the bench for a short time and on their return Dixon C.J. said:

"We are prepared to grant an adjournment of these applications without giving any consideration to or expressing any opinion as to the grounds upon which they are to be based, but, entirely so that the authority of this court may be maintained and we may have another opportunity of considering it.

We shall accordingly order that the execution of the prisoner fixed for tomorrow morning be not carried out, but be stayed pending the disposal of the applications to this Court for Special leave and of any appeal to this court in consequences of such applications." 39

Although during argument Dixen C.J. had said that he had "never had any doubt that the incidental powers of the court can pressure any subject matter, human or not, pending a decision".

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39. *Id.* at p. 624.
It should be emphasised that the courts' order was made entirely on the broader and more fundamental grounds that they were necessary in order to maintain the courts' authority and to provide the court with further time to consider the matter. Prof. Howard regarded the court's unprecedented order as going "to the heart of the relationship between the judiciary and the executive in the Australian Federal System". 40

Prof. Howard says:

"For the first time in Australian history, a court of competent jurisdiction peremptorily ordered a State Government to refrain from action that would stultify the consideration of a cause of which it was lawfully seized. The making of this order in the circumstances of the Tait case was an emphatic assertion of the powers and functions of the judiciary under the Australian Constitution. This event is one of the most important constitutional developments since the finding of the Commonwealth of Australia, for the existence of a powerful, independent and strong minded judiciary is one of the essential conditions of a practical democracy. The ideal that the individual should have reasonable freedom of action and self expression, and should in particular be protected from the arbitrary exercise of power, depends upon the ability and willingness of the judiciary to administer the law independently of all coercive pressures". 41

41. Ibid.
The inherent powers of the High Court under Section 482 Cr.P.C. is unique in its content and application. The Civil courts also have got inherent jurisdictions. The Supreme Court of India has got inherent powers of all encompassing variety. It is a juristic concept which has invaded all territories of jurisprudence. In England in many spheres of administration of justice by the High Court inherent jurisdiction is exercised. This jurisdiction is invoked in an inexhaustable variety of circumstances and in different ways. The concept is amorphous and ubiquitous and so pervasive in its operation. This makes inherent jurisdiction enigmatic. Questions are raised about the nature, juridical basis, limits, capacity to diversify, and claim to viability of the inherent powers. Prof. Jacob calls it an unchartered law of English procedural law. The emphasis is given on the word 'inherent'. Inherent jurisdiction is not the jurisdiction as such. It forms part of the general jurisdiction. A court of law has got its own competent jurisdiction - civil, criminal, appellate, revisional, testamentary, admiralty, original, extra-ordinary, ecclesiastical, advisory jurisdictions. It is limitless in application because the High Court is not subjected to supervisory control by any other courts. In matters concerning general administration of justice within its area the High Court exercises the full plenitude of judicial powers. The unique nature of inherent jurisdiction is that the contents of the power stands independent of any statute. Since, it is not defined through statutes, its true nature is found in a complex number of features. Master Jacob summarises the nature of inherent juris-

43. Ibid.
diction as having the following features:  

a) It is part of the process of administration of justice.

b) It is exercised in a summonary process.

c) It can be applied in respect of parties who are not litigants in a pending proceedings.

d) It is distinct from discretion.

e) The power is exercised despite rules of court.

It is a verile and viable doctrine. It stands on its own foundation and basis for its exercise is put on a different and perhaps in a wider footing. Therefore, the inherent power of a court is a reserve of powers which the Court may draw upon as necessary whenever it is just or equitable to do so. Master Jacob calls the provision in the Code of Criminal Procedure of India a definition of inherent powers.

Regarding inherent jurisdiction, it can be said that the complexities of administration of justice have made it imperative to have this power for the courts to keep the spheres of justice clear as well as moving. The inherent power adds to the sheen of judiciary's impartiality and relevance of the court. When people flee from the jaws of tiger, they jump into the sea. Escape routes are provided as lampposts for those swim in the sea. Section 482 Cr.P.C. is one such escape route. The power under Section

44. Id. at p.23
45. Ibid.
46. Ibid.
482 Cr.P.C. is positive, it is the power to quash as well as cause. If the courts do not have inherent powers in the present situation, one would have to discover a power akin to it. Necessity is the mother of invention here also. At least in Criminal law jurisprudence, to avoid injustice being perpetrated, to uphold the authority of law and courts and to cater to the societal needs courts require certain summary proceedings and inherent powers. Another notable jurist says:

"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."48

The source of inherent power is unwritten. The very nature of the courts requires it. It has positive and negative aspects. In one case, the power may be used to facilitate the proper conduct of legal proceedings, in another context it may be to overcome practices or devices which tend to delay, impede or frustrate judicial functioning. The inherent power is available despite the fact that law provides a particular procedure for tackling a situation. "The concept resists analysis in view of judicial claims to exercise the jurisdiction whenever necessary for the administration of justice. Its ubiquitous nature precludes only exhaustive enumeration of the power which is thus exercised by the courts."49

In England and other common law countries the inherent powers are available to the courts in civil and criminal jurisprudence. In India, the Civil Procedure Code 1908 recognizes the inherent

49. Ibid.
power of the courts under Section 151. This is accessible to all courts such as High Courts and subordinate courts. But, the inherent jurisdiction in criminal jurisprudence is limited to the High Court under section 482 of Cr.P.C. Only the Supreme Court, other than High Courts, examines the scope of applying inherent powers to a situation already considered by the High Court under Article 136 of the constitution.

v. Law Commission's View

Regarding the inherent powers of the subordinate criminal courts the repeatedly affirmed position is that inherent powers are open only to the High Courts.\(^50\) This view holds ground even today, as the Supreme Court has categorically stated in *Randhir Singh Rana v. State (Delhi Administration)*\(^51\) The utility of inherent powers is so great that the Law Commission in its 14th report had canvassed for inherent powers to the subordinate courts also. In its recommendations, it was included that:-

"7. The inherent powers of all criminal courts should be statutorily recognised.

8. The courts of session should be recognised as having inherent powers to pass appropriate orders to prevent the abuse of the process of any subordinate court by an appropriate amendment to section 561-A of the Criminal Procedure Code.\(^52\)

Though the report was submitted during the run up to the reenactment of the Cr.P.C. in 1973, the inherent powers of

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51. (1977) 1 SCC 361.
52. Law Commission of India, 14th Report, Para 16.
the High Court only was saved. Still this area evinces interest.

vi. Exercise of Inherent Powers by Subordinate Courts - Conflicting Views

The Kerala High Court in *Balakrishnan v. Rajamma*, 53 after considering the restoration of a petition under section 125 Cr.P.C. dismissed the same for default by assigning another number by the lower court. Its legality was questioned. It was held that the subordinate courts had no inherent power to review its earlier orders as inherent powers are exclusive to the High Court. But, in a subsequent decision, the Kerala High Court held in the affirmative in *Re District and Sessions Judge, Tellicherry*, 54 while in considering whether the judgment written by a judicial officer can be pronounced by his successor the court held that, though exercising inherent powers under section 482 Cr.P.C. are restricted only to the High Courts the subordinate courts are not without powers, they have auxiliary powers to do what is necessary for the dispensation of justice. But this very limitation of the powers is the hallmark of the inherent powers. The power of the High Court under section 482 Cr.P.C. is expressly recognized. The subordinate courts have no power to assume the same. But when the interest of justice is given paramount importance even a subordinate criminal court can take appropriate action. Or, taking the mandate of section 482 of the procedure Code the High Court has the inherent power to hold as correct and legal, an order passed by a trial court. In *Madhavi v. Thupran* 55 the Kerala High

53. 1979 KLT 502.
54. 1986 KLT 62. See also *Bindeshwari Prasad Singh v. Kali Singh*, AIR 1977 SC 2432
55. 1987 (1) KLT 488
Court had come across such a situation. It was a proceeding under section 125 of the procedure Code for maintenance. The Magistrate had ordered maintenance. The sessions court reversed the order in revision. The illegality alleged was that the trial court had granted permission to correct the mistake in the name of the petitioner. It is already recognised that the subordinate court can allow the correction of a clerical mistake to do justice. It was held in the above case that though section 482 of the procedure Code is only in favour of High Courts the subordinate criminal courts are not powerless to do what is absolutely necessary for the dispensation of justice in the absence of a specific enabling provision provided that there is no prohibition and no illegality or miscarriage of justice involved. The juristic fallout of this bold approach of the High Court, by this decision, the court has extended the inherent powers to subordinate criminal courts also. This may empower the lower courts to meet certain exigencies for which the code does not provide with, which will create a more unjust situation.

But the rule in this regard is not predictably clear as inherent powers are the preserve of higher judiciary. In Re Raman Narayanan the court considered the inherent power of the trial courts. Police by mistake entered the name of a stranger as accused in the charge-sheet. The question was whether the trial Magistrate could remove him from party array invoking inherent powers. The High Court held in the affirmative. The reasoning was that the express term of section 561A did not mean that the subordinate courts did not have inherent powers. Such courts

56. 1972 KLT 901
have inherent powers to act *ex-debito justitiae* to do real and substantial justice for which alone courts exist or to prevent the abuse of its own process. In *Bindeswari Prasad Singh v. Kali Singh* the Magistrate recalled the order dismissed earlier. The High Court dismissed the revision. It was held that Magistrate could not review or recall any order passed by them. Magistrate therefore erred in recalling the order made under Sec. 203 dismissing the complaint on ground of triviality.

In *State v. Pokker,* the question involved was territorial jurisdiction. The complaint was filed before the Magistrate who was having no territorial jurisdiction. Sub Divisional Magistrate transferred it to another court. The District Magistrate quashed the entire proceedings and directed to file a fresh complaint. This act was held to be without jurisdiction. It was beyond the power of the District Magistrate to quash the proceedings. Only the High Court could quash the proceedings under its revisional or inherent powers. The Supreme Court considered this aspect in *Maj. Gen. A. S. Gauraya and another v. S. N. Thakur and another.* It was a proceedings alleging violation of section 67 and 72-C (1)(a) of the Mines Act, 1952 read with regulation 106 of the Metalligorus Mines Regulations, 1961. In this case, the Magistrate had dismissed the complaint and acquitted the accused on ground of non-appearance of the complainant. The Magistrate had no jurisdiction to restore the dismissed complaint on a subsequent application of the complainant. The Code does not permit a Magistrate to exercise inherent powers.

57. 1977 SCC (Cri) 33
58. 1958 KLT 911 (F.B)
59. 1986 SCC (Cri) 249
In *Kerala Kumaran v. State of Kerala*\(^6^0\), it was held that the High Court had powers under section 482 Cr.P.C. to dismiss an appeal or revision or any other criminal proceedings for default or non-prosecution. An order dismissing an appeal for default does not amount to a judgment or a final order coming within the scope of section 362 Cr.P.C. The High Court has the inherent power to restore any matter dismissed for default or non-prosecution on sufficient reason being shown. The power of dismissal for default and restoration is inherent only to the High Court and cannot be exercised by the courts subordinate to the High Courts since they do not possess the inherent powers under section 482 Cr.P.C. In *Raj Ram v. Awadh Ram*,\(^6^1\) inherent powers of a District Judge regarding the execution of orders was considered.

Every court has power to ensure proper execution of its orders and to the extent to which it desires to be executed and anything done in excess of it can be undone by the court. Therefore, the view of Additional District Judge that he can do nothing in such case as he had no inherent powers is held not correct.

**vii. Spectrum of Inherent Powers of the High Court**

In the administration of Criminal justice in India, the inherent power of the High Court has created a province of its own. It has thrown up an occasion to the judiciary to consider its scope and,

1. Application, in orders passed in executive or administrative and Statutory capacity,

2. *Applicability in matters directly covered by specific provision of Cr.P.C.*,\(^6^0\)

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60. 1995 (1) KLT 789
61. 1990 Cri.L.J. 1663 (All)
3. Relevance for acting contrary to Statutes,
4. Examine whether any additional power is conferred on the High Court or only preserves the inherent powers;
5. Availability to give effect to any order under the code,
6. Power to prevent abuse of the process of any court;
7. Power to secure the ends of justice,
8. Power to interfere in the order of sentence passed by Subordinate courts, to run concurrently;
9. Power to review judgment,
10. Power to interfere at interlocutory stage of / proceedings,
11. Power to quash police investigation,
12. Power to stay proceedings in case of civil suit,
13. Power to expunge objectionable remarks from judgment,
14. Power to order restitution of property to proper person,
15. Power to give exemption from personal attendance of accused at trial,
16. Power to award costs;
17. Inherent power vis-a-vis jurisdiction of the Civil Court;
18. effect of an order under inherent power on Civil Court,
19. Inherent power of Labour Court etc.

This spectrum of judicial "extraversion"62 is incomplete. Julius

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Stone describes jurisprudence as:

"the lawyers' extraversion. It is the lawyer's examination of the precepts, ideals, and techniques of the law in the light derived from present knowledge in disciplines other than the law".63

It can be in the negative or positive aspect, it can be where inherent power is invoked by the High Court or declined to be invoked by the High Court; it can be where inherent power is invoked by the High Court and subsequently held otherwise by the Supreme Court; it can be when inherent power is declined to be invoked by the High Court and subsequently held otherwise by the Supreme Court, it can be where both High Court and Supreme Court concurrently hold that inherent power is to be invoked, or it can be where both the High Court and the Supreme Court concurrently hold that the inherent power is not to be invoked. The judicial expedition into the High Seas of jurisprudence on the catamera of inherent power would help one to unravel the unfathomable depths and insurmountable reaching in jurisprudence. The concept is temporal as well as spiritual, physical as well as metaphysical, simulative as well as dissimilative, visible as well as invisible, articulative as well as inscrutable. Therefore a jurist says on the nature of the concept,

"An inherent jurisdiction is a somewhat metaphysical concept. It involves a judicial power of last resort that will be invoked to block certain types of conduct which cannot be regulated by Statutes or Rules of court".64

63. Ibid.
The possibility of the power is so immense that it aids judges who are ready to create and use power designed to promote higher standards in relation to the conduct of litigation generally. The inherent power is acclaimed to be resourceful as it equips the court to deal with any exigency of circumstances. "It will be seen that the inherent jurisdiction contain in its armoury practically the whole gamut of judicial remedies". The inherent power can be used cumulatively because in a proper case the court may not only strike out a frivolous or vexatious claim or defence but also punish for contempt.

Sometimes inherent power may be asserted to achieve by indirect means with the result which could not be achieved directly by an order of the court. It is held inherent jurisdiction is the power which a court has simply because it is a court of a particular description. All courts of unlimited jurisdiction have inherent jurisdiction. This is the relevance of a High Court in the hierarchy of Indian Courts. The Supreme Court and High Court derive power from the same source, the Constitution. One is not subordinate to the other. But, in the matter of jurisdiction, the Supreme Court's power is far and wide, compared to that of the High Court, because the former is the apex court vested with the status of the final arbitrator of the destiny of the people and nation. But, in status and stature, both are courts of record and vested with the power to punish their contempt or abuse as per the provision of the Constitution and also the provision of the

65. Ibid.
67. Ref. supra 64 at p. 458.
Contempt of Court Act. Therefore, these institutions are of necessity having inherent powers not derived by implication from statutory provision conferring particular jurisdiction. If at all jurisdiction is from their statutory provision it would be inaccurate to call it as an inherent jurisdiction.\textsuperscript{68}

As the name suggests inherent jurisdiction requires no authorising provision. This is significant in the context of section 482 Cr.P.C. It is only a saving clause. Section 482 Cr.P.C. does not cause any new jurisdiction, or any jurisdiction at all. It only preserves, perpetuates, recognises the already available omnipresent all pervasive inherent powers of the High Court over the other provisions of the code. The Supreme Court has strongly laid down this principle in \textit{Raj Kapoor and others v. State and others}.\textsuperscript{69} In developing a clear philosophic character to the concept of inherent powers of the High Court under section 482 Cr.P.C. The part played by the Supreme Court of India is non-parallel in any judicial extraversion. The High Courts are at the performing point. The Supreme Court has a vision of detachment absolutely. There are several strands to the thread of juristic contribution to the wider acclaim surrounding the inherent power. The following remarkable features are discernible. Firstly, there is a disciplinary dimension. The High Court and the Supreme Court through self-respect, self-control and guided by the boundary drawn and redrawn by the Supreme Court practised high standard of restrain reticence and reservation in applying inherent powers.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{68} \textit{Ibid}.
\item \textsuperscript{69} 1980 SCC (Cri) 72.
\end{itemize}
\end{footnotesize}
Secondly, the inherent powers is known as a course of real and substantial justice. "The course of true love never runs smooth"\textsuperscript{70} Similarly the course of justice never runs smooth. The stream runs through difficult terrains. The Supreme Court guards it and guides it, being the Friend, Philosopher and Guide of Indian Jurisprudence.\textsuperscript{71}

Thirdly, there has been an increasing respectability to inherent powers with the discussion it generated in the context of the Constitutional power under article 226 and 227 of the Constitution with respect to the High Courts and under Article 32, 136, and 142, of the constitution with respect to the Supreme Court.\textsuperscript{72} Fourthly, the inherent power has made certain innovative strides exploring and excavating the possibilities of Criminal Justice system.

viii. Congruity with Powers under Articles 226 and 227

An aspect which has been engaging the judicial mind in invoking the inherent powers under section 482 Cr.P.C. has been its congruity with the power under Articles 226 and 227 of the Constitution of India. It took some time for the judiciary to ratify the potential of the court under section 482 Cr.P.C. at par with the power under Article 226, and 227 of the Constitution of India. The doctrine of the judicial review is the meeting point of the factors which make jurisdiction under section 482 Cr.P.C. and Articles 226 and 227 of the Constitution. Now, it has become

\textsuperscript{70} William Shakespeare, \textit{A Midsummer Nights Dream}, Act 1 Scene 1 Line 123.


settled that the High Court can exercise its power of judicial review in criminal matters.\textsuperscript{73} The superintendence by the High Court mandated through Article 227 of the Constitution is not only of administrative nature; but also of judicial nature. A trial Magistrate may go wrong just as an authority amenable to writ jurisdiction vested with a public duty is likely to go wrong. Therefore, in the interest of justice, the jurisdiction of the court is to be ample enough to keep the authority of the trial Magistrate inside the province of law. So far as this duty is performed, it makes little difference in the nomenclature under which the petition is filed. Article 227 prevents abuse of the process of court as much as section 482 Cr.P.C., In one case it is limited to criminal sphere and in the other case it is all encompassing. But, the repository of the power is the same - the High Court. The personality of the judges provides for the maturity with which the situation is faced. "The power conferred on the High Court under Article 226 and 227 of the Constitution and under section 482 of the Code have no limits, but more the power the more due care and caution is to be exercised while invoking those powers".\textsuperscript{74}

The Supreme Court is of the view that when the exercise of powers could be under Article 227 or section 482 Cr.P.C. it is not necessary to invoke the provision of article 226.\textsuperscript{75} In Article 227 the Court is vested with all the ramification of the power of judicial review available under Article 226. The distinctive feature is that Article 227 is a disciplinary force for the subordinate

\textsuperscript{73} Pepsi Foods Ltd. & another v. Special Judicial Magistrate & others - (1998) 5 SCC 749.

\textsuperscript{74} \textit{Id.} at p. 758.

\textsuperscript{75} \textit{Ibid.}
judicial institutions. For this purpose, section 482 Cr.P.C. is also for establishing the superiority of the courts of Record over the subordinate courts. If in a case, the court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as on under Article 227 or section 482 of the Code. The prestige and power of the court is to be guarded in the context of the nature of power exercised by it. The occasion should not be used to negate the chance for applying the power by taking refuge under some statutory provision providing for remedies of revision. For instance, the court should not decline to invoke the inherent jurisdiction under section 482 of the Code on the ground that the trial court has power to discharge the accused at the stage of framing charges or that remedies like appeal and revision can be availed of by the accused. Provision for discharge, appeal, or revision is no substitute for the remedy under inherent powers. A trial Magistrate is no match for a High Court judge. If the complaint does not disclose any offence, the High Court has only a Hobbson's choice for invoking the inherent power. The Court cannot turn a Nelson's eye to the fact that it is sheer abuse of the process of the Court, if the accused is left to undergo the agony of the criminal trial despite the fact that the complaint does not disclose any offence. The complaint was that a bottle of beverage 'Lahar Pepsi' sold to the petitioner was adulterated. The Magistrate issued summons. Parties approached the High Court, for writ of prohibition certiorari, mandamus or any other appropriate writ. High Court dismissed the petition. It directed to seek discharge under

76. Ibid.
section 245 of the Code. The High Court was of the opinion that it could not be said at that stage that the allegations in the complaint were so absurd and inherently improbable on the basis of which no prudent man could ever reach a just conclusion, and that there existed no sufficient ground for proceedings against the accused. This view of the High Court is surprising as the Supreme Court has already held that sections 203 and 245 (2) Cr.P.C. is no adequate remedy for a person charged on flimsy grounds. This is in this context that the High Court can exercise the powers of judicial review in criminal matters.

ix. Inherent Powers have no Rigid Formula

The extra ordinary powers under Article 226 of the constitution and the inherent powers under sec. 482 of the Code, do not lay down any rigid formula to be followed by the Courts. Nothing can be inflexible. The facts and circumstances of each case decide the question of application of inherent powers. The objective is to prevent the abuse of the process of the Court or to secure the ends of justice. One guideline is where the allegations made in the FIR, or the complaint even if, they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused. Under such circumstances, the accused should not be asked to go to the trial court and try the possibility of a dismissal or acquittal in case of a trial, or appeal, in case of conviction or revision in case of confirmation in appeal. It is held that the High Court is to

79. Ref: Guidelines in supra n. 71
rise to the occasion and act because the power under Article 227 and section 482 Cr.P.C. is vast enough to prevent the abuse of the process of court by the inferior courts and to see that the stream of administration of justice remain clean and pure.\textsuperscript{80} Going by the reasonings of the Supreme Court in \textit{Pepsi Foods} it has to be inferred that what is good for Article 227 is good for the Section 482 Cr.P.C. also. In a case where the intervention of the High Court is warranted it can do so under Article 227 with the power of judicial supervision. \textit{Waryam Singh v. Amarnath}.\textsuperscript{81} Nomenclature is not relevant. Availability of power is relevant. In the absence of a special procedure prescribed and which procedure is mandatory, it is for the court to bank on inherent powers to secure the ends of justice. If the court has inherent powers to frame rules of procedure, the court has definitely inherent powers to conduct its business notwithstanding the absence of specific rules. If in a case the court finds that the appellants could not invoke its jurisdiction under Article 226 of the constitution the court can certainly treat the petition as one under Article 227 or section 482 of the Code.\textsuperscript{82}

\textbf{x. To Get Away the Technicality or Rigidity of Lower Courts}

The significance of inherent powers is redoubled by the fact that the court of the 1st instance can be technical or rigid. Essentially, in criminal law, the accused is alleged to have wronged a person and thereby wronged the society. The Society has its guardian—the State. It will set the law in motion. But, if the ac-

\begin{itemize}
  \item \textsuperscript{80} \textit{Id.} at p. 758.
  \item \textsuperscript{81} \textit{AIR} 1954 SC 215
  \item \textsuperscript{82} Ref. \textit{supra} n. 73 at p. 760. Magistrate was deleted from party array.
\end{itemize}
cused is innocent, every inch, could he be asked to undergo the ordeal of a trial and then be pronounced guilty or not guilty.  

Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion."

The Magistrate must apply his mind to the facts of the case and the law applicable before issuing the order summoning the accused. The Magistrate is not to be a silent spectator. The allegation in the complaint and preliminary evidence are to be taken. To come to the conclusion whether any prima-facie case is made out the Magistrate may even put pertinent questions to the complainant and the witnesses. It inspite of the above requirements, if the Magistrate proceeds with the case it is the turn of the High Court to press the inherent powers into operation. Nomenclatures are irrelevant, and the High Court order under section 482 or Article 227, can have the proceedings quashed. A failure at this juncture can be a failure to secure the ends of justice and so the Supreme Court said again in Pepsi Food case that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion

82A. Jesus Christ was crucified and then deified; Joan O’ Arc was persecuted and canonised, Warran Hastings won the case, but lost life. These are initially heard in the history, those found unheard in criminal jurisprudence who suffered all along and did not survive to be known about their innocence are the martyrs of jurisprudence.

83. Ibid.
that there exists no sufficient ground for proceedings against accused." 84

xi. Supreme Court Critical about High Courts Abdication

This approach of the High Court in not invoking inherent power in an appropriate case stifles the flame of justice. The High Court itself was diffident in invoking the jurisdiction where it could done appropriately. Therefore the Supreme Court said:

"The High Court has also foreclosed the matter for the Magistrate, as the Magistrate would not give any different conclusion on an application filed under section 245 of Cr.P.C. The High Court says that the appellants could very well appear before the Court and move an application under section 245 (2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants". 85

This attitude of the High Court is not in tune with the gravity and resourcefulness with which an issue of abuse of process of court is to be tackled. Inherent Powers are recognized and saved to render justice and not to retard the progress of justice. In such cases the ends of justice get blighted. The Supreme Court would only be correct in calling a spade a spade in the following:

"It is no comfortable thought for the appellants to be told that they would appear before the court which is at a far

84. Id. at p. 761
85. Ibid.
off place in Ghanipur in the State of U.P. seek their release on bail and then to either move an application under Section 245 (2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the trial courts and the High Court should not have shied away in exercising their jurisdiction. Provision of Article 226 and 227 of the Constitution and section 482 of the Code are devoted to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it".86

After being dismayed by the way in which the Magistrate put the criminal law in motion, and the Magistrate put the same alive, and the High Court's inadvertence to rise to the occasion to use the inherent powers compelled the Supreme Court to set aside the order of the High Court and quash the complaint and proceedings against the persons.

xii. **Supreme Court Exercising its own Extraordinary Power**

The elbow room available to the Supreme Court in the matter of inherent powers exercised by the High Court is through the exercise of its own special power under Article 136 of the Constitution. Several factors go to the apex court to get opportunity

86. *Id.* at p. 762
to examine and modify the attitude of the High Court. The jurisdiction under Article 136 is a very special one when Supreme Court more often denies entry to the controversy to reach the portals of the judicial heartland of the Supreme Court. Then geographical and litigational factors more often dissuade the affected person from going to the Supreme Court assailing the High Court's order. What the Supreme Court has done is therefore, to establish landmark decisions to guide, to lead, and to accompany the High Court. Instances are *R.S. Raghunath v. State of Karnataka & another*, *Janata Dal v. H.S. Choudhary & Others*, *Pepsi Foods Ltd. & another v. Special Judicial Magistrate and others*, and *Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd. Clacutta*, *Mary Angel & others v. State of Tamil Nadu*.

It is settled law that in matters involving civil disputes or combination of civil and criminal matters the Criminal Court would be loathe to interfere. For instance in *Duncans Agro Industries* case even if the offence of cheating was *prima-facie* constituted, a compromise decree passed would amount to compounding of the offence of cheating. In addition to this, there was delay in this case completing investigation coupled with allegation against the officials. The High Court had only one option, ie, to quash the complaint. In a 136 petition against an order to Supreme Court it would only ratify the decision of the High Court which did not

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87. (1992) 1 SCC 335.
91. 1999 (3) SCALE 663
92. *Supra* n. 90
warrant any interference under Article 136 of the Constitution. The High Court was expected only to consider in a dispassionate and objective manner whether the allegation in the complaint *prima-facie* made out an offence or not. Therefore, the Supreme Court said,

"It is not necessary to scrutinise the allegation that are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidence are led in support of the complaint"\(^{93}\)

Exercise of inherent powers does not merely mean quashing the procedure. In that case it has very little difference with the revisional jurisdiction. Inherent powers are saved for a high and exalted function of keeping the administration of justice pure and clean and not to meddle *ad malleet* the stream of justice.

In *Jawaharlal Darda & others v. Manohar Rao Ganapat Rao Kapsika*\(^{64}\) the business of the Legislative Assembly was reported by a daily. Affronted by it a complaint for taking action under sections 499, 509, 500, 501 and 502 read with Section 34 I.P.C. was lodged. The Chief Judicial Magistrate issued process. Additional Sessions Judge quashed it in revision. By invoking the inherent power under section 482 Cr.P.C. the High Court quashed the order of the Additional Sessions Judge. The High Court held that the Additional Sessions Judge mis-interpreted the publication. It is all the more significant when the Chief Judicial Magistrate has *prima-facie* found a case against the accused.

\(^{93}\) *Id* at p. 607.

\(^{94}\) 1998 SCC (Cri) 815
The Supreme Court in the above case had seen a different side of the picture. The technicality in the High Court order was patent. High Court's perception of their power of revision of the Additional Sessions Judge was also not in consonance with the requirement of the ends of justice. So the supreme Court bleached the order of the High Court to restore the order of the Additional Sessions Judge. Apparently, it may appear conflicting and contradictory. But, the premier agenda of our judicial system is to ensure rule of law which includes securing the ends of justice. A court of record must have in its armoury weapons to face any situation. The constitutional safe-guards minimise the vulnerability of the High Court and the Supreme Court. Whether, it is the Supreme Court under Articles 32, 136, 129, 141, 142, or the High Court under Articles 226, 215, 227 or 482 of Cr.P.C. ends of justice shall not suffer shrinkage. Here the significance of inherent jurisdiction is underlined. Even for the High Court inherent powers are not solely available under section 482 Cr.P.C. alone. Being a Court of record, it has power to punish for contempt.95

The intimation of immortality to the justice system is thus through the inherent jurisdiction. There for the Supreme Court said in Supreme Court Bar Association v. Union of India.96

"Thus 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 prevent interference in the due administration of justice".

95. Ibid.
96. 1998 (4) SCC 409 at p. 420
The ideal preposition to compare the inherent powers is to draw a lesson from the power of the Supreme Court to do substantial and complete justice. Inherent jurisdiction is the authority of the judiciary to uphold, to protect and to fulfill the judicial function of administration of justice according to law in a regular, orderly, and effective manner.\(^{97}\)

xiii. **Not Derivative of Statute or Even Common Law**

Inherent power is not derived from any statute nor truly from the common law but instead flows from the very concept of a court of law.\(^{98}\) A court of law has its own stature. Some of its functions shall be vested in some specific tribunal or agency. But, that agency would not get the status or prestige of the Court. Inherent powers are such characteristic feature of the High Court that it would not inhere on any other body. When the Administrative Tribunal came into existence, doubts arose whether it would dwindle the relevance of the High Court as jurisdiction of the High Court was ousted. The Tribunals being amenable only to Article 136 jurisdiction had pretensions of a court similar to High Court. Some earlier decisions starting from *Sampath Kumar's* case\(^{99}\), endorsed it. But, it followed that decisions of the Supreme Court gradually proceeded away from *Sambath Kumar*, and finally reached *Chandra Kumar*.\(^{100}\)

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97. Ibid.
xiv. Inherent Power vis-a-vis Judicial Review and Revision

Here the Supreme Court considered the power of judicial review available to the High Court. In the Indian judiciary, the Supreme Court as well as the High Court have the power of judicial review. The alternative institution mechanism cannot hijack the inherent powers of the High Court. So far as the inherent powers under section 482 of Cr.P.C. is concerned the power is only on the High Court and the practise and procedure of the High Court is as a court of record, the concept of judicial review is supreme and is in the commanding heights of authority of law. Nothing is superior to it. It is another name for rule of law. In Administrative Law parlance, it is the authority of public bodies, in Constitutional Law, it is the basic tenets of the rights, in criminal Law, it is the means to secure the ends of justice, in law of Contempt of Court, it is the media to maintain the majesty of law. Even when the High Court exercises a jurisdiction saved through a statute like Cr.P.C., the very fact that such jurisdiction is the exclusive preserve of the High Court, and not available to the subordinate courts makes the powers as well as the High Court prestigious and superior. That is why the inherent power of the High Court under section 482 Cr.P.C. is treated at par with the power of the High Court, under Article 226 of the Constitution, and on a jurisprudential level of judicial review in the context of this form of the Supreme Court under Articles 32, 136, 142 etc. This has paved the way for the inherent powers of the High Court to be superior to any other provision of the Code where the High Court has jurisdiction. Under section 483 of the Cr.P.C. the High Court

has got continuous supervisory power over the trial courts. Under sections 397 and 401 Cr.P.C, the High Court has got revisional power. Under section 438 Cr.P.C., the High Court has got power to grant anticipatory bail. But, in this context, the power which accrues the High Court to prevent the abuse of the process of the Court and to safeguard the relevance of justice is the inherent power under Section 482 of Cr.P.C.\textsuperscript{102}

Krishnan v. Krishaveni \textsuperscript{103} was an established decision of the Court articulating the inherent powers of the High Court in clear and certain terms. When the matter under Article 136 came up before a two Judge bench of the Supreme Court, the court having adverted to some of the earlier decisions decided to refer the matter to a three Judges Bench. In Dharam Pal and others v. Ramshri & others,\textsuperscript{104} Rajan Kumar Machanda v. State of Karnataka,\textsuperscript{105} the Supreme Court analysed the mode of application of the revisionary power under sections 397 and 401 Cr.P.C. and the supervisory power under section 483 Cr.P.C. and compared it with the provisions of the power under section 482 Cr.P.C.

"The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior

\textsuperscript{102} Krishnan v. Krishnaveni, AIR 1997 SC 987.
\textsuperscript{103} Ibid.
\textsuperscript{104} Dharampal & others v. Ramshri & others. (1993) 1 SCC 435
\textsuperscript{105} Rajan Kumar Manchanda v. State of Karnataka, 1990 Supp SCC 132
Criminal Courts or to prevent miscarriage of justice.\textsuperscript{106}

Sections 397, 401 and 483 Cr.P.C. provide revisional and supervisory jurisdiction to prevent miscarriage of administration of justice, and to met out justice. But, the inherent power is to achieve greater objective of social harmony, peace and tranquility.

"However, High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under section 397 (1) However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process irregularities/incorrectness committed by inferior Criminal court in its juridical process or illegality of sentence or order."\textsuperscript{107}

The inherent power is preserved and saved not conferred or vested. The Supreme Court had been previously also attempting to calibrate the inherent powers of the High Court with decisions leading to Krishnan v. Krishaveni \textsuperscript{108}

In the jurisprudence of inherent powers under section 482 Cr.P.C. a contentious issue agitating the justices and judicial mind is the power of revision viz-a-viz inherent powers. What is spe-

\textsuperscript{106} AIR 1997 SC 987 at p. 990.
\textsuperscript{107} Ibid.
cifically barred in the Code cannot be undone through section 482 Cr.P.C. Section 397 (3) Cr.P.C. bars a second revision. Therefore, one cannot reach the High Court with a petition under Section 482 Cr.P.C. to impugne an order of the Criminal court or Session court. Dharampal and others v. Ramshri and others. 109

Regarding this inherent jurisdiction of the High Court, the High Court is at the performing point and is likely to be swayed by the facts of the case. If the High Court quashes the Magistrate’s order or Session Judge’s order, assailed before it. The High Court has no jurisdiction under section 482 Cr.P.C. to quash. This being the position, the Supreme Court found sufficient ground for holding that the inherent power under section 482 Cr.P.C. cannot be confined to the provisions under sections 483, 401, 341 of Cr.P.C. 110

xv. Nucleus of Judicial Activism in Criminal Justice

The inherent powers of the High Court today forms part of the nucleus of judicial activism. The powers have became indispensable for administration of criminal justice. The judicial activism has led to the presence of inherent powers in several aspects of criminal justice system. It is an achievement of inherent powers that when innumerable cases are brought to the High Court challenging the veracity of proceedings pending before the trial court, the High Court is to be very cautious in interfering with the criminal justice administration. Persons accused of offences have a propensity to challenge the steps taken by the trial court. There is no action of the trial court which is immune from the jurisdic-

tion of the High Court, but this does not mean that High Court is to apply inherent powers positively in all situations.

In *Tejmal Punamchand Burad v. State of Maharashtra*, the Bombay High Court held that applying powers High Court can interfere with the order passed by the Magistrate under section 133 of the Cr.P.C. But, this is possible only if substantial injustice is done. High Court has power under section 482 Cr.P.C. to take cognizance and interfere with the order passed by the trial court. The magistrate should have taken a different view where there is no evidence or no reasonable evidence on record, to justify, the magistrate's findings. In the above case, since the order was proper and passed within jurisdiction, High Court declined to interfere. There are several formalities in criminal justice administration. Though the fundamental principle is that, any citizen can initiate legal proceedings so far as an offence is concerned, in certain particular situations, certain statutory requirements are necessary for initiating the proceedings. One is obtaining sanction from the state. The conventional criminal jurisprudence teaches us that State is the aggrieved party in criminal cases. To keep the stream of justice clear of corruption, nepotism and bureaucratic excesses, it is required to get the sanction of the executive head, before a person is proceeded against. Section 197 of the Cr.P.C. provides for the requirements of sanction. There are special statutes like Prevention of Corruption Act, providing for sanction fulfilling the requirements of that particular statute. When sanction is a necessary step in the course of prosecution, relevance of inherent powers come to the forefront,

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111. 1992 Cri L.J. 379
when actions are initiated without sanction or when sanction is obtained improperly and without observing the principle of natural justice or violating the procedure established by law. It is a meeting point of Administrative law and Criminal law. But, here the courts are to be vigilant against attempts by delinquents to use the branch of inherent powers.\textsuperscript{112} The High Court is guided by the decision of the Supreme Court.\textsuperscript{113} At the same time ends of justice must be secured also.

In \textit{M. Gopalakrishnaiah v. State}\textsuperscript{114} a bank officer was involved in sanction of loans and there was allegation of cheating. The proceedings were challenged for want of proper sanction. Here, the Board of Directors had given necessary sanction. The Board was acting on a letter from the Additional Secretary to the Ministry of Finance, who is also a member of the Board who gave sanction for prosecution. The Board had earlier ratified the loans also. It was held that sanction obtained was invalid and proceedings were liable to be quashed.\textsuperscript{115}

In \textit{K.M. Mathew \& others v. P.K. Thungon},\textsuperscript{116} the court declined to interfere. The provisions under which allegations were made included offences under section 120B of IPC for cheating. It required prior sanction to proceed against. The Magistrate could not proceed without sanction. But, he could proceed with

\begin{flushleft}
\begin{footnotesize}
112. \textit{Lakshmana Kunjhan v. C.R. Sulochana}, 1978 Cri.L.J. 522 (Ker.)


114. 1988 Cri.L.J. 651 (A.P)

115. The High Court referred to \textit{Municipal corporation of Delhi v R.K. Rohtagi \& others} 1983 SCC (Cri) 115. The court is to take the allegation and complaint as they are and is not to add or substract, the facts subsequently proved are not relevant.

116. 1990 Cri.L.J. 244 (Gau.)
\end{footnotesize}
\end{flushleft}
the trial on other parties. Section 482 Cr.P.C. could not be invoked to quash the order of the Magistrate to take cognizance under sections 500, 502 and 507 IPC. Whether all or any of the accused committed any offence has to be decided at the time of trial after taking evidence.

In *Rangesh Sharma and another v. State of U.P. and another*¹¹⁷ prosecution against officers of State Electricity Board was initiated without necessary sanction. Sanction was necessary under section 56 of the Electricity Act and section 82 of the Electricity (Supply) Act, it was held that proceedings are liable to be quashed. Moreover, the officers cannot have gained any fruits by adopting the procedure established by law.

The Gauhaty High Court quashed the proceedings for attempting to circumvent the legal provision. The FIR discloses offences under the Penal Code and Prevention of Corruption Act. Charge sheet was submitted giving complete goby to the provisions of Prevention of Corruption Act to circumvent the sanction of prosecution. This is a fit case for invoking inherent powers.¹¹⁸

In *Subash Chandra Sinku v. State of Bihar*,¹¹⁹ the court declined to quash the FIR. The accused was a forest range officer, his contention was that his action was in order to maintain public order and tranquillity. The question of sanction required under section 132 of the Act was also raised. It was held that

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¹¹⁷. 1990 Cri.L.J. 861 (All.)
¹¹⁸. 1992 Cri.L.J. 1472 •
¹¹⁹. 1995 Cri.L.J. 3936 (Pat.)
question of sanction could be considered only when the petitioner appears before the court or and makes such submission.

In *M/s. Meenakshi Industries v. G. Guruswamy*, the offenses of non-payment of employees deposit linked insurance contributions were alleged. It was a continuous offence. The petitioner raised doubt regarding sanction of prosecution and *locus-standi* of the complainant. It was held that such matters are not to be considered under inherent powers. When economic offences are involved High Courts are more strict.

In *M/s. Tonesta Electronics v. Asst. Collector of Central Excise*, the complaint was filed for economic offences committed by the accused who were partners of a registered firm. The complaint against persons in charge of the affairs of the firm could not be quashed. It was held that the complaint against persons who were not responsible for the conduct of business of the firm at the time of alleged offence; complaint against them could be quashed. Ground that no sanction for prosecution as required under the Act - complaint cannot be quashed on such ground. Proceedings cannot be quashed on ground that no notice had been issued to accused persons before launching prosecution.

In *Ajay Handa v. State of Punjab*, the High Court held that while sanction is a necessary requirement, mere technicality shall not be brought in for sanction already given, it was held that -

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120. 1992 Cri.L.J. 2115 (Mad.)
121. 1995 Cri.L.J. 934 (Kar.)
122. 1995 Cri.L.J. 2002 (P&H)
Each and every fact namely date of sample when taken, date of analysts report need not be mentioned specifically in sanction order - Complaint and document accompanying ie, report of analyst prima-facie making out case. Complaint cannot be quashed.

The above decisions show that when Sanction is mandatorily required initiating action against a person in service without proper sanction is ipso-facto illegal and fodder for inherent powers of the High Court. But, of late, when increase of the white colar crimes, and corruption on the high places became rampant, the attitude of the judiciary is not to stumble upon technicalities. After looting huge amounts of public money by virtue of the position or post held, a person shall not be escaped scot-free under the cover of improper sanction.

If at all a theoretical basis is attributed to the inherent powers, it is not constant. New situations arise and new combination of reasoning lead to generalisation. One such aspect is application of inherent power as an alternate remedy in criminal justice system.

In Jamaluddin Shah and others v. State of Bihar,\textsuperscript{123} Patna High Court held that when the lower appellate court refused to grant stay under section 73 of the Cr.P.C. in a criminal appeal, the inherent powers under section 482 Cr.P.C. is an alternate remedy. In the above cases, criminal appeal before the Sessions Judge was against the order to execute security bonds. The Sessions court refused to grant stay under section 389(1) or section 373 of the Procedure Code. So, it was open to the High Court to

\textsuperscript{123} 1989 Cri.L.J. 1104 (Patna)
interfere and it was held that in suitable cases, in order to do justice and prevent injustice, the High Court can exercise inherent powers to grant stay of execution of bond. The High Court quashed the order refusing to stay the execution of security bond, and instead itself granted stay.

In *Ram Preet Singh v. State of Uttar Pradesh*,\(^\text{124}\) the court considered passing of interim relief. It was in view of the fact that there existed grave danger to the life of the applicant, if he was to surrender in the court of Haridwar. The FIR was lodged there. The High Court directed the applicant to appear before the court at Allahabad. The Chief Judicial Magistrate was also directed to accept the bail bond, in case bail be granted and till that time non-bailable warrant issued against the petitioner as well as Section 82-83 proceedings initiated were stayed. These are developments in the course of administration of criminal justice which require inherent powers.

**xvi. Standards in Application of Inherent Powers**

*State of Kerala v. Kolakkacanmoosa Haji*,\(^\text{125}\) the Magistrate issued order under section 156(3) of the procedure Code directing the Inspector General of Police to investigate a crime. It was under challenge. The High Court held that the Magistrate was empowered to forward the complaint to the officer in-charge of the Police Station for investigation. The order of the Magistrate forwarding the complaint to the Inspector General of Police was without jurisdiction and hence quashed. But, the High Court under Article 226 could direct superior police officers to investi-

\(^\text{124}\) 1990 Cri.L.J. 400 (All.)

\(^\text{125}\) 1994 Cri.L.J. 1288 (Ker.)
gate a crime. It can be gainful that the High Court under inherent powers also can issue direction. A Magistrate having neither inherent power nor original jurisdiction, could not issue such a direction.

*R.C. Goenka v. Som Nath Jain*\(^\text{126}\) the question involved was stay of criminal proceedings. Accused was entrusted with money for the purpose of investment in share. The accused was alleged to have caused loss to the complainant in share business, Civil Proceedings were pending between the parties. Moreover, there was no sufficient ground to continue criminal proceedings in the absence of any agreement and finding by the Civil court, as to the involvement of any fraud. The High Court's extraversion is encouraged by its duty to secure the ends of justice.

In *Chatu v. State of Haryana*,\(^\text{127}\) the High Court had to consider the decision of a State Level Committee for premature release of prisoners. The Committee rejected the prayer of the petitioner. High Court invoking inherent powers, quashed the order of the Committee and directed to reconsider the case afresh.

*B. Subbaiah v. State of Karnataka*\(^\text{128}\) the question was the suspension of sentence pending appeal - section 389(3) of Cr.P.C. applied only to a case where there is right of appeal. Article 136 of the Constitution conferred no right of appeal - Hence the accused cannot invoke section 389(3) Cr.P.C. for suspension of sentence for filing appeal under Article 136. It is held

\(^{126}\) 1996 Cri.L.J. 2918 (P&H)
\(^{127}\) 1996 Cri.L.J. 3313 (P&H)
\(^{128}\) 1992 Cri.L.J. 3740 (Kar.)
that the sentence can be suspended by invoking inherent powers. This area seems to be a nebulous one where there is no consenses regarding the power of section 482 Cr.P.C.

*Ramesh Narang v. Rama Narang*,\(^{129}\) the question of suspension of sentence was considered. It was held that appellate court could not suspend the order of conviction by resorting to section 482 Cr.P.C. Appellate court has power of execution of sentence alone. Power of appellate court flows from the provision of the Code. It cannot exercise inherent powers in the name of interest of justice.

The above instances shows that there are areas which are well in the process of evolution in the way to acceptable standards of jurisprudence of inherent powers. Another area in this direction is in the matter of compounding, invoking the inherent powers.

In *Mohan Singh and others v. State*\(^{130}\) the question was whether inherent power could be exercised, for compounding of offences except as provided by section 320 Cr.P.C. Petitioners who are convicted and sentenced under section 365 I.P.C. Compromise petition under section 320 Cr.P.C. was also filed. Appellate court declined to grant releif as the offence was not compoundable. So a petition under section 482 Cr.P.C. was filed for a direction to the appellate court to compound the offence. The court traversing the case law, laid down the following principles:-

(i) That the High Court possess the inherent power to be exer-

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129. 1995 Cri.L.J. 1685 (Bom.)
130. 1993 Cri.L.J. 3193 (Raj.)
cised *ex-debito* justice to do the real and substantial justice for the administration of which alone court exists. But, such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whims or caprice.

(ii) That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice.

(iii) That the power is not to be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party, and

(iv) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

The Court answered the question in the negative.

In *Annamdevula Srinivasa Rao v. State of A.P.*\(^ {131}\) it was held that the High Court could not issue a direction for compounding an offence which is otherwise non-compoundable such directions are not for securing the interest of justice or to prevent any abuse of the process of court. It was also held that power under section 482 Cr.P.C. is not a limited one. This itself is one against the tone of a positive and progressing principle of the acceptability in the trial.

In *Smt. Ghousia Sultan v. Mohd. Ghouse Beg*\(^ {132}\) a Full Bench of the Andhra Pradesh High Court held that High Court in exercising inherent powers cannot permit compounding non-com-

\(^{131}\) 1995 Cri.L.J. 3964 (A.P)

\(^{132}\) 1996 Cri.L.J. 2973 (A.P)
poundable cases. But, it was held in appropriate cases withdrawal from prosecution shall be permissible for securing the interest of justice. This in effect gives the relief of compounding to the aggrieved party.

In *State of Karnataka v. Srinivasa Iyengar*, the court held that even if both complainant and accused filed petition to compound the offences, it was to defeat statutory bar by resorting inherent powers under section 482 Cr.P.C.

A definite advancement took place in *Hari Moha Patra v. State of Orissa*, the High Court of Orissa quashed the proceedings while considering the petition under sections 482 & 320 Cr.P.C. for compounding, filed on behalf of informant and the victim. Alleged offences occurred about six years back and the victim was not willing to support the prosecution cases. Proceedings were quashed even though the alleged offences were not compoundable.

Another aspect pertaining to the jurisprudence of inherent powers is the question of jurisdiction.

In *Hack Bridge Hewitic & Easun Ltd. v. Provident Fund Inspector*, the prosecution was for failure to deposit the provident fund. There were several mitigating circumstances in the case, all dues of provident fund contribution were remitted subsequently, after launching of prosecution. So minimum sentence of nominal fine could be imposed.

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133. 1996 Cri.L.J. 3103 (Kar.)
134. 1996 Cri.L.J. 2952 (Ori.)
135. 1992 Cri.L.J. 303 (Mad.)
The court made it clear that in such circumstances, a lenient view is to be taken towards the accused. The court also sounded a word of caution, there should not be a mistaken belief that the High Court was interfering with the discretion vested in it. Discretion is a privilege vested in a particular office which cannot be arrogated by another authority. If that is done, it will be without jurisdiction. But the rigour of concept of jurisdiction is made flexible by the impact of inherent powers.

In *J. Boopalan v. Inspector of Police*¹³⁶ the question of inherent powers exercised to quash executive or administrative order were considered. It was held that, powers can be exercised only in respect of a proceeding pending before the High Court or any subordinate court. Hence, the application to remove the name of a person from the list of rowdies being an executive order, was held to be not allowable under inherent powers.

In *M. Abubacker Kunju v. R. Thulasi Das*¹³⁷ an important question regarding jurisdiction was considered in the above case. The question was whether an appeal could be filed before a Division Bench was against an order of the single judge in an application filed under section 482 Cr.P.C. The Division Bench of the Kerala High Court held that such an appeal was not maintainable, because the order passed by the High Court invoking inherent powers was in it supervisory jurisdiction.

In *K. Chandrasekhar v. Labour Enforcement Officer,*¹³⁸ the court held that the jurisdiction of the High Court is not at all lim-

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¹³⁶. 1992 Cri.L.J. 1235 (Mad.)
¹³⁷. 1995 Cri.L.J. 1664 (Ker.)
¹³⁸. 1995 Cri.L.J. 3402 (A.P)
ited in the matter of inherent powers. In a case of bride burning, a case committed for trial to the Sessions court. An application was filed by the brother of the deceased lady for transfer of the case. Objection was raised regarding the *locu-standi* of the petitioner. But, the court held in the affirmative, stating that it had jurisdiction.

In the matter of jurisdiction, one may come across petitions filed following wrong procedure. In *B.K. Bhowmick v. M/s. Princes Confectionary*, it was held that an order of the Additional Sessions Judge in respect of false identification of accused, the proper course was to challenge the order under section 371 of Code by filing an appeal. Inherent powers are not available for legalising wrong procedure. Similarly, earlier it was held that inherent powers cannot be exercised for trivial matters.

In *Santhosh v. State of Kerala* it was held that amending the charge midway was not at all violation of any order, a special court has got power under the statute to adopt its own discretion and inherent powers are not made use of for interfering in such matters.

In *Rajarathnam v. Ananthanarayanan*, the Magistrate framed charges for offences triable by the court of sessions. It was not quashed on the ground of jurisdiction. Allegations in complaint disclosed offences exclusively triable by a court of Session. The Magistrate framed charges for an offence under section 384 I.P.C., which was not exclusively triable by the Magis-

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139. 1979 Cri.L.J. 1473 (Cal.)
140. 1985 Cri.L.J. 756 (Ker.)
141. 1978 Cri.L.J. 1856 (Mad.)
trate. High Court under section 482 Cr.P.C could not direct the Magistrate to treat the case as preliminary register case. It was still open to the Magistrate to commit the case to the court of session in the course of trial if he was satisfied to do so.

xvii. **Looking into the Impact of Exercise of Inherent Power**

The major impact of exercising inherent powers is removing the liability of an accused. So, if the accused person is a company, or, the person accused of the offence was holding an office in a company, that person's liability for offences done on behalf of the company becomes vital. The capacity of juristic entities like a company, co-operative society or a corporation to form *mensrea may be doubted*. Therefore, the liability of such entities has been a subject of debate in the judicial parlours in many cases.

In *Darshan Singh v. State of Punjab*, 142 the court declined to exercise inherent powers in respect of offences alleged against persons holding position in the Punjab Co-operative Society. The court held that the award passed under section 56 in arbitration was not relevant so far as the criminal cases were concerned.

In *A.K. Jain v. State of Sikkim*, 143 the court considered the liability of the corporation, Prosecution proceedings were initiated against the Chairman and Managing Director of a company which owned a newspaper. The complaint did not disclose any facts to connect the applicants with the offences. The process issued against the application was quashed.

142. 1992 Cri.L.J. 948 (P&H)
143. 1992 Cri.L.J. 839
In Cuttack Co-operative Stores v. Regional P.F. Commissioner,\textsuperscript{144} it was held that, since there was absolutely no\textit{ mensrea} the petition filed against the co-operative Society was dismissed, remanded for reconsideration.

In S. Ram Mohan\textit{ v. State},\textsuperscript{145} the principle employer of a company who was not responsible for the day-to-day affairs of the company was held not liable and proceedings quashed. This ground came to stay, as proceedings were quashed in respect of persons who were holding office of the companies, but not directly responsible for the offence.\textsuperscript{146}

In such cases the agreed dictum is that since the liability is to be fastened on a person without clear averment and cogent facts, it is not possible to fix liability.

The above discussion of the general principal and particular decisions of the Supreme Court and Hight Courts endorse the claim that a jurisprudent of inherent powers is emerging. As suggested earlier, it is routed in a theory of Realism as opposite to the traditional theory of Analytical legal positivism. In both systems the study involves a metaphysical approach to the subject. It tallies with the general explanation of the term jurisprudent given by the high price Sir John Salmond,

"The name given to a certain type of investigation into law, an investigation of an abstract general and theoretical

\textsuperscript{144} 1996\textit{ Cri.L.J.}\ 1483 (Ori.)

\textsuperscript{145} 1995\textit{ Cri.L.J.}\ 2414 (Ori.)

nature which seeks to bear the essential principle of law and legal system".  

The obvious difference between the thinking of analytical positivists and the realists can be discerned here also. The distinction is on the basis of their attitude to law, legislature and courts. Positivism regards laws as the expression of the will of the state that the medium of the legislature. Theorists of legal realism too like positivists, looks on law as the expression of the will of the state, but see this as made through the medium of the court.

"Like Austin, the realists look on law as the command of the sovereign. But, the sovereign is not Parliament, but the judges for the realists, the sovereign is the court." 

This idea is true of the concept of inherent power also. One area where the court asserted as the sovereign is undoubtedly in the exposition of the definition of inherent power and its application to diverse circumstances. The result of the cogitation by the apex court on the categories of reference under the inherent power show the vast potential of this doctrine in criminal law jurisprudence.  

Almost all aspect of criminal justice system are subjected to the 'litmus test' of inherent powers. They include application of inherent powers in reference to FIR, in matters

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148. Id. at p. 35
prohibited under the Code\textsuperscript{151}, in the context of specific provisions\textsuperscript{152}, abuse of the process\textsuperscript{153}, quashing of charge\textsuperscript{154}, at the stage police investigation\textsuperscript{155}, pending criminal proceedings\textsuperscript{156}, taking cognizance\textsuperscript{157}, quashing complaint\textsuperscript{158}, power of the subordinate courts\textsuperscript{159}, stay of proceedings\textsuperscript{160}, matters once considered under section 341 Cr.P.C.\textsuperscript{161}, power review\textsuperscript{162}, expunging remark\textsuperscript{163}, delay in trial\textsuperscript{164}, towards interlocutory orders\textsuperscript{165}, revision\textsuperscript{166}, cancellation of bail\textsuperscript{167}, duty of the High Court\textsuperscript{168}, inherent powers of

\begin{itemize}
\item[154.] Radhe Shyam v. Kunj Behari, AIR 1990 SC 121.
\item[157.] Dr. Sharda Prasad v. State of Bihar, AIR 1977 SC 1754.
\item[160.] M.C. Mehta v. Union of India, AIR 1988 SC 1315.
\item[161.] Lalit Mohan Mondal v. Binoyendra Nath Chatterjee, AIR 1982 SC 785.
\item[162.] State of Orissa v. Ram Chandra, AIR 1979 SC 87.
\item[163.] Dr. Reghubir Saran v. State of Bihar, AIR 1964 SC 1.
\item[165.] Amarnath v. State of Haryana, AIR 1977 SC 2185.
\item[168.] Union of India v. A.N. Chadha, AIR 1993 SC 1082.
\end{itemize}
the Supreme Court and so on. In all these areas unanimity or consensus is always elusive. But the High Courts and the Supreme Court use this jurisdiction to convert the cacophony in criminal justice administration into a symphony. This process is ever on the move. One can suggest that the inherent jurisdiction is an instance of a legal category of indeterminate or concealed multiple reference.  