PART - III

CONSTITUTION, THE CODE AND INHERENT POWERS
CHAPTER - III

CONSTITUTIONAL DIMENSIONS OF INHERENT POWERS

The advent of the Constitution of India in 1950 brought India on the map of the Republics of the world. Establishment of the Supreme Court of India under that Constitution brought India's jurisprudential independence. The superiority of Privy Council was stopped. The Supreme Court became the trend-setter in formulating an agenda for the administration of justice. This is notwithstanding the criticism that on 26th January, 1950 it was Lord Macaulay's dream came true\(^1\), belying Mahatma Gandhi's dream.\(^2\)

i. Supreme court in the Pioneering Position

For the purpose of this study, it is more important to note that the Supreme Court as a pioneering judicial institution came to occupy an anchorman's position with High Courts discharging

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1. Maculay's Minutes:-
The destinies of our Indian Empire are covered with thick darkness... It may be that the public mind of India may expand under our system, till it has outgrown that system: that by good government we may educate our subjects into a capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such a day will ever come, I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the porudest day in English history. H.M. Seervai, *Constitutional Law of India* - Volume 1 (1983) P 1.

2. Gandhiji wrote in *Young India*,
"I shall work for an India in which the poorest shall feel that it is their country, in whose making they have an effective voice, an India in which there shall be no high class and low class of people, an Indian in which all communities shall live in perfect harmony... There can be no room in such an India for the curse of untouchability... Women will enjoy the same rights as men... This is the India of my dreams. Bipin Chandra, *Freedom Struggle* (1972) - Published by National Book trust, at pp. 129 - 130.
equally important constitutional obligations. It is correctly said by Granville Austin that judiciary was to be an arm of the social revolution.  

"The members of the constituent Assembly brought to the framing of the judicial provisions of the Constitution an idealism equalled only by that shown towards the Fundamental Rights. Indeed, the Judiciary was seen as an extension of the Rights, for it was the courts that would give the Rights force. The Judiciary was to be an arm of the social revolution, upholding the equality that Indians had longed for during colonial days, but had not gained - not simply because the regime was colonial, and perforce repressive, but largely because the British had feared that social change would endanger their rule".4

i. Superior Courts- the Same Sources of Power

In the Indian scenario both the Supreme Court and High Courts draw power from the same source, the Constitution of India. It is one of the virtues of the concept of Rule of Law that the two institutions while declaring law are themselves under the Rule of Law. But, between the two, the Supreme Court is poised to have a superior position due to reasons of jurisdiction. The fundamental law is the Constitution, the prestigious institution is the Supreme Court and the doctrine which helps is the judicial review.

With powers of the judicial review the court has a means for ascertaining the inherent powers. These powers are vested with

4. Ibid.
the superior courts, because they represent the least dangerous branch. In a similar context, about American Supreme Court, Bickel says:

"Interpretation of the constitution by the court made all the differences. The least dangerous branch of the American Government is the most extraordinarily powerful court of law the world has ever known. The power which distinguishes the Supreme Court of the United State is that of constitutional review of actions of the other branches of the Government, federal and state, curiously enough, this power of judicial review, as it is called, does not derive from any explicit constitutional command. The authority to determine the meaning and application of a written constitution is nowhere defined or even mentioned in the document itself. This is not to say that the power of judicial review cannot be placed in the Constitution, merely that it cannot be found there."

It may be true that when the court in validating the action of a state legislature it is acting against the majority will with in the given jurisdiction. the court though represents the national will, it does not do so as the legislature does through electoral responsibility. There is opinion on Judicial Review, endorsing Bickel's view, which reads,

6. *Id.* at p.33. "But, the institution of the judiciary needed to be summoned up out of the constitutional vapours, shaped, and maintained, and the Great Chief Justice, John Marshall - not single-handed, but first and foremost - was there to do it and did. If any social process can be said to have been 'done' at a given time and by a given act, it is Marshall's achievement. The time was 1803, the act was the decision in the case of Marbury v. Madison."
"There has been in recent times, one major attempt to reexamine judicial review's function, that of Alexander Bickel in The Least Dangerous Branch. Responding simultaneously to inadequacies in the legal foundation of judicial review as expressed in Marbury and to deep and continuing public acceptance of the practice, Bickel argued that a principled foundation for judicial review could be found only by a reformulation of its function. He proceeded to identify this function as the defense of fundamental values or long-term principle.7

The doctrine of judicial review has aided the Supreme Court to achieve a paradigm shift in all departments of jurisprudence. Even when the Supreme Court is theoretically amenable to the Rule of Law, practically the privilege to say what is law is reserved by the Supreme Court. The heartland of Supreme Court's judicial creativity is occupied by the interpretation of the Constitution and the laws. From its inception, the Supreme Court discharges its prolific function of exposition of law. The radiance emitted by it enlightens the High Courts and all other institutions. The Supreme Court is entitled to develop, transcend, mutate and invent doctrinaire positions as it is not bound by its own decisions.8

ii. Background of Distrust

The Supreme Court was not trusted by the constitution makers. The mood of the Constituent Assembly was not encouraging for the Supreme Court. According to Jawaharlal Nehru:

7. Silvia Snowis, Judicial Review and law of the Constitution, (1990), pp. 11-12
8 Bengal Immunity co.Ltd v. State of Bihar. AIR 1955 SC 661
"No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned no judiciary can come in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament.... But it is obvious that no court, no system of judiciary can function in the nature of Third House, as a kind of Third House of correction. So it is important that with this limitation the judiciary should function.\(^9\)

As per T.T. Krishnamachari:

.....that the judiciary should not place itself as an *imperium in imperio* and I am fully satisfied that the provisions that have been made in this Constitution will not make the judiciary an imperium in imperio.\(^10\)

He is quoted to have said:

"I would rather trust five hundred people with less than even mediocre abilities than four or five people with perhaps some claim for superior abilities but at the same time having their own personal prejudices."\(^11\)

In the words of Dr. Ambedkar:

"I do not see how five or six gentleman sitting in the Federal or Supreme Court examining laws made by the legis-

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9 As quoted in Gobind Das, *Supreme Court in Quest of Identity*, (1987)
10 Quoted *id.* at p. 8
11 Quoted *id.* at p. 9
lature and by the dint of their own individual conscience or their bias or their prejudice be trusted to determine which law is good and which law is bad.\textsuperscript{12}

At the inaugural function Attorney General M.C. Setelvad said:

"The task before us all is the building of a nation alive to its national and international duties, consisting of a strong central authority and federal units, each possessed of ample power for the diverse uses of a progressive people. In the attainment of this noble end, we hope and trust that this Court will play a great and singular role and establish itself in the consciousness of the Indian people."

In U.S.A. also the attitude of the executive was the same. But, Marshall, C.J. turned the tables on the executive with \textit{Marbury v. Madison}\textsuperscript{14} in 1803, where he held that the Supreme Court had the power to invalidate any Act of Congress if it violated the Constitution. He established the Supremacy of the written constitution over legislative Acts. And the Supreme Court had the power to consider if any law was void or not. He established the principle of judicial supremacy over legislature as a fundamental part of American law, almost as if the Constitution contained this specific dictum.\textsuperscript{15}

The court which decided the cases like \textit{A.K. Gopalan v. State of Madras},\textsuperscript{16} \textit{Keshavananda Bharati v. State of Kerala},\textsuperscript{17} \textit{Maneka

\begin{flushright}
12. Qouted \textit{id.} at p. 9
13. Qouted \textit{id.} at p. 10
15. Also see supra n. 9 p. 13
16. AIR 1950 SC 27.
17. AIR 1973 SC 1461
\end{flushright}
Gandhi v. Union of India,18 Pepsi Foods case 19 is the same. But, the laws declared through these decisions display a radical shift in the quality,20 This phenomenon is detected in the interpretation of criminal laws too. Its impact in articulating the dialectics of the inherent powers and inherent jurisdiction is explained hereunder. Consequently, the impact of an active constitutional law jurisprudence had its bearing also on the inherent powers of the High Court under section 482 Cr.P.C. This has been in stark contrast to the apprehension expressed by the constitution makers.21

According to Palkhivala, there is a crisis of public faith in judiciary and it is time for national introspection. He says,

"The poisoning of the wee spring of justice began in 1973 when the three seniormost judges of the Supreme Court, who were independent enough to decide against the executive in Kesavananda’s case, were superseded upon the Chief Justice’s office falling vacant"22

The judiciary was embarrassed. Even some judges of the Apex court revealed the virus affecting judiciary the decision in A.D.M. Jabalpur v. Shivakanth Shukla23 in 1976 could not be swal-

18 AIR 1978 SC 597
19. 1998 SCC (Cri) 1400
20. Prof. Upendra Baxi: "Constitutional Quicksands of Keshavandanda Bharati and the Twentyfifth Amendment". It was stated that the decision in Menaka Gandhi’s case supra. n.18 marked an obituary note to the Gopalan’s decision, supra. n.16 (supra) 1 (Jour) 4.5
21. Gobind Das, supra. n.9 at p.13
23. ADM Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207
owed by the public easily. All these according to Sri Palkhivala led to a public enchantment,

"Public disenchantment with judicial administration has been vastly aggravated by the recent developments in the Bombay High Court. If you lose faith in politicians, you can change them. If you lose faith in judges, you still have to live with them. The ineluctable fact is that the conduct of some judicial officers in different courts has been far from exemplary in terms of ethics"\textsuperscript{24}

iii. New Horizon for Inherent Powers and Justice

The period from 1950 witnessed the rewriting of several fundamental principles. The concept of \textit{locus-standi} was liberalised. The meaning of State under Article 12 was expanded. The liability of the State intensified rarest of the rare case theory in awarding Capital punishment was postulated the \textit{vin}\textsubscript{a} rights of the accused projected under the Human Rights angle. Similarly the rights of the injured also got amplified by the new dimensions of victimology. New offences imposing strict liability came into being. High Courts have got innumerable opportunities to consider the application of inherent powers. Rights and liabilities are adjudicated even without the aid of evidence.

Development of constitutional law having significance to the analysis of the inherent powers under section 482 of the Cr.P.C. can be discussed after delineating them into three components. Firstly, interpretation given to the concepts of law, equality, freedom, right to life and personal liberty, rights of a person pros-

\textsuperscript{24}. \textit{Supra.} n. 22
executed, principles governing preventive detention. Articles 13, 14, 19, 20, 21 and 22. Secondly, principles of judicial review encapsulated in Articles 226 and 227. Thirdly, inherent powers of the Supreme Court under Articles 32, 129, 136, 141, 142. A discussion of these provisions in the context of the inherent powers of the High Court under section 482 of Cr.P.C. would help to understand the impact of Constitution on the inherent powers of the High Court.

The Constitution of India is regarded as a document of rare merit containing the manifesto for India's social reconstruction and social revolution.

"The Indian constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement." \( ^{25} \)

This attitude to the constitution and judiciary is against the reservation expressed about the court. \( ^{26} \)

iv. **Liberal Interpretation of equality and Liberty Clauses**

A glance into the interpretation of the Constitution of India over the decades is helpful to keep the aspect in a clear perspective. The interpretation of Articles 14, 19 and 21 in a liberal and detailed manner has helped to create an atmosphere of liberalism and Rule of Law. The Supreme Court of India which has made pioneering contribution has been involved in a true intel-

\[ ^{25} \text{Granville Austin, } \textit{supra. n.3} \text{ p. 50} \]
\[ ^{26} \text{Ref. } \textit{supra} \text{ n. 21} \]
lectual exercise to articulate and illustrate the immense possibility of these provisions. Article 14 postulates the concept of equality. Any action vitiating the concept of the equality is for that matter alone tainted by illegality, irregularity and arbitrariness.

Freedom under Article 19 is evaluated against the background of equality principle under Article 14. The freedoms recognize the individuals worth. To induce logic, reasonable limitations are provided for the individual freedoms. Interpretation of article 21 and fusing together the import of the Article 14, 19 and 21 after the decision of the Maneka Gandhi's case in 1978 opened a new era of constitutionalism. Judges with high visibility of social security began to address basic aspects of human freedom and existence. Right to life and personal liberty and the tempo created in the interpretation by the Supreme Court permeated every department of human existence. Procedural law is given a substantive dimension in Article 21. Every person has a right to be subjected to the procedure established by law while dealing with his right to life and personal liberty. The authority of the State is well constructed with meaningful interpretation of the rights of the individuals. The right is available to all persons. Even persons undergoing punishment in Jail get the benefit of Article 21. In Charles Sobharaj v. Superintendent Central Jail the Supreme Court held that a prisoner does not shed his rights at the prison gates. The story of the Supreme Court's engagement with personal liberty starting from A.K. Gopalan's case supra continues through Maneka Gandhi's case supra and a catena of decisions.

addressing various aspects of personal liberty including right to go abroad, right to privacy, right against solitary confinement, right against bar fetters, right to legal aid, right to speedy trial, right against handcuffing, right against delayed execution, right against custodial violence, right against public hanging and so on. The fertile area opened by the Supreme Court with the interpretation of Article 21 has immensely influenced the administration of criminal justice also. Criminal justice administration is the one which evokes public interest and curiosity as the pain undergone by the person and the poignancy felt by the social ego are large.

v. New Avenues of Humanism - Impact on Criminal justice

The remedies for the violation of fundamental Rights conferred by Part III of the Constitution is provided under Article 32 of the Constitution. The remedies are also part of the Fundamental Rights. The Supreme Court in proceedings under Article 32 of the constitution has opened new avenues of humanism. A most fundamental question engaging the attention of the Supreme Court in proceedings under Articles 32, 136, 142 was the primacy of the fundamental rights over directive principles of State policy and vice versa. The perceived position initially was that Fundamental Rights weighed over the directive principles. Then the shift was to a position of equanimity between the two. Then, further, the primacy of directive principles over fundamental rights gradually crystallized. Similarly, under Articles 226 and 227 of the Constitution the High Courts acted as Courts of Record exercising a great degree of judicial review.

The above situation had its impact in the administration of
criminal justice also, "The range of judicial review recognized in the superior judiciary in India is perhaps, the widest and the most extensive known to the world of law".28 This area involves a strong precipitation of the inherent powers of the court. In the context of doing complete justice on the one hand and interpretation of the Constitution and the laws on the other hand, the Supreme Court and High Court have been banking heavily on their inherent powers. The extraordinary jurisdiction vested in the courts through the constitutional provisions has got great support from the inherent powers of the court. This has helped the courts to shed formalism to a great extent and concentrate more on securing the ends of justice. This is made possible because the language used in Articles 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of the High Courts in India are extensive.29 The jurisdiction of the Supreme Court under Article 136 vests discretionary powers in the court not subjected to any limitation.

Despite the fact that the Supreme Court's power under Article 136 is not as a regular court of appeal which a party can approach as of right. But, the power is there in cases where the interference of the Supreme Court is necessary to prevent grave or serious miscarriage of justice.

vi. Power to give Complete Justice as Inherent

Article 142 gives a more incisive power to the Supreme Court to make any other order to do complete justice. It is the explicit expression of the inherent powers of the Supreme Court. The

29. Ibid.
power under Article 142 to do complete justice coupled with the plenary and residuary power under Articles 32 and 136 embraces the power to quash criminal proceedings pending before any court. It is an ancillary power with no limitation.

No statutory provision can curtail this plenary power of the Supreme Court as decided by the Supreme Court in Anis v. Union of India, Union Carbide v. Union of India, Delhi J.S.A. v. State of Gujarat, Probably the only limitation is that the Supreme Court cannot do anything to do justice to one party which affects the substantial rights of the other party, eg. a fundamental right. The Supreme Court had occasion to consider this aspect in Arjun v. Jnanadas, Kamala v. Hem, Antulay v. Naik.

vii. Inherent Power of Superior Courts

The above reference to the inherent jurisdiction of the Supreme Court sheds light on the constitutional mandates of the Supreme Court recognizing its inherent powers. Similar provisions saving the inherent powers of the High Court are provided in the Constitution. Article 225 saves the inherent powers of the existing High Courts. This is subject to the provision of any law subsequently passed by the legislature. The rules of procedure

or jurisdiction of the High Court remained unaltered as it stood before the commencement of the Constitution. This has reference to the jurisdiction of the High Court, under Letters Patent which is subject to appropriate legislation. Until contrary legislation is made Letters Patent Appeals continue to be maintainable.\textsuperscript{38} The inherent jurisdiction of the High Court is saved. Article 225 recognizes the reality of inherent powers of the High Court in the context of a written constitution.

Articles 226 and 227 confer Plenary, summery, preliminary, prerogative and fundamental power on the High Court. All these are synonyms for the inherent powers. It can very well be submitted that the inherent powers of the High Court recognized in the special original jurisdiction form the heartland of the High Court's power. This power is discretionary. But, discretion when forms a part of the inherent powers sets as its objective a redressal of violation of the fundamental rights or any other rights of the person. It is also the power to prevent the abuse of the process of the court and to secure the ends of justice. The power is interchangeable for the one saved and preserved in section 482 of the Code of Criminal Procedure.\textsuperscript{39}

When the inherent powers of the Supreme Court under Article 142 to do complete justice are compared with the inherent powers of the High Court under Article 226 to have judicial review, the objective of both is the process of administration of


justice. The Supreme Court can pass any order to do substantial justice. The High Court under Article 226 of the constitution, can only guide the decision making process. This convenient appreciation of the discretionary power of the High Court is given a more concrete character by making it interchangeable with the power under section 482 Cr.P.C. But, under Articles 226 and 227 also the emphasis is given to justice. Formality takes second place. The dynamism of the inherent powers is realised while the same is applied. The High Court is allowed to have a substantial latitude in applying the powers. If the petitioner has asked for a relief, in a very wide form the court would issue the order in proper form. The obligation of the High Court to grant the fundamental right of the citizen is equal to that of the Supreme Court.  

Over the past four or more decades of application of the inherent powers by the High Courts the doctrine of judicial review has been given a great amount of credibility. Almost all aspects of the State power has been scrutinised by the High Court under its jurisdiction. Even when the Supreme Court could only express inability the High Court has come forward to the rescue of the affected person.

The power of the High Court under Articles 226 and 227 has permeated the administration of criminal justice also. This is the meeting point of the inherent powers of the High Court under section 482 Cr.P.C. and the original jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The commence-

41. Yasin v. Town Area Committee (1952) SCR 572.
ment of the proceedings initiated in a criminal court can be interfered under Article 226 as well as under section 482 of Cr.P.C.42 But, the same amount of caution as is observed in the exercise of the powers under section 482 of Cr.P.C. is observed under Articles 226 and 277 also. The proceedings pending before a trial court can be interfered with only in the rarest of rare cases.43 If one examines the roots of the power of the High Court under Articles 226 and 227 here also the ultimate point is equity. In the exercise of the inherent powers equitable considerations have great impact. The Supreme Court said so in *Hadibandh v. State of Orissa*,44 and *Banarsidas v. State of U.P.*45 Equity is companion of justice, the presence of one in a situation allows the performance of the other.46

viii. **Common Ground of Supervisory and Inherent Powers**

The supervisory power of the High Court under Article 227 of the Constitution is a well established jurisdiction which shares its qualities with the inherent powers of the High Courts under section 482 of Cr.P.C. Superintendence is not merely administrative in nature, it is judicial supervision. The scope of this power of the High Court came under the scrutiny by the Supreme Court in earlier period in cases like *Waryam v. Amar*,47 and *Banerjee v. P.R.*

42. *ADM Jabalpur v. Shivkant Shukla*. AIR 1976 SC 1207
45. 1984 Supp. SCC 204.
Mukherjee,48 In a Rule of Law Society the inferior courts shall not be allowed to run berserk, and the power under Article 227 provides for an effective control. In the administration of criminal justice, the inherent powers under section 482 Cr.P.C. exist for this purpose and that is the reason for common grounds between the powers under Article 227 and section 482 of Cr.P.C.

The supervisory jurisdiction of the High Court is in the light of the above explanation, the staple component of the inherent powers. It makes the atmosphere congenial for the High Court to exercise inherent powers. The expression "All Courts" in the Article 227 includes criminal courts also. Therefore, the power is available to the supervision of criminal judicial power also. Moreover, the term 'Court' is not defined in the Constitution. That qualifies all courts including criminal courts to come within the ambit of Article 227. So also, securing the ends of justice, is the objective of inherent powers. It was so held by the Supreme Court in Baldev Singh v. State of Bihar,49 and Gopal Das v. State of Assam.50 The application of the High Court's inherent powers under Article 227 to set aside a conviction not supported by any evidence and award without jurisdiction was considered. The power of the High Court under Article 227 is not circumscribed by the conditions laid down in section 401 of the Cr.P.C. This enables the High Court to stay a criminal proceedings pending decision of civil suit relating to the same subject matter;51 and to

48 1953 SCR 302.
49 AIR 1957 SC 612.
50 AIR 1961 SC 986.
51 Dharmeshar v. State, AIR 1952 Assam 78.
quash orders passed without jurisdiction.\textsuperscript{52} Similarly certain conservative thinking with regard to the exercise of the discretionary powers under Article 227 vis-a-vis the revisional powers under section 387 Cr.P.C. are being liberalised and reformulated.\textsuperscript{53}

The attitude of the Supreme Court has perceptibly changed from \textit{Jagir v. Ranbir},\textsuperscript{54} to \textit{Krishnan v. Krishnaveni}.
\textsuperscript{55} In the light of inherent powers of the High Court the jurisdiction created and recognised under Articles 226, 227 and section 482 of Cr.P.C. share the same ingredients. Regarding appeals from the decision of the High Court on proceedings under Article 227 the accepted view is that, only the Supreme Court has appellate jurisdiction. This is because the power under Article 227 is mainly regarded as revisional in nature. But, a decision of a single judge in a petition under Article 226, is appealable. The question of the competency of Letters Patent Appeal from an order passed by a Single Judge in exercise of the power under Article 227 is considered and decided in the negative by the High Court,\textsuperscript{56} and endorsed by the Supreme Court.\textsuperscript{57} Here is a flexible situation. Nothing prevents a party from labelling his petition as both under Articles 226 and 227. If the order of the Single Judge of the High Court is substantively under Article 226, Letters Patent appeal to a division bench will lie. This is because the application is treated

\begin{enumerate}
\item \textsuperscript{52} \textit{M.C. Mehta v. Union of India}, AIR 1988 SC 1115
\item \textsuperscript{53} \textit{Geevarghese v. Chacko}, AIR 1957 T.C. 256.
\item \textsuperscript{54} AIR 1979 S.C. 381.
\item \textsuperscript{55} AIR 1997 S.C. 987. Also see supra n. 110 ch. II
\item \textsuperscript{57} Supra n. 55
\end{enumerate}
as one filed under Article 226 of the Constitution only. Thus an analysis of the provision of the Constitution dealing with the Summary and plenary powers of the Supreme Court and the High Court would shed considerable light on the inherent powers having acquired more prestige, and prominence. The real impact of the Constitutional provision on the development of the inherent powers of the High Court is to be understood in this context.

ix. **Dynamic Jurisdiction of High Court**

The impact of the constitution on the inherent powers of the High Court under section 482 of the Code of Criminal Procedure is that the High Court is placed with a dynamic jurisdiction. The vicissitudes undergone by the power of the court in the course of interpretation of the Constitution has made the functioning of the court more transparent. The Supreme Court gets opportunity to closely watch the High Court treading through permissible or impermissible lines. Arbitrary use of inherent powers would compel the Supreme Court to put a check on it. This applies to the advantage as well as disadvantage. If the jurisdictions under Article 226 and section 482 Cr.P.C. share identical characteristics, their limitation also ought to be common. Appreciation of evidence is banned in both jurisdictions. Disputed questions of fact are not to be adjudicated upon while invoking the inherent powers of the High Court. The High Court is not expected to indulge in interpretation of the facts to arrive at a conclusion. Such petitions are not maintainable and are liable to be dismissed at the threshold.\(^{58}\)

x. No Arbitrary Use of Inherent Powers

While exercising the power under section 482 of Cr.P.C. the High Court is to desist from entertaining a petition requiring evidentiary corroboration. Whatever be the nature and name of the power, the jurisdiction under which the power is used cannot be unlimited, unethical or unguided. This underlines the supervisory nature of the powers under Article 226.

In State of M.P. v. M.V. Vyavasaya and co.\(^59\) the Supreme Court has castigated the disregard of the norms governing the exercise of the writ jurisdiction. Passing repeated interim orders of stay in a case is an arbitrary use of inherent powers. The Supreme Court has relied on its own decision\(^60\) as well as that of the House of Lords.\(^61\) The power under Article 226, like the power under section 482, Cr.P.C., is not appellate, it is only supervisory. This is not to be oblivious of the salutary influence of the constitutional principles on the inherent powers. The Supreme Court in Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others\(^62\) has created a conspectus on the dynamics of jurisprudence through mutating the Judicial process in Article 226 and 227 of the Constitution with section 482 of the Code of Criminal Procedure. In a legal system symphonied and synchronised by the cadence of procedure established by law and Rule of Law there is no scope for any jarring notes of the abuse of the pro-

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\(^{59}\) 1997 (1) SCC 156.

\(^{60}\) Ibid at p. 163. Also relied on Thar Shankar v. Dy. Excise and Taxation Commissioner, 1975 (1) SCC 737

\(^{61}\) Chief Constable of the North Wales Police, v. Evans, [1982] 3 All E.R. 141, H.L.

\(^{62}\) (1998) 5 SCC 749. Also see infra n. 63
cess or infraction of the ends of justice. Section 482 imports the concept of judicial review of criminal proceedings. Therefore the court said;

"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 more due care and caution is to be exercised while invoking these powers. When the exercise of power could be under Article 227 or section 482, of the Code it may not always be necessary to invoke the provision under Article 226 of the Constitution" 63.

In *Pepsi Foods Ltd.*, the principles discussed are the powers of the High Court under Articles 226 and 227 of the Constitution of India, and under Section 482 of the Code of Criminal Procedure, 1973. The petition filed before the Lucknow Bench of the Allahabad High Court was under Articles 226 and 227 of the Constitution of India. The writ petition was filed for quashing the complaint filed under section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. The specific prayers were for issuing a writ of certiorari or issuing a writ of mandamus accompanied by a prayer for any other appropriate writ in respect of the case pending before the Magistrate Court. The Magistrate issued summons and the parties immediately approached the High

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Court. The High Court refused to entertain a writ petition to consider the legality of the proceedings before the Magistrate. The petition before the High Court was not under section 482 of the Code of Criminal Procedure. The High Court declined to exercise the writ jurisdiction and held that the parties could approach the Magistrate for a discharge under section 245 of Cr.P.C. The attitude of the High Court was myopic and without advertising to the aspects of injustice done. The High Court was ruminating over discharge, writ jurisdiction, cognizable offence, complaint cases etc, when valuable rights of the accused persons got blighted through the criminal proceedings.

The Supreme Court put the issue in a clearer perspective by bluntly stating whether the High Court was justified in refusing to grant any relief to the parties because of the view it took of the law and facts. So, the power of the court under Articles 226 and 227 of the Constitution and section 482 of Cr.P.C. is annotated to find that there is no material difference in the jurisdictions. The thought process of the Supreme Court is apparent on the face of the decision. The issue is discussed at a higher level, in the context of judicial review of criminal matters. The courts says,

"It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal64 this court examined the extra-ordinary power under Article 226 of the Constitution and the inherent power under section 482 of the Cr.P.C. which it said could be exercised by the High Court either to prevent abuse of

64. 1992 Supp (1) SCC 335.
the process of any court or otherwise to secure the ends of justice".\textsuperscript{65}

The Supreme Court delves deep into the case on the concept of judicial review and unravels the majesty of law. It is more an appreciation of the jurisdiction under Article 227. Exercise of power under Article 227 and section 482 of Cr.P.C. is co-extensive.\textsuperscript{66} The Supreme Court refers to \textit{Waryam Singh v. Amarnath}\textsuperscript{67} to reassert the power of judicial superintendence under Article 227. The action of the Calcutta High Court in \textit{Dalmia Jain Airways Ltd. v. Sukumar Mukherjee},\textsuperscript{68} is viewed with approval. Then referring to the decisions in \textit{V.athutmal Raichand Oswal v. Laxmibai R. Tarta and another},\textsuperscript{69} \textit{R. v. Northumberland compensation Appeal Tribunal}\textsuperscript{70} and \textit{Nagendranath Boya v. Commissioner of Hills division},\textsuperscript{71} the Supreme Court made the ultimate statement that the difference in a proceedings under Article 227 and section 482 of the Code was only a difference in nomenclature and that it is not quite relevant. The Supreme Court's positive approach is remarkable especially in a proceedings for offences under the Prevention of Food Adulteration Act.

\textbf{xii. Exercise of Inherent Powers by the Supreme Court and High Court - The Contrast}

The above discussion of the Supreme Court's attitude towards

\begin{itemize}
  \item[66.] Ibid.
  \item[67.] AIR 1954 SC 215.
  \item[68.] AIR 1951 Cal. 193.
  \item[69.] AIR 1975 SC 1297.
  \item[70.] [1952] 1 All. E.R. 122.
  \item[71.] AIR 1958 SC 398.
\end{itemize}
The extra ordinary powers under Article 227 and inherent powers under section 482 Cr.P.C. would prompt one to believe that the Supreme Court has reached a point of no return: Far from that, the Supreme Court had already stated that there is no rigid parameter for the powers of the High Court. The judicially trained minds of the High Court judges must have great discriminatory sense to call a spade a spade in applying the inherent powers. This is what one learns from reading the judgment of the Supreme Court in *State of Kerala v. O.C. Kuttan*,72 The Supreme Court disagreed with the High Court in quashing the F.I.R. and disapproved of the action of the High Court in arriving at a conclusion that the lady was more than 16 years of age. The High Court also held that she was a willing partner for sex and commented on her character also. According to the Supreme Court, the High Court had exceeded its jurisdiction under Articles 226 and 227. Here offences were under sections 336 A, 327, 361, read with section 34 of I.P.C. alleging the sexual harassment by a large number of the accused persons. In *State of Kerala v O.C. Kuttan*73 the petition was filed under Article 226. A single Judge referred the matter to a division bench. This was inspite of *Pepsi Foods*,74 and *Bhajanlal's*75 decisions. In fact, the decision in *O.C. Kuttan's* was the appeal from *Tony Antony*76. The High Court while advert­ing to the point referred to by the single judge quashed the FIR and consequently the proceedings thereunder. The reasons which

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72. 1999 (1) KLT 747 (SC)
73. Id. at p. 760.
74. (1998) 5 SCC 749 *supra.* n. 65
75. 1992 Supp (1) SCC 335
weighed with the High Court to quash the proceedings and those explained by the Supreme Court to show the fallacy of the High Court's reasoning offer a study in contrast. In reaching the conclusion which it did the High Court consulted the earlier decisions of the Supreme Court mentioned in the referred order such as State of Haryana and others v. Bhajanlal and others,77 State of West Bengal v. Swapan Kumar Guha,78 State of Bihar v. P.P. Sharma79 and State of Punjab v. Gurmit Singh,80 The Supreme Court also refreshed its own judicial memory by referring to Sanchaita Investminet's case,81 Bhajan Lal's case,82 State of U.P. v. O.P. Sharma,83 and Rashmi Kumar v. Mahesh Kumar Bhada.84

In Tony Antony85 even though the petition was filed under Article 226 of the Constitution, the discussion centered around the concepts of jurisdiction in Articles 226, 227 and section 482 of Cr.P.C. After scaling through the decisions the High Court came to the conclusion in the judgment86 of which paragraphs 15 and 16 reads:

"15. We are of the view that in this case, the FIR and her later statements, even if are taken at their face value, do

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78. 1982 (1) SCC 561.
79. 1992 Supp (1) SCC 222.
80. AIR 1996 SC 1393.
82. Ref. supra p. 59.
83. 1996 (2) J.T. 488.
84. 1996 (1) SCALE (SP) 40 (1).
85. 1997 (2) KLT 853. Supra n.76
86. Ibid.
not make out a case against the petitioners. The uncontroverted allegation made in the FIR and other statements do not constitute the offence of rape.

16. For the reasons stated above, we find that these are fit cases in which this court in exercise of the jurisdiction under Article 226 of the Constitution of India should quash the criminal proceedings, against the petitioners to prevent the abuse of the process of court. 87

On behalf of the State it was contended that "as the investigation has reached almost concluding stage", the proceedings against the petitioner should not be quashed. 88


Interestingly after paying obsequies to the Supreme Court's decisions in paragraph 14, the High Court without any effort to

87. Id. p. 862
88. Id. at p. 860.
89. Ibid.
thrash out a reasoning concludes the judgment. This gives one the idea that even before analysing the case law the 'judicially trained mind' of the Judge had pre-meditated the decision. The narration of the facts in body of the judgment gives one the impression that the High Court judge had allowed his fancy to develop wings so that one feels like reading the judgement arising from an appeal. The analysis of the sensational dimension of the case is tantalisingly subjective bordering on a degree of voluptuousness and sensualism in the dictum used. The judgment is self illustrative-

"According to her FIR, Suresh and Sunny kept her in different houses, threatened her with assault and death, forced her to have sexual intercourse with more than 25 persons in exchange of money and made her to lead a life of a depraved woman. Though she resisted in the beginning, yet, later she yielded to their demand because she was left with no other option.

She has narrated that she had sexual intercourse with several persons, several times and at several places like Five Star Hotels at Ernakulam, luxurious hotels in Ooty, Kodaikkanal, Munnar, Madras and some other places of Tamil Nadu. When she went out for a pleasure trip with other men, neither Sunny nor Suresh accompanied her. On several occasions, she was left exclusively in the company of strangers. She has further stated to have sexual intercourse with some men, either because they did not pay money or because they looked ugly. She

90. Refer supra No. 76
also fell in love with a person called Mathew and did not like to extract anything from him.

As the days passed by she became more and more coquettish and voluptuous by availing the service of beauty parlours. Life was gay and cheerful. Her lust for sex and money grew. In her craze to have life of plenty, both in pleasure and pelf, she immersed herself in the activities of a prostitute practically. She took pills to prevent pregnancy. She had the discretion to have sex with men of her choice. 91

Then in a deft handling of the situation, the Judge diagnoses the ailment and comes to the conclusion as follows:-

"The inordinate delay in recording her statements under section 161 Cr.P.C. after the F.I.R. leads to the irresistible conclusion that during this period of one month she had the opportunity to deliberate, consult and discuss with legal experts in order to narrate a make-believe story" 92

The statement in F.I.R. and under section 161 Cr.P.C. is annotated with the thoroughness and exactitude usually resorted to evaluate the evidence during trial. The evaluation proceeds-

"At different stages, she has made different statements about her age. At any rate, it is no longer in dispute, she was more than 16 years of age when she came to Ernakulam and indulged in this activity. She was, therefore, not a minor girl when the alleged incidents took place,

91. Id. at p. 857.
92. Id. at p. 858.
she has not stated anywhere that these petitioners pro-
duced her for the purpose of prostitution or brought her
for the purpose of prostitution. There is nothing in her
statement or in any papers placed before this Court to
show that all these petitioners had the common intention
of committing the afore said crimes"93

After going through the catena of decisions on the point and
off the point the High Court sticks to the categories of cases
enumerated in State of Haryana v. Bhajanlal.94

"In the following categories of cases, the High Court may
in exercise of powers under Article 226 or under Sec. 482
of Cr.P.C. may interfere in proceedings relating to cogni-
zable offences to prevent abuse of the process of any
court or otherwise to secure the ends of justice. However,
power should be exercised sparingly and that too in the
rarest of rare cases.

1. Where the allegations made in the First Information Report
or the complaint, even if, they are taken— at their face value
and accepted in their entirety do not prima facie constitute
any offences or make out a case against the accused.

2. Where the allegations in the First Information Report and other
materials, if any, accompanying the FIR do not disclose a
cognizable offence, justifying an investigation by police of-
ficers under section 156 (1) of the Code except under an or-
der of a Magistrate within the purview of Section 155 (2) of
the Code.

93. Id. at p. 858.
94. 1992 Supp (1) SC 335.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R., do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155 (2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are also absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings, and or where there is a specific provision in the Code or the concerned Act., providing efficacious, redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did no fall in any of the categories of cases enu-
merated above, calling for exercise of extra-ordinary powers or inherent powers, quashing of F.I.R. was not justified”

The Supreme Court has viewed the attitude of the High Court scornfully, and reversed the decision of the High Court and G.B. Patnaik, J. of the Supreme Court, provided the judicial antidote to the extraversion of B.N. Patnaik, Judge of the High Court. The constitutional innovation of interchanging or interposing the power under Articles 226 and 227 and section 482 of Cr.P.C. cannot lead to a judicial imbroglio leading to decision enabling the retardation of justice rather than advancement of justice. While exercising the powers under section 482 of Cr.P.C. the best guide is to visualise the entire pastures of the fundamental rights, Rule of Law etc. The judge should ask himself twice before a decision is taken. The impact of the constitutional provision must reflect in the reasoning of the judge while applying the power. A dispassionate and objective approach is required. The fact that the petition is filed under Article 226 of the Constitution does not provide the judge with any unbridled freedom to enter into an area of conjecture and improbability.

The Supreme Court observed:

"High Court came to the conclusion that the lady was more than 16 years of age when she came to Ernakulam and indulged into the activities of leading immoral life and further she was not put to force of death or hurt or her consent was obtained by putting her in fear of death or hurt

95. 1997 (2) KLT 853 at pp. 861-862.
96. State of Kerala v. O.C. Kuttan, 1999 (1) KLT 747 (SC)
and on the other hand it is she, who exercised her discretion to have sex with those persons who she liked or got money and willingly submitted herself to the sexual activities and, therefore, this is a fit case where the High Court would be justified in quashing the criminal proceedings as against those who have approached the court.  

In the arguments before the Supreme Court, the judgment of the High Court was attacked as being seriously erroneous and which had not helped to advance justice. In its concluding thoughts the Supreme Court has made, short shrift of the High Court's reasons by suggesting the latter not to be whimsical or capricious. In contrast the Supreme Courts' own reasoning proceeds:

"At the outset there cannot be any dispute with the proposition that when allegations in the F.I.R. do not disclose prima-facie commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this court in Sanchaita Investment's case (1982 (2) SCC 561) in the case of State of Haryana and another v. Bhajan Lal & others, (JT 1990 (4) SC 650) this Court considered that the question as to when the High Court can quash a criminal proceedings in exercise of its powers under section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India, and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing...

97. Id. at p. 749.
98. Id. at p. 750.
the First Information Report. .......Having said so, the Court gave a note of caution to the effect that the Supreme Court's power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice".

The Supreme Court reiterates the caution made in other decisions.99 Finally, the Supreme Court concludes with the characteristic seriousness of a court of justice acting as a sentinel on the *qui vive*.

"...We have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an enquiry by sifting of evidence and coming to a conclusion with regard to the age of the lady on the date of illegal sexual intercourse, she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but on the other hand she willingly had sex with those who paid money.

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We also do not approve of the uncharitable comments made by the High Court in paragraph 12 of the judgment against the woman who had given the F.I.R. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. We also, have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she like or got money and she willingly submitted herself to most of them who came to her for sex.100

xii. Nature, Reach and Amplitude of Inherent Power

The reality of inherent powers was never questioned. Confusion was due to its reach and amplitude, and its nature and character. When projected against the background of the constitutional doctrines the inherent powers became more visible and clear. Experience of justice administration admits the existence of inherent powers to superior courts at all given times. After the inception of the Constitution with more and more subjects coming to be viewed under the limelight of constitutionality the inherent powers happened to occupy the central slot in the administration of justice. The question of personal liberty, reformative jurisprudence, fluctuations in crime rates, depletion in the standards of morals and values, popularisation of the concept of strict liability etc, have made the inherent powers relevant. What was statutorily recognised in 1923 through section 561A was retained

100. Ibid.
intact in the Code of Criminal procedure, 1973.\textsuperscript{101} Even when the reenactment of the Code in 1973, riding on the crest of simplification and rationalisation was made, the inherent powers of the High Court was saved. However, th Law Commission's proposal to recognise the inherent powers of the trial courts\textsuperscript{102} was not endorsed by legislature while reanacting the Code of Criminal Procedure. Recognising inherent powers of the trial courts would only lead to waterdown the potential of the inherent powers. Moreover, the guiding spirit behind the inherent powers is that, it is not conferred, but preserved. Preservation is possible only with one court. For that High Court is the suitable institution.\textsuperscript{103} In preserving the inherent powers in criminal matters even the Supreme Court of India would not be an efficacious choice. The parties who seeks the facilities of inherent power jurisdiction would find access to justice more congenial with the High Court. Supreme Court as the highest institution can act as modifying force on the High Court also lest inherent power itself is abused.

The revisional jurisdiction of the High Court and the Sessions court underwent a dimunition with the introduction of sub clause (2) and (3) of section 397 Cr.P.C. 1973.

xiii. \textbf{Judicial Responses on Delay in Criminal Justice}

With the above discussions of the impact of the Constitution, it is beneficial to examine certain situations where the judiciary has responded favourably against the back ground of inherent powers.

\textsuperscript{101} The provisions for inherent powers in Sec. 561-A of the 1989 Code was injected through the Criminal Law Amendment Act, 1923.

\textsuperscript{102} Ref. \textit{supra} ch.2, n. 52

\textsuperscript{103} Ref. \textit{supra} ch. 1, n. 2
In *Biswanath Prasad Sing v. State of Bihar*, the attention of the court was directed to the unconscionable delay in filing the charge sheet. No progress was marked after filing the case. The Supreme Court held that the circumstances warranted the quashing of the proceedings. The proceedings alleged offences under sections 408, 428 IPC and section 7 of the Essential Commodities Act. The High Court had dismissed the application filed under section 482 of Cr.P.C. The Supreme Court found that interest of justice demanded interference. It was all the more relevant because the appellant was already dismissed from service and benefits were forfeited and he had crossed the age of superannuation. In *Thulasidas v. State of Orissa* employees were charged as co-accused along with employer for unauthorised sale of Kerosine. It was held that to implicate them was unlawful. The proceedings were kept protracted in order. To secure the ends of justice, the High Court held that charges against employees were to be quashed even though they had not approached the High Court owing to poverty and want. This shows that Inherent Powers have got great social engineering possibilities. Being a court of justice, it does not require that the affected person is to approach the High Court because the court can quash in connected proceedings. The objective of inherent power of the court like the original jurisdiction of the Supreme Court and the High Court is to give a human face of the administration of justice. It is admitted that even High Court and Supreme Court cannot make interference where evidence is required to be adduced; but rules

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104. 1994 SCC (Cri) 1663
105. 1987 Cri.L.J. 664 (Ori.)
of evidence are not superior to norms of justice. If a prosecution is kept alive for a quarter of a century, it means that either there is no evidence or no material to supply. The very pendency of proceedings is gross abuse of the process of court. In Sant Prasad v. State of Bihar,\textsuperscript{106} it was held that a person cannot survive the rigour of such a harassment. The proceedings were quashed. It is mostly on the strength of the constitutional principle that the High Court wields inherent powers in such cases. Proceedings can be quashed on the ground of delay in the commencement of trial.\textsuperscript{107} It would be a denial of justice and gross mis-carriage of justice, if proceedings were to continue after long lapse of years. It violates the very spirit of article 21 of the Constitution of India. In the instant case, an instance of mis-appropriation was alleged to be held in 1970 and 1971. F.I.R. was lodged in 1979, i.e., after 9 years. Investigation was still going on in 1984-86. It was held that whatever evidence was there, would have been obliterated by this time.\textsuperscript{108} A possible effect of long delay is that there is every likelihood of the evidence got faded.\textsuperscript{109}

The impact of the constitution on inherent powers is that whenever in a given situation the High Court failed to mobilise necessary pickup to do justice, the Constitution has provided that through an uninterrupted power supply through Articles 226 and 227.

\textsuperscript{106} 1987 Cri.L.J. 1091(Patna)
\textsuperscript{107} K. Achutha Rao v. State of Orissa, 1987 Cri.L.J. 2022, (Ori.)
In *Suresh Chandra Swain v. State of Orissa*,\(^{110}\) it was held that the inherent power was not confined to proceedings before the court only. It can be invoked to quash the investigation also. There is no power under Article 226 similar to section 482 Cr.P.C. In *Rajendra Kumar & others v. State of Madhya Pradesh*,\(^{111}\) it was held that unconscionable delay amounts to violation of article 21 of the Constitution. A proceedings pending for Ten years was held to be violative of Article 21 and the court viewed that inherent powers under section 482 Cr.P.C. can be invoked in such cases as it is designed to achieve a salutary public purpose. It is true that justice is to be administered according to laws. But, the ends of justice are higher than the ends of mere law and inherent powers are regarded as mighty weapons in the hands of the court to do substantial justice. In *Ranjith Kumar Pal v. State*,\(^{112}\) a Division Bunch of Calcutta High Court held that long delay in disposal of the proceedings prejudicially affects the defence of the accused. Broad interpretation of Article 21 includes, the right to have speedy trials; the mental torture and anxiety suffered by the accused is to be treated as sufficient punishment. The judgment and decree passed in a civil proceedings in the selfsame transaction has a material bearing on criminal trial. If such proceedings are allowed to continue, it would be an abuse of the process of the court. In *Chotelal Jain v. State of Rajasthan*,\(^{113}\) the Court quashed the criminal proceedings. It was held that, the accused was not responsible for the delay and delay would be weakening

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110. 1988 Cri.L.J. 1175 (Ori.)
111. 1989 Cri.L.J. 554. (M.P)
112. 1990 Cri.L.J. 643
113. 1992 Cri.L.J. 2620
the efficacy of evidence. A chance of ultimate conviction was very bleak. The Accused was a Contractor against whom allegations were based on oral and documentary evidences. Prosecution took two decades for the registration of the case. The court had drawn reference to important decisions of the Supreme Court having great constitutional significance.\footnote{114. AIR 1978 SC 597 - Maneka Gandhi’s case, AIR 1987 S.C. 149 - Raghubir’s Singh’s case}

When no \textit{prima-facie} case is made out against a person and the proceedings are afflicted by long delay, and the complaint dogged by discrepancies, there is very little chance for convicting the accused. In \textit{Bharath Ranjan Mishra v. Shyam Sundar Agarwal},\footnote{115. 1994 Cri.L.J. 268 (Ori)} the court quashed the complaint relying on landmark decisions of \textit{Madhava Rao Jivajirao Scindia’s v. Shambaji Rao Chantrojairao Angre} and \textit{Nagawwa v. Veeranna},\footnote{116. AIR 1988 S.C. 709} \textit{Hareram Satpadi v. Tikkaram}.\footnote{117. AIR 1976 S.C. 1947} Unexplained delay in initiating proceedings and taking steps on the part of the prosecuting agency is a pointer to the weakness of the case, such proceedings are more often quashed by the Court. In \textit{Ganga Ram v. State of Rajasthan},\footnote{118. AIR 1978 S.C. 1568} FIR was quashed on the ground of unexplained delay for which the accused was not responsible. In this case, no charge framed even after Ten years from filing of Chalan and 18 years after the date of occurrence. The Constitutional Principles enunciated through the decisions encouraged the court to quash the

\begin{footnotes}
\item[114. AIR 1978 SC 597 - Maneka Gandhi’s case, AIR 1987 S.C. 149 - Raghubir’s Singh’s case]
\item[115. 1994 Cri.L.J. 268 (Ori)]
\item[116. AIR 1988 S.C. 709]
\item[117. AIR 1976 S.C. 1947]
\item[118. AIR 1978 S.C. 1568]
\item[119. 1995 Cri.L.J. 2125 (Raj)]
\end{footnotes}
In *Anil Sharma & others v. S.N. Marwaha*,\(^{121}\) the complaint was on the basis of allegation of cheating and conspiracy. It was alleged that the accused person had concealed the fact of there being a child from first marriage. The complaint was filed after 3 years of the date of knowledge regarding the child from the 1st marriage. This proved fatal to the prosecution.

Even in offences relating to Food Adulteration or transactions in insecticides where ordinarily courts see offences with great seriousness, unexplained delay on the part of the prosecution can prove the proceedings a non-starter and sufficient ground for the High Court to invoke inherent powers. In *Hindustan Ciba Geigy Ltd. v. State of Rajasthan*,\(^{122}\) the criminal complaint filed after the expiry of shelf-life of insecticide products, the accused was thus deprived of their valuable right of re-analysing the second sample in the Central Insecticides Laboratory. The contention of the prosecution against them was held to be an abuse of the process of the court. In *P.M. Kathiresan v. Shanmugham, Rtd. Captain*,\(^{123}\) the proceedings alleging offences under Section 500 IPC was quashed as the complaint was not filed within the prescribed period of limitation. It was also hit by exception of Section 499 IPC where it is provided that it is not defamation to prefer in good-faith an accusation against any person having law-

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121. 1995 Cri.L.J. 163 (Delhi)
122. 1995 Cri.L.J. 618 (Raj)
123. 1995 Cri.L.J. 2508 (Mad.)
ful authority. In *G.I. Punwany v. State*,\(^{124}\) corruption charges were foisted against the petitioner. Allegation was possession of disproportionate assets. Section 5(1) of the Act was introduced in 1964. Therefore, possession of assets after 1964 would render the petitioner criminally liable. But, the court held that even if those assets were acquired before 1964, it would not de-criminalise the possession thereof and charges could not be quashed on that account. This is giving strict interpretation to a statute having great social relevance, when a society is afflicted by corruption in high places. But, the accused gets a reprieve through inherent powers. Proceedings were highly belated, petitioner was not responsible for the delay. Proceedings were pending for 13 years. And it was held that the trial court cannot be permitted to proceed after almost 23 years therefore, proceedings were quashed.

In *Ajith Kumar Burman v. State of West Bengal*,\(^{125}\) the proceedings alleging breach of trust was quashed as the accused was called upon to render evidence after 16 years of alleged occurrence. Alleged offences was committed while the accused was in service and he has since retired from service.

The above decision shows that while the court considers every offence with great seriousness, the seriousness of the offence gets eroded by the actions of those who are to assist the court in keeping the majesty of the court. Not even prosecution is immune to the requirements of Rule of Law and the procedure established by law. If a case is transferred from one court to another, causing great inconvenience to the accused, it is viola-

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\(^{124}\) 1995 Cri.L.J. 3884 (All)

\(^{125}\) 1995 Cri.L.J 4052 (Cal)
tion of the procedure established by law. If there is a delay of 21
years also, due to no fault of the accused, the High Court need
not think twice for quashing the proceedings.\textsuperscript{126}

Mere description of the accused as 'in-charge' of the busi-
ness is not sufficient ground to impose liability on a person, when
the company's liability is being fixed. In \textit{Narain Extractions Pvt.}
\textit{Ltd. v. P.C. Mishra, Food Inspector,}\textsuperscript{127} it was held that prosecu-
tion was liable to be quashed because proceedings were launched
about 2 years and 8 months after the report of the public analyst
was made available. Inordinate delay of 10 years was held viola-
tive of Article 21 of the Constitution of India.\textsuperscript{128} Moreover, as
there was a trivial variation of standard found from the sample
would definitely prejudice the petitioner in preparing his defence.
When long delay is allowed to occur and still prosecution is not
even commenced, inherent powers of the High Court can be ex-
ercised against such lethargic and idle attitude of those who bring
action against the accused.

In \textit{Scanda Kumar Panda v. Saratulla Khan,}\textsuperscript{129} delay in pro-
ceedings resulting in contradictory evidence and failure to bring
in oral evidence after lapse of 12 years could sound the death-
knell of the prosecution's case.

The course of law must proceed without any retarding fac-
tors. When a criminal case is initiated against a person the equa-
tions are uneven as a minion, a David is pitted against a monster

\textsuperscript{126}. \textit{Akhtar Alison v. State of U.P.-} 1996 Cri.L.J. 459 (All.)
\textsuperscript{127}. 1996 Cri.L.J. 736 (Ori.)
\textsuperscript{128}. \textit{Rajbir Singh Sunar v. State of Haryana,} 1996 Cri.L.J. 1245 (P&H)
\textsuperscript{129}. 1996 Cri.L.J. 2104 (Ori). Also see \textit{Jaiprakash Singh v. State of U.P.} 1996
Cri.L.J. 2426 (All)
'Goliath' the State. Therefore, fairness requires that procedure must be unblemished, whatever be the offence alleged, there is a limit to the indifference and recklessness of State in dealing with the accused persons. If the State fails, the High Court has inherent powers to set free the accused. The powers of the court preserved through section 482 Cr.P.C. and re-enforced by Article 21 of the Constitution of India helps the accused to illuminate his basic and irreducible rights.

In *Naik v. State of Kerala*,¹³⁰ a person who had been in detention as an under-trial prisoner was set free. The entire proceedings were held liable to be quashed. There was inordinate delay in proceedings which was in violation of human dignity and fundamental rights. When the Indian Legal system supported by ethos of human rights, culture, and civilisation, even make one treat the soldier of an enemy country or the dead body of a slain-belligerant soldier with respect, the court cannot turn a wry face to the citizen heckled by the vagaries of the State. The period spent as under trial which itself is more than the maximum punishment for the alleged offences against which the accused is charged with.

It is in such a situation that the High Court is to feel reassured its inherent powers against the background not only of Cr.P.C. but also of the basic law of the land, i.e., the Constitution of India. Thus, the laxity, inadvertence, lack of promptitude, insolvency etc. of the prosecuting authorities cause delay and delay makes the State loose the case and helps the accused to regain his liberty. In *Coromandal Distributors v. Food Inspector and oth-
ers,\textsuperscript{131} default in complying with provision of Prevention of Food Adulteration was the subject matter of the proceedings. There was inordinate delay in filing proceedings against the petitioner. Court held that the trial against the petitioner is an abuse of the process of the court.

The Delhi High Court held that in appropriate cases, it is permissible to protect a person from illegal, and vexatious prosecution by issuing of an appropriate writ under Article 226 of the Constitution or in exercise of the inherent powers of the High Court under section 482 Cr.P.C.\textsuperscript{132} However the Supreme Court had reversed this decisions; again on another view of justice. Thus the dynamism of the Constitution of India as a living thing is felt- in the domain of inherent powers of the High Court in the matter of criminal justice system. But this has another side also while securing ends of justice genuinely, seriously and sincerely.

xiv. \textbf{Due Process and Fair Trial - Human Rights Jurisprudence}

The impact of the constitution as explained in the application of inherent powers helps to protect ends of justice. Prompt and punctual observation of the rules are necessary while a person is put to trial. Unconscienable delay as explained above can strike at the root of the very proceedings. In the wake of the human rights jurisprudence an awareness has been created regarding the right of the accused person in a fair trial. Delay in trial and investigation proceedings violates the due process of law and protection of laws and rights to equality, individual freedom and

\textsuperscript{131} ILR 1999 (1) 303

\textsuperscript{132} Delhi Development Authority v. Leela D. Bhagath, AIR 1975 SC 495
right to life and personal liberty enshrined in Articles 14, 19 and 21 of the Constitution of India. Inspite of this constitution advancement, the solemnity and seriousness of the criminal proceedings get protection under the inherent powers. Notwithstanding the positive imprint of constitutional principles in the criminal justice system, inherent powers preserved to prevent abuse of the process of the court and secure the ends of justice is not available to the accused persons who have contributed to the abuse of the process. Some persons by interlocutory orders and other dilatory tactics try to stall the progress of the proceedings. In such circumstances, it is such people who indulge in abusing the process of court at the cost of the interest of justice. Therefore, parallel to the development in the constitutionalism in inherent powers there has been a record of vigilance and seriousness on the part of judiciary in distinguishing who is to get the benefit of justice, and who is not to get the benefits. The following discussion centering around a few decisions would put the attitude of the judiciary in a clear perspective.

xv. Judicial Vigilence in the Interest of Investigation

In *Bharath Hybrid Seeds & Agro Enterprises v. The State*, the High Court declined to interfere with the judicial exercise of discretion of the trial court. Delay was satisfactorily explained to the Magistrate who had condoned it and took cognizance of the offence. In *Gopal Chouhan v. Smt. Satya and another*, the Magistrate had issued process in a complaint case. The accused did not challenge the order for about three years. At the stage of

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133. 1978 Cri.L.J. 61 (A.P)
134. 1979 Cri.L.J. 446 (H.P.)
evidence, he preferred a petition before the High Court under section 482 Cr.P.C. and Article 227 of the Constitution. Thus the petitioner had slept over the remedies for an inordinate period. His intention was to impede the proceedings of the lower court. Relying on landmark decisions of the apex court in *Amarnath v. State of Haryana* and *Madhu Limaye v. State of Maharashtra*\(^ {135}\) it was held that neither inherent powers under section 482 nor supervisory power under Article 227 could be invoked in such a case. As the very foundation of inherent powers is equity, fairness and Rule of Law, the court takes decision after ascertaining the reason for delay. If there is no fault of the complaint, proceedings are not liable to be quashed on account of delay. In *Bhagavath Pandey v. State of Bihar*,\(^ {136}\) nine years delay in taking cognizance by Magistrate was discarded by the High Court and declined to interfere under section 482 Cr.P.C. This was because delay was caused mainly due to loss of records\(^ {137}\).

Inherent powers are always considered in the light of interest of justice. The court has to balance the right of the individual and the interest of the society. In such a situation, 7 years delay in filing the charge-sheet need not be a ground for attracting the procedure of the trial court through invocation of inherent powers. Orissa High Court took such a view in *Kishore Chandra Behra and others v. State of Orissa*,\(^ {138}\) the court was conscious of the


\(^{136}\) 1986 Cri.L.J. 1429 (Patna)

\(^{137}\) The court adverted to the decision in *R.P. Kapoor v. State of Punjab* AIR 1980 S.C. 866

\(^{138}\) 1989 Cri.L.J. 166 (Ori)
long lapse of time amounting to miscarriage of justice. But, the
court was also equally aware of and more concerned with the
public interest. It was held that if a grave offence of misap­
propriation of a heavy public amount goes unnoticed, and unpun­
ished, due to lack of investigation, it is a case of miscarriage of
justice. The court makes an idealistic approach here and declines
to interfere. This "Not that I loved Ceasar less, but that I loved
Rome more"\textsuperscript{139} attitude of the court, in complying with the inher­
ent powers is a pointer to the investigating agency also who build
gate-ways to the accused to have safe-passage out of the prov­
ince of criminal liability.

Viewed against the above position of the court a three day's
delay in launching prosecution is very well condoned and High
Court’s inherent powers cannot be used to quash the proceed­
ings.\textsuperscript{140} The question of delay comes in the matter of filing peti­
tions under section 482 Cr.P.C. itself. There is no prescribed pe­
riod of limitation for filing petition under section 482 Cr.P.C. the
application should be filed within a reasonable time. In \textit{Bata @
Bata Krushna Behera v. Anamma Behera},\textsuperscript{141} the High Court held
that since the time limit for revision petition was 90 days applica­
tion under Section 482 itself at par with a revision petition also
be filed within 90 days and time beyond that period must be ex­
plained. This attitude of the High Court can create problems. It is
not so admirable to equate inherent powers with revisional pow­
ers. The scope of two jurisdictions vary greatly. The proceed­

\textsuperscript{139} William Shakespear, \textit{Julius Ceaser}, Act III Scene 2 Line 19
\textsuperscript{140} \textit{Madan Mohan Sharma v. State of M.P. - 1990, Cri.L.J. 1046 (M.P.)}
\textsuperscript{141} 1990 Cri.L.J. 1110 (Ori.)
nings initiated under inherent powers cannot be limited in the matter of time limit prescribed, especially when the Sec. 482 Cr.P.C. itself categorically states that nothing in this Code shall affect or limit the inherent powers of the High Court.

Similarly in *Prem Singh v. State of Himachal Pradesh*, High Court declined to exercise inherent powers to quash the proceedings on the ground of delay. The reasoning of the High Court is on sound principle of ends of justice. Offences involved were illegal felling of trees from Reserve Forests. The court considered the nature of the alleged offences, conduct of the investigating agency, and circumstances therein, while declining to quash the proceedings. In a case where proceedings were kept pending for about 14 years, the Calcutta High Court declined to interfere. The delay in framing charge occurred largely due to the conduct of the accused persons, one or the other of whom was persistently absent on days fixed for framing of charge. This itself is an abuse of the process of the court.143

If delay is not unreasonable, the High Court will be very cautious to exercise inherent powers. In *Amrinder Singh Kang v. State of Punjab*, the court dismissed the Petition. The attack on ground of delay was not accepted. Delay was reasonable, because, vigilance department had to conduct enquiry for assessment of value of property and scrutiny of details of bank statement etc. Such delay in cases the merits of which rest upon documentary evidence, is not sufficient enough to quash the proceed-

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142. 1990 Cri.L.J. 1354 (H.P)
144. 1994 Cri.L.J. 41, (P&H)
ings. This drive for the reasoning of the Supreme Court in *State of Andhra Pradesh v. P.V. Pavithran*,\(^\text{145}\) where it was held that for deciding the question of delay, it depends on the fact and circumstances of each case. Rules of equity states that, if accused defeats equity by contributing to the delay, the court cannot quash the proceedings. Similarly, once the case has considerable advancement in its proceedings, delay alone cannot be a ground for interference.\(^\text{146}\)

The consensus in the judicial parlance regarding the delay as a ground for quashing the prosecution is that instead of taking delay as such, while invoking inherent powers, the court has to consider the reason or the cause of delay.\(^\text{147}\) it is in such circumstances that the petitioner has to explain his conduct for causing delay.\(^\text{148}\)

When the petitioner has contributed to the delay, the maximum that High Court can do under inherent powers is to direct the trial court to have expeditious disposal of proceedings.\(^\text{149}\) The social impact of crimes are also to be considered while invoking inherent powers. Then delay may not be of much consequences. In *Santhosh Singh v. State of Orissa*,\(^\text{150}\) it was held that prosecution cannot be quashed merely on the ground of delay and infringement of right to speedy trial. The abhorrent nature of

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145. AIR 1990 S.C. 1266
146. *Sat Paul v. Inspector of Police and another* - 1994 Cri.L.J. 2898 (Cal.)
150. 1996 Cri.L.J. 2651 (Ori.)
the crime which has social impacts, economic offences and of­fences which affects the health of others should not be brought to a halt on the ground of delayed trial. The courts in such cir­cumstances should be asked to take up expeditious trial and if necessary a time limit should be fixed to conclude the trial. This direction to issue time limit instead of quashing the proceedings is the result of the balancing act done by the High Court with individual interest on the one side and society’s interest on the other side. In the above decision, the court had banked on the aid of the Supreme Court.\textsuperscript{151} The reasoning in the above decision to view, economic offences and offences under prevention of Food Adulteration Act which has an ultimate effect in the soci­ety, seriously made the High Court relectunt to invoke the inher­ent power.\textsuperscript{152}

xvi. \textbf{Dynamism of Inherent Powers - Impact of the Constitution}

The above discussion regarding the application of inherent powers to quash the proceedings vitiated by inordinate delay shows the dynamism of inherent powers. No person is allowed to make a march over the principles of law. The impact of the constitution has improved the consummate quality of inherent powers. It has also made the position clear so that undersirable persons do not get the benefits.

Among the various branches of law in respect of criminal jus-

\begin{footnotesize}
\begin{enumerate}
\item M/s. Sangeetha Traders v. P.K. Das 1996 L.L.J. 3207 (Or)
\end{enumerate}
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tice administration, criminal law has got direct bearing on individual freedom, and personal liberty. Constitutional law having specialised in fundamental rights, which are the life of personal liberty, has equal relevance in this context. So while assessing the impact of the constitution, on inherent powers the situation emerging is one where criminal law and constitutional law jointly address the problems in the above area. Judicial system in India with the Supreme Court and High Courts dominating the judicial process, the judicial activity is therefore intense. Every legislation, every act of every authority of the State must have the stamp of constitutionality. Ultimate powers are derived from the constitution. In criminal law, inherent powers of the High Court has achieved an equanimity with the constitutional powers. The contribution of the Supreme Court and High Court is substantial. An examination of a few instances made in the above paragraph underline this welcome development in Indian Jurisprudence. In some situation one is tempted to think that the above development so far as litigants are concerned is an onerous gift of jurisprudence, in the service of justice. Onerous because one is expected to surrender to the negative as well as positive developments. One cannot file a petition challenging the validity of a rule under section 482 Cr.P.C. In P.M. Ninan v. Executive Officer, Anikad153 a Full Bench of the Kerala dismissed such a petition. The petitioner ought to have made the challenge to the rule through writ jurisdiction of the High Court. The Full Bench also held that after the dismissal of the petition, petitioner could not file a writ petition for the same relief also. Because, it was hit by the doc-

153. 1979 Cri.L.J. 372 (Ker.)
trine of resjudicate. In State of Maharashtra v. Mohammed Yusuf Noor Mohammed, the Bombay High Court invoked inherent powers for the cause of public interest. Prosecution was launched by private individuals. It was held that the court can quash the proceedings in the larger interest of the society. There was conflict between two sects of Muslims. Persons belonging to one sect filed complaint against the head of another sect. The State argued that proceedings may cause another innings of violence and disharmony in the society. So inherent power for securing the ends of justice receives a novel dimension here. This is a direct result of the impact of the Constitution.

When the application of inherent powers is dismissed in the above perspective, one finds topics like personal liberty being discussed and decided. In Pranab Jyothi Gogoi v. State of Assam, the Gauhaty High Court accosted such a situation. The petition was filed under Article 226 of the Constitution and section 482 of the Cr.P.C. The matter in issue was the death of a detenue while in custody of Army authority. Death was due to injuries suffered by him. The victim was an undergraduate aged 22 years. Both parents of the victim were alive and court adverted to their suffering from agonising event a case under section 302 read with section 34 IPC was registered against Army Personnel. The court also held with an ex-gratia payment without legal consideration or some monetary payment could be admissible. Therefore, it was held that payment of Rs. 2,00,000/- (Rupees Two Lakhs) to the deceased person's parents by the Union

154. 1990 Cri.L.J. 2106 (Bom.)
155. 1992, Cri.L.J. 154 (Gau)
of India would meet the ends of justice. The Supreme Court of India had already created a climate of humanism in Indian Jurisprudence by awarding compensation in writ proceedings. *Sebastian Hongray v. Union of India*,\(^\text{156}\) is one instance of judicial philanthropy. This is translated to the inherent power jurisdiction also. This is a direct result of the impact of the Constitution. Matters of public interest arise in relation to the State also. The High Court under inherent power can even make the eyes of the authorities open, so that the State is pulled back in its endeavour to administer law and order. In *State of Madhya Pradesh v. Gyan Singh*,\(^\text{157}\) the Madhya Pradesh High Court considered the grievances of the State. Non-bailable warrant for arresting and producing the accused is issued. Non co-operation by the police in the matter was alleged by the State. It was also reported that large number of cases were pending in the court due to the said non-co-operation of police official. The attitude adopted by the police in such matter was deprecated by the High Court.

When precious fundamental rights of the citizens are at stake, the judiciary and the courts are the sole institution powerful to protect them. When a person is charge-sheeted under the drastic legislation like Terrorist and Disruptive Activities (Prevention) Act, the private interest must be given as much interest of the public. As the accused persons' options are minimum to get bail or to quash the proceedings, court must give less attention to formalities and more attention to the infraction done on justice.

\(^{156}\) 1984 Cri.L.J. 830 SC.
\(^{157}\) 1992 Cri.L.J. (192)
In *Girish Chandra Kakati v. Union of India*,\(^\text{158}\) the court discussed the fundamental rights and inherent powers in a conspectus of adjudication. The jurisdiction of the High Court under section 482 Cr.P.C. for entertaining an application for quashing an FIR in which accusation of offences in TADA Act was involved provided the situations. It was held that under section 482 Cr.P.C. the application could not be entertained as High Court had no jurisdiction. But, the jurisdiction of the High Court under Article 226 of the Constitution was never doubted. Going by the principle laid down by the Full Bench of Kerala High Court\(^\text{159}\) a dismissal of the petition would attract resjudicata, and the petitioners attempt to get justice would be checkmated. The question of converting the petition under section 482 Cr.P.C. to petition under Article 226 was considered. The plea was made by the lawyer. The court asserted that there was allegation of the violation of fundamental rights guaranteed under Article 21 of the Constitution and so, permission to convert the petition was granted since the question of protection of fundamental rights was involved. This is the pragmatic and realistic approach which fulfils the development of a legal realism in Indian jurisprudence.

If there is manifest injustice the High Court can interfere either under section 482 Cr.P.C. or under Article 226 of the Constitution. In *Hassan Ali Khan v. The State*\(^\text{160}\) the High Court considered the comparative possibilities under the two jurisdiction to attack an FIR and an investigation, drawing profusely from an

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\(^{158}\) 1992 Cri.L.J. 460

\(^{159}\) *P.M. Nainan v. Executive Officer Anikad*, 1979 Cri.L.J. 372 (Ker.)

\(^{160}\) 1992 Cri.L.J. 1828 (A.P.)
earlier authoritative pronouncement\textsuperscript{161} and formulated the following principles.

1. Power of police to investigate is unfettered when FIR discloses a cognizable offence.

2. Proceedings can be interfered with only when the materials before the court do not disclose any offence at all, for which the materials to be considered on its face value.

3. When the materials do make out any case power under Article 226 can be invoked to quash the case.

4. High Court will not interfere under the writ jurisdiction unless there is manifest injustice.

The above attempt of the High Court to expose the situation is a proof to the claim of constituionalism in the area of inherent powers. The concepts of equality of laws and equal protection of law and procedure established by law provide as input to High Court even when administering justice under inherent powers.

In \textit{Chinna Durai Nadar v. Assistant Health Officer}\textsuperscript{162} a question pertaining public interest was considered under section 482 Cr.P.C. The court quashed the complaint. The offences alleged were of non-making of sufficient artificial means of ventilation inside the auditorium of theatre. It was alleged to be injurious to public health and that it caused nuisance. But, no notice was given to the petitioner nor any opportunity as to how nuisance was com-


\textsuperscript{162} 1992 Cri.L.J. 2148 (Mad.)
mitted was given. The public health officer was never given an opportunity to abate or remove nuisance. When all scruples of justice are violated, however, grave the public interest, the authority must comply with the basic formalities, the violation of which violate natural justice and constitutional rights. In *Prem Kumar v. Nahar Singh and another*, the petition was filed under section 482 Cr.P.C. read with Article 227 of the Constitution. The allegation was that the Magistrate neither examined the complaint nor the witnesses, but directed to issue process. A Magistrate of the Second Class has no jurisdiction to take cognizance of an offence under section 500 IPC. The court had resorted to section 460 of the Cr.P.C. which states that a Magistrate is not empowered to do anything if taken cognizance of an offence erroneously but in good faith, this proceedings shall not be set aside merely because, he would not empowered. The High Court held that there was lack of jurisdiction over the Magistrate who took cognizance. It was proved that demands of justice are superior to a demand of law. The High Court set aside the order of the Magistrate and remanded the case back to the court below for proceeding afresh from the stage of complaint. A symbyotic relation is established between the inherent powers under section 482 Cr.P.C. and original Articles 226 and 227 of the Constitution of India to tackle situations crying aloud for justice. Perhaps an all time high is the impact of constitution, in the administration of criminal justice, which came with the monumental decision of the Supreme Court in *Common cause v. Union of India*.

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163. 1995 Cri.L.J. 2517 (H.P)
164. 1996 (2) KLT 820 (SC)
pertaining to Articles 21 and 22 of the Constitution of India, in respect of criminal trial pending in various courts named and unnamed engaged the attention of the Supreme Court. The decision indirectly proclaimed that the State cannot administer justice ignoring the existence of Constitution and pristine principles of personal liberty adumbrated in it. Criminal trial pending in a court for long periods was held to operate as an engine of oppression. Taking inherent power to deesy hights of jurisprudence the court issues direction to the criminal court to protect and effectuate the right to life and personal liberty of the citizen.

Accused persons were directed to be discharged or released on bail, after the Supreme Court had made a serious excursion into the subject and enumerated the different categories of offences. Here also, the Supreme Court was not on a spree unmindful of the society's interest at stake. The court was careful to identify grave offences and exclude them from the purview of the directions. In *Common Cause II v. Union of India*, the Supreme Court made a further modification inducting pragmatism to the thinking of the court. The above decisions show that inherent power and constitutional power have developed a territory of their own in Indian Jurisprudence. What is to be careful about is that, in the circumstances created under this development under serving persons may not get an opportunity to riggle out of the wrath of law. There is likelihood of persons who commit atrocious and abominable offences and then try to desect the syllables of jurisprudence to get out of liabilities. The High Court must be vigilant against them. A telling example is the decision of the Kerala High

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165. (1996) 6 SCC 775
Court in *Tony Antony v. Director General of Police*,\textsuperscript{166} the division bench of the High Court had gone on a tangent to quash the FIR and proceedings pending against the petitioners in respect of serious specific allegations of sexual offences. The High Court even drawing conclusion which would ordinarily be done after analysis of evidence, the Supreme Court was quick to react and the decision of the High Court was set aside and the accused persons were made to face trial. In *State of Kerala v. O.C. Kuttan*,\textsuperscript{167} the Supreme Court even criticised the High Court for an overzealous attitude. Something which cannot be done invoking inherent powers may not be allowed to obtain by invoking original jurisdiction under Article 227 of the Constitution of India.

xvii. **Constitutional Spirit**

Thus, the constitution and principle evolved from it over the decades have made an indelible impression in the solids of inherent powers. This once again shows the effectiveness of the Indian Constitution, and the power of assimilation of the Indian Judiciary. The positive development in this area gives credibility to the argument that Indian Constitution is a document of fair merit and that it is potent enough to bring a silent social revolution. "The Indian Constitution was in the right structure when pressing for a multiple revolution, settling as I have done in this lecturers for the figure of III as an entient symbol of pluralism - of Unity in diversity - in contrast to Monism and dualism".\textsuperscript{168}

\begin{itemize}
\item \textsuperscript{166} 1997 (2) KLT 853
\item \textsuperscript{167} 1999 (1) KLT 747
\item \textsuperscript{168} Dr. Peter G. Sack, *Constitutions and Revolutions* - Centre for Advanced Studies and Research Tvm. (1990), p. 103
\end{itemize}
The above observation of Dr. Peter G. Sack is based on the liberalism and humanism found in the letter and spirit of the constitution. Dr. Sack declares:-

"A revolution social or otherwise is not a matter of control, but a matter liberation and re-organisation"\textsuperscript{169}

In the area of inherent powers, the Supreme Court and High Court have helped the Indian Society to achieve a liberation and re-organisation by drawing from the spirit of the constitution. Administration of justice is possible only in the context of personal liberty and individual freedom. This, Dr. Sack says is made in the Indian Constitution through the cold social revolution which is the reinstatement of brotherhood. If the revolution has been slow, still born, it is because "The Constitution makers where neither able nor willing to provide an appropriate ideological and technological frame work, another "in otherwise a new paredine"\textsuperscript{170}

But, considering the experience of Indian jurisprudence, one cannot concede that the so called failure of the framers of the Indian Constitution, has done any irrecoverable damage. This is because, "The new paradigm" wished for in the above context has been provided by the Supreme Court and High Courts discovering the same from the Constitution itself. That paradigm can be called judicial review, basic structure, rule of law, or in the context of the impact of constitution on inherent powers, that paradigm can be called even inherent powers.

\textsuperscript{169. Ibid.}
\textsuperscript{170. Ibid.}