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**INHERENT POWERS OF THE HIGH COURT
UNDER SECTION 482 OF THE
CODE OF CRIMINAL PROCEDURE, 1973**

**THESIS SUBMITTED BY
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**UNDER THE SUPERVISION OF
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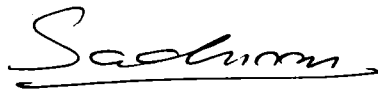
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CERTIFICATE OF THE RESEARCH GUIDE

Certified that to the best of my knowledge the thesis, **"Inherent Powers of the High Court Under Section 482 of the Code of Criminal Procedure, 1973"**, is the record of bonafide research work carried out by Mr. K.P. Kylasanatha Pillay, in the School of Legal Studies, Cochin University of Science and Technology under my supervision.

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Dr. G. Sadasivan Nair
(Research Guide)

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PREFACE

The great principle underlying the inherent powers of the High Court under section 482 Cr.P.C. is subjected to a lot of uses and abuses. The result is controversies in the administration of justice. So this requires conceptual clarity, sharpening, structuring or channelising. There are many issues and problems in this area. Its historical, theoretical and juristic bases constitute this thesis. A person accused of an offence is to defend himself against the allegations of the prosecution or the complainant. Sometimes proceedings are initiated on malicious and vexatious grounds. Therefore, the power is to be preserved with the court of justice to avoid vexatious and motivated proceedings. Hence, inherent powers of the court are recognised in the criminal jurisprudence. The power is not vested in the court through statutes. On the otherhand, the inherent powers are preserved and saved, over and above the provisions of the Code of Criminal Procedure. Taking historical, territorial^{theoretical} and juristic factors into consideration High Court is the right choice to become the repository of inherent powers under section 482 of the Code of Criminal Procedure. That signifies the importance of the study of inherent powers of the High Court.

This thesis consists of an introduction and ten chapters arranged in five parts. Part I consists of the introduction. It is a statement of the theme of the thesis. An inkling of the nature of the concept of inherent powers is also given in the introduction. Part II consists of chapters I and II. Chapter I deals with the genesis of the concept of inherent powers of the courts in India. The

historical background against which the concept of inherent powers developed is analysed. The other principles and doctrines in the common law realm having bearing on inherent powers are also consulted. They include the concept of Rule of Law, the doctrine of judicial review, the doctrine of judicial precedents and development of inherent power concept through cases. The operational dynamics of inherent powers against the background of juristic and juridical concepts, are explained in Chapter II. The legal Philosophy or Jurisprudence that can be deduced from the concept of inherent powers is discussed, drawing lessons from teachings of distinguished jurists like Julius Stone, B.N. Cardozo, C.K. Allen, Lord Denning, Lord Hailsham, *etc.*

Part III deals with the constitutional impact and provisions in the Code of Criminal Procedure. Chapter III, IV and V are included in this part. Chapter III deals with the constitutional dimensions of inherent powers. Supreme Court has itself got inherent powers under the Constitution of India. This has influenced the exposition of inherent powers of High Courts under section 482. The elements of inherent powers enumerated in the Criminal Procedure Code, 1973 form the subject of Chapter IV. An annotation of the statutory provision contained in section 482, Cr.P.C. in the light of decided cases of the High Courts and Supreme Court is made in this chapter. In Chapter V, a jurisdictional conundrum created by the application of inherent power is discussed. The jurisdictional conundrum is explained against the provisions of revision, review, recall etc.

Part IV of the thesis contained chapter VI, VII and VIII having an overview of inherent powers. Chapter VI deals with certain

obvious disadvantages in invoking inherent powers. This includes problems in respect of rules of evidence and principles of law. The facility of the High Court to appreciate evidence while invoking inherent powers is minimum.

Chapter VII deals with the extent and reach of inherent powers in criminal justice system. Resort to inherent powers of the High Court and the Supreme Court, is getting more and more popular resulting in the province and function of the inherent powers expanding over the years. The Chapter deals with the modus-operandi of the High Courts through a survey of cases. There are similarities as well as dissimilarities in the approaches of the Supreme Court and the High Courts to the application of inherent powers. Chapter VIII makes a comparative study of the inherent powers of the Supreme Court and High Courts. Emphasis is given to inherent powers in the context of administration of criminal justice and exposition of the fundamental rights by the Supreme Court.

Part V consists of concluding chapters. In this part chapters IX and X are included. In chapter IX of the thesis, a summing up of various aspects of inherent powers is attempted. A constructive assessment of the application of inherent powers is attempted by trying to evaluate the nature of the inherent powers exercised by the High Court based on the major findings of the research work. The findings and suggestions are enumerated in chapter X which is the concluding chapter.

I recollect with great gratitude and reverence the highly valuable and constructive help received from several of my benefactors. Foremost among them are Dr. G. Sadasivan Nair, Profes-

sor and Director, School of Legal Studies, Cochin University of Science and Technology, who has guided me in this research programme, and Dr. K.N. Chandrasekaran Pillai, Professor, School of Legal Studies. I have banked heavily on the erudition and scholarship of my guide. Amidst the exacting obligations of the office of the Director, my supervising guide piloted me very resourcefully in carrying out the research programme. Dr. K.N. Chandrasekaran Pillai has also been a guiding force at every stage of the work enthusing me with valuable suggestions. These two teachers acted as sources of great inspiration to me throughout the research programme. I am abundantly indebted to them for their magnanimity. I also express my immense gratitude to other members of the teaching faculty of the School of Legal Studies. Dr. V.D. Sebastian, the Dean of the Faculty, Dr. Leela Krishnan, Dr. N.S. Chandrasekaran and Dr. Varkey all belong to the School of Legal Studies are specially thanked for their encouraging and educative gestures to me during my research programme. I profusely thank the staff of the office of the School Legal Studies for being very alert in helping me on all occasions. I also express my thanks to the staff of the library for lending me timely help.

I also thank Mr. Anilkumar and Mr. M.G. Rajan for the able assistance in type working and computer setting of this thesis. A number of my colleagues found their valuable time to help me at all times with creative suggestions. I reciprocate the solidarity they have shown by expressing thanks without any reservations.

K.P. Kylasanatha Pillay

PART - I
STATEMENT OF THE THEME

INTRODUCTION

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

i. Inherent Powers in Criminal Justice System

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

ii. Inherent Powers an Enigma

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

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

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

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

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

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

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1. M.S. Dockray, "The Inherent Jurisdiction to regulate Civil Proceedings" (1997) 113 L.Q.R.120.
 2. Keith Mason, "The Inherent Jurisdiction of the Court", (1983) 5 Au.L.J. 449.

'in many spheres of the administration of justice, High Court of Justice in England exercises a jurisdiction which has the distinctive description of being called 'inherent'.³

The inherent power as understood and applied in India is on the line of thinking reflected in the opinion of the above jurists. The Supreme Court of India through a series of decisions, has been the chief exponent of the inherent powers. The Supreme Court has dealt with the inherent power of the High Court as well as its own inherent powers. In *Supreme Court Bar Association v. Union of India*,⁴ the apex court discusses the inherent powers of the Supreme Court for punishing contempt of the court. In the judgment reference is made to the '*Treatise on the Law of Contempt*' by Nigel Lowe and Brenda Suffin who relies on the ideas of I.H. Jacob.⁵

To secure the ends of justice courts must have inherent powers.⁶ This is so well articulated that the Court of Appeal in England referring to I.H. Jacob's views in *Re M and Others (Minors)*⁷ deals with aspect of controversy whether a trial judge has inherent powers to deal with contempt.

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

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3. I.H. Jacob, "The Inherent Jurisdiction of the Court", *Current Legal Problems*, (1970). Vol. 23, p. 23.
 4. (1998) 4 SCC 409.
 5. *Id.* at p. 420
 6. Refer *Infra.* n. 7, n.q. n.10.
 7. [1999] 2 All E.R (CA) 56 at p.64. The Court of Appeal refers to the decision in *Jennison v. Baker*, [1972] All E.R 997

It is not easy to define inherent powers in a precise and scientific manner.

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

iii. Background setting

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

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

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

8. Ref. *supra*. n. 1

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

"The Power thus put in their hands is great, and subject, like all power, to abuse, but we are not to flinch from granting it. In the long run, there is 'no guaranty of justice', says Ehrlich, 'except the personality of the Judge'.⁹

iv. Enacted Laws not Exhaustive

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

"There are times when the course is obvious. The rule that fits the case may be supplied by the constitution or by statute. If that is so, the judge looks no farther. The correspondence ascertained, his duty is to obey".¹⁰

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

9. B.N. Cardozo, *The Nature of the Judicial Process*, (1921), pp. 16-17.

10. *Ibid.*

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

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

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

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

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

11. *Ibid.*

12. Julius Stone, *Legal System and Lawyer's Reasoning*, (1967), Indian Reprint 1999, p. 213.

13. *Id.* at p. 214

"It is for experience to fill progressively the gaps we leave. The Code of a people makes itself with time: properly speaking it is not made".¹⁴

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

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

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

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

14. *Ibid.*

15. M.H. Mc Hough AC, "Judicial Method", (1999) 73 Au.LJ. 37.

16. Ref. *Supra.* n. 12, at p. 216

"There is no need of a judge where the rule lead everyone, provided no errors are committed, to the same solution, and where correct rule of reasoning from indisputable premises exist. We need judges when those rules are equivocal when reasoning does not end in a conclusion, but justify a decision".¹⁷

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

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

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

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

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17. Jerzy Wroblewski, *The Judicial Application of Law* ed. by Zenon Bankowski and Neil Mc Cormick (Kluwer Academic Publication-1992) at p. 315. The book is the English version Jerzy's, major polish work- *Sadowe Stoswaria Prawa*.
18. Ronald Dworkin, "Taking Rights Seriously", *Oxford Essays in Jurisprudence*, Ed. by A.W.B. Simpson, Clarendon Press, Oxford (1973), p.202.
19. *id.* at p. 203

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

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

v. The Indian Context

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

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

20. *ibid.*

21. (1991) 4 SCC 406

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

vi. **Attitude of the Supreme Court**

The pervading nature of the power is recognised by the Supreme Court of India, in *Raj Kappoor and others v. State and others*,²²

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

The above opinion of the Supreme Court tallies with the Court's opinion in the earlier decision of *Madhu Lemaye v. State of Maharashtra*,²⁴

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

22. 1980 SCC (Cri) 72.

23. *Id.* at p. 76

24. (1977) 4 SCC 551

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

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

vii. The code preserves the Inherent Powers

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

25. *Id.* at p. 551

The section heading runs thus, *saving of inherent powers of High Court*.

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

The inherent powers' concept has proximity to the Rule of Law concept. The concept of Law understood in its philosophical and sociological sense respects no barriers to criminal justice or civil justice. It is underlined by the pressure of a written Constitution "which serves as an Aorta in the anatomy of our democratic system".²⁶ Law is a weapon against the evils of society. Corruption is an octopus, if not overreached it will destabilize and debilitate the very foundation of democracy, wear away the rule of law through moral decay and make the entire administration ineffective and dysfunctional'.²⁷

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

26. *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 at p.346.

27. *Ibid.*

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

482. Saving of Inherent Powers of High Court

"Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.²⁸

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

viii. Questions Pertaining to the Application of Inherent Power

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

A noted jurist once said:

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

28. Corresponding old law- Section 561-A of the Code of 1898 read as follows:561-A:- Nothing in this code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

matter how great or powerful those others may be, the freedom of the humblest citizen shall prevail over it"²⁹

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

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

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

29. Sir Alfred Denning, *Freedom under the Law*, 1949, The Hamlyn Law Lectures at p.4.

30. *Id.* at p.4

Whether section 482 of Cr.P.C., could be used as a second revision? Whether additional evidence can be taken? If so, whether it can be like writ of certiorari? These are some of the different dimensions of the problem that are to be pondered over.

ix. Justice as a Universal Concern

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

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

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

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

31. Herbert Wechsler, *The Challenge of a Model Penal Code*, quoted by Glanville Williams, *Text book of Criminal Law*, (1983), p. 3.

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

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

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

The intention of the draftsman of the Code and the legislature which passed it was to preserve the prestige and power of the High Court. This power of the High Court enhances the majesty of the justice. It guards against miscarriage of justice ensuring against the abuse of the process of all courts. The present Code of 1973

verbatim reproduces section 561-A of the Cr.P.C. 1898. The Code of 1898 uses the phrase 'inherent power'. The Code of 1973 uses the phrase 'inherent powers'. Whether there is any distinction meant in 'Power' and 'Powers' is not stated. But, it can be presumed that the word, 'powers', signifies an empirical dimension of the concept. This power is rooted in the beginning of the administration of justice in India in the modern period. It is founded on the bedrock of the principles of common law and equity concept. This principle served as a lighthouse for those sailed along the High Seas of jurisprudence in the administration of justice.

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

Inherent powers in section 482 of Criminal Procedure Code is available to High Court only. But, in practice it is comparatively available to all courts including subordinate courts as the power is exercised to "prevent abuse of the process of any court". 'Any court' includes subordinate courts, (Civil Courts or any authority having the jurisdiction of a court and also the Supreme Court). An identical

provision is available to the civil Courts under Section 151 of the C.P.C. The inherent power under Section 151 C.P.C. is directly available to all courts and is less controversial as the plethora of application in a civil litigation finds entry into the courts under Section 151 C.P.C. The inherent powers is the expression of a power of the court preserved over the past several phases of progress of administration of justice. It was preserved by judges and courts. It was named inherent powers long after it came to be recognised as part and parcel of jurisprudence.

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

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

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

This is the quintessential view understood from a catena of decisions of the Courts.³⁴

32. Ref. *supra* n. at p. 23

33. *Sarkar on Criminal Procedure*, 7th Edn. (1996) p. 1403.

34. *Emperor v. Khawja Nazir Ahammed Hussain*, AIR 1945 PC 18. See also *Jai Ram Das v. Emperor*, AIR 1945 PC 94, *Emperor v. Mohammad Hassan*, AIR 1958 (Mad.) 305, *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866

Inherent powers of High Court guaranteed through Section 482 of Cr.P.C., are in the countenance of Article 21 of the constitution of India-

xi. Supreme Court on High Court's Power

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

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

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

factors and levels of public opinion while examining the correctness of the charge framed.

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

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

35. *Keshub Mahindra v. State of M.P.*, (1996) 6 SCC 129.

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

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

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

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

"That if at all it was an unfortunate accident which had taken heavy toll of human lives and cattle wealth, however, none of the accused could be held criminally liable for the said accident. It was, therefore, contended that the charges as framed

36. *Id.* at p. 135

37. *Id.* at p. 140

against the accused concerned are required to be quashed and the High Court had erred in not exercising its jurisdiction in that behalf".³⁸

Equally efficacious contention was made on behalf of the prosecution:

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

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

38. *Ibid.*

39. *Id.* at pp. 140-141.

227 Cr.P.C. available to the 'trial' court, for deciding whether charges framed are legally sustainable.⁴⁰

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

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

40. *Id.* at p. 141

41. *Niranjan Singh Karam Sing v. Jitendra Bhimraj Bijjaya & Others.*, (1990) 4 SCC 76.

cannot be expected of the High Court also to take, all that the prosecution states as truths. To project the rightness and correctness of the High Court exercising inherent powers under section 482 of Cr.P.C. reference is made to other authorities.⁴² In *State of U.P. v. O.P. Sharma*,⁴³ inherent powers were invoked. This was found unwarranted. The Supreme Court citing *Prithichand*⁴⁴ narrow down the scope of inherent power saying that it is settled law. Inherent Power is exercised in exceptional cases only. High Court is given instructions to take great care while scrutinising FIR/Charge Sheet/ Complaint, High Court is to see whether the case is the rarest of rare cases. For this, the gist of the matter is to be gone into. To see whether an allegation constitutes offence, the Court has to weigh the pros and cons while examining the charge-sheet, statement of witnesses etc. The Court shall not evaluate evidence, because it is the function of the trial court. A prima-facie consideration is sufficient. If the conclusion is that no cognizable offence is made out, High Court can quash the charge-sheet "But, only in exceptional cases". That is in the rarest of rare cases of malafide intentions of the proceedings to wreak private vengeance, process of criminal law is availed of on laying a complaint/FIR/Charge, itself does not disclose at all any cognizable offence. The court may embark upon consideration therefore and exercise power".

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

42. *State of Himachal Pradesh v. Pirthi Chand & another.*, (1996) 2 SCC 37.
State of Bihar v. Rajendra Agarwalla., 1996 (8) SCC 164.

43. (1996) 7 SCC 705.

44. (1996) 2 SCC 37.

ensure the ends of justice. In *Rajendra Agarwalla*⁴⁵ case also the Supreme Court held that Powers under section 482 Cr.P.C. should be very cautiously used. Only when a court comes to the conclusion that there would be manifest evidence and came to the conclusion".

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

45. (1996) 8 SCC 164.

46. *Keshub Mahindra v. State of M.P.*, (1996) 6 SCC 129.

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

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

xii. Power as Means to an End

The above narration of the chief events of litigation in respect of *Bhopal Gas Tragedy* case is to show the ramifications a particular case can assume. The social factors and the levels of public opinion mentioned above takes note of the temperament of the judiciary. It invites our attention to the discretion enjoyed by the judges of the High Court and Supreme Court. The sovereign function of law is to achieve social harmony, social peace and social security. Put in other words as Prof. RWM Dias did, law is a "means - to - an - end".⁴⁷ The 'end' is justice. Dias elaborates the relevance of justice in res^{olv}ing

47. RWM Dias *Jurisprudence*, Butterworth & co, First Indian Reprint (1994), p. 44

disputes. The position of British High Court is strategic in this respect. The decision of the High Court is law and are binding on subordinate authorities.

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

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

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

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

48. *Id.* at p. 127.

49. *Id.* at p. 151.

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

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

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

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

50. M.S. Dockray, "The Inherent Jurisdiction to Regulate Civil Proceedings", (1997) L.Q.R. 120

yester years need not be applicable as such today. One can glorify the rules and principles embodied in Codes and Acts.⁵¹ Drawing inspiration from the age of automatic machinery, the author talks of a machinery of law created by the ingenuity of the civilised man. A uniform and consistent style is envisaged in the administration of justice. The author's confidence is brimming to the full, when he states that in such a situation.

"To administer the law for a judge in the present day, or atleast should be merely to solve a problem of mathematics. If two is added to two, the result if four"⁵²

The author sounds Utopian when he states that;

"The legal rights of every individual are as safe as a balance in a Bank of England Pass Book. If a judge falls in error, in solving a problem, he must be taken to task, the problem must be solved again by a still more competent brain employed by the community as its agent - over appellate court - and justice done"⁵³

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

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

51. M. Harish Chandra Mittal, "Law versus Judicial Discretion", AIR 1927 J. 29.

52. *Id.* at p. 30.

53. *Ibid.*

an answer and announce the way he has reached it"⁵⁴

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

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

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

54. *Ibid.*

55. S.N. Narahara Ayya, "A Criticism on Law Versus Judicial Discretion" AIR 1927 J. 56.

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

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

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

gap between the two is bridged. It is this attempt to bridge the gap which occasion the development of New Jurisprudence."⁵⁶

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

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

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

56. J.S. Varma, J, "New Dimensions of Justice", (1997) 3 SCC (J) p. 4.

57. *Id.* at p.4

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

The decision must provide the bedrock of new juristic principles, or for application on all similar situations. That is the beginning of a new dimension. It is based conceptually on a new dimension. This principle enriches the existence of law and advances towards the goal of law as it ought to be. The decisions of the Supreme Court in *Bhajan Lal's* case,⁵⁸ *Pepsi Foods*⁵⁹ etc. belong to this category where, pressing inherent powers in to action, court has evolved a new dimension to the administration of justice. There are different facts involved, they include interpretation of statutes, interpretation of constitution, guidelines for exercise of discretion etc. Among the above, the guidelines for exercise of discretion is relevant in the matter of inherent powers. When vast power like inherent powers are applied in different High Courts there must be consistency and uniformity. But, it is difficult to achieve this quality. But, the Supreme Court as the summit court, can lead the thinking of the High Court through decision like *Madhu Limaye*,⁶⁰ *R.K. Rohtagi*,⁶¹ *Bhajanlal*,⁶² *Common cause*,⁶³ *D.K. Basu*⁶⁴ etc. This will help to reduce the Babel of voices heard from among the High Courts being converted to

58. AIR 1992 SC. 604

59. 1998 SCC (Cri.) 1400.

60. AIR 1978 SC. 47

61. AIR 1983 SC. 67

62. Ref. *supra* n. 58

63. (1996) 4 SCC 33 & 1996 (8) SCALE 557

64. AIR 1997 SC. 610

intelligible sounds of justice.

"The evolution of guidelines for general application to regulate exercise of discretion reduces to the minimum the area of individual discretion. The underlying principle in the guidelines is based on a juristic concept. This is true also for the sphere of inherent powers of the court. Framing of guidelines to regulate exercise of executive discretion to reduce possibility of arbitrariness has also gained roots in the system. There are some obvious methods for the progression of law towards justice by the judicial process".⁶⁵

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

"Rule of law in developing countries with new political philosophy in a welfare State is significant to influence the trend of modern jurisprudence. Judiciary's role in giving expression to the Constitution and the laws for doing justice in the cause is instrumental in the development of new dimensions of justice. Judicial process as a mission seeks justice and tries to do justice. It is a function of balancing interests."⁶⁶

65. Ref. *supra* n. 56 at p. 5

66. *Id.* at p. 10

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

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

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

67. *State of Kerala v. O.C. Kuttan*, 1999 (1) KLT 747 (SC)

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

PART - II
HISTORY AND PHILOSOPHY OF
INHERENT POWERS

CHAPTER - I**INHERENT POWERS :**
GENESIS OF THE CONCEPT

Power is the manifestation of authority. In human societies organized activities started from the dawn of History. 'Inherent Power' as a juristic concept does not have a clear and uninterrupted history. As the etymology of the word connotes it is the power of the court of law. Courts must have power to adjudicate. The source of the power is law. Law, enacted by legislature, or laid down by superior courts, or emanated from usage and custom, or derived from equity, or evolved from religious texts, or recognised from the thinking of philosophers, or encapsulated in maxims, confers the power on the court. But, when the law is not clear, or a specific law is absent, then also the courts must have power. Such power is inherent in the court. Even without being specifically called by any name the court has power to deal with unprecedented, unforeseen and unanticipated situations. The origin of this power, inherent power, is inextricably intertwined with the judicial process. Today the concept of inherent power has earned a place in the province of jurisprudence.

In the above situation to understand the acceptance, prominence and recognition of the concept of inherent powers in the realm of jurisprudence one has to assess the relevance of the various factors and forces which contributed to it. Similarly, when the examination of the concept is in relation to the criminal justice system and in respect of the High Court a glance through the major developmental events

in the legal and constitutional history of India is also required. This includes the evolution of judicial institutions in India during the modern period culminating in the establishment of the High Courts in 1862 and the legislative process which saved and preserved the inherent power of the High Court through the Criminal Law Amendment Act of 1923. With this amendment section 561-A of the Code of Criminal Procedure, 1898 was incorporated.¹ When the Code was amended in 1955 this provision was left untouched. When the Code was reenacted in 1973, section 482 of the new Code became the repository for the provision in section 561-A of the earlier Code. The rest is present history which tells us how this power is exercised by the High Courts to give effect to the orders passed under the Code, or to prevent the abuse of the process of the court or otherwise to secure the ends of justice.

i. Judicial Bases of Inherent Powers

While diagnosing the juridical bases of inherent jurisdiction I.H. Jacob argues that the very nature of the court as a superior court of law a special power as we understand by inherent power is necessary.

"For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused"²

According to the jurist "such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute".

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1. S. 561-A, Cr.P.C. 1898, Ref: n. 25, Introduction
 2. I.H. Jacob, "The inherent jurisdiction of the Courts", (1970) CLP, Vol 23, p. 23at p. 27.

In the absence of such a power the courts remain only as formal organs without substantial power. Inherent power enables a superior court to fulfil the function of a court of law. In *Connelly v. D.P.P.*³ the court of Appeal has unequivocally accepted it. "The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner".⁴

Even in the Anglo-Saxon jurisprudence and common law realm one finds the idea of the inherent power exhibiting an uncertainty. After going through the areas of adjudication where the terms 'inherent power' and 'inherent jurisdiction' occur one jurist wonders.

"Is this list of examples drawn from a single jurisdiction, or is it a cocktail of unrelated topics?"⁵

After commenting that the inherent powers have a considerable history and the powers were in operation long before the term inherent jurisdiction began to be used to explain and describe this, M.S. Dockray refers to the oldest use of the term quoting from a Report of the Select Committee of the House of Commons,⁶

"The oldest use of the term seems to be found in the power to punish contempt, which before 1875 was sometimes, but not invariably, said to be inherent.

For example,

3. [1964] A.C. at p. 1301.

4. Ref: *supra* n-1 at pp. 27-28.

5. M.S. Dockray, "The Inherent Jurisdiction to Regulate Civil Proceedings", (1997) 113 L.Q.R. p. 120 at p. 121.

6. *Id.* at p. 122

Courts of justice in Westminster Hall have inherent in them the summary powers of punishing such contempts..... without the intervention of a jury".⁷

The Common Law powers of the courts to amend the court's record, to stay actions, to prevent abuse of process or to control proceedings were exercised by the courts. But, the phrase inherent powers was not used. Terms such as "general jurisdiction" or "original powers", or simply "jurisdiction", were used to refer to power of this sort. Now all these are examples of inherent powers. In *Metropolitan Bank v. Pooley*⁸ the House of Lords held that:

"from early times (rather think, though I have not looked at it enough to say, from the earliest time) the court had inherently the right to see that its process was not abused by a proceedings without reasonable grounds"⁹

ii. British Administration of Criminal Justice

When the genesis of the inherent powers of the High Court is traced, one has to traverse the immediate past of the judicial process. In India, by immediate past what is meant is the modern period, to be precise, the British period. For this, one has to go through the history of administration of justice in India. The story of administration of justice in India, during the British period, is told through events from 1600 to 1950 A.D. Establishment of judicial institutions form a remarkable component of history. A remarkable point in the evolution of judicial institutions during the British period occurred with the establishment of the chartered High Courts in India in 1862.

7. *Ibid.*

8. (1885) 10 App. Cases 210 at p. 220.

9. Ref. *supra.* n. 5 at p. 123.

The High Courts became the highest judicial organ, second only to the Privy Council. Various jurisdictions were vested in the High Courts. Absence of substantive laws made it imperative, for this institution to exercise a high doze of inherent powers. Even after the constitution and the establishment of the Supreme Court, there has not been any dimunition in the status or powers of the High Court.

According to H.M Seervai-

"Few British institutions commanded greater respect in India than the High Courts. It is unnecessary to stress the importance of a highly trained, incorrupt and fearless judiciary, especially in a federation where the judiciary has the power to declare laws and executive acts void as violating the Constitution. Following the British precedent, our Constitution provides that the judges of the Supreme Court and the High Courts shall hold office during good behaviour and can be removed only for proved misconduct or incapacity, by a process analogous to impeachment."¹⁰

iii. Sociological Evolution

Man lived on earth as Tribes, nomads, and sociologically identifiable groups. When society developed as an institution connecting man and man, an atmosphere of human action and interactions also developed. He developed economy. At first, it was subsistence economy. Then, there was surplus. Then, there was accumulation of wealth. Wealth was used by man to dominate over other men. Thus, commenced the political organization of society. State was the prod-

10. H.M. Seervai, *Constitutional Law of India*, Vol. II, 3rd Edition, Reprint in 1986, p. 2182.

uct of this new dimension. Gradually, state became a strong institution capable of controlling all other institutions. The State was the embodiment of all accumulated power of human activities. State ruled men, State protected men - their lives and properties and State protected itself from outside intrusion.

When State emerged as a lasting institution, there required legitimacy for the activities of the State. This could be obtained only through a body of laws. The laws in the earlier period were inextricably connected with morality, religion, sociology and philosophy. In ancient India, all legal principles were to be found in the religious literature. Administration of justice became an important function of law. Justice came to be recognised as the important interest of all human beings. Interest in life, interest in family, interest in property, interest in position; all led man to think of justice, and to expect justice. State was the source. State ruled by the King was expected to maintain law and order. Even the King was expected to be under the laws. It is more a matter of culture than civilization, that man shall respect others and by respecting others, their interest, safety, and security shall also be secured. The King was all powerful. But, he had to act under law. In India, the concept of law was contained in the larger concept of Dharma. "Adharma" was against law and it was not tolerated. Law was defined in this context as a power, as a source of inherent powers controlling one and all. The 'Brihatharanyakopanishad' gives a definition of Dharma (Law).

"Law is the King of Kings,
Nothing is superior to law,

The law aided by the power of the King,
Enables the weak to prevail over the strong"¹¹

Dr. S. Radhakrishnan commented on this concept, in the *Principal Upanishad* thus:-

"Even the Kings are subordinate to Dharma, to the Rule of Law".¹²

This being the position of law, Administration of justice according to law became popular.

iv. Ancient and Medieval Period: Vedic Dharma, Marathas and Mughals

Indian legal history in the ancient and medieval period, takes its inspiration from the political organization. The empires which rose and fell in the Indian sub continent from the days of Nandhas to the days of Mughals and Marathas contributed their might to the development of a native, indigenous jurisprudence. In the ancient period, it was rooted in Smrithies, Sruthies, Vedas, Vedanthas etc. It was the speciality of the Savants, to think of and speak of Dharma. In the medieval period, the Sulthans and Mughals gave a new dimension to the administration of justice. Their activities prompted the historians to call their rule islamic and the justice administered, the islamic variety of the justice. There was action and interaction between the pristine Indian philosophy and the Islamic philosophy. Since, the rulers were interested in fighting battle, and scholars were not interested in developing a jurisprudence in the changed context, the administration of justice was in a fluid state, sans laws, sans courts,

11. M. Rema Jois, *Legal and Constitutional History of India*, Vol. (1), (1990),p.10.

12. *Ibid.*

sans justice, sans judges, sans everything. When the British reached the Indian soil, in the early years of the 17th century, the Indian scenario was of a medieval, backward looking, superstitious, stagnant society, unaware of the great possibilities of the world around. It was the best of the times for the West and it was the worst of times for the East. It was the age of wisdom for the West and it was the age of foolishness for the East. It was the spring of hope for the West and it was the winter of despair for the East,¹³ and then Westerners came, to India and the East, riding on the waves of renaissance, reformation and geographical discoveries.

v. British Period

The historic events which marked the advent of the Westerners into the East was Vasco De gama's successful landing at Calicut. Subsequently, more Europeans came. But, for the relevance of the discussion in this study, the arrival of the British is more significant. The British connection with India, technically begins in 1600 A.D. when Queen Elizabeth issued a charter establishing a company of merchants for conducting trade with the East. The first batch of British Merchants reached the Indian shores in 1608 at Surat, which was a major international port of the Mughals. Then, India was only a geographical expression. Mughals dominated a substantial territory, but there were the Rajapuths, the Marathas, and the southern Kingdoms, and a number of small principalities which owed allegiance to the big ones. There was utter chaos and confusion so far as the political organization of the peninsula was concerned. The British had only a commercial interest in the beginning. But, they soon de-

13. This comparison is analogous to the opening sentences of Charles Dickens' Novel *A Tale of Two Cities*.

veloped economic interest, military interest and political interest. When political interest got established, all paraphernalia of polity came with it, including the administration of justice, legislative activities, executive power of the State, revenue administration, defence, maintenance of law and order, public services etc. Thus, the modern State was born in India, with the active involvement of the British. A random look into the history shows that legal and constitutional developments occurred simultaneously with the political, military and economic developments from 1600 to 1950 A.D.

vi. Anglo-Saxon Jurisprudence

The legal system which we have inherited today, has the legacy of Anglo-Saxon jurisprudence writ large on it. The British successfully dovetailed their system of jurisprudence with the disjointed systems in India. The story of Indian Legal system from 1600 to 1950 A.D. is gathered from the Legislative, Judicial and the governmental activities of the period. History of Britain during this period gives us important lessons in the development of their State, and their legal system. Establishment of *curea-Regis* which became parliament subsequently, the Privy Council, and the development of the legal system in England, provides enlightenment for India also. When, the British history is punctuated by epoch making events like signing of Magna Carta, by King John in 1215, Petition of Rights, 1629, Bill of Rights in 1688, the Act of the Settlement in 1781, the Reform Acts of 1832, to 1855, Parliament Acts of 1911 and 1949 which metamorphosed the Indian jurisprudence and supplied it a colour and character of the British system of life under the British system of administration.

During this period, with British influence, Changes were introduced in India's legal fabric also. A random acquaintance with the development of laws from 1600 to 1950 A.D. takes us to the Charter of 1600, Charter of 1611, Charter of 1664, Charter of 1720, Charter of 1762, Charter of 1753, The Regulating Act of 1773, the Charter of 1774, Act of settlement 1781, the Pitts India Act, 1784, Charter Act of 1793, Charter Act of 1813, Charter Act of 1833, and Charter Act of 1853. All India Legislative Council established in 1833 was empowered to make law for all persons and all courts. Earlier, laws were to be registered with the Supreme Court. Now, laws made by the Central Legislative Council became binding on the Supreme Court and subsequently the High Courts also.¹⁴ Then came the Revolt which was a medieval, feudalist upheaval, which ultimately enabled the British crown, to further its strangle-hold over India. Power was transferred from the East India Company to the British crown. Queen of England proclaimed in 1858, that India formed a part of the British empire and all the assets and liabilities of the company stood transferred to the British crown. With this started an era of codification, era of centralised administration with major branches of law, codified and implemented including Civil Procedure Code, India Penal Code, Criminal Procedure Code, etc. They were followed by the Indian Contract Act, the Transfer of Property Act, the Indian Evidence Act, Negotiable Instruments Act, General Clauses Act, etc. British parliament also contributed in creating a tempo where by the Indian system emerged forward. After the Revolt, Indian Council Act of 1861 was passed by the Parliament. It was followed by the Indian Council Act, of 1892. The Indian Council Act of 1909 otherwise called

14. Ref. *supra* n. 11 at pp. 199-200

Minto-Morley reforms further advanced the development. The Government of India Act, 1919, which is otherwise called the Montague Chelmsford Reforms came as another milestone legislation. The Government of India Act, 1935 was the premier legislation forming part of future constitutional activities in India. The last major legislation passed by the parliament was the Indian Independence Act 1947. As per the provisions of this act, two dominions were created - Pakistan and India - with provisions to constitute institutions for drafting constitution and inaugurating their own independent Republics, which India realised on 26th January, 1950 with the inauguration of the Constitution of India. Within this framework functioned, all departments in India.

vii. Constitutional History of Courts

The administration of legal justice in the above context is discussed hereunder. The events which culminated and led to the drafting of the Indian Constitution, started from 1600 A.D. Similarly, the functioning of the judicial institutions also started during the above period and got transferred to their respective positions under the constitution of India, which includes their history, and performance till this date.

Administration of justice in the British India started on a rudimentary basis. After the establishment of the Surat Presidency in 1608 there were no laws and there were no courts. Nor was there any who felt for such courts because the British was not a force in India. The Indian society enjoyed the legacy of the Sultans, and the Mughals, and their system of administration including the Jagirdhari system, Ryothwary system and Mansab dari system, the Toddermal's

Bandobast, the Chouth and Sardeshmukhi of the Maraaths, etc. But, the British opened their innings on a very humble note, with the President and council at Surat. Their jurisdiction was administration of the Company's people. Not being satisfied with Surat, they proceeded to the South and reached Madras, which was "Madrasipattanam". The local Raja allowed them to establish their factory at Madrasipattanam and to fortify it as Fort St. George. Thus, came into existence the Black Town and the White Town. The White Town was the area inside the Fort and the Black Town was that which surrounded the Fort, where the Indians settled. This was around 1639.

In the White Town, there was no systematic court. In the establishment there was an Agent and Council, representing the President of Surat under the Surat Presidency. But, in the Black Town, an indigenous system of administration of justice existed. This is the meeting point of the occidental and oriental systems in the legal history of India. The name of the Court was Choultry and the name of the judge was 'Adhikaari'. Thus proceeded the administration of justice in India. The Choultry court gradually came within the control of the Company and 'Adhikaari' was replaced by a covenanted Civil Servant of the East India Company. Towards 1653, Choultry fell into oblivion. It had neither laws nor norms to guide it and to guide others. It was a court of summary jurisdiction, where the will of the 'Adhikaari' prevailed. After Choultry, with the promotion of the Agency in Madras to an independent presidency, in 1678 the Governor and Council in Madras constituted a High Court of Judicature for administration of justice. This was the first time when the nomanclature, the High Court of Judicature, was used in Indian scenario.

"In March 1678, the Governor and Council resolved that they would sit as a court on two days in a week to administer justice in all cases, civil and criminal, according to the laws of England with the help of jury of 12 men. This court was designated as the High Court of Judicature and was formally inaugurated on March, 27, 1678, at a public function".¹⁵

The High Court had appellate as well as original jurisdiction in the matter of administration of criminal justice. This was relegated to the background when the judicial charter of 1726 was issued. This system continued for sometime. Even the High Court of judicature had no laws to administer. It had only its inherent powers derived from the very existence of the court. Thus the High Court of Judicature functioned in Madras.

In 1686, the Admiralty court was established in Madras. Then there came the Mayor's courts of Madras in 1688. These courts also had no enacted or codified laws governing the jurisdiction or control the actions of the judges. The Mayor and the council members, called Aldermen, manned the Mayor's court, whereas the Admiralty court was manned by a judicial officer called Judge-Advocate. This was the first time when a professional expert was inducted into the system of administration of justice in India. The judge-advocate was to be a person learned in law. One Sir John Biggs was the first Judge-advocate, but the absence of laws and lack of professional competence made the two institutions function at daggers drawn distance, because their decision often ran counter to each other. The character and good sense of the judges were the only forces which gov-

15. M.P. Jain, *Outlines of Indian Legal History*, Wadhwa & Co. Reprint 1993 at p. 14

erned the functioning of this court. In other words, Justice, Equity and Good Conscience governed the functioning of these courts. Whenever the Judges lacked in sense of equity and good conscience justice was a sure casualty. Commenting on the administration of justice in Madras between 1639 - 1726, M.P. Jain makes the following observations,

"Thus justice was rough, severe and not according to any fixed system of law but according to judges' discretion."¹⁶

In the meantime, Bombay and Calcutta Presidencies were established in 1660 and 1690 respectively. Administration of justice in Bombay and Calcutta had never been taken up and the three presidencies had nothing in common among them in the matter of administration of justice. Then an effort was made, on the request of the East India Company, by the British Crown to introduce a uniformity and consistency in the three Presidencies. Of course, commercial activities of the British were gaining momentum and their economic power was fast being consolidated. An organized judicial institution on a systematic and uniform fashion, was then necessitated because the sand under the feet of the Indian Rulers was being fast drained by the British, leading to military, commercial and political hegemony. Thus, the Judicial Charter of 1726 was issued. With this, India was to be given a face lift in the Administration of justice. A Mayor's court and a Court of Record were envisaged in the three presidencies. Local legislatures were also constituted. These legislatures were to enact laws on two conditions. Firstly, such laws should not be against the laws of England. Secondly, they should not be against

16. *Id.* at. 76

natural justice. The output by the local legislatures was very scant. The Mayor's Court and the Court of Record in effect had no body of laws for effectively administering justice. They had more or less to bank heavily on the concept of justice, equity, and good conscience. This is another name of inherent powers. According to M.P. Jain,

"The Mayor's Court dispensed justice not according to any fixed law but as its ^{charter} ~~chart~~ laid down in a summary way to according to justice and good conscience and laws made by the company".¹⁷

He quotes the celebrated historian, Kaye to drive home the shallow state of affairs, "Justice gained little by the establishment of the Mayor's Court", for these courts were composed of "the company's mercantile servants - men of slenderest legal attainments, and the slightest judicial training."¹⁸

Inherent powers operate in the absence of specific enacted laws. It is the cardinal principle of equity. This dictum of inherent powers remained as the chief inspiration for all courts to come in the modern period. This is inspite of the intense legislative activity that followed during the 18th, 19th, 20th centuries. Even then, the proliferation of laws has made inherent powers more relevant.

After the judicial charter of 1726, came the regulating Act of 1773, One of the provisions of the Act was to enable the British Crown to issue charters to establish Supreme Courts at Calcutta, Bombay and Madras. Through the Regulating Act, the political and legal activities shifted from Madras to Calcutta and Calcutta became the capital of

17. *Ibid.*

18. *Ibid.*

India till it was shifted to Delhi in 1911. The Supreme Court at Calcutta and other places also had to function largely on the principle of equity, justice and good conscience. There was no clear body of civil or criminal laws. The Supreme Court was a court of law as well as court of equity. The Supreme Court of Calcutta had civil and criminal jurisdiction. Appeals were to the Privy council. The presence of inherent powers in the Indian judicial process manifesting with the Supreme Court of Calcutta.

"The Supreme Court was authorised to frame such rules of procedure, and to do all such acts, as were necessary for the administration of justice and due exemption of all powers granted to it".¹⁹

The Supreme Courts were crown courts because they were established through the Charters issued by the British Crown. They had jurisdiction only over the Europeans in the Presidencies. They had excluded the natives from their jurisdiction. They had a provision for engaging pleaders for the first time. But, it was the haven for the Europeans. The significance of Supreme Court at Calcutta was the change to parliamentary enactment in the matter of administration of justice.

"With the passage of this Act, the era of Royal charters gave place to the era of parliamentary enactments. Henceforth, parliament enacted a number of Acts, usually one Act at an interval of twenty years each, to renew the Company's Charter. On each occasion the affairs of the Company were subjected to close investigation and scrutiny and each time the

19. *Id.* at p. 70

authority of the Crown and Parliament was tightened over the Company".²⁰

Simultaneous with this, the company had its own judicial set up. When Warren Hastings became the Governor of Bengal and subsequently, Governor General, he introduced three installments of judicial reforms, in 1772, 1774, and 1780. It is popularly known as the Adalath system. Hierarchies of courts were established with Civil and Criminal jurisdiction. In the Civil jurisdiction, there were Small Causes Adalath, Mofussil Diwani Adalath, and Sadar Diwani Adalath, with appellate jurisdiction to Privy Council, in England. This jurisdiction of the Privy Council started with the judicial Charter of 1726 lasted till 1949.²¹

In the Criminal side, Warren Hastings, established Mofussil and Sadar Nizamath Adalath. Between the two systems, attention was given to the Diwani Adalath, because they had jurisdiction to decide civil and revenue cases. Administration of criminal justice was left in the hands of native Muslim law officers, Khazies, the Mufties and Moulavies, where as Diwani Adalaths had collectors and covenanted civil servants of the company as judges. M.P. Jain speaks about the desperate situation in which administration of justice remained even during the adalath system.

"The administration of criminal justice had hitherto been completely left to the Muslim law officers. The mofussil fouzdari adalaths were manned by Kazis, muftis and moulvies. The shadow of the Nawab's authority was still suffered to exist in

20. *Id.* at pp. 67-68

21. *Id.* at p. 315

this sphere even though it had disappeared from all other spheres. The Sandar Nizamath Adalath sat at Murshidabad and was presided over by Raza Khan as the Naib Nawab. He thus controlled the entire criminal judiciary. He appointed and removed criminal judges at his pleasure, passed any sentences he wished and was subject to none and answerable to nobody. The control of the Governor-General and Council over the criminal judiciary was purely nominal and extremely feeble as has been pointed out earlier".²²

An improvement was perceptible in the matter of administration of civil justice. The so called Islamic criminal law had very little of rationale and scientific qualities of Islamic jurisprudence. So far as the Islamic rulers were concerned, expediency was their watchword. Consequently Nizamath Adalath worked without any legal backing. The only principle which they could rely on was Justice, Equity and Good Conscience. The General atmosphere regarding the administration of criminal Justice was one of neglect,

"Prompt execution of the law is the essence of criminal justice so that people are deterred from committing crimes, but proceedings of the criminal courts in those days were extremely tardy and dilatory"²³

After the Regulating Act of 1773 Sir John Shore developed a criminal procedure following the reformatory tempo created during Lord Cornwallis. Lord Cornwallis gave a thorough overhauling in 1793. He had disclosed the faulty state of affairs. The information col-

22. *Id.* at p. 129

23. *Id.* at p. 131

lected from the questionnaires sent to the Magistrate revealed the sorry state, which is reflected in the following words;

"The Muslim Criminal Law which in the opinion of Cornwallis was against Natural justice and a Human Society

Defects in the constitution, organization and administration of criminal courts."²⁴

Sir Elijah Impey's, regulations passed for cases not covered by the Plan of 1772 to be decided by Justice, Equity and Good Conscience.

"This provision gave the courts the power to decide cases in a just manner on questions not covered by the provisions of Hindu Law or Muslim Law. Though it gave a very wide discretion to the Judges to decide the disputes according to their ability, to meet the ends of justice, the expressions Justice, Equity and Good Conscience, themselves gave a sound guidelines and imposed the Judges to act in a fair and reasonable manner and helped the development of 'judge made' law, on various branches not covered by the personal laws".²⁵

Later Elphinstone's Code also recognised the principle of equity. The administration of justice with the company courts called Adalaths and the crown court called the Supreme Court, offered a paradoxical situation. These two systems of courts had very little in common between them. But, the system remained till the Revolt of 1857. The period upto 1857 is generally called early period. During this period lack of clarity of laws and well structured judicial institu-

24. *Id.* at p. 154

25. *Id.* at p. 35

tions made administration of justice onerous. Regarding the condition in the early settlements W.A.J. Archbold observes,

"with regard to the administration of justice, we must be precise. The whole question, indeed, bristles with difficulties, as can be appreciated by any one who reads Sir James Fitzjames Stephen's "Nunecomar and Impey". The more so as neither Parliament nor the charter nor the company in the early days ever took the trouble to make matters at all definite. We know that there was a good deal of difference between the position as it was *de jure* and what it was in reality, and this pretense if so we may call it is reflected in the legal situation"²⁶.

With the Revolt of 1857, the company was liquidated. The company's courts also disappeared. The fabric of administration was changed with the entry of the British crown, and therefore, the Supreme Courts also had to exit from the arena of administration of justice. Then came the modern period in the history of administration of justice in India with the Indian Councils Act of 1861. The Act provided for establishing chartered High Courts in Calcutta, Bombay and Madras. Thus, the institution called the High Court of Judicature came into existence in India. With the merging of two systems of judiciary after the Revolt of 1857 ensured the process of the High Court. The High Court Act, 1861²⁷ gave power to issue letters patent to the crown for establishing the High Courts at Bombay, Calcutta and Madras. The High Court had very comprehensive jurisdiction,

26. W.A.J. Archbold, *Outlines of Indian Constitutional History*, (1973) p.30

27. 24 and 25 Vict. C. 104

including inherent jurisdiction. As per section 9 Civil, Criminal, admiralty and testamentary jurisdictions were in the High Court. Section 15 provided for power of superintendence over all other courts.²⁸ Letters patent were the sources of the power of the court. Section 16 facilitated High Courts. The Crown could modify or revoke the letter patent²⁹. The tempo created in 1861 continued and it led to legislations like The High Court Act 1911³⁰, Government of India Act 1915, Government of India Act 1935, This development culminated in the establishment of Indian Constitution.

There was only the Privy Council above the High Court, having a superior jurisdiction. When the Federal Court was established in 1937 it was only having very limited jurisdiction. Even when Federal court (Enlargement of Jurisdiction) Act (Act 1 of 1948) was passed, it did not entirely abolish the jurisdiction of the Privy Council.³¹ It was the Constituent Assembly which passed the Abolition of Privy Council Act 1949 which came into force w.e.f October, 10, 1949. All the cases pending with the Privy Council stood transferred to the Federal Court. But, even the Act of 1949 saved the jurisdiction of Privy Council to deliver the judgment where they were reserved for orders.

"By virtue of this clause the last decisions were given by the Privy Council on December 19, 1949 and with these ended the jurisdiction of the Privy Council which functioned with distinction as the highest tribunal for British India, for two centuries".³²

28. *Id* at p. 201

29. *Ibid.*

30. 1&2 Geo. V.C. 18.

31. *Id.* at p. 218

32. *Ibid.*

The last judgments which were to be delivered by the Privy Council are *Govindaram v. Gondal State*,³³ and *Manmohan Das v. United Province*,³⁴

The Charter of 1865 issued to establish the High Court of Calcutta had contained the earliest traces of inherent powers, apart from the principles of equity which are generally attributed to inherent powers. The High Court had power to review decisions of the lower courts. Similarly, principles of equity could also be applied.³⁵ Clause 26 of the Charter of 1865 runs thus

"The High Court could review any decision rendered in criminal trial by one or more Judges of the High Court in the exercise of its ordinary original criminal jurisdiction."

Clause 19 provides for the law to be applied

"(a) In the Original jurisdiction the court was required to apply law or equity as would have been applied by the Supreme Court."

There was more definiteness regarding the proceedings.

"In criminal matters, in exercising ordinary original jurisdiction, the High Court was required to follow the procedure which was being followed by the Supreme Court and in all other cases the Criminal Procedure Code 1861."

Even then the administration of justice was in a haphazard man-

33. AIR 1950 P.C. 99

34. AIR 1950 P.C. 85

35. *Id.* at p. 201

ner. There was no fixed rules as is shown from trials of Mrs. Dawes, Gilbert and De Lima, a Portuguese national.³⁶

The quality of justice was very poor, which provided prior to the establishment of the Supreme Court.

"The quality of administration of justice during this period was crude. No principle of substantive or procedural law governed the judicial proceedings. Judgment-Debtors and Criminals were sent to prison for indefinite periods. In one case in Indian convict on a charge of murder was hanged and his body in chain was displayed at a prominent place. Apart from death sentence, mutilation of the limbs, branding and whipping, forfeiture of property and fine and banishment were the punishments which were being inflicted. The Governor and Council had the power to pardon death sentence. Englishman guilty of serious offences were being sent to England. Piracy was considered a serious offence punishable with death. Interlopers were tried as Pirates by the Admiralty Court. Robbery was punishable with death. For stealing, the punishment was slavery.

Thus the position during this period was, there was no standard or criteria for imposing penalties or methods of Execution. Conditions of imprisonment were horrible. The cases were decided, and quantum of punishment which had absolutely no relation to gravity of the offence was being imposed according to whims and Fancies and prejudices of Judges. The modes of punishment were generally inhuman and bar-

36. *Id.* at pp. 104-106

barous and was being used against those who were caught to deter others."³⁷

Section 19 of the Act of Settlement 1781 had recorded the courts power to form rules of power. There was earnest attempt to analyse the adalath of criminal justice then or on an insufficient measure.

viii. **Equity, Fair Play and Good Conscience as Guiding Principles**

The transition from the Company's Court and the Crown Court to the High Court was without any specifically enacted body of laws. Equity, fair play and good conscience provided the guiding principle. But, when the High Courts began to function, the codification of laws had already been set in. The first Law Commission under the Chairmanship of Lord Macaulay drafted the Indian Penal Code, along with it, the Civil Procedure Code and the Criminal Procedure Code were also introduced. Then came other important legislations. The High Court as a judicial institution came to stay. The High Courts in Calcutta, Bombay, and Madras function even today continuing with their legacy of the eventful past. Then there came High Courts of Allahabad, Lahore, Patna, Oudh and Kashmir. These High Courts also functioned along with the earlier High Courts even after independence. They get their respectful position with the Scheme envisaged under the Indian Constitution. The High Courts had as their apex court, the Privy Council. When the Government of India Act, 1935 provided for establishing the Federal Court., the prestige of the High Court remained. The Federal Court was meant for interpreting the provision of the Government of India Act, 1935. Then in

37. *Id.* at p. 108

1948 the Amendment of the Jurisdiction to the Privy Council was enacted in the Central legislature, where by the Federal Court began, to exercise the power earlier exercised by the Privy Council. But, when the Constitution of India, was inaugurated, the Federal Court was Christened as the Supreme Court of India and the Judges of the Federal Court sat as the first judges of the Supreme Court of India.

ix. Power to Issue Prerogative Writs

While elaborating the emergence of judicial institutions during the British period in India, one finds that till the establishment of High Courts in 1861, there was no uniformity or method in the administration of justice. The High Court had full jurisdiction including the power to issue prerogative writs. The High Court was the premier institution vested with the divine function of the administration of justice. It included jurisdiction in civil and criminal law. In 1898, the Code of Criminal procedure was enacted taking the provisions from all the earlier procedural criminal laws. The Code contained about 565 provisions, but even then the High Court had to face situations where specific provisions of law were not present in the matter of procedure. The Court could not escape from its duty to decide cases on the excuse that there was no law empowering it. Here in lay the significance of inherent powers of the Court. Through an amendment in 1923, the inherent powers of the High Court were saved by introducing section 561A into the Code of Criminal Procedure, 1898. It was not an introduction of jurisdiction. But, it was the discovery of an already existing jurisdiction. It was not a conferring of power through an Act of legislature. It was only recognition and preservation of a

power by the legislature. The power existed independent of any legislation. That is inherent power. The power that is available to a court even in the absence of all laws. The power that is necessary for doing "*ex debito justitiae*".

x. **Emergence of Inherent Powers**

While tracing the roots of inherent powers, it is ultimately found in the moral and ethical dimension of the human character, which the society has always valued much. A person who was in authority for administration of justice had to be conscious of the divine function he was to discharge. It could be a function having a bearing on the rights of other persons. An analysis of the developments reaching the establishment of judicial institutions and enactment of laws in the modern period would compel one to believe that inherent powers of the Court cannot be claimed by any peculiar legal system. In India, owing to the anglo-saxon influence, inherent powers were accessible to a court when provisions of law were either absent or silent with regard to a situation. Establishment of High Courts in 1861 was a landmark development in the story of the judicial process in India. Initially three High Courts were established in the three major presidencies.

"The High Courts were not only much better instruments of justice than the preceding courts, but also represented the unification of the hitherto existing two disparate and distinct judicial systems of the company's court and the Royal Court in each of the three presidencies of Bengal, Bombay and Madras. The process of establishing High Courts, initiated in 1861, continued to gain momentum thereafter, resulting in the creation of a number of High Courts in the various Prov-

inces in course of time. The High Courts occupy a respectable and significant place in the judicial hierarchy of the country".³⁸

The establishment of High Court provided a forum for the operation of inherent power. It marked the arrival of "a modern judicial system under various legislation".³⁹ It marked the blessings of Rule of Law in India. Under this the High Court also came under the operation of Rule of Law.

"The establishment of three High Courts is an important landmark in the legal history of India as it laid the foundation for development of a sound and firm judicial system in India".⁴⁰

The dual judicial system prevalent in the Presidencies town had contradictions between the Supreme Court and the moffusil courts. With the establishment of High Courts, a homogeneity was given to the judicial institution. The Supreme Courts which functioned in the presidency towns were the harbingers of the High Courts. Regarding the appointment of judges and jurisdiction of the court, High Courts inherited several aspects from the earlier Supreme Court. But the contradictions which existed prevented the Supreme Court from generating great interest.

"The general jurisdiction of the Supreme Court extended to the geographical limits of the concerned presidency town, beyond the presidency town, the court exercised a personal jurisdiction on a few categories of persons, e.g., British subjects and Company's servants. The court had only an origi-

38. Ref. *supra* n. 15 at p. 399.

39. Ref. *supra* n. 11 at p. 99

40. *Ibid.*

nal and no appellate jurisdiction, except in the single circumstance of a written agreement between an inhabitant of Bengal and His Majesty's subject in which the former voluntarily accepted the Supreme Court's jurisdiction. The Supreme Court had no jurisdiction in revenue matters. For the most part the court applied the English law though in certain cases it also applied the personal laws to the Hindus and Muslims. The judges of the Supreme Court were all barristers, sent out to India from England, they were appointed by the crown's pleasure. The Supreme Court's procedure was based closely on the model of the procedure followed by the courts in England. Before 1833, the Supreme Court was not bound by the Regulations of the Government unless registered with the court".⁴¹

But, the Supreme Courts derived their powers not only from statutes, but also from common laws and equity concepts. One important source of power was the inherent powers derived from the principles of justice, equity and good conscience. While tracing the history of common law and Equity in India it is found that no separate courts existed for administering equity. M.C. Setelwad in his book 'The Common Law in India' comments thus:-

"The Supreme Courts had both common law and equity jurisdiction. As courts of equity, they had power and authority to administer justice as nearly as may be according to the rules and procedure of the High Court of Chancery in Great Britain."⁴²

41. *Ibid.*

42. M.C. Setalwad, *The Common Law in India*, (1920) pp. 58-59.

In his book 'Outlines of Equity' J.R. Lewis observes that the equity jurisdiction was concerned with defects in law or the failure at Common Law.⁴³ According to him at the end of 13th Century those who could not get justice in the common law courts approached the King with petitions. The King referred the petitions to the Chancellor.

"(Chancellor) he was concerned with a supplementary jurisdiction remedying the defects of the common Law on grounds of natural justice and conscience".⁴⁴

Then it was thought aloud in judicial parlance whether Judicature Acts had fused law and equity? J.R. Lewis refers to the observation of Jessel M.R. in *Salt v. Cooper*.⁴⁵

"But, it was not any fusion of anything of the King, it was the vesting in one tribunal the administration of Law and Equity in every cause, action or dispute which should come before that Tribunal".⁴⁶

Lewis also refers to *Errington v. Errington*⁴⁷ where Lord Denning suggests that law and equity are fused.

In a sense these courts combining both common law and equity jurisdiction brought about in advance the fusion of the law and equity jurisdiction which was effected in England by the Judicature Act, of 1873 and 1875.

In India, however, law and equity were always treated as part of

43. J.R. Lewis, *Outlines of Equity*, Butterworth, London, (1968)

44. *Id.* at p.3

45. (1880) 16 Ch. D. 544 at 549 quoted *ibid.*

46. *Ibid.*

47. [1952] 1 All E.R. at p. 155, quoted by J.R. Lewis, in *Outline of Equity*, Ch. I.

the same system. We have seen how the principle of equity law came into existence as justice, equity and good conscience. Laws in India now recognizes no distinction between the legal and equity rights.

Meaning of Equity:-

"The law and equity which the High Courts enforced in the presidency towns were those which were being applied by the Supreme Court, on which the successor be in its appellate jurisdiction. Its role of decision was justice, equity and good conscience, which had served the Sadar Courts." ⁴⁸

Lord Denning examines the relevance of equity in the administration of justice. Equity is a concept capable of producing great result in the administration of justice. But, it has its own danger, if equity is administered by persons of doubted integrity and character. For this, Denning refers to the incident of the Chancellor's foot. The phrase the 'Chancellor's foot was first used by the very learned John Selden who was a little younger than Francis Bacon. In 1617 he wrote a brief discourse on the office of Lord Chancellor in England. Lord Denning quotes his words,

"Equity is a roguish thing; for law we have a measure to know what to trust to. Equity is according to the conscience of him who is Chancellor: as it is larger or narrower so is equity. This all one as if they should make the standard for the measure we call a foot to be the Chancellor's foot."⁴⁹

Lord Denning appreciates the charm of the above metaphor,

48. Ref. *supra* n. 42 at pp. 58-59.

49. Lord Denning, *Landmarks in the Law'* (1984) at p. 51.

which brings out the personnel element involved in the concept of equity at that time. Denning says that the concept varies as much as the foot of one Lord Chancellor varies from that of his successor. The decisions rendered by Lord Chancellor's varied depending on their concepts of equity and this prompted John Selden to define equity in the above manner. Denning explains the relevance of equity and this was a dominant factor in his thought process.

"In the 19th century the law of England was dominated by the difference between law and Equity. Law had its own strict rules. Equity was, or should have been more flexible. It was the means by which the needs of the people could be met. As Sir Henry Maine said in his *Ancient Law* (1861): 'Social necessities and social opinion are always more or less in advance of law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to reopen. The greater or less happiness of a people depends of the degree of promptitude with which the gap is narrowed'" ⁵⁰

The subject of equity is capable of being made a topic of further law research. Again on doing equity, Lord Denning refers to another decision:

"And it was the Privy Council in *Plimmer v. Wellington Corporation*, who said that..... the court must look at the circumstances in each case to decide in what way the equity can be satisfied' giving instances. Recent cases afford illustrations of the principle. In *Inwards v. Baker*, it was held that, despite

50. *Id.* at p. 197.

the legal title being in the plaintiffs, the son had an equity to remain in the bungalow as long as he desired to use it as his home. Dankwerts L.J. said, equity protects him so that an injustice may not be perpetrated" ⁵¹

Dicey also, like Denning, speaks of equity while talking on public opinion in influencing the judicial process. According to him,

"It is clear that the system of trusts invented and worked out by the courts of equity, has stood the test of times, just because it gave effect to ideas unknown to the common law, and at one period hardly appreciated by ordinary Englishmen". ⁵²

The morality of the courts at that time was higher than that of 'the traders or politicians' but it so happen that the ideas entertained by the Judges of that time had often fallen below the 'highest and most enlightened public opinion of that time.'⁵³ Referring to Ashbourn's Principle of Equity, ^{Dicey} ~~Dicey~~ under scores the relevance of equity:-

"As to equity - in 1800, the Court of Chancery had been engaged for centuries in the endeavour to make it possible for a married woman to hold property independently of her husband, and to exert over this property the rights which could be exercised by a man or an unmarried woman".⁵⁴

Dicey shows that particularly at common law, this principle was kept alive by the Court. At common law it was indeed the property of

51. *Id.* at p. 220.

52. A.V. Dicey, *Law & Public Opinion*, p. 368.

53. *Ibid.*

54. *Id.* at pp. 376 - 377.

the trustee, but he was bound in equity to deal with the property according to the terms of the trust, and therefore in accordance with the wishes or directions of the woman. There they constituted the 'separate property' or the separate estate of the married woman.⁵⁵

Equity has grown to a stature similar to the other principles in common law. If we follow 'in the very most general way', without attempting to go into details, the course of parliamentary enactments from 1870 to 1893, the closeness of the connection between 'a whole line of Acts and the rules of equity, or in other words, a body of already existing judge-made law' will become apparent.⁵⁶ Dicey also speaks about the draw back of equity. According to Dicey rules of equity has delayed law reforms:

From the above discussion on the dynamics of equity it is clear that equity is a source of power to the court to temper adjudication with fairness, justice and morality. According to J.R. Lewis principles of equity provides a sort of flexibility to the entire machinery of the law.

"The necessity for an equitable jurisdiction arose in the first place out of the fact that the law could not provide a remedy in all deserving cases. Equity may, therefore, be regarded in the first instance as a system of rules based on fairness and morality (or natural justice, to use a more precise phrase) but existing outside the rules of law. These rules and principles are therefore a 'gloss' upon the law, the oil which lubricated the creaking medieval machinery of the law, which still

55. *Ibid.*

56. *Id.* at pp. 389 - 390.

today (within limits) provide an escape from the strict application of certain legal rules".⁵⁷

Dias gives a reasonable account of the relevance of equity in the administration of justice.

"In one sense equity is synonymous with justice. In so far as the purpose of law is to do justice, Cicero spoke of acquit-als as the principle which makes possible any systematised administration of law, namely, deciding like cases alike".⁵⁸

A need for justice developed over and above the available law and Aristotle spoke of Equity as a need to correct legal justice. Broadly speaking, one function of equity is to mitigate in various ways the effects of the strict law in its application to individual cases and the other function is to procure a humane and liberal interpretation of the law itself.⁵⁹

Equity arises out of the process of law in its applications and it is fashioned by the hands of those charged with that task. A parallel is found in the Roman law. There the rigidity and shortcomings of the civil law were remedied by the Praetors similar to the Chancellors in English law. As with the Roman Civil law, the common law, too, became technical, so appeals were addressed by aggrieved litigants to the King himself to give relief as a matter of conscience. The King handed these petitions to the Chancellor, an ecclesiastic in the early days and the 'Keeper of the King's conscience'. Thus, there grew up a new jurisdiction in Chancery. 'The Praetors and Chancellors are

57. Ref. *supra* n. 43 p. 7.

58. R.W.M. Dias, *Jurisprudent* (1994) p.221

59. *Id. at* pp. 319-320.

the parallel sources of equity in the two systems'.⁶⁰

Equity in the Roman context is Praetorian law and in the English law it is the Chancellor's law. The Roman jurist Pappinina explained thus:-

"Praetorian law, he said is what the praetors introduced for the purpose of assisting, supplementing and correcting the civil law. *jus praetorium est quod praetors introduxerunt adjuvandi vel supplendi vel corrigendi juris civilis gratia*".⁶¹

There even arose conflict between the common law and English law in the Equity. But, ultimate victory was brought by Equity.

"The judicatore Act, 1873, provided, Generally in all matters not herein before particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail".⁶²

But, those who relies the merit of equity tried to resolve the conflict between the Equity and common law. Maitland in his work Equity, suggested thus:-

"Equity had come not to destroy the law, but to fulfil it. Every jot and every title of the law was to be obeyed, but when all this had been done something mighty yet be needful, something that equity would require"⁶³

60. *Ibid.*

61. *Ibid.*

62. *Ibid.*

63. *Id.* at p. 321

Dias also attempts an analysis on the positive aspects on the principle of equity. Principles of equity always gave leverage to Judges with imagination and foresight to go everywhere with a sort of judicial activism. This is evident from Lord Denning, who realised the merit of equity in *Solliay v. Butche*,⁶⁴ *Central London Property Trust v. High trees hosue*⁶⁵ and *Bendal v. MC Whirter*.⁶⁶

Dias gives a graphic description of right to equity cristalised in law as in the case of inherent powers of High Courts under section 482 of the Code of Criminal Procedure.

"During the formative periods of Roman and English law the creative function of equity was not marked. In the more developed law it tended to be less active, but remained in the form of a cloud of principles to guide and ameliorate the application of the law, eg no one shall profit from his own wrong, nor be unjustly enriched at the expenses of another. These and other such principles were crystallised in the concluding Title of the Digest, and it was these that came to be absorbed as the fundamental principles of modern civilian systems. In English law, which did not 'receive' Roman law, equity solidified in time in much the same way as the common law had done, so much so that there has been a call for a revival of the old spirit of equitable justice. Lord Denning, in particular, ever since he became a High Court Judge, has been foremost in striving to inject a new equity into the law.

If the rules of equity have become so rigid that they cannot

64. [1915] 1 K.B. 671.

65. [1947] K.B. 130.

66. [1952] 2 K.B. 466.

remedy such an injustice, it is time we had a new equity, to make good the omission of the old.

Some of his experiments have met with success, others have not. Perhaps the reluctance of some of his colleagues to go along with him reflects the age-old need to strike balance between certainty and adaptability".⁶⁷

xi. High Courts' Jurisdiction

When the High Courts were established, a new era opened in the judicial set up in India. It was an era of transformation in the political leadership of the country also. When the Indian High Courts Act was passed by the British Parliament on the 6th day of August, 1861 titled as "*An Act for establishing High Court of judicature in India*",⁶⁸ it was considered to be another attempt to chastise the institutions administering justice. But, the provisions of the High Court Act infused greater degree of professionalism and rationale basis to the administration of justice. The Act of 1861 delineated the feature of the High Court:

"It vested authority in Her Majesty to issue letters patent under the Great Seal of the United Kingdom, to erect and establish High Courts of Judicature at Calcutta, Madras and Bombay. The High Courts were to come into existence at such time as Her Majesty might deem fit. Each of the High Courts was to consist of a Chief Justice and as many puisne judges, not exceeding fifteen, as Her Majesty might from time to time think fit to appoint. The judges were to be selected

67. Ref. *supra* n. 58 p.

68. Ref. *supra* n. 15 pp. 407-408.

out of the following categories of persons. (1) Barristers of not less than five year standing: (2) Members of the convened civil service of not less than ten year's standing, who shall have served as zillah judges, for at least three years of that period, (3) persons "who shall have held judicial office not inferior to that of principle sadarameen or judge of a small cause court for a period of not less than five years". (4) Persons who have been pleaders of a Sadar court or High Court for a period of not less than ten years". It was however laid down that not less than one third of the judges of a High Court, including the Chief Justice, were to be barristers, and not less than one-third of judges were to be members of the covenanted civil service. The Judges of the High Courts were to hold their office during Her Majesty's pleasure."⁶⁹

The jurisdiction of the High Court was substantial; each of the High Courts was to have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for in relation to the administration of justice in the presidency for which it was established, as Her Majesty might grant and direct by such letters patent. The letters patent could impose directions and limitations as to the exercise of original, civil and criminal, jurisdiction beyond the limits of the presidency towns. Subject to any directions contained in the letters patent, and without prejudice to the legislative powers of the Governor - General in council, each High Court

69. *Id.* at pp. 408-409.

was to have and exercise all jurisdiction and every power and authority whatsoever, "in any manner vested in any of the courts" abolished. The High Courts were further authorised to exercise, until the crown provided otherwise, the whole of the jurisdiction being exercised at the time by the Supreme Courts of Calcutta, Madras, and Bombay, over inhabitants of such parts of India as might not be comprised within the local limits of the High Courts. All provisions of the Acts of Parliament, or of any orders of Her Majesty in Council or charters or of any Acts of the Indian Legislature, applicable to the Supreme Courts were to apply to the High Courts as well so far as they were consistent with the provisions of the Indian High Courts Act and the charters issued under it, subject to the legislative power of the Governor-General in Council." ⁷⁰

xii. Supervisory Jurisdiction

In addition to the above, the High Courts were to have supervisory jurisdiction. The institution of High Court became the success story and subsequently High Courts were established in other areas. The Court had extra-ordinary jurisdiction in Civil and Criminal matters.

"As regards the criminal jurisdiction the High Court was to have an ordinary original criminal jurisdiction within the same local limits as its ordinary original civil jurisdiction. Beyond these local limits, this jurisdiction of the High Court also extended in respect of such persons, eg. British subjects, over which the Supreme Court enjoyed such jurisdiction - In exercise of its ordinary original criminal jurisdiction, the High

70. *Id.* at pp. 412-413.

Court was empowered to try all persons brought before it in due course of law. These clauses in the charter did not effect any change in the administration of criminal justice in the presidency town or in respect of persons subject to its criminal jurisdiction, residing in the interior of the country. The position was exactly the same as it existed under the Supreme Court".⁷¹

xiii. Inherent Powers

Justice is the chiefest necessity of man and justice should be administered by the court and by the court alone. For this, the High Court must have power unaffected and unlimited by any of the provisions in any of the laws. This is inherent power. Such inherent power is required to give effect to any order passed under any law; to prevent the abuse of the process of the Court; and to secure the ends of justice. In criminal law, the principle of inherent power has been the subject matter of *intense judicial debate, after independence when reform of judiciary was thought of, simultaneously requirements of laws were also contemplated*. The Law Commission came out with its report. The report touched the inherent powers of the court also. While there was all round support for simplifying the procedure, to avoid delay in the administration of criminal justice, there was effective support for retaining the inherent powers of the High Court. To unravel knotty situations of criminal law, the Law Commission suggested that inherent powers be conferred even on subordinate courts. Even though this suggestion is debatable, in the context of uniqueness of inherent powers, matching only with the constitutional powers of the apex court and the High Courts. When the criminal proce-

71. *Ibid.*

Code was enacted in 1973, section 482 of the Code reserved and saved the inherent powers of the High Court. Even now, we know that there is no foolproof definition of inherent powers. We know that High Court must be equipped, with inherent, inalienable, irreducible powers to give effect to orders passed under the Code, to prevent abuse of the process of the Court and to secure the ends of justice.

In *Aliyar v. Pathu*⁷² the Kerala H.C. underlined the indispensable nature of inherent powers. The purpose of the Code is to ensure ~~proper~~^{Proper} administration of justice. So, it was held, if there is want of any specific provision due to silent of the Code, the power under S. 482 can be invoked to fill up, the lacunae. According to the judges, in the above decision, Courts have since oldest times evolved theory of inherent, implicit or ancillary powers and applied the same to regulate their proper and effective functioning. In the discharge of their duties the ~~works~~^{Courts} must be able to get over technicality and to serve the ends of justice.

xiv. What is Inherent Power

What is inherent powers is the question. This is answered by the Supreme Court and the High Courts through decisions from time to time demonstrating occasions for invoking the inherent powers and not invoking inherent powers. So, the core of the inherent powers is occupied by the maxim 'justice, equity and good conscience' several contours can be delineated apart from the ingredients contained in section 482 of Cr.P.C. The inherent powers of the High Court in the administration of criminal justice has great cleansing effect so

72. 1988 (2) KLT 446.

far as the stream of justice and the system of judicial process are concerned. Inherent powers ensure fairness, clarity, and transparency to justice administration. Its roots traced to principles of equity takes us to the rudiments of the concept of justice. Inherent powers aim at maintenance of good conscience. Since, the court is conscious of the above qualities, the persons who approach the court also observe the virtues of equity. Whether the accused, the complainant or the prosecution, approaching the High Court through the channels of inherent powers, there must be credibility to the pleas. This is because there is no straight jacket formulae for the application of inherent powers. Pendency of a civil case or a departmental proceedings can be a favourable factor for a person to invoke inherent powers. But, for the sake of invoking inherent powers one should not use a proceedings pending before a statutory authority as ploy to get the favour of the court. Especially when the power under section 482 Cr.P.C. is textured with discretion and the person coming to the court has record of violating equity. Inherent power are the hallmark of the preeminence of law. It is the cradle of Rule of law. If Rule of law is synonymous to natural justice, fairness and rationale, inherent power provide the necessary punch to realise the above objectives. The equity cult of inherent powers is revealed by a quick estimate of judicial response to given situation.

In *Shri Mukesh Kumar and others v. Commissioner of Income Tax and others*,⁷³ an application for invoking inherent powers was filed. The main ground was that an application filed under section 245(c) of the Income Tax Act was pending consideration of the settlement commission. The petitioner allegedly concealed details of In-

73. 1995 Cri.L.J. 2244 (Patna)

come and had produced incorrect particulars. The High court held that on this ground the criminal proceedings could not be stopped. But, the High Court disposed of the petition, after considering the various aspects raised in the petition, giving liberty to the petitioner for approaching the Magistrate concerned for stay of prosecution with the final disposal of application before the settlement commission. There is no scope for interference by High Court if an absolute right of the person is not proved to be violated. Failure to provide notice of hearing to the counsel or the party cannot concern the High Court to apply inherent powers.⁷⁴ The broad judicial policy regarding the invocation of inherent powers is laid down through the utterances of the pioneer institutions.⁷⁵

The inherent powers are used with the laudable objective of achieving a rounded perfection to the concept of justice. The powers help us to fine tune our sense, comprehension and vision of justice. It is a stigma for a person to become accused in a criminal case. Usually, acquittal absolves the accused of all allegations. But, acquittal comes after trial. For a person who is abundantly innocent even the trial is a punishment because for no wrong committed he is made to undergo thousand natural shocks inflicted by the strain of the procedure. And, finally when acquittal comes, if the court acquits him on benefits of doubt the person is again made to suffer the slings and arrows of the outrageous fortune and carry the burden of doubt

74. *Kailash Chand Agarwal v. State of U.P.*, 1996 Cri.L.J. 927 (All.)

75. *Emperor v. Khwaja Nazir Ahmad*, AIR 1945 PC. 18, *Lala Jai Ram Das v. Emperor*, AIR 1945 P.C. 94; *R.P. Kapoor others v. State and others* AIR 1960 SC 866, *Madhu Limaye*' case, AIR 1978 SC 47, *Raj Kapoor and others v. State and others* 1980 SCC (Cri) 72, *Janata Dal v. H.S. Chowdhary and others* 1993 SCC (Cri) 36.

which again is stigmatic to a conscientious of mind. In *Amarnath Pandey v. State of M.P.*,⁷⁶ the M.P. High Court allowed a petition filed invoking inherent powers. The petitioner was accused in a criminal case alleging misappropriation of money. He was acquitted by the trial court. In the judgment the trial court used the term benefit of doubt. The accused claimed clean acquittal. The court referring to the authorities holding ground regarding benefit of doubt held that the accused is entitled to the doubt a reasonable man, or thinking man's doubt. It is not the doubt of a timid mind.

Doubt does not become evidence when there is neither possibility nor remote probabilities. The court also reminded itself of the fact that the benefit of doubt could be misleading also. Thus application of inherent powers is yet another aspect of fairness in action. The acid test of all situations is fairness. Only then be justice is to be done manifestly and undoubtedly. One cannot think that a judge of the High Court can act illegally under the cover of inherent powers. The aesthetics of justice administration can equip one to distinguish between permissible and impermissible. The judges of High Court, including the Chief Justice have no inherent power to act against violation of the rules of the High Court. In *Dwip Chand v. Prakash Kumar*⁷⁷ it was held that the Chief Justice of High Court has no inherent power to constitute a special bench at the request of a single Judge in violation of Rules. The single Judge is bound to follow the decision of the Division Bench, instead he cannot insist for the constitution of a special Bench to be treated as a comoflague to do an illegal thing.

76. 1988 Cri.L.J. 522 (M.P)

77. 1979 Cri.L.J. 542 (Cal.)(F.B)

xv. Inherent Powers Non Formal

It is true that inherent powers adhere to less of formalism. This is because of the history of the inherent power which developed around the concept of justice. This is not to mean that inherent powers strike at formalities. On the otherhand the powers are exercised to advance the cause of justice. In *Kuldip Singh v. Prabhjot Silky*,⁷⁸ a unique situation arose. In a proceedings seeking for maintenance the judgment was duly delivered, pronounced, typed and corrected. The same remained unsigned due to the death of the Magistrate. It was held that the judgment was not rendered ineffective in the above context. Relaying on *Iqbal Ismail Sodawala v. State of Maharashtra*,⁷⁹ the court held that an application to quash the execution of an order for maintenance on the ground that judgment was unsigned was not sustainable. Whether inherent powers are applied or not in a given circumstances the High Court always looks forward to protect the interest of justice. Similarly, less adherence to formalism does not mean discarding procedure established by law. In the interest of justice, High Court can consider a petition filed under Article 226 and 227 of the Constitution as one filed under section 482 Cr.P.C. also. Even without the affected persons coming to the court the High Court in connected proceedings could invoke inherent powers. An application under section 482 Cr.P.C. for compensation can be deemed as one filed under section 456 Cr.P.C. The High Court can also *suo-motto* take action under section 482 Cr.P.C. These are all to secure the ends of justice. This does not mean that a petitioner or his counsel can take liberties with the provision of the procedure Code and put the High Court in a catch 22 position. In *Rajeev Bhatia v. Abdulla*

78. 1995 Cri.L.J. 223 (P.H)

79. AIR 1974 SC 1880

Mohd. Gani,⁸⁰ the court took exception to the nomenclature of the petition "the inherent revisional powers' used by the petitioner. It is an instance of bad pleading where the High Court criticized strongly, because the powers of the High Court under sections 397 and 482 Cr.P.C. are distinct, different and mutually exclusive and ought not to be equated. The petition could either be for revision of the order under section 397 or for quashing of the order under section 482 Cr.P.C. invoking inherent powers.

xvi. Equity as the Root

Equity as the root of inherent powers is settled through the decisions of the Supreme Court and High Courts. In *Muralidhar and another v. State of U.P. and others*⁸¹ the S.C. held that the relief gained through an application under S.482 Cr.P.C. is equitable. So the party who comes to the court must do equity first. There should not be any suppression of facts. The Supreme Court, in the above case, set aside the order of the High Court and directed the party to move a fresh petition. In a proceedings under section 482 Cr.P.C. the party obtained an order from the High Court without disclosing the fact that an earlier revision petition was dismissed. According to the Supreme Court such orders are not sustainable. It was held that the High Court was to decide the case appreciating and considering the entire facts.

The argument that the basis of inherent powers of the court is routed in Equity, becomes more convincing in light of the responses of the High Courts and Supreme Court. The general principle of equity are applied in the matter of inherent powers. The reason gov-

80. 1992 Cri.L.J. 2092 (Bom.)

81. 1995 Supp (3) SCC 662

erning the inherent power is that no State prosecution shall be allowed to continue arbitrarily. At the same time the person who comes to the High Court to invoke inherent powers must not carry the weight of an in-equitous position. If the applicant does not allow the Magistrate to follow a procedure and rushes to the High Court, he is on the wrong side of equity. In *Ari Hand Singh Sachan v. State of U.P.*⁸² the Allahabad High Court repelled an application under section 482 for the reason that the applicant has not allowed the Magistrate to follow the procedure contained under section 239 of the Cr.P.C. The procedure laid down is for the Magistrate to examine both parties, consider the prosecution statements and then discharge the accused if the Magistrate considers that allegations are not triable. Similarly, suppression of material facts while coming to the High Court can cost dearly to the petitioner. In *Anand Kumar Jain v. State of Orissa*,⁸³ the petition was dismissed for suppressing the fact regarding the filing of an earlier application for quashing a proceedings. Subsequent application would be frivolous duplication of the first one. The mode adopted by the petitioner was deprecated. In *Mukund Singh and others v. S.D.M. and others*,⁸⁴ the petition was dismissed as the vital fact regarding the prior order of appointment of Receiver was not brought to the notice of the court.

If a person participates in the trial to a considerable extent and comes to the court after almost the completion of the trial, there is no scope for inherent powers. This was so held by the Calcutta High Court in *Indubhushan Das Gupta v. State*,⁸⁵ the applicant had participated in the trial and after some time preferred a petition under

82. 1982 Cri.L.J. 1419 (All.)

83. 1996 Cri.L.J. 1154 (Ori.)

84. 1996 Cri.L.J. 2378 (P&H)

85. 1995 Cri.L.J. 1180 (Cal.)

section 482 stating that FIR does not reveal an offence alleged. In *Harjit Singh v. State of Punjab*,⁸⁶ also the High Court declined to quash the trial proceedings as the petition was filed immediately after completion of prosecution evidence. The High Court was of the opinion that the trial court should be given a chance to arrive at a definite conclusion and it would not be in the interest of justice to quash the proceedings. So when a person comes to the High Court with a petition under section 482 Cr.P.C. in a way he is demanding equity to be done in that case, such person must himself do equity first.

The Central and pivotal ground for invoking inherent powers is that the averments in the complaint do not constitute offences alleged, it is easily said than proved, while the court will not hesitate to invoke inherent jurisdiction to ~~the~~ steer clear the stream of judicial process of all pollutants, the court is equally adamant to see that a proceedings based on genuine grounds is left unruffled. After abusing the process, one cannot allege abuse of the process. Persons who try to bye-pass the course of justice, persons who try to make short cut to success, persons who try to take the court for granted, and persons who act as enemy of the Society cannot avail of inherent powers. If, fine is imposed on a person with time limit, default in payment of such fine disqualifies a person to come to the High Court challenging the decision of the lower court.⁸⁷

xvii. Justice as the End

One cannot secure the ends of justice after doing greater injustice or doing with the intention of greater injustice. When a new leg-

86. 1980 Cri.L.J. (NOC) 106 (P&H)

87. Ref. *Ramlakhan and others v. State*, 1986 Cri.L.J. 617 (All.)

islation is enacted one cannot take advantage of the new legislation to defeat an already existing case. In *Bhasheer Khan v. Jameela Bee*,⁸⁸ the challenge against the recovery proceedings under section 128 Cr.P.C. on the anvil of Muslim Women (Protection from divorce) Act, 1986 was dismissed. Similarly, a finding of fact regarding the maintenance of the wife cannot be challenged under inherent powers.⁸⁹ If the husband fails to honour the direction of a court for maintaining his wife, the court views the action with suspicion. In *Makdum Ali v. Narghese Banon*,⁹⁰ it was held that the husband's conduct through-out the proceedings was not meritorious as he was appearing, disappearing, and re-appearing in the case at his will and pleasure. The High Court did not entertain the petition

xviii. Diverse Nature of Inherent Power

Power to do substantial justice is an inherent power. The power to issue writs is an inherent power. The power to declare law is an inherent power. The power of judicial review is an inherent power. The Power to punish for its contempt is an inherent power. In all these aspects, the paradigm against which function of the court is tested against the paradigm of reason and common sense. This conforms with Lord Moulton's definition of law, as the ^{crystallized} ~~crystalised~~ commonsense of the community. So we have in criminal jurisprudence the commonsense of the community cristalised in the inherent powers of the High Court. So when we address the genesis of the inherent powers, we start from the doctrine, of justice, equity and good conscience, when we discuss the development of inherent pow-

88. 1994 Cri.L.J. 361 (M.P)

89. *Lakshman Rao v. Kamala Bhai*, 1996 Cri.L.J. 1058 (A.P).

90. 1983 Cri.L.J. 111 (Delhi)

ers, we see the operation of justice, equity and good conscience and when we assess the present position of the inherent powers, we feel the all pervading impact of the maxim, justice, equity and good conscience. It follows that the inherent powers of the High Court are rooted in justice, equity and good conscience. It is found that the inherent powers of the High Court are developed through justice, equity and good conscience and established in justice, equity and good conscience. Even in the application of the inherent powers the High Court is guided by the considerations of equity. In *Aravindakshan v. State of Kerala*⁹¹ it was held that inherent power is discretionary and it shall not be used in favour of a person who does not come with clean hands.

xix. Constitution Supplements Inherent Power

The Constitution continues the jurisdiction of the powers and the law administered by a High Court immediately before the commencement of the Constitution, but the ban on original jurisdiction on matters concerning revenue, imposed in 1781 to put an end to disputes between the Supreme Court and the Council in Bengal is abolished. Jurisdiction in this context means competence to hear and decide cases.

'Power' is the administrative power such as the power to regulate procedure as prescribed duties of office. In the case of the older High Courts these are contained in Letters Patent mostly from the Crown but modified by orders made under the Independence Act, 1947."⁹²

91. 1985 KLT (SN.66) at p.41

92. Allan Gledhill, *The Republic of India. The Development of its Laws and Constitution*. (1964) p. 20

CHAPTER - II**JURISPRUDENCE OF INHERENT
POWERS OF HIGH COURTS**

The term jurisprudence evokes a sense of philosophy. Inherent powers of the courts in the administration of criminal justice have a long history. That this power is open to the courts today in the midst a plethora¹ of enacted laws is a proof of its transcendental merit. To search for the philosophy of such power, therefore, is to find its rational and scientific character. Perhaps it is difficult to define inherent powers. So is the endeavour to define law. Through a sort of "*free scientific research*"¹ the inherent powers are applied to situations tested by the High Court and retested by the Supreme Court. This process goes on. The Supreme Court being the torch bearer of the judicial process the philosophy of inherent powers is also developed around the wisdom of the apex court. In this process, certain patterns evolve or an attempt is made to discern some patterns, the explanation of which forms the philosophy.

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

1. Julius Stone uses this expression coined by the French Philosopher, Geny assert the endeavour of a legal system to adapt itself to chage. Ref. Introduction of Julius Stone, *Legal System and Lawyers' Reasoning*, (1964) p. 222.

Court of India in this context is appraised as embedded with in a dynamic historical milieu. It has its rules primarily in the jurisprudence theory of Legal Realism.² The Supreme Court is thus held to be 'half judicial tribunal and half political preceptor'. The Supreme Court negotiates with dominant yet shifting public opinion. It is the first political court of the nation and demands examination in political terms. This Political Jurisprudence compels the judges being acted upon by prevailing forces.³

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

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

"The Supreme Court of India has no jurisprudence of its own, no language of its own. Each concept is borrowed, every doctrine adopted. There is nothing Indian about the court, not even the architectural design. It is a credit to Indian genius that it has assimilated such an institution, made it its own and has nourished it with trust, faith and reverence during the last 37 years."⁴

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

2. Adv. Gobind Das, '*Supreme Court in Quest of Identity*', Eastern Book Company (1987), Preface.

3. *Ibid.*

4. See ch.1

"The Constitution expressly stated this position. In its judicial activities it is accountable to none. It is the ultimate. It is final. It is infallible. The exercise of judicial power in the hands of the court manned by a chosen few is patently undemocratic. Yet in India, as in America, vital problems are entrusted to the court for a solution."⁵

Inherent power is one component constituting the all pervasive character of the court. The Supreme Court has at its command tremendous power. It has the power to nullify the acts of the executive, and the will of the legislature. This reality of the prestige of the Supreme Court is despite the fear and apprehensions expressed by the political leadership at the time of the drafting of the constitution and on the occasion of inauguration of the Supreme Court.⁶

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

The provisions contained in the Code of Criminal Procedure 1973, are not exhaustive. Since the code is not exhaustive, the legislature has preserved or recognised the inherent powers of the High Courts. No new power is invested. Only a declaration of the power already existed is made by the legislature. Legislature has its own limitations. It cannot foresee all the contingencies. The incompetency of the legislature cannot be a justification for the courts to feign helplessness. Courts must have powers over and above the provisions of law provided by the legislature. Such powers must be unaffected or unlimited by anything

5. *Ibid.*

6. See *infra*. Ch. III.

contained in the legislation. Having discovered the inherent powers and stated its unlimited and unaffected character one asks the question, What exactly is the inherent power? Legislature has not defined it. In section 482 Cr.P.C., it is stated in very broad and abstract style that the inherent powers are to be used in the administration of criminal justice. High Courts have to use it to give effect to orders passed under the Code, or to prevent the abuse of the process of the Court, or otherwise to secure the ends of justice. The generality of the provision explains the limitations of the legislature and the opportunity open to the judiciary to have mutations and permutations. According to Julius Stone, it is the duty of the Courts to see that this divine function of filling the gaps or ironing out the creases in the body of the enacted law.

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

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

This is the justification for the inherent powers of the High Court. High Courts exercise this power owing to historic and juristic reasons⁸ High Courts must, therefore, use this power within the limits of prudence because, as Lord Denning says, it is

7. Ref. *supra* n. 1.

8. See *supra*. Ch. I

"to keep the path of justice clear of obstructions which would impede it" ⁹

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

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

9. Lord Denning, *The Discipline of Law*, Butterworth,(1993) Indian Reprint, p. 314.

10. (1991) 4 SCC 406.

abuse of the process of the court. In this context, the Supreme Court quashed a criminal proceedings pending against the Magistrate because it is not ideal to suggest that in such a situation the Supreme Court should be a helpless spectator. Article 142 provides for the Supreme Court to do complete justice. There is no provision like section 482 of Cr.P.C. for its express power on the Supreme Court to quash or set aside any proceeding pending before a criminal court, and to prevent abuse of the process of the court. But, the inherent power of the Supreme Court under Article 142 coupled with special and other powers under Article 136, empowers the Supreme Court to quash criminal proceedings, pending with any court to do complete justice in the matter. If the Supreme Court is satisfied that the proceedings in a criminal case is based on vendetta or if no case is made out of admitted facts, it would need the ends of justice to set aside or quash the criminal proceedings. Once, the Supreme Court is satisfied, that the criminal proceedings amount to abuse of the process of the Court, it should quash such proceedings to ensure justice. In the above case, punctuated by dozes of judicial activism the Supreme Court made short shrift of a conspiracy between police and other agencies of the State. A Chief Judicial Magistrate is an important organ in the body of the machinery of administration of justice. Police, instead of controlling the Chief Judicial Magistrate must co-operate with him.

This decision goes a long way in resolving the enigma of jurisdiction of the superior courts to exercise, inherent powers in criminal proceedings pending before the subordinate courts.

iv. Juristic Views on Inherent Powers

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

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

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

Lord Denning adds:

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

11. Lord Denning, *The Due Process of Law*, Butterworth, First Indian Reprint (1993), p. 3.

12. *Ibid.*

The above reference made in the book and the subsequent comments of the author show that the court has an inherent power to deal with contempt. It can be called by other names, summary power, plenary power or prerogative of the Court. Abuse of the Process of the Court is to be warded off. Ends of justice include the credibility and respectability of the courts also. This can be preserved only with inherent powers. The court cannot be powerless to do complete justice. Sometimes there can be contempt on the face of the court. An advocate, a senior member of the Bar may behave in a contemptuous and contumacious manner to evoke not only judicial ire but also public scorn. In *Re V.C. Mishra's*¹³ decision, the Supreme Court of India examined this and punished the contemner by awarding a sentence of imprisonment and suspending his licence to practise as an advocate. The gravity of the occasion is evident that under Article 129 read with Article 142 the Supreme Court effectively gave vent to its inherent jurisdiction. It was an occasion for the Court to ponder over the limits or restraint to be put on the inherent powers. So very soon *Supreme Court Bar Association v. Union of India*,¹⁴ overruled the holding in *Re V.C. Mishra* regarding the punishment for professional misconduct. In the academic parlance there is anxiety expressed in this attitude of the Supreme Court. The contempt of court on the face of it is so serious and when the contemner is an advocate holding responsible position of the Chairman of the Bar Council of India, the situation is quite alarming:

13. (1995) 2 SCC 584.

14. (1998) 4 SCC 409.

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

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

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

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

15. Dr. K.N. Chandrasekharan Pillai, *Contempt of Court by Advocates*, 1997 Ac. L.R. 213

With respect it may be pointed out that the statute, Advocates Act does not deal with contempt expressly: in a sense the court seems to say that contempt and misconduct are the same and since removal from the rolls has already been provided in the Statute governing misconduct cannot be there as punishment for contempt. This seems to be misleading. The crux of the court's reasoning becomes clear when it rules out the application of Article 142 thus:

Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is therefore, not permissible in exercise of the jurisdiction under Article 142.

The Court buttressed its arguments by saying that Article 142 can be invoked to do complete justice between the parties and that in the contempt case contemner and court cannot be said to be litigating parties and therefore in a contempt case Article 142 cannot be invoked".¹⁶

The views are concluded by the writer thus:

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

16. *Id.* at pp. 215-216.

more balanced and pragmatic than the ruling given in the decision in *Supreme Court Bar Association v. Union of India*".¹⁷

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

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

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

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

17. *Id.* at p. 217.

18. Lord Denning, *The Due Process of Law*, (1993) First Indian Reprint, at p.7 refers the decision [1970] 2 QB 144.

19. *Id.* at pp. 8-9.

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

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

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

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

20. C.K. Allen, *Aspects of Justice*, (1997), 1st Indian Reprint, p. 3

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

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

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

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

21. *Ibid.*

22. *Id.* at. p.4

22A. William Shakerspeare, Julius Ceaser Act III Scene 2 Line 19

clutch for excuse at the highest".²³

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

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

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

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

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

23. *Ibid.*

24. R.W.M. Dias, refers to Aristotle's Nicomachean ethics, *Jurisprudence*, (1985), 5th Edition, Vol. V at p. 65.

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

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

The concept of inherent powers of the court of justice would be intelligible, only if we accept the proposition in the earlier chapter²⁶ that its origin is to be traced back to the immemorial past. Even before man began to administer justice the inherent power was there in operation. To the question which of the two came into existence first - the inherent powers or the courts - the answer is that the power was there all along the history of administration of justice. Even when the body of laws was frail the concept of inherent powers ruled the decision making process. What gave the rhythm and life, direction and motive to the administration of justice was the continuity in the method of functioning of the courts. Even with the judicial charter of 1726, when courts

25. Kenny's definition improved by Austin, referred P.S. Atchuthan Pillai, 'Criminal Law' (1979) p.9.

26. Ref. *supra*. Ch. I.

with definite jurisdiction came into existence, the body of laws was ill-defined. In criminal law probably because of the prevalence of Islamic law no attempt was made to normalise, modernise or rationalise the criminal laws. Administration of criminal justice was really based on a sense of fairness and conscience. Even when Sir Warran Hastings introduced the much applauded Adalath system in 1772 he had left out the criminal justice administration to the caprices of the indigenous law officers. While the power and jurisdiction of Diwani ²⁷ Adalaths were precisely defined, (the institutions of civil justice), Mofussil Nizamath Adalath and Sadar Nizamath Adalaths, the criminal courts were left in the hands of the so called Islamic criminal law officers. The truth is that the legal system prevailed was anything but Islamic. It never had the purity or authority of Islamic law. Moreover, the Sulthans and the Mughals from whom the Islamic jurisprudence is said to have passed on to the Indian polity were guided by expediency rather than religious vision.²⁸

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

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

27. Refer *supra* Ch.I. In 1772 Warran Hastings introduced hierarchy of Criminal and Civil Courts, called Nizamath and Diwani Adalaths.

28. *Ibid.*

29. *Ibid.*

all these periods. With the appointment of Law Commission in 1833, the agenda for codification initiated there. It initiated the supply of law to the requirement of society. The Mutiny and the aftermath cleared the deck for progress in legislative activity. The Civil Procedure Code, Criminal Procedure Code, Indian Penal Code, Contract Act, Property Act, Specific Relief Act, Negotiable Instruments Act, etc. opened the way for intense legislative activity. But, the body of laws which came into existence was not foolproof. It had lacunae: codification and recodification, enactment and re-enactment would not make legislation self-sufficient. The more the laws, the more the lacunae. The Criminal Procedure Code was enacted in 1898 in a comprehensive manner. It had about 565 sections containing every conceivable eventuality in the administration of criminal justice for which procedure was to be laid down in advance. When the Code was put into action, in a matter of 20 odd years a situation cropped up warranting the interference of the court even when the proceedings were in its initial stages. The High Courts occupied a proud place in the absence of an Apex Court, like the Supreme Court or the Federal Court. The power which was available to the High Court going by its eminence and majesty, was total and absolute. The High Court had plenary and fundamental power or original, inalienable or irreducible powers. So, the legislature through the Criminal Law Amendment Act, of 1923, inserted section 561-A and saved the inherent power of the High Court. Inherent power was explained though not defined. The power of the High Court to give effect to any order under the Code or to prevent the abuse of the process of any court and secure the ends of justice was

superimposed on the Code. The High Court's eminent and the strategic position in the realm of criminal jurisprudence proved well for it to wield inherent powers. When the clumsiness and cumbersomeness of criminal procedure sought to be simplified by restructuring on a rational basis with the Code of 1973 the inherent powers of the High Court were left untouched and intact. The provision of law contained in section 482 of Cr.P.C. is a verbatim reproduction of the provision contained in Section 561-A of the old code. The only noticeable change is that in the earlier code the 'inherent power' was saved whereas in the new code the 'inherent powers' are saved, the change from 'power' to 'powers' can be accidental; but it can very well signify the new dimensions of reality perceived in the administration of criminal justice, through invocation of inherent powers.

The catch phrase 'inherent powers' is a paradigm or a touchstone. It is the basic norm of administration of criminal justice, something like Hans Kelsen's 'Grundnorm', or American Sociologist, Talcot Parsons' 'paradigm' Maxe Webber's 'ideal type' or 'the basic structure concept' evolved in the Indian Jurisprudence in *Kesavananda Bharathi's case*. *Inherent powers are there, though not tangible. The inherent powers permeate the adjudicatory process. Any proceedings or actions pending before any subordinate court can be subjected to the litmus test of inherent powers. The court in a given situation can exercise inherent powers or decline to exercise inherent powers. In both cases inherent powers are put to play and a criminal proceedings is either ratified or repudiated. Therefore, the concept of inherent powers requires a jurisprudential evaluation. It is a means*

for judicial independence, it is an example of judicial integrity. The words 'power' and 'jurisdiction' are used in an interchanging manner forgetting for a moment their etymological differences and juristic distinctiveness.

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

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

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

30. Henry Campbell Black, *Black's Law Dictionary* 4th Edn. 1968, p. 921.

31. John Bouvier, *Bouvier's Law Dictionary and Concise Encyclopedia*, 3rd revision (8th edn.) by Francis Rawle 1914, p. 1568.

32. Sir Guy Geen, Chief Justice of the State of Tasmania. 'The Rationable and Some Aspects of Judicial Independence', (1985) 59 Au.L.J. 135

33. *Ibid.*

development of the law relating to the inherent jurisdiction of the courts, and perhaps more especially the law of contempt, has resulted in a multitude of particular instances and special rules being built up which have been the subject of the usual common law processes of systemisation and classification. But, there is no justification for concluding that the law in this area is now incapable of further growth, or that it should be confined to those rules and instances as they presently exist. The generality and the extent of the inherent jurisdiction of superior courts which include the power to punish for contempt, has been emphasised in many cases. In 1912, Griffith C.J. confirmed in wide terms the existence of the jurisdiction which every superior court possesses to protect itself from any action tending to impair its capacity to administer impartial justice.³⁴

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

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

34. *Packer v. Peacock*: (1912) 13 C.L.R. 571 at p. 581.

35. (1972) 127, C.L.R. 1 at p. 7.

sary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempt at thwarting of its process".³⁶

The Judicial basis of this jurisdiction is the authority of the judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner.

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

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

36. [1964] A.C. 1254 at p. 1301.

administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interests which may conflict".³⁷

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

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

37. Ref. *supra* n. 32

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

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

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

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

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

38. (1962) 108 C.L.R. 620.

39. *Id.* at p. 624.

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

Prof. Howard says:

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

40. Time and the Judicial Process, (1963) 37 Au. L.J. 39 at p. 40.

41. *Ibid.*

The inherent powers of the High Court under Section 482 Cr.P.C. is unique in its content and application. The Civil courts also have got inherent jurisdictions. The Supreme Court of India has got inherent powers of all encompassing variety. It is a juristic concept which has invaded all territories of jurisprudence. In England in many spheres of administration of justice by the High Court inherent jurisdiction is exercised.⁴² This jurisdiction is invoked in an inexhaustable variety of circumstances and in different ways. The concept is amorphous and ubiquitous and so pervasive in its operation.⁴³ This makes inherent jurisdiction enigmatic. Questions are raised about the nature, juridical basis, limits, capacity to diversify, and claim to viability of the inherent powers. Prof. Jacob calls it an unchartered law of English procedural law. The emphasis is given on the word 'inherent'. Inherent jurisdiction is not the jurisdiction as such. It forms part of the general jurisdiction. A court of law has got its own competent jurisdiction - civil, criminal, appellate, revisional, testamentary, admiralty, original, extra-ordinary, ecclesiastical, advisory jurisdictions. It is limitless in application because the High Court is not subjected to supervisory control by any other courts. In matters concerning general administration of justice within its area the High Court exercises the full plenitude of judicial powers. The unique nature of inherent jurisdiction is that the contents of the power stands independent of any statute. Since, it is not defined through statutes, its true nature is found in a complex number of features. Master Jacob summarises the nature of inherent juris-

42. I.H. Jacob, 'The Inherent Jurisdiction of the Court' - Current Legal Problems 1979, vol. 23 pp. 23-52.

43. *Ibid.*

diction as having the following features:⁴⁴

- a) It is part of the process of administration of justice.
- b) It is exercised in a summary process.
- c) It can be applied in respect of parties who are not litigants in a pending proceedings.
- d) It is distinct from discretion.
- e) The power is exercised despite rules of court.

It is a verile and viable doctrine. It stands on its own foundation and basis for its exercise is put on a different and perhaps in a wider footing.⁴⁵ Therefore, the inherent power of a court is a reserve of powers which the Court may draw upon as necessary whenever it is just or equitable to do so. Master Jacob calls the provision in the Code of Criminal Procedure of India a definition of inherent powers.⁴⁶

Regarding inherent jurisdiction, it can be said that the complexities of administration of justice have made it imperative to have this power for the courts to keep the spheres of justice clear as well as moving.⁴⁷ The inherent power adds to the sheen of judiciary's impartiality and relevance of the court. When people flee from the jaws of tiger, they jump into the sea. Escape routes are provided as lampposts for those swim in the sea. Section 482 Cr.P.C. is one such escape route. The power under Section

44. *Id.* at. p.23

45. *Ibid.*

46. *Ibid.*

47. Dr. K.N. Chandrasekharan Pillai, 'Criminal Justice Administration - A Balance Sheet', 1994 Ac. L.R.1.

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

"Faced with the limitless ways in which the due administration of justice can be delayed, impeded or frustrated, Judges have responded with a vast armoury of remedies claimed to be part of their inherent jurisdiction."⁴⁸

The source of inherent power is unwritten. The very nature of the courts requires it. It has positive and negative aspects. In one case, the power may be used to facilitate the proper conduct of legal proceedings, in another context it may be to overcome practices or devices which tend to delay, impede or frustrate judicial functioning. The inherent power is available despite the fact that law provides a particular procedure for tackling a situation. "The concept resists analysis in view of judicial claims to exercise the jurisdiction whenever necessary for the administration of justice. Its ubiquitous nature precludes only exhaustive enumeration of the power which is thus exercised by the courts."⁴⁹ In England and other common law countries the inherent powers are available to the courts in civil and criminal jurisprudence. In India, the Civil Procedure Code 1908 recognizes the inherent

48. Keith Mason QC, 'The Inherent Jurisdiction of Court', (1983) 57 Au.L.J. 449.

49. *Ibid.*

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

v. Law Commission's View

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

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

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

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

50. *Bindeswari Prasad Singh v. Kali Singh*, 1977 SCC (Cri) 33.

51. (1977) 1 SCC 361.

52. Law Commission of India, 14th Report, Para 16.

the High Court only was saved. Still this area evinces interest.

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

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

53. 1979 KLT 502.

54. 1986 KLT 62. See also *Bindeshwari Prasad Singh v. Kali Singh*, AIR 1977 SC 2432

55. 1987 (1) KLT 488

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

But the rule in this regard is not predictably clear as inherent powers are the preserve of higher judiciary. In *Re Raman Narayanan*⁵⁶ the court considered the inherent power of the trial courts. Police by mistake entered the name of a stranger as accused in the charge-sheet. The question was whether the trial Magistrate could remove him from party array invoking inherent powers. The High Court held in the affirmative. The reasoning was that the express term of section 561A did not mean that the subordinate courts did not have inherent powers. Such courts

56. 1972 KLT 901

have inherent powers to act *ex-debito justitiae* to do real and substantial justice for which alone courts exist or to prevent the abuse of its own process. In *Bindeswari Prasad Singh v. Kali Singh*⁵⁷ the Magistrate recalled the order dismissed earlier. The High Court dismissed the revision. It was held that Magistrate could not review or recall any order passed by them. Magistrate therefore erred in recalling the order made under Sec. 203 dismissing the complaint on ground of triviality.

In *State v. Pokker*,⁵⁸ the question involved was territorial jurisdiction. The complaint was filed before the Magistrate who was having no territorial jurisdiction. Sub Divisional Magistrate transferred it to another court. The District Magistrate quashed the entire proceedings and directed to file a fresh complaint. This act was held to be without jurisdiction. It was beyond the power of the District Magistrate to quash the proceedings. Only the High Court could quash the proceedings under its revisional or inherent powers. The Supreme Court considered this aspect in *Maj. Gen. A.S. Gauraya and another v. S.N. Thakur and another*⁵⁹. It was a proceedings alleging violation of section 67 and 72-C (1)(a) of the Mines Act, 1952 read with regulation 106 of the Metalliferous Mines Regulations, 1961. In this case, the Magistrate had dismissed the complaint and acquitted the accused on ground of non-appearance of the complainant. The Magistrate had no jurisdiction to restore the dismissed complaint on a subsequent application of the complainant. The Code does not permit a Magistrate to exercise inherent powers.

57. 1977 SCC (Cri) 33

58. 1958 KLT 911 (F.B)

59. 1986 SCC (Cri) 249

In *Kerala Kumaran v. State of Kerala*⁶⁰, it was held that the High Court had powers under section 482 Cr.P.C. to dismiss an appeal or revision or any other criminal proceedings for default or non-prosecution. An order dismissing an appeal for default does not amount to a judgment or a final order coming within the scope of section 362 Cr.P.C. The High Court has the inherent power to restore any matter dismissed for default or non-prosecution on sufficient reason being shown. The power of dismissal for default and restoration is inherent only to the High Court and cannot be exercised by the courts subordinate to the High Courts since they do not possess the inherent powers under section 482 Cr.P.C. In *Raj Ram v. Awadh Ram*,⁶¹ inherent powers of a District Judge regarding the execution of orders was considered.

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

vii. Spectrum of Inherent Powers of the High Court

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

1. Application, in orders passed in executive or administrative and Statutory capacity,
2. *Applicability in matters directly covered by specific provision of Cr.P.C,*

60. 1995 (1) KLT 789

61. 1990 Cri.L.J. 1663 (All)

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

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

62. See Julius Stone, *Legal System and Lawyer's Reasoning*, (1964) p. 16.

Stone describes jurisprudence as:

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

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

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

63. *Ibid.*

64. (1983) Au. L J 449 at p. 458.

The possibility of the power is so immense that it aids judges who are ready to create and use power designed to promote higher standards in relation to the conduct of litigation generally. The inherent power is acclaimed to be resourceful as it equips the court to deal with any exigency of circumstances. "It will be seen that the inherent jurisdiction contain in its armoury practically the whole gamut of judicial remedies"⁶⁵. The inherent power can be used cumulatively because in a proper case the court may not only strike out a frivolous or vexatious claim or defence but also punish for contempt."⁶⁶

Sometimes inherent power may be asserted to achieve by indirect means with the result which could not be achieved directly by an order of the court"⁶⁷. It is held inherent jurisdiction is the power which a court has simply because it is a court of a particular description. All courts of unlimited jurisdiction have inherent jurisdiction. This is the relevance of a High Court in the hierarchy of Indian Courts. The Supreme Court and High Court derive power from the same source,- the Constitution. One is not subordinate to the other. But, in the matter of jurisdiction, the Supreme Court's power is far and wide, compared to that of the High Court, because the former is the apex court vested with the status of the final arbitrator of the destiny of the people and nation. But, in status and stature, both are courts of record and vested with the power to punish their contempt or abuse as per the provision of the Constitution and also the provision of the

65. Ibid.

66. *R.V. Exparte Hector Mac Donald Ltd*, [1951] 2 K.B. 611.

67. Ref. supra 64 at p. 458.

Contempt of Court Act. Therefore, these institutions are of necessity having inherent powers not derived by implication from statutory provision conferring particular jurisdiction. If at all jurisdiction is from their statutory provision it would be inaccurate to call it as an inherent jurisdiction.⁶⁸

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

68. *Ibid.*

69. 1980 SCC (Cri) 72.

Secondly, the inherent powers is known as a course of real and substantial justice. "The course of true love never runs smooth"⁷⁰ Similarly the course of justice never runs smooth. The stream runs through difficult terrains. The Supreme Court guards it and guides it, being the Friend, Philosopher and Guide of Indian Jurisprudence.⁷¹

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

viii. Congruity with Powers under Articles 226 and 227

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

70. William Shakespeare, *A Midsummer Nights Dream*, Act 1 Scene 1 Line 123.

71. *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.

72. See: *Supreme Court Bar Association v. Union of India & Others*, AIR 1998 SC 1895; *Krishnan v. Krishna Veni* AIR 1997 SC 987.

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

The Supreme Court is of the view that when the exercise of powers could be under Article 227 or section 482 Cr.P.C. it is not necessary to invoke the provision of article 226.⁷⁵ In Article 227 the Court is vested with all the ramification of the power of judicial review available under Article 226. The distinctive feature is that Article 227 is a disciplinary force for the subordinate

73. *Pepsi Foods Ltd. & another v. Special Judicial Magistrate & others* - (1998) 5 SCC 749.

74. *Id.* at p. 758.

75. *Ibid.*

judicial institutions. For this purpose, section 482 Cr.P.C. is also for establishing the superiority of the courts of Record over the subordinate courts. If in a case, the court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as on under Article 227 or section 482 of the Code. The prestige and power of the court is to be guarded in the context of the nature of power exercised by it. The occasion should not be used to negate the chance for applying the power by taking refuge under some statutory provision providing for remedies of revision. For instance, the court should not decline to invoke the inherent jurisdiction under section 482 of the Code on the ground that the trial court has power to discharge the accused at the stage of framing charges or that remedies like appeal and revision can be availed of by the accused. Provision for discharge, appeal, or revision is no substitute for the remedy under inherent powers. A trial Magistrate is no match for a High Court judge. If the complaint does not disclose any offence, the High Court has only a Hobson's choice for invoking the inherent power. The Court cannot turn a Nelson's eye to the fact that it is sheer abuse of the process of the Court, if the accused is left to undergo the agony of the criminal trial despite the fact that the complaint does not disclose any offence.⁷⁶ The complaint was that a bottle of beverage 'Lahar Pepsi' sold to the petitioner was adulterated. The Magistrate issued summons. Parties approached the High Court-, for writ of prohibition certiorari, mandamus or any other appropriate writ. High Court dismissed the petition. It directed to seek discharge under

76. *Ibid.*

section 245 of the Code. The High Court was of the opinion that it could not be said at that stage that the allegations in the complaint were so absurd and inherently improbable on the basis of which no prudent man could ever reach a just conclusion, and that there existed no sufficient ground for proceedings against the accused. This view of the High Court is surprising as the Supreme Court has already held that sections 203 and 245 (2) Cr.P.C. is no adequate remedy for a person charged on flimsy grounds.⁷⁷ This is in this context that the High Court can exercise the powers of judicial review in criminal matters.⁷⁸

ix. Inherent Powers have no Rigid Formula

The extra ordinary powers under Article 226 of the constitution and the inherent powers under sec. 482 of the Code, do not lay down any rigid formula to be followed by the Courts.⁷⁹ Nothing can be inflexible. The facts and circumstances of each case decide the question of application of inherent powers. The objective is to prevent the abuse of the process of the Court or to secure the ends of justice. One guideline is where the allegations made in the FIR, or the complaint even if, they are taken at their face value and accepted in their entirety do not *prima-facie* constitute any offence or make out a case against the accused. Under such circumstances, the accused should not be asked to go to the trial court and try the possibility of a dismissal or acquittal in case of a trial, or appeal, in case of conviction or revision in case of confirmation in appeal. It is held that the High Court is to

77. *State of Haryana v. Bhajan Lal*, (1992) Supp 1 SCC 335.

78. *R.S. Raghunath v. State of Karnataka & another*, (1992) 1 SCC 335.

79. Ref: Guidelines in *supra* n. 71

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

x. To Get Away the Technicality or Rigidity of Lower Courts

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

80. *Id.* at p. 758.

81. AIR 1954 SC 215

82. Ref. *supra* n. 73 at p. 760. Magistrate was deleted from party array.

cused is innocent, every inch, could he be asked to undergo the ordeal of a trial and then be pronounced guilty or not guilty.^{82A} Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion."⁸³

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

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

83. *Ibid.*

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

xi. **Supreme Court Critical about High Courts Abdication**

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

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

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

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

84. *Id.* at p. 761

85. *Ibid.*

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

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

xii. Supreme Court Exercising its own Extraordinary Power

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

86. *Id.* at p. 762

to examine and modify the attitude of the High Court. The jurisdiction under Article 136 is a very special one when Supreme Court more often denies entry to the controversy to reach the portals of the judicial heartland of the Supreme Court. Then geographical and litigational factors more often dissuade the affected person from going to the Supreme Court assailing the High Court's order. What the Supreme Court has done is therefore, to establish landmark decisions to guide, to lead, and to accompany the High Court. Instances are *R.S. Raghunath v. State of Karnataka & another*,⁸⁷ *Janata Dal v. H.S. Choudhary & Others*,⁸⁸ *Pepsi Foods Ltd. & another v. Special Judicial Magistrate and others*,⁸⁹ and *Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd. Clacutta*⁹⁰, *Mary Angel & others v. State of Tamil Nadu*⁹¹

It is settled law that in matters involving civil disputes or combination of civil and criminal matters the Criminal Court would be loathe to interfere. For instance in *Duncans Agro Industries case*⁹² even if the offence of cheating was *prima-facie* constituted, a compromise decree passed would amount to compounding of the offence of cheating. In addition to this, there was delay in this case completing investigation coupled with allegation against the officials. The High Court had only one option, ie, to quash the complaint. In a 136 petition against an order to Supreme Court it would only ratify the decision of the High Court which did not

87. (1992) 1 SCC 335.

88. (1992) 4 SCC 305.

89. (1998) 5 SCC 749.

90. (1996) 5 SCC 591.

91. 1999 (3) SCALE 663

92. *Supra* n. 90

warrant any interference under Article 136 of the Constitution. The High Court was expected only to consider in a dispassionate and objective manner whether the allegation in the complaint *prima-facie* made out an offence or not. Therefore, the Supreme Court said,

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

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

In *Jawaharlal Darda & others v. Manohar Rao Ganapat Rao Kapsikar*⁹⁴ the business of the Legislative Assembly was reported by a daily. Affronted by it a complaint for taking action under sections 499, 509, 500, 501 and 502 read with Section 34 I.P.C. was lodged. The Chief Judicial Magistrate issued process. Additional Sessions Judge quashed it in revision. By invoking the inherent power under section 482 Cr.P.C. the High Court quashed the order of the Additional Sessions Judge. The High Court held that the Additional Sessions Judge mis-interpreted the publication. It is all the more significant when the Chief Judicial Magistrate has *prima-facie* found a case against the accused.

93. *Id* at p. 607.

94. 1998 SCC (Cri) 815

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

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

"Thus power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice".

95. *Ibid.*

96. 1998 (4) SCC 409 at p. 420

The ideal proposition to compare the inherent powers is to draw a lesson from the power of the Supreme Court to do substantial and complete justice. Inherent jurisdiction is the authority of the judiciary to uphold, to protect and to fulfill the judicial function of administration of justice according to law in a regular, orderly, and effective manner.⁹⁷

xiii. Not Derivative of Statute or Even Common Law

Inherent power is not derived from any statute nor truly from the common law but instead flows from the very concept of a court of law.⁹⁸ A court of law has its own stature. Some of its functions shall be vested in some specific tribunal or agency. But, that agency would not get the status or prestige of the Court. Inherent powers are such characteristic feature of the High Court that it would not inhere on any other body. When the Administrative Tribunal came into existence, doubts arose whether it would dwindle the relevance of the High Court as jurisdiction of the High Court was ousted. The Tribunals being amenable only to Article 136 jurisdiction had pretensions of a court similar to High Court. Some earlier decisions starting from *Sampath Kumar's* case⁹⁹, endorsed it. But, it followed that decisions of the Supreme Court gradually proceeded away from *Sambath Kumar*, and finally reached *Chandra Kumar*.¹⁰⁰

97. *Ibid.*

98. *Pepsi Foods Ltd and another v. Special Judicial Magistrate & others*: (1998) 5 SCC 749.

99. *S.P. Sampathkumar v. Union of India*, AIR 1987 SC 386.

100. *J.B. Chopra v. Union of India*, AIR 1987 SC 357; *M.B. Manjundar v. Union of India*, AIR 1990 SC 2263; *Amulya Chandra Kaliba v. Union of India*. (1991) 1 SCC 18; *R.K. Jain v. Union of India*, (1993) 4 SCC 119; *Dr. Mahabal Ram v. Indian Council of Agricultural Research Centre*, (1994) 2 SCC 401. *L. Chandra Kumar v. Union of India and others*, AIR 1997 SC 1125.

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

Here the Supreme Court considered the power of judicial review available to the High Court. In the Indian judiciary, the Supreme Court as well as the High Court have the power of judicial review. The alternative institution mechanism cannot hijack the inherent powers of the High Court. So far as the inherent powers under section 482 of Cr.P.C. is concerned the power is only on the High Court and the practise and procedure of the High Court is as a court of record, the concept of judicial review is supreme and is in the commanding heights of authority of law. Nothing is superior to it. It is another name for rule of law. In Administrative Law parlance, it is the authority of public bodies, in Constitutional Law, it is the basic tenets of the rights, in criminal Law, it is the means to secure the ends of justice, in law of Contempt of Court, it is the media to maintain the majesty of law.¹⁰¹ Even when the High Court exercises a jurisdiction saved through a statute like Cr.P.C., the very fact that such jurisdiction is the exclusive preserve of the High Court, and not available to the subordinate courts makes the powers as well as the High Court prestigious and superior. That is why the inherent power of the High Court under section 482 Cr.P.C. is treated at par with the power of the High Court, under Article 226 of the Constitution, and on a jurisprudential level of judicial review in the context of this form of the Supreme Court under Articles 32, 136, 142 etc. This has paved the way for the inherent powers of the High Court to be superior to any other provision of the Code where the High Court has jurisdiction. Under section 483 of the Cr.P.C. the High Court

101. *S.R. Bommai v. Union of India and others*, AIR 1994 SC 1918.

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

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

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

102. *Krishnan v. Krishaveni*, AIR 1997 SC 987.

103. *Ibid.*

104. *Dharampal & others v. Ramshri & others.* (1993) 1 SCC 435

105. *Rajan Kumar Manchanda v. State of Karnataka*, 1990 Supp SCC 132

Criminal Courts or to prevent miscarriage of justice.¹⁰⁶

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

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

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

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

106. AIR 1997 SC 987 at p. 990.

107. *Ibid.*

108. AIR 1997 SC 987. Also refer: *Simrikhia v Dolley Mukherjee*, (1990) 2 SCC 437, *Deepti alias Ara-ti Rai v Akhil Rai*, (1995) 7 JT (SC) 175, *Madhu Limaye v State of Maharashtra*, (1977) 4 SCC 551, *V.C. Shukla v State* (1980) 2 SCR 380.

cifically barred in the Code cannot be undone through section 482 Cr.P.C. Section 397 (3) Cr.P.C. bars a second revision. Therefore, one cannot reach the High Court with a petition under Section 482 Cr.P.C. to impugne an order of the Criminal court or Session court. *Dharampal and others v. Ramshri and others*.¹⁰⁹ Regarding this inherent jurisdiction of the High Court, the High Court is at the performing point and is likely to be swayed by the facts of the case. If the High Court quashes the Magistrate's order or Session Judge's order, assailed before it. The High Court has no jurisdiction under section 482 Cr.P.C. to quash. This being the position, the Supreme Court found sufficient ground for holding that the inherent power under section 482 Cr.P.C. cannot be confined to the provisions under sections 483, 401, 341 of Cr.P.C.¹¹⁰

xv. Nucleus of Judicial Activism in Criminal Justice

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

109. (1993) 1 SCC 435.

110. *Krishnan v. Krishnaveni*, AIR 1997 SC 987.

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

In *Tejmal Punamchand Burad v. State of Maharashtra*,¹¹¹ the Bombay High Court held that applying powers High Court can interfere with the order passed by the Magistrate under section 133 of the Cr.P.C. But, this is possible only if substantial injustice is done. High Court has power under section 482 Cr.P.C. to take cognizance and interfere with the order passed by the trial court. The magistrate should have taken a different view where there is no evidence or no reasonable evidence on record, to justify, the magistrate's findings. In the above case, since the order was proper and passed within jurisdiction, High Court declined to interfere. There are several formalities in criminal justice administration. Though the fundamental principle is that, any citizen can initiate legal proceedings so far as an offence is concerned, in certain particular situations, certain statutory requirements are necessary for initiating the proceedings. One is obtaining sanction from the state. The conventional criminal jurisprudence teaches us that State is the aggrieved party in criminal cases. To keep the stream of justice clear of corruption, nepotism and bureaucratic excesses, it is required to get the sanction of the executive head, before a person is proceeded against. Section 197 of the Cr.P.C. provides for the requirements of sanction. There are special statutes like Prevention of Corruption Act, providing for sanction fulfilling the requirements of that particular statute. When sanction is a necessary step in the course of prosecution, relevance of inherent powers come to the forefront,

111. 1992 Cri.L.J. 379

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

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

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

112. *Lakshmana Kunjhan v. C.R. Sulochana*, 1978 Cri.L.J. 522 (Ker.)

113. *R.P. Kapoor v. State of Punjab*, AIR 1960 SC 866

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

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

116. 1990 Cri.L.J. 244 (Gau.)

the trial on other parties. section 482 Cr.P.C. could not be invoked to quash the order of the Magistrate to take cognizance under sections 500, 502 and 507 IPC. Whether all or any of the accused committed any offence has to be decided at the time of trial after taking evidence.

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

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

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

117. 1990 Cri.L.J. 861 (All.)

118. 1992 Cri.L.J. 1472 .

119. 1995 Cri.L.J. 3936 (Pat.)

question of sanction could be considered only when the petitioner appears before the court or and makes such submission.

In *M/s. Meenakshi Industries v. G. Guruswamy*,¹²⁰ the offenses of non-payment of employees deposit linked insurance contributions were alleged. It was a continuous offence. The petitioner raised doubt regarding sanction of prosecution and *locus-standi* of the complainant. It was held that such matters are not to be considered under inherent powers. When economic offences are involved High Courts are more strict.

In *M/s. Tonesta Electronics v. Asst. Collector of Central Excise*,¹²¹ the complaint was filed for economic offences committed by the accused who were partners of a registered firm. The complaint against persons in charge of the affairs of the firm could not be quashed. It was held that the complaint against persons who were not responsible for the conduct of business of the firm at the time of alleged offence; complaint against them could be quashed. Ground that no sanction for prosecution as required under the Act - complaint cannot be quashed on such ground. Proceedings cannot be quashed on ground that no notice had been issued to accused persons before launching prosecution.

In *Ajay Handa v. State of Punjab*,¹²² the High Court held that while sanction is a necessary requirement, mere technicality shall not be brought in for sanction already given, it was held that -

120. 1992 Cri.L.J. 2115 (Mad.)

121. 1995 Cri.L.J. 934 (Kar.)

122. 1995 Cri.L.J. 2002 (P&H)

Each and every fact namely date of sample when taken, date of analysts report need not be mentioned specifically in sanction order - Complaint and document accompanying ie, report of analyst *prima-facie* making out case. Complaint cannot be quashed.

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

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

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

123. 1989 Cri.L.J. 1104 (Patna)

interfere and it was held that in suitable cases, in order to do justice and prevent injustice, the High Court can exercise inherent powers to grant stay of execution of bond. The High Court quashed the order refusing to stay the execution of security bond, and instead itself granted stay.

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

xvi. Standards in Application of Inherent Powers

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

124. 1990 Cri.L.J. 400 (All.)

125. 1994 Cri.L.J. 1288 (Ker.)

gate a crime. It can be gainful that the High Court under inherent powers also can issue direction. A Magistrate having neither inherent power nor original jurisdiction, could not issue such a direction.

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

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

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

126. 1996 Cri.L.J. 2918 (P&H)

127. 1996 Cri.L.J. 3313 (P&H)

128. 1992 Cri.L.J. 3740 (Kar.)

that the sentence can be suspended by invoking inherent powers. This area seems to be a nebulous one where there is no consensus regarding the power of section 482 Cr.P.C.

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

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

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

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

129. 1995 Cri.L.J. 1685 (Bom.)

130. 1993 Cri.L.J. 3193 (Raj.)

cised *ex-debito* justice to do the real and substantial justice for the administration of which alone court exists. But, such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whims or caprice.

- (ii) That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice.
- (iii) That the power is not to be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party, and
- (iv) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

The Court answered the question in the negative.

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

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

131. 1995 Cri.L.J. 3964 (A.P)

132. 1996 Cri.L.J. 2973 (A.P.)

poundable cases. But, it was held in appropriate cases withdrawal from prosecution shall be permissible for securing the interest of justice. This in effect gives the relief of compounding to the aggrieved party.

In *State of Karnataka v. Srinivasa Iyengar*,¹³³ the court held that even if both complainant and accused filed petition to compound the offences, it was to defeat statutory bar by resorting to inherent powers under section 482 Cr.P.C.

A definite advancement took place in *Hari Moha Patra v. State of Orissa*,¹³⁴ the High Court of Orissa quashed the proceedings while considering the petition under sections 482 & 320 Cr.P.C. for compounding, filed on behalf of informant and the victim. Alleged offences occurred about six years back and the victim was not willing to support the prosecution cases. Proceedings were quashed even though the alleged offences were not compoundable.

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

In *Hack Bridge Hewitic & Easun Ltd. v. Provident Fund Inspector*¹³⁵, the prosecution was for failure to deposit the provident fund. There were several mitigating circumstances in the case, all dues of provident fund contribution were remitted subsequently, after launching of prosecution. So minimum sentence of nominal fine could be imposed.

133. 1996 Cri.L.J. 3103 (Kar.)

134. 1996 Cri.L.J. 2952 (Ori.)

135. 1992 Cri.L.J. 303 (Mad.)

The court made it clear that in such circumstances, a lenient view is to be taken towards the accused. The court also sounded a word of caution, there should not be a mistaken belief that the High Court was interfering with the discretion vested in it. Discretion is a privilege vested in a particular office which cannot be arrogated by another authority. If that is done, it will be without jurisdiction. But the rigour of concept of jurisdiction is made flexible by the impact of inherent powers.

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

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

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

136. 1992 Cri.L.J. 1235 (Mad.)

137. 1995 Cri.L.J. 1664 (Ker.)

138. 1995 Cri.L.J. 3402 (A.P)

ited in the matter of inherent powers. In a case of bride burning, a case committed for trial to the Sessions court. An application was filed by the brother of the deceased lady for transfer of the case. Objection was raised regarding the *locu-standi* of the petitioner. But, the court held in the affirmative, stating that it had jurisdiction.

In the matter of jurisdiction, one may come across petitions filed following wrong procedure. In *B.K. Bhowmick v. M/s. Princes Confectionary*,¹³⁹ it was held that an order of the Additional Sessions Judge in respect of false identification of accused, the proper course was to challenge the order under section 371 of Code by filing an appeal. Inherent powers are not available for legalising wrong procedure. Similarly, earlier it was held that inherent powers cannot be exercised for trivial matters.

In *Santhosh v. State of Kerala*¹⁴⁰ it was held that amending the charge midway was not at all violation of any order, a special court has got power under the statute to adopt its own descretion and inherent powers are not made use of for interfering in such matters.

In *Rajarithnam v. Ananthanarayanan*,¹⁴¹ the Magistrate framed charges for offences triable by the court of sessions. It was not quashed on the ground of jurisdiction. Allegations in complaint disclosed offences exclusively triable by a court of Session. The Magistrate framed charges for an offence under section 384 I.P.C., which was not exclusively triable by the Magis-

139. 1979 Cri.L.J. 1473 (Cal.)

140. 1985 Cri.L.J. 756 (Ker.)

141. 1978 Cri.L.J. 1856 (Mad.)

trate. High Court under section 482 Cr.P.C could not direct the Magistrate to treat the case as preliminary register case. It was still open to the Magistrate to commit the case to the court of session in the course of trial if he was satisfied to do so.

xvii. Looking into the Impact of Exercise of Inherent Power

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

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

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

142. 1992 Cri.L.J. 948 (P&H)

143. 1992 Cri.L.J. 839

In *Cuttack Co-operative Stores v. Regional P.F. Commissioner*,¹⁴⁴ it was held that, since there was absolutely no *mensrea* the petition filed against the co-operative Society was dismissed, remanded for reconsideration.

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

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

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

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

144. 1996 Cri.L.J. 1483 (Ori.)

145. 1995 Cri.L.J. 2414 (Ori.)

146. Reference made to: *P.C. Madhwa v. S.C. Bhatia*, 1995 Supp. (4) SCC 244; *Ashok Kumar Jain & others v. State of Bihar*, (1995) 1 SCC 516; *S. Ram Mohan v. The State*, 1995 Cri.L.J. 2414 (Ori.); *Devi Chand & others v. State of Rajasthan*, 1995 Cri.L.J. 2977 (Raj.)

nature which seeks to bear the essential principle of law and legal system".¹⁴⁷

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

"Like Austin, the realists look on law as the command of the sovereign. But, the sovereign is not Parliament, but the judges for the realists, the sovereign is the court"¹⁴⁸

This idea is true of the concept of inherent power also. One area where the court asserted as the sovereign is undoubtedly in the exposition of the definition of inherent power and its application to diverse circumstances. The result of the cogitation by the apex court on the categories of reference under the inherent power show the vast potential of this doctrine in criminal law jurisprudence.¹⁴⁹ Almost all aspect of criminal justice system are subjected to the 'litmus test' of inherent powers. They include application of inherent powers in reference to FIR,¹⁵⁰ in matters

147. P.J. Fitzgerald, *Salmond on Jurisprudence*, (1966), 5th Impression (1988) p.1.

148. *Id.* at p. 35

149. Sunil Kumar G. "Supreme Court on Inherent Powers of High Court", 1997 Cri.L.J. (J) 10.

150. *Kurukshethra University v. State of Haryana*, AIR 1977 SC 2229; *Union of India v. B.R. Bajaj*, AIR 1994 SC 1256; *Rupan Deol Bajaj v. K.P.S. Gill*, AIR 1996 SC 309

prohibited under the Code¹⁵¹, in the context of specific provisions¹⁵², abuse of the process¹⁵³, quashing of charge¹⁵⁴, at the stage police investigation¹⁵⁵, pending criminal proceedings¹⁵⁶, taking cognizance¹⁵⁷, quashing complaint¹⁵⁸, power of the subordinate courts¹⁵⁹, stay of proceedings¹⁶⁰, matters once considered under section 341 Cr.P.C.¹⁶¹, power review¹⁶², expunging remark¹⁶³, delay in trial¹⁶⁴, towards interlocutory orders¹⁶⁵, revision¹⁶⁶, cancellation of bail¹⁶⁷, duty of the High Court¹⁶⁸, inherent powers of

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151. *Smt. Sooraj Devi v. Pyare Lal*, AIR 1981 SC 736; *State of Orissa v. Ramachandra Agarwal*, AIR 1979 SC 87.
152. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866; *Palaniappa v. State of Tamil Nadu*, AIR 1977 SC 1328.
153. *State of Karnataka v. Muniswamy*, AIR 1977 SC 1489; *Naganna v. Viranna*, AIR 1976 SC 947.
154. *Radhe Shyam v. Kunj Behari*, AIR 1990 SC 121.
155. *Jehan Singh v. Delhi Administration*, AIR 1974 SC 1146; *M/s Jyant Vitamins Ltd., v. Chaitanya Kumar*, AIR 1992 SC 1930.
156. Ref. *supra* n.153. Also see *Madhava Rao v. Sambahaji Rao*, AIR 1988 SC 709; *State of Orissa v. Banshidhar Singh*, AIR 1996 SC 938.
157. *Dr. Sharda Prasad v. State of Bihar*, AIR 1977 SC 1754.
158. *Smt. Chand Dhawan v. Jawahar Lal*, AIR 1992 SC 1379; *K.M. Mathew v. State of Kerala*, AIR 1992 SC 2206.
159. *Bindeswari Prasad v. Kali Singh*, AIR 1977 SC 2432. *Major Genl. A. S. Gauraya v. S.N. Thakur*, AIR 1986 SC 1440.
160. *M.C. Mehta v. Union of India*, AIR 1988 SC 1115.
161. *Lalit Mohan Mondal v. Binoyendra Nath Chatterjee*, AIR 1982 SC 785.
162. *State of Orissa v. Ram Chandra*, AIR 1979 SC 87.
163. *Dr. Reghubir Saran v. State of Bihar*, AIR 1964 SC 1.
164. *State of U.P. v. Kapil Deo*, AIR 1973 SC 494. *Santosh De v. Archana Guha*, AIR 1994 SC 1229.
165. *Amarnath v. State of Haryana*, AIR 1977 SC 2185.
166. *Dharampal v. Smt. Ramshri*, AIR 1993 SC 1361; *Ganesh Narayan Hegade v. S. Bangarappa*, 1995 AIR SCW 2364.
167. *T.H. Hussain v. M.B. Mondkar*, AIR 1958 SC 376; *Pampapathy v. State of Mysore*, AIR 1967 SC 286.
168. *Union of India v. N.N. Chaddha*, AIR 1993 SC 1082.

the Supreme Court¹⁶⁹ and so on. In all these areas unanimity or consensus is always elusive. But the High Courts and the Supreme Court use this jurisdiction to convert the cacophony in criminal justice administration into a symphony. This process is ever on the move. One can suggest that the inherent jurisdiction is an instance of a legal category of indeterminate or concealed multiple reference.¹⁷⁰

169. *Delhi Judicial Service Association, Tis Hazari Court v. State of Gujarat*. AIR 1991 SC 2176.

170. Julius Stone, *Legal System and Lawyers' Reasonings*, (1964) p. 26.

PART - III
CONSTITUTION, THE CODE
AND INHERENT POWERS

CHAPTER - IIICONSTITUTIONAL 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 true¹, 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

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 proudest 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.³

"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

3. Granville Austin, *Indian Constitution: Cornerstone of a Nation*, (1966), p 164

4. *Ibid.*

the superior courts, because they represent the least dangerous branch. In a similar context, about American Supreme Court, Bickel says⁵:

"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"⁶

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,

5. A.M. Bickel, *The Least Dangerous Branch*, (1962) p.1

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-

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.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"¹³

In U.S.A. also the attitude of the executive was the same. But, Marshall, C.J. turned the tables on the executive with *Marbury v. Madison*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.¹⁵

The court which decided the cases like *A.K. Gopalan v. State of Madras*,¹⁶ *Keshavananda Bharati v. State of Kerala*,¹⁷ *Maneka*

12. Quoted *id.* at p. 9

13. Quoted *id.* at p. 10

14. (1803) 1 Cranch 137. 177-179 2L. ed. 60 cited in H.M. Seervai *Constitutional Law of India*, (1983) Vol. 1.

15. Also see *supra* n. 9 p. 13

16 AIR 1950 SC 27.

17 AIR 1973 SC 1461

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 Shukla*²³ 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 (1974) 1 SCC (4our) 45

21. Gobind Das, *supra*. n.9 at p.13

22. Nani A. Palkhivala, *We The Nation* (1994)p. 219

23. *ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207

lowed by the public easily. All these according to Sri Palkhivala led to a public^{dis} 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"²⁴

iii. New Horizon for Inherent Powers and Justice

The period from 1950 witnessed the rewriting of several fundamental principles. The concept of *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 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-

24. *Supra.* n. 22

ecuted, 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. Granville Austin, *supra*. n.3 p. 50

26. Ref. *supra* 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*²⁷ 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

27. (1978) 4 SCC 104. Also see *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494; *D.K. Basu v. State of West Bengal*, AIR 1997 SCC 610.

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

28. Durga Das Basu, *Shorter Constitution of India*, (1996), p. 270.

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.³⁰ It is an ancillary power with no limitation.³¹

No statutory provision can curtail this plenary power of the Supreme Court as decided by the Supreme Court in *Anis v. Union of India*,³² *Union Carbide v. Union of India*,³³ *Delhi J.S.A. v. State of Gujarat*,³⁴ 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. Nanadas*,³⁵ *Kamala v. Hem*,³⁶ *Antulay v. Nagaraj*.³⁷

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

30. *Id* at. p. 450. Reference is made to *Delhi Judicial Service Association v. State of Gujarat*, AIR 1991 S.C. 406, *Union Carbide v. Union of India*, (1991) 5 SCC 584.

31. *Nanavathi v. State of Maharashtra*, AIR 1961 S.C. 112.

32. (1993) 2 U.J.S.C. 305.

33. 1991 Supp. (1) S.C.R. 251.

34. (1991) 4 SCC 406.

35. (1989) 4 SCC 612.

36. (1989) 3 SCC 145.

37. (1988) 2 SCC 602.

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.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, summary, 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.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

38. *D.D. Basu*, Shorter Constitution of India, (1996) p. 525. Refers to *Shivarudrappa v. Kapurchand*, AIR 1965, Mys. 76; *Board v. St. Thomas School*, AIR 1984 Cal. 208; *Chunilal v. Chief Justice*, AIR 1972 Cal. 470.

39. *Ibid.* Refers to *Sitarama v. State of A.P.* AIR 1959 SC 359; *Hari v. Chief Conservator*, AIR 1959 Mad. 406.

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.⁴⁰

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.⁴¹

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-

40. *Pepsi Foods Ltd. & another v. Special Judicial Magistrate and others* - (1998) 5 SCC 749.

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

43. *Pepsi Foods case*. (1998) 5 SCC 749.

44. *State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222. *State of Haryana v. Bhajanlal*, 1992 Supp (1) SCC 335.

45. 1984 Supp. SCC 204.

46. *Dwaraka v. Union of India*, AIR 1990 SC 428; *State of Bihar v. Sanjay*, AIR 1990 SC 749; *Dwaraka v. Union of India* AIR 1990 S.C. 428 ; *Kini v. Union of India* 1985 Supp SCC 122; *Narayani v. State of Kerala* 1989 Supp SCC 212.

47. AIR 1954 S.C. 215.

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.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.⁵³

The attitude of the Supreme Court has perceptibly changed from *Jagir v. Ranbir*,⁵⁴ to *Krishnan v. Krishnaveni*.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,⁵⁶ and endorsed by the Supreme Court.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

52. *M.C. Mehta v. Union of India*, AIR 1988 SC 1115

53. *Geevarghese v. Chacko*, AIR 1957 T.C. 256.

54. AIR 1979 S.C. 381.

55. AIR 1997 S.C. 987. Also see *supra* n. 110 ch. II

56. In *Re Tirupuliswamy*, AIR 1955 Mad. 287; *Aidal Singh v. Karan Singh*, AIR 1957 All. 414 (FB); *Sukhendra v. Harekrishna*, AIR 1953 Cal. 636, *Braham Dutt v. People's Co-op. Society*, AIR 1961 Punj. 24.

57. *Supra* n. 55

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

58. *Umaji v. Radhikabai*, AIR 1986 SC 1272; *Sushila Bai v. Nihalchand*, 1993 Supp (1) SCC 11; *R.D.C.C.B. v. Dinkars*, 1993 Supp (1) SCC 9.

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 decision⁶⁰ 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-

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

63. *Ibid.* In *Pepsi Food* Supreme Court makes a strong case in favour of the inherent powers by the fusing together the varieties of inherent powers under Article 226, 227 of the Constitution and section 482 of the Cr.P.C. Reliance is also made on a number of previous decision like *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, *Waryam Singh v. Amarnath*, AIR 1954 S.C. 215, *Vathutmal Raichad Oswal v. Laxmibai R. Tarta*, (1975) 1 SCC 858, *Nagendranath Boya v. Commissioner Hills division*, AIR 1958 S.C. 398.

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 Lal*⁶⁴ 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".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.⁶⁶ The Supreme Court refers to *Waryam Singh v. Amarnath*⁶⁷ to reassert the power of judicial superintendence under Article 227. The action of the Calcutta High Court in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*,⁶⁸ is viewed with approval. Then referring to the decisions in *Vathutmal Raichand Oswal v. Laxmibai R. Tarta and another*,⁶⁹ *R. v. Northumberland compensation Appeal Tribunal*⁷⁰ and *Nagendranath Boya v. Commissioner of Hills division*,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.

xi. Exercise of Inherent Powers by the Supreme Court and High Court - The Contrast

The above discussion of the Supreme Court's attitude towards

65. *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others* (1998) 5 SCC 749.

66. *Ibid.*

67. AIR 1954 SC 215.

68. AIR 1951 Cal. 193.

69. AIR 1975 SC 1297.

70. [1952] 1 All. E.R. 122.

71. AIR 1958 SC 398.

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 advert- ing to the point referred to by the single judge quashed the FIR and consequently the proceedings thereunder. The reasons which

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

76. *Tony Antony v. Director General of Police*, 1997 (2) KLT 853.

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. Sharma*⁷⁹ and *State of Punjab v. Gurmit Singh*,⁸⁰ The Supreme Court also refreshed its own judicial memory by referring to *Sanchaitha 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 Antony*⁸⁵ 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

77. 1992 Supp. (1) SCC 335.

78. 1982 (1) SCC 561.

79. 1992 Supp (1) SCC 222.

80. AIR 1996 SC 1393.

81. (1982) 1 SCC 561.

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

"Learned Advocate General relied on the decisions of the *Supreme Court in the State of H.P. v. Pirthi Chand*, (1996) 2 SCC 37, *State of U.P. v. O.P. Sharma*, (1996) 7 SCC 705, *State of Bihar v. Rajendra Agarwalla*, (1996) 8 SCC 164, and *Rashmi Kumar v. Mahesh Kumar Bhada*, (1997) 2 SCC 397, and vehemently contended that this Court, in exercise of the powers under Article 226 of the Constitution of India, or under section 482 of the criminal Procedure Code, 1973., should not quash the criminal proceedings against the petitioners at that stage as the investigation had almost come to a concluding stage"⁸⁹

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.⁹⁰ 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 ^{diction} ~~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 co-quettish 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 produced 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 cognizable 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 officers under section 156 (1) of the Code except under an order 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 not 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"⁹⁵

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.⁹⁶

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"⁹⁷

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^{cal} or capricious.⁹⁸ 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.

99. *Id.* at p. 751. *State of U.P. v. O.P. Sarma*, 1996 (2) JT SC 488. *Rashmi Kumar v. Mahesh Kumar Bhada*, 1996 (1) SCALE (SP) 40 (1)

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, 1973.¹⁰¹ 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, the Law Commission's proposal to recognise the inherent powers of the trial courts¹⁰² was not endorsed by legislature while reenacting 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.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. 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.

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

102. Ref. *supra* ch.2, n. 52

103. Ref. *supra* ch. 1, n. 2

In *Biswanath Prasad Sing v. State of Bihar*,¹⁰⁴ 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*¹⁰⁵ 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

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*,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.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. ie, 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.¹⁰⁸ A possible effect of long delay is that there is every likelihood of the evidence got faded.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.

106. 1987 Cri.L.J. 1091(Patna)

107. *K. Achutha Rao v. State of Orissa*, 1987 Cri.L.J. 2022, (Ori.)

108. The court consulted a catena of decisions holding the field, including: *State of U.P. v. Kapil Deo Shukla*, AIR 1973 SC 494; *State of Bihar v. Uma Shankar Kotriwal*, AIR 1981 SC 641; *Chajoo Ram v. Radhey Shyam*, AIR 1971 SC 1367; *Machander v. State of Hyderabad*, AIR 1955 SC 792; *Hussainara Khatoon v. State of Bihar*, AIR 1979 S.C. 1360

109. *Bal Ram Swain v. State of Orissa* - 1987 Cri.L.J. 2030

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 Bench 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

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.¹¹⁴

When no *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 *Bharath Ranjan Mishra v. Shyam Sundar Agarwal*,¹¹⁵ the court quashed the complaint relying on landmark decisions of *Madhava Rao Jivajirao Scindia's v. Shambaji Rao Chantrojairao Angre*,¹¹⁶ *Nagawwa v. Veeranna*,¹¹⁷ *Hareram Satpadi v. Tikkaram*¹¹⁸. 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 *Ganga Ram v. State of Rajasthan*¹¹⁹, 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

114. AIR 1978 SC 597 - *Maneka Gandhi's case*, AIR 1987 S.C. 149 - *Raghubir's Singh's case*

115. 1994 Cri.L.J. 268 (Ori)

116. AIR 1988 S.C. 709

117. AIR 1976 S.C. 1947

118. AIR 1978 S.C. 1568

119. 1995 Cri.L.J. 2125 (Raj)

proceedings.¹²⁰

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-

120. AIR 1978 S.C. 597-*Maneka Gandhi's case*. AIR 1979 S.C. 1360 - *Hussainara Khaton's case*, AIR 1992 S.C. 1701 A.R. Antulay's case, AIR 1987 S.C. 149, Raghbir Singh's case.

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 there of 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-

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.¹²⁶

Mere description of the accused as 'in-charge' of the business is not sufficient ground to impose liability on a person, when the company's liability is being fixed. In *Narain Extractions Pvt. Ltd. v. P.C. Mishra, Food Inspector*,¹²⁷ it was held that prosecution 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 violative of Article 21 of the Constitution of India.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 exercised against such lethargic and idle attitude of those who bring action against the accused.

In *Scanda Kumar Panda v. Saratulla Khan*,¹²⁹ delay in proceedings 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 factors. When a criminal case is initiated against a person the equations are uneven as a minion, a David is pitted against a monster

126. *Akhtar Alison v. State of U.P.*- 1996 Cri.L.J. 459 (All.)

127. 1996 Cri.L.J. 736 (Ori.)

128. *Rajbir Singh Sunar v. State of Haryana*, 1996 Cri.L.J. 1245 (P&H)

129. 1996 Cri.L.J. 2104 (Ori). Also see *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 - belligerent 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 back ground not only of Cr.P.C. but also of the basic law of the land, ie, the Constitution of India. Thus, the laxity, inadvertence, lack of promptitude, insolence 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-*

130. 1991 (1) KLT 67

ers,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.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. 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. Unconscionable 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

131. ILR 1999 (1) 303

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. In spite of this constitutional 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 Vigilance in the Interest of Investigation**

In *Bharath Hybrid Seeds & Agro Enterprises v. The State*,¹³³ 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*,¹³⁴ the Magistrate had issued process in a complaint case. The accused did not challenge the order for about three years. At the stage of

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 land mark 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 records¹³⁷.

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

135. AIR 1978 SC 47. *Amarnath v. State of Haryana*, AIR 1977 SC 2185

136. 1986 Cri.L.J. 1429 (Patna)

137. The court adverted to the decision in *R.P. Kapoor v. State of Punjab* AIR 1960 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 misappropriation of a heavy public amount goes unnoticed, and unpunished, 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 Ceaser less, but that I loved Rome more"¹³⁹ attitude of the court, in complying with the inherent powers is a pointer to the investigating agency also who build gate-ways to the accused to have safe-passage out of the province 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 proceedings.¹⁴⁰ The question of delay comes in the matter of filing petitions under section 482 Cr.P.C. itself. There is no prescribed period of limitation for filing petition under section 482 Cr.P.C. the application should be filed within a reasonable time. In *Bata @ Bata Krushna Behera v. Anamma Behera*,¹⁴¹ the High Court held that since the time limit for revision petition was 90 days application under Section 482 itself at par with a revision petition also be filed within 90 days and time beyond that period must be explained. This attitude of the High Court can create problems. It is not so admirable to equate inherent powers with revisional powers. The scope of two jurisdictions vary greatly. The proceed-

139. William Shakespear, *Julius Ceaser*, Act III Scene 2 Line 19

140. *Madan Mohan Sharma v. State of M.P.* - 1990, Cri.L.J. 1046 (M.P.)

141. 1990 Cri.L.J. 1110 (Ori.)

ings 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*,¹⁴² 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*,¹⁴⁴ 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-

142. 1990 Cri.L.J. 1354 (H.P)

143. *Seva Singh v. K.C. Kanungo*, 1992 Cri.L.J. 2569 (Cal.)

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*,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.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.¹⁴⁷ It is in such circumstances that the petitioner has to explain his conduct for causing delay.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.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*,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

145. AIR 1990 S.C. 1266

146. *Sat Paul v. Inspector of Police and another* - 1994 Cri.L.J. 2898 (Cal.)

147. *Hari Raman v. State*, 1995 Cri.L.J. 3527 (Mad.)

148. *Basana Gowda Patil v. State of Karnataka*, 1996 Cri.L.J. 631; *Santhosh de v. Archana Guha*, AIR 1994 SC 1229

149. *Rajaram Patnaik v. Indian Metal Fero Alloys Ltd.*, 1996 Cri.L.J. 732 (Ori)

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.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 reluctant to invoke the inherent power.¹⁵²

xvi. **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 undesirable persons do not get the benefits.

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

151. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *A.R. Antulay v. R.S. Naik*, AIR 1992 SC 1701; *State of Bihar v. P.P. Sharma*, 1992 Supl. (1) SCC 222

152. *M/s. Sangeetha Traders v. P.K. Das* 1996 Cri. L.J. 3207 (Ori)

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, Anikad*¹⁵³ 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*,¹⁵⁴ 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*,¹⁵⁵ 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 detenu 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*,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*,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*,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 Court¹⁵⁹ 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*¹⁶⁰ the High Court considered the comparative possibilities under the two jurisdiction to attack an FIR and an investigation, drawing profusely from an

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 pronouncement¹⁶¹ 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 constitutionalism 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 *Chinna Durai Nadar v. Assistant Health Officer*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-

161. *Emperor v. Khwaja Nazir Ahmad*, AIR 1948 P.C. 18; *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866; *State of West Bengal v. Swapan Kumar Guha*, AIR 1982 SC 949

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*,¹⁶³ 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*.¹⁶⁴ Matters

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*,¹⁶⁵ the Supreme Court made a further modification injecting 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

165. (1996) 6 SCC 775

Court in *Tony Antony v. Director General of Police*,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*,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 Ill as an entient symbol of pluralism - of Unity in diversity - in contrast to Monism and dualism".¹⁶⁸

166. 1997 (2) KLT 853

167. 1999 (1) KLT 747

168. Dr. Peter G. Sack, *Constitutions and Revolutions* - Centre for Advanced Studies and Research Tvm. (1990), p. 103

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"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 paradine"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 paradine can be called even inherent powers.

169. *Ibid.*

170. *Ibid.*

CHAPTER - IV

ELEMENTS OF THE INHERENT POWERS OF THE HIGH COURT

The Code of Criminal Procedure is the premier adjective law for the administration of criminal justice. Its importance is social, legal, political and historical. Social security and social peace are the *sine qua non* for a civilised society. Law is the most efficacious medium for social engineering. Political organizations and institutions are meant to protect social harmony. Law is the chiefest weapon in the hands of the political leadership to supervise all social activities. Whatever be the provisions in the substantive law a clear and conscientious procedure is required to secure the ends of justice. The provisions for inherent powers of the High Court contained in Section 482 of the Code of Criminal Procedure articulate the means to realise justice.

i. Objective of Inherent Powers

The cardinal objective of inherent powers is to safeguard the virtues of justice. This is evident from the fact that the occasion for invoking the inherent powers of the High Court is before the commencement of trial. Comparative studies of criminal trials in different legal systems have been unanimous in the opinion about the sanctity of fair procedure. It borders on the theme of human rights. In India it is stressed in the context of the provisions contained Part III and Part IV of the Constitution. The publication of

the proceedings of a colloquium under the British Institute of Studies in International Comparative law entitled as, *The Accused-A Comparative Study* brings out the all the important character of procedure¹. In the pretrial stage the question of police powers becomes irrelevant. Therefore the question of human rights comes; and it would lead our attention to the sociological dimensions of criminal law².

Crimes predate human society. Even in pre-historic period, neohistoric period or the puranic or mythological period, crimes existed. Most treacherous offences of today were prevalent in the ancient societies also. Man's innate propensity to dominate his fellow beings, his endeavour to amass property and acquire position, his intolerance of alien faith all resulted in behaviour injurious to others and detrimental to the society. State as the guardian of the society stands sentry to protect the social interest, mores and values. Even when individual freedom is recognised as fundamental, inalienable and inextinguishable, care is taken to limit such freedom on the basis of the public good.

Article 19 of the Constitution of India recognises individual freedom of persons. These freedoms are subject to reasonable restrictions. The State while recognising the worth of man also protects the unity of the society³. Rights and freedom do not mean licence and impertinence. For every jural correlative there is jural opposite. If there is right, there is duty, if there is power there

1. Edited with an introduction by J.A. Coutts, *The accused - A comparative Study*, London (1960) published by Stevens Sons.

2. *Id.* at p.5, from the introduction by J.A. Coutts entitled, "The Public Interest and The Interest of accused in Criminal Process".

3. Jethro Brown, *The Underlying Principles of Modern Legislation*, (1917) pp.40-57

is liability, if there is immunity, there is disability⁴. So man, though born free, is in chains everywhere. This idea of Rousseau is symbolically adopted to show that the chain of law bridles the proclivity of man. In this context criminal justice system is most significant.

The type of the laws prevalent in a society must be according to the requirement of its people. *Ubi Societas Ibi jus*⁵ is the principle. The harshness of a legal system is often measured by the character of its penal laws. Substantive criminal law would be broadly the same in all legal systems. The basic difference is in the procedure. A body of procedural laws for the administration of criminal justice based on rational principles is required to inspire confidence in the public. Securing the ends of justice should be the ultimate objective of the laws. The Code of Criminal Procedure, 1973, contains provision for adjudicating criminal cases, The Code with its companion, the Evidence Act, 1872 keeps patrol of criminal justice system and ensures that every offence is dealt with according to procedure established by law⁶. Criminal Procedure Code provides for every reasonable situation contemplated in advance. Still there can be circumstances unimagined by the authors of the code. This shall not impede the smooth administration of justice. In these days of Human Rights Jurisprudence, the most vulnerable area of social psyche is the mismanagement of criminal justice system.

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4. R.W.M. Dias, *Jurisprudence* (5th Edn), p. 24. The author discuss the lattitudes in jural relation in the context of the contribution of Arther John Salmond, Hohfeld, G.L. Williams etc.
 5. The maxim meaning, as is the Society, so is the law.
 6. For historical background of events leading to the enactment of the Code of Criminal Procedure, 1973, See Ch.I *supra*.

This is the region where the prerogative of the State rubs with the privileges of the citizens. By merely imputing a person in a criminal case and putting him to defend, a serious drain of money, material, mental peace and status can be affected. Courts are visited by fortune-seekers and time servers. Situations arise where the very proceedings run counter to the morality and ethics since the allegations are vague, vexatious and illegal. At this age of mutual human mistrust and apathy, where:

"Best lacks all conviction, and the worst is full of passionate intensity,"⁷

human beings are exposed to the vagaries of the State. The only solace is the judiciary which one expects to do complete and total justice. In this respect requirement of a foolproof procedure is stressed Hon'ble Justice Scarman's words are apt to be recalled:-

"More and more it is becoming clear that the old adage *ubi remedium ibi jus*, has as much relevance to our problem as its successor *ubi jus ibi remedium*. In the civilized world the substantive criminal law does not greatly differ from one legal system to another: Nor-with a few exemptions (example political offences, capital punishment, the treatment of the young offender.) do the difference really matter. If a man is proved a thief, he is, almost the world over, convicted of crime. But how does society set about proving its case and punishing the guilty? Here is the rub: for justice and liberty depend so much on the definition of

7. Y.B. Yeats, *The Second coming*,(1919),"The Twentieth century Verse-An Anglo American Anthology", (1979) p.62 at p.63

the crime as on the nature of the process, administrative as well as judicial designs to bring the alleged offender to the justice⁸.

For this courts must have legislative mandate to act effectively and convincingly. It is in this context that one has to view the inherent powers of the High Courts under section 482 of the Code of Criminal Procedure. It is a privilege against incrimination available to the accused in India. Inherent powers of the High Court are saved in section 482 of the Code. It is distinguished from the general scheme of the Code through a *Non-obstante* clause. "Nothing in this Code shall be deemed to limit or affect the inherent powers of High Court". Inherent Powers are unlimited and unaffected by the provisions of the Code. No provision can be deemed to override the inherent powers. The inherent powers are specifically for three purposes:-

- i) Powers to make such orders as may be necessary to give effect to any order under the Code.
- ii) Power to prevent abuse of the process of any court.
- iii) Power otherwise to secure the ends of justice⁹.

If one searches for generalisations in applying inherent powers there is difficulty. It is essentially something which is to occur to the deciding judge.

The principles enshrined in S. 482 Cr.P.C., enumerated above are general, universal and eternal ingredients for justice of high

8. Ref. *supra*. n.1, Foreword by Hon. Justice Scarman.

9. It is the gist of inherent powers as saved in Sec. 482 Cr.P.C. 1973 and Sec. 561-A Cr.P.C. 1898.

quality. Actually there is only one major dogma, *ie* Justice. Three ways are suggested to reach justice. Think justice, act justice and reach justice. The reason for suggesting that there is one major dogma Justice is because justice is the objective of inherent powers. In S. 482 Cr.P.C. it is not an enumeration of the ingredients of inherent powers. It is an elaboration of the concept of inherent powers.

ii. Principle of Inherent Powers

- a. **inherent powers are such powers required to give effect to orders passed under the Code.**

This means the proceedings initiated under the Code are to be respected and effected. Orders passed under the Code form the various processes of the criminal courts. The process must be obeyed. Abuse of the process of any court amounts to order passed under the code being not given effect to. This in turn leads to a situation where the ends of justice are rendered insecure. Inherent powers are preserved to protect justice. So these notations of inherent powers demonstrate the progression of justice. While giving effect to orders passed under the Code abuse of the process of all courts is prevented. If orders passed under the Code are abused, or if provisions of the Code are abused and illegal orders are passed the sufferer is justice. Our sense of justice is wounded. Even when the court puts the provision of the Code for wrong purposes it may be without malafides and technically be said that justice is administered. But, there, Lord Hewart's immortal words come to the fore; justice should not only be done, but it should be manifestly and undoubtedly be seem to

be done. That cannot be when the orders passed under the Code abuse the process of the court or process of the court are abused to render nugatory orders passed under the Code. In both cases justice suffers. The ends of justice are let vulnerable. So there is only one chief function to the inherent powers. That is to patronise, protect and practice justice. It is the power to give effect to orders passed under the Code, or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. For this the inherent powers in the Code are limited by or affected by nothing in the Criminal Procedure Code. It puts justice above law. If specific provisions are absent in the Code, still justice is to be done, invoking inherent powers. That power is there even if one assumes all provisions of the Code are declared redundant. It is not assumption, it could be the reality in yester years where neither Code nor legislatures existed. Then justice was administered with inherent powers of the court. Justice cannot operate in vaccum; there must be laws empowering the courts. Even if there is no law the courts must still have powers to hold justice aloft; and that power is inherent powers.

Inherent powers of the court are not conferred on the court through laws. they are not vested. They are not formulated or devised or invested. They were there; they were there even before we used the catch phrase 'inherent powers' to signify the capacity of the court to do *ex debito justitiae*. Inherent power is preserved and saved. Section 482 Cr.P.C. only makes a declaration regarding the inherent powers of the High Court. So. when one finds inherent powers of the High Court. it is only meant, as suggested, declared or indicated through section 482 Cr.P.C. We

derstand inherent powers under section 482 Cr.P.C. in the same vein as we understand the revisional powers under sections 397 to 401 Cr.P.C. or appeal powers or various other procedures contemplated under various provisions of the Code. Section 482 Cr.P.C. announces that there is more to the requirement of justice than what is stated in the Code. That deficit is met by inherent powers. Therefore, to understand the full import of inherent powers one should not be satisfied by knowing the criminal procedure in the Code. One should come out into the full blaze of jurisprudence to see how ends of justice are secured by the inherent powers of the High Court. The mechanics of inherent powers helps one to set a kaleidoscopic view of the realm of criminal justice administration.

b. power to prevent abuse of any court

Abuse of the process of the court is a phrase which sums up the entire gamut of practice and procedure of the judicial process. Conduct of the presiding officer is crucial. Contents of the complaint are vital. Character of the parties involved in the proceedings is relevant. Propriety of the forum chosen, applicability of the provision of law invoked are all having a bearing on the process of the court. One cannot narrow down the scope of the process of the court to the summons, notices, warrants and other proceedings issued by a court. Process of the court is the power of the court, the prestige of the court. A court of law shall not be a theatre of the absurd. Sources of abuse can be the Magistrate, the parties, the counsel, the prosecutor, the witness or the investigating agencies. A client may speak profane language in the court. Statements may be made for private motives. If the pre-

siding officer is to be peeved by it and ventilates his ire on the counsel it is abuse of the process of the Court¹⁰. Judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve

iii. No Hard and Fast Rules

In coming to the conclusion that there is abuse of the process of the court, the High Court cannot have any hard and fast rules. There is no eternal principle to detect and destroy the abuse. The High Court itself should be vigilant and not overzealous. Exercise of inherent powers render real and substantial justice. While invoking inherent powers the High Court does not examine the veracity of allegations¹¹. Under the guise of invoking inherent powers the High Court cannot interfere with the judicial exercise of the discretion vested in the lower courts. Nor should the High Court be diffident in acting where stern action is required. Complaints constituted by vague allegations, after thoughts, figments of imagination cannot supply the real material connecting the accused and the offence alleged. The Supreme Court of India in *Bhaskar Chatteraj v. State of West Bengal*¹² quashed the charges under sections 478 and 380 IPC in an appeal under Article 136 of the Constitution. The High Court had declined to exercise the inherent powers. The Supreme Court made its unique imprint when it quashed the proceedings against the appellant and allowed the proceedings against the other accused to continue. If the com-

10. *Assankutty v. State*, 1990 (1) KLT 207. For getting the benefit under S. 19 (2) of the Prevention of Food Adulteration Act accused made statement.

11. *Kelappan v. Kalyani*, ILR1991 (3) 866

12. 1991 Supp (2) SCC 574

plaint is prima-facie not genuine or bonafide no more vacillation is expected of the High Court. An inquiry under section 363 (1) of the Merchant Shipping Act 1958¹³ was averted by the Supreme Court as the complaint did not satisfy the essential requisites of section 363 of the Act. The Supreme Court's impact on the inherent powers of the High Court is remarkable. It cannot be said that the Supreme Court is examining the correctness or otherwise of all decisions of the High Court. The Supreme Court's opportunity is mainly through the jurisdiction under Article 136 of the Constitution. Prevention of the abuse of the process of the court is the one reason on which the High Court bases its jurisdiction for pressing inherent powers into action. When the High Court invokes inherent powers on being convinced that the offence alleged is not made out even if taken at their face value, the Supreme Court would be very slow to interfere with the finding of the High Court¹⁴. This does not mean that the High Court can pre-judge the case. In *State of Bihar v. Raj Narain Singh*¹⁵ the order of the High Court quashing the prosecution at the preliminary stage was set aside and the criminal case restored for trial by the lower court.

The situation created by a plethora of decisions by the various High Courts is complex and enigmatic. The question time and again posed is about the depth and reach of the inherent powers of the High Court. Inherent powers of courts when in-

13. *Capt. Subash Kumar v. Principal Officer, Mercantile Marine Department*, (1991) 2 SCC 449.

14. *Dhanwanti Vaswani (Dr) v. State and another*, 1991 Supp (2) SCC 329.

15. 1991 Supp (2) 393. The Supreme Court followed the decision in *Eastern Spinning Mills and others v. Rajiv Poddar and others*, 1989 Supp (2) SCC 385.

voked in a fit case are effective. But, when the invocation of the inherent powers is clouded by doubt and apprehension one yearns for a scheme or guidelines for the High Court to use the jurisdiction. When the inherent powers of the High Court are pressed into service for quashing an FIR, or a complaint the effect is that the case altogether diffuses into thin air. In *State of Haryana and others v. Bhajanlal and others*,¹⁶ disgusted with the action of the High Court, the Supreme Court came out with a few illustrations containing circumstances with a few instances which would examine the power being used in a regular and legal manner. The Supreme Court took a leaf or two out of the voluminous concept of judicial review and dilated the powers of the High Court, be it under Article 226 of the Constitution or section 482 of the Code of Criminal Procedure. In both, what is expected of the High Court is an approach marked by maturity, detachment and dispassionateness. The High Court is not to evaluate evidence. The High Court is not to assume or presume, infer or imply. While wielding the powers to prevent the abuse of the process of any court, the High Court itself is not to degenerate into a forum for abusing the process of the court. It is in this context that one has to examine the categories of reference made by the Supreme Court in *State of Haryana v. Bhajanlal*¹⁷.

iv. Depending on facts and Circumstances

The consensus of judicial pre-meditation is that the facts and circumstances of each case would give impressions to decide whether there is abuse of the process of the court. In *R v. B*¹⁸ the

16. 1992 Supp (1) SCC 335.

17. *Ibid.*

18. 1996 Crim.L.R. 406.

Criminal Division of the Court of Appeal considered the conviction of 'B' for rape and indecent assault of daughter and step-daughter. The event had occurred in 1970. The first case was registered in 1989. The action was challenged. The trial judge refused to grant a stay of proceedings on the ground of abuse of the process. The question before the Court of Appeal was whether a fair trial could be possible? According to the Court the verdict would be unsafe and conviction questionable. The court observed that the trial judge had referred to the difficulties of the complainant without referring to the difficulties of the accused. But in *R v. Hickson*¹⁹ the Court of Appeal dismissed an appeal. The action was for indecent assault and sexual abuse of girls between 13 and 14 years committed between 1983 to 1988. The conduct was for a substantial period of time and the court had strong supporting evidence. Sometimes, the allegations may be solid. But, the nature of controversy in those cases is such that the proper forum would be a trial court. In some cases,²⁰ for example, failure to exercise inherent jurisdiction would be endorsing the abuse of the process of the Court. In one case, a proceedings for an offence of breach of trust under section 406, Indian Penal Code was initiated against a person for shortage of paddy and rice produced for Food Corporation of India. The matter was under arbitration. The Magistrate taking cognizance under such circumstances would be an abuse of the process of the court.

In a petition under section 482 Cr.P.C. the High Court refused to quash the proceedings. According to the Supreme Court,

19. 1997 Crim. L.R. 495.

20. *Balkishan Das v. P.C. Nayar*, 1991 SCC (Cri) 1055

it was a fit case for invoking the inherent powers as the forum of the criminal court was sought to canvas an issue, the core of which was purely a civil matter. The refrain running through the pronouncements of the Supreme Court is always that the power under section 482 of the Criminal Procedure Code is not to be invoked by the High Court on irrelevant considerations,²¹ or for thwarting the prosecution²² or to cut short a normal process of criminal trial²³.

The weight of the Supreme Court's opinion is that while the High Court is all powerful to press the inherent powers into action in fit cases, the power shall not be a ruse to indulge in judicial experimentation or speculation. In *State of Maharashtra v. Budhikota Subbarao, (Dr)*²⁴ the Supreme Court held as unwarranted the strictures passed by the High Court against the State and the Public Prosecutor of sharp practice, suppression of facts, fraud etc.

The abuse of the process of the court itself is patent and is understood on a close acquaintance with the facts of the case as disclosed by the complaint. A complaint which alleges a father having committed the offence of kidnapping his daughter, provides an expressly paradoxical situation. Father is the natural guardian. Even if, the girl is staying with her maternal uncle proceedings against the father for kidnapping would not stand, if the

21. *Union of India and others v. W.N. Chadha*, 1993 Supp (4) SCC 260.

22. *Radhey Shyam Khemka v. State of Bihar*, (1993) 2 SCC 54.

23. *State of Bihar and others v. K.J.D. Singh*, 1994 SCC (Cri) 63.

24. (1993) 3 SCC 71. For detailed analysis of adverse commits and its effects see. *infra* Ch. VII. Also see Chapter IX

girl is taken away by the father²⁵. Entertainment of such a complaint by the Magistrate is an abuse of the process of the court. The High Court is justified in quashing the order of the Magistrate. Abuse of the process once detected should be eradicated. But, the dividing line between use and abuse is thin and very finite; and there is no commonly recognized line of control between the two. So, when using the inherent powers the High Court should be alert to the fact that only the abusive part of the process of the court is to be quashed and if anything worth survives, even after this, in the proceedings, it should be allowed to stand. Otherwise, the ends of justice would suffer. A wife brings in an action against her husband under Section 494 and 498-A of I.P.C. Cognizance is taken by the Magistrate²⁶. On an application under section 482 of the Code of Criminal Procedure, the High Court quashed the entire proceedings. The main reasoning of the High Court was that the proceedings for offence under section 494 of the Indian Penal Code would be hit by limitation under section 468 Cr.P.C. and hence the action was barred. The Supreme Court's remonstrance of the High Court is not only for quashing the entire proceedings but also that the prohibition under section 468 of Cr.P.C. is not applicable to offences under Section 494 I.P.C. The conclusion to be drawn is that the High Court as a superior institution for maintaining judicial discipline in the administration of criminal justice must use the power, under section 482 of the

25. *Chandrakala Menon (Mrs) v. Vipin Menon*, (1993) 2 SCC 6.

26. *Vanka Radhamanohar v. Vanka Venkata Reddy*, (1993) 3 SCC 4.

Sec. 494:- Marrying again during life time husband or wife.

Sec. 498 A:- Husband or relative of husband of a woman subjecting her to cruelty.

Sec. 468 Cr.P.C.: Bar to taking cognizance after lapse of the period of limitation.

Code of Criminal Procedure, only for salutary purposes. The High Courts are not to act as Magistrate Courts or other subordinate criminal courts; instead the power helps the High Court to keep the Magistrate Court and other courts in good stead to administer justice without blemish or pollution. The most crucial aspect which requires the engagement of the judicial attention is that the forum of the criminal judiciary is not used for executing a hidden agenda of the parties. In *Madhavarao Jivajirao Scindia and others v. Sambhajirao Chandrojirao Angre and others*,²⁷ basis of the controversy was civil rights, human relationship, relevance of documents, rights created under tenancy and trust etc. The story had all the trappings of a civil case. But, the complainant came to the Magistrate court with a basket full of allegations of offences under sections 406, 467 read with section 34, and 120 B of IPC and Section 53, Trust Act 1882. If a criminal court is to entertain such complaints for any length of time, it is sheer abuse of the process of the court. The party should be sent back at the threshold itself. If the Magistrate does not do this, the High Court under section 482 Cr.P.C. can prevent the abuse of the process of the court by quashing the proceedings at the preliminary stage itself. While quashing the proceedings pending before the trial court with the inherent powers the High Court should have strong and effective compulsion. It cannot grant stay of proceedings pending before the trial court ordinarily,²⁸ or search for evidence, pondering over probabilities²⁹.

27. 1988 SCC (Cri) 234. Interfere at threshold or at interlocutory stage is a rare exception. The settled principle being no interference at interlocutory stage, *P. Vijayapal Reddy and others v. The State*, 1978 SCC (Cri) 501

28. *M.C. Mehta (II) v. Union of India*, 1988 SCC (Cri.) 141

29. *State of Bihar v. Murad Ali Khan and others*, (1988) 4 SCC 655.

v. Prima facie Disclosure of an offence

One line of thinking to detect the abuse of the process of the court is to check whether the complaint *prima-facie* discloses the commission of an offence. If the complaint is only a litany of the grievances of the complaint against the accused without any logical coherence or rational nexus the duty of the High Court is to quell the proceedings by quashing the same. Similarly, if the complaint is vague, imaginary and only the dispersed meditations of a disgruntled litigant the criminal judiciary shall not be allowed to accommodate such persons and such proceedings. What is required by the High Court is to fine tune its jurisdictional sense to tackle the sensibility of the proceedings. Two decisions of the Supreme Court of India provide a contrasting study - *Municipal Corporation of Delhi v. Purushottam Das Jhunjunwale & others*,³⁰ and *Municipal Corporation of Delhi v. Ramkishan Rohtagi and others*³¹. In both the cases, the offences alleged were under the provisions of the Prevention of Food Adulteration Act, 1954. In *Jhunjunwala*³² the complainant clearly stated that the Chairman, Managing Director and Director of the Mill were in charge of the company and responsible for the conduct of the business, at the time of the commission of the offence. The High Court by invoking the inherent powers quashed the proceedings taken by the Municipal Corporation Delhi. This according to Supreme Court, is in spite of the specific allegation in the

30. 1983 SCC (Cri) 123.

31. 1983 SCC (Cri) 115.

32. Ref. *supra* n. 30.

complaint³³. Clear averments were made regarding the active role played by the accused and the extent of their liability. Therefore, it could not be said that their averments were vague.

"From a perusal of the various clauses of the complaint, including para 5, it is quite clear that a prima-facie case for summoning the accused has been made out and the High Court was absolutely wrong in holding that the allegations made in para 5 are vague. The High Court failed to consider that the allegations were quite clear and explicit so as to be sufficient for taking cognizance of the offence against the accused"³⁴.

According to the Supreme Court this case does not merit the engagement of the powers under section 482 of Cr.P.C. High Court has misdirected itself in wrongly exercising the discretion. The accused were held to be summoned and placed for trial in accordance with law³⁵. In contrast, in *Ram Kishan Rohtagi*,³⁶ the

33. Supreme Court extracts paragraph 5 of the complaint in paragraph 3 of the judgment in 1983 SCC (Cri) 123 at p. 124, para 3 reads,

The High Court was of the view that the complaint did not disclose any offence and adopting a similar line of reasoning as in criminal Appeal No. 701 of 1980, quashed the proceedings, against respondents No. 1 to 11. We have already dealt with the law on the subject in our decision in Criminal Appeal No. 701/1980, a copy of which is placed on the file of this case. The relevant allegations against the accused respondents are to be found in para 5 of the complaint which may be extracted thus:-

"5. That accused Ram Kishan Bajaj is the Chairman, accused R.P. Neyatia is the Managing Director and accused 7 to 12 are the Directors of the Hindustan Sugar Mills Ltd., and were incharge of and responsible to it for the conduct of its business at the time of commission of offences."

34. *Ibid.*

35. *Ibid.*

36. Ref. *supra* n. 31.

complaint in fact did not make out any offence. Under such circumstances, the proceedings effected could be quashed at the initial stage itself. The complaint was against the accused Manager and Directors of the Manufacturing company. It was on the presumption that the accused were in charge of and responsible for the conduct of the business of the company at the time of sampling. The High Court quashed the proceedings. But, the Supreme Court held that *prima-facie* case was made out against the manager in view of the very nature of his office and functions. But, the complaint was vague as regards the Directors as no offence was revealed against them. The Supreme Court ratified the view of the High Court partially, holding that the High Court was justified in quashing the proceedings against Directors but erred in doing so against the Manger. According to the Supreme Court, the judicial and juridical perception required here is that the power under sections 482 and 397(1) of Cr.P.C. that had same effect when applied, differ in their character and conduct. Revisional power is not to prevent the abuse of the process of the court. As explained by the Supreme Court in *Madhu Limaye v. State of Maharashtra*,³⁷ section 482 of Cr.P.C. has a different parameter and it is a provision independent of section 397(2) Cr.P.C. Inherent powers are of a greater amplitude, and handy to prevent the abuse of the process of the court. Where the process of the Court has been seriously abused the High Court is to invoke the inherent and separate powers to pass orders. The maxim *ex debito justitiae* is to be invoked which means in the interest of justice. That the inherent powers are exercised by the

37. 1978 SCC (Cri) 10.

High Court lest the portals of criminal courts would be frequented by persons with frivolous and vexatious worries. In *Chandrapal Singh v. Maharaj Singh and another*,³⁸ the complainant embarked on a course of criminal proceedings after losing his case in the Civil Court under Rent Control proceedings. The tenant was implicated in frivolous criminal prosecution. According to the Supreme Court, such gross abuse of the process of law must be prevented by the High Court in exercise of the inherent jurisdiction.

Abuse of the process of the court is contemplated in the functioning of subordinate criminal courts. While preventing the abuse of the process of court, the High Court itself cannot perpetuate abuse by invoking inherent powers in the wrong way and in the wrong case. In *Kurukshetra University v. State of Haryana*,³⁹ the Supreme Court held that section 482 of the Code of Criminal Procedure does not recognize any arbitrary powers for the High Court. In other words, the decision of the High Court while applying inherent powers should not be whimsical or capricious. The general understanding is that inherent powers are applied sparingly and with maximum reserve and reticence. Only the rarest of rare cases deserve invocation of powers under section 482 Cr.P.C. In the case mentioned above, the High Court quashed the First Information Report even before the police had commenced the investigation and no proceedings were pending in any court pursuant to the FIR. Here process of the court is given

38. 1982 SCC (Cri) 249.

39. AIR 1977 SC 2229. Here the investigation proceedings were quashed at the stage of investigation itself. Offences were in respect of indiscipline inside the campus.

a strict interpretation by the Supreme Court of India meaning an action actually pending before the court of law in its anxiety to prevent abuse of the process of the court. The High Court cannot be overzealous to prevent the abuse of the process of the court which is initiated. There is no test to examine whether the process initiated amounts to abuse. When the contours of the power under section 482 of the Cr.P.C. is marked, it is evident that there is scope for discretion. The discretionary power to do justice in a judicial function or in quashing judicial proceedings, must be exercised very carefully, and in an upright manner.

In *Union of India v. W.N. Chadha*,⁴⁰ the Supreme Court once again reminded one and all that quashing an FIR in a proceedings under section 482 Cr.P.C. is not congenial to the atmosphere of Rule of Law. When the proceedings are still pending, it is said that the case is at an interlocutory stage. Invoking inherent jurisdiction at an interlocutory stage would be against the accepted tenets of the inherent jurisdiction. But, in *Madhu Limaye v. State of Maharashtra*,⁴¹ an instance of positive application of inherent jurisdiction was discussed by the Supreme Court of India. Here proceedings were initiated illegally and without jurisdiction. So the court held that the argument that inherent jurisdiction should be invoked sparingly and in the rarest of rare cases does not preclude the High Court from exercising it in circumstances glaringly calling immediate and stern action. However, in the name of preventing the abuse of the process of the court, the inherent powers could not be exercised to stifle a legitimate prosecution.

40. AIR 1993 SC 1082.

41. AIR 1978 SC 47.

So, in *Janata Dal v. H.S. Choudhary and others*⁴² Supreme Court castigated the High Court for adopting an extreme view of taking judicial notice of the illegalities did by any court. Here also, investigation was in its embryonic stage. The High Court took *suo-motu* cognizance and proceeded with the matter stepping into the shoes of the accused party. This is not an exercise of discretion but an exercise of discrimination.

"The power possessed by the High Court under section 482 of the Code are very wide and the very amplitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principle.

The High Court being the highest court of a State is normally restrained from giving a premature decision in a case wherein the entire facts are extremely indifferent and hazy more so to the evidences which has not been collected and produced before the court and to issues involved where factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material"⁴³

In *Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd.*,⁴⁴ the Supreme Court considered possibilities of applying inherent powers for quashing the complaint at the threshold. The High Court is to consider whether on the face of an allegation a criminal offence is stated. It need not

42. 1993 A.I.R. S.C. 892.

43. Taxman's *Criminal Major Acts, Law and Practice*, at p. 1. 518

44. AIR 1996 SC 2452.

scrutinise all the allegations for the purpose of deciding whether those allegations are likely to be upheld in trial.

vi. **Abuse of the process is to be prevented for securing the ends of justice**

These dual principles are conditioned by the larger principles of due process of law and constitutionality. The objective of criminal law should be to obtain social harmony and not disharmony. Court proceedings are to be viewed with a zeal for administration of justice and not injustice. Keeping a proceedings pending for an inordinately long period itself is an abuse of the process of the Court. *Santhosh De v. Archana Guha and others*,⁴⁵ was a case where after being committed to sessions court in 1974 and charge framed in 1983, the High Court was well within the ambit to quash the proceedings as gross abuse of the process of the court was branded on the face of the proceedings itself. In *Punjab National Bank and others v. Surendra Prasad Sinha*,⁴⁶ the complaint filed without any *prima facie* case motivated to harass the petitioner for vendeta was rightly quashed. The Magistrate had a duty cast upon him to find that there was enough material to satisfy the requirements of law, while proceeding against a person. A private person shall not be allowed to take advantage of the situation. In the above case, abuse of the process was detected. In *S.G. Nain v. Union of India*,⁴⁷ a prosecution under section 10(4) of the C.R.P.F. Act 1949, and section 409 of the Indian Penal Code was quashed. The matter was pending for 14 years. In such

45. AIR 1994 SC 1229.

46. AIR 1992 SC 1815.

47. AIR 1992 SC 603.

circumstances, the trial after such a prolonged period would not be fair. Interest of justice should take precedence over interest of prosecution. In the instant case, prosecution had justification because an appeal was pending in the Supreme Court against the order of the High Court declining to quash the prosecution. This was not the reason for letting the case de-generate into an abuse of the process of the court. Thus the concept of abuse of the process of the court as a ground for invoking the inherent powers under section 482 is a relative concept which depends heavily on the facts and circumstances of each case.

In the pretext of preventing the abuse of the process of the court, the High Court cannot quash a criminal trial without conforming to reasonable opportunity of the prosecution⁴⁸. The High Court is not to analyse evidence while adjudicating an application under section 482 of the Code of Criminal Procedure. The Supreme Court held so in *State of Bihar v. Raj Narain Singh*⁴⁹. In *Palaniappa Gounda v. State of Tamilnadu and others*,⁵⁰ the question considered was availability of inherent powers in circumstances covered by specific provisions of the Code. The High Court held that the provision under Section 357 of the Code of Criminal Procedure contemplates application for compensation. Yet, the court here invoked inherent powers inspite of specific provisions. In the interest of justice, the High Court need not be hyper technical. Instead of rejecting a petition under section 482 Cr.P.C., the High Court can exercise inherent powers to allow a

48. *State of Bihar v. Rajnarain Singh*, AIR 1991 SC 1308.

49. *Ibid.*

50. AIR 1977 SC 1323.

petition under section 357 of the Code.

Administration of justice requires adherence to reasonableness and an objective correlative. In *State of Karnataka v. L. Muniswami and others*,⁵¹ the proceedings which made some among the accused persons stand trial and discharged the rest was challenged. This case is a remarkable event marking an achievement of inherent powers. The Supreme Court conceded the wholesome power. The High Court under section 482 Cr.P.C. is entitled to quash a proceedings if it came to the conclusion that allowing the prosecution to continue could be an abuse of the process of the court. The discretion of the court is to be applied in a constructive and meaningful manner. For this purpose, the High Court can go into the reasons given by the sessions judge in support of his order and determine the facts and circumstances of the case. Similarly, if the allegations in the complaint or charge sheet do not constitute any offence, the High Court is entitled to quash the proceedings by exercise of inherent powers. Therefore, the question is whether the allegation set out in the complaint constitute any offence. In *Smt. Chandh Dhawan v. Jawaharlal & others*,⁵² the honorary secretary of a club is alleged to be guilty of offences under sections 54(a) and 57(a) of the Bihar and Orissa Excise Act. The allegation was that women were employed by the club and cabare dance was performed in the club where liquor was being consumed by the public. Such vague and casual allegations would not constitute an offence. In the instant case the High Court had rejected the application for

51. AIR 1977 SC 1489.

52. AIR 1992 SC 1379.

invoking power under section 482 of the Criminal Procedure Code. The Supreme Court filled the bill where the High Court failed to get the situation in a correct perspective. The Supreme Court held in the above case that the High Court while exercising inherent jurisdiction is not expected to look beyond what is contained in the complaint to form a *prima-facie* opinion. Apart from this, hard and fast rules cannot be adumbrated. In a case, the High Court quashed the process issued by the trial court; on additional materials filed by the accused. These materials were not available to the Magistrate while issuing the process.

vii. No Evaluation of Evidence

The cumulative effect of the Supreme Court decisions is that while exercising inherent powers, the High Court shall not attempt an evaluation of evidence as if, in an appeal case. The process of the Court shall not be abused. At the same time, this was not to be a reason for staying a proceedings. In *M/s Jayant Vittamins Ltd.v. Chaithanya Kumar and another*,⁵³ the Supreme Court held that while investigation into offence is still in the way, the High Court by exercising the power cannot quash the proceedings. Similarly, inherent powers under section 482 of the Cr.P.C. cannot be used for quashing prosecution on the ground of malafides. *State of Maharashtra v. I.shwar Piraji Kalpathri and others*,⁵⁴ is an instance. Here according to the Supreme Court, the High Court could not offer any credible material for reaching a conclusion for quashing the proceedings on the ground of malafides at the stage of FIR or complaint. If at all such a decision is made, the

53. AIR 1992 SC 1930.

54. AIR 1996 SC 722.

probability, reliability and genuineness of the allegation, are to be examined. The Supreme Court reversed the decision of the *Bombay High Court* holding that the truthfulness of the allegation and the establishment of the guilt could only take place when the trial proceeded without any interruption. The principle that emerges is that abuse of the process of the Court is not a blanket ground given to the High Courts to interfere under Section 482 of the Criminal Procedure Code. The process of the court is kept free of pollution by an exercise of inherent powers. Though, it is to be applied with circumspection, the power given to the High Courts helps the administration of criminal justice presumably free from vitiating and malignant influences.

viii. Power Otherwise to Secure the Ends of Justice

The concept of justice has received a face-lift with the advent of a dynamic judiciary in India. Every aspect which has a bearing on the rights of the persons has been explained under the aura of judicial creativity. This has prompted Prof: Upendra Bhakshi to comment that judges in India have not only been amending the Constitution, but also re-drafting the Constitution in certain vital areas⁵⁵. This tempo is reflected in the administration of criminal justice also. Power of the High Court to invoke inherent powers under section 482 of the Code of Criminal Procedure is to be viewed in this context. In *State of Karnataka v. L. Muniswamy*,⁵⁶ the Supreme Court has held that the High Court while invoking inherent powers is called upon to do justice between the State

55. Prof. Upendra Baxi: "Constitutional Quicksands of *Keshavandanda Bharati* and the Twentyfifth Amendment" (1974) 1 *JCC* (Jour.) 45-

56. AIR 1977 SC 1489.

and subjects. The judgment has properly realised the width and contours of the inherent jurisdiction. The purpose of inherent powers in its entirety is to achieve higher standards of justice. Justice is not a romantic ideal, but, a pedantic reality. Therefore, ends of justice are to be secured. Before annotating the method and function of the High Court in securing the ends of justice, the word 'Ends' has to be kept in a proper perspective. It has great currency in the philosophic parlance. The word 'Ends' means, objective, aim, ideal, standards etc. It means the goodness that is wished for in any administration. If ends of justice are to be secured injustice should be excluded. For excluding injustice inherent powers are exercised. The High Court is called upon to discharge its unenviable function.

ix Justice According to Law

"The ends of justice are higher than the ends of mere law and that justice has got to be administered according to laws made by the Legislature"⁵⁷

Once the situation is realised to be one crying for justice no bar imposed even by the Code or any other statute can bridle the inherent powers of the High Court. In *Velayudhan v. Sukumari*⁵⁸ the Kerala High Court held that where the interference of the High Court is absolutely necessary then nothing contained in sections 397 (3) and 399 (3) of Cr.P.C. would limit the inherent powers.

In the modern State where activities of the Government are umpteen, the liability created under laws innumerable, there is

57. Taxman's *Criminal Major Act*, p. 1.516. Taxman Publications - 1998.

58. 1978 KLT 301.

every chance for citizens being exposed to the vagaries of the State. Therefore, under the Constitutional scheme, with its jurisdictional expanse, historical significance, and territorial access, the High Court is to act as a happy meeting place for the State and the citizens, the Prosecutor and the accused, the petitioner and the respondent etc. In the matter of administration of justice, the High Court is called upon to examine the functioning of the Magistrate Court and other subordinate courts, by invoking the inherent powers. If a person is charge-sheeted for an offence without sufficient facts for the summons, if a complaint is filed against a person on frivolous and vexatious grounds, if a purely civil matter is left to be agitated in the criminal court, if an FIR is lodged on conjectures and hypothesis, the remedy for the affected persons ought not to be before the trial Magistrate as the victim's very fundamental rights are thwarted. Therefore, he is entitled to approach the High Court under section 482 Cr.P.C. so that ends of justice are secured by the High Court. The loose term that is, ends of justice, used in the section connotes the residuary aspect of power left untouched by other provisions of the Code.

"The authority of the court existed for advancement of justice and if any attempt has made to abuse that authority, the court must have power to prevent it"⁵⁹

x. **Meaning of 'Ends of Justice'**

Naturally, the question that is posed to ourself is what is meant by ends of justice. Justice is a relative term. One cannot say that ends of justice is secured when a person is acquitted, nor can we

59. *Sarkar on Criminal Procedure*, 7th edition (196), p. 1413.

say that ends of justice is satisfied when a person is convicted. More difficult is to say whether ends of justice suffer when a person is asked to appear before a court through a summons issued by the court. So, section 482 Cr.P.C. provides for an occasion to come to the High Court directly without regard for the evidence in the case and without waiting for the trial to complete. The very entry of the aggrieved person to the court room with a petition under section 482 of the Cr.P.C. is to invoke the power of the High Court so that trial magistrate is enlightened of the requirements of justice. The concept of justice has undergone a sea change. It has shed all formalism. Even when the High Court is considering a petition under Article 226, or 227 of the Constitution of India, the High Court has got inherent powers. If the exigency of circumstances demands, the High Court can convert such a petition into an application under section 482 of the Cr.P.C. The latest thinking of the Supreme Court of India in this context is that, by whatever names petitions are called, the objective is the same - ie to secure the ends of justice.

"What is in a name, that which we call a rose by any another name, would smell so sweet"⁶⁰.

If ends of justice is the ideal to be achieved in the administration of justice, the petitions filed can be under section 482 Cr.P.C. or under articles 226, 227 and the same can be described under any nomenclature. In *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others*⁶¹ the Supreme Court has upgraded the prestige of the High Court while invoking the inherent jurisdic-

60. William Shakespeare, *Romeo and Juliet*. Act II Scene 2 Lines 43-47.

61. 1998 SCC (Cri.) 1400.

tion. Whether it is dispensing justice through the extra ordinary writ jurisdiction or extra-ordinary jurisdiction of inherent powers the High Court has to do the same. The court cannot be technical and prosaic in its attitude. The power given under Article 226 and section 482 Cr.P.C. contains a high doze of discretion. But, a discretionary power is not to be exercised to entertain every Tom, Dick and Harry who come to the High Court. At the same time the court shall not be averse to exercise the power when justice is in peril.

"Provisions of Articles 226 and 227 of the constitution and section 482 of the Code are devised to advance justice and not to frustrate it. In our view, the High Court should not have adopted such a rigid approach which certainly has led to mis-carriage of justice in the case. Power of judicial review is discretionary, but this was a case where the High Court should have exercised it"⁶².

In the matter of the exercise of inherent powers the High Court is to examine a situation with a judicially trained mind to see whether there is any thwarting of the interest of justice. Ends of justice is a concept capable of having its effect on both ways. The power is exercised only to secure the ends of justice. By exercising the power, ends of justice should not be blasted. In *Rupan Deol Bajaj v. K.P.S. Gill*,⁶³ the Supreme Court of India, considered the quashing of an FIR by the Punjab and Haryana High Court invoking the power under section 482 of Cr.P.C. The top most police officer in the State was involved in an offence

62. *Id.* at p. 762.

63. AIR 1996 SC 309.

under sections 354, and 509 of I.P.C. The victim was an I.A.S. officer. When the FIR was lodged and the investigation was still in its infancy the accused approached the High Court and got remedy by invoking inherent powers. The Supreme Court viewed this attitude of the High Court with great seriousness not only for quashing the FIR, but also for the comments made by the High Court while disposing of the matter. The Supreme Court had expressed its anguish in the attitude of the High Court which least subservient the ends of justice.

"We are constrained to say that in making above observations, the High Court has flagrantly disregarded-unwillingly we presume-the settled principles of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegation made.....

For the reasons aforesaid, we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. K.P.S. Gill, in the High Court under section 482 of Cr.P.C."⁶⁴

The Supreme Court has used strong words against the callous way in which the High Court had gone around with the invocation of inherent powers. It was a case where ends of justice was not secured. According to the Supreme Court, the High Court could have atleast consulted Supreme Court's decision in *State*

64. *Id.* at p. 315.

of *Haryana and others v. Bhajan Lal and others*.⁶⁵ In this case it was stated that an FIR or a complaint may be quashed, if the allegations made therein, are so absurd and inherently improbable that no prudent person can ever reach a just conclusion. In a case like the one discussed *Rupan Deol Bajaj's* case, having a great bearing on the psyche of the Society the High Court ought to have taken extra-care rather than going on a tangent. Issues like outraging the modesty of a woman, terrorism, narcotics, etc, are those eating into the vitals of the society. When interfering in this, the court must be very vigilant lest the judiciary itself shall be painted in shadowy colours. In *State of Orissa v. Bansidhar Singh*,⁶⁶ again the Supreme Court had occasion to consider the attitude of the High Court, in invoking the inherent powers on an overzealous proportion. This is projected in the body of the judgment. The Supreme Court stresses the point that the High Court must be very careful in invoking inherent powers under section 482 of Cr.P.C.

xi. Justice Delayed is Justice Denied

Justice delayed is justice denied, and justice hurried, is justice burried, it is often said. But, if justice is way laid, in the course of the judicial process, it only leads to disharmony in the society. The High Court is not expected to dive deep into the details of the case, and labour to come to a decision. In *State of Madhya Pradesh v. Harsh Gupta*,⁶⁷ the Supreme Court held that the High Court cannot examine the defences in detail in a section 482

65. 1992 Supp (1) SCC 335.

66. AIR 1996 SC 938.

67. 1998 SCC (Cri) 1723.

Cr.P.C. proceedings. The High Court is only expected to look into the complaint and see whether there is *prima-facie* case or not. Similarly, in *Asok Chaturvedi and others, v. Shitulh Chanchani, and another*,⁶⁸ the Supreme Court held that the power under section 482 has to be exercised sparingly and in the interest of justice. Here, the Supreme Court accepted the approach of the High Court in exercising the power under section 482 of Cr.P.C. in a case where criminal proceedings continued, even when the allegations in the complaint did not make out any offence. Thus, "giving effect to the orders passed under Code", "preventing abuse of the process of the court" and "securing the ends of justice" are convertible terms. Justice is being given priority. In *Jawaharlal Dharda and others v. Manohar Rao Ganapat Rao Kapsikar and another*,⁶⁹ the controversy was regarding a report in the news paper 'Daily Lokmath'. Proceedings were initiated for offences under sections 499, 500, 501, and 502 read with section 34 of I.P.C. for defamation. The High Court interfered with the proceedings, but the Supreme Court held that the High Court had taken a technical view and committed an error in interfering in the matter. The power of the High Court to secure the ends of justice is the expression of the jurisdiction of the High Court in its absolute term. In the Code the notations of the inherent powers are developed through the above three phrases connected by the conjunction 'or'. The concept of justice is incorporated as forming an important ingredient of inherent powers. The chief aim of inherent powers is to secure the ends of justice. The concept of justice has social, political and ethical dimensions.

68. 1998 SCC (Cri) 1704.

69. (1998) 4 SCC 112.

While elaborating the philosophy of administration of justice, Sri. V.D. Mahajan in his book "Jurisprudence and Legal Theory", draws supportive statements from authorities. Justice administration is closely related to the civilizational achievement of a nation. Prof. Sidgwick states as follows:

xii. Realisation of Justice in Administration

"In determining a nation's rank in political civilization, no test is more decisive than the degree in which justice as defined by the law is actually realised in its juridical administration"⁷⁰.

Salmond even defined law,

"As the body of principles recognised and applied by the State in the administration of justice"⁷¹.

Blackstone suggested that the administration of justice is not the mercy of the King, but the duty of the King:

"Justice is not derived from the king as his free gift but he is the steward of the public to dispense it to whom it is due. He is not the spring but the reservoir from whence right and equity are conducted by a thousand channels to every individual"⁷²

The administration of justice being a mark of civilization is a social, political, historic and legal necessity, it is required to keep man as man, because without justice, man would be like wolves. Jeremy Taylor makes an assessment thus:-

70. V.D. Mahajan, *Jurisprudence and Legal theory*, (1987) p. 128.

71. *Ibid.*

72. *Id.* at p. 129.

"A herd of wolves is quieter and more at one than so many men, unless they all have one reason in them or have one power over them"⁷³

According to Prof: Mahajan, the origin and growth of administration of justice is identical with the origin and growth of man.

"The social nature of man demands that he must live in society; while living so, man must have experienced a conflict of interests and that created the necessity for providing for the administration of justice"⁷⁴

In the organization of the modern State, the old principle of "a tooth for a tooth, an eye for an eye, and a life for a life" is displaced by cannons of justice. Legal justice ensures uniformity and certainty. There are several theories regulating the administration of justice. This being the significance of justice administration, inherent powers occupy a very valuable place in the arena of the administration of justice.

xiii. **Power and Dignity of the Court: All Aspects of Inherent Power**

A court of law must not be powerless to conduct itself. The dignity and decorum of the court is to be asserted. Its process should be complied with. Any action to subvert the functioning of the court is to be curtailed by the court itself. The procedure in the court must be legal, regular and relevant. The forum of judiciary shall not be used to settle scores for private vengeance. Every move in a court must be in the direction of the attainment

73. *Id.* at p. 129.

74. *Id.* at p. 130.

of the ends of justice, and not to stifle the same.

Preventing the abuse of the process of any court is the core of inherent powers. The exposition of inherent powers in section 482 Cr.P.C. is to be on a three dimensional perspective, ie, inherent power to pass orders as may be necessary to give effect to any order under the Code, power to prevent abuse of the process of any court, and power otherwise to secure the ends of justice. The inherent powers remain independent of the powers in other provisions of the Code. Nothing can be deemed to limit or affect the inherent powers. One cannot create a legal fiction against inherent powers. It is total and absolute, it is invulnerable and inviolable. Giving effect to any order under the Code or preventing the abuse of the process of the court or securing the ends of justice all these statutory provisions in effect speak of one thing-keeping the administration of justice clear and clean. Even though the power is there for the High Court it is not open to the mere asking. There must be glaring illegality in the action challenged. Seizure of articles without warrant is normally deprecated. But in *Ouseph v. State of Kerala*⁷⁵ seizure of utensils and other materials used for making illicit liquor was held not attracting the inherent powers of the High Court. The Court had relied on *R.P. Kapoor v. State of Punjab*⁷⁶ Similarly inherent powers under section 482 Cr.P.C. can be invoked only when there is no express provision to redress the grievance of the petitioner. Similarly the issue involved shall not be trivial or doubtful but must be grave and clear⁷⁷.

75. 1980 KLT 827.

76. AIR 1960 SC 866.

77. *Prabhakaran v. Devayani Amma*, 1985 KLT (S.N.) 85 at p. 53.

Abuse of the process of any court means any criminal court. Any Criminal court, subordinate to a High Court, if entertains a cause wholly unjust or patently erroneous proceedings, it is abuse of the process of that court. A court of law is a hallowed place which is sacrosanct, and the sacerdotal medium of criminal judiciary cannot be open to persons who come with frivolous and vexatious causes, to persons who seek prosecution of another on trifles, to persons who seek private vengeance and retribution. A trial Magistrate may be swayed by a bunch of facts to issue summons to a person. The state and its organs like police and prosecutor may fall upon innocent individuals. A complaint without disclosing *prima-facie* an offence may be acted upon. The person who suffers "the slings and arrows" of the process of the court becomes a victim of irrelevant and extraneous factors which set the criminal law in motion. It is true that every crime is a wrong against the society. Since society is an unorganized mass devoid of any mechanism to guard itself, the State steps in as its guardian. The wrong against the society is corrected by the State by punishing the wrong doer. But, if the so called wrongdoer is a person "more sinned against than sinning",⁷⁸ and he is made to stand trial owing to the private hatred of another person, here also the society is to bear the burnt of such instances of injustice. It is an instance of abuse of the process of the court. For instance while passing an order under section 107 of the Procedure Code the Magistrate must ascertain the possibility of breach of peace. The Magistrate is to act reasonably and in good faith only. But in *Peethambaran v. State of Kerala*⁷⁹ it was held that the

78. William Shakespeare, *King Lear*, Act III Scene 2 Line 57-60

79. 1980 KLT 876.

materials before the Magistrate were insufficient to support the action and the High Court had no option but to interfere.

If the court before which the proceedings are pending cannot read between the lines and is to go on with the proceedings there ought to be a superior court with a superior power. In the province of criminal law jurisdiction in India the High Court's inherent powers are expected to prevent the abuse of the process of any court. "The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceedings ought not to be permitted to degenerate into a weapon of harassment or prosecution"⁸⁰.

Providing protection to the lives and property of individuals by prosecuting and punishing the accused at the instance of the state is a measure of logic and legitimate expectation. There is the other side of the picture. That is, the prosecution of a person, against whom no *prima-facie* case exists as per the ingredients of the offence in the statute and as per the materials available, is unwarranted; whereas, protecting the interest of that person is also of paramount importance. This is necessary to call adjudication blemishless. It is a fundamental requisite of any society which claims any strides in civilizational achievement.

"The State has always been a society where the strong rules the weak.... The collective will is a mere fiction which only serves to veil the brutal reality of facts".⁸¹

Mere presumption of innocence of the accused till the guilt is

80. Taxman's *Criminal Major Acts- Law and Practice*. Taxman publications (P) Ltd., (1998) p. 1. 516

81. M. Duguit, *Le Droit Objectif et la loi Positive* quoted *supra*. n. 3 at p. 71.

proved beyond reasonable doubts is not a sufficient safeguard in this context. Putting an innocent person to trial itself is ignominious. If the judiciary has an occasion to cry halt to a patently abusive process the administration of justice must be well modulated to prevent such injustice. The High Court therefore, would be justified in quashing the proceedings in the interest of justice, in a lame prosecution due to the very nature of the material on which the structure of the prosecution rests.

Abuse of the process of the court means putting the platform of judiciary for a malignant purpose or a mischievous purpose or as a part of machination. For this the High Court has inherent powers to keep the abuses of the process of the court at bay. Anything done by the court or proceedings pending in a court is the process of the court⁸². In adjudicating parlance abusing the process of the court implies a proceedings which lacks in bonafides and is frivolous, vexatious or oppressive⁸³. If allowing the proceedings to continue would be an abuse of the process of the court and the High Court feels that ends of justice requires to quash it, inherent powers can be exercised⁸⁴.

The inherent powers of the High Court to prevent the abuse of the process of the court itself is in the interest of justice. Anything done or said in the court must bear the stamp of legality. The Supreme Court has set the tone for the High Courts to base its reasoning while exercising inherent powers. Converting a civil dispute into a criminal case is abuse of the process of the court⁸⁵.

82. Evans 50 B. 71:A 1926(8)551; Upendra A 1931 p.81 cited in S.C Sarkar *The Law of Criminal Procedure (1996) 7th Edn.* at p. 1408.

83. AIR 1967 AP 219(DB) *Narappa Reddy v. Jagarlamudi Chandramouli*

84. *State of Karnataka v. L. Muniswamy others*, AIR 1977 SC 1489.

85. *Sardar Trilok Singh and others v. Satya Deo Tripathi*, (1979) SCC (Cri) 987.

So far as civil disputes are concerned the appropriate form for their redressal is that of the civil courts. Initiating the process of the criminal court for grievances relating to civil disputes is a ground for invoking the inherent powers of the High Court. For instance a complaint arising out of breach of contractual obligation is a dispute of civil nature. In *Hariprasad Chamaria v. Bishunkumar Sureka & others*,⁸⁶ the Supreme Court held that in such cases criminal proceedings are not sustainable. The order of the Patna High Court quashing the proceedings for offences under section 420 IPC was upheld by the Supreme Court. Similarly the dispute between the hire purchaser and purchasee is of essentially civil nature. In *Sardar Trilok Singh and others v. Sathya Deo Tripathi*⁸⁷ when the High Court declined to quash the complaint alleging offences under sections 395, 468, 465, 471, 412 and 120-B, read with Sec 34 IPC, the Supreme Court quashed the complaint holding that it was an abuse of the process of the Court.

A civil dispute cannot be converted into a criminal case. In *Chandrapal Singh and others v. Maharaj Singh and another*⁸⁸ the Supreme Court quashed the proceedings initiated through complaint alleging offences under Section 193, 199 and 201 IPC. The High Court had declined to quash the complaint. In this case, the landlord after losing his case in civil courts implicated the tenant in frivolous criminal prosecution. The Supreme Court held that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the

86. 1973 SCC (Cri) 1082.

87. 1979 SCC (Cri) 987.

88. 1982 SCC (Cri) 249.

criminal court.

Orders of maintenance for the minor child is a matter appealing to one's sense of justice. If paternity of the child is disputed the aggrieved party should go to a civil court to decide disputed paternity. Instead the High Court shall not by exercise of inherent powers quash the order of the Magistrate granting maintenance under Section 125 Cr.P.C. to the minor child. In *Smt. Dukhtar Jahan v. Mohammad Farooq*⁸⁹ the Supreme Court held that the High Court erred in interfering with the order of the Magistrate. Supreme Court allowed the appeal and set aside the order of the High Court and restored the order of maintenance. The court left unanswered whether in an application under section 482 High Court can interfere with concurrent findings of courts below. In the present case the High Court had quashed only the order of maintenance where as in *Pratibha Rani's*⁹⁰ case, the High Court had quashed the entire proceedings.

The facts of a case should have the ingredients of a criminal case. Matters arising out of the management of a trust is essentially of a civil nature. If the personal relation between the settler of the trust and the co-trustee and his wife is strained criminal proceedings initiated by the trustee against the office bearer of the trust would not sustain. In *Madhavarao Jivajirao Scindia and others v. Shambajirao Chandrojirao Angre and others*,⁹¹ the Supreme Court upheld the order of the High Court quashing a pro-

89. 1987 SCC (Cri) 237.

90. 1985 SCC (Cri.) 180

91. 1988 SCC (Cri) 234.

ceedings alleging offences under sections 406 and 467, read with 34 and 120-B IPC and section 53 of Trusts Act, 1883.

The allegations shall not be far fetched to constitute an offence. In *Balkishan Das v. P.C. Nayar*⁹², the proceedings against the petitioner was under section 406 IPC for shortage of paddy and rice procured by him for FCI. The matter was already under arbitration. The Supreme Court was of the view that the matter being purely of a civil nature criminal proceedings cannot stand. The Supreme Court allowed the appeal and quashed the proceedings. The High Court had dismissed the petition.

When a matter is to be pursued in a civil court the proceedings in a criminal court is an abuse of the process of the court and the High Court can interfere. Offences alleged are under Section 361 and 363 IPC. In *Chandrakala Menon v. Vipin Menon*,⁹³ the order of the High Court was upheld. The Magistrate passed an order to register a case against the father for taking possession of his daughter. According to Supreme Court the High Court was justified in interfering under Section 482 of Cr.P.C. The father being the natural guardian of the child could not be charged with the offence of kidnapping. If any dispute exists relating to the paternity of the child the same could be agitated before appropriate civil court.

The issue has the other side also. Pendency of a civil dispute need not always be a reason for quashing criminal proceedings. Even when civil case is pending parties may indulge in criminal

92. 1991 SCC (Cri) 1055.

93. 1993 SCC (Cri) 485.

acts. Proceedings against such criminal acts would not amount to abuse of the process. In *A.E. Rani v. V.S.R. Sarma and others*⁹⁴ the High Court had quashed the proceedings in which offence under section 380 IPC was alleged. A complaint was filed after filing final report by the police. The events occurred in respect of partition of property. Already a partition suit was pending. In the meantime the accused forcibly removed movable articles. The Supreme Court held that civil dispute of partition has nothing to do with the complaint and therefore it could not be quashed as abuse of the process of law.

But on the otherhand the decision in the civil case can have a persuasive effect in the criminal case. The conclusion of a civil case can influence a criminal proceedings. In *Central Bureau of Investigation, SPE, SIU (X) New Delhi v. Duneans Agro Industries Ltd.*,⁹⁵ the Supreme Court endorsed the view of the High Court. The High Court had quashed the complaint alleging offences under sections 409, 420, 467, 468 and 471 read with 120-B IPC. The Supreme Court dismissed the appeal and upheld the order of the High Court. In an act constituting both civil and criminal wrong the civil suit for recovery of dues was compromised. It was held that compromise amounts to compounding of offence of cheating. Similarly, there was delay in completing investigation. There was no action against the erring officials. The Supreme Court held that the High Court was justified in its order

94. 1995 (1) SCC 627.

95. 1996 (5) SCC 591.

quashing the proceedings.⁹⁶

A complaint filed by the financier against purchasee of a truck who obtained decree against the financier not to take possession of the vehicle on the ground that no amount was due to the financier was an abuse of process of court. The court has absolute jurisdiction to quash complaint in respect of civil dispute even though FIR or complaint discloses *prima facie* offence.⁹⁷ In *Bhim Raj Sharma v. State*⁹⁸ it was held that no useful purpose would be served in continuing criminal proceedings based on a complaint under section 420 IPC about the documents forged in a civil transaction between the parties, when civil suit was compromised subsequently. Though the charge is non compoundable it cannot sustain because of the compromise.⁹⁹ In *Subramaniam & others v. State of U.P.*¹⁰⁰ the effect of an order passed by the civil court in a matter which has both civil and criminal consequences was considered. The occupation of the tenant even after the expiry of the lease period cannot be deemed unauthorised in the light of the correspondence made to extend the lease and for the enhancement of rent. The initiation of criminal proceedings against the tenant, when he had obtained an order from a com-

96. The Supreme Court had relied on - *State of Haryana v. Bhajanlal and others*, 1992 SCC (Cri) 426; *State of Bihar and others v. P.P. Sharma I.A.S. and another*, 1992 SCC (Cri) 192; *Janata Dal v. H.S. Choudhary and others*, 1993 SCC (Cri) 36; *Collector of Customs and Central Excise, Bhuvaneshwar v. Paradip Port Trust & another*, 1990 SCC (Cri.) 579; *Union of India and others v. B.R. Bajaj and others*, 1994 SCC (Cri) 477.

97. *Suresh Prasad Yadav v. S.K. Bawa*, 1992 Cri.L.J. 3192 (All).

98. 1992 Cri.L.J. 3977 (Del)

99. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866.

100. 1996 Cri.L.J. 929 (All)

petent civil court restraining the landlord's interference, establishes malafide intentions and ulterior motive.¹⁰¹

But, the most difficult situation is for the High Court to come to a conclusion to hold that there is abuse of the process of the court and hence the inherent power is to be applied. Lest the High Court may go wrong, the Supreme Court goes on reminding that inherent powers under section 482 Cr.P.C. are extraordinary powers and it is not possible to lay down any precisely defined, sufficiently channelised and inflexible guidelines or rigid formulae¹⁰². According to the Supreme Court myriad kinds of cases crop up as the engine of administration of justice is operated. In the same case different provisions of law are involved. In the instant case offences under section 339, 341, 342, 352, 354 and 504 IPC were to be examined at the incipient stage of the case through the microscope of inherent powers. Added to the above provision was the argument for invoking the defence under section 95 IPC. Of course, the High Court would be discharging an onerous function. While the High Court has power to exercise inherent powers to prevent the abuse of the process of court, the High Court itself is to be vigilant in not letting the process of the court being abused. Causing delay in trial is abuse of the process of the court. On the interference by the High Court shall at the initial or interlocutory stage of a criminal case causing delay in trial is unwarranted¹⁰³. This does not mean that High Court is barred from exercising the inherent powers for the reason that a sessions judge

101. *R.P. Kapur v. State of Punjab*, AIR 1960 S.C. 866; *State of Haryana v. Bhajanlal*, AIR 1992 S.C. 604. referred to:

102. *Rupan Deol Bajaj and another v. K.P.S. Gill*. (1995) 6 SCC 194.

103. *Ganesh Narayan Hegde v. S. Bangarappa & others*. (1995) 4 SCC 41.

considers the issue in revision. But, the High Court should not act as a second revisional court. It should not appreciate the merits of the case. While holding that the High Court has gone beyond the scope of the inherent powers, the Supreme Court has tried to set the issue in correct legal perspective through timely pronouncement.

In *Dhanalakshmy v. R. Prasanna Kumar and others*¹⁰⁴, the Supreme Court has held:

"Section 482 of Cr.P.C. empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent powers to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offences of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under section 482"¹⁰⁵

But, this does not empower the High Court to proceed on a fishing expedition assessing, assuming or appreciating the probabilities and possibilities to arrive at a conclusion whether a conviction would be sustainable. In such a case, the High Court is clearly in error. The principles are clearly laid down by the Supreme Court. In the complaint, they can be only specific allegations. It shall consist of the ingredients of the offences. The complainant must get an opportunity to adduce evidence. In the ab-

104. 1990 Supp. SCC 686.

105. *Ibid.*

sence of circumstances to hold prima-facie that the complaint is frivolous when the complaint discloses the commission of an offence there is no jurisdiction for the High Court to interfere¹⁰⁶. The above principles are crystallized through a series of decisions of the Supreme Court. *Sharada Prasad Sinha v. State of Bihar*,¹⁰⁷ *Sardar Trilok Singh v. Satya Deo Tripathi*,¹⁰⁸ *Municipal Corporation of Delhi v. Purushottam Das Jhunjunwala*¹⁰⁹.

In *State of Bihar v. Murad Ali Khan and others*,¹¹⁰ the Supreme Court had held that the High Court shall not usurp the functions of a Magistrate by embarking upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. The High Court is only to see whether abuse of the process of law is there.

"Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceedings at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet do not in law constitute or spell out any offence and that resort to criminal proceedings would in the circumstances amount to an abuse of the process of the

106. *Id.* p. 48.

107. 1977 (1) SCC 505.

108. 1979 (4) SCC 396.

109. 1983 (1) SCC 9.

110. 1988 (4) SCC 655.

court or not"¹¹¹

This being the atmosphere under which the High Court is to invoke inherent powers, entertaining a petition under section 482 Cr.P.C. itself can ultimately result in the abuse of the process of the court. If unconscionable delay in conducting the trial is abuse of the process of the court a period of twelve years is ground enough to interfere¹¹². But, if the complainant is not responsible for such delay interference by the High Court is not palatable. And, if the contention regarding delay is not raised before the High Court, the High Court cannot assume things. A wrong application of inherent powers to quash a proceedings would only delay the trial. The matter would reach the Supreme Court and on interference by the apex court, like a "snake and ladder" game, the matter would be relegated to the Magistrate again. Regarding the slow motion of the Criminal Courts the Supreme Court had occasion to observe in *Re Special Courts Bill, 1978*¹¹³.

"The procedure is dilatory, the dockets are heavy, even the service of process is delayed, and still more exaggerating, there are appeals upon appeals and revision and supervisory jurisdiction baffling and balking speedy termination of prosecution".

In another case, the Supreme Court has found fault with the interference by the Superior courts, meaning High Courts, imput-

111. *Ganesh Narayan Hegde v. S. Bangarappa & otehrs*, (1995) 4 SCC 41 at p. 50.

112. *Common Cause v. Union of India and others*, 1996 (4) SCC 33; *Common Cause II v. Union of India*, 1996 (8) SCALE 557.

113. 1979 (1) SCC 380. By V.R. Krishna Iyer, J.

ing that it can lead to miscarriage of justice. According to the Supreme Court,

"The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. We are sad to say that repeated admonitions of this court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interest of justice demand it, it cannot be a matter of course¹¹⁴.

It is to be appreciated that the inherent powers are most potential and its use should be for obvious and clear purposes. While the Supreme Court admonishes the High Court for interfering with the proceedings at its incipient stage, it does not mean that the Supreme Court perpetuates a lethargy towards this power. There are positive assertions by the Supreme Court where the High Court declined to interfere. Once, it is patent that the accused person is no longer liable under law it is futile to proceed against him. In *G.L. Didwania and another v. Income Tax Officer and another*,¹¹⁵ the Supreme Court in a special Leave Petition under Article 136 of the Constitution, quashed criminal proceedings initiated under section 277 of Income Tax Act. The High Court had declined to interfere under section 482 Cr.P.C. What prompted the Supreme Court was that Income Tax Appellate Tribunal had already allowed an appeal by the accused person. Therefore, the

114. *Ganesh Narayan Hegde v. S. Bangarappa & others*, (1995) 4 SCC 41 at p. 50.

115. 1995 Supp (2) SCC 724.

Criminal Proceedings under section 277 of the I.T. Act becomes a futile exercise. A futile proceedings is an abuse of the process of the Court. The Supreme Court has relied on the other decisions in support of this proposition, ie, *Uttam Chand v. Income Tax Officer, Central Circle Administrator*,¹¹⁶ and *P. Jayappaⁿ v. S.K. Perumal, First I.T. Officer, Tuticorn*¹¹⁷.

In *State of Karnataka v. Muniswamy and others*,¹¹⁸ the Supreme Court had adopted a positive approach. The Supreme Court projected the position that the saving of the High Court's inherent powers both in civil and criminal matters is designed to achieve a salutary public purpose. The court proceedings ought not to be permitted to degenerate into a weapon of harassment for prosecution. It was held that the ends of justice are high than the ends of mere law, though justice has got to be administered according to laws made by the legislature. The Supreme Court held that the High Court could under its inherent powers quash proceedings pending before the sessions judge on the ground of insufficiency of evidence. The Supreme Court had adverted to the previous decisions of the Apex court in this point¹¹⁹.

Any vitiating factor in a criminal trial is corrected through the application of inherent powers. Observance of the principles of natural justice and the 'audi alteram partem' rule is ensured through

116. (1982) 2 SCC 543.

117. 1984 Supp SCC 437.

118. 1977 SCC (Cri) 404.

119. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866; *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar*, AIR 1960 SC 1113.

Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra, 1972 SCC (Cri) 495.

the inherent powers. In *Ram Narain v. State of Rajasthan*,¹²⁰ in a pending proceedings alleging offences under sections 120-B IPC 408, 420 and 467 IPC an application filed to record additional evidence was dismissed. An order was passed without hearing the applicant. The Supreme Court allowed the appeal and the conviction of the appellant was quashed. Thus anything done to pollute the stream of justice would end in the acquittal of the accused. The ends of justice would require that nonobservance of the principles of natural justice would be discontinued.

In *Zacharia v. State of Kerala*,¹²¹ the legality of proceedings under section 386 Cr.P.C. was considered. The offences alleged were under sections 16 (1)(a) read with section 7(1) of the Prevention of Food Adulteration 1954. Before the trial court there were two accused. One of them was acquitted. An appeal was filed before the sessions court by the other accused. The person acquitted by the trial court was not a party in the appeal. The state had not filed any appeal against the acquittal. The case was remanded by the High Court. Proceedings could be initiated against one accused only. No action could be initiated against the person acquitted by the trial court. By allowing the application under section 482 of the procedure Code the High Court held that it is a fundamental principle that an adverse order cannot be passed against a person without giving an opportunity of being heard. If proceedings are initiated it is an illegality amounting to the abuse of the process of the court. In *Narayana Pillai and others v. Chacko*,¹²² Magistrate taking cognizance of the offence

120. 1973 SCC (Cri) 545

121. 1986 KLT 272.

122. 1986 KLT 1005.

on a complaint under section 499 I.P.C. by a person not aggrieved is an abuse of the process. The Magistrate is incompetent to proceed and in such cases the test whether the allegation does constitute an offence is not necessary. In other words there must be substantial reason or grounds raised so as to interfere with the proceedings at the trial stage. In *Bhujanga Swamy v. Subrahmonian*,¹²³ the court enumerated the circumstances when taking cognizance of an offence is illegal. They are (1) The complaint does not disclose any offence alleged. (2) Complainant is incompetent to set the law in motion. (3) Cognizance without previous cases, in cases where sanction is required under section 197 Cr.P.C. In the instant case though requirement of sanction was raised, the court was of the opinion that sanction under section 197 Cr.P.C. was not required. Therefore, it declined to exercise inherent powers to quash complaints alleging offence under section 500, read with 34 I.P.C.

The inherent powers are to be exercised by the High Court to secure the ends of justice. Arbitrary interference in the trial proceedings is not justified. An instance of such arbitrariness on the part of the High Court is interference made when trial proceedings have almost come to an end. A delayed application under Sec. 482 of the Cr.P.C. to the High Court for quashing the proceedings violates equity and hence deserves to be condemned. It was so held by the Supreme Court in *Amar Chand Agarwala v. Shanti Bose, and another*¹²⁴. In a proceedings alleging offences under section 120-B and 409 IPC the Calcutta High Court quashed

123. 1987 (1) KLT 481.

124. 1973 SCC (Cri) 651

the charge sheet. The Supreme Court relying on its earlier decision¹²⁵ set aside the High Court's decision.

The declared policy of the court is that resorting to inherent powers itself should not end up in an abuse of the process of the court. While the power is available to secure the ends of justice, the party must approach the High Court through proper procedure. For instance a prisoner sends an application to invoke inherent powers to the Registrar of the Bombay High Court by post. The proper way should have been to route the application through the Superintendent of Jail and be countersigned by him. Rule 25 Chapter XXVI Bombay High Court Appellate file Rules 1960 provides for it. For noncompliance with that rule, the application was dismissed by the Bombay High Court. In *Iqbal Ismail Sodawala v. State of Maharashtra*,¹²⁶ the Supreme Court upheld the decision by the Bombay High Court, holding that the provision for countersignature of the Jail Superintendent was to safeguard the court being mischeived by others. Inherent Powers shall not be used to interfere to make concession to such a provision¹²⁷.

Securing the ends of justice is a broad parameter adopted for the exercise of inherent powers. Justice is a relative concept. What is not required for securing the ends of justice can subsequently be a requirement for the ends of justice. So in filing an application for invoking inherent powers there is no bar in filing for the second time even if, the first one was dismissed. In

125. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866,

126. 1974 SCC (Cri) 764

127. The court also referred to the decision in *U.J.S Chopra v. State of Bombay*, (1955) 2 SCR 94.

Superintendent and the Remembrancer of Legal Affairs (W.B) v. Mohan Singh and others,¹²⁸ the Supreme Court upheld the High Court decision quashing the charge-sheet filed under section 304-A read with section 109 I.P.C. The ban for the re-arraigning was that the second petition was filed on changed circumstances. There is no jurisdictional infirmity in entertaining a second petition and quashing the proceedings if there is an element of abuse of the process of the Court. This averment may sound unusual. The Supreme Court had dismissed several earlier appeals holding contrary view¹²⁹.

The High Courts have to put the ends of justice at the top of its judicial agenda. In its pursuit for securing the ends of justice the High Court has specific powers of continuous supervisory power under section 482 Cr.P.C. and revisional power under section 397 and 401 of the Code of Criminal Procedure. In section 401 of the Code of Criminal Procedure, the High Court can *suo-motu* initiate action to enhance punishment in revision. The legality of such an action by the High Court was challenged in respect of an offence under section 61(a) of Punjab Excise Act. The High Court declined to exercise inherent powers and limited the application. The Supreme Court in *Nadir Khan v. The State (Delhi Administration)*¹³⁰ upheld the decision of the High Court. It was held that the High Court as an effective instrument for the administration of criminal justice, keeping a constant vigil and where it

128. 1975 SCC (Cri) 156.

129. They include *Hoshiar Singh v. State*, 1958 Cri.L.J. 1093; *Namdeo Sindhi v. State*, 1958 Cri.L.J. 67; *U.J.S. Chopra v. State of Bombay*, AIR 1955 SC 633; *Raj Narin v. State*, 1959 Cri.L.J 543; *Lal Singh v. State*, 1970 Cri.L.J. 267; *Ram Vallabh Jha v. State of Bihar* (1962) 2 Cri.L.J. 629.

130. 1975 SCC (Cri) 622.

finds that justice suffered it takes upon itself as its bounden duty to *suo-motu* act where there is blatant abuse of the law.

Adverse remarks made in a judgment is a ground for invoking inherent jurisdiction to expunge such remarks. Here the issue of violation of the principles of natural justice is also involved. The relevant factors for consideration are those in respect of the necessity and legality of such remarks. The Supreme Court has laid down three tests in *State of U.P. v. Mohammed Naim*¹³¹. They are (1) the person must have an opportunity to defend his act. (2) There must be evidence on record to justify the remarks. (3) The remarks must be the integral part of the decision without which it will not sustain. Relying on these tests the Supreme Court dismissed an appeal filed by a judicial officer seeking to expunge the remarks made by the High Court in its judgment. The judicial officer had issued notice to an advocate under section 476 Cr.P.C. in respect of a false affidavit filed by a surety. The Supreme Court in the said decision, *R.K. Lakshmanan v. A.K. Sreenivasan and others*,¹³² was of the opinion that the adverse remarks were to be retained in the judgment.

In securing the ends of justice technicality should be avoided. In *Deepak Sarkar and another v. State of Bihar and another*,¹³³ the High Court declined to quash the charge sheet in proceedings initiated under Prevention of Food Adulteration Act, 1954. The chief reason for the High Court not to entertain the applications was that the applicant raised contentions which were not

131. AIR 1964 SC 703

132. 1975 SCC (Cri) 654

133. 1977 SCC (Cri) 128

pleaded in the petition. While allowing the appeal and setting aside the High Court order the Supreme Court held that questions of law though not pleaded can be allowed to be taken at the stage of arguments. The matter was remanded to the High Court.

In *Union of India and others, v. Haji Masthan Mirsa*,¹³⁴ the preventive detention order quashed by the High Court was upheld by the Supreme Court. Here also, technicality is not allowed to subdue the force of inherent powers. The petition challenging detention after release was held to be proper. Detenu could not challenge the detention order owing to prevalence of emergency while he was under detention. It does not amount to estoppel against his right to move the court after his release. The inherent powers are preserved to secure the ends of justice. The impact of petition under article 226 of the Constitution or under section 482 of Cr.P.C. is same.

The ends of justice has two sides. While invoking the inherent powers the court should not be undermining the ends of justice. The Supreme Court in *Pratibha Rani v. Suraj Kumar and another*,¹³⁵ held that if clear allegations consisting the offence alleged are made out the court should be reluctant to interfere. The *prima-facie* satisfaction is to be based only on the allegations made in the complaint taking them to be correct. What little relief the appellant obtained from the trial court was rendered nugatory by the High Court by quashing the proceedings. The Supreme Court restored the complaint to file.¹³⁶

134. 1984 SCC (Cri.) 271

135. 1985 SCC (Cri.) 180

136. 1976 SCC (Cri) 507-The Supreme Court applied the dictum laid down in *Smt. Nagawwa v. Veeranna Shivalingappa Konjali*.

A proceedings violating the principles of natural justice does not secure the ends of justice. The inherent powers of the High Court are saved to secure the ends of justice. But, the High Court itself should not violate the ends of justice. In *S.K. Viswambaran v. E. Koyakunju and others*,¹³⁷ the Supreme Court expunged the remarks against a police officer in a proceedings in which he was not a party. This was against the settled principle. The Supreme Court held that not only the principles of natural justice were violated but also on merits also such comments were immaterial.

Abuse of the process of the court is a ground for invoking the inherent powers. While exercising such powers, the High Court shall not abuse the process of the court. The Supreme Court in *State of Karnataka v. Narsa Reddy*,¹³⁸ has held that while exercising inherent powers the action of the High Court in splitting up trial of a case arising out of a common incident is not justified. Prosecution is to lead evidence against them in common. The case allegation of offence under section 302 and 201 read with 34 of I.P.C. and sections 3 and 4 of the Dowry Prohibition Act, 1961.

The inherent powers of the High Court shall not be to delay and defeat the cause of justice. In an application under section 482 Cr.P.C., if the High Court orders interim stay of criminal proceedings before the trial and if the stay is to continue for a long time, it would not serve the interest of justice. In *M.C. Mehta (II) v. Union of India and others*,¹³⁹ the Supreme Court while consid-

137. 1987 SCC (Cri) 289

138. 1987 SCC (Cri) 744.

139. 1988 SCC (Cri.) 141

ering the Public Interest Litigation against Ganga Water Pollution issued general directions to the High Court normally to decline to grant stay in such cases and speedily dispose of such cases. The complaint was alleging the violation of the provisions of Water (Prevention and Control of Pollution) Act, 1974 by the Industrialists.

Legislations containing special provisions for specific proceedings are not trammled by the inherent jurisdiction of the High Court. Sections 20(B), 19(1) of the TADA (Terrorist and Disruptive Activities (Prevention) Act, 1987) make specific provision for bail. The Supreme Court in *Usmanbai Dawoodbhai Memon and others, v. State of Gujarat*,¹⁴⁰ held that High Court is precluded from granting bail under section 439 and 482 of Code of Criminal Procedure.

High Court's forum is not for canvassing stale claims. In *State of U.P. v. R.K. Srivastava and another*,¹⁴¹ the High Court had quashed an FIR, allegation of offences under sections 420, 468, 471 and 120 B IPC and Sections 5 (2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. The Supreme Court upheld the decision of the High Court.

The High Court must appreciate the grievances of the complainant. A complaint was filed in respect of an offence under section 302 IPC. The High Court quashed the complaint. The ground was that, though in the complaint three persons were proceeded against, police filed challan in respect of only one per-

140. 1988 SCC (Cri.) 318

141. 1989 SCC (Cri.) 713

son for the same offences mentioned. The allegation in the complaint was the informant gave names of three persons but charge-sheet was only against one person. In *Manikantan v. Pandian and others*,¹⁴² the Supreme Court set aside the order of the High Court.

In *Dhanalakshmi v. R. Prasanna Kumar, & others*,¹⁴³ the Supreme Court set aside the decision of the High Court. Complaint alleged offences under Sections 494, 496, 498A, 112 and 120B IPC. There were specific allegations of offences in the complaint containing ingredients of offences for which cognizance was taken.

In *P.M. Nalini v. K.M. Mathew*,¹⁴⁴ the Supreme Court held it improper for the High Court to quash proceedings alleging an offence under section 500 IPC. The High Court quashed the proceedings without hearing the parties on point neither raised in application nor argued. If the High Court considered respondents enjoyed immunity it should give opportunity of hearing to the parties and allow them to adduce evidence by way of affidavits. It was held that the High Court should not express an opinion on merit at the stage of proceedings under section 482 Cr.P.C.

Inordinate delay alone is not sufficient for invoking inherent powers. In *Mangilal Vyas v. State of Rajasthan*,¹⁴⁵ the Supreme Court held that the long pendency for 25 years is not sufficient ground for, termination of the proceedings. This view was upheld

142. 1990 SCC (Cri.) 203

143. 1991 SCC (Cri.) 142

144. 1991 SCC (Cri.) 221

145. 1991 SCC (Cri.) 231

by the Supreme Court. An inordinately delayed case protract the travesty of justice and such Proceedings are to be quashed¹⁴⁶.

The question, whether it is correct on the part of the High Court to invoke the powers under section 482 Cr.P.C. in a proceedings under Articles 226 and 227 of the Constitution India was considered in *State of Haryana and others v. Bhajanlal and others*,¹⁴⁷ the Supreme Court opened new vistas in the application of inherent powers by the High Court. The petition was under article 226. The FIR alleged offences under sections 161 and 165 of IPC and section 5(2) of the Prevention of Corruption Act. The Supreme Court came out with a diagnosis of the power of the High Court. Here the High Court had quashed the entire proceedings including the FIR. The Supreme Court disposed of the appeal by setting aside the High Court order and ordered fresh investigation. After examining the entire body of case of law, on the point the Supreme Court held that High Court's power to quash criminal proceedings should be exercised sparingly and in "the rarest of rare cases". The High Court is not to examine the reliability of the allegation made in the FIR or the complaint. The criteria must be to ascertain whether a *prima facie* case is made out against the accused. The Supreme Court made certain enumerations and illustrations.

In *Ravi Raman Prasad and another v. State of Bihar and others*,¹⁴⁸ the Supreme Court set aside the order of the High Court as it was gross abuse of the process of the court to have invoked

146. *State of U.P. v. Parshottam*, 1991 SCC (Cri) 1016

147. 1992 SCC (Cri.) 426

148. 1993 SCC (Cri.) 489

the inherent powers under section 482 of Cr.P.C. where the Sub Divisional Magistrate had dismissed a petition under section 145 of Cr.P.C.

On mistaken legal grounds the High Court shall not invoke inherent powers. The inherent powers must be applied on a rational and intelligible basis. Quashing of an FIR after filing the charge-sheet is not permissible. In *State of Punjab v. Dharam Vir Singh Jethi*,¹⁴⁹ the Supreme Court set aside the decision of the High Court. The High Court had based its decision on the ground of delay in this FIR/Charge-sheet and as presumably thinking that the proceedings were hit by section 468, 469(b) and 473 of the Code. The fact that the offences alleged were not coming under the ambit of the above sections. The High Court's decision was likely to have an impact on the process and of the court and of the ends of justice.

In *Chetan Anand v. State of Punjab*,¹⁵⁰ the Supreme Court endorsed the view of the High Court in not invoking the inherent powers in a proceedings under section 406 and 420 IPC. The Supreme Court held that even on a perusal of the order of the trial court and other documents no ground was made out.

Quashing the FIR and proceedings on a mechanical way is not the invocation of inherent powers. The High Court quashed the proceedings alleging offences under sections 354 and 509 IPC. In *Rupan Deol Bajaj and another v. K.P.S. Gill and another*,¹⁵¹ the Supreme Court reversed the order of the High Court. It was

149. 1994 SCC (Cri) 500.

150. 1994 SCC (Cri) 554.

151. (1995) 6 SCC 194.

held that while quashing an FIR the High Court must ascertain whether the allegations made therein are so absurd and inherently improbable to make such a conclusion by any prudent man as is held in *Bhajan Lal's*¹⁵² case. In the absence of such a finding the quashing of an FIR by the High Court is improper and a gross error of law¹⁵³.

Abuse of the process once convinced of, the proceedings should be quashed. The High Court should not have any diffidence. In *G.L. Didwania and another v. Income Tax Officer and another*,¹⁵⁴ the Supreme Court reversed the decision of the High Court. The charge-sheet alleged offences under section 277 Income Tax Act 1961. Application under section 482 Cr.P.C. was dismissed by the High Court. Prosecution was initiated by Income Tax Dept. for making a false statement. The Appellate Tribunal set aside the assessment against the appellant (Petitioner). The finding of the Appellate Tribunal was conclusive and the prosecution could not be sustained. The criminal proceedings were liable to be quashed¹⁵⁵.

A complaint filed without considering relevant aspects is liable to be quashed. In *State of Punjab v. National Organic Chemi-*

152. *State of Haryana and others v. Bhajanlal and others*, 1992 Supp. (1) SCC 335.

153. Supreme Court had referred to *Abinamdah Jha and others v. Dinesh Mishra*, AIR 1968 SC 117; and relied on *Bhagavant Singh v. Commissioner of Police and another*, 1985 SCC Cri. 267 and *State of Haryana v. Bhajanlal and others* 1992 SCC Cri. 426.

154. 1995 Supp. (2) SCC 724.

155. Supreme Court followed *Uttam Chand v. Income Tax Officer Central Circle, Amritsar*, (1982) 2 SCC 543 and referred to *D. Jayappan v. S.K. Perumal*, 1984 Supp. SCC 437.

cal Industries Ltd.,¹⁵⁶ the High Court had quashed the complaint and the Supreme Court upheld the High Court order on different grounds. Allegation was offences under sections 21, 22 and 24 of the Insecticides Act, 1968. But, there was nondelivery of one portion of sample to the person from whom the insecticide was taken. There was also denial of statutory rights to get the sample tested. The Supreme Court observed that a complaint should be lodged with utmost dispatch and any delay would result in quashing the complaint.

If an allegation does not make out an offence continuation of proceedings would be abuse of the process. In *Guru Bipin Singh v. Chongtham Manihar Singh and another*,¹⁵⁷ the Supreme Court quashed a complaint which the High Court declined to quash applying inherent powers. Offence alleged were under sections 465 and 468 read with section 420 IPC. Complaint was that appellant published a forged book by stating that it was in the manuscript of King Bhaga Chandra. There was no allegation that the accused had himself written the book. According to the Supreme Court there was no case of forgery and consequent cheating. So complaint was liable to be quashed.

Entertaining a baseless complaint is abuse of the process of the court. A Sessions Court quashed the proceedings in revision. The High Court restored the complaint in section 482 Cr.P.C. The Supreme Court set aside the order of the High Court and restored the sessions court order. In *Jawaharlal Darda and oth-*

156. (1996) 11 SCC 613

157. (1996) 11 SCC 622

ers v. Manohar Rao Ganapat Rao Kapskar and another,¹⁵⁸ the Supreme Court held quashing the proceedings by the Session Court to be correct. Prosecution was initiated for defamation. Publication of a news item disclosing accurate and true report of proceedings of Legislative Assembly. The news item was published in good faith for public good, believing the statement to be true. The order of the Additional Session Judge, quashing the proceedings was held to be correct.

158. 1998 SCC (Cri.) 815.

CHAPTER - V
REVISION, REVIEW
AND INHERENT POWERS -
A JURISDICTIONAL CONUNDRUM

Inherent powers are a necessary concomitant of the administration of justice. Administration of justice shall not come to a standstill with the courts and judges bewildered by the absence of proper provision of law to get over any hiatus developed during the course of the proceedings. The power of review and revision are meant to correct any deviance, or deficiency in the matter of administration of justice, so that the stream of justice would flow uninterruptedly, evenly and without any let or hindrance. Inherent powers are recognised as a superior source of power to the court to keep the administration of justice meaningful. The inherent powers in criminal justice system is available to the High Court only. Under section 151 of Civil Procedure Code all the civil courts have inherent powers. A subordinate judicial officer shall not exercise any power in the nature of inherent powers in the matter of criminal justice administration.

A Magistrate cannot issue summons to recall a party after dismissing the complaint. There is no power for the Magistrate to review or recall an order passed by him. It would be an order passed without jurisdiction¹. Even if, the Magistrate thought it fit to pass any order, it should have been on fresh grounds and on a fresh petition. If previous facts are relied on for a second petition, a special case should be made out². Here it is pertinent to

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1. *Bindeswari Prasad Singh v. Kali Singh*, 1997 SCC (Cri.) 33.
 2. *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, AIR 1962 S.C. 876.

note that even the inherent powers available to the High Court under section 482 of the Code of Criminal Procedure is not recognized good for passing an order amounting to revision or review.

Revision and Review are powers incidental to a jurisdiction. In criminal jurisprudence provision for review is effectively barred through Section 362 of the Code of Criminal Procedure³. The clothing of the inherent powers of the High Court under section 482 Cr.P.C. with words so absolute and clauses so articulate, one would easily think that here is a jurisdiction without any bridle. The High Court is armed with the *power to give effect to any order passed under the Code, or to prevent the abuse of the process of any Court or to secure the ends of justice*. This power is notwithstanding all other provisions in the Code. Those provisions cannot affect or limit the powers of the High Court. But, a quagmire of judicial permissibility and impermissibility is created around the inherent powers of the High Court making it impossible to the High Court to invoke inherent powers on certain adjudicating eventualities. There has been elaborate debates in the judicial circles time and again. The emphasis has been on two extreme points. Inherent powers under section 482 Cr.P.C. cannot be invoked for a proceedings amounting to a second revision. This is because, revision itself is barred under section 397(2) of Cr.P.C. in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings, Similarly section 397(3)

3. Section 362 Cr.P.C. reads:- "Save as otherwise provided by this Code or by any other law for the being in force, no Court, when it has signed its judgment or final disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error".

of the Code expressly bars second revision. On the otherhand, through interpretation, the phrase 'interlocutory order' is given a limited connotation and inherent powers are interpreted to occupy a primordial position in the administration of criminal justice.

i. Revisional Power vis-a-vis Inherent Power

Regarding revision the legal provisions are clear. Power of revision vis-a-vis inherent powers contains three aspects. Firstly, revisional power is concurrent being conferred on the sessions Court and the High Court. Secondly, an interlocutory order is not revisable. Thirdly, a second revision is barred and therefore invoking inherent powers under section 482 if amounts to a second revision the High Court does not entertain the application. In practice it is not easy to observe the above principles because inherent powers of the High Court are something more in prominence and amplitude. Under normal circumstances going by the letter of the law the High Court is loathe to interfere. In *Chandran v. Jagadamma*⁴ the Kerala High Court declined to exercise inherent powers against an order of the sessions court dismissing a revision application against an order of maintenance under section 125 Cr.P.C. It was held that the High Court need not go through the case to find out whether the matter could be decided on a different approach. Such an exercise would be uncalled for and beyond the scope of section 482 Cr.P.C. But even here, if abuse of the process of the court is proved, the High Court may interfere. But it is to be proved conclusively. In *Areefa Beevi v. Dr. K.M. Sahib*⁵ an application under section 125 Cr.P.C. filed by

4. 1981 KLT 654

5. 1982 KLT 242

a father claiming maintenance from his daughter was allowed. Father filed a revision for adequate amount. Daughter did not file a revision. The High Court held that subsequently she could not file an application under section 482 Cr.P.C. before the High Court. But, preventing abuse of the process of the court and securing the ends of justice is far superior to the technicality of revision or second revision or revision of the interlocutory order. The Kerala High Court in *Abdulla Kutty Haji v. Addl. Judicial First Class Magistrate*⁶ quashed the complaint and charge sheet alleging offence under sections 406 and 120 I.P.C. read with sections 34 I.P.C.

ii. **Supreme Court on Bar of Revisional Power of High Courts**

The Supreme Court had an occasion to consider this aspect in *Amarnath v. State of Haryana*⁷. A certain latitude is sought to be achieved by countenancing the etymology of the phrase, 'interlocutory order'. Here the question is essentially one of jurisdiction. Therefore, one must be alert to the very nuances of the concept of jurisdiction while deciding that the High Court has no power to entertain a revision on an interlocutory order, or an application amounting to a second revision. A detailed account of the facts is necessary to appreciate the issue in *Amarnath*. The chain of events in the above case is thus⁸:- An FIR was filed on the death of three persons. A number of accused persons were mentioned in the FIR. Police filed charge-sheet excluding certain persons, including the appellants, whose names figured in the

6. 1982 KLT 861

7. AIR 1977 SC 2185.

8. *Id.* at p. 2186.

F.I.R. Final Report, in respect of those persons whose names were excluded, was filed under section 173 of Cr.P.C. 1973. The Magistrate set the appellants at liberty. A revision petition was filed before the Additional Sessions Judge against the order of the Magistrate. The revision was dismissed. So a regular complaint was made before the Magistrate by the informant, who was the revision petitioner. That Complaint was also dismissed by the Magistrate. The Complainant again preferred a revision before the Sessions Judge. That revision was allowed and the case was remanded to the Judicial Magistrate for further inquiry. The Magistrate on receiving the order of the Sessions Judge, issued summons to the accused persons straight away. The accused persons approached the High Court with a petition under sections 397 and 482 of the Cr.P.C. The attack against the order of the Magistrate was on the ground that the Magistrate had issued summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition. The reason was that order summoning the accused was only an interlocutory order and hence revision was barred under section 397(2) of the Code. Since, revision was barred the jurisdiction under section 482 Cr.P.C. also could not be invoked. In such a case the object of section 397(2) would be defeated as the order could not be challenged in revision under Section 397(1). It is pertinent to note that the parties did not approach the Sessions Judge with an application for revision petition under section 397(2) Cr.P.C. against the order of the Magistrate. The attitude of the High Court amounted to making the inherent powers subservient to the requirements of section 397(2) of the Code. It is here that

perceptual distinctions become relevant. Inherent powers cannot be utilized to defeat the bar of revision under section 397(2) of the Code. But, inherent powers are not conferred on the court. It is not a new power. Inherent powers are those already possessed by the High Court and preserved all along. The position of law is amply clear from the words of the Supreme Court:-

"A harmonious construction of sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject matter. Where there is an express provision, barring a particular remedy, the court cannot resort to the exercise of inherent powers"⁹.

Now the more interesting and important part of the puzzle comes. The position stated above is apparently settled. For the reason for declining revision under section 397(2) Cr.P.C., some questions may be asked, can all orders passed by the Magistrate during the pendency of the proceedings be declared as interlocutory in nature? If it is not interlocutory in nature, would the mischief of section 397(2) Cr.P.C. be removed? Is not the High Court entitled to examine the correctness of the Magistrate's order with the revisional jurisdiction under section 397 Cr.P.C. and the inherent powers under section 482 Cr.P.C.? The High Court's powers cannot be fettered once the light is found and the line is

9. *Id.* at p. 2187.

cleared. High Courts occupy a vanguard position in the matter of jurisdiction. It has revisional jurisdiction, under sections 397 and 401 of the Criminal Procedure Code, inherent jurisdiction under section 482 Cr.P.C., and continuous supervisory jurisdiction under Section 483 of the Cr.P.C. So, the distinction of an order being final or interlocutory assumes little significance, all the more when the interlocutory nature of the order itself is disputed¹⁰. The position can be expressed clearly in the words of the court itself. Referring to various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes, and Webster's New World and case law Dictionary, the Court said:-

"It seems to us that the term 'interlocutory order' in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witness, adjourning cases, passing orders for bail, calling for reports, and such other steps in aid of the pending proceeding, may no doubt amount to

10. *Id.* at p. 2189.

interlocutory orders against which no revision would lie under section 397(2) of the 1973 Code. But, orders which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court"¹¹.

Thus issuing summons without affording an opportunity to the accused was bad in law. It amounted to a valuable right of the petitioners being denied to them by the Magistrate. The Court concluded:-

"We are therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial"¹².

Therefore, the High Court should not have shirked its responsibility to interfere. The question of interlocutory character of the order impugned takes a back seat¹³.

This interpretation by the Supreme Court provided elbow-room

11. *Id.* at p. 2190.

12. *Ibid.*

13. The Supreme Court consulted its own earlier decisions - *Central Bank of India v. Gokul Chand*, AIR 1967 S.C. 799, *Mohan Lal Magan Lal Thacker v. State of Gujarath*, AIR 1968 SC 733, *Baldevadas v. Filmistan Distributers(India)Pvt Ltd.*, AIR 1970 SC 406.

for the High Court to exercise its inherent jurisdiction. The competency of the High Court is not dubious. According to the Supreme Court, sections 397 and 482 Cr.P.C. have enough scope in a case like this. This attitude of the Supreme Court displays the prestige attached to the power of the High Court. In other words, the clothing of section 482 Cr.P.C. is such that nothing is deemed to limit or restrict the powers of the High Court. It is not a question of the inherent powers under section 482 of Cr.P.C. pitted against any other provision of the Code. Even when power under a particular provision is exercised by the High Court, the inherent powers are there. It is inherent, it is in-built, it is found, not invented, it is preserved and saved not procured and perpetuated.

iii. Pervasive Nature of Inherent Power

In *Raj Kapoor & others v. State and others*¹⁴, the Supreme Court very categorically asserted that revisional jurisdiction under Section 397 does not exclude jurisdiction under section 482 of the Code. The conflict between the provisions of section 482 and section 397 Cr.P.C. is only apparent and the innovativeness of the High Court and the Supreme Court can find a happy solution.

The opinion of the Supreme Court is that inherent powers are recognised. It is pervasive. It is there so long as the court is there. The caution is that the power shall not be used to subvert specific statutory provisions. Revisional jurisdiction is statutorily provided. It has its own specific conditions contained in Sec-

14. *Raj Kapoor v. State*, 1980 SCC (Cri) 72

tion 397Cr.P.C. In spite ^{of} the bar, to get over the same, resort to inherent powers cannot be made. What cannot be achieved directly, cannot be sought to be achieved indirectly. At the same time, this shall not diminish the sheen of inherent powers also. The Supreme Court made the position clear in the following words:-

"The first question is as to whether the inherent power of the High Court under section 482 stands repelled when the revisional power under section 397 overlap. The opening words of section 482 contradict this contention because nothing in the code, not even section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made, easy resort to inherent power is not right except under compelling circumstances, not that there is absence of specific power under the same code¹⁵.

In this context, the Supreme Court relied on the reasoning in *Madhu Limaye v. State of Maharashtra*¹⁶, a leading case on the point. In this decision, the Supreme Court opined that resolving a tangle created by the interplay of sections 397 and 482 Cr.P.C. is not beyond the compass of the court. The bar provided in section 397(2) Cr.P.C. is only in respect of revisional power. That too is in respect of an interlocutory order. 'Interlocutory order' is

15. *Id.* at p. 76.

16 AIR 1978 SC 47. Also see *Kurukshetra University v. State of Haryana*, (1977) 4 SCC 451; *Madhu Limaye v. State of Maharashtra*, 1978 SCC (Cri) 10.

a phrase easily termed under judicial process¹⁷. And bar of revision operates as no bar on inherent jurisdiction. On the otherhand, if revision is barred, inherent power will have to come into play. If the impugned order of the Magistrate-

"Clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent powers by the High Court"¹⁸.

A criminal proceedings, initiated illegally, or without jurisdiction is an instance to the point. Therefore, the court shall not display hesitation to interfere. Such cases may be rare¹⁹. So, the inherent power is invoked only sparingly.

In *Raj Kapoor's case*²⁰, the Supreme Court viewed the inherent power of the High Court with all the solemnity it required. In the discussion, rather than diminishing the inherent power of the High Court the Supreme Court tried to isolate and project this inherent powers in the following words:-

"In short there is no total ban on the exercise of inherent power where abuse of the process of the court or other extra ordinary situation excites the court's jurisdiction. The limitation is self restraint, nothing more. The policy of the

17. AIR-1977-SG-2185; referred *supra*: n.7

18. *Madhu Limaye v. State of Maharashtra*, AIR 1978 S.C. 47 at p. 51.

19. *Ibid*.

20. *supra*. n.14

law is clear that interlocutory orders pure and simple, should not be taken upto the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face"²¹

In a fine act of judicial creativity, the Supreme Court gives the idea of a position in between the two extremes, a *tertium quid* drawing analogy from its earlier decision in *Madhu Limaye v. State of Maharashtra*²² where an order impugned is more than purely interlocutory and less than final in nature. Thus the court opined in *Raj Kapoor*:-

"...the present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? The answer to this is drawn from *Madhu Limaye's* case, that the bar will not operate to prevent the abuse of the process of the court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."²³

21. *Ibid.*

22. AIR 1978 SC 47.

23. *Raj Kapoor v. State*, 1980 SCC (Cri) 72 at p. 77

What is required under such circumstances is the vision to consider seriously the entire gamut of the administration of justice as observed by the Supreme Court in *Raj Kapoor's* case. The Court said again in *Raj Kapoor's* case:-

"I am therefore, clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides sensitively responding to our allergy for legalistic, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified"²⁴

In the course of its exposition of the law upto the facts of the case, the Supreme Court castigates the reluctance of the High Court and clarifies the various implications. When the film "Sathyam, Sivam, Sundaram" was produced, the producer had never thought that his venture would also be a cause for delineating the majesty and beauty of law. A clear labyrinth was created by the High Court for the producer of the film and other accused persons who had participated in the film, when it projected a clash of two jurisdictions resulting in injustice. The dismissal of the petition by the High Court was on a point of procedure as made clear by the Supreme Court thus:

24. *Ibid.*

"The negative order under challenge, was made by the High Court refusing to exercise its inherent power under Sec. 482 of the Criminal Procedure Code. (The Code, for short) because the subject fell under its revisional power under Section 397 and this latter power was not unsheathed because a copy of the short order of the trial court had not been filed as required, not by the code, but by a High Court rule, although the original order, together with all the records had been sent for and was before the Court"²⁵

The Supreme Court's opinion measures upto the position that the High Court had thus created a mess of its own jurisdiction.

"When the order in original, is before you, to dismiss the petition for non-production of a copy of it is to bring the judicial process into abjuration, and if a copy were so sacred that the original were no substitute for it some time could have been granted for its production, which was not done. In law, as in life, a short cut may prove a wrong ~~cut~~^{cut}. I disinter the cessation proceedings and direct it to be disposed of de novo by the High Court. The content of the power, so far as the present situation is concerned, is the same, be it under section 397 or section 482 of the Code."²⁶

The question of jurisdiction is answered to the full by the Supreme Court with a philosophic note:

25. *Id.* at p. 74.

26. *Id.* at p. 77.

"All these add up to one conclusion that finality and infallibility are beyond courts which must interpret and administer the law with pragmatic realism, rather than romantic idealism or recluse extremism"²⁷

The Supreme Court held that the proceedings was maintainable before the High Court and its rejection was wrong.

iv. Inconsistency Not of Substantive Nature

The little confusion ranging the inherent powers and the revisional powers is kept alive, but the controversies in fact pertain to the direct cases. The inconsistency between sections 482 and 397(2) of the Code is more of synthetic nature than of substantial nature. In *Municipal Corporation of Delhi v. R.K. Rohtagi and others*,²⁸ it was held that the scope, ambit and range of section 482 is quite different from the powers conferred under section 397(2) and there is no inconsistency between the two. The power under section 482 Cr.P.C. is not only a revisional power meant to be exercised against orders passed by subordinate courts. It is separate and independent power while the High Court alone possesses the power to pass an order *ex debito justitiae*. There is no prohibition in mingling the revisional power and inherent powers as one is not the antithesis of the other. That is why the Supreme Court in *Madhu Limaye v. State of Maharashtra*,²⁹ held that section 482 had a different parameter and was a provision independent of section 397(2) of the Code.

27. *Id.* at p. 78.

28. 1983 SCC (Cri) 115.

29. *Supra* n. 16

"On a plain reading of section 482, however it would follow that nothing in the code which would include sub section (2) of section 397 also, shall be deemed to limit or affect the inherent power of the High Court."³⁰

When it is clear that there is no conflict between section 397(2) and section 482 the rest is with the court and the judges to see that the administration of justice is not impeded for want of clarity, as it happened to *Raj Kapoor*³¹. The juristic skill and verve of the judge could see the controversy through and the majesty and prestige of the court is kept unaltered. It is an occasion for the judges to have an expression of their personality and not for an escape from their personality. In *Rohtagi's case*,³² the Supreme Court while appreciating the approach of the High Court in analysing the complaint demonstrated its determination by holding that quashing the entire proceedings was not called for and the charge against the Manager was to stand trial.

In the jurisdictional conundrum created by the interplay of revisional jurisdiction under section 397 Cr.P.C. and inherent powers under section 482 Cr.P.C., another area of controversy is the availability or non-availability of inherent powers while already a revision was availed of under section 397(1) of the Code. If the parties go first to the sessions court with an application for revision under section 397(1) Cr.P.C. and then try to avail the jurisdiction of the High Court to extract a subsequent revision it is closed under section 397(3) Cr.P.C. The only option for the ag-

30. *Id.* 32.

31. *Supra.* n. 23.

32. 1983 SCC (Cri) 115.

grieved person is to invoke the inherent jurisdiction. An application under section 482 Cr.P.C. amounting to a second revision would not be allowed. The Supreme Court had an occasion to consider this and express its opinion. But, the matter has not yet been given a quietus as situation props up differently at different times making, it impossible to the Supreme Court to put a full stop.

v. **Elbow Room for Innovation by the Supreme Court**

In interpretation of law one is bound to concede that there is elbow room for introspection and innovation. Two decisions of the Supreme Court could shed light on the controversy. They are *Dharmapal and others v. Ramshri and others (Smt.)*³³ and *Krishnan v. Krishnaveni*³⁴. In *Dharmapal* the facts make confusion worse confounded. The parties play a litigational snake-and-ladder game before the Magistrate, Civil Court, District & Session court, High Court and finally before the Supreme Court. An order of attachment under section 146 Cr.P.C. is passed in a section 145 Cr.P.C. proceedings. The order is challenged in revision before the Session Judge, Revision is dismissed. The Magistrate passed a fresh order of attachment. Against that came one more revision. Pending revision a suit was filed for permanent injunction. Interim injunction prayed for in Interlocutory application was dismissed by the trial court and allowed by the District Court. In the meantime, subsequent revision was dismissed. The Magistrate passed an attachment order again. Again revision was filed before Session Court. Stay of attachment was ordered. Then

33. 1993 SCC (Cri) 333.

34. AIR 1997 SC 987.

the attachment was sought to be withdrawn. The Magistrate passed orders allowing withdrawal. Again revision was filed against that order and it was dismissed. Then a petition under section 482 Cr.P.C was moved before the Hon'ble High Court, which entertained the application and held that it was not open to the Magistrate to withdraw the attachment till a competent court decided the matter finally. The High Court restored the attachment. The Supreme Court was of the opinion that the proceedings before the High Court amounted to a second revision. The Court said:-

"The question that falls for our consideration now is whether the High Court could have utilised the powers under section 482 of the Code and entertained a second revision application at the instance of the respondent No.1. Admittedly respondent No.1 had preferred a criminal application being Cr.R.No. 180 of 1978 to the Sessions Court against the order passed by the Magistrate on October 17, 1978, withdrawing the attachment. The sessions judge had dismissed the said application on May 14, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of respondent No.1"³⁵.

This interpretation by the Supreme Court is apparently final and conclusive. But, a leeway is opened in *Krishanan v.*

35. 1993 SCC (Cri) 333 at p. 336.

*Krishnaveni*³⁶. Where the Supreme Court on a harmonious interpretation of sections 397, 401, 482, 483 of the Code held that the prohibition under section 397(3) of the Code is not applicable to the state seeking revision under section 401 of the Criminal Procedure Code. The High Court can entertain it in case of grave miscarriage of justice or abuse of the process of court by exercising inherent powers under section 482 Cr.P.C. and continuous supervisory power under section 483 of Cr.P.C.³⁷ The Supreme Court has resorted to two internal aids for interpreting the law, ie, the definition of 'person' in section 11 I.P.C. and power under section 483 Cr.P.C. for continuous supervision of the functioning of the trial courts. The power of the High Court of continuous supervisory jurisdiction under section 483 Cr.P.C. is of paramount importance to examine the correctness legality and propriety of any finding or order recorded or passed as also regulatory of proceedings of all inferior criminal courts³⁸ The Supreme Court makes a foray into the interpretation of the provision for revision, and inherent powers by projecting the prominence of the inherent jurisdiction coupled with supervisory jurisdiction.

The Supreme Court had an occasion to diagnose the position of the High Court in the administration of the criminal justice in the decision of *Krishnan v. Krishnaveni*³⁹. The revisional jurisdiction is only one of the shades which presents a mosaic of ju-

36. AIR 1997 SC 987.

37. S. 483 Cr.P.C. reads: Every High Court shall so exercise its superintendence over the courts of judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

38. AIR 1997 S.C. 987 at p. 990.

39. *Ibid.*

jurisdictional aspects. The High Court's power of revision is wider than that of the Sessions Court. The High Court while enjoying coextensive revisional power under section 397 Cr.P.C. with the Sessions Court, also has *suo-motu* power of revision under section 401 Cr.P.C. This puts the High Court at a higher pedestal so far as revisional power is concerned. For the High Court the Sessions Court and the Magistrate are subordinate courts and hence amenable to the jurisdiction under section 401 Cr.P.C. The Magistrate courts though subordinate to the sessions court are not amenable to the jurisdiction of the Session Court as in the case of that court, under section 401 Cr.P.C. In other words the sessions court has no *suo-motu* power of revision over the Magistrate Courts. This itself tells the difference in the status of the revisional jurisdiction of the High Court and Sessions Court. Then by virtue of inherent powers under section 482 of the Code of Criminal Procedure the High Court has a very vast territory of jurisdiction where its writ alone stands. This power was there even before the Code was introduced. The inherent powers derived from the ancient doctrine of Justice, Equity, and Good Conscience, can become a perennial source of power to clear the *Augean Stable* of Criminal Justice system. Added to this is the continuous supervisory power under section 483 of the Code. Thus, the powers of the High Court in criminal justice system are well entrenched, with the inherent powers under section 482 Cr.P.C. occupying commanding heights. These components of power refurnishes the jurisdiction of the court. In to this context is the happy blending of jurisdiction under the Constitutional provisions as gradually achieved. This principle has been further for-

warded and reiterated by the Supreme Court with the horizon of the High Court's jurisdiction expanding with the fashion of the power under section 482 Cr.P.C. and Articles 226 and 227 of Constitution, making one substitute for the other making both streams of power to confluence at the High Seas of jurisprudence, bringing the action of the High Court, under the ambit of judicial review in criminal matters⁴⁰. The Supreme Court said in *Pepsi Foods Case*:-

"Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. It is a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Sec. 482 of the Code. It may not however, be lost sight of that provisions exist in the code of revision and appeal but some time for immediate relief. Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave error that might be committed by the subordinate courts"⁴¹

Therefore, the argument of diminution of inherent powers once a revision under section 397(1) is resorted to is likely to be redundant. Therefore said in *Krishnan v. Krishnaveni*,

"The revisional power of the High Court merely conserves

40. *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others*, (1998) 5 SCC 749.

41. *Id.* at p. 759.

the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal Courts or to prevent miscarriage of justice"⁴²

The public trust reposed on the High Court is manifold as sections 397, 401 and 483 Cr.P.C. together forming enough ammunition to scuttle any attempts of sabotage of criminal justice system by miscarriage of justice or irregularity of procedure. The court again said in *Krishnan v. Krishnaveni*,

"In addition, the inherent power of the High Court is preserved by section 482. The Power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiously when the sessions Judge has simultaneously exercised revisional power under section 397(1). However, when the Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal Court in its jurisdictional process or illegality of sentence or order"⁴³

So, the Sub section (2) or (3) of 397 Cr.P.C. cannot act as

42. *Krishnan v. Krishnaveni*, AIR 1997 SC 987 at p. 990.

43. *Ibid.*

brakes on the High Court's mechanism for invoking the inherent powers. The various sources through which the High Court derives its power make it imperative on the High Court to budge, lest justice is imperiled. The inherent powers of the High Court is no match for its revisional powers. The inherent powers of the High Court are not conferred on the High Court by the Code. The power is there already and it predates the High Court itself and for that matter predates any organized institutionalized administration of justice. The legislative history of the revisional power is too recent to have it any claim of antiquity with the inherent powers. The Law Commission's report⁴⁴ and the parliamentary working Committee's Report⁴⁵ necessitated removing some procedural bottlenecks to stress the teeming procedure in the criminal trials. The very object of section 397(3) Cr.P.C. is to put a bar on simultaneous revisional application to the High Court and the court of sessions. The Supreme Court has culled out the term 'any person', from section 397(3) and with the aid of the definition 'person' in section 11 of I.P.C.⁴⁶ has held that the State is not 'person' for the purpose of section 11 IPC and therefore, a second revision if preferred by the State is not prohibited under section 397(3) Cr.P.C. This is in recognition of the pivotal role played by the State as the prosecutor of the offenders and enjoined to conduct prosecution on behalf of the Society and to take such a remedial step, as deems proper⁴⁷. The object behind criminal law

44. Law Commission 14th and 41st Reports.

45. Report on Sec. 435 and 439 of the Code of 1898 and 1955 respectively.

46. Section 11 I.P.C.reads:- The word person includes any company or association or body of persons whether incorporated or not.

47. *Krishnan v. Krishnaveni*, AIR 1997 SC 987 at p. 991.

is to maintain law, public order, stability as also peace and progress in the society. The Supreme Court said in *Krishnan v. Krishnaveni*.

"In view of the principle laid down in the maxim *Ex debito justitiae*, ie, in accordance with the requirements of justice, the prohibition under section 397(3) on revisional power given to the High Court would not apply when the State is not prohibited to avail the revisional power of the High Court under section 397(1) read with section 401 of the Code."⁴⁸

The Supreme Court drives home the idea that the bar under section 397(3) Cr.P.C. ought not to be an embargo to the application of inherent powers Prohibition under section 397(2) and (3) Cr.P.C. coupled with the power under section 401 Cr.P.C. against the backdrop of the continuous supervisory power under section 483 of the Code is exposed to the hilt for the sake of inherent powers under section 482 Cr.P.C. "Ordinarily, when revision has been barred, by section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Sec. 397(1) or under inherent powers of the High Court under se. 482 of the Code since it may amount to circumvention of the provisions of section 397(3) or section 397(2) of the Code. It is seen that the High Court has *suo-motu* power under section 401 and continuous supervisory jurisdiction under sec. 483 of the Code." The court said in clear and in no uncertain terms:-

48. *Ibid.*

"So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is therefore, to meet the ends of justice or to prevent abuse of the process of that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under sec. 397(1) read with section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out⁴⁹.

Krishnan v. Krishnaveni,⁵⁰ settles the conundrum. There the Supreme Court has categorically stated in a culmination of the thought process emanated earlier in *Madhu Limaye v. State of Maharashtra*⁵¹ and *V.C. Shukla v. State*⁵². The Supreme Court

49. *Id.* at p. 991. The court also noted that, the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted

50. *ibid.*

51. AIR 1978 SC 47.

52. AIR 1980 SC 962.

has interalia, considered its own earlier decision in *Rajan Kumar Manchanda's case*⁵³, and *Dharampal's case*⁵⁴, where revisional power was given precedence over inherent powers,⁵⁵ and disapproved of it in view of *Madhu Limaye's case*⁵⁶, and *V.C. Shukla's case*⁵⁷. The correct position was reiterated in the *Krishnavani's case*, in the following words:-

"On the facts in that case.. it could be said that the learned Judges would be justified in holding that it was not revisable since it was prohibitory interim order of attachment covered under sec. 397(2) of the Code but the observations of the learned Judges that the High Court had no power under sec. 482 of the Code were not correct in view of the ratio of this court in *Madhu Limaye's case* as upheld in *V.C. Shukla's case*, and also in view of our observations stated earlier⁵⁸.

The Supreme Court has adverted to the fact that the High Court had without applying its mind exercised or declined to exercise its inherent powers and the same was subsequently commended by the Supreme Court. That does not mean that the High Court has no jurisdiction to use inherent power. In *Rajan Kumar Manchanda's case*⁵⁹, the High Court dismissed a revision against the Magistrate's order. But, subsequently, on an application filed

53. AIR 1990 SC 1005:1990 Supp SCC 132

54. 1993 AIR SCW 303

55. Ref. *supra* n. 53

56. Ref. *supra* n. 51

57. AIR 1980 SC 962

58. Ref. *supra* n. 47

59. Ref. *supra* n. 53

under section 482 of the Code, the High Court corrected it. This amounted to a review of the order, so, the Supreme Court held that High Court cannot exercise inherent powers for the second time. Thus finally, the Supreme Court held:-

"In view of the above discussion, we hold that though the revision before the High Court under subsection (1) of sec. 397 is prohibited by subsection (3) thereof, inherent power of the High Court is still available under sec. 482 of the Code and as it is paramount power of continuous superintendence of the High Court under sec. 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below"⁶⁰

The decision of the Supreme Court in *Krishnaveni's* case helps to come out of the conundrum created by the divergent views. The power and jurisdiction of the High Court in the context of the revisionary powers under section 397(1) read with 397(3) and the inherent powers is convincingly asserted. Revision as a procedure is available before the Sessions court as well as the High Court in order to rectify the unjust delay of administration of justice, the Law Commission of India had suggested several measures. One was to curb the increasing incidents in instances of revision petitions resulting in effecting blocking of prosecution criminal cases. When the Code was reenacted in 1973 Section 397 of the Procedure Code contained general principle of revision. Concurrent jurisdiction of the Sessions court

60. *Supra*, n. 47 p. 992.

and High Court is provided for revision. Sub Clause (2) of section 397 Cr.P.C. provided that interlocutory orders could not be challenged in revision. Similarly, sub clause (3) provided that second revision was not permitted. A person who once avails the jurisdiction of the Sessions court is barred from approaching High Court with a revision petition. Owing to this bar, an application under section 482 also would not stand, if it amounts to a second revision.

vi. Second Revision and Interlocutory Orders of the High Court

In *Deepthi alias Arati v. Akhil Rai*,⁶¹ the Supreme Court set aside the High Court order. The High Court had quashed the charge sheet and proceedings in an action alleging offences under the proceedings on the basis of the concessions made by the Government Advocate. The Supreme Court held that the court ought to verified records before accepting the concessions. It was also held that a second revision after the dismissal of the first one by the Sessions court was not maintainable. In *Dharmapal and others v. Smt. Ramsree and others*⁶². The Supreme Court reversed the High Court order quashing proceedings under Section 146 of the Criminal Procedure Code. If an order is purely interlocutory, there is no revision and inherent powers are also barred. The *Gur Dayal Singh Mann v. Dharampal Singh Mann*,⁶³ held that Sub Divisional Magistrate can order attachment of property in dispute and appoint Receiver till the rights

61. (1995) 5 SCC 751

62. 1993 SCC (Cri) 333

63. 1990 Cri.L.J. 389 (P&H)

are decided by a competent court. But, it was also held that petition under section 482 Cr.P.C. was not barred against orders passed erroneously. In *H.K. Rawal and another v. Nidhi Prakash*⁶⁴ a Full Bench of the Allahabad High Court considered the application of inherent powers against an order in revision under section 397 Cr.P.C. It was held that when the application under section 397 Cr.P.C. was rejected by the Sessions court, the aggrieved party can approach the High Court under section 482 Cr.P.C. only if the order of the Sessions court as resulted in the abuse of the process of the court and called for interference to secure the ends of justice. If this elements are not present, bar under section 397(3) Cr.P.C. comes into operation.

vii. Revision Not to be Equated with Inherent Powers

Even under such circumstances, as is mentioned above, the Sessions court does not have inherent powers to interfere with interlocutory orders for that power is solely vested with High Court⁶⁵. In *Charanchith Singh v. Gursharam Kaur*,⁶⁶ (P&H) it was held that revision cannot be equated to inherent powers. The provision of section 397 Cr.P.C. does not constitute as a bar to the exercise of the High Court under section 482 of the Code. The limitation is self-restraint and no more. But, the interference with a revisional order would be very sparingly made.

This opinion would go to show that the inherent power of the High Court is not to be equated with the revisional power reading between the lines of Supreme Court judgments, it is clear that

64. 1990 Cri.L.J. 961 (All.) (F.B)

65. *Bhupendra Kumar v. State of Rajasthan* 1996 Cri.L.J. 3180 (Raj)

66. 1990 Cri. L.J. 1264 (P&H)

inherent powers are not expressly restricted or constricted through any provision. Only thing is that, the power shall not be used to stifle prosecution, but does justice, *ex debito justitiae*. *Janata Dal v. H.S. Chowdhary*,⁶⁷ it was held that High Court could not indulge arbitrary exercise of power. In a proceedings under section 120-B 161, 162, 163, 164, 165-A, 409, 420, 468, 471 IPC and sections 5(2), 5(1)(d) and 5(1)(c) of Prevention of Corruption Act, the High Court invoking power under section 397, and 482 Cr.P.C. dismissed the petition. At the same time *suo-motu* cognizance was initiated. The Supreme Court upheld High Court order quashing the complaint. The High Court order initiating *Suo-motu* action was quashed.

With the advancement made in *Krishnan v. Krishnaveni*,⁶⁸ the inherent powers of the High Court are placed at a higher pedestal than the revisional powers. Nothing contained in Sec. 397 of Cr.P.C. therefore ought to limit or restrict when the High Court exercised its inherent power and supervisory powers under Section 482 and 483, respectively, to prevent grave miscarriage of justice or abuse of the process of the court. This decision had adverted to a number of decisions of the Supreme Court⁶⁹.

viii. Bar is to Avoid Conflict of Jurisdiction

The bar imposed on recision and application of that bar on the inherent powers is to avoid conflict of jurisdictions. While the potency of inherent jurisdiction of the High Court is not in doubt,

67. 1993 SCC (Cri) 36

68. AIR 1997 SC 987.

69. *Rajan Kumar Manchanda* case, 1990 Supp SCC 132; *Dharam Pal* case, 1993 AIR SCW 303; *Madhu Limaye's* case, AIR 1978 SC 47; *V.C. Shukla's* case, AIR 1980 SC 962.

the caution expressed is to avoid using this power to defeat an express provision of law. This position has been holding ground from the very beginning of inherent powers within the statutory framework of criminal procedure⁷⁰. When interlocutory orders cannot be challenged in revision High Court will interfere. Only in extraordinary case where special circumstances are made out which sets the order inherently illegal so that an abuse of the process of the court is *prima-face* made out⁷¹. If the interlocutory order is patently illegal inherent powers could be used. Interfere with an order passed in this jurisdiction is infraction of the intention of the legislature⁷². In *Changdeo Kishan Jadev v. Chindya Jain & others*,⁷³ the impact of S. 482 Cr.P.C. should not be so consumed as to defeat a mandatory provision in the statute.

In *M/s Swarna Mahal and another v. General Excise and Customs Department*,⁷⁴ it was held that while alleging against the provision of the court mere pointing out that some mistake was committed by court while making the order framing charge was not sufficient to attract inherent jurisdiction. Element of preventing abuse of the process of Court must be brought in.

It may be of no doubt that the order framing a charge is an interlocutory order and a bare reading of section 397(2) of the Code would indicate that a revision is not maintainable against

70. *Budaraju Seshagiri Rao and others v. T.V. Sarma and another*, 1976 Cri.L.J. 902.

71. *Amarnath Rula Ram and others v. Kanwar Joginder Singh and others*, 1976 Cri.L.J. 394 (H.P))

72. *Rajanikanta Mehta v. State of Orissa*, 1976 Cri.L.J. 1674 (Ori)

73. 1976 Cri.L.J. 1293 (Bom)

74. 1977 Cri.L.J.(NOC) 229 (Kar)

such an order. In order to invoke the inherent jurisdiction, under section 482 Cr.P.C. some thing more was needed than merely pointing out that some mistake was committed by the court while making order to frame charge. The element of preventing the abuse of the process of the court is necessarily to be brought in. If any order can be held to be manifestly incorrect or there is an apparent error on the face of the record some thing can be stated to infer that the order need be corrected to secure the ends of justice. But, to say that an order is incorrect upon the estimate of the counsel would rather be misuse of the power prescribed under section 482 Cr.P.C. and the court would not interfere to set right the mistake.

This has its other side also. If an order passed by the court results in miscarriage of justice, even if it is interlocutory in nature the High Court should exercise its inherent powers. In *Taddi Rama Rao and others v. Kondi Asservadam and another*,⁷⁵ it was held that the High Court even after being convinced that the impugned order is manifestly unjust and apparently illegal declines to set it aside by exercising power under section 482 Cr.P.C. on the mere ground that the impugned order is only an interlocutory order. Then there will be perpetuation of miscarriage of justice and as such the very intention of the legislature is providing section 482 Cr.P.C. in the Code would be defeated and the lower courts would develop a very callous attitude in passing interlocutory orders with the view that their orders will become final and will not be interfered with. Thus there will be abuse of section 397 Cr.P.C. So there is a duty cast on the High Court to consider

75. 1977 Cri.L.J. (NOC) 259 (A.P)

carefully whether the orders passed by the Magistrate or Sessions judge is correct and in conformity to the standards of justice enumerated in section 482 of the Procedure Code. In *Cheddilal v. Smt. Kamala*⁷⁶ the trial court allowed maintenance to the wife. Additional Sessions Judge reduced the amount in revision filed by husband. The husband again challenged the order under section 482 Cr.P.C. - High Court cannot invoke inherent powers to circumvent provisions of sections 397(3) & 399(3) Cr.P.C. The High Court relied on, *Amarnath v. State of Haryana*⁷⁷. Had it been in the other way round where wife comes to the High court with a petition against the order of the Sessions court, in the interest of justice the order should have been modified. Even without a specific application by the wife the Sessions judges order could have been modified by the High Court to restore amount ordered by the magistrate.

ix. Inherent Power Only to Serve the Ends of Justice

In the course of a trial the subordinate courts would issue orders to conduct the trial smoothly. It is in the interest of justice to decide the case on the basis of the best evidence. In *State of Bihar v. Hardwa Pandey*⁷⁸ the High Court declined to interfere with the trial court's order directing to produce a box containing incriminating documents seized during search and inventory of the documents for inspection of the accused. There is no abuse of the process of the court and in the administration of criminal justice all are equal before law, including the state. Since the ju-

76. 1978 Cri.L.J. 50 (All.)

77. AIR 1997 SC 2185

78. 1979 Cri.L.J (NOC) 27 (Patna)

jurisdiction of the High Court under section 482 Cr.P.C. is in the greater interest of justice, the same cannot be contemplated to be juxtaposed to the revisional powers. Inherent powers are more viable and less formal. For instance when a revision is pending before the sessions court another revision before the High Court is barred. But the High Court can allow such a petition to be converted to one under section 482 Cr.P.C. This does not mean that the High Court should interfere in the impugned order. In *Maryalathammal v. Manimutthu Theras*⁷⁹ the High Court in the above context, declined to exercise inherent powers as there was no application invoking the power under section 482 Cr.P.C. In *Ramesh Chandra v. State of Bihar and another*⁸⁰ the court considered the question of treating an application under section 482 Cr.P.C. as revision under section 397 Cr.P.C. to attract the bar on section 397(2) Cr.P.C. In *Raj Kapoor v. State*,⁸¹ it has held that the petition under section 482 Cr.P.C. is not barred even if a revision petition filed has been rejected. If the High Court feels that the impugned order brings out a situation which is an abuse of the process of the court or it is necessary to secure the ends of justice, it may interfere. Nothing in the Code can affect the amplitude of the inherent powers under section 482 Cr.P.C. Court followed the principle laid down in *Madhu Limaye v. State of Maharashtra*⁸².

Adhering too much to formalities in applying inherent powers is to miss the wood for trees. Since interest of justice is espoused,

79. 1980 Cri.L.J. 1017

80. 1989 Cri.L.J. 476 (Pat.)

81. AIR 1980 SC 258

82. AIR 1978 SC 47

converting a petition from one provision to another is in the interest of justice. In *Gajendra Singh v. State of Rajasthan*⁸³, the petition was filed invoking inherent jurisdiction. Petitioner had alternate remedy to move a petition under section 397(1) Cr.P.C. invoking revisional jurisdiction of the High Court. A petition under section 482 Cr.P.C. was held not maintainable when there was an express provision in the Code to redress the grievance. The plea for conversion of the petition under section 482 Cr.P.C. into criminal revision under section 397 Cr.P.C. was allowed, considering the fact that petition was filed by a young member of the bar and such bonafide mistake was natural.

Review of judgment and order is a procedure in judicial process. But, in Criminal law, review of judgment and orders are expressly barred⁸⁴. Therefore, by exercising inherent powers under section 482 of the Cr.P.C. the High Court cannot review its own judgment and order. In *Simrikhia v. Dolley Mukherjee and Chaabi Mukherjee and another*,⁸⁵ the Supreme Court held that inherent power of the High Court does not extend to what is exactly barred under the Code. Therefore, the order of the High Court recalling its earlier order by exercising inherent powers was set aside, by the Supreme Court. The principle is established beyond doubt as the judicial parameters are already there to show that review is not possible under section 482 Cr.P.C.⁸⁶. The High

83. 1995 Cri.L.J. 2133 (Raj)

84. *Sardar G. Singh v. Hardeep Singh*, 1987 (2) KLT 35.

85. 1990 SCC (Cri) 327.

86. *Supdt. and Remembrancer of Legal Affairs v. Mohan Singh*, 1975 (3) SCC 706.

Court has no jurisdiction to alter or change its decisions⁸⁷. This view holds the ground inspite of the new vistas of inherent jurisdiction achieved vis-a-vis the revisional power under section 397(2) and (3) Cr.P.C.⁸⁸. The court has no power to set aside its previous judgment, or order disposing of an appeal or revision and restore to file and rehear the same. In *Bhanu v. Vilasini*⁸⁹ the High Court held that such a power is *non est* and does not form part of the inherent powers contemplated in section 482 Cr.P.C. The position is the same even if one of the parties satisfies the court that he or his counsel was prevented by sufficient cause from appearing in the court⁹⁰. If a trial court is to do such an exercise it is a ground for invoking inherent powers as is held in *Balakrishnan v. Rajamma*⁹¹. Therefore, the rule is that inherent powers under section 482 Cr.P.C. could not be invoked for any purpose that would amount to be a review. This is not to seal the scope for judicial discretion of the High Court while wielding inherent powers. There are exceptions to this rules where there has been denial of natural justice, or judgment has been passed without jurisdiction, or default of appearance, or the matter was not disposed of on merit or where the facts of the case are shocking to the judicial conscience and a grave injustice has been done to the party⁹².

87. *Sooraj Devi v. Pyare Lal* (1981) 1 SCC 500, *Motilal v. State of Madhya Pradesh*, AIR 1994 SC 1544.

88. *Krishnan v. Krishnaveni*, AIR 1997 SC 987.

89. 1980 KLT 13

90. *Supra*. n. 89

91. 1979 KLT 502.

92. *Kunju Ahmmad v. Abdul Khader*, 1977 KLT 840.

In *Bhaskaran v. State*⁹³ the Kerala High Court held that invoking inherent powers to direct the sentences of imprisonment in two different cases to run concurrently would amount to review and hence inherent powers could not be invoked. But a Division Bench of the Court overruled the above view in *Subramonian v. State of Kerala*⁹⁴. The court held that the High Court under section 482 Cr.P.C. can give direction that sentences be run concurrently after the disposal of the case. Such a direction does not amount to alteration or review of judgment. Thus only under extra -ordinary circumstances the court would venture to do as in the above case. Normally there is no provision to rehear or review after an appeal or revision is disposed of. In *Sheriffa v. Alikutty*⁹⁵ another division bench of the court held that extra ordinary and unusual cases must conform to the standard requirements enumerated in section 482 Cr.P.C. of the procedure Code. Similarly recalling an order of judgment is different from reviewing the same. A Full Bench of the Rajasthan High Court in *Habu v. State of Rajasthan*⁹⁶ considered the legality of recall and differentiated it from review. It was held that powers under section 482 Cr.P.C. could be exercised by the High Court for recalling the judgment in case hearing is not given to the accused and the case falls within the standards of requirement of section 482 Cr.P.C. The above discussion reveals the latitudinal variations in the application of the inherent powers. But this does not mean that powers under section 482 of the procedure Code are a substitute for appeal or revi-

93. 1978 KLT 6.

94. 1983 KLT 452.

95. 1986 KLT 1331 (DB).

96. 1987 (1)KLT (SN 65) at 49 (FB).

sion. A proceedings under section 482 of the procedure Code is an independent one. Similarly the pendency of a proceeding under section 482 of the procedure Code before the High Court does not prevent an earlier judgment of the trial court, which was not taken on appeal or revision, becoming final. This was considered by the Kerala High Court in *Rajarithnam v. State*⁹⁷. The Magistrate passed order acquitting the accused on the basis of the then position of law. No appeal or revision was filed. A petition under section 482 Cr.P.C. was filed to set aside the acquittal. The allegation was offences under sections 279, 337, 338 and 304A I.P.C. It was held that the pendency of proceedings under section 482 Cr.P.C. without resorting to appeal or revision will not have the effect of saving the finality of judicial pronouncement. Proceedings under section 482 Cr.P.C. is not a continuation of trial. A decision which has become final cannot be reopened in a proceedings under section 482 Cr.P.C. on the ground that a subsequent judicial interpretation has changed the position of law.

x. Where the Remedy is Appeal or Revision

If a person is aggrieved by an order of the trial court his remedy is to go in for appeal or revision. Instead, if the person resorts to an application under section 482 Cr.P.C. it amounts to a review. The High Court will not oblige. The reason is that the inherent jurisdiction cannot be exercised for the purpose of indirectly undoing or modifying an order which has become final because no appeal or revision was filed against it or having been

filed were dismissed thus giving finality to the same⁹⁸. In *Ghanashyam Das v. Cuttak Municipality*⁹⁹ Orissa High Court held that the High Court had no power to review its appellate decision by invoking power under section 482 Cr.P.C. This is in spite of the fact that only High Courts have inherent powers and the subordinate courts are excluded from possessing inherent powers¹⁰⁰.

xi. Review, Recall, Remand and Rehearing

Even if a petition is filed with a different name attached, if the interference of the High Court has the effect of a review relief is seldom granted. Words like recall, remand, rehearing are used, but the final effect of all these proceedings is to alter or modify the judgment already pronounced. In *Chandrabli v. State*¹⁰¹ appeal against conviction was dismissed on account of the counsel and accused being absent. Subsequent petition under section 482 Cr.P.C. to recall the judgment was held to be not maintainable as it amounts to a review which was specifically barred under section 363 Cr.P.C. In *Sooraj Devi v. Pyare Lal*¹⁰² it was held that recall amounts to review. The perceived position is that the provision in section 362 Cr.P.C. does not contemplate inherent powers under section 482 Cr.P.C.¹⁰³. Order once passed by trial court or High Court is final. For the lapses of the parties the court does not pay attention. In *Ravinder Bhatia v. Satnam Singh*¹⁰⁴ the ap-

98. *Mohan Lal and another v. State*, 1974 Cri.L.J. 1407 (All).

99. 1978 Cri.L.J. 1310 (Ori.)

100. H.C. referred to the decision of the SC in *Bindeswari Prasad Singh v. Kali Sing*, 1977 SCC (Cri) 33.

101. 1979 Cri.L.J. 1218 (All).

102. AIR 1981 SC 736.

103. See also *A. Paramasivan v. State*, 1982 Cri.L.J. (NOC) 150 (MAD).

104. 1990 Cri.L.J. 2467 (Del)

plication was for restoration of revision petition. The Magistrate ordered maintenance- There was default in payment. Warrant of arrest was issued against the husband. Revision was filed for cancellation of warrant. Nobody was present at the time of hearing. Revision was dismissed. It was held that the party had no absolute right to be heard in person or by pleader. The order in revision could not be recalled and revived for giving hearing to counsel¹⁰⁵.

If the person who comes to the court with application for review or recall is not qualified under rules of equity there is no question of invoking inherent powers. In *State of Maharashtra v. Sundar P. Lalvani*¹⁰⁶ it was held that inherent powers could not be invoked for the purpose of review or reconsideration of exparte order. If the High Court invokes power positively it will amount to overriding the specific bar under section 362 Cr.P.C. When, particularly an opportunity of hearing was given but not availed of by the party, equity does not favour such a person. Law favours the vigilant and not the lazy. In *I.C.P.A. Health Product Ltd. v. State of West Bengal*,¹⁰⁷ the High Court refused to apply inherent powers for recalling an order. The petitioner was not represented on the date of hearing. The reason stated was the fault of the advocate's clerk who missed the matter in the cause list. The case was heard on merits and order was passed. The petitioner also was absent and not vigilant for some time after the order was passed against him. The subsequent application for recall-

105. *Datta Narayan Samant v. State of Maharashtra*, 1982 Cri.L.J. 1025

106. 1992 Cri.L.J. 2015 (Bom).

107. 1996 Cri.L.J. 2804 (Cal)

ing the said order by invoking inherent powers was held not maintainable.

The above position with respect to applicability of inherent powers for reviewing an order or judgment is almost settled except for some variations obtained through judicial innovation. Already, it is accepted that factual errors, clerical errors, mathematical errors etc could be corrected. Still there is no blanket ban on inherent powers as it would whittle down the very prestige of judiciary. On occasions High Courts have not been averse to assert the impress of inherent powers. In *Tika and others v. State of U.P.*¹⁰⁸ it was explained without actually invoking the powers. Where an appeal has been disposed of without hearing the appellant's counsel, if he appeals, it is gross violation of natural justice and the court has certainly inherent jurisdiction to recall such order and treat it as a nullity. But, the court was not inclined to invoke the inherent jurisdiction, since the court was not satisfied. Judgment in Criminal Appeal was held to be perfectly valid and no ground has been made out by the applicant to invoke the inherent powers of the Court. In *Kashi Ram v. Union of India*,¹⁰⁹ it was held that dismissal of earlier petition on same facts for quashing proceedings is not a bar to maintain subsequent petition for the same reliefs. The same could not be treated as a review or revision of earlier order¹¹⁰. In *Pitambar Bohan v. State*¹¹¹ the High Court considered the question of remanding a case to the trial

108. 1995 Cri.L.J. 337 (All).

109. 1992 Cri.L.J. 382 (Patna).

110. *Ibid.* The court followed Superintendent and Remembrancer of Legal Affairs *West Bengal v. Mohan Singh*, AIR 1975 SC 1002.

111. 1992 Cri.L.J. 645.

court. The offence alleged was under section 304 IPC. Application for quashing the order taking cognizance was made challenging jurisdictional aspects. Facts of the case and evidence before police stating that accused slapped the deceased who dashed against the fence. The fracture he sustained on his head became septic and due to improper treatment, and it resulted in his death. Cognizance was taken under section 304 of Penal Code in a Mechanical manner. The case was remanded for decision afresh. Jurisdiction to quash the order taking cognizance can be exercised in the rarest of rare cases. It should be the exception but not the rule. The object behind this view is that the accused at the state of framing charge can bring to the notice of the court that there is no acceptable law or legal material to proceed against him. In case where the accused feels that if the order taking cognizance is unwarranted he can raise the disputes at the time of framing charge. It is not without reason, the legislature has prescribed two stages. One for taking cognizance and other for framing charge. There is no overlapping. In the former stage, accused has practically no role to play, while in the latter stage he comes to the forefront^{Except}. ~~Expect~~ for the above views and other similar episodic opinion the generally judicial thinking is against reviewing an order or judgment already passed¹¹³.

112. *Dhanalekshmi v. R. Prasanna Kumar*, AIR 1990 SC 494. *Hareram Satpathy v. Tikaram Agarwala*, AIR 1978 S.C. 1568. Referred.

113. Also see *Raju & another v. State of U.P* 1982 Cri.L.J. 635 (All); *Har Bilas v. Ram Ninhas Bansal*, 1984 Cri.L.J. 1008 (All) *H.N. Bhattacharjee v. P.B. Venkatasubramonian*, 1988 Cri.L.J. 1901; *Registrar, Jawaharlal Nehru Technology University v. Dr. G. Lakshmi Narayan & others* 1990 Cri.L.J. 681(A.P).

Even though the accepted principle is that there is no review, by invoking inherent power under section 482 of the Criminal Procedure Code, in *Nazeem v. Assistant Collector Customs*,¹¹⁴ it was held that the High Court has inherent power to pass final orders in certain situations. In *Udaya Gouri v. A.D. Rao*,¹¹⁵ the challenge was against an order of the Magistrate recalling a prosecution witness for further cross examination after a lapse of nine months from the date of first cross examination. It was held that the recall of witness was not essential to the just decision of the case. Order of the Magistrate was set aside for not fulfilling the pre-conditions necessary under section 311 of the Cr.P.C.

Whether it is review of an order or recall of an order, the legal effect is almost same. In *Sooraj Devi v. Pyarelal*¹¹⁶ it was held that even though revisional power is barred under section 397 in respect of interlocutory orders, if the order was not purely interlocutory but intermediate or quasi-final, the revisional power to the High Court or sessions Judge could be attracted. But, regarding review, under section 482 Cr.P.C., Supreme Court's view in *Motilal v. State of M.P.*¹¹⁷ is categorical.

xii. Cases of Exception

As per section 362 Cr.P.C. there is a specific bar against altering a judgment after signing the same, except for clerical and arithmetical errors. Therefore, the High Court has no jurisdiction

114. 1992 Cri.L.J. 390.

115. 1992 Cri.L.J. 1077.

116. 1981 SCC (Cri) 188.

117. AIR 1994 SC 1544.

under section 482 Cr.P.C. to alter its own judgment. This settled position has been holding ground from the period of the old Code 1898 under section 369 which clearly negates the power of the court to review. In *State of Orissa v. Ramachander Agarwala and others*,¹¹⁸ in a proceedings under section 20 C of the Forward Contract Regulation Act, 1952, the Supreme Court set aside the order of the High Court.

In *Superintendent and Remembrancer of Legal Affairs West Bengal v. Mohan Singh and others*¹¹⁹ and *Sankatha Singh and others v. State of U.P.*,¹²⁰ it was held that High Court cannot review its own judgment invoking inherent powers. There are various instances where this position is not strictly adhered to. In *Kunhali Meeran v. State of Kerala*,¹²¹ it was held that the High Court invoking inherent powers could modify the judgment for correcting the mistake. There was a mistake on the part of the court as it failed to take notice of section 55 IPC while awarding punishment under section 27 Travancore- Cochin Forest Act. In the instant case, the High Court had actually reviewed the judgment.

In *Lal Chand and another v. Assistant Customs Collector*,¹²² Jammu and Kashmir High Court held that a Magistrate had no inherent power to restore the case after dismissal of a complaint

118. AIR 1979 SC 87. The Supreme Court in the above decision approved the decision in *Emperor v. Khwaja Ahammed Hussain*, AIR 1945 PC 18, and relied on *U.J.S. Chopra v. State of Bombay*, AIR 1955 SC 633.

119. AIR 1975 SC 1002

120. AIR 1962 SC 1208

121. 1960 KLT 356

122. 1989 Cri.L.J. 731 (J&K)

for nonappearance of the complainant and the court discharged the accused. Dismissal of the complaint and discharge of the accused is a final order. Trial court has neither got inherent power nor jurisdiction.

The foregoing discussions centering around the principles of revision and review *vis a-vis* inherent powers brings to our notice an important factor in the criminal justice system. Not only the Code, but also every principle in the Code can be treated as not exhaustive. The conservative attitude is that inherent powers have no relevance where principle of revision contained in section 397(2) and 397(3) of the Criminal Procedure Code are made applicable. But, the dynamism with which inherent powers are applied has found leeways to develop exceptional and outstanding situations where justice demands application of inherent powers. Similarly, ban on review is not an absolute principle. Without mentioning the process as review courts produce result of review through application of inherent powers. In the province of inherent powers, revision and review have got no overwhelming relevance because inherent powers are profusely and abundantly superior to any other provision under the Code of Criminal Procedure.

PART - IV
AN OVERVIEW OF INHERENT
POWERS

CHAPTER - VI

QUESTION OF EVIDENCE IN
INVOKING
INHERENT POWERS

Inherent powers of the High Court under section 482 of the Code of Criminal Procedure is unique in criminal jurisprudence. It is the most potent weapon for the High Court to clear the province of criminal law jurisdiction of all vitiating and malicious influences. The questions naturally raised in the context are about the scope, extent and limitation of the power. The powers are not available to the subordinate courts for the obvious reason that there will be pandemonium in the criminal justice system¹. The inherent powers are available only to the High Court for reasons historical, jurisprudential and practical. Still the High Courts have to labour hard to wield the inherent powers without being erratic, slipshod or arbitrary.

i. No Statute to Control Abuse of Powers

The nature of the powers is such that there is no statutory mechanism to check its misuse or abuse. One has only to believe that the High Court like Calphurnia is beyond suspicion². Whatever controls are perceived to be embedded in the decision of the Supreme Court, the Supreme Court itself admits that so far as inherent powers of the High Court are concerned, one has to believe in the goodsense of the judges and the degree of reti-

1. *Randir Singh Rana v. State* (Delhi Administration), (1997) 1 SCC 361.

2. William Shakespeare *Julius Ceaser*, Calphurnia, the wife of Julius Ceaser is known for her fidelity to her husband.

cence, reserve and restraint practiced by them. The inherent powers of the High Court are preserved by section 482 of the Criminal Procedure Code. As rightly observed by the Supreme Court:-

"The Power of the High Court, therefore is very wide. However, the High Court must exercise such power sparingly and cautiously. When the High Court notices that there has been a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice."³

ii. Limits of Inherent Powers

The powers under section 482 Cr.P.C. are recognised as forming the ground on which the judicial review of criminal matters rest⁴. Inherent powers are multifaceted as it involves power to punish for contempt of court, power to do complete and substantial justice, and power to keep the stream of justice pure and clean. In *Supreme Court Bar Association v. Union of India & another*,⁵ the Supreme Court has made a long and strong exposition of inherent powers both of the High Court and the Supreme Court. The problem is in drawing a boundary for the Supreme Court and High Court to keep the exercise of this power within the limits of legality and constitutionality. The Supreme Court can punish an advocate, for contempt of court or for the contumacious behaviour in the court, under Article 129 read with 142 of the Constitution.

3. *Krishnan v. Krishnaveni*, AIR 1997 S.C. 987 at p. 990.

4. *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335; *Pepsi Foods Ltd. v. Special Judicial Magistrate*, 1998 (5) SCC 749.

5. (1998) 4 SCC 409.

But, to suspend the licence of the advocate is an excess use of inherent powers because it is the function of the Bar Councils. While reversing the decision of the Supreme Court in *Re V.C. Mishra*⁶ the Supreme Court cautioned itself.

"It must be remembered that wider the amplitude of its power under Article 142 the greater the need of care for this Court to see that the power is used with restraint.....⁷

This cautioning is applicable to the High Court in the matter of inherent powers under section 482 of Cr.P.C.

"The power conferred on the High Court under Article 226 and 227 of the Constitution and under Section 482 of Cr.P.C. have no limits. But, more the power more due care and caution is to be exercised while invoking this power"⁸.

While invoking inherent powers the High Court does a tripple function. It gives effect to orders passed under the Code. It prevents the abuse of the process of the Court, and it secures the ends of justice. Inherent Powers help to keep the prestige and credibility of the judiciary intact and make justice invulnerable to illegal incursions.

The gravity and scope of the powers of the High Court prompts one to think of the possible limitations in applying the inherent powers. section 482 Cr.P.C. proclaims that nothing in the Code shall affect or limit the inherent powers. This does not mean that the High Court can exercise the powers in an uncouth

6. (1995) 2 SCC 584.

7. *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409.

8. *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749.

manner. There ought to be certain rules of the game, or code of conduct, lest the High Court itself can cause a deadlock in the administration of criminal justice. Indeed there are certain generally accepted and respected factors and forces which play an effective check on the High Court's application of inherent powers. The rules of evidence is one major force which helps High Court to keep its inherent jurisdiction within permissible limits. Then there are principles of law applied as yardsticks to the situations which call for High Court's interference. One such principle is that the High Court does not interfere at a premature stage of the proceedings pending before the subordinate court. This involves interference at the threshold as well as, at the investigation stage. Another principle is that matters which are specially dealt with in the Codes are kept outside the pale of inherent powers. Matters which are specifically included under the Code are made immune to inherent powers⁹. Regarding the question of opportunity to assess and evaluate evidence the same acts as guiding factors in the invocation of inherent powers. The Supreme Court has laid down these principles through decisions and High Courts tackle situation in the light of such decisions. But the prominence of inherent powers even render the above control mechanisms ineffective when demands of justice call for positive interference.

iii. Rules of Evidence

In spite of recognised rules of evidence, the High Courts display discipline as well as deviance in their approaches to situa-

9. *Reghubir Singh v. State of Bihar*, AIR 1987 SC 149.

tions. The core of a situation for applying inherent powers is by examining whether the allegations set out in the complaint or charge constitute any offence. If *prima facie* case is made out regarding the offence alleged the High Court has no use for its inherent powers. If no *prima facie* case is made out the High Court must exercise its inherent powers and quash the Magistrate's order taking cognizance of the offence. It all depends on how one perceives. The perception of the High Court may tally with that of the Magistrate, which need not be concurred by the Supreme Court. The Supreme Court has the last word. In *Dr. Sharda Prasad Sinha v. State of Bihar*¹⁰ the charge-sheet was filed alleging offences under sections 54(1) (a) and 57(c) of the Bihar and Orisa Excise Act, 1915. The High Court declined to interfere. In appeal the Supreme Court quashed the proceedings. Thus the impressions of the High Court and the Supreme Court may vary with regard to allegations in the complaint constituting or not constituting any offence. In both cases a decision is taken without the aid of evidence. At all tiers of judiciary the trial courts, the High Court and the Supreme Court what is looked for is the core ingredients of the offence alleged in the complaint in the given context. If the facts *per se* do not disclose an offence the only course available to the High Court is to quash the complaint. The pertinent point is that the forum of the High Court shall not be made use of to agitate hollow grievenes. In *Dr. Dhanwanti Vaswani v. State and another*¹¹ the Supreme Court held that the High Court could rightly quash the complaint if the facts of the

10. 1977 SCC (Cri.) 132.

11. 1991 SCC (Cri) 1040.

case did not disclose the offence, even if taken as correct on its face value. The Supreme Court held that the opinion of the High Court in respect of the 2nd accused was correct and the High Court had rightly quashed the complaint. The above decisions go to show that in cases where there is no scope for evidence, allowing the prosecution to continue is itself an abuse of the process for the court. It does not mean that the High Court can do the function of a trial court. Nor is it the lookout of the High Court to search for materials. In *Radhey Shyam Khenka v. State of Bihar*,¹² the Supreme Court upheld the decision of the High Court. It was held that the High Court cannot usurp jurisdiction of the trial court and conduct a powerful trial. The charge-sheet was filed alleging offences under section 409 IPC. The High Court dismissed the petition. The Supreme Court held that it is not the duty of the High Court to find out whether the accused are likely to be convicted on the basis of the materials collected during the investigation.

While saving the inherent powers of the High Court it is also made clear that the High Court shall not engage in a fishing expedition to find the truth, probability or possibility of the allegations. It is here that the precarious position of the High Court is revealed. Inherent powers are most potent. But, its application requires all the sense and sensibility of a scientist and the resourcefulness of an artist. The power is exercised at the threshold of a proceedings. The court cannot make a 'hit or miss' approach. The court works under a serious handicap. In appellate jurisdiction, it has the entire evidence available before the trial court. It

12. 1993 SCC (Cri) 591

has also the judgment of the trial court. But, while exercising inherent powers the court works without evidence, or without the paraphernalia of a trial. The classical jurisprudence would say that a case is heard and decided. But, that is in trial. Here no judgment is pronounced. Court passes an order. Even if called upon to do so the Supreme Court or the High Court refrain from forming any opinion in a controversy which requires a decision on evidence. Thus while exercising inherent powers there is no determination of facts. Determination of facts is one of the activities necessary for final judicial decisions. Each final judicial decision has a factual basis "The art of the judicial process is in fact an ability to use evidence"¹³.

According to Albert.S.Osborn, adjudication sans evidence is arbitrary. Law of Evidence is a principal branch of procedural law. This is the significance of application of inherent powers. Osborn suggests that evidence is the medium through which courts of law administers justice.

"It seems strange that the law itself should thus ever be the actual means of hiding the truth and defeating justice, but unfortunately this has been the fact, and much of what is called law reform has consisted in getting what has been the law out of the way so that an investigation could be taken up in a sensible manner, taken into court, and the facts proved. There are many persons who do not seem fully to understand that this opportunity to prove the facts in a court of law is the means by which justice is main-

13. Ref. *supra*. Introduction, n. 17

tained in civilized communities, and that the progress of civilization is marked by the halting steps by which this proceeding has been made more easy and certain"¹⁴

Prof. Goodhart based his studies on doctrine of judicial precedents and *ratio decidendi*. In his book chapter II deals with "recent tendency in English Jurisprudence". It is as good in Indian jurisprudence also, because, Indian jurisprudence has inherited the legacy of anglo-saxon jurisprudence.

While explaining the recent tendencies in English jurisprudence, Prof. Goodhart talks about the tendencies in criminal law also. Prof. Goodhart explains the logic behind the administration of criminal justice. The question of punishment as well as redressal of the victim are considered. The role played by other social sciences are also referred to. Prof. Goodhart also adverts to procedure and evidence which make administration of criminal justice all the more onerous. The over bearing effect of procedure and evidence is reflected in the following words of Prof: Goodhart.

"Mention must be made, however, of those technical but important subject - procedure and evidence. Fortunately in England the law relating to procedure has been completely overhauled sine 1873 and is now on a satisfactory basis, in the United States it is still in hopeless confusion because no scientific attempt at reform has been made. Quack legal remedies are as dangerous as quack medical ones. The law of evidence is of peculiar interests between law in action and law in the books. The principles

14. Albert S. Osborn, *The Problem of proof* - p. xxi of Preface.

of evidence are substantially the same in England and in the United States, but nevertheless they function in an entirely different manner in the two countries. In England, a trial, civil, or criminal, is rapid, orderly, and fair, in the United States it is too frequently intolerably slow, punctuated by brawls between opposing counsels, and uncertain in its results. The law of evidence is in itself the most striking evidence that a legal system depends for its efficiency primarily upon the spirit and character of those who administer it. The best engine may be wrecked by an inefficient engineer"¹⁵.

After making the above observations, Prof. Goodhart concedes that at the present time, law is not in a "period of stability and tranquillity". But, the State requires fundamental re-adjustments.

The Supreme Court, and for that matter the High Court, cannot count itself as a court of a Magistrate or a Special Judge to consider whether there is evidence or not sufficient for framing of charge¹⁶. Viewed from this angle the jurisdiction of the High Court while exercising the inherent powers under section 482 Cr.P.C. to quash an F.I.R. or a complaint is very limited. It has no jurisdiction to examine the correctness or otherwise of the allegation¹⁷. The allegations in the complaint are to be taken at their face value, without adding or subtracting anything. Any omis-

15. A.L. Goodhart, *Essays in Jurisprudence and Common Law* (1931) Cambridge University Press, p.. 48

16. *Supra* n. 9

17. *J.R.D. Tata, Chairman TI & S.Co. Ltd. v. Payal Kumar*, 1987 Cri.L.J. 447 (SC).

sion or gap in the complaints has to be viewed in the light of the evidence¹⁸. The court has to consider the failure to mention the stirring of the milk in the complaint by the Food Inspector¹⁹.

The proceedings under section 482 Cr.P.C. is not regulated by the rules of evidence normally applied in an adjudicatory process. There is no occasion to dissect and display the facts in issue to find any preponderances of probability or proof beyond reasonable doubt. The High Court is expected to discharge the powers derived from a high-voltage jurisdiction. There is no room for logical analysis of the facts and events. There is no scope for a synthesis of what is and what ought to be. Logic, analysis, juristic 'extraversions' and all other conventional methods of a judge's trade are conspicuous by their absence. The experience of the Judge²⁰ the wisdom of law and the living facts discussed by the F.I.R. or complaint combine together and the High Court is to decide whether to be, or not to be²¹. Whether to invoke the power and quash the proceedings or not to invoke the power and save the proceedings. There is no scope for responding on reflexes. It will be a misadventure at the cost of justice. The cardinal consideration of the High Court would be to see whether the materials before it could disclose any offence. If the averments in the complaint or the F.I.R. or the charge-sheet, if taken at their face value, do not constitute an offence then the High Court is justified in invoking the inherent jurisdiction. But, if the averments

18. *B.M.L. Gary v. U.T. Chandigarh*, 1987 Cri.L.J. 507 (P&H)

19. *Ibid.*

20. O.W. Holmes, *The Common Path of Law* : said that Life of law is not logic, it is experience.

21. William Shakespeare, *Hamlet*, Act III Scene 2 Line 56

allege an offence which can be proved on evidence, or for adjudicating the controversy evidence is required, the High Court should be averse to use inherent powers. The sensitive character of the jurisdiction of the High Court under section 482 Cr.P.C. is that once the High Court invokes the power to quash the proceedings, the allegations are removed lock, stock as barrel. The aggrieved party who filed the complaint is deprived of any further opportunity to canvas the correctness of his allegation. All his attempts prove abortive, as the case suffers a sudden death. The Supreme Court's most vociferous grievance about the High Court in the matter of invoking the inherent power in this area.

iv. High Court not to Presume Facts

In a given situation the High Court has no opportunity to ruminate over the facts, to have flights of fancy, to assume to presume, to hypothesise, to conjecture or to imagine them. The High Court is only required to be cool and detached, dispassionate, and disinterested so that what clue is procured from the body of the complaint it takes a decision on it. While doing so, the High Court must keep in mind the social purpose behind every legislation. In the modern period, several social welfare legislations are enacted with provisions for strict liability. The classical requirement of mens rea for fixing the liability is waved. Under such circumstances, if the High Court quashes the proceedings on slender grounds, it causes double jeopardy by killing the case on the one hand and undermining the legislature on the otherhand. In *State of Punjab v. Devinder Kumar*,²² the Supreme Court took exception to the attitude of the High Court in quashing criminal

22. AIR 1983 SC 545

proceedings in different Magistrate courts.

"Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceedings in different Magistrate's Courts at a premature stage in exercise of its extra-ordinary jurisdiction under section 482, Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence"²³

v. Supreme Court's Disapproval of High Court's Interference at Interlocutory Stage

The Supreme Court has in castigating language disapproved the interference of the High Court at interlocutory stage. There were no cases of that exceptional character where continuation of prosecution would have resulted either in waste of public time and money or in grave prejudice to the accused, concerned. On the otherhand, this undue interference by the High Court has been responsible for the prosecution in respect of grave economic offences remaining pending for a long time²⁴.

23. *Id.* at p. 549.

24. *Ibid.*

The High Court is to imbibe in itself the intention of the legislature as in a Rule of Law Society the public interest shall not suffer in preference over private interest and social security shall not be preceded by personal safety. Legislations like the Prevention of Food Adulteration Act 1954 is brought into force to check the rampant social evils of adulteration and misbranding, in larger public interest.

"In certain cases, the Act provides for imposition of penalty without proof of a guilty mind. This shows the degree of concern exhibited by Parliament in so far as public is concerned. While construing such food laws, courts should keep in view that the need for prevention of future injury is as important as is actually inflicted. Merely because a person who has actually suffered in his health after consuming adulterated food would not be before court in such cases, courts should not be too eager to quash on slender grounds the prosecutions for offences, alleged to have been committed under the Act"²⁵.

Thus evidence is crucial to all proceedings. The High Court cannot anticipate an absence of evidence and then quash the proceedings. In *Dhanalakshmy v. R. Prasannakumar*,²⁶ the Supreme Court considered the erroneous attitude of the High Court in exercising the inherent powers. A wife was before the Magistrate court against her husband. In the complaint the offences under sections 494, 496, 498A, 112, 114, 120, 120B, and 34 I.P.C. were alleged. The husband had secretly married another lady while the

25. *Id.* at p. 547.

26. 1990 Supp. SCC 686.

divorce petition was pending. That lady as well as those connived to solemnise the marriage were all in the party array. The husband, moved the High Court under section 482 Cr.P.C. The proceedings for a decree of divorce was still pending. On application the High Court proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable. On such premises the High Court arrived at the conclusion that the proceedings were to be quashed against all the respondents. The Supreme Court was peeved by it. There were specific allegations in the complaint. The complainant had to substantiate the allegations by leading in evidence. There was nothing to hold that the complaint was *prima facie* frivolous. On the otherhand, the complaint did disclose an offence. Interference by the High Court under section 482 Cr.P.C. was not justified. The decision of the High Court was inspite of principles laid down by the Supreme Court in this context already²⁷.

"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on a complaint an exercise of the inherent powers to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High

27. Ref. *supra* n. 26. Reference is made in the Judgment to *Sharda Prasad Sinha v. State of Bihar*, 1977 SCC (Cri) 132 and *Sardar Trilok Singh v. Sathya Deo Tripathi*, (1979) 4 SCC 396; *Municipal Corporation of Delhi v. Prurshottam Das Jhunjunwala*, (1983) 1 SCC 9.

Court to quash the same in exercise of inherent powers under section 482. It is not however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is malafide, frivolous or vexatious, in that event there would be no justification for interference by the High Court"²⁸.

The Supreme Court held that the High Court was clearly in error in assessing the material before it, and concluded that the complaint could not be proceeded with.

The responsibility of the High Court is quite onerous. It has to make a tight rope walking by balancing the interest of the society and interest of the individuals. In a conventional trial the accused as well as the prosecution can have time, space and action to unfold the case in all its detail. Society's interest is respected by convicting the real wrong doer. Individual's interest is protected by acquitting the innocent accused. The case takes its own course. The aggrieved party can go in appeal or revision to the superior court where also a post-mortem of the proceedings in the trial court is conducted. Even if, the appellate court is the High court, it works with appellate power and not debilitated as in the case of deciding a petition under section 482 Cr.P.C. While exercising

28. *Dhanalakshmi v. R. Prasana Kumar and others*, 1990 (Supp) SCC 686 at p. 687

inherent powers the High Court has no occasion to see the evidence. The materials before it shall not be so meticulously annotated to arrive at a conclusion. The High Court acts without evidence and at the same time it has to act within law. The decision must be legal, regular and convincing. It does not mean that the High Court should always be disinclined to exercise the inherent powers. But, sometimes, the attitude of the Supreme Court is also enigmatic. At one instance the High Court is indoctrinated with the virtues of trial and undersirability of invoking inherent powers and meticulously examining the records; at the other instances the Supreme Court does the work of the High Court.

In *Bhaskar Chatteraj v. State of West Bengal*²⁹ the offence alleged was under section 448 I.P.C., ie, of criminal trespass. There were two other accused. The High Court declined to invoke the inherent jurisdiction. The High Court held that on perusal of documents submitted under section 173 of Cr.P.C. it had spelt out a prima-facie case. On the otherhand the Supreme Court held the allegation to be very vague. The Court said:

"We carefully and meticulously went through the entire reports as well as the statements of the witnesses recorded ~~(Procedure Code)~~ during the course of the investigation and on perusal of the records, we are satisfied that there is no material connecting the appellant with the alleged offence of criminal trespass. The learned counsel appearing on behalf of the respondent is not able to satisfy us showing any material that would justify the implication of the appellant with the offence for which he now stands charged.

29. AIR 1991 SC 317.

In our considered opinion, no conviction can be recorded on the mere vague allegations, that too made only in the petition, dated 15-11-1985 and as such the entire proceedings as against this appellant is only an abuse of the process of the Court. In view of the above circumstances, we quash the charge framed as against this appellant under section 448 I.P.C."³⁰

According to the Supreme Court, the High Court had occasion to consider the case of the appellant alone. The others were charged under sections 448 and 380 IPC. The appellant was charged under section 448 IPC only. It was a summons case, others were to be proceeded in a warrant case since section 380 of IPC was included. A separate charge was framed for the appellant. So, the Supreme Court held that it was patent that the appellant could be spared the ordeal of the trial. In this case, the Supreme Court discharged the inherent powers of the High Court. This is inspite of the view of the Supreme Court that it cannot convert itself into a court of the Magistrate or a Special Judge to consider whether there is evidence³¹. But, in a matter requiring complete justice, the Supreme Court can in a Special Leave Petition under Article 136 invoke the greater jurisdiction under Article 142 of the Constitution. There is no provision similar to Section 482 Cr.P.C. enabling the Supreme Court with inherent powers. But, the provision under Article 136 and 142 are sufficient to invoke "the overbearing jurisdiction of the Supreme Court". To quote a juristic opinion:

30. *Id.* at p. 318.

31. *Supra* n. 9.

"Once the court is satisfied that the criminal proceedings amount to abuse of the process of court, it would quash such proceedings to ensure justice. No enactment made by Central or state Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the court must take into consideration the Statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the court would take into consideration the express provisions of a substantive statute. Once the court has taken seisin of a case, cause or matter, it has power to pass any order or issue, direction as may be necessary to do complete justice in the matter"³².

vi. No Prejudging

Deciding without evidence would be prejudging. Quashing a proceedings while it is still at a preliminary stage and without affording the prosecution a reasonable opportunity to substantiate the allegation would be incorrect. This is also prejudging. In *State of Bihar v. Raj Narain Singh*,³³ the Supreme Court had deprecated this practice of the High Court inspite of cautioning on previous occasions³⁴.

- 32 Rakesh Bhargava, *Criminal Major Acts – Law And Practice 1998 – Taxman* – publication . A note on *Simranji Singh Mann v. State of Bihar: AIR 1987 SC 149* -

33. AIR 1991 S.C. 1308.

34. The Supreme Court refers to the decision in *Eastern Spinning Mills Sri. Virendrakumar Sharada v. Rajiv Poddar*, AIR 1985 SC 1668.

"The reason given by the High Court for entertaining the petition for quashing and allowing the relief to the respondent is an analysis of the First Investigation Report and the statements of witnesses recorded during investigation and the discrepancy appearing therein is mainly in regard to the implications of the respondent by name"³⁵

Rajnarayan's name is recorded in some places as Rajan. The High Court recognised it as a discrepancy and quashed the proceedings. The High Court cannot create evidence where no scope existed or none required. It was not a stage for appreciating evidence. The case had not reached that stage.

"Evidence has yet to be taken, and the aspects which have been relied upon by the High Court could very well be clarified by evidence when the prosecution has its opportunity of placing the case through witness in court. What the High Court has done is pre-judging the question without affording reasonable opportunity to the prosecution to substantiate the allegations - a practice which has no more than one occasion been found fault with it by this court"³⁶.

Interference by the High Court at investigation stage should only be in exceptional cases where non-interference would result in miscarriage of justice³⁷. Otherwise the court and the judicial process should not interfere at the stage of investigation of an offence. The Supreme Court also retorted in a reprimanding tone the unusual procedure of oral application and oral appeals and

35. *Supra* n. 33

36. *Ibid.*

37. *Supra* n.34

interim order interfering with investigation³⁸.

Invoking inherent powers at the stage of investigation amounts to premature interference. Investigation is the function of the agencies of the state like Police. A person shall not be allowed to avail the inherent jurisdiction of the High Court when the matter is still at a premature stage and the investigation is incomplete. The following is an enumeration of the decisions of the Supreme Court over the years. These decisions are to act as guiding force to the High Court for coming to the conclusion whether inherent power is to be used in a given situation. After consulting the Supreme Court decision it would be advantageous to acquaint with a few decisions of various High Courts. In *Jehan Singh v. Delhi Administration*,³⁹ application filed before the Delhi High Court for quashing FIR., alleging offences under section 420 and 120B of IPC was dismissed. The Supreme Court upholding the decision of the High Court held that the High Court cannot adjudicate the reliability of the FIR by entering into an appraisal of evidence⁴⁰.

The reason for being apprehensive when investigation is interfered under section 482 Cr.P.C. is that filing of FIR is only the first step. The case is still in its nascent stage. The High Court shall not foreclose all options of the prosecution by quashing the FIR in a hasty and arbitrary manner. In *Kurukshetra University and another v. State of Haryana and another*,⁴¹ the Supreme Court took strong exception to the manner in which the High Court had

38. *Ibid.*

39. 1974 SCC (Cri) 558

40. The Supreme Court had followed the reasoning in *State of West Bengal v. S.N. Basak*, (1963) 2 SCC 54.

41. 1977 SCC (Cri) 613

exercised inherent powers to quash FIR alleging offences under sections 448 and 452 IPC. FIR was quashed just after it was filed without notice to the complainant. It was held by the Supreme Court that inherent powers do not confer an arbitrary power on the High Court to act according to its whims or caprice. The force and content of the inherent powers are so potent that the court has to exercise such powers sparingly, with circumspection and in the rarest of the rare cases.

It is the paramount duty of the state to assist the court in administering justice by investigating every act where there is an offence. This was provided for, from the very being of administration of justice. Premature interference by the High Court is deprecated. In the Code of 1898, the committal inquiry by the Magistrate was considered to be a proceedings at the threshold. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Ashuthosh Ghosh and others*⁴² the Supreme Court held that High Court was not justified in going into the merits of the case while exercising inherent powers. The High Court had quashed the proceedings even before the committal proceedings was complete. The principle in this regard had been holding the ground for several decades.

Quashing complaint at interlocutory stage is interference at a premature position. In *State of Punjab v. Devinder Kumar and others*,⁴³ the Supreme Court held that High Court cannot arrive at a conclusion regarding the guilt or innocence of the accused on the basis of materials on record at a stage prior to the leading of

42. 1979 SCC (Cri) 991

43. 1983 SCC (Cri) 501

evidence by prosecution. The Supreme Court set aside the order of the High Court quashing proceedings under section 7(i) of the Prevention of Food Adulteration Act, 1954. In *State of Punjab v. Sat Pal*⁴⁴ Supreme Court set aside the order of the High Court and remanded the matter to the trial court.

In *Maninder Kaur v. Rajinder Singh and others*,⁴⁵ it was held that to quash a proceedings at the initial stage so as to stragulate it at its inception was not justified. The Supreme Court set aside the decision of the High Court and restored the complaint to file. Complaint alleged offences under sections 363, 366, 376, and 368 read with 34 IPC.

In *Mohinder Singh v. Gulwant Singh*⁴⁶ the High Court quashed the proceedings. The complaint was filed under section 494 IPC for bigamy. In an enquiry under section 202 Cr.P.C. the only requirement is to ascertain whether the evidence adduced by the prosecution has made out a *prima-facie* case so as to put the proposed accused on a regular trial. The High Court erred in going into the sufficiency of evidence for conviction of offence of bigamy and quashing the case. The Supreme Court held that High Court exceeded the scope of enquiry provided under Section 202⁴⁷.

Public confidence in High Court is founded on the clarity of

44. 1985 SCC (Cri) 141

45. 1992 SCC (Cri) 522

46. AIR 1992 SC 1894

47. The Supreme Court followed the reasoning in *Vadilal Panchal v. Dattatraya Dulagi Ghadigaonkar*, AIR 1960 SC 1113 and *Pramatha Nath Thalukdar v. Saroj Ranjan Sarkar*, AIR 1962 SC 876. It distinguished the ruling in *State of Karnataka v. L. Muniswamy*, AIR 1977 SC 1489.

thinking and purity of intention in the judgment. So when the allegations in the complaint *prima-facie* made out a case, quashing criminal proceedings at the initial stage was not proper. In *State of Maharashtra v. Ishwar Piraji Kalpatri and others*,⁴⁸ the Supreme Court set aside the order of the High Court. The High Court quashed the proceedings alleging section 5(a) read with section 5(1)(e) of the Prevention of Corruption Act, 1947. It was held by the Supreme Court that the High Court was not justified in judging the probability, reliability or genuineness of the allegations made. It was recalled by the Supreme Court that powers under section 482 Cr.P.C. and Article 227 should be used only in extraordinary circumstances.⁴⁹

In *State of Orissa v. Bansidhar Singh*,⁵⁰ the Supreme Court set aside the order of the High Court, which quashed the proceedings. The offence alleged was under section 302 IPC. The Supreme Court held that quashing criminal proceedings at the initial stage is not justified. The High Court had rejected the dying - declaration before its veracity could be tested at trial. At the investigation stage the High Court cannot take into consideration statement of persons whose evidence is yet to be recorded at trial. If at all inherent powers are restricted at the stage of investigation it should be a lost case. Quashing criminal complaint at initial stage is to be an exception in applying inherent powers. The High Court quashed the proceedings alleging offences un-

48. 1996 (1) SCC 542

49. The Supreme Court had followed *Rupan Deol Bajaj v. K.P.S. Gill*, 1995 SCC (Cri) 1059. This negative capability of the H.C. threatens the creditworthiness of inherent powers also.

50. (1996) 2 SCC 194. Supreme Court had to followed to decision in *State of Haryana v. Bhajan Lal*, 1992 SCC (Cri) 426.

der Section 6 of the Prevention of Corruption Act.

In *State of M.P. v. Dr. Krishna Chandra Saksena*⁵¹ the Supreme Court had set aside the order of the High Court. Sanction order was challenged. Sanction order was not *ex-facie* illegal. The allegation was that documents supporting the accused were not considered. Accused was subsequently promoted and retired, and also complainant was not traceable. According to Supreme Court all these are irrelevant factors for quashing the complaint. While quashing the proceedings at the entry stage the High Court is undertaking a delicate task. What the trial court failed to see the High Court must see. If the accused is discharged by the trial court, the High Court in revision ought to consider the matter in a clear perspective. There is no mechanical exercise of power. Preliminary stage of a proceedings is a premature stage.

In *State of Jammu and Kashmir v. Romesh Chander and others*,⁵² the Supreme Court reversed the High Court decision. Complaint was against an allegation of offences under Jammu and Kashmir Nationalisation of Forest Working Act, 1987. Supreme Court held that the High Court look into relevant law and allegations made in the charge-sheet and then consider whether any offence has been made out. The matter was remitted back to High Court.

At the initial or preliminary stage quashing is to be done sparingly. The High Court must be cautious to prevent miscarriage of justice. In *Rashmikumar (Smt) v. Mahesh Kumar Bhada*,⁵³ the

51. (1996) 11 SCC 439

52. 1997 SCC (Cri) 44

53. 1997 SCC (Cri) 415

complaint alleged offences under section 406 IPC. The High Court quashed the proceedings. The Supreme Court set aside the High Court's order. Before embarking upon the exercise of inherent powers, the court must keep in mind that social stability and social order required to be regulated by proceedings against the offenders in deserving cases. Even regarding interference at initial stage the High Court cannot be mechanical. It should actually apply its judicially trained mind to see whether a *prima-facie* case is made. In a proceedings alleging offences under section 200 IPC the High Court dismissed the petition. In *M.M. Rajendran v. K. Ramakrishnan*,⁵⁴ the Supreme Court had allowed the appeal and the matter was remitted back to the High Court for fresh disposal. The High Court rejected the plea without examining the question whether the complaint *prima-facie* made out any offence and whether the ingredients of the offence alleged are satisfied. Similarly question of limitation and sanction for prosecution were not considered. The Supreme Court held that the attitude of the High Court was not commendable.

vii. High Court not to Evaluate Evidence under section 482 Cr.P.C. Proceedings

The normal rule is that in an application under section 482 Cr.P.C. the High Court does not evaluate evidence. The High Court is to read only the complaint and to see whether the complaint contains the offence alleged to be committed. The court shall not adduce or substract anything while doing so⁵⁵. If an of-

54. 1997 SCC Cri. 849

55. *A.G. Abraham v. State of Kerala*, 1987 (2) KLT 458

fence is made out the court is not justified in quashing the proceedings. This is an effective restraint on the High Court from being erratic and wayward in its approach to the inherent powers. Similarly, the High Court cannot consider the factual correctness of allegations in the complaint regarding commission or omissions which constitute the offence.⁵⁶

Appreciation of evidence is a matter for the trial court. The verifiability of the facts are possible only through ascertaining the evidentiary value. An application to invoke inherent jurisdiction by the High Court is a step taken in advance by the accused. The objective is not only to avoid punishment but also to avert the trial. The High Court's involvement in the case is to be detached and dispassionate, objective and rational. If the case at hand has nothing to warrant interference by the High Court, then the trial must be left untouched. The High Court shall not shoulder the burden to apprise evidence in the case and ascertain the reliability of the FIR. This has been a very consistent and steady approach of the Supreme Court in the matter of exercising inherent powers. In *Jehan Singh v. Delhi Administration*⁵⁷ the Supreme Court endorsed the view of the High Court in dismissing an application for quashing the FIR. While exercising inherent powers the High Court is not to search for evidence to reach a decision⁵⁸.

56. *Choice Canning Company Ltd. v. Ramachandran*, 1988 (1) KLT (SN 67) at 30.

57. 1974 SCC (Cri) 558. This is clearly laid down in *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866. The Supreme Court had followed the reasoning in (1963) 2 SCR 54. *State of West Bengal v. S.N. Basak*

58. *Lakshmana v. Sulochana* 1977 KLT 858, the Kerala High Court decided to interfere in a proceeding for offences under sections 331, 334, 354, 356 read with section 109 IPC.

Similarly, the High Court must realise the infirmity with which the trial Magistrate functions. In a proceedings under Section 202 Cr.P.C. the Magistrate cannot conduct a detailed inquiry into the matter. The Magistrate has only limited power. If the High Court interferes on this ground it would be beyond the scope of its inherent jurisdiction. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others*,⁵⁹ the Supreme Court set aside the High Court's decision. The High Court had quashed proceedings alleging offence under sections 302, 114, 148, and 147 IPC.

The High Court is not to evaluate evidence for coming to the conclusion regarding the use of inherent powers is an accepted dictum. This does not mean that the High Court is precluded from entertaining an application under section 482 Cr.P.C. in a case where there is no sufficient evidence to take cognizance. In *State of Karnataka v. L. Muniswami and others*,⁶⁰ the Supreme Court dismissed the appeal against the High Court order. The High Court had quashed the charge sheet filed under sections 324, 326, 307 read with 34 IPC and section 120B of IPC. The Supreme Court had held that insufficiency of evidence is a good ground to quash the proceedings. The purpose of inherent powers in civil and criminal jurisdiction is to prevent degeneration of the proceedings into a weapon of harassment or persecution. The power under section 482 Cr.P.C. ought not to be encased within the straight jacket of a rigid formula⁶¹.

The High Court's attitude must not be perverse in invoking

59. 1976 SCC (Cri) 507.

60. 1977 SCC (Cri) 404.

61. The Supreme Court explained the reasons in *R.P. Kapur v. State of Punjab*: AIR 1960 SC SC 866, and relied on the decision in *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar*: AIR 1960 SC 1113

inherent jurisdiction. In *Sewak Ram Sobhani v. R.K. Karanjia and others*,⁶² the Supreme set aside the High Court order quashing the entire proceedings initiated on a complaint filed alleging offences under sections 499 and 500 IPC. The dispute arose in respect of recording a statement under section 251 Cr.P.C. The High Court quashed entire proceedings. The Magistrate's order was to record the statement without verifying a confidential report. The High Court, on the otherhand called for the report and perused the same and quashed the proceedings. According to the Supreme Court the interference of the High Court before recording the statement under section 251 Cr.P.C. was perverse. If there is *prima-facie* case made out in the complaint the High Court shall not look around for evidence. If allegations are specific the High Court shall not interfere. Two decisions of the Supreme Court shed light on this aspect. In *Municipal Corporation of Delhi v. R.K. Rhotagi and others*,⁶³ in a proceedings under sections 5 and 7 of the Prevention of Food Adulteration Act, 1954, the Supreme Court held that the High Court could interfere only if *prima-facie* case is not made out. If *prima-facie* case is made out against one accused and not against the other the proceedings against the latter only could be quashed. But, the High Court had quashed the entire proceedings. In *Municipal Corporation of Delhi v. Purushotham Das Jhunjunwala and others*,⁶⁴ again a case under the provision of the Prevention of Food Adulteration Act, 1954, decided on the same day ie, 1-12-1982 as the above one the Supreme Court set aside the order of the High Court for the rea-

62. 1981 SCC (Cri) 698.

63. 1983 SCC (Cri) 115.

64. 1983 SCC (Cri) 123.

son for a complaint considered consisting of specific allegation. Extent of available evidence against the accused were not relevant because the High Court was not expected to appreciate evidence. If *prima-facie* offence is made out in the complaint the High Court shall not interfere. It is not the High Court's forte to go into the truth or otherwise of the allegation. In *J.P. Sharma v. Vinod Kumar Jain and others*,⁶⁵ the Supreme Court set aside the order of the High Court quashing the proceedings alleging offences under section 120B I.P.C. and section 5 Imports and Exports (Control) Act, 1947⁶⁶.

While exercising inherent powers the High Court cannot go into the question whether the offence could be established by evidence or not. In *State of Bihar v. Murad Ali Khan and others*⁶⁷ the Supreme Court held that the High Court had only to see whether a complaint *prima-facie* discloses the alleged offences. The order of the High Court quashing the proceedings under sections 55, 51, 9 (1) of Wild Life (Protection) Act, 1972 was reversed by the Supreme Court.

Framing charge is a preliminary step in a proceedings. At the time of framing of charge the High Court is not justified in going into meticulous consideration of evidence and appreciate documents and evidence and statements filed by police. In *Radhey Shyam v. Kunj Behari and others*,⁶⁸ the Supreme Court set aside the order of the High Court quashing the charge sheet. The High

65. 1986 SCC (Cri) 216.

66. 1985 SCC (Cri) 180 and 1983 SCC Cri. 115. The Court relied on *Prathiba Rani's* decisions also.

67. 1989 SCC (Cri) 27.

68. 1990 SCC (Cri) 194.

Court should bear in mind the gravity of the offence alleged also. In the above case, offences under sections 302, read with 120-B I.P.C. were alleged.

While exercising inherent powers the High Court is not a trial court, not even an appellate court. Appreciation of evidence, is minimum in section 482 Cr.P.C. proceedings. In *Karpoori Thakur v. Baikunth Nath Dev and another*⁶⁹ the Supreme Court held as improper the style of the High Court in quashing the proceedings for offences under sections 467, 468, and 471 IPC. The Supreme Court deprecated the action of the High Court when it adverted to case diary, relied upon a letter addressed by persons to the officer in charge of a police station. The High Court quashed the proceedings after the above exercise on the ground that parties had settled their disputes. While criticising the High Court, the Supreme Court also held that it would not be expedient to allow the prosecution to continue.

The main opinion of the High Court exercising the power is that, there is no scope for evaluation of evidence. So the High Court dismissed a petition challenging the charge sheet alleging offences under section 448 IPC. In *Bhaskar Chatteraj v. State of West Bengal*,⁷⁰ the Supreme Court on meticulous examination of the record as well as statements, held that there was no material connecting the appellant with the offence of criminal trespass. Allegations were vague and a result of after thought. So setting aside the decision of the High Court, the Supreme Court quashed the charge. Here, ironically, the Supreme Court did what the High

69. 1990 SCC (Cri) 642.

70. 1991 SCC (Cri) 1077.

Court is prevented from doing while exercising inherent powers, ie, to evaluate evidence. In *State of Bihar and another v. P.P. Sharma*,⁷¹ the Supreme Court deviated from the above decision and held that the High Court was wrong in considering the affidavits and documents at a pre-trial stage.

The FIR contained allegation of offences under sections 409, 402, 468, 469, 471, 120B of IPC and section 7 of Essential Commodities Act. The High Court had quashed the proceedings. The Supreme Court held that the High Court had gone wrong because the veracity of the documents was to be proved in trial. Before the High Court, the petition was filed under Articles 226 and 227. The High Court should look to the complaint to see whether the allegation *prima-facie* constitute the offence. On the otherhand, the High Court cannot rely on additional materials produced by the accused not admitted, or accepted by the complainant. In *Chant Dhawan (Smt) v. Jawaharlal and others*,⁷² proceedings alleging offences under sections 494 IPC was quashed by the High Court. While exercising inherent powers the High Court has no jurisdiction to wade through the entire original records produced by the Govt. as secret documents for court's perusal. The High Court after this denied the controversial issue regarding observance of proper procedure in exercising the Bofors contract and on these basis quashing the FIR and letter rogatory. In *Union of India & another v. W.N. Chadha*⁷³ letter rogatory was issued un-

71. 1992 SCC (Cri) 192.

72. 1992 SCC (Cri) 636. The Supreme Court referring to *State of Haryana v. Bhajan Lal*, 1992 SCC (Cri) 426 and *State of Bihar v. Murad Ali Khan*, 1989 SCC (Cri) 27 set aside the order of the High Court and referred the complaint to the file.

73. 1993 SCC (Cri) 1171

der section 166 Cr.P.C. The proceedings also included offences under sections 120B read with sections 161 and 165A, IPC and provision of Prevention of Corruption Act read with 404, 420, 468, 471 IPC. The Supreme Court allowed the appeal and the order of the High Court was set aside. Quashing proceedings on the basis of affidavit filed by parties is not proper. In *Minakshi Bala v. Sudhir Kumar and others*,⁷⁴ the High Court quashed the entire proceedings and the Supreme Court set aside the High Court's order. The High Court can rely on only those documents which are relevant.

While exercising inherent powers the High Court must be very vigilant. Quashing an FIR and investigation are a very rare phenomenon. In *State of Tamil Nadu v. Thirukural Perumal*,⁷⁵ the Supreme Court reversed the orders of the High Court and allowed Tamil Nadu State Appeal. The proceedings initiated were under sections 147, 148, 342, 323, 395, 506 (ii) and 109 IPC. The Supreme Court held that power to quash an FIR and criminal proceedings should be exercised sparingly and that the High Court was not justified in evaluating the genuineness and reliability of allegations made in the FIR or complaint on the basis of evidence collected during investigation. The High Court cannot look into the merits of the case. No appraisal of evidence is allowed. In a, proceedings under sections 304, 326, 324, and 429 read with section 34 IPC, the petitions under sections 397 and 482 Cr.P.C. to quash the proceedings were dismissed by the High Court. In *Keshub Mahindra v. State of Madhya Pradesh*,⁷⁶ the Supreme

74. 1994 SCC (Cri) 1181.

75. 1995 (2) SCC 449.

76. (1996) 6 SCC 129.

Court had partly allowed the appeal and proceedings under certain provisions were quashed. The Supreme Court held that there was only a limited jurisdiction to make only a *prima-facie* appraisal of the charge sheet, and supporting material to decide whether the allegations constituted an offence.

One area of certainty in the application of inherent powers is that the High Court shall not be justified in appreciating evidence while taking a decision as to whether any *prima-facie* case exists. In *State of Bihar v. Rajendra Agarwala*⁷⁷ the Supreme Court held that for quashing of criminal proceedings at the initial stage, the inherent powers should be very sparingly and cautiously exercised. Similarly, the High court is not justified in appreciating the evidence and came to the conclusion that no *prima-facie* case is made out. If there is a question of facts to be ascertained or disputed there is no scope for inherent power. It has to be gone into during trial. In *Hari Shankar Jalan v. Food Inspector, Cherukole and others*,⁷⁸ the Supreme Court held the decision of the High Court correct. The complaint alleged offence under section 16 read with section 20-A of the Prevention of Food Adulteration Act, 1954. The plea was that appellant's company nominated a person under section 17(2) of the Act who would only be liable for breach of the Act. The question is one of facts that can be gone into at the time of trial. The High Court was correct in dismissing the plea.

Where veracity of the fact is to be tested at trial there is no scope for inherent powers. Mere averment that the facts related

77. (1996) 8 SCC 164.

78. 1997 SCC (Cri) 968.

to commercial transaction amounting to civil disputes is not sufficient to interfere through section 482 Cr.P.C. In *Nagpur Steel and Alloy Ltd. v. P. Radhakrishna and others*⁷⁹ the Supreme Court had restored the complaint by quashing the High Court order. The complaint alleged offences under section 420 IPC. The Supreme Court held that the High Court was not justified in quashing the case merely because the alleged offence was committed during the course of a commercial transaction. The veracity of the allegation is to be tested on the basis of the evidence at the trial stage only.

The above decisions are found settled in the field. From an early time the Supreme Court was of the opinion that so far as the question of evaluating evidence is concerned in the context of applied inherent powers, the High Court has little role to play except perhaps to examine the absence or presence of legal evidence. This was the same position under section 561-A of the Code of 1898 also. The principle in respect of evidence, being fundamental, has acquired a lasting stand in the realm of inherent powers. In *Hazari Lal Gupta v. Rameshwa Prasad & another*⁸⁰. The High Court dismissed the petition to quash the proceedings. It was held that the appellant could not challenge orders to which he agreed and later complied. In the absence of legal evidence or for any impediment to the institution or continuance of proceedings quashing is not justified. But, High Court does not enquire the reliability of the evidence. Likewise, the High Court should not interfere with investigation, because it is the statutory power

79. 1997 SCC (Cri) 1073.

80. AIR 1972 SC 484.

of the executive.

In *R.P. Kapur v. State of Punjab*⁸¹ the Supreme Court streamlined the limitations of inherent power. The High Court dismissed the petition to quash the proceedings. It was held that inherent power cannot be exercised in regard to matters specifically covered by other provision of the Code. The High Court would be reluctant to interfere with the proceedings at an interlocutory state. The categories of cases where Inherent Powers can be invoked are classified. In *State of West Bengal v. S.N. Basak*⁸² the High Court quashed the proceedings in which FIR was instituted. As per section 156 Cr.P.C. the Police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this power cannot be interfered with by the exercise of power under section 439 Cr.P.C. or under the inherent power of the court under section 561-A old Code.

In *Rajendranath Mahato v. T. Gangooly, Dy. Supdt. of Police, Purulia & others*⁸³ the High Court quashed the proceedings where by the Magistrate issued the process. It was held that the High Court under section 561-A of Cr.P.C. can go into the question as to whether there is any legal evidence. The High Court can go into the question whether there is any *prima facie* case is made out and if the evidence is reliable or not. In the above context of the attitude of the High Courts is worth analysing. A survey of the decision making process of the High Courts would reveal that the

81. AIR 1960 SC 866

82. AIR 1963 SC 447

83. AIR 1972 S.C. 470

reasoning of the Supreme Court in the above discussed decisions has crystallised. But there are deviant and erratic responses also. Since all the decisions of the High Court are not available for the Supreme Court to invoke its appellate jurisdiction the criminal justice system stands discredited due to erroneous decisions.

While applying inherent powers matters involving evidence are not entertained by the High Court. A question of fact is best ascertained by the trial court.⁸⁴

Pleas of jurisdiction also are held not to be questions of law it is either question of facts, or mixed question of law and facts. Such pleas cannot be decided merely on the basis of averment made in the affidavit and hence no interference with inherent jurisdiction.⁸⁵ In a petition against complaint of cheating containing averments, of falsely advertising the petitioner's Yoga course was recognised by the Government and on the strength of this, deposits received from the applicants. The ingredients show that decision can be taken only through evidence.⁸⁶ In a private complaint on dishonour of a cheque, the reason given as 'account closed' can be looked into only with the help of evidence and therefore court could not interfere.⁸⁷ When a complaint alleging harrassment, threat and cutting of water and electricity supply of

84. *A.R. Kumbat v. Peejay Rubber Industries Ltd.* - 1995 Cri.L.J. 3828 (Ker). "F.n. Here the endorsement 'refer to drawer' on a bounced cheque leading to the question whether there are sufficient fund in the bank or not, was held to be a question of fact"

85. *M/s. Garg Forgings Ltd. v. M/s. Steel Strips Ltd.* - 1996 Cri.L.J. 3306 - (P&H)

86. *Swami Dharendra Brahmachary v. Shylendra Bhushan*- 1995 Cri.L.J. 1810 (Delhi)

87. *Veera Raghavan v. Lalith Kumar*, 1995 Cri.L.J. 1882 (Mad.)

the complainant's house, a mere denial of statement of the petitioner cannot be a ground for quashing investigation. This was so held in *Ravindar Wadhwa v. State*.⁸⁸

In *A. Balareddy v. Saraswathy and others*⁸⁹, it was held that finding of facts in a judgment will not normally be interfered by the High Court, under inherent jurisdiction. Here the issue was regarding maintenance of second wife. The marriage took place when polygamy was permissible. Presumption of marriage could be drawn from long cohabitation and documentary evidence. In a complaint alleging commission of abetment of offence of bigamy, the court held that when specific averments are made in the complaint, and the awareness of the accused regarding the earlier marriage, and intentionally aiding performance of 2nd marriage, interest of justice serves only when decision is taken by the trial court on evidences. (*Mohinder Jith Kaur v. Parminder Kour Gill*)⁹⁰.

In *Gopal Chakravarty v. State and others*,⁹¹ allegations of abetment of suicide against husband and in-laws of the deceased were held to be not improbable. Allegation specifically makes about the persisting torture against deceased wife continuing for 17 years after marriage. Wife later became a victim of burning in the house of the husband and succumbed to her injuries. Referring to Landmark decisions of the Supreme Court the court held

88. 1996 Cri.L.J. 2700 Del. The court adverted to a catena of decision of the Supreme Court spanning from *Muniswamy's* case, AIR 1977 SC 1489; *Madhava Rao Scindhya's* case, AIR 1988 S.C. 709; *Dhanalakshmi's* case, 1991 SCC (Cri) 142; *Swapan Kumar's* case, AIR 1982 S.C. 949 to *Bhajanlal's* case- AIR 1992 S.C. 604).

89. 1994 Cri.L.J. 1125 (A.P)

90. 1995 Cri.L.J. 1657 (P&H)

91. 1996 Cri.L.J. 3358 (Cal.)

that where *prima facie* is made out shutting out evidence by invoking inherent powers would be avoided.

The various responses of the High Court declining to interfere with the proceedings pending before the trial court, where matters of evidence are involved show the seriousness with which situation is considered. In the adjudicatory process evidence is crucial. Decision without evidence can be equal to decision without reason. So, a consistent approach for applying inherent powers where the question of appreciation of evidence comes the High Court is loathe to interfere. Ends of justice is the ideal. Securing the ends of justice, means, the awareness, care and caution, to be taken by the High Court, while applying inherent powers. To quash a proceedings means to keep nothing on the record. That amounts to preventing one party from bringing evidence in support of his contention. Therefore, High Court is at its strictest while applying inherent powers where question of evidence is involved. Any facts which is to be ascertained is left to the trial court, instead of assuming, presuming, or inferring while dealing with a petition under section 482 of the Cr.P.C. If it is to be ascertained whether certain reproduction of an item violates provisions of the copy right Act. It is for the trial court to consider the facts involved.⁹² If it is to be ascertained whether licence is necessary or not, it can be satisfactorily agitated before the trial court and can be adjudicated on the basis of evidence adduced.⁹³

Similarly, while dealing with a subsequent complaint, causing undue harassment and the complaint is of a different offence, it

92. *Radhakrishna Sinha v. State of Bihar*, 1979 Cri.L.J. 757 (Patna)

93. *P.K. Gopinathan Nair and others v. Executive Officer and another*, 1976 Cri.L.J. 171 (Ker.)

is not for the High Court to examine any piece of evidence. The accused person can move the Magistrate to show there is no evidence.⁹⁴ A Magistrate while issuing process does not ascertain whether the accused will be ultimately convicted or acquitted, he is concerned only with the *prima-facie* case.⁹⁵

When the trial court exercised the discretion under section 311 of the Criminal Procedure Code, to summon material witnesses the order was challenged under section 482 Cr.P.C. It was held that High Court would not be interfering in the legitimate exercise of discretionary power, and will not interfere in respect of matters seeking evidence. Whether a Prosecution Witness in a criminal case can be called upon to get his voice recorded for enabling an accused to get the same compare with an alleged tape recorded voice of the same witness was refused by the Magistrate. There is no provision in the Evidence Act governing such a situation⁹⁶. The attitude of the High Court would be negative as it can give any direction Magistrate court, that was the authority according to the law. And the court cannot direct the Magistrate to do an act which he is not empowered to act. The High Court can look into the legal evidence but where there is no abuse of the process of the court and which does come within the parametres prescribed for invoking inherent powers, in the interest of justice, the application is not entertained⁹⁷. The reluctance of the High Court to interfere when the investigation of the case is due to complete of

94.. *R. Meeriahv. State of A.P.*, 1977 Cri.L.J (NOC) 258 (A.P.)

95. *Jacob Harold Aranha v. (Mrs.) Veera Aranha* - 1979 Cri.L.J. 974 In *Vinod Kumar and others v. The Municipal Corporation of Delhi* , 1980 Cri.L.J. (NOC) 26 (Delhi)

96. *Vinod Kumar and others v. State*, 1980 Cri.L.J. (NOC) 26 (Delhi)

97. *Brejamohan Das v. Jogi Bisol*, 1982 Cri.L.J. (NOC) 203 (Ori.)

the law and evidence. In *Mangal Chouhan v. State*,⁹⁸ A Division Bench of the Calcutta High Court held that when the FIR discloses a prima-facie case against the accused and the circumstances narrated therein corroborate the case, High Court shall not block the judicial process through the inherent power by preventing prosecution from leading evidence before the court. In *Kavitha Prasad v. State and another*,⁹⁹ the Magistrate found that there was sufficient ground and there was no illegality or jurisdictional error. The High Court cannot look into the pros and cons of the complaint case and the findings of the trial court. The powers under section 482 Cr.P.C. is not exercised to stifle a legitimate prosecution. When a Jeep which is the material evidence charged for murder, is kept in the custody of the court, a petition to release the same cannot be entertained. Everything is to be maintained in the same condition, for being produced in the court of trial.

*Sarjoo Prasad v. State of U.P.*¹⁰⁰ a decision taken on evidence collected in the court proceedings cannot be interfered with inherent powers. In *Ram Nivas v. State of U.P.*¹⁰¹ through proceedings under section 390 Cr.P.C. a person was chargesheeted, the absence of his name under the enquiry report of the investigating officer is not a bar. It cannot held that, if the High Court is to interfere with the trial, it would be interfering with the presumption of adducing evidence under section 482 Cr.P.C. does not mandate. In this case, it was also held that in a proceedings un-

98. 1983 Cri.L.J. 279 (Cal)

99. 1993 Cri.L.J. 2002 (All)

100. 1990 Cri.L.J. 123 (All)

101. 1990 Cri.L.J. 460 (Mad)

der section 482 Cr.P.C. appeal cannot be open to the accused.

In *K.A. Abdul Salam Abdhurahiman v. K.N. Muhammadali*,¹⁰² petition was filed for quashing the complaint, it was filed on the ground that the accused had got several defences in his favour to controvert the case. Dismissing the petition, the Kerala High Court held that availability of defences is not a matter of the decision by the High Court in applying inherent powers. The court need only consider whether allegation in the complaint and sworn statement discloses any offence.

In *R.N. Bajaj v. K. Govindan*¹⁰³ it was held that all that the complainant is required to allege as the task foundation on which the prosecution rests. The complete details of evidence need not be disclosed in the complaint because at the later part of the proceedings, it can be brought on record through the witnesses to be examine and document to be produced. These aspects cannot be considered by the High Court while invoking inherent powers. The Rules of evidence are applicable to all judicial fora, adjudicating cases. In *Brij Behari v. State*¹⁰⁴ it was held that mere assertion in the High Court or trial court of a fact is not sufficient. Here the Magistrate cannot merely record the case on the ground of breach of contract and drop proceedings¹⁰⁵.

In *Pavan Kumar Ruia v. S.P. C.B.I.*¹⁰⁶ a Full Bench of the

102. 1992 Cri.L.J. 4079 (Ker.)

103. 1993 Cir.L.J. 2317 (Mad.)

104. 1993 Cri.L.J. 2536 (All).

105. *B.L. Dalmia v. State of Haryana*, 1994 Cri.L.J. 2493 (P&H). It was held that in a case where criminal and civil liability were enquired by the petitioner in the same proceedings, the criminal proceedings could not be quashed, even though the same was compromised in the civil proceedings.

106. 1995 Cri.L.J. 3726 (Cal.)

Calcutta High Court held that when FIR *prima-facie* discloses an offence, there is no question of looking into the other materials under section 482 Cr.P.C. proceedings. The court cannot embark upon a parallel enquiry into the case. The allegation that investigation of malafide act are to be substantiated by the evidence. Similarly, in the matter of details regarding the standard of samples collected, and the manner in which sample was taken cannot be a ground for quashing FIR¹⁰⁷.

In *Khan Mohammed v. Talib Hussain*,¹⁰⁸ it was held that existence of *prima-facie* case excludes the interference of the High Court. In the complaint, by the son-in-law against father-in-law, allegations of using abusive language and defamatory words made, complainant and witnesses were examined. The Magistrate has to scan evidences whether *prima-facie* case exists or not. It was held that the High Court is not precluded from going into evidence to see whether summons is rightly or wrongly issued.

In *Ardhendhu Sarkar v. Subhash Chandra Choudhary*¹⁰⁹ the accused refused to give his hand-writing to the investigation officer. Further investigation was ordered by the court. It was based on the subjective satisfaction of the Judge. So, interference by the High Court invoking inherent powers would not be congenial to the administration of justice.

Inherent powers cannot be exercised to prevent a case being

107. *Sarup Chand v. State of Punjab*, (1995 Cri.L.J. 1601 (P&H)

108. 1995 Cri.L.J. 1401 (H.P)

109. 1996 Cri.L.J. 195 (Cal.)

decided on the basis of best evidence. It will not be in the interest of justice and also it will be an abuse of the process of the court. Inherent powers are strong weapons in the hands of the higher judiciary to steer the stream of justice clear of all accumulated pollutants. However, the power shall not be used to cause further malignancy in the currents of justice through abuse of the process of the court and defeating the ends of justice. The procedure adopted on the basis of the fundamental principles of criminal jurisprudence are to be allowed to be complied with. So far as a trial is concerned the most sacred part of it is in the appreciation of evidence. Best evidence must be collected. The trial court should have the opportunity to decide the case on the basis of correct, coherent and corroborative facts. There must be fool-proof investigation capable of conserving the best evidence.

Every offence is a crime against the society. When an offender is brought to book a social purpose is served. The question of giving him a liberal punishment or lesser punishment is totally foreign to the aspect of conducting the trial in a solemn and sincere methods. No power of the court, even the inherent power of the High Court should be used to throw spanner in the works of the trial courts. So, if FIR discloses an offence. Police is entitled to investigate; *Emperor v. Khwaja Ahammed*¹¹⁰. Relying on it Punjab and Haryana High Court held in *Kishorilal and others v. Dayanand and anothers*,¹¹¹ The High Court shall not consider under its inherent jurisdiction whether complaint discloses

110. AIR 1945 PC 18.

111. 1974 Cri.L.J. 902 (P&H)

all offences alleged. It is the duty of the trial court¹¹².

The High Court requires high sense of judicial aptitude. A prosecution shall not be attacked prematurely, nor should the police be allowed to have a filed day¹¹³. High Court should know all the rules of evidence, but shall use none in considering the application of inherent powers. Scrutiny of allegation is sufficient. Court need not go in for evidence as held in *Municipal Corporation of Delhi v. R.K. Rohtagi*¹¹⁴. Based on the Kerala High Court in *M. Kunhayisu v. P. Kalyani*¹¹⁵ held that High Court is not to consider whether the complainant would be in a position to prove the offence beyond reasonable doubt. Assessing evidence is not the function of High Court or Supreme Court. The higher judiciary cannot condescend to the level of a trial Magistrate.¹¹⁶

When a person impugns a proceedings under the inherent powers of the court, he may have important pieces of evidence with him. But, the High Court would not advert to it. The petition could successfully use the evidence at trial. In *B.M.L. Gary v. U.T. Chandigarh*¹¹⁷ it was held that, at the time of taking cognizance the trial court takes no evidence. If at all the process of taking cognizance can be said to invoked taking evidence, the standard of evidence varies. At trial every syllable of facts collected is tested to test its relevancy with meticulous care and optimum

112. *Narmadeswahara Sharme and another v. Saiju Chandra Poddar*, 1977 Cri.L.J. 959 Pat.) This is because cognizance is taken if a case is not of and individual.

113. *Jiwat Ram v. State of Rajasthan*, 1978 Cri.L.J. 693 (Raj.)

114. AIR 1983 SC 67

115. 1987 Cri.L.J. 125 (Ker.)

116. *Raghubir Sing v. Sate of Bihar*, AIR 1987 SC 149

117. 1987 Cri.L.J. 507 (P&H)

diligence. At the time of taking cognizance the court looks whether prima-facie evidence of offence is available. In the above case, the averment was that the complaint did not mention whether the milk was stirred before collecting sample. According to the petitioner, this alone was sufficient to quash the complaint. But, the High Court held that it requires examination of witnesses and evidence to be recorded. The primary factor is whether a *prima-facie* case is established. If this is done the trial court looks no farther. Summons is issued, If *prima facie* case is not established, no process is issued. If process is issued, it is an abuse of the process of the court and the High Court can interfere even if it is at FIR stage. The decision of the Allahabad High Court in *Ram Lal Yadav and others v. State of U.P. and others*,¹¹⁸ is relevant in this context. Application Section 482 to quash the FIR and investigation subsequent to Single Judge referred the matter before the Full Bench and sought correctness of decision of the Full Bench in the case of *Prashant Gaur v. State of U.P.*¹¹⁹ with respect to law laid down by Supreme Court and Privy Council. The question was whether the High Court has the inherent power under section 482 Cr.P.C. to interfere with the investigation by the police and whether the High Court has power to stay the arrest during investigation whether he has answer given to the above question by the Full Bench in the above case is in accordance with Supreme Court/Privy Council decisions. The court held that High Court has no inherent power under section 482 Cr.P.C. to interfere with the arrest of a person by a Police Officer even when no offence is

118. 1989 Cri.L.J. 1013 (All.)

119. 1988 All W.C. 828

disclosed in the FIR or the investigation is malafide. If the FIR does not refer to any offence - the investigation thereof is liable to be quashed under Article 226, and not in exercise of inherent powers under Section 482¹²⁰. The reasoning in this decision may look obsolete in the light of the latest thinking of the Supreme Court equating latest thinking of the Supreme Court equating the jurisdiction of the High Court under section 482 Cr.P.C. to the Article 226 and 227 of the Constitution¹²¹. FIR only puts the criminal law in motion. If it is patently fallacious High Court need not be averse to press inherent powers into action. In *Laiq Ram v. State of Himachal Pradesh*¹²² FIR sought to be quashed on the ground that continuation of investigation would amount to harassment and was misuse of powers by police- Petitioner is not able to convince that there was no case at all made against him. Only investigation could reveal the degree of his culpability in the matter.

The petitioner cannot anticipate police excesses and make it a ground to come to the Magistrate mere allegations of malafides also would not suffice the High Court to quash the proceedings. In *P.R. Gopal alias Rajagopal v. Inspector of Police, C.B. CID*¹²³ it was held that the proceedings can be quashed if allegations in FIR do not make out any offence or if on face of complaint no offence is constituted. Allegation of malafide against complainant or prosecuting agency cannot be a ground for quashing the

120. Court over ruled - *Prasanth Gaur v. State of U.P.*, 1988 All. W.C. 828. Referred - *Pratibha Rani v. Suraj Kumar*, AIR 1985 S.C. 628; *R.P. Kapur v. state of Punjab*, AIR 1960 S.C. 866

121. See chapter III

122. 1990 Cri.L.J. 1350 (H.P)

123. 1992 Cri.L.J. 2087 (Mad.)

proceedings.

The court while indulging in a matter invoking the inherent powers, it should not only advert to the merit of the petition but also alert itself the lawful intent of the community. In *Omraonal Goyal v. State of West Bengal and others*¹²⁴ Revision application filed under Section 482 and Article 227. Court has rejected the contention that FIR does not disclose by cognizable offence. It was also found that FIR disclosed *prima-facie* violation of the provision of the Essential Commodities Act and section 8 of the West Bengal Anti - profiteering Act. Also held that in the matter of Administration of Criminal Justice, the exercise of power to quash the police investigation will be detrimental to the interest of the community at large. In this case the court granted time to the petitioner for preferring an appeal against the order of confiscation, if any passed.

The High Court shall not speculate anything about the possible outcome of the proceedings while inherent powers are invoked. If the High Court is to mediate over the outcome of the prosecution and professedly to avoid a futile exercise of trial by quashing FIR that itself would be gross abuse of the power of the court.

In *Union of India and others v. B.R. Bajaj and others*,¹²⁵ Supreme Court took exception to the High Court's attitude in quashing the proceedings. When the FIR disclosed omission of a cognizable offence. The proceedings under Section 120-B read with

124. 1995 Cri.L.J. 2611 (Cal.)

125. 1994 SCC (Cri) 477

sections 418, 468 IPC and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act was quashed by the High Court. Order of the High Court was set aside by the Supreme Court holding that the High Court cannot ascertain whether offences alleged were made out or not. Investigation in a statutory power of the police and the High Court is not justified to interfere through the medium of inherent powers.

If the Magistrate pass an order under section 204 Cr.P.C. to summon the accused on the basis of available materials the High Court shall not interfere. Section 204 Cr.P.C. warrants the Magistrate's opinion and it is not necessary to state reasons for the opinion *Hatia Swain v. Chinthamani Mishra*¹²⁶. Issuing summons is a matter for the satisfaction of the trial judge. The course of the case and the fate of the accused persons would ultimately be denied that a full-fledged trial.

In *T. Parthasarathy and others v. Smt. Madhu Sangal*¹²⁷ complaint was filed against officers of cantonment Board under sections 179, 181, 256 of Cantonments Act, 1924. Offences under sections 149, 341 of the Penal Code was also alleged. Processes were issued under section 204 Cr.P.C. to officers as *prima facie* case was established. Actions of the officers were not covered under section 250 Cr.P.C., and therefore Process could not be quashed.

If notice of demolition had been issued to the complaint under the Act and terms of such notice had not been complied with, the Board or person giving such notice could after giving notice

126. 1990 Cri.L.J. 47 (Ori).

127. 1992 Cri.L.J. 26

in writing to the complainant, take action towards demolition and recover all expenses involved there in from him. Demolition of structure without complying with the requirement of provisions was illegal.

viii Matters of Public Interest

Moreover, the subject matter involved would be such that if let off without a proper trial it would eat only among the very vitals of the society. It is all the more significant when the matter is of great social and public importance and requires adjudication on the basis of evidence. With matters like Water Pollution, narcotics ^{peddling} ~~peddaff~~, breach of Negotiable instruments, Food adulteration cases, corporate crimes, white collar crimes, terrorism, communalism and other attendant social maladies on the increase the High Court as the court with inherent powers and other constitutional and statutory power must be an initiation for generally the social interest. A culprit shall not be let free even without giving the society a chance to seek him invoke or culpability under the matter of inherent powers. In *M/s. Trans Asia Carpets Ltd. v. State of U.P.*¹²⁸ the complaint was for offences under section 44 of Water (Prevention and control of Pollution) Act, (Act 6 of 1974) the question is of extent of pollution or whether effluence is being discharged as stream or well or is being used otherwise it was held that the petitioners can raise these questions before Magistrate concerned and then the application for quashing of proceedings not proper.

In *Rekha v. Asst. Collector of Customs*,¹²⁹ the petition for

128. 1992 Cri.L.J. 673 (All.)

129. 1992 Cri.L.J. 901

quashing criminal proceedings where the Prosecution of accused for possession contraband under NDPS Act was initiated. It was held that the question whether confessional statement of accused was voluntary or not cannot be decided under section 482 Cr.P.C. The trial court can decide question on assessment of evidence before him.

Similarly by issuing cheques without the intention to honour the same the very sanctity of negotiable instruments is violated. A number of questions generally emerge regarding the question of limitation, and genuineness of the situation,¹³⁰ discrepancy in the endorsement,¹³¹ vague notice,¹³² evasion of service of notice¹³³ etc., which would require evidence to decide without infraction of the ends of justice. When compoundable crimes are on the increase, in an unprecedented manner, the culprits shall not be allowed to escape under the comoflague of corporate personality¹³⁴.

Among the different factors which tend to structure and confine the application of inherent powers the principles of evidence are most assertive, while exercising inherent powers documents sought to be brought on record by the defendant cannot be looked into by the High Court¹³⁵.

130. *Jagarla Mudi Surya Prasad v. State of A.P.* 1992 Cri.L.J. 597(A.P.)

131. *Thomas Varghese v. Jerome*, 1992 Cri.L.J. 3080 (Ker.)

132. *M/s Syed Rasoll and Sons v. M/s. Aildas and Co.*, 1992 Cri.L.J. 4048 (A.P.)

133. *Syed Hamid Bafaky v. Moideen*, 1996 Cri.L.J. 1013 (Ker.)

134. *Bima Kumar Napany v. Registrar of Companies*, 1990 Cri.L.J. 1902, *Venkitesh Narayanappa & others v. Sri Vittal*, 1992 Cri.L.J. 586, *Niranjan Dey v. Regional Provident Fund Commissioner*, 1996 Cri.L.J. 1424 (Cal.)

135. *M.S. Kuppu Swami v. State of Tamil Nadu*, 1992 Cri.L.J.56 (Mad)

The reason for an adamant approach by the Supreme Court and the High Court against invoking inherent powers is cases where evidence is required is to protect the very foundation of the criminal judicial process. If every accused as a matter of course is entertained by the High Court through inherent powers the public trust in the system will be endorsed. Even in cases where the High Court and Supreme Court interfered the needle of the public criticism had pointed towards the ivory tower cult of adjudication oblivious of the harsh realistics out in the world. This is the reason for the Supreme Court to remind the High Courts and itself that "inherent power should be invoked only in the rarest of the rare cases. The essence of Supreme Court's attitude in that "No inherent powers in Economic offences or offences of moral turptitude or crimes of grave nature. In *State of Himachal Pradesh v. Pirthi Chand and another*,¹³⁶ allegation was offence under section 20 of the Narcotic Drugs and Psychotropic substances Act, 1985. The Supreme Court held that in quashing of FIR/Charge Sheet/complaint the inherent powers must be invoked only in rarest of rare cases. The High Court should not weigh the pros and cons of the prosecution case or consider the effect of non-compliance of mandatory provisions of law. High Court must take care.

136. 1996 (2) SCC 37

CHAPTER - VII

EXTENT AND REACH OF INHERENT POWERS

The effect of application of inherent powers in criminal justice system can best be evaluated by examining the *modus operandi* and the responses of the judiciary to the situations arising in cases. The Supreme Court of India has the last word but the High Courts get more opportunities to examine various situations. Therefore, the extent and reach of inherent powers in criminal justice system is best evaluated through acquaintance with the decisions of the Supreme Court and High Courts. The Supreme Court lays down principles for the application of the power. The High Courts adjust the programme of their judicial process according to the decisions of the Supreme Court. But, owing to the nature of the inherent powers the Supreme Court is not able to articulate the possibilities of inherent powers for all times to come. Even definition of inherent powers like definition of law is difficult. So, to have a better understanding of the dynamics of inherent powers, it is more meaningful to try to read the minds of High Court and Supreme Court in coming to the conclusion which they have reached.

i. Difficult to define

When the decision making process is analysed, one would realise the difficulty in defining the inherent power like defining the law itself. The classical definition of law is also in terms of the administration of justice. Salmond defined law as the body

of principles recognised and accepted in the administration of justice. This definition of law explains only one dimension of law. Giving a universally acceptable definition to law is a 'thorny intellectual problem' as Glanville Williams said of defining crime. In the juristic approach to the definition of law one travels from the conventional definition of law as a command of the sovereign;¹ to the nonconventional and individualistic approach that there is no necessity for defining law,² and if at all defined, it is done in a pragmatic style, like O.W. Holmes' opinion that, 'Life of law is not logic, it is experience'³.

Inherent powers are in the present context powers of the court which are statutorily recognised, saved and preserved. In criminal law, it is the power of the High Court under section 482 of the Code of Criminal Procedure, which saves the inherent powers⁴. It also shows the inexhaustive character of the Code. Best effort is taken to consolidate and amend the law relating to the criminal procedure through the enactment of the Code of Criminal Procedure, 1973⁵. It was done with an effort to simplify the procedure and speed up trials⁶. Even then, in Sec. 482 of Cr.P.C. 1973, in an attempt to give an aura of consummation and finiteness the draftsmen of the Code have saved the inherent powers.

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1. John Austin, defined law as a command of the sovereign.
 2. Olivecrona, a Scandinavian Realist suggested that there is no necessity for defining law.
 3. *The path of Law.*
 4. In the Cr.P.C. of 1898, Sec. 561-A contained the saving provision of the inherent powers of the High Court. Ref. *supra*. Introduction n.28
 5. Act 2 of 1974:- The provisions are arranged in a systematic manner in 484 sections in 37 Chapters with each chapter having its chapter headings, and two schedules containing classification of offences and forms of procedure.
 6. The Code of 1898 had 565 sections and often drew flak for being clumsy.

The concept of inherent powers is so indeterminate and inscrutable that a technically perfect definition is a near impossibility. The generalisations of the Supreme Court on inherent power while examining the correctness of a High Court decision are the most appropriate definitions. The Supreme Court over the years have laid down guidelines and illustrations while testing the rationale of the High Court's decisions.

ii. **The Law Commission's Suggestion**

The Law Commission in its 14th report has underlined the presence of inherent powers in the following words:-

"Though Laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make impossible to lay down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore, have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This had led to the acceptance of the principles that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do real and substantial justice and prevent an abuse of their process"⁷

The Law Commission of India suggested statutory recognition for the inherent powers of the subordinate courts also. While

7. First Law Commission, 14th Report at p. 828.

summarising the conclusions in the Report, the Commission made this suggestion.⁸ The Commission's view is contrary to the jurisprudential character of the inherent powers. A power that is not defined or structured or which is impossible for the legislature to exhaustively state, cannot be distributed among the trial courts. When the Commission submitted its 41st Report on the Code of Criminal Procedure, 1898, a draft code was also submitted. In this draft, 'section 483' contained the above mentioned proposal. Commission's proposal was rightly discarded as inherent powers in criminal justice system cannot be diffused. The judicial process of criminal justice system has demonstrated that inherent powers are to be invoked only in the rarest of rare cases. There must be circumspection. If all the trial magistrates and sessions judges are to invoke powers in the nature of inherent powers as understood in the present day context, it will lead to an unintelligible situations.

The development of inherent powers in criminal justice system is found to be along lines of constitutional law principles like equality, judicial review, Rule of Law etc. This shows that the states prerogative in the criminal justice administration is limited and abuse of the prerogative is checked with the help of the inherent powers. The gravity of the power is so immense that even the High Courts, occasionally, are found deviating from rational procedure in the application of inherent powers. The stature of the court, the honour justice, interest of the society, the security of the individual, and the maturity of the very polity is assessed on the manner in which justice is administered by the courts.

8. Ref. *supra* at 830.

So far as civil courts are concerned the facility to invoke inherent powers are extended to the entire hierarchy⁹. The palpable difference, in this context, with the application of the inherent powers in criminal justice system is that the civil courts resort to inherent powers for every interlocutory contingencies. Unlike in criminal cases, the proceedings survives even after applying inherent powers.

iii. Supreme Court on the Contours of Inherent Power

The Supreme Court often formulates and reformulates the concept of inherent powers. The Supreme Court has tried to streamline the contours of the inherent powers. It cannot be said to be an attempt at structuring the inherent powers. The Supreme Court's decisions at time appear to be prescribing the permissible and impermissible limits of inherent powers. With imperceptibly minor variations, the Supreme Court goes on expounding the inherent powers. It is profitable to examine a few important norms developed by the Supreme Court in this context, before going through the decision making process of the High Courts.

a. **Inherent powers have to be exercised sparingly, carefully and with caution**

The running theme of the Supreme Court decisions is that inherent powers have to be exercised sparingly, carefully and with caution. The facts of the case must justify the grounds specially laid down in section 482 Cr.P.C.¹⁰. In matters specifically cov-

9. Section 151 C.P.C.: - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such as may be necessary for the ends of justice or to prevent abuse of the process of the court.

10. *Talab Haji Hussain v. Madhukar Parshottam, Mondkar*, AIR 1958 SC 376.

ered by the other provisions of the Code inherent powers cannot be availed of¹¹. The High Court can exercise inherent powers, if the FIR or the complaint contains allegations which even if, taken at their face value and accepted in their entirety do not constitute the offence. In such cases, the appreciation of evidence is not necessary. If the accused cannot justly contend that on the face of the record the charge levelled against him is unsustainable, inherent powers cannot be used¹².

b. inherent powers cannot be invoked to rehear the appeal dismissed in default

According to the Supreme Court, inherent powers cannot be invoked to rehear the appeal dismissed in default, because section 369 read with 424 of the Criminal Procedure Code, 1898, specifically prohibits it¹³. While invoking inherent powers, the High Court cannot obstruct the statutory right of the police to investigate. Therefore, quashing of the investigation started by the police is not taken in good taste¹⁴. The Power of the High Court to make orders in securing the ends of justice is contained in the inherent powers. This includes power to expunge irrelevant passages from a judgment or order of a subordinate court. In one case a Doctor sent his report to the Magistrate in a bail application. The Magistrate made remarks about the Doctor, that he was negligent, and careless. It did not mean that the Magistrate had flagrantly abused the process of the Court. But, the court held

11. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866.

12. *Ibid.*

13. *Sankatha Singh v. State of U.P.*, AIR 1962 SC 1208.

14. *State of West Bengal v. S.N. Basak*, AIR 1962 SC 447.

that inherent powers could not be exercised to expunge the remarks¹⁵. But while invoking inherent powers, power can be exercised for expunging the sweeping and general observations made against the entire police officers, in a case involving only one police officer. It was so held in *State of U.P. v. Muhammad Naim*,¹⁶ In *Pampapathy v. State of Mysoor*,¹⁷ the Supreme Court held that the inherent powers could be used only for any one of the three purposes, specifically mentioned in section 561-A Cr.P.C. 1898. The question before the court was whether it could cancel the order of sentence and justify granting of bail to the person. It was held in the affirmative and the order of suspension of sentence and grant of bail made under section 426 Cr.P.C., 1898 could be cancelled and order the rearrest and committal to jail custody of the appellant. In *State of Uttar Pradesh v. Kapil Deo Shukla* it was held that as unreasonable delay has been occurred, the court could invoke inherent power¹⁸.

c. It is premature to quash the proceedings which are in the process of police investigation

In *Ram Narain v. State of Rajasthan*,¹⁹ it was held that petition under section 561-A Cr.P.C. should be disposed of only after hearing the counsel of the applicant. It is premature to quash the proceedings which are in the process of police investigation. Moreover, the High Court cannot enter upon an enquiry to consider the probability of evidence. Attempt to invoke inherent pow

15. *Dr. Reghubir Saran v. State of Bihar*, AIR 1964 SC 1

16. AIR 1964 SC 703.

17. AIR 1967 SC 286. also see sections 482 and 198 Cr.P.C. 1973.

18. AIR 1973 SC 494.

19. 1973 SCC (Cri.) 545.

ers in a premature and incompetent manner is repelled by the Supreme Court. In *Jehan Singh v. Delhi Administration*,²⁰ the Court held that inherent power of the High Court has no use in an investigation except to meddle with the statutory investigation of the case. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh & others*,²¹ the court was concerned with an application to exercise inherent power subsequent to an earlier one considered. First application was dismissed. But, it was held that 2nd application was permitted and it did not amount to reviewing the earlier order. Since the inherent powers are aimed at securing the ends of justice one cannot predict the occasion for invoking the powers.

d. for securing the ends of justice and to prevent the abuse of the process of the Court

While espousing the aspects of inherent powers one area where the Supreme Court has evinced keen interest has been the transition from 1898 Code to 1973 Code. In *Philip v. Director of Enforcement New Delhi*,²² the application was made without the disposal of another one pending under the earlier code. There occurred no sea change in the attitude of the Supreme Court and the inherent powers remained unaltered by the new Procedure Code of 1973 also. In *Palaniyappa Gounder v. State of Tamil Nadu*,²³ it was held that when a specific purpose provided for in the code inherent powers cannot be exercised. In *State of*

20. AIR 1974 SC 1146.

21. 1975 SCC (Cri) 156.

22. AIR 1976 SC 1185.

23. AIR 1977 SC 1323.

Karnataka v. Muniswami & others,²⁴ the Supreme Court made positive exposition of the inherent powers. It was held that for securing the ends of justice and to prevent the abuse of the process of the Court, High Court was entitled to quash the proceedings if patent injustice was detected. In this decision, the Supreme Court held that the High Court's inherent powers both in civil and criminal matters were designed to achieve a salutary public purpose. The proceedings in a court shall not degenerate into a weapon of harassment of prosecution. Scaling through the length and breadth of the Supreme Court's decisions, the areas where judicial consummation has been reached, are discernible. In *Sharda Prasad Sinha v. State of Bihar*,²⁵ the court held that if the allegation set out in the complaint or the charge sheet does not constitute any offence the inherent power could be exercised to quash the proceedings.

- e. when a particular order is expressly barred under section 397(2) Cr.P.C., inherent powers cannot be invoked**

In developing a symmetry of action in invoking the inherent powers a knotty situation arose in the position of the court with respect to provisions contained in section 397 of the Cr.P.C. providing for revision. The principle that has crystallised in the course of judicial process is that when a revision is barred under sub section (3) or sub section (2) of section 397 Cr.P.C. A harmonious construction is necessary here. When a particular order is expressly barred under section 397(2) Cr.P.C., inherent powers cannot be invoked. This stems from the principle that inherent

24. AIR 1977 SC 1489.

25. AIR 1977 SC 1754.

powers of the courts ordinarily be exercised only when there is no express provision on the subject matter. This ratio of *Amarnath v. State of Haryana*,²⁶ has shed light in deciding a number of cases. Judicial process is so complex that, a rigid statement of law as is contained in *Amarnath's* decision is likely to get liberalised because section 397 Cr.P.C. is only revisional power which is conferred through statute. Inherent powers are plenary and prerogative powers of the Court recognised and preserved over and above, the provisions of the Code. In *Kurukshethra University v. State of Haryana*,²⁷ the Supreme Court examined a situation where High Court had arbitrarily exercised the inherent powers. It was held that quashing an F.I.R. when the police had not even commenced investigation would amount to application of inherent powers on the basis of whims and caprices of the individual judge.

f. to tackle the formalism attached to the filing of petitions

Another area where Supreme Court operated its mechanics in jurisprudence was to tackle the formalism attached to the filing of petitions. In *Madhu Limaye v. State of Maharashtra*,²⁸ the Supreme Court held that the label of the petition filed by the aggrieved party is immaterial. The High Court can exercise the powers in accordance with section 482 Cr.P.C. inspite of the fact that invoking the revisional powers of the High Court is impermissible. A paradigm shift in the attitude of the Supreme Court, in experiencing new dimensions to the reality of the inherent pow-

26. AIR 1977 SC 2185.

27. AIR 1977 SC 2229.

28. AIR 1978 SC 47.

ers, commences with *Madhu Limaye's* case. In that case, the principles ordinarily and generally followed in the exercise of the inherent powers were considered, ie, no inherent powers would be applied if specific provision is there in the Code, inherent powers are used only very sparingly and powers are not used against express bar of law. Here the Supreme Court was faced with a situation where interference was absolutely necessary on the face of patent abuse of the process of the court, and in the interest of justice. Then fettering the power of the High Court under section 482 Cr.P.C. would itself be an injustice. The Supreme Court justified its action by saying that, such a case would be few and far between. In the present case it was held to be an instance, where proceedings were initiated illegally, vexatiously, and without jurisdiction.

The dynamic advancement commenced with this case was continued in *Raj Kapoor v. State (Delhi Administration)*²⁹. The court tackled the tendency to meddle with strength of inherent powers in *Raj Kapoor*. The belief is that there is no revision against interlocutory order and therefore, no petition under section 482 also. This dogma was contradicted with the opening words of section 482 Cr.P.C. itself. The Supreme Court held that nothing could affect the amplitude of the inherent powers preserved in so many terms with section 482 Cr.P.C. Perhaps easy resort to inherent powers may not be right. But, that is not an excuse that there is no inherent powers at all. There is no question of jurisdiction involved according to the Supreme Court. The only limitation is self-imposed restraint, so that inherent powers

29. 1980 SCC (Cri.) 72: AIR 1980 SC 258

do not invade to areas set apart for specific powers under the Code.

The term interlocutory order is to be given a very liberal construction in favour of the accused, in order to secure complete fairness. This was the view adopted by the Supreme Court in *V.C. Shukla v. State, through C.B.I.*³⁰ Not only Indian Penal Code offences, but also offences under numerous Acts are questioned under the inherent jurisdiction. The court in *V.C. Shukla*, held that sub section (3) of section 397 Cr.P.C. does not limit the inherent powers of the High Court.

The Supreme Court in *Smt. Sooraj Devi v. Pyarelal & another*,³¹ held that specific prohibition contained in a provision in Criminal Procedure Code cannot ordinarily be got over through section 482 Cr.P.C. This decision was in the context of the prohibition contained in section 362 Cr.P.C. against the Court altering or reviewing its judgment. Inherent powers are not contemplated for getting over section 362 of Cr.P.C. In *Drugs Inspector, Palace Road, Bangalore v. B.K. Krishnaiah*,³² the Supreme Court laid down a principle that the primary duty of the High Court is to see whether allegations made in the complaint or petition make out a prima-facie case. In the instant case, the allegation was that, the accused had stocked drugs which had expired their period of potency. It was an offence under section 18(1)(vi) of the Drugs and Cosmetics Act, 1940 and Rules. The alleged action was punishable under section 28, 27B of the Act. The Mag-

30. AIR 1980 SC 962.

31. 1981 SCC (Cri) 188.

32. AIR 1981 SC 1164.

istrate proceeded with the trial and the High Court quashed the proceedings. It is a matter to be established by evidence during trial and therefore, judgment of the High Court was held to be erroneous.

There are occasions where Supreme Court detect enthusiasm on the part of the High Court to invoke inherent powers. In *Sewakram Sobhani v. R.K. Karanjiya, Chief Editor, Weekly Blitz & others*,³³ the High Court displayed its overzealous attitude. The respondents only wanted that the Magistrate should not proceed to record the plea of the accused persons under section 251 of the Cr.P.C. without pursuing the enquiry report under section 91 of the Code. There was no application before the High Court under section 482 Cr.P.C. for quashing the entire proceedings. The applicants wanted the impugned order to be quashed and the learned Magistrate be directed to pursue the report under Section 91. The Supreme Court deprecated this attitude of the High Court for quashing the entire proceedings.

In *Dr. R.V. Murthy v. State of Karnataka*,³⁴ the High Court while granting leave to appeal to the State against the order of acquittal, also passed an order asking to show-cause why the petitioner should not be sent to trial. The High Court had no occasion or jurisdiction to pass any order at the initial stage by invoking the discretion under section 482 Cr.P.C. in directing the trial of the appellant. According to the Supreme Court that itself amounted to serious abuse of the process of the Court and it resulted in gross and substantial injustice to the appellant. The

33. AIR 1981 SC 1514.

34. AIR 1982 SC 677.

above decision of the Supreme Court displays a usual phenomenon in the history of inherent powers. The Supreme Court is called upon on occasions to consider the actions of the High Court in invoking inherent powers of the Court. The differences in perceptions of the Supreme Court and High Courts make telling effect in the applications of inherent powers. In *Kacheru Singh v. State of U.P.*³⁵ it was held that the High Court is entitled to examine the validity of an order passed under section 341 Cr.P.C. Since section 397(2) Cr.P.C. bars revisions inherent powers could certainly be applied. The bar contained in section 341 of the Criminal Procedure Code cannot be held against application under sections 482 Cr.P.C. This position was reiterated by the Supreme Court in other decisions also. In *Lalith Mohan Mondal & others v. Benoyendranath Chatterjee*,³⁶ the Supreme Court remitted the case to the High Court with a direction to sent for the records and satisfy itself whether the order directing the complaint to be filed was expedient in the interest of justice. The Supreme Court also directed the High Court to see for itself whether inherent jurisdiction under section 482 Cr.P.C. was to be invoked in such a situation. Resorting to the remedy under section 482 Cr.P.C. after loosing all legal battles under other provisions of law including civil litigation, itself is an abuse of the process of the Court. In *Chandrapal Singh & others v. Maharaj Singh & another*,³⁷ the respondent after loosing all rent control proceedings filed a criminal complaint against the petitioner. It was held that invok-

35. 1982 SCC (Cri) 696.

36. AIR 1982 SC 785.

37. AIR 1982 SC 1238.

ing the inherent jurisdiction in such circumstances, is the only remedy and the disinclination of the High Court to use the power to quash the proceedings was criticised by the Supreme Court.

The Supreme Court's endeavor to define the mechanics of inherent powers under section 482 Cr.P.C. is onerous, because there could be cases apparently identical, but at the same time having substantial differences. The decision of the Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & others*,³⁸ and the decision in *Municipal Corporation of Delhi v. Purushotham Dass Jhunjunwala*,³⁹ offer such a scenario. In *Junjchunwala's* case, the High Court quashed the proceedings and the Supreme Court ratified it, because complaint did not contain specific allegations against the petitioner. Where as, in *R.K. Rohtagi's* case, the Supreme Court considered the regulation of inherent powers through section 397(2) of Cr.P.C. The Supreme Court held that the powers under section 482 Cr.P.C. are separate and independent power for doing *ex-debito justitiae*, in case where grave and substantial injustice has been done. It was held that equating inherent powers with revisional powers was against the concept of the ends of justice.

- g. the high court must have strong reason to believe that process of law is being misused to harass a citizen**

One thing which is reiterated by the Supreme Court is the requirement of circumspection with which inherent powers are to be exercised. The High Court must have strong reason to believe that process of law is being misused to harass a citizen. In

38. AIR 1983 SC 67.

39. AIR 1983 SC 158.

L. V. Jadhav v. Shankarrao Abasaheb Pawar & others,⁴⁰ the complaint was filed after obtaining the necessary sanction of the State Government as required by section 4 of the Dowry Prohibition Act, 1961. The complaint *prima-facie* disclosed the offence. The High Court quashed the complaint. According to the Supreme Court, the High Court ought to have considered the relevant aspects of the case in a clearer perspective and dissuaded from interfering under section 482 Cr.P.C.

The High Court is not expected to give legal advice to the parties under the inherent powers jurisdiction. In *Pratibha Rani v. Suraj Kumar & another*,⁴¹ after quashing the complaint, the High Court directed the complainant to seek civil remedy. The facts of this case, revealed the vulnerability under which ends of justice remained. A helpless married woman, was turned out by her husband. Her ornaments, money and clothes were not returned. She got only some relief from the trial court. But, when she moved the High Court, she was coolly told to approach civil court. According to the Supreme Court, the approach of the High Court was one devoid of any respect for all norms of justice and fair play. In the complaint, she had pleaded offence under section 405 I.P.C. A *prima-facie* case for summoning the accused was made out. She ought to have been given an opportunity to prove her case rather than her complaint being quashed. When such contingencies arise, the Supreme Court criticises the High Court in no uncertain terms. The inherent powers of the High Court to quash a criminal proceedings is not to be extended for mere ask-

40. AIR 1983 SC 1219.

41. AIR 1985 SC 628.

ing. The High Court does not work under any norms or directions, because the inherent powers are not structured properly. But, that is not a reason for the High Court to exercise the power in a capricious manner.

In *J.P. Sharma v. Vinod Kumar Jain & others*,⁴² the Supreme Court set aside the order of the High Court quashing the complaint. Here the High Court, made its indulgence basing its reasoning on a subsequent report by the C.B.I. That is not ground for quashing the criminal Proceedings. The High Court is not expected to add or subtract anything from the complaint. In *Bindeshwary Prasad Singh v. Kali Singh*,⁴³ the Supreme Court considered the capacity of a Magistrate to revive or restore a complaint dismissed on default under section 203 of the Criminal Procedure Code. Inherent powers are available only to the High Courts. The Magistrate become *functus officio* once the order is passed. This was also considered in *Major General A.S. Gauraya v. S.N. Thakur*.⁴⁴ In exercising inherent powers the Court is to examine whether the Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction. Section 482 Cr.P.C. specifically states that inherent powers of the High Court are saved. In *Major General A.S. Gauraya's* case, Supreme Court followed the decision in *Bindeshwary Prasad Singh's* case. The Magistrate never had a power similar to one in Section 151 of the C.P.C. The Magistrate had no jurisdiction to recall an order dismissing the complaint. The remedy of the complainant was to

42. AIR 1986 SC 833.

43. AIR 1977 SC 2432.

44. 1986 SCC (Cri) 249.

approach the Sessions Court or High Court under revision.

h. certain special subject to be viewed with seriousness

There are certain special subject matters which are to be viewed with great seriousness. Terrorism is one such subject. In the Terrorists And Disruptive Activities (Preventions) Act, 1987, the High Court's inherent jurisdiction is totally excluded. Therefore, an application for grant of bail cannot be entertained under section 482 Cr.P.C. An action otherwise would only lead to an anomalous situation as the source of power is not the Cr.P.C. This was so held in *Usmanbhai Dawoodhbhai Memon & others v. State of Gujarath*⁴⁵. The special statute is enacted for a special purposes and that purpose shall not be defeated. In *M.C. Mehta v. Union of India*⁴⁶ the Supreme Court observed that granting a stay in a petition under section 482 Cr.P.C., and allowing the matter to remain for a long time would be an abuse. Ordinarily no stay should be granted. Even if, an order of stay is granted, in an extra-ordinary case, the High Court should dispose of the case within a short period. Here the issue involved was the problem of pollution of the water in the river Ganga. In the said case, the seriousness of the issue is reduplicated by the fact that the stay granted by the High Court acts as an antithesis to the ends of justice.

i. inherent powers not to be invoked on the basis of evaluation of evidence

Inherent powers under section 482 Cr.P.C. are exercised not

45. 1988 SCC (Cri) 318.

46. AIR 1988 S.C. 1115.

on the basis of any evaluation of evidence.⁴⁷ The High Court looks at the complaint and examines whether the Magistrate was correct in forming an opinion. In *State of Bihar v. Raj Narayan Singh*,⁴⁸ again, the Supreme Court pulled up the High Court for making conjectures. Nor can inherent powers be invoked for an action amounting to review, because, it is barred under section 362 of the Cr.P.C.⁴⁹ The Supreme Court considered the matter related a process issued by the Magistrate to the accused who are alleged to have solemnized the 2nd marriage, during the subsistence of earlier marriage. In *Smt. Chand Dhawan v. Jawahar Lal & others*⁵⁰ it was held that High Court should not have exercised its powers, while the Magistrate had issued process after considering the facts.

j. attitude towards matters at the threshold

Another situation which the Supreme Court has come across in the matter of inherent power is the attitude of the High Court to matters which are at the threshold. In *M/s Jayant Vitamins Ltd. v. Chaitanya Kumar*,⁵¹ the Supreme Court held that the High Court was not justified in quashing the investigation which was still on its way. Without any compelling justifiable reasons, the High Court shall not throw a spanner in the works of the police and the State Government. In *The Janatha Dal v. H.S. Chowdhary & others*⁵², the Supreme Court castigated the High Court over

47. *Supra* n. 26. See ch. VI.

48. AIR 1991 SC 1308

49. *Simrikhia v. Dolly Mukherjee*, AIR 1990 SC 1605. See ch. VI

50. AIR 1992 SC 1379.

51. AIR 1992 SC 1930.

52. AIR 1993 SC 892.

deviating from the path of the judicial discipline and sobriety in the exercise of the inherent powers. A judge of the High Court has exhibited hideous rashness in the exercise of the inherent powers. The court took *suo-motu* cognizance after referring to sections 119, 397, 401 and 482 of the Cr.P.C. The office of the High Court was directed to register a case under the title *Court on its own motion v. State and C.B.I* and the High Court Judge further ordered the C.B.I. and the State to show-cause why proceedings initiated against the accused be not quashed, which were pending in the court of special judge, Delhi. The Supreme Court castigated the High Court Judge in a very stern and serious language, because the High Court judge had gone on private thinking and personal prejudices. It was an extreme act on the part of the High Court Judge to take judicial notice of illegality committed by a court. Here also investigation was only at the threshold. The High Court judge ought not have taken *suo-motu* proceedings and cognizance with the matter. By doing so, he virtually stepped into the shoes of the accused parties.

The decision in *The Janata Dal v. H.S. Choudhari & others*,⁵³ offered the Supreme Court a situation where a High Court should be at its worst in invoking the inherent powers. In *Dharampal v. Smt. Ramshri & others*⁵⁴ the Supreme Court reiterated that power under section 482 Cr.P.C. is not applicable for a second revision as section 397(3) of Cr.P.C. specifically bars a second revision. The order of the High Court was reversed. Similarly in *Govindamma v. Veluswami & another*,⁵⁵ the Supreme Court con-

53. *Ibid.*

54. AIR 1993 SC 1361.

55. AIR 1994 SC 751.

sidered the exercise of inherent powers in a case where the aggrieved party had its relief before the Civil Court. The rights of the family members in respect of the properties of a temple cannot be adjudicated in the forum of Criminal Courts. In the interest of justice, the High Court ordered Police protection to the aggrieved person with a direction to the lower court to dispose of the matter within a time-frame.

In *Moti Lal v. State of Madhya Pradesh*⁵⁶ the Supreme Court reiterated the declared stand on the inherent powers under section 482 of Cr.P.C. vis-a-vis, the bar of review under section 362 of Cr.P.C.

In *State of West Bengal v. Mohammed Khalid & others*,⁵⁷ it was held that interference during investigation is not under inherent powers but under the Constitution of India. But, this view was already modified in the light of Supreme Court's own decision in *Pepsi Foods Ltd. v. Special Judicial Magistrate & others*⁵⁸, that a petition under Article 226/227 is as good as one under section 482 Cr.P.C. and that nomenclatures are immaterial. This position distinguished the stand taken in *State of Himachal Pradesh v. Pirthi Chand*.⁵⁹

The decision in *Pirthichandh's* case is not as much an explanation of the jurisdiction of the court under Article 226/227 and section 482 of the Cr.P.C. The attention of the Supreme Court is centered around, the correctness of the High Court's decision to

56. AIR 1994 SC 1544.

57. AIR 1995 SC 785.

58. 1998 SCC (Cri) 1400.

59. AIR 1996 SC 977.

interfere with the investigation. In *State of Maharashtra v. Eswar Piraji Kalpatry*⁶⁰ the Supreme Court considered this interference of the High Court under Section 482 Cr.P.C. in a normal trial proceedings. If trial is disrupted with inherent powers, that itself is an abuse of the process of the court. In the instance case, F.I.R. was lodged and the Government of Maharashtra has accorded sanction and charge sheet was filed. According to the Supreme Court, the accused was rightly prosecuted. High Court could not say that there was lack of application of mind, when the F.I.R. was prepared and the sanction of the Government obtained.

In cases like *Krishnan v. Krishnaveni*,⁶¹ *Pepsi Foods Ltd. v. Special Judicial Magistrate & others*,⁶² and in *State of Kerala v. O.C. Kuttan*,⁶³ the Supreme Court has placed the law in a very crystal clear position. In *Krishnaveni's*⁶⁴ case, inherent powers have been placed at a higher pedestal than the revisional powers. So far as, inherent powers of the High Court are concerned, this was a historic necessity. Ever since, section 397 Cr.P.C. 1973 was enacted, inherent powers under section 482 Cr.P.C. suffered an eclipse and was prevented from being fully exploited for securing the ends of justice. In *Krishnan v. Krishnaveni*⁶⁵, the Supreme Court resolved ambiguity in the revisional Jurisdiction and the inherent jurisdiction. In this decisions the Supreme Court re-

60. (1996) 1 SCC 542.

61. AIR 1997 SC 987. See ch. VI.

62. Ref. *supra* n. 58

63. 1999 (1) KLT 747 SC

64. Ref. *supra* n. 61

65. *Ibid.*

lied on the decisions in Madhu Limaye's⁶⁶ and V.C. Shukla's⁶⁷ cases and distinguished the decision in Manchanda case⁶⁸.

In section 482 Cr.P.C. inherent powers cannot be extended to the appreciation of facts.⁶⁹ Interference on facts means appreciation of evidence. The High Court from such a distance from the trial court unaccompanied by opportunity to appreciate evidence cannot comment on facts.⁷⁰ While extending the authority under section 482 rather than application of hard and fast rules, prudence and equity are to be guide to the conscience of the High Court.⁷¹

The Supreme Court was of the opinion that the High Court can interfere in the interest of justice and give positive directions. Similar is the position of the High Court treading in the territory of civil jurisprudence invoking inherent powers. The High Court is not to invoke inherent powers to settle a civil dispute of partition of immovable property which has nothing to do with a complaint filed by one of the parties, regarding forcible removal of the movable articles. It is not a ground for invocation of power under section 482 Cr.P.C. In *A.E. Rani v. V.S.R. Sarma and others*,⁷² the Magistrate took cognizance of offences under section 380 IPC in respect of forcible removal of immovable articles. The High Court quashed the complaint, on the assumption that it in-

66. AIR 1978 SC 47

67. AIR 1980 SC 962

68. 1990 Supp. SCC 132

69. *Sajan K. Varghese v. State of Kerala*, (1989) 2 SCC 208.

70. *State of Bihar v. Murad Ali Khan & Ors.* : 1989 SCC (Cri.)27

71. *Raj Kapur v. State* : AIR 1980 SC 258.

72. (1995) 1 SCC 627.

volved a question of civil nature. The Supreme Court was of the opinion that the High Court's action was not justified as forcible removal of movable articles from the special nature of the criminal complaint, notwithstanding civil dispute in respect of immovable property. That appreciation of evidence is barred while invoking power under section 482 Cr.P.C. is a well accepted principle⁷³.

Powers under section 482 Cr.P.C. have great impact as it can eradicate a criminal case pending before a subordinate court. Restraint, reticence, and reasons are to guide the High Court while invoking the powers to quash a proceedings pending before the trial court. This was so held by the Supreme Court in *Maninder Kaur v. Rajendra Singh and others*.⁷⁴ Here the Court declined to invoke power under section 482 Cr.P.C., in an offence charged under sections 363, 366, 367 of IPC. The Supreme Court while setting the tune for the High Courts to play the magic wand of inherent power under section 482 Cr.P.C. insists as much on dispassionate and objective approach⁷⁵.

An appraisal of the charge-sheet and supporting material is not always excluded. This is not appreciation of evidence. This is only an examination of the materials available before the Magistrate, for taking cognizance of the offence. The Magistrate has to decide whether allegation made in the charge-sheet with supporting materials can be appraised. The case *Keshub Mahindra v.*

73. *State of Tamilnadu v. Thirukural Perumal*, (1995) 2 SCC 449; *State of Haryana v. Bhajanlal*, 1992 Supp (1) SCC 335.

74. 1992 Supp (2) SCC 25.

75. *Smt. Rashmikumar v. Maheshkuamr Bhada*, (1997) 2 SCC 397; *State of Himachal Pradesh v. Pirthi Chand & another*, (1996) 2 SCC 37.

*State of Madhya Pradesh*⁷⁶ involved Bhopal Gas Tragedy and the offences were under sections 229, 304(2), section 321, 322, 324, 326 and 429 of I.P.C. In such circumstances, the Supreme Court examined the dynamics of power under section 482 Cr.P.C. and extended in the light of similar powers available under Article 136 and 142 of the Constitution. Power under section 482 Cr.P.C. is discussed in the light of the power of the Magistrate under section 227 and 228 of the Cr.P.C. The High Court of Madhya Pradesh at Jabalpur dismissed the petition under section 482 Cr.P.C. The Supreme Court under Article 136 while considering the Special Leave Petition discussed the ramifications of the case and partly allowed the prayers of the petitioners. The court dilated on contingency under Indian Constitution where power is conferred on the court to secure the ends of justice, as in the case of Article 136 and 142 of the Constitution. Reference was made to a number of decisions of the apex court.⁷⁷

Opportunities made available to the High Court and the Supreme Court in the context of application of inherent powers under section 482 Cr.P.C. traverse legislation and offences civil, criminal, corporate, and constitutional. This rests upon the principle of equity, which permeates the power under section 482 of Cr.P.C. A case with a high degree of equity element can be one where the High Court failed to appreciate the existence of equity and the Supreme Court sees through the reasonings of the High Court and records of the case. In *Captain Subash Kumar v. Prin-*

76. (1996) 6 SCC 129.

77. eg. *Niranjana Singh Karam Singh v. Jitendra Bhimraj Bijaya & others*, (1990) 4 SCC 76; *State of Bihar v. Rajendra Agarwalla*, (1996) 8 SCC 164.

cipal Officer, Mercantile Marine Department, Madras,⁷⁸ section 363 of the Merchant Shipping Act, had been examined. This does not mean that High Court is to read equity at all circumstances. This will result in meddling with the prosecution. The High Court is not to interfere with the reasonable opportunity of the prosecution, to substantiate the allegations of the case. This point was discussed in *Eastern Spinning Mill v. Rajiv Poddar*.⁷⁹

On equity, the stream of justice can be controlled and coordinated under section 482 Cr.P.C. A transaction purely of civil nature cannot constitute the subject matter of a prosecution under criminal law. In *Balakrishna Das v. P.C. Nayar*⁸⁰ action was initiated under section 406 IPC. The agreement was for procuring foodgrains for the Food Corporation of India. There was shortage in the quantity. There was also an arbitration agreement which covered the contract. The Supreme Court held that the matter was of civil nature and the High Court rightly quashed the complaint. So power under section 482 Cr.P.C. is not available to settle dispute of civil nature. The criminal courts are not made the fora for settling civil disputes and in such cases, power under section 482 Cr.P.C. is invoked to quash the proceedings leaving the parties to the choice of appropriate forum instead of stifling the ends of justice. The High Court is to exercise great care and caution and nothing is to be assumed, No conjecturers, no assumption, no deeming, no preponderance of probabilities while dealing with a case under section 482 Cr.P.C. If an offence under

78. (1991) 2 SCC 449.

79. 1989 Supp (2) SCC 385. Also see *State of Bihar v. Raj Narain Singh*, 1991 Supp (2) SCC 393.

80. 1991 Supp (2) SCC 412.

section 496 IPC is the allegation in the complaint, and the Magistrate is of the view that there is prima-facie case, the High Court is not to embark upon its own chartered course to correct the Magistrate. In *Chant Dhavan (Smt.) v. Jawaharlal and others*,⁸¹ the High Court relied on additional material, to quash the complaint. Such material was not admitted or executed by the complainant. No opportunity was given to the complainant, to rebut the veracity of the material. Still the High Court quashed complaint and criminal proceedings before the Magistrate. This attitude is not in consonance with the allowed latitude of the inherent powers and the Supreme Court held that the High Court's decision was not justified, because the High Court assumes certain things which are not revealed by the complaint. The High Court reached the territory outside the inherent power.⁸² This shows that graver the power, the more cautious the High Court ought to be.

"No inflexible guidelines or rigid formulae can be set out and it depends upon the facts and circumstances of each cases, where no such power should be exercised. High Court is asked to travel through a bridge in the course of administration of justice where there is no railings to hold on. If the High Court errs patently, the Supreme Court is there to correct, but the attitude of the Supreme Court while reversing the decision of the High Court on the onehand and deciding partly in favour of the accused on the otherhand, is inscrutable. The quashing of a complaint

81. (1992) 3 SCC 317.

82. *State of Haryana & Others v. Bhajanlal & others*, 1992 Supp (1) SCC 335.

for offences under section 484, and 107 IPC by the High Court is set aside by the Supreme Court, saying that High Court erred in quashing the complaint. But, the Supreme Court in the same instance says that the proceedings for offences under section 107 IPC need not be continued.⁸³

From the reasoning of the Supreme Court it is seen that High Court failed to see through the necessity of the proceedings for offences under section 474 IPC and the redundancy of offences under section 107 IPC. This shows that power under section 482 Cr.P.C. apparently negative an destructive, meant for quashing and curbing, has got positive dimension where ends of justice can be secured by severing the offences which are clubbed together in a single proceedings. So even with regard to the inherent powers of the High Court under section 482 Cr.P.C. the final arbiter is the Supreme Court. But, even the Supreme Court is under law. It cannot arrogate a jurisdiction to itself. This is evidenced by the decision in *Supreme Court Bar Association v. Union of India*.⁸⁴

Under law, Bar Council is vested with the power to adjudicate the professional misconduct of lawyers. The Supreme Court in a collateral way cannot adjudicate upon the conduct of a lawyer. Punishing the contempt of court is the court's prerogative. This is because, power of the Supreme Court under Article 129 is exclusively a prerogative to protect the majesty and the prestige of law. Article 142 contains a rare species of power to the Supreme Court to do complete justice. This constitutional imperative can-

83. Ref. *supra* n. 51

84. AIR 1998 SC 1895.

not be used to assume jurisdiction where none existed.

When a lawyer commits contempt of the High Court, it is contempt of a Court of Record. Quoting Master Jacobs the Supreme Court said:

"The power that courts of record enjoys to punish contempt is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being the authority of the judiciary to uphold, to protect and to fulfill the judicial functions of administering justice according to law in a regular orderly and effective manner".⁸⁵

This power is not derived from statutes, nor is it a common law cannon, it contributes to the flow of justice caused by the very concept of law. Punishment of contempt is a part of inherent jurisdiction. The Supreme Court has an inherent superior jurisdiction. A three Judges Bench of the Supreme Court held in *Re Vinay Chandra Mishra's case*,⁸⁶ that an advocate guilty of criminal contempt in obstructing the course of justice is liable to be punished for the contumacious conduct. So the court is constrained to invoke power under Articles 129 and 142. Contemner is punished with imprisonment. He is also punished with suspension of practice as advocate. Consequently, all posts held by the advocate stood vacated there at. The Supreme Court has thus reached areas of nonexisting jurisdiction. The Supreme Court corrected itself in *Supreme Court Bar Association case*⁸⁷. The

85. *Id.* at p. 1896.

86. (1995) 2 SCC 584.

87. *Supreme Court Bar Assn. v. Union of India*. AIR 1998 SC 1895.

power under Article 142 is to do justice in a case pending before it. The issue of professional misconduct, was never a pending matter before the Supreme Court. Power is given to the Bar Council to consider the aspect of professional misconduct. The Supreme Court has gracefully accepted this contention and corrected itself. Inherent jurisdiction does not include jurisdiction to usurp powers of statutory bodies like the Bar Council. What the Supreme court could have done at the first instance itself was to refer the matter to the Bar Council for appropriate action. Instead, the Court had assumed the role of the Bar Council. That is done under the special jurisdiction of Article 142⁸⁸. The scope of the power of the Supreme Court under Article 142 vis-a-vis the power of the High Court under has been elaborately discussed in *A.R. Anthulay's*⁸⁹ case. The contempt jurisdiction while underlining the special plenary power of the Supreme Court and High Court had its own peculiar quality as explained by the Supreme Court and corrected through the *Supreme Court Bar Association v. Union of India*⁹⁰.

In the above paragraphs the attitude of the Supreme Court towards the application of inherent powers by the High Court is explained. Now, based on the above exposition of the inherent powers as contained in the decisions of the Supreme Court the performance of the High Court is to be assessed.

A magistrate while taking cognizance of an offence is opening the vistas of prosecution to the accused. The Magistrate is discharging a grave and sensitive function. His duty is to give

88. Article 142 (1) empowers the Supreme Court to do complete Justice.

89. AIR 1992 SC 1701.

90. AIR 1998 SC 1895.

optimum consideration to all relevant factors. While initiating proceedings in a complaint the Magistrate has to conform to the requirements of the provision in Section 200 of the Code of Criminal Procedure. The provisions are mandatory and not discretionary. In *Mac Culloch v. The State and Another*⁹¹ the Calcutta High Court held that a nonconformity to the provision of section 200 Cr.P.C. by the Magistrate will be a non-conformity to the procedure established by law. The court quashed the proceedings initiated by a complaint alleging offences under sections 147, 323, 341, 448, 504, 427 and 506 of I.P.C. It was held that the intention of the legislature was to give effect to the protection of the accused persons against unwarranted complaints. So here, a failure to adhere to the import of section 200 of the Procedure Code by the Magistrate, justifies interference by the High Court. Insufficiency of averments and allegation made in the complaint can also prompt the High Court to exercise inherent powers. In *K. Narayana Swami and another v. P.N. Viswanathan and another*,⁹² the Madras High Court quashed the proceedings in respect of one accused only. The complaint alleged offences under section 420 IPC. The High Court held that there was no averment in the complaint to the effect that the accused indulged in any conspiracy or intentionally aided the act of cheating. The High Court relied upon the monumental decision of the Supreme Court in *R.P. Kapoor v. State of Punjab*⁹³. This decision of the Supreme Court contains an annotation of the inherent power of the High Court.

91. 1974 Cri.L.J. 182 (Cal.)

92. 1974 Cri.L.J 1524 (Mad.)

93. 1960 Cri.L.J. 1239.

The factor which should weigh with the High Court is the ends of justice. Relying on the above decision of the Supreme Court, the Karnataka High Court in *R.R. Diwakar and others v. B. Guttal*⁹⁴ held that it is open to the High Court to exercise inherent power even without the petitioner invoking the same. The court held, quashing a proceedings alleging offence under sections 465, 471 IPC, if no fraud or dishonesty is made out warranting conviction, the High Court could set aside the order under challenge. This could be done even sitting in revision. Demands of justice are put above technicalities of proceedings.

While judging a case the adjudicating person must show great reticence and equipoise. The judgment shall not be a repository of unnatural comments and remarks. When comments are directed against persons who are not before the court the degree of arbitrariness is enhanced. A Division Bench of the Himachal Pradesh High Court in *M/s. Dr. M.L. Ahuja and others v. The State of Himachal Pradesh*⁹⁵ expunged the remarks of the sessions court on the doctors who have conducted the post mortum.

In *Anujaram Parhi v. State of Orissa*⁹⁶ the petition was to expunge remarks in the judgment against the Doctor. Court had followed the decision rendered by the Supreme Court in *State of U.P. v. Mohammad Naim*,⁹⁷ that the High Court can exercise inherent jurisdiction to expunge adverse remarks either made by itself or by an inferior court. Court may do so to prevent abuse

94. 1975 Cri.L.J. 90.

95. 1975 Cri.L.J. 330 (H.P)

96. 1989 Cri.L.J. 447 (Ori.)

97. AIR 1964 SC 703.

of the process of court or to secure the ends of justice although the matter has not been brought before it in regular appeal or revision. If any remark in the judgment affects the person against whom it is made, the court must refrain from making so.⁹⁸ *C.K.P. Assankutty v. State Kerala*⁹⁹ the High Court expunged the remarks, made by the Magistrate against the petitioner, who was the counsel appearing for the 1st accused. A counsel cannot be blamed for the statement made by his client for getting the benefit under the enactment. The counsel has a duty to bring out the circumstances which entitle his client to get the benefit of enactment. The tests to be adopted for expunction of remarks discussed by the High Court relying on the earlier decisions of the Supreme Court.¹⁰⁰ *Ghuraiya alias Rohini Baiswar v. State of M.P.*¹⁰¹ it was held that court is empowered to make remarks against an investigating officer while appreciating evidence. The court must be however circumspect in making such remarks. The proper course in such cases is to refer the action of the investigating officer to the competent authority for disciplinary enquiry rather than making adverse comment against him. *Himachal Road Transport Corporation v. State of Himachal Pradesh.*¹⁰² the remarks made by the trial judge were such that if omitted there was no effect of crippling the judgment. But allowing them to exist has the effect of condemning a person without affording an opportunity of ex-

98. AIR 1940 (Lah.) 82

99. 1990 Cri.L.J. 362 (Ker.)

100. *State of U.P. v. Mohammed Naim*, Ref: 1964 (1) Cri.L.J. 549 - AIR 1964 SC 703.

101. 1990 Cri.L.J. 1129 (M.P)

102. 1990 CRI.L.J. 1156 (H.P)

plaining and defending himself which is against the canons of justice and fair play. The High Court expunged the remarks from the judgment. In *B. V. Naik v. State of Karnataka*¹⁰³ the court while convicting the accused on the basis of evidence before it made certain uncalled for remarks about the honesty and integrity of a police officer. The Police officer was not having any opportunity to meet those remarks. So the remarks were expunged.

In certain cases observations and comments are drastic and vituperative. In *Javadhi Sessa Rao v. State of A.P.*,¹⁰⁴ in a murder trial, because of the personalities involved and notoriety of accused as well as deceased, investigation could not be completed swiftly and all evidence could not be brought to light. The remarks of the trial Judge against investigating officer that accused were falsely implicated by him at the instance of some Ministers and that he was guilty of sections 193 and 196 IPC were held *ipso facto* unjust. The remarks were based on testimony of witness who turned hostile. Such remarks stigmatise the conduct of investigating officer and the same were directed to be expunged. The irony is that the High Court also is found to be violating this basic norm of justice. In a petition under section 482 Cr.P.C. to expunge remarks by the High Court against a sessions judge, the High Court dismissed the petition. In *Kashi Nath Roy v. State of Bihar*,¹⁰⁵ the Supreme Court allowed the appeal and expunged the remarks. The High Court made adverse comments against a session judge for granting bail on the ground of

103. 1992 Cri.L.J. 3441 (Kar.)

104. 1995 Cri.L.J. 897 (A.P)

105. (1996) 4 SCC 539.

an infirmity in evidence in the criminal trial. The Supreme Court held that it was not a glaring mistake or impropriety so as to attract adverse remarks and disciplinary action.

In *Dr. I.B. Gupta v. State of U.P.*¹⁰⁶ the Supreme Court allowed the appeal by expunging the adverse remarks made by the High Court against a doctor. The High Court observed that a doctor was not fit to be retained in Government service while discussing the evidence in appeal in connection with the investigation of a murder case. It was held that observation amounted to condemning the doctor without being heard. The Supreme Court had a number of opportunities to consider the scope of inherent powers in this area. In *Dr. Raghubir Saran v. State of Bihar & another*,¹⁰⁷ the Supreme court considered the inherent powers of the High Court to expunge the adverse remarks made by the subordinate judiciary in their judgments. In this case the order of Munsiff - Magistrate made adverse remarks against the appellant who was not a party to the proceedings. The Supreme Court had categorically endorsed the power of the High Court even holding to the extent that the High Court has inherent power to expunge objectionable remarks in a judgment or order of subordinate court against a stranger, after it has become final, if the interest of the party concerned would irrevocably suffer. The Supreme Court had adverted to the earlier decision diagnosing the inherent power of the High Court in *Emperor v. Khwaja Nazir Ahmad and Jai Ramadas v. Emperor*.¹⁰⁸ Probably the most com-

106. 1994 SCC (Cri.) 691.

107. AIR 1964 SC 1

108. AIR 1945 PC 18 & AIR 1945 PC 94

prehensive views of the Supreme Court are contained in the decision in *State of Uttar Pradesh v. Mohammad Naim*¹⁰⁹. The Supreme Court enumerated the categories of circumstances which would ordinarily be ideal for the High Court to use the inherent power. In *The State of Assam v. Ranga Muhammed & others*,¹¹⁰ the Supreme Court had to consider the remarks made by the High Court against the State in the matter of consultation with the High Court regarding transfer of district judges. While discussing the generality of the powers the Supreme Court held that inherent power to expunge remarks is an extra-ordinary power and can be exercised only when a clear case is made out. The question to be considered is not whether another judge would have made those particular remarks but whether the Judge in making those remarks has acted with impropriety.

It is thought provoking to see the vulnerability of the High Court in this respect were the High Court itself commits the error of making comments violating the principles of natural justice. In *Jage Ram v. Hans Raj Midha*.¹¹¹ The High Court in a Habeas corpus proceedings made adverse remarks against police officers. The Supreme Court held that for expunction of remarks made in a judgment, it is necessary that remarks must be such as can be described as unwarranted, unnecessary or irrelevant or can be characterised as generalisation or of a sweeping nature. The court had followed the dictum laid down in *State of U.P. v. Mohammad Naim*¹¹².

109. AIR 1964 SC 703.

110. AIR 1967 SC 903.

111. AIR 1972 SC 1140

112. AIR 1964 SC 703

In spite of the above exhortations of the Supreme Court the High Courts are prone to go at a tangent. In *State of Maharashtra v. Ramesh Narayan Patil*¹¹³ the Supreme Court considered adverse remarks passed by the High Court against a police officer. The High Court had made observations against a police officer directing the Government to withdraw from his purview certain powers under the Bombay Police Act. The officer repented for the faults on his part and tendered unconditional apology. He also had undertaken to assure that recurrence of mistake will be avoided. The Supreme Court accepted the apology and remarks were expunged. In *State of Maharashtra v. Dr. Budhikota Subbarao*,¹¹⁴ the High Court made adverse comments against the State and Public Prosecutor while deciding the case. The ire of the High Court was in respect of the charge-sheet. The main issue in this case is not in respect of quashing the charge sheet. The propriety of a Judge of the High Court in deciding the case by making adverse remarks against the Public Prosecutor and State is held wrong by the apex court. In *K.P. Tiwari v. State of Madhya Pradesh*¹¹⁵ adverse remarks were made by High Court in its judgment against a District Judge. The High Court while passing an order of reversal of the lower court's order granting bail to accused persons in a case, observed in an adverse manner against the judge personally. Remarks were made about interestedness and motive of lower court in passing an unmerited order. This practice was deprecated by the Supreme Court for making remarks in judgment which are improper and expunged

113. AIR 1991 SC 1722.

114. (1993) 3 SCC 339.

115. AIR 1994 SC 1031.

the remarks as it would downgrade judiciary.

In *Pammi alias Brijendra Singh v. Government of Madhya Pradesh*¹¹⁶ the High Court made adverse remarks on a Sessions Judge while reversing an order of acquittal. In the appeal by the accused it was held by the Supreme Court regarding the adverse remarks while dealing with orders of lower courts. According to the Supreme Court the High Court should have avoided unsavory remarks against a judicial personage of the lower hierarchy. The opinion of the Supreme Court discussed above show that even the High Courts are not fully disciplined to wield judicial powers. The paradox is that the High Court which is having the inherent powers to secure the ends of justice oversteps its limits to defeat the ends of justice. Sometime the rashness of the High Court judge transcends the limit of all sense of scruples. A case to the point is *State of Rajasthan v. Prakash Chand and others*¹¹⁷. Adverse comments were made by a single judge of Rajasthan High Court against the Chief Justice and other judges of the High Court while deciding a criminal revision petition. Notice of contempt also was directed to be issued to Chief Justice. The Supreme Court rose to the occasion to open a few lessons in decorum and propriety to the High Court judge. Intemperate comments and disparaging and derogatory remark by single Judge against Chief Justice and brother judges, is a case of lack of judicial restraint and amounts to abuse and misuse of judicial authority and betrays lack of respect for judicial institution. The consternations felt by the Supreme Court was due to the comments

116. AIR 1998 SC 1185.

117. AIR 1998 SC 1344.

in respect of drawal of daily allowance for residence by Judges of the High Court. They were factually and legally incorrect, and the same were liable to be quashed and expunged. The Judge while making such comments exceeded all restraints, judicial probity and authority and seemed to be reckless in his manner by assuming powers that are not vested with him.

In *Kesava Panicker v. State*¹¹⁸ it was held that the remarks were unnecessary. It was held by the Travancore-Cochin High Court that the High Court can expunge remarks in a judgment of a court subordinate to it, when the words objected to are not relevant to the case and are of a scandalous or very improper nature. The High Court acts under this power to judicially correct the subordinate judges. The rule laid down in this case state the law clearly. The court also relied on several decisions holding the field.¹¹⁹ In *Persy Gerala Papali v. Abraham*¹²⁰ expunging the remarks the High Court held that language employed in judgments to be sober, restrained and dignified. Aspersion are not to be cast on the character of any person unless necessary for proper disposal of case and is arranged by the evidence. A farsighted and visionary view is held by the Kerala High Court in *Jayaraja Menon v. K. Gheevarghees*¹²¹. It was held that if the remark is made against a person who is not a party and if such a remark is unjustifiable or if it does not form the main fabric of the judgment, or that it is separable and is irrelevant or where the attack

118. 1954 KLT 329 (T.C)

119. AIR 1927 All 193; AIR 1953 Bom. 152. AIR 1954 Bom. 65; AIR 1928 Lah. 740. AIR 1939 Lah. 174; AIR 1944 Mad. 320.

120. 1963 KLT 312.

121. 1972 KLT 691.

will harm the reputation of a person or affect him officially or jeopardize his means of livelihood, then the High Court can interfere. For such effective interference a cogent case must be made out. Sometimes the remarks may require to form a part of the judgment. In *Sujatha v. State of Kerala*¹²² the Kerala High Court considered the question whether the officer whose judgment/order is criticised, needs to be heard. It was held that only when there is personal remarks against the officer concerned, she/he must be heard. Otherwise, the remarks can be taken on part of judicial function. Adverse remarks when it is an integral part of the judgment, without which the conclusion cannot be reached, prayer for expunction cannot be allowed.

Interference by the High Court against adverse remarks in the lower courts judgment is not as a matter of course. Since the inherent jurisdiction itself is guided by consideration of equity here also discretion plays a definite role. If remarks are not wholly irrelevant or unjustifiable the applicant does not get the benefit of inherent powers. In *G.S. Shekhar v. State of Himachal Pradesh*¹²³ the remarks against the witness in the judgment were held to be not under any exceptional circumstances. Inherent jurisdiction could not be used. If an authority does something not authorised by law the official would not get protection of inherent jurisdiction. In *State of Orissa v. Raghunath Jena & others*¹²⁴ the Magistrate made certain remarks against the excise superintendent. The excise authorities seized goods not authorised by law. The ac-

122. 1989 (1) KLT 177.

123. 1976 Cri.L.J. 95 (H.P)

124. 1978 Cri.L.J. 1059 (Ori.)

tion was irresponsible enough to invite mild comments in a judicial order. It cannot be treated as objectionable and hence not warranting interference of the High Court on the ground of securing the ends of justice.

The strictness with which the court views the gravity of inherent powers is evident when it declined to interfere. The High Court imposes restraint to the extend of its own inherent powers. In *S. Nachimuthu Gounder v. Chellamma & others*¹²⁵ it was held that on facts inherent powers could not be exercised. Nor do the observations made by criminal court bind on civil court adjudicating a connected proceedings. It was also held that a civil suit was not barred by any observation made in a criminal case and it is for the civil court to try the issue before it and to come to an independent conclusion of its own decisions on the available materials placed before it. In the impugned observations the view has been expressed by the judge as the facts prima facie appeared to him. Therefore, the judge had not finally determined the issue regarding the facts of the case pending before the civil court. Also, the High Court after testing the impugned the observation against the authoritative judicial pronouncements¹²⁶ held that those observations would not fall under any exceptional category so as to enable the High Court to invoke inherent powers.

If the malfunctioning of a judicial officer is commented upon by the High Court the former has no right to get a clean chit. In *Intelligence Officer, Narcotic Control Bureau v. Kamruddin Ahmad*

125. 1977 Cri.L.J. (NOC) 90 (Mad.)

126. 1964 Cri.L.J. 549 SC; AIR 1951 Mad. 344; AIR 1935 Mad. 429; AIR 1966 Mad. 425.

*Shike & another*¹²⁷ the High Court considered the expunging of objectional matter from the record. Gross error was committed by the subordinate court in passing certain order infavour of the accused in a case under NDPS Act. Similar gross error was committed by that court earlier also. The High Court observed that it was yet another extra ordinary order passed by the same judge and that it had shown total non application of mind and was wholly perverse. It was held that High Court was only performing its duty to point out the error in the approach of the subordinate court and to sound a word of portion. It was also held that observation did not amount to adverse strictures and did not warrant expunction.

In *Assankutty v. State*¹²⁸ the High Court had an occasion to consider the lack of ethics in the conduct of the proceedings. In a Food Adulteration case the same counsel appeared for vendor and manufacturer. The vendor's case was that there was a Warranty and the same was said to have been entrusted to the counsel. The counsel did not produce the same. The vendor was convicted. In appeal the case was remanded. After remand, the accused gave evidence against the former counsel at the instance of the latter counsel. The court criticises the later counsel for the Impropriety and expunged the remarks. This was because the remarks made by the Magistrate against the counsel was never needed for the decision of the case. Judicial pronouncements must be judicial in nature, having the required sobriety, moderation and reserve. The court quoted from the Supreme Court de-

127. 1994 Cri.L.J. 1069 (Bom.)

128. 1990 (1) KLT 207

cision in *State of U.P. v. Mohammad Naim*.¹²⁹

Interest of justice is not a mirage. It is to be realised through responsible interaction with the situation. Similar to the quashing of adverse remarks is the applications of inherent powers at the investigation state of a case. Quashing an F.I.R. or interference by the High Court when the investigation is still on is normally not done. But, if ends of justice demands that if the investigating agency is allowed to continue with the investigation and harass a citizen on the strength of an FIR which does not disclose a cognizable or non-cognizable offence, then the High Court shall not be shy to press into action its inherent powers. The Punjab and Haryana High Court in *M/s Balwant Sing v. District Food and Supplies Controller and another*¹³⁰ quashed the proceedings alleging violation of clauses 9, 10 and 11 of the Punjab Control of Bricks Supply Order 1972. The Court relying on the Privy Council decision in *Emperor v. Nazir Ahammed*¹³¹ held that in the interest of justice inherent powers could be exercised even at the stage when only an FIR is lodged with the police.¹³² Interference with Investigation without compelling reasons is not admitted. Investigation is a Statutory function of the police supervised by the Government. In *M/s. Jayant Vitamins Ltd. v. Chaitanya Kumar and another*,¹³³ the Supreme Court found fault with High Court in quashing the investigation. Investigation against the accused under sections 420, 408 read with 34 of IPC was quashed by the High Court

129. AIR 1964 SC 703.

130. 1975 Cri.L.J. 687 (P&H).

131. AIR 1945 PC 18.

132. Refer also *Veeramani and others v. Superintendent of Police, Dharmapuri and others*, 1977 Cri.L.J. (NOC) 109 Mad.

133. 1992 SCC (Cri) 793.

in a number of cases.¹³⁴ In *Mrs. Rita Wilson v. State of Himachal Pradesh*¹³⁵ FIR lodged by a judicial officer for not permitting his car to be parked inside a school premises wherein his wife worked. The Magistrate ordered to take into custody the gate, key and chain for investigation. The High Court quashed the FIR, which otherwise would have led to a frivolous proceedings. For investigation there must be reasonable suspicion of offence. If offence is not made out from records proceedings can be quashed. Even though investigation is a territory occupied by the executive, pitted against the interest justice, for securing which the inherent powers of the High Court are saved an FIR does not have sanctity. In *Jitender Mohan Gupta v. State*¹³⁶ the High Court quashed the FIR. The petitioner contended that he was falsely implicated and that FIR did not constitute any offence. The plea of the prosecution that Challan was filed during the pendency of proceedings for quashing FIR was not held sustainable. In *Belala alias Raja v. State of Orissa*¹³⁷ the High Court had to face the grievance of a father alleging the kidnapping of his daughter. The girl was a major and had eloped with the accused out of her own volition. They both got married and were living happily together. No offence was committed. The proceedings initiated only to violate the freedom of the accused. So the High Court quashed the FIR and investigation

134. The Court relied on *State of West Bengal v. Swapan Kumar Guha and others*, 1982 SCC (Cri) 283; *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 and distinguished *State of U.P. v. R.K. Srivastava*, AIR 1989 SC 2222.

135. 1992 Cri.L.J. 2400 (H.P.).

136. 1992 Cri.L.J. 4016 (Del.).

137. 1994 Cri.L.J. 467 (Ori.)

In *Mange Ram v. State of Haryana*¹³⁸ the FIR was lodged against the petitioner for violation of provisions of HDRUA Act. Section 7 of the Act requires licence for advertising sale of a plot in colony. Advertisement made by the petitioner is not in respect of any colony. There was no relationship of property deals with any colony as owner, share holder or proprietor. The FIR lodged by District Town Planner being false and frivolous was held liable to be quashed.

In *M/s Apronto Tools Pvt. Ltd. v. State*¹³⁹, it was held that by merely filing a complaint and then seeking several adjournments for filing the final report would erode gravity of the procedure. It was a proceedings alleging offences under sections 78 and 79 of the Trade and Merchandise Marks Act, and section 63 of the Copy Right Act, section 420 of I.P.C. The Interim report was submitted by police. The final report was not submitted and several adjournments taken. The petitioner was likely to suffer great lose in case no early action taken. The High Court issued direction to the Magistrate to examine and enquire into case himself for deciding, if there was sufficient ground for proceeding in matter. An FIR registered in violation of the provisions of the Code is liable to be interfered with. In *Paras Ram v. State of Haryana*¹⁴⁰ the FIR was quashed. The application under Section 340 and 195 Cr.P.C. was filed before court. Section 340 Cr.P.C. requires an enquiry and a complaint in writing to be made prayer to initiating procedure on the basis of the enquiry. The Court without making enquiry into offence alleged send the said application to police for registra-

138. 1994 Cri. L.J. 1427 (P&H)

139. 1994 Cri.L.J. 421 (Del.)

140. 1995 Cri.L.J. 1603 (P&H)

tion of a case. The FIR registered in derogation of provision under section 340 Cr.P.C. was held liable to be quashed. Similarly vague and ill founded allegations in FIR would only further weaken the case. The connected events proved the duplicity of the prosecution. In *re. Sankar Gope*,¹⁴¹ the FIR was filed for offences of cheating and misappropriation. Allegations in FIR were vague and did not make out the alleged offences. The FIR and criminal proceedings were held liable to be quashed. The High Court granted bail to the accused who was in Jail. But he was rearrested in connection with another case without informing the court. It was held illegal and superintendent of Jail was directed to release the accused and report the same to the court. He was also directed to show-cause why criminal contempt should not be initiated. It was also held that compensation be ordered to be paid by him/or by state.

In *Banswara Syntex Ltd. and others v. State of Rajasthan and another*¹⁴² the Rajasthan High Court had to consider the investigation proceedings commenced in violation of the notification issued by the commissioner. Proceedings which are being taken against a person under the temporary statute will *ipso-facto* terminate notification which automatically comes to an end. The investigation can be proceeded. To secure the ends of justice, it is expedient and necessary to quash FIR and also the investigation. In this case a notification under clause 16 of the order of 1986 was issued having duration till March, 1995. But the orders has been repealed with effect from 7.12.92 the court considered

141. 1995 Cri.L.J. 1358 (Cal)

142. 1995 Cri.L.J. 2969 (Raj)

it as a temporary statute which is having no operation after the expiry of the said notification. In *Ravinder Singh v. State of Punjab*¹⁴³ the challenge was against FIR and proceedings. It was held that an offence of criminal conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence. The court also pointed out that only when challan has been put in court, the complaint or FIR should not be quashed and it should be left from the discretion of the trial court. But, in cases where on reading of FIR, if believed in toto, does not constitute any offence, it will be an abuse of the process of court to compel to go through the trial. In *K. Srinivas v. State of Karnataka*¹⁴⁴ the petitioners were undertaking quarrying operations in certain land. They were proceeded against for alleged contravention of the Mines and Minerals Act. The FIR was lodged by Assistant Superintendent of police who was not competent to exercise powers in view of notification issued by State Govt. Also no material showing that he has been authorised by competent authority to do so. It was held that cognizance cannot be taken on the basis of information lodged by Assistant Superintendent of Police. So the FIR was quashed.

In a matter which is not within the purview of any statute¹⁴⁵ and with no material to hold one guilty of the offence¹⁴⁶ or where

143. 1995 Cri.L.J. 3297 (P&H)

144. 1995 Cri.L.J. 3810 (Kar). See also: *Daulat Ram v. State of Punjab*. AIR 1962 SC 1206; *Dr. Sharda Prasad Sinha v. State of Bihar*. AIR 1977 S.C. 1754.

145. *Binode Kumar Laddha v. State of West Bengal*, 1996 Cri.L.J. 992 (Cal)

146. *Siddaraj & others v. State of Tamil Nadu*, 1996 Cri.L.J. 1024 (Mad.)

the dispute had already been settled¹⁴⁷, there is no meaning in continuing the proceedings. The FIR can be quashed in the interest of justice. In *Indian Association of Lawyers v. State of Andhra Pradesh*¹⁴⁸ the FIR was filed by police to malign a judicial officer. The High Court while quashing the FIR observed that subordinate judiciary be protected from interference or attack by police authorities. Also the High Court had drawn attention to the general guidelines issued by the Supreme Court in 1994 (4) SCC 687 to be observed by Police when complaint is made against a judicial officer for any offence.

The inherent power is with the court. The general belief is that where interest of justice suffers inherent powers can interfere. Technical questions are not a bar. Viewed from this angle the decision of the Division Bench of the Jammu and Kashmir High Court in *Municipality of Jammu v. Puran Prakash*¹⁴⁹ fails to carry conviction. In appeal, a Single Judge bench of the High Court reduced the conviction of the accused of offences under section 16 of the Jammu and Kashmir Prevention of Food Adulteration Act, and expunged the remarks in the judgment of the trial court. But, the Division Bench held that it is not the province of the Single Judge to have expunged the remarks made by the trial court against the public analyst. According to the Judges of the Division Bench, it could be done by the High Court while exercising its discretion under inherent powers. The court set aside

147. *Mohinder Sing Kosla v. Union Territory, Chandigarh*, 1996 Cri.L.J. 1247 (P&H)

148. 1996 Cri.L.J. 2360 (A.P). See also: *U.P. Judicial Officers Association v. Union of India*, 1994 (4) SCC 687; *Delhi Judicial Service Association v. State of Gujarat*, 1991 Cri.L.J. 3086.

149. 1975 Cri.L.J. 677 (J&K)

the order of the learned Single Judge expunging the remarks. The remarks were held to stand unless expunged on proper application made. This attitude of the court amounts to putting an embargo on the inherent power of the court. If the remarks made are unnecessary to the ends of justice no technique shall dog the High Court's inherent power to expunge the same¹⁵⁰. When gross injustice stares at our face even well established rules would give way to inherent power. For instance the normal rule is that inherent powers are not exercised to direct rehearing of an appeal. But, in *Bombay Cycle and Motor Agency Ltd. v. Bhagawan Prasad Ramraghubir Pandey and others*,¹⁵¹ a Division Bench of the Bombay High Court held that the High Court has the inherent power to make an order that the appeal be reheard in a proper case where there is violation of the principles of natural justices. Order so obtained is an abuse of the process of the court. To secure the ends of justice, it is necessary to rehear the appeal.

k. inherent powers for constructive purpose - necessity of positive judicial thinking

A positive judicial thinking is necessary to use the inherent powers for constructive purpose. The interpretation of the laws are to be checked by the application and vision of Judges who has to exercise inherent powers. For instance, a Division Bench of the Calcutta High Court in *Suprova Bose v. The State*,¹⁵² held that absence of specific provision should not trammel the four-

150. Ref. *supra* n.95.

151. 1975 Cri.L.J. 820 (Bom.)

152. 1976 Cri.L.J. 313 (Cal.)

tain of justice and stand in the way of the court granting relief. This is a positive approach because inherent powers of the court are to be exercised *ex debito justitiae*. This power is not to be used to override any express provision of the laws or where another remedy is available. But in a situation where the petitioner is entitled to a right but is unable to get a relief and there is no known law by which a relief can be granted, invoking inherent powers of the court will not amount to overriding of any express provision of law. This is because ends of justice is greater than the ends of law. Absence of specific legal provision is no excuse for denying justice. For instance, there is no provision for substitution of names in the procedure Code, also no provision bars substitution. In such situation, the Calcutta High Court held in *Bhupendra Nath Barik v. Brahmachari Giri and others*,¹⁵³ that, the High Court has got jurisdiction to hear the parties to secure the ends of justice.

I. inherent powers available even while exercising a specific statutory power

The inherent powers are there with the court even when the court is exercising a specific statutory power. Therefore, when an appeal is heard by the High Court to meet with unforeseen situations arising out of the proceedings in the court inherent powers could be used. In *Jamshed v. State of U.P.*¹⁵⁴ the Allahabad High Court held that law gives authority to make further enquiry. The matter involved was regarding the taking of blood of the accused and its infraction of Article 20(2) of the Con-

153. 1976 Cri.L.J. 552 (Cal.)

154. 1976 Cri.L.J. 1680 (All.)

stitution. The Court held that Section 367(1) of the Code of Criminal Procedure, gives power to the authorities as well as ancillary power to the High Court in the case of death sentences awarded. To exercise such power and make orders the High Court could apply its inherent powers. The court dismissed the appeal against conviction under sections 294 and 302 of I.P.C. with modification. Thus, the import of the provision is to secure the ends of justice. Formalities and technicalities occupy only a back seat. In *Jogendranath Biswas v. Nityananda Haldar and others*,¹⁵⁵ the Calcutta High Court held that the inherent powers of the High Court could be invoked to treat an application in revision as an appeal when the petitioner wrongly filed a revisional application without preferring an appeal. The inherent power of the High Court is a vast repository of powers. A Division Bench of the Calcutta High Court held in *Biswanath Agarwall and others v. The State*¹⁵⁶ held that indiscriminate or frequent use of inherent powers to interfere with interlocutory orders would obviously render nugatory the bar put by section 397(2) of the Procedure Code. It is inadvisable to expand the application of inherent powers to areas occupied by specific provisions. The Court had relied on major decisions of the Supreme Court. But, this is not a hard and fast rule. The situation can be made flexible by question of the ends of justice. If the allegation raised in the complaint or the initial deposition does not constitute an offence the High Court should exercise its inherent powers. In *Manoranjan Sinha v. Bishamborlal Saboo*,¹⁵⁷ the court quashed the complaint filed alleging offences

155. 1975 Cri.L.J. 1266 (Cal.)

156. 1976 Cri.L.J. 1901 (Cal.)

157. 1976 Cri.L.J. 1622 (Gau.)

under section 420 IPC. The offence alleged was not disclosed either in the complaint or deposition. Therefore, to secure the ends of justice and to prevent the abuse of the process of the court, inherent powers could be exercised.

m. inherent powers to have moderating and tempering effect on criminal justice administration

The inherent powers of the High Court are intended to have a moderating and tempering effect on the administration of criminal justice. The larger object of the power is to prevent the development of any clog on the process of criminal justice administration. The trial magistrates while issuing orders would not be advertent to all relevant factors. This may prejudicially affect one of the parties. A wife is granted maintenance by the Magistrate. Husband files a subsequent application alleging that the wife was not entitled to maintenance because of adultery and remarriage. But, the Magistrate directs the husband to deposit maintenance amount without considering the question of marriage. It is a situation where the scope of inherent powers of the High Court is contemplated to secure the ends of justice. In *Mobinur Rahman v. Bibi Afgana Khatoon*,¹⁵⁸ the High Court upheld the order of the Magistrate and directed the Magistrate to consider the question of maintenance. The Magistrates in their enthusiasm would proceed on fields specifically outside the sphere of criminal justice. When a civil suit is pending in respect of a property the Magistrate shall not pass an order under section 145 of Cr.P.C. (1898) and appoint a receiver. In *Gajpati v. Sardar Uttam Singh*¹⁵⁹ the

158. 1977 Cri.L.J. Nos, 159 (Patna)

159. 1977 Cri.L.J. (NOC) 252 (MP)

High Court held that it was improper exercise of power by the Magistrate. The order of the Magistrate was struck down. Similarly the trial courts are not expected to make innovative strides or to swim against the currents of criminal jurisprudence which are well established. In *State of Maharashtra v. Tukaram Shiva Patil and others*,¹⁶⁰ a Division Bench of Bombay High Court cancelled the bail granted by the Magistrate in a proceedings alleging the offence under section 302 I.P.C. It was held that the High Court could cancel the bail in exercise of its inherent jurisdiction apart from the power under Article 227 of the Constitution. This is over and above the power under Section 439(2) of the Procedure Code.

n. inherent powers superior to the mandate of the specific provision in the code

The magnitude of the inherent powers is superior to the mandate of the specific provision of the Code. One of the well defined positions in the application of inherent powers is that where there are matters specifically covered by provisions of the Code, it does not apply. Another position is that order of interlocutory powers. But, these are not immutable rules. When interest of justice is at stake the High Court would not pay heed to the hiatus of legal provisions¹⁶¹. The thinking is that the provisions in section 397(2) Cr.P.C. cannot be accepted as a bar on the High Court exercising inherent powers when serious, exceptional and unusual features in the case brought before the Court warrant

160. 1977 Cri.L.J. 394 (Bom.)

161. *Kamal Krishna De v. State and another*, 1977 Cri.L.J. 1492 (Cal.)

such an interference¹⁶². In *E. Kunjanbu Nair v. State of Kerala*¹⁶³ the Kerala High Court in exercise of inherent powers quashed an order passed under section 116(3) Cr.P.C. to execute money bond. The order of the Magistrate was without complying with the proviso to the section 116(3) Cr.P.C. This shows that the interest of justice is having precedence over the intricacies of law. In *M/s. Prestolite of India Ltd. v. The Munsiff Magistrate*¹⁶⁴ the court reiterated that section 397(2) Cr.P.C. does not prohibit the High Court from passing appropriate orders under section 482 Cr.P.C.

The bar under section 397(2) Cr.P.C. is only where/when the court below passes the interim order with proper jurisdiction. The Orissa High Court in *Ranjit Kaur Samanjoy v. State of Orissa*¹⁶⁵ quashed the proceedings under section 107 Cr.P.C. holding that there was no materials to proceed against the accused¹⁶⁶.

The inherent powers are meant for overcoming unforeseen hindrances in the judicial process. It is an unusual power to face abnormal situations. So, rules applicable for normal situations may discount the applicability of inherent powers. But, the facts and circumstances of a case may throw up unusually delicate position where justice is feared to suffer. Then as a levelling force the inherent powers descent on the scene.

162. *Bhiku Ram v. Delhi Municipality*, 1977 Cri.L.J. 1995 (Delhi)

163. 1978 Cri.L.J. 107 (Ker.)

164. 1978 Cri.L.J. 538 (All.)

165. 1978 Cri.L.J. 687 (Ori.)

166. The court relied on *State of Karnataka v. L. Muniswamy*, 1977 Cri.L.J. 1125; *Amarnath v. State of Haryana*, AIR 1977 SC 2185; *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47, *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866.

The Jammu and Kashmir High Court in *Gulam Mohammed v. Hari Chand*¹⁶⁷ quashed the orders passed by the Magistrate under section 145 Cr.P.C. This is inspite of the fact that the proceedings under section 145 Cr.P.C. are purely of summary nature and in normal course it would not be interfered with. But, patent irregularity committed by the Magistrate is a solid invitation to the inherent powers of the High Court. The purpose of all procedure is dispensation of justice and any procedure enabling this is permissible unless it is prohibited. The Allahabad High Court in *Mahesh Kumar v. The State*¹⁶⁸ set aside the decision of the sessions Court which declined to grant the prayer to convert a Revision petition to Appeal. The Sessions Court could be faulted because the subordinate courts do not have inherent powers. The High Court could fill the void by applying inherent powers. So, inherent powers are not meant only for quashing a proceedings. It is envisaged to give positive direction also. Even where the High Court declined to quash a proceedings a direction could be issued in the interest of justice. In *Maheswari Oil Mills v. State of Bihar*¹⁶⁹, Patna High Court declined to quash the proceedings under the Edible oil orders but directed to release the goods.¹⁷⁰

If put to use with vision and imagination, inherent powers can achieve a salutary purpose in criminal justice administration. The success of the application of inherent powers depends on identifying fit cases for its use. This is because, the power once used

167. 1978 Cri.L.J. 299 (J&K)

168. 1978 Cri.L.J. 390 (All.)

169. 1978 Cri.L.J. 659 (Patna)

170. Reliance was made on *Emperor v. Kwaja Nazir Ahamad* AIR 1945 P.C. 18, *State of W.B. v. S.N. Basak*, AIR 1963 S.C. 447 & *Jehan Singh v. Delhi Administration* AIR 1974 SC 1146

destroys the very foundation of the proceedings. Proceedings, which if allowed to continue would jeopardize the interest of justice, are to be quashed by invoking inherent powers. In this respect no law could fetter the Power of the Court. A Division Bench of the Rajasthan High Court in *Bhanvar Lal v. Madan Lal*¹⁷¹ answered a reference in respect of the power under section 482 vis-a-vis under section 397(2). It was held that the inherent powers of the High Court under section 482 Cr.P.C. is not controlled by section 397(2) in respect of interlocutory orders. The wordings of section 482 establishes this fact. Two provisions relate to the jurisdictions and operate in different fields. Both are independent powers which would not overlap. What is significant is not so much the interlocutory character of the order as the infraction it has on the ends of justice, or the presence of a *prima-facie* case.¹⁷² There are statutes, the orders passed under which, having no provision for revision. Then also, the bar under section 397(2) can be ignored. In *K.P. Bhaskaran v. R. Sen*¹⁷³ the Calcutta High Court set aside the order partly in a proceedings under section 145 (1) of the Merchant Shipping Act. The Act did not provide revision and hence even if interlocutory order is passed inherent powers are not barred. The arbitrary and illegal orders, even if interlocutory in nature, passed by a Magistrate seek refuge under section 397(2) Cr.P.C. In *Pranab Kumar Mukherjee v. Yusuf Ali Bhar*¹⁷⁴ the Calcutta High Court set aside the order of the Magistrate in section 145 Cr.P.C proceedings.

171. 1978 Cri.L.J. 697 (Raj.)

172. *Shri Ram v. Thakurdas*, 1978 Cri.L.J. 715 (Bom.)

173. 1978 Cri.L.J. 1493 (Cal.)

174. 1979 Cr.L.J. 95 (Cal.)

The Magistrate by an interlocutory order removed the joint receiver appointed by Civil Court¹⁷⁵.

- o. **sensibilities of justice to be given priority over the semantics of law**

Sensibilities of justice are given priority over the semantics of law. The inherent power is provided to do complete and substantial of law. The power is to do complete and substantial justice, *ex debito justiae*. Ordinary men are not concerned with the technicalities and nuances of legal terminologies like inherent power, interlocutory order, revision, review, recall, remand, appeal etc. The Power of the High Court is inherent in the court and it is open ended. The High Courts have been vigilant to keep the flame of inherent powers burning and are not to be eclipsed by provisions like sections 397 and 399.¹⁷⁶ Similarly, even if the Code is silent about it, the High Court under inherent power could remand a case.¹⁷⁷ The open ended character of the inherent powers enable the High Court to correct the misconceived proceedings. A minor partner is not personally liable for the transaction of the firm. He is a beneficiary to the profits of the firm. In *P. Krishnamurthy v. Asst. Collector of Central Excise*¹⁷⁸.

175. Reference to *Kurukshethra University v. State of Haryana*, AIR 1977 SC 2229 & *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47

176. *Ram Prakash v. State of H.P.*, 1979 Cri.L.J. 750 (H.P); *N.C. Nagpal v. State*, 1979, Cri.L.J. 998 (Cal.), *Ravi Singh and another v. State of Bihar*, 1980 Cri.L.J. 330 (Patna), *S.K. Mahajan & others v. Municipality, Jammu and others*, 1982, Cri.L.J. 646 (J&K)

177. *Praful Choudhary v. Sate*, 1979 Cri.L.J. 103. (Del.)

178. 1979 Cri.L.J. 297 (Mad.), the Madras High Court quashed the proceedings initiated under Section 9(d)(ii) of Central Excise Act and Rule 52A of Excise Rules.

The power under section 482 Cr.P.C. shows more affinity to the sociology of law than the technology of law. Institutions of justice should not be agencies of oppression. Especially in criminal justice system. The Criminal Rules of Practice require only a memo of appearance to be filed. If the Magistrate is to deny exemption to the accused, under section 317 Cr.P.C. on the ground that the Pleader has not filed Vakkalath it amounts to injustice. In *K. Subba Rao v. State*¹⁷⁹, the Karnataka High Court remanded the case for fresh disposal by invoking inherent powers. The fact that the order of the Magistrate was an interlocutory one was not to obstruct the course of justice. An order described as interlocutory in nature is therefore interfered with under section 482 to prevent the abuse of the process of the court.¹⁸⁰ It is not incumbent upon the High Court to meditate over the full import of section 397(2) Cr.P.C. The nature of the order and the mischief it creates are to be examined. Then to secure the ends of justice, as was held in *Madhu Limaye v. State of Maharashtra*¹⁸¹.

p. delayed prosecution - an abuse of the process of the court

Delayed and lame prosecution are sources of abuse of the process of the court. In *Jagmohan v. The State*¹⁸², the Delhi High Court held that prosecution launched under section 473 IPC. after the expiry of limitation, prescribed under section 468 Cr.P.C.

179. 1979 Cri.L.J. 369 (Kar.)

180. *Mahadev Viswanath Parulekar v. Luis P. Lobo and another*, 1980 Cri.L.J. 944 (Goa). The High Court remanded the matter for de novo consideration by the Magistrate

181. AIR 1978 S.C. 47 the High Court is to exercise the power; see also *Dawaraka Dass v. State of Himachal Pradesh*, 1980 Cri.L.J. 1048 (H.P)

182. 1980, Cri.L.J. 742 (Del.)

was an abuse of the process of the Court. It is all the more so when the delay is totally unjustifiable and unexplained. Interest of justice is of a lofty stature. The portals of criminal judiciary are not to be misused. The person who comes to the court must have a genuine cause. For instance if the complaint is not the aggrieved person¹⁸³, or a mandatory requirement of obtaining sanction for prosecution is absent¹⁸⁴ or the proceedings lacks any probability of bringing any evidence¹⁸⁵ the only refuge is under the inherent powers. Similarly, the inherent powers act as a disciplinary force. The trial Magistrates and Sessions Judges are liable to be carried away by impulses. This may prompt them to become too eloquent. Witnesses, officials and persons who are not in party array are commented upon. Not that the trial court is to be highlighted, but comments and observations made must be such as to become sufficient for part of the reasoning which proceeds the decision. Casual inadvertent innocuous comments should be avoided. This is because the person subjected to the scrutiny does not get an opportunity to straighten the record. It is an affront to natural justice. This is an area where High Court interferes to correct the aberrations. The Allahabad High Court in *Mathura Prasad v. The State*¹⁸⁶, expunged the remarks against a witness. It was observed that the judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. Remarks of unjustified or unneces-

183. *Parappa Sidram Karlali v. Dundwva and others*, 1980 Cri.L.J. (NOC) 85 (Kar.)

184. *Laachi and another v. Inspector, Insecticides Sree Gangangr and another*, 1980 Cri.L.J. (NOC) 93 (Raj.)

185. *Brahmadeo Nunia v. The State*, 1980 Cri.L.J. (NOC) 146 (Gau)

186. 1980 Cri.L.J. (NOC) 140 (All.)

sary, defamatory or dispersing nature destroy the solemnity and dignity of judgments¹⁸⁷.

General observations punctuated by strong and virulent criticism of particular persons will lead to exercise of inherent powers"¹⁸⁸. A Session Judge shall not use the columns of his judgment to make disparaging remarks. This is all the more relevant when the aggrieved person is a public Prosecutor where relation with the Sessions Judge is already strained.¹⁸⁹

Order issuing summons is interlocutory in nature. If such an order is against the mandatory provision of the Code, it has no legs to stand on the anvil of inherent powers. In *Ganesh Nand v. Swami Divyanand*¹⁹⁰ the complainant was not the aggrieved party. Cognizance taken by the Magistrate for offences under sections 500 IPC was held to be violative of the Public policy contained in Sec. 199 (1) Cr.P.C. and hence quashed.

The High Court has the inherent powers to acquit a person convicted by the trial court if during the pendency of appeal the Original records of the case are irrecoverably lost. A Division Bench of the Allahabad High Court in *Sita Ram and others v. State*¹⁹¹ allowed the appeal on this ground in a case alleging offences under section 302 read with section 149 IPC. During the

187. *Padma Charan Biswal and another v. Balara Biswal and others*, 1980 Cri.L.J.(NOC) 1497(Ori) held that High Court by invoking the inherent powers could expunge such remarks and observation unless it affects or alter the substance or merits of decision.

188. *Govindaraj Shetty v. State of Karnataka*, 1980 Cri.L.J. 879 (Kar)

189. *K.P. Radhakrishana Menon v. State of Kerala*, 1980 Cri.L.J. 1073 (Ker)

190. 1980 Cri.L.J. 1036

191. 1981 Cri.L.J. 65 (All.)

pendency of the appeal the Original records were destroyed due to fire. It was not possible to reconstitute or reconstruct the file, nor was it legally permissible for the appellate court to affirm the conviction. This is one view of administering criminal justice. Given the same set of facts applying the inherent powers another Judge may reach a different conclusion. In *Sadhu v. State*¹⁹², Allahabad High Court set aside the order of the Sessions Judge and ordered for retrial to secure ends of justice. The conviction was for offences under Sec. 307 and Section 34 of I.P.C. The reasoning of the judge was that without going through the record the appellants could not be acquitted nor could the appeal be dismissed in view of section 396 of the Cr.P.C.

Interest of justice is the paradigm on which the High Court would test every situation for the application of inherent powers. If the accused has a right to have a counsel at the time of investigation then it can be enforced by exercising inherent powers. In *Ram Lalwani v. The State*¹⁹³ the Delhi High Court allowed the appeal against the order of the Magistrate. The petitioner was accused in the case for throwing knife at the Prima Minister. When stolen articles are sought to be returned and the Magistrate declined the prayer that the High Court can interfere through inherent powers. In *J.P. Saraogi v. Jamal Ahmad and another*¹⁹⁴, the ECG Machine was directed to be released. The High Court considered the fact that an ECG machine is of great use to the petitioner who is a doctor. The patients may also suffer.

192. 1981 Cri.L.J. 67 (All)

193. 1981 Cri.L.J 97 (Delhi)

194. 1981 Cri.L.J. 543 (Patna)

Long delay of 11 years from the alleged date of occurrence of the act would defeat the enquiry and justice. The Punjab and Haryana Court in *Prithvi Raj and another v. State of Haryana*¹⁹⁵, held that it was gross abuse of the process of the court, where FIR registered in 1979 and a charge framed in 1980.

If a question of jurisdiction is raised trial shall be commenced only after deciding it. In *Abhay Lalan v. Yogendra Madhav Lal*¹⁹⁶ the Kerala High Court held that the decision regarding jurisdiction is to be on the basis, of the allegations and averments in the complaint or the charge. Evidence that is yet to be adduced cannot confer jurisdiction. Otherwise section 177 Cr.P.C. would become otiose. If the Magistrate proceeds without jurisdiction it will be an abuse of the process of the court. Proceedings of the trial court in violation of any of the provisions of the Code is depriving such course of jurisdiction. The Kerala High Court in *Pavithran Madhukkani and others v. Kunjukochu & another*¹⁹⁷ held that order passed by the Magistrate without complying the procedure contained in section 137(1) of the Code was unsustainable.

Similarly for non-compliance with the amended provisions of Prevention of Food Adulteration Act, the proceedings were quashed by a Division Bench of Calcutta High Court in *United Flour Mills Co.Ltd. and others v. The Corporation of Calcutta*¹⁹⁸.

The above discussions with the help of decisions of the Supreme Court and various High Courts leaves one at the point

195. 1981 Cri.L.J. 984 (P&H)

196. 1981 Cri.L.J. 1667 (Ker)

197. 1982 Cri.L.J. 103 (Ker)

198. 1982 Cri.L.J. 578 (Cal)

where the survey was commenced. The dimensions of inherent powers are so complex that judicial mind has not scaled even the possible extent and reached the possible distance in the realm of criminal jurisprudence. The topics of agitation in the court under inherent powers offer a panoramic vision of the social action and interaction it leads one to conclude that to achieve discipline and decorum in administration of criminal justice; inherent powers have come to stay with lasting eminence.

q. delay in lodging FIR - sufficient ground to quash the proceedings

*Umman Koshy v. State of Kerala*¹⁹⁹, it was held that inordinate delay in filing FIR can be a ground for quashing the proceedings at the preliminary stage. The position obtained is that, there is no hard and fast rule holding that an FIR shall not be quashed. But, at the same time, in *K. Karunakaran v. State of Kerala*²⁰⁰, it was held that the investigating agencies must have sufficient opportunity to gather materials. This freedom is ensured in Section 300 of the Procedure Code. This cannot be diminished even by application of legal principle like 'resjudicata'. It was also held that the judgment in a writ petition cannot be taken as binding juridical pronouncement to quash an FIR lodged for a second time after gathering additional information. This decision of the Kerala High Court reflects the quintessence of the jural principles surrounding the application of inherent powers with respect to a case which is still at the investigation stage. The court had referred to and relied on and utilised the reasoning

199. 1989 (2) KLT 384

200. 1997 (2) KLT 128

of Supreme Court effecting a progression of the principle contained in a series of decisions²⁰¹. A curious aspect in this case is that the petitioner before the High Court tried to derive advantage from an earlier decision in his favour of the High Court where in, prosecution proceedings were quashed at the initial stage itself. In *K. Karunakaran v. Nawab Rajendran*²⁰², the court applied inherent powers positively to quash the proceedings.

r. application of inherent powers is to be guided by the society's interest

It was held that a court cannot be utilised for an oblique purpose; where the chances of an ultimate conviction are bleak, the court may quash the proceedings even at the preliminary stage. The factor which deserve attention is that, in both the above decision, the Supreme Court's ruling in *State of Haryana v. Bhajanlal & others*²⁰³ came to the aid of the High Court. This shows that High Court can approach and apply inherent powers on an objective and dispassionate manner. When interest of justice is pitted against interest of persons, the court gives preference to interest of justice. The very concept of administration of criminal justice is social interest. Therefore, application of inherent powers is also to be guided by Society's interest. In *Chairman, Hindustan Latex Ltd. v. State of Kerala*²⁰⁴, a private complaint filed against the petitioner, for publishing an alleged obscene advertisement was impugned. But, two responsible bodies had already decided not proceed against the accused, ac-

201. Ref. *supra* n. 73.

202. 1997 (2) KLT 15

203. AIR 1992 SC 604

204. 1999 (1) KLT 418

cepting his explanation. The court quashed the private complaint, for the larger interest of the Society for which the advertisement was published in the consideration.

Similarly, in *Janet v. State of Kerala*²⁰⁵ interest of justice was given precedence over other factors. In the proceedings of a Murder case, PW-1 (Prosecution Witness) who is the widow of the deceased moved the trial court for issue of summons to the witnesses. The petition was dismissed. In the application filed under section 482 of the Criminal Procedure Code, it was held that whenever an illegality is brought to the notice of the court, the court has to act to correct the illegality so as to secure the ends of justice. The aspects like *locustandi* of the petitioner are to be decided with regard to the status of the petitioner and the nature of the proceedings.

- s. **the court to interfere when the abuse of the process of the court is palpably strong**

Even though the generally accepted view is that a trial proceedings shall not be disturbed at the threshold, when abuse of the process of the court is palpably strong, the court can interfere. In *Mathew v. Nalini*,²⁰⁶ the High Court quashed the complaint against the Chief Editor of a news paper alleging offence under section 499 IPC. The court held that as per the provisions of the Press and Registration of Books Act, 1867 and Editor means a person who selects material for publication. The same averment in respect of the Editor need not apply to the Chief Editor. Here, the decision of the High Court was challenged be-

205. 1993 (2) KLT 134.

206. 1987 (2) KLT 286

fore the Supreme Court. The Supreme Court was of the opinion that the High Court committed an error in quashing the proceeding on a point not raised by the party. In *Nalini v. K.M. Mathew*²⁰⁷ the Supreme Court was of the opinion that High Court ought to have been given notice to the parties and heard them on the question before reaching a conclusion. The case was remanded to the High Court for fresh disposal. But, the High Court on fresh consideration also found no ground in proceedings with the prosecution and therefore again quashed the proceedings²⁰⁸. It shows the independence of the High Court to form an opinion so far as inherent powers are concerned. If an action initiated against a person will not lead to any concrete result and apart from harassing the accused with trial, nothing is achieved, then inherent power is to be exercised²⁰⁹.

The above discussion of the decisions of the various High Courts and the Supreme Court show the amplitude of the inherent powers. If a definition of inherent power is tiresome the chief reason is this continuous shifts in the impact it has in the administration of justice. We get a view of this dynamism of the power of the High Courts first through the reasonings of the Supreme Court and then through the decisions of the High Courts.

207. 1988 (2) KLT, S.N. 21 at 13

208. *K.M. Mathew v. Nalini*, 1988 (2) KLT 832

209. *N. Jothi v. Rajamani*, 1996 Cri.L.J. 2435 (Mad.)

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

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

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1. AIR 1973 SC 1461.
 2. AIR 1978 SC 597

The Supreme Court was initially viewed with scepticism by those who had placed it amidst the thicket of constitutional powers and prerogatives. Even before the inauguration of the Court several national leaders who had participated in the drafting of the constitution expressed their halfheartedness.³ But all these proved to be hindsight of the politicians rather than the sagacity of statesmen because the Supreme Court has proved the apprehensions as misplaced. Today the only institution to enjoy universal respect of the society is the judiciary atopped by the Supreme Court. The court as the pioneer judicial institution has contributed to the social revolution envisaged through the constitution.

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

3. Ref. *supra* Chapter III n.12.

thin and obliterated with the forays made through judicial creativity. The Supreme Court of India sets the agenda and the High Courts try to implement it.⁴

i. Similarities and Dissimilarities

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

ii. Where the Supreme Court Failed to Exercise Inherent Power

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

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

5. AIR 1976 SC 1207.

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

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

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

iii. Where the Supreme Court Asserted the Power

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

6. *Id* at p. 1277.

7. AIR 1973 1461.

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

It can be noted that the Supreme Court on occasions takes us to higher levels of thinking while exercising the powers, even though it does not have any inherent powers similar to one conserved and preserved under section 482 Cr.P.C. 1973, in the interest of justice. The Supreme Court exercises even powers akin to the inherent powers under section 482 of the Cr.P.C. In *Delhi Judicial Service Association v. State of Gujarat*,⁸ the Supreme Court demonstrated its power to quash proceedings pending before trial court.

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

iv. Power to Punish for Contempt

The *Delhi Judicial Service Associations* case was an occasion

8. (1991) 4 SCC 406.

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

enigma of jurisdiction of the Superior court to exercise inherent powers in criminal proceedings pending before the subordinate courts.

v. **Modifying its own Decisions**

In *Union Carbide v. Union of India*,⁹ the Supreme Court opened yet another leaf of inherent powers. The Supreme Court had an occasion in 1990 to consider the matter, which was considered again in this case. Even going to the extent of reviewing its earlier order, the Supreme Court issued directions to the Magistrate. The Supreme Court modified its own earlier order.

vi. **In the Light of Equity**

In *Gurbax Singh v. Financial Commissioner and another*,¹⁰ the Supreme Court considered inherent power in the light of the principle of equity. The Supreme Court is in a position to consider any situation arising in the administration of justice. Even when a matter is pending before the legislature, the Supreme Court is not devoid of inherent powers to interfere. This was so held in *Mrs. Sarojini Ramaswami*.¹¹

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

9. 1996 (3) SCALE (SP) 64.

10. AIR 1991 SC 435.

11. (1992) 4 SCC 506.

to the Judge when a motion is adopted, because finding of the fact is made in the report of the Enquiry committee, was rejected by the Court.

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

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

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

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

12. (1992) 1 SCC 225.

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

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

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

13. *State of Maharashtra v. Dr. Budhikota Subbarao*, (1993) 3 SCC 71.

14. (1993) 4 SCC 288.

15. (1993) 4 SCC 119

16. (1993) 1 SCC 501.

17. (1997) 7 SCC 91.

West Bengal,¹⁸ the Supreme Court exercised its power under Articles 21, 22, and 32 issuing direction to authorities in the matter of arrest of persons. Resort to jurisdiction of inherent powers by the High Court is considered as an effective remedy in the administration of criminal justice. Those who are charge-sheeted for offences triable by ordinary criminal courts get an opportunity to test the veracity, reliability and verifiability of the charge, complaint or information. This power is vested in the High Court. It is not accidental or coincidental. It has relevance. The High Courts were for a long time, the court of Record with only Privy Council in England having superior jurisdiction. The High Court is a court of law, as well as a court of justice. So when a controversy or allegation, which is ordinarily to be examined in the light of evidence, is subjected to a scrutiny of a superior court this court exercises inherent powers.

ix. Judicial Review of Criminal Proceedings

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

18. AIR 1997 SC 610.

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

x. Inspiring Confidence in the administration of Justice

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

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

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

Invitation to enter on new areas continued to be extended in

19. (1969) 2 AC 177.

20. Michael Mann, in the Foreword to Clive Lewis, *Judicial Remedies in Public Law*.

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

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

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

xi. Areas of Inherent Powers

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

- A. Inherent Powers of the High Court in civil jurisdiction. This is provided under Section 151 of the Code of Civil Procedure.
- B. Inherent powers of the High Court in criminal jurisdiction as provided under section 482 of the Code of Criminal Procedure.
- C. Inherent powers of the High Court under Articles 226 and 227 of the Constitution of India which are interchangeable with power under section 482 of the Code of Criminal Procedure.

21. *Ibid.*

- D. Inherent powers of the High Courts under Article 215 of the Constitution to punish for its contempt including criminal contempt.
- E. Inherent powers of the High Court gathered from decisions of the Supreme Court on the subject.
- F. Inherent powers of the High Court emanating from provisions in Statutes, eg. High Court Act, and other legislations.
- G. Inherent powers available to the High Court which are variations of powers under Section 482 of Code of Criminal Procedure. eg: sections 397, 401, 483 of Cr.P.C.

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

- A. Power under Article 142 to do complete justice.
- B. Power under Article 129 to punish for its contempt.
- C. Power under Article 136, to consider the legality of any order passed by any court or tribunal in India.
- D. Power under Article 32 of the Constitution which is available to those citizens as a fundamental right to controversial remedies.
- E. Power under Article 141 and 143 of the Constitution.

The Supreme Court's inherent powers are a class by itself, because the notion created by the term inherent powers when used in the context of the High Courts, is changed when the same is used in the context of the Supreme Court. The Supreme Court's power is not at all structured. Only the Supreme Court can correct itself, if there is a dominant opinion that the Supreme Court has gone wrong. Unless the attitude of the Supreme Court is so drastic and creating

an incongruent situation for the Parliament and the executive, the Supreme Court has got inherent powers to do anything under law. Even if limitations are effected on the power it is self imposed.

xii. Courts of Record and Contempt Proceedings

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

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

22. Art. 215 and 129 of the Constitution of India.

23. (1998) 4 SCC 409.

prevent interference in the due administration of justice"²⁴

The Supreme Court consults the reputed law dictionaries, to gather a definition of a Court of Record. While consulting, the Supreme Court goes through the Books like Jovitt's Dictionary²⁵ and Warten's²⁶ Law Lexicon.

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

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

The contempt jurisdiction as a manifestation of the inherent power is explained.²⁸

24. *Id.* at p. 419.

25. *Jovitt's Dictionary of English Law*, 1st Edn.

26. At p. 526, a court of Record has been defined as: "A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority".

27. *Ibid.*

28. Nigel Lowe and Brenda Sufrin. *Treatise on the Law of Contempt*, Butterworths - (1996) 3rd Edn.

The contempt jurisdiction of courts of record forms part of their inherent jurisdiction. The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being. The authority of the judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner. Such a power is not derived from Statute nor truly from the common law but instead flows from the very concept of a court of law. All Courts of Records have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the court resides exclusively in superior courts of record. Superior courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior courts.

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

In *S.K. Sarkar, Member, Board of Revenue v. V.C. Mishra*,²⁹ the Supreme Court held that:

"Articles 129 and 215 preserve all the powers of the Supreme Court and High Courts, respectively, as a Court of Record which include the power to punish the contempt of itself"³⁰

In *Supreme Court Bar Association v. Union of India*,³¹ the Supreme Court displaying a rare sense of reality asserted its inherent power as well as that of the High Court to punish for contempt and at the same time accepted the limitations of jurisdiction. While dealing with a subject covered by a Statute and the authority created thereunder, An advocate who was guilty of contumacious behaviour in a court, was held liable to be punished for contempt.³²

The finding of criminal contempt of court was for "obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language".³³

Taking the gravity of the contumacious conduct of the contemner, the Supreme Court sentenced him to undergo simple imprisonment for a period of six weeks. The court also suspended him from practising as an Advocate for a period of 3 years. In *Supreme Court Bar Association v. Union of India*,³⁴ in a petition filed under Article 32

29. (1981) 1 SCC 436.

30. *Id* at p. 441. The *Halsbury's Law of England* 4th Edition holds that, there is no statutory limit to the term of imprisonment imposed for contempt.

31. *Supra* n. 22

32. In *Re Vinay Chandra Mishra*, (1995) 2 SCC 584.

33. *Supra* n. 23 at p. 417

34. *Ibid.*

of the Constitution the Supreme Court considered the logic behind its earlier decision in *Re V.C. Mishra's*³⁵ case. A constitution Bench of the Supreme Court considered the issue as it had great bearing on the power and prestige of the judiciary, as well as the privilege and position of the lawyers. After making a threadbare discussion, of facts and law, the Supreme Court came to the conclusion that the plenary inherent powers of the Supreme Court and High Court to punish for contempt is unlimited. There is an inherent power to punish for contempt independent of the Statutory provision contained in the contempt of Court Act. This inherent power accompanying the very institution, is not conferred nor vested. It is there so far as the court is there. The Court being a Court of Record, the saving of the inherent powers is all the more important. A glance at the legal history of India would show that the concept of a Court of Record came into being from 1726 when the judicial charter was issued and Mayor's Court and Court of Record were introduced in the Presidencies. So, the power to punish for contempt is an inherent, inalienable, irreducible power.

xiii. Power to do Complete Justice

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

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

35. Ref. *supra* n. 32

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

a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The Construction of Article 142 must be functionally informed by the parties. It cannot be otherwise. As already noticed in a case of contempt of Court, the contemner and the Court cannot be said to be litigating parties"³⁶.

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

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

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

36. *Supra* n. 22 at p. 431.

pending his licence to practice where the contemner happens to be an advocate".³⁷

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

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

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

37. *Id.* at p. 444.

38. *Id.* at p. 446.

39. (1998) 5 SCC 749.

40. *Ibid.*

court can be said to be devoid of the inherent powers to do justice in all its ramifications. Once, the superiority of the inherent powers is established, the statutory powers and statutory authority shall not be a reason for the Supreme Court to take an application of the inherent powers to a logical conclusion. This prompts one to look at the decision of the Supreme Court in *Supreme Court Bar Association v. Union of India*,⁴¹ with some scepticism.

The question is not of the relevance of the inherent power of the Supreme Court in the context of statutory powers of the Bar Council, but, a larger concept of Rule of Law, where a person or an individual, confronts an institution, that is the judiciary, with utmost misdemeanors. This itself is an act violating not only law, but also, ethics. It is *ex facie* contempt. That is, contempt at the face of the Court. It is as contemptuous, as throwing a chapel on the face of the Court. Therefore, the inherent powers of the Supreme Court, ought to be open to give the contemner a complete penalty for his behaviour. The Advocates Act deals with professional misconduct of the lawyers, but it does not deal with the contempt of Court by advocates. Therefore, the decision of the Supreme Court in *Supreme Court Bar Association v. Union of India*,⁴² is criticised to that extent. Some jurist hold that the reasoning of the decision of the three judges Bench⁴³ in V.C. Mishra's case was more balanced and pragmatic than the ruling given in the decision in *Supreme Court Bar Association v. Union of India*. But this equalling strong contrary view sounding alarm calls for the judiciary crossing its limit.

41. Ref. *supra* n. 22

42. *Ibid.*

43. K. N. Chandrasekharan Pillai, "Contempt of Court By advocates" (1997) *Academy Law Review*, Vol. 21, p. 211.

xv. Process of the Court not to be Obstructed

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

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

xvi. Impact of the Constitution- Expeditious Trial

The constitutional developments have made its impact in the process of exercising inherent powers. The Supreme Court has displayed an instance in the decision *Common Cause v. Union of India*,⁴⁴ The weight of the decision is in the direction of the constitutional principles contained in Article 21. The petitioner was a registered society espousing public causes. The petition was filed under Article 32 of the Constitution of India. The main thrust of the petition was aimed at causing an imprint in the administration of criminal justice.

44. AIR 1996 SC 1619.

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

The petitioners wanted to quash all proceedings against persons accused of offences under the Motor Vehicle Act, where proceedings had been initiated more than one year ago and were still pending in court. The petitioners wanted unconditional release of the accused and dismissal of the proceedings involving offences for which maximum sentence is not more than six months. It was also prayed for unconditionally releasing the accused and dismissing the criminal proceedings where persons had been in police or judicial custody for a period of more than 3 years involving offences not punishable with more than 7 years. Also, the prayer for unconditional release and dismissal of proceedings, against persons accused of offences under section 309 I.P.C., where proceedings have been pending for more than one year. The Supreme Court appreciated the prayers in the light of the consistency they had with the spirit

underlying in the constitution of India, and the criminal justice system. According to the Court, the issues raised merited serious attention. Several persons languish in Jail and in custody without seeing day light, being treated like mere animals. The Supreme Court realised the necessity for issuing appropriate directions. About nine specific directions were issued in this context which were made valid for all the States and Union Territories. The first direction involved the release of accused on bail or on personal bond in case where the accused was in custody and the punishment did not exceed three years. Secondly, release was ordered on bail or on personal bond in criminal case, where punishment does not exceed 5 years imprisonment. Direction was issued to discharge the accused and close the case where criminal proceedings were pending regarding traffic offences. Regarding cases where the offence was compoundable, acquittal was ordered. As for the non-cognizable and bailable offences pending for more than two years, without commencement of trial, the accused were acquitted and discharged from the trial and closed the cases. The directions issued in this decision were not to be applicable in certain categories of offences explained by the Supreme Court.

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

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

(b) Smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic substances Act,

- (c) Essential commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offence,
- (d) Offences under Arms Act, Explosive substances Act, terrorists and Disruptive Activities Act,
- (e) Offence under Arms Act, explosive substances Act. Terrorists and Disruptive Activities Act,
- (f) Offences relating to the Army, Navy and Air Force,
- (g) offence against public tranquility,
- (h) offences relating to public servants,
- (i) Offences relating to coins and Government Stamp,
- (j) Offences relating to election,
- (k) Offences relating to giving false evidence and offences against public justice
- (l) Any other type of offences against the State,
- (m) Offences under the Taxing enactments and
- (n) Offences of defamation as defined in section 499, IPC⁴⁵

xvii. Humanism in the Administration of Criminal Justice

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

45. Ref. *supra* n.44 at p. 1621.

cation of criminal justice. But, the spirit of the judgment is universally welcomed as in the name of administration of justice, thousands are put to peril through gross abuse of the process of justice. One may not find fault with the Supreme Court for overlooking the other various interests involved in the criminal trial.⁴⁶ The decision of the Supreme Court is likely to be misinterpreted as a premium announced on crimes in the society. Probably due to the discussion which generated, subsequent to the decision, Supreme Court modified the same.⁴⁷

xviii. Supreme Court- the Last Word in Justice

Administration

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

46. "Mahesh T.Pai, "Delay in Criminal Justice System: Common Cause evaluated - 1996 CULR 385.

47. Common Cause II, (1996) 8 SCALE 587.

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

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

proceedings, extending alternate remedies, reviewing its own decisions, convicting, acquitting all with the aid of a conscious proselytizing zeal.

xix. Expunging Remarks

The above being the position the Supreme Court can endorse the High Court decision to cancel bail granted to the accused in a bailable offence.⁴⁸ The Supreme Court can declare a ban on using inherent power in matters specifically covered by other statutes.⁴⁹ The Court prohibits invoking inherent powers to do things expressly barred in the Code.⁵⁰ The Supreme Court refrains the High Court from interfering with investigation.⁵¹ The Supreme Court can opine on the applicability of inherent powers to expunge remarks,⁵² and on the remarks made by the High Court on an investigating officer⁵³ The court can cancel order suspending sentence and granting bail.⁵⁴ can quash the trial dogged by delay,⁵⁵

xx. Review of Bail Orders

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

48. *Talab Haji Hussain v. Madhukar Purushottam Mondakar*, AIR 1958 SC 376

49. *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866

50. *Sankatha Singh v. State of U.P.*, AIR 1962 SC 1208

51. *State of West Bengal v. S.N. Basak*, AIR 1963 SC 447

52. *Raghubir Saran v. State of Bihar*, AIR 1964 SC 1

53. *State of U.P. v. Mohammad Naim*, AIR 1964 SC 703

54. *Pampapathy v. State of Mysore*, AIR 1967 SC 286

55. *State of U.P. v. Kapil Deo Shukla*, (1972) 3 SCC 504

56. AIR 1967 SC 1639

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

xxi. Abuse of the Process should be Manifest

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

57. AIR 1958 SC 376

58. AIR 1973 SC 494

59. 1983 SCC (Cri.) 813

60. AIR 1982 SC 949

under Article 226 of the Constitution. This is an indication of the impact of the Supreme Court's attitude. It was held that FIR and criminal proceedings, not disclosing the commission of cognizable offences, could be quashed under Article 226 of the Constitution. In such cases, it was held that the court had a duty to interfere with in investigation and to stop the same, to prevent any kind of uncalled for or unnecessary harassment to an individual. Yet another case in which the Supreme Court's version of inherent powers is reflected is: *Delhi Judicial Service Association v. State of Gujarat & others*⁶¹ In this decision, reference is made to the above decision of *Sawapan Kumar Guha*.⁶² Even though, the Supreme Court was not vested with power similar to section 482 Cr.P.C., it was held that the Supreme Court itself could quash the proceedings in exercise of its plenary and residuary powers under Article 136 of the Constitution of India. This shows the quality of justice to be maintained as envisaged by the Supreme Court in respect of invoking inherent powers. High Courts draw a lesson or two from the attitude of the Supreme Court, in *Captain Subhash Kumar v. The Principal Officer, Mercantile Marine Dept. Madras*⁶³ The High Court had dismissed the petition to quash the proceedings. The complaint was against the master of a ship by the principal officer, Mercantile Marine Department. Proceedings were initiated for enquiry under section 363 of the Mercantile Marine Shipping Act, it was in respect of a shipping casualty occurred on board a foreign ship at a place beyond the territorial water boundary of India. The complainant was incompetent to file the complaint. Central Government is the proper authority. The inci-

61. AIR 1991 SC 2176

62. (1982) 1 SCC 561

63. AIR 1991 SC 1632

dent being taken place beyond the territorial waters of the India, the Act itself was not applicable. The complaint was held liable to be quashed.

xxii. Enforcing Civil Rights

The fact that inherent powers of the High Court and the Supreme Court meet in the context of enforcing civil rights of the citizen as evidenced by the decisions of the apex court. In *A.R. Antulay & others v. R.S. Nayak and another*,⁶⁴ it was held that the court has discretion under section 482 of the Code. The Court may advert to relevant factors. If charges cannot be quashed in the light of fact, the court may fix a time limit for concluding the proceedings. This is a pragmatic dimension earned to the inherent powers by the Supreme Court.

In *S.G. Nain v. Union of India*,⁶⁵ the High Court had dismissed the petition. Prosecution was initiated without necessary sanction under the CRPF Act. The case was pending already for 14 years, the Supreme Court found that such proceedings would create mental agony and a fair trial would become impossible. Hence, the proceedings were quashed without going into the material questions. This shows the summary way in which the inherent powers are applied. Therefore, it requires great sagacity to envisage a correct situation for applying inherent powers.

In *Dr. Dhanwanti Vaswani v. State and another*⁶⁶ the High Court had quashed the proceedings against one of the accused even though complaint was against seven persons. It was held that, even

64. 1992 SCC (Cri) 93

65. AIR 1992 SC 603

66. AIR 1993 SC 1206

on taking the allegation in the complaint as correct on its face value the proceedings against the petitioner would not stand.

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

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

67. AIR 1992 SC 1815

68. (1995) 4 SCC 41

preme Court, in an earlier case, the High Court is to decide according to the reasoning of the Supreme Court.

In *P.S. Rajya v. State of Bihar*,⁶⁹ the Supreme Court set aside the orders of the High Court and quashed proceedings by applying the dictum in *Bhajanlal's case*⁷⁰. The charge impunged had alleged offences under section 502 and section 51E of the Prevention of Corruption Act 1947. The Supreme Court set aside the order and quashed the proceedings. Prosecution was for earning disproportionate to income. There was exoneration in departmental proceedings in the light of the report of Central Vigilance Commission. The High Court was of the opinion that the issue raised had gone into the finalisation of proceedings. But, the Supreme Court held that the case falls under the guidelines of *Bhajanlal's*⁷¹ case and hence inherent powers could be exercised.

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

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

69. (1996) 9 SCC 1

70. 1992 Supp (1) SCC 335.

71. Ref. *supra* n. 70

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

The contribution from the Judges in filling the gaps in the body of law has been substantial. The occasion provides for an expression of the personality of the judges.⁷² The work of the Indian Judges has been more than fulfilled the expectations of Sir Charles Wood, Secretary of State for India, in his Despatch dated 14-5-1962, after the Indian High Court of 1861. The Despatch accompanies the letters patent for High Court of Calcutta.

72. Indian Judges as Law Makers; some glimpses of the past, by Mr. Justice M.N. Venkata Chellaya, (1995) 1 SCC (J) 1

"The crown by its Letters Patent has sanctioned the establishment of a tribunal as the Chief Justice in India, which in the trained learning of the Judges selected from the Bar and in the knowledge of the language, feelings and habits of that country possessed by other members of the Court, combines the most material elements of success".⁷³

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

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

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

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

73. *Id.* at p. 2

74. *Id.* at p. 9

do make law. The Judge cannot make it merely by virtue of label that he as a Judge. But it takes great erudition and scholarship to take law.⁷⁵

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

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

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

xxiv. Judicial Activism and Creativity

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

75. *Id.* at p. 10

76. *Ibid*

77. 1987 Cri.L.J. 762 (Raj.)

filial considerations prevented him from leaving the child alone. The nurses declined to take injunction. The child was dead soon. While disposing of the petition challenging the action against the hospital staff the High Court held that Dr. R. N. Singh, the Superintendent was not on the scene and the action against him only could be quashed. The attitude of the High Court highlights the strong moral content expected in criminal justice system.

In *O.P. Lamba v. Tarun Mehta*,⁷⁸ the court addressed a moral question. The Magistrate issued summons to the petitioner and General Manager of the Daily, 'Tribune'. The allegation was in respect of a picture printed in the news paper which would excite impure thoughts in the minds of ordinary people of normal temperament. The photograph was totally smudged and vague. It was also held that the picture was in no manner lascivious and obscene and it did not tend to deprave or corrupt. Its proceedings were only abuse of the process of the court, and hence quashed by the High Court. These instances show the High Court under section 482 Cr.P.C. get opportunity to consider matters of moral and social relevance.

xxv. Caution to be made

The greatest caution to be made while invoking inherent power is to guard against the possible misuse of the provision. The power is envisaged to get over specific situations threatening the security of justice. In *Amudha & others v. Inspector of Police*,⁷⁹ the High Court declined to issue a blanket order. A woman alleged to be missing by her family members approached the High Court. She apprehended arrest and detention. The court held that she had alternate

78. 1988 Cri.L.J. 610 (P&H)

79. 1994 Cri.L.J. 404 (Mad.)

remedy to quash the proceedings initiated by the respondents.

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

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

80. 1984 Cri.L.J. 905 (Ori.)

81. 1990 Cri.L.J. 2184 (Delhi)

voices. This does not mean that the High Court never exercises its discretion to correct the waywardness of the proceedings which drifts away from the normal and expected line. If the trial court makes manifestly erroneous order the High Court can issue necessary direction except granting bail. In *Sampathmal Jain v. State of Assam*,⁸² the court considered the order of remand under section 19 of the TADA. As the order suffered from legal flaws the High Court allowed the petitions and impugned orders were set aside. The petitioner accused were given bail on furnishing a bail bond of Rs. 2,000/- and Rs. 3,000/- and for solvent sureties of like sums. The court examined powers in addition to those under Articles 226 and 227 of the Constitution. The scope of writ jurisdiction is limited in such circumstances. In *Chamanlal Jain v. State of Rajasthan*,⁸³ also the High Court held that the power under Sec. 482 Cr.P.C. can be invoked to correct the mistake committed by the Chief Judicial Magistrate. The extraordinary jurisdiction cannot be invoked when the remedy is available in the Code. This shows that the design of inherent power is such that it can even supplement the constitutional provisions expressing the court to administer justice. But, there is no uniformity in the views held by the High Courts.

In *D. Veerasekaran v. State of Tamil Nadu*,⁸⁴ it was held that High Court had no jurisdiction to entertain application for bail in TADA cases under section 482 Cr.P.C. But, it was held that High Court could act under Article 227 to grant bail when the designated court rejected the bail application.

82. 1992 Cri.L.J. 919 (Gau)

83. 1992 Cri.L.J. 955 (Raj.)

84. 1992 Cri.L.J. 2168 (Mad.)

xxvi. Not a Substitute for Statutes

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

85. 1992 Cri.L.J. 2349 (Bom.)

86. 1992 Cri.L.J. 3821 (Delhi)

87. 1993 Cri.L.J. 2025 (Delhi)

presumably to regulate this through the correct path. In *Kum. Anju Khatri v. Gyanchand and others*,⁸⁸ the Sessions Judge granted bail after the bail application was rejected by the High Court. It was held to be arbitrary exercise of power by the Sessions Judge, as there existed no fresh ground to the accused to get bail. It was held that the Sessions Court's order amounted to arbitrary exercise of judicial discretion and order suffered from serious infirmity. So, the High Court could in suo-motu exercise of inherent powers interfere with such order of grant of bail. In *Jodha Ram v. State of Rajasthan*,⁸⁹ it was held that the refusal to grant anticipatory bail could be challenged under section 482 Cr.P.C. if the order is perverse and illegal. The reason for rejecting the application for anticipatory bail was that the offence was committed beyond the territorial jurisdiction of the Court. The position is that the courts at place where the offender apprehends arrest has jurisdiction to grant anticipatory bail. The suggestion to file application before the court having jurisdiction is not an alternate remedy.

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

When justice is made to suffer through wrong exercise of discretion by the trial court only inherent powers can administer adequate corrective measures. In *Ashok Kumar Kabra v. Kamala Devi Shaw*,⁹⁰ the order granting anticipatory bail was found to be based on suppression of material facts and incorrect statements in affidavits. It was held that the order could be set aside by the High Court

88. 1993 Cri.L.J. 2274 (M.P.)

89. 1994 Cri.L.J. 1962 (Raj.)

90. 1996 Cri.L.J. 876 (Cal.)

by invoking inherent powers. In *State of Maharashtra v. Walchand Hiralal Saha*,⁹¹ order granting bail in a murder case was declared to be a nullity in law. The injured eye-witness had assigned a specific role to the accused and their testimony was corroborated by the medical evidence. Accused had also made a false statement in the affidavit that no application for bail was pending in any other court. There is blatant violation of equity and the High Court had no other option but to cancel the bail. Through inherent powers, the court has the power to quash an order cancelling bail already granted by the trial court. In *Babulal Chottelal Shah v. State of Maharashtra*,⁹² the trial court cancelled the provisional bail. The ground for cancellation was that in further investigation it was revealed that the accused was arch conspirator in an assault case. But no grounds of apprehension about the accused absconding or tampering with prosecution witnesses were raised.

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

In *Bhola v. State*,⁹³ order cancelling bail was in question. It was an interlocutory order. Therefore, revision under section 397(2) Cr.P.C. was barred. But, the court held that if abuse of the process of the court is patent, High Court can invoke inherent powers to remedy the mistake.

91. 1996 Cri.L.J. 1102 (Bom.)

92. 1996 Cri.L.J. 3145 (Bom.)

93. 1979 Cri.L.J. 718 (All.)

In *Re. Peer Mohammed*,⁹⁴ the court held that High Court under section 482 cannot give any specific direction regarding the disposal of bail application. But, the court observed that it is the general principle that bail application should be disposed of expeditiously and Magistrate will have to follow the precedents and an act according to the law in the interest of justice. Since, bail is so crucial in the process of a trial, High Court normally declined to interfere.

In *Santhosh Bhaurao Raut v. State of Maharashtra*⁹⁵ it was held that after considering the gravity of the offence committed and necessity to ensure the presence of the accused during trial, and to avoid tempering of evidences, it was better not to exercise power under section 482. The High Court do not allow its forum to the petitioners to substitute jurisdiction.

*Radhey Shyam v. State of U.P.*⁹⁶ order refusing bail was challenged. Order granting bail, as well as refusing bail are interlocutory in nature. Therefore, neither revisional jurisdiction nor inherent jurisdiction can ordinarily be invoked. It was held that, if the remedy was an illegal one proper remedy is a writ of habeas corpus. In this decision, one aspect which raises the pointer of doubt is regarding the amplitude of inherent powers in matters affecting constitutional significance. If the order rejecting bail is an illegal one, there is no question of it being considered as an interlocutory order. The illegal order, if it perpetuate injustice can be set aside by invoking inherent powers.⁹⁷ In such circumstances, it is only a perfunctory exercise of

94. 1979 Cri.L.J. 429 (Mad.)

95. 1989 Cri.L.J. 205 (Bom.)

96. 1995 Cri.L.J. 556 (All.)

97. The Court referred to *Amarnath v. State of Haryana*, AIR 1977 SC 2185 and *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47

power. If the High Court is of the opinion that remand order is illegal, instead of suggesting writ jurisdiction, under inherent power it can straightaway interfere. One can state with precision to the development of law today, especially after Pepsi Foods' case.⁹⁸

xxviii. Inherent Power only to Prevent Abuse and Not to Meddle with Trial

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

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

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

98. *Supra* n.39

99. AIR 1978 SC 1568

100. 1982 SCC (Cri) 487

In *Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi*,¹⁰¹ the High Court quashed the proceedings with cost of Rs. 5,000/- The Supreme Court had a word of caution, because the High Court had ventured too far into the territories which are out of bound for inherent powers. In this case, documents annexed to the complaint, prima-facie made out a case of cheating, breach of trust, and forgery. But, the High Court proceeded to consider the version of the accused given out in the petition filed under section 482 Cr.P.C. vis-a-vis that of the version in the complaint. The High Court entered in to the debatable area of finding which of the version was true. This, according to the Supreme Court was not permissible under section 482 Cr.P.C. The Supreme Court referred *State of Haryana v. Bhajanlal*¹⁰²

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

The jurisdiction under section 482 of the Code of Criminal Procedure has a supervening authority. It is a unique phenomenon in the criminal justice system. The power is not to be exercised for futile purpose. It cannot be invoked by a person who is not aggrieved in a case. In *Ram Lal v. Delhi Administration and others*,¹⁰³ a person not aggrieved by the pendency of a proceed-

101. AIR 1996 SC 2982

102. *Supra* n. 70

103. 1980 Cri.L.J. (NOC) 82 (Delhi)

ings filed an application invoking inherent powers to replace the public prosecutor. The High Court declined to interfere as the person who filed the application had no business to meddle with the prosecution. In criminal jurisprudence it is a basic tenet that any person can cause the law into motion, but that is not in respect of invoking power of the High Court to see that justice is done. A judicial officer even if not an aggrieved party, cannot be called a busybody. A complaint filed by a Munsiff against a person who is meddling with the process of the court, can be entertained under inherent powers. In *Premlatha and others v. State of Punjab*¹⁰⁴ the High Court dismissed the writ petition to quash the proceedings. Accused persons obstructed the process server from serving summons of a suit - Suit settled and parties living amicably - 15 years old incident - proceedings against accused liable to be quashed as no useful purpose would be served by continuing them.

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

104. AIR 1991 SC 69

In *Mohammed Umer & others v. State and another*,¹⁰⁵ a Munsiff filed a complaint against a person for obstructing the Amin in executing the decree of the court. It was held that the complaint was maintainable. The court did not accept the plea that the complaint was time barred and that it was raised for the first time. So, the subject matter of the complaint under section 482 Cr.P.C. exerts a considerable clout in persuading and dissuading the High Court in invoking inherent powers. Merely because a person was a partner of a business firm, such a person need not be fastened with criminal liability for the act done by persons who were in charge of the firm on the date of the offence. In *Ramesh Babu v. State of Karnataka*,¹⁰⁶ it was held that proceedings against the petitioners could be quashed because they were not responsible for the conduct of the business of the firm on the date of occurrence of the alleged offence. The Economic offences alleged against the petitioners would not stand.

Criminal Liability cannot be conjured up through narration of events. It is guided by laws in force. As explained in the above case, the partner of a firm cannot be proceeded against for the lapses of the firm. In *Unneerikutty v. Dy. Commissioner*,¹⁰⁷ proceedings were initiated against petitioner as per the provisions of the Income Tax Act. But, section 2(35) of the Act provides that partners do not come within the definition of the 'principal officer' unless the Income Tax Officer had served notice of his intention to treat them or any of them, as the Principal Officer. A

105. 1982 Cri.L.J. (NOC) 44 (All.)

106. 1992 Cri.L.J. 1963

107. 1994 (2) KLT 70

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

xxix. Power is to Secure the Ends of Justice

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

108. 1993 (1) KLT 482

109. 1995 Cri.L.J. 1949 (Mad.)

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

110. M.S. Dokray, "The Inherent Jurisdiction to regulate civil proceedings", (1997) 113 L.Q.R. 120

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

111. 1998 SCC (Cri) 1400

PART - V
CONCLUDING CHAPTERS

CHAPTER - IX**INHERENT POWERS: A SUMMING
UP OF THE CONCEPT AND ITS
APPLICATION****i. Juristic Perceptions**

The doctrine of inherent powers acquire significance because the principles of criminal justice administration are not exhaustively dealt with in the Code of Criminal Procedure. Rather it is impossible for a Code to be exhaustive. According to R.V. Kelker,

"In prescribing rules of procedure legislature undoubtedly attempts to provide for all cases that are likely to arise, but it is not possible that any legislative enactment dealing with the procedure however carefully it may be drafted would succeed in providing for all cases that may possibly arise in future. Lacunae are sometimes discovered in procedural law and it is to cover such lacunae and to deal with cases where such lacunae are discovered that procedural law invariably recognises the existence of inherent powers"¹.

The above jurist's view sounds the general understanding that the objective is to meet the exigencies of any situations, the court has inherent power to mould the procedure to enable it to pass such orders as the ends of justice may require². As the

1. R.V. Kelkar, *Outlines of Criminal Procedure*, (1977), p. 582.

2. *Id.* at p. 1.6

Procedure Code is not exhaustive, so is the inherent powers under section 482, Cr.P.C. also. The views of the jurists and the judges concur to say that the principle is given only partial statutory recognition.³

"Inherent Jurisdiction, to prevent abuse of the process" and "to secure the ends of justice", are incapable of definition and enumeration and capable at the most of test, according to well established principles of criminal jurisprudence. 'Process' is a general word meaning in effect anything done by the court. The framers of the Code could not have provided with provisions to cover all cases and to prevent abuse of the process of court. It is for the court to take a decision.⁴

ii. Some Questions Emerging on Summing Up

In a summing up one has to refer to the origin, existence, expansion, application and limitations of the inherent powers of the High Court. It is significant to note the respectability earned by the doctrine. The extent to which inherent powers have contributed to the prestige of judiciary depend on the general bearing it has on the entire foment of judicial process. Similarly the transcendental greatness of the judicial process as a whole reflects on the doctrine of inherent powers also. A realistic opinion would concede that all is not well with judiciary either, in India. We have it on record when the high priest of Indian legal profession, Shri Nani A. Palkhivala bemoans the decline and the fall of the prestige of judiciary. Shri Palkhivala projects justice and Rule

3. *Akhil Bandhu Ray v. Emperor*, AIR 1938 Cal. 258; *Krishna Mohan v. Sudhakar Das*, AIR 1953 Ori. 281; *Nagen Kundu v. Emperor*, ILR 61 Cal. 498.

4. Ref. *supra* n. 1 at p. 300

of Law as two human virtues. On the subject the jurist expresses his opinion thus:

"Justice and the Rule of Law are perhaps two of the noblest concepts evolved by the wit of man"⁵.

The author refers to ancient Roman and Indian Jurisprudence and recalls the admirable quality maintained in justice administrations. But there is a precipitative diminution and sharp erosion of values in the province of judicial process.

In ancient Rome Justice was akin to a Goddess; in India it was related to the concept of *Dharma*. High standards were set for those engaged in administration of justice. On the ancient tradition an eminent writer says:

".....the standards set for judges and magistrates are very high; they are to be learned, religious, devoid of anger, and as impartial as humanly possible..... The *Arthasastra* advises that the honesty of judges should be periodically tested by agents provocateurs, while *Vishnu Smriti* prescribes banishment and forfeiture of all property for a judge found guilty of corruption or injustice- the most severe penalty a brahman could incur under the sacred Law".⁶

The prescriptions in *Arthasastra* and *Vishnu Smriti* may look incompatible with the modern Rule of Law concept. But it asserts the dignified approach of the society towards administra-

5. Nani A. Palkhivala, *We the Nation - The Lost Decades* (1994), p. 210, the author makes mention to the ancient Roman and Indian Juristic virtues.

6. A.L. Basham, *The Wonder that was India*, (1967), p. 116

tion of justice. Under the guise of Rule of Law one should not be allowed to ride along adjudication as if mounted on an unruly horse.

Shri Palkhivala ridicules the lack of seriousness in the adjudicatory process. What was formerly a cathedral is today a casino. According to him, law is imperfect even if it were made by a committee of archangels. But this is not justification for converting justice administration into a great gamble. He says,

"The court is no longer looked upon as a cathedral but as a casino: if you are dissatisfied with the trial court's judgment, you double the stakes and go to the Division Bench, if you are dissatisfied with the Division Bench judgment, you treble the stakes and go to the Supreme Court".⁷

It is against the above background the appreciation of the concept of inherent powers is to be made. So, in a critical evaluation of the inherent powers of the High Court under section 482 of the Code of Criminal Procedure, 1973 some relevant questions crop up which press for answers. Firstly, whether this power has come to stay in the province of criminal jurisprudence? The second question is whether inherent power is associated to discretion and equity? The third question is whether a spiritual and philosophic character is attained by the inherent powers? There are other relevant question also. One is the assessment of inherent power is as illustrative of realism, another question regarding affinity of constitutional and inherent powers. Yet another question is regarding the amplitude of inherent powers.

7. *Supra* n. 5

structuring of inherent powers is a central question, next significant question is regarding the amplitude of inherent powers. Question regarding the inherent powers of the Supreme Court is of overwhelming nature. Another question is regarding the abuse of inherent powers. Question arise regarding the personality of the judge. Last but not least significant of this enumeration of questions is in respect of future possibilities of inherent powers.

iii. Inherent Powers : A Strong and Stable Jurisdiction in Criminal Jurisprudence

Viewed from many angles, it is but imperative that High Courts should have inherent powers in the administration of criminal justice. In the previous chapters, the discussions overwhelmingly tend to the direction that inherent powers of the High Court are a reality. The questions to be answered in this context are the pros and cons of the inherent powers of the High Court. When the performance of the High Court is assessed in retrospect in the application of inherent powers the merits and demerits are to be appreciated.

The points central to the questions posed above give a sort of balance-sheet of the performance of the court in exercising inherent powers. It can very well be said at the outset itself, that inherent powers have come to stay in the province of criminal jurisprudence. Even before statutory recognition was given the Judicial recognition was accorded on inherent powers. When the inherent powers were incorporated as part of the criminal procedure through section 561-A the High Courts began to exercise

the power with all dignity and decorum.⁸ This is evident from the innumerable opportunities given to the High Court to consider the legality or otherwise of proceedings pending before subordinate criminal courts. The public confidence in the administration of criminal justice is to some extent consolidated by the judiciary through the decisions involving the application of inherent powers. Aggrieved persons come to the High Court with grievances afflicted by experience of injustice. They challenge FIRs, charge-sheets, complaint and other proceedings. Undergoing trial for no reason can itself be excruciating for a person. If the allegations *prima-facie* do not constitute an offence, there is no meaning in protracting the trial proceedings. But, at the same time, the High Court must be fully conscious of the fact that inherent powers are not to be resorted to in cases where a decision is to be taken on evidence. Similarly if the complaint *prima-facie* discloses the ingredients of offences alleged, the High Court would be loathe to interfere. Since, the history of inherent powers is traced back to the very beginning of the administration of criminal justice, the system cannot work without inherent powers of the court. In the earlier chapters it was found that statutory recognition given to inherent powers in 1923⁹ was only a positive stage in the evolution of the concept of inherent jurisdiction. With the Code of Criminal Procedure, 1973 through

8. The earlier decision shows that this power was used very seldom. The High Courts never allowed themselves to drift away from the main stream of the judicial process. See, *Rameswar Khiroriwalla v. Emperor*, AIR 1928 Calcutta 367; *Local Government v. Gulam Jilani*, AIR 1925 Nagpur 228; *Edmond Few v. Emperor*, AIR 1939 Lahore 224; *Dahu Rawt and others v. Emperor*, AIR 1933 Calcutta 870; *Nazir Mohammed Khan v. Hara Singh Bedi*, AIR 1926 Lahore 146.

9. Criminal Law Amendmet Act 1923

section 482 preserving the inherent powers the jurisdiction earned a permanent place in the province of criminal jurisprudence, and the increasing dependency on it. With the bonds established with constitutional principles and judicial review on the grounds for challenging a proceedings pending in a trial where the inherent jurisdiction has received a new force and weight. Today the interpretation by the Supreme Court and the High Court of the inherent jurisdiction is done in the company of interpreting the constitutional principles. All apprehensions of the inherent powers getting bogged down by the technicalities and special procedure in criminal law like a revision and review have vanished. The accepted principle that the question of curtailing jurisdiction of the Supreme Court or High Court as conferred by the constitution does not arise in India, is applicable in the case of the High Courts inherent jurisdiction also.¹⁰ Courts must have power to do justice and the laws passed shall not be interpreted to dwindle the esteem of the court. Even laws specially containing the 'finality clause' and 'ousting clause' do not totally erase jurisdiction of the court in the light of Article 136, 226 and 227¹¹ Even in England where parliament is supreme there is a strong presumption against exclusion of supervisory jurisdiction of superior courts.¹²

iv. Discretion the Hallmark, Equity the Roots

The roots of inherent powers are traced to equity¹³. So the

10. G.P. Singh, *Principles of Statutory Interpretation*, 6 Edn., (1996) p. 483

11. *Shri. Kilhota Hollohan v. Mr. Zachilhu*, AIR 1993 SC 412

12. *G.P. Singh - Id.* Ref. *supra* n.10 p.483

13. Ref. *supra* Ch. I

judges have in abundance the prerogative attached to equity-discretion. When inherent powers are discussed in the light of individual freedom, human rights, liberty, rule of law, fundamental rights, the scope of the powers is extended. So the inherent powers are interpreted in the light of equity despite the fact that section 482 Cr.P.C. saves the inherent powers. The construction of the inherent powers under section 482 Cr.P.C. can be said to be proceeding upon the equity of statute. This was postulated by Lord Westbury in an early decision *Hay v. Lord Provost of Perth*,¹⁴ This mode of construction is very common and consistent with the principle and manner according to which Acts of Parliament were framed.¹⁵ "Equity", said Coke, "is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief, or clause of the making of the same, shall be within the same remedy that the statute provided and the reason where of is for that the law-makers could not possibly set down all cases in express terms"¹⁶

Equity has influenced law in England independent of Chancery. It played a role in certain branches of common law. Courts are enabled to extend the scope its powers through interpretation of equity. Inherent powers are highly relevant in this context. The *Mareva Injunction* and *Anton Pillor* orders are examples of the above concepts. They are founded on the principle of inherent jurisdiction of the courts. "Both devices are equitable in

14. (1863) 4 Macq. H.L. (SC) 835

15. *Cries on Statute Law*, 7th Edition (1971) edited by S.G.G. Edgar, pp. 101-102

16. Quoted *Ibid.*

the original sense of the term, they are new procedures devised by judicial discretion, without precedent, to make the regular law function more effectively."¹⁷

In the final analysis it can be stated that in ensuring fairness to criminal trial the inherent powers are used in a variety of circumstances. Such circumstances include cases which call for justice, to be done. It can be to avoid technicality,¹⁸ to advance public interest¹⁹ to quash a dispute arising from a controversy having civil nature²⁰ partner of the firm not in charge of the conduct of the business.²¹ It can be to check delay,²² it can be in case of doubtful identity of the accused²³.

It can also be when allegations do not constitute an offence,²⁴ or an action without legal base,²⁵ wrong dismissal of a revision

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17. J.H. Baker, *An Introduction to English Legal History*, (1990) p. 232-233
 18. *State (Delhi Administration) v. Dharam Pal*, 1982 Cri.L.J. 1103
 19. *The State v. Sadanadan*, 1982 Cri.L.J. 1117 (Ker.)
 20. *S.B. Georke v. R.K. Aggaswokk*, 1982 Cri.L.J. 1228, (Ori.) relied on AIR 479 SC 850; *V.V.L. Chandy and others v. N.A. Martha and others*, 1983 Cri.L.J. 106; *Mirsri Lal v. Tota Ram*, 1984 Cri.L.J. 1338; *Vijay Khappe v. Jumbo Electronics Co. Ltd.*, 1984 Cri.L.J. 1667; (Del.)
 21. *Major Singh and others v. State of Punjab*, 1986 Cri.L.J. 303 (P&H)
 22. *Hare Krishna Mittal v. Republic of India and another*, 1982 Cri.L.J. (NOC) 17, under Sec. 5(2) or 5(1)(d) P.C. Act, 1947 See also *M/s I.A. & I.A. P.A. Ltd. BB v. State of A.P.*; 1985 Cri.L.J. 810 A.P.; *D.R. Devarajan v. The State*, 1985 Cri.L.J. 1614 (Mad.)
 23. Court suspecting Food Inspector to give supplementary complaint to fasten suit over the accused. *Ramesh Kumar v. State of Haryana*, 1982 Cri.L.J. No. 20
 24. *K.S. Narayanan v. S. Gopinathan*, 1982 Cri.L.J. 1611; *Ramauter Choudhary v. Hari Ram Todi and another*, 1992 Cri.L.J. 2260; *Nohar Chand Capt v. State of Punjab*, 1984 Cri.L.J. 886
 25. *G.S. Ananthaswamy Iyyer v. State of Karnataka*, 1982 Cri.L.J. 212

petition,²⁶ when subordinate court exercise inherent powers²⁷ or of Constitutional Significance,²⁸ the High Court is also called upon to consider.

Investigation on allegations not constituting offence,²⁹ relating to sentencing,³⁰ proceeding without evidence,³¹ summoning of a witness,³² awarding compensation,³³ relating to review,³⁴ grant of Police Protection,³⁵ restitution of property,³⁶ improper conduct of court proceedings,³⁷ expunging remarks,³⁸ Chairman of a Company charge-sheeted,³⁹ relating to Parole,⁴⁰ accused party not filing complaint⁴¹

The Ordinary understanding of inherent powers prevail. The powers are to be applied with circumspection and reticence.⁴²

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26. *P.S. Singh v. S.M. Manikandan Delhi*, 1982 Cri.L.J. 2352
 27. *Sankar Rao v. Mohd. Mustafa*, 1983 Cri.L.J. 30, *Mariabhith Ramanna v. Andavarannu Dhanyath*, 1986 Cri.L.J. 738
 28. *Bamder Pradha v. State of Orissa*, 1983 Cri.L.J. 527
 29. *Balagopal Goenka v. State of West Bengal*, 1983 Cri.L.J. 570
 30. *Mani Snathosh v. State of Kerala*, 1983 Cri.L.J. 1262 (Ker.)
 31. *Aigambar Jain Sabha v. State of H.P.*, 1984 Cri.L.J. 272
 32. *R. Srivinas v. Shanmughan Vadivelu*, 1984 Cri.L.J. 337 (Mad.) *Om Prakash Saha v. Man Mohan Mohanty*, 1984 Cri.L.J. 901
 33. *State of Maharashtra v. Padaj Kachara Sonawane*, 1984 Cri.L.J. 1023
 34. *Deppak Thanwardas Balswami v. State of Maharashtra*, 1985 Cri.L.J. 23
 35. *M. Sohanray v. Dy. Commissioner of Police*, 1985 Cri.L.J. 132
 36. *Rajin Bharathi v. State of Bihar*, 1985 Cri.L.J. 143
 37. *Krishna Sadar Gosh v. Govind Prasad Saraj*, 1985 Cri.L.J. 1121
 38. *Vinod Kumar Jain v. J.P. Sharma 7 others*, 1986 Cri.L.J. 884 (Del.); *Pramodkumar Padhi v. Gokka and others*, 1986 Cri.L.J. 1634
 39. *Dasari Narayan Rao v. R.D. Bhajumdas*, 1986 Cri.L.J. 888
 40. *Viswanath Verma v. Commissioner of Police*, 1986 Cri.L.J. 1800 (Del.)
 41. *M.P. Nagarajan Pillay v. M.P. Chacko*, 1986 Cri.L.J. 2002
 42. *Gajan Kishore v. State and others*, 1999 (1) Crimes 39 (Del.)

The parameter of the rarest of rare case stands.⁴³ The petitioner should be allowed to raise his points before the cognizance taking Magistrate. The above is the normal attitude. But, in a case where there is abuse of the process of the court blatantly and patently, then inherent powers are relevant. The High Court shoots down the abuse through its power. A party to an agreement involving a package deal of divorce and withdrawal cannot show a volte face half way through. In that case the High Court should definitely interfere.⁴⁴ The FIR can be quashed even the petition was filed Article 226 of the Constitution and section 482 Cr.P.C.⁴⁵

v. Spiritual and Philosophic Points to Ponder Over in a Summing Up

Giving a theoretical basis to the application of inherent powers, is difficult in the above circumstances. A symmetry or coherence in the mode of operation may be lacking. In connecting legal theory with practical aspects of life, Jeremy Waldron⁴⁶ attempts to expose the earthly aspects of jurisprudence. Judicial reasoning or legal reasoning is the a prominent topic in the judicial process. Waldron refers to the realist movement in law. Judges at times articulate their own preferences rather than fol-

43. *Rabinarayan Das v. State of Orissa*, 1999 (1) Crimes 99 (Ori.)

44. *Satish Gathwal and others v. State and another*, 1999 (1) Crimes 16 (Del), *Kerra alias Chander v. State of M.P.*, 1999 (1) Crimes 64 (P&H), *Gangan Kishore Srivastava v. State & others*; *Hariprasad Chamaria v. Bishun Kumar Surekha*, AIR 1974 SC 30, *Bhajan Lal's case*, AIR 1992 SC 604; *M/s Jayant Vittamins - AIR 1992 SC 1930*.

45. *Rabinarayan Das v. State of Orissa*, *Sathish Gathwal and others v. State of Andra Pradesh*; *State of Karnataka v. L. Muniswamy* relied., *Sudeshkumar and others v. State of Punjab and others* FIR quashed.

46. Jerry Waldron, *The Law*, (1990)

lowing the logic of legal doctrines. This was the argument of the realist and this was a criticism on judges. While invoking the type of power contemplated under the catchphrase the 'inherent powers', the Judge may give expression to his own private thinking in preference to objective standards. This is evidenced by the responses of the Supreme Court in a number of cases, where the High Court exercised inherent powers under circumstances unwarranted for interference. So judging is a process which requires restraint, especially when invoking powers of summary nature as inherent powers. Ronald Dworkin's formulation of moral principles forming the structure of legal system is of help in this context.

"Dworkin develops a powerful theory about judges both in common law and in statutory interpretation and he comments it with a subtle theory of political legitimacy and obligation that requires the law to present itself to the citizen as a coherent force. Legal interpretation, he argues, is an active process whereby one seeks to make the best that one can in moral and political term of a body of legal materials.⁴⁷

Inherent powers being what they are, take origin from equity. If this is so, morality has a great role in the application of inherent powers. In this context the personality of the judges count a lot. The deciding judge has a high degree of discretion also.

R.W.M. Dias discusses the quality and character of judges that leads us to the question of judicial impersonality. Where dis-

47. *Id.* at 195

cretion is allowed, being impersonal becomes a bit difficult. Question of impersonality raises the aspect of values. A point of importance is raised in this context, that every one thinks that a Judge is also a human being subjected to:

".....likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge"⁴⁸

But the judges wielding such high profile power are to guard with a missionary zeal the prestige of justice.

"As long as it is believed that judges are merely mechanical appliers of laws it is proper that they should be immune from criticism. Indeed, one reason why the judiciary has been able to preserve its aloofness for so long is this belief. Another reason has been the Judge's refusal to enter into areas which clearly and obviously involve policy considerations. They are being forced to do so increasingly in modern conditions, and when, in addition to that, it is realised that policy and discretion, in whatever degree, are inseparable from the judicial process, then their conduct is at once open to comment and criticism".⁴⁹

This is because, the questions raised are regarding the social and political prejudices of judges.

48. R.W.M. Dias, *Jurisprudence*, (1994) p. 220

49. *Ibid.*

"Some exercise of discretion, be it large or small, is unavoidable in the very nature of the judicial process. The point that needs to be stressed is that there is a difference between allowing this discretion to be guided by one's personal likes and dislikes and by one's sense of current values assessed as objectively as possible".⁵⁰

Since the values are subjected to individual thinking, subjectivity cannot be excluded altogether.

"In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences including those that tend to counteract and minimise prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules; the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice".⁵¹

In some instances, an unconscious adverse influence is perceptible on the judges.

The stress given by the author is due to this amount of discretion available to the High Court Judge. In this context, the most vociferous remarks are made by Justice Cardozo. A High Court judge is in a Unique position and frame of mind, while exercising inherent powers. He should think not only of the case

50. *Id.* at p. 221

51. *Ibid.*

at hand, but the social aspects and public interest required. That is why Cardozo draws inspiration from all social sciences while expounding his views on judicial process. He deals with major streams of influence on a judge and thereby the adjudicatory system. Cardozo after putting jurisprudence in the centre of social sciences draws several circles of varying radii with the same centre drawing from other social sciences.

"The directive force of a principle may be exerted along the line of logical progression, this I will call the rule of analogy or the method of philosophy; along the line of historical development, this I will call the method of evolution, along the line of the customs of the community, this I will call the method of tradition, along the lines of justice, morals and social welfare, the mores of the day; and this I will call the method of sociology".⁵²

About consistency, in the judicial activity, Cardozo suggests that it is too complex to be consistent.

"Principles are complex bundles. It is well enough to say that we shall be consistent, but consistent with what? Shall it be consistency with the origins of the rule, the course and tendency of development? Shall it be consistency with logic or philosophy or the fundamental conceptions of jurisprudence as disclosed by analysis of our own and foreign system?"⁵³

Cardozo declares that rather than consistency the Society's

52. B.N. Cardozo, *The Nature of the Judicial Process*, (1921) pp. 30-31.

53. *Id.* at p. 64

interest is to be uppermost.

"The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence.....I do not mean, ofcourse, that judges are commissioned to set aside existing rules at pleasure in favour of any other set of rules which they may hold to be expedient or wise. I mean that when they are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance"⁵⁴

To imbibe the above values a judge must have a personality with rounded perfection. Whatever be the extraneous influences, the personality of the Judge is the deciding factor. Therefore, Judges must have an extra-care in keeping the lamp of light.

"The future, gentlemen is yours. We have been called to do our parts in an ageless process. Long after I am dead and gone, and my little part in it is forgotten, you will be here to do your share, and to carry the torch forward. I know that the flame will burn bright while the torch is in your keeping".⁵⁵

The jurors must have high sense of morality when exercising powers which are inherent in the court. Philosophically speaking, inherent powers maintain the connection between Law and Justice and Morality and Justice and Morality and Law. According to Lon L. Fuller⁵⁶. concept of morality has occupied an impor-

54. *Id.* at pp. 66-67

55. *Id.* at pp. 179-180

56. Lon L. Fuller, *The Morality of Law*, Yale University - 1969

tant position in the speculations of law. Fuller examines the relevance of morality in the administration of justice in jurisprudence by drawing profusely from H.L.A. Hart, Oliver Wendal Holmes and others. When morality comes legality takes a back seat, and sentiments of wrong or right emerge. The quality of morality is infinite and justice administered without morality is half baked. Fuller refers to Oliver Wendal Holmes:

"Holmes' legal philosophy had as its Central theme the necessity for maintaining a sharp distinction between law and morals. Yet in the Path of the Law he wrote:

I do not say that there is not a wider point of-view from which the distinction between law and morals becomes of secondary importance, as all mathematical distinctions vanish in the presence of the infinite".⁵⁷

While dealing with the legality and justice Fuller refers to Hart in ascertaining the inner morality of law:

"One deep affinity between legality and justice has often been remarked and is in fact explicitly recognised by Hart himself. This lies in a quality shared by both, namely, that they act by known rule. The internal morality of the law demands that there be rules, that they be made known, and that they be observed in practice by those charged with their administration. These demands may seem ethically neutral so far as the external aims of law are concerned. Yet, just as law is a precondition for good law, so acting by known rule is a precondition for any meaningful

57. *Id.* at p. 152

appraisal of the justice of law. A lawless unlimited Power expressing itself solely in unpredictable and patternless inventions in human affairs could be said to be unjust only in the sense that it does not act by known rule. It would be hard to call it unjust in any more specific sense until one discovered what hidden principle, if nay, guided its interventions. It is the virtue of a legal order conscientiously constructed and administered that it exposes to public scrutiny the rules by which it acts".⁵⁸

Fuller speaks as if affinity between legality and justice consisted simply of the fact that a rule articulate and may permit the public to judge of its fairness.

"In the criminal law, as in all law, questions about the action to be taken do not present themselves for decision in an institutional vacuum. They arise rather in the context of some established and specific procedure of decision: in a constitutional convention, in a legislature, in a prosecuting attorney's office, in a court charged with the determination of guilt or innocence, in a sentencing court, before a parole board; and so on".⁵⁹

When power such as inherent power is saved for an apex court like the High Court, the only parameters which can enforce restraint and discipline on the High Court is consideration of justice, legality and morality. Otherwise, the decision of the High Court will also have the same flaws often detected in the decisions of the administrative authorities. As Ammon Rubinstin in

58. *Id.* at pp. 157-158

59. *Id.* at p. 180

his celebrated work *Jurisdiction and illegality - A study in Public Law*, suggested that the High Court which is a court of record having vested with inherent power, shall not resort to invalid procedure. This is because even the widest discretionary power is subject to certain limitations. Though, Rubinstein primarily had adjudicatory functions of administrative authorities in mind, while discharging public duty. the philosophy and theory enunciated by Rubinstein can be used as tools to understand the mechanism of inherent powers. While invoking inherent powers also, the High Court is examining the validity of action. While examining the validity High Court itself should not resort to invalid procedure. Any authority vested with right or power for exercising power must exercise the power within the sphere allotted to him by law.

In his work, Rubinstein explains a court of record. The justification for preserving the inherent powers of the High Court is that, it is a court of record. A court of record is defined thus:

"The rule was limited to courts of records. A court of record was defined as a court which had jurisdiction to fine and imprison or as a court with jurisdiction to try civil causes according to common law in matters involving forty shillings or more".⁶⁰

Regarding the discretionary powers Rubinstein would say that

"exercise of discretionary power excludes jurisdiction. Where, there is absolute discretion, there is no scope for applying any yardstick like objectively correct discretion."⁶¹

60. Rubinstein, *Jurisdiction and Illegality*, (1965), p. 57

61. *Id.* at p. 165

But there are limitations according to Rubinstein:

"However, powers which are totally discretionary will not be found in a system governed by the Rule of Law. Even the widest of discretionary powers is subject to certain limitations placed by law. These limitations may be numerous or few, limiting the subject matter, mode of exercise, or the type of sanction which can be imposed".⁶²

The above discussions would suggest that giving correct size and shape to inherent power is impossible.

vi. Application of Inherent Powers is Illustrative of an Indian Variety of Realism

Realism is a new movement in jurisprudence, whether it is American or Scandinavian. American Realism was a Revolt against formalism⁶³. Scandinavian Realism was an expression of individualism and abstract approach.⁶⁴ Very close to the above two groups was the sociological jurisprudence.⁶⁵ The realists, at first, promoted an experimental and constructive attitude to social life and thought. Later the jurimetricians and the behaviorists among them concentrated on developing actual techniques for helping the practitioner to understand and anticipate the trends of judicial decision.⁶⁶ This has prompted one jurist to comment on Realism thus

62. *Ibid.*

63. Lord Lloyd of Hampsted and MDA Freeman, *Lloyd's Introduction Jurisprudence*, 5th Edn. (1985) p. 679.

64. *Id.* at p. 805

65. *Id.* at p. 548

66. *Id.* at p. 686

"Realist movement in law is with the aim to come to terms with move beyond currently entrenched mass and looking at central topics in the Philosophy of language and mind".⁶⁷

In India while invoking the inherent jurisdiction the higher judiciary has been less formalistic and more realistic. There is an increasing tendency to relegate technicalities to the background and address the problem of abuse of the process and securing ends of justice.⁶⁸ Logical approach was discouraged. In the application of inherent powers for applying the principles the same is tested against the facts of the case at hand and then either applied or repelled. An instances is the question of invoking inherent powers where specific provision is made or specific prohibition is made. In both cases the moderate view is that inherent powers cannot be used. For instance interlocutory orders are not challenged under section 482 Cr.P.C.⁶⁹ Proceedings amounting to a second revision are not entertained under section 482 Cr.P.C.⁷⁰ But, in both cases the High Courts and Supreme Court find leeways to interfere with the proceedings pending before the trial court on interpretation of the complex concepts like abuse of the process and infraction of justice.⁷¹

Another factor which has contributed to the dynamism of inherent powers is their close proximity to the sphere of constitu-

67. Gary Ebbs, *Rule-Following and Realism*, (1997) p. 1

68. *Madhu Limaye*, AIR 1978 SC 47; *Raj Kapoor*, AIR 1980 SC 258; *Pepsi Foods*, 1998 SCC (Cri) 1400 etc.

69. Ref. *supra* Ch. V, n. 13

70. *Krishnan v. Krishnaveni*, AIR 1497 SC 987

71. Ref. *supra* Ch. V n. 40

tionalism.⁷² Constitution and constitutionalism have positively influenced the inherent jurisdiction of the High Court⁷³. Constitutionalism has enhanced the scope of the inherent power of the Supreme Court also. This in turn has had its impact on the High Courts.⁷⁴

A philosophic base constituted by components like Rule of Law, Natural Justice, Substantial Justice, Judicial Activism, historical factors, has consolidated to lay a strong foundation of inherent powers. On this foundation the High Court and Supreme Court have built a superstructure.⁷⁵ The Gothic spirit of justice is given utterance through the Indian Mind.⁷⁶

The historical factors and forces lent their hands to keep the flag of inherent powers float in heavenly heights.⁷⁷ Story of institutions, legislations, doctrines and principles add credence to this point. It is relevant in this context to recall the development of judicial institutions in India leading to the climactic event of establishment of the chartered High Court⁷⁸. The High Court became a strong institution to wield inherent powers. The Charter of 1865 itself had glimpses of inherent powers.⁷⁹ Later when the Code of Criminal Procedure was enacted in 1898 High Courts remained the most powerful courts in India.⁸⁰ So when partial

72. Ref. *supra* Ch. III generally

73. Ref. *supra* Ch. III n. 30

74. Ref. *supra* Ch. III n. 38

75. Ref. *supra* Ch. III n. 20

76. Decision from 1925-1999

77. Ref. *supra* Ch. I generally

78. Ref. Ch. I n. 68

79. Ref. Ch. I n. 49-51

80. Ref. Ch. I n. 35-36

statutory recognition was given to inherent power the High Courts became the obvious choice as a preservatory of the powers.⁸¹ Later when the legislation underwent amendment, repeal and reenactment inherent powers remained in tact, and remained with the High Court. The call for recognising the inherent power of the subordinate courts was ignored.⁸² High Courts and the Supreme Court have earned a lasting and honourable place to the inherent powers in the criminal justice system.⁸³ Criminal Procedure Code and the Constitution recognises the premier power in the administration of justice. Among the doctrines which have played a conducive role are the principle of Equity, Rule of Law, Judicial Review, Right to life and Liberty, Justice, etc.

vii. Constitution and Inherent Powers

On the third question it is clear that great prominence has been given to the ideas of inherent powers of the High Court after the inception of the Indian Constitution. The Constitution had its impact on the administration of justice. The provisions of fundamental rights, and establishment of the Supreme Court with vast powers, under the Constitution, developed a healthy climate for inherent jurisdiction to evolve. The Supreme Court has got its own arsenal of inherent powers recognised by the Constitution. The High Courts with their ascertained place in the constitutional scheme, with powers of judicial review influence the mechanics of inherent powers. The period after the inauguration of Indian Constitution India witnessed several issues relat-

81. S. 561-A Criminal Law Amended Act.

82. S. 482 Code of Criminal Procedure, 1973

83. Ref. *supra* Ch. VIII, generally.

ing to the administration of justice being discussed in the light of the provisions of the Constitution of India. The interpretation of the provisions of the Constitution regarding equality, right to life, and personal liberty, underlined the need of inherent powers of the court. Instances are not scarce, where High Courts and the Supreme Court have been called upon to apply inherent powers in cases the trials of which have been protracted and investigation not completed. Now, a watershed area has been reached where inherent powers under Criminal Procedure Code, and plenary powers under the Constitution, meet and mingle to form a 'jurisprudence of realism underlined by pragmatism'.⁸⁴ The line of thinking which commenced with *Madhu Limaye* case,⁸⁵ has been taken to the hilt in *Pepsi Foods*, decision where the court has held that the High Court has got inherent powers to treat a petition filed under Article 227 of the Constitution as one filed under section 482 of the Code of Criminal Procedure. Similarly, several provisions of statutory offences have been tested against the provision of the Constitution while examining their legality. This has helped the court in developing an area of activity for application of inherent powers. So, it can very well be said that the Indian Constitution has positively influenced the inherent jurisdiction of the High Court in criminal justice system.

Indian constitution is ascertained to be a very living thing. Inherent powers of the Supreme Court and the High Court have added vigor to the life of the constitution by prolific interpretations. Though the hardware is substantively that of the common

84. Gobind Das, *Supreme Court in Quest of Identity*, (1987) at p. v

85. *Madhu Limaye* case, AIR 1978 SC 47

law tradition of the English, in plasticity and flexibility Indian constitution has even overreached the British constitution. In Britain there is criticism about too much strain on the constitution. Lord Hailsham's criticism of the over centralised and over worked constitutional edifice says that the very political structure of the country is in peril.⁸⁶ The jurist observe that "There is plenty of life.... if we can avoid being stampeded in to chaos in compatible with its essential nature and genesis"⁸⁷ In contrast the Indian Constitution has accommodated great human and liberal values in its interpretations. This has trickled down to the administration of criminal justice. The Supreme Court has of late held that in a petitions under section 482 Cr.P.C. exemplary costs can be ordered.⁸⁸ This trend comes from new dimensions of interpretations of the constitutional provisions where the courts intially started to grand exemplary cost and compensation cost as a palliative in writ proceedings.⁸⁹

viii. Amplitude Attained by Inherent Powers

The fourth question is regarding the amplitude in jurisdiction achieved by the High Court through the application of inherent powers. Going through the cases decided by the High Court and examined by the Supreme Court, one finds that the application of inherent powers has increased in extent and reach. The volume of cases has increased on the onehand, and a number of offences under the Indian Penal Code, as well as Statutory of-

86. Lord Hailsham, *On the Constitution*, (1992), Harper Collins Publications, p. 1

87. *Ibid.*

88. *Mary Angel and others v. State of Tamil Nadu*, 1999 (3) SCALE 663.

89. C. Kuttikrishnan, "Right to Life and Personal Liberty as a Limit on State Power: The Growth of Human Rights Jurisprudence in India", 1988 Ac.L.R. 1.

fences, have been subjected to the application of inherent jurisdiction. In all High Courts among the criminal miscellaneous petitions filed, a large chunk is in respect of the applicability of inherent powers. Moreover, High Courts have often used the inherent power not only to give effect to orders passed under the Code or prevent abuse of the process of the court, or otherwise to secure the ends of justice, as narrated in section 482; but, also, other categories of references of illusory and circular nature as suggested by Prof. Julius Stone, have been identified. Thus a petition for bail, a petition for specific direction, a petition for expunging remarks, plea for return of articles, petition for compensation, etc. have broadened an ambit of inherent powers with the interplay of inherent powers of the High Court and the Supreme Court, the jurisdiction is further amplified.

The latest thinking of the Supreme Court in respect of inherent powers is in tune with the dynamism shown by the apex court in asserting its inherent powers. In *Supreme Court Advocates Association v. Union of India*⁹⁰ the Supreme Court has attempted to indoctrinate everybody of its inherent powers. The court philosophises on it. The same interest is shown by the Supreme Court in Pepsi Food's case also. The Supreme Court has demolished the distinction in nomenclature of the petition filed under Articles 226 and 227 on the Constitution and under section 482 Cr.P.C. The requirement of justice was given priority over technicalities.

90. *Supreme Court Advocates Association v. Union of India* (1998) 5 SCC 759

A jurisprudential advancement is effected by the Supreme Court in *Mary Angel and others v. State of Tamil Nadu*⁹¹. The court in this milestone decisions held that the Supreme Court had power to pass orders for costs including exemplary costs. The decision is a pointer to the High Court as to look to which direction to serve the ends of justice. If a frivolous and vexatious petition is filed under section 482 Cr.P.C. the High Court had every power to impose exemplary cost of rupees ten thousand⁹². This is notwithstanding the provisions contained in sections 148 (3), 342 and 359 Cr.P.C. The accused in this case adopted a dilatory tactics preventing the Sessions court from proceeding with the case⁹³.

"In our view section 482 Cr.P.C. stands independently from other provisions of the code and it expressly saves inherent powers of the High Court by providing that 'nothing in this code' shall limit or affect the inherent power of the High Court. The spirit of *Madhu Limaye, Raj Kapoor, Bhajan Lal, Pepsi*, etc. is taken to the dizzy heights of criminal justice.

ix. Structuring Inherent Powers

While one concedes that inherent powers have come to stay which have achieved constitutional status and that, the inherent jurisdiction is amplified, the question whether the power is structured cannot be answered in a positive manner. The Supreme Court gets an opportunity to consider cases decided by the High Court applying inherent powers only if one takes the

91. *Supra* n. 88

92. *Id.* at p. 666

93. *Id.* at p. 665

matter to the apex court under Article 136 of the Constitution. But, with the opportunity received, the Supreme Court has made an earnest attempt to establish certain norms in the invocation of inherent powers. The decisions in *R.K. Kapoor*, *Mohammed Naim*, *Muniswami*, *Raj Kapoor*, *Madhu Lemaye*, *Rogthagi*, *Bhajanlal*, *Krishnaveni*, *Pepsi Foods*, are instances to show that the Supreme Court has while deciding cases also has attempted to establish ^{normative} standards at the application of inherent powers. But, when an objective assessment is done, one has to concede that inherent powers are not structured properly. One finds conclusive factors in this respect, going through the decision of the High Court. There are, broad principles already laid down and well accepted, for instances, there is no inherent powers for reviewing a decision; there is no inherent power for the subordinate courts. No inherent power for achieving indirectly that which cannot be obtained directly.

x. Infirmities in applying Inherent Powers by the High Court

There is no inherent power for evaluating evidence. But, the High Courts are not consistent or uniform in their attitude to issues.

On the onehand, the relevance of inherent powers of the High Court in the administration of Criminal Justice is conceded and on the otherhand, the infirmities and imperfection in the application of this power are realised. The reasons are to be found from the history of inherent powers during the past several decades as well as other legal and procedural bottlenecks in the exercise of inherent powers.⁹⁴ The number of cases calling for the appli-

94. Ref. *supra* Ch. VI, generally

cation of inherent powers is galore. Similarly, the subject matter for the exercise of inherent powers is also extended.⁹⁵ The jurisprudence of inherent powers has received a diversification because of the impact of the Indian Constitution. One reason for the High Court to find it ^{unwieldy}unwieldy is the overgrowth of the jurisdiction. There are other infirmities, invoking inherent powers for quashing a complaint or proceedings can be termed as a lateral, collateral, or even preliminary attack.⁹⁶ When a proceedings is quashed, that is the end of it. Viewed from this angle, the power of the High Court quashes the proceedings on the threshold itself. The consequence is that the Prosecution or the complainant is deprived of the opportunity to adduce evidence and prove their allegations beyond reasonable doubts. There is therefore no real adjudicatory process in the conventional sense of the term. The High Court on a *prima-facie* approach takes the decision. The only thing expected of the High Court is to consider whether on the materials supplied to the trial court, can it be possible for the prosecution to initiate action against the accused. On the same materials, the trial court proceeds on the belief that there is *prima-facie* case, the High Court applying a different parameter under a different jurisdiction considers the same materials to come to the conclusion whether a *prima-facie* case exists. Therefore, if the High Court decides that there is no *prima-facie* case, the proceedings are halted. Naturally, the question arises whether the use or abuse of the process of the Court necessitates the involvement of the High

95. Ref. *supra* Ch. VII generally

96. *Jehan Singh v. Delhi Administration*, AIR 1974 SC 1146

Court and whether ends of justice can be secured. The fear expressed in this context is that there is every possibility for arbitrariness and unbridled exercise of power. There is a possibility for miscarriage of justice. There is possibility for whims, fancies and caprices of the individual judges, having a sway over the decision making process. Thus, the question of evidence becomes a crucial factor in the inherent power/jurisdiction. The High Court decides without evidence and the High Court's decision prevents parties to adduce evidence. This is the most vulnerable area in the application of inherent powers. The Supreme Court in a number of cases have found fault with the High Court for invoking the inherent powers on this count. Either the High Court would have elaborately considered the materials at hand as if, sifting the evidence from a mass of facts or the High Court would have embarked on an enquiry on the basis of conjectures to come to a conclusion. Evidence is the core of adjudication. In a situation where evidence is either not available or is not required to be considered, the decision taken by the court would be of a sensitive nature. Then, another infirmity of the High Court is the lack of proper norms or guidelines in the exercise of inherent powers. In this matter, the opinion of the Supreme Court is that, it is a near impossibility to lay down norms and rules because what the legislature cannot anticipate in advance the Supreme Court may not be able to do. The rationale for inherent powers, being saved and preserved in section 482 of the Code of Criminal Procedure, 1973, is grounded in the reality that it is impossible for any organ to lay down in advance, the situation for invoking inherent powers. Unforeseen and unimaginable situations may arise. Then the only solution is for the judge to bank heavily on his sense of juris-

prudence, his commonsense, his positive sense, or his discretion - to quote Prince Hamlet, "Let your own discretion be your tutor"⁹⁷ Another area of difficulty posed before the High Court in invoking inherent powers is the conflict it has with other provisions in the Criminal Procedure Code as well as other legislations. For instance, it is even now an unsettled proposition whether inherent powers can be exercised after availing a revision under sections 397(1) of the Code. Then the question of review is there. Here the Supreme Court opines that the High Court cannot review its judgment or decisions. But in the interest of justice the Supreme Court itself reviews decisions. Therefore, in a future case, a situation can arise where the Supreme Court will have to concede, for the purpose of serving the ends of justice that the High Court can exercise inherent powers even to review or recall or reconsider its decision. The connotation of review are multiple rather than complex. Review is the power of the court which made the decision the cancel, withdraw, alter, or otherwise modify it. Article 137 of the constitution confers on the Supreme Court the power to review any judgment or order. One opinion says that the reason for expressly barring review under section 362 Cr.P.C. would be that the head of the executive Government possesses the power of pardon which can be exercised where the courts commit illegalities in the method of punishment.⁹⁸ But the executive is subjected to judicial review.⁹⁹ The power of judicial review here is regarded as inherent in nature. So, the power un-

97. William Shakespeare, *Hamlet*, Act III, Scene 2, Line 21

98. K. Parameswaran, 'Power of Review by administrative authority' 1997 Ac.L.R. 11 at p. 14.

99. *Kehar Singh's case*, AIR 1989 SC 653

der section 482 Cr.P.C. is invoked to have judicial review of criminal cases in the interest of justice. In rare and deserving cases with all restrictions and reticence the High Court can exercise the power to review the judgments or orders. About the connection between the judicial review, Constitutional and inherent powers. Similarly, contradictory situations arise in the matter of an order passed under Section 341 of the Code of Criminal Procedure. Viewed from all these angles, it becomes clear that application of inherent powers for quashing a complaint or an FIR is not an easy or unimpeded job. The High Courts are to be very alert and it works under obvious limitations, even though the section provides that nothing in the Code could affect or limit the exercise of inherent powers.

There are several legal propositions which prevent the High Court from invoking inherent powers. One is that if the procedure Code prescribes a specific provision for a situation, inherent powers cannot be applied overreaching that provision. For example there is a provision for sentences to run concurrently for a person undergoing imprisonment. In *Bhaskar v. State*¹⁰⁰ the Kerala High Court held that inherent powers could not be exercised to direct that the sentences in two separate cases be directed to run concurrently. It would amount to a review of the earlier judgment. This is also an area where the High Court send out confusing signals. Instances are there when the High Court allowed the running of the sentences concurrently,¹⁰¹ and the dominant opinion is that under section 482 Cr.P.C. the High

100. 1978 KLT 6

101. *Sher Sing v. State of Madhya Pradesh*, 1989 Cri.L.J. 632.

Court can order running of the sentences concurrently.¹⁰² Where there is an express provision barring a special remedy inherent powers could not be used. Similarly, review of a judgment and second revision of a trial court order are barred; so is the invocation of inherent powers against interlocutory orders¹⁰³. The principle is that contained in the maxim *expressio unis est exclusio alterius* meaning express mention of one thing implies exclusion of another thing. This includes the power under section 482 Cr.P.C. also. Similarly, for every High Court territorial jurisdiction is limited. In *Chellappan v. Chandulal*¹⁰⁴ it was held that the High Court in Kerala has no jurisdiction to exercise its powers under section 482 Cr.P.C. to quash proceedings pending in a court outside the State. Under the guise of invoking inherent powers the High Court cannot "invade areas set apart for specific purposes under the Code". In *State of Kerala v. Sadanandan*¹⁰⁵ it was held that the High Court has no inherent powers to remand an accused to police custody. The court dismissed the application filed on behalf of the State relying on the decision of the Supreme Court already holding the field¹⁰⁶ Even when the High Court ~~dismisses~~^{dismisses} an application under section 482 of the procedure Code it does not mean that the court does not have the power. For instance in cases where other remedies are available the inherent powers cannot be invoked. In *Kunjikannan &*

102. *Abdul Razak Raju v. Superintendent Central Prison, Visakhapatnam*, 1992 Cri.L.J. 1261 (A.P); *Mukthiar Singh v. The State*, 1995 Cri.L.J. 2051 (J.K)

103. S. 397 Cr.P.C.

104. 1980 KLT 84

105. 1984 KLT 747

106. *Raj Kapoor v. State*, AIR 1980 SC 258; *Natabar Parida v. State of Orissa*, AIR 1975 SC 1460

*another v. A.S.I. of Police*¹⁰⁷ it was held that the inherent powers of the High Court are always there inspite of any provisions or absence of any provisions. Otherwise there may arise an occasion where the High Court becomes powerless in extreme cases. In the above cases the court quashed the charge sheet alleging violation of sections 7 & 8 of the Kerala Gaming Act (Act 20 of 1960) There are occasions when the High Court has to act positively because in the course of judicial process there may arise curious and unique situations. A sessions court makes a reference to the High Court under section 482 of the Procedure code seeking the directions whether a judicial officer can pronounce a judgment written by his predecessor. Accepting the reference the Kerala High Court, *In Re District and Sessions Judge, Tellicherry*¹⁰⁸ held that courts may have to deal with contingencies not contemplated by the framers of the Code. Absence of specific provisions should not fetter the hands of the Court in meting out justice which is absolutely essential in certain circumstances.

In the Procedure Code where provisions are made for specific eventualities there is no scope for invoking inherent powers. Granting of bail is regulated by the provisions of the procedure Code. A Full Bench of Kerala High Court held in *Mammooty and others v. Food Inspector and others*¹⁰⁹ that the High Court could not grant bail to a person who has been acquitted by trial court and convicted by the High Court in appeal. Inherent powers could only be exercised within the frame work of the law and not in violation of law. It was also held that while exercising in-

107. 1985 KLT 484

108. 1986 KLT 62

109. 1986 KLT 113

herent powers the court has to guard against passing of an order which could conflict with the provision of the Code. A relief however equitable cannot be granted in contravention of the law¹¹⁰. Equity does not permit to act against law¹¹¹.

Another area where it is difficult for the High Court to invoke inherent powers is investigation by Police. It is the statutory function of the Police. In *Johny Joseph v. State of Kerala*¹¹² relying on the decisions of the Supreme Court in AIR 1985 SC 1668¹¹³ and AIR 1982 P&H 372¹¹⁴ it was held that the High Court seldom interferes with investigation and trial. There must be specific and judicially acceptable circumstances to warrant interference. A Full Bench of the Kerala High Court held that excepting in exceptional cases where non interference would result in miscarriage of justice the court and the judicial process should not interfere at the stage of the investigation of offences. In an application under section 482 of the Procedure Code alleging action under section 154 & 157 was challenged. The offence involved was under section 304 I.P.C. On the earlier petitions the police did not register FIRs. Crime was registered on second application. The Full Bench relying on the Supreme Court decisions held that it was not a ground for quashing the proceedings¹¹⁵. The law which is settled in this respect is that an

110. Full Bench overrule the decision in *Abdulla Haji v. Food Inspector*, 1985 KLT 754; relied on *Jayaram Das v. Emperor*, AIR 1945 PC 94; *Ranganath Reddiyar v. State of Kerala*, AIR 1968 Ker. 192

111. *Venu v. State*, 1986 KLT 273.

112. 1986 KLT 445

113. *Eastern Spinning Mills' case*

114. *Vinod Kumar v. State*

115. *State of Bihar v. J.A.C. Saldanna*, AIR 1980 SC 326; *State of West Bengal v. Swapan Kumar*, AIR 1982 SC 949; *Eastern Spinning Mills v. Rajive Poddar*, AIR 1985 SC 1668

interlocutory order passed when investigation is still pending, cannot be challenged by invoking inherent powers¹¹⁶.

xi. Inherent Powers of the Supreme Court

While evaluating the applicability of the inherent powers by the High Court, an important consideration is the impact of the Supreme Court and its inherent powers. The Supreme Court of India has its own variety of inherent powers. Vast and various jurisdiction conferred on the Supreme Court make it enable to wield immense power. The Supreme Court for what it is, inherent powers are a necessity. In the matter of dealing with contempt the Supreme Court relies on its inherent powers. Several other areas emanate where the Supreme Court is to exercise inherent powers.¹¹⁷

In the interest of justice, even in the absence of a specific provision, like Section 482 of Code of Criminal Procedure, the Supreme Court can exercise inherent powers similar to those saved under section 482 of the Code of Criminal Procedure. The style and rhythm of adjudication is defined and demonstrated by the Supreme Court to be followed by the High Court and subordinate courts. In this context, the Supreme Court gets an opportunity to comment upon the inherent powers of the High Court; together, the Supreme Court has effected a positive impact on the High Court. Where executive and legislature have failed in meeting the requirements in tune with public opinion, the Supreme Court is not to remain idle or powerless, but to meet the ends of justice through its inherent powers. The modern administrative

116. *Mohan Pai v. State of Kerala*, 1987 (1) KLT 625

117. *D.K. Basu*, *infra* n. 135, AIR 1997 SCC 610

state, which has firmed up its control over all the activities in the name of welfare, has given the Supreme Court situations where inherent powers are required. It is an area where the Supreme Court's inherent powers have executive and legislative actions. Layers and layers have accumulated around the concept of judicial review in complex situations. It can be the power of the court to consider a motion adopted by the legislature, a decision of the President in considering a mercy petition, the factors to be considered while Article 356 is to be enforced, etc. Then on the otherhand, there are the compulsions over the Supreme Court even to monitor investigation of very serious cases, till the stage of filling charge-sheet¹¹⁸. So, the shine and sheen of the inherent powers of the Supreme Court have illuminated the inherent powers of the High Court. The constitutional provisions and their impact under Article 226 and 227 are considered to be akin to the ingredients of section 482 of the Code of Criminal Procedure.

The constitutional provision declaring the inherent power of the Supreme Court is contained in Article 142.¹¹⁹ The provision have been subjected to intense interpretation. The Supreme Court's powers has been discussed at various levels of judicial and juridical nature.¹²⁰ It is of great topical importance with the court's dynamic entry into the fields occupied by Government.¹²¹

118. *Vinod Kumar and others v. Municipal Corporation Delhi*, 1980 Cri.L.J. (NOC) 261 (Del.)

119. Article 142 on the Constitution:- Enforcement of decrees and orders of Supreme Court and orders as to discovery etc.

120. *Re V.C. Mishra, S.B.A. v. Union of India, Dr. K.N. Chandrasekhara Pillay, P.P. Rao, J.S. Verma, A.M. Ahammedi, K.K. Venugopal*

121. *Vineet Narayan's case*

In the 1980s a great charisma accrued on Article 21 through a benevolent and broad interpretation. In the 1990, the Supreme Court tightened its hold not only over India's jurisprudence, but also over India's polity. Inherent powers of the superior courts and the issue of contempt of the court of record functioned as potent inputs in the cauldron of judicial review.

Article 142 is considered to be a source of additional power and not of jurisdiction.¹²² A distinction is drawn between Jurisdiction and Power.

"Jurisdiction means the authority to adjudicate a dispute. Power means the ability to alter the rights and liabilities of persons"¹²³. Reference is made to jurisdiction under Articles 32, 131, 132 to 136 and 138. Jurisdiction is derived either from the constitution or laws made by the legislature. So the concept of jurisdiction is a legislative function. So, the nature of this power excludes power to add or abridge the jurisdiction of the court.¹²⁴ Court is to work in cooperation with legislature. Court's work cannot be considered obstructive of long cherished view of the House of Lords.¹²⁵ and the Supreme Court¹²⁶.

The criticism against the inconsistency in interpretation is due

122. Article 142: P.P. Rao, 'Is The Power To Do Complete Justice Subject To Rule of Law?' 1994-96 Indian Advocate, p.1)

123. *Ibid.*

124. *Ibid.*

125. *Attorney General v. Herman James Sillem*, (1864) 10 HLC 703.

126. *Manohar Lal Chopra v. Raja Seth Hiralal*, (1962) Supp. 1 SCR 450; *M/s Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhaya Lal Bhargava and others*, (1966) 3 SLR 856; *Pampapathy v. State of Mysore*, (1966) Supp. SCR 477.

to the apprehension whether it is in consonance with the Rule of Law concept¹²⁷. The interpretative history of Article 142 is one of being inconsistent. In *K.M. Nanavati v. State of Bombay*,¹²⁸ the view was that the power was not limited or fettered. In *Premchand Garg v. Excise Commissioner*¹²⁹ a constitution bench held that the Supreme Court could not make an order plainly inconsistent with a statutory provision, let alone any constitutional provision. *A.R. Antulay v. R.S. Nayak*¹³⁰ larger bench of seven Judges, approved *Premchand Garg v. Excise Commissioner* case's decision. It is in consonance with Rule of Law concept. "Rule of Law" the pride of Great Britain negates invasion by one agency into the territory of another¹³¹. This discipline of law led to *Keshavanada Bharati*¹³² and further to *Smt. Indira Nehru Gandhi v. Raj Narayan*.¹³³

Expansion of interpretation of Article 142 took a *U-turn in Delhi Judicial Service Association v. State of Gujarath*,¹³⁴ Three judges distinguished constitution bench decisions in *Premchand Garg* and the larger bench *A.R. Antulay*. Interpretation centered around "complete justice". The reference made by the Supreme Court while deciding *Delhi Judicial Service Association* the court adverted to decisions earlier to *Premchand Garg* and subsequent to *A.R. Antulay*¹³⁵. The decisions were *Harbans Singh v. U.P.*

127. Ref. *supra* n 123 at p. 3

128. (1961) 1 SCR 497

129. (1963) Supp. 1 SCR 885

130. (1998) Supp. 1 SCR 56

131. Ref. *supra* n 123 at p.4

132. (1973) Supp. SCR 1

133. (1976) 2 SCR 347

134. (1991) 3 SCR 936

135. Ref. *supra* n123

State,¹³⁶ *State of U.P. v. Poosu*,¹³⁷ *George Bishan v. Jai Narain*,¹³⁸ *Mohinder Sing Gill v. Chief Election Commissioner*,¹³⁹ *Navnit R. Kamani v. R.R. Kamani*,¹⁴⁰ *B.N. Nagarajan v. State of Mysore*¹⁴¹.

The main criticism against *Delhi Judicial Service Association's* case, is that it contains a wide preposition. This preposition suffer from infirmities. The court is alleged to have not completely understood the ratio in *A.R. Antulay* and that reliance on case law misplaced.

Reference is made to *Union Carbide Corporation v. Union of India*.¹⁴² Here also the court failed to understand correctly the ratio of *A.R. Antulay*. The dictum in *Delhi Judicial Service Association's* case and *Union Carbide Corporation* case, burdened the judicial thinking. Further we have *Mohd. Anis v. Union of India*,¹⁴³ and *Vinaya Chandra Mishra*¹⁴⁴. In *Supreme Court Bar Association v. Union of India*,¹⁴⁵ introspection is effected. The later decision is without loosing the sheen of the Supreme Court's inherent powers. The recent trend is that the power to do complete justice is recognised in respect of the High Court also. *B.C. Chaturvedi v. Union of India*¹⁴⁶. The different voices with which the Supreme Court speak on Article 142 prompts one to feel the

136. (1982) 3 SCR 235

137. (1976) 3 SCR 1005

138. (1986) 1 SCC 75

139. (1978) 2 SCR 277

140. (1988) 4 SCC 387

141. (1966) 3 SCR 682

142. (1991) 4 SCC 584

143. 1994 Supp. (1) SCC 145

144. (1995) 2 SCC 584

145. (1995) 4 SCALE 759

146. (1995) 6 SCC 749

necessity to have all the questions settled by a larger Bench of 7 judges so that the nature and ambit of power under Article 142 does not remain in the realm of uncertainty. Trend is against Rule of Law as evidenced by *Jaisingshani v. Union of India*.¹⁴⁷

There is the other view of the matter also. The Supreme Court is held in high esteem for the rapid strides it has made in the dispensation of justice. This is reflected in the following words,

"The Supreme Court without being concerned any more about the political might of the state.... in the country."¹⁴⁸

xii. Abuse of Inherent Powers

The negative aspect of inherent powers in the administrations of criminal justice is those generating from lack of consistency, uniformity and the standards of invoking inherent powers. For instance, inherent powers wrongly used can affect the stream of justice. If only the matter is taken to the Supreme Court, a further opportunity to save and secure ends of justice will be obtained. The reality is that only a fraction of cases decided by the High Court reaches the Supreme Court for its final word. In those cases where the Supreme Court interfered and tested the decision of the High Court, cleaning the way of the trial court to proceed, untrammelled by what happened in the High Court or in the Supreme Court. This leads to delay which is again not forming part of the ends of justice. Unconscionable delay will lead only to deflate justice. The witnesses would have their memory

147. (1967) 2 SCR 703.

148. K.K. Venugopal, "Supreme Court of India: The most powerful court", [1998] C.U.L.R. 355 at p. 378

faded and a remoteness injected to the proceedings can convert into a lethargy to those involved to lead a proceedings to a purposeless end. In this case, the State had filed a leave to appeal. While granting leave, the High Court issued notice to the accused to show-cause why he should not be sent for trial. This was by invoking the inherent powers. Supreme Court is of the view that High Court was wrong in doing so without hearing the concerned person. Arbitrary exercise of inherent powers make the position of the High Court unenviable. In *State of Bihar & another v. K.J.D. Singh*¹⁴⁹ Supreme Court held that the inherent powers were not to be exercised arbitrarily. The High Court should not cut-short the normal process of criminal trial except in exceptional cases. Appreciating evidence at a pretrial stage or quashing proceedings at the threshold is not permissible under inherent powers. Regarding this aspect, Supreme Court has been steadily maintaining the record. In the above case, reliance was made on the decisions¹⁵⁰ like *R.P. Kapur v. State of Punjab* and *Janata Dal v. H.S. Choudary*. If the High Court usurp the jurisdiction of the trial court, that again is an abuse of the process of the court. In *Radhashyam Khemka v. State of Bihar*,¹⁵¹ the Supreme Court held that the High Court cannot convert itself into a trial court and it should not conduct a powerful trial. Here the reasoning of the High Court and Supreme Court tallied as the High Court had dismissed the application under section 482 Cr.P.C.

149. 1994 SCC (Cri) 63

150. AIR 1960 SC 860 and 1993 SCC (Cri) 36

151. 1997 SCC (Cri) 591

The History of the inherent jurisdiction in criminal justice system shows that justice is the prime objective. While considering the application under section 482 Cr.P.C., the High Court must be governed first by the interest of justice and only then by the intricacies of law. Consideration of facts and law shall not be too rigid to produce an outright and unjust solution. For instance, an interlocutory order cannot be challenged in revision as the same is barred by section 392(2) Cr.P.C. Since it is expressly barred in the ordinary course, inherent powers should also not be invoked. So, if a stand still situation arises, in the interest of justice, the High Court must make a positive approach. In *Lalith Mohan Mandal & others v. Binoy Chandra Nath*¹⁵² an order passed under section 141 Cr.P.C. was challenged. Such an order was not revisable and so the High Court declined to interfere. The Supreme Court adopted an affirmative stand. It was also when inherent power could be gainfully used. According to the Supreme Court, the High Court must apply its mind for being satisfied whether interest of justice is secured. Here, the Supreme Court allowed the appeal and remanded the matter to the High Court for fresh disposal.

Power under section 482 Cr.P.C. is most successfully used when it can be utilised for issuing positive directions. This is also in the interest of justice as held by the Supreme Court in *Sajan K. Varghese v. State of Kerala, and others*.¹⁵³ A film producer went bankrupt. He also had a financing company which had fallen on bad days. A big budget feature film was being

152. 1982 SCC (Cri) 679

153. 1989 SCC (Cri) 339

produced and its production was half way through. By invoking inherent powers, the High Court directed the party to hand over unfinished negative of films to another person to complete it, to safeguard the interest of the creditors.

While exercising inherent powers, the High Court shall not overstep the limit. In *Dy. Commissioner of Police, Delhi v. Jas Pal Singh Gill*,¹⁵⁴ the Supreme Court cancelled bail granted to a person alleged of offences under sections 3, 5, and 9 of official secret Act, 1923 read with section 120 I.P.C. Charges related to offences of passing on defence secrets to foreign agent. The Supreme Court held that since the charges against the accused were *prima-facie* made out, High Court was not justified in enlarging the accused on bail. Similarly, passing oral orders to conduct the proceedings of the court is not in tune with the restraint recognised for invoking inherent powers. In *Naresh Sreedhar v. State of Maharashtra*,¹⁵⁵ the oral order of the High Court prohibiting publication of trial proceedings was dismissed by the Division Bench of the High Court. The Supreme Court held that, the High Court had jurisdiction to hold trials in camera, or part of the trial in camera, to prohibit excessive publication of a part of the proceedings of the court in order to secure the ends of justice.

Issuing positive directions means invoking inherent powers for constructive purpose. This is because the power is in-built, in the institution of the court. In *Palani Vel v. State of Tamilnadu and others*.¹⁵⁶ The petition was filed for compensation. The High

154. 1984 SCC (Cri.) 444

155. AIR 1967 SC 1

156. 1977 SCC (Cri) 297

Court amended the prayers. The Supreme Court criticised the attitude of the High Court because when there was express provision under section 357(1) Cr.P.C. inherent powers cannot be invoked. But, the Supreme Court made a realistic approach by holding that, though the petition is made under section 482 Cr.P.C. the High Court could have considered it as one under section 357(1) and act accordingly. This is to mitigate the rigor of technicality. Too much of technicality will make justice administration rigid. In *Rajpathy v. Bachan and another*¹⁵⁷, the Supreme Court held that technicality must give way to the feasibility of justice.

In spite of the fact that inherent powers in criminal justice system is in play for considerably long time even after legislative recognition was obtained, the rule is not capable of being stated with certainty and precision. Countless occasions come to the High Court and the decision could not reflect the consistency or a lasting rationale. The reasons for this phenomenon as well as the result for of this phenomenon have advantages as well as disadvantageous.

When section 561-A was introduced in the Code in 1923 through the Criminal Law amended Act, it was not an attempt to prescribe the parameters precisely. The rule stated is not inflexible. The High Court has a wide spectrum to move about while exercising inherent powers. In *Chammnad Oil Manufacturing Co. v. Circle Inspector of Police, Puthoor*¹⁵⁸, the Kerala High Court held that there is no inflexible rule in respect of the ^{governance} ~~governance~~ of

157. 1980 SCC (Cri) 927

158. 1974 (1) KLT 161

inherent powers. The thinking of the Highest judicial fora, the Privy Council and the Supreme Court endorsed this. The Privy Council in *Emperor v. Nazir Ahammed*,¹⁵⁹ and the Supreme Court in *R.P. Kapur v. State of Punjab*,¹⁶⁰ had expressed this view. One aspect in this context is the power of the High Court to consider repeated applications, invoking inherent powers. Depending upon the situation, the High Court can adopt varying stands, holding that on the one hand repeated applications amounts to abuse of the process of the court,¹⁶¹ and on the otherhand, holding that there is nothing which prevent filing a second petition on the very same ground.¹⁶² This position of the High Court also equips it to take decisions in the interest of justice.

According to J.A. Jolowic¹⁶³, an action against the abuse of the process of the court has come to occupy a definite territory in jurisprudence.

"If the need for the power to deal with an abuse of process is clear, it is also clear that it must be exercised only on extreme cases"¹⁶⁴

The above observation is because, there is no detailed trial. There is denial of proper hearing. It means there is conflict of

159. AIR 1945 PC 18

160. AIR 1960 S.C. 866

161. *P.K. Hameed v. Chanda Pillai Kurien*, 1974 KLT-49, *Rajendran v. State of U.P.*, 1993 Cri.L.J. 3058]

162. *Dr. A.M. Berry v. Revi Arora and others*, 1992 Cri.L.J. 1327 (Del).

163. J.A. Jolowic, "Abuse of the Process of the Courts- Handle with Care", CLP (1990) 43 p.77

164. *Id.* at. p. 79

principles. Therefore, a balanced approach taking care of both the privilege of the court and the position of the accused person must be adopted. "Abuse of the process of the court must be prevented but, the right to a hearing must be preserved".¹⁶⁵

The British legal system has developed rules regulating action against abuse of the process. But the modern rules are identical as the concept of inherent jurisdiction, incorporating virtually the whole of inherent jurisdiction.¹⁶⁶

A negative development in the course of action against an abuse of the process of the court is that the Judges at times become overzealous and they use it to cases pending in a court.

Similarly when a person file an application to withdraw a pending action, the interest of the courts leads to decline the application. J.A. Jolowic is a bit critical of the attitude of the Judges sounding a warning that it can even risk the administration of justice.

"Taken at face value - and that is how the language of the Judges of our highest court should be taken - this gives a greatly extended and even a strained meaning to 'abuse of the process of the court'. The power to put a stop to an abuse of process, exists to protect the administration of justice, and its exercise is not justified by a general appeal to public policy"¹⁶⁷

Regarding the tendency not to accept the application for

165. *Id.* at p. 77

166. *Id.* at p. 48

167. *Id.* at p. 92

dismissing the action, the author refers to Lord Scarman

"Lord Scarman was surely correct when he said in *Gillick v. West Norfolk AHA*, if there are as in the present case, an abuse of the process of the court, the house cannot overlook it, even if the parties are prepared to do so".¹⁶⁸

This opinion from the bench has agitated the minds of jurists like the author. It has generated an apprehension that matters even lead to abuse from the bench,

"It is time for a fresh look to be taken at the power of the court to bring proceedings to an end by branding them as an abuse of the process of the court. However excellent their intention, the courts must not abuse their power. The warnings issued by the Judges of the late 19th and early 20th Centuries must be reactivated. If they are not, the courts power to strike out a pleading or dismiss an action, as an abuse of process, will come to do more harm than good to the administration of justice which it exist to defend."¹⁶⁹

The above remarks about the abuse of inherent powers from the bench is significant in the estimation of the Supreme Court when the High Courts, go berserk while invoking inherent jurisdiction.¹⁷⁰ In *Rajesh Bajaj v. State NCT of Delhi and others*¹⁷¹ for quashing a complaint alleging offence under section 415 and 420 IPC the Supreme Court has vehemently criticised the High

168. *Id.* at p. 93

169. *Ibid.*

170. *Bhajan Lal*, AIR 1992 SC 604, *Kurukshetra University*, AIR 1977 SC 2229

171. 1999 (1) Crimes 136.

Court. The Supreme Court's castigation runs like this:

"The High Court seems to have adopted a strictly hyper- technical approach and sieved the complaint through a cullender of finest gauzes for testing the ingredients under section 415 IPC"¹⁷²

According to the Supreme Court it can be done in trial, not at investigation stage. Even early occasions also the Supreme Court has not spared of occasions to sound alarm when the High Court ride on the inherent powers like an 'unruly horse'. The observations in *Mangilal and others v. State of Madhya Pradesh*¹⁷³ on inherent powers referring to landmark decisions in the common law realm the Supreme Court laments the lack of judicial restraint and opines that a judge must be of a sterner stuff.¹⁷⁴

xiii. An Occasion to Study the Personality of the Judge

Personality of the judge means judicial personality. When absolute discretionary power like the inherent powers are wielded by the judges they must take the interest of the whole court and the whole justice administration process. There should not be an occasion for poignant comments like,

"The judicial proceedings in this court relating to the administering the High Court during that period would indicate that this went severely wrong in the High Court's administration in certain matters."¹⁷⁵

172. *Ibid.*

173. JT 1994 (3) SCC 644.

174. *R v. Bath Compensation Authority*, (1925) 1 KB 635; *Public Utility Commission of the District of Columbia v. Franklin S. Pullock*, 343 US 451

175. *Supra* n. 174 at p. 646

At times the High Court judge can go wild causing panic among the judicial fraternity as well as general public.¹⁷⁶ It is not becoming of a judge to make disparaging remarks about the chief justice and other judges. In such a case the High Court judge would be acting outside his jurisdiction and the whole criticism of such exercise is comparable to an authority acting without jurisdiction. The concept of jurisdiction and illegality postulated by Rubenstein is pertinent in this context. The jurisdictional conundrum haunting the administrative law are precipitated in the case of invoking inherent powers also.¹⁷⁷

xiv. Future Possibilities

While analysing the jurisdiction of the High Court in the area of inherent powers, on the above grounds one confronts the future possibility of this jurisdiction also. The possibilities are immense, the High Court can use this power for positive directions to the trial courts for securing the ends of justice. The High Court shall not waver or vacillate in the exercise of inherent powers. The concept of the rarest of the rare cases can be adopted here. Power shall be applied only in very rare cases, because its application excludes evidence. In patently unjust and illegal proceedings, the High Court must interfere even if a codification is not possible on the face of not achieving perfection in codification, because inherent powers are conserved and saved. Certain norms can be evolved for the application of inherent powers. Regarding the requirements of inherent powers, in a system like Indian Criminal Justice Administration, it is neces-

176. *State of Rajasthan v. Prakash Chand and others*, AIR 1998 SC 1344

177. *Ref. supra* n. 60

sary that the High Court possess inherent powers to be used as a touchstone to detect fake and fabricated proceedings. By its long history, the High Court is the obvious candidate for wielding inherent powers. Crime rate is on the increase. So also crime range. In the confusion created thus, innocent people shall not be victimised. Inherent powers are therefore required to conduct a litmus test to find veracity of the complaint or proceedings.

With the contribution of the Supreme Court and High Courts in interpreting the inherent powers, the future of this jurisdiction is promising and prominent. In totality it can be said that the judicial process has evolved a policy for administration of criminal justice through applying inherent powers. When judges engage in policy making it is not appreciated. The opinion of two writers reflect thus

"The court performs three interrelated but distinguishable functions: they determine facts; they interpret authoritative legal text, and they make new public policy"¹⁷⁸ The authors are of the view that courts are not supposed to act as policy makers, "The assertion that they do is generally treated as either harsh realism or a predicate to condemnation"¹⁷⁹

The above view need not be universally correct. If the controversy regarding the judicial legislation can be successfully resolved to the extent to say that it is 'fairy tale' that judges do not legislate. In the interest of justice going by the adage, ne-

178. Malcom M. Feeley and Edward L. Rubin, "*Judicial Policy Making and Modern State*" (1998) p.1.

179. *Ibid.*

cessity is the mother of invention, the judiciary may be compelled to frame policy. According to Justice V.R. Krishna Iyer when justice is at cross roads judges cannot keep mum for want of rules or policy to govern the rules. He quotes Daniel Webster,

"Justice, Sir, is the greatest interest of man on earth; it is the ligament which holds civilised being and civilised nations together".¹⁸⁰

The relevance of justice among the community of men is so acute that judges while discharging a divine functions not only administer justice but also accumulate the inputs for justice administration like rules, laws and even policy. About poets P.B. Shelley declare, "Poets are the unacknowledged legislators of the world"¹⁸¹ It can be said with even greater confidence and conviction that judges are the acknowledged ^{legislators} ~~legislative~~s of the world as they are struggling with mundane human problems and to administer justice. In criminal justice administrations inherent powers have given the courts and judges necessary support to perform the above function.

The landscape of jurisprudence is enriched with the fragrance of inherent powers. In future, functioning with proximity to the doctrine of judicial review, inherent powers have great possibilities for ensuring the Independence of Judiciary. The satiric comments of Lord Denning about the Chancellor's Foot would remain a harmless anecdote in the present day context of Rule of Law¹⁸². The judiciary as an institution has seasoned enough to

180. V.R. Krishna Iyer, *Justice at Cross Roads*, (1992) at p. vii

181. P.B. Shelley, *A Defence of Poesey*

182. Ref. *supra* Ch. 1 n. 29

withstand the "increasingly complex nuances about subtle government pressures"¹⁸³, Independence of judiciary does not mean merely a pack of judges indisposed to governmental pressures and not allowed to the micro and macro judicial functions of redressing the individual grievances and attending to social reconstructions: "The law can do much to ensure a fair balance between the conflicting demands and pressures"¹⁸⁴. Law devices safeguards to protect the individual. Even in the absence of specific laws individual is to be protected. Herein lies the ^{relevance} ~~relevants~~ of inherent powers. Change is the sign of life; but the change must be in the correct direction. If the judiciary is armed with sufficient powers, even if "the state a modern Leviathan, absorbed the individual in his service"¹⁸⁵ the citizen have solace under Rule of Law. In *A.D.M. Jabalpur v. Shivakanth Shukla*¹⁸⁶ we had experienced result of both dependence and independence of judiciary. When the High Court largely banking on inherent powers to interpret the provisions of the constistution, ordered the release of the detenus the Supreme Court had slammed the doors on the hapless littigant as well as Rule of Law. But the apex court very soon change its track and we got the classic judgment in *Menaka Gandhi's case*.¹⁸⁷ There ensued a most brilliant period in the chapter of administration of justice in India.

Inherent powers of the court has become a part of the basic

183. Robert Stevens, "The Independence of Judiciary, The View from Lord Chancellor's Office", (1993), p. 169

184. W. Friedmann, "Law in a Changing Society" (1959), pp. 497-498

185. *Id.* at p. 495

186. AIR 1976 SC 1207

187. AIR 1978 SC 597

concept of legal thought in India. While diagnosing the aspects of the justice administration a fair procedure satisfying the Wedensbury reasonableness is expected.¹⁸⁸ *Associated Motion Picture Company v. Wedensbury Corporation*,¹⁸⁹ the inherent jurisdiction of the High Courts with its huge credit of leeways developed over the years can do justice. This is all the more significant in the procedural aspect. One thinker comments on the virtues of fair procedure thus, "In its just form, a fair procedure is all that is needed to generate a just result.... These are procedures that do not admit of mistakes; no one can complain about the outcome as unjust"¹⁹⁰ this is highly relevant in the aspect of inherent powers. The court while preventing the abuse of the process of courts takes care of the interest of the complainant, the prosecution, the accused and the above all the interest of the court itself. The inherent powers if sagaciously applied can convert the "vague intangibles" of the concept of law into intelligible tangibles. This is pertinent context of improving the difficulties in understanding the law and justice. In a collection of highlights of legal opinions once scholar remarks, "The nature of law is increasingly more difficult to understand as we study more about it. "Law" means many things to many people."¹⁹¹ "Vague intangibles" mentioned above are the gaps and loopholes in the body of law when the judges use their discretion. They may bank on their sense of justice, sense of equity. Inherent powers, here,

188. [1948] 1 KB 223

189. *Ibid.*

190. George P. Fletcher, "Basic Concepts of Legal Thought", (1996), p. 81

191. Ray D. Henson, *Landmarks of Law: Highlights of Legal Opinion*, (1960), Introduction, p. vii

act as a stable support mechanism to administer justice. Rule of Law, or Human Rights, or "Due Process is not a fair-whether or timid assurance. It must be respected in periods of calm and in times of trouble it protects aliens as well as citizens", says one commentator of law and justice.¹⁹²

The prestige of the court depends on its power. With power court moulds the structure of the society. Judicial application of law is not a mechanical process, "of fitting every case with a strait jacket of rule or remedy"¹⁹³. Law does not give strait jackets always to meet every situation. Superior courts must invoke power inherent in them to administer justice. What is required is a progressive realism. As observed by one jurist, Constitution is not be a catechism and judges are not priests reciting it.¹⁹⁴ Realism requires judges with understanding social growth including changes in political, economic and social dimensions. The above author quotes Brandis, who is quoted all over the world by all who have faith in their Constitution. "Our Constitution is not a strait jacket. It is a living organism. As such it is capable of growth - of expansion and of adaptation to new conditions"¹⁹⁵

The Indian condition also gives a successful picture in the administration of justice. The Supreme Court and High Courts in India are more relying on their inherent powers rather than searching for "strait jacket". There is much "free scientific re-

192. Brian Harris, *The Literature of the Law*, (1998), p. 39

193. Roscoe Pound, *An Introduction to the Philosophy of Law*, (1922), p. 49

194. Alexander M. Bickel, *The Supreme Court and the Idea of Progress*, (1970), p. 19

195. *Id.* at p. 20

search" and "extraversion"¹⁹⁶, to borrow the words of Julius Stone, by the Indian judiciary which has helped the precipitation of a realism in Indian jurisprudence. This realism is the inherent force of the inherent powers of the High Courts and the Supreme Court.

196. Ref. *supra* Ch. II.

CHAPTER - XFINDINGS, CONCLUSIONS AND SUGGESTIONS

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

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

1. Ref. *supra*, "Some question emerging on summing up", at p. 492

is negative but the effect is positive. The pending proceedings are uprooted. The accused goes scot-free. If the High Court declines to exercise inherent powers the proceedings survive. The accused is to face trial. These two effects always accompany inherent powers.

The State as the guardian of the society's interest prosecutes the offender. This is paternalism. The same State through its judicial branch while invoking inherent powers protects the rights of the accused. This is maternalism.² Viewed in this context inherent power is a two edged sword. The parameters identified are to fit with the case. Otherwise inherent powers do not respond. Since it is a doctrine associated with procedure it looks after the interest of the entire system. Inherent powers offer fair trial. The frequency with which the provision is invoked shows its success. The inherent powers empower the courts to give effect to orders passed under the procedural law.³

The nature of inherent powers convey the presence of a strong weapon in the hands of the judiciary. There is chance for abuse, misuse or disuse. But the enlightened opinion is in favour of giving inherent powers to the judge.⁴ The judge conducts ^{research} ~~research~~⁵ so that situations which do not fit in the 'strait jacket' of rule or order are overcome⁶. Thus inherent power occupies a permanent slot in criminal justice system.

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2. Ref. *supra* ch. IV, n. 3
 3. Ref. *supra*, introduction, n. 1&2
 4. Ref. *supra*, introduction n.9
 5. Ref. *supra*, n. 12&13
 6. Ref. *supra*, ch. IX, n. 194

The permanency advocated above has supplied the inherent powers with a theory and philosophy.⁷ The jurisprudence of inherent powers is evolved from its association with doctrines of equity, fair play, Rule of Law, constitutionalism, judicial review and such paradigms of law. The jurisprudence has given inherent powers a theoretical base. Among the recognised theories Legal Realism has optimum compatibility to inherent powers. Like Realism inherent powers have brought justice out of the ivory tower of jurisprudence to dwell amidst the society. The Realists believe in the power of the court and the performance of the court. They are pragmatists⁸.

The High Court happened to be the apt candidate for being the repository of inherent powers. Reasons are historical, philosophical, juridical and juristic. It was the first successful superior court in India⁹. It was born before the Supreme Court¹⁰. It had occasionally gone before the Supreme Court in securing ends of justice.¹¹

The most striking character of inherent powers is the element of discretion it carries. The judge is supreme. But a judge cannot ride on inherent powers as if on an 'unruly horse'. There must be restraint, equipoise and magnanimity¹². A judge should not be so

7. Ref. *supra*, introduction, n.17& n. 33; ref. ch. II generally; ref. ch. V n. 14

8. Ref. *supra*, ch. IX "vi" Application of inherent powers as illustrative of an Indian Realism

9. Ref. *supra*, ch. I n. 10 and n. 20

10. Ref. *supra*, ch. I n.36

11. *A.D.M. Jabalpur v. Shivakanth Shukla*, AIR 1976 SC 1207

12. Ref. *supra*, introduction, n. 9

uncouth as to issue notice of contempt to the Chief of the same court. The judges shall not be emotive with the parties and bring in images of sentiments. No unnecessary word shall be uttered¹³. At the same time giving power to the judges is indispensable because rules and laws are not always there when justice is in jeopardy.¹⁴

The function of the Supreme Court in the above context becomes onerous. It has to control, confine and limit the inherent powers of the High Court within the permissible limits. So there has been interaction between two varieties of inherent powers - that of the High Court and that of the Supreme Court. There has been a reciprocation also¹⁵. The Supreme Court has, even without having inherent powers to quash criminal proceedings, demonstrated that the same can be done in the interest of justice¹⁶. On the other hand the High Courts have shown how application of inherent powers can be developed along the lines of interpretation of the Constitution. Supreme Court's construction of Article 21 has enabled the High Courts to structure inherent powers in the mould of constitutional principles. This symbiosis has helped new contours of jurisprudence.

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

13. *Bhajan Lal's case*, 1992 Supp. 1 SCC 335; Judges tell the story of Porus, the vanguard king brought before Alexander.

14. Ref. *supra*, introduction n. 17

15. Ref. *supra*, ch. VIII n. 44, 45

16. Ref. *supra*, introduction, n. 64 and ch. III, n. 30

situations. "Giving effect to orders", "preventing the abuse of the process of the court", and "securing the ends of justice", are expressions capable of producing a spectrum of possibilities. They are materials for testing the veracity of the facts of the case. Abuse can be of a wide range¹⁷, inherent powers can be subjected to abuse. The High Courts may proceed on a tangent and instead of leading justice mislead it to inhospitable terrains¹⁸.

There are principles which go to check the unbridled nature of the inherent powers¹⁹. Revision and review have for some time retarded the scope of inherent powers. An aura of conservatism surrounding the judicial thinking, for a time, even subordinated inherent powers to revision and review. But the Supreme Court freed the powers from the shackles of unrealistic interpretations. Inherent powers are restored with the celestial status²⁰.

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

17. Ref. *supra*, ch. VI, generally

18. Ref. *supra*, ch. IX, n. 168; also refer n.150

19. Ref. *supra*, ch. V, generally

20. *Madhu Limaye*, 1978 SCC (Cri) 10; *Raj Kapoor* 1980 SCC (Cri) 72; *Pepsi Foods* 1998 SCC (Cri) 1400; *Krishnaveni*, AIR 1997 SC 987.

This is the one area where judges must display professionalism and this is also an area, most of the judges, when fail in this respect, fail miserably²¹. A judge is deemed every inch a judge for his dexterity to use evidence²². Failure here is failure of justice²³. Through a catena of decisions the Supreme Court has criticised almost all High Courts for treading through the slippery field of evidence²⁴. This has its reverse effect also, when the High Court is to interfere, fearing the wrath of the Supreme Court, act shy.²⁵ Thus this is an area requiring attention and discipline. High Court, if not alert to the seriousness of the situation, can risk the credibility of inherent powers; and thereby risk the credibility of justice system.

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

Concept of inherent powers reaches areas of Constitutional

21. Ref. *supra*, ch. III, n. 100

22. Ref. *supra*, ch. VI, n. 13&14

23. Ref. *supra*, ch. VI, n. 22

24. Ref. *supra*, ch. VI, n. 26 and n. 36, 41, 42, 59

25. Ref. *supra*, ch. VI, n. 29

26. Ref. *supra*, ch. VII, n.25, 28, 29

27. Ref. *supra*, ch. VII n. 48, 51, 52

background when we discuss the inherent powers of the Supreme Court. What is inherent in the inherent powers is decided by the Supreme Court. In one voice the Supreme Court castigates High Courts, and then without much ado exercises power far in excess of the High Court²⁸. The fact of a case^{28A} is narrated in the introduction of this thesis to show the course a case could take with a little measure of inherent powers employed by the High Court. Even though areas of exclusive operation for the High Courts and the Supreme Court's are discernible the Supreme Court power greatly influences the High Court's inherent powers. The Supreme Court has developed a jurisprudence of inherent powers for its own use. Article 142 of the Constitution gives the power. At times strong sentiments are expressed regarding the way in which Supreme Court decides cases²⁹. Opinions vary from allegation of failure to understand the precedents to being oblivious of Rule of Law on the one hand³⁰, and accolades for transforming itself to a powerful court³¹, and also a sense of failure for vacillations³².

Inherent power jurisdiction is neither to be played in an amphitheatre nor to be staged in a theatre of the absurd. Judges get opportunity to express their personality. But it should not be an expression of a larger than life personality³³. This will induce a devastating paralysis into justice administration. The sum to-

28. Ref. *supra*, Introduction, n. 35

28A. *Keshob Mahendra*, (1996) 6 SCC 129

29. *Keshob Mahendra*, (1996) 6 SCC 129; *D.K. Basu*, AIR 1997 SC 610; *Re V.C. Mishra*, (1995) 2 SCC 584

30. Ref. *supra*, ch. IX, n. 122

31. Ref. *supra*, ch. IX, n. 148

32. *K.N. Chandrasekaran Pillai*, 1997 Ac.L.R.

33. *State of Rajasthan v. Prakash Chand*, AIR 1998 SC 1344

tal of personalities of the individual judges should produce the unified personality of the court and justice. There is only one species of power, inherent powers. It is used by judges who are also human beings. There may be persons with the proverbial "Chancellor's Foot"^{33A}. But such "Foot" does not measure upto the expectation of justice. Justice is impersonal and impartial. Justice administered by the Supreme Court and by the High Court do not differ in quality or texture. There is no superior-inferior, or superordinate-subordinate relationship between the Supreme Court judges and the High Court judges, in this respect, both derive power from the Constitution. Both are subordinate to Rule of Law. A case decided by the High Court can be reversed and remanded to it by the Supreme Court and it can again be decided by the High Court as it had decided at the first instance³⁴.

Inherent powers of the High Courts under section 482, Cr.P.C. is in an evergrowing state. High Court itself must find leeways by doing "free scientific research" to test the possibilities. Only then can this power assume still greater significance in the administration of justice. Such a vast power is reserved only for a single judge bench of the High Court. There is no scope for appeal to a bench of two judges. Attempts to develop this have been foiled at the outset³⁵ Among the thousands of cases decided by the High Court applying inherent powers or declining to apply inherent powers there may be erroneous decisions. There is no opportunity for correction, except before the Supreme Court

33A. Ref. *supra*, ch. I, n.

34. Ref. *supra*, *K.M. Mathew v. Nalini* cases, 1988 (2) KLT, S.N. 21 at 13; 1988 (2) KLT 832

35. *Abubaker Kunju v. Thulasidas*, 1994 (2) KLT 987

with a special leave petition. Only a fraction of cases come before the Supreme Court after the consideration by the High Court. In writ jurisdiction under Article 226 there is provision for a writ appeal before a bench of two judges. The High Court Act and Rules permit it³⁶. It permits an appeal before a Division Bench from the decision of a single judge. One can hope that the benefit of section 5(1) of the Kerala High Court Act and similar provisions in respect of other High Courts would accrue on the inherent power jurisdiction also. Other areas are brought under this facilities³⁷.

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

36. Section 5(1) Kerala High Court Act, 1958

37. *Premavalli v. State of Kerala*, 1998 (1) KLT 822 (FB)

The above mentioned findings of this research work in respect of inherent powers of the High Court in criminal justice system can further multiply to obtain other combinations. Julius Stone's concept of indeterminate category of illusory reference can be studied in comparison³⁸. This prompts one to make some significant suggestions in the exercise of the inherent powers.

High Court while using this jurisdiction must obviously be aware of its limitations as well as its potential. In the introductory chapter a few questions were raised regarding the pertinence of inherent powers in the administration of justice³⁹. In chapter IX, while summing up certain possible questions also emerged. The thoughts evoked thus compels one to believe that there must be great circumspection in the use of inherent powers.

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

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

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

38. Ref. *supra*, ch. II, n...

39. Ref. *supra*, Introduction, after n.30

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

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

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

40. Ref. *supra*, ch. II n. 135

41. Ref. *supra*, ch. II n. 52

It is more necessary to stabilise the constitutional and jurisprudential foundations of inherent powers, so that there is a ~~non~~ ^{non} *ius scriptum* for all concerned to follow the application of the power. There must be a standard to keep the independence of judiciary. It must be a means to maintain the majesty of Rule of Law. It must be a support for keeping the interest of justice alive.

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

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

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

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