



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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THE INHERENT POWER OF THE COURT: A DISCUSSION UNDER CIVIL PROCEDURE CODE

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ABSTRACT:

Inherent powers within the jurisdiction of the court are basic and serve as defining traits, existing as a permanent and indivisible quality. These inherent powers of a court are the means at its disposal to guarantee that the parties concerned in a case get complete and impartial justice. The courts have a moral duty to uphold justice in all circumstances, whether explicitly stated in legal laws or not. This obligation gives them great ability to administer justice even when specific regulations are missing. This jurisdiction is sometimes seen as an inherent prerogative of the court, even if it has not been officially conferred. Section 151 of the Civil Procedure Code examines and delineates the court's inherent powers. The authority that accompanies this responsibility is significant and far-reaching. It grants the courts the capability to dispense justice even in the absence of a predefined legal provision. This aspect of their authority is commonly referred to as their inherent authority, as it inherently resides within the court's role in the justice system. This intrinsic authority is considered vital for the courts to adapt to evolving societal needs and unforeseen circumstances.

Keywords: Inherent, Inherent power, Court process, Abuse of Process, Procedural Construction.

INTRODUCTION:

The rule of law has always been a crucial component of civilization. It was present before humanity were civilized, and it is still there now that we live in a much more advanced environment. The existence of courts greatly increases our awareness of the existence of law. The essential idea to do justice and to resolve disputes amicably was upheld by the Courts even when there was no written law to support it. They are not as ancient as law, but only courts have recognized law. As a result of their responsibility to uphold justice between the parties, they have a very prominent status in society.

Every court must be seen as having all the authority required to carry out the right thing and correct the wrong in the course of administering justice since every court is established to administer justice between the parties. Since the primary duty of the courts is to administer justice rather than concentrating on the procedural aspects of the parties, the Code of Civil Procedure is a procedural or adjective law, and its rules must be freely interpreted to advance the cause of justice and accomplish its purposes.¹ The Law of Civil Procedure recognises the powers and restrictions placed on the courts, however there are certain inherent powers that belong to the courts but are not included in the code. In addition to the particular authority granted to the court by the statute, the court also has inherent power. They work in addition to those abilities. The court is allowed to utilize them to further the interests of justice or prevent misuse of the legal system. The cause is clear. The court's rules are not all-inclusive for the simple reason that the legislature was unable to anticipate every scenario that may occur in a future court case. In such unanticipated situations, inherent powers step in to save the day. Even in the lack of provisions in the statute, they may be exercised *ex debito justitiae*. However, they must be used responsibly and not arbitrarily.

OBJECTIVES:

1. To study the inherent powers of the court.
2. To analyze the inherent powers and its exercise.
3. To analyze the limitations as to the use of inherent powers by the court.

HYPOTHESIS:

H1: The inherent powers of the courts under section 151 are a substantive provision.

H01: The inherent powers of the courts under section 151 are not a substantive provision.

¹India, I. (2022). *The Inherent Powers of the Court*. Legalservicesindia.com. Retrieved 30 September 2022, from <http://www.legalservicesindia.com/article/1736/The-Inherent-Powers-of-theCourt.html>.

RESEARCH QUESTIONS:

1. What are the inherent powers of the court?
2. What is the procedure of inherent powers and its exercise?
3. What are the limitations as to the use of inherent powers by the court?

RESEARCH METHODOLOGY:

The methodology used in the research is collection of secondary data from the various sites. The data has been taken from the various internet sources and journals. The data was collected and then was compiled to make this paper.

LITREATURE REVIEW:

The word "inherent" is a rather wide one. Anything intrinsic or necessary, vested in or connected to a person or position as a privilege right is referred to as something permanent and inseparable from it, a permanent quality or feature, an important component, or anything else (**P Sirajuddin v. Government of Madras**).

If the court judges that an injunction order was breached while using its inherent powers, it may restore the parties to the same position as if the injunction order had not been violated (**Arjan Singh v. Punit Ahluwallia, 2008**).

Inherent abilities cannot be used contrary to the specific restrictions of the law. The concepts and methods pertaining to the assessment of expenses in administrative law proceedings cannot be directly translated into the code-governed civil prosecution. It is not permissible to use the inherent authority of the courts to accomplish indirectly what is not lawful directly (**Sarda, M.2016**).

The inherent power may only be used in severe situations for which the Code provides no way. It may not be used to invalidate a code provision. When the code is unanimous on a particular subject, the provision should not be regarded as extensive (**National Institute of DTH 7 N Sciences v. C Parmeshwara**).

When a party to a case undertakes acts, such as collecting advantages by committing fraud against the court or another party, generating a multiplicity of processes, etc., that party becomes the perpetrator of the abuse (takwani, C. 2009)²

DATA ANALYSIS:

1. INHERENT POWERS OF COURT:

It is an ancient and well-established concept that every court has the authority to act *ex debitojustitiae* in order to administer the real and substantive justice for which it alone exists. Additionally, the court has an inherent responsibility to prevent the misuse of its established procedures. The reason why the Code of Civil Procedure is not comprehensive is that the legislature is incapable of anticipating all potential scenarios that may emerge in future litigation and, therefore, of creating procedures for all of them. Therefore, the court has, in many situations when the circumstances so necessitate, acted on the premise of inherent authority. This well-established concept is codified in Section 151 of the Code of Civil Procedure, which states: S. 151. Preservation of the court's inherent powers. Nothing in this Code will be construed as limiting or otherwise affecting the inherent authority of the Court to issue such orders as may be required for the interests of justice or to avoid the abuse of the Court's process.³

The provision in this section is only suggestive of the court's authority to issue such orders as may be required to achieve justice's purposes and to avoid an abuse of the court's process; it does not give authority. As these authorities have a broad extent and reach, they enable the court to award relief when justice and equity so require. In the case of *Raj Bahadur Ras Raja v. Seth Hiralal*, the Supreme Court said, "the inherent authority has not been granted to the court; it is a power the court has by virtue of its obligation to do justice amongst the parties before it." This judicial authority is restricted to the degree that it cannot be employed if its exercise is inconsistent with or in conflict with any of the powers explicitly or by necessary implication given by the Code on International Journal of Pure and Applied Mathematics Special Issue. If there are explicit provisions that comprehensively cover a certain issue, then it follows that no authority may be exercised on that topic in any way other than

²Civil Procedure Code with Limitations act, 1963 by C.K. Takwani Pg. No: 758 1) K.N. Candrasekharan Pillai (rev.), R.V. Kelkar, Lectures on Criminal Procedure, 4th ed. 2006, Eastern Book Company, Lucknow.

³ India, I. (2022). The Inherent Powers of the Court. Legalservicesindia.com. Retrieved 30 September 2022, from <http://www.legalservicesindia.com/article/1736/The-Inherent-Powers-of-the-Court.html>.

what is provided by the relevant provision. In addition, the authority conferred by Section 151 cannot be employed as an appellate power or to issue administrative or ministerial directives.

2. INHERENT POWERS BE EXERCISED:

In exercising its inherent powers, the court must take into account two important considerations under Section 151. The first is that the powers are to be utilized only for the sake of justice, and the second is to avoid judicial process abuse. This authority must not be employed when banned or excluded by the Code or other legislation, or where particular provisions of the Code are relevant to the pending dispute. (Chaudhri 1917).

3. POWER TO BE EXERCISED: END OF JUSTICE

Courts have inherent authority to issue interim orders for the purposes of justice or to prevent justice from failing. The Supreme Court has remarked that the interests of justice are the first consideration in granting or denying pleas in a petition under Section 151, and that no rule or process may limit this authority of the court. Though the order of is in the interest of justice, the superior court may refuse to intervene under section 115, even if the lower court lacks the authority to issue such an order. Revision interference is discretionary and should only be used in cases when it serves the interests of justice. The decision of the Patna High Court serves as an illustration of this idea. It was determined that the possibility that the dismissal might be reviewed or altered under order 47 should not impede the exercise of authority under this section. Similarly, intervention was deemed essential to protect the minor's rights, as required under Section 31 of the Guardians and Wards Act of 1890. In the interest of justice, the court may also intervene with an order, particularly an ex parte order, that is issued in error, even suo motu. As in any other matter, the court cannot award relief based on its inherent jurisdiction if the same remedy may be granted by another court under an explicit provision of the Code. (2013) Potts and Murray Sections 148 through 153 of the Civil Procedure Code address the inherent powers of the courts.⁴

Article 148 of the CPC states: Extension of time: Whenever the Court sets or grants a time limit for the performance of any act required or permitted by this Code, the Court may, in its discretion, extend

⁴ *The inherent powers of Court.* (2015). Retrieved 30 September 2022, from <https://www.lawteacher.net/free-law-essays/constitutional-law/inherent-powers-of-the-court-constitutional-law-essay.php?vref=1>.

such time limit from time to time.

Section 149 of the Code of Criminal Procedure states: Power to make up shortage of Court-fees:

- Where the whole or any part of any fee prescribed for any document by the current law relating to court-fees has not been paid, the Court may, in its discretion, at any stage allow the person by whom such fee is payable to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Article 150 of the CPC states: Unless otherwise provided, if the business of a court is transferred to another court, the receiving court shall have the same rights and responsibilities as those bestowed and imposed by or under this Code upon the court from which the business was transferred.

Section 151 of the CPC is titled "Reservation of inherent powers of the code:

- Nothing in this code will be construed as limiting or otherwise affecting the inherent powers of the court to issue such orders as may be required for the objectives of justice or to avoid the abuse of judicial procedure.

Section 152 of the Criminal Procedure Code states: Amendment of judgments, decrees, or orders:

- Clerical or mathematical errors in judgments, decrees, or orders, or errors resulting from any unintentional slip or omission, may be remedied at any time by the Court, either on its own initiative or at the request of any party.

Section 153 of the CPC reads: General powers to amend: - The Court may, at any time and on such terms as to costs or otherwise as it may deem appropriate, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or arising from such proceeding.

Article 153-A of the CPC states: Ability to change a decision or order after a summary dismissal of an appeal: - Where an Appellate Court dismisses an appeal pursuant to rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the

dismissal of the appeal has the effect of confirming the decree or order, as applicable, passed by the Court of first instance.

4. **WHERE THE COURT HAS NO INHERENT POWERS:**

Inherent powers can't be practiced in contradiction to the particular provisions of the code. The principles and practices relating to the levy of costs in administrative law matters can't be imported precisely in connection with the civil prosecution governed by the code. Provisions of the inherent power of the courts can't be conjured to do indirectly what is not permitted to be done directly.⁵

The inherent powers of the courts cannot be exercised under the following: -

- Transfer of Suits;
- Stay of proceedings under the 1996 Arbitration and Conciliation Act;
- Continue to work on income tax matters;
- Payment of future interest after the decree's effective date;
- No authority to change the decree to grant greater statutory advantages;
- The courts cannot restart a matter under Article 226 of the Indian Constitution by filing a Miscellaneous Application;
- To hear an appeal from an order that is not appealable;
- Modify its decision after it has been signed;
- The court cannot change the final decree by invoking Order XLVII Rule 1;
- The Court has no inherent power to entertain an application for correcting a final decree;
- The courts cannot set aside ex parte decree under its inherent powers;

FINDINGS AND SUGGESTIONS:

Instances where Inherent Power can be exercised by the courts:

- To order a combined trial of suits;
- To postpone suit hearings;
- To "enable a defense in the form a pauperism;"

⁵ *Inherent Powers Of The Court Under Civil Procedure Code, 1908.* iPleaders. (2020). Retrieved 30 September 2022, from <https://blog.ipleaders.in/inherent-powers-of-the-court/>.

- To remain at cross-suits for the sake of convenience;
- To "ascertain whether the proper parties are present;"
- To consider the request of a third party to be included as a party;"
- To register the heirs, even if it is determined that Order 1 Rule 10 cannot be used;
- To "restore a suit dismissed for default in a case not provided by Order IX Rule 9;"
- To "correct its own mistake;"
- To "review an order passed in a petition under 226 of the Constitution;"
- To "put aside a sale resulting from deception in the Court;"
- To stay earlier litigation pending the outcome of later litigation;
- To review an interlocutory order issued under Section 151 of the Civil Procedure Code

CONCLUSION:

Section 151 CPC is not a substantive provision, as shown by the doctrinal study and the analytical technique. Sections 148-153A provide the courts broad and comprehensive authority to limit litigation, eliminate duplication of actions, and administer full and complete justice to the parties before them. Section 151 preserves the court's inherent powers, which are to be utilized ex debito justitiae, or in the interest of justice.

It is evident that the court's fundamental powers are basically expansive and temporary. There are restrictions on inherent powers, not because they are bound by the principles of the Code, but because it is anticipated that the legislative process is guided by the interests of justice.

Regardless of any restrictions that may be imposed by the implementation of the provisions of Section 151 of the Code, the unquestionable jurisdiction granted to that court by Section 151 of the Code does not restrict the court's authority to issue an effective order to prevent the misuse of its proceedings.

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