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THE MASTER KEY OR STATUTORY BYPASS? RE-EVALUATING SECTION 151 OF THE CODE OF CIVIL PROCEDURE

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Abstract

Section 151 of the Code of Civil Procedure, 1908¹ (CPC) preserves the inherent powers of civil courts, enabling them to issue orders necessary to ensure justice or prevent the abuse of court processes. While intended to address procedural lacunae that legislators could not have foreseen, the practical application of Section 151 often manifests in two ways: sometimes it serves to fill essential gaps, while at other times it is utilized as a "statutory bypass" to circumvent the Code's explicit directives. This paper critically evaluates the legal aspects of Section 151 to determine whether these inherent powers become an unchecked mechanism that compromises procedural certainty, or if judicial restraint maintains them as a supportive and equitable instrument. Through a theoretical analysis of legal frameworks and landmark judicial decisions, the study examines the tension between codified procedural rules and substantive equity, highlights legal practices that lead to systemic procedural delays, and proposes a systematic three-step judicial test to harmonize inherent judicial powers with statutory provisions.

Keywords: Section 151 CPC, Inherent powers of courts, Ends of justice, Abuse of process, Gap-filler, Statutory bypass, Judicial restraint, Civil jurisprudence.

1. Introduction & Historical Context

Background and Statutory Context

The Code of Civil Procedure, 1908 (CPC) serves as the primary procedural framework for civil litigation in India². Designed to ensure certainty, uniformity, and finality in legal proceedings, the Code prescribes detailed rules for every stage of a lawsuit—from its initiation to final execution. However, no legal drafting, however precise, can fully anticipate every procedural situation or tactical maneuver that may arise during litigation. Recognizing this inherent limitation of codified law, the legislature enacted Section 151 of the CPC³. This section confers

upon civil courts the inherent power to issue orders necessary for the ends of justice or to prevent the abuse of the court's process.

Section 151 does not confer new substantive jurisdiction or create a new legal remedy; rather, it explicitly recognizes the essential authority of judicial forums to administer equity where the written Code is silent⁴ (*Padam Sen v. State of Uttar Pradesh*, 1961). Grounded in fundamental legal principles such as *Actus Curiae Neminem Gravabit* (an act of the court shall prejudice no one)⁵ and *Ubi Jus Ibi Remedium* (where there is a right, there is a remedy)⁶, Section 151 serves as a vital legislative provision. Its objective is to uphold substantive equity while adhering to procedural rules.⁷

Statement of the Problem

In contemporary civil proceedings, the application of Section 151 has diverged significantly from its original judicial purpose. The exercise of inherent powers constantly oscillates between two conflicting roles:

- **An essential gap-filler:** Acting as a necessary equitable mechanism to address genuine omissions (*lacunae*) and rectify administrative errors.
- **A statutory bypass:** Serving as a convenient mechanism to circumvent clear statutory constraints, bypass limitation periods, and override specific provisions enacted by the legislature.⁸

Litigants routinely employ Section 151 applications as an all-encompassing "master key" to reopen concluded evidentiary stages, circumvent procedural lapses under Order IX or Order XLVII⁹, or delay the progress of the trial through interim applications. This perpetual conflict between codified procedural rules and substantive justice creates significant systemic friction. It jeopardizes procedural certainty, encourages dilatory litigation tactics, and burdens High Courts with revisionary challenges arising from discretionary orders passed by lower courts.¹⁰

Research Objectives and Methodology

To address the growing procedural disorder associated with this issue, this study critically evaluates the legal boundaries of Section 151. The primary objectives of this research paper are as follows:

1. Understanding the nature of inherent powers: Analyzing the legal threshold that distinguishes between rectifying procedural *lacunae* and improperly bypassing statutory provisions.¹¹
2. Evaluating judicial precedents: Examining key judgments of the Supreme Court of

India—such as **Manohar Lal Chopra v. Seth Hira Lal** (1962)¹², **Arjun Singh v. Mohindra Kumar** (1964)¹³, and **K.K. Velusamy v. N. Palanisamy** (2011)¹⁴—to determine whether judicial restraint has effectively curbed the misuse of inherent powers.

3. Formulating a normative framework: Proposing a systematic and objective 'Three-Prong Judicial Test' to guide trial courts in balancing inherent fairness with explicit statutory provisions, thereby minimizing procedural delays and restoring certainty in civil litigation.

Adopting a methodology grounded in legal principles, this research paper systematically analyzes statutory provisions, diverse judicial interpretations, and trends in procedural litigation, aiming to devise a practical framework that harmonizes Section 151 with the broader scheme of the Code.

2. THE NATURE AND SCOPE OF INHERENT JURISDICTION

'Inherent jurisdiction' is an attribute of judicial authority intrinsic to the court's fundamental function of administering justice between litigants. Section 151 of the Code of Civil Procedure, 1908 (CPC), does not confer or create any new legal jurisdiction for civil courts; rather, it serves a distinct protective function by preserving and safeguarding the residual procedural power already inherent in the courts¹⁵ (**Padam Sen v. State of Uttar Pradesh**, 1961). This provision acknowledges that while written laws are inherently limited, the procedural exigencies in adversarial litigation are virtually limitless¹⁶.

Core Jurisprudential Characteristics

- **Procedural in nature, not substantive:** Section 151 is strictly limited to procedural matters. It cannot create substantive rights, establish a new cause of action, or confer a right of appeal unless such a provision exists in the law. Substantive rights are the exclusive domain of legislative enactments¹⁷.
- **A procedural bridge:** Acting as a procedural bridge, Section 151 enables courts to address unforeseen procedural hurdles for which the law (the Code) makes no provision (**casus omissus**). This ensures that the administration of substantial justice is not obstructed by mere procedural technicalities¹⁸.
- **Comparative Taxonomy: Codified Rules vs. Inherent Powers**

Dimension	Specific CPC Provisions (e.g., Order IX, Order XXXIX)	Inherent Power (Section 151 CPC)
Source of Power	Explicit statutory grant enacted directly by the legislature	Retained inherent authority preserved, but not created, by statute
Scope of Application	Restricted strictly to defined, enumerated statutory parameters	Flexible and residual; operational exclusively where the Code is silent
Judicial Discretion	Strictly bounded by express statutory pre-conditions	Wide equitable discretion, subject to self-imposed judicial restraint
Interaction & Hierarchy	Primary procedural mechanism governing standard litigation	Supplementary, gap-filling mechanism secondary to express rules

Dual Statutory Pillars of Inherent Authority

The exercise of powers inherent under Section 151 is guided by two distinct legal objectives:

- 1. Serving the "ends of justice":** Authorizing affirmative procedural interventions to rectify judicial or administrative errors (such as under the principle of **actus curiae neminem gravabit** meaning an act of the court shall prejudice no one)¹⁹, consolidating multiple suits²⁰ (e.g., **Manohar Lal Chopra**, 1962), or granting equitable restitution²¹.
- 2. Preventing the "abuse of process":** Empowering courts to dismiss litigation tactics adopted in bad faith, recall orders obtained through fraud (**ex debito justitiae**)²², and reject frivolous applications filed solely for the purpose of delay.²³

3. SECTION 151 AS A "MASTER KEY":

SUPPLEMENTING PROCEDURE

Where the Code of Civil Procedure, 1908 (CPC) is silent or contains an inadvertent legal lacuna, civil courts employ Section 151 as a vital procedural tool to prevent injustice and

uphold the integrity of the process. Rather than serving as a source of arbitrary authority, this inherent power functions as a supplementary mechanism to address omissions (*casus omissus*), ensuring that substantive rights are not lost due to rigid procedural shortcomings.²⁴

Doctrinal Categories of Legitimate Gap-Filling

1. Recall of orders obtained through fraud

It is an established legal principle that fraud vitiates every solemn judicial act (*fraus et jus nunquam cohabitant*)²⁵. When an order, judgment, or decree is obtained from the court through fraud, misrepresentation, or the deliberate concealment of facts, Section 151 empowers the court to recall its order in the interest of justice (*ex debito justitiae*)²⁶(*Indian Bank v. Satyam Fibres (India) Pvt. Ltd., 1996*). Since fraud strikes at the very foundation of judicial integrity, courts do not relegate the aggrieved party to a separate, protracted suit, as their inherent powers suffice to expunge fraudulent orders from the record.

2. Restitution and other interim protective measures

Although Order XXXIX, Rules 1 and 2 govern formal applications for temporary injunctions²⁷, novel litigation scenarios often fall outside the scope of their explicit legal language. Where judicial protection is required to maintain the *status quo* in an urgent interim situation and no specific rule applies directly, courts appropriately invoke Section 151²⁸ (*Manohar Lal Chopra v. Seth Hira Lal, 1962*). Similarly, where a party is dispossessed or suffers loss due to an erroneous interim order, courts exercise their inherent power to grant equitable restitution, extending the underlying principles of Section 144 of the CPC to situations that do not strictly fall within its ambit.²⁹

3. Rectification of judicial and administrative errors

Courts bear an inherent obligation to rectify inadvertent procedural lapses and administrative errors that cause prejudice to the litigating parties. Based on the principle of *actus curiae neminem gravabit*³⁰ (an act of the court shall prejudice no one), the inherent power under Section 151³¹ extends far beyond the limited scope of Section 152 (which covers only clerical or arithmetical errors). It enables courts to restore suits dismissed due to errors by the registry, rectify misstatements in judicial records, and condone inadvertent procedural lapses, thereby ensuring that administrative oversights do not obstruct the administration of fair justice.

4. Section 151 as a "Statutory Bypass": Overriding Express Bars

A significant issue arises in civil litigation proceedings when Section 151 of the Code of Civil Procedure, 1908 (CPC) is improperly invoked as a "legal bypass" to circumvent expressly prescribed procedural remedies, statutory time limits, or legislative bars. Although the Code preserves inherent powers to address lacunae, litigants often attempt to use them to supplant statutory provisions, thereby undermining procedural certainty and legal discipline.³²

Manifestations of Procedural Overreach

1. *Conflict with express prohibitions and specific remedies* A well-established principle of statutory interpretation is that where the Code provides a specific remedy or prescribes a set procedure for relief, Section 151 cannot be invoked to bypass those statutory conditions or to create alternative avenues³³ (*Arjun Singh v. Mohindra Kumar*, 1964).

- **Order IX, Rule 13 (Ex-parte decree):** Parties unable to demonstrate "sufficient cause" for their non-appearance often resort to Section 151 to seek the setting aside of an ex-parte decree, attempting to circumvent the mandatory legal requirements of Order IX.³⁴
- **Order XXXIX, Rules 1 and 2 (Interim injunction):** When an applicant fails to satisfy the three fundamental criteria required under Order XXXIX (prima facie case, balance of convenience, and irreparable injury), inherent powers cannot be exercised to grant broad interim orders.³⁵
- **Order XLVII, Rule 1 (Review):** When the statutory grounds required for a review under Order XLVII are absent, a substantive review of judgments cannot be undertaken under the guise of Section 151.³⁶

2. *Circumventing limitation periods and statutory abatement*

Section 151 is misused when it is invoked to bypass strict time limits prescribed by the Limitation Act, 1963³⁷. For instance, when a sole party dies and no application is filed to bring legal representatives on record within the timeframe stipulated under Order XXII, the suit automatically abates by operation of law. Litigants often file applications under Section 151 to set aside abatement or implead a legal representative after the statutory limitation period has expired, thereby attempting to bypass the requirement under Order XXII, Rule 9 to demonstrate "sufficient cause"^{38 39}(*Union of India v. Ram Charan*, 1964). Where the law prescribes a specific consequence for a default,

inherent powers cannot be invoked to override vested rights or extend limitation periods.

3. *Reopening Evidence and Recalling Witnesses*

Trial courts frequently encounter interim applications under Section 151 seeking to recall witnesses, introduce documents belatedly, or reopen evidence long after the trial has concluded. Although Order XVIII, Rule 17 provides a specific and limited mechanism for the court to recall witnesses for clarification⁴⁰, litigants often resort to Section 151 to circumvent these stringent conditions. As the Supreme Court cautioned in **K.K. Velusamy v. N. Palanisamy** (2011)⁴¹, the inherent power to reopen evidence must be exercised with great circumspection. It cannot be turned into a routine tool for litigants to fill evidentiary gaps, introduce afterthoughts, or unduly prolong trial proceedings.

5. Judicial Precedents And The Boundaries Of Restraint

The Indian judiciary has repeatedly attempted to define the scope of Section 151 of the Code of Civil Procedure, 1908 (CPC)⁴², to prevent it from transforming from a provision meant to address procedural lacunae in the interest of justice into an instrument of unbridled and arbitrary power. The key judgments listed below systematically elucidate the evolution and scope of these 'inherent powers' across various procedural contexts:

5.1 *Padam Sen & Anr. v. State of Uttar Pradesh* (AIR 1961 SC 218)

- **Facts of the Case:** In a civil suit for the recovery of money, the plaintiff apprehended that the defendant might alter or tamper with his account books. He filed an application under Section 151 of the CPC, requesting the court to seize the account books. The Additional Munsif appointed a commissioner to seize the account books from the defendant's possession. While the commissioner was executing the order, the appellants offered him a bribe, leading to their criminal prosecution under Section 165A of the Indian Penal Code, 1860.⁴³
- **Key Legal Issue:** Does a civil court possess the inherent jurisdiction under Section 151 of the CPC to appoint a commissioner for the seizure of account books or documents in the possession of a party?
- **Ratio Decidendi:** The Supreme Court held that a civil court does not possess inherent power under Section 151 to appoint a commissioner for seizing documents in the

custody of a party. The Court clarified that inherent powers are supplementary to the powers specifically conferred by the Code and cannot be exercised in a manner contrary to express legal provisions or legislative intent. Since Order XXVI of the CPC details the specific purposes for which a commissioner may be appointed⁴⁴, Section 151 cannot be invoked to create a category of commissioner powers not included therein.

5.2 Manilal Mohanlal Shah & Ors. v. Sardar Sayed Ahmed Sayed Mahamad & Ors. (AIR 1954 SC 349)

- **Facts of the Case:** In an auction sale of immovable property, the auction-purchaser failed to immediately deposit the requisite 25% of the purchase money at the time of sale under Order XXI, Rule 84 of the CPC, and also failed to deposit the remaining 75% within fifteen days as required under Order XXI, Rule 85⁴⁵. The trial court treated this non-compliance as a mere procedural irregularity and attempted to regularize the defective sale by invoking its inherent equitable powers under Section 151 of the CPC.⁴⁶
- **Key Legal Issue:** Can a court invoke Section 151 of the CPC to extend statutory time limits or condone non-compliance with the conditions regarding the deposit of money under Order XXI, Rules 84 and 85 of the CPC?
- **Ratio Decidendi:** The Supreme Court held that the statutory requirements under Order XXI, Rules 84 and 85 are mandatory. Failure to deposit the purchase money within the stipulated time results in no valid sale, and under Order XXI, Rule 86, the court is legally bound to resell the property. The Court ruled that where the Code explicitly covers a specific matter and prescribes mandatory consequences for a default, Section 151 cannot be invoked to override statutory mandates or to cure fundamental jurisdictional defects.

5.3 Arjun Singh v. Mohindra Kumar & Ors. (AIR 1964 SC 993)

- **Facts of the Case:** In a civil suit, after hearing oral arguments, the trial court adjourned the matter for the pronouncement of the judgment⁴⁷. Meanwhile, the defendant filed an application under Section 151 of the CPC, seeking to set aside the order to proceed 'ex-parte' and requesting permission to participate in the proceedings. The plaintiff argued that the rule under Order IX, Rule 7 of the CPC⁴⁸ applies only when the hearing is adjourned, whereas in this instance, the hearing had concluded, and only the judgment remained to be pronounced under Order XX, Rule 1 of the CPC⁴⁹.

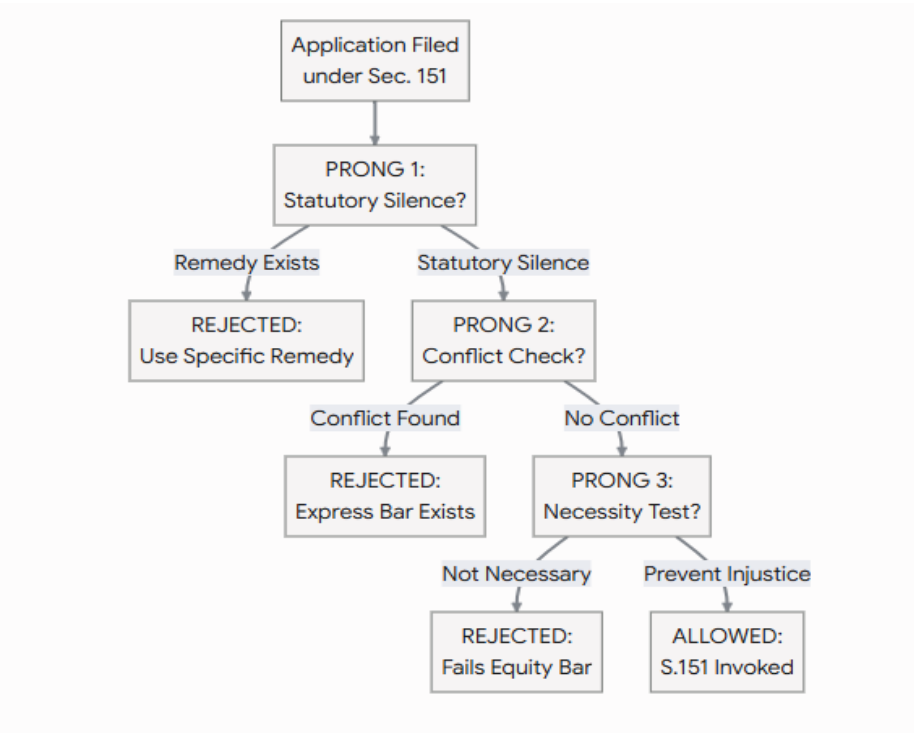
- **Key Legal Issue:** Can Section 151 of the CPC be invoked to set aside an 'ex-parte' order or to grant permission to participate in proceedings when the statutory provisions of Order IX, Rule 7 of the CPC do not fully cover the stage where the hearing has concluded and the judgment has been reserved?
- **Basis of the Judgment:** The Supreme Court held that Order IX of the CPC constitutes a complete and self-contained code dealing with non-appearance (default) at various stages of the trial. Where a statute provides a comprehensive mechanism to deal with a specific situation, there is no scope to invoke Section 151 to grant relief outside that mechanism. 'Inherent powers' cannot be exercised to devise alternative procedural measures when legal procedures already cover the matter.

5.4 *K.K. Velusamy v. N. Palanisamy ((2011) 11 SCC 275)*

- **Facts of the Case:** In a suit for 'specific performance' of a contract, after the conclusion of evidence and oral arguments, the defendant discovered that the plaintiff had admitted certain crucial facts during a telephonic conversation. The defendant filed an application under Section 151 of the CPC, seeking to recall witnesses for cross-examination regarding these newly discovered recordings and to reopen the evidence stage. Both the Trial Court and the High Court dismissed these applications, holding that recalling witnesses to fill lacunae (gaps) in the evidence is not permissible under Order XVIII, Rule 17 of the CPC.^{50 51}
- **Key Legal Issue:** Can a court invoke Section 151 of the CPC to reopen the evidence stage or recall witnesses after the conclusion of arguments, notwithstanding the limited scope of Order XVIII, Rule 17 of the CPC?
- **Basis of the Judgment:** The Supreme Court held that in the absence of an express prohibition in the Code against reopening the evidence stage to bring crucial information on record, Section 151 of the CPC can be appropriately invoked in the interest of justice under exceptional circumstances. However, the Court cautioned that Section 151 should be exercised sparingly and with great circumspection, and only when the applicant satisfies the court that, despite due diligence and without any mala fide intent or delay, the evidence could not have been produced earlier.

6. Strategic Recommendations: A Three-Prong Judicial Test

To ensure that Section 151 of the Code of Civil Procedure, 1908 (CPC) serves merely to address procedural lacunae and does not become an arbitrary means to bypass legal rules, the trial court should apply a standard 'three-pronged judicial test' when considering applications filed under 'inherent jurisdiction'.⁵²



Three-Prong Judicial Test: Detailed Breakdown & Application

The **Three-Prong Judicial Test** serves as a strict filtering mechanism for trial courts. Its objective is to provide a structured, step-by-step checklist to prevent the misuse or arbitrary invocation of Section 151 of the Code of Civil Procedure, 1908 (CPC).

Prong I: Statutory Silence Check (Exhaustiveness Evaluation)

Core Question: Does the CPC already contain a specific provision, rule, order, or remedy governing this issue?

- **Operational Logic:** Section 151 applies only when the Code is completely silent on a matter (i.e., in cases of a genuine legislative lacuna or *casus omissus*)⁵³. Where an explicit statutory procedure is prescribed, inherent powers cannot be used as an alternative or circumvention route.

- PRACTICAL EXAMPLES:
 - **Setting Aside an Ex-Parte Order:** If an ex-parte decree is passed against a non-appearing defendant, the specific remedy lies under **Order IX, Rule 13**⁵⁴. An application under Section 151 is maintainable only if Order IX does not apply; otherwise, it must be rejected at Prong 1.
 - **Review of Judgment:** To correct an error apparent on the face of the record, the party must file for review under **Order XLVII, Rule 1**, rather than invoking Section 151.⁵⁵

Prong 2: Non-Conflict & Prohibition Check (Statutory Integrity)

Core Question: Does the requested relief conflict with an express statutory bar, mandatory procedural requirement, or the Limitation Act, 1963?⁵⁶

- **Operational Logic:** Inherent powers are complementary, not contradictory. They exist to supplement the Code, not to override statutory mandates or express prohibitions.
- PRACTICAL EXAMPLES:
 - **Bypassing Limitation:** If a suit abates under **Order XXII** due to a failure to bring legal representatives on record within the statutory 90-day period, Section 151 cannot be invoked after a prolonged delay (e.g., 2 years) to bypass the law of limitation⁵⁷ (*Union of India v. Ram Charan*).
 - **Mandatory Execution Deposits:** Under **Order XXI, Rules 84 and 85**, an auction-purchaser must deposit 25% of the purchase money immediately and the remaining 75% within 15 days. Section 151 cannot be used to extend these mandatory deadlines⁵⁸ (*Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmad*).

Prong 3: Manifest Injustice & Abuse Threshold (Equitable Necessity)

Core Question: Will refusing the application result in grave injustice or amount to an abuse of the process of the court?

- **Operational Logic:** Passing Prongs 1 and 2 (establishing that the Code is silent and no bar exists) is a prerequisite, but not sufficient on its own. The applicant must further demonstrate extraordinary circumstances requiring equitable relief (*ex debito justitiae*)⁵⁹. Inherent powers cannot be granted for routine procedural lapses.

• PRACTICAL EXAMPLES:

- **Recall of Witness / Reopening Evidence:** Seeking to recall a witness post-cross-examination merely to cover up negligence or lacunae in evidence will fail Prong 3. Conversely, if crucial evidence surfaces that could not have been discovered earlier despite due diligence, reopening evidence under Section 151 satisfies Prong 3 ⁶⁰(*K.K. Velusamy v. N. Palanisamy*).
- **Fraud Upon the Court:** Where an order or decree is obtained through misrepresentation or fraud, Section 151 may be validly invoked to recall the fraudulent order to prevent abuse of judicial process.⁶¹

Summary Table for Judicial Application

Test Stage	Evaluated Criterion	Action if Test Fails (FAIL)	Action if Test Passes (PASS)
Prong 1	Express Provision Check	Reject Application. (Direct party to specific statutory Order/Rule).	Proceed to Prong 2 .
Prong 2	Express Bar & Limitation Check	Reject Application. (Cannot override statutory prohibitions or limitation).	Proceed to Prong 3 .
Prong 3	Equitable Need & Due Diligence Check	Reject Application. (Fails threshold of extraordinary necessity).	ALLOW Application. (Valid invocation of Sec. 151).

8. Conclusion

Section 151 of the Code of Civil Procedure, 1908 (CPC) occupies a uniquely delicate position within Indian civil jurisprudence⁶². It is neither an omnipotent "master key" capable of unlocking every procedural restriction regardless of explicit statutory locks, nor is it a toothless power intended to be paralyzed by hyper-technical rules of procedure. At its foundational core, Section 151 functions as an indispensable safety valve—an equitable mechanism designed to ensure that legislative gaps, unforeseen contingencies, and procedural lacunae do not culminate

in a failure of justice. The inherent power saved by this provision is rooted in the timeless legal maxim *ex debito justitiae*⁶³, affirming that courts exist primarily to administer real and substantial justice between parties rather than to remain fettered by procedural technicalities.

However, contemporary trial practice reveals a persistent dichotomy between statutory intent and pragmatic application. Litigants routinely invoke Section 151 as an unbridled legal shortcut to bypass express statutory remedies, circumvent statutory periods of limitation⁶⁴, introduce belated evidence, or evade mandatory procedural directions⁶⁵. This indiscriminate deployment threatens the predictability of the legal process, creates procedural bottlenecks, and contributes significantly to judicial delays. The misapplication of inherent jurisdiction risks transforming a procedural safeguard into an engine of arbitrary judicial discretion, blurring the line between legitimate gap-filling and impermissible judicial law-making.

In response to this growing tension, landmark judicial jurisprudence—ranging from foundational rulings like *Padam Sen*⁶⁶ and *Manilal Mohanlal Shah*⁶⁷ to modern precedents like *K.K. Velusamy*⁶⁸ has consistently reinforced the doctrine of judicial restraint. The Supreme Court of India has repeatedly affirmed that inherent powers are strictly complementary to, and subordinate to, explicit statutory prohibitions. Section 151 can supplement the procedural code where legislative silence exists, but it can never be weaponized to override, nullify, or supersede a mandatory statutory bar. Where the legislature has explicitly provided a specific remedy or prescribed mandatory consequences for default, invoking inherent jurisdiction to grant contradictory relief constitutes clear judicial overreach.

To reconcile the competing demands of procedural order and substantive equity, the trial judiciary must adopt a structured analytical framework, such as the proposed Three-Prong Test. By systematically verifying statutory silence, confirming the absence of express statutory bars, and establishing a genuine threat of manifest injustice or abuse of process, courts can effectively filter out frivolous applications while preserving true equitable remedies.

Ultimately, as the legal maxim dictates, procedure is the handmaid, not the mistress, of justice.⁶⁹ Enforcing clear, principled boundaries around Section 151 ensures that equity operates with analytical discipline rather than unguided discretion. By doing so, the legal system successfully safeguards procedural certainty and statutory integrity without sacrificing the ultimate mandate of delivering substantive justice.

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³ The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 151.

⁴ Padam Sen v. State of Uttar Pradesh, AIR 1961 SC 218.

⁵ Actus curiae neminem gravabit — an act of the court shall prejudice no one. See Takwani, Civil Procedure with Limitation Act, 1963, 8th edn, 2017, on the maxim as a basis for correcting judicial error.

⁶ Ubi jus ibi remedium — where there is a right, there is a remedy. See Mulla, The Code of Civil Procedure, 19th edn, 2017.

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¹² Casus omissus — a case not provided for by the statute; on the concept generally, see Sarkar & Sarkar, Law of Civil Procedure, 12th edn, 2014.

¹³ Actus curiae neminem gravabit — an act of the court shall prejudice no one. See Takwani, Civil Procedure with Limitation Act, 1963, 8th edn, 2017, on the maxim as a basis for correcting judicial error.

¹⁴ Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527.

¹⁵ The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 144 (doctrine of restitution).

¹⁶ Ex debito justitiae — as a debt of justice, i.e., relief the court is bound to grant. See Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

¹⁷ The Constitution of India, 1950, art. 142.

¹⁸ P.C. Sarkar & S.C. Sarkar, Law of Civil Procedure, 12th edn, Wadhwa & Company, Nagpur, 2014.

¹⁹ Fraus et jus nunquam cohabitant — fraud and justice never dwell together; see Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

²⁰ Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

²¹ The Code of Civil Procedure, 1908, Order XXXIX, Rules 1 and 2 (temporary injunctions).

²² Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527.

²³ The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 144 (doctrine of restitution).

²⁴ Actus curiae neminem gravabit — an act of the court shall prejudice no one. See Takwani, Civil Procedure with Limitation Act, 1963, 8th edn, 2017, on the maxim as a basis for correcting judicial error.

²⁵ The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 152 (limited to correction of clerical or arithmetical mistakes).

²⁶ Rajeev Dhavan, "Judicial Discretion and Procedural Rules in Indian Civil Courts", Journal of the Indian Law Institute, Vol. 24, No. 3, 1982, pp. 310-335.

²⁷ Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993.

²⁸ The Code of Civil Procedure, 1908, Order IX, Rule 13 (setting aside an ex-parte decree).

²⁹ The Code of Civil Procedure, 1908, Order XXXIX, Rules 1 and 2 (temporary injunctions).

³⁰ The Code of Civil Procedure, 1908, Order XLVII, Rule 1 (review of judgment).

³¹ The Limitation Act, 1963 (Act No. 36 of 1963).

³² The Code of Civil Procedure, 1908, Order XXII, Rule 9 (setting aside abatement).

³³ Union of India v. Ram Charan, AIR 1964 SC 215.

³⁴ The Code of Civil Procedure, 1908, Order XVIII, Rule 17 (recall of witness by the court)

³⁵ K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275.

³⁶ The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 151.

³⁷ Padam Sen v. State of Uttar Pradesh, AIR 1961 SC 218.

³⁸ The Code of Civil Procedure, 1908, Order XXVI (commissions).

³⁹ The Code of Civil Procedure, 1908, Order XXI, Rules 84, 85 and 86 (deposit of purchase money at execution sale).

⁴⁰ Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmad, AIR 1954 SC 349.

⁴¹ The Code of Civil Procedure, 1908, Order XX, Rule 1 (pronouncement of judgment).

⁴² The Code of Civil Procedure, 1908, Order IX, Rule 7.

⁴³ Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993.

⁴⁴ The Code of Civil Procedure, 1908, Order XVIII, Rule 17 (recall of witness by the court).

⁴⁵ K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275.

⁵² The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 151.

⁵³ Casus omissus — a case not provided for by the statute; on the concept generally, see Sarkar & Sarkar, Law of Civil Procedure, 12th edn, 2014.

⁵⁴ The Code of Civil Procedure, 1908, Order IX, Rule 13 (setting aside an ex-parte decree).

⁵⁵ The Code of Civil Procedure, 1908, Order XLVII, Rule 1 (review of judgment).

⁵⁶ The Limitation Act, 1963 (Act No. 36 of 1963).

⁵⁷ Union of India v. Ram Charan, AIR 1964 SC 215.

⁵⁸ Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud, AIR 1954 SC 349.

⁵⁹ Ex debito justitiae — as a debt of justice, i.e., relief the court is bound to grant. See Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

⁶⁰ K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275.

⁶¹ Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

⁶² The Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 151.

⁶³ Ex debito justitiae — as a debt of justice, i.e., relief the court is bound to grant. See Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550.

⁶⁴ The Limitation Act, 1963 (Act No. 36 of 1963).

⁶⁵ Upendra Baxi, "The Rule of Law in India", Sur International Journal on Human Rights, Vol. 4, No. 6, 2007, pp. 6-27.

⁶⁶ Padam Sen v. State of Uttar Pradesh, AIR 1961 SC 218.

⁶⁷ Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud, AIR 1954 SC 349.

⁶⁸ K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275.

⁶⁹ The maxim that "procedure is the handmaid, not the mistress, of justice" is discussed in Dhavan, "Judicial Discretion and Procedural Rules in Indian Civil Courts", (1982) 24 J. Indian L. Inst. 310.

