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## INHERENT POWERS OF COURTS UNDER THE CODE OF CIVIL PROCEDURE

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### ABSTRACT

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This paper deals with the general study on the inherent powers enjoyed by the civil courts in India by the Civil Procedure Code. The Code of Civil Procedure acknowledges the powers along with limitations on the courts but there are some powers which are vested in the court but not prescribed in the code and those are the Inherent powers. The inherent powers of the court are in addition to the powers specifically conferred by the code on the court. They are complementary to those powers. The court is free to exercise them for the ends of the justice or to prevent the abuse of the process of court. The reason is obvious. The provisions of the court are not comprehensive for the simple reason that the legislature is incapable of contemplating all the possible surroundings which may arise in future litigations. Inherent powers come to the rescue in such unforeseen circumstances. They can be exercised ex debito justitiae in the absence of provisions in the code. But those need to be exercised with due care and not arbitrary.

The word Inherent is very wide in itself. It means existing and inseparable from something, a permanent attribute or quality, an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege.<sup>1</sup> Hence, inherent powers are such powers which are inalienable from courts and may be exercised by a court to do full and complete justice between the parties before it.<sup>2</sup>

**Keywords:** Inherent powers, Substantive rights, Debito justitiae.

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<sup>1</sup> Concise Oxford English Dictionary (2002).

<sup>2</sup> <https://www.lawctopus.com/academike/inherent-powers-court-cpc-2>

## INTRODUCTION

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Law has always been an essential element of society. It was there even when men was uncivilized and it is even today when we have entered into much sophisticated world. The presence of law is made much known to us with the existence of courts. The Courts existed when there was no written statute on the fundamental principle to do justice and to peacefully settle the matter. They are not as old as law but law got a recognition by courts only. They hold a very high position in society by virtue of its duty to do justice between the parties. Every court is constituted for the purpose of administering justice between the parties and, therefore must be deemed to possess all such powers as may be necessary to do the right and to undo the wrong in the process of administering the justice. The Code of Civil Procedure is a procedural or adjective law and the provisions thereof must be liberally construed to advance the cause of justice and further its ends since the basic function of the courts is to do justice rather than focusing on the procedural part of the parties.

The Code of Civil Procedure acknowledges the powers along with limitations on the courts but there are some powers which are vested in the court but not prescribed in the code and those are the inherent powers. The inherent powers of the court are in addition to the powers specifically conferred by the code on the court. They are complementary to those powers. The court is free to exercise them for the ends of the justice or to prevent the abuse of the process of court. The reason is obvious. The provisions of the court are not comprehensive for the simple reason that the legislature is incapable of contemplating all the possible surroundings which may arise in future litigations. Inherent powers come to the rescue in such unforeseen circumstances. They can be exercised *ex debito justitiae* in the absence of provisions in the code. But those need to be exercised with due care and not arbitrary.

## INHERENT POWER: MEANING

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The word Inherent is very wide in itself. It means existing and in-separable from something, a permanent attribute or quality, an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege Hence, inherent powers are such powers which are inalienable from courts and may be exercised by a court to do full and complete justice between the parties before it. The main aim of the study is to study whether

the inherent powers is substantive right or not. The inherent powers of the courts under section 151 are not a substantive provision.

## OBJECTIVES

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- To study the inherent powers of the court
- To analyse the inherent powers and its exercise
- To study and compare between the inherent powers and substantive rights
- To study other provision relating to inherent powers
- To analyse the limitations as to the use of inherent powers by the court

## RESEARCH METHODOLOGY

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The researcher has adopted doctrinal method of research and the entire paper is in the form of analysis of the established procedures, thereby following analytical mode of research. The primary sources for this research paper is the Civil Procedure Code and relevant judicial decisions. Secondary sources include books, articles and web sources.<sup>25</sup>

## INHERENT POWERS OF THE COURT

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There exists an age-old and well-established principle that every court has power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists. Also, it has an inherent duty to prevent abuse of the existing processes of the court. The Code of Civil Procedure is not exhaustive; the reason for this being that the legislature is incapable of pre-empting all possible circumstances which may arise in future litigation, and consequentially for providing the procedure for the same. The court has, therefore, in many cases, where the circumstances so require, acted upon the assumption of possession of inherent power. This well-established principle receives legislative recognition in Section 151 of the Code of Civil Procedure which states that:

S. 151. Saving of inherent powers of the Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

## **NATURE AND SCOPE OF S.151**

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The provision contained in this section is merely indicative of the power of the court to make such orders as may be necessary for achieving the ends of justice, and also to prevent an abuse of the process of the court and does not confer any power. The court has been vested with such powers to make it capable to grant relief when the ends of justice and equity so demand, as such powers are of a wide scope and ambit. The Supreme Court in the case of Raj Bahadur Ras Raja v. Seth Hiralal<sup>3</sup> observed that the inherent power has not been conferred on the court; it is a power in the court by virtue of its duty to do justice between the parties before it. This power of the court is limited to the extent that it cannot be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred under the Code. If there are express provisions exhaustively covering a particular topic, that give rise to a necessary implication that no power shall be exercised in respect to that topic in any manner other than that prescribed by the said provision. Also, the power under S.151 cannot be exercised as an appellate power and it cannot be invoked to pass administrative and ministerial orders.<sup>4</sup>

## **WHEN CAN AN INHERENT POWER BE EXERCISED**

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Under S. 151 there are two major principles the court must take into consideration while exercising its inherent powers. The first being that the powers are to be exercised only for the ends of justice and second, it should be to prevent abuse of process of the court. Such power must not be exercised when prohibited or excluded by the Code or other statutes and in situations when there exist specific provisions in the Code applicable to the litigation at hand.

## **POWER TO BE EXERCISED ONLY FOR THE ENDS OF JUSTICE**

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Courts have inherent power to pass interim orders for ends of justice or to prevent failure of justice. It has been observed by the Supreme Court that the interests of justice are the prime consideration in granting or not granting prayers in a petition under S.151 and no rule or procedure can curtail that power of the court. Where the order of this is in the interest of justice, the higher court can refuse to interfere under S.115, even if the court below has no jurisdiction to pass such an order. The interference in revision is discretionary and should be

<sup>3</sup> Raj Bahadur Ras Raja v. Seth Hiralal, AIR 1962 SC 527.

<sup>4</sup> <http://www.legalservicesindia.com/article/1736/The-Inherent-Powers-of-the-Court>

used only in interest of justice and not in a case where it is not. Illustrating example of this principle can be found in the judgement of the Patna High Court. It held that the fact that the dismissal could be reviewed or revised under order 47 should not come in the way of exercising power under this section. Likewise, interference on the grounds of safeguarding the rights of the minor as envisaged by S.31 of the Guardians and Wards Act 1890 was held necessary. The court can also interfere, in the interest of justice, with an order especially an ex parte order, which has been issued through its mistake, even suo motu. As in the case of any other case even in such situation the court cannot grant a relief under inherent jurisdiction, if the same relief can be granted by another court, under an express provision of the Code.

Let us now look into the sections of the Civil Procedure Code, section 148- section 153 deals with the Inherent powers of the courts:

- i. Section 148 of CPC reads: Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period
- ii. Section 149 of CPC reads: Power to make up deficiency of Court-fees:- Where the whole or any part of any fee prescribed for any document by the law for the time being in force 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..
- iii. Section 150 of CPC reads: Transfer of Business:- Save as otherwise provide, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.
- iv. Section 151 of CPC reads: Saving of inherent powers of the code:- Nothing in this code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court.

- v. Section 152 of CPC reads: Amendment of judgements, decrees or orders:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.
- vi. Section 153 of CPC reads: General powers to amend:- The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made of the purpose of determining the real question or issue raised by or depending on such proceeding.
- vii. Section 153-A of CPC reads: Power to amend decree or order where appeal is summarily dismissed:- Where an Appellate Court dismisses an appeal under 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 the case may be, passed by the Court of first instance.

## SCOPE AND USE OF INHERENT POWERS

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### Judicial Interpretations:

In the absence of any special circumstances which amount to abuse of the process of the Court, it cannot grant a relief in exercise of its inherent power when the justice can be served by another remedy is available to the party concerned provided by the Code.

**No Powers over the Substantive Rights:** The inherent powers saved by s. 151 of the Code are not over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders

In *Ram Chand and Sons Sugar Mills v. Kanhayalal*<sup>5</sup> : the SC held that the Court would not exercise its inherent power under S.151 CPC if it was inconsistent with the powers expressly or impliedly conferred by other provisions of Code. It had opined that the Court had an undoubted power to make a suitable order to prevent the abuse of the process of the Court.

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<sup>5</sup> On March 10, 1966

The Apex Court in *M/s Jaipur Mineral Development Syndicate v. The Commissioner of I.T*<sup>6</sup>, has maintained that the Courts had power under Section 151, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

### **To Advance Interests of Justice:**

In *M/s. Ram Chand & Sons Sugar Mills Pvt. Ltd. Barabanki (U.P.) v. Kanhayalal Bhargava*<sup>7</sup>, the appellant contended that during the pendency of the first suit, certain subsequent events had taken place due to which the first was not fruitful and in law the said suit could not be kept pending and continued solely for the purpose of continuing an interim order made in the said suit. While examining the question the Supreme Court was to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed or not. The question arose was whether, a defendant could make an application under Section 151 CPC for dismissing the pending suit on the ground that the said suit has lost its cause of action. The Court upheld the contention.

### **Restoration of Money Suit:**

*Bahadur Pradhani v. Gopal Patel*<sup>8</sup> In this case the plaint of a Money Suit was rejected for non-payment of deficit court fee within the time granted by the court. The plaintiff filed a petition under Section 151, C.P.C. for restoration of the suit in the ends of justice. The court allowed the petition and the suit was restored to file. This Court examined the scope of the inherent powers of the Court and expressed that the provisions of the Code do not control the inherent powers of the court by limiting it or otherwise affecting it. It is a power inherent in the court by virtue of its duties to do justice between the parties before it.

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<sup>6</sup> AIR 1977 SC 1348

<sup>7</sup> AIR 1966 SC 1899

<sup>8</sup> AIR 1964 Ori 134

**When there is no scope for getting any relief :**

It was held in the case of *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*<sup>9</sup> that the provisions of the Code are not exhaustive as the legislature is incapable of contemplating all possible circumstances which may arise in future litigation.

**SCOPE OF INHERENT POWER EXERCISED BY THE COURT UNDER SECTION 151 OF CPC**

More than seven decades back, the Privy Council in the case of *Emperor v. Khwaja Nazir Ahmed*<sup>10</sup>, observed that Section 561A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted.

It was observed the section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code.

In the very recent verdict of *K.K. Velusamy v. N. Palaanisamy*,<sup>11</sup> the Hon'ble Supreme Court upheld that Section 151 of the Code recognizes the discretionary power inherited by every court as a necessary corollary for rendering justice in accordance with law, to do what is right and undo what is wrong. The Court summarized the scope of Section 151 of the CPC as follows:

- a) Section 151 is not a substantive provision which confers any power or jurisdiction on courts. It merely recognizes the discretionary power of every court for rendering justice in accordance with law, to do what is right and undo what is wrong, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process
- b) The provisions of the Code are not exhaustive; section 151 says that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used by the court to deal with such situation, to achieve the ends of justice, depending upon the facts and circumstances of the case.

<sup>9</sup> On 16 November, 1961

<sup>10</sup> (1945) 47 BOMLR 245

<sup>11</sup> On 30 March, 2011

- c) A Court has no power to do things which is prohibited by law or the Code, in the exercise of its inherent powers. The court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is expressly provided in the Code
- d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them and the court should exercise it in a way that it should not be in conflict with what has been expressly provided in the Code.
- e) While exercising the inherent power, there is no such legislative guidance to deal with those special situations of the case and so the exercise of power depends upon the discretion and wisdom of the court, and also upon the facts and circumstances of the case. So, such consequential situation should not however be treated as a *carte blanche* to grant any relief. (f) The power under section 151 will have to be used with care, only where it is absolutely necessary, when there is no provision in the Code governing the matter or when the *bona fides* of the applicant cannot be doubted or when such exercise is to meet the ends of justice and to prevent abuse of process of court.

## LIMITATIONS

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It can be clearly seen that the inherent powers of the court are extensively wide and residuary in nature. Though, one cannot rule out the fact that the same inherent powers can be exercised *ex-debito justitae* only in the absence of express provisions in the code. The limitations on the innate forces are not there on the grounds that they are controlled by the arrangements of the Code, but since of the way that it might be assumed that the methodology gave by the governing body is directed by closures of equity

### **When Prohibited By the Code or Other Statutes:**

It is all around settled through a great deal number of judgments that when a power is to be practiced by a common court under an express arrangement, the inherent power can't be taken plan of action to. A court has inherent power unless it isn't denied by the Code. Further, this segment puts such power in the court, over issues which are in its locale and insight. The court likewise can't disregard the arrangements of law of impediments by speaking to this

area. The time of impediment can't be stretched out by the court in exercise of its inborn forces.

## CONCLUSION

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Through the doctrinal research and the analytical approach, it can be safely deduced that Section 151 CPC is not a substantive provision. Sections 148-153A bestow the courts with very wide and extensive powers to minimize litigation, avoid multiplicity of proceedings and render full and complete justice between the parties before them. Sec 151 saves inherent power of the court, which are supposed to be exercised *ex debito justitiae*, i.e., in the interest of the justice. These powers are not conferred upon the court. In the end, one has to look up to the judgement of J. Subbarao who made a very poignant observation in the case of *Ram Chand & Sons Sugar Mills Ltd. v. Kanhayalal Bhargav*.

Whatever limitations are imposed by construction of the provisions of Section 151 of the Code, they do not control the undoubted power of this court conferred under section 151 of the Code to make a suitable order to prevent the abuse of the process of the court.

While exercising the inherent power, there is no such legislative guidance to deal with those special situations of the case and so the exercise of power depends upon the discretion and wisdom of the court, and also upon the facts and circumstances of the case. So, such consequential situation should not however be treated as a *carte blanche* to grant any relief.

(f) The power under section 151 will have to be used with care, only where it is absolutely necessary, when there is no provision in the Code governing the matter or when the bona fides of the applicant cannot be doubted or when such exercise is to meet the ends of justice and to prevent abuse of process of court.

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