
INHERENT POWERS OF THE COURT: UNDER CIVIL PROCEDURE CODE

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ABSTRACT

This paper focuses on exploring the inherent powers granted to civil courts under the Indian Civil Procedure Code (CPC). While the CPC explicitly outlines many powers and limitations for the courts, it also confers certain powers that are not specifically codified within the law. These inherent powers, though not expressly written into the legal provisions, supplement the court's ability to administer justice effectively and prevent abuse of the judicial process. Their purpose is clear: to address situations unforeseen by the legislature, offering flexibility where the codified law may lack specific guidance. Such powers allow the court to act *ex debito justitiae*—out of a duty to justice—when the procedural code does not provide for a particular situation. However, it is crucial that these powers are exercised judiciously, avoiding any arbitrary application. They are capable of being implemented *ex debito justitiae* in the scenarios of the code's lack of provisions. But these oughts to be utilized properly and without any degree of arbitrariness.¹

The word “Inherent” is a word with broad meaning. It basically says that something is unseparated from its atom, it is a feature that remains with it, it is the main component, it is a characteristic, or it can be given to a person or an office as a benefit or a privilege. Therefore, inherent powers are such powers or can be called as rights that are not separable from courts and are some of the tools which a court may use to achieve justice between the parties involved.

¹ Nawathe P and others, ‘Inherent Powers of the Court under the CPC’ (*Academike*, 21 March 2019) <<https://www.lawctopus.com/academike/inherent-powers-court-cpc-2/>> accessed 6 November 2024

INTRODUCTION

Law has always been an essential part of society, present since ancient civilizations and continuing to play a critical role as the world becomes increasingly complex. This is evident in the role of courts in everyday life. Courts are not only necessary where written laws may fall short in providing justice, but they are also essential for resolving disputes peacefully. While they were not the origin of law, courts are the institutions through which law is realized and enforced. They hold a respected position in society due to their responsibility to treat all parties fairly. Each court exists to uphold justice, and it must have the necessary powers to correct wrongs and administer justice effectively. The Code of Justice, as a statute, should be interpreted liberally to serve the cause of justice, with the court's primary role being to act impartially and not align with the objectives of any party.

The Code of Civil Procedure defines the powers and limitations of the courts, but there are also powers that, while not explicitly detailed in the code, are inherent to the court's function. These inherent powers are supplementary to the specific powers outlined in the code and are intended to aid in the fair administration of justice or to prevent any abuse of court processes. The reason for these powers is clear: legislative provisions cannot anticipate every possible situation that may arise in future cases. In such cases, inherent powers serve as a safeguard, allowing the court to ensure justice when the code does not provide explicit guidance. However, these powers must be exercised with care, avoiding arbitrary use, and remaining focused on achieving fair outcomes.

INHERENT POWER - MEANING

The term "inherent" itself is broad, indicating a permanent and essential quality that is intrinsic to a person or office—in this case, the civil courts—as a right or privilege. These powers are, therefore, inseparable from the civil courts of India and may be used by the courts to administer justice between the parties involved. The research mainly focuses on inherent powers as a right of courts.²

It is well-established that an ancient principle recognizes that every court, by its very existence, holds the authority to act *ex debito justitiae*—to ensure true and substantial justice, which is

² Kamble SU, 'Section 151 of the Civil Procedural Code in India: Critical Examination of Its Concept, Principles, And ' (2023) 6 International Journal Of Journal Management & Humanities 2566

the core purpose of its establishment. The Code of Civil Procedure is not exhaustive, as it is impractical for the legislature to foresee every potential situation that may arise in future litigations and prescribe specific procedures for each. Consequently, in many instances, courts have assumed inherent powers when the circumstances demand it, operating on the presumption that they possess such authority to fulfill their role in administering justice. 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.”³

NATURE OF THE PROVISION

Section 151 of the Code of Civil Procedure states that the court has inherent powers to issue orders to uphold the principles of natural justice, including measures to prevent misuse of court procedures, though it does not grant any additional powers. Civil courts under the CPC are endowed with inherent powers to provide relief when necessary to achieve justice and equity, as these powers have a broad and flexible scope.

In *Raj Bahadur Ras Raja v Seth Hiralal*⁴, the Supreme Court held “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”⁵. The court’s inherent powers are restricted from being applied in situations where doing so would conflict with any specific powers or provisions explicitly or implicitly provided in the Code. This means that if a matter is fully addressed by particular provisions, it implies that the court should not use its inherent powers on that subject in a way that differs from what the established provisions dictate.

S.151 of CPC cannot be exercised as an appellate power and it cannot pass administrative orders.⁶

WHEN WILL THE POWER BE EXERCISED

Inherent powers must be used by the court with two main considerations: they should be

³ Code of Civil Procedure 1908, s 151

⁴ *Raj Bahadur Ras Raja v Seth Hiralal* AIR 1962 SC 527

⁵ *ibid*

⁶ India, legal S. (no date) *The abuse of the process of the court must be prevented by court as an inherent duty of the court. The Code of Civil Procedure is not exhaustive, The inherent powers of the Court*. Available at: <https://www.legalservicesindia.com/article/1736/The-Inherent-Powers-of-the-Court.html>, (Accessed: 06 November 2024).

applied only to achieve justice or to prevent misuse of the court's processes. These powers should not be exercised if there are provisions in the Code or other laws that prohibit their use, nor should they be invoked when specific sections of the Code provide a solution for the matter at hand.⁷

Courts have the authority to issue interim orders to either secure justice or prevent it from being obstructed. As the Supreme Court has stated, under Section 151, the decision to accept or reject an application is determined by what serves the interests of justice. There are no rigid rules or criteria that can restrict the court's jurisdiction in this regard. If the Court has no jurisdiction to pass the order, to prevent the essence of justice, the High Court may refuse to interfere under Article 115⁸. The decision of the Patna High Court illustrates this principle. The Court held that the fact that the order of revocation can be reviewed or modified under Section 47⁹ should not be a bar to the exercise of the power under that section. Similarly, we think that it should also be affected by the protection of the rights of children under Section 31 of the Guardianship and Wards Act, 1890¹⁰. The court may intervene in the pursuit of justice during a trial, particularly if an order becomes final due to its own mistake or lack of action. However, in such cases, an injunction cannot be issued in a jurisdiction where another court has already granted the same relief under the provisions of this Act.

PROVISIONS RELATED TO INHERENT POWER

Let us now look at the various sections of the Code of Civil Procedure relating to the jurisdiction of the court from 148 to 153.

Section 148 of the Code of Criminal Procedure provides as follows: Adjournment, Where the court has fixed or granted a period for the execution of any judgment provided for or authorized by this Code, the said court shall from time to time decide for the extension of the period.¹¹ Section 149 of the Code of Criminal Procedure provides as follows: Power to reduce the amount of court costs, If the whole or part of the costs specified in any document under the Code are not available for the time being in respect of court costs, in whole or in part, the court

⁷ Bolla, M.R. (2012) *Inherent power of civil court-a hand maid of justice!*, *Legal India: Find Legal News, Articles, Tips and ask Query*. Available at: <https://www.legalindia.com/inherent-power-of-civil-court-a-hand-maid-of-justice/> (Accessed: 06 November 2024).

⁸ Constitution of India, art 115

⁹ Code of Civil Procedure 1908, s 47

¹⁰ Guardians and Wards Act 1890, s 31

¹¹ Code of Civil Procedure 1908, s 148

shall, at any stage of its decision to allow the person to whom the costs are due to be paid to pay the whole or part of the court costs, order the same as the fees originally paid, in respect of the documents to which they are due to be paid. The court to which the matter is referred, should have almost similar powers as the said court to which the matter is referred and shall perform the same functions as are granted and ordered or under this Code.¹² Section 151 of the CPC states- “The authority of this law is reserved, Nothing in this Law shall be deemed to limit or interfere with the power of the Court to give such decisions as may be necessary in the interests of justice or to prevent abuse of the Court process.”¹³ Section 152 provides: “Change of decision, order or judgment, In case of an error in a decision, order or judgment caused by a mathematical error of any authority or number or by any error or omission, the Court may at any time, on its own motion or upon the request of any party, change this right. Every effort shall be made to determine or raise the real issue or question on which this decision depends. The Court dismissed the objection raised under Article 11 of the Decision passed by the Court of First Instance (subject to conditions).”¹⁴

JUDICIAL PRECEDENTS

1. In *Taru Puri v. A. Sheikh aka Malaika*¹⁵, Delhi High Court held “The fact that the Code of Civil Procedure does not specifically provide for in-camera sessions is no ground to hold that such sessions are prohibited.”¹⁶ This led the High Court decided that, when necessary and the facts and circumstances of the case so needed, the Court can make any order for the conduct of the proceedings in secret by virtue of sec. 151 of CPC. The court also quoted the case of *NS Mirajkar v. State of Maharashtra*¹⁷ to contend that “Section 151 of the Code invested it with such powers as were necessary for the administration of justice or to prevent a miscarriage thereof.”¹⁸

2. In the case *K.B. Dutt vs S S Shaheb*¹⁹, the bench included, Krishna Murari and Hima Kohli, they observed that “Section 151 of the CPC would only apply in a situation where there is no other remedy available under the existing legal rules. Such power cannot enact remedies which

¹² Code of Civil Procedure 1908, s 149

¹³ Code of Civil Procedure 1908, s 151

¹⁴ Code of Civil Procedure 1908, s 152

¹⁵ *Taru Puri v A Sheikh aka Malaika* (2019)

¹⁶ *ibid*

¹⁷ *NS Mirajkar v State of Maharashtra* (1967) 1 SCR 120 (India)

¹⁸ *Ibid*

¹⁹ *K.B. Dutt v. Shamsuddin Shah Shaheb* (1930) 34 Cal WN 488.

are not provided by the Code. It is a fit case under Section 151, where the inherent authority of the Court should be invoked to set aside the ex parte decree. It was also held that ex parte decree must be set aside since court has cause to believe so.”²⁰

3. In the case of *Ramesh Chander v. Savitri Devi*²¹, Supreme Court held that “if the court feels there is good reason for default, under Section 151 of CPC the court may revive an appeal dismissed for default.”²²

4. In *Dhananjay Sharma v. State of Haryana*²³, the apex Court held that “the inherent powers is in the civil court by virtue of Section 151 of the CPC and it should be exercised only in rare or extreme cases.”²⁴

5. In *Padam Sen v. State of U.P.*²⁵, The apex court held that “the Powers under Section 151 are supplementary in nature, the judiciary is at ease to use the inherent powers for the objectives listed in the provision. No conflict in any way should go against the legislative intent. The inherent power must also not be used in a manner inconsistent with or contrary to the procedure that is clearly outlined in the Code.”²⁶

6. In *Debendranath v Satya Bala Dass*²⁷, the court held that “ends of justice are solemn words and these words are a polite expression in the eyes of juristic methodology. This suggests that Justice is the pursuit and goal of all law. The expression does not present an imprecise and indefinite concept of justice as envisaged by laws of the land and statutes.”²⁸

CRITICAL ANALYSIS

A beneficial provision which confers a right to get any form of relief cannot be Section 151 CPC. It is only a rule of procedure that provides for an application by a litigant that the course of proceedings in a litigation shall be such as it would be proper for them to be in accordance with justice and equity. Similar is the case with inherent powers; they cannot be allowed to

²⁰ *ibid*

²¹ *Ramesh Chander v Savitri Devi* (1996) 2 SCC 108 (India)

²² *Ibid*

²³ *Dhananjay Sharma v State of Haryana* (1995) 3 SCC 757 (India)

²⁴ *ibid*

²⁵ *Padam Sen v State of U.P.* (1961) 3 SCR 742 (India)

²⁶ *ibid*

²⁷ *Debendranath v Satya Bala Dass* (1970) 2 SCC 705 (India)

²⁸ *Ibid*

revive disputes that are now settled. To that extent, the abolition by the Legislature of the Court's inherent powers must be considered. Express prohibition against the use of inherent power is not needed; it may even be implied. Such power is obviously necessary for vindication of the goals of justice and defeat of its shortcomings. Unless there is a prohibition, the Court can use any form of justice. Unless there is a State revision on the matter, no article of the Code provides for consolidation of suits. Thus, where a common question of fact and law arises, the same can be done in the exercise of powers; however, the same must not include misjoinder of parties. Failure to consolidate two or more lawsuits will usually lead to the filing of multiple lawsuits, which leaves an avenue for conflicting rulings about the same matter that will probably be common among two or more lawsuits sought for consolidation.²⁹

As held in *D.D. Mahasabha v. Sukdev Ary & others*³⁰ by the court, the point is well settled by the law, and it held that the inherent powers contained in S. 151 CPC can be exercised in case no other provision furnishes redress. But even if the party had attained a judgment or order from misleading the court, or simply because the court had wrongly issued the judgment or order, then the court shall be allowed to correct itself by either recalling the first judgment or in issuing the new judgment that is just and proper.

It is one of the criticisms regarding Section 151, giving unrestricted power to the court in issuing orders as the court deems fit with no set rules or restrictions imposed. This might give an arbitrary effect to the court's inherent power with sometimes inconsistent and unpredictable results. The inherent power of the court under Section 151 of the Civil Procedural Code is often invoked for the purpose of avoiding certain legal requirements, which has a negative impact on the rule of law. This inherent power of civil courts could be applied only in exceptional circumstances where no specific legal provision exists. A party cannot use Section 151 to hide behind historical wrongs, correct them, and get over procedural safeguards incorporated into the CPC.

SUGGESTIONS

The section 151 of the code is not exhaustive, and since there are always cases and precedents that what the code's provisions stated are not covered, and that the legislature could not possibly

²⁹ SAIPREETHI S, 'A GENERAL STUDY ON INHERENT POWERS OF COURTS UNDER CIVIL PROCEDURE CODE ' (2018) 120 International Journal of Pure and Applied Mathematics 2529

³⁰ *D.D. Mahasabha v Sukdev Ary & Others* (1996) 4 SCC 117 (India)

predict, we do not consider this an argument to be compelling enough against the creation of specific indicative tests. Whereas the fact is that the legislature could not predict every situation arising in which the section was to be applied, the legislature can certainly predict the scale of the need for it. The section can even be "subdivided into subsections to provide for control over court procedures and control over particular courts". According to the principle of "Actus Curiae Neminem Gravabit" (no act of the court shall prejudice anyone), the party must be made whole and compensated for the injustice done to it.

Similarly, inherent powers cannot be put into action to revive closed litigations. So far, it should be regarded that the statute has revoked the inherent powers of the Court. It is not essential to have an implicit prohibition regarding exercising inherent authority; it can be only a presumption. A judgment-debtor who did not hold any interest in the litigations cannot inhibit the execution through inherent power. Such power is definitely required to implement the aims of justice and defeat its failures. The text of the provision can be circumscribed, and an explicit list can be provided. Thus, the word "specifically" can be incorporated to limit the powers of the court.

CONCLUSION

In conclusion, Section 151 of the Code of Civil Procedure (CPC) is an important provision that allows courts to exercise inherent powers in situations where the formal procedures might not be sufficient to ensure justice. However, its broad scope and reliance on judicial precedents have raised concerns about inconsistent application and the possibility of misuse, as pointed out by former Chief Justice N.V. Ramana. While the intent of providing such discretion is to prevent the misuse of legal processes, the lack of specific guidelines can sometimes undermine the goals of the CPC, particularly its emphasis on procedural consistency and clarity. Thus, while Section 151 is crucial for achieving justice, its application needs to be exercised with caution to maintain fairness and uniformity in legal proceedings. Insights from *Ram Chand & Sons Sugar Mills Ltd. v. Kanhayalal Bhargav*³¹ underscore that these powers, exercised "ex debito justitiae," are not substantive rights but essential tools for maintaining judicial integrity. To improve procedural clarity and ensure fair outcomes, the study suggests creating a more structured framework to guide the use of Section 151 of the Code of Civil Procedure. This would help balance judicial discretion with the need for safeguards against misuse. Clear

³¹ *Ram Chand & Sons Sugar Mills Ltd. v. Kanhayalal Bhargav* (1984) 2 SCC 159 (India)

guidelines would reduce the risk of inconsistent decisions and ensure that inherent powers are used in a way that aligns with the principles of justice. Such a framework could define the specific situations where these powers are applicable and set criteria to evaluate their use, ensuring that the court's discretion serves justice without undermining procedural fairness. This approach would preserve the flexibility courts need while maintaining the integrity of legal proceedings.