

Blessings of Inherent Powers of Courts: A Comparative Study of National and International Practises

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Abstract

Almost all the Courts whether national or international exercising inherent powers to promote justice but their exercise notably varies across various jurisdictions thereby, leading to uncertainties in the justice administration. This study concentrates on the investigation of causes of such inconsistencies in exercise of inherent powers, with special focus on scope, jurisprudence and limitations of such powers in Courts across Pakistan, United States of America, India and International Court of Justice, in order to choose best practices and way forward for reforms. The methodology of doctrinal research, involving comparative analysis as basic tool for key findings and recommendations. This article asserts the need for uniformity in the application of inherent powers. Exploration of application of doctrine of inherent powers is crucial for understanding the scope of problem. This article identifies lacunas in the exercise of Inherent powers by various Civil and international Courts, to highlights way forward for uniform and unbiased application of these powers.

Keywords: *Inherent Power, Court, Justice, Law, International Law.*

1. INTRODUCTION

Court being custodian of human rights and freedoms, have duty to do justice in all cases by exercising judicial powers, irrespective of the availability of detailed provisions within statutory law or not. Commonly, in order to perform this duty court has to rely upon statutory laws and judicial precedents, whereby it exercises ordinary or special powers to redress a wrong.

This will not be fair to say that Court have no authority to do justice in the absence of express provisions of law or judicial precedents. This vary duty of Court to provide justice for all types of infringement demand some necessary powers to do justice in the absence of law in order to fill gaps not covered by statutes and to supplement the procedure. These powers were known as inherent powers, possessed by every court whether national or international, to regulate procedure in the absence of express law.

This Article examine the scope, form and instances of exercise of inherent powers by national and International Courts. It first describes the meaning, scope and limitations of these powers and its application in various legal systems such as United States of America, Pakistan & India by adopting comparative analysis approach. Moreover, article highlights the jurisprudence of international Court of Justice to apply inherent power.

This Article will highlight the jurisprudence, scope and limitations to the exercise of inherent powers by comparatively analysing its application under various legal systems. This article identifies lacunas in the exercise of Inherent powers by various Civil and international Courts, to highlights way forward for uniform and unbiased application of these powers.

Judicial process is generally governed by law and practise for the time being enforced. Inherent powers can be exercised to promote ends of justice, avoid multiplicity of proceedings and misuse of process of law as well. This study shall strive to give comprehensive analysis of national and international practises regarding the concept, scope, sources and limitations of inherent powers of Courts. This study will analyse the historical foundations, concept and scope of inherent powers, to explore the incidents when these powers can be exercised and when not. Moreover, will discuss the use of inherent powers by national and international courts by using case laws as data source to argue that these powers were available to all courts and were inevitable for the discharge of judicial functions. Finally, the study concludes with few recommendations regarding use and limitations of inherent powers of Courts.

2. HISTORICAL FOUNDATIONS, SCOPE, LIMITATIONS AND BENEFITS OF INHERENT POWERS OF COURTS

The term inherent is derived from the word “inhere”. The dictionary meaning of the word “inhere” is “to exist as a permanent, inseparable or essential attribute or quality of a thing (Garner, 1999). As far as the expression “power” is concerned, it means “the right or authority of a person or group to do something.” So inherent powers were powers held by Courts by virtue of their standing as judicial body. It was held in *Raj Bahadar Ras Raja vs. Seth Hiralal* case that Court possess inherent powers by virtue of its primary duty to provide justice.

Inherent power is “a power that necessarily derives from an office, position or status” (Garner, 1999).

These powers are possessed by courts, in order to regulate litigation in the absence of express authorization by law or Court rules.

Thus in the absence of express rule of law, it will be perfectly justifiable for the judiciary to exercise its inherent jurisdiction. The existence of such inherent powers means, there is never a vacuum to get remedy for right according to law. Inherent powers of the court are based on the legal maxim “*UBI JUS ABI REMEDIUM*” There is no wrong without remedy.

In sum, it may be said that the inherent powers of the court have been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary, whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression to do justice between the parties and to secure a fair trial between them. (Bomhof, S, 2003)

History, as far as historical foundation of inherent powers is concerned, it's an English common law doctrine and has its roots in necessity. These powers were originally exercised by “Superior Courts of Common Law in England” and were derived by virtue of their status as superior Courts rather than by statutes or law (Wendy, 2003). Under Common Law legal system inherent jurisdiction were characterized as substantive authority of certain higher Courts whereby unlimited powers were granted under the written or unwritten laws.

Study of ancient Islamic history reveals that, where there is no prescribed law for deciding any matter in dispute, then that matter was decided by Qazi in accordance with the principles of natural justice, equity or good conscience in order to secure the ends of justice.

2.1. Nature and scope of Inherent Powers

In order to discuss the nature and scope of inherent powers of court, it's essential to see the sources of inherent powers. As far as sources of inherent powers were concerned, there is

no clear source of these powers. Despite the uncertainty in sources these powers have been frequently exercised by not only national but also international courts and tribunals in order to validate authority exercised by court in the absence of express authorization by law and to fill lacunas of law. So in order to have a glance at sources of inherent powers, case laws and certain general provisions of law were fully examined accordingly.

As to nature of inherent powers, these powers maybe necessarily implied or expressly shaped by law of the land. For instance, these powers were not conferred by law, rather preserved by law to achieve justice in Pakistan and India. In case of USA, Judicial power has been granted under Article III of the US constitution, but these inherent powers have not been expressly granted, yet recognised under Article III and it impliedly protects inherent power of Courts.

As to scope of inherent power, it is not easy to determine proper boundary for exercise of inherent powers. Court can exercise these powers to protect process of law only when protection of process is necessary to protect public rights. (Control of unauthorized) Legislative coordination in the context of defining and determining inherent powers is required for more beneficial exercise of inherent powers of courts (Dowling, Henry M.,1935)

It has following characteristics;

- Inherent powers were procedural in nature and can be exercised as a part of administration of justice and hence serve as source of procedural development.
- These powers cannot be exercised to pass ministerial and administrative orders and cannot be invoked as appellate powers.
- These powers were general in nature and can be exercised against anyone.
- These powers can only be exercised when clear necessity exists that validates the consequent judicial action and no formal procedure exists to deal with the case (Silver, A, R,1985)
- These powers can be exercised in addition to and not in derogation or substitution of powers expressly conferred by law.
- These powers were not overruled by statutes and must be granted and preserved by statutes.
- Inherent powers can be invoked by Courts in order to safeguard the legal system and rights of people for the core goal of administration of justice.
- Inherent powers cannot be exercised to defeat provisions of law or code. (Deb,2021)

2.2. Benefits of Inherent Powers

Generally, being procedural in nature, inherent powers serve as source of procedural development. It was held in Attorney General v. Ebert (2001) case, that by exercising these powers, litigants can be prohibited from distressing the conduct of court processes orderly.

Therefore, by exercising these powers every court can protect its process being abused. Court use it to bring fairness in proceedings by controlling proceedings before it, on the principles of equity and justice, in order to make judicial proceedings effective. (Attorney General v. Ebert, 2001)

3. AN APPRAISAL OF APPLICATION OF INHERENT POWERS BY COURTS IN UNITED STATES OF AMERICA, INDIA AND PAKISTAN

Inherent powers have always been exercised as a supplemental source of authority for procedural requirements in the perspective of determination of suits. These powers were applied by judiciary in a large number of cases. The main object to invoke these powers were to fill lacunas in law. Court by vary nature of its duty to administer justice have authority to entail procedural rules, in the absence of an express formal legal rules, in the context of determination of disputes. Therefore, these powers were invoked in aid of Courts, intended to fill gaps ignored by existing procedural framework. The prime consideration by Courts while exercising inherent powers is the interest of justice and cannot be curtailed by any procedural rule. Legislature cannot control the exercise of inherent powers in a manner defeating ends of justice, if controlled so, such legislation shall not be valid. Courts in Pakistan, India and USA exercise certain inherent powers in addition to powers explicitly granted by law in order to facilitate the use of express powers. In Pakistan, India and US judiciary have inherent powers to do all reasonable and necessary things subject to its jurisdiction and statutory regulations for administration of justice. But these powers were to be exercised by judiciary subject to reasonable discretion (Silver, A,R,1985). Courts have to maintain balance while exercising these powers, inherent powers will have dominance in cases where there is primary goal to protect and preserve the dignity of process and procedure of judiciary intending thereby, to protect public rights. (Control of unauthorized)

3.1. Statutory and Judicial Recognition of Inherent Powers in USA

Inherent Powers have not been expressly dealt under Article III of US Constitution but as a subset of implied powers. The inherent powers were firstly recognised by “United States Supreme Court” in “United States vs. Hudson”, wherein it was asserted that these powers were indispensable for the exercise of other powers by judiciary. Court has to rely on inherent powers on almost all the stages of trial. Court relies on these powers not only to manage litigation but also to sanction parties. These powers were flexible and wide to be adopted in a variety of situations. Court invoked these powers in order to consolidate cases, limit pre-trial hearing length, to control their calendars, for promoting settlement among parties during pre-trial conferences. Court have to depend upon inherent power to fix time limit in order to expedite trials, to limit expert witness number, to exclude exhibits, to disallow witness testimony that was not enlisted before trial, for alteration of common law procedural rules, to exclude evidence on the bases of unfairness, in habeas cases to implement discovery procedure, demanding from prosecution for the production of statement of witness that have been previously recorded. Court generally invokes inherent powers to improve fact finding process.

It was held that, Court can exercise inherent powers for the production of appropriate instruments for themselves in order to perform judicial tasks. For instance, Court has been authorized to appoint the persons that are unconnected from Court in order to assist the judges in discharge of judicial duties, can acquire parties’ attendance for the sake of discussion regarding evidence disappearance and government can be compelled for submission of memorandum of law. Court apply these powers to maintain decorum and silence in Court by using inherent powers regarding contempt of Court.

3.2. Statutory and Judicial recognition of inherent powers of Courts in Pakistan and India

Inherent powers of the judiciary in Pakistan and India were preserved not only under the Constitution but also under procedural laws of the land. Inherent powers of the Supreme Court

of Pakistan and India were granted under the necessary clause of Article 187 and 142 of the Constitution of Pakistan and India respectively. Article 187 states “Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it”. (Constitution of Pakistan, 1973)

Similarly, Article 142 of Indian Constitution authorises Supreme Court of India “to pass any decree or order as may be necessary for doing complete justice among the parties”. In accordance with necessary clause inherent powers should be exercised when necessary to do justice and not as mere beneficial powers. It was held that inherent powers of Supreme Court under Article 187 of the “Constitution of Pakistan” is independent of party application and can exercise it as suo motu jurisdiction in view of imposition of fundamental rights and for public good interest (PLD 2013SC829). In accordance with Order XXXIII, Rule 6 of the “Supreme Court Rules” Court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of process of court in Pakistan. Indian Supreme Court in case of **Mahendra Manilal Nanavati v. Sushila (1965)**, held that inherent powers can be exercised by court in the absence of express provisions of law to decide the case. In both Pakistan and India, Supreme Court relies on inherent powers to compel “attendance of a person” or to demand discovery of a document and its production thereto and can punish for the contempt of Court etc.

As to inherent powers of Civil Courts in India and Pakistan, Inherent powers of civil courts were preserved under Article 151 of the Code of Civil Procedure; this section merely preserves the powers and does not confer any new power on the Courts. Whereas, Section 148, 149, 150, 152, 153 deals with the exercise of inherent powers by Civil Courts under several circumstances. Section 151 of the code states that Court can exercise these powers to secure two-fold objectives, first to secure the “ends of justice” and secondly to “prevent the abuse of process of the Court”. The expression “to secure the ends of justice” and to “prevent the abuse of process of the Court” should be interpreted with respect to the other provisions of Code and legislative intention to empower the Court to take necessary actions in case of lapse in the code, with reference to its pending in Court. Civil Court, thereunder, can only make necessary orders and shall record reasons for exercising such powers under section 151 of the Code of Civil Procedure (C.P.C 2018). Court of civil Jurisdiction can exercise these powers under section 148 to enlarge the time given by court to do any specific act up to 30 days in the absence of any express specification by law that curtails the extension of time as held in *Jagdhayan vs. Balu Ram* that power under this section is discretionary in nature, under section 149 regarding court fee payment, as held in *K.C. Skaria vs. Govt. of Kerala* that power to allow the party to make good the deficient court fee even after expiration of period of limitation is discretionary as well and can be exercised to promote cause of justice.

These powers can be employed to transfer of business of court under section 150 of CPC and to amend the decree that is in variance with judgement under section 152. Moreover, these powers can be relied on by court in order to amend any defect or errors in proceedings in suit or to rectify it in accordance with section 153 (Sarda, 2016). In “*M/s Jaipur Mineral Production Syndicate vs. Commissioner of I.T.*”, the Supreme Court held, that in the absence of prohibition established clearly by law, the Courts is authorized to issue orders as justice demands or to discourage abuses of the process of law (Saipreethi & Udayavani, 2018). These powers authorize Court to take necessary steps for seeking protection against such actions rendering judicial process ineffective (Mian, J.Q. 2009). Inherent powers can be employed to bring fairness in legal process & ensure convenience.

In the context of convenience Supreme Court of Pakistan in *Meera shafi vs. Ali Zafar* case held that where for requiring witness physical attendance in court causes unnecessary delay, huge expense or inconvenience, court order for allowing witness virtual attendance through video conferencing is to secure ends of justice and such rejection by opposite party for physical appearance is unjustified and courts order is to prevent abuse of the process of the court and covered by section 151 of the Code of Civil Procedure (*Meera case*, 2022).

In “*Garment Industry through Chief Executive v. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and another*” acquiesces that, an order for restoration could be passed by Court under section 151 of the Code of Civil Procedure. Moreover, In “*Messrs United Bank Limited through Attorneys and 2 others v. Messrs Plastic Pack (Pvt.) Limited and 4 others*” Court held that Court can exercise inherent powers to supplement the Code of Civil Procedure in case of any omission in code defeating ends of justice. By investing Court with inherent powers legislature was aware of the potential fact that all circumstances cannot be covered by statute therefore, by saving these powers legislature facilitated the Courts in the administration of Justice. Therefore, it is considered as residual or reserve source of powers which can be exercised under necessity on equitable grounds.

4. INTERNATIONAL PRACTICES WITH REFERENCE TO INTERNATIONAL COURT OF JUSTICE

Exercises of inherent powers for international adjudication by international courts sometimes become controversial (Brown, 2014). Such controversial arguments relies on the notion that these powers were not expressly granted under the international instruments regulating their jurisdiction. International Courts use inherent powers as residuary powers in various cases in procedural law contexts, in case of necessity in order to solve international dispute and settle international law principles as well. International Court of justice (Hereinafter called ICJ) has fundamental authority to decide with respect to procedural matters therefor, it applies inherent powers in this context. According to Article 36(6) of the statute of ICJ in case of dispute as to jurisdiction of case, its Courts competence to decide it. This is internationally recognised principle under various conventions and covenants that “Court should be Judge of its own competence”. Most of the international judiciary relies on respective international instruments, their constitutive documents statutes etc. and international law principle to solve international disputes. Inherent powers can be invoked only in case of lacunas or gaps left by above said documents.

The inherent power exercise depends on the nature of function performed by international Court. (Shelton & Dinah, 2009). So ICJ exercises these powers for revision of judgements and interpretation of decisional as empowered under ICJ statute. International Courts generally apply these powers under common law tradition system. In the *Nottebohm* case the ICJ refers the exercise of inherent jurisdiction is essential to perform arbitral function. ICJ exercised its inherent powers in recent case between Iran vs. United States of America (Galeano, 2021).

5. CONCLUSIONS

This is considered view that, inherent powers being residuary powers serve as a device, not only to strengthen courts capacity to do justice but also source of legal developments as well. As to scope of inherent power, Court is empowered to determine proper boundary for exercise of inherent powers and provisions relating to inherent powers needs subjective

determination of the terms such as “to secure ends of justice” and to avoid abuse of process of court in the context of India and Pakistan.

Future Recommendations

Inherent powers were not defined under laws of Pakistan and India, yet preserved only under saving clauses. Currently, these powers were exercised in compliance with meaning given to it by Court while interpreting saving clause of inherent powers and demands legislative coordination in this context for its uniform and unbiased application. It is hereby strongly recommended that higher court decisions/practises regarding exercise of inherent powers should be compiled and used as supplementary guide to exercise these powers uniformly by lower courts, to remove doubts in the exercise of these powers. Moreover, grant of authority to exercise inherent powers regarding procedural matters is necessary for Courts to pass substantive decisions by satisfying due process standards that promotes justice.

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