INHERENT POWERS OF THE SUPREME COURT OF INDIA: AN ANALYSIS

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Abstract

In this article an attempt has made to understand the nature, scope and width of the inherent powers of the Supreme Court. The Indian judiciary at present owes its origin and powers to the Constitution of India, 1950 which is the fundamental law of the land. As the Indian Constitution does not fit into either purely unitary category or federal category, the judiciary under it has many unique features compared to the judiciaries under the British and United States of America Constitutions. Being the fundamental law of India, its supremacy must be maintained by an independent and impartial authority to decide disputes between the Centre and the States and the States inter se. This function can only be entrusted to a judicial body like the Supreme Court of India. It is the final interpreter and guardian of the Indian Constitution and the Fundamental Rights. It plays the role of guardian of the social revolution and has to draw a line between individual liberty and social control. The Supreme Court often formulates and reformulates the concept of inherent powers. The Supreme Court has tried to streamline the contours of the inherent powers. It cannot be said to be an attempt at structuring the inherent powers. The Supreme Court’s decisions at time appear to be prescribing the permissible and impermissible limits of inherent powers. With imperceptibly minor variations, the Supreme Court goes on expounding the inherent powers.

Introduction

The Indian judiciary at present owes its origin and powers to the Constitution of India, 1950 which is the fundamental law of the land. As the Indian Constitution does not fit into either purely unitary category or federal category, the judiciary under it has many unique features compared to the judiciaries under the British and United States of America Constitutions. Being the fundamental law of India, its supremacy must be maintained by an independent and impartial authority to decide disputes between the Centre and the States and the States inter se. This function can only be entrusted to a judicial body like the Supreme Court of India. It is the final interpreter and guardian of the Indian Constitution and the Fundamental Rights. It plays the role of guardian of the social revolution and has to draw a line between individual liberty and social control.  

The Constitution of India which was drafted by the Constituent Assembly and which came into force on 26th January, 1950 contains number of provisions that deal with the structure, function and powers of the judiciary. It introduced a unified judicial system in all the States and Union Territories. It virtually introduces a three tier judicial system viz. the Supreme Court of India, the highest court of the land. However the

Constitution contains specific provisions relating only to the Supreme Court and High Courts and it leaves the subordinate judiciary to the States. ²

At the time of framing the constitution, the Members of the Constituent Assembly had to ask themselves which of the provisionsshould be retained, and, if retained, how they should be modified and how the jurisdiction and powers of the courts should be widened to meet the needs of an independent State. As regards the establishment of the Supreme Court was concerned, an ad hoc Committee of five members - B.N. Rau, K.M. Munshi, Alladi Krishna Swami Ayyar, B.L. Mitter and S. Varadachariar undertook the work. “The first recommendation of their report bestowed the power of judicial review upon the court. The report suggested that a Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme.”³

The success of the Constitution depends upon the impartiality and detachment of the judiciary. For a democratic country like India an appropriate atmosphere should has been created so that the judiciary can work impartially. An impartial, unbiased and independent judiciary will be in a position to defend the Constitution and protect the liberty of the people. Judges should not be given any appointment of political nature after their retirement.

“The preamble to the Constitution of India states that the republic is committed to secure justice, liberty and equality, to all citizens. To secure the ends of justice means, realising justice in its social, economic and political dimensions. Added to this is the assurance to secure the dignity of the individual also. The Supreme Court of India by virtue of its commanding position oversees this preambular pledge. This makes the court assume the role of not merely an adjudicator, but something more. This extra responsibility of the Supreme Court is to secure the ends of justice by discovering juristic devices.” In Kesavananda Bharati v. State of Kerala,⁴ advancement was made in this direction. Then came the decision in Maneka Gandhi v. Union of India.⁵ It was followed by a period in the history of Indian judiciary which witnessed a remarkable achievement with its major contribution coming from the Supreme Court. This has given the Supreme Court the position of a dynamic, innovative, social institution capable of feeling the pulse of the society. This achievement is in the background of the power wielded by the Supreme Court. The inherent power is one component which has enabled the Supreme Court to break the ground of judicial creativity as well as make the judiciary command respect from one and all.

The Supreme Court considered the scope of contempt and inherent power jurisdiction under Articles 32,⁶ 136,⁷ 142,⁸ 141⁹ and 129¹⁰ to take action against contempt of court cases against insubordination also.

⁴AIR 1973 SC 1461.
⁵AIR 1978 SC 597.
Such an action is likely to have repercussion throughout the country. The Supreme Court resorts to such powers only sparingly. In this case a controversy erupted when the police misbehaved to the Chief Judicial Magistrate of Nandiad, where the police officers assaulted and arrested him on flimsy grounds, handcuffing and tying with a rope a Chief Judicial Magistrate to wreak vengeance and to humiliate him. The Supreme Court decided to punish the contemners with quantum of punishment to be awarded to each on the basis of the contribution to the incident.

Inherent Powers

The concept of inherent powers is so indeterminate and inscrutable that a technically perfect definition is a near impossibility. The Law Commission in its 14th report has underlined the presence of inherent powers in the following words:

"Though Laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make impossible to lay down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore, have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This had led to the acceptance of the principles that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do real and substantial justice and prevent an abuse of their process." 11

The Supreme Court often formulates and reformulates the concept of inherent powers. The Supreme Court has tried to streamline the contours of the inherent powers. It cannot be said to be an attempt at structuring the inherent powers. The Supreme Court's decisions at time appear to be prescribing the permissible and impermissible limits of inherent powers. With imperceptibly minor variations, the Supreme Court goes on expounding the inherent powers. The roots of inherent powers are traced to, equity.

General inherent powers of Supreme Court

Constitutional Remedies (Article 32)12- The Supreme Court is a multi-jurisdictional Court and its jurisdiction is very broad and is far more extensive than that of any other Court of a similar stature in any part of the World. The Supreme Court under our Constitution is the greatest unifying and integrating force of our country. Its Writ runs throughout the length and the breadth of our vast country and all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. The Constitution has given power to the Supreme Court under Article 32 to issue writs or judicial processes such as habeas corpus, mandamus, prohibition, certiorari and quowarranto in order to the enforcement of the fundamental rights against any authority in the state, at the instance of an individual whose right guaranteed under this Article has been violated.

11Law Commission of India, 14th Report, P. 828.
Liberalisation of Doctrine of Locus Standi

The doctrine of locus standi which requires that only a person to whom a legal wrong is done or an injury is caused can approach the court for vindication of his rights or for redressal of his grievance.

In *S.P.Gupta&Ors v. President of India & Ors* the Supreme Court has firmly stated that any member of the public having sufficient interest and has not acted with malafide or political motives can approach the Court for enforcing Constitutional or legal rights of other persons and redressal for a common grievance. Thus, the principle of *Locus Standi* has been replaced by *Sufficient Interest*.

Public Interest Litigation

“The emergence of Public Interest Litigation has recognized that the right to elective access to justice is the most basic and fundamental human right in the welfare state which guarantees social rights. For the enjoyment of the traditional legal right as well as the new social rights this tool presupposes the mechanisms for their elective protection and the traditional conception of adjudication. Moreover the assumptions on which it is based are proving to be inadequate for the operation of the Public Interest Litigation. Consequently, the courts have liberalized the standard of locus standi to meet the challenges of the time. In Indian law, PIL means litigation for the protection of public interest. It is litigation introduced in a court of law not by the aggrieved party but by the court itself or by any other private party. It is not necessary for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation empowers the public promoting judicial activism.”

The Supreme Court in *People’s Union for Democratic Rights and Others v. Union of India and Others*, defined ‘Public Interest Litigation’ and observed that the Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.

In *HussainaraKhatoon v. Home Secretary, State of Bihar*, In the instant case the allegation is that there was large number of under trial prisoners kept in various jails for several years without trial in the State of Bihar. This was brought to the notice of the Supreme Court by a lady advocate based on a News Paper article claiming a writ of habeas corpus for the persons named in that News paper article. In the present case, the Apex Court through Justice Bhagwati ordered that all such persons whose names were submitted to the Court in the writ petition should be released forth with. Since speedy trial was held to be a fundamental right guaranteed Article 21 the Supreme Court considered its constitutional duty to enforce this right of the accused persons.

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13AIR 1982 SC 149.  
15AIR 1979 SC 1369.
In *Rural Litigation and Entitlement Kendra Vs State of Uttar Pradesh*, the Court ordered the closure of certain limestone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. This matter was brought before the apex court by a PIL alleging that a large scale pollution was caused by limestone quarries adversely affecting the safety and health of the people living in that area. The Court had appointed a committee for the purpose of inspection of certain limestone quarries and the committee has suggested for the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein.

**Court of Record under Article 129**

The Supreme Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. A court of record is a court whose acts and judicial proceedings are recorded for perpetual memory and which are not to be challenged or questioned when presented before any court for purpose of evidence. 18

In the case of *Groenvelt v. Burwell*, Holt CJ said, “Whenever a person is given to examine, hear and punish, it is a judicial power and they in whom it is reposed, act as Judges and wherever there is a jurisdiction erected with power to fine and imprison, that is a Court of Record and what is there done is matter of record.”

**Court of Record under Indian Constitution**

It is important to note that the expression Court of Record has not been defined in the Constitution of India. Article 129 of the Constitution India however, declares the Supreme Court to be a Court of Record, while Article 215 of the Constitution India declares a High Court also to be a Court of Record. A Court of Record is a Court, the records of which is admitted to be of evidentiary value and is not to be questioned when produced before any Court. The power that Courts of Record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the Courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.

**FREEDOM OF SPEECH AND EXPRESSION VIS-À-VIS CONTEMPT OF COURT**

Freedom of speech and expression includes the right of every citizen to criticise the judiciary as an institution and its functioning. The court to maintain their independence use the power of contempt to punish one who lowers the dignity of the court or interferes with administration of justice. This precisely is the conflict between freedom of speech and expression and contempt of court. Both freedom of speech and power of contempt are vital for a democratic setup. Freedom of speech ensures judicial accountability whereas power of contempt ensures fair administration of justice.

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161985 (2) SCC 431.
Article 19(1)(a) of the Indian Constitution does not expressly mention the Freedom of the Press, such as the freedom to print and to publish what one pleases without permission. However, it is settled law that the right to Freedom of Speech and Expression in Article 19(1)(a) includes the freedom of the Press also. Freedom of the Press, like Freedom of Speech, has many values to the editor or speaker, to the reader or listener and to the society as a whole. Greatest of these is freedom to read and learn. The book, speech and pamphlet open new horizons for people. They are essential for the informed and intelligent electorate, as well as for the scientist, the philosopher, or the administrator.

The Supreme Court in *re Harijai Singh's case*, stated importance, utility and role of Press in a democratic setup of the country. It was expressed that Freedom of Press has always been regarded as an essential pre-requisite of a democratic form of Government. It has been regarded as a necessity for the mental health and the well being of a society. It is also considered necessary for the full development of the personality of the individual. It is said that without freedom of press truth cannot be attained. The Supreme has further held that the Freedom of Press is regarded as the mother of all other liberties in a democratic society. The importance and the necessity of having a free Press in a democratic country governed by Rule of Law, like has been correctly stressed and explained by the Apex Court.

**SCOPE OF ARTICLE 129**

The true scope of Article 129 of the Constitution of India cannot be better explained in the words of *Justice K.N. Singh*. His Lordship in *Delhi Judicial Service Association, Tis Hazari Court v. State of Gujarat*, interpreted the Article 129 of the Constitution of India in the following words:

Article 129 of the Constitution of India declares the Supreme Court a Court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in Article 129 of the Constitution of India is not restrictive instead it is extensive in nature. If the framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression including the power to punish for contempt of itself. The Article confers power on the Supreme Court to punish for contempt of itself and in additions it confers some additional power relating to contempt as would appear from the expression including. The expression including has been interpreted by courts to extend and widen the scope of power. The plain language of article clearly indicates that this court as a Court of Record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a Court of Record.

Rule of law is the basic rule of governance of any civilized democratic polity. It is foundational feature of our Constitution and the right to obtain judicial redress is a feature of its basic structure as held in *Minerva Mills Ltd. V. Union of India*. Judicial independence is one of the facets of rule of law. It is through the

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20AIR 1997 SC 73.
21AIR 1991 SCW 2419.
22(1980)3 SCC 625.
courts that the rule of law reveals its meaningful content. Protection of the administration of justice is, therefore, as imperative as its existence for the civilized functioning of any free and egalitarian social order. The law of contempt secures public respect and confidence in the judicial process and provides the sanction for any act or conduct which is likely to destroy or impair such respect and confidence.

The power to punish for contempt any one that interferes with the administration of justice is an inherent power vested in the judiciary. This may appear to be an arbitrary power, because the role of prosecutor and adjudicator is combined in one person or one body of persons. But, it is an necessary power for the protection of the impartial administration of justice to maintain the majesty of law. One of the basic principles of any civilized system of justice is that a person is entitled to fair trial free from prejudice. One purpose of the law of contempt is to provide sanctions against any word or conduct which is likely to prejudice fair trial. The authority of judiciary should rest on the firmer foundations of the quality and nature of its judgments rather than on respect extracted under the threat of penalty. A more vigorous public scrutiny has only served to strengthen the judiciary everywhere.

In P.N. Duda v. P. Shiv Shankar, Mr. P. Shiv Shankar who was formerly a High Court Judge and at the relevant time was Minister for Law, delivered a speech at a seminar on Accountability of the Legislature, Executive and Judiciary under the Constitution of India organised by the Bar Council of Hyderabad on November 23, 1987.

The court held that administration of justice and judges are open to public criticism and public scrutiny. But the criticism must be fair and reasonable. Regarding the speech of Law Minister, the Court has adopted a lenient view. The Court said the Minister was making a study of the attitude of the Supreme Court and such a study perhaps is important for the understanding of the evolution of the constitutional development. It was further observed that the speech of the Minister read in its proper perspective, did not bring the administration of justice into dispute or impose administration of justice. Thus the Court with those observations held that there was no imminent danger to the administration of justice, hence the Minister not guilty of contempt of court.

POWER UNDER ARTICLE 129 IS INDEPENDENT OF POWER OF CONTEMPT UNDER STATUTORY LAWS.

In re Ajay Kumar Pandey, it was held that the jurisdiction of Supreme Court under Article 129 is independent of the Contempt of Court’s Act, 1971, as the power under Article 129 cannot be denuded, restricted or limited by the Contempt of Court Act, 1971. In re Vinay Chandra Mishra, also it was held that Article 129 is independent of the statutory law of contempt enacted by the Parliament under Entry 77 of List 1 of seventh Schedule of the Indian Constitution. Article 129 is sui generis. The jurisdiction to take

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24Article 129 of the Indian Constitution, 1950. Supreme Court to be a court of record.
26AIR 1995 SC 2348.
cognizance of the Contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore the Contempt of Court Act, 1971, can be pressed into service to restrict the said jurisdiction.

**Special Leave Petition**\(^{27}\): It provides that the Supreme Court may, in its discretion, grant Special Leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or tribunal in the territory of India except the Court or tribunal constituted by or under any law relating to armed forces. The SLP under this provision of the Constitution is very wide, and the Court has made an extensive use of its prerogative under this category. The jurisdiction covered virtually all tribunals the concept being interpreted widely in *ShivjiMathubhai v. Union of India*,\(^{28}\) The Court goes into question of law, matters of natural justice and even, where the need arises, questions of fact, to decide on the matter of SLP, as it was also held in *DahyabhaiChhaganbhaiThakkar v. State of Gujarat*.\(^{29}\)

**Advisory jurisdiction of Supreme Court (Article 143)**\(^{30}\): The authority conferred by Article 143 is not the authority to hear any cause or complaint referred to the Supreme Court in the formal manner but the discretionary power of the Supreme Court to give its opinion on any question of public importance that may be referred to it by the president. Under Clause (1) of, the Article 143, the court has the discretion to give its opinion or to decline to express any opinion on the questions submitted to it. An analysis of thereferences made under Article 143 to the Supreme Court makes it clear that the Court gave its opinion on majority of occasions of reference, even though the same was not obligatory on its part to do so, it was held in *Re Kerala Education Bill*,\(^{31}\)*Berubari Union case*,\(^{32}\)*Re Special Courts Bill, 1978*.\(^{33}\)

The Court has clarified so many issues about the scope of this article in the above said cases and other cases, such as the Court is not bound to give an opinion. It cannot go into disputed questions and President is empowered to obtain the opinion of the Supreme Court upon any question of law or fact which has arisen or is likely to occur and is of such a nature and such public importance that it is expedient to obtain such opinion. However, it should not be on hypothetical questions. Strictly speaking, the advisory opinion of the Supreme Court is not binding on the President though the President usually honours it and sometimes the Court also take an undertaking through the Attorney General that it will be honoured.

**The Plenary power of the Supreme Court (Article 142)**\(^{34}\): Article 142 of the Constitution of India provides that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed.

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\(^{27}\) Article 136 of the Indian Constitution, 1950..

\(^{28}\) AIR 1960 SC 606.

\(^{29}\) AIR 1964 SC 1563.

\(^{30}\) Article 143 of the Indian Constitution, 1950.

\(^{31}\) AIR 1958 SC 956.

\(^{32}\) AIR 1960 SC 845.

\(^{33}\) AIR 1979 SC 478.

\(^{34}\) Article 142 of the Indian Constitution, 1950.
by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

Under Article 142 (2)\textsuperscript{35} of the Constitution of India, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 142 of the Indian Constitution vests the Supreme Court with repository of discretionary powers that can be used in appropriate circumstances to deliver complete justice in a given cause or matter. It is an important Constitutional power granted to the Court to protect the interests of citizens when laws are found to be inadequate for the purpose of granting of any relief. \textsuperscript{36}

**Conclusion:** Since 1973, the judiciary started using power to nullify, even an amendment made in the constitution by the amending body on substantive grounds, if it changes the basic structure or framework of the Constitution in *KeshavanandBharti v. State of Kerala*.\textsuperscript{37} The undoubted privileges of the Legislature even in respect of their internal proceedings have been brought under the purview of judicial review inre *Keshav Singh*.\textsuperscript{38} Power of ‘Judicial Review’ as exercised by the Supreme Court and the High Court has been recognized by these courts to be an unalterable basic structure of the Constitution in *Indira Nehru Gandhi v .Raj Narain*.

The concept of ‘state’ for the purpose of enforcement of fundamental rights has been widened by successive judgments of the Supreme Court so as to include all public, quasi public authorities even involved in commercial activities as state had extended its role of promoting for public corporation. \textsuperscript{40} But there are certain limitations on the inherent powers of the Supreme Court as ;

The Supreme Court can issue writ only in case of violation of any of the Fundamental Rights contained in Part III of the Constitution. This power is much lesser then the one provided to the High Court under Article 226 \textsuperscript{41}i.e. the High Court has power to cure violation of both Fundamental Rights and other legal and Constitutional Rights.

By extending its jurisdiction (PIL), the court is trying to bite more than it can chew. As a result, the arrears are increasing and it might ultimately spell a total collapse of the judicial system in India, as it would open floodgates of litigation.

At present, the judges of the Higher Judiciary have triple shield. There is no practical remedy for the removal of corrupt judges. There is no provision for investigation of charges against the judges. The power

\textsuperscript{35}Article 142(2) of the Indian Constitution, 1950.


\textsuperscript{37}AIR 1973 SC 1461.

\textsuperscript{38}AIR 1965 SC 745.

\textsuperscript{39}AIR 1975 SC 2299.

\textsuperscript{40}Article 12 of the Indian Constitution, 1950.

\textsuperscript{41}Article 226 of the Indian Constitution, 1950.
of contempt of court is used as a tool to silence the criticism. It is being used to provide complete immunity to judges and has institutionalised judicial impunity.

The aggrieved party cannot claim special leave to appeal under Article 136 as a right, but it is privilege vested in the Supreme Court of India to grant leave to appeal or not.

Article 143 is not part of administration of justice. It is part of advisory machinery designed to assist the President (the Executive). Article 143(1) is couched in broad terms, which provide that the President for the consideration of the Supreme Court may refer any question of law or fact.