Inherent Jurisdiction

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In the context of the above topic the root word is “inhere”, meaning, “To exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something.” The term “jurisdiction” has been defined by the Black’s Law Dictionary as “A Court’s power to decide a case or issue a decree”; “A geographic area within which political or judicial authority may be exercised;”. A political or judicial subdivision within such an area.” Both the terms read together would mean a permanent, essential and intrinsic power of a court to decide a case or issue a decree within the specified geographical area and within the specified judicial subdivision. In British civil procedure the terms “traditional” and “extended” inherent jurisdiction are used keeping in view the principle laid down in Grepe v. Loam.

The Court has an inherent jurisdiction to make an order for the purpose of preventing abuse of its procedures. This jurisdiction is a fertile source for procedural development. It was also held that the High Court has jurisdiction to make an order (which may, perhaps, properly be described as an order for an “interim remedy”) restraining a person from initiating civil proceedings without the permission of the Court, where the proceedings will be. vexatious (an extended “Grepe v. Loam” order”) In another case it was said that CPR serves to bolster the principle that, in the exercise of its inherent jurisdiction, the court has power to restrain litigants from disturbing the orderly conduct of court processes. In the case of Bhamjee v. Forsdick the

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1 This lecture was delivered in the training course of Second Batch of Additional District & Sessions Judges on Oct 28, 2009.
3 Ibid p. 855
The court of appeal referred to the relevant authorities and restated the principle that every court has the power to protect its process from abuse. The court emphasized the element of the overriding objective that speaks of the need to ensure that, in dealing with a case justly, so far as practicable the case is allotted an appropriate share of the court’s resources whilst taking into account the need to allot resources to other cases. In this case, the Court re-classified “traditional” and “extended civil restraint” orders, where a court was persuaded that a solicitor had not acted negligently in continuing to act for a company which had been struck off the register, nonetheless the Court was able to make an award of costs against the solicitor from wasting the time of Court staff and that the defendants were clearly in a position to know the status of the company.  

This term of “inherent jurisdiction” is one of the most frequently used term but at the same time, most lawyers would not be able to adequately define it. At the same time most judges are anxious to pass just and equitable orders, but are not sure of the express provision. An unprepared lawyer who is not aware of the relevant provision insists the court to pass order under its “inherent jurisdiction”, and the court is not sure whether it can do so?

The inherent jurisdiction was originally conferred on the superior courts of the common law in England, and was derived not by virtue of any statute or rule of law, but by very nature of such superior courts the inherent powers being intrinsic in stem. According to accepted standards of statutory construction the very term, “inherent jurisdiction” clearly exhibits that it requires no authorizing provision, hence, the term “inherent”. In determining the term “inherent jurisdiction” number of judges and jurists have resorted to the definition from “Halsbury’s Laws of England”:

“In sum it may be said that the inherent jurisdiction of the Court is a virile and viable doctrine, and has been defined as being the

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7 See e.g. Bhamjee v. Forsdick (2003) EWCA civ. 113; The Times July 31st, 2003 C.A.
reserve 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 due
process of law, to prevent vexation or oppression, to do justice
between the parties and to secure a fair trial between them.”

The doctrine of “Inherent Jurisdiction” applies to unlimited
number of events/cases/circumstances however; we can broadly
divide it into four:

**Distinction Between Sec-151 C.P.C, Section 561-A Cr.P.C &
Inherent Powers.**

Powers u/s 151 CPC and under section 561-A Cr.P.C are saving
clauses arise out of statute while Inherent Jurisdiction which does not
arise out of statute. The purpose of Inherent Powers is:-

a) To ensure convenience and fairness in legal proceedings;

b) To prevent steps being taken that would render judicial
proceedings inefficacious;

c) To prevent abuses of process; and

d) To act in aid of Superior Courts. The inherent powers are
intrinsic in stem and in aid or control of inferior Courts and
tribunals.\(^{11}\) The power stems not from any particular statute
legislation, but rather from “inherent” powers vested in a court
to control the proceedings brought before it.

**Limitation On The Exercise of Inherent Jurisdiction**

I. This doctrine cannot be used to override statute or rule. The
clearest articulation of such restriction is set out in the
Supreme Court of Canada decision. \(^ {12}\) The Supreme Court of
Canada held that,

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\(^{10}\) G. Sanam, Halsbury’ Laws of England, 4\(^{th}\) ed. (London-Butterworths); See Also, Issac H. Jacob, “The
Inherent Jurisdiction of the Court: (1970)


\(^{12}\) College Housing Co-Operative Ltd v, Baxter Student Housing Ltd [1976] 2 S.C.R. 475.
“Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or rule. Moreover, because it is a special and extraordinary power it should be exercised only sparingly and in a clear case.”

II. Another restriction on the doctrine of inherent jurisdiction is that, it cannot be used to create new rules of substantive law. In the case of Re Regina and Unnamed Person Zuber j. of the Ontario Court of Appeal stated that “the limits of this power are difficult to define with precision but cannot extend to the creation of a new rule of substantive law.”

AN INDEPENDENT & SEPARATE BASIS OF JURISPRUDENCE

The inherent jurisdiction may be seen as an independent and separate basis of jurisdiction possessed by the superior courts. According to Jacob, the inherent power is a tool to protect courts capacity to administer justice. It constitutes that residual or reserve source of powers which the court may draw upon as necessary whenever it is just and/or equitable.

It is said that the powers under inherent jurisdiction are ancillary or incidental to a court’s general jurisdiction and therefore are procedural in nature.

Keeping in view the writings of Jacob, de Jersey, Mason’s four primary functions of the jurisdiction, the following four types of powers may fall under the heading of the “Inherent Jurisdiction”

13 Ibid, at 480
14 Ibid, at para 9
15 Loc Cit, iH Jacob 51
16 Ibid
17 P Twist, “the International Jurisdiction of Masters’ [1996] New Zealand Law Journal 351; See Also, Jacob, above
18 It must be noted that Jacob actually views the Court’s inherent jurisdiction as being only a part or an aspect of its general jurisdiction rather than as incidental or ancillary to it as Twist does. This point is however, qualified by his assertion that inherent jurisdiction is certainly part of procedural rather than substantive law.
i. Ensuring Conveniences and fairness in legal proceedings:

- Developing rules of court and practice directions;
- Remedying breaches of the rules of natural justice and setting aside default orders;
- The power to correct, vary or extend and order to prevent injustice;
- The power to order that a case can be heard in camera;
- The power to prohibit the publication of part of proceedings;
- The power to decline to proceed with a matter if the proceedings are not properly constituted;
- The power to dismiss an action for want of prosecution, including cases where a prolonged or inordinate delay means that the defendant is likely to suffer prejudice;
- The power to compel observance of the court’s process and obedience of and compliance with its orders;
- The power to punish for contempt of court, including any conduct calculated to interfere with the due administration of justice;
- The power to exercise protective and coercive powers over certain classes of persons (i.e. control over practitioners and officers of the Court);
- The right to inspect documents denied to one of the parties.

ii. Preventing steps from being taken that would render judicial proceedings inefficacious:
• The power to order security for costs in civil actions;
• The power to stay the execution of a judgment;
• The power to grant certain remedies including Anton Piller Orders and Mareva Injunctions

iii. Preventing abuse of process:

• The power to stay or dismiss proceedings where an action is frivolous, vexatious, oppressive, or groundless;
• The power to stay proceedings where a more suitable alternative forum is available or has already been invoked;
• The power to stay proceedings where a criminal charge is pending;
• The power to stay proceedings for want of prosecution;
• The power to order a stay of proceedings, whether permanent or temporary, whether conditional or unconditional and where such order is demanded by the circumstances of the case in order to prevent injustice.

iv. Acting in aid of superior courts and in aid or control of inferior courts and tribunals;

**SECTION-151 CPC**

There is widely spread misconception to the effect that inherent powers are exercised by the courts under section 151 CPC. The fact of the matter is that Section-151 CPC is only a saving clause. It saves and refuses to limit the inherent powers of the court which court may exercise to prevent abuse of the process of the court. The inherent powers are germane to and inherently built in the powers of the court. There is no specific and/or separate statute conferring inherent powers in a court.
Conclusion:

That an approach based on the “inherent jurisdiction”, Wheeler, espouses the view that due process of court guarantees may be implied by expanding our understanding of “Judicial Power” ¹⁹