

Inherent Powers of Courts

By

Qaiser Javed Mian

Director Research/Faculty Member
Punjab Judicial Academy, Lahore.

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Section 151 C.P.C.

“Saving of inherent powers of 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.”

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Section 561-A Cr.P.C.

“Saving of inherent power of High Court. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

- Root word “**Inhere**”, Black’s Law Dictionary meaning:
“to exist as a permanent, inseparable, or essential attribute or quality of a thing;
to be intrinsic to something”
- “**Jurisdiction**” Black’s Law Dictionary meaning:
“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 sub-division within such an area”

Definition formulated by Me

Both the terms i.e. “Inherent” and “jurisdiction” 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.

Halsbury's Laws of England, Definition of
"Inherent Jurisdiction"

“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 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”.

6. M. Naeem

Versus

**The State through Prosecutor General, Province of
Sindh..**

2010 P Cr. L J 1039

Karachi High Court, Sindh

Provisions of S. 561-A, Cr.P.C. had saved/protected inherent jurisdiction of High Court to pass any order to secure the ends of justice and prevent the abuse of process of the court.

7. Dr. Muhammad Naseem Versus State 2009 YLR 252

Karachi-High-Court-Sindh

- S. 561-A---inherent jurisdiction under S. 561-A, Cr.P.C.---Scope---Proceedings under section 561-A, Cr.P.C. do not provide any additional or alternate remedy and High Court cannot assume the function of Trial Court; however, in appropriate cases, in order to avoid the abuse of process of Court, High Court in exercise of its power under section 561-A, Cr.P.C. can quash the proceedings.

8. Khuda Bux Versus The State

2010 P MLD 864

Karachi High Court, Sindh

- **S.561-A---Quashing of order---inherent jurisdiction of High Court-Scope.**
- Purpose of invoking provisions of S.561-A, Cr.P.C. was mainly to prevent abuse of process of court; and to secure the ends of justice.

**9. Muhammad Ali Versus Muhammad Aslam.
2002 MLD 726**

Karachi High Court, Sindh

High Court possessed inherent powers under S.561-A, Cr.P.C., but said provisions were not meant for the purpose of thwarting the criminal proceedings pending in the lower courts and the High Court, ordinarily, would not interfere at intermediate stage of criminal proceedings in a subordinate Court---In certain cases wherein apparently a miscarriage of justice had occurred and there was no probability of any kind of conviction and that apparently the continuation of the proceedings amounted to abuse of process of law, the High Court; in order to prevent the abuse of process of Court, must interfere and if the prosecution, on the face of it, was illegal, the proceedings in such cases could be rightly quashed.

10. Abdul Hussain Versus Muhammad Shabbir.
2000 YLR 1603
Karachi High Court, Sindh

- Quashing of order or proceedings---Jurisdiction of High Court---Scope and nature---High Court, in exercise of its power under S.561-A, Cr.P.C. normally would refrain from interfering in normal course of trial or subordinate courts, particularly where evidence had not been recorded---Inherent jurisdiction of High Court could not be invoked merely because accused considered allegations leveled against them to be false---Jurisdiction under S.561-A, Cr.P.C. **was not additional or alternate but such powers were to be exercised sparingly to correct errors of law in exceptional cases.**

11. Sh. Naveedur Rehman Versus The State.
2010 P Cr. L J 1340

Lahore High Court, Lahore

- Quashing of F.I.R.---Disputed question of facts could not be gone into by High Court while exercising its extraordinary Constitutional jurisdiction---If an offence had, prima facie, been committed, the same should be inquired into and tried by Trial Court---inherent jurisdiction of High Court was not an alternative or additional jurisdiction.

12. Muhammad Nawaz Versus State
1994 MLD 1102
Karachi-High-Court-Sindh

Criminal Procedure Code (Cr.P.C) ---S. 561-A---Inherent powers of High Court--
-High Court in appropriate case can exercise jurisdiction under S.561-A, Cr.P.C. as the powers of High Court are co-extensive with powers of Trial Courts under Ss. 265-K or 249-A, Cr.P.C.

**13. Ghulam Abbas Shah
Versus
D.I.G of Police, Rawalpindi Range, Rawalpindi.
2001 YLR 186
Lahore High Court, Lahore**

- Constitution of Pakistan 1973----Art. 199---Criminal Procedure Code (V of 1898), Ss. 561-A & 156--- Constitutional jurisdiction and inherent powers of High Court---Interference with investigation and re-investigation---Superior Courts cannot control investigations and re-investigations, **but are empowered to strike down any order of re-investigation if the same is based on mala fides or is ulteriorly motivated**---Court cannot stop the investigation and cannot strike down an order of re-investigation merely on the ground that previously a police officer has finalized the investigation.

14. **Muhammad Channah**
Versus
Province of Sindh through Home Secretary.
2011 P Cr. L J 952
Karachi High Court, Singh

S. 561-A---Inherent powers of High Court---Scope---Prima facie case---Effect---Inherent jurisdiction is not an alternative or additional jurisdiction---Such is only in the interest of justice to redress grievances for which no other procedure is available---Power given by S.561-A, Cr.P.C. cannot be so utilized as to interrupt or divert ordinary course of criminal procedure as laid down in procedural statute---criminal cases should proceed before courts concerned in accordance with normal law--If prima facie case is made out, the proper course is that the same be tried---Mere claim of innocence by accused can never be considered sufficient to justify such departure because if the same was permitted then every accused person would opt to stifle prosecution and to have his guilt or innocence determined under S.561-A, Cr.P.C.

15. Muhammad Ghufuran Versus The State
2010 P Cr. L J 351

Karachi High Court, Sindh

- **S.561-A---inherent powers of High Court---**inherent jurisdiction of High Court under S.561-A, Cr.P.C. is not of an alternate or additional character and is to be invoked rarely only in the interest of justice for seeking redress of grievances, in the absence of any other procedure---
Section 561-A, Cr.P.C. should not be availed to obstruct or to divert the ordinary course of criminal procedure.

16. Chief Justice of Pakistan Iftikhar Muhammad Chaudhry

Versus

President of Pakistan through Secretary.

2010 PLD 61

Supreme Court

- Restraining a Judge from exercising his judicial power and from discharging the obligations cast on him by the Constitution---Effect---Even a temporary interference with the office of the Chief Justice or of a Judge, even when he had not been suspended but in fact appointed to another judicial office, amounted to his “removal from office”---**No constitutional, the legal and the legislative frame-work of Pakistan recognize any inherent, ancillary or incidental powers with the competent authority to suspend or to restrain from working, Chief Justice of Pakistan whose tenure in office stood guaranteed by the Constitution---Chief Justice of Pakistan could not be suspended from office or could be restrained from exercising the judicial’ powers appertaining to his office, in exercise of some alleged inherent, ancillary, implied or implicit powers, vesting in the President.**

**17. Habib-ur-Rehman Versus The State.
2010 P Cr. L J 658**

Quetta High Court, Balochistan

- **Inherent power of High Court---Review---**
Sanctity of finality is, no doubt, attached to a judgment passed by a criminal Court by virtue of section 369 Cr.P.C., but High Court under its inherent power can review or recall its judgment or order if found to have been passed without jurisdiction, without adjudication on merits, in violation of any law or obtained by playing fraud on the Court.

18. 2010 PTD 1418 Customs, Federal Excise and Sales Tax Appellate Tribunal

- Ss.193-A & 194---Review---Scope---
No court much less the Tribunal
having the special and limited
jurisdiction possesses the **inherent
power to review its order unless
this power is expressly granted
by the statute.**

19. Lal Khan

Versus

Station House Officer, Police Station Kotwali, Jhang.

2010 P Cr. L J 182

Lahore High Court, Lahore

- **S.561-A---Constitutional jurisdiction and inherent powers of High Court---Scope---High Court, in exercise of constitutional jurisdiction and inherent powers, was supposed to take effective steps to safeguard legal rights of the people and the system.**

**20. Lal Khan
Versus
Station House Officer, Police Station Kotwali, Jhang.
2010 P Cr. L J 182
Lahore High Court, Lahore**

In order to enforce law of the land and to enable alleged abductee and her second husband/accused, to lead peaceful matrimonial life of their choice, it was fully justified to exercise constitutional jurisdiction and inherent powers by High Court, in their favour. Such an action by the High Court would not amount to interference in the allotted sphere of investigating agency, prosecution and trial court because the three organs of administration of justice had stepped over their respective authority.

21. Yasin alias Bhutto Versus The State.
2010 MLD 998

Lahore High Court, Lahore

- Consideration of period of detention while awarding sentence to accused and giving benefit of S.382-B, Cr.P.C.---inherent jurisdiction of High Court---Scope---Petitioner had prayed for grant of benefit of S.382-B, Cr.P.C. contending that it was mandatory upon the Trial Court to consider the question of grant or otherwise of the benefit of S.382-B, Cr.P.C., but same had not been done in the case of the petitioner---Validity---**High Court had inherent jurisdiction to extend the benefit of the provisions of S.382-B, Cr.P.C. to a convict**---Petition filed by the petitioner was allowed and he was extended the benefit of S.382-B, Cr.P.C.---Period of detention of accused as under-trial would be counted towards his sentence.

22. Mst. Parveen Akhtar

Versus

Muhammad Adnan

2010 C L C 380

Lahore High Court, Lahore

- S. 151---Subsequent events, taking notice of---inherent jurisdiction of Civil Court---Scope---Civil Judge had inherent powers to take notice of subsequent events and do justice to save parties from unnecessary litigation.

23. Mst. Sana Parvaiz

Versus

Muhammad Sajawal Butt

2010 MLD 143

Karachi-High-Court-Sindh

- High Court keeping in view the facts and circumstances of the case, without going into the technicalities of law, taking into consideration the welfare of the minor, ordered, in exercise of its inherent jurisdiction, that the custody of minor son be handed over to the petitioner/mother who was entitled to retain her custody---Interim custody of the minor son was delivered to the petitioner (mother).

24. Natasha Rashid Versus Rashid Zar
2010 PLD 119
Karachi-High-Court-Sindh

- Ss.491 & 561-A---Habeas Corpus Petition---
Maintainability---Custody of minors---Cases
pertaining to **custody of children** should not be
decided on technicalities---Where petition
under S.491, Cr.P.C is not found to be
competent due to absence of element of illegal
custody by the father of his own child, High
Court can also pass an appropriate order in
exercise of its inherent jurisdiction.

25. Kawas B . Aga
 Versus

City District Government, Karachi (CDGK) through Nazim-e-Ala
2010 PLD 182
Karachi-High-Court-Sindh

- Ss.35 & 35-A---Constitution of Pakistan (1973), Art.199---Constitutional petition---Costs, awarding of ---Scope---In addition to actual costs and compensatory costs, High Court in its Constitutional jurisdiction can award compensatory costs even in excess of twenty five thousands Rupees as prescribed under S.35-A,C.P.C.---**Special costs can also be awarded by High Court in exercise of its inherent powers**---Costs including compensatory costs as well as exemplary costs can be imposed by High Court in its Constitutional jurisdiction.

**26. Federation of Pakistan
Versus
Mian Muhammad Nawaz Sharif
2009 PLD 284
Supreme-Court**

- When the election laws are not providing any remedial steps, the High court has got inherent and constitutional powers to remedy the wrong being done or having been done by the Election Tribunal---High court, therefore, has got power and jurisdiction in such circumstances to invoke its said power to do justice---Principles.

**27. Sued Fakhar Imam
Versus
Muhammad Raza Hayat Miraj
2009 CLC 1
Punjab Election Tribunal**

- **Inherent jurisdiction of court, source of---
Every court, in absence of any express
provision, **would be deemed to
possess in its very constitution all
such powers, which would be
necessary to do right and undo a
wrong in the course of administration
of justice.****

**28. Muhammad Nawaz
Versus
Ghulam Mustafa Ansari
2009 PLD 467
Lahore-High-Court-Lahore**

- Where a forum has power to grant the final relief, it has inherent power to grant any interim relief, vice versa, where the forum itself does not have power to grant the final relief, it shall have no power even to grant interim relief.

**29. Zarai Tariqati Bank Limited through Branch Manager
Versus
Hassan Aftab Fatiana
2009 CLD 36
Lahore-High-Court-Lahore**

- Where the Financial Institutions (Recovery of Finances) Ordinance, 2001 itself provides the specific procedure for resolving a proposition, under the settled principles of construction of statues, the provisions of general law not only to that extent, but even regarding the inherent jurisdiction of the court available under Civil Procedure Code, 1908 shall not be attracted.

30. Muhammad Ismail Versus Rehmat Ali
2009 YLR 1265

Lahore-High-Court-Lahore

- Judgment and decree in question was assailed by respondent under S. 12(2), C.P.C. and the same was set aside by Lower Appellate court in exercise of revisional jurisdiction ---Validity--- Court had jurisdiction to take cognizance of open fraud---No rule was required to correct/rectify a wrong---Court had always inherent powers to prevent abuse of process of law by moulding relief in appropriate cases---Provisions of S.151, C.P.C. were rightly invoked by Lower Appellate Court in aid of justice, as it was thought necessary in the circumstances of the case to prevent abuse of process of the court and to avoid a situation resulting in stalemate.

31. Naseer Ahmed Versus State
2009 PCrLJ 1430
Lahore-High-Court-Lahore

- **Protective/enabling bail is nowhere defined or provided in Criminal Procedure Code, 1898.**
- It is an injunctive order in exercise of inherent powers by High court, which is being termed as protective or enabling bail---Court of session does not have inherent powers under S.561-A, Cr.P.C. and being creation of S.9 Cr.P.C., Sessions Judge or Additional Sessions Judge are competent to grant post-arrest bail in cases pertaining to their sessions division---Court of Session is not vested with inherent powers to pass restraining order/enabling bail in cases pertaining to another sessions division.

32. Ghafoor Aslam Versus State
2009 P Cr L J 1108
Lahore-High-Court-Lahore

- **S. 561-A---inherent jurisdiction of High Court, exercise of---**Exercise under S.561-A, Cr.P.C. has to be made sparingly and rarely in most appropriate cases in order to save a party from harassment and abuse of the process of the court---Nevertheless, jurisdiction of High Court under S.561-A, Cr.P.C. is very wide and indefinable, but the same has to be exercised subject to limitations imposed by law and it cannot by pass the express provisions of the Criminal Procedure Code, 1898.

33. Ghafoor Aslam Versus State

2009 P Cr L J 1108

Lahore-High-Court-Lahore

- **Inherent jurisdiction of High court, exercise of---**No invariable rule of law exists for the exercise of jurisdiction under S. 561-A, Cr.P.C---It depends on the facts of each case whether to allow the proceedings to continue or to nip the same in the bud.

34. Gulzar Ahmad

Versus

Superintendent District Jail, Faisalabad

2009 MLD 1068

Lahore-High-Court-Lahore

- **Ss.561-A & 397--inherent jurisdiction of High court--**According to the specific provisions of S.397, Cr.P.C. it is the prerogative of the Trial Court or the Appellate Court to pass a direction for the sentences to run concurrently or not--
-High Court, therefore, cannot pass such a direction on a petition filed under S. 561-A, Cr.P.C.

35. Rashid Mirza Versus Regional Director
2009 MLD 25

Lahore-High-Court-Lahore.

- Art. 199---Criminal Procedure Code (V of 1898), S.561-A---Quashing of F.I.R.---Practice and procedure---High Court is always reluctant in quashing the F.I.R. in exercise of constitutional jurisdiction and inherent powers, but at the same time it is high time for taking effective legal steps to keep the government functionaries, departments, institutions and agencies within their allotted sphere.

36. Parvaiz Versus Muhammad Ramzan
2009 CLC 513

Lahore-High-Court-Lahore

- Court must remedy injury or wrong done to a party because of order of court---Procedure was provided under S. 144 C.P.C., while power to order restitution was inherent in court and should be exercised whenever justice demanded---Present was not a case of restoration of possession but of restitution of possession because order of revenue authority regarding dispossession was set aside by appellate authority declaring the same to be illegal and without jurisdiction.

**37. Nizar Ali Fazwani Versus Pak Golf Leasing Company Ltd.
2009 CLD 237
Karachi-High-Court-Sindh**

- When on the face of it no case was made out against the accused, or there was lack of jurisdiction or when there was sheer abuse of the process of law, High Court under its inherent powers under S. 561-A, Cr.P.C. could quash the F.I.R. or even proceedings for that matter---Impugned F.I.R was based on mala fides and ulterior motives and the same being not sustainable was quashed accordingly.

38. Tariq Habib Versus State

2009 YLR 1364

Karachi-High-Court-Sindh

- Ss.561-A, 63 & 169---inherent jurisdiction---Scope---Court can rectify the injustice done in the case, when the, order was a result of mala fides on the part of the police in getting the accused discharged by Magistrate.

39. Shah Jahan Alamgir Shahanshah, Advocate

Versus

Muhammad Sharif

1989 PCRLJ 374

Karachi-High-Court-Sindh

- Criminal Procedure Code (Cr.P.C)---Ss. 561-A & 435-Inherent powers of High Court, exercise of---Provisions of S.561-A, Cr.P.C. cannot be pressed into service to agitate against concurrent findings of two competent courts below arrived at after appraisal of evidence.

40. Gulam Mustafa Versus State
1999 YLR 1616
Karachi-High-Court-Sindh

- Criminal Procedure Code (Cr.P.C)---S. 561-A---Inherent jurisdiction of High Court---Concept elucidated. Power under section 561-A, Cr.P.C is not mean to stifle the prosecution but it is intended to prevent the abuse of the process of court. For quashing proceeding at the initial stage before framing the charge and recording the evidence the Court has to consider the allegations made against the accused on their face value and if a prima facie case is made out the Court can refuse the quashment. The High Court under section 561-A, Cr.P.C cannot assume the role of trial Court and evaluate/assess the evidence which is yet to come. It is the function of the trial Court. High court cannot embark upon such an exercise to determine the guilt or innocence of a person by way of a detailed enquiry. The accused may have a good defence but they have to pass the test of cross-examination and the appreciation of defence evidence is also the duty of the trial Court in the light of the statutory provisions and the dictums laid down by the superior courts. The jurisdiction under section 561-A, Cr.P.C. is an extraordinary one and powers vested in the High Court are to be exercised sparingly and not generally or as a matter of routine.

41. Tariq Versus State
1994 P CR L J 2297
Lahore-High-Court-Lahore

- Criminal Procedure Code (Cr.P.C)---Ss. 561-A; 439-A & 439---Inherent power of High Court---Effect on other courts---High Court, no doubt, has inherent powers-under S. 561-A, Cr.P.C. to interfere with any order or proceedings in the interest of justice or where miscarriage of justice has been caused or where such an interference has been necessitated to meet the ends of justice, but vesting of such general power in the High Court cannot be said to have the effect of depriving other courts of the powers conferred on them by or under the Code of Criminal Procedure.

42. Shaukat Hussain Versus The State.
2002 P Cr. L J 432

Lahore High Court, Lahore.

Application for sending the case to the Court of Magistrate under Section 30, Cr.P.C. having been dismissed by the Additional Sessions Judge, the accused had filed petition under S.561-A, Cr.P.C. which had been converted by the High Court into a revision--Courts below had failed to appreciate the fact that S.31 P.P.C. which deals with cases relating to Qatl-e-Khata, was an independent offence and had no nexus with S.302, P.P.C. which deals with cases relating to Qatl-e-Amd.

43. Sajjad Amjad Versus Abdul Hameed
1998 PLD 474
Lahore-High-Court-Lahore

- Criminal Procedure Code (Cr.P.C) ---S, 151---Criminal Procedure Code (V of 1898), S.561-A---Inherent jurisdiction of High Court—Application for quashing of plaint under S. 151, C.P.C. pending adjudication---Maintainability---Juxtaposed examination of S.151, C.P.C and S.561-A, Cr.P.C---Courts are equipped with necessary enabling powers to pass orders to do acts which are necessary to do substantial justice between the parties, within the framework of reason, good conscience and fairness---Necessary elements for exercise of such power enumerated---High Court, in exercise of its authority under S.151,C.P.C. cannot entertain any application to quash a plaint/appeal which is before either the court of trial or the court of appeal---Power of High Court under S.151, C.P.C. is not coextensive with the power of the court below and can be exercised only where the lis is pending before High Court---courts of trial, courts of appeal and revisional courts are invested with powers by specific provision of Cr.P.C to do the said job---Principles---High Court in view of S.561-A. Cr.P.C. is not subject to limitation and is empowered to recall or alter its order if some mandatory provisions of law have been violated---[Irshad Ahmad v. Muhammad Jamil PLD 1994 Lah. 583 dissented from.