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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

## **SECTION 482 CRPC: CONTRASTING PERSPECTIVES ON THE INHERENT POWERS OF MAGISTRATES.**

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### **ABSTRACT:**

The newly implemented Bharatiya Nagarik Suraksha Sanhita (BNSS) with section 528 replaces Section 482 of the Code of Criminal Procedure (CrPC) by retaining the same principles regarding the High Court's inherent power to quash an FIR that is wrongfully filed against any person. No fundamental changes were brought in the new provision. Therefore, this commentary primarily spotlight on Section 482 of CrPC, covering all vital perspectives, mainly the quashing FIR by the High Court. This article analyses these powers in detail, discuss on two ideological perspectives regarding the scope of Section 482, and examines various landmark judgments. The commentary aims to provide a clearer and comprehensive understanding of Section 482 and its continued relevance under the BNSS.

### **Introduction:**

Section 482 of the Code of Criminal Procedure (CrPC) grants comprehensive authority to High Courts for addressing all types of criminal case. In 1960, the Hon'ble Supreme Court first addressed the circumstances under which the High Court exercise their inherent jurisdiction, which include: When there is a legal restriction on initiating or continuing the proceedings; When the allegations in the first information report or complaint do not establish the alleged offence; and When there is either a lack of legal evidence to support the charges or the presented evidence is clearly insufficient to prove them. In 1977 the Hon'ble Supreme Court revised the three broad principles that continue to guide High Courts in determining the use of their inherent powers, which are:

1. To enforce compliance with an order under the Code of Criminal Procedure.
2. To prevent misuse of the judicial process.
3. To ensure justice is achieved.



Purpose of this act:-

- I. High Courts possess the authority to step in and prevent cases or complaints that are filed with malicious intent or aimed solely at causing harassment. Additionally they can ensure that procedural hurdles do not result in the denial or undue delay of justice.
- II. High courts exercising its powers can dismiss criminal proceedings such as complaints and First Information Report (FIR) to safeguard the individuals who are wrongfully accused.
- III. Under Section 482 the High Courts possesses inherent powers to nullify illegal orders issued by a court or tribunal. These powers may be exercised to overturn orders that lack legal validity, are issued without proper jurisdiction, or contravene the principles of natural justice.

### **What is inherent powers:-**

Inherent powers, in a general sense, are those that naturally reside within an authority by virtue of its very existence, independent of any external source or delegation. Various legal dictionaries and Judges have provided definitions for the term “inherent powers” as follows: Justice Anderson described inherent powers as follows: “The authority of every court over its own processes is boundless; it is an inherent attribute of all courts, whether inferior or superior. Without such authority courts would be compelled to passively witness the misuse of their processes to perpetrate injustice. The application of this power, however demands the utmost caution and discretion.”

According to Black’s Law Dictionary, “inherent powers” are defined as attributes that are fundamental, essential, or permanently characteristic of something.

### **Justification for These Powers:-**

The concept of inherent powers is not a novel aspect of the Indian legal framework, having first appeared as Section 151 of Code of Civil Procedure (CPC). In the context of criminal procedural law, there was no specific provision addressing inherent powers prior to 1923. It was in that year that such a provision was introduced as Section 561A in the Code of Criminal Procedure, 1898, which was later renumbered as Section 482 under the Code of Criminal Procedure 1973.

In the case of *Jai Berham*, the Hon’ble Privy Council observed that “every Court exists to



deliver real and substantial justice and to prevent the misuse of its own process. Therefore, it inherently holds the power to achieve these objectives, even in the absence of specific provisions in the code.” Consequently, before the introduction of Section 482 in the CrPC, and during the period when a similar provision existed under Section 561A of the CrPC, the Privy Council advocated for the recognition of inherent powers in all courts, including Magistrate courts.

## **TWO DIFFERENT PERSPECTIVE:-**

The Two Divergent Perspectives on Section 482:

One perspective asserts that Magistrates, like other Courts of Law, inherently possess such powers. This view is grounded in the fundamental principle that no legislation can foresee and account for every possible situation that may arise in the future. Consequently, Courts are believed to have the inherent authority to issue necessary orders to uphold justice in such scenarios.

On the other hand, the opposing stance argues that Magistrates lack inherent powers because Section 482 of the CrPC does not explicitly grant or reserve such authority for them.

- 1) Judgements which indicates magistrate can enjoy inherent powers under sec 482 of CrPC.

In the 1969 case of Pritam Singh v. State, the Allahabad High Court adopted a judicious approach rather than a rigidly technical one. It interpreted the provision to mean that subordinate Criminal Courts do have inherent powers. The Court observed that, in the case of an order that is a nullity, there is no reason to prevent the court, upon identifying the mistake, from correcting it directly, rather than being compelled to follow the lengthy process of referring the matter to the High Court. The Court made a clear distinction between an erroneous order and one that is a nullity, concluding that subordinate courts lack the inherent authority to rectify erroneous orders but possess the power to address nullities.

In the 2008 case of Sakiri Vasu v. State of Uttar Pradesh and Others, the Supreme Court expressed a similar view, stating that “when an authority is granted the power to perform a particular function, it inherently includes all incidental or implied powers necessary to ensure the proper execution of that function.” In other words, if a statute explicitly confers a power, it implicitly includes all supplementary powers essential for

its effective implementation, as denying these would render the primary grant ineffective. This case highlights that various judgments from the Supreme Court and High Courts have expressed differing, and at times contradictory, views regarding whether subordinate Criminal Courts possess inherent powers.

- 2) Judgements which indicates magistrate cannot enjoy inherent powers of High courts; In the case of Bindeswari Prasad, the Hon'ble Supreme Court observed that even if a Magistrate possessed the jurisdiction to recall an order, such action would need to be undertaken through another judicial order, accompanied by valid reasons demonstrating that the recall was justified. However, the Court noted that under the Criminal Procedure Code of 1898 (applicable to this case), there was no provision empowering a Magistrate to review or recall an order they had passed. While the CrPC does provide for inherent powers under Section 561A, these powers are exclusively granted to the High Court. Unlike Section 151 of the Civil Procedure Code, subordinate Criminal Courts do not have inherent powers. As a result the Magistrate in this case lacked the authority to recall the order dismissing the complaint. In the 2009 case of Mithabhai Pashabhai Patel v. State of Gujarat, the Supreme Court ruled that subordinate courts do not possess inherent powers under Section 482 of the Code of Criminal Procedure or through any other means. The Court further emphasized that the pre-cognizance jurisdiction for remand, vested in subordinate courts, must be exercised strictly within the boundaries established by the Code.

Various Reports suggesting the expansion of sec 482 of CrPC:

**14<sup>th</sup> Law Commission Report:**

Report of the 14<sup>th</sup> Law Commission: Laws strive to address all possible scenarios, but the limitless variety of circumstances and the inherent limitations of language make it impractical to create provisions that govern every situation. Courts, dedicated to the pursuit of justice, should have the authority to address cases that fall outside the explicit scope of the law, ensuring that injustice or abuse of legal processes is prevented. This principle has led to the recognition that courts possess inherent powers to deliver substantive justice and curb misuse of judicial processes, even in situations not explicitly addressed by the law. Accordingly, the Commission recommended granting statutory recognition of such inherent powers under Section 561A of the CrPC to all subordinate criminal courts.

### **Malimath Committee Report:**

The Report stated that there is no valid justification for withholding inherent powers from other subordinate criminal courts. It recommended: “All courts should possess inherent powers to issue orders as necessary to uncover the truth, enforce any provision under this Code or prevent the misuse of legal processes.”

### **Conclusion:-**

The first tier of the court system in India, forming the foundational structure of the subordinate judiciary, is divided into two branches: Civil and Criminal. These branches are overseen by Civil Judges and Judicial Magistrates, respectively.

Civil Judges, who represent the lowest rung in the hierarchy of civil adjudication in terms of jurisdiction and seniority, are entrusted with inherent powers recognized and safeguarded by law. This level serves as the initial filing court for cases within the minimum pecuniary jurisdiction. Every order issued by a sub-ordinate Criminal Court, like much decisions concerning bail or death sentences, is subject to review by higher and supreme courts. Orders passed under inherent powers are no exception. In cases where the gravity of the matter is a concern, lawmakers can clearly define areas of lesser significance where such powers may be exercised by Magistrates, and those of greater importance that fall within the jurisdiction of Sessions Judges.

For a common litigant, traveling to a High Court for a minor procedural error, such as the issuance of a process, poses a significant challenge. Studies have shown that the geographical proximity of the court to the litigant plays a crucial role in determining whether they can realistically pursue a remedy. These studies reveal that the closer the court is, the higher the likelihood of the litigant seeking redressal. The Country with a population exceeding 1.3 billion relying with only 24 High Courts, accessibility becomes a major issue. The process demands extensive time and financial resources, making it inconvenient; an economically burdensome endeavour.