

INHERENT POWER OF THE CIVIL COURT VIS-À-VIS DEEMED TO BE CIVIL COURT- A JURIDO-LEGAL LABYRINTH.

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Abstract

Inherent power of the courts in general, and civil courts in particular, manifests, though not exclusively, the intrinsic nature of a litigation. This is more prominent when a civil court tries to adjudicate a litigation comprising several facets within it. The chasm about the nature of inherent power is more conspicuous with the creation of the quasi-judicial bodies, because these adjudicating authorities are product of some special statutes and those statutes mostly provides that these adjudicating authorities shall be treated as a deemed civil court which contributes a great deal in making the issue of inherent power a more complicated one. These statutes mostly provide that the concerned adjudicating body must have some attributes of a civil court, but do not provide for the inherent power of a civil court, which is mostly required in order to deal with some out-of-the-box issues. This silence on the part of the special statutes has the effect of contortion, in both the procedural and substantial grounds, because the

presence of inherent power may have an enthralled effect on the entire adjudication and the results thereof.

Keywords: - 1) *Inherent Power of Courts*; 2) *Deemed Civil Court*; 3) *Extent of Inherent Power*; 4) *Quasi-Judicial Bodies*.

D) INTRODUCTION

Plausibly, the inherent power of the civil courts is the most noteworthy power of a subordinate civil court, in order to indurate the powers of a civil court, from the perspective of vouchsafing dispensation of complete justice, in the Indian legal realm.

But in contrast, it must be remembered that, inherent power perpend on the eccentric factual matrix, which demands some extraordinary powers of the civil court, in order to intervene in such a scenario.

It must not lose sight that, the intention of the lawmakers, by introducing the concept of inherent power in the domain of civil law suggest, both in the jurisprudential and in the middle of a court-room battle, the urge to provide some armament to a civil court, in order to deal with a scenario, where all other legal weapons may seem feeble, if not totally defenseless.

It is pertinent to note that neither the Code of Civil Procedure, 1908,¹ nor the General Clauses Act, 1897² provide any definition of the term 'Inherent Power' or even of the term 'Inherent'.

In the attempt to reconnoiter the issue of the definition of the term 'inherent power', even in the lyceum of criminal law, one is bound to face a dike, which is almost impenetrable, because the Bharatiya Nagarik Suraksha Sanhita, 2023,³ do not provide any definition of the impugned term.

¹ The Code of Civil Procedure, 1908, No. 5, 1908 (India).

² The General Clauses Act, 1897, NO.10, 1897 (India).

³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

Hence, except for looking at dictionaries, it will be impossible to suggest a definition of the term 'inherent power'.⁴

According to Webster, the term 'inherent' is an adjective, which means, inter alia, the essential characters of something which are imbibed in the nature of that object.⁵

More or less on the same line, as per the Cambridge dictionary, the term 'inherent' denotes something (or may suggest an attribute) which exists in a thing naturally and which forms a basic element/characteristic of that thing in question.⁶

The bewilderment will increase if an attempt is made to define the term 'Deemed to be Court'. Again, both the procedural legislations, governing the procedure of civil and criminal cases, are absolutely silent in this area, and even the General Clauses Act, 1897⁷ is of no avail. But multiple statutes in India, which include but not limited to, the Consumer Protection Act, 2019,⁸ the Competition Act, 2002,⁹ the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,¹⁰ the Companies Act, 2013,¹¹ the Code on Social Security, 2020¹² etc. speaks unequivocally about importing the attributes of a civil court on the authorities in question, created by the relevant statutes, by deeming those authorities as civil courts.

⁴ See B.M. GANDHI, INTERPRETATION OF STATUTE, 111, 112 (1st ed. EASTERN BOOK COMPANY, 2011). See also CWT v. Officer-in-Charge (Court of Wards), (1976) 3 SCC 864; Supt. & Remembrancer of Legal Affairs v. Abani Maity; (1979) 4 SCC 85.

⁵ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/inherent> (last visited on May 22, 2025).

⁶ CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/inherent> (last visited on May 22, 2025).

⁷ The General Clauses Act, 1897, NO.10, 1897 (India).

⁸ The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

⁹ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

¹⁰ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30, Acts of Parliament, 2013 (India).

¹¹ The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

¹² The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

II) INHERENT POWER OF THE CIVIL COURT – A BIRDSEYE VIEW

Sec. 151 of the Code of Civil Procedure, 1908,¹³ is possibly the most cited provision, in the civil disputes arising in this country. Thanks to the seemingly unending possibilities of civil disputes, the inherent powers of the civil courts work as a life-saving mechanism to deal with a scenario that may catch even the most resilient legal minds in a flabbergasted position. But notwithstanding such credence on the inherent powers, it is difficult, if not impossible, to point out accurately, the genesis of this power, but it can be safely submitted that this power is also placed to restrict and if possible to prohibit the abuse of the powers of the civil courts, which is otherwise plenary in nature.¹⁴

The issue of inherent power is more conspicuous, with the advent and widespread use of quasi-judicial bodies,¹⁵ which is most illuminated (arguably) in the arena of consumer protection and competition law regime, at least in the Indian legal domain.

It is pertinent to note that, like its civil counterpart, the Bharatiya Nagarik Suraksha Sanhita, 2023¹⁶ also speaks about the inherent powers of the criminal courts. Sec. 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹⁷ empowers the concerned High Court(s) to take such necessary actions, to provide complete justice in a positive sense and to prevent the abuse of the process of the criminal courts in the negative sense. This inherent power of the High Court(s) is a direct corollary to the powers appended to the High Courts and the session courts

¹³ The Code of Civil Procedure, 1908, § 151, No. 5, 1908 (India).

¹⁴ Hafiz Gaffar, *The Doctrine of Inherent Powers under the Sudanese Civil Procedure Code: Its Origin, Nature and Scope*, 69 JOURNAL OF AFRICAN LAW 109, 117-118, 123-127 (2025). See also Jeffrey D Pinsler, *The Inherent Powers of The Court*, SINGAPORE JOURNAL OF LEGAL STUDIES, 1, 2, 7, 8 (1997).

¹⁵ Nick Robinson, *EXPANDING JUDICIARIES: INDIA AND THE RISE OF THE GOOD GOVERNANCE COURT*, VOLUME 8 NUMBER 1 WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW 1, 69 (2009).

¹⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

¹⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 528, No. 46, Acts of Parliament, 2023 (India).

under Sec. 438, 439, 440 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023.¹⁸ The stark difference between the inherent power of civil court¹⁹ and criminal court lies in the forum to which such power is assigned by the relevant statutes. In this case, the High Court(s) will act as a statutory court instead of a constitutional court.

It is not out of context to note that the inherent power of court is being appended, at least in expressed terms, in case of civil, to all the strata of civil courts, but so far as criminal court is concerned, it is limited only to the High Court(s), though the power of revision is extended to the session courts also along with the High Court(s).

It can be humbly submitted that this departure of the legislature, while elongating the inherent powers to the civil courts, clearly suggest the intent of the lawmakers, which is nothing but to provide a more plenary power in the form of inherent power to the civil courts in particular, in comparison to the criminal courts.

Again, it is pertinent to note that Sec. 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023,²⁰ starts with a *non obstante clause*,²¹ which is similar to Sec. 151 of the Code of Civil Procedure, 1908,²² which also provides for the inherent powers of the civil courts.²³

The civil law or better to say the civil justice system differs from the criminal law on multiple arenas and the most prominent, inter alia, is the preference-shaping and risk-creating element of criminal law, which can be achieved by the way of legislative interventions, otherwise that

¹⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 438, 439, 440, 442, No. 46, Acts of Parliament, 2023 (India).

¹⁹ *Supra* note 10.

²⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 528, No. 46, Acts of Parliament, 2023 (India).

²¹ See *Om Prakash v. Union of India*, (2011) 14 SCC 1; *Indra Kumar Patodia v. Reliance Industries Ltd.*, (2012) 13 SCC 1

²² The Code of Civil Procedure, 1908, § 151, No. 5, 1908 (India).

²³ See *Prabhu Chawla v. State of Rajasthan*, AIR 2016 SC 4245; *Dhariwal Tobacco Products Ltd. v. State of Maharashtra*, AIR 2009 SC 1032; *Mohit alias Sonu v. State of Uttar Pradesh*, AIR 2013 SC 2248.

may have a diminutive impact on that part of criminal justice system which is quintessentially non-deterrent in nature.²⁴

On the other hand, the adjudicatory process of civil court is more malleable in nature, which is chiefly because, civil law do not provide any risk-creating element²⁵ and is more judge centric,²⁶ at least in comparison with its criminal counterpart, and this make the civil adjudication system and the concomitant procedure governing such civil adjudication less unbudging and provide a more poignant milieu to use the resplendency of the legal acumen of both the bench and the bar.²⁷

Now, attempt can be made to read in a conjoint manner, the verdicts of the Indian apex court in cases of *Nain Singh v. Koonwarjee*²⁸ and *National Plywood Industries Ltd. Resolution Professional v. JSVM Plywood Industries Ltd.*,²⁹ where the former speaks for the civil court and the latter for the criminal court, clearly suggests that the inherent powers of courts shall not be applied to pillage the statutory structure.

This clearly elucidates that the use of inherent power must be resorted to, only in such scenarios, where other remedies or legal ways are lost in the wild with a bleak.³⁰

²⁴ John C. Coffee Jr., *Paradigms Lost: The Blurring of the Criminal and Civil Law Models – And What Can Be Done About It*, 101 YALE L. J. 1875, 1877-1878 (1992).

²⁵ *Id.* at 1878.

²⁶ John C. Coffee Jr, *supra* note 20, at 1878.

²⁷ Danie Van Loggerenberg, *Civil Justice in South Africa*, Volume III (2016) Issue 4 BRICS LAW JOURNAL 125, 126-127 (2016).

²⁸ AIR 1970 SC 997.

²⁹ (2021) 9 SCC 401.

³⁰ See *Ramji Gupta v. Gopi Krishan*, (2013) 11 SCC 296; *CIT, Delhi v. Bansi Dhar*, AIR 1986 SC 421; *State of Kerala v. Thrassia*, AIR 1994 SC 1488; *Bai Shakriben v. Special Land Acquisition Officer*, AIR 1996 SC 3323; *DLF Housing & Co. v. Sarup Singh*, AIR 1971 SC 2324; *Prakash Singh Teji v. NIG Transport Co Pvt Ltd.*, AIR 2009 SC 2304.

III) DEEMED TO BE COURT- A LEGISLATIVE TOOL

The issue of 'Deemed to be Court' in general and 'Deemed to be Civil Court' in particular, is the most convoluted matter, at least in comparison with the issue of inherent power of civil courts.

Now a closer scrutiny of the Delhi High Court judgment in *Rakesh Khanna v. Naveen Kumar Aggarwal*³¹ is required, where the Honourable High Court pointed out that, Sec. 72(2) of the Consumer Protection Act, 2019³² starts with a *non obstante* clause and inter alia, for this reason, the consumer forum(s) has a right to give direction as to arrest and this power of the consumer forum is analogous with that of the magistrate under the relevant provisions of the enactment governing the criminal procedure.³³

Now, before plunging into another aspect of this issue, an attempt must be made in order to decipher the meaning of the term 'Deemed'.

Etymologically the word 'Deem' or 'Deemed' is derived from the word 'Demen', which in turn is connected with the German word 'Tuomen', and at the very outset, the term 'Deemed' means 'To Judge',³⁴ and this is the most mettlesome meaning, which comes in consonance with the use of this term in the present day legal context and is more true at least in the Indian backdrop.

In this respect, the conjoint reading of Sec. 53-O (2) of the Competition Act, 2002,³⁵ Sec. 56(6), 95, 125(3) and 131(2) of the Code on Social Security, 2020,³⁶ Sec. 424 (2) of the Companies

³¹ 2024 SCC OnLine Del 6811.

³² The Consumer Protection Act, 2019, § 72(2), No. 35, Acts of Parliament, 2019 (India).

³³ Now it is The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

³⁴ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/deem> (last visited on May 26, 2025).

³⁵ The Competition Act, 2002, § 53-O (2), No. 12, Acts of Parliament, 2003 (India).

³⁶ The Code on Social Security, 2020, § 56(6), 95, 125(3), 131 (2), No. 36, Acts of Parliament, 2020 (India).

Act, 2013,³⁷ Sec. 71, 38(9), 38(11), 49(1), 59(1) of the Consumer Protection Act, 2019³⁸ and lastly, Sec. 35, 60(1), 61, 70(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013³⁹ among others, speaks for the legal fiction, about the nature of the concerned authorities or tribunals as the case may be.

It is pertinent to note here that the Competition Act, 2002, under Sec. 53-O (1),⁴⁰ the Companies Act, 2013, under Sec. 424(1)⁴¹ and the Code on Social Security, 2020, under Sec. 125(2),⁴² on a clear terms also provides that, the Code of Civil Procedure, 1908⁴³ shall not be applied *stricto sensu*, in the proceedings under the relevant legislations, which contributed to more legal conundrums, as all these bodies or authorities or tribunals, as the case may be, have the attributes of the civil court.

But in the case of the Consumer Protection Act, 2019, in particular, the issue is clearer, because specifically Sec. 38 (9) of the said Act⁴⁴ says that the District Consumer Disputes Redressal Commission must have the attributes of a civil court, and hence must be treated as a 'Deemed Civil Court'. This procedural element, as mentioned under Sec. 38(9) of this Act,⁴⁵ is applicable to the Consumer Disputes Redressal Commission(s), both at the national⁴⁶ and the state level⁴⁷ and moreover, this impugned statute does not contain any provision which can be interpreted

³⁷ The Companies Act, 2013, § 424(2), No. 18, Acts of Parliament, 2013 (India).

³⁸ The Consumer Protection Act, 2019, § 71, 38(9), 38(11), 49(1), 59(1), No. 35, Acts of Parliament, 2019 (India).

³⁹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 35, 60(1), 61, 70(2), No. 30, Acts of Parliament, 2013 (India).

⁴⁰ The Competition Act, 2002, § 53-O (1), No. 12, Acts of Parliament, 2003 (India).

⁴¹ The Companies Act, 2013, § 424(1), No. 18, Acts of Parliament, 2013 (India).

⁴² The Code on Social Security, 2020, §125(2), No. 36, Acts of Parliament, 2020 (India).

⁴³ The Code of Civil Procedure, 1908, No. 5, 1908 (India).

⁴⁴ The Consumer Protection Act, 2019, § 38(9), No. 35, Acts of Parliament, 2019 (India).

⁴⁵ The Consumer Protection Act, 2019, § 38(9), No. 35, Acts of Parliament, 2019 (India).

⁴⁶ The Consumer Protection Act, 2019, § 59, No. 35, Acts of Parliament, 2019 (India).

⁴⁷ The Consumer Protection Act, 2019, § 49, No. 35, Acts of Parliament, 2019 (India).

in such a manner which can possibly oust the application of the Code of Civil Procedure, 1908.⁴⁸

But a pertinent question can arise in this respect, as to the applicability of the inherent power of the ordinary civil courts to these quasi-judicial bodies. Without prejudice to the other relevant statutes, the closure scrutiny of the aforementioned enactments reveals that all the concerned provisions used the term 'namely' before prescribing some specific powers of a civil court to the concerned quasi-judicial bodies, like summoning of witnesses, examination of witnesses, recording evidences, discovery and production of documents, etc. But the issue which remains is, whether the word 'namely' suggests a list of exhaustive powers akin to the civil courts, or whether the powers mentioned in the relevant statutes are only the examples and the actual power of these quasi-judicial bodies travels beyond it and may reach the mark of inherent power as well.

IV) CONCLUSION

It will not be out of the context to remember that, across the globe, almost in all legal systems, the inherent powers of the courts are drafted by the legislature in the widest possible terms to infuse the greatest amplitude to this power,⁴⁹ and India is not an exception.

Arguably, Sec. 148 to 153 of the Code of Civil Procedure, 1908,⁵⁰ provide some particular examples, where the inherent powers of a civil court can be exercised, which include a variety of subjects, like enlargement of time, transfer of business, amendment of judgment, etc., among others.⁵¹

⁴⁸ The Code of Civil Procedure, 1908, No. 5, 1908 (India).

⁴⁹ Lynn Laufenberg & Geoffrey Van Remmen, *Courts: Inherent Power and Administrative Court Reform*, Volume 58 Issue 1 MARQUETTE LAW REVIEW 133, 136 (1975).

⁵⁰ The Code of Civil Procedure, 1908, § 148, 149, 150, 151, 152, 153, No. 5, 1908 (India).

⁵¹ S. Saipreethi & Mrs. V. Udayavani, *A General Study on Inherent Powers of Courts Under Civil Procedure Code*, Volume 120 No. 5 INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 2529, 2533-2534 (2018).

But it is humbly submitted that, these aforementioned examples are unconsolidated in nature and in reality, the power of the civil court is more gelatinous in nature, which can infuse a plethora of powers within itself, without violating the statutory framework of both the Code of Civil Procedure, 1908⁵² and any other statute for the time being in force.

It is pertinent to note here, the verdict of the apex court, in the case of *Brigade Enterprises Limited v. Anil Kumar Virmani*,⁵³ where the apex court allowed the application of Order- I, Rule.1, 3 and 8 of the Code of Civil Procedure, 1908⁵⁴ in consumer disputes, whereas the impugned Consumer Protection Act, 2019, under Sec. 38(11) speaks for the application of Order- I, Rule. 8⁵⁵ only in consumer disputes with the required modifications.

It is to be noted that the issue of appeal shall not be melded with that of the inherent powers, as the appellate court must plunge into the merits of the case in hand.⁵⁶ But while applying inherent powers, the merits of the case do not stand on the same pedestal, but it is the logic of convenience within the legal framework that stands on the highest pedestal.⁵⁷

Before parting with this issue, it must be remembered that strict civil proceeding rules, specifically in the arena of quasi-judicial bodies, may lead to legal anomalies.⁵⁸ But at least in the Indian context, the issue regarding the application of inherent powers by these quasi-judicial bodies in the garb of 'deemed civil court' requires intervention from the end of the appropriate legislatures and nevertheless staid attention is required from both the bench and the bar.

⁵² The Code of Civil Procedure, 1908, No. 5, 1908 (India).

⁵³ CIVIL APPEAL NO.1779 of 2021.

⁵⁴ The Code of Civil Procedure, 1908, § Order- I, Rule. 1, 3 8, No. 5, 1908 (India).

⁵⁵ The Code of Civil Procedure, 1908, § Order- I, Rule. 8, No. 5, 1908 (India).

⁵⁶ Tukhtasheva Umida Abdilovna, *The Scope of Power of The Court of Appeal in Criminal Proceedings*, Volume 4, Issue 4 INTERNATIONAL JOURNAL OF ADVANCED RESEARCH 357, 358 (2016).

⁵⁷ See also *CBI v. Arvind Khanna*, (2019) 10 SCC 686.

⁵⁸ Scott Dodson & Colin Starger, *Mapping Supreme Court Doctrine: Civil Pleading*, Volume 7, Issue 1 Fed. Cts. L. Rev. 285, 286 (2014).