

**A Study Of Judicial Trends Regarding Exercise of Inherent Power by
High Court of Uttarakhand under Section 482, Code of Criminal
Procedure, 1973**

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Introduction:

Administration of criminal justice delivery system is a vital event in our legal system. Indian courts had the Anglo-Saxon legacy which was not powerless to give effect to orders passed under the criminal code or to secure the ends of justice.

Law of procedure defines the jurisdiction and power of the court while substantive laws defines equations or association of human relations, distribution in these equations of human relation are set through courts. This is the foundational core of the justice delivery system. There shall be no interstice to this judicial process and Justice shall be governed by the courts, neither spoil by any iniquitous, nor impeded by any clog, or polluted by any malignant.

Section 482 of the Code is the facsimile of the principle contained in Section 561A of earlier Code. In this provision, the highlighting is given to the preservation or conservation of extraordinary power of High Court in India.

Section 482 of the Code is following:

Saving of Inherent Powers of High Court: "Nothing in this Code shall be deemed to limit or affect the inherent powers 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."

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Principle of Inherent Power

There are some Latin maxims which is corner stone of the inherent power of the court:-

“quando lex aliquid alicui concedit concedere videtur et id sine quo res ipsae esse non potest” it means when the law gives a person anything it gives him that without which it cannot exist.

All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice.

The adage *“actus curiae neminem gravabit”* has been engrafted in section of the Code show High Court is competent to exercise jurisdiction under the section to correct the mistake committed by the court, which has occasioned a failure to justice or caused injury to litigants. The power of rectification to do justice inheres in all courts and principle is inextricable mixed up in the provision of section 482 of the Code.

There is an age old and well established principle that every court has power to act *“ex debito justitiae”* to do that real and substantial justice for the administration of which alone it exists. Also, it has an inherent duty to prevent abuse of the existing processes of the court” because the Code of Criminal Procedure is not exhaustive. The reason for this being that the legislature is incapable of pre-empting all possible circumstances which may arise in future litigation, and consequentially for providing the procedure for the same. The court has, therefore, in many cases, where the circumstances so require, acted upon the assumption of possession of inherent power. This well established principle receives legislative recognition in Section 482 of the Code of Criminal Procedure.

Objectives of study

1. The main objective of this research is subjected to a lot of uses and abuses of inherent powers of High Court in India. The researcher focused his study only on Section 482 of the Code, in context of High Court of Uttarakhand, because it demands conceptual clarity, sharpening, structuring or channelizing.
2. To establish the judicial trend of Uttarakhand High Court in exercising its inherent power and to show with the help of gathered data from various sources the trend of

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- judicial interference of Uttarakhand High Court in dealing with vexatious trials and proceedings leading to probable miscarriage of justice.
3. Whether the inherent powers of the High Court, in the manner they are exercised in High Court of Uttarakhand have succeeded to promote natural justice, fairness and rationale which are the cardinal elements of Rule of Law.
 4. To study the judicial application of Section 482 of the Code as its wide scope of application results in controversies in the administration of justice.
 5. To bring forth the real intention of legislature behind formulating this provision, to provide prerogative powers to the Courts giving wide span or interpretation and extraordinary forum especially to avoid vexatious and driven by vengeance to stop the abuse of process resulting in miscarriage of justice.
 6. To throw light on the wide scope of application and with theoretical study to show that this power cannot be limited in straight jacket formulae for the purpose of application by Courts.
 7. To look into the ground reality wherein Inherent power are treated as hallmark of the pre-eminence of law and are regarded as the cradle of Rule of law.

Need of the study

The Code of Criminal Procedure is written law means the courts are bound to do within the four corners of this Code. This is exhaustive Code but it is not possible for the legislature to provide all solution, in the Code for unforeseen problems arise in future which is not come in the mind at the enactment of legislation. So legislation wisdom placed some provision which gave powers to the Court to do justice. There is thin line between law and justice.

The State of Uttarakhand created in 9 November 2000 and same day High Court of Uttarakhand came into existence. The power of the High Court under section 482 of the Code is a special in administration of criminal justice system. It is a very potent instrument for all the High Courts of India to clean the area of criminal justice delivery system of all vitiating and malevolent influences.

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Year	Total criminal case instituted	Total criminal case disposed	C-482 instituted	C- 482 Disposed
2000	47	25		
2001	583	396		
2002	839	187		
2003	2612	2419		
2004	2548	2170		
2005	2829	1971		
2006	3264	3266		
2007	3181	4280	976	1127
2008	2640	2577	890	692
2009	4226	3704	1022	678
2010	5580	5841	1555	1841
2011	4745	4815	1440	1458
2012	5855	5753	1196	1341
2013	6887	7727	1532	2118
2014	6335	5318	1742	1094
2015	7272	5588	1692	1138
2016	8036	6716	1999	1400
2017	7946	7921	1802	2473
2018	8802	5562	2043	1195
2019	10741	10299	2910	2407
2020 (as On 29.05.2020))	2787	1799	494	414

Note-: The said table is based on reply of Right to Information sought before State Public Information Officer, High Court of Uttarakhand. The data of Criminal

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Miscellaneous Application/ C-482 is maintained by the public information officer from 2007.

Research Questions

1. Whether there is any conceptual difference between Inherent Jurisdiction of High Court and Inherent Power of High Court under Section 482 of the Code?
2. Whether the judicial application of Section 482 of the Code of Criminal Procedure is promoting equity, justice and good conscience for betterment of justice delivery system?
3. Whether the inherent powers under Section 482 of the Code exercised by the High Court of the Uttarakhand promote Rule of Law?

Hypothesis

1. There is an existence of conceptual difference between Inherent Jurisdiction and Inherent Power under Section 482 of Code is real or imaginary.
2. Inherent Powers of the High Court under Section 482 Code of Criminal Procedure have succeeded in avoiding vexatious and vengeance driven proceedings.
3. High Court of Uttarakhand has been succeeded in promotion of natural justice, fairness through the exercise of inherent powers under Section 482 of Code.

Literature Review

There is need for development of a better understanding of power of High Court under Section 482 Cr.P.C. The researcher focused his work specifically upon the judicial trends of the High Court of Uttarakhand because he found that it is power of the High Court and no work has done by any researcher to study of the inherent power of High Court of Uttarakhand.

Malik, Surendra and Sudeep, Supreme Court on Bail, Anticipatory Bail and Quashment, EBC Lucknow, 2015, the author in his book has carefully dealt with the cases regarding quashing of criminal prosecution. The exercise of inherent power is an extremely

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important exercise of the judicial powers invested with the judges of the superior courts. Inherent powers under Section 482 of the Code of Criminal Procedure though wide should be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. These powers exist with the superior court for preventing injustice and for the advancement of justice. The framers of the Code of Criminal Procedure have incorporated inherent powers of the court to achieve these twin objectives by invoking inherent powers in the absence of specific provisions in the statute.

Tyagi, S.P., “ Inherent Jurisdiction of High Court in Criminal Cass” , Vishwas Law House, First Edition 2011, the author in his book dealt inherent jurisdiction of High Court. Admittedly the powers possessed by the High Court under Section 482 of the Code are very wide and expansive. Seemingly they have the height of mountain and depth of ocean. In fact this section is a sort of reminder to the High Courts that they are not merely the Courts of law but also the Courts of justice and as such they possess inherent powers to remove injustice and to do the right and to undo a wrong in course of administration of justice on the principle *“quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest.”* Such power is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist.

Unfortunately it is not being reflected in practice in some decisions of High Courts. The apparent reason appears to be that Section 482 Code of Criminal Procedure is the most misunderstood and ill-interpreted provision in the Indian Justice delivery system. In some cases the High Courts had extended and expounded the scope and ambit of this provision beyond its statutory permissible limits and had granted relief, which petitioners do not deserve within legal frame work. The expressions “abuses of the process” of the court or “ends of justice” are being used out of context. On the other side, High Court is not granting relief to the real petitioners even in genuine cases, for which this section was brought on record.

Law Commission of India 14th report (Reforms of Judicial Administration) (Volume 2 Chapters 30-57) .This report prepared under the chairmanship of Shri M.C. Setalvad. Chapter 39 of the above report includes Criminal Revisions and Inherent Powers. The commission recommended that the inherent powers of all criminal courts should be

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statutorily recognized and the Courts of Session should be recognized as having inherent power to pass appropriate orders to prevent the abuse of the process of any subordinate court by an appropriate amendment to section 561-A of the Code.

Law Commission of India 277th report Wrongful Prosecution (Miscarriage of Justice): Legal Remedies. This report prepared under the chairmanship of Dr. Justice B. S. Chauhan on 30 August 2018. The subject matter of this report required a focused study for framing of new provision for legal remedies to the wrongfully prosecuted, as no such legislative framework exist today. The Commission proposed some amendments in the Code as in Section 2(ja) “Malicious Prosecution”, 2(xa) “Wrongful Prosecution”, Section 365A Application for compensation, Section 365B Option regarding claims for compensation in certain cases, Section 365C Award of this Special Court, Section 365D Award of interest where any claim is allowed, Section 365E Factors to be taken into account by the Special Court, Section 365F Removal of disqualification attaching to conviction, Section 365G Procedure and powers of Special Court, Section 365H Appeals, Section 365I Power to State Government to make rules.

Law Commission of India 237th report Compounding of (IPC) Offences in this report is prepared under the chairmanship of Mr. Justice P. V. Reddi on 30 December 2011. In *Preeti Gupta v. State of Jharkhand (2010) 8 SCC page 131*, the Hon’ble Supreme Court observed that a serious re-look of the entire provision (section 498-A IPC) is warranted by a legislation. The Supreme Court deplored the tendency of several implications and exaggerated versions. The Court observed: “It is high-time that the Legislature must take into consideration the pragmatic reality and suitable changes in the existing laws”. A copy of the judgment was directed to be sent to the Law Commission of India and to the Union Law Secretary for taking appropriate steps in the larger interest of the Society.

Accordingly, the Commission has made an in-depth study and identified certain offences that can be added to the list of compoundable offences under Section 320 Cr.PC. In particular, the Commission has suggested that Section 498A IPC (husband or his relative subjecting a woman to cruelty) and Section 324 IPC (causing hurt by dangerous weapons or means), should be made compoundable with the permission of the Court.

Notwithstanding the observation of the Supreme Court in a short order passed in

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Ramgopal's case 2010 (7) SCALE 711, the Commission has taken the view that Section 326 IPC should remain non-compoundable.

Law Commission Report 243Rd Report on Section 498A IPC

This report is prepared under the chairmanship of Mr. Justice P. V. Reddi on August 2012. Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Secretary, Government of India through his D.O. letter dated 1st September, 2009 requested the Law Commission of India to consider suggesting amendment, if any to s.498A of Indian Penal Code or other measures to check the alleged misuse of the said provision. Thereafter, in the case of *Preeti Gupta v. State of Jharkhand*, (2010) the Supreme Court observed that “serious relook of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of overimplication is also reflected in a very large number of cases”. Copy of the Judgment has been directed to be sent to the Law Commission and Union Law Secretary for taking appropriate steps.

Justice V. Ramkumar, the author of the article published in live law explained the scope of Section 482 of the Code. The authors explained various dimensions of inherent powers of High Court under Section 482 of the Code.

Justice P. Sathasivam “Inherent Powers of Courts under Section 482 of the Criminal Procedure Code”. This article provides a clear concept about Section 482 of the Code and examined the powers of the Court under Section 482 of the Code in relation to quashing of criminal proceedings.

Marcelo Rodriguez Ferrere “The Inherent Jurisdiction and its Limits” Otago Law Review (2013) Vol 13 No. 1-The “inherent jurisdiction of the court” is a phrase often relied upon by courts and perennially examined by commentators. The currency of this phrase would suggest a clear and definite meaning, but such a supposition is surprisingly wide of the mark: there are few concepts in the common law that are invoked so often yet remain so nebulous. This paper is a further attempt to define the inherent jurisdiction, describe its exercise and prescribe its limits.

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The paper has two parts. The first part seeks to define the inherent jurisdiction. It does so by commencing with the traditional and oft-cited definition, and then attempts to resolve the confusion that this definition has caused. This part will also examine the exercise of the inherent jurisdiction in four similar but distinct common law systems with a view to identifying common denominators in their experiences of the concept.

The second part attempts to formulate limits on the inherent jurisdiction. It draws on the common denominators identified in the first part and constitutional principles to determine theoretical limits that apply to all judicial actors, before examining the practical limits that force compliance with those theoretical limits.

The paper concludes that it is important and possible to define and distinguish the inherent jurisdiction, but its commonality and conflation with other, related concepts, means that it must be examined in the way it is often invoked, as an umbrella term. The paper also finds more similarities than differences in various common law systems experiences of the inherent jurisdiction; similarities that give rise to clear, if not always enforceable limits.

Rosara, Joseph, *Inherent jurisdiction and inherent powers in New Zealand*, [2005] *Canterbury Law Review* 220-The “inherent jurisdiction of the court” is a phrase that regularly appears in the judgments of our courts. It is cited as being the foundation of a multitude of powers and jurisdictions. However, the “inherent jurisdiction of the court” is also the subject of much confusion. There is confusion about the distinction between “inherent jurisdiction” and “inherent power”; confusion about which courts possesses inherent jurisdiction; and confusion about the nature and scope of inherent jurisdiction and inherent powers.

Joan Donnelly, “Inherent Jurisdiction and Inherent power of Irish Court” *Judicial Studies Institute Journal*, 2009:2- The notion of a court’s “inherent jurisdiction” is familiar to legal practitioners. Counsel frequently exhort the court to utilize its inherent jurisdiction in response to failures of procedural justice, whilst, in the absence of a specific statutory jurisdiction, the concept is often invoked by judges to give efficacy to judicial proceedings. “Inherent Jurisdiction” is generally understood as referring to the panoply of implied powers which are exercisable by judges for the purpose of regulating curial processes. The difficulty of formulating legal principles to capture the shifting and dynamic nature of the

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jurisdiction has been the subject of both academic and judicial commentary. One commentator has described a courts' "inherent jurisdiction" as "so amorphous and ubiquitous and so pervasive in its operation that it seems to defy the challenge to determine its quality and to establish its limits".

The researcher when started work he finds that under section 482, almost more than thousand petition or applications every year were filed before the High Court of Uttarakhand and chief justice is the master of the roster, so one judge hold this jurisdiction with the pleasure of the chief justice, so it is not fruitful to work with concluded one or two years case laws. The researcher also found that most of the cases decided in cyclostyle order and approaches of the Hon'ble justices/judges cannot be overlooked. The researcher choose those cases which set the judicial trend or important for study and trying to collect the judgment of different Hon'ble justices. The variable of this study is case laws.

Research Methodology

Research methodology is doctrinal and analytical. The research needs in wider sense to investigate the provisions concerning "Inherent Powers of the High Court" in Section 482 of the Code, but in specific sense the limiting itself a power of High Court of Uttarakhand under section 482 of the Code. The Research demands an in-depth study of the topic. The researcher is mainly dependent on sources of statutes, Regulations, reports, case laws, books, articles, journals, blogs etc.

Doctrinal Method

Doctrinal research is basically concerned about the provisions, promises and prospects of any law related to a particular issue i.e. how the legal doctrine has been developed and applied. In this research both primary and secondary sources have been adopted. Keeping in view the nature of the problem, the study method to be adopted would be doctrinal and empirical both.

- i. **Observation of Case Laws:** Under this method the researcher has taken up many case studies to explore the inherent powers and their implication on the modern judicial system. The researcher has applied qualitative method as far as possible to study the problems and their multi-fold dimensions.

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- ii. **Comparison of Different Reports:** Under this study, the researcher has taken help of various reports of Law Commission, governments, international agencies etc.
- iii. **Analysis of Statutory Laws:** the researcher has tried to analysis the merits or demerits of inherent powers used in the day-to-day criminal justice. Under this study the researcher has taken into consideration various statutory laws for analysis purpose.

Organization of Chapters:This thesis has been divided by the researcher into six chapters for the reason of clarity and convenience of the reader is as follows:

Chapter 1- Introduction

This is an introductory chapter pertaining to need of the study, objects of the study, scope and utility of topic, research questions, hypothesis, research methodology, literature review and scheme of the study.

Chapter 2- Principle, Concept and Jurisprudence of Inherent Powers of High Court in India

This chapter deals history and jurisprudential aspects of inherent powers of the High Court under Section 482 of the Code. It also includes philosophical and jurisprudential approaches of the inherent powers and also explaining the legacy of High Court. This chapter deals followings headings: Establishments of the Indian High Courts/ Indian High Courts Act, 1861, Principle of Inherent Power, Jurisdiction of High Courts, Constitutional status of High Courts, High courts' power of Superintendence, Ancient Laws, Inherent powers verses Inherent power, Concept of Inherent power in other countries procedural view point, Conceptual difference between Inherent jurisdiction and Inherent powers of court is real or imaginary, Ingredients of Section 482 of the Code, Parameters of using inherent power, To give effect to any order under this Code, Ends of Justice, Abuse of the process, Judicial process in India, Justice delayed justice denied, No hard and fast rules, Applicability of interlocutory and intermediate order under Section 482 of the Code, Whether order passed under Section 145(1) and 146(1) of the Code are interlocutory or intermediate

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order and such orders are revisable or not before the High Court, Whether order under Section 156(3) of the Code is an interlocutory order or not. The first hypothesis is explained in this chapter. The main ingredient of Section 482 of the Code is discussed in this chapter and trying to understand the meaning and definition of ends of justice and abuse of the process.

Chapter 3- Scope of Application and Span of Discretion Involved in Inherent Powers of the High Court

This chapter is in two segments, the first is scope of application of the inherent powers of the High Court under Section 482 of the Code. This Chapter is in following heads: Whether the revision against summoning order is maintainable, Whether the second revision is barred under the Code, What is the position lower courts in the context of under Section 482 of the Code of Criminal Procedure, Second Application under Section 482 is not barred, Where there is no provision in the Code, Whether the bar under Section 397(2) of the Code, in relation to interlocutory order, is applicable to Section 482 of the Code., Whether the Inherent Power can be exercised by the High Court over a court which is not subordinate to such High Court, Whether Section 482 of the Code can be exercised to review an earlier order, Civil and Criminal remedy, Delay in trial is a ground for quashing proceedings, Whether the proceedings can be quashed under Section 482 of the Code upon settlement of the dispute between the parties in cases involving non – compoundable offence, Whether proceedings against an absconding accused are liable to be quashed without a trial for the sole reason that the co-accused have been acquitted after trial, Whether new documents can be produced along with the petition under Section 482 Cr.P.C., Whether it is open for the High Court to quash the criminal action in exercise of inherent powers even in a case which has ended with an order of conviction after trial, Section 482 of the Code and Article 226-227 of the Constitution of India, Trial court has inherent power to rectify such typographical mistakes to do justice between the parties,

The second segment is ambit and limitation of discretion of inherent powers under Section 482 of the Code. It is under the followings part: Judicial Discretion, It is applicable in general before criminal court, not specific in I.P.C., High Court cannot exercise its inherent power to subordinate court to do something which was

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impermissible to create new categories of inherent jurisdiction, The High Court cannot go contrary to the mandate of the Legislature by relying upon its inherent power, The inherent power under Section 561A of the Code had no jurisdiction in revision to interfere with any judgment, order or sentence passed by a single judge of the High Court, Proceedings can be quashed in initial stage sparingly and cautiously, Whether the criminal proceedings should be allowed to continue or the same should be quashed, 8. Inherent power may exercise where there is no law or statute in wrongful prosecution or malicious prosecution. The second hypothesis is discussed in this chapter.

Chapter 4- Judicial Trends on Exercise of Inherent Powers under Section 482 of the Code of Criminal Procedure in Uttarakhand High Court.

This chapter is closely associated with the theme of the research study. Judicial trends of High Court of Uttarakhand regarding the Section 482 of the Code. This power is widely used by the High Courts in India, so the researcher focused his study in the High Court of Uttarakhand and trying to understand the judicial approach of the High Court of Uttarakhand. This is under the following categories. Introduction, Stages of Trial, quashing of investigation, quashing of complaint along-with judicial trends of High Court of Uttarakhand in quash of complaint, judicial trends of High Court of Uttarakhand in quash of charge-sheet, quashing of order of framing of charge, quashing of order of cognizance, quashing of order of cognizance with reference to judicial trends of High Court of Uttarakhand in quashing of order of cognizance.

The role of the High Court of Uttarakhand is summarized in following important case laws and discussed some core issues like as Whether the investigation or an F.I.R. could be quashed in exercise of the powers under Section 482, Cr.P.C. or if the proper proceeding, therefore, would be one under Article 226 of the Constitution of India, Whether order issuing the process or summoning order would be interlocutory order or would amount to intermediate order or quasi final order, Whether Order of Interim Maintenance challenged in Revision or Under Section 482 of the Code of Criminal Procedure.

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This chapter contains researcher work being an advocate in the High Court of Uttarakhand and given table of 98 cases wherein he was/is a counsel of applicant or respondent. The pendency of Section 482 applications is not creating a delay in the district courts of the State of Uttarakhand. The researcher is also highlighting some important judgments under Section 482 of the Code passed by the High Court of Uttarakhand. The third hypothesis dealt in this chapter.

Chapter 5- Judicial Response in India

This chapter pertains to judicial response of the Supreme Court of India. Judicial response of Privy Council, Federal Court, Supreme Court and High Courts in concern of inherent power of High Courts under section 482 of the Code is elaborately discussed. It is divided into three periods. The first begins from 1852 to 1923. Inherent powers of the High Courts, prior to Section 561 A of the Code of Criminal Procedure, 1898. The second period begins from 1923 to 1973 after insertion of section 561A in the Code of Criminal Procedure. Third period starts from 1973 to 2020 after insertion of Section 397(2) and 482 of the Code of Criminal Procedure. Judicial response of the Supreme Court of India against the judgments of High Court of Uttarakhand under section 482 of the Code.

Chapter 6- Conclusions and Suggestions

This chapter contains conclusions and suggestions regarding the inherent power of High Court under Section 482 of the Code. A study of the contents of the Section 482 of the Code and an examination of the attitudinal response of the High Courts, particularly High Court of Uttarakhand suggested in depth study.

CONCLUSION

Section 482 applications come in pre-trial, trial and post-trial stages but in practice of High Court of Uttarakhand, the Hon'ble High Court refrains to entertain in pre-trial stage and post-trial stage. Most of the section 482 application prayer is very common like as quashing the entire proceeding or charge-sheet and summoning order. The exercise of section 482 of the Code is rule of practice but a lot of use of this power has been done in compounding the offences which is not compoundable under section 320 of the Code. So High Court generally acts like a Mega Lok Adalat Court.

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The protection of rights of accused by the High Court under section 482 of the Code should be dealt with positive approach because in many cases judges approach are neutralized because they abstain themselves for entertain petitions under section 482 of the Code . Law of evidence is life of trial or Law of evidence is eye of the law and it is very true that the High Court cannot evaluate the evidence at pre-trial stage, even there is a very weak evidence against the accused. But on the contrary, it is the duty of the High Court not to burden the lower judiciary by overlooking the right of accused not using their inherent power under section 482. Legitimacy of evidence and sufficiency of evidence are not synonyms. Evidence is a very wide concept and Court to ensure, prima facie case against the accused, how it is determined? Merely allegation leveled by the complainant in his/her first information report and investigation officer investigate and file charge-sheet is sufficient to run the trial. When the charge sheet does not contain legitimate evidence, except the statements of informant, no prima facie case is made out against the accused. The word prima facie phrase totally overlapped the abuse of the process of the Court both are synonyms to each other. Prima facie means if the prudent men believe that there is case against the accused, accusation based on some substance. It is the first and foremost duty of the magistrate because cognizance taken by him, but in practice the magistrate takes a cognizance in cyclostyle and mechanical manner and summoned the accused.

Section 482 of the Code is double edged sword, if used properly, it removes injustice and wrongly creates miscarriage of justice and abstain to use it means neutralize to justice or stand as a salient spectator before injustice. It is not being reflected in practice in some decisions of High Courts. There is probability for misuse, abuse or disuse but the enlightened opinion is in favor of giving inherent powers to the judge.

SUGESTIONS

Section 498-A I.P.C. should come under the section 320 Code of Criminal Procedure. Law Commission of India 237th report suggested that Section 498A I.P.C. should be made compoundable with the permission of the Court.

1. Compensation and cost system should be applied. Having concluded the trial, compounding should only be allowed on the basis of compensation or cost. The

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frivolous, vexatious or false application should be rejected with exemplary or heavy cost.

2. Application under Section 482 of the Code should decide on merit within six months. Proceeding of trial court should only adjourn with reasoned order in very exceptional case because it creates delay in trial. It appears from the figures which researcher has been able to collect, that a number of cases in the High Court of Uttarakhand just have managed to keep pace with the section 482 of the Code, which have been filed before them from year 2000 to year 2020. It is of the essence of the relief contemplated in section 482 of the code that it should be speedily granted and the matter should be disposed of within six months. The delays/lingering or pendency in dealing with these applications not only create inconvenience to the applicant but also hamper the prosecution in the discharge of its diverse administrative functions.
3. The High Court under its extraordinary power should not direct to the Trial Court regarding his discretionary power because it can affect the trial and it should always remember subordinate judiciary is the bedrock on which entire judicial systems depends and indisputably the foundation of justice delivery system.
4. The recommendations of law commission 14th report should be applicable. It recommended that “paragraph 16.(7) the inherent powers of all criminal courts should be statutorily recognised and in para 16(8) the Court of Session should be recognised as having inherent power to pass appropriate orders to prevent the abuse of the process of any subordinate Court by an appropriate amendment to section 561-A of the Criminal Procedure Code.”
5. The researcher finds that the learned magistrate should be empowered to compound offences, which are compoundable, at the investigation stage and also High Court compounded the offence which are not affected at public at large at the investigating stage under section 482 of the code. This step will reduce the number of the cases proceedings for trial at the threshold stage itself and relieve the Court docket to great extent.
6. The section 482 is a tool of fair trial and fair trial is a fundamental right. Fair trial means a trial followed the procedural law and apex Court judgments. The right of accused and the right of the victim is pros and cons of fair trial. In India, there is no

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legal frame work about wrongful prosecution which caused ends of justice. The law commission of India submitted his 277th report regarding wrongful prosecution (miscarriage of justice): legal remedies proposed section 2(ja) “malicious prosecution” and section 2 (xa) “wrongful prosecution” and also proposed new chapter xxvii for Compensation to persons wrongfully prosecuted. The researcher opined that in the absence of Law or statutory provision, wrongful prosecution and malicious prosecution matter should deal under section 482 of the Code. Being the highest criminal court of the state, it is the duty of the High Court to stop the miscarriage of justice and open its door by way of section 482 of the Code for those persons who are the victims of wrongful prosecution or malicious prosecution. This may be new dimension of section 482 of the Code but it clearly fall within the wisdom of legislators, who enacted the section 561A of earlier Code or section 482 of the present Code. Denying or ignoring “ends of justice” under section 482 of the Code may come to the form of “miscarriage of justice”. There is no form of judicial injustice, which this court, if need be cannot reach.

7. It is open for the High Court to quash the criminal action in exercise of inherent powers even in a case which has ended with an order of conviction after trial. This subject has been discussed in detail *Abasaheb Yadav* case, full bench of Bombay High Court held that the power to compound can be exercised at the trial stage or even at the appellate stage, subject to satisfaction of the conditions postulated by the legislature under section 320 of the Code. But in latest case of *Maya Sanjay Khandare v. State of Maharashtra* dated 05.01.2021 the full bench of Nagpur Bombay High Court held that the convict and informant/complainant have entered into a compromise after the judgment of conviction can be raised only before the appellate/revisonal Court in proceedings challenging such conviction. It would be sound exercise of discretion under section 482 of the Code and in accordance with the law of the land to refuse to quash criminal proceedings postconviction for a non-compoundable offence only on the ground that the parties have entered into a compromise. The law commission of India 237th report recommended that the offence which affect the security of the State or have a serious impact on the society at large, ought not to be permitted to be compounded. So also, crimes of grave nature should

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not be the subject matter of compounding. The policy of law on compoundability of offences is complex and no straightjacket formula is available to reach the decision.

The researcher suggests that this is tussle between deterrent theory and reformatory theory. If we see in the eyes of reformatory theory the scope of the section 482 of the Code in reference of the compounding cases after conviction has wide, but in deterrent theory compounding cannot be allowed after the conviction. The retributive theory is best for such situations. There is no confusion that the compounding application can be allowed after the conviction of accused within the peripheral of section 320 of the Code but in offences other than the section 320 of the Code, the plea bargaining concept should be adopted at the appellate and revisional stage. *Damodar S. Prabhu v. Sayyad Babulal* (2010) 5 SCC 663 although this judgment relate to only compounding in Negotiable Instrument Act but if we read this judgment with plea bargaining provisions then we can reach a solution. We always remember that compounding and quashing are not complimentary, so if the conviction is based on civil, money transaction, family dispute, matrimonial dispute or offences punishable less than seven years may be compounded in terms of Damodar S. Prabhu and plea bargaining theory.

8. Section 482 Criminal Miscellaneous Application is independent proceeding in the High Court of Uttarakhand and heard by a single judge of the High Court. It is very important and common in use before the High Court of Uttarakhand. There is no scope for appeal before division bench in the High Court. There is no opportunity for correction, except before the Supreme Court with a special leave petition. In writ jurisdiction under Article 226 there is provision for a writ appeal before a bench of two judges under chapter viii-R.5 Allahabad High Court Rule which is also applicable in Uttarakhand. It can also be applied in Criminal Miscellaneous Application under section 482 of the Code.

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