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Unravelling the Paradox – Article 226 and 227 of the Constitution

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ABSTRACT

Ubi Jus Ibi Remedium – Where there is a Right, There is a Remedy

This Latin maxim is not just an empty expression. It has sown the seeds of hope and confidence amongst the multitudes, who have placed their unflinching faith in the judiciary, in the legislature, in the Constitution itself. It is an undeniable fact that the judiciary, with advance of time, has gained immense prominence and has demonstrated herself as a strong willed yet humane judicial authority, providing much-needed succour to many grieving souls. However, the extent of the law and its remedies has moved at a snail's pace through the labyrinth of the judicial system. The sentinels of the law have sadly, through their stereotyped approach on certain issues, unwittingly contributed towards over burdening the judiciary with frivolous cases. It has been observed that writ petitions are being filed before the High Courts under Article 226 read with Article 227 of the Constitution of India on a routine basis without appreciating the facts that the scope and powers granted under aforesaid Articles are very different. This paper is dealing with the discussion on Article 226 and 227 of the Constitution of India³ in general, highlighting the necessity to understand the intelligible distinctiveness that exists between these aforesaid Articles. The tepid and insensitive approach adopted towards the nature and scope of these aforesaid Articles has resulted in overwhelming the High Courts with Writs that digresses from the well-established norms in terms of various judicial precedence, which in turn has become the bane for speedy and effective remedy. This paper, thereby intends to reinforce the understanding and nitty-gritty involved in the practical application of the aforesaid Articles.

Keywords: Writ Jurisdiction, Scope of Article 226 and 227, Fundamental Rights.

I. INTRODUCTION

The Constitution of India enjoins the High Courts to secure the rights and liberties of the citizens and ensure judicial relief to those seeking a remedy against infringement of their rights.

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³ India Const. art. 226, cl.1, art. 227. cl.1.

It is for this reason alone that writs were introduced in the common law as a fountain of justice. Before the adoption of the Constitution, writs were issued by the three Presidency Courts of Bombay, Calcutta and Madras. However, the powers conferred upon these courts to issue writs were highly truncated in the scope of their operation. This aspect was not lost on the Framers of our Constitution and hence during the drafting of the Constitution of India, our Founding Fathers enlarged the expanse of the power of writs. In due course of time, with the adoption of Constitution of India, the Superior Courts were empowered to issue writs as extraordinary remedies, wherein they enjoyed wide discretionary powers to ensure proper administration of justice. The High Courts, therefore, under the Article 226, had the power to issue writs throughout their territorial jurisdiction, to any persons or public authority (within the meaning of Article 12), including in appropriate cases, any Government within the territories, for the enforcement of Fundamental Rights or for any other purpose (legal rights and duties). Further, under Article 227, they have been conferred powers to exercise superintendence over the subordinate courts or tribunals (except courts related to Armed Forces), throughout their jurisdictional territory.⁴ While the objective of Article 226 is to provide a quick and inexpensive remedy to an aggrieved person, the powers of superintendence of the High Courts under Article 227, being both administrative and judicial in nature, has been conferred to keep the subordinate courts and tribunals within the ambit of their jurisdiction for smooth administration of justice. It would, therefore, serve the best interest of justice, if the High Courts exercises self imposed control and exhibits restrained discretion over the powers of superintendence, thereby avoiding a scenario where it may be judged as an appellate authority over the actions of the subordinate courts. However, the High Courts, on the contrary, owing to the wide discretionary powers at their disposal, have engaged in continuous interference in the matters of the subordinate courts or tribunals, resulting in docket explosion of the court. Before delving into the nuances, governing the nature and scope of both the Articles 226 and 227, it is foremost necessary to understand the efficacy of the writs and the ambit of their jurisdiction.

II. NATURE OF WRIT JURISDICTION

Writs are Constitutional powers, conferred upon the High Courts under Article 226 and they serve as an extraordinary remedy to an aggrieved person seeking justice from the High Courts for the enforcement of his Fundamental Rights and legal duties. The Constitution provides five types of writs, namely;

⁴ Id.

(A) Habeas Corpus

Writ of Habeas Corpus has a Constitutional privilege. The main aim of this writ is to preserve the liberty and the freedom of an individual detained illegally. The Constitution through this writ, endorses the sanctity of the Articles 19 and 21, by offering a quick judicial remedy and thereby places in the hands of an aggrieved person a powerful tool against illegal detention. The Apex Court, through its dissenting ratio by Justice H.L. Khanna, has given validity to this objective in the case of **A.D.M. vs Srikant Shukla**,⁵ famously known as the Habeas corpus case, wherein it was held that whether a person is kept in a wrongful custody or in the custody of an individual, if such detention is found to have no legal jurisdiction, then the law must rush to the protection of such aggrieved person without any delay.

The writ is a form of command to the detaining authority to produce the body and adjudicate upon the grounds on which the arrest has been made. However, the Apex Court in the case of **Kanu Sanyal vs District Magistrate, Darjeeling**,⁶ chose to digress from this futile habit of producing the body, citing that the objective of the writ is to defend the liberty of the individual and if the grounds suggest that a prima facie evidence exists on the face of the record and there has been an arbitrariness in action and implementation of law, thereby proving an illegal detention or custody, it would be immaterial to physically produce the body.

The dynamic role of judicial remedy transmits an operational utility to the writ of Habeas Corpus. It was held in case of **Sunil Batra vs Delhi Administration**,⁷ that the writ of Habeas corpus is not restricted to providing succour to illegal detention but it also extends to inners walls of prison and correctional homes, thus prohibiting unlawful inhuman treatment meted to the convicts. Unlike other writs, the Constitution empowers the Supreme Court and the High Courts to issue writ of Habeas Corpus against a legislative body and therefore, a person, if aggrieved by the order of legislature, can seek remedy under this writ.

1. Salient Features

a. The court does not bar any individual or associations to claim issuance of writ, provided they exhibit sufficient interest in the incident. Even suo motu action is permissible. The burden of proof lies on the detaining authority to justify detention.⁸

b. The writ will not be entertained for individual who is convicted and undergoing a

⁵ A.D.M., Jabalpur v. Srikant Shukla, AIR 1976 SC 1207 (per Khanna, J., dissenting)

⁶ Kanu Sanyal v. District Magistrate, Darjeeling, AIR 1974 SC 510.

⁷ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

⁸ Icchu Devi v. UOI, AIR 1980 SC 1983.

sentence on a criminal charge.⁹

c. The intention of the writ is to provide judicial remedy against illegal detention but cannot be filed to prevent a conviction/arrest.¹⁰

d. In exceptional circumstances, the writ is maintainable even where detention has not been affected, provided that, on prima facie, it is evident that the procedure of law applied, does not find resonance with the rights and conditions provided by the Constitution under Articles 19, 21, 22 and is therefore, offensive to the rule of law.¹¹

e. The Constitutional rights of an individual during arrest/detention must not be abridged except in the manner permitted by law. It is therefore, of utmost importance to follow the well established directions and guidelines for the arrest and/or detention.¹²

f. Successive application of the writ to different judges for a satisfactory outcome is not permissible.¹³

g. Detention does necessarily mean a physical confinement. Any restrictions on movements, imposed by an authority which assumes the nature of custody and control particularly in the case of a child, amounts to illegal detention and is a valid reason for the issuance of the writ.¹⁴

h. Monetary compensation is awarded in exceptional circumstances under Articles 32 and 226 by the superior court to the person who has been illegally detained.¹⁵

(B) Mandamus

It is the most popular writ and is issued to rectify the defects of justice and to preserve the rights of the citizen. Writ of Mandamus is a command given by the High Courts to the government or public authority or subordinate courts or tribunals or any person who is bound by law to perform a public duty.¹⁶ However, the writ must be claimed in good faith and not with malafide intentions, so as to merely harass the opposite party.¹⁷ The essential condition for this writ to be issued is that, an individual approaching the High Courts under Article 226, seeking remedy for his grievances, must possess a distinct legal right under the statute that enforces its performance,¹⁸ which when infringed, must be a legally enforceable and a legally protected right and the act of denial of that particular legal right is effected by a person or authority or

⁹ Janardhan Reddy and Ors v. State of Hyderabad & Ors, AIR 1951 SC 217.

¹⁰ State of Maharashtra v. Bahurao Punjabrao Gawande, (2008) 3 SCC 613

¹¹ Ibid.

¹² D.K.Basu v. State of Bengal, AIR 1997, SC 610.

¹³ Lallubhai Jogibhai Patel v. UOI, AIR 1981 SC 728.

¹⁴ Mohd. Ikram Hussain v. State Of U.P. and Ors, AIR 1964 SC 1625.

¹⁵ Rudul Sah v. State Of Bihar and Another, AIR 1983 SC 1086.

¹⁶ State Of Mysore and Anr. v. K.N. Chandrasekhara & Ors., AIR 1965 SC 532.

¹⁷ Himmatlal Harilal Mehta v. The State Of Madhya Pradesh and Two Ors., AIR 1954 SC 403.

¹⁸ Dr. Umakant Saran v. State Of Bihar and Ors., AIR 1973 SC 964.

subordinate courts or tribunals, charged with public or statutory duty and who is bound to do the act or abstain from doing the act.¹⁹

The writ does not lie against;

- a. The President or The Governor of a State – Article 361 of Constitution of India.
- b. A legislative body or a subordinate ministerial officer, bound to obey his superior according to the law.²⁰
- c. A private individual or a private company.²¹

The authority vested with the High Courts to issue writs must be used sparingly and due care must be taken to refrain from assuming the role of Court of Appeal. The power of writ, thus vested with the High Courts, does not necessarily mean the curtailment of the route to appeal.

(C) Prohibition

This writ is invoked as a preventive measure and is issued against subordinate courts or tribunals or quasi judicial bodies, with an objective to restrain them from any violation of law. Writ of Prohibition is supervisory in nature and hence must be used with caution. It is issued only when there is evidence on the face of record that;

- a. The lower courts or other judicial bodies have exercised powers beyond their jurisdiction or have exercised those powers that were not vested in them.²²
- b. The principles of Natural Justice were violated by non observance of unbiased proceedings and non availability of an equal opportunity to present one's case.²³
- c. The lower courts or other judicial bodies proceeds to act beyond the purview of a Statute which renders the act unconstitutional.
- d. The actions of the lower courts or other judicial bodies infringes the Fundamental Rights.
- e. There exists an Error of law but not Error of facts.

(D) Certiorari

Famously known a King's own writ, it is the most effective and efficient writ for remedies. This writ is curative in nature and is issued against lower courts or tribunals or quasi judicial bodies with an objective to correct errors and prevent abuse of law. The writ being supervisory in

¹⁹ Comptroller And Auditor General ... v. K.S. Jagannathan and Anr, AIR 1987 SC 537.

²⁰ Narinder Chand Hem Raj and Ors v. Lt. Governor, Administrator, AIR 1971 SC 2399.

²¹ Praga Tools Corporation v. Shri C. A. Imanual and Ors., AIR 1969 SC 1306.

²² East India Commercial Co., Ltd. v. The Collector Of Customs, 1962 AIR 1893.

²³ S. Govinda Menon v. The Union Of India and Anr, AIR 1967 SC 1274.

nature, must be used sparingly and can be issued only if;

- a. The lower courts or other judicial bodies have exercised powers beyond their jurisdiction or have exercised those powers that were not vested in them.²⁴
- b. The principles of Natural Justice were violated by biased proceedings²⁵— Nemo Judex in Causa Sua (No one is judge in his own cause) and absence of fair hearing and opportunity – Audi Alteram Partem ²⁶ (Let the other side be heard).
- c. The lower courts or other judicial bodies proceeds to act beyond the purview of a Statute which renders the act unconstitutional.
- d. The actions of the lower courts or other judicial bodies infringes the Fundamental Rights.
- e. There exists an Error of law but not Error of facts.²⁷

The writ of Certiorari and Prohibition operate on a common footing. However, there is a marked distinction between the two writs and they operate at two different levels, namely;

- a. The writ of Prohibition lie only while the proceeding is in progress. This writ being preventive in nature enforces the curtailment of the proceedings, if there is a likelihood of occurrence of grave injustice.
- b. The writ of Certiorari is invoked at a later stage, when the subordinate court has made a judicial pronouncement and if such order or direction is found violative of the Constitutional provisions, it would be quashed under this writ.
- c. It is in fitness of things that an alternate remedy, if available must be exhausted. Writ of Prohibition can be issued in presence of an alternate remedy, while writ of Certiorari can be issued if the alternate remedy is not efficacious.

In certain instances, wherein the order of the subordinate courts or tribunals or quasi judicial bodies does not dispose of the case in totality, both writs are simultaneously imposed. The writ of Certiorari is issued to quash the impugned order related to decided issues, while the writ of Prohibition is issued to stop further continuation of the proceedings for pending issues.

(E) Quo Warranto

This writ empowers the court to question the legal grounds through which a person occupies a public office. The writ is a tool in the hands of the judiciary to control the execution of unlawful appointments and also can be issued to question a judicial appointment. The salient features of

²⁴ Rafiq Khan and Anr. v. State Of Uttar Pradesh and Anr., AIR 1954 All 3.

²⁵ A P State Road Transport Corpn and Anr. v. Sri Satyanarayana Transports Pvt Ltd AIR 1965 SC 1303.

²⁶ Gullapalli Nageswara Rao and Anr. v. Andhra Pradesh State Road, AIR 1959 SC 308.

²⁷ Syed Yakoob v. K.S. Radhakrishnan and Ors., AIR 1964 SC 477.

writ of Quo Warranto are;

- a. The writ does not deal with non-performance, hence it can be invoked by any individual, even though he may not have a sufficient or personal interest in the matter.
- b. The occupation of a public office by an unauthorised person, if allowed to continue without confrontation would involve a new cause of action each day and thus the writ cannot be denied on account of delay in submission.
- c. The writ can be denied in presence of an alternate remedy.

While the Article 226 of the Constitution, necessitates strict adherence to procedures of law, which needs to be followed by an aggrieved person seeking remedy, the aforesaid Article enjoys a wider field of operation in case there is a violation of Fundamental Rights or Statutory rights of a person. On a literary glance of the Article 226, one may unintentionally tend to make an incorrect assumption that the Article has a defined and limited direction of approach. This perception eventually leads to a constricted view of the aforesaid Article's sphere of jurisdiction, which in turn would, prima facie create an impression that, a writ can be claimed only against a public office which is statutory in nature. Such a view, presents an ill-conceived perception and which is restrictive in nature. A close reading of the aforesaid Article, however, distinctly points to the fact that the High Courts is bestowed with a wider ambit of jurisdiction, wherein the High Courts can exercise it's inherent power of issuance of writs even against a private authority or a private person, albeit such private authority or private person must be engaged in discharge of a public function at such time and the enforcement of rights sought by the aggrieved person which had been infringed by the actions/inactions of such private authority or private person, must be held against them in relation to discharge of their public duty. The holder of the office must be a person who is in actual occupancy at the time of issuance of the writ.²⁸

Our Founding Fathers, while framing the Constitution had ensured that the powers conferred upon the High Courts under the aforesaid Article, are wide and plenary in nature and that, such Constitutional powers must possess unfettered rights that cannot be abridged by any statute made by the legislature, in order to to exercise it's jurisdiction. Since the remedy of writ under the Article 226 is exercised for the protection of an individual, the Writ Court must satisfy itself solely on the question of law and it's competency. The unrestrained powers of the High Courts under Article 226, does not entail the court to act as a substitute for civil courts and adjudicate

²⁸ The University Of Mysore and Anr. v. C. D. Govinda Rao and Anr., AIR 1965 SC 491.

upon the civil rights or to preside over matters related to erroneous appreciation of facts which had resulted in a wrong conclusion arrived upon by the lower courts or tribunals. Such matters are appropriately relegated to the appellate authorities to deliberate upon and re-examine the facts, since the original jurisdiction enjoyed by the High Courts under Article 226, is an initial jurisdiction and thus cannot be a continuation of proceedings of subordinate courts or tribunals. On the other hand, it was held by the Apex Court, in the case of **Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Ors.**, that, under Article 226, the High Courts while exercising powers under original jurisdiction may quash or set aside, the acts or decree or orders or proceedings of the subordinate courts or tribunals, but cannot substitute it's own decision in place thereof.²⁹

The High Courts under Article 227, being vested with the power of superintendence over the subordinate courts and tribunals, on the contrary, in addition to setting aside the order or judgement of the lower courts and tribunals, can issue directions to these courts to act in particular manner or even supersede or substitute their own decisions in place thereof. However, this does not necessarily mean that the High Courts needs to be intrusive in nature and under the pretext of such discretionary powers, disguise itself and act as a Court of Appeal. The Hon'ble Supreme Court in **Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam**,³⁰ held that, "though the High Courts under Article 227 can judicially intervene with the orders of the subordinate courts or tribunals, however, the extent of powers of Article 227 cannot have greater expanse than that of the powers constitutionally provided under Article 226. The Constitution empowers High Courts under Article 226, that it may intervene to exercise it's jurisdiction, if the situation warrants, in quashing an impugned order on the ground of a mistake apparent on the face of the record. However, the High Courts under Article 227, are strictly bound by it's inherent limitation of supervisory powers which can only be exercised to keep the subordinate courts or tribunals within the boundaries of their authority. Hence Article 227, come into play only when the lower courts oversteps or fails to exercise their authority." It is therefore necessary to understand that both the aforesaid Articles 226 and 227, operate on entirely different foundations and therefore, their legislative intent in terms of jurisdiction and competency of application warrants a wider explanation.

III. LIFTING OF THE VEIL

The foregoing discussion succinctly emphasises the fact that the High Courts enjoys wide

²⁹ Hari Vishnu Kamath v. Syed Ahmad Ishaque and Ors., AIR 1955 SC 233.

³⁰ Nagendra Nath Bora and Anr v. Commissioner of Hills Division and Appeals, Assam, AIR 1958 SC 398.

discretionary powers under the Articles 226 and 227. The essence of Article 226 is that, it is directed against the decision making process, wherein a question of law, evident on the face of record is reviewed on the grounds of illegality, irrationality or procedural impropriety. The High Courts assumes the role of a sentinel in a writ jurisdiction, wherein it confines itself to the constitutional mandate of appreciation of the applied law and competency of the application. On the other hand, under Article 227, the High Courts exercises its supervisory powers in a restrictive manner, limiting its role of interference to the gravest violation of jurisdiction or flagrant disregard of the procedures by the subordinate courts or tribunals. The exercise of power of superintendence by the High Courts under the aforesaid article, is entirely discretionary and this discretionary power cannot be forced into action by anyone as a matter of right. The Constitution of India, empowers the High Courts to act as the custodian of justice, thereby vindicating its position as the highest judicial authority in the State. It is evident that the nature and scope of jurisdiction of the each of the aforesaid Articles are placed on a different field and both the powers cannot be exercised together.

The Hon'ble Supreme Court in the case of **Shalini Shyam Shetty and Anr. v. Rajender Shankar Patil**,³¹ observed that 'the inherent power related to the issuance of writs lies only under Article 226. To assume that a petition filed under Article 227 is a writ petition, is nothing but a flawed notion and one that must be nipped at the first instance. Under no circumstances should such fallacy be allowed to flourish. The Constitution has not conferred powers to issue writs under Article 227 and thus it cannot exceed its mandate cannot exceed its mandate. No rule of any High Courts can amend or alter this clear Constitutional scheme.'

However, owing to the lack of knowledge, it has become a common custom of labelling the petitions jointly under Articles 226 and 227 of the Constitution of India. In order to demarcate the scope of the aforesaid Articles in question and bring in a distinct clarity amongst them, the Apex Court, in **Umaji Keshao Meshram v. Smt. Radhikabai**,³² held that;

a. Proceedings under Article 226 are in exercise of original jurisdiction while under the Article 227, it has supervisory powers over subordinate courts and tribunals which is neither an original nor it is an appellate jurisdiction. However, the supervisory powers of Article 227, must be used in exceptional circumstances and must be undertaken only to regulate the limit of authority of the subordinate courts and tribunals so as to refrain from assuming the pedestal of Court of Appeal by intruding into the actions of the lower courts.

³¹ Shalini Shyam Shetty and Anr. v. Rajender Shankar Patil, AIR 2010 (8) SCC 329.

³² Umaji Keshao Meshram v. Smt. Radhikabai, AIR 1986 SC 1272.

b. The High Courts can exercise its supervisory jurisdiction, in the event of grave injustice meted out to the aggrieved person, when the subordinate courts or tribunals have acted without powers of jurisdiction vested upon them or failed to exercise its jurisdiction or have flagrantly violated the ambit of their jurisdiction with little or no regard to the rule of law or to the principles of natural justice.

In the case of **Surya Devi Rai v. Ram Chander Rai**,³³ the Apex Court while relying on the judgement of the case *ibid*, observed that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be bounded by rigidity. It further observed that the High Courts can exercise its powers to issue writs under Article 226 to correct gross errors of jurisdiction and also that, it can use its supervisory powers under Article 227, in the event of grave injustice occasioned when the Subordinate court has acted beyond or failed to exercise its jurisdiction or have acted flagrantly to the principles of natural justice. By this judicial pronouncement, the Apex Court brought all subordinate judicial bodies under the ambit of Article 226 of the Constitution of India, curtailing the alternate remedy of appeal available to the aggrieved. This judgement, in turn accelerated the rush of writ petition under Article 226, since it gave the aggrieved citizens, a hope of a speedy trial.

A writ petition is maintainable against the order passed by the statutory authorities and for enforcement of fundamental or legal rights. However, a writ petition against the judicial orders of the civil court is bad in law and is not maintainable. The Hon'ble Supreme Court, in the case of **Sadhana Lodh v. National Insurance Co. Ltd.**,³⁴ observed that, “the High Courts must respect the mandate of the Constitution and therefore refrain from exercising its discretionary powers under Article 227 to intervene in the presence of remedy existing in the manner of appeal. Even in cases where the orders or judgements of lower courts are protected against appeal, the High Courts must insist on a revision petition under Section 115 of CPC. Unless such revision petitions under Section 115 of CPC are barred by a State enactment, the petition may be strictly filed under Article 227 of the Constitution only.”

Further demonstrating their reservations on Surya Devi Rai (*supra*) ruling, the Apex court, in the case of **Radhey Shyam and Anr. v. Chhabi Nath & Ors.**,³⁵ held that, the writ jurisdiction is constitutionally conferred on all High Courts. A writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or court other than judicial court. The Control of working of the subordinate courts in dealing with their judicial orders is

³³ Surya Devi Rai v. Ram Chander Rai, (2003) 6 SCC 675.

³⁴ Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524.

³⁵ Radhey Shyam and Anr. v. Chhabi Nath and Ors., (2015) 5 SCC 423.

exercised by way of appellate or revisional powers or power of superintendence under the Article 227. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is Constitutional. Orders of civil court stand on different footing from the orders of authorities or Tribunals or court other than judicial/civil court. The Supreme Court further observed that owing to the inherent fault embedded in the ratio given in *Surya Devi Rai vs. Ram Chander Rai* (supra), there was an alarming increase in the writ petitions regarding property matters. Disputes relating to partition suits, matters relating to execution of a decree, cases of dispute between landlord and tenant and also, in a case of money decree and in various other cases where disputed questions of property are involved, writ court were entertaining such disputes. In some cases, such property disputes were entertained under Article 227 by the High Courts as a routine matter and were treated as writ petitions. The erroneous appreciation of the judicial pronouncement in the case of *Surya Devi Rai* (supra), was further justified by the amendment of Section 115 of CPC,³⁶ which excluded the remedy of revision to the High Courts on the Interlocutory orders passed by the subordinate courts. This led to an exodus of petitions being filed as writ petition under the Article 227. The Supreme Court held that, though the revisionary powers of Sec 115 of CPC has diminished to an extent, however, it does by not by any stretch of imagination suggest that the powers conferred by Article 226 & 227, expands the superintendence role of the High Courts. The jurisdiction of the High Courts under Article 227, remains unaffected by the amendment of Section 115 of the CPC (Civil Procedure Code). The Apex Court further held that, judicial orders of civil court are not amenable to a writ of certiorari under Article 226 and the scope of Article 227 is different from Article 226.

The High Courts can exercise their power of judicial review, if the actions of the subordinate courts or tribunals do not conform to parameters of the law and the provisions laid under the Constitution or where their actions are otherwise vitiated by arbitrariness, bad faith, malafide intentions or their actions are in excess of jurisdiction vested upon them. It is therefore, not only the duty of the Court to protect the citizens of the State from high handedness and administrative wrong, but at same time exercise control and preserve the integrity of the constitutional institutions, which have been brought into existence to inspire public confidence, being their sole aim. The success of this presumption of good administration can only be achieved when every authority and person, engaged in discharge of public duty plays a legitimate role in execution of such duties. However, when the method of functioning of such public institutions has caused legal injury to the citizen of the State or their actions border on

³⁶ Code of Civil Procedure, 1908, §115(amendment) Act 46, 1999.

illegality and are in contravention to the existing procedures of law, the Court must examine the allegations with more than ordinary care. Unless, the situation warrants intervention, it is not just or proper for the High Courts to act on pre-conceived notions and to prevent public authorities from discharging functions which are vested upon them by the constitution. Some times, observance of restraint on the part of the High Courts would serve the wheels of justice well.

IV. CONCLUSION

The scope of both the Articles 226 and 227 are separate and distinct as they operate on a different sphere. The High Courts under Article 226, exercises original jurisdiction which emphasises that the decision challenged for issuance of a writ is not a continuation of the proceedings of the earlier court or tribunal. Whereas the High Courts under Article 227, exercises supervisory jurisdiction over the subordinate court or tribunals and is neither original nor it is appellate.³⁷ It is for this reason, the powers of superintendence is to be used with great discretion, so as regulate the proceedings of the subordinate courts or tribunals within their domain of jurisdiction and that it must be exercised in cases occasioning grave injustice or flagrant disregard of procedure or failure of justice. The aim behind such restrictive application of supervisory powers, is to refrain the High Courts from assuming the pedestal of Court of Appeal. The High Courts is at the apex of the State Judicial apparatus. It, therefore becomes imperative on part of the High Courts to adhere to the time honoured principles of law and follow the regime of law with grim tenacity, in order to exude public confidence in the judiciary. Unless, a restrictive control is established by the High Courts against the inflow of the proliferating litigations that arises from the base level, which are not only frivolous in nature but at the same time, are in most cases, oblivious to the existing distinction between both the Articles 226 and 227, the inundation created by such petitions in the High Courts, would lead to an inordinate delay in dispensing justice. The power of interference, if kept to a minimum by the High Courts under the aforesaid Articles, without impairing the quality of justice, would inspire public confidence in the judicial functions of the subordinate courts or tribunals, inevitably leading to speedy and inexpensive trial, which is the need of the hour.

³⁷ Waryam Singh v. Amarnath, AIR 1954 SC 215.