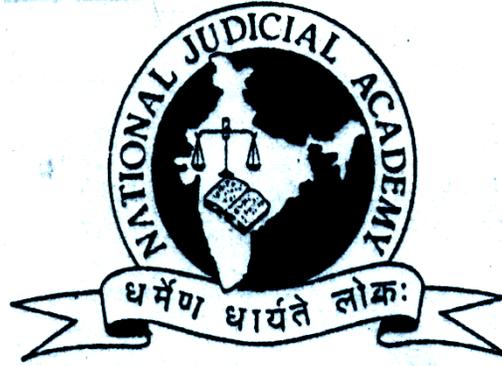


NATIONAL JUDICIAL ACADEMY



NATIONAL CONFERENCE OF **NEWLY ELEVATED HIGH COURT JUDGES**

Date: August 23-24, 2014

PROGRAMME REPORT (P-827)

By

Programme Coordinator – Dr. Amit Mehrotra, Assistant Professor
National Judicial Academy

Background

Entrusted with the powers of superintendence over district judiciary and additionally endowed with writ jurisdiction, the High Courts have the onerous responsibility of contributing in the development of law in our country and protecting the rights of people. Therefore, the future of this system undoubtedly depends on the judges who are newly elevated to the High Courts and who have to go a long way in their tenure as Justices.

Keeping this very important aspect in the foreground, National Judicial Academy each year organizes the National Conference of Newly Elevated High Court Judges. This Conference received 32 Justices who participated in the conference and discussed various complex issues relating to their day and day judicial functioning with experienced sitting and former and judges of the Supreme Court in order to enhance the justice delivery system in India.

This Conference provided an occasion to newly elevated judges to meet their counterparts from different high courts and share their experiences and views, which in turn made the Conference more fruitful and meaningful.

The esteemed resource persons for the two day conference includes: Hon'ble Justice GS Singhvi, Hon'ble Dr. Justice BS Chauhan and Hon'ble Justice Kurian Joseph.

Session 1

In **Session 1** various insights about **Being a judge of a Constitutional court** was discussed. Hon'ble Justice GS Singhvi is the speaker of the session and the session was chaired by Hon'ble Hon'ble Justice Kurian Joseph and by Hon'ble Dr. Justice BS Chauhan

Dr. Balram K. Gupta, Director, National Judicial Academy welcome the Hon'ble resource persons and Justices of different High Courts. Dr. Balram K Gupta stated that National Judicial Academy has a very distinguished panel that will deliberate and will carry forward the discussions. He stressed that Constitutional court judges play a very significant role in the development of the Constitution and in the growth of Justice delivery system. Through the contribution of the Justices Constitution grows like a plant and they make the constitution as a living organism. He delineated that the role of the constitutional court is so significant that they make the constitution live to different human situation in a humane manner. He stressed that

judges contribute to the durability and longevity of the constitution. He delineated that judges are the constructive additional legislatures.

Hon'ble Justice Kurian Joseph made introductory remarks and initiated the session with the self introduction of the Justices. Hon'ble Justice GS Singhvi has taken the session forward and requested the justices to remember their oath before holding the chair. The resource person stated that while taking oath we as judge swear it in the name of God solemnly affirm that we will bear true faith and allegiance to the Constitution of India as by law established and that we will hold the sovereignty and integrity of India as well as we will faithfully and conscientiously discharge our duties and will do right in all manner in accordance with the Constitution and the law, without fear or favour, affection or ill will. The resource person emphasized that preamble of the Constitution is the key to everything. He requested the participating Justices to go through the five volumes of the Book of Framing of Constitution authored by B. Shiva Rao. He emphatically emphasized that Civil servants and judicial officers are the servant of the people. The resource person stressed that as a judge we don't exercise any power, rather a judge can do is to perform the duty for the citizen of the country or the litigant who comes before the court and the true role of the constitutional court of our country should be understood under this perspective. He further deliberated that constitution has assigned certain roles to different constituents. There are several laws in our country which are enacted and made for the benefit of the people but are not implemented. The resource person stressed that it the duty of the court to see that the laws are respected and the rule of law is enforced. It was discussed that the role of judicial officers in this critical time is more important for the survival of the Sovereign, democratic and republic India. The resource person deliberated that from 2013 and onwards the Courts are not mere adjudicator to decide the disputes between the individuals, however, they are the real protectors of the Constitution and also the protectors of the legal rights of the people which are made available to the people by the Supreme Court through the interpretative process. Thus, it is the duty of the courts to protect the constitutional rights of the individual. The session went interactive and the participants has share their experience and insight with regard to the constitutional court.

Session 2

The theme of the **Session 2** was a round table discussion on Justice Delivery System in India: Reflection by the Higher Judiciary whereby the justices with the help of the eminent resource persons discussed the challenges and suggested the pro active steps and measures with respect to the functioning of High Courts. The session was chaired by Hon'ble Justice GS Singhvi, Hon'ble Dr. Justice BS Chauhan and by Hon'ble Justice Kurian Joseph.

It was deliberated that the High Court are not the legislators and they cannot make any enactment, however they can definitely make the interpretation in the light of the constitution to secure the ends of justice. It is the duty and responsibility of the court to see that policies were framed in accordance to law or as per the Constitution of India. As a pro active judge, it is the duty of the constitutional court to advise the legislature to relook the policy if needed. It was discussed that No proper assistance from the government pleader or from an advocate is excuse for not arriving to the just, true, correct and justified decision. The Judgment of the judge is always be seen and analyzed. Section 24 of the Cr.p.c was discussed during the discourse. It was deliberated that judge has to work under the odd circumstances to secure justice as judge has taken the oath to decide the case in accordance to law and as per the ambit of the Constitution; however lawyer has not taken such oath. It was delineated that advocate may try to misguide the judge in the interest of his client but it is the duty of a judge to find out the correct law and do justice. It was further emphasized that a judge has to do the exercise for complete justice in a way that justice should not only be done for those who comes before the court but also for those who could not have come before the court, by process of activism to stop the possibility of further litigation. In the discussion the resistance from the Bar as one of the concern was also discussed during the session and it was suggested that bar has to be handled very tactfully and sophisticatedly and many a times it depends upon the judges how they tackle the advocates. It was emphatically emphasized that Constitution mandate of the country and supremacy of the law is to be established while adjudicating any issue. Disposal of criminal appeal under section 386 was also discussed and it was deliberated that even if the party fails to appear it is the duty of the appellate court to decide the criminal appeal on merits. It was further delineated that uploading of the orders on the website brings more transparency in the justice delivery system. The session

was concluded by the deliberation that too much speaking on the Bench kills more time and hammer the work and thus Justice should speak through pen more rather than through mouth.

Session 3

In **session 3 Key areas of Appellate and Revisional Jurisdiction of High Court** was being discussed. Hon'ble Justice Kurian Joseph deliberated the session and the session was chaired by Hon'ble Justice GS Singhvi and Hon'ble Dr. Justice BS Chauhan

Before starting up the session the resource person requested the participants to be participative. The resource person emphasized that conceptually revision is a part of appeal but appeal is not a part of revision. It was deliberated that the appeal and revision are the creatures of Statutes and there is no inherent right and litigant gets the right for appeal or revision depending upon the Statute.

It was stressed that first Appeal is in a continuation of a suit or of an original proceedings. Therefore, with regard to the appreciation of the evidence i.e. questions of facts and law the doors of the first appellate court is open. The power of first appellate court is co extensive with the trial court. It was stated that the appellate jurisdiction involves on the rehearing of facts and law unless otherwise limited by the Statute. It was delineated that as far as the second appeal is concerned it can be entertained when the substantial question of law is involved or framed at the time of admission. It was further discussed that court can frame substantial question of law after giving notice to the parties. It was discussed that there is no rehearing of facts in revision because it is concerned only with the principles of exercising jurisdiction not vested in it, failing to exercise the jurisdiction vested in it or exceeding of the jurisdiction resulting in material irregularity, impropriety and illegality. The resource person also talked about the supervisory and writ jurisdiction of the high court and discussed the concept of superintendence.

The distinction between Article 226 and Article 227 was also been discussed during the discourse. It was emphatically stated that no writ can be issued under Article 227 of the Constitution of India. The resource person remarked that in Ram Dass vs. Ishwar Chander and Ors. AIR1988SC1422 the observation on the correctness of finding of facts can also be gone into in the revision has been mostly misunderstood by various courts and cleared that the expression that it only means that finding of facts should be in accordance with law and there should no error of law in finding of fact. It was also stressed that revision is not a second court of first appeal.

Section 401 of the Cr.Pc was also discussed in detail. The resource person emphasized and also discussed the following cases during the discourse which includes: Ubaiba vs. Damodaran (1999)5SCC645, Sri. Raja Lakshmi Dyeing Works and Ors. Vs. Rangaswamy Chettiar, AIR1980SC1253, Rukmini Amma Saradamma Vs. Kallyani Sulochana and others AIR1993SC1616, P.R. Krishnamachari Vs. Lalitha Ammal AIR1987SC2048, Moti Ram Vs. Suraj Bhan and Ors AIR1960SC655, Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval AIR1975SC1111.

Session 4

The **Theme of the session 4** was on the **Expansion of Article 21: Judicial Activism or Overreach**. The speaker for this session was Hon'ble Dr. Justice B.S. Chauhan. The session was chaired by Hon'ble Justice Kurian Joseph and by Hon'ble Justice GS Singhvi.

He started the session by quoting the great philosopher of the enlightenment, Montesquieu, "there is no liberty where judicial power is not separated from both legislative and executive power. If judicial and legislative powers are not separated, power over the life and liberty of the citizens would be arbitrary, because the judge would also be a legislator. If it were not separated, the judge would have the strength of an oppressor." Thus, he argued that the legislator should make law, the executive should execute it and the judiciary should settle the disputes in accordance with the law.

The resource person delineated that the classic statement of Montesquieu has become one of the cardinal principles of governance in a modern constitutional democracy. He further discussed the inherent salient features that are pre-requisite for a cohesive and hassle free governance structure, which includes: A written constitution which establishes its supremacy over any institution created under it; Distribution of powers among the three organs of the State; and the co-equal status, along with the coordinating powers of each of the three organs. The resource person explained the essence of the doctrine of separation of powers as stated by Prof. D.D. Basu. He further emphasized that the Constitution of India envisages a system of governance based on the separation of powers, even though the Constitution does not expressly mention it. He delineated that a judge merely applies the law that it gets from the legislature and further elaborated that the judge only reflects the law regardless of the anticipated consequences, consideration of fairness or public policy and a judge is not authorized to legislate law.

The resource person took the discussion forward by elaborating the key historical developments that have influenced the role of the Judge in the form of Judicial Review. He then stated the two main criticisms of the power of Judicial Review which includes: Issue of accountability of Judges and Doctrine of Democratic Deficits. The resource person explained the concept of an Activist Approach and dwell on the meaning of Judicial Restraint. He stated that the activist approach and by extension which also means as, “Judicial Activism”, as suggested by Justice Bhagwati, envisages the changes in the interpretation of the constitutional and statutory provisions in consonance with the dynamics and uncertainties of human affairs and relations. He further elaborated that the courts must apply the law in a way that makes sense of the temporal nature of our reality. In the Indian context, judicial activism is regarded as the active interpretation of an existing provision with the view of enhancing the utility of the legislation for social betterment, in accordance with the constitution.

The resource person discussed on the invention of Public Interest Litigation (PIL) in India and stated that the Supreme Court of India developed the strategy of public interest or social action litigation, with the motivation of making the legal system more accessible to the poor. He further delineated that the Supreme Court of India has addressed the issue of evidence production for the poor and marginalized by appointing separate commissioners for the purpose of investigating and making reports to the court. The reports thus produced, are made available to both sides of the legal issue so they can act accordingly.

During the discourse, the resource person discussed some landmark cases which includes: State of Bihar vs. Bal Mukund Shah, (2000) 4 SCC 640, Rai Sahib Ram Jawaya Kapur & ors. Vs. The State of Punjab AIR 1955 SC 549, L.C. Golak nath vs. State of Punjab AIR 1967 SC 1643, State of West Bengal vs. Committee for protection of Democratic Rights, West Bengal & Ors., AIR 2010 SC 1476, Southern Pacific vs. Jensen, 244 U.S. 205 (1917), Hunter Vs. Southam Inc., [1984] 2 S.C.R. 145, M. Nagaraj & Ors. Vs. Union of India, AIR 2007 SC 71, Dred Scott vs. Stanford, (1856) 19 How 393, Plessy vs. Ferguson, 163 U.S. 537 (1896), State of Tamil Nadu vs. K. Shyam Sunder, AIR 2011 SC 3470, Marbury vs. Madison, 5 U.S. 137 (1803), State of UP & Ors. vs. Jeet S. Bisht & Anr., (2007) 6 SCC 586, S.P. Gupta vs. Union of India, AIR 1982 SC 149, Dayaram vs. Sudhir Batham, (2012) 1 SCC 333, Suraz India Trust vs. Union of India, (2011) 4 SCR 224, Nand Kishore vs. State of Punjab, Bandhua Mukti Morcha vs. UOI, AIR

1984 SC 802, PUDR vs. UOI, (1982) 3 SCC 235, Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845, Kesavananda Bharti vs. State of Kerala, AIR 1973 SC 1461, Vishaka vs. State of Rajasthan, AIR 1997 SC 3011, DK Basu vs. State of West Bengal, AIR 1997 SC 610, etc.

Various Constitutional provisions which includes, Article 21, 39, 53 (1), 50, 211, 122, 212, 361, 13, 13 (2), 14, 32, 226, 141, 142 and 144 of the Indian Constitution was discussed during the discourse.

DAY 2

Session 5

In **session 5** Inherent Powers of the High Court was being detailed. The session was delineated by Hon'ble Dr. Justice BS Chauhan. The session was chaired by Hon'ble Justice GS Singhvi. The resource person explained the meaning of inherent power and stated that Inherent power means an authority possessed without its being derived from another. It is a right, ability or facility of doing a thing, without receiving that right, ability or facility from another. It was discussed that section 482 Code of Criminal Procedure has a very wide scope and it is really important for the courts to use it properly and wisely. The great principle underlying the inherent powers of the High Court under section 482 Cr.P.C is subject to a lot of uses and abuses. It was emphasized that the High Court under section 482 Cr.P.C is crowned with a statutory power to exercise control over the administration of justice in criminal proceedings within its territorial jurisdiction which is to ensure that proceedings undertaken under the Code are executed to secure the ends of justice.

It was deliberated by the resource person that the legislature has empowered the High Court with an inherent authority which is repository under the Statue. It was further stressed that conferment of such inherent power might be necessary to prevent the miscarriage of justice and to prevent any form of injustice. However, it was emphasized that section 482 Cr.PC is neither divine nor limitless. It is not to generate unnecessary indulgence. Various situations and circumstances where the inherent powers of the High Court can be exercised were deliberated and discussed during the session.

It was stated that there are no limits of power of the Court, but more the power, more due care and caution is to be exercised in invoking such powers. It was delineated that the object and purpose of the provision is to do justice between the State and subjects.

It was also deliberated that were the court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise the court may consider special facts and special features and can quash the criminal proceedings to encourage general settlement of the disputes between the parties. It was also discussed during the discourse that High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions to a named judge. It was also deliberated that section 482 Cr.PC can only be exercised in relation to a matter pending before a criminal court and also only when no remedy is available to the litigant. It was also expressed that inherent power cannot be exercised to do something which is expressly barred under the Code of Criminal Procedure. During the discourse it was also deliberated that the inherent jurisdiction of the High Court under section 482 of the Criminal Procedure Code can be exercised even when there is a bar under section 397 or some other provisions of the Criminal Procedure Code. However, this power cannot be exercised if there is a statutory bar in some other enactment. It was also stated that the High Court while exercising its revisional, or appellate power, may exercise its inherent powers as incidental or supplemental power in relation to substantive and also to procedural matters. It was also expressed that the power can be exercised suo moto in the interest of justice. It was expressed that before exercising such power High Court must have due regard to the nature and gravity of crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. However, it was also been deliberated that simply because an offence is not compoundable under section 320 Code of Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power under section 482 of Cr.PC. The cases which were deliberated during the discussion include State through Special cell, New Delhi, v/s Navjot Sandhu @ Afshan & Ors, (2003) 6 SCC 641, Popular Muthiah v/s State represented by Inspector of Police, (2006)7 SCC 296, Gian Singh v/s State of Punjab & Anr. (2012) 10 SCC 303, State of West Bengal & Ors. v/s Sujit Kumar Rana, AIR 2004 SC 1851, Padal Venkata Rama Reddy @ Ramu v/s Kovvuri Satyanarayana Reddy & Ors., (2011) 12 SCC 437, Shiji @Pappu & Ors. v/s Radhika & Anr (2011) 10 SCC 705, Jayrajsingh Digvijay Rana v/s State of

Gujrat & Anr. JT 2012 (6) SC 504, B.S. Joshi & Ors. v/s State of Haryana, AIR 2003 SC 1386, Madhavrao Jiwaji Rao Scindia & Anr. v/s Sambhajirao Chandrojirao Angre & Ors. AIR 1988 SC 709 M/s Indian Oil Corporation v/s M/s. NEPC India Ltd. & Ors. AIR 2006 SC 2780, C.B.I. v/s Duncans Agra Industries Ltd. AIR 1996 SC 2452, M/s Zandu Pharmaceuticals Works ltd. & Ors. v/s Mohd. Sharaful Haque & Ors., AIR 2995 SC 9 State of Haryana v/s bhajan Lal, AIR 1992 SC 604 and R.K. Kalyani v/s Janak C. Mehta., (2009) 1 SCC 516

It was deliberated that the power of section 482 is to protect the system of justice from being polluted. The power cannot be and should not be used to belittle its own existence. One cannot concede anarchy to an inherent power for that was never the wisdom of the legislature. The session was concluded with an opinion that while exercising inherent powers the High can quash criminal proceedings, however, such power should be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves.

Session 6

The theme of the **Session 6** was on **Superintendence of Subordinate Courts of High Court**. The speaker of the conference was Hon'ble Justice G.S. Singhvi and the session was chaired by Hon'ble Justice B.S. Chauhan. The scope and ambit of Section 227 of the Constitution of India was deliberated and discussed in detail. The resource person stated Clause (1) of Article 227 of the Constitution of India which speaks about that every High court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It was stressed that the Superintendence must be administrative and as well as judicial. However, it was further stated that as per the Article 227 clause 2 of the Constitution of India it is confined to the courts only and not to the tribunals which are not regular court but discharge the quasi judicial function. The resource person requested the participants High Court Justices to take note of some judgments which throws light on the superintendence power which include Manmatha Nath Biswas v/s Empror AIR 1933 Calcutta 132 in which section 107 of the Government of India Act 1915 was interpreted. It was stated by the resource person that in this case Chief Justice Rankin made observation that superintendence is not a legal fiction whereby the High Court judge is vested with the omnipotence but is as Norman J. had said a term having a legal force and signification. The general superintendence

which this court has overall jurisdiction subject to appeal is to see that courts do what their duty requires and that they do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law. The resource person delineated that there is a common understanding that there should be no interference on the finding of fact and even on interpretation of law is been done so as far as Art 227 is concerned. Resource person deliberated that experience has shown that some High Courts have been very liberal in exercising the power under Art 227 of the Constitution of India in their zeal to do justice but in the process, the High Court has created more problems for the subordinate court and also for themselves. The resource person referred to the case of *Dalmia Jain Airways Ltd v/s Sukmar Mukerjee* AIR 1952 Cal 193 in which it was observed that though under Article 227 of the Constitution of India the High Court has a right to interfere with decisions of court and tribunals under its power of superintendence, however such right must be exercised most sparingly and only in appropriate cases. It was further asserted that the power of superintendence confers a power of a known and well recognized character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep subordinate courts within the bounds of their authority to see that they do what their duty require and that they do it in a legal manner. The case of *Jodhey Lal and other v/s State through Ram Sahai* AIR 1952 All 788 was referred whereby beautiful enunciation by Justice Nasir Ullah Beg was delineated by the resource person that a reading of the entire Article 227 of the Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the constitution makers was to make the High Court responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is special tribunal constituted under a Statute cannot be set up as a bar to the exercise of this power by the High Court. The prohibited area is to be found within the four corners of the constitution itself and nowhere else. Further was deliberated that the fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Court's themselves. It

seems that these powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy. Under this power, the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party.

The resource person discussed the case of Surya Dev Rai v/s Ram Chander Rai (2003) 6 SCC 675 and stated that in this case Supreme Court has traced the history of Article 226 and Article 227 and proceeded to hold that the certiorari Jurisdiction under Article 226 is available for correcting an order passed the civil court. The primary issue was when the remedy under section 115 of CPC has been barred by the virtue of the Amendment Act 46 of 1999 which came effect from 1st July 2002 whether still the remedy under Article 226 or under Article 227 is available? The resource person stressed that the Supreme Court in this case curled out and concluded in nutshell the following certain principles:

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by

overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a

later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

The resource person delineated that in some of High Courts the petition under Article 227 is described as a writ petition whereas Article 227 does not talk of any order, directions or writs; however as a practice some clever lawyers mention the writ petition under Article 226 and 227 of the Constitution. The recourse person stressed that the one High Court which is not using this terminology is Delhi High Court. In Delhi High court the petition under Article 227 is mentioned as Civil Miscellaneous petition. The resource person delineated that Radhey Shyam and Anr v/s Chhabi Nath and Ors. (2009) 5 SCC 616 disagreed with the decision in Surya Dev Rai v/s Ram Chander Rai and Ors. (2003) 6 SCC 675 case so far as the scope of power certiorari jurisdiction is concerned which speaks about that against an order passed by a civil court a writ of certiorari can be issued and made reference to the larger bench. The resource person discussed the case of Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil (2010) 8SCC329 and deliberated that after analyzing the court curled out the following points on the exercise of High Court's jurisdiction under Article 227 of the Constitution:

- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227.
- (c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.
- (d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.
- (f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.
- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar v. Union of India and Ors.* reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

The resource person also emphasized and quoted on the following points of the case *Syed Yakoob v/s K.S. Radhakrishnan and Ors.* AIR 1964 SC 477:

1. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned

finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding is within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

2. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record.

Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.

The resource person concluded the session by making the remark that each case should be decided by the presiding judge in his wisdom. There is no straight jacket formula that can possibly be laid down for the exercise of power either under Article 226 or under Article 227 and each case should get determine at the backdrop of its own facts and principles is to be wisely applied.

Dr. Balram K Gupta expressed his gratitude to the eminent resource persons and heartfelt thanks to the justices of various jurisdictions for their great insights and making the conference the conference successful.

-----X-----X-----X-----