

**EXAMINE THE APPELLATE JURISDICTION OF
SUPREME COURT IN INDIA.**

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SUBJECT- CONSTITUTIONAL PART-II

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INTRODUCTION

In any country, the judiciary plays the important role of interpreting and applying the law and adjudicating upon controversies between one citizen and another and between a citizen and the state.

In a country with a written constitution courts have the additional function of safeguarding the supremacy of the constitution by interpreting and applying its provisions and keeping all authorities within the constitutional framework.

India has a unified judicial system with the supreme court standing at the apex and the high courts below it. supreme court thus enjoys the top most position in the judicial hierarchy of the country. It is the supreme interpreter of the constitution and the guardian of the peoples fundamental rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land. And thus helps in maintaining a uniformity of law throughout the country.

The jurisdiction of the supreme court of India can broadly be categorized as -

a. APPELLATE JURISDICTION

c. ORIGINAL JURISDICTION

c. ADVISORY JURISDICTION.

Its exclusive **original jurisdiction** extends to any dispute between the government of India and one or more states or between the government of India and any state or states on one side and one or more states on the other or between two or more states, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

In addition, Art-32 of the constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of fundamental right.

It is empowered to issue directions, orders, or writs including writs in the nature of Habeas corpus, mandamus, prohibition, quo-warranto and certiorari to enforce them.

The supreme court has been conferred with power to direct transfer of any civil or criminal case from one state High court to another state High court or from a court subordinate to another state High court.

The **appellate jurisdiction** of the supreme court can be invoked by a certificate granted by the High court concerned under article 132(1), 133 (1) or 134 of the constitution in respect of any judgment, decree, or final order of a High court in both civil and criminal cases involving substantial question of law as to the interpretation of the constitution.

The supreme court has also a very wide appellate jurisdiction over all courts and tribunals in India in as much as it may, in its discretion grant special leave to appeal under Article-136 of the constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

The supreme court has **special Advisory Jurisdiction** in matters which may specifically be referred to it by the president of India under Article-143 of the constitution.

CHAPTER -II.

APPELLATE JURISDICTION

The supreme court is primarily a court of appeal and enjoys extensive appellate jurisdiction .It may be discussed under the following heads :

1. Constitutional matters.
2. Civil matters.
3. Criminal matters
4. Appeal by special leave.

1. CONSTITUTIONAL MATTERS:

Under Article -132(1), an appeal lies to the supreme Court from any judgment, decree or final order. Whether in a civil, criminal, or other proceeding of a high Court if it certifies that the case involves a substantial question of law as to the interpretation of the constitution.

According to Article 132(3), where such a certificate is given, any party in the case may appeal to the supreme court on the ground that any such question has wrongly decided.

Under Article 134(A) the High court can grant a certificate for appeal to the supreme court under Article 132 either on its own motion or on oral application of the aggrieved party immediately after passing the judgment, judgment, decree or final order. Prior to this High court could do only on the application of the aggrieved party.

Under Article (1) three conditions are necessary for grant of certificate by the High court.

1. The order appealed must be against a judgment, decree or final order made by the High court in civil, criminal or other proceedings.
2. The case must involve a question of law as to the interpretation of the this constitution and
3. If the High court under Article -134(A) certifies that the case be heard by the supreme court .

The words other proceedings include all proceedings other than civil and criminal they include “revenue proceedings” which includes proceedings under the sales-tax act or the Income –tax Act, Etc.

Secondly, the case must involve a substantial question of law which has been decided by the Supreme Court in a previous case. But if there is a difference of opinion on any question of law among High court, and there is no direct decision of the Supreme Court on that point it would be a substantial question of law.

A very broad power is thus conferred on the supreme court to hear appeals in constitutional matters.

When the appeal is not competent under Article-132, the Supreme Court will not hear it even if the High court has granted the necessary certificate.

The appellate who comes before the Supreme Court under this Article is not entitled to challenge the propriety of the decision appealed against on a ground other than that on which the High court granted the certificate or the Supreme Court gave the leave , except with the permission of the Supreme Court. This means that the appellant should ordinarily confine himself to the constitutional law point involved.¹

In ELECTION COMMISSION V/S VENKATA RAO ²

A question was raised as to whether an appeal would lie to Supreme Court from a decision of single judge. The Supreme Court answered the question in affirmation. but this can only be done in very exceptional cases , where direct appeal to the Supreme Court is necessary and in view of the great importance of the case an early decision is required in public interest.

2. CIVIL MATTERS

Under article 133 (1) , an appeal lies to the Supreme Court from any judgment ,decree or final order in a civil proceeding of a High court if it certifies-

¹Bombay v/s jagmohandas , AIR 1966 SC 1418.

²AIR 1953 SC 210 at P. 212.

- a. That the case involves a substantial question of law of general importance and
- b. That in the opinion of a High court the said question needs to be decided by the Supreme Court.

An important question of law can arise in any case whatever the value of the subject matter involved.

Now, an appeal may go to the Supreme Court in any case involving an important question of law even though the value of the subject matter involved may not be large.

No appeal in a civil matter to the Supreme Court as a matter of right. An appeal can lie only on a certificate of the High court which is issued when the above 2 conditions are satisfied.

The proper test to determine whether a question of law is substantial is whether it is of general public importance or whether it directly and substantially affects the rights of the parties.

A question of law which is fairly arguable, or when there is room for difference of opinion on it, or when the court thinks it necessary to deal with that question at some length and discuss alternative views would be a substantial question of law.

The Supreme Court has emphasized that for grant of the certificate the question, however important and substantial should also be of such pervasive import and deep significance that in the High court judgment it imperatively needs to be settled at the national level by the High court, otherwise the court will be flooded with cases of lesser magnitude.

When the High court has given such a certificate the appeal before the Supreme Court is not limited only to the specific question of law but the entire appeal will be before the court.

In appeal to the Supreme Court Under Article 133 , question of constitutional law may also be raised. No appeal lies to the Supreme Court under Article 133 from the decision of a single judge of the High court, but parliament has power to provide otherwise.

Civil proceedings'-

The expression civil proceeding means proceedings in which a party asserts the existence of a civil right.

A civil proceeding is one in which a person seeks to remedy by an appropriate process the alleged infringement of his civil right against another person or the state and which , if the claim is proved , would result in the declaration , express or implied of the right claimed and relief , such as payment of debt, damages , compensation, etc.

Under Article 133 the Supreme Court does not interfere with concurrent findings of fact by the trial court and the High court unless it is shown that important and relevant evidence has been overlooked or unless it is fully unsupported by evidence on record. It is left to the judicial discretion of the court as to when it will interfere in the concurrent findings of fact of trial court and High court. In appeal under Article 133 the appellant cannot be allowed to raise new grounds not raised before the lower court.

3. APPEAL IN CRIMINAL CASES ARTICLE 134.

According to article 134 an appeal lies to the supreme court from any judgment, final order or sentence in a criminal proceeding of a high court in the following 2 ways.

- a. Without a certificate of high court.
- b. With a certificate of the high court.

A. Without a certificate art-134 (a) (b) :

An appeal lies to the supreme court without the certificate of the High court if the High court -

- a. Has on appeal reversed an order of acquittal of an accused person and sentenced him to death.
- b. Has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death.

But if the High court has reversed the order of conviction and has ordered the acquittal of an accused, no appeal would lie to the supreme court.

B. With a certificate Article 134 (c)

Under clause (c) an appeal lies to the supreme court if the High court certifies under Article 134-A that it is a fit case for appeal to the supreme court.

The power of the High court to grant fitness certificate in the criminal cases is a discretionary power but the discretion is a judicial one and must be judicially exercised along with the well-established lines which govern these matters.

The Supreme Court has laid down entire guiding principles for the high court to follow in granting certificate.

The high court should grant certificate only where there has been exceptional circumstances. Eg. Where substantial and grave injustice has been done.

Thus a certificate cannot be granted by the high court on mere question of fact.

In State of U. P V/s Raj Nath

The High court acquitted the accused in appeal solely on the ground that it regarded the testimony of eye-witness to be baseless. It was held that the order of acquittal had resulted in the manifest miscarriage of justice because the High court did not make an attempt to evaluate the evidence of eye-witness properly.

Accordingly , the order of the High court was set-aside and it was directed to dispose of appeal a fresh after evaluating the evidence.

Parliament is empowered under Article 134(2) to extend the appellate jurisdiction of the supreme court in criminal matters.

Certificate for Appeal to Supreme court - 134(A)

The constitution 44th amendment has amended Art-132.133 and 135 And inserted a new Article- Article134-A for regulating the grant of the certificate for appeal to the supreme court by the high court.

The object of this new provision is to avoid delay in cases going to the supreme Court in appeal from the judgment , decree, final order or sentence of the High court

Art-134-A is as follows-

“**Every** High court passing or making a judgment , decree, final order of sentence , referred to in clause (i) of Article 132 or 134.”

- a. May , if it deems fit so to do so ,own motion and
- b. Shall if an oral application is made , by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, Decree, final order or sentence,

Determine as soon as may be after such passing or making, the question whether certificate of the nature referred to in clause(i) of Article 132, 133 or sub clause (c) of clause (i) of Article 134 , may be given in respect of that case.

Thus under the new Article 134 –A it is obligatory on the High court to consider the question of granting certificate immediately on the delivery of the judgment , decree, final order, or sentence concerned either on oral application by the party aggrieved, or ,if it deems fit to do so , on its own motion.

Power of the supreme court to withdraw and transfer cases article 139- A

Article 139 –A (i) provides that if an on application made by the Attorney general of India or by a party or on its own motion the supreme court is satisfied that cases involving the same or substantially the same question of law are pending before the supreme court and one or more High court or before two or more High court and that such question are substantially question of general importance it may withdrawn them and dispose them itself.

IN A R. Antulay V/s R.s Nayak³

It has been held that the supreme court has no power under Article -139 A to withdraw a case from a special judge and transfer it to High Court.

³³ 1988 2 scc 602

In Swaranjitkaur V/s Swaransinghsohi⁴

The wife of the petitioner sought the transfer of a divorce petition from Delhi District judge to District judge Indore.

The petitioner is dependent on her parents. She has two children .it is difficult to defend the case by travelling to Delhi. The court allowed her transfer petitioner from District judge, Delhi to District judge at Indore.

In L.T Venkat v/s Union of India ⁵

The two writ petitions were filed before the supreme Court for transfer of three writ petition filed in the High Court of Madras by the convicts found guilty in Rajiv Gandhi assassination case after rejection of their *merly* petition by the president of India.

It was averred that the long delay in the decision of mercy petition by the president would entitled the convict to seek commutation of death sentence.

An identical question was pending before the Madras High Court to itself as the matter involved was a substantial question of general importance and the decision was likely to affect a large number of persons convicted by the competent courts.

4. APPEAL BY SPEC IAL LEAVE-ARTICLE 136

Under 136 the Supreme Court is authorised to grant in its discretion special leave to appeal from

- a. Any judgement , decree determination sentence or order
- b. In any case or matter

⁴ AIR 2009 SC 12

⁵ AIR 2012 SC 2503

c. Passed or made by any court or tribunal in the territory of India.

The only exception to this power of the Supreme Court is with regard to any judgment etc. of any court or tribunal constituted by or under any law relating to the Armed forces.

This Article vests wide power in the Supreme Court, the power given under this Article is in the nature of a special residuary power which are exercisable outside the purview of ordinary law.

Article 132 to 135 deal with ordinary appeals to the Supreme Court in cases in cases where the needs of justice demand interference by the highest Court off the land.

POWER TO GRANT SPECIAL LEAVE TO APPEAL TO BE EXERCISED IN EXCEPTIONAL CASES-

From the above , it is clear that Supreme Court is vested with very wide discretionary power.

IN D. c. mills v/s commissioner of income tax, W. B⁶

The court held that it being an exceptional and overriding power it has to be exercised sparingly and with caution and only in special extra ordinary situations.

Beyond that it is not possible to fetter the exercise of this power by any set formula or rule.

CONCURRENT FINDINGS OF THE TRIAL COURT AND THE HIGH COURT.

Normally the Supreme Court does not interfere with concurrent findings of the trial court and the high court unless there is sufficient ground to do so.

⁶ AIR 1955 SC 55

But that cannot mean that injustice must be perpetuated because it has been done two or three in a case.

IN CRIMINAL CASES

The power of the Supreme Court under Article 136 has more frequently been invoked in criminal appeals.

In criminal cases the court will not grant special leave to appeal unless it is shown that special and exceptional circumstances exist, or it is established that grave injustice has been done and that the case in question is sufficiently important to warrant a review of the decision by the Supreme Court.

In Haripada Dey V/S State Of West Bengal⁷

The Supreme Court held that it will grant special leave only if there has been gross miscarriage of justice or departure from legal procedure such as which vitiates the whole trial or if the finding of fact were such as shocking to the judicial conscience of the court.

Delhi Judicial Service Assn V/S State Of Gujarat⁸

The Supreme Court has held that under article 136 the Supreme Court has wide power to interfere and correct the judgement and orders passed by any court or tribunal in the country.

The Supreme Court has supervisory jurisdiction over all court of India.

⁷ AIR 1956 SC 757

⁸ 1991 4SCC 406

CONCURRENT FINDING OF FACT-

An appeal under article, the supreme court does not interfere with the concurrent findings of fact unless it is established -

1. That the finding is based on no evidence .
2. That the finding is perverse , it being such as no reasonable person could arrive at even if the evidence was taken at its face value.
3. The findings is based and built on inadmissible evidence which evidence , executed from vision would negate the prosecution case or substantially discredit or impair it or
4. Some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked , disregarded or wrongly discarded.

IN Radhakrishna Dash V/S Administrative Tribunal ⁹

The appellant were found guilty of negligence in verifying the stock wheat with agent under the state government order.

A departmental inquiry was entrusted to the administrative tribunal. On the basis of evidence the tribunal came to the conclusion that the appellant had acted negligently and recommended

their discharge from service. Their writ petition were dismissed by the high court .the Supreme Court held that it would not be proper for it to interfere with the concurrent findings of fact about the guilt of the appellants as it was not a case of total want of evidence.

⁹⁹ 1988 2 scc 229

**PROVIDE PARTY CAN FILE APPEAL UNDER ARTICLE -136
CHALLENGING ACQUITTAL:**

In A Landmark Judgement In Ramakant Ravi V/S MadanRai¹⁰

The Supreme Court held that where an accused is acquitted by the high court and no appeal against the acquittal is filed by the state a private party can file appeal under article 136 against the acquittal order of the high court.

TRIBUNALS

Under Article 136 the power of the Supreme Court to grant special leave to appeal is not confined to orders or determination of a court of law , but includes tribunals also.

Thus a tribunal is a body of authority although not a court having all the attribute of a court which is vested with judicial power to adjudicate on question of law or fact affecting the rights to citizens in a judicial manner.

However it does not include a tribunal which have purely administrative or executive functions or a tribunal having only legislative functions without any quasi judicial functions.

Judicial tribunal, income tax tribunals., labour appellate tribunals, election commission railway rate tribunals, etc. are few example of such tribunals, though not a court of law in the strict sense are invested with certain functions of justice.

¹⁰ air 2004 sc 77

In Clerks Of Calcutta Tramways V/S Calcutta Tramways Co. Ltd ¹¹

It was held that the Supreme Court can normally interfere with the decisions arrived at by these tribunals on the following grounds where-

1. The tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulating it or where it ostensibly fails to exercise a patent jurisdiction.
2. There is an apparent error on the face of the decision .
3. The awards are made in violation of principles of natural justice to parties.
4. The tribunal has erroneously applied well accepted principle of jurisprudence.

¹¹ AIR 1957 SC 78

CONCLUSION

Appellate jurisdiction is different from the concept of original jurisdiction. Appellate jurisdiction is the power of a court to review decision and change. It review the case for error. Appellate trail is based on simple argument of lawyers. No testimony or witnesses.

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