## PAPER I

# PRACTICE AND PROCEDURE

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#### **WHAT IS ARTICLE 32 JURISDICTION OF THE SUPREME COURT?**

- Article 32 of the Constitution has with due deliberation, conferred on the Supreme Court the power to issue writs for enforcement of fundamental Rights of citizens, but in certain circumstances rights of non-citizens as well, which are enshrined in Part III of the Constitution whenever such rights are infringed, by any law, or any authority or person.
- ☐ Article 32 said to be providing Judicial Review is thus a basic feature of the Constitution.
- ☐ Article 32 is itself part of the basic structure of the Constitution, it cannot be ousted or abridged by even a constitutional amendment.
- Article 32 has the power to grant consequential relief or to grant any relief to do complete justice even in favor of those persons who may not be before the Court or have not moved the Court.
- □ Order XXXVIII, Rule 1 TO 13 of Supreme Court Rules, 2013 deals with Article 32 petitions.

State of West Bengal Vs. Committee of Democratic Rights, (2010) 3 SCC 571 held that Judicial Review itself part of the basic structure of the Constitution, it cannot be ousted or abridged by even a Constitutional Amendment.

L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261

#### **PUBLIC INTEREST LITIGATION**

- ☐ 'Public Interest Litigation' means a legal action initiated in an appropriate court for the enforcement of public interest in which the public or class of the community has an interest founded on their constitutional or legal rights.
- PIL movement was heralded by Justice P.N. Bhagwati in the case of *S.P. Gupta Vs. Union of India, 1981 Supp SCC 87.* It is held that any member of the public or social action group acting bonafide shall have the locus to invoke Writ Jurisdiction of the High Court or the Supreme Court.
- Supreme Court entertaining petitions directly under Article 32 raising a wide range of issues.
- Financial or economic decisions taken by the Government in the exercise of its administrative powers, cannot be challenged in a Public Interest Litigation unless the same is violative of Article 21 of the Constitution and the persons adversely affected are unable to approach the Court.
- □ Order XXXVIII, Rule 12 of Supreme Court Rules, 2013 deals with Public Interest Litigation.
- o In *People's Union for Democratic Rights Vs. Union of India, (1982) 3 SCC 235* laid down certain principles which will guide public interest litigation.
- O State of Uttaranchal Vs. Balwant Singh Chaufal, (2010) 3 SCC 402

#### **CONTEMPT JURISDICTION OF SUPREME COURT**

- ☐ Article 129 vests in the Supreme Court, all the powers of a Court of Record including the power to punish for contempt itself.
- ☐ Original Contempt Jurisdiction under Article 129 is distinct from the appellate contempt jurisdiction under section 19 of the Contempt of Courts Act, 1971. Article 129 cannot be denuded, restricted or limited by the Contempt of Courts Act, 1971.
- ☐ Supreme Court as a Court of Record has the inherent jurisdiction to punish contempt not only concerning proceedings before them but also to punish contempt in connection with proceedings before inferior courts.
- □ Supreme Court can be deemed to have *Suo-motu* Contempt Proceedings based on materials disclosed in an application.
- A contempt petition in the Supreme Court lies u/R. 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 r/w S. 2(b) [civil contempt] or 2(c)[criminal contempt] of the 1971 Act, as case may be, and Articles 129 and 142(2) of the Constitution.

In Prashant Bhushan IN RE, (2021) 1 SCC 745
E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar, (1970) 2 SCC 325

#### **SUPREME COURT JURISDICTION TO TRANSFER CASES**

- □ Supreme Court has jurisdiction to transfer cases from one Court to another under section 25 of the CPC, 1908, section 406 of Cr.P.C., and Article 139A(1) of the Constitution of India including the provisions laid down in Supreme Court Rules, 2013.
- □ TRANSFER UNDER SECTION 406 OF CR.P.C. R/W ORDER XXXIX RULE 1 TO 4
  - O Supreme Court may direct any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction to another High Court.
- □ TRANSFER UNDER ARTICLE 139A(1) R/W ORDER XL RULE 1 TO 10
  - O The Supreme Court has the power to transfer cases by its own motion, or by an application made by the Attorney General of India or by a party to such case provided that the case involves the same or substantially the same question of law pending before the Apex Court and one or more High Courts.
- ☐ TRANSFER UNDER SECTION 25 OF CPC R/W ORDER XLI RULE 1 TO 5
  - O Supreme Court has the power to transfer suits, or proceedings from one High Court to another to achieve the ends of justice.
- ☐ A single Judge can entertain an application for transfer of criminal or civil cases from one High Court to another High Court or one trial court to another trial court in another state.
- O Ravinder Nath Agarwal Vs. Yogender Nath Agarwal, (2021) 15 SCC 282
- O Umesh Kumar Sharma Vs. State of Uttarakhand, (2021) 12 SCC 517

### **APPELLATE JURISDICTION OF SUPREME COURT**

- ☐ Appellate Jurisdiction of the Supreme Court is conferred by Articles 132 to 136 of the Constitution. Article 132, 133. 134 provides regarding the scope of the Jurisdiction and conditions of appeal.
- ☐ Article 136 is an invaluable jurisdiction, and need for intervention by the Supreme Court in the context of a wide array of Courts and statutes.
- Article 136, regulating the Supreme Court's appellate jurisdiction, empowers to grant its discretion, and special leave to appeal from any judgment, decree, determination, and sentence on order passed by any Court or Tribunal.
- Articles 132 to 134, appeal lies to the Supreme Court only from Judgments/Orders passed by High Courts. Such restrictions are not enacted under Article 136 even against interim orders passed by High Courts or Tribunals, Special Appeal can be granted by the Supreme Court.
- Under Article 136, the Supreme can hear an appeal in a case involving a substantial question of constitutional law if the High Court refuses to grant the necessary certificate under Article 132. Criminal Appeals may be brought to the Supreme Court under Article 136 when these are not covered under Article 134.
- ☐ Order XXI Rule 1 to 15 of Supreme Court Rules, 2013 deals with Special Leave Petition (Civil) and Order XXII Rule 1 to 12 deals with Special Leave Petitions (Criminal).

# ENLARGED APPELLATE JURISDICTION OF THE SUPREME COURT IN CRIMINAL MATTERS

- Article 134(2) provides that the 'Parliament may by law confer on Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court subject to conditions and limitations as may be specified in law.
- ☐ In pursuance of this power, The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 was promulgated.
- ☐ No certificate by the High Court is required in the cases covered under the above-mentioned Act.
- ☐ Order XX of the Supreme Court Rules, 2013 deals with Criminal Appeals
- O **Kishore Singh Vs. State of M.P., (1977) 4 SCC 524.** held that if a right to appeal would lie under section 2 of this Act, a certificate by the High Court under Article 134(1)(c) not necessary.

#### **ORIGINAL JURISDICTION OF SUPREME COURT**

- ☐ Article 131 confers power on the Supreme Court to adjudicate disputes between the Government of India and one or more of its states, or between different states.
- ☐ Article 131 should not be tested on an anvil of rules that are applied to other Courts under CPC for determining whether a suit is maintainable or not.
- ☐ The dispute must involve a question relating to a legal right. For Article 131, the legal rights of citizens and other persons are distinct from the legal rights of States and the Central Government which stem constitutional provisions.
- ☐ The proviso to Article 131 enacts that the jurisdiction of the Supreme Court does not extend to a dispute arising out of any treaty, agreement, covenant, engagement or other similar instrument.
- □ Order XXV to XXXVII of Supreme Court Rules, 2013 deals with Original Suits in the Supreme Court.
- O State of Bihar Vs. Union of India, (1970) 1 SCC 67
- O State of Haryana Vs. State of Punjab, (2004) 12 SCC 673

## LAW DECLARED BY THE SUPREME COURT TO BE BINDING ON ALL COURTS

- ☐ Article 141 incorporates the doctrine of *stare decisis*. The doctrine envisages that the Lower Courts are bound law laid down by the Higher Courts.
- ☐ Article 141 gives constitutional status to the theory of precedents according to which the judicial decisions are considered to have binding force for the future.
- ☐ The General principles of law laid down by the Supreme Court are applicable to every person including those who are not parties to an order.
- ☐ Supreme Court's dismissal of a Special Leave Petition with a non-speaking order or dismissed *in limine* without giving reasons has precedential value.

- All India Reporter Karamchari Sangh Vs. All India Reporter Ltd., 1988 Supp SCC 472
- O Director of Settlements, A.P. Vs. M.R. Apparao, (2002) 4 SCC 638

#### **SUPREME COURT POWERS TO DO COMPLETE JUSTICE**

- ☐ The essential feature of Article 142 to do complete justice between the parties, grants power to the Supreme Court to do complete justice.
- ☐ Under Article 142 Supreme Court possesses inherent powers to do substantial justice drawn on the persuasive compulsions of the case.
- ☐ Statutory provisions cannot override Article 142, it cannot be limited or conditioned by any law. No enactment made by the Central or State legislature can limit or restrict the power of the Supreme Court.
- ☐ Supreme Court has the power under Article 142 to correct its error while rendering a decision.
- Bharat Sewa Sansthan Vs. U.P. Electronics Corpn. Ltd. (2007) 7 SCC 737
- · Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, (2005) 3 SCC 284
- Shilpa Sailesh Vs. Varun Sreenivasan, 2023 SCC OnLine SC 544

#### **ADVISORY JURISDICTION OF THE SUPREME COURT**

- ☐ Article 143 deals with the power of the President of India. Article 143 authorizes the President of India to refer a question of law or fact of public importance to the Supreme Court and obtain its opinion.
- ☐ The President can refer only to questions of law hitherto undecided by the Supreme Court.
- ☐ Advisory Jurisdiction under Article 143 is not an appellate jurisdiction. The Executive has no power to ask the Supreme Court to revise its decision.
- ☐ The Supreme Court always remain free to re-examine and if necessary to overrule the view taken in an opinion under Article 143.
- ☐ The Supreme Court has the power to retain the discretion to decline to express any opinion. When it finds a question would involve an examination of expert evidence.
- ☐ Order XLII to XLV of Supreme Court Rules, 2013 deals with references.
- O In re, Cauvery Water Disputes Tribunal, (1993) Supp (1) SCC 96
- In re, Special Reference No. 1 of 2012, Natural Resources Allocation, (2012) 10
   SCC 1
- Special Reference 1 of 1964, (1965) 1 SCR 413.

#### **REVIEW JURISDICTION OF THE SUPREME COURT**

- ☐ Article 137 gives powers to the Supreme Court to review any judgment pronounced or order passed by it.
- ☐ Review Petition is not an appeal in disguise it can be exercised for correction of mistakes, but not to substitute a view.
- Review Petition can only be allowed on the grounds of error apparent on the face of the record on being pointed by parties to the satisfaction of the Supreme Court.
- ☐ Judgments of the Supreme Court are not to be reconsidered on this ground unless the Court is satisfied that a glaring omission or patent mistake or a grave error has crept in earlier by judicial fallibility.
- Supreme Court deals with review petitions in chambers. Application for review is circulated to the same judges or Bench of judges that delivered the judgment sought to be reviewed.
- ☐ Order XLVII Rule 1 to 5 of Supreme Court Rules, 2013 deals with the Review Jurisdiction of the Supreme Court.
- O Lily Thomas Vs. Union of India, (2000) 6 SCC 224
- O Kamlesh Verma Vs. Mayawati, (2013) 8 SCC 320

#### **CURATIVE JURISDICTION OF THE SUPREME COURT**

- Supreme Court in its curative jurisdiction may correct its own Orders/Judgments under its inherent power after the dismissal of a review petition on the ground that violation of the principle of Natural Justice, abuse of process of the court or miscarriage of justice to an aggrieved person.
- Curative petitions ought to be treated as a rarity. The curative petition may be entertained ex debito justitiae.
- Curative Petition shall be accompanied by a certificate of Senior Advocate.
- ☐ Curative Petition shall be accompanied by a certificate of Advocate on Record that it is the first curative petition.
- ☐ Curative Petition first circulated to a Bench of three senior-most judges and the judges who passed the judgment.
- ☐ Order XLVIII Rule 1 to 4 of Supreme Court Rules, 2013 deals with the Curative Jurisdiction of the Supreme Court.
- O Rupa Ashok Hurra Vs. Ashok Hurra, (2002) 4 SCC 388
- O Yakub Abdul Razak Menon Vs. State of Maharashtra, (2015) 9 SCC 552
- O In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, 2023 SCC OnLine SC 1666

#### STATUTORY APPEALS TO THE SUPREME COURT

- □ Section 130 E of the Customs Act, 1962. It provides for an appeal to the Supreme Court from any judgment of the High Court on a reference made under Section 130 or any order passed by the Appellate Tribunal relating, amongst other things, to the determination of any question having relation to the rate of custom duty or the value of goods for assessment.
- □ **Section 379 Cr P.C.** It provides for an appeal to the Supreme Court from any judgment, final order or sentence in criminal proceedings of a High Court
- □ Section 67 of the Consumer Protection Act, 2019. It provides for an appeal to the Supreme Court from an order made by the National Commission.
- □ Section 19 (1) (b) of the Contempt of Courts Act, 1971. It provides for an appeal to the Supreme Court, as of right, from any order or decision of the Division Bench of a High Court in the exercise of its jurisdiction to punish for contempt.
- Section 15(z) of the Securities and Exchange Board of India Act, 1992. It provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court on any question of law arising out of such order
- Section 18 of the Telecom Regulatory Authority of India Act, 1997. It provides for an appeal to the Supreme Court against any order not being an interlocutory order, of the Appellate Tribunal, on one or more of the grounds specified in Section 100 of Code of Civil Procedure
- □ Section 38 of the Advocates Act, 1961. It provides any person aggrieved by an order made by the disciplinary committee of the Bar Council of India u/s 36 or 37 prefer an appeal to the Supreme Court.

## PROFESSIONAL MISCONDUCT UNDER SECTION 35 THE ADVOCATES ACT, 1961

- ☐ Section 35 explicates the punishment that an advocate shall be given in case of professional misconduct or other misconduct.
- ☐ In Section 35, the state bar council must have reasons to believe that an advocate is guilty of misconduct and then refer the case to a disciplinary committee under Section 36.
- ☐ The Advocates Act, 1961 as well Bar Council of India are silent in providing an exact definition for professional misconduct because of its wide scope though under Advocates Act, 1961.
- ☐ Misconduct is of infinite variety, this expression must be understood in a broad meaning, such that it extends the meaning under natural law.

- O V.C. Rangadurai Vs. D. Gopalan, (1979) 1 SCC 308
- O K. Anjinappa Vs. K.C. Krishna Reddy, 2021 SCC OnLine SC 1275

#### **SUPREME COURT RULES, 2013**

In the exercise of the powers conferred by Article 145 of the Constitution, the Supreme Court enacted the Supreme Court Rules, 1966, which have been subsequently replaced by the Supreme Court Rules, 2013.

The Rules Regulate, inter alia

#### Part I

Order IV Advocates
Order V Business in Chambers
Order VI Constitution of Division Courts and Powers of a Single Judge
Order XI Notices of motion

#### Part II (Appellate Jurisdiction)

Order XIX Civil Appeals
Order XX Criminal Appeals
Orders XXI-XXII Special Leave Petitions
Orders XXIII-XXIV Appeals under the special acts

#### **Part III (Original Jurisdiction)**

Orders XXV-XXXVII Original Suits
Orders XXXVIII Applications for enforcement of fundamental rights (Article 32)
Orders XXXIX-XLI Applications for Transfer of Cases
Orders XLII-XLV References
Order XLVI Election Petitions