

## **PRACTICE AND PROCEDURE**

### **SHORT NOTE BY JAY SAVLA, SENIOR ADVOCATE**

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

The jurisdiction of the Supreme Court can be broadly categorized under:

##### **1. Appellate Jurisdiction**

- (i) appeals permitted under Articles 132 (if HC certifies under Article 134A that the case involves substantial question of law as to the interpretation of Constitution), Article 133 (if HC certifies under Article 134A that the case involves a substantial question of law of general importance) and 134 of the Constitution read with Orders XIX and XX;
- (ii) appeals arising out of Statutes or any other law for the time being in force [refer to Orders XIX, XX, XXI, XXII, XXIII and XXIV of the Rules];
  - (1) appeal under Section 35L of the Central Excise and Salt Act, 1944;
  - (2) appeal under Section 23 of the Consumer Protection Act, 1986/under Section 67 of the Consumer Protection Act, 2019;
  - (3) appeal under Section 19(1)(b) of the Contempt of Courts Act, 1971;
  - (4) appeal under Section 38 of the Advocates Act, 1961;
  - (5) appeal under Section 116A of the Representation of People Act, 1951;
  - (6) appeal under Section 18 of the Telecom Regulatory Authority of India Act, 1997;
  - (7) appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992;
  - (8) appeal under Section 261 of the Income Tax Act, 1961;
  - (9) appeal under Section 53T of the Competition Act, 2002;
  - (10) appeal under Section 125 of the Electricity Act, 2003;
  - (11) appeal under Section 29(1) of the Wealth Tax Act, 1957;

- (12) appeal under Section 22 of the National Green Tribunal Act, 2010;
  - (13) appeal under Section 10 of the Special Court (Trial of offences relating to Transaction in Securities) Act, 1992;
  - (14) Appeal under Section 62 of the Insolvency & Bankruptcy Code, 2016.
  - (15) appeal under Section 19(1)(b) of the Contempt of Courts Act, 1971.
  - (16) appeal under Section 374 (1) of the Code of Criminal Procedure, 1973;
- (iii) appeals under Section 2 of the Supreme Court [Enlargement of Criminal Appellate Jurisdiction] Act, 1970; and read with Order XX of Rules;
  - (iv) appeals, upon grant of special leave to appeal, under Article 136 of the Constitution read with Orders XXI and XXII of the Rules.

## 2. Extra-ordinary Appellate Jurisdiction

Petitions for special leave to appeal under Article 136 of the Constitution read with Orders XXI and XXII of the Rules.

## 3. Original Jurisdiction

- (i) Petitions under Article 32 of the Constitution read with Order XXXVIII of the Rules for issue of directions or orders or writs, including the writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for enforcement of the fundamental rights;
- (ii) Original suits under Article 131 of the Constitution read with Part III(A) Orders XXV to XXXVII of the Rules. The Supreme Court has original jurisdiction in any dispute between Government of India and one or more States or between two or more States. However, Article 262 state that Parliament by law may provide for adjudication of dispute with respect of inter-state river. In such case, the Supreme Court shall not exercise jurisdiction.

- (iii) Petitions under Article 139A(1) of the Constitution read with Order XL of the Rules seeking transfer of cases involving the same or similar substantial questions of law pending before the Supreme Court and one or more High Courts or before two or more High Court, to itself.
- (iv) Petitions under Article 139A(2) of the Constitution read with Order XLI of the Rules seeking transfer of any case, appeal or other proceedings pending before any High Court to any other High Court;
- (v) Petitions under Section 25 of the Code of Civil Procedure, 1908 read with Order XLI of the Rules, seeking transfer of any suit, appeal or other proceeding from a High Court or other civil court in one State to a High Court or other civil court in any other State. It is relevant to note that transfer between Punjab & Haryana will be filed before the P&H High Court at Chandigarh. Similarly, jurisdiction of Guwahati High Court will extend to Assam, Nagaland, Arunachal Pradesh and Mizoram.
- (vi) Petitions under Section 406 of the Code of Criminal Procedure, 1973 (Section 446 of BNSS) read with Order XXXIX of the Rules, seeking transfer of any particular case or appeal 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 subordinate to another High Court;
- (vii) Petition under Part III of the Presidential and Vice-Presidential Elections Act, 1952 (31 of 1952) read with Article 71 of the Constitution and Order XLVI of the Rules relating to doubts and disputes in relation to the election of a President or Vice-President;
- (viii) Petition under Section 11(5) of the Arbitration and Conciliation Act, 1996, read with Appointment of Arbitrators by the Chief Justice of India Scheme, 1996 relating to appointment of an Arbitrator.

#### **4. Extra-ordinary Original Jurisdiction**

- (i) Petitions under Article 32 of the Constitution read with Part III(B) Order XXXVIII of the Rules in the nature of public interest

litigation seeking redressal of public injury, enforcement of a public duty or vindicating interest of public nature.

- (ii) Petitions under Article 32 of the Constitution seeking transfer of cases involving the State of Jammu & Kashmir, in furtherance of right of citizen to access justice under Article 21.

## **5. Advisory Jurisdiction**

- (i) Reference by the President under Article 143(1) of the Constitution read with Order XLII of the Rules on a question of law or fact of public importance;
- (ii) Reference by the President under Article 143(2) of the Constitution read with Order XLII of the Rules of a dispute of the kind mentioned in the proviso to Article 131 of the Constitution;
- (iii) Reference by the President under Article 317(1) of the Constitution read with Order XLIII of the Rules in relation to an inquiry for removal of the Chairman or any other Member of a Public Service Commission from his office on the ground of misbehaviour;
- (iv) Reference by the President under Section 14(1) of the Right to Information Act, 2005 read with Order XLIII of the Rules;
- (v) Reference by the Governor under Section 17(1) of the Right to Information Act, 2005, or any Statute under Order XLIII of the Rules;
- (vi) Reference under Section 257 of the Income Tax Act, 1961 read with Order XLV of the Rules, by the Income Tax Appellate Tribunal through its President.
- (vii) Reference under Section 11 of the Competition Act, 2002.

## **6. Inherent and Plenary Jurisdiction**

- (i) Contempt Petition (Civil)- A petition under Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, read with Section 2(b) of the Contempt of Court Act, 1975, read

with Section 2(b) of the Contempt of Courts Act, 1971 and Articles 129 and 142(2) of the Constitution shall be registered as a Contempt Petition (Civil).

- (ii) Contempt Petition (Criminal) A petition under Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, read with Section 2(c) of the Contempt of Courts Act, 1971 and Articles 129 and 142(2) of the Constitution shall be registered as a Contempt Petition (Criminal).

- (iii) Review Petition

An application for review under Order XLVII of the Rules read with Article 137 of the Constitution and shall, as far as practicable, be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

- (iv) Curative Petition

A curative petition under Order XLVIII of the Rules shall be first circulated to and heard by a Bench of the three senior-most Judges and the Judges who passed the judgment or order complained of, if available.

Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation, without any oral arguments.

If the Bench before which the petition was circulated concludes, by a majority, that the matter needs hearing, then it shall be listed before the same Bench, as far as possible.

- (v) Exercise of jurisdiction under Article 142 of the Constitution

This is a special provision available only with the Supreme Court. In appropriate cases, to do complete justice, the Supreme Court is empowered to pass such orders as may be required to sub-serve the cause or meet ends of justice. Article 142 is a unique provision, it grants Supreme Court power to pass any order necessary to secure complete justice.

## **CONSTITUTION OF BENCHES**

### **I. Single Bench**

1. Under Order V Rule (2) of the Rules, the powers of the Court in relation to the matters may be exercised by a Single Judge sitting in Chambers.
2. In exercise of powers conferred by Order II Rule 6 of the Rules, the Chief Justice may direct matters of urgent nature to be heard by a Judge sitting singly during summer vacation or winter holidays.
3. The Supreme Court Rules, 2013 are partially amended by Rules of 2024. Order II of the Supreme Court Rules, 2013 is substituted and instead of Vacation Judge, the words 'Partial Court Working Days' is substituted. Further, under Order XXXVIII Rule 1 is substituted after amendment, Petition under Article 32 shall be heard by Court of not less than Five Judges provided that Petition which does not raise substantial question of law as to the interpretation of the Constitution will be heard by Court of less than Five Judges and during partial court working days by a Judge sitting singly.

### **II. Division Bench**

- (i) Under Order VI Rule 1 of the Rules, subject to other provisions of the Rules, every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.
- (ii) Every cause, appeal or other proceedings arising out of a case in which death sentence has been confirmed or awarded by the High Court shall be heard by a Bench consisting of not less than three Judges.
- (iii) In exercise of powers conferred by Order II Rule 6 of the Rules, the Chief Justice may direct matters of urgent nature to be heard by a Division Court during the vacation.

### **III. Constitution Bench**

- (i) Every case involving a substantial question of law as to the interpretation of the Constitution under Article 145(3) or any Reference made under Article 143 of the Constitution shall be heard by a Bench consisting of not less than five Judges.
- (ii) Every petition calling in question the election of the President and Vice-President under Article 71 of the Constitution read with Part III of the Presidential and Vice-Presidential Elections Act, 1952, shall be posted before a Bench of five Judges under Order XLVI of the Rules.
- (iii) The Chief Justice may, from time to time, constitute a Bench consisting of five or more Judges for the purpose of hearing any other case, appeal or matter.

#### **IV. Reference to Larger Bench**

- (i) A Division Bench of two or more Judges may refer any cause, appeal or other proceeding, pending before it, to a larger Bench of not less than five Judges involving a substantial question of law as to the interpretation of the Constitution, as per proviso to Article 145(3) of the Constitution.
- (ii) Where, in the course of hearing of any cause, appeal or other proceeding, the Division Bench considers that the case should be dealt with by a larger Bench, it shall refer the case to the Chief Justice, who shall thereupon constitute a Bench for hearing it.
- (iii) If a Bench of less than three Judges, hearing a cause, appeal or matter is of the opinion that the accused should be sentenced to death, it shall refer the case to the Chief Justice, who shall thereupon constitute a Bench of not less than three Judges for hearing it.
- (iv) After the Reference is answered by a larger Bench, wherever required, the case shall be placed before the Chief Justice for listing before an appropriate Bench for hearing and decision in accordance with the opinion of the larger Bench.

