

7 RMLNLUJ (2015) 187

The Burgeoning Appellate Jurisdiction of the Supreme Court of India - An
AnalysisTHE BURGEONING APPELLATE JURISDICTION OF THE SUPREME COURT OF INDIA - AN
ANALYSIS*by***B. Muthu Kumar***

I. INTRODUCTION

The Supreme Court of India is one of the most competent Courts in the World and earned more fame because of its activist approach, in taking necessary measures to make the other two organs free from corruption, nepotism and favouritism. It became more responsive to the public interests in the absence of good governance from the Government and thereby virtually converts itself from Court of Law into Peoples' Court. Undisputedly, the activist approach of the Supreme Court in every sphere of nation's activities gained laurels from the people, and this makes the Supreme Court happy at one end but at the same time upset because of litigation explosion to unmanageable proportions. Internally, the Supreme Court has been going through a lot of problems and difficulties, and this is evident from the recent remarks of the then Chief Justice of India Justice R.M. Lodha. He expressed his frustration about the excessive workload in the Supreme Court and mentioned that it had to bear the steady inflow of cases and said: 'Workload is abundant in the highest judiciary, which is uncontrolled and excessive.' We are not finding any remedy to deal with the situation and the CJI also expressed unhappiness with the reaction of the legal fraternity towards his proposal for 365 working days a year in the judicial sector. He urged senior lawyers to discuss the issue comprehensively and then come up with a solution to decrease the workload of the Court.¹ However, of late, a five-Judge Constitution Bench² refused to reconsider the scope of Article 136, wherein this provision is being used indiscriminately and the petitions under this article obstructing the Supreme Court in disposing of the cases regularly and thereby adding to its pendency. Concerning the



Page: 188

jurisdiction of the Supreme Court, it is firmly lodged in the Constitution. The Indian Constitution provides various jurisdictions under different categories to the Supreme Court of India and confers powers, which include the power to interpret the Constitution and thereby pronounce upon the validity of the Statutes. The Parliament cannot take away the existing jurisdiction conferred by the Constitution. However, it can extend the jurisdiction and authority of the Supreme Court under Art. 138 of the Indian Constitution.³ The Parliament used this provision to the possible extent and conferred more jurisdictions upon the Supreme Court through amending the Constitution as well as enacting Statutes. After the Constitution (Forty-second) Amendment, Art. 323-A and Art. 323-B provide for the proliferation of tribunal system in the country.⁴ The idea underlying this amendment is to lighten the load of work on the Courts especially the High Courts, which has burdened with service cases and other matters. The tribunal established under these provisions will practically have the same status as the High Court as appeals from these tribunals could go to the Supreme Court under Art. 136. Further, the Parliament is empowered to constitute a

special or particular tribunal under Art. 323-B and the particular Statute provide a direct appeal to the Supreme Court from the tribunals constituted under Art. 323-B by excluding the jurisdiction of the High Court. Besides the Parliament's extension of the jurisdiction of the Supreme Court, the Supreme Court herself enlarged its domain through its activist role by interfering in each and every Governmental policy besides the judicial review of legislations and executive actions with an intention of freeing the Government from corruption and saving the citizens tax money. In this aspect, the Court put itself in an awkward position by creating self-inflicted injuries by expanding jurisdiction on its own and made their shoulders burdened with it and thereby finding difficult to dispose of the appeals in time bound manner. Thus, the researcher makes an attempt to analyse critically over the Supreme Court appellate jurisdictions and particularly the appeal, which directly lies to the Supreme Court from Commissions and Tribunals.

II. SUPREME COURT UNDER CONSTITUTION OF INDIA

The Supreme Court is a multi-jurisdictional Court. Its jurisdiction is very broad and is far more extensive than that of any other Court of a similar stature in any part of the World. The Supreme Court under our



Page: 189

Constitution is the greatest unifying and integrating force of our country. Its Writ runs throughout the length and the breadth of our vast country and all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.⁵ The jurisdiction of the Court under our Constitution may be as follows: (A) Original Jurisdiction (B) Appellate Jurisdiction and (C) Advisory Jurisdiction. However, the researcher has confined only to the Appellate Jurisdiction of the Supreme Court of India, which includes Statutory appeals also.

III. APPELLATE JURISDICTION OF THE SUPREME COURT UNDER THE CONSTITUTION OF INDIA

A. Article 132 of the Constitution

It provides for an appeal to the Supreme Court from any judgment, decree or final order of a High Court, whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. By this provision, the High Courts' grant a certificate of leave under Art. 134-A if any matter irrespective of the nature contain substantial question of law as to the interpretation of the Constitution. However, it is rarely exercised by the High Courts.

B. Article 134 of the Constitution

It provides for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if, (a) it has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself, any case from any Court subordinate to it and has in such trial convicted the accused and sentenced him to death; or (c) it certifies that the case is a fit one for appeal to the Supreme Court. The Supreme Court can hear an appeal under this Article from the decision of a single Judge of a High Court or Division Bench of a High Court on the grant of the necessary certificate by him. But the Supreme Court has emphasised that this should be done in very exceptional cases where a direct appeal is necessary because of the grave importance in that case and an early decision is not possible to reach, further, the decision of the case is a must in

the larger interest of the public.⁶ The jurisdiction conferred on the Supreme Court is not that of an ordinary court of criminal appeal. Before granting a certificate, the High Court must be satisfied that it involves some substantial question of law or principle to bring



Page: 190

it within the scope of Art. 134(1)(c).⁷ In 1970, criminal jurisdiction was also given to the Court not just in capital punishment and life imprisonment cases but also in cases where a sentence of ten years or more has been imposed by way of punishment. Justice Sikri hint that Parliament should not have increased their jurisdiction in 1970 seems unjustified because the fact that this is the only area where the Supreme Court has comfortably coped with the volume of cases before it.⁸ But, the Court's criminal work was standard. The criminal appeals formed 6.13% of the Court's normal docket in 1961 and 3.30% of its normal docket in 1970.⁹ Thus, the Court is not much burdened by the Criminal cases even though the jurisdiction enlarged in 1970.

C. Article 133 of the Constitution

It provides for an appeal to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies that the case involves a substantial question of law of general importance and in its opinion the said question needs to be decided by the Supreme Court. This provision is meant only for the civil appeal from High Court. Before 1972, there was a right of appeal to the Supreme Court from a decision of a High Court if the subject-matter involved in the dispute was valued at Rs. 20,000/- or more. This has been changed by the Parliament by bringing the Constitution (Thirtieth Amendment) Act, 1972 and made that no appeal in a civil matter lies to the Supreme Court as a question of right unless it involves a substantial question of law. However, the case is not fair in civil docket as like in criminal docket. The civil appeals docket, which increased from 1961 to 1970 from 19.68% to 33.54%.¹⁰ Further, from 1973 to 1981, almost 20% of the total number of cases decided by the Court during this period under certified appeals from the High Courts. Of these, at least, 19% belonged to civil certified appeal and only about 1% comprised the certified criminal appeals.¹¹ Unlike Dr. Rajeev Dhavan, the Supreme Court data from 2005-2011 has been categorised by Mr. Nick Robinson into subjectwise like labour, service, arbitration, family, etc. In the subjectwise, the Criminal matter also occupied a place in it, which is comparably less than all the above said civil subjects and the average comes around 25% of admission disposal and 20% in the regular disposal. However, the data is not clear whether the criminal matter includes only certified criminal



Page: 191

appeals or direct criminal appeals under Art. 134 read with Sec. 375 of the Code of Criminal Procedure or include SLP (Criminal) also.¹² Thus, the researcher is unable to put the latest table on civil and criminal appeal since the data available is only for seven years and put into micro-classification. It is significant to discuss the Supreme Court view on the jurisdiction under Arts. 132 & 133 of the Constitution. Concerning Art. 132 of the Constitution in *R.D. Agarwala v. Union of India*¹³, the Court disapproved of a single Judge granting a certificate to appeal directly to the Supreme Court. The Court applied the rule contained in Art. 133(3) of the Constitution.¹⁴ This decision has been criticised as *per incuriam* because it ignores *Election Commission v. Saka*

*Venkata Subba Rao*¹⁵, which explicitly lays down those limitations in Art. 133 of the Constitution do not apply to Art. 132. The Supreme Court has also gently chided High Courts for giving leave to appeal to the Supreme Court without duly considering the matter.¹⁶ The Court is, of course, anxious that High Courts not just send their dirty linen upstairs each time a complicated case comes up.¹⁷

Table showing the Work Load of the Supreme Court in Civil and Criminal Appeals

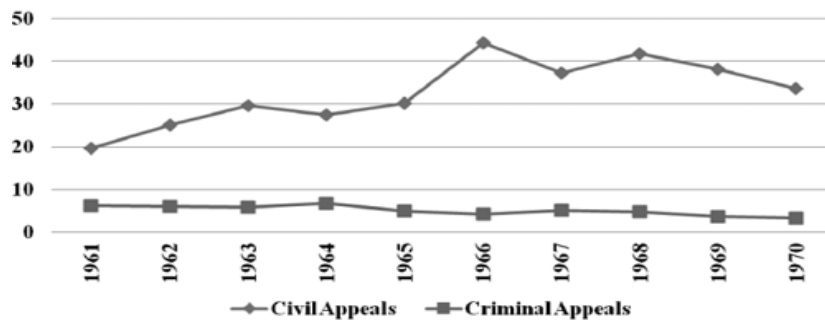
Year	Civil Appeals to the total normal docket	Criminal Appeals to the total normal docket	All Appeals to the total normal docket
1961	19.68	6.13	25.81
1962	25.04	6.04	31.08
1963	29.57	5.81	35.38
1964	27.44	6.71	34.15
1965	30.13	4.96	35.09
1966	44.29	4.30	48.59
1967	37.22	5.04	42.26
1968	41.68	4.72	46.40
1969	38.09	3.68	41.77
1970	33.54	3.40	36.94

Source : Dr. Rajeev Dhavan analyses of Supreme Court Docket 1961-1970



The above data is represented below through the bar diagram and the graphical picture to find out the disposal of Civil and Criminal appeal from 1961 to 1970.

Picture showing the workload of the Supreme Court in Civil and Criminal Appeals from 1961 to 1970



D. Appeal by Special Leave under Article 136 of the Constitution

It provides that the Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or tribunal in the territory of India except the Court or tribunal constituted by or under any law relating to armed forces.

Table showing The Work Load of the Supreme Court in Civil and Criminal Appeals

1951	12.48	29.15	41.64
------	-------	-------	-------

1952	16.93	27.44	44.37
1953	20.27	35.6	55.33
1954	17.27	31.63	48.90
1955	21.36	33.54	54.90
1956	31.02	31.02	62.05
1957	26.22	26.26	52.48
1958	32.30	31.43	63.73
1959	28.45	34.64	63.09
1960	27.81	32.89	60.70
1961	32.03	30.16	62.19
1962	34.39	27.82	62.21

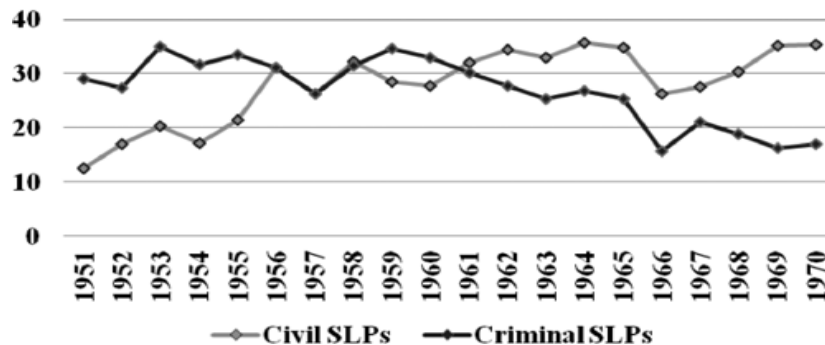


1963	32.99	25.39	58.38
1964	35.83	26.77	62.60
1965	34.86	25.34	60.20
1966	26.33	15.66	41.99
1967	27.66	20.99	48.65
1968	30.41	18.77	49.18
1969	35.15	16.17	51.32
1970	35.44	17.01	52.45

Source: Dr. Rajeev Dhavan analyses of Supreme Court Docket 1951-1970

The above data is represented below through the bar diagram and the graphical picture to find out the disposal of SLPs (Civil) and (Criminal) from 1951 to 1970.

Picture showing the workload of the Supreme Court in Special Leave Petitions (1951 to 1970)



The Special Leave Petition under this provision of the Constitution is very broad and the Court has made an extensive use of its prerogative power under this category. Because of the broad interpretation, the jurisdiction covered virtually all tribunals in India.¹⁸ The Court goes into questions of law, matters of natural justice and even, where the need arises, questions of fact.¹⁹ The early Court had decided not to fetter its jurisdiction too much.²⁰ Since 1980, the Special Leave jurisdiction has become very broad



indeed. It covers a wide range of situations. The Court has, therefore, as a matter of policy stated will not, generally go into concurrent findings of fact but does so if there is a grave miscarriage of justice. The Court usually will not allow raising any new pleas, however, permits this in special cases. The Court is worried about its extensive special appeal jurisdiction. However, this jurisdiction is invaluable because it is a way in which the Supreme Court monitors the work of various bodies.²¹ It is clear from Table 2 above that the Special Leave Petitions in civil matters increases and whereas, in criminal matters decreases from 1950 and further, the period from 1958 to 1965 showed a steady increase and maintained around 60%, and thereby it get reduced. Totally, from 1951-1970, it displays the fluctuating approach. During 1973-1981, the Court has been dominated by Special Leave Jurisdiction category.²² A total of 3425 decisions, i.e., almost 85% of the decisional output of the Supreme Court consists of the determination of appeals from High Courts. Only 24% of such appeals reach the Court through the channel of the certificate of fitness granted by the High Courts, whereas, the remaining 76% were added to the docket of the Supreme Court by the Court itself under its Special Leave Jurisdiction.²³ Almost 65% of the total disposal consisted of appeals under the Special Leave category. Within the Special Leave category, it will be further noticed that the disposal of civil SLPs occupies 37%, which has exceeded those of the criminal SLPs throughout the nine years period except 1979. Special Leave criminal holds the account of 27.7%.²⁴

Percentage of Supreme Court Admission Docket by Special Leave Petition

Year	SLP	Year	SLP
1993	81.9	2003	85.2
1994	81.5	2004	85.8
1995	82.4	2005	83.2
1996	79.6	2006	84.8
1997	78.7	2007	86.5
1998	82.9	2008	86.3
1999	80.6	2009	86.0
2000	83.0	2010	85.9
2001	84.9	2011	84.6
2002	85.1		



Source: Nick Robinson analyses of Supreme Court Data

The above table shows the Special Leave Petitions both in civil and criminal matters from 1993-2011. It maintains an average of 84% of the Court's docket. It is very clear that the Special Leave Petitions began to constitute a significant part of the docket that come to the Court. This tends to suggest that the Supreme Court had given a big twist to its jurisdiction in Special Leave cases. Two kinds of matters came up before the Court in this area. Firstly, there were cases of administrative justice. The Court could by its Special Leave jurisdiction monitor the work of the 'Tribunals'. The Court has given a very wide interpretation to the word 'Tribunal', which includes the Central

Government when it gives an Order directing a Company to transfer certain shares.²⁵ There are some restrictions. However, the Court has declared it to follow the test that the body must be invested with a part of the judicial power of the State. Thus, a customs officer acting under Sec. 167 of the Sea Customs Act is not a 'Tribunal' even though he must act judicially.²⁶ Secondly, those cases in criminal and civil matters which the Court could not hear under its normal civil and criminal jurisdiction were being heard under its Special Leave jurisdiction.²⁷ However, the Court has imposed limitations on a large number of cases that it will normally go into concurrent findings of facts unless there is a grave miscarriage of justice.²⁸ Further, the Court will not allow raising any new pleas at the first instance²⁹, except in special cases.³⁰ However, interpretation of miscarriage of justice, though arbitrary, is very wide.³¹ The Supreme Court has characterised its power under Art. 136 as 'an untrammelled reservoir of power incapable of being confined to definitional bounds; the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense of justice of the Judges'.³² However, at the same time discouraged the indiscriminate invocation of Article 136. In 1952 itself, the Supreme Court in *Aswini Kumar Ghose v. Arabinda Bose*³³ has cautioned the High Courts' against indiscriminate granting of the certificates in a casual manner.³⁴ Further, the Supreme Court interpreted Order XIII Rule



Page: 196

2 and Order XLV Rule 1 of the Supreme Court Rules, 1950 in *Hindustan Commercial Bank Ltd. v. Bhagwan Dass*³⁵ as the appellant cannot approach the Supreme Court under Art. 136 without exhausting the remedy in getting the certificate from the High Court under Art. 132.³⁶ However, the Supreme Court for the ends of the justice can relax this rule. Of late, it is uncommon to see an appeal with the grant of the certificate from the High Court. No party even make an attempt to secure a leave for appealing to the Supreme Court. Article 132 and 133 were just in the textbook and not followed in real spirit.³⁷ Moreover, the Supreme Court Rules either in 1966 or 2013 did not contain any of the provisions as similar to the Rules made in 1950 because the exception became the rule now. Since the last two decades, the Supreme Court adopted a more restrained view in entertaining the SLPs. In *Narpat Singh v. Jaipur Development Authority*³⁸, it observed that 'the exercise of the jurisdiction conferred by Art. 136 is discretionary. It does not confer a discretionary of widest amplitude to use by the Supreme Court for satisfying the demands of justice. On one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or circumstances occasioning gross failure of justice; on the other hand, it is an overriding power whereunder the Court may generously step in to impart justice and remedy injustice.'³⁹ In this connection, it observed that Art. 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any Court or tribunal in India in its discretion.⁴⁰ It is pertinent to mention that in the year 2010, a division Bench consists of two judges⁴¹ in *Mathai v. George*⁴² brought out the apathy of the Supreme Court in entertaining appeals under Art. 136⁴³ moreover, held that



Page: 197

exercise of discretionary power too leniently at present has resulted in the huge backlog of cases and the time has come to authoritatively lay down guidelines for the

exercise of discretion judiciously and referred the matter to Constitution Bench to decide what are the kinds of cases in which discretion under Art. 136 should be applied with the suggestions⁴⁴ given by Mr. K.K. Venugopal and in addition to that the Court also added two categories of cases.⁴⁵ Very recently i.e. on 11/01/2016, it came before the Constitution Bench of the Supreme Court, wherein the Court refused to revisit the scope of Article 136 of the Constitution of India or lay down guidelines regulating the power. The Bench after appraising various cases relating to the exercise of discretionary powers under Article 136 observed that no effort should be made to restrict the power of the Supreme Court under Article 136. It also ruled that there could be no strait-jacketed approach in the exercise of discretionary powers under Article 136, and it depended on a case to case basis.⁴⁶ Thus, it is clear that the firm determination of the Judges alone will make a change in entertaining the petition under Art. 136.

E. Reference under Section 257 of the Income Tax Act, 1961⁴⁷

Income Tax Appellate Tribunal (ITAT), through its President, can refer to Supreme Court under Sec. 257 of the Income Tax Act, 1961, any question of law regarding which there is conflict in the decisions of High Courts, and it is expedient that a reference should be made to the Supreme Court. The invocation of this jurisdiction by the President of ITAT will rarely occur, and there is no precise data to show how much cases arise under this provision. However, it is sure that this reference jurisdiction is used little by the Supreme Court.



IV. STATUTORY APPEALS

Besides the appellate jurisdiction conferred by the Constitution, the Parliament has enacted many Statutes and provide appeal provisions either directly to the Supreme Court from any Court, Tribunal, and Commission or by the leave of the Court, Tribunal and Commission. This also forms substantial portion in the Supreme Court docket. The Statutes, which provide appeals under the above two categories are summarised below:

A. Section 35L of the Central Excise and Salt Act, 1944⁴⁸

It provides for an appeal to the Supreme Court from any judgment of the High Court delivered on a reference made under Section 35G. Further, in any case which the High Court certifies that the case is a fit one for appeal to the Supreme Court, or against any order passed by the Appellate Tribunal relating, amongst other things, to the determination of any question having a relation to the rate of duty of excise or the value of goods for purpose of assessment. Similar to the above provision in Customs Act, this provision also does not confer appeal directly from any judgment of the High Court and does only after the High Court make it through a reference under Sec. 35G of the above said Act or certifies to be a fit one for appeal by granting leave to the Supreme Court. However, the appeal lies directly from the Appellate Tribunal concerning the question relating the rate of excise duty or the value of goods for the purpose of assessment.

B. Section 116A of the Representation of People Act, 1951⁴⁹

It provides for an appeal to the Supreme Court on any question, whether of law or fact, from every order passed by a High Court under Section 98 or Section 99 of the said Act.⁵⁰ This provision also provides appeal directly to the Supreme Court from the

Order of the High Court under Secs. 98 and 99 of the Representation of People Act, 1951. This provision brought as an amendment and came into force in the year 1966 only.

C. Section 38 of the Advocates Act, 1961⁵¹

It provides for an appeal to the Supreme Court from an order made by the Disciplinary Committee of the Bar



Page: 199

Council of India under Section 36 or 37 of the said Act. The above provision confers appeal directly to the Supreme Court of India from the Disciplinary Committee of the Bar Council of India. The Bar Council of India can exercise disciplinary powers under Sec. 36 and by its appellate powers under Sec. 37 of the Advocate Act, 1961.

D. Section 261 of the Income Tax Act, 1961

It provides for an appeal to the Supreme Court from any judgment of the High Court delivered on a reference made under Section 256 against an order made under Section 254 before 1st October 1998 or on appeal made to the High Court in respect of an order passed under section 254 on or after that date, in any case which the High Court certifies to be a fit one for appeal to the Supreme Court. This provision did not provide automatic appeal to the Supreme Court unless the High Court certifies that the present case is fit one for appeal to the Supreme Court. However, sec. 257 deals with the statement of case to Supreme Court in certain cases. It means, 'If, on an application made against an order under section 254 before the 1st day of October 1998 or under section 256 and, if the Appellate Tribunal also views that on account of any conflict in the decision of various High Courts in respect of any particular question of law and, it is necessary that a reference should be made directly to the Supreme Court. While doing so, the Appellate Tribunal may draw up a statement of the case and refer it to its President for addressing it to the Supreme Court.' Thus, by this way of reference also, the appeal may reach to the Supreme Court.

E. Section 130E of the Customs Act, 1962⁵²

It provides for an appeal to the Supreme Court from any judgment of the High Court on a reference made under Section 130, in any case which the High Court certifies to be a fit one for appeal to the Supreme Court, 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 the purpose of assessment. However, it was amended in the year 2005 and instead of an appeal to High Court, National Tax Tribunal was replaced with effect from 28.12.2005, and since the National Tax Tribunal was held to be unconstitutional⁵³, the appeal lies only from the High Court. This provision does not confer appeal directly from any judgment of the High Court. The appeal lies to the Supreme Court only after the High Court either makes it through a reference under Sec. 130 of the above said Act or certifies to be a fit one for appeal by granting leave to the Supreme Court. But, the appeal lies directly from the Appellate Tribunal concerning the question of the relation to the rate of customs duty or the value of goods for the purpose of assessment.



Page: 200

F. Section 19(1) of the Contempt of Courts Act, 1971⁵⁴

It provides for an appeal to the Supreme Court as of right from any order or decision of Division Bench of a High Court in the exercise of its jurisdiction to punish for contempt. The provision is very clear that the appeal shall lie directly to the Supreme Court from any order or decision of a High Court in the exercise of jurisdiction to punish for contempt. No leave of the High Court is necessary to pursue the appeal against the Order of the High Court. The aggrieved party can approach the Supreme Court as a matter of right.

G. Section 379 of the Code of Criminal Procedure, 1973⁵⁵ read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, as amended by the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Amendment Act, 1972⁵⁶

It provides for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceedings of a High Court, if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or to imprisonment for a period of not less than ten years; (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 imprisonment for life or imprisonment for a period of not less than ten years. This provision is similar to Art. 134 of the Constitution of India and it was analysed above in detail. Although the criminal appellate jurisdiction of the Supreme Court has been relaxed both by the Constitutional provision as well as the statutory provision, it did not create more accumulation of criminal appeal cases in the Supreme Court docket.

H. Section 23 of the Consumer Protection Act, 1986⁵⁷

It provides for an appeal to the Supreme Court from an order made by the National Commission, entertaining complaints where the value of the goods or services and compensation, if any, claimed exceeds Rupees One Crore. It provides appeal directly to the Supreme Court from the Order of the National Consumer Commission. There is no leave of the Commission to prefer an appeal to the Supreme Court. As a matter of right,



the aggrieved party can prefer an appeal to the Supreme Court from the Commission.

I. Sec. 19 of the Terrorists and Disruptive Activities (Prevention) Act, 1987⁵⁸

This provision provides appeal as a matter of right against the judgment or Order of the designated Court to the Supreme Court both on law and facts, but the order must not be an interlocutory Order. The appeal shall be filed within thirty days from the date of judgment or Order. However, it can be extended if the Supreme Court satisfies that the appellant has sufficient cause for not preferring the appeal within thirty days. This was the first anti-terrorism law, which was in force between 1985 and 1995. This Act contains many controversial provisions and widely misused by the implementing authority. It invites criticism from different sections of the society, and finally, it made to lapse in the year 1995 since the Act is a temporary enactment.⁵⁹ As of now, the appeal under this Act has got reduced now.

J. Section 10 of the Special Court (Trial of offenses relating to Transactions in Securities) Act, 1992⁶⁰

It provides for an appeal to the Supreme Court from any judgment; sentence or order is not being an interlocutory order, of the special court, both on fact and on law. This provision provides appeal directly to the Supreme Court from the Order of the

Special Court of both on facts and on law.

K. Section 15(z) of the Securities and Exchange Board of India Act, 1992⁶¹

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. This Provision provides appeal to the Supreme Court only on any question of law arising out of the Order of Securities and Exchange Board of India Act (SEBI). This provision was brought as an amendment i.e. SEBI (Amendment) Act, 2002. Before this amendment, the appeal lies to the High Court against the decision or Order of the Securities Appellate Tribunal on any question of fact or law arising out of such order.



Page: 202

L. Section 18 of the Telecom Regulatory Authority of India Act, 1997⁶²

It provides for an appeal to the Supreme Court against any order not being an interlocutory order of the Appellate Tribunal for one or more of the grounds specified in Section 100 of Code of Civil Procedure. This Provision does not permit the parties concerned directly prefer an appeal to the Supreme Court. The appeal could be preferred against the Order of the Appellate Tribunal except the interlocutory Order only if it satisfied the conditions stated in Sec. 100 of the Code of Civil Procedure. Section 100 deals with the second appeal to the High Court from the appellate decrees and also the section enumerates the conditions regarding entertainment of the second appeal. Thus, the similar conditions will apply to the Order of the Appellate Tribunal at the time of considering the appeal to the Supreme Court.

M. Section 53T of the Competition Act, 2002⁶³

It provides for an appeal to the Supreme Court against any decision or order of the Appellate Tribunal. This Act replaced the Monopolies and Restrictive Trade Practices Act, 1969⁶⁴, where Sec. 55 of the said Act provides direct right to appeal to the Supreme Court and in consonance with that provision, the new and replaced, Act also provides right to appeal to the Supreme Court under the above said provision.

N. Section 125 of the Electricity Act, 2003⁶⁵

It provides the appeal from the decision or order of the Appellate Tribunal, and it has to be filed within sixty days from the date of communication of the decision. However, the Court may extend sixty days in addition to the above if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal. This Provision does not permit the parties concerned directly prefer an appeal to the Supreme Court. The appeal can be preferred against the Order of the Appellate Tribunal only if it satisfy the conditions stated in Sec. 100 of the Code of Civil Procedure. Section 100 deals with the second appeal to the High Court from the appellate decrees and also the section enumerates the conditions when the second appeal should be entertained.



Page: 203

O. Section 24 of the National Tax Tribunal Act, 2005⁶⁶

The provision in this Act provides appeal as a right for any person including any department aggrieved by any decision or order of the National Tax Tribunal. The

appeal has to be preferred within sixty days from the date of communication of the decision or Order of the National Tax Tribunal. However, the Supreme Court may permit any appellant to file the appeal beyond the said sixty days if it is satisfied that the filing of appeal has been prevented by sufficient cause. The appeal under this Act will not arise because the Supreme Court has ruled in *Madras Bar Assn. v. Union of India*⁶⁷ that Sections 5, 6, 7, 8 and 13 as unconstitutional based on the violation of the theory of separation of power and judicial independence. By declaring these provisions as unconstitutional, the remaining provisions are rendered ineffective and inconsequential to that, the entire enactment is declared unconstitutional.

P. Section 37 of the Petroleum and Natural Gas Regulatory Board Act, 2006⁶⁸

It provides the appeal from the decision or order of the Appellate Tribunal, which does not include interlocutory orders and it has to be filed within ninety days from the date of Order of the decision. However, the Court may extend the time limit if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. This appeal can be preferred against the Order of the Appellate Tribunal only if it satisfies the conditions stated in Sec. 100 of the Code of Civil Procedure and moreover, no appeal shall lie against the Order of the Tribunal with the consent of the parties.

Q. Section 30 of the Armed Forces Tribunal Act, 2007⁶⁹

It provides for an appeal to the Supreme Court against any decision or order of the Appellate Tribunal. However, this is subject to Sec. 31 of the said Act. It provides leave to appeal to the Supreme Court by the Tribunal when it find a point of law of general public importance is involved in the decision of the Tribunal, or it appears to the Supreme Court that the point is one which ought to be considered by that Court. All these Statutory appeals are in addition to the very wide jurisdiction that the Court enjoys under the Constitution. The appeals from these statutes occupy a substantial portion of Courts' docket.



R. Section 31 of the Airports Economic Regulatory Authority of India Act, 2008⁷⁰

It provides the appeal from the decision or order of the Appellate Tribunal, which does not include interlocutory orders and it has to be filed within ninety days from the date of Order of the decision. However, the Court may extend the time limit if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. This appeal can be preferred against the Order of the Appellate Tribunal only if it satisfy the conditions stated in Sec. 100 of the Code of Civil Procedure and moreover, no appeal shall lie against the Order of the Tribunal with the consent of the parties.

S. Sec. 22 of the National Green Tribunal Act, 2010⁷¹

It provides the appeal from the decision or order of the Appellate Tribunal, and it has to be filed within ninety days from the date of communication of the Order. However, the Court may extend the time limit if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. This appeal can be preferred against the Order of the Appellate Tribunal only if it satisfies the conditions stated in Sec. 100 of the Code of Civil Procedure.

T. Sec. 423 of the Companies Act, 2013⁷²

It provides the appeal from the decision or order of the Appellate Tribunal, and it has to be filed within sixty days from the receipt of the Order of the Appellate Tribunal.

However, the Court may extend the time limit if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. It does not impose any conditions that it has to satisfy as stated in Sec. 100 of the Code of Civil Procedure. Thus, as a matter of right, they can prefer an appeal to the Supreme Court.

U. Sec. 38 of The Pension Fund Regulatory and Development Authority Act, 2013⁷³

It provides the appeal from the decision or order of the Securities Appellate Tribunal, and it has to be filed within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal. However, the appeal can be preferred only on any question of law arising



Page: 205

out of such Order. The Court may extend the time limit for another sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.⁷⁴

V. CONCLUSION AND SUGGESTIONS

It is very clear from the above analyses that the Court is really burdened with the appellate jurisdiction. The majority of the docket comes through Special Leave Petition. The Court also enjoys its discretion in Special Leave Petitions but at the same time, they should consciously aware of the increasing backlog of cases. Besides the burgeoning jurisdiction of the Supreme Court under the appellate jurisdiction of the Constitution, the Parliament is also relegating much burden on the Supreme Court by expanding the appellate jurisdiction of the tribunal or commission. The appeal against the Order of the Appellate Tribunal of the Competition Act, Companies Act, The Pension Fund Regulatory and Development Authority Act; Judgment or Order from the Contempt of Courts Act, Consumer Protection Act and Special Court from Trial of offences relating to Transactions in Securities Act does not require sanction or leave of that particular Commission, Tribunal and Court to file an appeal to the Supreme Court and they can file their appeal as a matter of right. However, the appeals arising from certain Acts like Telecom Regulatory Authority of India Act, The Electricity Act, The Airports Economic Regulatory Authority of India Act, The National Green Tribunal Act, can be entertained by the Supreme Court only if it satisfy the conditions stated in Sec. 100 of the Code of the Civil Procedure i.e. the case should involve a substantial question of law. This situation does not seem to be a tough one. Further, the Sec. 15 (z) of the SEBI Act provides appeal to the High Court and only after the SEBI (Amendment) Act, 2002, the appeal lies to the Supreme Court. Thus, the Parliament is creating more tribunals for different subject matter thereby reducing the burden of regular Courts altogether especially the High Court but increased the workload of the Supreme Court by providing appeal to the highest appellate Court as a matter of right or providing conditions which can be easily circumvent by the litigants. The tribunalisation also had a setback for the Government when the Supreme Court held that the National Tax Tribunal as unconstitutional⁷⁵ but it had succeeded in making the National Company Law Tribunal and National Company Law Appellate Tribunal as constitutional.⁷⁶ The Statute under which the tribunal is created provides an appeal from these tribunals either to the High Court or the Supreme Court. The judicial review of the High Court cannot be ousted even if the appeal is provided directly to the Supreme Court. This has been held in *L. Chandra Kumar v. Union of India*.⁷⁷



Page: 206

However, of late the Supreme Court held in *Union of India v. Shri Kant Sharma*⁷⁸ held that the High Court do not have jurisdiction to entertain Writs under Art. 226 against Orders of Armed Forces Tribunal, where Sec. 30 of the Armed Forces Tribunal Act provides appeal to the Supreme Court by the leave of the Tribunal. Thus, the Parliament's idea of creating more tribunals for speedier justice and to reduce the backlog of cases in ordinary Courts is appreciable. However, at the same time providing appeal directly to the Supreme Court to correct the errors committed by these tribunals and creating an additional burden on the Supreme Court in disposing of appeals is unacceptable. Nevertheless, the appeal arising under Art. 136 of the Constitution hold the major chunk of the Court's docket. Although the Supreme Court shows restrained attitude in hearing SLPs, it is to be noted that the Supreme Court's Constitution Bench refused to revisit the scope and ambit of discretionary power in entertaining appeals under Art. 136. It shows that the Supreme Court hesitant to put self-imposed fetters on their powers by bringing mandatory rules (judiciously) in entertaining SLPs, it may be for the right reason, but it should exercise self-restraint in hearing appeals under Art. 136 and further, the Parliament should not provide appeal directly to the Supreme Court from Tribunals, Commission, and other Special Courts to burden the Supreme Court. The appeal should be provided either directly to the High Court or the Supreme Court by leave of the Tribunal, Commission and Special Court. These above measures alone will convert the Supreme Court from mere appellate Court to Constitutional Court, and the Court also can give more attention to the Constitution Benches to determine the Constitutional questions and fulfil the object for which it was created.

* Assistant Professor (Law), SRM School of Law, SRM University, Kattankulathur - 603 203, Tamil Nadu.

¹ Apoorva Mandhani, Supreme Court Laments over-increasing workload; urges senior lawyers to discuss the issue, LIVE LAW.IN, July 11, 2014, <http://www.livelaw.in/supreme-court-laments-ever-increasing-workload-urges-senior-lawyers-discuss-issue/>.

² Hon'ble Justices Anil Dave, Kurian Joseph, A.K. Goel, Rohinton Nariman and S.K. Singh.

³ INDIA CONST. art. 138: Enlargement of the jurisdiction of the Supreme Court: (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer. (2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

⁴ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 456 (5th ed. 2003).

⁵ INDIA CONST. art. 144.

⁶ *Union of India v. Jyoti Prakash Mitter*, (1971) 1 SCC 396 : AIR 1971 SC 1093, 1100.

⁷ Jain, Supra note 4, at 225.

⁸ RAJEEV DHAVAN, THE SUPREME COURT OF INDIA - A SOCIO-LEGAL CRITIQUE OF ITS JURISTIC TECHNIQUES 123 (1977) [hereinafter Dhavan 1].

⁹ RAJEEV DHAVAN, THE SUPREME COURT UNDER STRAIN - THE CHALLENGE OF ARREARS 46 (1978) [hereinafter Dhavan 2].

¹⁰ Id., at 38.

¹¹ VIJAY K. GUPTA, DECISION MAKING IN THE SUPREME COURT OF INDIA 78 (1995).

¹² Nick Robinson, The Indian Supreme Court by Numbers, 231-232 (Azim Premji University, LGDI Working Paper No. 2012-2, 2012).

¹³ (1970) 1 SCC 708 : AIR 1971 SC 299.

¹⁴ Dhavan 1, Supra note 8, at 122.

¹⁵ AIR 1953 SC 210.

¹⁶ *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*, (1972) 1 SCC 898.

¹⁷ Dhavan 2, Supra note 9, at 23.

¹⁸ *Shivji Nathubhai v. Union of India*, AIR 1960 SC 606 (Central government exercising power of review under R. 54 of the Mineral Concession Rules, 1949 was held to be a tribunal).

¹⁹ *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563.

²⁰ The Court described the nature of this power in *Dhakeswari Cotton Mills Ltd. v. CIT*, AIR 1955 SC 65.

²¹ Dhavan 2, Supra note 9, at 23-24.

²² Gupta, Supra note 11, at 77.

²³ *Id.*, at 81.

²⁴ *Id.*, at 78.

²⁵ *Harinagar Sugar Mills v. Shyam Sundar Jhunjhunwala*, AIR 1961 SC 1669.

²⁶ *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh*, AIR 1964 SC 1140.

²⁷ Dhavan 2, Supra note 9, at 29.

²⁸ *State of Rajasthan v. Kartar Singh*, (1970) 2 SCC 61 : AIR 1970 SC 1305 (where the Court appraised the evidence).

²⁹ *Ram Gopal Chaturvedi v. State of M.P.*, (1969) 2 SCC 240 : AIR 1970 SC 158.

³⁰ *Bharat Kala Bhandar (P) Ltd. v. Municipal Committee, Dhamangaon*, AIR 1966 SC 249.

³¹ Dhavan 1, Supra note 8, at 125-127.

³² *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359 : AIR 2000 SC 2587, 2593.

³³ AIR 1952 SC 369.

³⁴ '.....The petition, however, has been presented before us as an application under Art. 136 of the Constitution for special leave to appeal from the judgment of the Special Bench of the Calcutta High Court. We have been pressed to proceed with the matter on the footing as if special leave to appeal has been given and the delay in the presentation thereof has been condoned by this Court. I deprecate this suggestion, for I do not desire to encourage the belief that an intending appellant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation in the petition as to why he did not apply to the High Court and as to why there has been such delay in applying to this Court should nevertheless get special leave from this Court for the mere asking. As, however, the matter has been proceeded with as an appeal, I express my views on the questions that have been canvassed before us. (*Id.*, at 386, para 69).

³⁵ AIR 1965 SC 1142.

³⁶ In the Supreme Court Rules, 1966, the Special Leave Petitions were dealt under Order XVI and in the Supreme Court Rules, 2013, there is a classification SLP (Civil), which is dealt under Order XXI and SLP (Criminal), which is dealt under Order XXII. In either of these rules, there is no similar provision imposing a mandatory condition to exhaust the remedy in getting the certificate under Art. 132.

³⁷ J. Chelameswar, Supreme Court - Jurisdiction, Problem of Pendency, (2015) 9 SCC J-1.

³⁸ (2002) 4 SCC 666.

³⁹ *Id.*, at 668 and 669.

⁴⁰ *N. Suriyakala v. A. Mohandoss*, (2007) 9 SCC 196.

⁴¹ Hon'ble Justices R.M. Lodha and Markendey Katju.

⁴² (2010) 4 SCC 358.

⁴³ Nowadays it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realising the scope of Art. 136. Hence, we feel it incumbent on us to reiterate that Art. 136 was never meant to be ordinary forum of appeal at all like Sec. 96 or even Sec. 100 CPC. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Supreme Court in the State was expected to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice had been done. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the constitutional scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute. [Id., at 363].

⁴⁴ (i) All matters involving substantial questions of law relating to the interpretation of the Constitution of India; (ii) All matters of national or public importance; (iii) Validity of legislation: Central and State; (iv) *After Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, the judicial review of constitutional amendments; and (v) To settle differences of opinion on important issues of law between High Courts. [Id., at 367].

⁴⁵ (i) Where the Court is satisfied that there has been a grave miscarriage of Justice, and (ii) Where there is a prima facie case relating to the violation of a fundamental right of a person has prima facie been violated. [Id.]

⁴⁶ Apoorva Mandhani, Constitution Bench of Apex Court refuses to revisit the scope of Article 136, LIVELAW.IN, Jan. 13, 2016, <http://www.livelaw.in/constitution-bench-of-apex-court-refuses-to-revisit-scope-of-article-136/>.

⁴⁷ Act No. 43 of 1961.

⁴⁸ Act No. 1 of 1944.

⁴⁹ Act No. 43 of 1951.

⁵⁰ Subs. by Act, 47 of 1966, Sec. 50, for Secs. 116A and 116B (w.e.f. 14-12-1966).

⁵¹ Act No. 25 of 1961.

⁵² Act No. 52 of 1962.

⁵³ Infra note 67.

⁵⁴ Act No. 70 of 1971.

⁵⁵ Act No. 2 of 1974.

⁵⁶ Act No. 28 of 1970.

⁵⁷ Act No. 69 of 1986.

⁵⁸ Act No. 28 of 1987.

⁵⁹ Sec. 1(4): It shall remain in force for eight years from the 24th day of May 1987, but its expiry under the operation of this sub-section shall not affect.

⁶⁰ Act No. 27 of 1992.

⁶¹ Act No. 15 of 1992.

⁶² Act No. 24 of 1997.

⁶³ Act No. 12 of 2003.

⁶⁴ Act No. 54 of 1969.

⁶⁵ Act No. 36 of 2003.

⁶⁶ Act No. 49 of 2005.

⁶⁷ (2014) 10 SCC 1.

⁶⁸ Act No. 19 of 2006.

⁶⁹ Act No. 55 of 2007.

⁷⁰ Act No. 27 of 2008.

⁷¹ Act No. 19 of 2010.

⁷² Act No. 18 of 2013.

⁷³ Act No. 23 of 2013.

⁷⁴ *Keshav Mills Co. v. CIT*, AIR 1965 SC 1636.

⁷⁵ *Madras Bar Assn. v. Union of India*, (2014) 10 SCC 1.

⁷⁶ *Madras Bar Assn. v. Union of India*, (2015) 8 SCC 583.

⁷⁷ (1997) 3 SCC 261 : AIR 1997 SC 1125.

⁷⁸ (2015) 6 SCC 773.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

© EBC Publishing Pvt.Ltd., Lucknow.