

first time provides for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a high court, as of right, in two specified classes of cases —

(a) where the high court has on an appeal reversed an order of acquittal of an accused person and sentenced him to death;

(b) where the high court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death.

In these two classes of cases relating to a sentence of death by the high court, appeal lies to the Supreme Court as of right.

Besides the above two classes of cases, an appeal may lie to the Supreme Court in any criminal case if the high court certifies that the case is a fit one for appeal to the Supreme Court. The certificate of the high court would, of course, be granted only where some substantial question of law or some matter of great public importance or the infringement of some essential principles of justice are involved. Appeal may also lie to the Supreme Court (under *Article 132*) from a criminal proceeding if the high court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

Except in the above cases, no appeal lies from a criminal proceeding of the high court to the Supreme Court under the Constitution but Parliament has been empowered to make any law conferring on the Supreme Court further powers to hear appeals from criminal matters.

While the Constitution provides for regular appeals to the Supreme Court from decisions of the high courts in Articles 132–134, there may still remain some cases where justice might require the interference of the Supreme Court with decisions not only of the high courts outside the purview of Articles 132–134 but also of any other court or tribunal within the territory of India. Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Article 136. This Article is worded in the widest terms possible —

136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal 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.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting special leave, against any kind of judgment or order made by any court or tribunal (except a military tribunal) in any proceeding and the exercise of the power is left entirely to the *discretion* of the Supreme Court unfettered by any restrictions and this power cannot be curtailed by any legislation short of amending the Article itself. It has been observed by the Supreme Court that it would be better to use the said power with circumspection, rather than to limit the power forever. *Mathai v George*, (2016) 7 SCC 700 : (2016) 2 Scale 102.

When the Supreme Court exercises its discretionary jurisdiction under Article 136 of the Constitution, it is in order to ensure that there is no miscarriage of justice. If finding of acquittal by high court is found to be misconceived and perverse, this court can quash such order of acquittal under Article 136 of the Constitution.¹⁸ This wide power is not, however, to be exercised by the Supreme Court so as to