

# Residual Power of Supreme Court

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Special Leave Petitions in India (SLP) holds a prime place in the Judiciary of India, and has been provided as a “residual power” in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is evolved, or gross injustice has been made.

Under Article 136 of the Constitution of India any person aggrieved by any Judgment, decree, determination or order in any cause or matter passed or made by any Court or Tribunal in the territory of India may appeal to the Supreme Court of India. Accordingly a person aggrieved by any order or judgment of High Court or of Tribunal may appeal to the Supreme Court by filing Special Leave Petition.

This is special power bestowed upon the Supreme Court of India which is the Apex Court of the country, to grant leave in any judgment in case any substantial constitutional question of law is involved, or gross injustice has been done.

“Special leave petition or SLP hold a prime place in the India judicial system. It provides the aggrieved party a special permission to be heard in Apex court in appeal against and judgment or order of any Court and tribunal in the territory of India.

## **DESCRIPTION OF THE PROCESS OF FILING OF SPECIAL LEAVE PETITION IN SUPREME COURT OF INDIA**

### **SLP under Article 132 of the Constitution of India:**

Special Leave Petition is filed under Article 132 of the Constitution of India which contemplates for an appeal to the Supreme Court of India from a judgment, decree or final order of a High Court, whether in civil, criminal or any other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution of India. On the basis of such certificate the party can approach the Supreme Court of India and engage a lawyer for SLP in Supreme Court of India and file a SLP in the Supreme Court of India.

### **Appeal by Special Leave Petition (SLP) under Article 136 of the Constitution of India:**

Provides that the Supreme Court of India in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any case of matter passed or made by any Court or tribunal in the territory of India except the Court of tribunal constituted by or under any law relating to armed forces. The party aggrieved by the order of the High Court can engage a

lawyer for SLP in Supreme Court of India and file a SLP against the orders of the High Court.

**Special Leave petition or SLP can be presented under following circumstances:**

1. SLP can be filed against any judgment or decree or order of any High Court/tribunal in the territory of India.
2. SLP can be filed in case the High court refuses to grant the certificate of fitness for appeal to Supreme Court of India.
3. SLP can be filed against any judgment of High Court within 90 days from the date of judgment.
4. SLP can be filed within 60 days against the order of the High Court refusing to grant the certificate of fitness for appeal to Supreme Court.

**Who can file SLP?**

Any aggrieved party can file SLP against the judgment, order or verdict of refusal of grant of certificate by the High Court or directly.

**Procedure for filing special leave petition (SLP)**

***Time limit:***

The Rules Governing SLP are contained in order XVI of the Supreme Court Rules 1966. Under the said Rule, SLP can be filed against either the order of High Court rejecting petition for leave to appeal to Supreme Court of India, i.e., on High Court refusing to grant Certificate of fitness for Leave to Appeal to Supreme Court or against the Order/judgment itself. It is also possible to file SLP against the Judgment of the High Court either in Writ Petition (WP) or in the income Tax Reference. If the petition is filed against the Judgment of the High Court, the time limit is 90 days from the date of Judgment/Order and if the petition is filed against the Order of High

Court refusing to grant Certificate of fitness for Appeal, the time limit is 60 days from the date order refusing to grant Certificate of fitness for Appeal, the time limit is 60 days from the date of Order refusing to grant Certificate. The above time limit is subject to the time taken for obtaining certified copy of the Judgment/Order; i.e., subject to Sections 4,5,12 and 14 of the Limitation, Act, 1963.

**Preparation of Petition:**

1. The petition should state succinctly and clearly all facts as may be necessary to enable the Court to determine whether SLP ought to be granted or not! The petition should be signed by Advocate on record of the Petition.

- (i) The petition should contain statement as to whether the petitioner had filed any petition in the High Court for Leave to appeal to Supreme Court or not! The petition should also contain a statement that no other SLP has been filed by the Petitioner against the Order appealed.
- ii. The Petition should be accompanied by a certified copy of the Judgment appealed against and an affidavit of Petitioner verifying the petition.
- iii. The annexure to the Petition; i.e., Exhibits to the Petition should be certified copies of documents which had formed part of the record in the High Court, if the certified copies are not available, uncertified copies can be filed and an affidavit verifying the Annexure as true copy should also be filed.
- iv. The petitioners has to file seven copies of the petition.
- v. The petition is required to be filed on white paper and not on green ledger paper.

- vi. The petition should be cyclostyled, if possible, typed or printed.

#### **Contents of SLP:**

This petition is required to state all the facts that are necessary to enable the court to determine whether SLP ought to be granted or not. It is required to be signed by Advocate on record. The petition should also contain statement that the petitioner has not filed any other petition in the High court. It should be accompanied by a certified copy of Judgment appealed against and an affidavit by the petitioner verifying the same and should also be accompanied by all the documents that formed part of pleading in lower court.

#### **The Scope of Power Vested with the Supreme Court of India under Article 136 of Constitution of India:**

The Constitution of India vest “discretionary power” in the Supreme Court of India. The Supreme Court of India may in its discretion be able to grant special leave to appeal from any judgment or decree or order in any matter or cause made or passed by any Court/tribunal in the territory of India. The Supreme Court of India may also refuse to grant the leave to appeal by exercising its discretion.

An aggrieved party from the judgment or decree of High Court cannot claim special leave to appeal as a right but it is privilege which the Supreme Court of India is vested with and this leave to appeal can be granted by it only.

An aggrieved party can approach the Apex Court under article 136 in case any constitutional or legal issue exists and which can be clarified by the Supreme Court of India. This can be heard as civil or criminal appeal as the case may be.

#### **Judgments of Various Courts of India on SLP:**

There is catena of Judgments mentioning about the scope of power of Supreme Court under Article 136, the maintainability of special leave petitions. The below mentioned are some of prominent Judgments mentioning about SLP.

- Pritam Singh v. the State (Air 1950 SC 169)(2)
- Kunhayammed vs. State of Kerala (2000) 245 ITR 360 (SC) (3)
- Smt. Tej Kumari vs. (2001) 247 ITR 210 (4)
- N. Suriyakala vs. A Mohan dodos and Others (2007) 9 SCC 196 (5)
- Trupati Balaji Developers Pvt. Ltd vs. State of Bihar AIR 2004 SC 2351,(6)
- Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai AIR 2004 SC 1815
- Mathai @ Joby v. George (2010) (4SCC 358)
- Columbia Sportswear Company v. Directorate of Income Tax (Judgment of Supreme Court of India in SLP no 31543 of 2011)

#### **Affidavit:**

- i. Affidavit verifying the petition is required to be filed along with the SLP. The affidavit should be typed on plain white paper;
- ii. Affidavit verifying the uncertified copies of the Exhibits/Annexure should be filed;
- iii. If the petition is filed beyond 60/90 days the affidavit should be filed explaining the time taken for obtaining certified copy and /or the reason for delay.

**Court Fees Payable:**

- i. On the SLP, the Court fees payable is Rs.250/-
- ii. In case of petition on certificate granted by High Court, the Court fees payable is Rs.250/- if the amount of dispute is Rs.20,000 or less and for every Rs. 1,000/- in excess of Rs. 20,000/- Rs.5/- but the maximum Court fees payable does not exceed Rs.2,000/-.

**Vakalatnama:**

The petitioner should appoint an advocate on record in New Delhi and send Vakalatnama in favour of the proposed Advocate on record who will be filing the SLP.

**Interim Relief and Grant Leave:**

If any interim relief is required a separate application should be filed giving facts and circumstances as to why interim relief is sought from the Court. It is discretionary power vested in the Supreme Court of India and the court may at its discretion refuse to grant leave to appeal.

**Bibliography:**

- a) Constitution of India, 1950

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