

## Litigation & the Indian Supreme Court

**Responsible Faculty Instructor:** Nikhil Parikshith

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**Designation:** Associate Professor of Legal Practice

Credits: 4

Credits Type: Elective

Cross-registration:

Pre-requisites: Constitutional Law, Administrative Law, Code of Civil Procedure, 1908 & Code of Criminal Procedure 1973 / BNSS 2023;

### COURSE DESCRIPTION (COURSE VISION):

The Supreme Court of India is a public institution that has a pervasive influence in our society. Its decisions have shaped the rights of billions including persons living on the fringes of society. As an institution of public accountability it is imbued with the authority to speak truth to power. The rich jurisprudence of the Supreme Court has been shaped by its Justices but also in equal measure by Advocates through their advocacy, intellect and industry. To be a practitioner before the Supreme Court is a matter of immense pride and responsibility. For some it is the pinnacle of a legal career. While the institution has a public character, the functioning of the Court is shrouded in mystery. Navigating the hallowed corridors of the Supreme Court can be daunting particularly for a new practitioner, let alone for a law student. The object of this course is to make the Supreme Court more accessible by shining light on its jurisdiction, procedures and day to day functioning. This course is especially relevant for students who wish to practice in the Supreme Court. For any new Supreme Court practitioner, the learning gap can be steep and fraught with challenges. This course aims to address that gap. A journey of a thousand miles begins with a single step – this course aims to be that single step.

### TEACHING METHODOLOGY:

- Lectures
- Classroom Discussions
- Review of actual Pleadings filed in the Supreme Court
- Drafting of Supreme Court Pleadings: hypothetical problem based

### INTENDED LEARNING OUTCOMES:

<b>Course Intended Learning Outcomes</b>	<b>Teaching and Learning Activities</b>	<b>Assessment Tasks/Activities</b>
<ul style="list-style-type: none"> <li>• Understand the different jurisdictions of the Supreme Court</li> <li>• Understand the</li> </ul>	<ul style="list-style-type: none"> <li>• Reading of case law and theoretical material</li> <li>• Reading pleadings</li> </ul>	Student's ability to grasp and critically evaluate the topics/issues

<p>practice and procedure of the Supreme Court</p> <ul style="list-style-type: none"> <li>• Acquire the ability to read and analyze pleadings filed in the Supreme Court</li> <li>• Acquire foundational knowledge necessary for drafting pleadings before the Supreme Court</li> </ul>	<p>filed before the Supreme Court</p> <ul style="list-style-type: none"> <li>• In-class, drafting exercises.</li> <li>• Students will acquire knowledge of the perspectives pertaining to the topics to be covered in the syllabus.</li> <li>• Students will be expected to debate the topics in light of the readings. This will give them a perspective as to the readings and will also allow them to develop their analytical, critical and creative skills</li> </ul>	<p>discussed in the syllabus will be tested in the following ways:</p> <p>(i) End-semester examination (50%)  (ii) Internal Assessment (50%)</p> <p>Course instructor will inform the students separately about the methods by which the students will be assessed internally.</p>
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READING LIST (upto 10 select readings):

1. Constitution of India
2. Supreme Court Rules, 2013
3. Handbook on Practice and Procedure And Office Procedure (2017) issued by Supreme Court of India
4. The Supreme Court Practice & Procedure by R Venkataramani (Edition: Reprinted 2023) (Mohan Law House)
5. Master of the Roster: Securing Process Legitimacy of the Supreme Court Sudhir Krishnaswamy and Advay Vora 13th Sep 2024 <https://www.scobserver.in/75-years-of-sc/master-of-the-roster-securing-process-legitimacy-of-the-supreme-court/>
6. Legal Notes by Arvind Datar: Reviving the neglected Articles 128 and 224A <https://www.barandbench.com/columns/legal-notes-by-arvind-datar-reviving-the-neglected-article-128-and-224a>
7. Legal Notes by Arvind Datar: The need to reconsider Kunhayammed <https://www.barandbench.com/columns/the-need-to-reconsider-kunhayammed>
8. Legal Notes by Arvind Datar: Per Incuriam and Article 141 <https://www.barandbench.com/columns/legal-notes-by-arvind-datar-per-incuriam-and-article-141>
9. Legal Notes by Arvind Datar: The need to resurrect Articles 132-134A <https://www.barandbench.com/columns/the-need-to-resurrect-articles-132-134a>

10. Indira Jaising, National Judicial Appointments Commission: A Critique, 49(35) EPW 16, 18 (2014)

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
<b>MODULE 1: OVERVIEW ON THE SUPREME COURT OF INDIA &amp; THE COURT'S JURISDICTION</b> <ul style="list-style-type: none"> <li>➢ <b>BRIEF HISTORY OF THE SUPREME COURT OF INDIA</b></li> <li>➢ <b>ARTICLE 141 OF THE CONSTITUTION: LAW DECLARED BY THE SUPREME COURT TO BE BINDING ON ALL COURTS</b></li> <li>➢ <b>SUPREME COURT'S POWER TO DO COMPLETE JUSTICE UNDER ARTICLE 142 OF THE CONSTITUTION</b></li> <li>➢ <b>CIVIL AND JUDICIAL AUTHORITIES TO ACT IN AID OF THE SUPREME COURT UNDER ARTICLE 144 OF THE CONSTITUTION</b></li> <li>➢ <b>SUPREME COURT AS A “COURT OF RECORD”</b></li> <li>➢ <b>JUDICIAL APPOINTMENTS AND COLLEGIUM SYSTEM INCLUDING NJAC CASE</b></li> <li>➢ <b>CONSTITUTION AND JURISDICTION OF BENCHES AND ROSTER OF BENCHES</b> <ul style="list-style-type: none"> <li>▪ Chief Justice of India as “Master of the Roster”</li> <li>▪ Roster of Benches</li> <li>▪ Single Bench - Division Bench - Constitution Bench - Reference to Larger Bench – Constitution of benches for hearing Review Petition (s) &amp; Curative Petition (s);</li> <li>▪ Powers, Duties and Functions of the Chamber Judge and the Registrar</li> <li>▪ Registry of the Court</li> </ul> </li> </ul>	Week 1
<b>MODULE 2: APPELLATE JURISDICTION OF THE SUPREME COURT</b> <ul style="list-style-type: none"> <li>➢ <b>Extra-ordinary Appellate Jurisdiction:</b> Petitions for special leave to appeal (SLP) under Article 136 of the Constitution read with Orders XXI and XXII of the Supreme Court Rules, 2013 ('Rules').</li> <li>➢ <b>Precedential value of the an Order of the Supreme Court dismissing a SLP including leading cases on the same</b></li> <li>➢ <b>Appellate Jurisdiction:</b> (i). Appeals under Articles 132, 133 &amp; 134 of the Constitution read with Article 134A of the Constitution read with Orders IX &amp; XX of the Supreme Court Rules, 2013 &amp; (ii). Appeals arising out of Statutes or any other law for the time being in force.</li> <li>➢ <b>Enlarged Appellate Jurisdiction of the Supreme Court in Criminal Matters:</b> Petitions under Article 134 (2) of the Constitution. <ul style="list-style-type: none"> <li>▪ Kishore Singh v State of M.P., (1977) 4 SCC 524</li> </ul> </li> <li>➢ Judicial meaning of Substantial Question of Law of “general</li> </ul>	Week 2

<p>importance" and "as to the interpretation of the Constitution".</p>	
<p><b>MODULE 2: CONTD.</b></p>	Week 3
<p><b>MODULE 3: ORIGINAL JURISDICTION OF THE SUPREME COURT</b></p> <ul style="list-style-type: none"> <li>➤ 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. <ul style="list-style-type: none"> <li>▪ State of Bihar v Union of India., (1970) 1 SCC 67</li> <li>▪ State of Haryana v State of Punjab., (2004) 12 SCC 673</li> <li>▪ State of West Bengal v Union of India., 2024 INSC 502</li> </ul> </li> <li>➤ 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;</li> <li>➤ 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.</li> </ul>	Week 4
<p><b>MODULE 4: EXTRA-ORDINARY ORIGINAL JURISDICTION OF THE SUPREME COURT</b></p> <ul style="list-style-type: none"> <li>➤ 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;</li> <li>➤ Petitions under Article 32 of the Constitution read with Part III(B) Order XXXVIII of the Rules in the nature of public interest litigation (<b>PIL</b>) seeking redressal of public injury, enforcement of a public duty or vindicating interest of public nature. <ul style="list-style-type: none"> <li>▪ People's Union for Democratic Rights v Union of India., (1982) 3 SCC 235</li> <li>▪ State of Uttaranchal v Balwant Singh Chauhan., (2010) 3 SCC 402</li> </ul> </li> </ul>	Week 5
<p><b>MODULE 5: SUPREME COURT'S JURISDICTION TO TRANSFER CASES</b></p> <ul style="list-style-type: none"> <li>➤ 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.</li> </ul>	Week 6

<ul style="list-style-type: none"> <li>➤ 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;</li> <li>➤ 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.</li> <li>➤ 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; <ul style="list-style-type: none"> <li>▪ Ravinder Nath Agarwal Vs. Yogender Nath Agarwal., (2021) 15 SCC 282</li> <li>▪ Umesh Kumar Sharma Vs. State of Uttarakhand., (2021) 12 SCC 517</li> </ul> </li> </ul>	
<b>MODULE 6: ADVISORY JURISDICTION OF THE SUPREME COURT</b> <ul style="list-style-type: none"> <li>➤ 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. Advisory Jurisdiction under Article 143 is not an appellate jurisdiction. Order XLII to XLV of Supreme Court Rules, 2013 deals with references. <ul style="list-style-type: none"> <li>▪ In re, Cauvery Water Disputes Tribunal, (1993) Supp (1) SCC 96</li> <li>▪ In re, Special Reference No. 1 of 2012, Natural Resources Allocation, (2012) 10 SCC 1</li> <li>▪ Presidential Reference on Powers of the Governor and President (SPL.REF. No. 1/2025 )</li> </ul> </li> </ul>	Week 7
<b>MODULE 7: REVIEW &amp; CURATIVE JURISDICTION OF THE SUPREME COURT</b> <ul style="list-style-type: none"> <li>➤ 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. Order XLVII Rule 1 to 5 of Supreme Court Rules, 2013 deals with the Review Jurisdiction of the Supreme Court. <ul style="list-style-type: none"> <li>▪ Lily Thomas Vs. Union of India, (2000) 6 SCC 224</li> <li>▪ Kamlesh Verma Vs. Mayawati, (2013) 8 SCC 320</li> </ul> </li> <li>➤ 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</li> </ul>	Week 8

<p>or miscarriage of justice to an aggrieved person. Order XLVIII Rule 1 to 4 of Supreme Court Rules, 2013 deals with the Curative Jurisdiction of the Supreme Court.</p> <ul style="list-style-type: none"> <li>▪ Rupa Ashok Hurra v Ashok Hurra, (2002) 4 SCC 388</li> <li>▪ Yakub Abdul Razak Menon v State of Maharashtra, (2015) 9 SCC 552</li> <li>▪ In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, 2023 SCC OnLine SC 1666</li> <li>▪ Delhi Metro Rail Corporation Limited v Delhi Airport Metro Express Private Limited., 2024 INSC 292</li> </ul>	
<p><b>MODULE 8: CONTEMPT JURISDICTION OF THE SUPREME COURT</b></p> <ul style="list-style-type: none"> <li>➢ 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. A contempt petition in the Supreme Court lies under Rule. 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 read with 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. <ul style="list-style-type: none"> <li>▪ In Prashant Bhushan IN RE, (2021) 1 SCC 745</li> <li>▪ E.M. Sankaran Namboodripad v T. Narayanan Nambiar, (1970) 2 SCC 325</li> <li>▪ Reliance Communication Ltd. v State Bank of India, 2019 SCC OnLine SC 240</li> </ul> </li> </ul>	Week 9
<p><b>MODULE 9: PREPARATION, FILING AND LISTING OF CASES IN THE SUPREME COURT</b></p> <ul style="list-style-type: none"> <li>➢ Preparation for Filing of Cases</li> <li>➢ Filing and Processing of Cases (including clearing of defects)</li> <li>➢ Limitation</li> <li>➢ Listing of Cases including procedure for urgent listing of cases</li> <li>➢ Mentioning of Cases: Practice and Procedure</li> <li>➢ Categorization of Cases</li> <li>➢ Procedure After Listing</li> <li>➢ Cause List of the Supreme Court</li> <li>➢ Advocate-on-Record: Duties, Powers and Functions</li> </ul>	Week 10
<p><b>MODULE 10: CLASS EXERCISE ON DRAFTING AND FILING A SPECIAL LEAVE PETITION</b></p>	Week 11
<p><b>MODULE 11: CLASS EXERCISE ON DRAFTING AND FILING A COUNTER AFFIDAVIT</b></p>	Week 12
<p><b>MODULE 12: MISCELLANEOUS APPLICATIONS FILED IN THE SUPREME COURT</b>  <b>[EG. FOR DIRECTIONS, MODIFICATION, INTERIM BAIL, VACATION</b></p>	Week 13

<b>OF INTERIM ORDER, ADDITIONAL DOCUMENTS, EXEMPTION APPLICATIONS]</b>	
<b>REVISION WEEK</b>	Week 14