
Stages of Appeal in Criminal Cases

- S. Rajalakshmi¹

“It is better than ten guilty person escapes than that one innocent suffers”

- William Blackstone,
(*Commentaries on the Laws of England*, 1760)

The indispensable aim and objective of Criminal Law is to protect the society against the criminals and lawbreakers, for the purpose of having holds over the criminal there is a threat of punishment which is an attempt to make the actual offender suffer the prescribed punishment. Indian Criminal law by its nature itself is very extensive, were it includes both substantive law and procedural law. The definition of offence and the punishment prescribed for the offence are all included under Substantive Law, were as the procedures through which it has to be done are contained within under Procedural Law in order to administrate the Substantive Law.

The Code of Criminal Procedure is applicable with respect to the proceeding under criminal justice system, which controls and regulates the working set up from investigation to trial of the offence. It plays dual role under criminal law, on one hand it enhances the power to make strong and effective investigation and adjudicatory process under trial and on the other hand it regulates the abuse of power by police officer, judges and other officials and takes precautionary measure to rectify the human error while rendering justice, through the way of ‘*appeal*’ and ‘*revision*’. CrPC is envisaged as a “balancing point between the conflicts”, because it clearly enumerates the delegated powers of the officials involved in the criminal justice system.

The researcher in this research paper would like to deal about the rectification process involved in the criminal justice system in particular with “appeal” process. This paper would try to explain about the notion of the term ‘appeal’, with inclusive of the stages involved in it and the powers relating to the appeal process with respect to various courts.

2. OVERVIEW OF APPEAL:

2.1 Scope and Nature of Appeal:

One of the components of the fair procedure is *Natural Justice Principle*². This code of Criminal Procedure provides grounds for preserving fair and justice decisions. The Code

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² M.H. Hoskot vs. State of Maharashtra, (1978) 3 SCC 544.

enable the superior court to review and correct the decision made by the lower court through ‘appeal’ and ‘revision’. As the lower courts are duly scrutinized by the superior courts, it certainly gives satisfaction to the ‘aggrieved party’ that all the reasonable effort has been made out to reach a just decision, as it manifest the value upheld in Article 21³.

The term ‘appeal’ is derived from two different Latin word called ‘ad’ (to) and ‘pellere’ (to drive) and later it get modified into ‘appellare’ (to address), it got change over into a French word as ‘apel’ and in Middle English it was called as ‘appeal’.

An “appeal” means right of carrying a particular case from an inferior to a Superior Court. An appeal means a complaint to a Superior Court of an injustice done or error committed by an inferior one, judgment or decision the Court above is called upon to correct or reverse⁴. ‘No right is an inherent right by itself’, it is same in the case of right to appeal also, it is mere right created by the statute and it can only be exercised unless it is expressly provided by the Law itself⁵. This right was served to the aggrieved parties in order to ensure reasonable and fair justice but, this consideration is also based on certain criteria, if the mere chance of error in the judgment of the Trial Court is very remote or if the error stated by the aggrieved parties in the Lower Court judgment is of insufficient nature then the appeal cannot be encouraged in these cases.

2.2 Who is an Accused?

Accused is a person who may be natural or artificial juristic person also. According to Sec. 11 of IPC⁶ the word ‘*person*’ includes company or association or body of persons whether incorporated or not. Similarly it is defined under Sec. 3(32) of the General Clauses Act, 1897 as the ‘*person*’ shall include any company or association or body of individual, whether incorporated or not. But in the context of IPC where it refers to the person punishable for doing or failing to do a specific thing, would normally exclude their application to a body of individual, that doesn’t mean that company or association cannot be prosecuted, they are also prosecuted for certain offence under IPC and other law which is punishable with fine.

If a right of the accused includes the right to engage a counsel as legal right in order to have fair trial, then equal importance is given for appealing a case by the accused if is aggrieved of the judgment given by the Lower Courts. The Supreme Court now has recognized that every needy accused person has a fundamental constitutional right to get free legal services for his defence, not only in the case of trial but this right extents up to appeal also. The provision under Sec. 304 of CrPC doesn’t restrict the accused to engage a legal counsel for his defence in appeal, though it is only provides for the stage of trial of the

³ Article 21 of Indian Constitution, 1950; *See also*, M.H. Hoskot vs. State of Maharashtra, (1978) 3 SCC 544

⁴ Black’s Law Dictionary (4th Edn.) 124.

⁵ Durga Shankar Mehta vs. Raghuraj Singh, AIR 1954 SC 520.

⁶ Section 11 of Indian Penal Code, 1860.

offence under this section⁷. The Legal Services Authorities Act, 1986 came into force in order to envisage Article 39-A⁸ 'to afford legal aid to the indigent accused'.

2.3 When appeal can be claimed and by whom?

The aggrieved parties may file an appeal; it may be in the case of accused or on the side of prosecution. General principle of law is that, appeal is not encouraged under criminal justice system but in a way to mandate the fair and reasonable justice, this Code justifiably allow appeal in certain case which is fairly permitted.

The considerable circumstances in which appeal can be claimed are in the cases of an appeal against the order of conviction or of acquittal and the on the side of prosecution i.e government can appeal on the grounds of inadequate sentence passed on the accused person. At the same time any kind of appeal can be rejected by the Superior if the claim is of insufficient in nature and if the claim of error in the judgment is too remote then appeal cannot be entertained. Mostly second appeal is not entertained. As because it's mere chance for the aggrieved party to gain fair justice, that right cannot be misused.

2.4 Appellate Authorities:

The Court other than the Trial Court or the Court of first instance will be considered as appellate Court in the criminal cases. Generally trial in criminal cases starts at Magistrate Court or Session Court and the appeal can move to High Court and Supreme Court but, in some instances Session Court will also hear appeal case if the Trial begins at Magistrate Court. A right of appeal carries with it a right of hearing on law and as also on facts. Generally re-hearing of facts is not appreciated during appeal but instance only if there are any new facts added then it can be reviewed⁹.

3. MODE OF APPEAL:

Appeal can be seek out in various instances such as in the case of order of conviction or order of acquittal or in the cases of increased punishment for the offences committed or if the prosecution feels that the sentence given for the convict is not enough.

3.1 No Appeal:

It is not necessary that every case has to be heard for appeal. It's at the discretion of the Superior Court to decide whether the case has to be heard under appeal or not in order to render fair and reasonable justice to the needy accused.

3.1.1 No appeal unless provided by law:

⁷ See, Pyar Singh vs. State of M.P 2006 Cri LJ 1354 (MP); Chandra Prakash Gojwel vs. Inspector of Police, 2006 Cri LJ 1791.

⁸ Article 39-A of Indian Constitution, 1950.

⁹ State of Kerala vs. Sebastian, 1983 Cr LJ 416, 418 (Ker).

Right to Appeal is not an inherent right, it just the creature of statute, so it gains power only through Statute itself. Sec. 372 of CrPC¹⁰ enumerates the general principles that no appeal shall lie from any judgment or order of a criminal cases except as provided by the Code or by the other law which authorizes appeal. This provision gives right to the victim to file an appeal before the High Court; this generated more debates among different High Courts expressing different views, at last they hold on a common point that the right of victim to appeal is limited to three categories.

3.1.2 No appeal in petty cases:

Main criteria for moving on an appeal is that the person must basically be an accused, if the charges against him are proved then he will be convicted, in that cases he cannot go for an appeal if he his punished according to Sec. 376 of CrPC because those cases are classified as petty cases. There are four circumstances, namely;

- a) while High Court passes only sentences of imprisonment for a term not exceeding 6 months or of the fine amount not exceeding Rs. 1000, or both;
- b) while Sessions Court or Metropolitan Magistrate Court passes only a sentence of imprisonment for a term not exceeding 3 months or of the fine amount not exceeding Rs. 200, or both;
- c) while first class Magistrate passes only a sentence of fine not exceeding Rs. 100; or
- d) while, in a case tried summarily, a magistrate empowered to act under Sec. 260, CrPC passes only a sentences of fine not exceeding Rs. 200.

At the same time exceptions are given under the same proviso, if any other punishment is combined with it then appeal can be claimed. But merely under further grounds appeal is not encouraged;

- i) if that person is convicted is ordered to furnish security to keep the peace; or
- ii) if that a direction is given for imprisonment in default of payment of fine is included in the sentence; or
- iii) if more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

However, for the purpose of the convict to appeal, the aggregate of the consecutive sentences of the imprisonment passed against him at one trial shall be deemed to be a single sentence as mentioned in Section 31(3), CrPC.

¹⁰ Section 372 of Criminal Procedure Code, 1973, Amendment Act 5 of 2009.

3.1.3 No Appeal where the accused is convicted on his plea of guilty:

The Code clearly explain this context under Sec. 375, when accused pleaded guilty and he has been convicted based on that, there shall be no appeal

- a) if the conviction is by a High Court; or
- b) if the conviction is by a Session Court, Metropolitan Magistrate or First class Magistrate or Second class Magistrate, except as to the extent of the legality of the sentence.

The reasoning given behind this restriction is that a person who deliberately pleads guilty cannot be aggrieved by being convicted. If the accused is convicted by any Court based on his plea of guilty then that person is denied of exercising the right to appeal. But it is subject to exception that, if it is proved that the plea of guilty is not a 'real one' and it is obtained out of force or coercion then it is not considered as 'plea of guilty', as the act is not a voluntary or free act, so on this ground appeal is allowed, provided that the facts are true and if the punishment given under conviction is more than the nature of the offence and legality then also it can be appealed.

Nevertheless, there is a common exception to this ground of plea of guilty is that, if the person is convicted and sentenced by the High Court under his plea of guilty then he is not allowed to appeal even with the extent of nature and legality of the sentence¹¹.

3.2 Appeal against the order of Convictions:

Appeal against the order of conviction can be made if there are sufficient grounds and error or illegality occurred on the part of Judiciary. It can lie before any Courts but, Second appeal is generally not allowed under this Code yet, it is also subjected to exception because the powers of Supreme Court are extended through amending Enlargement of Criminal Appellate Jurisdiction Act, 1970.

3.2.1 Appeal to Supreme Court:

In this circumstance, the appeal lies before the Supreme Court only when the High Court acts as the trial Court under these grounds mentioned below;

a) High Court act as a trial Court under its *extra-ordinary original criminal jurisdiction* convicted a person then he may go for appeal to the Supreme Court and it shall not lie before another bench of the same High Court. (Sec. 374(1),CrPC.)

b) On an appeal if High Court reversed the order of acquittal of an accused and convicted and sentenced him to death or to imprisonment of life or to imprisonment for 10 years or more, then he can go for second appeal to Supreme Court. (Sec. 379, CrPC.)

¹¹ See, 41st Report, pg.no: 259, para. 31.11.

c) High Court should grant a certificate stating that the case involves in substantial questions of law only then appeal can be allowed. And any final order or decree passed by the High Court in cases withdrawn for trial before itself from any Court subordinate with its authority and has convicted and sentenced him. (Art. 132(1), Indian Constitution)

d) If High Court refuses to give certificate, only then Supreme Court will decide upon it through granting special leave¹² under a condition that the case must involve in a substantial question of law. (Art. 132(2), Indian Constitution)

e) A person may appeal before the Supreme Court under any grounds, only if the issue is involved with substantial question; even with or without special leave. (Art. 132(3), Indian Constitution.)

The case which does not come under clause (a) and (b) of Article 134 (1) or under Sec. 379, CrPC cannot move on an appeal to Supreme Court against the order of conviction. According to Art. 136(2), nevertheless, this rule does not apply to the any order or judgment or sentence passed or made by any Court or Tribunal constituted under the law relating to armed force.

3.2.2 Appeal to High Court:

A person convicted by any Trial Court such as Session Court or any Magistrate Court the appeal lies before High Court. If the Trial is held by any Session Judge or an Additional Session Judge in which sentence of imprisonment is awarded more than 7 years has been passed against him or against any other person convicted under the same Trial may appeal before the High Court¹³. if the appeal lies before the High Court then the judgment given by the Lower Court will be held in stay until the pending of the appeal¹⁴.

If in an instance the Trial is conducted by an Assistant Session Judge meanwhile, he is promoted or invested with the power of Addition Session Judge or Session Judge, then the judgment given by the him can be challenged or appealed only before the Session Judge, the Allahabad High Court held that appeal in this case would lie only to Session Judge and not to High Court as the accused was convicted “on a trial held by” an Assistant Session Judge and not by Additional Session Judge. Mere delivery of judgment after becoming Additional Session Judge will not affect the position of the Trial¹⁵.

If the accused is tried and acquitted in the Magistrate Court and on appeal to High Court the judgment is reversed, the accused is convicted and then the case is sent back to the Trial Court for sentencing, in this situation the appeal does not lie before the Sessions Court,

¹² Article 136 of Indian Constitution, 1950.

¹³ Section 374(2) of Criminal Procedure Code, 1973

¹⁴ V. Sundararami Reddi vs. State, 1990 Cri LJ 167 (All); S.M. Malik vs. State, 1990 Cri LJ, 1919 (Del)

¹⁵ Bakshi Ram vs. Emperor,(1938) 39 Cri LJ 345.

if it lies before it, it's not maintainable because that forum has not convicted the accused, as the conviction part is done by the High Court the appeal should lie only before the High Court as it is the accurate forum for appeal¹⁶.

3.2.3 Appeal to Session Court:

In respect of all restriction imposed by the Code, the appeal lie before Sessions Court if any person is,

i) Convicted under the Trial conducted by the Metropolitan Magistrate or Assistant Session Judge or First Class or Second Class Magistrate; or

ii) Sentenced under Sec. 325; or

iii) In respect of whom the order has been made or a sentence has been passed under Sec. 360 by any Magistrate.

3.2.4 Special Right of Appeal:

When more than one person is convicted under one trial, and if appealable order is passed with respect to any one of the convict then, all or any person convicted in such Trial can exercise right to appeal. This is a special right of appeal given to the accused under Sec. 380 in certain cases where if he is in a situation that he can't appeal then in that case he can use rights of other person who has been convicted under the same Trial and the judgment is of appealable nature.

3.3 Appeal by Government against inadequate sentence:

Increasing the revisional power of High Court was not a satisfactory idea but, at later stage there was numerous numbers of cases facing inadequate sentencing so, in order to rectify the error committed, the State was the only party given an opportunity to appeal; this was include under the provision of Sec. 377, CrPC.

i) In any case of conviction held by the Trial Court or any Court other than High Court the State Government can direct its Public Prosecutor to move on an appeal under the grounds of inadequate sentencing; appeal may lie before,

a) Sessions Court if the sentencing is passed by the Magistrate during the Trial, and

b) High Court if the sentencing is passed by any other Court.

Sec. 377 was amended in 2005, which permitted the file an appeal in the Sessions Court rather than in the High Court that to only if the sentence is passed by the Magistrate, this facility has been made only for the administrative purpose¹⁷.

¹⁶ C. Gopinathan vs. Krishnan Ayyappan, 1991 Cri LJ 778 (Ker).

ii) if the accused is convicted in a case in which the investigation is conducted by Delhi Special Police Establishment, which is constituted by Delhi Special Police Establishment Act, 1946 or by any other agency which has power to make investigation of the offence under any Central Act other than this Code, the Central Government can direct the Public Prosecutor to appeal before; a) Sessions Court, if the Magistrate Court has passed sentence; and

b) High Court, if any other Court has passed the sentence;

iii) when an appeal is filed under the ground of inadequacy, the appellate Court (includes High Court and Sessions Court) shall not enhance the sentence without giving reasonable opportunity of showing cause to the accused against the enhancement of the sentence, in this case the accused may even plead for acquittal or for reducing his sentence

This sub-section does not apply to an appeal under Art. 136¹⁸. And issue of notice to show cause upon the accused before considering the enhancement of sentence is must, if notice is not issued then any enhanced sentence passed is invalid¹⁹.

Sec. 377 does not restrict the accused to appeal for reducing his sentencing but in the appropriate cases the High Court and Sessions Court act suo moto to decide and enhance the sentence. At the same time the prosecutor shall not be allowed to plead that accused is guilty for graver offence; he can only plead for enhancement of sentence under the grounds of inadequacy²⁰.

3.3 Appeal against the order of Acquittal:

Appeal against the order of acquittal is an extra-ordinary remedy, which can be exercised only by the Government; in some case appeal can be instituted by the Government as well as by the complainant. Sec. 378, CrPC explains about the appeal against the order of acquittal, instance the appeal only lies before

a) Session Court, if an order of acquittal is passed against the accused in the Magistrate Court in respect of the cognizable and non- bailable offence; it is instituted by the Public Prosecutor under the direction of District Magistrate.

b) High Court, if an original or appellate order of acquittal is passed against the accused by any Court, other than High Court; it is instituted by the Public Prosecutor under the direction of State Government.

¹⁷ Section 377 (1) of Criminal Procedure Code – Amendment Act, 2005.

¹⁸ State of U.P vs. Dharamendra Singh (1999) 8 SCC 325.

¹⁹ Surjit Singh vs. State of Punjab, AIR 1984 SC 1910.

²⁰ Eknath Shakarrao Mukkawat vs.State of Maharashtra, (1977) 3 SCC 25.

This proviso mandate that the direction is to given by the State Government or by the District Magistrate to the Public Prosecutor to institute an appeal, where he can't act on his own or misuse his power if he does so it will be invalid, this was inserted under 2005 amendment²¹. It can be explained in other way, in which a situation where it is impossible to have a Public Prosecutor for presenting an appeal on behalf of the State, it would be legitimate to invoke the maxim "*lex non cogit ad impossibilia*" which means 'dispensing performance of what is prescribed when performance of it is impossible'²².

If any order of acquittal is passed in any case in which the offence is investigated by any agency empowered under Central Act or any other Act other than this Code, the Public Prosecutor may be directed to appeal before High Court or Sessions Court as mentioned in above proviso (S.378(2)). The right of appeal under this provision can be exercised only after obtaining the leave of the High Court i.e only after receiving certificate of appeal from the High Court (S. 378 (3)). If the order of acquittal is passed by Magistrate Court or Sessions Court for whatever offence it may be the appeal in every case of acquittal may only lie before High Court on the grant of special leave (S. 378 (4)).

The Supreme Court has restated the principles of the appeal against the order of acquittal and interference by the High Court in *Ajit Savant Majagvai vs. State of Karnataka*²³, in order to govern and regulate the hearing of appeal in High Court;

1) In an appeal against the order of acquittal, High Court possesses all the power while hearing the appeal on acquittal and it is same as that for appeal against conviction.

2) High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and finding in the place of findings of the Trial Court, if the said findings are against the weight of the evidence on records.

3) Before reversing the finding of acquittal, High Court has to consider each ground on which the order of acquittal was based and to record its own reason for not accepting those grounds and not subscribing to the view expressed by the Trial Court that the accused is entitled to acquittal.

4) In reversing the finding of the acquittal, High Court has to keep in mind the fact that the presumption of innocence is still available in favor of the accused and the same stand fortified and strengthened by the order of acquittal passed in his favour by the Trial Court.

5) If High Court, on fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

²¹ Section 378 of Criminal Procedure Code, 1973 – Amendment Act – 2005.

²² J.M. Almedia vs.State, 1980 Cri LJ 145 (Goa JCC).

²³ Ajit Savant Majagvai vs. State of Karnataka, AIR 1997 SC 3255.

6) High Court has also to keep in mind that the Trial Court had advantage of looking to the demeanour of the witness and observing their conduct in the Court specially in the witness – box.

7) High Court has to keep in mind that event at that stage the accused is entitled to the benefit of doubt. The doubt should be reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

Under Article 144, Limitation Act, in an appeal from an order of acquittal by the State, the period of Limitation is 90 days (3 months) from the date of order of appealed from; it is not necessary to wait until the grant of leave by the High Court, an appeal can be filed by the State, if the leave sought for is not granted by High Court, then appeal is not entertained and stands dismissed²⁴. This rights which is given to the State cannot be restricted under the provision of Sec. 378 (4) and (5), CrPC, since it is a right given to the independent complainant, if the complainant is a public servant within the expiry of 6 months an appeal is to be filed and if the complainant is a private person within the expiry of 60 days. However, there is an exception to right to appeal as above mentioned if the grant of special leave to appeal by the High Court is refused then no appeal can be entertained under High Court or Session Court (Sec.378(6)).

3.5. Appeal by Victims:

The only proviso which gives rights to the victim to appeal is Sec. 372 as it was inserted in the Amendment Act 5 of 2009, which came into effect from 31st December 2009. It gives right to the victim to file an appeal in the High Court against any order of a Criminal Court acquitting the accused or convicting for lesser offence or the imposition of inadequate compensation²⁵. It confers a right only to the victim and also does not envisage an appeal against an inadequate sentence. The term “victim” is defined under Sec. 2(wa) of the Code - which means that a person who has suffered any loss or injury caused by revision of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heirs.

This created more debate among the different High Court which came up with disparate interpretation. Right to appeal is subject to the leave of High Court as mentioned in the other cases under Sec. 378. This view is being countered by the argument that the right of the victim is absolute. The right of victim limited to three category is intended to be absolute and that is in consonance with the aim of the legislature to protect the victim. In this respect Sec. 357A of the Code it has extended the victim’s right of compensation by inserting “Victim Compensation Scheme” in the Amendment Act of 2008.

²⁴ State of Rajasthan vs. Ramdeen, (1977) 2 SCC 630.

²⁵ Neeraj Tiwari, “Legislative Framework and Judicial Response To The Victim’s Right Of Appeal”, (2013) 9 SCC J-13.

4. POWER OF APPELLATE COURT:

The Court other than Trial Court are considered as Appellate Court which should be of the higher rank and not of the lower rank if appeal is made to the lower Court then that appeal is invalid. Mostly, High Court act as an appellate Court but in certain circumstances the appeal may lie before Session Court if the Trial is conducted by the Magistrate Court and appeal may even lie before Supreme Court in the rare instance, only under the leave of the High Court. The power of the Appellate Court is given under Sec. 386, CrPC which envisages two basic requirement for the appellate Court; i) before or on hearing the appeal the material on record of the case is must ii) Appellate Court must hear the claims of both the parties, if it is complainant or pleader or Public Prosecutor, because hearing both side is one of the natural justice principle.

A) No interference is needed – if the appellate Court considers that there is no sufficient ground for interfering and then it can dismiss the appeal.

B) Appeal from an order of acquittal – if the appellate Court reverses the order of acquittal then it can direct for further inquiry or that the accused be retried or committed for trial, or find him guilty and pass sentence on him according to law.(Sec. 386(a)).

The principle which is to be followed during the appeal against the order of acquittal is state in the previous chapter.

C) Appeal from an order of Conviction – i) the appellate Court may reverse the finding and sentence this would lead to acquittal or discharge the accused, or order him to be ‘retried’ by a Court of competent jurisdiction subordinate to such appellate Court or committed for Trial, or

ii) it may alter the finding, maintaining the sentence, or

iii) it may with or without alter the findings, alter the nature or the extent, or the nature and extent of the sentence, but not so as to enhance the same. (Sec. 386 (b)).

D) Appeal for enhancement of Sentence – the appellate Court follows the same procedure as that of the appeal on conviction; only difference is here in this case appellate Court may order for enhancement of sentence at the same time reduce the sentence of the accused (Sec. 386 (c)).

E) Appeal from any other order – the appellate Court may alter or reverse any such order passed by the Trial Court (Sec. 386 (d)).

F) Consequential or incidental orders – the appellate Court can make any amendment or consequential change in the order to make it just and proper (Sec. 386 (e)).

Consequential or incidental orders are the complement to the main order passed by the Trial Court, it is a supportive order passed by the appellate Court which follows the path of the main order.

G) No dismissal of Criminal Appeal for default – This Code doesn't contain any provisions for dismissal of an appeal for default or for an appeal becoming infructuous²⁶.

This is of the view that finality is attached to the appellate judgment, once the Court hears the appeal cases it decides not to dismiss the appeal summarily, but it should give reason for its conclusions²⁷.

5. OTHER PROCEDURES ON APPEAL:

i) Second Appeal – this right to second appeal is only applicable only to the cases which lies on an appeal to High Court and in which the order is being reversed and convicted the accused and sentenced him to death or to imprisonment for life or to imprisonment for terms of 10 years or more, in this situation he can appeal to Supreme Court (Sec. 379, CrPC).

ii) Hearing of Appeal in Session Court – the power of appeal is given to Sessions Court for the administrative purpose, Sec. 381 provides for the procedure to follow; a) appeal to Session Court will lie before Session Judge and it is heard by Sessions Judge or Additional Sessions Judge. And at the same time appeal against conviction on the trial held by the Second class magistrate will be heard and disposed by Assistant Session Judge or a Chief Judicial Magistrate.

b) All appeal to the Session Court lies only before the Session Judge, then he will transfer the cases to the Additional Session Judge, Assistant Session Judge or Chief Judicial Magistrate, were as these Judge has no power to hear the appeal cases directly.

iii) Petition of Appeal – all the appeal should be made in the form of petition in writing and it must be presented by the appellant or his pleader and the petition must be presented directly before the Court by attaching the copy of the judgment or order against which it is appealed so the fact are not modified by the appellant and the Court to have clearly and initial view of the case²⁸. The petition of appeal should specify the grounds of appeal²⁹ (Sec. 382, CrPC).

iv) Appellant in Jail – if the appellant is in jail, then he may present his appeal from jail by attaching the copy of judgment or the order against which appeal is filed can be send through jail superintendent on his behalf and submit before proper Appellate Court. In some other case, even the pleader of the accused can also file an appeal to the proper Appellate Court by attaching the copies of judgment or order against the appeal, on his behalf.

²⁶ State vs. Ram Gopal, 2006 Cri LJ 2805 (Del).

²⁷ Balan vs. State, 1981 Cri LJ 1549 (Ker).

²⁸ Mukand Lal vs. State, 1979 Cri LJ 105(Del).

²⁹ Kapil Deo Shukla vs. State of U.P, 1958 Cri LJ 262.

v) **Summary dismissal of Appeal** – General Principle of law is that appeal cannot be dismissed, as it is the only right given to the accused so it cannot be denied. But there is a way to dismiss the appeal informally that is done through ‘summary dismissal’- for the purpose of not delaying the formal proceeding, explained under the provision Sec. 384, CrPC.

1) After all examination of petition and the copies of the judgment received under S. 382 and S. 383, if the appellate Court feels that it has no sufficient grounds to interfere, so it may dismiss the appeal summarily; provided that – a) in an appeal presented under S. 382, appellant or his pleader had a reasonable opportunity to be heard b) in an appeal presented under S. 383, appellant had a reasonable opportunity to be heard, except in the case that the Court feels the appeal is of frivolous in nature or if the custody of the accused is before the Court would involve in such inconvenience as it would disproportionate in the circumstances of the cases. c) Before the expiry of the period preferred to appeal under S.383.

2) Before dismissing the appeal the Appellate Court will call for record of cases.

3) Dismissal of appeal is applicable only for Sessions Court and Magistrate Court, where it shall also record reasons for doing so.

4) If any appeal present under S.383 is dismissed summarily and at later stage the Appellate Court finds that there is another appeal filed by the same accused under S.382 then Court on considering the interest of the accused will hear and dispose the appeal.

vi) **Procedure for Hearing Appeal not dismissed summarily** – if the appellate Court does not dismiss the appeal then it send notice of time and place at which appeal can be heard will be given to 1) appellant or his pleader 2) Public Prosecutor 3) complainant, if the appeal is from judgment of conviction and 4) accused, if the appeal is under S.377 or S. 378 and shall also furnish with the copies of ground of appeal to all the above mentioned person. The appellate Court may send the records of the case to the accused (Sec. 384, CrPC).

vii) **Judgment of Sub-ordinate Appellate Court** – the rule mention under S.358 – S.363 in Chapter – XXIII for the judgment if original jurisdiction of Criminal Court shall apply as such to the judgment in the appeal to the Session Court or Chief Judicial Magistrate; and it is applicable only if the appellate Court direct for the presence of the accused to hear the judgment delivered (Sec. 387, CrPC).

viii) **Order of High Court on appeal certified to Lower Court** – a) if the High Court decides on the appeal, the judgment or the order shall be certified to the lower court, and if the Court is of Judicial Magistrate Court other than Chief Judicial Magistrate then order or the judgment shall be sent through District Magistrate.

b) The Court from the appeal is been moved to High Court will be certified with the judgment or the order passed by the High Court, so that the appropriate Court make necessary order to conformable to the judgment or the order of the High Court, it can be amended if it is necessary.

ix) Suspension of Sentence pending on appeal ; release of appellant on bail – 1) if an appeal is pending the appellate Court may release the accused on bail under his own bond on writing. Provided that in the order against the accused, he has been convicted for death or imprisonment of life or imprisonment not less than 10 years, regarding this bail the show cause notice is to be sent to Public Prosecutor and he must be given an opportunity to file an application of cancellation of bail.

2) same power applies to High Court on an appeal by the convicted person and also to a Court Subordinate.

3) the convicted person demanding bail on his appeal must intended to prove that he was imprisoned for not less than 3 years and where the offence committed on which appeal is made is bailalble. If the convicted person is released on bail then he is given time to appeal and his period of sentence of imprisonment is suspended as he is released on bail.

4) when a bail is grant for the appellant for whom the sentencing is to life or imprisonment is for term, then the time period he is released shall be exclude in computing the term for which he is sentenced(Sec. 389, CrPC).

x) Arrest of Accused – under Sec. 390, CrPC if an appeal presented on Sec. 378, and if the High issues warrant against the accused then he can be arrested before it or any subordinate Court in order to commit him or to admit bail.

xi) Collection of Evidence directly - the appellate Court has the power to take evidence directly and it may direct other sub-ordinate Court to collect for additional evidence, such evidence collected by the Session Court or the Magistrate Court shall certify it to the appellate Court. Even the accused or his pleader has the right to present the direct evidence to the Appellate Court (Sec. 391 CrPC).

xii) Appellate Court Judges are equally divided – when the appeal is heard it should be according to the High Court Rules, if the judgment or order is given by the Single judge he constitute a bench, then appeal should be made before larger bench with at least two judges (Sec.392 CrPC).

xiii) Finality of Judgment on appeal - the order or the judgment passed by the Appellate Court upon appeal case shall be considered to be final as it is decided on merits with regard to conviction, acquittal and enhancement of sentence (Sec. 393, CrPC)

xiv) Abatement of Appeal – Every appeal against order of acquittal or conviction abates on the death of the accused, except in the case of sentence of fine, as liability can be carried on to his legal representatives . But in the case of appeal on the order against conviction, the appellant dies and the sentence is death or of imprisonment, in which the appeal does not abate; the pending suit may be continued by the near relatives like spouse, parents and lineal descendent, within 30 days of the death of the appellant by applying to the appellate Court for a leave, if it is granted then appeal can continue under Sec. 394, CrPC.

CONCLUSION:

Indian Judiciary mainly concerns about the welfare of the people as a whole, which is inclusive of accused also. The Code of Criminal Procedure is structured in a way that it enhance the welfare of the accused, the best example out of it is the ‘right to appeal’ this remains us the fairness and reasonableness entrusted by the Natural Justice Principle. Even this is supported by the constitutional provision which envisage the free legal aid to the poor accused and it has been reasonably interpreted and enlarged the scope of free legal aid to the accused even in the stage of appeal. Mostly these kinds of interpretation are in the favour of accused it’s because right to appeal is the only right available to him at this stage.
