

ORIGIN OF APPEAL (CRIMINAL)

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AN ANCIENT AND MEDIEVAL ORIGIN - ROME

- The *Provocatio ad populum*. Roman citizen has the right to appeal against death sentence and severe punishment to the *populam* assembly.
- Emperor was the authority.
- Only citizen had this right, non- citizen did not-
- Appeals were discretionary not automatic.

AN ANCIENT AND MEDIEVAL ORIGIN - MEDIEVAL EUROPE

- Feudal Court had no formal appeal system.
- "Writs of error" in Royal Courts allowed review of mistakes but only for nobles on clergy
- **Catholic church**
 - Developed canonical appeals to the Pope
- **English Common law**
 - The Court of Kings Bench, review the lower counts decision
 - No appeal on facts, only on law
 - Required Royal permission.
 - 19th Century Birth of Modern criminal Appeal.
 - England. Criminal Appeal Act 1907
 - Created the Court of Criminal Appeal.
 - Question of law and facts, are dealt with.
 - Question of Sentence also considered in U.S.A.
 - Federal Court - Judiciary Act of 1789 allowed Appeal but scope was limited.

20TH CENTURY

U.S.A Constitutionalized the appeal.

England established Court of Appeal (Criminal Division).

HISTORY OF CRIMINAL APPEALS GRADUALLY SHIFTED FROM ROYAL DISCRETION TO LEGAL RIGHT FOLLOWING

- Rule of law
- Wrongful Conviction
- Human right standards.
- Fair trial

CRIMINAL APPEAL IN HINDU LAW AND JURISPRUDENCE

Hindu law rooted in Indian legal tradition primarily derived from Dharma sastras. As per Hindu law criminal appeal was not formal. Due process was followed in structured hierarchical review. Appeal was discretionary. Initiated by the aggrieved party or petitioner focused on errors in procedure, evidence on interpretation of 8000 shastric principles . There was no professional lawyer. Self-representation was promoted or elderly persons given assistance.

*Manu smriti (chap-8) (8.14 - 15) implying appellate scrutiny to avoid "adharma" with the help of wise persons.

*Yajnavalkya Smriti (2.1-18) allow appeal in criminal case for manifest injustice, including excessive sentence.

Village Assembly Court , Panchayat and Local Tribunals deals with petty cases. Order of the Tribunal, appeal may be preferred to District Court. Narada smriti (1.17) .

Mid-level offences - Multi Judges Court against such order appeal may be preferred in Kings Court

Appeal may be presented orally or in writing. No automatic right appeal required "Vyavahara Dosh"(legal flaw) evidential -error, procedural lapses, Excessive punishment. Appeal to be disposed of within one lunar month (preferably).

- New evidence may be taken
- No Jury, no adversarial System was followed.
- Absence of professional advocate but kin, friends or wise person may be allowed to present the case.
- Appeal prioritized Prayashchitta (atonement) over retribution.
- Equality and Dharma were followed in appeal.
- Kautilya in his Book Artha Sastra advised to Consult Jurists for disposing the appeal.
- King has to follow "Raj dharma"

ISLAMIC LAW

Sharia has to be followed. There is no express provision of Appeal in Islamic law. But Emperor could pardon or revise the sentence against the order of Qazi. In limited scale may be appealed before provincial sadav (chief religious Judge)

MEANING OF APPEAL

- Appeal means applying to a higher court - for a re-consideration / re-evaluation of decision of a lower court.
- It is a judicial re-examination of a case by a higher authority.
- Appeal court can affirm, reverse modify or remand the decision.

APPEAL IS A CREATURE OF -STATUTE - NO ONE CAN CLAIM IT AS A FUNDAMENTAL RIGHT- VIDE DURGA SHANKAR MEHTA VS RAGHUNAJ SINGH AIR

1954 S.C 520

AN APPEAL IS A CONTINUATION OF THE ORIGINAL PROCEEDINGS. APPEAL ALLOWS AN AGGRIEVED PARTY TO APPROACH A SUPERIOR COURT- TO CHALLENGE THE LEGALITY, PROPRIETY OR CORRECTNESS OF A JUDGEMENT, SENTENCE PASSED BY A LOWER CRIMINAL COURT.

WHO CAN FILE AN APPEAL

- Accused person - against an order of conviction on sentence.
- State Government- through public prosecutor against acquittal or for enhancement of sentence.
- Complainant- in complain case. (with leave).
- Victim
- Legal representative - of a deceased accused or complainant- in limited circumstances.
- Jail appeal. - Appeal filed by the convict from jail. without engaging private lawyer. S.383 c.r.p.c. 421 B.N.S.S.
- Both the appeal arises from same Judgement - filed by the both parties separately, cross appeal be heard together and disposed of by a common a judgement.

LIMITATION PERIOD: FOR FILING OF APPEAL

- By Convicted person - 30 days from the date of Judgment-
- By state Government - 30 days.
- By complainant - 60 days.

Delay may be condoned u/s 5 of the limitation Act - if sufficient cause is shown. Period of getting certified an authenticated copy of impugned order / judgment-is to be exempted from that period.

POWER OF THE APPELLATE COURT-

S.386 C.R.P.C/ 430 BNSS

- Dismiss the appeal (if no merit).
- Reverse the finding.
- Acquit the accused.
- Or convict the accused, or rehearing, and can take evidence.
- Alter the nature and extent of sentence.
- Enhance the sentence (after giving opportunity to the accused to be heard).
- Remand the case to lower court.

APPEAL IN BOTH A QUESTION OF LAW AND FACT,
APPEAL COURT CAN RE-APPRECIATE THE –EVIDENCE.

NO APPEAL IN CERTAIN CASES: -
WHEN ACCUSED PLEADS GUILTY AND IS CONVICTED
ON SUCH A PLEA (EXCEPT AS TO THE EXTENT OR
LEGALITY OF SENTENCE).

In Criminal Appeal, court is to see/ appreciate i.e. evaluates, examine and weighs whether the conviction or acquittal is maintainable or not dismiss the appeal (if no merit).

- Appeal Court- re-appreciate oral and documentary evidence as a count of- fact and law.
- count should not interfere merely because another view is possible. interference only can be done If the trial court's view is perverse, illegal or impossible on based on inadmissible and illegal evidence.

State of Rajasthan v Islam (2011) 6 scc 673

- When only fine up to RS. 1000/-in case of crpc RS 2000 in case of BNSS imposed.
- Imprisonment is lay than six months and fine is less than Rs 1000/ (BNSS)
- When an order of acquittal is passed only state can appeal (Not the complainant unless permitted)

SPECIAL FEATURE IN B.N.S.S.

- Encourages digital appeal filing
- Fine limit for no appeal – Rs 2000/-
- Principle of appeal in crpc is also followed by B.N. SS with modern languages and clarity.

DECISION AFTER HEARING OF APPEAL

- Appeal Dismissed (conviction upheld) Trial courts findings are reasonable legal and based on evidence. NO interference warranted.
- Appeal allowed means conviction. Set aside acquitted. conviction is unsustainable due to lack of evidence, reverse.
- Conviction altered (s. 386(b)) conviction under wrong section e.g. s. 302 I.P.C. instead of 304 of I.P.C.
- Sentence Modified - Reduce or enhance the sentence Proportionality - should be maintained with reason.
- Retrial ordered - if trial is vitiated on 8 due to biased findings.
- Summary Dismissal (S.384 crpc) If the appeal is frivolous or no arguable Case. May dismissed without full hearing
- Presumption of Innocence: the accused retains the benefit of doubt -
 - Appeal Court- should not interfere when two views are possible then took trial Court's- view not against the accused without strong reasoning.
- Appeal Court- is to see whether trial Court- mis applied the law, misinterpreted statutes or violated procedural fairness e.g. non-Compliance with s. 313 c.r.p.c. inadmissible evidence S. 27 of evidence Act.
- Factual findings reversed only if
 - No evidence supports the findings.
 - Fed finding based on inadmissible evidence
 - Finding is patently perverse
 - Sentence Reviewed for proportionality and legality.
 - If excessive or without reasons.
 - Enhanced only in appeal by state. (S.377 of crpc).

KEY JUDICIAL PRONOUNCEMENTS

- **Chandrappa v State of Karnataka (2007) 4 scc 415.**
 - Presumption of Innocence continues
 - Benefit of doubt to accused.
 - Appeal Court can re-appreciate evidence
 - No interference unless findings are perverse
 - High Court can convert the sentence vice versa
- **State of Goa v Sanjay Thakran (2007) 3 scc 755.**
 - Perversity - finding which no reasonable man could arrive at.
- **Aruna Chalam v PSR Sadhanontham (1979) 2 scc 297**
 - Appeal is a statutory right, must be appreciated on merit
 - In fact , the appeal court acts as a guardian on justice, nor as second trial Court. It corrects the grave errors not minor discrepancies.

CRITICAL JUDICIAL DOCTRINE

- Two views theory - If two views possible view favouring the accused prevails.
- Last Seen theory - Needs Close temporal link, motive is sine qua non.
- Dying declaration - Can be sole basis but must be wholly reliable there must not be any & chance of tutoring.
- Hostile whiteness - Not wholly unreliable part credence possible.
- Circumstantial evidence - Chain must be complete there should not be any missing link.
- Special Knowledge.
- Expert evidence / forensic evidence.
- Defence case must be considered.

THE HIDDEN LAYERS

- Appeal lies only against- judgement not- every orders. S. 374 of c.r.p.c Appeal from conviction and Sentence. No appeal from interim orders exception u.s. 11 of the Contempt of- courts Act,
- State appeal against acquittal has wider Scope. (Section 378cr.p.c)
- Pre appreciation of evidence and hearing. Appeal Court does not sit as a Second trial Court. It Court substitutes its view.
- Short Commings - Demeanour of -witness is lost - oral evidence can't be appreciated in it's right perspective – Therefore intrinsic contradiction on documentary evidence to be considered too after appreciate the oral evidence
- Benefit of non-putting case v/s 313er. p. c - if incriminating circumstance not put the accused – Cannot be used against the accused. (Nursing v State of Haryana2015)
- Perversity - Not mere error finding of fact - is such which no reasonable man could reach.
- Sole dying declaration can be ground of conviction if it is corroborated by other circumstantial evidence and scientific evidence.

THE HIDDEN LAYERS

- Sentence is matter of discretion but not absolute. Appeal court interferes only when No reasons given s. 354(3) crpc. Disproportionate to crime. Ignores mitigating factors (e.g. age, first offender, family etc)
- Reformative vs Retributive balance should also be maintained. Probation of offender's Act should be kept in mind.
- Condonation of delay is not automatic in filing appeal. Sufficient cause must be shown not vague but specific cause must be shown.
- Death of appellant – Conviction appeal Abates (s. 394 crpc) but sentence appeal survives if legal representative pursues. (for fine recovery)
- Power to convert findings must be done with care and caution s. 386 (b) (1) of crpc .
- Retrial in double edged sword only if trial is vitiated (e.g. Judge is biased, evidence not recorded or considered) Not for filling up the lacunae.
- High Court can dismiss appeal in limini - no arguable case, no detailed judgement refined violates Article 21 of the constitution.
- Additional evidence is exceptional s. 391 c.r.p.c. For just- decision of case that is important or evidence existed at trial but. could not be produced. But- nor for filling up the gaps.
- Acquittal Appeals - Double presumption in favour of accused – Presumption of innocence and benefit of doubt must be given to accused. if not compelling circumstance/reasons.
- No regular Third appeal. It could be if only for substantial infraction of law, gross miscarriage of justice.

- Conviction by Assistant Sessions Judge in view of - s. 28(3) crpc - imprisonment less than seven years appeal would lie to session Judge not High Court.
 - chha chunno v. State of U.P. 1990
 - er.l.3 1057. Abdul Kadin VS State of
 - Tripura 2003 c.l.3 4045.
- **Jail Appeal**
 - Jail Appeal is an appeal filed by a convict - from jail without engaging private lawyer - through jail superintendent to the Appeal Court. s.383 crpc/ s.421 B.N.S.S.
- **Purpose**
 - Ensure access to justice for the prisoner.
 - Prevents miscarriage of Justice by allowing judicial scrutiny
 - Upholds Article 21 of the constitution
 - Court - may assign legal aid counsel. u/s 304 of cr.p.c 343 of BNSS.

CROSS APPEAL

- Cross appeals occurs when both the parties file separate appeals against- same judgement.
- Accused file against- Conviction and State file for enhancement of Sentence.
- Both the appeal heard together, court- clubs both and heard in the same sitting by common judgement Disposed of both appeals.
- Separately numbered even though the appeals are separate.
- The operative order applies both.
- No separate Section provides for clubbing the appeals.
- State of Rajasthan vs. Ram Naresh (2009) 12 s.c.c. 194 - cross appeal
- T Venkatesh Murthy vs State of Karnataka (2004) 7 sec 763. - Disposed of by common Judgement
- Reference for Confirmation of Death Sentence, High Court hears even if accused does not prefer appeal.
- Lawyer must be engaged to defend the accused through legal aid.
- The hearing must be held at least- two judges of the High Court's. 371 c.r.p.c/ s. 477 BNSS.
- On confirmation by the High Court session court issues the warrant of execution.
- After confirmation accused may file appeal before Supreme court.

THANK YOU FOR YOUR PATIENCE