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Changing Contours of Appeal under Criminal Law

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Abstract – It is a fundamental requirement of the fair procedure that it must contain provisions for the review of Judgments, orders and sentences passed by the court.Until the enactment of the Criminal Appeal Act of 1907 (repealed) a modern and satisfactory system of Appellate review was not available. The constitution of India and the Cr.P.C. 1973 provide for a review of decision of lower court by appropriate Appellate/Provisional authority.

Accordingly "Appeal" denotes the right of carrying a particular case from an inferior to a superior court to ascertain whether the judgment is sustainable. An appeal is a peripheral of the statute and there is no inherent right of appeal.

As per black's law dictionary: A proceeding assumed to have a decision re-examined by higher authority; predominantly, the submission of a lower Court's or agency's decision to higher court for review and possible reversal.

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INTRODUCTION

The main objects of criminal appeals are to check the mistakes and errors of decision. The Cr.PC therefore, provides for "Appeals" and thereby enables the Superior Courts to review and correct the decisions of the lower courts. Apart from its beings a corrective device, the review procedure serves another important object.[2] The review of the case by superior courts, in a way, assures the aggrieved party that all reasonable efforts have been made to reach a just decision free from plausible errors, prejudice and mistakes.[3]

APPELLATE SYSTEM: A HISTORICAL GLIMPSE

Hindu Period

During the Hindu Period in Ancient India, Hindu Society, institution and beliefs gradually developed and defined in particular shape. The king was the Supreme authority of his State and Highest Court of appeal. His functions involved the protection not only of his kingdom against external aggression but also of life, property and traditional custom against internal foes.[4] There was the court of chief justice (Pradvivaka) next to the king who had assigned with the responsibilities to take up the matters according to territorial jurisdiction. In this period, separate tribunals were made and the appeals moved from tribunal of guild to local court and then to Royal Judges and finally to the fountain head of justice, the King.[5]

Muslim period

The Judicial structure which existed in India during Muslim rule on the studied under the 'Sultanate Period' from 1206 A.D. to 1526 A.D. and thereafter under the 'Mughal Period' starting from 1526 A.D. and which lasted upto 1680 A.D. In Mediaeval India the Sultan conferred headship of the state, he was the ultimate authority to administer justice in his kingdom. The administration of justice was one of the important functions of the Sultan, which was actually done in his name in three capacities. Diwan-e-Mazalim (as head of bureaucracy), Diwan-e-Qaza (arbitrator), Diwan-e-Siyasat (as commander-in-chief of forces).[6] There was an existence of six courts at the capital of the Sultanate, may be stated as:

The King's Court, Diwan-e-Mugalim, Diwan-e-Risalat, Sadre Jehan's Court, Chief Justice's Court and Diwan-e-Siyasat.[7] In each province (Subah) at the provincial headquarters five courts were established, namely, Adalat, Nazim Subah, adalat dari-e-subah, Governor's bench (Nizam-e-Subah's Bench), Diwan-e-Subah and Sadre-Subah.

In each district (Sarkar), at the District headquater, six Courts were established namely dazi, Dabbaks or Mir Adils, Faujdars, Sadre, Amils, Kotwals. Two courts namely daz i-e-parganah and Kotwal were

established at each parganah headquarter. **:** A parganah was divided, into a group of villages. There was a village assembly or panchayat, a physical structure of five leading men to look after the executive and judicial affairs. Mughal Period marks beginning of a new era in the Legal History of India: In India the Mughal Period begins with victory of Babar in 1526 over the Last Lodhi Sultan of Delhi. During this period, the Imperial Capital of India at Delhi, is highest courts of the empire empowered with original and appellate jurisdictions were established. During this Mughal Period a gradations ,of courts, having powers were established all over the empire..[8]

British Period

Prior to British rule there was no uniform law of criminal procedure for India as a whole. There were separate acts, very rudimentary in character, which were meant to guide the procedure of courts in the farmer provinces presidency towns and Indian states. The Indian laws and courts are closely modeled on the English pattern. The Indian laws and courts are closely sculptured on the English pattern By the foundation of East India Company under Crown's chapter of 1600. The history of their introduction and development begins[9] The right of appeal was granted to the Privy Council from the judgements of the courts in India under the Charter act of 1726 granted by George-I. Till 10 October, 1949, the privy council, sitting in England, was the Supreme appellate tribunal for India.[10]

The Govt of India Act, 1935, made a change in the structure of superior courts in India. The Act constituted the Federal Courts.[11] Sections 205 to 207 of the provided act conferred appellate jurisdiction on the Federal Court in appeals from High Courts respectively in British India and in Federated States.[12] The Federal Court interfered when there was failure of record a clear finding by the Appellate Court on the vital issue in the case.

Abolition of Privy Council jurisdiction

By virtue of the provisions of the abolition of Privy Jurisdiction Act (Constituent Assembly Act V of 1949) the jurisdiction of the Privy Council to entertain and dispose of appeals and petitions in criminal matters had ceased with effect from 10th October, 1949, except certain pending cases mentioned in Section 4 of the said Act. When on 26th January, 1950 the constitution of India came into force The Govt. of India Act, 1935,was repeald in its entirely.[13]

Establishment of Supreme Court

The Supreme Court of India was established by virtue of Article 124, and it succeeded the Federal Court by virtue of Article 374 of Constitution of India. The Supreme Court now considered the apex body of the judicial system of India. Resembled with the house of Lords in England, it is final appellate tribunal of the land. The Criminal Justice System introduced by British rules in India was queer mixture of Anglo-Saxen judicial principles and available traditional and practices of the indigenous people. Undoubtedly, the system of criminal justice innovated by British rule in India worked satisfactory for over a century and it proved so successful that even after the Indian Independence almost the same judicial arrangement has been retained with minor changes here and there.

APPEAL UNDER CODE OF CRIMINAL PROCEDURE, 1973

The Right of Appeal in Criminal cases in enumerated in Chapter XXXIX under the provisions of Section 372-395 of the code of Criminal procedure, 1973. The object of the chapter is to enable the superior courts to review and correct the decisions of the lower courts and to inspire in the public mind a better confidence in the administration of criminal justice.

Section 372 lays down the general principle that no appeal shall lie from any judgement or order of a criminal court except as provided by the code or by any other law for the time being in force. The right of appeal in a criminal matter is a statutory and not inherent right. Section 376 provides for the exclusion of petty cases. The Section intended to restrict the right of appeal given under Cr. P.C. "No appeal in petty cases" marginal note: A petty case does not necessarily mean a case which is of a petty nature, using the word 'petty' in the sense of "not serious". The word 'petty' obviously has reference to the shortness of sentence of imprisonment or of smallness of five. According to Section 375, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal :

(i) if conviction is by High Court; or

(ii) if conviction is by Court of Session, Metropolitan Magistrate or Magistrate of the first class or second class, except as to the extent or legality of the sentence.

The object of this provision is to limit the right to appeal when the accused has pleaded guilty concept as regards the extent or legality of the sentence.[14] The High Court can dismiss it in a Criminal appeal against conviction, if court is of opinion that there is no sufficient ground for interference after examining various grounds urged to challenge decisions of lower court. The High Court may not examine entire record for purpose of arriving at an independent conclusion.[15]

Section 380 of Code retained special right of appeal in certain cases. Prior to this Section, divergent views were expressed on the question, whether, if a person who is given a sentence which is ordinarily non-appealable is tried jointly with a person who is given an appealable sentence, the former obtains a right of appeal which he would otherwise not have. The following rulings held that there was a right of appeal.

If the conviction which has been passed unequally in any case in which offence has been investigated by DSPE or by any other agency empowered for the investigation into an offence under any Central Act other than this code, the Central Government may also direct PP to presentation appeal to Court of Session, if sentence is passed by Magistrate and to High Court, if sentence is passed by any other Court against sentence on ground of its inadequacy. The State Government may if the person is convicted on a trial held by any court other than a High Court, direct PP to prefer on appeal to Court of Session, if sentence is passed by Magistrate and to High Court, if sentence passed by any other Court.

The appeal in case of acquittal has been enumerated in Section 378 of Code. The Code has amended the Section recently in order to guard against the arbitrary exercise of power and to reduce reckless acquittals, to provide that on appeal against on order of acquittal passed by a magistrate in respect of police report would lie to court of Sessions, and the District Magistrate will be authorized to direct the PP to file such appeals. Section 5 of the Limitation Act, 1963 applies to condonation of delay in filling on appeal against acquittal by Government and Article 21 of constitution of India is not violated thereby. The Code is general and not a special law. Primer facie therefore, provisions of Section 5 of Limitation Act will apply to applications for leave to appeal. Time limit is 60 days laid down in sub-section (5) is a special law of limitation and there is nothing in this special law which expressly excludes applicability of Section 5 of Limitation Act.[16] A reading of Section 381 of Code would show that only appeal included in the provision on a trial held by a Magistrate of 2nd class, could be heard and disposed of by an Assistant Sessions Judge or CJM. It is only these appears that could be made over to them by the Sessions Judge. After discussing above various provisions relating to criminal appeals it becomes pertinent to consider the mode in which appeals are filed and how orders are filed and how orders are filed and how orders are passed on them. The relevant law is dealt with under 4 broad headings namely :

a) Petition for appeal

b) Presentation of Jail appeal

c) Summary dismissal of appeal.

d) Procedure for hearing appeals not dismissed summarily.

POWERS OF THE APPELLATE COURT

The powers include powers discussed under Section 386, incidental powers as additional evidence, suspension of sentence, arrest of accused in appeal from acquittal, abatement of appeals and the Judgements of subordinate Appellate Court, certification and finality of judgements. The Section defines powers of the Appellate Court in dealing with appeals. The powers enumerated are vested in all courts, whether the High Court or Subordinate Courts, except that clause (a) of the Section is restricted to the powers of the High Court only since an appeal against an order of acquittal lies only to that court, while clause (b) of the Section is not so restricted and embraces all courts. There is no distinction as regards powers of High Court in dealing with an appeal from an order of acquittal and that from a conviction, The High Court has full power to review at large all the evidence upon which order of acquittal was founded and to reach conclusion that upon that evidence, it is also settled law that where the case turns on oral evidence of witnesses, the estimate of such evidence by the trial court is not to be lightly set aside.[17] This dismissal of appeal for default/non-prosecution is not contemplated in Cr. PC, such as order is non-est.[18] The intention of legislative in enacting Section 391 is to empower Appellate Court to see that justice is done between prosecution and person prosecuted, and if Appellate Court finds that certain evidence is necessary in order to enable it to give a convict findings, it would be justified in taking action under this Section.[19] The intention of legislative in enacting Section 391 is to empower Appellate Court to see that justice is done between prosecution and person prosecuted, and if Appellate Court finds that certain evidence is necessary in order to enable it to give a convict findings, it would be justified in taking action under this Section.[20]

The purpose of legislative in enacting Section 391 is to authorise Appellate Court to see that justice is done between prosecution and person prosecuted, and if Appellate Court finds that certain evidence is requisite in order to enable it to give a convict findings, it would be vindicated in taking action under this Section.[21]

An indigent accused, person may be involved in an appeal case either as a respondent in an appeal against his acquittal, or as an appellant seeking redress against mistakes and errors in order of conviction passed against him by the Trial Court either case, liberty of indigent accused person may be in jeopardy and hence Article 21 of Constitution would require appeal procedure to be 'reasonable', fair and just' procedure. As an essential ingredient of such a procedure, as has been held by the

Supreme Court in Hussainara Khatoon (iv) Vs. Home Secretary, State of Bihar,[22] it will be necessary to provide at State expense, a lawyer to an indigent accused person be he the respondent on the appellant, if he is unable to pursue one due to his poverty or indigence.

OTHER LEGISLATIVE PROVISIONS ON APPEAL

In our criminal justice system there are constitutional and statutory provisions for the exercise of criminal appeal. The Appellate jurisdiction exercised by Supreme Court is conferred by Article 132 to 136 of the Constitution. Articles 132, 133 and 134 provide when an appeal there under would lie and when not. The grant of certificate under Article 134 (1) (c) is not a matter of course but power is to be exercised after considering what difficult questions of law or principles were involved in the case which should require further consideration of Supreme Court. The High Court must exercise power of certification with great circumspection and reasons for granting certificate must be apparent on face of order itself so that Supreme Court may know exactly the High court's difficulty and what questions of outstanding difficulty or importance the High Court feels the Supreme Court should settle.[23] There is no difference in substance between a criminal and civil appeal. In both the cases, the right being a vested right, vesting from date of institution of proceedings, it cannot be altered or taken away by any subsequent legislation passed during the pendency of action.

PENDENCY OF APPEALS

The speedy justice informed by fairness remains the primary objective of every civilized criminal justice system, as justice delayed is justice denied. The constitution of India which became operative from January 26, 1950 does not expressly provide for right to speedy justice as a fundamental right. Under the expanded and broad sweep of Article 21, the right to speedy justice was brought under Constitutional guarantee by Supreme Court through a series of judicial decision.

The process began with the Hussainara pronouncements[24] by the Supreme Court in 1979, these decisions are described as historic incident resulting from strange combination of circumstances arising from certain coincidences. In *Hussainara Katoon (I) vs. Home Secretary, Bihar[25]* it was held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded reasonable, just or fair so as to be in conformity with requirement of Article 21. In Hussainara (II),[26] the Court re-emphasized the expeditious review for withdrawal of cases against under trials for more than two years. In Hussainara (II),[27] the court reiterated that investigation must be completed within a time-bound programme in respect of under trials and gave specific orders to be followed for quick disposal of cases of under trial. In Hussianara (iv),[28] in continuation of Hussaianara (I) and Hessianara (III), the court considered affidavits filed in response to its earlier orders and passed further directions. The right to speedy trial encompasses all the stages, namely stage of investigation, inquiry, trial, appeal, revision and re-trial.

CONCLUSION & SUGGESTIONS

Constitution of India reflects quest and aspiration of mankind of justice when its preamble speaks of justice in all its forms : social, economic, and political. Those who have suffered physically, mentally or economically approach courts, with great hope, for redressal of their grievances. The present study indicates that the court of appeal exercises an important role in upholding high judicial standards including judicial discipline in courts. The study reveals that Appellate Courts power in judging judicial conduct and in securing high standards of judicial conduct and in securing high standards of judicial behaviour in court is manifold. The study reveals, that in India, delay in disposal of Criminal Appeals has become a great problem. It has been observed that delay and uncertainty in application of Criminal procedure render even best penal laws useless and oppressive.

At the end it becomes desirable that being parties to international agreement and treaties like GATT, WTO we have to March forward with advancement in fields of science & technology, trade and commerce so as to not only retain but increase our share in prosperity & achievement & for that purpose it would be necessary to have an efficient & effective justice delivery system at affordable casts. It is my firm belief that the steps I propose to suggest if taken in right earnest will go a long way in reducing burden of appeals & it may be possible to bring them within manageable limit. Many of these suggestions have already been made at different jorums. The need of hour is to act upon these suggestions swiftly & decisively.

REFERENCE

1. MC Millan, Encyclopedia of Crime and Justice 62-67 (Free press, New York, Vol. I).

2. Walker's Oxford Companion to Law (1980).

3. Bryan A. Grover. Beack's Law Dictionary; 8th Edition.

4. P.V. Kane, History of Dharamsastra, (Pona, 1953, Vol. IV, pp. 56-103.

5. Kane, n. 1, pp. 242-316.

6. Ibid.

7. S.K. Puri, Indian Legal and Constitutional History, (Allahabad; 1989), Seventh Edition, pp. 14-23.

8. Dr. A.L. Shrivastava (1953). The History of Culture of Indian People, (Delhi, 1953) Second Edition, Vol. VI, p. 104.

9. Rama Jois (1984). Legal and Constitutional History of India, (Delhi, 1984), Vol. II, p. 191.

10. J.P. Eddy's article, "India and Privy Council : The last appeal", 66 L & R 206, 208.

11. Govt. of India Act, 1935, Section 208 & 212.

12. Raja Khan vs. The Crown, 52 Cr. LJ 231.

13. Constitution of India, Article 395.

14. 21 Cr. LJ 547.

15. Kanwar Bhadur Singh vs. Sheo Baran Singh and State of UP, AIR 2003 SC 2066.

16. Mangu Ram vs. Delhi Municipality, AIR 1976 SC 105.

17. Prem Das vs. ITo, AIR 1999 SC 1079.

18. Kishan Singh vs. State of U.P., 1996 SCC (Cri.) 1010.

19. Dulla vs. Emperor, AIR 1926 Lah 309.

20. Dulla vs. Emperor, AIR 1926 Lah 309.

21. Dulla vs. Emperor, AIR 1926 Lah 309.

22. 1979 Cr. LJ 1045.

23. Ibid.

24. Hussainara Khatoon vs. Home Secretary, State of Bihar, AIR 1979 SC pp. 1360, 1369, 1819.

25. Hussainara Khatoon (I) vs. Home Secretary, State of Bihar, AIR 1979 SC 1360.

26. Hussainara Khatoon (II) vs. Home Secretary, State of Bihar, AIR1979 SC 1369.

27. Hussainara Khatoon (III) vs. Home Secretary, State of Bihar, AIR 1979 SC 1377.

28. Id., at 1369.

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