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Appeal Under The Code Of Civil Procedure, 1908 (CPC)

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1. Abstract

The Code of Civil Procedure, 1908 (CPC), is one of the most important procedural laws in India. It provides the framework for the fair and efficient resolution of civil disputes. Among its various provisions, the right to appeal is one of the most vital. An appeal gives a party the right to approach a higher court if they are dissatisfied with the decision of a lower court. It ensures that no injustice remains uncorrected and that judicial errors, whether of fact or law, can be reviewed and rectified.

However, the appeal process also has its drawbacks. It can lead to long delays in justice, increase litigation costs, and cause backlog in courts. Despite this, appeals remain a cornerstone of natural justice and the rule of law.

Here we will discuss in detail the concept, nature, and types of appeals under the Code of Civil Procedure, 1908. It explains the statutory framework, constitutional connection, important case laws, challenges faced by the appeal system, and possible reforms to make it more effective. The study concludes that while appeals are necessary for justice, they must be regulated to ensure speedy and fair adjudication.

2. Keywords

Appeal, Civil Procedure Code, Judiciary, Justice, Substantial Question of Law, Right to Remedy, Natural Justice, Delay, Frivolous Litigation, Access to Justice.

3. Research Methodology

This research is **doctrinal** in nature, which means it is based on a detailed study of laws, statutes, and judicial decisions rather than on fieldwork or empirical data.

Sources of Data:

- **Primary Sources:**

- The Code of Civil Procedure, 1908.
- The Constitution of India, 1950.
- Important Supreme Court and High Court judgments interpreting the law of appeals.

- **Secondary Sources:**

- Google search, Law Bhoomi
- Some u tube videos – Physics Lawwala etc.

4. Introduction

Justice is the foundation of a civilized society. The courts play a crucial role in ensuring that justice is done in every case. However, judges are human, and mistakes can happen while deciding a case - either in understanding facts, interpreting laws, or applying legal principles.

To correct such mistakes, the law provides a mechanism called **Appeal**. An appeal allows a higher court to re-examine the judgment of a lower court and decide whether it is correct or not. The appellate court can confirm, modify, or set aside the decision of the lower court.

An appeal is not an inherent or natural right. It is created by statute -which means a person can file an appeal only if the law specifically allows it. Under the CPC, the appeal system ensures that no wrong decision remains uncorrected and that justice is done not only in substance but also in procedure.

The appeal system, however, has two sides. While it provides a second chance to the aggrieved party, it also causes delay and prolongs litigation. Therefore, a balance must be maintained between fairness and finality of litigation.

5. Constitutional Perspective

Though the right to appeal is not a fundamental right, it supports several fundamental principles laid down in the Constitution of India.

1. Article 14 – Equality before Law

The right to appeal ensures uniformity in the application of law and protects individuals from arbitrary or biased judgments. By giving a higher court the power to review decisions, it ensures equality before law.

2. Article 21 – Right to Life and Personal Liberty

The Supreme Court has interpreted Article 21 to mean that the procedure established by law must be fair, just, and reasonable. The appellate process is part of this fairness because it provides an opportunity to correct judicial errors.

3. Article 39A – Equal Justice and Free Legal Aid

This Article ensures that justice is not denied due to economic or other disabilities. It indirectly supports the right to appeal by making sure that even the poor have access to higher courts through legal aid.

In conclusion, the right of appeal strengthens constitutional values by promoting equality, fairness, and justice.

6. Statutory Framework of Appeals under the CPC

The Code of Civil Procedure, 1908 provides a detailed system for appeals in civil matters. It recognizes **four kinds of appeals**:

(1) Appeals from Original Decrees (Sections 96–99, Order XLI)

- This is called the **First Appeal**.
- It can be filed against any decree passed by a court exercising original jurisdiction.
- It can be made on questions of fact as well as law.
- The first appeal lies to the court authorized to hear appeals from the court that issued the decree.

Example: If a civil judge passes a decree in a property dispute, the appeal can be made to the District Court or High Court, depending on the pecuniary jurisdiction.

FIRST APPEAL – Sections 96 to 99 of CPC

- The first appeal is the first opportunity for a party who is not satisfied with a judgment or decree of a lower court to approach a higher court for review.
- It helps to correct any mistakes of law or fact made by the trial court.

Section 96 – Appeal from Original Decree

- This is the main provision for first appeals.
- It says that:
 - A party aggrieved by a decree passed by a court exercising original jurisdiction (that means the trial court) can appeal to a higher court.

Simple Explanation:

- If a District Court passes a decree (final decision), the party who is not happy with that decision can file a first appeal in the High Court or in another court authorized by law.

Key Points under Section 96 Who can appeal?

Any person aggrieved by the decree (that is, the person who feels the decision has gone against them).

What can be appealed?

- A decree (final decision of the court).
- Not every “order” can be appealed (only certain orders under Section 104 & Order 43 Rule 1).
- No appeal from consent decree (Sub-section 3):

If both parties agree to a decree (called a consent decree), then no appeal is allowed. *example:*

If both sides agree to settle the case and the court passes a decree based on that agreement, it cannot be appealed.

- Ex parte decree can be appealed (Sub-section 2):

If a decree is passed ex parte (i.e., in the absence of one party), the absent party can file a first appeal.

- Appeal from small cause court (Sub-section 4):

If the decree is passed by a Court of Small Causes, appeal is allowed only if the amount or value of the subject matter exceeds ₹10,000 (or as fixed by law).

Section 97 – Appeal from preliminary decree

A preliminary decree is one that decides some rights but not all - like deciding shares in a property but not yet dividing it.

This section says:

If a party does not appeal against a preliminary decree, they cannot later challenge it when appealing against the final decree.

Example:

1. In a partition suit, the court first passes a preliminary decree fixing shares of each person.
2. If you do not appeal at that stage, you cannot later challenge the share division when the final decree is passed.

Section 98 – Decision where appeal heard by two or more Judges

Sometimes, an appeal is heard by two or more judges (like in a Division Bench of the High Court).

This section explains how the decision will be made:

If the majority of judges agree - that decision becomes the judgment of the court. If the judges are divided equally (tie) →

The decree of the lower court is confirmed (stands as it is).

Example:

If two judges hear an appeal and one says “allow appeal” while the other says “dismiss appeal,” then the appeal fails and the lower court’s decree remains valid.

Section 99 – No reversal for minor errors

This section says:

The appellate court should not reverse or modify a decree just because of a technical mistake, error, or irregularity if it does not affect the merits of the case.

Example:

If the trial court made a small procedural error (like wrong date or misdescription of property) but it did not cause injustice, the appellate court will not cancel the decree for that reason.

(2) Second Appeal (Sections 100–103, Order XLII)

- A Second Appeal lies to the High Court against a decree passed in the first appeal.
- It can be filed only on a substantial question of law.
- The memorandum of appeal must clearly state such a question, and the High Court must formally frame it before hearing.

Section 103 allows the High Court to decide any issue necessary for disposing of the appeal if the evidence on record is sufficient.

Illustration:

If both the trial court and the first appellate court give conflicting judgments about property ownership based on interpretation of a will, and the question arises about how to interpret that will under law, it becomes a substantial question of law.

SECOND APPEAL – Sections 100 to 103 of CPC

A second appeal is an appeal made to the High Court against the decree passed in the first appeal by a lower appellate court.

It is not a matter of right like the first appeal — it can be filed only on specific legal grounds. Section 100 – Second Appeal

This is the main section for second appeals. It says that:

A second appeal shall lie to the High Court from a decree passed in appeal by a subordinate court, only if the case involves a substantial question of law.

Meaning in Simple Words:

- You can file a second appeal in the High Court only when there is an important legal question involved — not just disagreement about facts or evidence.
- The High Court's role here is to interpret the law, not to recheck the facts.

Key Features of Section 100

1. Substantial Question of Law Required

- The High Court will not entertain a second appeal unless there is a substantial question of law.
- “Substantial” means it must be important, real, and significant, not a minor or technical question.

2. High Court Must Formulate the Question

- When admitting the appeal, the High Court must clearly state what the substantial question of law is.

3. Hearing Limited to That Question

- During the hearing, the High Court will discuss only that legal question (unless another important question arises during the hearing).

4. Examples of Substantial Question of Law

- Wrong interpretation of law or legal principles.
- Misapplication of a statute.
- Conflict between two legal decisions.
- Violation of natural justice.

Example:

If both the trial court and first appellate court wrongly interpret a law about property inheritance, then a second appeal can be filed to correct that legal mistake.

Purpose of Second Appeal

The aim is not to re-argue the facts but to ensure the correct interpretation of law. It helps maintain uniformity and consistency in legal decisions across India.

Section 101 – No Second Appeal on Questions of Fact

This section clearly says:

No second appeal shall lie except on the ground mentioned in Section 100. Meaning:

You cannot file a second appeal just because:

- You think the lower court made a mistake about the facts,
- Or you disagree with how evidence was interpreted.

Only legal errors, not factual errors, can be challenged.

Example:

If two courts found that “A was present at the scene” based on witness evidence, you can’t challenge that fact in second appeal.

But if they misapplied a legal principle while deciding, you can.

Section 102 – No Second Appeal in Small Value Cases

This section restricts second appeals in small suits. It says:

No second appeal shall lie in any suit where the subject matter is below ₹25,000, or below the value fixed by the government.

Meaning:

If the amount involved in the case is small (like below ₹25,000), you cannot file a second appeal to the High Court.

Purpose:

To prevent unnecessary burden on the High Courts with minor cases.

Section 103 – Power of High Court to Determine Issues of Fact

Normally, the High Court cannot decide facts in a second appeal. However, Section 103 gives an exceptional power to do so in limited situations.

It says:

The High Court can decide factual issues if:

1. The lower courts failed to decide those issues, and
2. The evidence on record is sufficient to decide them.

Meaning:

If the lower courts forgot to give a finding on an important factual issue, the High Court can itself look at the evidence already on record and decide it, but it cannot take new evidence.

Example:

If both lower courts forgot to decide whether a property was joint or self-acquired and all documents are already on record - the High Court can itself decide that issue.

(3) Appeals from Orders (Sections 104–106, Order XLIII)

Certain orders (not decrees) are also appealable under the CPC. These include orders relating to:

- Rejection of a plaint.
- Grant or refusal of injunctions.
- Orders returning a plaint.
- Orders relating to costs, compensation, or detention.

However, not all orders are appealable. Only those specifically mentioned in Order XLIII, Rule 1 can be appealed.

Appealable Orders (Order 43 Rule 1 CPC – In Short):

1. Order 7 Rule 10 – Return of plaint.
2. Order 9 Rule 9 – Refusal to restore suit dismissed for default.
3. Order 9 Rule 13 – Refusal to set aside *ex parte* decree.
4. Order 11 Rule 21 – Striking out of defence for not answering interrogatories.
5. Order 21 Rules 72, 92, 96 – Orders relating to execution sales and delivery of property.
6. Order 22 Rules 9 & 10 – Orders about abatement and substitution of parties.
7. Order 23 Rule 3 – Recording or refusing compromise.
8. Order 23 Rule 6 – Refusal to withdraw suit with liberty to file afresh.
9. Order 25 Rule 9 – Refusal to restore suit dismissed for not furnishing security.
10. Order 26 Rules 2, 3, 9, 14 – Orders relating to commissions.
11. Order 32 Rule 2 – Appointment or refusal of guardian for minor.
12. Order 33 Rules 5, 7, 9 – Refusal to allow suit by indigent (pauper) person.
13. Order 38 Rules 5, 6, 7, 10 – Orders for arrest or attachment before judgment.
14. Order 39 Rules 1, 2, 4, 10 – Granting or refusing injunctions or interlocutory orders.
15. Order 40 Rules 1 & 4 – Appointment, refusal, or removal of receiver.
16. Section 35A – Awarding or refusing compensatory costs.
17. Section 91 & 92 – Refusal of leave to file suit for public nuisance or charitable trust.

18. Section 95 – Compensation for wrongful arrest, attachment, or injunction.
19. Orders imposing fine or directing detention (not in execution).

Note:

Only these specific orders are appealable under Order 43 Rule 1 CPC. If an order is not listed here, it cannot be appealed, but may be challenged through revision (Section 115 CPC) instead.

(4) Appeals to the Supreme Court (Sections 109–112, Order XLV; Articles 132–136 of the Constitution)

Appeals to the Supreme Court can be made in civil cases where:

1. The High Court certifies that the case involves a **substantial question of law of general importance**; and
2. It requires a decision by the Supreme Court.

Additionally, under **Article 136**, the Supreme Court has the power to grant **Special Leave to Appeal (SLP)** in cases where grave injustice has been done, even if no appeal lies under ordinary law.

Section 109 – When appeal lies to the Supreme Court

This section explains **in what cases an appeal can be made** to the Supreme Court.

An appeal lies to the Supreme Court from a **judgment, decree, or final order** of a **High Court** in the following cases:

(a) Certificate of Fitness

When the **High Court certifies** that the case is fit to be appealed to the Supreme Court. (This is called the "**Certificate of Fitness**" under Article 134A of the Constitution.)

(b) Substantial Question of Law

When the case **involves a substantial question of law** of general importance and the High Court is of the opinion that it should be decided by the Supreme Court.

(c) Any Other Case as per Law

If any other law (for example, the **Constitution of India**) allows an appeal to the Supreme Court.

Section 110 – Conditions for appeal to the Supreme Court (Repealed)

Earlier, this section stated that:

- The amount or value of the subject matter in dispute had to be at least **₹20,000 or more, and**
- The case must involve a **substantial question of law**.

However, this section has been **repealed (removed)** after the **Constitution (Enlargement of Powers of Supreme Court) Act, 1970** and now appeals are governed mainly by **Articles 132– 134A of the Constitution** and **Section 109 CPC**.

So, **Section 110** is now **no longer in force**. **Section 111 – Bar of appeals in certain cases** This section states that:

- If a **Special Law** (for example, the Income Tax Act, Rent Control Act, or any other Act) provides a **final decision** by a High Court, **then no appeal can be made** to the Supreme Court under Section 109, **unless** that special law itself allows it.

Example:

If the Rent Control Act says that the decision of the High Court is final, you **cannot** appeal to the Supreme Court under CPC unless the Act itself provides for it.

Section 112 – Savings

This section saves (keeps valid) certain **special powers** of the Supreme Court. It says that:

- The provisions of CPC (Sections 109–111) **do not affect** the powers of the Supreme Court given by:
 - **The Constitution of India**, or
 - **Any other law** that allows the Supreme Court to hear appeals or give special leave.

In short, **Section 112** means:

Even if CPC sets certain limits or rules, the **Constitutional powers** of the Supreme Court remain **untouched and supreme**.

7. Judicial Interpretations and Case Laws

1. **Ganga Bai v. Vijay Kumar (1974) 2 SCC 393**

- The right to appeal is a statutory right and not an inherent one.
- Parties cannot create a right to appeal by agreement.

2. **Lachmeshwar Prasad v. Keshwar Lal (AIR 1941 FC 5)**

- An appeal is a continuation of the original proceedings.

3. **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar (1999) 3 SCC 722**

- A second appeal can be filed only if there is a substantial question of law.

4. **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of Ahmedabad (1999) 4 SCC 468**

- The right of appeal is statutory and can be subject to conditions.

5. **State of Haryana v. Darshana Devi (AIR 1979 SC 855)**

- The appeal system ensures fairness and prevents miscarriage of justice.

These cases collectively highlight that the appeal process is not automatic but a controlled statutory remedy to ensure justice.

8. Importance of Appeals

The appeal system serves many important functions in the administration of justice:

1. **Correction of Judicial Errors:** Higher courts can correct wrong findings or misinterpretations.
2. **Uniformity in Law:** Ensures consistent interpretation of laws across courts.
3. **Protection of Rights:** Prevents miscarriage of justice and safeguards individual rights.
4. **Public Confidence:** Strengthens trust in the judicial system.
5. **Accountability:** Keeps lower courts accountable for their judgments.

6. **Fairness:** Provides litigants another opportunity to present their case if the lower court made an error.

9. Challenges in the Appeal System

1. **Delay in Justice:** Multiple appeal stages lead to years of litigation before final relief.
2. **Frivolous Appeals:** Many parties misuse the right to appeal to delay enforcement of decrees.
3. **Judicial Backlog:** Higher courts are burdened with millions of pending appeals.
4. **High Costs:** Appeals require payment of court fees, advocate fees, and other expenses.
5. **Limited Access:** Poor and illiterate citizens find it difficult to navigate complex appeal procedures.
6. **Lack of Filtering Mechanism:** Courts often admit appeals that do not involve serious questions of law.

10. Findings and Discussion

The right to appeal under the CPC is essential for maintaining judicial fairness and correcting errors. It is an extension of the principle of natural justice - “no one should be condemned unheard.”

However, unrestricted appeals have created major problems such as delay and congestion in higher courts. The law now restricts second appeals to “substantial questions of law” to reduce misuse, but this is not enough. Effective reform must focus on balancing two competing needs:

- Ensuring fairness by allowing genuine appeals; and
- Ensuring efficiency by preventing unnecessary litigation.

The use of technology, pre-screening of appeals, and penalties for frivolous litigants can help achieve this balance.

11. Conclusion

The appeal system under the Code of Civil Procedure, 1908, is a powerful safeguard for justice. It ensures that wrong decisions can be reviewed and corrected, promoting fairness, equality, and uniformity in the judicial process.

However, the system faces challenges like delays, backlogs, and misuse by litigants. Thus, while the right to

appeal should be preserved, it must be regulated and made efficient. The justice system must strike a balance between **fairness and finality** so that justice is not only done but done without unnecessary delay.

12. Suggestions / Recommendations

1. **Stricter Scrutiny of Appeals:** Only appeals involving real legal or factual issues should be admitted.
2. **Penalties for Frivolous Appeals:** Heavy costs should be imposed on parties who misuse the process.
3. **Fast-Track Benches:** Special appellate benches can be created for faster disposal of cases.
4. **Encouragement of ADR:** Promote mediation and arbitration to reduce appeal cases.
5. **Use of Technology:** Introduce e-filing, video hearings, and digital case management.
6. **Legal Awareness:** Educate citizens about genuine grounds for appeal.
7. **Legal Aid for the Poor:** Strengthen free legal aid to ensure equality in access to appellate remedies.

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