

Criminal Appeal and Its Kind Under CrPC

The word appeal has not been defined in the Criminal Procedure Code. Neither the definition is available in the General Clauses Act.

Criminal appeal has been discussed in chapter 29 of the Criminal Procedure Code under sections 372 to 394. The chapter is not absolute and exhaustive, as many provisions related to appeals are provided out of this chapter, for instance, sections 86, 250, 351, 449, 454, 458(2).

An appeal can be defined as a complaint made to a higher court with the intent that the order, finding, sentence passed by the lower court is illegal or erroneous (wrong, incorrect).

Fundamental Principles of Appeal

The fundamental principles of appeal under CrPC are as follows:

- An appeal is a creature of statute.
- No inherent right to file an appeal.
- No appeal only against conviction.
- No appeal in petty cases.
- Generally, there is no appeal on conviction on a plea of guilt.

Kinds of Appeal Under Criminal Procedure Code

Various kinds of appeals provided under CrPC are:

1. Appeal in Court of Session – Section 373 CrPC

An appeal may lie to the Court of Session against the order under:

- Section 117: Where a person has been ordered to give security for keeping the peace or for good behaviour.
- Section 121: Where a person has been aggrieved by any order refusing to accept or reject a surety.

2. Appeal from Convictions – Section 374 CrPC

1. While exercising extraordinary original criminal jurisdiction, if High Court passes an order of conviction, an appeal shall lie to Supreme Court.

2. If Court of Session or Additional Court of Session passes the order of conviction during the trial, an appeal shall lie to High Court.
3. If Court of Session or Additional Court of Session gives punishment of more than seven years, the appeal shall lie to High Court.
4. Where a person is convicted by Assistant Court of Session, Metropolitan Magistrate Judicial Magistrate I, Judicial Magistrate II, an appeal shall lie to Court of Session.
5. A person aggrieved under section 325, 360 of the Criminal Procedure Code can appeal to the Court of Session.

Exception to Section 374 CrPC

Section 375 and section 376 of the Criminal Procedure Code are exceptions to sections 374 of the Criminal Procedure Code, elaborated as follows.

Section 375 CrPC – No Appeal in Certain Cases Where the Accused Pleads Guilty

If the accused pleads guilty at High Court and the court takes the plea on record and convicts the person, then no appeal shall lie.

Where the accused pleads guilty at a court other than High Court, an appeal for the sentence is allowed.

Appeal on sentence is allowed based on:

1. Extent.
2. Legality of the sentence.

Section 376 CrPC – No Appeal in Case of Petty Cases

No appeal shall lie in the case of petty cases. Petty cases differ from court to court. Following are considered petty cases:

- In case of High Court- Imprisonment up to 6 months, fine of Rs 1000 or both.
- In case of Court of Session- Imprisonment up to 3 months, fine of Rs 200 or both.
- In case of Metropolitan Magistrate- Imprisonment up to 3 months, fine of Rs 200 or both.
- In case of Judicial Magistrate 1st class- Fine of Rs 100.
- In case of Magistrate empowered under section 260 of the Criminal Procedure Code- Fine up to Rs 200.

3. State Appeals Under Sections 377 and 378 of CrPC

Appeals by the State Government:

- For enhancement of sentence – Section 377
- Against the acquittal of accused – Section 378

Section 377 CrPC – Appeal Against Sentence

The section empowers the State Government to file an appeal through a Public Prosecutor at the Court of Session or High Court on the grounds of insufficiency of the sentence:

- If an order of sentence is given by Magistrate, then appeal to lie to Court of Session.
- If an order of sentence is given by any other court, then appeal to lie to High Court.

The direction will be given to the Public Prosecutor by the central government if the investigation is done by Delhi Special Police Establishment or any other central agency.

When such appeal or order for enhancement of punishment is filed, such order will not be passed until a reasonable opportunity of being heard is given to the accused.

Section 378 CrPC – Appeal in Case of Acquittal

In this section, District Magistrate is empowered to direct the Public Prosecutor to file an appeal to the Court of Session for the order of acquittal done by any Magistrate in a matter of cognizable and non-bailable offence.

The State is also empowered to direct the Public Prosecutor to file an appeal for the order acquittal done by any court other than High Court for appeal or revision.

- If the investigation is done by Delhi Special Police Establishment or any central agency, the direction to file an appeal will be given by the Central Government.
- It is to be noted that prior permission of the High Court will be taken before filing an appeal at the High Court.
- If an order of acquittal is given in a matter of case instituted on complaint, and High Court grants special permission to present the appeal, then such appeal can be presented by the complainant.
 - If the complainant is a government servant, then the application can be moved within six months from the order of acquittal.

- If the complainant is not a government servant, then the application can be moved within 60 days from the order of acquittal.

If such appeal is rejected, no appeal from an order of acquittal shall lie.

4. Appeal Against Conviction by High Court in Certain Cases – Section 379 CrPC

If the High Court reversed an order of acquittal of a person and convicted him and sentenced him to death, life imprisonment, or imprisonment for a period of ten years or more, the accused has the right to make an appeal to the Supreme Court.

5. Special Right of Appeal in Certain Cases – Section 380 CrPC

Under this section, an accused has a right of appeal in an unappealable sentence if his co-accused has been given an appealable sentence.