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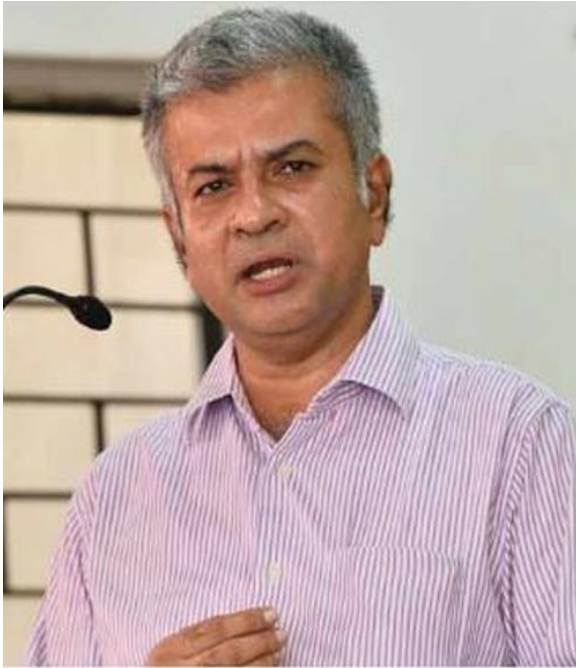
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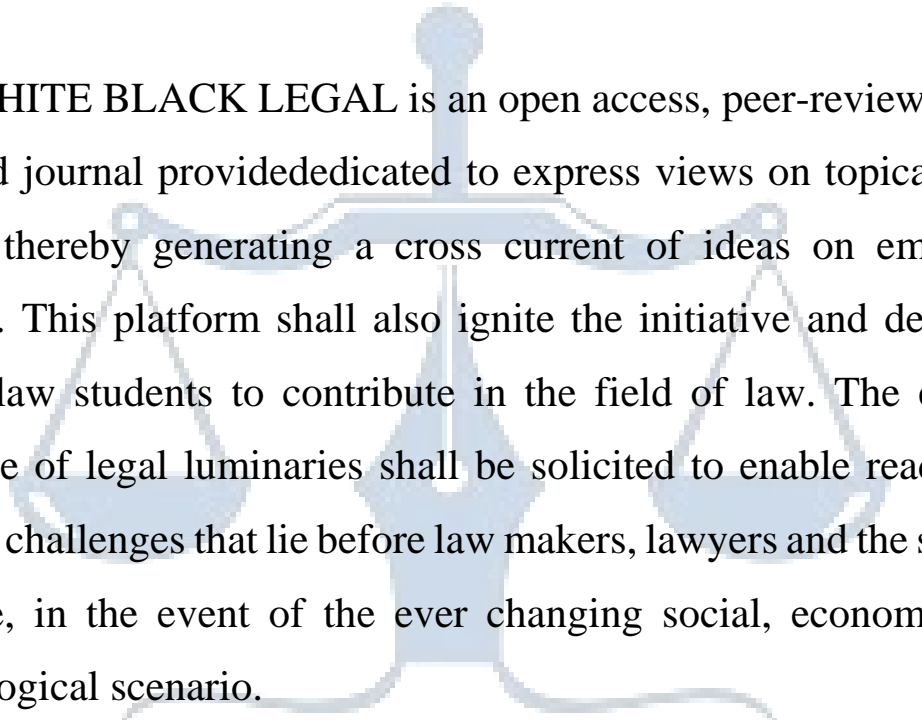


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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Difference Between Appeal, Review, And Revision: An Analysis In Civil, Criminal, And Administrative Cases-

Authored By - Deepak

Introduction

In India, the three tiers of Judiciary i.e., District Courts, High Courts and Hon'ble Supreme Court of India have several roles and procedures to perform in delivering justice. The provision of appeal, review and revision empowers all three Courts to exercise such, depending on which Court's Order is challenged. Any illegality, irregularity or impropriety coming to the notice can be rectified with the help of these mechanisms. To prevent the miscarriage of justice which defeats the very purpose of the judicial system, the need for the creation of some procedures is essential to ensure that justice is fairly delivered. Therefore, it is necessary to know the nature and scope of all the three provisions and also how they differ from each other.

The provisions related to Review, Appeal, and Revision form an important part of both civil and criminal procedures. They substantiate rights granted to the individuals to question the legality and propriety of their judgments. The need for the creation of these procedures was to ensure that justice is fairly delivered. Appeal means the removal of a cause from an inferior court to a superior one to test the soundness of the decision of the inferior court. Review of judgment is to look at or study the facts and judgment of the case once more and Revision means where a higher court calls for the record of the case decided by a court subordinate to it to check whether the jurisdiction, procedure, and legal principles were duly followed while disposing of the case.

Scope of Appellate, Review, and Revisionary

jurisdiction of the court: Appeal

The appellate jurisdiction is one of the most important jurisdictions exercised by the courts in the country. This jurisdiction enables a person to approach the higher court in case he is not satisfied with the judgment given by the lower courts. In the appellate jurisdiction, the higher court eradicates any misinterpretation of law or misconstruction of facts, in the proceedings of the

lower court.

An appeal is asking a higher court to review and if needed, reverse the decision of the lower court and to turn it in the losing party's favour after the final judgment has been given. The losing party has to quote legal reasons as to why it feels the judgment of the lower court was wrong and why it should be overturned by the higher court. The losing party and the appellant here must show the errors or mistakes that were committed during the previous trial. The two grounds on which an appeal can be filed are:

- When a mistake was committed in the trial– Only grave errors are counted under this provision. Harmless errors cannot be a ground for appeal. The appellant must also show that the error caused his rights to be infringed.
- When evidence does not support the verdict– It is much harder to prove an appeal that is based on insufficient evidence. As the Court of Appeal did not hear the entire proceedings in the previous trial and didn't make a fully unbiased decision. Based on their belief in the judgment of the trial court, most appeal courts weigh and then make their decision.

Some of the important points regarding the Appeal:

(1) An appeal is a proceeding where a higher forum reconsiders the decision of a lower forum, on:

(a) questions of fact;

(b) questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

(2) In criminal cases, the appeal is a statutory right. A person can't appeal where there is no right to appeal given under the statute.

(3) In civil cases remedy of appeal is available only against the decree, or appealable orders when the statute provides for the same.

(4) The right of appeal is substantive – The right to First appeal is a substantive right but the Second appeal is only allowed on a substantial question of law.

(5) An appeal abates if the legal representatives of a deceased party are not brought on the record within the time allowed by law.

(6) In appeal questions of law and facts, both can be agitated.

(7) Suo moto appeal is not possible.

(8) The appeal is a continuation of the suit wherein the entire proceedings are left open before the appellate authority- An appeal is the continuation of the original proceedings before a superior court. The statutory right of appeal confers the right of re-hearing the whole dispute unless expressly restricted in scope and the appellate court is not confined to the reasons which have been given by the subordinate court for its decision.

(9) Subsequent events can be considered by the appellate authority.

Appeal against decree: Under CPC, 1908, Part VII is legislated on appeals comprising of sections 96 to 112, however, the word “appeal” is not defined under CPC. Appeal means the removal of a cause from an inferior court to a superior one to test the soundness of the decision of the inferior court. The superior court need not be High Court but maybe a District Court.¹

Appeal against order: The appeal also lies against an order if so provided for by Section 104, or Order 43 CPC. As soon as judgment is pronounced against the party, the right to appeal arises. The right to appeal doesn't arise when the adverse decision is given, but on the day suit is instituted i.e., proceedings commenced, the right to appeal gets conferred. Thus, it can be said the Right to appeal is an appeal substantive right vested in parties from the date suit was instituted.

Appeal in criminal cases: The provision of Appeal is dealt under Sections 372 to 394 of the Code of Criminal Procedure, 1973:

Section 372 states that unless otherwise provided by the Code or any other law in effect at the time, no appeal is allowed. It may be possible to file an appeal to the Supreme Court against the High Court's acquittal order under Articles 132, 134, and 136 of the Indian Constitution.²

Section 373 states that it applies to appeals from:

- Orders requiring security for the sake of maintaining the peace or good behaviour, and
- Orders refusing to accept or rejecting a surety under section 121.

¹ The Court of Civil Procedure, 1908, s. 96-112

² The Code of Criminal Procedure, 1973, s.372

The appeal is to the Court of Session unless the proceedings have already been laid before the Session Judge under sub-section (2) or (4) of Section 122.

Section 374 states appeal from Conviction:

- “Any person convicted in a High Court trial held under its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- Any person convicted by a Sessions Judge or an Additional Sessions Judge, or by any other Court, of a sentence of imprisonment for more than seven years [passed against him or any other person convicted at the same trial] may appeal to the High Court.
- Any person convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first or second class, sentenced under section 325, or in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session, unless otherwise provided in sub-section (2).”³

In some cases, Sections 375 and 376 ⁴ prohibit appeals, hence Revision can be filled in such cases:

- When a High Court imposes a sentence of not more than six months in prison or a fine of not more than one thousand rupees or both,
- When a Court of Session or a Metropolitan Magistrate imposes a sentence of not more than three months in prison or a fine of not more than two hundred rupees or both,
- If a Magistrate of the First Class imposes a fine of not more than one hundred rupees,
- In a summary case, a Magistrate may impose a fine of not more than two hundred rupees.

³ The Code of Criminal Procedure, 1973, s. 374

⁴ The Code of Criminal Procedure, 1973, s. 375, 376

Appeal against the decision of administrative tribunals:

The procedure to appeal from decisions of administrative tribunals is given under their governing statutes itself. Appeals from administrative tribunals usually lie with the concerned High Court. But, under some statutes appeal lies directly to the supreme court. For instance, under The Industrial Disputes Act, 1947, the appeal against the decision of the Industrial Tribunal lies with High Court. whereas, under The Administrative Tribunal Act, 1985, a decision of the Central Administrative Tribunal can be appealed to the supreme court.⁷ Under article 136 of The Constitution, the aggrieved party can file Special Leave Petition in the Supreme court.

Article 136(1):

“Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India”⁸

But, in case *L. Chandra Kumar v Union Of India*, it was observed that no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.⁹

Review:

Review means when the court re-examines the decisions made by itself, the examination of any legislation made by the government or any act of the administrative organizations; it rectifies the error in an act, judgment, or legislation. According to many leading legalphilosophers and luminaries, the main purpose of this law is to protect the rights of the people

⁷ PRS India, The Tribunal System in India, <https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india>(last visited on July 20, 2022)

⁸ The Constitution of India, 1950, *art. 136*

⁹ 1995 AIR 1151

as the judgments made by the courts, not mostly, but at times are fallible. In the process of review, the court might either overturn the decision or make necessary changes in it. The constitution of India has provided us with enough provisions of review to make the principles of justice more efficient.

Cases where review lies:

- (i) *Non-appealable cases*– Non-appealable cases are cases where no right is given to the suffered party or when an appeal is rejected on the grounds of incompetence or being time-barred. The party who has suffered can hence file for review.
- (ii) *Where appeal lies but is not preferred*- In cases where the benefit of an appeal lies but is not preferred by the party, the party can file for a review but the review must not be against the order because that would be going into the facts which are not entertained by the courts. When the party has already filed for an appeal before the court which is pending, in such cases the petition for review will not be entertained by the court. However, if the review petition is filed first and the appeal is filed subsequently then the court's jurisdiction to review can't be questioned under law.

Review in civil cases :

Review in civil cases is filed under section 114 of the Civil Procedure Code:

As per section 114 of CPC-

“Review – Subject as aforesaid, any person considering himself aggrieved-

- (i) By a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (ii) By a decree or order from which no appeal is allowed by this Code, or
- (iii) By a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passes the decree or made the order, and the Court may make such order thereon as it thinks fit.”¹⁰

¹⁰ The Code of Civil Procedure, 1908, s. 114

Order 47 of CPC deals with the application for review of the judgment. An application for review can be rejected on various grounds. These grounds are mentioned in the rules of Order 47 of CPC.

Rule 1 of Order 47 of CPC:

“(1) Any person considering himself aggrieved-

by a decree or order from which an appeal is allowed, but from no appeal has been preferred, by a decree or order from which no appeal is allowed, or by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”¹¹

Hence, the grounds for Review of judicial decision are:

- *Discovery of new evidence*— When new evidence or matter which is substantial to the case and was not in the cognizance of the concerned person, then that person can successfully apply for review. However, the burden of proof lies on the concerned person to prove that at the time of the verdict he was completely unaware of the fact or evidence that could have influenced the decision-making. However, the mere fact that the concerned party was not cognizant of the ruling in any other case which might have impacted the decision wouldn't be considered by the court for review.

¹¹ *The Code of Civil Procedure, 1908, o. 47*

¹² *AIR 1922 PC 112*

- *Error on the face of record*– The prima facie error that looks pretty conspicuous without a legal analysis of the judgment can only be taken into account for review under this ground. The error or mistake could either be a mistake in law or a mistake in fact.
- *Other sufficient reason*– This ground of review has given a very wide coverage of the reviewing process. In the landmark case of *Chajju Ram v. Neki*¹² it was held that the sufficient reason shall be connected with the other two reasons in the least possible way. The mere fact that the court ignored an important fact will not make a valid point under this ground.¹³

Grounds of Judicial review of administrative action:

It was in *L. Chandra Kumar v Union Of India*¹⁴, as there was a light on the short inclusive definition of the Judicial Review where the Hon'ble Supreme Court stated that, "Definition of judicial review in the American context is, subject to a few modifications, equally applicable to the concept as it is understood in Indian Constitutional Law. Broadly speaking, judicial review in India comprises three aspects: judicial review of legislative action, judicial review of judicial decisions, and judicial review of administrative action."

In the case of *Council of Civil Service Union v. Minister of Civil Service* (1984)¹⁵ of the United Kingdom, Lord Diplock of England gave some of the important grounds of judicial review of administrative actions, in which it was held that royal prerogative is subject to judicial review. Though these grounds of judicial review are not exhaustive, they provide an apt base for the courts to exercise their jurisdiction. The grounds given were:

(1) *Jurisdictional Error*: A case of 'lack of jurisdiction' is where the tribunal or authority holds no power or jurisdiction at all to pass an order. The court may review this administrative action on the ground that the authority exercised jurisdiction which it was not supposed to. The power of review may be exercised on the following three grounds-

- (a) That the law under which the administrative authority is constituted and exercising jurisdiction is itself unconstitutional,
- (b) That the authority is not properly constituted as the law requires, and

¹³ *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* AIR 1954 SC 526

¹⁴ *Supra* note 7

¹⁵ [1984] UKHL 9

(a) That the authority has mistakenly decided a jurisdictional fact and henceforth assumed jurisdiction which did not belong to it first.

(2) *Irrationality*: A general established principle is that the discretionary power conferred on an administrative authority should be exercised reasonably. A decision of an administrative authority can be held to be unreasonable if it is so outrageous in its defiance of logic or prevalent moral standards that no reasonable person who had applied his mind to the subject could have arrived at it.

(3) *Procedural Impropriety*: It is a failure to comply with the laid down procedures. Procedural Impropriety is to cover two areas which are failure to observe rules given in statute and to observe the basic common-law rule of justice.

(3) *Proportionality*: Proportionality means that the concerned administrative action should not be more forceful than it requires it to be. The principle of proportionality implies that the court has to necessarily go into the advantages and disadvantages of the action called into question. Unless the so-called administrative action is advantageous and in the public interest, such an action cannot be upheld. This doctrine tries to balance means with ends.

(4) *Legitimate Expectation*: This doctrine serves as a ground of judicial review to protect the interest when a public authority rescinds a representation made to a person. A legitimate expectation arises in the mind of the complainant who has been led to understand expressly or impliedly that certain procedures will be followed in reaching a decision. The expectation has a reasonable basis. This doctrine has evolved to give relief to the persons who have been wronged because of the violation of their legitimate expectations and have not been able to justify their claims on the basis of law. Two considerations determine legislative expectations-

- (a) Where an individual or group has been led to believe impliedly or expressly that a certain procedure will apply.
- (b) Where an individual or group relies upon a particular policy or guideline which has previously governed an area of executive action.

Revision

There is no right to appeal in every case and it is confined to such cases as are specifically provided by the law. Even in such specified cases, the code allows only one appeal and a review of the decision of the appellate court is not normally permissible by way of further appeal to yet another higher court. In order to avoid the possibility of any miscarriage of justice in cases where

no right of appeal is available the code has devised another review procedure, namely Revision.

Revision is a new prospect for the resolution of law. It means re-examining the case involving improper inference, non-exercise, or inappropriate jurisdictional exercise. In the exercise of revisional powers, it is not the responsibility of the High Court to take into consideration the benefits of the evidence; it merely has to see if the provisions of the law have been properly adhered to by the court whose order is the subject of the revision.

In civil cases, only high courts have been given the power of Revision but in criminal cases, both the session court and the high court can exercise the power of revision.

Revision in civil cases: Section 115 of the Code of Civil Procedure¹⁶ gives the High Court the power to revise the matter. As per the section, there are only three grounds for revision, which are:

- When the lower court meditates on a matter on which it has no jurisdiction.
- There was authority, but it was not exercised.
- Jurisdiction has been applied illegally or irregularly.

Section 115 shall thus prevent subordinate courts or lower courts from acting arbitrarily, illegally, irregularly, or capriciously.

Revision in criminal cases: In criminal cases, Section 397 to 405 of the Criminal Procedure Code¹⁷ deals with the powers of revision conferred on the higher courts and the procedure to regulate these powers. The powers of revision conferred upon the higher courts are very wide and are purely discretionary in nature. Therefore, no party has the right to be heard before any court exercises such powers. Section 399 provides that a Sessions Court shall have the same revisionary powers as the High Court under Section 401 and the procedure to be followed by the Sessions Court is also the same. Therefore, the powers of the two courts are analysed together under one common head.

The basic objective behind the code in section 401 is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the code does not

¹⁶ The Code of Civil Procedure, 1908, s. 115

¹⁷ The Code of Criminal Procedure, 1973, s. 397-405

provide for appeal. The power however is to be exercised only in exceptional cases where there has been a *miscarriage of justice* owing to: – a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision appeal is being heard.

In the case of *Amit Kapoor vs Ramesh Chander & Anr*¹⁸, the Hon'ble Supreme Court of India held that “the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely.”

There are some conditions in which revisional jurisdiction is exercised.

1. The case must be decided by the subordinate court.
2. There should be no remedy of appeal to be exercised. In the case of *Major. S.S. Khanna v. Brig. F.J. Dillion*¹⁹ Supreme Court held that, when any other remedy is available, the court may not exercise its revisional jurisdiction.

Difference between Appeal and Review:

An appeal is a request to change or modify the decision or verdict whereas a review is a request to look into the legality of the ruling. Procedural irregularity, impropriety, irrationality, and illegality form the basis of a review whereas there can be grounds of dissatisfaction or disappointment in filing an appeal. The appeal is a statutory right of the individual whereas review is a discretionary right of the court.

Review can be filled either in the non-appealable case where there is no right to appeal or in cases where the appeal is allowed but has not been preferred. But in the case of *Ram Baksh v. Rajeshwari Kunwar*²⁰, it was held that the option of review is still there even if the appeal has been dismissed on any ground.

It was observed by the full bench of Allahabad high court in *Behari Lal And Anr. vs M.M. Gobardhan Lal And Ors*²¹, “The accepted view has been that the Code of Civil Procedure did not contemplate the simultaneous proceedings of review and appeal, but it did not specifically

¹⁸ (2012) 9 SCC 460

¹⁹ 1964 AIR 497

²⁰ 1948 AIR 213

²¹ AIR 1948 All. 353

provide that a review application would become incompetent after the filing of the appeal and, therefore, a review application does not become incompetent merely on account of an appeal being filed subsequently and must, therefore, be decided by the Court having jurisdiction over it.”

It was further observed in the case, “...Section 114, Civil P.C., does not refer to the non-filing of an appeal as a condition precedent for the filing of an application for review but refers to such non-filing as defining of such appealable decrees or orders from which a party aggrieved can file an application for review. It may also be implied from the facts that the right of review in other cases is also given against such decrees or decisions from which no appeal is provided, that it has been found essential that the hearing of the appeal filed subsequent to the filing of a review application should remain postponed till the decision of the review application in order to make the review application effective and that there is the consensus of opinion that simultaneous proceedings of appeal and review were not contemplated by the Code.”

Review is a tool that is used by an aggrieved party, to request a court of law to take a second look at its decision or verdict. Review is used in situations where there is no provision for an appeal. Review is not a statutory right of the people and is considered a discretionary right of a court as it can reject the request for a review. Review is sought in the same law court from where the original decision came. There is no system of a second review. Review can be undertaken *Suo moto* by a court of law.

Difference between Appeal and Revision:

Appeal whereas ensures the litigants that they will be granted justice under the law while the resolution of a particular dispute and appeal also helps in enacting the rules of decision that will be binding on all lower courts within the judicial system, thus ensuring uniform treatment and some measure of certainty and guidance for those whose actions bring them within the scope of the rule.

An appeal is a continuation of the court proceeding on a certain case while a revision is checking whether the legal actions were followed in the proceedings.

Revision on the other hand clothes the High Court with the powers to ensure that the subordinate courts ‘ proceedings are conducted within the boundaries of their jurisdiction and in the furtherance of justice in accordance with the law. It allows the High Court to rectify, errors of jurisdiction committed by subordinate courts and provides the means to obtain rectification of a non-appealable order to an aggrieved party. In other words, revisional jurisdiction is conferred

on the High Court for the effective exercise of its supervisory and visitorial powers.

In the case of *Hari Shankar vs. Rao Girdhar Lal Chowdhury*²², 1962, had an occasion to consider the question of the distinction between an appeal and a revision, and Hidayatullah, J. (as he then was) speaking for the Court observed at page 939 of the report as follows:-

"The distinction between an appeal and revision is a real one. A right to appeal carries with it the right of re-hearing on the law as well as fact unless the statute conferring the right to appeal limits the re-hearing in some way as we find has been done in the second appeal arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior court so that it may satisfy, itself that a particular case has been decided according to law."

Conclusion

The maintenance of justice which is important for every society in a democracy is possible due to the presence of the Constitution. The principles of democracy have been preserved by the provisions of the judiciary by giving reasoned decisions. But, sometimes courts of law also make mistakes and errors in delivering its decision. Law provides a course to correct such errors in the form of appeal, review, and revision as the purpose of the law is to protect the rights of the public.

The provisions have been used by the appellate courts while delivering verdicts. The main principle behind the review is to protect the sanctity of complete justice and protect the rights of the individual through the legal process that is dominion over the republic of India. Review not only protects the right but also the dignity of the individual and makes sure that there is no miscarriage of justice.

The concept of review gives the power to a person to enforce his rights to establish justice against injustice. The review system is also very essential for checking and balancing the overreaching acts that the government might perform in the course of administration. If the legislature makes any law or the government performs any act that contravenes the right of any person in India and that contravention per se is not allowed by law, then review acts as a tool to salvation for that person, and any such act or law passed will be set aside by the appellate court.

²² AIR 1963 SC 698

The review system sets the tone for the proper functioning of the pillars of democracy by determining the limits of every governmental and judicial organ and is essential for effective coordination. The Suo moto cognizance is one of the most influential tools to enhance judicial review and the justice process. It gives the right to the supreme court to take cognizance of the injustice that's happening in any part of the country and enforce justice by law and order. It thus provides a solution to the very famous line "injustice anywhere is a threat to justice everywhere".

Revision is the re-examination of legal actions. They may be some assumptions made illegally, non-exercise, or exercise of jurisdiction irregularly by a lower court. In this case,, therefore, a higher court re-examines the decisions made by a lower court to know whether all the legal actions were exercised.

Just like appeal, the revision of the judgment can be brought by either of the parties to the suit which is aggrieved by the judgment and the findings of the court. However, the court exercising the revisional jurisdiction cannot revise the judgment on its merit and only revise the procedural aspect of the judgment. On contrary, unlike the appeal, revision is not a statutory right. The superior court therefore can decide to examine or not examine a decision made by a lower court. The main primary purpose of a revision is to make sure that justice has been administered properly and also to correct any errors that could have led to improper justice.

The debate surrounding Justice vs judiciary has been century-long but the review system acts as an invisible bridge and ensures harmony between both by the due procedure of law. The provisions regarding appeal, review, and revision remove the possibility of human error not only during delivering verdicts in courts but also protects from abuse of discretion by administrative authorities ensuring the rights of every individual in the eyes of law.

Statutes:

The code of civil procedure, 1908

The Criminal Procedure Code, 1973

Industrial Disputes Act, 1947

The Administrative Tribunal Act, 1985

Cases:

L. Chandra Kumar v Union Of India 1995 AIR 1151

Chajju Ram v. Neki AIR 1922 PC 112

Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius AIR 1954 SC 526

Council of Civil Service Union v. Minister of Civil Service[1984] UKHL 9

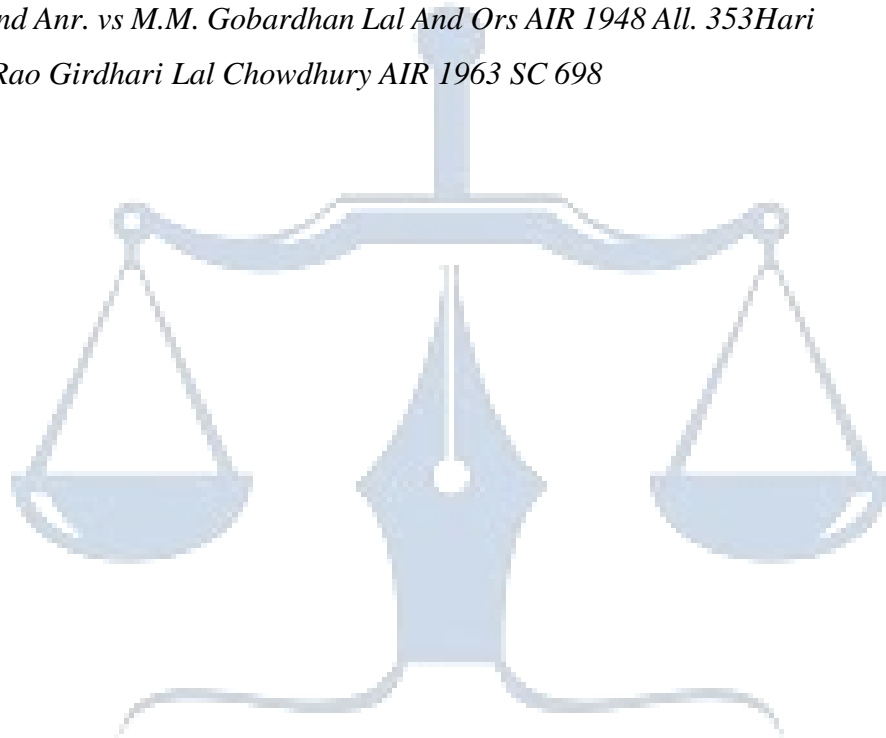
Amit Kapoor vs Ramesh Chander & Anr(2012) 9 SCC 460

Major. S.S. Khanna v. Brig. F.J. Dillion 1964 AIR 497 Ram

Baksh v. Rajeshwari Kunwar 1948 AIR 213

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Shankar vs. Rao Girdhari Lal Chowdhury AIR 1963 SC 698



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