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Gujarat Land Grabbing Act: Comparative and Analytical Analysis of Absence of Right to Appeal

Nisarg Nirajkumar Jain
Faculty of Law, Parul University, India
**Corresponding Author: nisargjain05@gmail.com*

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Abstract

This article connotes a comparative and analytical lens to the right to appeal against the conviction, sentencing or acquittal and against the judgment deciding the possessory rights under the Gujarat Land Grabbing (Prohibition) Act 2020 that legislates the punitive and civil subject-matter. It is introduced in State of Gujarat, India, by categorically absenting the provision of appeal. The article advocates the logical importance of the appeal and also compares the appealing provisions in other criminal and civil laws of India and other countries. The article argues that the notable interconnection in how appeals have been gestated in Indian civilized society. Secondly, this article highlights the negative effect of the absence of the right to appeal to the victim or accused and the litigant for the possessory civil rights. Thirdly, it also touches on the issues of human error and mistake, by the judge or jury, as a common motion of human existence. Hence, the examination by the sufficiently more judges strengthen the justice system. Fourthly, the State of Gujarat is bound to codify the right of appeal in the law as India is a signatory of ICPCR 1966 which, under Article 14, has engrafted provision to provide the right of appeal.

Keywords: appeal rights, criminal law reform, legal representation, miscarriage of justice, possessory rights disputes.

1. Introduction

The Gujarat Land Grabbing (Prohibition) Act 2020 (herein after referred to as the Land Grabbing Act) has been enacted by the state legislature with an objective to prohibit the land grabbing and connected activities within the territory of Gujarat. The Act has been codified with the definition of the important words and phrases such as 'land', 'land grabbing', 'land grabber' and so on in the context of the law.[1] Therefore, the Act seems to be a complete package for the administration of justice in the field of grabbing land in the state. The Act also constitutes the provisions for the establishment of the Special Court and the powers, functions and procedure before the Special Court with immense discretion in the adoption of the procedure by the presiding officer.[2] It is necessary to begin with an overview on the process of trial in Indian courts.

The conduct of the trial is generally medicated being the incarnation of the modern criminal justice system in India. The issues of societal interest, reflected in the concern of the state's prosecution or driven by the influence of media coverage, reach their zenith at trial

[1] Chandra Kumar Dutta and others, 'Land Suitability and Human Adaptation: River Siang from Sangam to Pongging, Arunachal Pradesh, India', *World Development Sustainability*, 5 (2024), p. 100179 <https://doi.org/10.1016/j.wds.2024.100179>.
[2] Liz Mount, '"Rescuing the Reformable: NGO Interventions, Queer Necropolitics, and the Criminalization of Hijra Families in India"', *Women's Studies International Forum*, 111 (2025), p. 103123 <https://doi.org/10.1016/j.wsif.2025.103123>.

which is contended on the merits of the issues involved. A bird-eyed could be excused for believing that criminal justice proceedings invariably rest on the delivery of verdict and further imposition of punishment.[3] However, for the litigant at the end of the trial, whether a complainant who loses his plight or the accused who is convicted, it is usually not the closing stage in the legal process. Thus, the gamut of right to appeal comes into play here. The reasons for the provisions of appeal in the law are generally inserted due to the following reasons:

First, a convicted accused normally has the right to appeal against the conviction and sentence in most of the democratically headed nations. Further, the victims are also recognized as an entity entitled to the re-examination of their loss and hence there is no reason to think that a person who has undergone the rigours of the trial, in any capacity, will not exercise this right;[4] Second, civilized society believes that it is human nature to make mistakes. The judges are also human. So, they are no exception to implementing these kinds of errors. A judge can make an error in the course of his duties of judicial dispension, being influenced by the features of some events or acts.[5]

For centuries now, the clauses of appeal, revision and review have been dealt with under the law. These provisions are framed with an intention to attempt to remove or reduce the errors by the judges. Because one of the reasons behind law's birth was to preserve the rights of the public, hence the implementation of the law turns worthless when the judgment of any trial or civil dispute goes wrong. People, in situations where they are manhandled or cheated or kept away from their human rights, try to get the shelter of the law. Yet when the law fails to endow the shelter, the person becomes remediless, helpless and loses his trust in law. It is, therefore, expected that the law and judges should not be mistaken. But it's very difficult not to do so. For this reason, the provisions of appeal review and revision have been hand-picked. However, this is a grey element of society and the aristocracy of jurist that 'the right off in the context of its existence and absence in the structuring of the legislation, the term 'appeal' has received only sporadic attention.

According to Andrew Ashworth: "*Despite being both important and prominent, there has been relatively little scholarly attention paid to the issue of criminal justice appeals.*"[6] While commenting upon the right and modes of appeal, the Hon'ble Supreme Court, in the case of Ganga Bai V. Vijay Kumar[7], has held that: "*There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no right to sue. A suit for its*

[3] Vanya Slavchevska and others, 'From Law to Practice: A Cross-Country Assessment of Gender Inequalities in Rights to Land', *Global Food Security*, 45 (2025), p. 100852, doi:https://doi.org/10.1016/j.gfs.2025.100852.

[4] Sabyasachi Kar, Gaurav R Sinha, and Puneet Dwivedi, 'Rules and Interactions around Customary Tree Ownership in Forested Public Lands: A Qualitative Study in Jharkhand, India', *Forest Policy and Economics*, 172 (2025), p. 103442 <https://doi.org/10.1016/j.forpol.2025.103442>.

[5] Ryan Stock, 'Triggering Resistance: Contesting the Injustices of Solar Park Development in India', *Energy Research & Social Science*, 86 (2022), p. 102464 <https://doi.org/10.1016/j.erss.2021.102464>.

[6] Rosemary Pattenden, *English criminal appeals, 1844-1994 : appeals against conviction and sentence in England and Wales*, 5th edition, (New York: Clarendon Press,1996).

[7] Ganga Bai Vs. Vijay Kumar AIR 1974 SC 1126. (Supreme Court of India: Ganga Bai vs Vijay Kumar & Ors on 9 April, 1974; Equivalent citations: 1974 AIR 1126, 1974 SCR (3) 882, AIR 1974 SUPREME COURT 1126, 1974 3 SCR 882, 1974 2 SCC 393, 1974 MAH LJ 602, 1974 MPLJ 629, 1974 SCD 682
Author: Y.V. Chandrachud; Bench: Y.V. Chandrachud, M. Hameedullah Beg) https://indiankanoon.org/doc/1350326/.

maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law."

The appellate court only reviews what happened in the trial court to decide if a legal mistake was made in the original trial; for example, to see if the trial court judge applied the wrong law to the facts of the case. It is also important to note the proposition here that the framers of the legislation are not always required to reckon the right to challenge on each and every aspect of the issues involved, as being implemented before the trial judges, rather limited amount of right to appeal based upon the sound and intelligent issues or legal perspective may also be subjected to the appellate provisions only to get the error corrected. Further, it is also notable that the contrary effect, vague and ambiguous situation that will rise in case of the application or appeal is proposed to be filed by any third party/litigant to the proceedings under Section 43 of Indian Evidence Act, 1872 which legitimately and statutorily recognizes the right to file application in the given situation, however the absence of provision of appeal in the law *i.e.* Gujarat Land Grabbing (Prohibition) Act, 2020 does not recognize such procedure and practice and binds all parties, irrespective of their existence as a party to the litigation and ultimately unjustifiable waives his right to justice unreasonably. Thus, the absence of the provision for appeal under the impugned law will lead us towards the characteristics of the uncivilized society. Here, it can be rightly quoted that: "*Developed legal systems make provision for correcting error. Error in the sense of good faith differences of opinion about finding the facts or about formulating or applying rules of law is expected as a regular occurrence*."[8] "Most depictions of appellate courts suggest that they serve two core functions: the creation and refinement of law and the correction of error."[9]

2. Method

The present article is theoretical research which is conceptualized and based upon the actual provisions of the law i.e. the Gujarat Land Grabbing Act and other punitive laws of India or other countries. The article compares the existing law to the extent of the provision of appeal with other laws and further criticise the complete neglect of the provision of appeal in the law. It also highlights the scheme for framing of the provision of appeal in the punitive law. The suitable method of the research is chosen keeping in mind the context of the research. The researcher has gone through the extensive research material of various sources like books, journals, and published articles, etc for the development of the study. The present research is limited to extent of highlighting the absence of the provision of appeal under the Gujarat Land Grabbing Act. No other infirmities are mentioned or criticised in the present article.

[8] John H. Langbein, Renée Lettow Lerner & Bruce P. Smith, *History of The Common Law: The Development of Anglo-American Legal Institutions*, (Aspen Publishing, 2009), p.416. <https://aspenpublishing.com/products/langbein-historyofthecommonlaw?srsltid=AfmBOoqpKXVQfZl4UNmzGYxKvVZ1LnBMFQGnYaW7DgQKACGZdq9HWz2r>.

[9] American Jurist: Chad M. Oldfather, Error Correction, *Indiana Law Journal*. Issue 1. Article 2. (2010) p. 49-85 <https://ilj.law.indiana.edu/articles/85/85_1_Oldfather.pdf>

3. Discussion and Analysis

3.1. Meaning

It is necessary to define some relevant technical terms, including review, appeal, and revision. Review refers to either the action of a court to re-examines the decisions made by itself or the examination of any legislation made by the government or any act of the administrative organizations. The provisions for review are Article 13 and 32 of the Constitution of India, Section 114 and Order 47 of the Civil Procedure Code.

Appeal has not been defined generally, however, as per the dictionary meaning it may be understood as "judicial examination of the decision of inferior court by the higher court". It is a complaint made to the higher court that the decree passed by the lower court is unsound and wrong.[10] The provisions for appeal, defined under various laws can be summarized as Article 132, 133 and 136 of the Constitution of India; Sections 372, 374 and 378 of Code of Criminal Procedure, 1973; Sections 96 and 100 of the Civil Procedure Code 1908 and so on.

Revision means re-examining the case involving improper inference, non-exercise or inappropriate jurisdictional exercise. The provisions for revisions against the order of the learned subordinate courts, defined under various laws can be summarized as Sections 397 read with 401 of the Code of Criminal Procedure 1973; Sections 115 of the Civil Procedure Code 1908 and so on.

A notion of appeal or review or revision refers to the right of the accused, the victim and the government prosecutor (public prosecution in India) to have the chance to challenge the judgment of the court of first instance, under the pretense of any legal, factual or evidentiary error undertaken by the level of proceedings of trial.[11] Therefore, the appeal plays the role of the instrument that fixes the eventual errors, which could have been done by the court of first instance. The right to submit the appeal guarantees the procedural parties that the principal of two instances will be respected.

Review is one of the most important parts to ensure justice and this principle is almost present in every democratic country. Review enables an individual to ensure that his right is not violated by any act, any law made by the government or by an error of any court. Review truly holds together the concept of complete justice.[12] If there had not been a system of review in the judicial process, then the judgment of the court of first instance would not be subject to the re-examination or review by the court and the entire judicial process would become defective and debatably inaccurate. The principle of judicial review ensures the principle of complete justice.

To harness the expressive power of a constitutional rule, it is important that appellate review be guaranteed to all litigants, requiring the appellate court to decide the appeal and without granting it the authority to voluntarily decline jurisdiction. The appellate authority in the justice system promotes participation by allowing losing litigants to seek a second chance at justice by presenting their concerns to a higher tribunal. Even if they do not prevail on appeal, a ruling on the substance of their claim by a second tribunal gives losing litigants a

[10] Meenakshi Sinha, 'Harnessing Land Value Capture: Perspectives from India's Urban Rail Corridors', *Land Use Policy*, 108 (2021), p. 105526 <https://doi.org/10.1016/j.landusepol.2021.105526>.
[11] Charu Jain and others, 'Women's Land Ownership in India: Evidence from Digital Land Records', *Land Use Policy*, 133 (2023), p. 106835 <https://doi.org/10.1016/j.landusepol.2023.10683>5.
[12] Tejal Jesrani and Daimiris Garcia, 'Gendered SLAPPs: Addressing Criminal Prosecutions against Exposers of Sexual and Gender-Based Violence under International Human Rights Law', *International Journal of Law, Crime and Justice*, 80 (2025), p. 100729 <https://doi.org/10.1016/j.ijlcj.2025.100729>.

greater voice in the justice system which reassures litigants that they are getting the fair right to justice that is the cause of the due Process guaranteed under Article 21 of the Constitution of India: Right to Life and Personal Liberty.

The division bench of Honorable Madras High Court in the case of Vivekananda Vs. State of Tamilnadu while analyzing the need of the right to appeal to the convict held that the convict shall have at least a single right of appeal. The convict shall have at least a right of first appeal on facts. These right finds reinforcement in under Article 21of the Constitution of India.

3.2. Appreciating the Provisions of Appeal in the Other States' Land Grabbing Law in India

In India, there are five states which have enacted the law for prohibiting the illegal land grabbing activity i.e. Assam, Andhra Pradesh, Karnataka, Gujarat, and Odisha. Each state has different objectives but the ultimate purpose of each states law is to prevent the menace of illegal land possession by use of force or deceit. Except the state of Gujarat, all other states have framed the law of land grabbing with the provision of the review or the appeal. Thus, except the impugned law, all other similar nature of state land grabbing laws has appreciated that the provision of appeal is paramount statutory opportunity for the aggrieved person and therefore, every party of the proceeding must have the right to challenge the judgement of first instance court.[13] How other states have incorporated the provision of review and appeal will be discussed in the following.

A. The State of Odisha
   The State Legislature of Odisha has framed the prohibitive law, namely the Odisha Land Grabbing (Prohibition) Act 2015, where in Section 25 contains the provision for the right of review of the judgment passed by the ld. Trial Court. The said state law permits the review of the judgment for the limited purpose of: a mistake of fact; ignorance of any material fact; and an error apparent on the face of the record.

B. The State of Karnataka
   The State legislature of Karnataka has the similar kind of provision of review in Section 17, incorporated in law as noted in the State of Odisha, providing the second opportunity to the aggrieved person.

C. The State of Assam
   In the state of Assam, Section 13 of the state land grabbing law, stipulates the provision of appeal to the higher forum/court. The provision provides for the opportunity of appeal only against the final or the intermediate order and not in the case of the interlocutory order. The law further limits the period of filing of the appeal so that any person may not misuse the provision of appeal by keeping the right of appeal pending in his pocket for wasting the judicial time. It is also prominent that the land grabbing law of Assam has also stipulated the separate appeal for the separate nature of proceedings i.e. civil and criminal proceedings in the land grabbing law. Thus, the cause of both the appeals will be kept separated which will have sufficient opportunity of hearing in the civil litigation also.[14]

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[13] John Kujur and others, 'Marginals within the Marginalised: Exploring the Changes in Occupational Pattern among Adivasi Women in the Context of Land Alienation in India', *World Development*, 182 (2024), p. 106715 <https://doi.org/10.1016/j.worlddev.2024.106715>.

[14] Arjunan Subramanian and Parmod Kumar, 'Property Rights, Factor Allocation and Household Welfare: Experimental Evidence from a Land Titling Program in India', *Journal of Development Economics*, 167 (2024), p. 103238 <https://doi.org/10.1016/j.jdeveco.2023.103238>.

Further, the land grabbing law of Assam also binds the higher forum/court to complete the hearing of the appeal and pass the judgment within a period of 6 months from the date of filing of the appeal.

D. The State of Andhra Pradesh
In the State of Andhra Pradesh, the land grabbing law is enacted with both provision of review as well as an appeal. In Section 7A, sub-section 3 and Section 16, the law provides the opportunity of appeal before the higher forum on the ground of the law and the facts. Further, the law also stipulates the time period of filing of the appeal. The state legislature of Andhra Pradesh has enacted the similar kind of provision of review in Section 17A, incorporated in law as noted in the State of Odisha and Karnataka, providing the second opportunity to the aggrieved person.[15]

3.3. Absence of Appellate Provision: Comparison with Other Criminal Law of India and Other Nations

"A function of criminal appeals is to maintain consistency in trial courts."[16] An accused has an expectation that he or she will be treated lawfully and by the eyes of law, both procedurally and substantively, with the rule of law and in the identical manner as any other accused facing the trial. Appellate court has an important role to play in ensuring that suitable practice and equality of treatment is processed. A right to statutory appeal enables a person to enforce his right that might have been overlooked by the subordinate court. In the process of statutory appeal, the litigant will exercise his right to get re- examined the merits of his case based on the law and the fact. If an appellate court finds contravention to any dominant law at the time of appeal, then it would set the decision aside.[17]

In India, mostly all legislations have provisions of appeal or revision or review overtly or covertly. The criminal, civil, family, consumer, labour and even arbitration laws have provisions of appeal, revision and review. This ensures the right to be heard by the second forum for the cause. Thus, the second forum hearing is available in every sphere and stream of legislation. On the other side, the practice and implementation of the Land Grabbing Act in the present context will be opposite to this though the kind of proceedings of the Act is primarily civil or criminal.[18] The section of the accused or complainant of the proceedings conducted under the Land Grabbing Act will be unable to approach the superior courts. Though the accused/complainant of the criminal case, one statute will entitle them and another will prevent. Thus, the parties to the proceedings will begin to experience discrimination against one another.[19]

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[15] Amit Bhaduri and Kaustav Banerjee, 'Land Acquisition and Economic Development: A Decolonised View', *World Development*, 192 (2025), p. 107011 <https://doi.org/10.1016/j.worlddev.2025.107011>.
[16] Lester B. Orfield, The Right of Appeal In Criminal Cases, *Michigan Law Review*., 34.7 (1936), p. 937, 938. <https://repository.law.umich.edu/mlr/vol34/iss7/3/>.
[17] Anna-Katharina von Krauland and Mark Z Jacobson, 'India Onshore Wind Energy Atlas Accounting for Altitude and Land Use Restrictions and Co-Located Solar', *Cell Reports Sustainability*, 1.5 (2024), p. 100083 <https://doi.org/10.1016/j.crsus.2024.100083>.
[18] Philip Mader, 'Orchestrating Self-Empowerment in Tribal India: Debt Bondage, Land Rights, and the Strategic Uses of Spirituality', *World Development*, 174 (2024), p. 106440 <https://doi.org/10.1016/j.worlddev.2023.106440>.
[19] Jef De Mot, Michael Faure, and Jonathan Klick, 'Appellate Caseload and the Switch to Comparative Negligence', *International Review of Law and Economics*, 42 (2015), pp. 147–56 <https://doi.org/10.1016/j.irle.2015.01.003>.

The present law will also raise a moot question as to the situation where the party to the proceedings is subjected to the dual legislation i.e. Gujarat Land Grabbing Act and another law, having provision of appeal or revision or review. In such an eventuality, the judgment would be appealable for the part of the provisions of legislation having appellate jurisdiction. However, the provisions of the grabbing act will not be appealable. This illogical situation will create havoc and confusion of the law in the mind of the public at large. In the background of the aforementioned discussion, it is prominent to contend here that the legislature has the power to restrict unnecessary and unreasonable filing of the appeals by limiting the power of appeal. The legislation is not always supposed to be provisioned so that each and every aspect of the judgment is appealable in detail. The legislature, in their wisdom, can restrict the subject of the judgment which can be appealed against, for example: appeal against the recording of the facts or the appreciation of evidence or the question of law only.

India has a federal system of legislature and framing structure of law i.e. Union and State. In India, mostly every criminal as well as civil laws framed by the union government have the provisions for appeal. These laws are Criminal procedure Code 1972, Civil Procedure Code 1908, Protection of Children from the Sexual Offences Act 2012, Hindu Marriage Act 1955. The appellate provisions may not always be equipped with the review of the entire orders and judgments. Some laws may have technical restrictions to the grounds of the appeal or review or revision. Under the provisions of the Civil Procedure Code 1908, there are only three grounds for revision[20], which are: When the lower court meditates on a matter on which it has no jurisdiction; There was authority, but it was not exercised; and Jurisdiction has been applied illegally or irregularly.

Under the provisions of the Civil Procedure Code 1908, the second appeal is preferable only in the case where the appellant is able to produce Substantial Question of Law[21]. Under the provisions of the Arbitration and Conciliation Act 1996, the provisions for challenge[22] are limited to: A party to the proceedings was under some incapacity; or The arbitration agreement is challengeable under the law; or The party making the application was not given proper notice of the appointment of an arbitrator; or The subject- matter is beyond the scope of the submission to arbitration; The arbitral award is in conflict with the public policy of India.

As comparison, in United Kingdom, under the Magistrate's Court Act 1980, the right to appeal against the order or judgment of the Magistrate Court is available to the litigant[23]. However, when the litigant is intending to challenge the judgment under the Child Support Act 1991, the provision of Section 111A limits the right to file appeal in the cases, involving the issues of: A decision is against the law; or the verdict is excessive to the court's jurisdiction. Here, the limitation cast by the law on the right to file an appeal is that except in the aforementioned situation, the appeal would not be maintainable in the appellate jurisdiction court.

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[20] Section 115 of Civil Procedure Code, 1908. (Union of India – Section: Section 115 in The Code of Civil Procedure, 1908). <https://indiankanoon.org/doc/82577596/.>

[21] Section 100 of Civil Procedure Code, 1908. (Union of India – Section: Section 100 in The Code of Civil Procedure, 1908). <https://indiankanoon.org/doc/192138551/>.

[22] Section 34 of Arbitration and Conciliation Act, 1996. (Union of India – Subsection: Section 34(2) in The Arbitration And Conciliation Act, 1996). <https://indiankanoon.org/doc/439304/>

[23] Section 111(1) Magistrates' Courts Act,1980. <https://www.legislation.gov.uk/ukpga/1980/43/section/111>

In landmark judgment of McKane v. Durston[24], un-dissented United States Supreme Court laid down a legal ration that no matter how grave the offense would be, a criminal defendant has neither constitutional nor statutory right to appeal. This principle was laid down on the basis of the common law features that do not recognize an absolute right to appeal. However, the Hon'ble Supreme Court has held in the case of United States of America v. Quintero-Barraza[25] that: *"The Court of Appeal does not consider evidence not presented to the district court, claims that require outside record support cannot be presented on direct appeal."* The leading jurist of USA Justice Frankfurter had an opportunity to comment upon the right of appeal in the case of Griffin v. Illinois[26]. His lordships had dictum that neither the common law nor national historical experience lends any support to the contention that "due process of law" should be construed to include a right to appeal in criminal cases. The federal courts had not appreciated the appeals from convictions. In fact, it is also noteworthy that there was no appeal from convictions until 1907 in England despite the civilized standards of criminal justice.

The Constitution of Washington, under Article I, Section 22, contains as under: "*In criminal prosecutions, the accused shall have…the right to appeal in all cases."* The essential function aimed by the provision of right to appeal is to reduce the risk of deciding the fate of the case erroneously, mistakenly, intentionally or corruptly and thereby either acquitting the culprit or convicting the innocent in the criminal cases. Thus, the Constitution of Washington State has expressly included the right to appeal from a criminal conviction in article I, section 22 of the 'Declaration of Rights'. In the year 1889, Washington became the first federal state in the USA to recognize the right to appeal in criminal cases. Later on, 6 other states have amended their constitutions to specify the guarantee of the right to appeal in criminal cases.

Thus, the principle of limited scope of appeal is well recognized in India as well as by the common law countries, where the laws have permitted the appeal but restricted the appellant from arguing, excessive to the appellate-jurisdiction and by providing the aforementioned illustrations, the endevour was made to furnish the examples of legislation where the limited right of appeal is enacted under the law. The impugned law could have been codified with the rider of the limited right of appeal under the law for the effective satisfaction of the purpose and objectives of the criminal jurisprudence. Thus, the provisions of appeal are indeed the most important feature of the act which is lacking in the present legislation. The litigants of the afore-stated legislation, though falling within the same category of civil disputes and criminal trial, have the right to appeal, in either of the above-described forms. However, the impugned legislation falling under the same part does not have such provisions. Thus, the impugned legislation discriminates between the subjects of the law for the very same kind of subject. Here, the primary glance does not make any *inteligia differentia* which can justify the vacuum of right to appeal to the subjects of the impugned land grabbing act.

[24] McKane Vs. Durston 153 Us 684 (1894). (Justisia U.S. Supreme Court McKane v. Durston, 153 U.S. 684 (1894), McKane v. Durston, No. 1185). <https://supreme.justia.com/cases/federal/us/153/684/>
[25] America Vs. Quintero-Barraza 78 F.3d 1344, 1347 (9th Cir. 1995).
[26] Griffin Vs. Illinois 351 Us 12(1955). (Justisia U.S. Supreme Court, Griffin v. Illinois, 351 U.S. 12 (1956), Griffin v. Illinois, No. 95). <https://supreme.justia.com/cases/federal/us/351/12/>

3.4. Affirming Patent Error and Injustice

"The very existence of the right of appeal renders appellate oversight likely, which in turn encourages consistency (and better decision-making) among trial judges, who know that their decisions may be subject to challenge."[27] In the impugned law, the error of the court can arise in two different proceedings i.e. Civil and Criminal. In civil proceedings, the appreciation of applicable evidence and facts and interpretation of peculiar law is primary to decide the right to the tangible or intangible property and interest into it. In criminal lodgment, patent error can take place in mainly two ways: Firstly, an innocent accused may be wrongfully convicted based upon the many arbitrary reasons for such errors i.e. The judge may fail to assess the adduced evidence properly; He may be misled by fabricated or misleading evidence or exculpatory evidence may not be produced at trial. Second, an accused may not have received a fair, impartial and unbiased trial for a myriad of reasons. The right of appeal provides a forum in which the accused may have these errors and concerns get addressed before the senior forum. Thus, the right of appeal is crucial for ensuring that justice is done in each case. These functions of appeal explain their inclusion in modern fundamental rights instruments.[28]

To substantiate the need for efficient and sufficient appeal opportunity, whereby any errors of the judgment may be corrected, one may take reference of England where the special enactment of appeal i.e. the Criminal Appeal Act 1907 was introduced. The law established the Court of Criminal Appeal for the very first time. The appeals under the new act were sufficiently broad in both scope and jurisdiction and the right to appeal was available to all persons convicted and the provision for the review of the trial courts' judgment and conviction was permitted as of right to the litigant on two aspects: questions of law; the mixed questions of law and fact.[29]

The most acceptable way in which the human judges are accountable is through the right of the party to appeal against the judicial verdict through the appropriate higher courts. In this way, the affected party is statutorily able to have the decision reviewed by another independent judge or judges which will mostly eliminate the chances of injustice due to prejudice or incapability or corruption. The court adjudicating an appeal will correct errors of the trial judge and the right of appeal ensures that, as far as possible, the courts reach correct conclusions. With a right to appeal, a single human adjudicator is no longer in control of the litigant's destiny instead, the power of the adjudication will be exercised through a multi-judicator appellate panel in addition to the trial court. In this way, the process will guarantee decentralized decision-making which limits the amount of power vested in a single individual.[30]

The private function of the judges is to perform the accountability to the individual litigants. The public function is that enabling errors to be corrected maintains and enhances the confidence of citizens in the justice system. Another aspect of the public function is that

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[27] Patrick David Hansen, Stacking Appellate Dissents: Due Process In The Appellate Arena, *Val. U. L. Rev.*, 18, (1983) p. 141 - 144. <https://scholar.valpo.edu/vulr/vol18/iss1/4>

[28] Annabel Dulhunty, 'When Extractive and Racial Capitalism Combine – Indigenous and Caste Based Struggles with Land, Labour and Law in India', *Geoforum*, 147 (2023), p. 103887, doi:10.1016/j.geoforum.2023.103887.

[29] Mader, 'Orchestrating Self-Empowerment in Tribal India: Debt Bondage, Land Rights, and the Strategic Uses of Spirituality'.

[30] Dhiraj Barman and Subhanil Chowdhury, 'Land for Urbanization: Shifting Policies and Variegated Accumulation Strategies in a Fast-Growing City in Eastern India', *Land Use Policy*, 140 (2024), p. 107111 <https://doi.org/10.1016/j.landusepol.2024.107111>.

the appeal court can provide guidance for future cases and thus facilitate certainty. In these ways the right of appeal furthers the rule of law. The afore-stated idealistic and realistic combination can be achieved through the effective control where the appeals are broad in scope and argument, involving complete reconsideration of the case by the superior court and thus canonist procedure, wherein the legal issues, factual findings and the punishment imposed are reviewable by the appellate court. In fact, the strict document-keeping procedure in the structural system further facilitates comprehensive review and a written dossier becomes the backbone of criminal trials.

3.5. Absence of Right of Appeal is Violative of Article 14(5) of International Covenant of Civil and Political Rights Adopted in 1966

The ICCPR is a framework of UN general assembly, having framed with 49 articles, which was adopted in the year of 1966[31] to protect and preserve basic human rights.[32] India is a signatory to ICCPR which was adopted by India in the year of 1979. The ICCPR covenant, under Article 14 sub-article 5 ensures a right of appeal in wider and unequivocal terms which contains as follow "*Art. 14(5). Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*" According to United Nations Human Right Commission, "This article guarantees the right to a fair trial and aims at ensuring the proper administration of justice".[33] Further, the requirements of hearings to be both fair and public shall be applicable equally on appeal and its subjects. This article needs to be strictly followed by the government as it may have international implications for the creditability of the national judicial system. The worldwide recognized event of it had occurred in the case of Vazquez v. Spain, where the International Human Rights Law and Practice Committee found that the Spanish appellate remedy is violative of article 14(5) because the appellant had the limits on his arguments legal aspects of the conviction only. The Government of Spain was diplomatically forced to introduce amendment to the provision, expanding the scope of Review.[34]

The Indian legal system has, till now, fulfilled and adhered to every international implication, having signed by the government and achieved the various milestones of civilized nations. However, the present impugned law of land grabbing is completely contradictory to the spirit of the ratification of the central government which may result in criticism at international institutions. It is thus essential that the particular remedy for appeal

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[31] Core InstrumentUniversal Instrument, International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. <https://www.ohchr.org/sites/default/files/ccpr.pdf>

[32] UN General Assembly *Resolution, 2200a (xxi)*, (Dated 16.12.1966). International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A(XXI)_economic.pdf>

[33] U.N. Human Rights Commission, General Comment 32, Para. 2, U.N. *Doc. No. Ccpr/C/Gc/32*, (Aug. 23, 2007). <https://digitallibrary.un.org/record/606075?ln=en&v=pdf>

[34] International Human Rights Law and Practice Committee, *Final Report on The Impact of The Findings of United Nations Human Rights Treaty Bodies*, Para. 38 (2004). <https://www.ohchr.org/sites/default/files/Documents/Publications/NgoHandbook/ngohandbook4.pdf>

or review must be provided for the opportunity of an adequate review. Therefore, the insertion of the right to appeal is extremely warranted by the government.

3.6. Contrary to the Aim, Spirit and Objectives of Section 43 of the Indian Evidence Act

The Land Grabbing Act of Gujarat has very rare provision of law which has two unique aspects: Firstly, it binds all the parties to the case, irrespective of their existence as a party in the civil suit or not, with the judgment. Secondly, it binds the losing party with the outcome of the judgment of the trial court without having the right of appeal. The provision is contained in Section 9 sub-section 2 of the law as follow: "*Section. 9(2) Notwithstanding anything in the Code of Civil Procedure, 1908, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall, subject to the provisions of this Act, be triable in the Special Court and the decision of Special Court shall be final.*"

The literal interpretation of the afore-stated provision would be that the litigant for the civil case under the Land Grabbing Act has only a single forum i.e. Special Court. Once, the Subordinate Court has declared the judgment, any party, even if righteous, would be remediless to take any statutory recourse. Here, the most interesting thing is the contradiction between the present provision of the Land Grabbing Act and Section 43 of the Indian Evidence Act which read as: "*Judgments, etc., other than those mentioned in sections 40 to 42, when relevant. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.*"

The provision of the law provides that the judgment or order or decree of the court is relevant to the extent of 'the Fact in Issue'. However, the present provision of the Land Grabbing Act binds all the parties whether impleaded as the party in the litigation or not. These create a serious contradictory situation between the civil features of land grabbing laws and the traditional civil procedure code. The traditional view only binds the party to the extent of fact in issue and thereby limited to the facts of parties to the litigation and not alien person.[35]

3.6. Arguments against the Provisions of the Right to Appeal

Those who argue that the provision for appeal is unnecessary in the current Land Grabbing Act present various propositions, both empirical and non-empirical. The most prominent and noteworthy arguments are discussed below.

Constitutional Protection with Discretionary Jurisdiction: When the law had just come into force, the government pleaders/public prosecutors, representing the state government of Gujarat in the various District Court and High Court, argued that the discretionary system and jurisdiction under the contours of Constitutional framework can provide a sufficient discretionary appellate remedy.[36] They have contended that the parties can present their case to the higher court under Article 32 or 226 or 227 of the Constitution which sufficiently

[35] Madhavi Jain, 'Future Land Use and Land Cover Simulations with Cellular Automata-Based Artificial Neural Network: A Case Study over Delhi Megacity (India)', *Heliyon*, 10.14 (2024), p. e34662 <https://doi.org/10.1016/j.heliyon.2024.e34662>.

[36] Jeovan Assis Silva and Tomas Aquino Guimaraes, 'Factors Affecting Judicial Review of Regulatory Appeals', *Utilities Policy*, 72 (2021), p. 101284 <https://doi.org/10.1016/j.jup.2021.101284>.

protects the litigant's rights even if the court then rejects the appeal after the scrutiny of the case. Negating the said contention, the Honorable Division Bench of the High Court has suggested to the top law officer (Advocate General) of the Government of Gujarat to consider the amendment in the law by engrafting the provision of appeal under the law, while hearing the petition bearing Special Civil Application No. 2995 of 2021 and allied matters, challenging the constitutional validity of the impugned act due to the non-enactment of the provision of appeal. The captioned petition is presently pending before the Honorable High Court of Gujarat.[37]

This position of state government has pragmatic support, as the discretionary denial of reviewing the judgment or order of the Special Court under such articles by the Supreme Court or the High Court has the limited tools of interference. The most pertinent position here is that the courts cannot be compelled to exercise their powers under the writ/review jurisdiction. Nevertheless, from a procedural point of view, the discretionary denial of appeal review is by no means equivalent to an affirmation. A court with discretionary review power may deny review for any number of reasons other than the perceived correctness of the lower court's ruling. A court may decline review, for example, because the underlying judgment is small, and its effect appears limited to the parties before the court and unlikely to affect future cases. However, it has to be conceded that such denial amounts to confirmation of the judgment of the subordinate court.

Rare Erroneous Criminal Judgment: The belief of society is that the judge, being the sound individual, extremely rare delivers the wrongful convictions and that would be only in the case of non-sufficiency of material and provision of law against the claim of the litigant. Therefore, the provision of appeal is not pointless, on the contrary such appealing provision will wrongfully strengthen the wrongdoer to safeguard himself from the guilt of the offense and imposition of the punishment and at the same time the frivolous and fabricated complaints.

Finality of Judgment: The layman argues that the appeals undermine the finality in the criminal trial and procedure. The appeal will make the process of execution of the judgment more stressful and sometimes negligible. It is argued that the final determination has to be specified somewhere. However, the arguers of this proposition disregard that the judge being a single individual may commit human errors, resulting in fatality to the justice system. This argument could be plausible in the judicial system based upon the jury trial where the appropriate body may make such a determination of case. The juries in a group hear the arguments, appreciate the evidence and the witnesses at trial, and are therefore best positioned to arrive at the truth.

Greed of Lawyers to Continue Litigation. The politician who has also held political offices in the 19th century, Sir Thomas Denman, the former Lord Chief Justice of King's Bench of England and Wales, during 1832 to 1850, has alleged and attributed the support for the right of appeal to lawyers' greed for another litigation to show their skills and to criminals who desired to plead guilty to crimes that they did not commit in order to thumb

[37] The Indian Express. *Gujarat Land Grabbing (Prohibition) Act: HC suggests state to consider amendments* <https://indianexpress.com/article/cities/ahmedabad/gujarat-land-grabbing-hc-amendments-7641855/> (published on 26.11.2021).

their noses at the authorities.[38] This baseless, erroneous, unreasonable statement from a jurist will certainly degrade the decorum of the judicial organ. Further, this envisages how politically promoted jurists can undermine the principle of due process and the noble institution of bar.

Burden of Expense on Government. The additional contention canvassed is that the criminal appeals will lay additional burden on and encouraging a number of further costs. A system of appeals, undoubtedly, is expensive for the resource of government. Additional appellate judges need to be appointed with supporting staff. Further, the documentation, transcript, and paper book are some of the additional charges that will be laid down on the government and ultimately on the people. However, that being a part, such argument is too uncivilized to argue because it promotes the cost of money at the higher pedestal in front of the cost of injustice in society.[39]

4. Conclusion

The Gujarat State Legislature should explicitly recognize a due process of statutory right to appeal under the Gujarat Land Grabbing Act 2020 in both civil and criminal remedies. The right to appeal plays a number of important roles in the justice system, especially the correction of legal and factual errors. If appellate remedies are absent from the modern procedural framework, the system as a whole would no longer provide adequate due process protection which is engrafted under Article 21 of the Constitution of India. Recognizing constitutional protection for appellate rights would also express a normative view, promoting the values of institutional legitimacy, respect for individual dignity, predictability, and accuracy. It will satisfy the aims, core, motive of the Indian civilized society, its principles and the elements of the nutshell of fundamental Right to Justice as enshrined under Article 21 of Constitution of India."

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[38] N.W.Sibley, *Criminal Appeal and Evidence*, 19, N.2, (Making of the Modern Law:1908 import Gale, Making of Modern Law (20 December 2010). <https://www.amazon.in/Criminal-Appeal-Evidence-N-Sibley/dp/1240125909>

[39] Casey Welch and John Randolph Fuller, 'Chapter 11 - The Right to Appeal and the Appellate Process', ed. by Casey Welch and John Randolph B T - American Criminal Courts Fuller (Anderson Publishing, Ltd., 2014), pp. 378–413 <https://doi.org/10.1016/B978-1-4557-2599-1.00011-4>.

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