

VICTIM RIGHT OF APPEAL

Written by **Dheerendra Kumar Baisla**
LLM Student, Galgotia School of Law, Galgotias University

ABSTRACT

Over the two Decades the New Jurisprudential study has increased regarding the role of victim which is very less, for this Several initiative were taken Internationally by the UN Declaration of Basic Principles of Justice for the Victim of Crime and Abuse of Power, 1985, Nationally by Recommendation of 41st, 48th, 154th as well as 221st Law Commission Report and lastly by the Malimath Committee Report in 2003. The main reason behind that, it is the people by and large have lost confidence in the Criminal Justice System. There is need to carry fair and equal opportunity justice to victim participation as they are sitting outside the court in mute spectator though they are the primary victimization of offence. In this regard 2008 Amendment Act in the Code of Criminal Procedure, 1973 brought significant changes in terms of Victim role, but still there is no Unanimity amongst different High Court. While considering this in the Present Paper the Author address following issues Firstly, as to What is the true meaning of the expression 'Victim' as define in section 2(wa) read with proviso to section 372. Secondly addressing, in regards to the Status of Complainant is that Whether the Complainant consider as Victim for the purpose of proviso to 372 Criminal Procedure Code. Thirdly addressing, Whether the Victim after Right to Appeal is accessory or auxiliary to State power to appeal. Fourthly addressing, Whether Victim has to obtain Leave to Appeal as required by the State to appeal against acquittal under section 378.

KEYWORDS: Victim, Right of Appeal, Criminal Procedure Code, Complainant, State.

INTRODUCTION:

In India the criminal justice system followed by the adversarial system, Under which the role of victim is very minimal in comparison to the role of accused. Basically there are three main functionaries firstly, Investigation which is done by police, secondly, prosecution and thirdly, judges. Each functionaries have their role in confirmation with the separation of power. As we can very well notice there is no special legislation for the victim, the above functionaries have important role to play, but from the past two decades it is assume by the above functionaries as well as by the government that the people

by large has lost trust and confidence as system is considered to be favorable to the accused, justice got delayed, foul play by the investigation agencies, and victim has no say. Due to this several amendment had brought to change the scenario in the present system as well as to increase the role of victim participation as this will increase trust and confidence in the people and serve the purpose of Restorative Justice. But due to such change it is very well examine that now in India adversarial system is neither a pure adversarial system nor a pure Inquisitorial system. It is somewhat can be said to be a Quasi-Adversarial system. Several new provisions has been included in terms of Restorative justice as well as in terms of Participatory victim and one of such provision is Victim Right of Appeal. Earlier before 2009 there is no such kind of provision, it is only the Central government, State government, District Magistrate, and Complainant who are having the enabling provision of preferring the appeal subject to certain conditions.

EVOLUTION OF VICTIM RIGHT TO APPEAL

The Evolutionary development of Victim Right of Appeal had started when the Britishers had passed a legislation which is called Regulating Act 1773 of which authority is given to the Supreme Court to legislate British subject only later of after the Mutiny Revolt of 1857, to govern Indian criminal aspect the britishers had passed The Code of Criminal Procedure 1861 which is originally enacted and which do not provide Right of Appeal against acquittal to anyone including victim as well as state.

It was the Code of Criminal Procedure of 1898 a provision 417¹ was inserted which enables the Government to direct the public prosecutor to present an appeal to the high court from an original or appellate order of acquittal passed by any court other than a High Court. Even in the cases of Inadequacy of Sentence as provided in section 417A², it is only the government who can only direct the public prosecutor against such inadequacy. Later on to curtail the indefinite power of state, Law Commission of India in its 41st Report³ as well as in its 48th Report⁴ recommended to restrict the right of appeal given to the state government and accordingly the parliament in The Code of Criminal Procedure, 1973 creates an embargo that is i.e. 'Leave to Appeal' but here also no role is assigned to

¹ *Ibid see footnote no. 2.*

² *Ibid see footnote no. 3.*

³ 41st Report of Law Commission reporting on The code of criminal procedure, 1898-Vol 1, 1969.

⁴ 48th Report of Law Commission reporting on Some questions under the code of criminal procedure bill,1970.

the victim in terms of appeal. And lastly, it is the amendment of 2008⁵ within The Code of Criminal Procedure, which brought newly definition of victim as well as other provisions also of which the most important is Proviso to Section 372⁶.

WHO IS VICTIM?

Accordingly, it is The Code of Criminal Procedure 1973 (as amended in 2008) which defines Who is Victim and Who can be Considered as Victim and for the purpose of understanding the Victim Right to Appeal first of all we have to understand as to what is the true meaning of the expression 'Victim' as define in section 2wa in comparison to the Universally accepted definition by the United nation.

As per UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985⁷ :-

- "Victim is someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental right through acts or omissions that are in violation of criminal laws operative within a state, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim."

As we can very well examine from the above definition wordings which is very broad in nature and it is also accepted and followed by the International Criminal Court, which was established in 1998. However the definition is so wide, for that we have to examine the keywords of definition which is-

- 'Someone Suffered'- this someone can be of anyone either it is Natural person or it is Legal person⁸.
- 'Harm'- harm can be of any nature whether direct harm or indirect harm⁹
- 'Impairment of Fundamental Right'- as we know fundamental right are human rights this led to further widening of the scope of victim.

⁵ Ins, by Act 5 of 2009, sec.29 (w.e.f. 31-12-2009).

⁶ *Ibid see footnote no. 5.*

⁷ United Nation Declaration on Basic principles for justice to the victim and abuse of power, 1985.

⁸ International Criminal Court rule 85 states "someone who has suffered harm."

⁹ International Criminal Court rule 85 states "someone who has suffered harm."

To protect the above mentioned victim the resolution has also stated that each state must provide opportunity to the victim, so that he can avail fairness in the justice.

India is also the signatory to the above mention Resolution, but it took more than two decades even to define who is victim and providing fair opportunity to contest. In India it is only the amendment of 2008 throughout which our criminal justice aware 'who is victim' but as far as 'who can be considered as victim' is concern till now there are several conflicting views of the High Court in terms of Victim Right to Appeal.

- As per Section 2wa¹⁰ – “a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”
- As per Section 372 proviso¹¹- “Provided that the victim shall have a Right to prefer an Appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.”

So for the purpose of proviso itself first of all we have to understand the victim as provided in Section 2wa. For that we have to examine the definition keywords and these are:-

EXPRESSION PERSON

'Person' as far as the word person is concerned it is specifically mention in the CR.P.C that the expression which is not defines in this act are construe from the IPC¹² and according to IPC section 11 which states as

“The word “person includes any company or association or body of persons, whether incorporated or not.”

The above definition shows that both natural as well as legal person are considered as person which were also fall in the definition of Victim, but this is not the case as if read it “Victim means and includes a person who suffered any loss or injury” according to definition than it shows that it is used in the context of the person whose suffering is the direct and most proximate. As the word means and include make it very exhaustive as held in kareemul case.

¹⁰ The Code of Criminal Procedure, 1973, Section 2wa

¹¹ *Ibid see footnote no. 5.*

¹² Indian Penal Code, 1890, Section 26 reads as the expression which are not define

WHO CAN BE CONSIDERED AS VICTIM?**Expression ‘Any Loss or Injury’ whether ‘Includes Guardian and Legal Heir’**

The other issue regarding the victim right to appeal is that whether the word victim includes Guardian and Legal Heir for the purpose of preferring appeal. The Expression ‘Any loss or Injury’ whether includes apart from the victim his Guardian and Legal Heir. Basically there are several conflicting decisions of the high court regarding victim includes legal heir or not in terms of appeal.

There are three views of court which are as follows:-

Narrower View	Broader View	Equalize View
Delhi high court 1. Chattar Singh V. Subhash & Others ¹³	Guahati high court 1. Gouranga Debnath V. State of Tripura	Punjab and Haryana high court 1. Tata steel V. Atma Tube Products ¹⁴
Andhra Pradesh high court 2. D.Sudhakar V. Panapu Sreenivasulu ¹⁵	Patna high court 2. Parmeshwar Mandal V. the State of Bihar ¹⁶	Delhi high court 2. Ram Phal V. State And Ors. ¹⁷
Under this head the views of the court narrower according to according to them:-	Under this head the views of high court are liberal and according to them:-	Under this head the views of high court liberal as well as equal to both side and according to them:-

¹³ (2011) 123 DRJ 257 (DB).

¹⁴ [2013(1) ILR 719 (P&H)].

¹⁵ (2013 Cr LJ 2764).

¹⁶ (Criminal Appeal (DB) No.1078 of 2012).

¹⁷ (CrL.A.1415/2012).

<p>“Victim” means a person who suffered direct and proximate injury.</p>	<p>“Victim” means the person who suffered mental, physical, and emotional suffering.</p>	<p>“Victim” means the person who suffered mental, physical, and emotional suffering.</p>
<p>“Legal Heir” means the person who are in the line of succession on the basis of personal law.</p>	<p>“Legal Heir” means the person who are in line of succession on the basis of personal law. Here they are limiting.</p>	<p>“Legal Heir” means any person irrespective of the proximity of succession in the line of personal law.</p>

In the above table it is clearly shown that there are number of conflicting views of different-different high court regarding who can be considered as victim for the purpose of filling of an appeal. Basically the above conflicting views are arise from the inclusion of proviso under section 372 proviso. Bb inclusion of proviso some high derived there interpretation on basis of giving restricted interpretation as it is a proviso. But some of the high court are giving true meaning of the words irrespective it is proviso. Ultimately liberal equalize with liberal view taken into consideration wherein appeal can be filed by any one in the line of legal heir but relief can only be given who are the sufferers.

Victim and Complainant Issue:

As we already know who is victim and who can be considered as victim for the purpose of appeal under section 372 proviso. The another issue regarding it is that if talk about complainant they are also considered as victim it is no doubt, but can such complainant file an appeal under section 372 proviso though there was already section 378 (4) & (5) which specifically dealing right of complainant to file an appeal. There are several conflicting views of High Court regarding the complainant right to file an appeal under section 372 proviso and section 378.

Evolution of Criminal procedure code.	Evolution of Victim Right of Appeal
--	--

<p>The Code of Criminal Procedure 1861.</p>	<p>It does not provide for any right to appeal against acquittal to the victim and as well as state also.</p>
<p>The Code of Criminal Procedure 1898.</p>	<p>Originally it contained two provision of right to appeal:-</p>
	<ol style="list-style-type: none"> 1. Section 417- Appeal against Acquittal Which provide exclusive authority to government to direct public prosecutor to present an appeal to the High Court. 2. Section 417A- Appeal against Inadequacy of Sentence Which also provide exclusive authority to respective government and victim had no role to play.
<p>The Code of Criminal Procedure 1973.</p>	<p>Here also same authority is given to the State government and victim has no role to play as per section 377 and 378.</p>
<p>The Code of Criminal Procedure 1973 (as amendment of 2008)</p>	<p>But it is interesting to note here to restrict the power of state who have exclusive right to appeal an embargo of 'leave to Appeal' is created to control the biasness of State.</p>
	<p>It is only the amendment of 2008 which brought significant changes in terms of victim right of appeal and new provision of defining who is victim and who</p>

In the cases of dishonor of cheques if money is not withdrawn it causes 'injury' which were also fall under section 372.

Different Views of High Court

<u>Complainant can file under section 372 proviso</u>	<u>Complainant can only filed under section 378 (4) & (5).</u>
<p>Kerala High Court</p> <p>1. Sree Gokulam Chit & finance Co. (P) Ltd. And another V. T. Krishnakumar & others¹⁸</p>	<p>1. Shibu Joseph & others V. Tomy K.J & others¹⁹</p> <p>2. Omana Jose V. State of Kerala²⁰</p>
<p>Calcutta High Court</p> <p>2. National Plywood Industries V. State of West Bengal²¹</p>	
<p>Jharkhand High Court</p> <p>3. Mahesh Kumar Sinha V. The State of Jharkhand & another²²</p>	
<p>Rajasthan High Court</p> <p>4. Laxmilal Menariya & others V. Rajendra Kumar & others.²³</p> <p>5. Ram Avtar Gupta V. Ravinder Gupta²⁴</p> <p>6. Ashok Kumar V. State of Rajasthan.²⁵</p> <p>7. Porwal Trading Corporation (M/s)</p>	<p>3 Nathu Ram Bansal V. State of Rajasthan & another.²⁷</p>

¹⁸ (2013 (4) KLT 547).

¹⁹ (ILR 2013 (4) Ker.866).

²⁰ (ILR 2014 (2) Kerala 669).

²¹ (LAWS(CAL)-2013-3-64).

²² ((DB) No.4 of 2013).

²³ (2012 (4) Cr.L.R. (Raj.) 2015).

²⁴ (S.B.Crl.Leave to Appeal No.230/2011).

²⁵ (AIR 1990 SC 2134).

²⁷ (014(1) WLC (Raj.) 490).

V. M/s. Global Syntex (BHL) Ltd. & another. ²⁶	
Delhi High Court	4 The Bhajanpura Cooperative Urban V. Suchil Kumar ²⁸

Bombay High Court	5 Ganesh Bandu Badgular V. Manglabhai Ashokbhai Patel & The State of Maharastra. ²⁹
Madras High Court	6 Selvaraj V. Venkatachalapathy ³⁰

Different- different High Court have given different- different views but one of the interesting and larger bench judgment is given by the Punjab and Haryana High Court and others V. Atma tube Products Pvt. Ltd. Three judge bench in which by considering above various high courts conflicting judgment, this high court viewed it differently and it clearly said that once the conviction is done under the complaint case now that complainant only for the purpose of Inadequacy of Sentence and Inadequacy of Lessor amount of compensation can file an appeal under section 372 proviso. So, this high court indirectly recognized complaint as victim for the purpose of 372 proviso.

STATUS OF VICTIM RIGHT TO APPEAL IN COMPARISON TO STATE:

²⁶ (S.B.Crl Leave to Appeal No.100/2012).

²⁸ (CC No.4625/10).

²⁹ (LAWS(BOM)-2013-12-99).

³⁰ ((MD)No. 237 of 2014).

Under the amended Cr.P.C most of the scholars think that due to the inclusion of Victim right to appeal the status of state is considered to be inferior, but there are several judicial opinions regarding the status of State some of these are:-

First Stand:

In this Stand most of the high court judgments are in favour of State and according to them It is the State is superior to the victim and if victim prefer appeal against acquittal and at the same time appeal also filed by the state that the appeal of the victim will not be entertained.

This view has been taken by the Division bench of Gujarat high court.

Second Stand:

In this stand some of the high court considered that the right of appeal given to the victim is more comprehensive & superior to the right of State.

This view was taken by the Allahabad high court.

Third Stand:

In this Stand some of the high court remains neutral and according to them Right of Victim to file an appeal as well as of State are operates in different sphere and neither oust the other.

VICTIM AND LEAVE TO APPEAL:

It is significant to notice is that this right to appeal, which is clearly in affirmative terms, has been given to the victim by inserting the said proviso in Section 372 itself, which is the opening section of the Chapter, and not by any insertion in section 377 or 378, which deal with appeals against inadequate sentence and acquittal. In comparison to wordings of Section 377 and 378, which are apparently enabling provisions, and only give a liberty to the District Magistrate, State Government, the Central Government, and the complainant, to prefer an appeal by use of the word “may”, a victim, under the said proviso to Section 372 has been given a right to prefer appeal by use of the expression “shall have a right to appeal”. So as per the rule of interpretation every criminal law has to be strictly construed if the wordings of the section are clear, unambiguous, as well as without any conflict. It is also significant to notice that, whereas in Section 378, grant of leave has been made a condition precedent for entertaining any appeal against acquittal preferred under sub-sections (1) and (2), and grant of special leave for entertaining an appeal by a complainant preferred under sub-section (4), there is no such qualification prescribed in the said proviso to Section 372 for a victim to maintain

his appeal against an order of acquittal, or against a conviction for a lesser offence or against imposition of inadequate compensation.

- The division bench of Bombay high court has upheld the above view in *Mr. Balasaheb Rangnath Khade vs The State Of Maharashtra*.
- Patna high court has also upheld the above vies in *Parmeshwar Mandal vs The State Of Bihar & Ors*.

CONCLUSION:

Although by creation of such a pleasure right to the victim it will not only minimize the trauma of secondary victimization but also reposed trust and confidence in the victim which has lost in him in view of the Criminal Justice System. But still there is need of more number of participation strategy to the victim in various phases of the criminal justice system firstly, provision of participatory victim in the hearing and opposing the bail application as presently it is only the prosecution which has exclusive right to file an appeal. Secondly, during the investigation after filling of an FIR by the victim it is the absolute authority of police who investigate, no role to the victim has been assigned till now but for the purpose of effective investigation victim should be given such role which establish some sort of victim satisfaction model. So, by incorporating the provisions of 372 proviso victim right of appeal there is expectation in the coming future regarding such kind of provision which ensure fair mechanism to the victim by making victim to participate.