

VICTIMS' RIGHT TO APPEAL UNDER INDIAN CRIMINAL JUSTICE SYSTEM

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Abstract: *Our present criminal justice system is mainly dependent on the victim, but the system is more concerned with the offender, his activities, his rights and correctional needs. There has been gross neglect of the victims' need and interest. After the recommendation of 154th Law Commission Report and Malimath Committee Report the change came in the form of the Criminal (Procedure) Amendment Act, 2008. This Act amended provisions of the Criminal Procedural Code and instituted a number of basic provisions. This included Section 372, the right of a victim to appeal in cases of acquittal, conviction of lesser offence and inadequate compensation. This recent provision has been the subject of a number of case laws in the few years since it was enacted. Although the intention behind this section is noble, there are many practical problems of interpretation that the courts are facing. This paper highlights the decision of the various High Courts in regard to the issues which has emerged after the amendment.*

Keywords: victim, appeal, criminal justice system.

I. INTRODUCTION

Victims of crime play an important role in criminal justice administration both as a complainant and as a witness for the police or prosecution. Although the system is profoundly dependent on the victim, our present criminal justice system is more concerned with the offender, his activities, his rights and correctional needs. The right of the accused or the convict is safeguarded by the constitution as well as various statutory provisions. But the victim who put the law in motion is usually the forgotten people in the criminal justice delivery system. His participation remains at the periphery of the criminal justice system as the initiator of the prosecution and as witness if the prosecution desires. He is neither

participant in the proceeding launched against the offender nor a guiding element in any stage of prosecution. There has been gross neglect of the victims need and interest. In addition he is made to suffer not only in the hand of accused and their associates but at the hand of prosecution agencies.

But lately it has been realized that the victims are the actual sufferers, and they should be situated in the system. As early as in 1979, Justice Krishna Iyer in *Rattan Singh v. State of Punjab*¹ exactly highlighted the need of victims of crime. He observed:

“.....it a weakness of our jurisprudence that the victims of crime, and distress of the dependent of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature.”

The Malimath Committee on Criminal Justice Reforms recommended for empowering the victims with the right to plead themselves as a party, right to be represented by counsel, right to produce independent evidence and cross examine witnesses with the leave of court, right to be in heard the matter of bail, right to continue with the case if the prosecution sought withdrawal, and right to advance argument and prefer an appeal against an adverse order.²

The Malimath Committee has categorically mentioned about victim’s right to appeal in the following words:

*“The victim or his representatives who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the trial court. In such an appeal he could challenge the acquittal, or conviction for a lesser offence or inadequacy of sentence, or in regard to compensation payable to the victim. The appellate court should have the same powers as the trial court in regard to assessment of evidence and awarding of sentence.”*³

Earlier Law Commission in its 154th Report⁴ had also addressed need for victim orientation in the criminal justice administration.

II. NEED AND SIGNIFICANCE OF THE STUDY

¹ (1979) 4 SCC 719

² Government of India, Report: *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, 2003) available at: http://mha.nic.in/pdf/criminal_justice_system.pdf

³ *Id.* at para 2.21

⁴ See Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, Vol.1, Chptr XV (1996)

Prior to the amendment Act of 2008, Victim was only seen as an informant/complainant who set the system in motion by informing police about the occurrence of a cognizable offence or by approaching a magistrate with his complaint. The victim was not given the right to seek information on progress of the investigation and his participation in the investigation process was also dependent on the need of the investigating agencies. At the stage of trial also victim's rights were not addressed adequately. Even in matters of acquittal of the accused the right of appeal against the order/ judgement of acquittal were given to the state which was further made subject to the leave of the High Court. Though in a complaint case the right of appeal against the order/ judgement of acquittal is given to the complainant but the same is also made subject to the special leave from the High Court. And in a police case, the said right of appeal is given only to the state and not to the complainant. The amendment act has brought to several changes in the code the most significant being the definition of 'victim' and 'victim's right to appeal.' But this amendment has created some technical difficulties which has gained considerable attention from the various High Courts. It is utmost necessary to know the stand of various High Courts in different issues. With this eminence the present study has been considered as significant one.

II. OBJECTIVES

The objectives of the study are as follows-

1. To study the changes brought by the Amendment Act of 2008 with regard to victim right to appeal.
2. To study the difficulties which has arisen after the amendment.
3. To discuss the decision of various High Courts in relation to victims right to appeal.

IV. RESEARCH METHODOLOGY

Researcher has used doctrinal method in this research. The status of victim in Indian criminal justice system have been studied from various books and journals. The recommendation of law commission in relation to victim has been studied from the Report of Law Commission of India. The legislative framework relating to victim has been studied from different books. The Judicial response relating to victim punishment has been studied from Judgments of the concerned High Courts and various commentaries on the Judgments.

V. CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008

Keeping in view the recommendation of Law Commission and the Malimath Committee the Legislature has passed the Code of Criminal Procedure Amendment Act 2008.

The amendment act has made several changes in the code the most significant being the definition of the word 'victim' and victim's right to appeal.

Section 2 (wa) of the code defined victim as under:

“Victims means 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 legal heir.”

With the added proviso, Section 372 of the code reads as under –

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this code or by any other law for the time being in force.

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.

VI. JUDICIAL RESPONSE TO VICTIMS RIGHT TO APPEAL

The newly added proviso to Section 372 of the Code, for the first time confers the right on the victim to appeal in criminal jurisprudence of our country. It is to be noted that the said proviso does not provide for Victims right of appeal for enhancement of sentence which still remains the prerogative of the state under Section 377 of the code. Since Section 378 of the code⁵ was not amended in consequence of the insertion of proviso to Section 372 the doubt remains as to whether or not leave of the High Court would be required in case of appeal against acquittal which can be filed in the High Court by the Victim. The language of the proviso to Section 372 supports the view that the victim can directly file an appeal against the order of acquittal without seeking leave from the High Court. If such an interpretation is given to the said proviso it may lead to the following difficulties application of the same:

Firstly it is not clear whether the victim has an absolute right to prefer an appeal or such right to prefer appeal would be available to him only in the case where the state has not prefers the appeal.

Secondly Whether 'complainant' in a private complaint-case, who is also the 'victim' and the 'victim' other than the 'complainant' in such cases are entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek 'special leave' to appeal from the High Court under Section 378(4) CrPC?

Thirdly, Where would the appeal of a 'victim' preferred under proviso to Section 372 lie when the State also prefers appeal against that order of acquittal under Clause(a) of Section 378(1) CrPC?

Fourthly, the said proviso does not provide for the period of limitation in cases where the victim prefer an appeal under the proviso for the categories of cases mentioned therein.

Fifthly, there is no corresponding provision as contemplated under section 390 of the Code⁶ for the appeal preferred under the proviso to section 372 and therefore even if the High Court

⁵Section 378 provides for appeals by the state and the complainant in case of acquittal.

⁶Section 390 provides for procedure of arrest of the accused in cases of appeal from acquittal. It says "When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before which he is brought before it or any subordinate court, and the court before which he is brought commit him to prison pendig the disposal of the appeal or admit him to bail"

entertain such appeal filed by the victim, the court would not have benefit of action being taken under section 390 as section 390 is applicable only to appeal filed under section 378.

A brief analysis of the cases decided by different High Court in relation to the abovementioned issues are discussed hereinafter.

With regard to the first issue In Bhikabhai Motibhai Chavda v State of Gujarat⁷ the complainant/ victim preferred an appeal against the order of acquittal in spite of the fact that the state has already preferred an appeal against the order of acquittal in which the leave has been granted by high court and the appeal was admitted. The bench held that the victim's right of appeal is neither absolute nor higher than that of the state and only if the state is not pursuing the matter with a proper spirit the victim may validly raise a grievance and file an appeal.

A full bench of Gujarat High Court in the case of Bhavuben Dineshbhai Makwana v State of Gujarat & others⁸ reversed the finding of the Division Bench in Bhikabhai case. The Full Bench opined that the right of victim to prefer an appeal is a separate and independent statutory right and is not dependent either upon or is subservient to right to appeal of the state. The court held that the rights of the 'victim' and the State operate in different spheres and neither ousts the other, therefore, filing of appeal by the one will not rob the other of its right to appeal

A similar view was taken by the Punjab and Haryana High Court in the case of M/s. Tata Steel Ltdv M/s. Atma Tube Products Ltd. &Ors.⁹ and held that the right conferred on a 'victim' to present appeal under proviso to Section 372 is a substantive and independent right which is neither inferior to nor contingent upon the filing of appeal by the State in that case.

In relation to the second issue in the case of Smt. Ram Kaur @ Jaswinderkaur v Jagbir Singh alias Jabi¹⁰ the court added a new dimension and observed that :

“By the proviso, a right to file an appeal has been conferred on the victim against the order of acquittal, but the procedure for filling such appeal will be the same as provided

⁷ 2010 CriLJ 3325 (Decided on 10.05.2010)

⁸ Criminal Appeal No.238 of 2012 decided on 2012

⁹ CRM-790-MA-2010 (O&M) Date of Decision: March 18, 2013

¹⁰ 2010 (3) RCR (Cri) 391. (Criminal appeal No.205 of 2010, decided on 01.04.2010)

under sec.378 of the Code. Therefore, even if the victim has a right to prefer an appeal against the order of acquittal, he has to seek leave of the high court to prefer such an appeal.He can not directly file the appeal against the order of acquittal as a first appeal”¹¹

A similar view was taken by Patna High Court in the case of Guru Prasad Yadav v State of Bihar¹² and rejected the maintainability of the appeal filed by the victim without any application for grant of leave.

This issue was extensively addressed by the Division Bench of the Bombay High Court in the case of Balasaheb Rangnath Khade v. State of Maharashtra¹³ where the judges differed in their opinion.On one hand, Justice Kanade rejected the argument that the victim’s right of appeal is further fettered by the procedural requirement of section 378.On the other hand, Justice Thipsy opined that even a victim would be required to obtain the leave of the High Court in the same way as has been contemplated under sub-section (4) of section 378 of the Code. As both the judges disagree the matter was placed before a third judge and thereby Justice Roshan Dalvi has final say in this matter.¹⁴ After referring to the existing laws in various jurisdictions Justice dalvi stated that

“The right of the victim to speak corresponds with the obligation of the court to listen and that listening is a must for the right to be free, full and unfettered; it cannot be shackled upon leave granted by the court, the hearing of which the court is obligated to listen. Requiring the victim to obtain leave would mean that it is trammled by what the court deems fit to do.”¹⁵

In Bhavuben Dinesh Bhai Makwana vs. State of Gujarat and 9 others¹⁶.The Full Bench also disagreed with the view taken by this Court in Smt. Ram Kaur's¹⁷ case; the Patna

¹¹Id at para 14.

¹²Criminal Appeal (DB) No 582 of 2011(Decided on 02.08.2011)

¹³Criminal Appeal No. 991 of 2011(Decided on 21.09.2011)

¹⁴ 2012 BomCR(Cri)632(Decided on 27.04.2012)

¹⁵ Id at para 51

¹⁶Criminal Appeals No. 238 of 2012 and 608 of 2012

High Court in *Guru Prasad Yadav vs. State of Bihar*¹⁸; and the Bombay High Court in *Balasaheb Rangnath Khade's*¹⁹ case, and held that:-

"If the victim also happens to be complainant and the appeal is against acquittal, he is required to take leave as provided in Section 378 of the Criminal Procedure Code but if he is not the complainant, he is not required to apply for or obtain any leave. For the appeal against inadequacy of compensation or punishment on a lesser offence, no leave is necessary at the instance of a victim, whether he is the complainant or not."

In the case of *M/s. Tata Steel Ltd v M/s. Atma Tube Products Ltd. &Ors.*²⁰ has laid down following principles

(i) the 'complainant' in a complaint-case who is a 'victim' also, shall continue to avail the remedy of appeal against acquittal under Section 378(4) only except where he/she succeeds in establishing the guilt of an accused but is aggrieved at the conviction for a lesser offence or imposition of an inadequate compensation, for which he/she shall be entitled to avail the remedy of appeal under proviso to Section 372;

(ii) the 'victim', who is not the complainant in a private complaint-case, is not entitled to prefer appeal against acquittal under proviso to Section 372 and his/her right to appeal, if any, continues to be governed by the un-amended provisions read with Section 378 (4) of the Code;

(iii) those 'victims' of complaint-cases whose right to appeal have been recognized under proviso to Section 372, are not required to seek 'leave' or 'special leave' to appeal from the High Court in the manner contemplated under Section 378(3) & (4), for the Legislature while enacting proviso to Section 372 has prescribed no such fetter nor has it applied the same language used for appeals against acquittals while enacting sub-Section (3) & (4) of Section 378 of the Code

¹⁷Supra note 10

¹⁸Supra note 12

¹⁹Supra note 13

²⁰Supra note 9

In *Dhane Singh Vs. State of Rajasthan*²¹ the learned Division Bench relied on the case of *M/s Tata Steel Ltd. Vs. M/sAtma Tube Products Ltd. &Ors.*²² and laid down the same principle.

Similarly, a learned Division Bench of Kerala High Court in the case of *Omana Jose Vs. State of Kerala*²³ reported in, has held that the complainant cannot challenge the order of acquittal passed by a Magistrate for an offence under Section 138 of the Act before Sessions Court under proviso to Section 372 Cr.P.C. and his remedy is to file an appeal to the High Court with Special Leave under Section 378 (4) of the Code.

In *Smt Yuvraj Mehta vs State Of Rajasthan And Anr.*²⁴ the Rajasthan High Court dismissed an appeal filed by the complainant under proviso to Section 372Cr.P.C against the order of acquittal.

In *M/s. Tata Steel Ltd v M/s. Atma Tube Products Ltd. &Ors*²⁵ held that while in view of proviso to Section 372 an appeal preferred by a 'victim' against the order of acquittal passed by a Magistrate in respect of a cognizable offence whether bailable or non-bailable shall lie to the Court of Session, the State's appeal under Section 378(1)(a) of the Code against that order shall also be entertained and/or transferred to the same Sessions Court.

Various High Courts have experienced difficulty in determining the period of limitation for an appeal preferable by a victim under proviso to Section 372 of the Code. A Division Bench of Patna High Court in *RaghunathYadav vs. State of Bihar*²⁶ has viewed that since the period of limitation for filing an appeal against the acquittal under Section 378 is ninety days and no period of limitation has been provided for filing an appeal under Section 372 by a 'victim', the same period of limitation as provided under Article 114 of the Limitation Act will be applicable for filing an appeal under Section 372 of the Code also. The Full Bench of Gujarat High Court in *Bhavuben Dineshbhai Makwana's case*²⁷ too, with reference to Article 114(a) of the Limitation Act, has held that the period of ninety days

²¹2015 WLC (Raj.) UC 640

²² Supra note 9

²³2015 Cr.L.J. 2784

²⁴S.B. CRIMINAL REVISION PETITION No.278/2015 4 August, 2016

²⁵ Supra Note 9

²⁶ 2011 (6) RCR (Crl.) 133,

²⁷Supra note 16

should be the reasonable period for a 'victim' to file an appeal as the said period is the longest period of limitation for filing an appeal against an order of acquittal prescribed by the Legislature. The Delhi High Court in *Kareemul Hajazi' v State of NCT of Delhi and Ors*²⁸ case , however, thought differently and after referring to certain precedents laying down that 'in the absence of prescription of the limitation period, the statutory authority must exercise its jurisdiction within a reasonable period', it decided to bring the 'victim' at par with the 'accused' for the purpose of period of limitation to prefer appeal and held that since an accused is required to prefer appeal to the High Court within sixty days as prescribed under Section 374 of the Code read with Article 115(b)(i) of the Limitation Act, the period of limitation for the appeal of a 'victim' shall also be the same i.e. sixty days.

In of *M/s. Tata Steel Ltdv M/s. Atma Tube Products Ltd. &Ors*²⁹ the period of limitation for an appeal by a 'victim' under proviso to Section 372 of the Code shall be as under:-

(a) In case of acquittal -

- | | | | |
|------|--------------------|---------|--------------------------------|
| (i) | Where appeal lies | 90 days | Date of order appealed against |
| | to the High Court | | |
| (ii) | Where appeal lies | 60 days | Date of order appealed against |
| | to any other court | | |

(b) Any other sentence or order -

- | | | | |
|------|--------------------|---------|-------------------|
| (i) | to the High Court | 60 days | The date of |
| | | | Sentence or order |
| (ii) | to any other court | 30 days | The date of |
| | | | Sentence or order |

The issue of non –availability of action under section 390 of the Code for appeals preferred under the proviso to section 372 was also adverted to in *Balasaheb Case*.³⁰ Justice

²⁸2011(1)JCC 500

²⁹ Supra note 9

Dalvi opined that the newly added section 437 A³¹ would fill the procedural lacuna so created by the proviso to section 372 of the code. In order to ensure that the person who is acquitted does not abscond or his presence is properly secured section 437 A confers an obligation on the court passing the order of acquittal to direct the person to execute a bond with sureties which would continue for a period of six months. Therefore, if a victim prefers appeal the appellate court can, thereafter, impose fresh conditions on the acquitted accused.

In the case of Smt. PraneetaPrakashNavage and Sunil LaxmanGhode v. The state of Maharashtra &ors., Nitin Bhikaji Nikam³², the division bench of Bombay High Court found that the power to issue a warrant is vested in the High Court under section 390 only when an appeal is presented under section 378. As per the law laid down in Balasaheb case the appeal preferred by the victim will not be governed by section 378 of the Code and thus the power under section 390 can not be invoked by the High Court in an appeal under the proviso to section 372.³³ The bench has also observed that the power so conferred by section 437A of the code can only be exercised before passing an order of acquittal either in trial or in the appeal. Therefore, the high court after admitting the appeal under the proviso to section 372 of the Code can not take recourse to section 437A and direct the respondent accused to execute the bail bond.³⁴

Consequently the Bench has read the source of such power to order arrest and detention of the accused in section 482 of the code and stated that

“In case of an appeal against acquittal governed by the proviso to section 372 of the code, the power to order arrest and detention of the accused in prison pending the final disposal of the appeal or directing his enlargement on bail, will have to read as power ancillary to and necessary for effective exercise of power of appeal under the proviso to section 372 of the code. But for the existence of such ancillary power, the right conferred by the legislature to the victim to prefer an appeal against acquittal will become ineffective and

³⁰ Supra note 13

³¹ 437 A. Bail to require accused to appear before next Appellate Court –(1) Before conclusion of the trial and before disposal of the appeal, the court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher court as and when the court issue such notice in respect of any appeal or petition filed against the judgement of the respective court and such bail bond shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.

³² Criminal Appeal No. 1129 of 2012 (decided on 01.08.2012)

³³ *Id* at para 5

³⁴ *Id* at para 16

redundant....Thus, in absence of applicability of section 390, the exercise of the said power will be under section 482 of the code.”³⁵

VII. CONCLUSION

The victim of a crime is one of the most ignored parties in the criminal justice system of India. The right to appeal against an acquittal was not even considered until the 41st Law Commission Report. Even then, such a right was exclusively granted to the State. After the recommendation of 154th Law Commission Report and Malimath Committee Report the change came in the form of the Criminal (Procedure) Amendment Act, 2008. This Act amended provisions of the Criminal Procedural Code and instituted a number of basic provisions. This included Section 372, the right of a victim to appeal in cases of acquittal, conviction of lesser offence and inadequate compensation.

The amended and un amended provisions of the Code pose a serious threat to the well-known rule of harmonious interpretation and lead to some of those unconciliatory eventualities which have been enlisted as the 'questions' that arise for the determination of various high court. The country is riddled with varied decisions from High Courts regarding the matter, and no clear and established law is yet in sight.

The Law Commission of India in its 221st Report given in April, 2009 recommended amendments in Sections 378, 397 and 401 of the Code to provide that (i) in complaint cases also the appeal against an order of acquittal passed by a Magistrate should lie to the Sessions Court subject to the grant of special leave by it; (ii) wherever the District Magistrate or the State do not prefer an appeal against an order of acquittal, the aggrieved person or the informant should have the right to appeal with the leave of the appellate Court; (iii) there should be only one revision forum of the Sessions Court against the orders passed by the Magistrates instead of two alternative forums; and (iv) the Legislature should specifically categories revisable orders instead of leaving the matter to the discretion of the Courts. The suggested amendments, however, are still awaited.

REFERENCES

³⁵Idat para 11

- Anand , A. S. (2001), “Victims of Crime-The Unseen Side” SCC (journal), Aug., 2001, p.8.
- Sharma , D. P. (2003), Victims of Terrorism, New Delhi: A.P.H. Publishing Corporation, p-84.
- Reddy, P.V. (2006), “Role of Victims”, Student Bar Review, Vol.18(1), NLSI, Bangalore, p.4
- Rajan ,V.N. (1995), Victimology in India, New Delhi, A.P.H Publishing Corporation, p-63.
- Mehraj-ud-din ,Mir (1984), Crime and Criminal Justice System in India, New Delhi: Deep and Deep Publications
- Tiwari, Neeraj (2013) “Legislative Framework and Judicial Response to the Victim’s Right to appeal ”Madras Law JournalVol (1)part 3
- Thomas , Roshun (2005), “Administration of Criminal Justice in Ancient India”, Journal of Indian Legal Thought, Vol.(3), p.159.
- Subash C. Raina, (1992) Evolution of Victimological Jurisprudence in India Law, Judiciary and Justice in India. New Delhi: Deep and Deep Publication, p-82.
- Raina ,Subash C., (2000), "Victimology: towards a new millennium in the study of victims, Victimization and Compensatory Jurisprudence in India" In: Renu Gosh (ed.), BRANDED; A Standard Book on Crime Reporting, New Delhi: Deep and Deep Publications.
- Ansari, Zia ul Mustafa,(2016)“ Victimology in India with Special Reference to Child Victim”,Imperial Journal of Interdisciplinary Research (IJIR) Vol-2, Issue-5, Retrieved from <http://www.onlinejournal>.