



CJP'S IMPACT ON LAW REFORM

AMENDMENT TO THE CRPC (CRIMINAL PROCEDURE CODE):

The Introduction of Victimology in Indian Criminal Law came through an Amendment of 2009 following CJP's Success in the BEST Bakery Case (Re-Trial Ordered & Transfer of Case from Gujarat to Maharashtra):

In law, "**victim**", 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 guardian or legal heir;'. This was the definition as inserted by an act of Parliament in 2009

Extract of the THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008
NO. 5 OF 2009, [7th January, 2009.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:-

1. Short title and commencement. - (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2008.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. Amendment of section 2. - In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), after clause (w), the following clause shall be inserted, namely:-

'(wa) "victim" 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 guardian or legal heir;'

3. Amendment of section 24.

3. Amendment of section 24. - In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:-

"Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."

4. Amendment of section 26.

4. Amendment of section 26. - In section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely:-

"Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman."

5. Amendment of section 41.

5. Amendment of section 41. - In section 41 of the principal Act,-
(i) in sub-section (1), for clauses (a) and (b), th...

VICTIMOLOGY, INDEPENDENT RIGHT TO APPEAL

The CRPC Amendment of 2009 had Resulted in New Rights Based Jurisprudence

(Judgements of Different High Courts: 2010, 2011, 2012)

Extracts from Various Judicial Pronouncements Following the Crucial Amendment –How we Have Forged Victimology Based Jurisprudence

Section 372 Right to Prefer Appeal

Section 24(8)(2) Right of the Victim to Engage Lawyer in Criminal Trial

I.Right of Victim to File Appeal, Be Heard

“1.....The crime problem is the overdue debt a society pays for tolerating for years the conditions that breed lawlessness. - Earl warren.

‘...2. An aspect of victimology, the doctrine of victim protection, victim representation and victim rehabilitation, is the subject matter of the above appeals.

“...3. The criminal justice system has been designed with the State at the center-stage. Law and order is the prime duty of the State. It fosters peace and prosperity. The rule of law is to prevail for a welfare State to prosper. The citizens in a welfare State are expected to have their basic human rights. These rights are often violated.

The law and order is (3) Cr. Appeals 991, 992, 331 & 854/11

breached. A citizen is harmed, injured or even killed as a result of the crime. He/she is a victim of an act termed an 'offence' in the criminal justice system. He/she seeks recourse to law and justice. Justice is given to him/her upon upholding the rule of law. It is denied to him/her upon any breach by the perpetrator of the violation or even by the defender of his rights - the State.

“...4. The machinery of the State is set in motion by the victim, either upon his/her own complaint which is a private complaint, when he, as a complainant, seeks to prosecute the case of harm done to him/her. He/she may require the State to prosecute the case of harm done to him/her by informing the State of the act of offence. He/she would then be only the first informant- the State would prosecute such crime.

“...5. He/she may be victim of the crime himself/herself, but not always.

“...6. A thin difference between the victim and the complainant may first be noted.

“..Section 2 (wa) of the Code of Criminal Procedure which was incorporated by the Amending Act, 5 of 2009 defines a victim as : 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;

“...7. The State being the prosecuting authority upon a complaint of the complainant/first informant takes upon itself the recourse to law and justice in cases in which the complainant does not seek to prosecute the complaint himself/herself. The provisions in the Code of Criminal Procedure deal with both the aspects.

“...8. Both prosecutions were expected to yield the same result - the prosecution of the crime seriously, faithfully, justly and efficiently. The results however were far from envisaged in case of the State-led prosecution. Yet for decades the system as prevailing ruled the roost even if it left much to be desired.

“...9. There came a time when the State-led prosecutions did not serve the purpose they were meant to serve. The State either failed or neglected in its solemn duty or it caused more harm than good in certain cases. This would have been a death-blow to the Rule of Law if the situation was not remedied. The stark reality of what the social scenario deteriorated into has been set out by the Supreme Court in the case of **Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors. (2004) 4 SCC 158...**

“... 10. The State sought to make amends in the years that followed which was a departure from what was earlier recommended to be the recognition of the rights of the citizens and the procedure of the criminal Courts in bringing the offenders of these rights to justice. (5) Cr. Appeals 991, 992, 331 & 854/11...

“...11. The mischief that the State sought to remedy was the total neglect of the violation of human rights of victims. The State, in other words, sought to embark upon and to grant to the victims of crime their human rights.

“...12. Far reaching efforts had come to be made in the direction of victimology in the western democracies which India had emulated from the time of drafting the Constitution of India.

“...13. The state of the victims in the discipline of victimology has gone far ahead in the west. The victims have a right to speak and to be heard at all stages of the criminal prosecution - bail, release, evidence, sentence and parole. 'Victims impact statements' are recorded and extensively used by the jury and the judge whilst convicting and sentencing respectively and thereafter 'victims impact assessments' are required to be done as a continuous act.

“...17. The General Assembly of the United Nations in its 96 th plenary meeting held on 29th November, 1985 set out the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which recognizes and grants to the victims, their families, witnesses and others who aid

them the rights in the area of access to justice and fair treatment, Restitution and Compensation as basic human rights.

“....21. In India in the past the Judges have attempted to accord and confer the victim their rights in the criminal justice system. In the case of Vijay Valia Vs. State of Maharashtra, 1987 Mh.L.J. 49 whilst considering the question of appointment of Special Public Prosecutors, the Division Bench of this Court sounded the requirement of the Courts accepting the right of the victim to partake in the criminal prosecution for doing the victim justice. The Court in various paras observed thus: Both the State and the private party have a right to prosecute the offender whether the offence is cognizable or non-cognizable, and the prosecution, whether launched by the private party or the State, is a prosecution on behalf of the State.

The right to be heard includes the right to be represented by an able spokesman of one's confidence. This right belongs both to the accused and the complainant. It is not only the accused who is in need of assistance and protection of his rights but also the complainant. In fact, it is to vindicate the rights and grievances of the complainant and through him, of the State, that the prosecution is launched- whether by the State or the private party.

.....whenever there is a request made by a private party to engage an advocate of his choice to be paid for by him, the request should be granted as a rule. The complainant in such cases is either a victim of the offence or is related to the victim or otherwise an aggrieved (11) Cr. Appeals 991, 992, 331 & 854/11 person. He has a right to be heard and vindicated. As stated earlier, the right to be heard implies a right to be effectively represented at the hearing of the case. He has therefore a right to engage an advocate of his choice.

There is therefore no reason why the State should refuse him the permission to conduct the prosecution with the help of his advocate. If there are any reasons for refusal, they should be stated and communicated to him in writing.

“....22. In the case of Nilabati Behera (Smt) alias Lalita Behera Vs. State of Orissa & Ors. (1993) 2 SCC 746 the Supreme Court enjoined Court to 'evolve' new tools and mould the remedies for harm done variously. In that case death of a son of 22 years in police custody entitled a mother to compensation as an heir of the "victim" by way of monetary amends and redressal by the State since the death constituted violation of the Fundamental Right to Life by the State's instrumentalities or servants.

“...23. We may also consider the recommendatory history leading to this legislative enactment. The Code of Criminal Procedure was sought to be wholly amended in tune with the reforms suggested by the well known Malimath Committee constituted by the Ministry of Home Affairs, Govt. of India on 24th November, 2000 which submitted its Report popularly called the Malimath Committee Report to the Ministry of Home Affairs in March, 2003. Though the Report sought to make more than the usual cosmetic changes and indeed suggested recommendations in the areas of victims participation in trial and investigation and victim compensation by way of the grant of Rights of Victims of Crimes, even that committee's recommendations fell far short of the depth that the victim's place in the Indian criminal justice system merited.

“...54. Those appeals do not fall within the parameters of Section 378 of the Code of Criminal Procedure. Consequently the requirement of obtaining leave of the High Court to file an appeal cannot be read into the provision with regard to the substantive right given to the victim to file such appeal.... In fact, an appeal against acquittal would be a more serious appeal by a victim since the accused is wholly acquitted and not even convicted for a lesser offence. The appeal in case compensation granted as per Section 357 or 357-A would seek to right a lesser prejudice caused to the victim. There is no provision for obtaining leave in those cases. It, therefore, would not stand to reason that for a case in which the accused is wholly acquitted the victim would be able to prosecute an appeal not per se but only if permitted by the Court and would have to stand the additional scrutiny of the Court for showing the Court the merits of his/her case.

“...56. If the victim was required to take leave to appeal an acquittal only, why would the legislature not provide for such requirement expressly ? This question would be more acute since the legislature has provided expressly for the requirement of leave by the State as well as the private complainant both of whom have prosecuted the crime and have failed. If that was so, the legislature could have provided for the additional appeal by a victim by incorporating another sub-para in Section 378 itself in the same terms as Section 378(4). But the legislature added a proviso setting out an exception to the whole chapter of appeals in conferring the right to the victim to appeal instead. There are no consequential amendments to Section 378. The procedural requirement about the application and grant of the leave of the High Court has remained unchanged. It would apply with all force in case of State appeals as also appeals by complainant in private complaints, but none else. Reading into such a proviso away from the other provisions of leave in Section 378, a mandate for leave would be to rewrite the legislation and to go against its implicit intention. That would do injustice to the amendment and the mischief that it sought to remedy. That would also lead to anomaly and absurdity not be contemplated by the (25) Cr. Appeals 991, 992, 331 & 854/11 legislature. Since the particular procedural requirement is not provided, it must be taken to be intended to be excluded or exempted upon reading the statute as a whole.

“...57. The question whether a private complainant would take recourse to the provision to Section 372 is not threatening. A complainant in a private complaint, even if he/she has been the victim of the offence, would not fall under the said proviso as a victim since the appeal to be filed by him has been separately contemplated under the specific provision being Section 378(4). Hence though describing him as a victim, which inclusive definition came to be incorporated in the Criminal Procedure Code only alongside the incorporation of the proviso to Section 372, it would apply only to those who fall within the proviso. The complainant in a private complaint would not be able to avoid the scrutiny of the Court for being granted the leave contemplated in Section 378(4) which provision stands.

“...59. The situation that there would be plurality of appeals must also not deter in the true construction of the proviso. The case of **Zahira Sheikh (26) Cr. Appeals 991, 992, 331 & 854/11 (supra)** is a telling demonstrative reflection of this position. There is, therefore, no anomaly in the fact that even if leave is refused to the State the victim could be able prosecute the appeal. That is the ultimate justice that the victim could avail to herself/himself by his own effort, endeavour and exercise. In fact it is reflective of the present situation in which the victim must bear the brunt of refusal of appeal of the prosecution without Balasaheb Rangnath Khade vs The State Of Maharashtra & Ors on 27 April, 2012 having a say in it. The fact that in a given case leave may be refused to the State, but the victims would be heard in appeal is the contemplated check. If such an appeal ultimately results in reversal of acquittal it would be the ultimate test of the melody and the remedy for such melody. The plurality of appeals against the accused cannot be stated not to have been contemplated. It is upon the specific social scenario that the amendment came to be expressly made. The accused would, therefore, have to stand the appeal by the State and/or the victim since both the appeals are expressly contemplated under the Criminal Procedure Code.

“...61. The victims' rights are considered alongside and on par with that of the accused. Whereas the accused appeals from an order of conviction, the victim appeals from an order of acquittal, lesser offence or inadequate compensation. Since the right of the accused to appeal is absolute, (though denoted by the word 'may') so has been made the right of the victim (in fact, denoted by the word 'shall'.) Both would be equally prejudiced from an order of acquittal or an order of conviction as the case may be. Both are the parties who have been harmed or prejudiced by the order of the trial Court. They prosecute their personal rights as human beings. Their's are, therefore, human rights which are to be considered. The power balancing which is required to be done by the State has been done albeit at only the appellate stage. Consequently a victim of crime is not left to the arbitrariness or the vagaries of the State officials and not left to accept any verdict in which he/she does not play an effective part for its (28) Cr. Appeals 991, 992, 331 & 854/11 final determination at least in the appeal.

Stating, as in the Judgment of Bhikabai (supra), that the right of the victim required to be balanced indeed requires the power balancing to be done. Such power balancing is not to treat equals equally - The State and the victim - but to treat unequals equally - the victim and the accused, a situation brought about by the social position that prevailed at the time and well before the amendment was made when it was rife.

“...62. The later part of the proviso to Section 372 further reflects the comparative position of the victim with the accused. It requires appeals of the victim (of all the 3 types mentioned in the further part of the proviso) to be filed in the Court in which the appeals against convictions (by the accused) would be filed. This provision of Balasaheb Rangnath Khade vs The State Of Maharashtra & Ors on 27 April, 2012 the Code shows that the victim is put on par with the accused and not the State. The power balancing is done with the accused and not the State. The comparison of the rights of the victim would also, therefore, be with the accused and not the State. The victim and the State, who were meant to complement one another, would go hand in hand if all is well. But if not, the victim's rights which had hitherto been jeopardized or at least prejudiced are sought to be recognized and granted.

“...63. The debate as to with whom the right of the victim could be equated is, therefore, set at rest. The victim is given a special place in an appellate jurisdiction. He/she can neither be equated with the State whose work for prosecuting the crime has been bypassed by the victim's self-help, hitherto unaccepted, or with a private complainant who may present an appeal subject to special leave of the Court. He/She shall stand tall - shoulder to shoulder with the accused.

“...65. A proviso shows an exception to the Section that may qualify the main enactment. Ergo, the proviso to Section 372 of the Code of Criminal Procedure shows that no matter what is the position in the Code of Criminal Procedure, the right of appeal is given to the victim and that is not only as provided in the Code. It is an unqualified right and could be exercised not only as provided in the Code (i.e. not only with leave of the Court). It is a right untrammelled by other procedural provisions and requirements - to cite - the leave of the Court. It is, therefore, improper to be shackled by the position of the past in which a victim plays no role at all in the criminal justice system and to say that the victim cannot claim to be on higher pedestal in a criminal prosecution than the State and that such can never been the intention of the legislature. The intention of the legislature is writ large in the proviso which gives the substantive right to prefer three types of appeals only to the victim, no matter what else is provided in the Code.

“....70. In the result, I hold that the victim is not required to apply for or obtain leave of the Court to file any of the appeals under the proviso to section 372. Appeals to be placed before the appropriate Court for hearing.

See Balasaheb Rangnath Khade vs The State Of Maharashtra & Ors. Judge Roshan Dalvi, 27 April, 2012

II. Right to Appeal

“....3. The learned counsel for the respondents had preliminary objection to the tenability of the appeal. He submitted that it would be necessary for the appellant to first seek leave of the Court, as required under, Section 378 of the Code of Criminal Procedure (for short, the Code) to file an appeal. He also submitted that the appeal itself not having been preferred within a period of sixty days from the Appellate Judgment is barred by limitation. The learned counsel for the appellant submitted, first, that in view of the amendment to Section 372 of the Code, whereby a proviso was inserted, the victim has a right to prefer an appeal against any order of the Court acquitting the accused and such appeal lies to the Court to which an appeal ordinarily lie against an order of conviction. She submitted that this proviso does not require the victim to prefer an application for leave to file appeal and therefore the appeal has to be entertained as of right. For this purpose, she placed reliance on an order of this Court, dated 20-4-2011, passed on Criminal Application No.241 of 2011 {Suhas Bhaskar Musale v. Sameer Anant Nalawade & Anr. }, wherein this Court had considered the relevant provisions and concluded that the requirement of obtaining leave before preferring an appeal could not be read into the proviso to Section 372 which enables the appellant-victim to prefer this appeal. In any case, question of granting leave to file appeal would arise only if the appeal is one which is covered by sub-section (1) or (2) of Section 378 of the Code. Sub-Section (4) enables a complainant in a private complaint to file an appeal to the High Court and it specifically provides that such complainant has to seek special leave to appeal. Since the appellant in this case is the victim and not a complainant on whose complaint the respondents were prosecuted, sub-section (4) does not apply to her. As far as sub-section (3) is concerned, it refers to only appeals under sub-sections (1) and (2) which provides for appeals by the District Magistrate or the Government. Therefore, though it may seem that an appeal by a first informant would .have absolutely no filter of evaluation of Merits, in the appeal, since Section 378 does not require such victim to prefer an application for leave to file appeal, it would be impermissible to read such a requirement in the Said Section.

“...4.The learned counsel for the appellant submitted, first, that the limitation prescribed under sub-section. (5) is only in relation to applications under sub-section (4) and, in any case, the Limitation Act itself does not provide for any limitation in respect of an appeal by a victim. But this is the choice of the-Legislature. Since the Legislature has chosen not to impose any limitation for exercise of this

right, it would not be permissible for the Court to impose any limitation when none exist. There may be a reason for not prescribing a limitation for exercise of such right by the victim. When a complainant files a complaint before a Magistrate, he is a party to the proceedings and therefore would ordinarily know the result of the case. The same may not be the case of the victim who is not a party to the proceedings before the Court and may not come to know about the delivery of Judgment in his/her case and therefore, may be for good reasons, no limitation has been prescribed for exercise of this right by the victims.

“....5. Again, it is the Legislative prerogative to decide as to what type of litigation is to be heaped upon which Court. While enabling the District Courts to entertain appeals against acquittals, the Legislature chose to restrict such appeals to cases in respect of cognizable and non-bailable offences. The corollary was that in case of non-cognizable or bailable offences, which are lighter offences attracting lesser sentences, an appeal would lie before the High Court itself. Thus, appeals against acquittals in cases of serious offences go before the District Court whereas cases where the offences are not serious, land up in the High Court. But this is the choice exercised by the Legislature. Therefore, whether the proviso to Section 372 of the Code opens a flood-gate of litigation or not, is irrelevant for the present purpose.

“....7. Since the appeal has been admitted, there would be no purpose in examining whether leave could be granted to the State for preferring appeal against the same Judgment. Therefore, Criminal Application No.5485 OF 2010 would also have, to be allowed and is accordingly allowed and stands disposed of accordingly.

See Bombay High Court, Roma Sukhajit Singh vs Nirmalsingh Habhansingh Saini & 4 Ors. 4 August 2011, Judge RC Chavan

III. Right to Appeal

“..9... Keeping this in mind, upon a plain reading of the proviso to Section 372, we cannot discern any CRL. A. No.793/2010 Page No.6 of 8 limitations in respect of the requirement to take leave of the High Court before an appeal is presented by a victim. The proviso to Section 372 is a special provision and it deals with three different situations, namely, appeals against acquittal, conviction for a lesser offence and inadequacy of compensation. The proviso to Section 372 is not limited to appeals against acquittals. All the appeals, whether they are against acquittal or conviction for a lesser offence or inadequate compensation, have been placed on the same footing.

“...10. This being the position, the present appeal would be clearly maintainable, inasmuch as there is no requirement for first obtaining leave of this Court. We, however, agree with the submission made

by the learned CRL. A. No.793/2010 Page No.7 of 8 counsel for the respondents 1 to 5 that the victim's appeal against acquittal under the proviso to Section 372 does not stand on the same footing as that of a convict's appeal against conviction. The victim must demonstrate prima facie that there is some serious error in the judgment of the trial court which the High Court must look into and for this purpose, admit the appeal for an in- depth examination. All that we are saying is that while in the case of an appeal by a convict, admission is more or less a formality and a matter of course; in the case of an appeal by a victim against an order of acquittal something more has to be shown before the appeal is admitted. The issue of maintainability stands decided accordingly.

See Delhi High Court Jagmohan Bholu vs Dilbagh Rai Bholu & Ors on 24 January, 2011

IV. Victimology, Right to File Appeal

“.....5... a niche has been carved out with the proviso Section 372 of the Code of Criminal Procedure, 1973 (for short "the Code")- by the amended Act [Amendment) Act, 2008 (5 of 2009)] for the victims in the following terms:

"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; and does not right to appeal in ordinary sense as available to the victims under Sections 374 and 380 of the Code."

“.....7. Amended Act- 5 of 2009. Statement of objects and reasons of the amended Act 5 of 2009 discharges the need or purpose of the amendment inn following words:-

"The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, the victims are the worst sufferer's in a crime and they don't have much role in the Court proceedings. They need to be given certain rights and compensation, so that there no distortion of the criminal justice system. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidence, minimise the risk of escape of the remand prisoners, during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair trial to persons of unsound mind who are not able to defend themselves."

“..8.Considering these objects, Mr. Patil submitted that the appeal preferred by the victim stood at par with the appeal preferred by the convict.

“..9.The scheme for the appeals under the Code found under the Chapter XXIX of the Code, essentially lays down that no appeal shall lie from any judgment or order of a criminal court except as

provided for by the Code or by any other law for the time being in force. Before the Amendment Act.5 of 2009, there was no provision enabling the victim to prefer an appeal in case he was aggrieved by any order passed by the criminal court. Proviso to Section 372 of the Code conferred right to prefer an appeal on the victim against the order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

“...13. As pointed out earlier, the victim has right to prefer an appeal i.e. right to submit an appeal for consideration as aforesaid and there is no express provision in the Code which requires leave of the court for considering or entertaining such appeal. If leave to entertain such appeal was envisaged under the Code, it would have been so expressly provided. If requirement of the leave is to be read from the plain words ‘right to prefer an appeal’, it will divest the appellant-victim of the protective mechanism protecting the appeals from summary dismissal for default the appeals enjoy under Section 384 of the Code.

“...14. A plain reading of the words "right to prefer an appeal" suggests a meaning right to submit an appeal for consideration. However, the word "preferred", as observed by the Apex Court in the judgment in **Commissioner of Income-Tax (Central), Calcutta, Appellant vs. B.N. Bhattacharjee and another, Respondents (AIR 1979 SC 1725)**, has dual import and its semantics depend on the scheme and the context, its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. Their Lordships the Hon'ble Mr. Justice V.R. Krishna Iyer and Mr. Justice V.D. Tulzapurkar, while delivering the said judgment further observed :-
"There is good ground to think that an appeal means an effective appeal. {1973-31 STC 434 (SC)}.
An appeal withdrawn is an appeal non est as judicial thinking suggests. {1968-21 STC 154 (SC), 1964-52 ITR 780 (All) and (1973) 31 STC 434 (SC)}.

Black's Law Dictionary gives the following meaning:

PREFER: To bring before; to prosecute to try to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

Thus it may mean 'prosecute' or effectively pursue a proceeding or merely institute it.
Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it."

“....16.Considering these interpretations, both contextually and purposefully, it can be seen that no leave is necessary for preferring an appeal by a victim with the aid of the proviso to Section 372 of the Cr.PC., 1973.

“.....17.In view of the above, it needs to be held that no leave is necessary for preferring an appeal by the victim under the proviso to Section 372 of the Code of Criminal Procedure, 1973 against any order passed by the court acquitting the accused or convicting for lesser offence or imposing inadequate compensation.

“.....18. In the result, the appeal will have to be admitted. Appeal is admitted. The record and proceedings be called. Private paper book be furnished. Service of notice is waived.

See Bombay High Court, Suhas Bhaskar Musale vs Sameer Anant Nalawade & Anr, 20 April 2011, Judge UD Salvi

V. Amended Section 372, Amended Section 24(8)(2)

“...The question which arise for consideration in the present matter is the aspect of entertainment of appeal, preferred by the original complainant, inspite of the fact that the State has preferred Appeal against the order of acquittal in which the leave has been granted by this Court and the Appeal is admitted.

“....Section 372 Cr.P.C., which provides for appeal under Chapter XXIX, reads as under :
372.....No appeal to lie unless otherwise provided 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].

Section 378 Cr.P.C. provides for appeal in case of acquittal, which reads as under :

“....Section 24(8) Cr.P.C. would also be relevant, which reads as under: Bhikhabhai vs State on 10 May, 2010 24(8)” The Central government or the state Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

[Provided that the Court may permit the victim to engage an advocate of the choice to assist the prosecution under this sub-section]

“.... The Parliament has only added the proviso which enables the

Victim to prefer appeal against the order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. Therefore, the right is given by virtue of proviso to the victim concerned to prefer an appeal.

“...It is hardly required to be stated that in the matter of commission of offence and for ensuring that the offenders are booked, the primary responsibility is of the State and it is for the State to ensure that the offenders are booked and the victims are not made to suffer. If one has committed offence he is bound to be punished, but, if one is innocent he would be entitled to the benefit thereof. The aforesaid is one of the sovereign function of the State which can neither be abdicated nor can be diluted in any welfare State. If the State is not pursuing his matter with proper spirit and zeal, the victim may validly raise grievance and also compel the State to take appropriate action for ensuring that the offenders are booked. But, such right cannot be read at the only as per the desire or will of the victim and while pursuing such right the victim can not claim a higher pedestal than that of the State whose basic duty is to ensure that the offenders are booked. In normal circumstance if the State is showing any lethargy or not pursuing the matter for ensuring that the offenders are booked the victim may legitimately make grievance and may also step into litigation by ensuring that the culprits are prosecuted and the suffering of the victim are sufficiently given solace and compensation. But, it appears that such right as may be available to the victim is not by way of taking revenge against the accused or by aggravating the situation against the accused, but, is limited to the extent of ensuring the punishment to the culprit in accordance with law. It is by now recognized principles that justice to one party should not result into *Bhikhabhai vs State* on 10 May, 2010 injustice to the other side and it will be for the Court to balance the right of both the sides and to up-hold the law.

“...The attempt on the part of the Court would be to see that reasonable interpretation is given so as to ensure that real purpose and the intention of the statute is maintained. The purposive interpretation of any of the provision is to be made by the courts while giving effect to any provision of the statute. The essential purpose for enacting the amendment in Section 372 is to see that if the State does not prefer appeal against the order of acquittal the victim should not be left to the helplessness condition. The right should equally be made available to the victim to make grievance by preferring the appeal, but, such right, in our view would be available only if the State has not preferred appeal. If the State is pursuing the matter properly of a criminal prosecution and the appeal has already been preferred by the State against the order of acquittal for which the grievance is also of the victim and such appeal is entertained by grant of leave and subsequently admitted, it can be said that the grievance of the victim to that extent is taken care of. It is only at the time when the final hearing of appeal is to take place, the victim can make the submission to the appellate court against the order of acquittal by assisting the Public prosecutor as per the scheme of Section 24(8) of Cr.P.C.

“...In view of the aforesaid, the application for leave to prefer appeal preferred by the applicant victim original complainant as well as the appeal preferred against the order of acquittal is not entertained. However, it is observed that the applicant original complainant victim shall be at liberty to assist the P.P. at the time of final hearing of the criminal Appeal No.1412 of 2009, preferred by the State and shall also be at the liberty to make submission with the P.P. against the order of acquittal at the time of final hearing of the appeal.

See Gujarat High Court, Bhikhabhai vs State on 10 May, 2010