



WHO CAN FILE A CRIMINAL APPEAL? RIGHTS OF THE ACCUSED AND THE VICTIM

-EVA

META DESCRIPTION: Know who is legally entitled to file a criminal appeal, including accused persons, victims, and the state, explained in simple terms.

Suppose you just read the verdict in a criminal case in a court. Perhaps the man she accused of committing a crime is jailed now. Perhaps the man she accused of committing the crime is jailed today. Perhaps they escaped unharmed. In either case, there may be someone in the courtroom who isn't going to be happy with the outcome. What would they do about that, then?

The concept of a criminal appeal is here. An appeal is nothing more than a request for a higher court to review the case and to determine whether it was correctly decided by the lower court. However, there's a catch-not everyone who's involved in a case can just go to an appealable court and appeal. The right is specifically reserved for a certain type of people as outlined in law. Let's explain this verbally.

WHAT IS A CRIMINAL APPEAL?

A criminal appeal is a request from a lower court to the higher court to consider a judgment, order or sentence by the lower court. It is not a fresh hearing, however the appellate court can review both the fact and law at issue, and also has the ability to confirm, reverse or modify the initial ruling.

Appellate jurisdiction used to be regulated by the **Code of Criminal Procedure (CrPC), 1973** in India. This has been superseded by **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** and appeals are now before the sections in **Chapter XXXI, Sections 413-435 of the Sanhita**. The main concepts are very similar, with only numbers and minor edits to reflect this.

Important: The right to appeal is not always or automatically granted; the law provides that an appeal cannot be taken unless there is a specific provision granting it. Let's take a look at who has that permission then.

1. THE ACCUSED PERSON

The clearest person that has the right to file an appeal is the accused-the one that was found guilty. Where a person has been found guilty and sentenced, they can appeal this decision or the sentence length and/or severity to a higher court.

There are a few restrictions, however:

- If accused admits his guilt and convicted of it, then he cannot appeal against the conviction, but if his conviction is against the statute law or too harsh he may do so.
- Typically, very minor cases, such as a fine from a High Court or brief jail term from a lower court, will not allow any further motion for appeal. The law would prefer that they avoided filling the higher court with fines, jail time and other actions for trivial instances.
- In multiple trials, if one of the co-defendants is granted the "right of appeal" even though his sentence is ineligible, then the rest of them receive the same "special right of appeal" as well, even if they too get sentenced to an unreplaceable term.

To which place does the accused appeal? Depending on whom they had been convicted by:

- Conviction by a Magistrate which may be appealed to the Sessions Court.
- A Sessions Court's conviction- appeal to the High Court
- In the case of a High Court's original conviction (rare), the appeal is to the Supreme Court.

2. THE VICTIM - A RIGHT THAT WAS ADDED LATER

Until recently, the real 'aviation' of the appeal was done by the state and the accused. So, there was a longing for the subjects to essentially be excluded, and to have the prosecutors' side of the case. This was to be altered by an important provision of **amendment in 2009 (amendment 372 CrPC (now 413 BNSS))**.

In today's day and age, a suffering individual can appeal if:

- The accused is acquitted (let off completely),
- The accused is found guilty of a lesser charge than all of which he was indicted, or
- The compensation awarded for the victim is not substantial enough.

An appeal is to the same court in which a conviction appeal would be brought. A simple advantage over a private complainant is that the victim will usually not require special permission ("leave to appeal") by the court at which the appeal is filed.

So who is a 'victim' here? It is in the broad sense of the word, meaning that the person who suffered the loss or injury as a result of a crime, as well as their legal heirs or guardian (if they are deceased or incapable of managing on their own).

The number of times a victim may appeal for a tougher sentence (not a conviction or acquittal) is more restricted, that's more frequently the state's calling card.

3. STATE (THROUGH PUBLIC PROSECUTOR)

The appeals also are accessible to the government, which has its own Public Prosecutor-defined appeal rights to ensure justice is served:

- Where a serious offence is in question, on an acquittal, if the State Government (or in some cases, the District Magistrate) wants to challenge the acquittal, it can argue their case before the Public Prosecutor to do so.
- The state may appeal to have a sentence increased if it thinks the lower court's original sentence was too lenient.

This is a significant protection- when a cause is sent away on a trial court's miscreation and the person is acquitted it can be brought back to take care of those issues.

4. THE PRIVATE COMPLAINANT

In some instances a complaint by the complainant may be made directly to a Magistrate instead of the police and a criminal action may be instituted. If the case is acquitted in this manner the complainant may also appeal, subject to having gained **special leave (permission) from the High Court**. This does not apply to a "victim" who, as mentioned above, is not required for this permission.

Therefore, a complainant who did not qualify under the legal criterion for being a "victim" (for example, in a case involving cheque bounce or fraud) may be required to do this additional hurdle.

WHAT'S SACRED AND CAN'T BE APPEALED?

There are some limits on the law either:

- There are limits to how minor sentences and fines can be appealed.
- In the normal case where the accused pleads guilty, the conviction itself cannot be attacked (only the sentence is attackable in a limited case).

- There are also time limits (limitation periods) where appearance on appeal must take place- if an appellant does not appear within that time frame, the right to appear will be lost unless there are good reasons to delay as decided by a court.

WHY THIS BALANCE MATTERS

Rules regarding who may appeal and to whom not are not random. They represent some compromise of three interests:

- Accused must have a fair opportunity to prove his innocence (in case of conviction, it relates with constitutional right to life and liberty through Article 21).
- The right to have an input and not to be left undone if they think justice was not served.
- The duty of the State that if people are guilty, they shall not escape from passing on the appropriate punishment because of mistakes during the trial stage.

IN SIMPLE TERMS

To sum it all up:

- **Convicted:** must file an appeal against the conviction and/or sentence (unless there are exceptions).
- **Acquittal, lesser conviction or inadequate compensation:** victim has the opportunity to appeal without special permission from court.
- **State/Public Prosecutor:** may appeal against an acquittal or for the enhancement of inadequate sentence(s).
- **Not a 'victim'-Private complainant:** Can appeal to the High Court on its own merits.

Appeals are possible because, like other human institutions, courts are not infallible. When someone knows that others have the right and opportunity to examine this again, the accused can at least be assured that the justice system has a built-in check-and-correct process, as can the victim, as well as the public.

This article is intended as general information only and should not be taken to be a replacement for legal advice. In any criminal case, when deciding whether or not to pursue an appeal, you'll want to have the advice of an experienced criminal lawyer who can advise you based on the circumstances of your case.