

CHAPTER -1
THE CONCEPT OF RIGHT TO
EXPUNGEMENT OF CRIMINAL
RECORDS

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1.1 GENERAL INTRODUCTION:

“Rehabilitation is the method of guiding the offender towards becoming and maintaining a productive part of the community, equipped with all duties and privileges. When formal punishment finishes and criminals are not rehabilitated in this way, de facto punishment continues. Rehabilitation is a method of lessening the severity of punishment.¹

The sentencing policy of a country is largely depending upon the ideology that the country adopted & enshrined in its constitution. Such ideologies may be capitalism, communism, and welfare. In a capitalist model², the nation’s main objective is to maintain law & order and adopt the *policy of lezzis fair*. In a communist model, apart from the maintenance of law & order, the means of production own by the community. In a socialist welfare model, according to the *Beveridge Report*³ nation’s massive attack must be on the five giant evils- Unemployment, Sickness, Literacy, Slums, and Inactivity. The eradication of these evils has been considered to be the prime requisite for securing social justice.

The notion of social justice encompasses the goal of eliminating all inequities and providing equal opportunity to all of the country's residents. As justice has to be future-oriented, not the past. Our job is to ‘let justice roll down like water’- that is, to house the homeless, clothe the necked, feed the hungry, provide work for the jobless and rehabilitate the convicts. To create a just society is not a matter of shooting some people and jailing others – it is a matter, rather, of recognizing that we are collectively victims of the situation or a system, seeking our universal

¹ M.C. Williams, W. and Pease, K. (1990) Probation practice and an end to punishment, Howard Journal of Criminal Justice, 29(1): 14–25.

² Macmillan Dictionary of Modern Economics, 3rd Ed., 1986, p. 54.

³ Beveridge, Janet (1954). Beveridge and his Plan, London: Hodder and Stoughton

liberation.⁴ Thus, the welfare nation has responsibilities more than maintaining of land order and it has to act as *a provider, protector, facilitator and dispenser of justice* and thereby contemplates system of laws and institution through which a government attempt to protect and promote the economic and social welfare of its citizens based usually on various form of social insurance against unemployment⁵, accidents, illness, old age and rehabilitation of convict.

In general, the sentencing theory has taken two approaches to its subject, with sentencing judgments based on either "utilitarian" methods or "retribution"⁶ ideas. The 'utilitarian'⁷ method has emphasized the 'welfare' approach and rehabilitation, reintegration, reformation, and therapeutic concerns. As a result, the focus is supposed to be on the criminal rather than the crime, as well as the criminal's character, with the goal of reducing the likelihood of any 'future crimes' that he or she might do. This strategy is thought to be appropriate for young offenders. The humanitarian method is only applicable to include as relevant knowledge as possible more about culprit, considering their previous police record as well as the possibilities of forgiveness after previous crimes (both honorable acquittals and minor charges).

The 'retributive' strategy, concentrates on the crime rather than the offender, and imprisonment is dependent on the seriousness of the crime and a proportional penalty. It focuses more on minimizing 'crimes in the future' than on 'previous crimes' and the appropriate sentence for them.

All most all the progressive democratic state around the globe which centered their administration of justice upon victim also focuses on rehabilitation and provides a second chance to offenders in petty and grave offence if applicable. They strongly believe that except in the case of recidivism an offender if released

⁴ H.R. Khanna, Constitution and socio-economic changes (1977) page no. 18

⁵ H.R. Khanna, Constitution and socio-economic changes (1977) page no. 16

⁶ B.Hudson, Understanding Justice: an introduction to ideas, perspectives and controversies in modern penal theory, Open University Press, Buckingham.

⁷ Duignan, Brian "Utilitarianism" (revised). Encyclopedia Britannica. Retrieved 5 July 2020.

after serving his sentence can be converted into a law-abiding citizen. Rehabilitation and reintegration in fact are the goals of these nations.

There are Expungement/spent legislation in a variety of industrialized and developing nations (whatever name by expungement). Under certain jurisdictions, all records related to the person's recognition, acquisition, imprisonment, incarceration, prosecution, or settlement of an offense inside the judiciary may be eradicated from any court, detained or custodial institution, law enforcement, or criminal justice agency.

The expungement law's purpose is deeply associated with reformative justice. For example, Australia⁸, the United Kingdom⁹, the United States of America, China,¹⁰ Israel,¹¹ Russia,¹² and the UAE,¹³ All these countries constitute fundamentally different philosophies of state machinery. Some are police states; others are capitalist still they are associated with the philosophy of giving second chance to ex-offenders.

India being a welfare nation needs to adopt a sentencing policy which focuses on social utilitarianism and which embraces the rehabilitation approach.¹⁴ Thus the sentencing policy in **India- a welfare state** must embed People are 'resettled,

⁸ Criminal Records Act 1991

⁹ The Rehabilitation of Offenders Act 1974.

¹⁰ “Dui Hua Foundation, Chinese Courts Experiment with Expunging Criminal Records for Juvenile Offenders, Human right journal (2011), <https://www.duihuahrjournal.org/2011/02/chinese-courts-experiment-with.html>.

¹¹ An Israeli soldier with a criminal record is able to file a request for an official recommendation to the president that his criminal record be expunged. Such requests are usually granted if a soldier has not been convicted in a military court, has not had more than six disciplinary infractions and has not gone AWOL for a period of two weeks or more. In most cases, the soldier in question comes before a council and must convince them to issue a recommendation to the president on his or her behalf.”

¹² “The criminal code of the Russian federation no. 63-FZ OF JUNE 13, 1996 “Article 86 prescribed expungement of Criminal Record i.e. A person sentenced for a committed crime shall be deemed to be convicted from the day of the entry of the court's sentence into legal force, until such time as the conviction is quashed or struck from his criminal record. In keeping with this Code, criminal record shall be considered in cases of recidivism of crimes and during the imposition of punishment.”

¹³ UAE: Expunge Activists' Convictions, Human rights watch (2011), <https://www.hrw.org/news/2011/11/30/uae-expunge-activists-convictions> (last visited Jan 16, 2018).

¹⁴ Ibid citation no. 3

"reintegrated, 'rehabilitated,' and 'reformed'¹⁵ when they have stopped offending. If the two balancing lances are in balance, justice can be done, whereas one spear signifies the suffering whereas the other signifies the criminal. Ever since earliest civilizations, judicial systems have always favored the innocent, and the rule of innocent for the convicted has been generally neglected. Individuals who might have been arrested but declared innocent or cleared of all charges have been treated to horrific act as a result of these strategies. Now is the moment to redefine our understanding of justice and rehabilitation programmes to prisoners as well.

For the same honourable Delhi high court recently referred the need for such kind of legislation which helps in rehabilitation of ex-convicts. Court says that "*It is unfortunate that in India, the government does not come out with guidelines pertaining to the problems of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government.*"¹⁶

Everyone makes errors in life, but that does not imply they must be paid for the rest of one's life. People make mistakes because they are human, however, if they are punished before, they have double jeopardy, not in a lawful manner, but in the feelings of civic denial. The law will not permit double jeopardy, yet it ironically fosters "*multiple social jeopardies*" by maintaining the permanent criminal record. What incentive is there for the individual who has been convicted to "go straight" if he knows he will never again share the opportunities of his fellow citizens? What is worse, the person who is erroneously arrested and subsequently released or acquitted must never account for his arrest. It is time more states followed the lead of those that have enacted expungement statutes.¹⁷

However, this does not mean that a criminal must not be penalized because of their crimes or improper conduct, since the example above pertains to people

¹⁵ All of there're' words imply that this group of people are in some way returned to some state that previously they had occupied.

¹⁶ Government of NCT of Delhi & Anr. Vs. Robin Singh, 171 (2010) DLT 705

¹⁷ Pasco L. Schiavo, condemned by the Record, Vol. 55, No. 6 American Bar Association Journal pp. 54 (AD), URL: <http://www.jstor.org/stable/25724811> (last visited Jan 11, 2018).

who have been pardoned, freed, or whose sentence has expired. The labeling perspective of punishment¹⁸ explains why these individuals' histories continue to haunt individuals as a reputation in such situations. The labelling specific deterrence stresses that individuals became abnormal not for a consequence of the misconduct itself, though as a function of how individuals reacted to it. This undoubtedly suggests that anybody who has broken the law (of whatever severity) will bear the disgrace of becoming disregarded by community or having a criminal image. As a consequence of being designated a burglar and getting an unofficial judicial judgment of culpability, the person has several financial, social, and mental problems. This suggests that a victim's life is irretrievably destroyed since society has given no opportunity for change, repentance, or rehabilitation. That comes with an perspective *“Failure to expunge an ex-offenders record is associated with a significant increase in the risk of post-exoneration”* Labeling theory, developed by sociologists in the late 1960s, portrays criminality as a product of society’s reaction to the individual. It contends that an individual who has been labelled as a criminal may transform into criminal identity. Following this logic, an individual who has been convicted of a crime would acquire a criminal identity.”¹⁹

The interaction has a transforming element to it. Former tags, for example, might create anxiety, negative self, feared demotion, racism, refusal, and antisocial behaviour.²⁰ Since the criminal is regenerated following acquitted or executing a term in the case of guilt, society attitudes must also be corrected. However, society's stigmatization of him as an "offender or criminal" prevents him from reintegrating into society. The social consequences of a criminal record might lead to a person's civic engagement being rejected.

¹⁸ Labeling Theory: Social Constructionism, Social Stigma, De-institutionalization, George Herbert Mead, Howard S. Becker, Labelling. General Books LLC. ISBN 9781234583347

¹⁹ Amy Shlosberg, Evan J. Mandery, Valerie West, and Bennett Callaghan, Expungement and Post-exoneration Offending, 104 j. criminal law & criminology 353 (380-381). <http://scholarlycommons.law.northwestern.edu/jclc/vol104/iss2/3> (Sept. 30, 2015)

²⁰ Supra

When a person's previous life and personality are considered, his or her prior convictions becomes a trickier proposition. It hinders in Accommodation, Career, Learning, Health coverage, Licenses, Loan repayments, Weapons, Implementation, and Service are among its many facts. Because police and court records are public and employers, landlords, schools and colleges, banks and others can inquire about them. These trials create a distinct class of criminals who are barred from re-entering society in order to start over. This entire group of people is denied access to ultimate justice. So, the issue becomes, "*Do such outlaws have any method to get rid of their criminal background and start over?*" The response is unmistakably affirmative. The exercise of the Right to Expungement of criminal records is the method for removing criminal records or any social stigma or impediment.

Expungement in general terms implies the destruction or sealing of criminal records. In other words, it means making the criminal records inaccessible to the general public. Often the terms are used interchangeably, but they are not the same.

1.2 RIGHT OF EXPUNGEMENT OF CRIMINAL RECORDS: RECKONING JUSTICE TO OUTLAWS

Expungement processes are defined differently in each country where the law permits them. Expungement is the procedure for removing a case's records from public scrutiny. However In various places, the information might not always entirely "vanish" which may still be viewable to police departments, punishment authorities for further offenses, and prisons in which the prisoner may also be (imprisoned) punished for additional crimes. Expunction is explained by Corpus Juris simply "*a term expressive of cancellation or deletion, implying not a legal act, but a physical annihilation*". The terms "rub out," "destroy," and "obliterate" are utilized throughout its development.²¹"Expungement of record," according to Black's Law Dictionary, is the "*process of destroying or sealing a criminal conviction record from a state or federal repository.*"²²

²¹ Bernard Kogon, Donald L. Jr. Loughery, Sealing and Expungement of Criminal Records--The Big Lie, 61 J. Crim. L. Criminology & Police Sci. 378 (1970)

²² Black's Law Dictionary, Thomson Reuters, P.702 (10TH ed. 2014)

The criminal record expungement procedure is analogous to a defamation suit under which the respondent (an individual who has been released or served his term) requests that the jury delete his records of any conviction from prosecutors and police records. The practice for erasing a prosecution's evidence from client review is known as expungement. However, in many areas, the details may not even "vanish," and therefore might be available to criminal justice, punishment judges for further offenses, and imprisonment facilities. Where the defendant may be punished on subsequent convictions."²³

In its simplest form, the Right to Expungement of criminal records means that you can get your criminal record erased by bringing a legal complaint. On a first inspection, expungement seems like a pretty straightforward idea but as the researcher thinks about it more, it's clear that this area is not simple at all. Instead, it's a maze of complicated legal issues and hard decisions about what's right. Whether or not to erase a criminal record is even harder to determine if somehow the suspect was already committed of a specific crime or whether removing the record might result to assaults or child molestation that might have been addressed properly.²⁴ In the same way, issues of expungement may be looked at differently when a person with a conviction that has been removed is admitted to the bar and then commits crimes against innocent clients again.

1.3 EXPUNGEMENT VIS-À-VIS SEALING OF CRIMINAL RECORDS²⁵

Corpus Juris, "the word 'seal' is defined as meaning to fasten with a seal, or a fastening impressed with a seal to guarantee security; so, to fasten, that the seal, or the band or wrapper fastened by the seal, must be torn or broken in order to remove the enclosed article".²⁶

²³ <http://en.wikipedia.org/wiki/Expungement> , (Oct. 1, 2019)

²⁴ Diehm, James W. (2012) "Federal Expungement: A Concept in Need of a Definition," St. John's law review: vol. 66: Issue. 1, Article 2. P.73(101-102) <http://scholarship.law.stjohns.edu/lawreview/vol66/iss1/2> (Oct. 12, 2019)

²⁵ Adverse Legal Consequences of Convictions and their Removal: A Comparative Study, 59 J. CR. L., C. & P.S. 347, 542 (1968),

²⁶ Pettler & Hilmen, Criminal Records of Arrests and Convictions; Expungement from Public Accesses: Expungement Calif. West law Review 127 (1967)

Basically a document or procedure is "just" tightly closed, not discarded, when it is "sealed." The connotation is apparent and intentional: the locked records or incident could be unsealed within specific circumstances. Most consider expungement to be a "comparatively modern notion." It essentially implies that the documentation or activity is wiped clean, as though it never existed. The incident is no longer remembered and it can't be brought back under any circumstances.²⁰The main difference between expunging and sealing a criminal record is now a confidential document "exists" in both a judicial as well as factual perspective, expungement implies that no evidence of any imprisonment or criminal charges ever existed.

An expungement and a pardon are two very different things. Whenever an expungement is authorized, the individual for whom the records are deleted could, and in the most part, treat the occurrence it's like it never occurred. A pardon, which is also known as "executive clemency," doesn't "erase" what happened. Instead, it means that the person is forgiven. Only a court may order an expungement order while pardon could be granted in U.S.A by American president or India can issue a pardon for grievous criminal violations. The governor of the state, some other government executive authorities, or the Governing Board of Immunity deals and Condemns can give a forgiveness for government offenses.

1.4 JURISPRUDENCIAL BASIS OF EXPUNGEMENT OF CRIMINAL RECORDS

There are various justifications for protecting the right to expungement of criminal records. For *starters*, some argue that by emphasizing on previous illegal activity, community loses out on the opportunity to utilize the abilities, experiences, and enthusiasm of those whose development it is interested in. Organizations are ignoring such a big pool of prospective employees is, at the very minimum, a waste of public money.

Second, it keeps people from being left out and maybe even from becoming a criminal underclass.²⁷

Third, not helping ex-offenders get back into society can make it harder for them to become law-abiding citizens, which makes the crime problem worse. Research shows that being able to get an employment reduces the likelihood of a previous criminal attempting further offense indicates the inverse relationship of employability and recidivism.

Fourth, a country with a welfare system needs to have a sentencing policy that is based on the idea of social utility and uses a rehabilitation approach.²⁸ So, a welfare state's sentencing policy must include the ways that people stop breaking the law and are "resettled," "reintegrated," "rehabilitated," and "reformed."²⁹

Fifth, if there is no way to start over, having a criminal record can be the most lasting punishment, making it almost like a life sentence.

Sixth, there are already a lot of people from certain socioeconomic groups while in justice process, as well as the denial of expungement laws makes things even worse for them.³⁰

Lastly, the rate of crime goes down sharply with age, and there isn't much to be gained by keeping people from getting jobs long after any real risk has gone away.

These reasons have to be weighed against the public interest, which includes things like the need for well-informed decision-making, fair judgment, as well as the demands of sufferers. It may be argued that attempting to remove criminal histories and enforcing separate regulations for individuals with a variety sorts of felony convictions are both necessary limits freedom of speech and hides the

²⁷ supra

²⁸ supra

²⁹ supra

³⁰ Mayfield, M. 'Revisiting expungement: concealing information in the information age,' Utah Law Review 1997 No. 4, p. 1067

truth. In fact, some people have stated that a culture where society that widespread falsehood is acceptable has uncertain moral justification.³¹

From a professional standpoint, limiting an employer's right to know something and creating an "information asymmetry" can make it harder for both sides of an employment contract to agree on something. Such rules could also hurt the relationship between an employer and employee, which is based on trust and good faith.³²From the point of view of criminal justice, it is said that offenders need to take more responsibility for their actions. This seems to be particularly the case because "people with criminal records are more likely to commit crimes than the rest of the population."³³

It could be argued that a former criminal has no right to be trusted by society if he or she chose to break the law. Allowing offenders to hide their pasts instead of telling the truth about them goes against the idea but they should also accept individualism for such damage they had already created.

Even though companies are specifically banned against exploiting details regarding people's prior convictions, injustice may nevertheless occur. For instance, informational prohibitions might be breached by the use of unofficial "estimation techniques" (that take into account things like socioeconomic class) instead of formal "particularized information."³⁴

It is hard to find a good balance between protecting society (exclusion) and helping offenders get back into society (inclusion). This is especially true given the fear of crime and the fact that law and order issues are becoming more and more political having the elements of law and order.³⁵But it is wrong to say that these worries are mutually exclusive.

³¹ supra

³² B. 'Eyes open policy: employment of a person with a criminal record,' New Zealand Law Journal November 1986, pp. 386-388

³³ supra

³⁴ Funk, T M. and Pols by, D.D. 'The problem of lemons and why we must maintain criminal records', The Cato Journal, 1998 Vol. 18, No. 1, pp. 75-83 at p. 81

³⁵ O'Donnell, I. and O'Sullivan, E. Crime Control in Ireland: The Politics of Intolerance 2001. More generally, see Tonry, M. and Frase, R.S. (eds) Sentencing and Sanctions in Western Countries 2001.

Re-integration programmes can also help keep the public safe by breaking the cycle of exclusion and making it less likely that more crime will happen. In many cases, the public's right to know is outweighed by the bad and unfair effects of a criminal record. Allowing these records to be hidden won't hurt the public's right to safety, but it will make it easier for the offender to get back into society. Some examples of what is being done in other places to find a fair balance between reintegration and public safety has to be gather by studying other countries jurisprudence.³⁶ These give a context for thinking about any ideas that might come out of the review of the Employment Equality Act.

1.5 GROUNDS OF RIGHT TO EXPUNGEMENT OF CRIMINAL RECORDS

When deciding whether to grant expungement, the following factors must be taken into account:

1. The length of time ever since arrest of conviction (verdict or imprisonment)
2. The severity and complexity of the incident over which expungement is being sought; and
3. A person's past criminal records

1.5.1- THE LENGTH OF TIME SINCE THE ARREST OR CONVICTION

This is to put into consideration when the opportunity to expungement is granted. Criminals must be stopped from doing bad things if society is to stay safe. There needs to be a set amount of time in which a person's observing actions and activity is doable. This might have had an influence on the implementation for the Privilege of Expungement, since an individual may seek for clarification for the Right to Expungement and get it, but then keep doing bad things by taking advantage of the fact that his criminal record is gone, which hurts the public as a whole. In the United States, Most rehabilitation regulations ensure

³⁶ Kilcommins, S. 'The duty to disclose previous criminal information in Irish insurance law,' Irish Jurist 2002, Vol. 37, pp. 167-186.

respondents to await a specified period of time before filing an expungement request. This is to make sure that this doesn't happen. In some states, a person can't get an expungement if they got convicted during the waiting period or if they were charged at the time they filed.³⁷ Rarely, such waiting periods could be rather lengthy. The gravity and type of the offense over which forgiveness is being requested.

1.5.2 THE SEVERITY AND NATURE OF THE OFFENCE

The person who wants to get his criminal record erased must not have done anything so serious offence that it seriously hurts the public's interests. In every judicial system, offences are punished and divided into main groups depends on how serious they are: *felonies and misdemeanours* (petty or minor offences). Misdemeanor charges are "least serious" crimes, sometimes known as Minor offenses. Felonies include crimes that are more serious than misdemeanours. It is important to take into account how bad the crime is and how it was done. The records that need to be expunged and how much they need to be erased will be decided based on this. This means that the Right of Expungement of criminal records is easier to use in the case of misdemeanours and harder to use in the case of felonies because some felonies include "moral turpitude," which means that a person has a criminal nature or a guilty mind. Generally, murders, crimes, and misdemeanors of the first category in which the complainant is lower than eighteen years are not entitled for expungement. Serious Violation such as sexual assault, corrupting of a child, and physical compulsion are prohibited, exposing a minor to obscenity or pornography, and serious weapons charges.

1.5.3 APPLICANT'S PREVIOUS CRIMINAL RECORDS

As the title suggests, mostly about the criminal past actions of the individual who has requested that their data be deleted. This section comprises first-time offenders, whose charges are dropped or overturned by the judiciary, individuals

³⁷ Shlosberg, A. Evan J. Mandery, Valerie West, and Bennett Callaghan, Expungement And Post-Exoneration Offending, 104 J. Criminal Law & Criminology 353 (357-358). [Http://Scholarlycommons.Law.Northwestern.Edu/Jclc/Vol104/Iss2/3](http://Scholarlycommons.Law.Northwestern.Edu/Jclc/Vol104/Iss2/3) (Sept. 30, 2021)

who are pardoned or freed with a warned by the court, and individuals who already fulfilled their term. Here, "criminal records" that a person will have trouble using their "Right to Expungement" if they have repeatedly done illegal things. Those who have never been arrested before, i.e., first-time offenders, will be able to get their records erased easily.

1.6 CROSS- JURISDICTIONS ANALYSIS OF RIGHT TO EXPUNGEMENT OF CRIMINAL RECORDS-

Legal System is the symbol and working style for the laws and the way they work in a certain area or jurisdiction.³⁸ There seem to be two significant forms of legal frameworks: *Adversarial and Inquisitorial*. The Inquisitorial (Independent judiciary) Legal System is a method for gathering data utilized in legislation. The judge conducts the trial, chooses the questions raised, and establishes the scope of the inquiry.³⁹ It is present in France, the Netherlands, and other places.

Whereas the adversarial (Confrontational) Judiciary System is, like the Anglo-American legal system, a process system in which engaged and unrestricted parties strive to present a matter before a fair and balanced judicial officer, it is not identical.⁴⁰ Nations such as Britain, Asia, and Ghana, etc. come next. It is pretty clear that the Common Law System, which is based on the Adversarial Legal System, is used in all or most of the countries that used to be part of the British Empire. This indicates that the origins of the regulations and prison reform of all nations with this Judiciary System must be identical. Moreover, it follows that the requirements and operations of these systems must be same. Therefore, it is necessary to examine the various expungement of criminal records rules in nations with adversarial judicial systems. This cross-jurisdictional examination will assist us in comprehending why India really need an expungement of criminal records legislation.

³⁸ Black's Law Dictionary, Thomson Reuters, P.1035 (10th ed.2014)

³⁹ Ja Jolowicz, *Adversarial and Inquisitorial Models of Civil Procedure*, 53 *International and Comparative Law Quarterly* 281-295 (2003), <http://heinonline.org> (last visited Mar 23, 2021).

⁴⁰ *Supra*

1.6.1 EXPUNGEMENT LAWS IN AUSTRALIA⁴¹

The Criminal Records Act of 1991 of New South Wales in Australia has rules about expungement. Under this Act, the word "spent conviction" is used to mean "expungement." The Act's Section 7 says that a spent conviction is the only one that applies. It states that all offenses can be expunged with the exception of:

- Regarding the offenses that culminated in a jail term of much more than six months;
- Sexual offences,
- Enforced towards corporations,
- Mandatory under rule.⁴²

In addition, Section 8 details the circumstances under which a conviction may be expunged. It states that a conviction can be expunged when a certain amount of time has passed during which there has been no further illegal behavior. On the converse, it stipulates that the conclusion of such a crime-free period is not required under the following circumstances:

- The charge against the individual has been dismissed and caution has been issued by the Children's Court;
- The individual's guilt has been established beyond a reasonable doubt;
- An offence is of a type that has lost its status as a criminal offence as a result of the operation of the law.⁴³

The repercussions of having a conviction that has since been expunged are laid forth in later Section 12 of the Act. When a sentence is erased, the individual is not compelled to reveal any details on the offense about any reason. In fact, in the execution to an individual of a clause of a legislation or regulatory procedure, a

⁴¹ "In New South Wales, the relevant legislation is the Criminal Records Act 1991. Under the Act, an offender's criminal record may become spent if they do not re-offend for a period of 10 years. Offenses resulting in a prison term of more than six months will not become spent. Additionally, for certain employment occupations (e.g., education or child services), a "full disclosure" check is required, and spent convictions are still visible."

⁴² Criminal records Act, § 7 (1991)

⁴³ Criminal records Act, § 8 (1991)

referral to the specific individual or ability is not to be construed as authorizing or mandating the consideration of previous offenses or spent convictions.⁴⁴

1.6.2 EXPUNGEMENT LAWS IN NEW ZEALAND

The Crime Records (Clean slate) Act, introduced in 2004, offers New Zealand people the opportunity to already have their histories wiped. In this scenario, the erasure is referred to as a "Clean Slate." The eligibility requirements for exercising this right are outlined in Section 7 of the Act, and they include the following situations:

- A responsibility that comes a punishment of fine or restitution, which has also been repaid or is presumed to have already been pardoned;
- Since the date of his sentencing, the individual has accomplished the observational assessment;
- He has never been convicted with a prison term;
- It has not been determined whether or not he is eligible to have a driver's license.

In particular, Article 14 of the Act outlines the consequences of the requirements of a fresh start. The individual may respond in the negative when questioned about his history of violence; nevertheless, this is not really a limitation if he freely chooses to divulge the information. Those outcomes are as follows. This clause does not offer protection from the laws of other countries' jurisdictions.⁴⁵

1.6.3 EXPUNGEMENT LAWS IN SINGAPORE

The Registration of Criminals Act, 1949 was amended in 2005 was amended to provide a mechanism for the erasure of criminal records. It has been amended by the Registration of Criminals (Amendment) Act, 2005, which added sections 7A to 7F to the original statute. This Act's new S.7B provision allows all entries in the Singapore enrollment of offend to be expunged at any time (whether before, on, or after the date of the Act's commencement). Once a person has been free of

⁴⁴ Criminal records Act, § 12 (1991)

⁴⁵ Criminal records (Clean Slate) Act, § 14 (2004)

criminal activity for a certain amount of time in Singapore, their criminal record is considered "spent." There must be at least five years without any criminal activity since the date specified in the section during which the crime-free interval begins.⁴⁶

S. 7C, on the other hand, prohibits a person from having their criminal record expunged. According to this provision, an individual is not eligible to apply for expungement if:

- After being found guilty of the crime, his punishment might range from a fine exceeding \$2,000 to three months in prison;
- S. 7C (a), (c), and (d) disqualify him from participating in the election.
- The individual has a history of multiple criminal offences;
- He holds a warrant of arrest for any unexecuted offence at this time;
- He does not have any past criminal record.⁴⁷

In S. 7E, the individual shall be deemed to have no history of that prior offences, and it should be permissible for him to express an opinion concerning his felony conviction or reveal facts concerning his prison background after the specified date that it would be lawful for him to do in the absence of that previous conviction.⁴⁸

1.6.4 EXPUNGEMENT LAWS IN THE UNITED KINGDOM⁴⁹

Expungement laws are clearly in place in the United Kingdom, which is the founder of the Adversarial Legal System. Sections 1 and 4 of The Rehabilitation of Offenders of Act- 1974 deal with eligibility requirements and the consequences of

⁴⁶ Criminal Records in Singapore, Singapore Legal Advice.com (2017), <https://singaporelegaladvice.com/law-articles/criminal-records-in-singapore> (last visited Mar 23, 2018).

⁴⁷ Registration of Criminals Act, §7C (1949)

⁴⁸ Registration of Criminals Act, §7E (1949)

⁴⁹ "In the United Kingdom the term "spent conviction" is used. The relevant legislation is the Rehabilitation of Offenders Act 1974. In the data retention model of the Police National Computer, arrests which do not lead to a finding of guilt "step down" as soon as the relevant decision is made (typically a "not guilty" verdict or a dismissal of charges) and become visible to law enforcement only. Records of cautions and minor convictions do not step down and remain on the PNC and on enhanced CRB checks until the offender's 100th birthday"

a previous conviction that has expired. If a person has been found guilty of an offence that isn't exempt from rehabilitation and hasn't committed another offence during their rehabilitation time, they are regarded as rehabilitated for motive of this Section, their felony is deemed expunged. This Law does not cover to a particular individual who has not served or otherwise completed or adhered to the terms of any sentence imposed on him in connection with such conviction, according to Section 2 of S. 1 of the Rehabilitation Act of 1973, as amended.⁵⁰

Those who have been deemed rehabilitated for the motive of this Act is related to their convictions will be regarded as persons who have not committed or been charged with or arrested or punished for the offense or offenses for which they were charged. This is stated in Section 4 of this Act.⁵¹

According to the information presented above, practically every country with an adversarial legal system allows for expungement in some form or another. Countries such as South Africa and the People of the United States fall under this category also have expungement legislation. Expungement laws are clearly defined in South Africa's Criminal Procedure (Amendment) Act of 2008 and a few legislative acts in the U. S. Because of this, a codification guaranteeing the right to expungement is urgently required in India.

1.7 STATUS OF RIGHT TO EXPUNGEMENT OF CRIMINAL RECORDS IN INDIA:

Expungement of criminal records is not a *res Integra* notion in India. Both Expungement and the prohibition on disclosing a person's name in circumstances involving minors are simultaneously provided in Indian law. In addition, the Indian judiciary has indicated a preference for discharge from employment without conviction in a number of situations. Offenders are given several opportunities to reintegrate back into society thanks to the provisions of The Probation Offenders Act Of 1958 and the Juvenile Justice (Care and Protection of

⁵⁰ Rehabilitation of Offenders Act, §1(1974)

⁵¹ Rehabilitation of Offenders Act, sec- 4(1974)

Children) Act of 2015. It is stipulated in S.12 (probation) of the Probation of Offenders Act, 1958, as follows:

Removal of “Disqualification” attaching to conviction – “A person convicted of an offence under section 3 or section 4 shall not be disqualified, if any, as a result of such a conviction under any other law: If a person who was released under section 4 is later condemned for the initial offence, nothing in this section shall apply to him.⁵²” However, the interpretation of this Section has fluctuated, but many times it is understood to suggest that the disqualification attached to the offenders due to their convictions should be eliminated.

According to the court's findings in the case of **Prem Kumar v. Union of India**,⁵³ “We have heard the learned Counsel at some length, but we find ourselves unable to agree with the above contention. The relevant words of the section are *'shall not suffer disqualification, if any, attaching to a conviction of an offence under such law'*. The words can only be read to remove the disqualification which under some law may attach to a person on account of his conviction. For instance, if a person is convicted of an offence, he is disqualified from standing for election to the Central or State Legislatures. But if such a person is given benefit under the Probation of Offenders Act, then by virtue of Section 12 of that Act the disqualification for that purpose (standing for election) will stand removed.”⁵⁴

In **Rajbir v. State of Haryana**, the Supreme Court decided as follows: “There is no material on the record to indicate that the appellant had any previous conviction. In the absence of such evidence, we treat the appellant as a first offender. He is entitled to be admitted to the benefits of probation under Section 3 of the Probation of Offenders Act, 1958, taking into consideration the circumstances of the case, the nature of the offence and the character of the appellant. While maintaining his conviction we direct that he shall be released on

⁵² The Probation of Offenders Act, sec- 12 (1958)

⁵³ ILR 1969 Delhi 1214

⁵⁴ 1971 MPLJ 483

probation of good conduct under Section 4 of the Act. The Chief Judicial Magistrate, Bhiwani, before whom the appellant is directed to appear within four weeks from today shall release him after due admonition. We do not consider it necessary to direct him to enter into a bond in the facts of the case. We are of the view that in the peculiar facts of the case, the conviction should not affect his service.”⁵⁵

Eventually, in **Government of India & others. V. Bakshi Ram**, the Supreme Court decided, "Section 12 is clearly plain, and it merely specifies that the criminal “Must not incur disqualification, if any, attaching to a conviction of an offence under such law," afterwards. Disqualification due to a criminal conviction is an example of such a law in this situation. "For example, if a law disqualifies a person from being appointed to any position or from seeking election to any authority or body in view of his conviction, the disqualification by virtue of Section 12 remains eliminated," ⁵⁶That's not all: There are also several Expungement-friendly clauses in the Juvenile Justice (Care and Protection of Children) Act, 2015. In accordance with S.24 of this Act:

Elimination of the bar imposed by a felony conviction. - (1) A child (juvenile) who has committed an offense and been punished in conformity with the appropriate of this Act must not be subject to any prohibition related to a conviction for an offense under such regulations, despite of what is declared in other laws. (2) **“The Committee will pass an order mandating the destruction of all significant data related to this sentence follows the expiration of the appeal term or a reasonable period as stipulated by regulations, as applicable.”**⁵⁷

In addition, every youngster has the *confidentiality and anonymity (secrecy)* safeguards whatsoever periods and even during the court procedure, according to the *privacy & confidentiality concept*. The concept of *principle of repatriation and restoration*

⁵⁵ AIR 1985 SC 1278

⁵⁶ AIR 1990 SC 987

⁵⁷ The Justice (Care and Protection of Children Act, §24 (2015). This part of the act suggests the reference with respect to expungement law in India for juveniles only.

provides that each and every youngster in the Juvenile justice system has the entitlement to be bound by a common with his parents as soon as possible and to be recovered to almost the same political and social and ethnic standing he held long before it came under the jurisdiction of this Conduct, except where such rehabilitation and family reunification is not really in his better interests.⁵⁸ During a child's time in a Children's Home, the S.39 *Rehabilitation and Reintegration* procedure begins. Probation officers' and social workers' reports are to be treated as confidential, according to S.99. As a result, it is clear that the right to expungement of criminal records exists in India, as evidenced by these regulations.

The researchers study looked at a number of different aspects of the Right to Expungement of criminal records. India does not have a Statutory right to Expungement of criminal record, but the right is not *res Integra* in India. Due to its Adversarial Legal System, India has particular requirements. Cross-jurisdictional research can help explain why India needs a law that allows criminal records to be expunged. Those statutes of India that allow for the erasing of criminal records and the removal of disqualifications are also mentioned in the above and further study also has been taken. A unique component of the present research is that it discusses the benefits of the Right of In contrast to eradication of arrest histories, the difficulties that may arise from such debate and possible solutions to such difficulties.

There is a pressing need for the right to expungement of criminal records in India. When awarded, this right allows the holder to reintegrate into society and begin anew. However, he or she is entitled to an employment, subject to certain conditions. In addition, he must be identified as someone who has never been arrested. As a result of this right, the idea that "*once a thief always a thief*" is dispelled. As a result to assure that everyone has fair treatment Indians, the post-convict population must be granted this privilege of right to expungement of criminal records.

⁵⁸ The Justice (Care and Protection of Children Act, §3(13) (2015)

1.8 SIGNIFICANCE OF THE PROBLEM

The Welfare Nation apart from maintaining of law and order has enormous responsibilities such as to act as a provider, protector, facilitator and dispenser of justice and thereby contemplates system of laws and institution through which a government attempt to safeguard and advance efficiency of the economy of its citizens based usually on various form of social insurance against unemployment, accidents, illness, old age and rehabilitation of convict.⁵⁹The primary object and function of criminal justice system of a welfare state is to prevention of crime or at least reduction of crime rate because we all want to live in peace and order.

In the past, ex-offenders and exonerees due to various their invisibility, they were considered to as "invisible punishment." The negative influence on their work prospects that having a criminal record has on those who are looking for a new job. As a society, we do more harm than good by stigmatizing ex-offenders as "criminals." In this age of modernization, the establishment of the modern prior convictions record and the affordability of employment-related details on past convictions pose issues for former criminals. The Constitution of India eliminates double jeopardy⁶⁰, yet the system of maintaining the permanent criminal record ironically creates & foster "multiple social jeopardies". What incentive is there for the individual who has been convicted to "go straight" if he knows he will never again share the opportunities of his fellow citizens?

For the most part, Indian policies and efforts to rehabilitate ex-offenders have had disappointing outcomes. When it comes to economic independence in rehabilitation, these programmes and policies don't go far enough. For decades, the reintegration and deterrence of criminals has been linked to the employment of ex-offenders. Law-abiding lifestyles are facilitated by its status, financial resources, and social

⁵⁹ supra

⁶⁰ See, Article 20(2) of India's Constitution states: "No person shall be prosecuted and punished for the same offence more than once." Also see, The Fifth Amendment of the Constitution of the United States, which relates to criminal and civil legal proceedings, contains a similar clause.

networks. According to some studies, getting a job reduces recidivism by 30 to 50 percent.⁶¹

Is there a method for such a former culprit to erase their criminal history and start over after completing their sentence? Can they demand justice when they are outlawed by society itself? Whether an accused can demand expungement of his criminal records in case of his “honorable acquittal” / “fully exonerated” from court of law?

Keeping this view in mind the present study has been undertaken to identify the need to incorporate Right to expungement of criminal records in Indian criminal jurisprudence as it can act as a catalyst in rehabilitation of ex-offenders. The Absence of these laws has helped in further strengthening the criminals and offenders toward recidivism. To understand this notion, it is necessary since the Supreme Court has criticized the lack of government standards for the recovery of formerly incarcerated individuals, with such a concentration on the need for government positions for ex-convicts.

1.9 OBJECTIVES OF THE STUDY

It is necessary to study the general aspects of which includes the historical background, origin and the growth of the Right to expungement of criminal records in other countries and in India in comprehensive and authoritative way. The Socio-Legal dimensions of the problem and its techno-legal facets would be studied. The following are some of the important objectives of the Study:

- I. To study the historical development of Right to expungement in India and in world at large.
- II. To study the importance of Right to expungement in respect of honorable acquittals and ex-offenders.
- III. To study the significance and development of International Human rights instruments concerning Right to expungement.

⁶¹ Uggen, C. (2000) Work as a Turning Point in the Life Course of Criminals: a duration model of age, employment and recidivism, *American Sociological Review*, 67: 529-546.

- IV. To analyze the fundamental requirements for Right to expungement and existing legislations in India and in world at large.
- V. To critically evaluate whether the existing legal regime is appropriate to incorporate Right to expungement or not under the Indian criminal jurisprudence.
- VI. To study the inclusion of Right to expungement for the facilitation and rehabilitations of ex-offenders.
- VII. To study the status of ex-offender's employability in the light of non-availability of right to expungement to them.
- VIII. To critically analyze the renowned judicial pronouncements relating to Right to expungement in different countries and the position in India relating Right to expungement for ex-offenders.
- IX. To study the upcoming latest challenges posed in front of USA, UK and Australia that provide Right to expungement.

1.10 HYPOTHESES

The following is recommended hypothesis developed to conduct research:

“Availability of Right to expungement of criminal records to Ex-offender facilitates the process of rehabilitation.”

1.11 SCOPE AND LIMITATION OF THE STUDY

Researchers had a difficult time gathering data for their study because the topic was mostly unknown. Despite the breadth of the topic, it's covered extensively. As a result, this study does not profess to be a comprehensive or comprehensive investigation of the issue at hand. The researcher, on the other hand, went to great lengths to obtain all the facts and data he needed for the study.

The scope of the study is limited to allow the undertaken study completed within reasonable time and budget constraints. Since, the Right to expungement is very wide and broad concept, which includes various issues such as loss of civil liberties which continue even after serving the sentences by offenders, Property right,

Political rights, Diplomatic and international restrictions which includes the right to hold a passport, entries in foreign country, Deportation of aliens, Family rights and capacities, Testimony right which follow in criminal trial, civil trial, General incapacity to testify, Contractual capacity, Insurance.

The researcher in this research topic touches only one issue that is Right to expungement of criminal records vis-à-vis employability of ex-offender, as this issue is most essential in the process of rehabilitation.

The researchers across the world have studied Right to expungement of criminal records with reference to socio- economic and legal framework of different jurisprudence. The researcher, hence focuses on Right to expungement models which suited most for future sentencing policy in India, within its cultural and political environment besides geographical constraints. Moreover, the present study is suggestive to the policy makers of the legal system for future insight. Nevertheless, even a simple idea or suggestion, extremely important, quite often does not find favors due to a number of reasons. The Right to expungement is a progressive legislation if, enacted in future will be helpful for the smooth implementation in the process of rehabilitation of ex-offenders and exonerees.

One of the implied presumptions and limitation throughout this research is that Right to expungement of criminal records is not applicable upon *recidivism and offender of grave offences*. The foreign jurisprudence divided offence into felony and misdemeanors and for the same reason the right to expungement of criminal records in this research is applicable broadly on offences which are described as non-cognizable, cognizable and petty offences.

The other implied limitation revolved around the complexity of the issue itself as the issue at first instance seems to be simple, but it is not so. Taking into consideration the topic in hand, researcher planning to seek opinion through questionnaire method to legal fraternity - Judges, Lawyers, academicians and law student and to some of the NGO'S who are working for rehabilitation of ex-offenders with special reference to Delhi, Rajasthan and Gujarat.

1.12 RESEARCH DESIGN AND METHODOLOGY

The researcher intends to study the Concept of right to expungement of criminal records and the feasibility and inclusion in Indian criminal justice system. This part of methodology mainly elaborates data collection procedure, study design, selection of participants, data analysis and analytic strategy.

In order to find out answers to research questions mixed methods of research have been adopted. In this mixed type of study, combined descriptive and analytical methodologies are employed to achieve the survey's result.⁶²

The term mixed research was expanded by Johnson, Onwuegbuzie and Turner. They said, "Mixed methods research is an intellectual and practical synthesis based on qualitative and quantitative research; it is the third methodological or research paradigm (along with qualitative and quantitative research). It recognizes the importance of traditional quantitative and qualitative research but also offers a powerful third paradigm choice that often will provide the most informative, complete, balanced, and useful research results."⁶³

"Quality documents," according to Creswell, "may be any form of public record." For starters, they may be accessible at any time convenient for researchers, serve as an unobtrusive data source, and reflect carefully collected data from participants. Finally, they save researchers time because they are readily available and contain documented evidence.

⁶² Julia Brannen, Mixed Methods Research: A discussion paper, (NCRM Methods Review Papers NCRM/005) available at [http://eprints.ncrm.ac.uk/89/1/Methods Review Paper NCRM-005.pdf](http://eprints.ncrm.ac.uk/89/1/Methods%20Review%20Paper%20NCRM-005.pdf). Bryman, (2001) citing Morgan (1998); Hammersley (1996); Rossman and Wilson (1994) observed that the data obtained from qualitative and quantitative methods are juxtaposed and generated complimentary insights.

⁶³ R. Burke Johnson, Anthony J. Onwuegbuzie & Lisa A. Turner, Toward a Definition of Mixed Methods Research, 1 J. Mixed Methods Res.112, 129 (2007), available at [http://www.sagepub.com/bjohnsonstudy/articles/Johnson, %20Burke%20Mixed%20Methods%20Research.pdf](http://www.sagepub.com/bjohnsonstudy/articles/Johnson,%20Burke%20Mixed%20Methods%20Research.pdf).

Creswell and Plano Clark⁶⁴ stated that mixed method of research is not only collecting and analyzing qualitative and quantitative data but it involves use of both the approaches in tandem. This increases overall strength of study which is greater than individual qualitative or quantitative research.”

White defined qualitative research as “it explores the why aspect of attitudes or behaviour in order to understand social or more human based aspects of a problem. Instead of trying to answer a specific set of questions through experimentation, qualitative research is often trying to find interpretation and is indicative as opposed to deductive.”⁶⁵ One to one interview helps to understand detailed description of people’s behaviour and thoughts to illuminate their social meaning.⁶⁶ In the qualitative research it is expected that the social process is known rather than merely obtaining representative sample. This study interviewed convicts personally by visiting sub-jails, the police officers also got interviewed through online mode and Telephonic interview for NGOs who are working in the area of rehabilitation of ex-offenders too.

1.13 QUESTIONNAIRE DESIGN

A good questionnaire should include a mix of closed, open and scaled questions.⁶⁷ Designing of a comprehensive, self- explanatory, non- ambiguous, short and crisp questionnaire is the main challenge before the researcher for collection of data. The questionnaire is prepared by considering hypotheses and research questions. While framing questions, utmost care has been taken to avoid ambiguous language, non -derogatory language for targeted audience, prejudicial language, and biased questions.

⁶⁴ John Creswell & V. L. Plano Clark, *Designing And Conducting Mixed Methods Research* (Sage Publication 2011).

⁶⁵ Hollie C. White, *Understanding Research: Choosing a Design*, 34 *Technical Service L. Libr.* 18 (2008-2009).

⁶⁶ Matt Henn, Mark Weinstein & Nick Foard, *A Critical Introduction to Social Research* 164 (Sage Publication 2nd Ed. 2009) (2006).

⁶⁷ Matt Henn, Mark Weinstein & Nick Foard, *A Critical Introduction to Social Research* 164 (Sage Publication 2d Ed. 2009) (2006).

The Questionnaire comprises responsive and Likert scale questions. Wide questions let respondents to express their opinions outside qualitative research or intervention.⁶⁸ Simultaneously, close ended questions produce uniform answers and they are mutually exclusive.⁶⁹

Important part of the present questionnaire is to assure respondent their anonymity and confidentiality about the names of the respondents with respect to convicts. At the beginning of the questionnaire, it was disclosed that this exercise was being carried out for academic purposes and the names and identity of the respondent would not be disclosed under any circumstances. In case of self-administered questionnaire, assurance of anonymity increases the rate of response and also it will reduce the social desirability bias.⁷⁰

To extract the relevant information, the scholar prepared some questions including a series of questions relevant to the subject under investigation to which he or she wanted a response, while taking into consideration the purpose of this study and the primary audience.

Questionnaire contained clear directions for completing the survey. The main focus of all six sets of questionnaires is to seek opinion on right to expungement. The questionnaire is divided into six broad category of respondents who are related to law.

- 1) JUDGES - The first target group belongs to serving judges which includes from judicial magistrate first class to district judges. The judges belong to state of Rajasthan, Gujarat, Delhi and some other states. The researcher here seeks good opinion from judges as they are very well versed with the concept of Right to expungement.

⁶⁸ William Foddy, *Constructing Questions for Interviews and Questionnaires: Theory and Practice in Social Research* (Cambridge University Press 1993).

⁶⁹ D. A. De Vaus, *Surveys In Social Research* 94-98 (First Ed. 2003).

⁷⁰ Norman Bradburn, Seymour Sudman & Brian Wansink, *Asking Questions: A Practical Guide to Questionnaire Design* 90-100 (John Wiley & Sons, Inc. Jossey Bass 2004).

- 2) **LAW STUDENTS-** In this section of questionnaire the researcher asked questions only to 4th and 5th year law students in five-year law integrated course and 2nd and 3rd year students in three-year law courses. The same question was also asked to LLM students whose branches were criminal law or Criminology. The researcher slightly presumes that criminal law as a subject mainly thought in higher classes and also the good quality of responses can be obtained from this target group only. The question was sent to GNLU GUJARAT, UNIVERSITY LAW COLLEG RAJASTHAN UNIVERSITY, UFYLC RAJASTAHN UNIVERSITY, AMBEDEKER LAW UNIVERSITY RAJASTAN, NLUD and some state university and colleges.
- 3) **POLICE OFFICERS-** The first institution which encounter with ex-offenders and specifically with convicts, accused and criminals are police officers. During this research the researcher observed first-hand information from police persons. The researcher during his research was associated with some police institutions where police training was provided and due to that the data, which was gathered here belongs to almost all states of India. The question was sent to CENTRAL DETECTIVE TRAINING INSTITUTION JAIPUR, POLICE TRAINING ACADEMY JAIPUR and different police persons. The respondent was generally belonging to police constable, sub- inspector and Deputy Superintendents of Police.
- 4) **NGO'S** - With respect to this category a comprehensive list was downloaded from internet. A total of 52 NGO's who is actually working on Rehabilitation and Re-integration of offenders was questioned. This category also served very important role as they closely worked with the subjects.
- 5) **LAW PROFESSORS** - The knowledge of law could be best served with academicians. This category serves a deep insight in the literature of Right to Expungement. The researcher through his questionnaire found some good quality responses. All academicians belong to law field and mostly has taught or has basic knowledge of criminal law of criminology. The range varies from Assistant professor to Professors of law. The question

was asked to different institutions namely Rajasthan University, GNLU, DELHI UNIVERSITY, Teaching professors at Police academy and some of the state colleges.

- 6) **CONVICTS OR ACCUSED** – Initially at the starting of the PhD the researcher formulated questions to be asked to exonerees or ex-offenders. It is humble submission at this stage by researcher that due to COVID situations the researcher could not asked question to the same and that's one of the research projects gaps which researcher humbly admitted.

To compensate the same, researcher again formulated new questions to be asked to those persons who are presently accused of some crime or serving the jail. The researcher also taken into consideration that Right to expungement is mostly suited to the age group between 20 to 35 years and for the same researcher personally went to sub-jails of the different districts. The researcher founds most respondents to targeted area i.e., the age which is mentioned for quality of answers.

Basing on the nature of the topic, the study is a combination of primary and secondary methods. Law books, journals, periodicals, recent case laws, as well as other relevant materials, have been consulted by the researcher when compiling the relevant data. Hein Online, Westlaw, Lexis Nexis, Social Science Research Network and JSTOR were referred for scholarly writings on the above topic as well as related areas of law. To conduct the primary study the researcher is planning to operate interview method.

The researcher also planned to seek information related to ex-offenders and *exonerees* who applied for employment & recruited successfully in last 10 year from public service commission across India through Right to information. The researcher here faces huge impediment as the answer could not be gathered due to denial buy different govt. institutions based on RTI. Due to this impediment, as the data could not be collected the researcher proposes alternative ways.

The study also covers the historical growth & analysis of Right to expungement in another jurisdiction such as USA, UK, and Australia. Selecting the best element from USA, UK and Australia researcher is planning to propose a modal Bill upon Right to expungement for India.

1.14 REVIEW OF LITERATURE

The concept of right to expungement of criminal records is multidimensional complex right. The Indian criminal and civil law do not have any specific provisions with respect to the same. Presently the concept is widely used in parliament i.e., in cases of adverse remark.⁷¹ Or by upper courts remark which any party find derogatory in a proceeding.⁷²

“The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in *State in Uttar Pradesh vs. Moh. Naim*⁷³. Those tests are:(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and (iii) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.”

The right to expungement of criminal records were discussed by Supreme Court in limited cases only. The court expresses their opinion in the favor of enactment of this kind of law but in limited sense. The court explain expungement of criminal records could be done in acquittal cases. The court focuses on two types of acquittal that is “honorable acquittal” and acquittal due to non-availability of evidence, compromise and acquittal by giving benefit of doubt. With respect to

⁷¹ Dr. Raghubir Sharan vs The State of Bihar on 14 March, 1963

⁷² Jage Ram, Inspector of Police & Anr. vs. Hans Raj Midha AIR 1972 SC 1140, R.K. Lakshmanan vs. A.K. Srinivasan AIR 1975 SC 1741 and Niranjana Patnaik vs. Sashibhusan Kar & Anr. AIR 1986 SC 819.

⁷³ AIR (1964) 2 SCR 363

right to expungement the concept of honorable acquittal plays important role in applying the expungement application. Acquittal in a criminal case does not mean that an applicant is ineligible for the position in question. A person's acquittal or dismissal does not necessarily mean that he was involved in a dishonest act or had no prior criminal record. When a candidate is acquitted, they cannot claim the case as their own. The terms "honourable acquittal," "acquitted of blame," and "completely exonerated" do not appear in the Code of Criminal Procedure or the Penal Code, which are derived from judicial pronouncements. Honorably Acquitted specific meaning is hazy at best. One can say that an accused person has been "honorably acquitted" if the prosecution's evidence was fully considered and the prosecution's charges had been demonstrably false."⁷⁴

“A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations. The Court held that offences which are grave, serious and involve moral turpitude will not justify public employment. However, respondent's offence being non-cognizable, bailable, involving no moral turpitude and not shocking the moral conscience of the society does not justify denial of employment”. Present case focuses on need of human approach in cases of ex-convict rehabilitation by providing employments in public sphere.⁷⁵

⁷⁴ RBI v. Bhopal Singh Panchal (1994) 1 SCC 541, Union territory, Chandigarh, administration and others V. Pradeep Kumar and others (2018) SLP(C) No.23855 of 2016]

⁷⁵ Ms. Nidhi Kaushik vs Union of India & Ors. on 26 May, 2014, Delhi H.C.

Terry Thomas (2003) the writer expresses his opinion that lots of disabilities are attached with criminal conviction. In England and Wales, he explores the contemporary usage and customs of criminal records. Instead, he is anxious about how it would harm his professional position,⁷⁶ in addition even though employment is increasingly regarded as essential to well wellness and certain other consciousness markers in the present era. They begin by examining the situation in England and Wales.⁷⁷

- (a) The establishment of the existing felony conviction system and the availability of relevant documentation for occupation (and other licensing purposes) and other purposes is discussed.
- (b) The considerations that influenced the current design.

Second, he discusses what is known from the British criminological literature on employment and conviction records and what additional criminological study is needed. A last point of interest for this essay is how a person can have their record sealed or expunged under the 1974 Rehabilitation of Offenders Act in the United Kingdom. Socially desirable rehabilitation and reintegration of ex-offenders should be fostered, as it is obvious. Previously, possessing an unlawful act was characterized to as "undetectable penalty" due to its detrimental influence on job applicants with a felony conviction.

Mirjan R. Damaska's 1968⁷⁸ study for the Worldwide Prisoners Aid League was envisaged as a critical point upon which subsequent country analyses might be tied. The United Nations' Human Rights Year of 1968 was a major factor in the Association's activities. His initial piece, which appeared in the Journal in

⁷⁶ Bevan Greenslade, "Eyes Open" Policy: Employment of a Person with a Criminal Record, 1986 N.Z.L.J. 386, 386

⁷⁷ Terry Thomas & Bill Heberton (2013) Dilemmas and consequences of prior criminal record: a criminological perspective from England and Wales, *Criminal Justice Studies, A Critical Journal of Crime, Law and Society*, 26:2, 228-242. <http://www.jstor.org/stable/1141836> (last visited Jan 12, 2018).

⁷⁸ Mirjan R. Damaska, Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study (Part2), Vol. 59, *The Journal of Criminal Law, Criminology, and Police Science*, 542-568 (1968), <http://www.jstor.org/stable/1141836> (last visited Jan 12, 2018).

September 1968 as part of a two-part series on collateral legal repercussions of criminal convictions, was published in the journal in September 1968. After studying the origins and development of such collateral disabilities, the author concluded that the tendency is toward lowering legal restrictions for ex-offenders. Denmark and Sweden have eliminated all penal ramifications of punishment, denied harsh ramifications of guilty verdict, and a general restart approach, but Norway has reduced dramatically article impairments.

Another study done by R. Paul Davis (1980)⁷⁹ states that a conviction of a criminal offence places the offender in a new status role. He is seen by the community and by its agencies as a person who is in many cases less deserving of attention, a less desirable associate. The damage to his standing in the community does not stop there: in most countries of the world, including the three which will be used here to illustrate the phenomenon - the USA, Canada and England - the convicted person, particularly if his crime was serious or his sentence long, has a new legal status.

His views mainly focus on loss of civil liberties which continue even after serving the sentences by offenders. Property right, Political rights, Diplomatic and international restrictions which includes the right to hold a passport, entries in foreign country, Deportation of aliens, Family rights and capacities, Testimony right which follow in criminal trial, civil trial, General incapacity to testify, Contractual capacity, Insurance, pensions and workmen's compensation benefits.

Recidivism and compensating jurisprudence have been linked in research conducted by Mandery. He primarily does empirical studies. Exonerees who receive compensation above a \$500,000 threshold People who are getting remuneration perform felonies at a smaller rate than someone who does not receive money or who compensated below the minimum.. In the past, critics have advocated for more and better results.

⁷⁹ R. Paul Davis, Civil disabilities of ex-offenders in Canada, England and the United States: a comparative study, *The Comparative and International Law Journal of Southern Africa* 35-60 (1980), <http://www.jstor.org/stable/23245405> (last visited Jan 12, 2018).

Regulations grounded on the concept of impartiality In light of these findings, it is evident that considerable compensation might significantly reduce post-release offending. Exonerees who receive compensation, according to theory, do so because it gives them a sense of worth in society and helps them overcome the significant obstacles to readmission they encounter. Having a good sense of how things are going may make you less willing to try new things. Despite the fact that Limited research has been performed on the experiences of former inmates, the significant number of which are being released from prison still require employment.⁸⁰

In the same line of thoughts Indian writer Manikandan (2018) studied that Recidivism and employment have a strong correlating factor between them because when an offender managed to get into a labor market which ultimately decreased the risk factor of recidivism.

To help refugees return to their homes, many wealthy countries such as America and Britain as well as the Nordic countries and a few European countries have set up programmes to give them financial support. Developing countries like India instead of paying financial aid, prisoners are giving skill development training and employability training; also help prisoners to get employment before releasing from the prison through various employment schemes like campus placement drive, self-employment through vocational training etc. This article is set to analysis and discusses the concept of recidivism and an overview on “how employment contributes to reducing recidivism among the offenders in the context of India”.⁸¹

Another disability arrives in the form of social restraints and jeopardy for those persons who had criminal records. The same has been studied by Schiavo He centered on the concept of “criminal record” as it applies to others who have been

⁸⁰ Evan J. Mandery, Compensation Statutes and Post-exoneration Offending, Vol.103, Issue -2, Journal of Criminal Law and Criminology (2013), <https://scholarlycommons.law.northwestern.edu/jclc> (last visited Jan 13, 2018).

⁸¹ S. Manikandan & Dr. Latha S, Employment Reduces Recidivism: An Overview of Employment Based Rehabilitation in India, 6 Indian Social Science Journal 1-8 (2018), www.igga.co.uk (Last Visited Mar 22, 2018).

charged for a felony but have never been guilty of it or have been convicted of a crime but totally rehabilitated. This group includes both adults and juveniles, all cruelly branded with indelible "criminal records". Those individuals who were wrongfully found guilty or innocently involved in the murkier details of a criminal offense also fall into this general category. The habitual criminal or criminal recidivist is excluded.⁸²

Although the law does not permit double jeopardy for a single crime, it ironically fosters a multiple social jeopardy by allowing the permanent criminal record. Persons with an undeserved or irrelevant record are the forgotten of our society in being bypassed by every liberal and progressive movement in the realm of criminal law.

Markus Funk has studied the interplay between criminality and youth (1999). On the basis of this information, the author proposes the creation of a National Serious Juvenile Offender Database, which would benefit both state and federal courts and law enforcement. It is unrealistic and contradicts all of the available criminological data that advocates of aggressive expungement assert that juveniles will "out-grow" their criminal tendencies and that therefore serious delinquency records should be indiscriminately destroyed in order to avoid stigmatizing the youthful offender.

Expungement statutes were primarily enacted in the 1960s and 70s in an attempt to reduce the "stigma" on juveniles convicted of what is known in the juvenile justice system as a "delinquent" act. In the words of one prominent labeling theorist, "deviance is not a quality of the act the person commits, but rather a consequence of the application of others of rules and sanctions to an 'offender.' The deviant is not to whom that label has successfully been applied; deviant behavior is behavior that people so label."⁸³

⁸² Pasco L. Schiavo, *Condemned by the Record*, 55 *American Bar Association Journal* 540-543 (1969), <http://www.jstor.org/stable/25724811> (last visited Jan 13, 2020).

⁸³ T. Markus Funk, *Considering Juvenile Crime Records in Criminal Sentencing*, 11 *Federal Sentencing Reporter*, 282-284 (1999), <http://www.jstor.org/stable/20640186> (last visited Jan 15, 2018).

Few socio-legal studies have explored the records themselves or their link to the individuals they represent, despite the fact that criminal records have a negative impact on one's life. The author, Myrick, takes a fresh approach here, displaying arrest histories as the physical, written proofs of an individual's history. Myrick (2013) Expungement seekers— Individuals who really are confronted according to their own past —are observed by the author in order to get a sense of their reactions. According to inductive theories of symbolic interactionism this data demonstrates a second collateral impact of the felony conviction: it depersonalizes the social identities of individuals and prevents them from conveying corrected consciousness to the governmental agencies who generate the documents. According to this definition, "having a criminal record" essentially includes having a literary substitute that the authority has produced on its own terms, again with no interference from the government whoever it forever portrays and while hiding to those individuals how the composition was performed. There are a number of reasons why the criminal records system acts as an impediment to prison inmates and the judicial system's ability to coordinate.⁸⁴

The need to have a proper legislation on Right to Expungement is required. India as well as other countries which already having the laws need to be more justice-oriented approach. The ideas of Diehm (1992) postulates the same. He focuses on the need of expungement laws. An urgent need exists for clear government policy on erasure of criminal records to be established through legislation. In the legislative process, policy formulation and drafting statutes to implement it are particularly well-suited. Congress can ensure that all citizens are treated equally under the law by implementing such legislation, which is mandated by the Constitution. Expungement themes such as Policy consideration, Authority bases for expungement of criminal records, Criteria for application, Procedure consideration and related issues, Effect of expungement laws and the necessity for

⁸⁴ Amy Myrick, Facing Your Criminal Record: Expungement and the Collateral Problem of Wrongfully Represented Self, 47 Law & Society Review 73-104 (2013), <http://www.jstor.org/stable/23357931> (last visited Jan 15, 2020).

federal laws connected to expungement are also discussed in this document.⁸⁵ Many points raised by Professor Jacobs are worth noting, such as: what exactly is "criminal record?" What causes it to happen in the first place? Who is in charge of it? Who makes the final decision on whether or not to share information with the public? Is it better to make risk information generally available or to keep it under lock and key due to its ability to lead to exclusion?

Professor Jacobs builds his extensive argument in *The Eternal Criminal Record*⁸⁶ on the 'individualism' of the American criminal justice system., which he argues is considered as high amounts of criminalization and incarceration and a strong emphasis on open access to information. Where there are high perceived risks, such as sex offences, countries Europe and Australia are moving in the right direction, and in Australia, at least, there's really overwhelming public support for a significantly larger amount of information available to "publicly shame" offenders, typically on the grounds of "risk"-based public security. This is especially true in Australia.

While it's true that having easy access to a person's criminal past is crucial for public safety, it's equally true that allowing ex-offenders to "shed a negative (criminal) identity and (re-)assume a positive, non-criminal one" by working effectively in the workforce improves public safety. For both rehabilitation and Australia's future, the Eternal Criminal Record examines some of these issues.

A very foundational principle of criminal justice administration that is presumption of innocence till proved guilty beyond reasonable doubt which is the case in right to expungement that a minor with criminal record has to live with multiple social jeopardy and presumption of guilt whenever he / she applied for jobs.⁸⁷

⁸⁵ James W. Diehm, Federal Expungement: A Concept in Need of a Definition, 66 St. John's Law Review 74-106 (1992), <http://scholarship.law.stjohns.edu/lawreview/vol66/iss1/2> (last visited Jan 10, 2018).

⁸⁶ James B Jacobs, *The Eternal Criminal Record*, Harvard University Press: Cambridge, MA, 2015; 416 pp.

⁸⁷ Jerome S. Horvitz, the Expungement of Records: Post Acquittal Recourse for Youthful Offenders, 01 the Justice System Journal 60-68 (1975), <Http://Www.Jstor.Org/Stable/20877477> (Last Visited Jan 16, 2018).

The denial of post-acquittal relief in the Michael S. decision forces the youthful offender to live with a criminal record and the presumption of guilt that accompanies it in the community. The assumption of guilt from an arrest record tends to dominate in the economic reality that responses must prepare for, rather than the presumption of innocence that rules in the world of legal theory until conviction. Why should the exonerated youth bear this presumption merely because the Family Court has imposed a higher standard of evidentiary guilt on the state in the name of due process of law? In order to comply with the continuum of due process, the court should permit the expungement of criminal records in these instances.

How may ex-offenders benefit from the ability to have their criminal records expunged? According to this author, sealing and expungement methods should be abolished and not just modified. They are of no use to the criminal justice system. Criminal and delinquency records can neither be sealed nor completely deleted. Attempts to keep the record secret always backfire, resulting in the offender's punishment. The real issue is not addressed by record manipulation. Even worse, we deceive ourselves and others who have made a decent adjustment by pursuing record manipulation tactics. Forcing an offender's rehabilitation into society requires going head-on into the obstacles standing in their way. An entirely new method is needed to correct the problem; the solution is to keep records intact but constantly enhance them, and to launch an educational programme with the assistance of the law to change public perceptions of criminals.⁸⁸

One of the most insightful information the researcher taken from the book written by *Terry Thomas (2003)* this book is very informative with respect to criminal records of an offender and how it's been used for future trials. It is divided into nine chapters which elaborately cast light upon every aspect of the criminal records starting from Introduction it contains Past of felony convictions, modern

⁸⁸ Bernard Kogon & Donald L. Loughery, Sealing and Expungement of Criminal Records. The Big Lie, 61 *Journal of Criminal Law, Criminology, and Police Science*, 378-392 (1970).

prior convictions management, police convictions, their function and goal, "finished" felony convictions, and criminal background and employment screening are all covered. The Bureau of Criminal Information and Records (BCIRI), as a concluding note, the book proposes the need for expungement laws for the rehabilitation of offenders in a global context.

A criminal record that prevents you from getting a job or earning an income can feel like a punishment in and of itself, even though it's justified in some cases because Organizations avoid hiring someone with a history of violence. Perhaps we are producing a class of second-class citizens who are unable to return to normal life after a period of punishment. Having a criminal record can weigh you down for a long time even if your punishments are just temporary.

The advanced technology in recent years which we can call “the age of big data” can diminished the value of Right to Expungement.⁸⁹ As per this research, a large and often uncontrolled private information market represents a significant threat to post-expunction confidentiality, which may also cost persons with expunged records a considerable amount of money. Due to the fact that data-handling businesses are not required to maintain accurate records, erased offenses are really being brought to light.

The fact that you can't get a job or a paycheck because of a criminal record makes you feel like the punishment you received from the court is now worse than it was when you were sentenced to prison in the first place. Perhaps we are producing a class of second-class citizens who are unable to return to normal life after a period of punishment. Having a criminal record can weigh you down for a long time even if your punishments are just temporary.

It is difficult for someone with a criminal record to practice law in South Africa. This paper aims to shed light on how the law on expungement of criminal records

⁸⁹ Logan Danielle Wayne, The Data-Broker Threat: Proposing Federal Legislation To Protect Post-Expungement Privacy, 102 *The Journal of Criminal Law and Criminology* 253–282 (1992), <http://www.jstor.org/stable/23145791> (last visited Jan 14, 2020).

in South Africa was drafted, to describe how criminal records are kept, used, and expunged in the country, to point out legal loopholes, and to offer suggestions for improvements.

In South Africa, the problem of criminal record erasure was discussed by the author. 'Arrest record' and 'criminal record' are two distinct categories of records that have been defined. In South Africa, arrest records are not considered criminal records. An individual with a criminal record faces numerous obstacles, as the piece has revealed.

1.15 SCHEME OF THE STUDY

The present study is divided in to six chapters besides the Bibliography, Appendices, and list of abbreviations. First Chapter is the introductory consisting of the general Introduction, significance, nature and scope of the problem. Apart from review of literature, the chapter also contains the Hypothesis on which the present study proceeds, the objectives which the study is undertaken, and Methodology adopted for the study for collection of data.

Eternal Criminal records and Related Implications is the focus of the second chapter. Persons who are found guilty of any felony, or even just arrested or charged, face a slew of federal and state prohibitions on their political, economic, social, and domestic activities. The researcher tries to focus on every civil and criminal disabilities which is attached to having a criminal record. Some of the disabilities are same to Indian jurisprudence but some are different. To understand the effect of criminal records a working classification has to make. The researcher here proposes to classify the broad effects of criminal records into four categories i.e. (A) Legal Consequences (B) Social, Physical, Civic and Economical Effects (C) Impact on Communities and Democracy and Miscellaneous Consequences.

Chapter three deals with Rehabilitative Justice and Right to Expungement. The Objectives of Prisons and Correctional Administration could be classified as proposed by researcher into two broad categories. Entry and exit of offenders into

prison. The entry of offender starts by incarceration and remain throughout the journey while he is in the prison. The real claim that rehabilitation works could be studied by the consequences it follows when an offender re-enters into society. This should be the chief aim of correction institution and for the same the researcher is focusing on “real rehabilitation by accepted re-entry of offenders.” present study by researcher aims for the same.

Fourth chapter highlights the comparative analysis of Right to expungement and International and National dimensions of Right To expungement. The legal system refers to the laws and procedures in place in a certain jurisdiction.⁹⁰ Adversarial and Inquisitorial are the two primary categories of legal systems. The adversarial legal system is a criminal rules verifiable evidence procedure where the magistrate leads the hearing, chooses the questions being asked, and determines the trial's boundaries.⁹¹ Countries like France, the Netherlands, and others make use of it.

Fifth chapter which is the core of the thesis deals with feasibility of Right to expungement of criminal records in India, statistical survey and interview method are adopted to collect data and opinions and the analysis and results are placed in this chapter.

Finally, the Sixth chapter deals with conclusion and suggestions. This chapter is the concluding chapter contains the findings based on the present study. The chapter also contains certain constructive suggestions for the effective and efficacious Model Code for Right to expungement.

1.16 CONCLUSION

The Right of Expungement of criminal records was examined on a number of fronts by the researcher. India does not have a Statutory right to Expungement,

⁹⁰ Black's Law Dictionary, Thomson Reuters, P.1035 (10th Ed.2014)

⁹¹ Ja Jolowicz, Adversarial and Inquisitorial Models of Civil Procedure, 53 International and Comparative Law Quarterly 281–295 (2003), <http://heinonline.org> (last visited Mar 23, 2018).

but the right is not *res Integra* in India. Due to its Adversarial Legal System, India has particular requirements. Cross-jurisdictional research can help explain why India needs a law that allows criminal records to be expunged. Those statutes of India that allow for the erasing of criminal records and the removal of disqualifications are also mentioned in the article. A unique component of the paper is that it discusses the benefits of the Right of Expungement as well as the difficulties that may arise from such debate and possible solutions to such difficulties.

There is a pressing need for the right of expungement to be included in Indian law. When awarded, this right allows the holder to reintegrate into society and begin anew. However, he or she is entitled to an employment, subject to certain conditions. In addition, he must be identified as someone who has never been arrested. As a result of this right, the idea that "once the thief always a thief" is dispelled. As a result, ensuring that all Indians possess equality of rights, the post-convict population must be granted this privilege.