

CHAPTER 6
CONCLUSION AND SUGGESSTIONS

CHAPTER-6

CONCLUSION AND SUGGESTIONS

This chapter deals with the conclusion and suggestions. This chapter is the concluding chapter and 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.

According to Corpus Juris, expungement is "a phrase expressing erasure or erasure, meaning not a law but a physiological eradication." In its expansion, the terms "eradicate," "destruction," and "utterly destroy" are employed. The elimination of a sentence from a people's police history, as defined by Black's Law Dictionary.⁶⁰⁰ The erasure procedure is a type of civil action in which the applicant (the individual who has been exonerated or has done his time) seeks the judge to delete his prior convictions from court system archives. In common, erasure is the procedure of "expelling from public access" case-related data. In several countries, however, databases may remain accessible to police departments, punishment magistrates for further crimes, and correctional institutions to which the subject may be committed upon a prevalent.⁶⁰¹

The Right of Expungement, in its basic form, entails initiating a civil claim to have arrest histories wiped. At first blush, erasure seems like a rather straightforward notion. On closer inspection, however, it has become clear that, apart from being easy, this subject is a labyrinth of intricate legal difficulties and challenging value judgments. The question of when to erase a felony conviction is further difficult when the offender has indeed been guilty of a major offence or when expunging the file could cause to assault or child sexual abuse that could have instead been prevented.⁶⁰²

⁶⁰⁰ Black's Law Dictionary, Thomson Reuters,P.702 (10th Ed. 2014)

⁶⁰¹ [Http://En.Wikipedie.Org/Wiki/Expungement](http://En.Wikipedie.Org/Wiki/Expungement) , (Oct. 1, 2015)

⁶⁰² Diehm, James W. (2012) "Federal Expungement: A Concept In Need Of A Definition," St. John's Law Review: Vol. 66: Iss. 1, Article 2. P.73(101-102)

6.1 JUSTIFICATION OF RIGHT TO EXPUNGEMENT OF CRIMINAL RECORDS IN INDIA-

Any Justification for the inclusion of other laws in Indian criminal jurisprudence needs to have rehabilitative and beneficial properties. Addressing these contrasting aims of security for community (exclusion) and greater reintegration of criminals (inclusion) is a challenging task, especially in light of the prevalent levels of violence and the politicization of legislation concerns.⁶⁰³ However, it is a fallacy to characterize these issues as mutually incompatible. Re-integrative activities can also help to community security by lowering the extent of marginalization and the probability of future criminal activity. In many circumstances, the negative and unjust repercussions of a felony conviction exceed the government's responsibility to information. Allowing the concealment of these facts will not compromise the government's right to protection while facilitating the accused's participation in society. Following are some instances of efforts being undertaken in different states to establish a compromise amongst reintegration and community potential hazards.⁶⁰⁴

- ❖ The core concern against the inclusion of this right comes in the form of security of state and sovereignty vis-a-vis their past criminal records. The researcher suggests that are these criminals (mostly punished for up to 3 years) are a threat to the state or they could be fully rehabilitated? This preposition is the outcome of two contrasting views i.e. **the right to expungement of criminal records is based on rehabilitative justice vis-a-vis the possible future a danger to the government's independence (sovereignty) and control by these class of ex-criminals.** According to the researcher's points of view, the first paramount consideration outweighed the second counterargument of the security of the state. Moreover, these ex-criminals are the by-products of societal conditions and forced poverty.

⁶⁰³ O'Donnell, I. and O'Sullivan, E. Crime Control in Ireland: The Politics of Intolerance 2001. More generally, see Tonry, M.

⁶⁰⁴ Kilcommins, S. 'The duty to disclose previous criminal information in Irish insurance law,' Irish Jurist 2002, Vol. 37, pp. 167-186.

- ❖ The researcher wants to propose a simple beneficial analogy of the law. The concept of expungement is not applicable in the Indian context but somehow indirectly it has its importance with respect to juvenile justice. It appears that the criminal records of a juvenile could be expunged based on **Principle of the right to privacy and confidentiality, the principle of repatriation and restoration, Rehabilitation and Reintegration and welfare consideration of the juvenile.** The researcher here proposes that if the records of the juvenile could be expunged why not it could be applicable to adults as well. The jurisprudence of expungement of criminal records is focused on *first time petty offenders* who have already served their jail term and now want to be law-abiding citizens, they want to go for jobs which will ultimately provide financial independency and subsequently it may highly reduce the risks of recidivism. According to the researcher, these offenders should not have less weightage than juvenile considerations.
- ❖ The researcher here suggests by emphasizing on past criminal behaviour, society forfeits the potential to recruit the capabilities, abilities, and energy of persons in whose growth it has a strong interest. Organizations who disregard this range of possible workers are, so at the minimum, unproductive and expensive.
- ❖ It avoids the development of a continuity of marginalization and maybe even a violent impoverished and thereby acts as a legal weapon to combat societal stigma and exclusion.⁶⁰⁵ The rehabilitative perspective of the Indian criminal justice system is in consonance with the right to expungement of criminal records and thereby inclusion of such right will add at least some value to it.⁶⁰⁶

⁶⁰⁵ This Argument Has Been Made In The National Development Plan, 2000-2006 (PN- 7780) 1999, P. 194

⁶⁰⁶ Chapter 5 of Part – 3 Rehabilitation Through The Right To Expungement Of Criminal Records

- ❖ Again difficulty to rehabilitate former criminals might have the unexpected effect of keeping individuals of becoming legislation residents, therefore exacerbating the violence problem. Job growth reduces the likelihood that a former criminal would reoffend as numerous researches indicate that employability reduces recidivism.⁶⁰⁷
- ❖ A welfare nation needs to adopt a sentencing policy which focuses on social utilitarianism and which embraces a rehabilitation approach. Thus the sentencing policy in a welfare state must embed the 'Resettlement," reintegration," rehabilitation,' and 'reform' are methods by which offenders are stopped from committing crimes and' reintegrated, "rehabilitated,' and' reformed'.⁶⁰⁸ If there is no opportunity for a new beginning, a felony conviction might become one of the most persistent of all punishments, generating a type of life imprisonment. Particular demographic groups are already highly affected in the judiciary, and the absence of expungement laws just exacerbates their imbalance.⁶⁰⁹ Lastly but not least, the frequency of violence declines sharply with age, so there is nothing to be accomplished by keeping a work restriction long after these significant danger has vanished.
- ❖ The right to expungement of criminal records is not just limited to the criminal career side of a convict but it also shows the socio-economic and political standing in society. This could be understood by looking what are the consequences which are associated with criminal records. ⁶¹⁰In count, there are numerous disabilities which are associated and the same could be done away with using the right to expungement criminal records wisely.

⁶⁰⁷ Chapter 5 of Part – 3 Question 17 Rehabilitation Through The Right To Expungement Of Criminal Records

⁶⁰⁸ All of there're' words imply that this group of people are in some way returned to some state that previously they had occupied.

⁶⁰⁹ Mayfield, M. 'Revisiting expungement: concealing information in the information age,' Utah Law Review 1997 No. 4, p. 1067

⁶¹⁰ Chapter 2 Eternal Criminal Records and Their Consequences

So here researchers have a strong belief that it could be imported into the Indian criminal justice system with necessary changes.

6.2 CRIMINAL RECORDS DISABILITIES AND RIGHT TO EXPUNGEMENT

A lengthy number of government and state limits or impairments (international jurisdiction) relating to governmental, financial, cultural, and household behaviors are placed on individuals who've been convicted of a felony, or in certain circumstances, just suspected. The investigator tries to focus on every civil and criminal disability which is attached to having a criminal record. Some of the disabilities are the same as in 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. This would come in the form of suggestions that what kind of disabilities could be done away with if the Indian criminal justice system had the right to expungement of criminal records.

- ❖ **ADOPTION LAW-** The researcher here suggests that Indian child adoption jurisprudence which prescribed some of the disqualifications in the process of adoption, nowhere mentions that an individual with a felony record cannot adopt legally. The viewpoints of juvenile justice and Best Needs of the Student virtually includes disqualification of persons with such records. This is suggestive of nothing but one proposition is – **Are every person with criminal records irrespective of gravity (Felony / Misdemeanours) should be disqualified from legal adoption even if he has been fully rehabilitated?** Compare with foreign jurisprudence with respect to criminal charges and adoption laws, some countries do not seem to have problems with becoming a Rehabilitated ex-convict to an Adoptive parent. In the same argument, the researcher proposes that considering the condition (There are lots of youngsters who need love and

compassion. from Law) of India. If an ex-convict is fully rehabilitated and now wants to take the responsibility of parenthood, why he should be denied this pious responsibility. This opportunity is beneficial for both as a child will have a family and the ex-convict will be toward full rehabilitation. Fewer researchers have tested the circumstances whereby being a mom or dad is most probable to occur in decreases in criminal behaviour.

- ❖ Whether the right to expungement could be imported into Indian criminal jurisprudence, a deductive analogy could be inferred from recent different Supreme Court judgments which suggest the removal of barriers of the ex-convict by the “*offence-consequences-suitability approach*” and thereby provide the employability in government sector.
- ❖ **RIGHT TO EXPUNGEMENT AND LGBTIQ RIGHTS** - With a new aspect of Offences Act (Historical Homosexual Convictions Expungement) Bill 2017. The objective⁶¹¹ of the bill could be very useful for understanding and the possibility of inclusion as well. This bill focuses on new dimensions of LGBT rights which could be applicable to Mutatis mutandis in the Indian context as the researcher proposes. This line of thought of Supreme Court judgment leads to the decriminalization of Contraventions of Section 377 of the IPC – 1860. “In view of the aforesaid findings, it is declared that insofar as Section 377 criminalizes consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violate of Articles 14, 15, 19, and 21 of the Constitution.”

⁶¹¹ “This Bill Provides An Expungement Scheme To Reduce Prejudice, Stigma, And All Other Negative Effects, Arising From A Conviction For A Historical Homosexual Offence By— Enabling An Application For Expungement Of The Conviction To Be Made To The Secretary For Justice By An Eligible Person Or A Representative; And Expunging The Conviction If The Secretary’s Decision On The Application Is That, On The Balance Of Probabilities, The Conviction Meets The Test For Expungement”

In the same line of thought, the researcher here suggests that if any offence has been decriminalized by the court or by the parliament of India, A person should have at least this strong right of expungement where he could delete his past criminal record permanently or the social stigma. For example the “adultery law of India’ and if someone wants to remove this from records not for employability perspective but for the right to life and dignity perspective he should have that right optionally.

- ❖ **DRIVING LICENCE in India**, The Motor Vehicle Act- of 1988 provides for the revocation of a driver's license in particular cases. In which an individual has earlier been found guilty of an offence committed charged under section 184 (i.e. Driver Hazardously) and destroyed the lives or assault with a deadly weapon to one or even more individuals, the commuting license held by such individual shall be dismissed in regards to certain term or condition of automobile up to six months⁶¹² In any other cases apart from grave ones, the right to expungement if necessary could be used under Motor Vehicle act- 1988.

- ❖ **PASSPORT ISSUE-** Indian jurisprudence over here relay on the text of the laws. This case involves the foreign secretary and the provincial immigration department (RPO), as well as two legislative measures: Section 10(3) (e) of the Travel documents Act, 1967, and Ministerial Announcement No. G.S.R. 570(E) published in 1993. Under the first, if an Indian citizen has an ongoing murder investigation, his citizenship can be either confiscated or withdrawn.

The provision of the Indian Passport Act – 1976 is applicable if a person travelling and a case is pending in Indian jurisdiction then the passport could be denied. But the right to expungement could be used and petty offences records after rehabilitation could be erased. The main factor which has to be taken care of the security and sovereignty of the state. The passport authority has the power to

⁶¹² Sec- 21 Motor Vehicle act- 1988

deny travelling based on past criminal records of any person. But if past crimes were of petty nature, then the expungement benefit could be extended to those also.

- ❖ **MILITARY MATTERS-** Indian jurisprudence with respect to Military services before and after joining are similar in nature to foreign jurisprudence. The recruitment board shall always have the discretionary power to select a suitable candidate over a candidate who is having criminal charges. Such solutions are very ornamental and need commendable devotion and personality. Whether such a person with a misdemeanours track may enroll in the Indian Military Services dependent on a variety of variables, such as the kind, quantity, degree, and facts of the case or offenses comprising the history, as well as the date on which the offence or offences were perpetrated.

Prospective draftees who've already completed certain kinds of crimes and offenses may be granted ethical exemptions. But some offences, until "expunged" (such as sexual assault offenses), prevent recruitment. A mere act of misdemeanor before joining services must not ipso facto debar a suitable candidate and the whole case's characteristics must be factored except if he is not charged with an offence of moral turpitude.

- ❖ **OCCUPATIONAL DISQUALIFICATION OF CRIMINAL RECORDS-**

The dire repercussions of possessing a felony record before entering into a government job have an invisible counterproductive effect as data and human psychology tends not to inputs those kinds of person who is having criminal antecedents. These labelling remarks of so-called "criminals" make virtually a person Impossible to acquire Govt. jobs. During the input process, the credibility, suitability and integrity of the candidates are questioned.

"The employability chances of ex-offenders are minimum due to this disability, but research and study show that Economic independency

(Employment Whether govt. or non-Govt.) reduces the chance of recidivism. As the central idea and presumption of this research is “Non- availability of Right to expungement in India to a person having a criminal record negatively affects their employability in Government Sector” which is, if an ex-offender (Charged with Misdemeanor/non-cognizable offences) past criminal records is erased through Expungement process the chances of getting jobs will improve (Employment of ex-offenders has Consistently acknowledged as a critical component in reintegration and criminal avoidance." It gives the prestige, wealth, and social networks that contribute to a law abiding citizens and that may be increased chances and thereby he/she can move through real rehabilitation in future.

“What the researcher here wants to suggest is that the Right to expungement of criminal records if coupled with the law of probation, both could act as a panacea and move forward from just rehabilitation to real rehabilitation. Law of probation would extend the benefit of section 12 in the form of a disqualification after it could be coupled with the right to expungement of criminal records to delete criminal records which might help in to get a job as the candidates would have the ‘right to legally lie’ during the interview or at the time of form submission.”

Certain specific disqualification has been mentioned in this research upon which the right to expungement can be applicable. Disqualification imposed by the court, Bar from the practice of law, Loss of liquor license, Administrative Disqualifications of Criminal Records, Eliminations Inflicted by Academic and Resulting In the emergence, Organization Closure.

- ❖ **RIGHT TO PRIVACY-** Talking about the Indian Context the age of information and data combined as described by, We have already been existing at whatever Nicholas Dirks refers to as a 'sociolinguistic state,' in which we are constantly and fascistically producing and accumulating information regarding ourselves.. The right to expungement can be used

against those institutions or data centers that expose personally identifiable information and the release has no relevance to any activity or purpose, or would result in an unreasonable breach of the participant's privacy.

The real question to be pondered upon in this section is whether the Right to Know under the Right to Information Act – of 2005 by the general public violates the Right to Privacy of ex-offender who hold the Right to be forgotten and especially in the present Era where the Right to privacy is a Fundamental Right.

❖ **RECIDIVISM AND RIGHT TO EXPUNGEMENT OF CRIMINAL RECORDS-**

Reoffending (recidivism) is the continuation of illegal actions following punishment or treatment for a prior offence.⁶¹³ Reoffending is assessed by illegal activities that culminated in re-arrests, reconvictions, or face punishment, even without a fresh term, within three years after a detainee's discharge.

Having a criminal record acts as a strong deterrence in rehabilitation but Recidivism and employment have a strong correlating factor between them because when an offender managed to get into a labour market it ultimately decreased the risk factor of recidivism. The criminal records make the process of rehabilitation very difficult i.e. either he relapses into crime as he may find no alternative to survival or the govt. officials hesitate very much to incubate past criminals into govt. office.

The researcher humbly submits that the rate of recidivism in govt. Records are roughly 6 to 7 % but it is more as most other cases are not registered. The prison system of India focused mainly on the rehabilitation of offenders through vocational training and soft skills developments.

Right to expungement of criminal records here could be used as a catalyst if an educated ex-offender provided to join jobs as a means of financial freedom. Most of the ex-offenders don't even think to join govt. jobs as they somehow know

⁶¹³ National Institute of Justice, 2010.

that previous criminal records will act as a huge hindrance. In this situation, the right to expungement of criminal records can be a panacea for this problem.

6.3 POLICY INCLUSION - INDIAN MODEL OF RIGHT TO EXPUNGEMENT

Now is the moment to broaden our conception of justice and provide accessibility to criminals as well. For the same, the honourable Delhi high court & Supreme Court recently commented on the need for such kind of legislation which helps in the 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 employees under the government. Everyone makes mistakes in his life, but it does not mean that he has to pay for them for the rest of his life. One makes mistakes by virtue of being human, but when he has been punished once, why he is subjected to double jeopardy, not in the strict sense but through social denial. The law will not permit double jeopardy, yet it ironically fosters multiple social jeopardies by maintaining the permanent criminal record.”⁶¹⁴

- ❖ **LEGAL SYSTEM-** The laws and how they operate in a particular territory are referred to as the System Of justice.⁶¹⁵ The majority of judicial systems classified into two groups: confrontational and prosecutorial. The Internal disciplinary Judicial Form is a process of solid evidence employed in legislation in which the magistrate leads the case, selects what relevant questions, and establishes the extent and breadth of the investigation. Countries such as France and the Netherlands employ it.⁶¹⁶

⁶¹⁴ Government of NCT of Delhi & Anr. Vs. Robin Singh, 171 (2010) DLT 705

⁶¹⁵ Black's Law Dictionary, Thomson Reuters, P.1035 (10th Ed.2014)

⁶¹⁶ 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).

Whereas the Confrontational System Of law is a process systems, similar to the Anglo-American legal system, having proactive and unrestricted participants competing with one another, the Confrontational Law System is not confrontational to put forth a case before an independent decision-maker. It is followed by countries like England, India, South Africa, etc. So to say, with respect to the right to expungement of criminal records the legal system we could follow same as the United Kingdom. The most suitable example could be The Rehabilitation of Offenders Act- of 1974 with necessary changes.

❖ **MODEL OF EXPUNGEMENT RIGHT** - There are a variety of techniques to coping with arrest records. Different agencies, and even different regions within courts, employ varied approaches to this problem, notably in terms of the crimes addressed, the relevant times, the exclusions, and the implementation tools. However, three major paradigms may be distinguished:

(A) **Discriminatory Model:** forbids prejudice based on a felony conviction in a number of contexts, notably work. Nevertheless, bias based on a violent history is not illegal if this can be explained by the intrinsic needs of the post.

(B) **Spent conviction Model:** infractions are wiped after eligible time periods after the stipulated term, a criminal is not required to divulge the guilty history or facts behind the sentence.

(C) **Hybrid Model:** provisions are established to eliminate bias based on an immaterial felony record. Nevertheless, spent crimes thing that determines what defines an immaterial police history.

A mix of *spent convictions* and *discriminatory legal provisions* may be the best-suited option in the present context of the criminal justice system of India. The right to expungement of criminal records in India could work toward the rehabilitative regime and a beneficial law for the reintegration of ex-offenders into society. However, with this right, a large number of legal technicality comes first-hand.

- ❖ **GROUNDS OF RIGHT TO EXPUNGEMENT** - The right to expungement of criminal records of any ex-offenders come with certain conditions. Gravity and nature of the crime, the time elapsed from the release of an offender from jail, and previous criminal records are some of the pivotal considerations before granting expungement of criminal records. The expungement right is not for luxury and it must be only for those who are *“first-time petty offenders who seek complete rehabilitation”* and want to do away with social stigma and exclusion only.
- **COOLING-OFF PERIOD**-Criminal conduct must always be monitored to prevent crime and disorder. The time duration in which one's attitude and actions can be monitored must be predetermined from the date of release of the convict from the jail or the date of application. The researcher throughout this research advocates for 3 years cooling off period post-release from the jails but this time could be extended up to 5 years or even more based on the severity of the offence committed.
- **SEVERITY AND NATURE OF THE EVENT**- The Persons wishing to have their arrest histories expunged must never have conducted those heinous crimes that threaten the general government's welfare. Throughout all correctional institutions, offenses are generally classified into two categories depending on their seriousness: (felonies and misdemeanours.). Indian criminal laws are broadly divided into cognizable, Non-cognizable, bailable and non-bailable offences, Greater and lesser levels of guilt can be distinguished in the charges. **The researcher suggests that for an offence which is Non-cognizable, bailable and punishable by up to 3 years the right to expungement could be applied automatically. Those offences which are non-bailable and cognizable in nature and punishable for greater than 3 years but less than 5 years could be expunged by the courts and subjected to certain strict conditions only and in rare cases only.** Typically, the following crimes really aren't qualified for

resentencing; death, crimes, and offenses of the very first category in if the decedent was less than 18 years old. Sex, Forms of sexual violence, sexually assault on a juvenile, corrupt practices of a minor Obscene or pornographic material affecting minors, Grave weaponry accusations and violations involved moral turpitudes.

- **APPLICANT'S GUILTY RECORD** - As the name implies, this section consists mostly of the drug convictions or conduct of the individual who has requested the erasure of evidence. This group covers first-time criminals, those who are convicted or voided by a judiciary, anyone that is pardoned or released on reprimand by a judge, those that have completed full sentence.

- ❖ **HONOURABLE ACQUITTAL**- The Right to expungement of criminal records should be applicable irrespective of the length and gravity of charges in “honourable acquittal”. The question arises in what cases the Right to expungement should be applicable. The researcher points out that the relevant consideration for Government employability is a good character which we measure by previous criminal history. At the same time, the recruitment board have a compelling reason not to take these people with criminal past. So, the best-suited condition in Indian laws in which the right to expungement should be granted is with respect to honourable acquittal prima-facie. Simultaneously the Right to expungement could be applied to the “normal acquittal” also.

- ❖ **EXPUNGEMENT VIS-À-VIS SEALING OF CRIMINAL RECORDS**⁶¹⁷-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

⁶¹⁷ Adverse Legal Consequences of Convictions and their Removal: A Comparative Study, 59 J. CR. L., C. & P.S. 347, 542 (1968),

in order to remove the enclosed article".⁶¹⁸ In essence, "closing" indicates that a document or procedure is "just" concealed and not deleted. There is a clear and intentional inference that the concealed object or event may be opened under specific conditions. In contrast, sealing, considered by some to be "a term of very modern provenance," actually means that the record or proceeding is obliterated, as though it never occurred or sealing off⁶¹⁹ visa-a visa Right to expungement of criminal records could be answered in the Indian context that whether the security or sovereignty of the state could be compromised by expunging the records of these petty offenders or they could be fully rehabilitated. The sealing off of criminal records could be reversed but not the expungement. The researcher has suggested that these criminals are not a threat to anyone and so expungement of criminal records is the best-suited option.

6.4 EMPIRICAL RESEARCH FINDINGS-

The researcher during this research come across some of the important and useful observations which could be in the form of suggestions. These findings are more supportive in the favor of the right to expungement of criminal records.

- ❖ **REMOVAL OF SOCIAL STIGMA AND EXCLUSION-** Those situations are probable to occur in social marginalization. The procedure of release from jail would not be simple for ex-offenders. By just holding the title "ex-offender," they will be considered to be different in society.⁶²⁰ In our culture, it is common to consider an ex-offender as violent or dangerous upon first meeting. However, individuals should consider the core of incarceration. The question arises could the right to expungement be used

⁶¹⁸ Pettler & Hilmen, Criminal Records of Arrests and Convictions; Expungement from Public Accesses: Expungement Calif. West law Review 127 (1967)

⁶¹⁹ Bernard Kogon, Donald L. Loughery and Jr., Sealing and Expungement of Criminal Records. The Big Lie, The journal of criminal law, criminology, and police science, Vol. 61, No. 3, 378 (379-380) <http://www.jstor.org/stable/1141965>

⁶²⁰ Christy Visher and Jeremy Travis, "The Characteristics of Prisoners Returning Home and Effective Re-entry Programs and Policies", in the Oxford Handbook of Sentencing and Corrections Oxford University Press, 2011.

as a tool to remove this kind of discrimination? Most of the offenders surveyed here have done offences due to economic or financial distress and that became the reason for their incarceration.⁶²¹ Although the law does not permit double jeopardy for a single crime, it ironically fosters “multiple social jeopardies” by allowing a permanent criminal record and that could be removed by expungement right if it is used in the true sense.⁶²² It was found that among these factors the social reasons seem to be strongest. The social exclusion, stigmatization by society, labelling of a criminal, recidivism, Non-incubation of these persons into jobs, and prima-facie disqualification due to criminal records are the very strong factors.⁶²³ The erasure of arrest records will be useful to remove the “Tag of criminals” in society.⁶²⁴ A “second-class citizen” is an individual who is consistently and intentionally prejudiced towards inside a nation or some other political authority, notwithstanding their nominal identity as a community member or legal citizen there, solely because of a previous convictions and the same could be done away by expungement right so to say.⁶²⁵ What the researcher humbly suggests is that prima facie the relation of marriage in petty offences could be saved by the “law of probation” which is an institution of rehabilitation. Subsequently, if the right to expungement could be given to these eligible convicts that will provide better opportunities for rehabilitation. Here the law of probation and right to expungement could provide “extended rehabilitation” which a beneficial law supposes to do.⁶²⁶

⁶²¹ Question 3 part 2- Of Chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

⁶²² Question 4 part- 2 Of Chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

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⁶²⁴ Question 5 part- 2 Of Chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

⁶²⁵ Question 6 part- 2 Of Chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

⁶²⁶ Question -9 of part 2 Of chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

6.5 REHABILITATION THROUGH RIGHT TO EXPUNGEMENT

According to the researchers, the right to expungement of criminal records is an external manifestation of rehabilitative justice and Indian criminal jurisprudence focuses on rehabilitation the most⁶²⁷.

- A person who has been sent to jail by the courts for up to 3 years could seek the benefit of the law of probation in India but What the researcher here wants to suggest is that the Right to expungement of criminal records if coupled with the law of probation, both could act as a panacea and move forward from just rehabilitation to real rehabilitation. Law of probation would extend the benefit of section 12 in the form of a disqualification after it could be coupled with the right to expungement of criminal records to delete criminal records which might help in to get a job as the candidates would have the *'right to legally lie'* during the interview or at the time of form submission.⁶²⁸
- The researcher here humbly suggests that even this category of convicts (That person who has been sent to jail up to for 5 years) is not eligible for after-care services if he /she is an educated person who is serious about his future and wants to join govt. Or private services then the Right to expungement of criminal records could be used as a most important tool for real rehabilitation.⁶²⁹
- It appears that the criminal records of a juvenile could be expunged based on the notion of the privacy rights and secrecy, the concept of secrecy repatriation and restoration, Rehabilitation and Reintegration and welfare consideration of the juvenile. The same principles could be applicable to adult criminals if they are first-time petty offenders and it can be made the basis of the right to expungement of criminal records.⁶³⁰
- Those with restricted employment possibilities are more likely to commit a crime. An arrest conviction reduces the amount and work quality

⁶²⁷ Question -11 of part 3 chapter 5 Empirical Survey Of Right To Expungement Of Criminal Records In India

⁶²⁸ Question -11 of part 3 chapter 5

⁶²⁹ Question -12 of part 3 chapter 5

⁶³⁰ Question -13 of part 3 chapter 5

chances, hence perpetuating of unemployed, crime, and imprisonment. Researchers have noted that salary increases for reduced employees and the expansion of companies with higher earnings for reduced employees can significantly lower recurrence. Upcoming re-entry assessments must therefore concentrate on plans and practices that enhance post-prison income and steady employment possibilities, as well as measures that promote more companies to rethink recovered ex-offenders as job seekers. The above analogy suggests that the right to expungement of criminal records can act against recidivism and could provide employment opportunities.⁶³¹

- This aspect is taken account when granting the privilege to erasure. To prevent corporate fraud, violent activity must be regulated. There must be a corrected amount of time during which a particular personality and actions can be digitized, which might also affect the implementation for Correct of Expunction since it is feasible that an individual may be allowed Privilege of Resentencing, but then proceed his illegal acts by trying to take advantage of his expunged felony conviction, affecting the general populace.⁶³²
- An arrest conviction is a history of a person's violent record, which is commonly used by future clients to evaluate a person's dependability. The data contained in a felony conviction differs between nations including between authorities within the same nation. In most instances, it includes a list of all non-expunged felony crimes, as well as misdemeanours such as exceeding the speed limit and drunk driving. In some nations, the evidence is restricted to prior crimes (where the person has pled guilty or been convicted by a court of competent jurisdiction), but in others, it also contains convictions, case dismissed, charges pending, and even acquittals. The latter approach is frequently held to be a breach of human rights since it breaches the right to a fair trial by subjecting individuals to unfair treatment on the basis of unverified charges.⁶³³

⁶³¹ Question -17 of part 3 chapter 5

⁶³² Question -18 of part 4 chapter 5

⁶³³ Ms. Nidhi Kaushik vs Union of India & Ors. on 26 May, 2014