

**CHAPTER 2**  
**ETERNAL CRIMINAL RECORDS**  
**AND THERE COSQUEQUENCES**  
**(DISABILITIES)**

## CHAPTER-2

### ETERNAL CRIMINAL RECORDS AND THERE COSQUEQUENCES

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#### 2.1 INTRODUCTION-

Employer's analyses criminal records <sup>92</sup> to determine whether or not an applicant is suitable for their position.<sup>93</sup> The information contained in a criminal record differs from country to country and even from jurisdiction to jurisdiction within a country. Typically, all non-expunged arrestable acts and traffic fines, including exceeding the speed limit and driving while intoxicated, are also included. In certain places, the register solely contains crimes (whether the defendant admitted guilt or was charged and convicted by an authorized judge), but more often than not, this even contains searches, charges are dropped, charges filed, and perhaps even acquittals. Unproven allegations are frequently used to discriminate against individuals under this second policy, which is frequently cited as a human rights violation.

In the post-war years, two primary approaches emerged, one utilitarian <sup>94</sup> and the other retributive<sup>95</sup>, which covered the period from 1945 to 1990. In actuality, the two tend to merge together rather than being distinct. A first-time defendant with no previous crimes or police record may claim that their behavior was valid and so earned a far more lenient punishment. It is feasible for a previously convicted individual to declare that they are already being penalized for their earlier offenses, but authorities are now more inclined to feel they deserves a heavier penalty because of the fact that the previous sentences were ignored, increasing

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<sup>92</sup> "Reflexions - The saga of the criminal record". Reflexions.ulg.ac.be. Retrieved 7 August 2021

<sup>93</sup> E. Larrauri, 'Legal Protections against Criminal Background Checks', 14 *Punishment and Society* (2014) pp. 50-74. D. Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. (Chicago, IL: University of Chicago Press, 2007).

<sup>94</sup> Beccaria, Cesare on Crimes and Punishments. Trans. David Young. Indianapolis: Hackett Publishing Company, 1986.

<sup>95</sup> Positive' Retributivism and the Meaning of Desert". *Stanford Encyclopedia of Philosophy*. Archived from the original on July 11, 2010. Retrieved June 2, 2021

their culpability, and making them no longer considered a first-time offender. A persistent offender gradually loses the mitigation that a first-time offender has over time as a result of aggravating, mitigating and external variables.

The 'retributive' method focuses on the crime rather than the criminal, and Punishments are according to the seriousness of the conduct and what could be a reasonable penalty. The 'just deserts'<sup>96</sup> notion of punishment is used in the retributive approach. In order to reduce 'future crimes,' it is less related with lowering 'past crimes' and more concerned with what sentence is appropriate for the offence in question.<sup>97</sup> Retributive justice becomes less interested with the culprit, because it is far less inclined to examine a murderer's criminal history.

By virtue of its deterrent of illegal behaviour and other positive outcomes for individuals and society, "utilitarian" ideas argue that punishment is necessary. Rehab and treatment are at the heart of the "utilitarian" method, which is also known as the "welfare approach." With an eye toward preventing any 'future crimes,' it is more concerned with reducing the likelihood of future crimes being committed by criminals, as opposed to the actual crime itself. A focus on juvenile criminals may be particularly beneficial. In the present chapter the researcher tries to convey that right to expungement is one of the aspects of border principle of utilitarianism in which a young offender gets second chance in his life thereby rehabilitation of offenders shall be not only in books but in sprite also.

## 2.2 CRIMINAL RECORD- DIFFERENT PERSPECTIVES

India, with 1,350,262,913 (1.35 billion) people is the second most densely populated nation in the world. The conflict between persons resulting into crime is normal and day to day phenomena in Indian scenario. With rising of technology and easy accessibility to crime, the criminals are highly motivated.

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<sup>96</sup> Von Hirsch, Andrew. "The 'Desert' Model for Sentencing: Its Influence, Prospects, and Alternatives." *Social Research*, vol. 74, no. 2, The New School, 2007, pp. 413-34, <http://www.jstor.org/stable/40971938>.

<sup>97</sup> Von Hirsch, A. (1986) *Past or Future Crimes: deservedness and dangerousness in the sentencing of criminals*, Manchester University Press, Manchester.

With 27.6 % growth in crime and criminal record, the total registered (NCRB)<sup>98</sup> cases in last decade went up to 6.9 crore.<sup>99</sup>

A previous convictions or criminal background is a description of a person's prior illegal activity. Every country's criminal records differ in terms of what they include, as well as which jurisdictions have access to them. The record may contain non-expunged offences and vehicular offenses, such as exceeding the speed limit and driving while intoxicated. While in some nations, a criminal record only contains convictions, in other jurisdictions, it consists of robberies, awaiting approval additional fees, and fees that have been found guilty.

Criminal records, or "rap sheets" are a person's prior conviction. Typically, the arrest conviction includes a compilation of local, state, and government data. Additionally, the record includes the person's criminal history, as well as other relevant information Name and any already established guises. This may be the date of birth, Address, Photograph, Fingerprints etc. A person's criminal record may include more than simply misdemeanours and felonies, depending on where they lived and who kept the records. Additionally, criminal records may reveal the following: The following are a list of my previous arrests and warrants: When it comes to a criminal record, expunged information is usually not included.<sup>100</sup> In addition, the police history may contain the victim's body size, eye and complexion, distinguishing markings, multiple identities used against the individual, different dates of birth, social security numbers, biometric classification, and racial.<sup>101</sup>

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<sup>98</sup> "This is the oldest and the most prestigious publication brought out by NCRB. The data for the report is collected by State Crime Records Bureau (SCRB) from the District Crime Records Bureau (DCRB) and sent to NCRB at the end of every calendar year under the reference. Data from mega-cities (cities having population of 10 lakh or more as per the latest census) is also collected separately".

<sup>99</sup> Rajiv Mehrishi, *Crime in India 2015* (2015).

<sup>100</sup> Criminal Records & Arrest Records DMV.ORG (2010), <https://www.dmv.org/criminal-records.php> (last visited Feb 3, 2019).

<sup>101</sup> Backgroundchecks.com, Learning Centre backgroundchecks.com (2012), <https://www.backgroundchecks.com/learningcenter/crimesandcriminalrecords> (last visited Feb 3, 2021).

“Police records” are commonly mistaken for “criminal records”. These two sorts of documents have certain similarities, but they are not the same. Remember that someone’s arrest record is a documentation of any prior offenses he may have, while the police history he have on file contains information on his dealings with the authorities. Having a criminal record includes a history of arrests and any outstanding warrants for his arrest. After being arrested for a crime, authorities may still have the record of his arrest on your police record for that offence, but it will not be included in any convictions on his criminal history.<sup>102</sup> So what exactly is a “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?

At the same time, the criminal courts record may have the conviction and sentencing of those found guilty of a crime. As a result, this study focuses on criminal records and the idea of expungement. When it comes to processing and passing around information, criminal records are no different than anything else. We might even simplify it to “data” if we employ digital technologies for this purpose. “In the real world, people tend to view their criminal histories as more than just data. There are numerous measures in place to guarantee the security of personal information, and this information is undoubtedly personal information that identifies a specific individual. It's also possible to argue that the information on a person's criminal history and the related status and stigma are particularly sensitive. Your disgraceful act has drawn the displeasure of your fellow people that at a certain point in the past.

There's no point in compiling criminal records at the national level unless we have a specific purpose in mind for doing so.<sup>103</sup> It's also a waste of time if they

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<sup>102</sup> Criminal Records & Arrest Records, DMV.ORG (2010), <https://www.dmv.org/criminal-records.php> (last visited Feb 3, 2021).

<sup>103</sup> Data Protection Act 1998, s. 2(h)

can't be connected to the person they're meant to be for.<sup>104</sup> Fingerprints, DNA samples, or other biometric measures must be used in conjunction with criminal records to ensure a match between individuals and records. These cross-border identification matches are increasingly being sought across national boundaries and across international borders.

Both India and the United States have a state-based federal political system. State governments in both countries are in charge of creating and distributing criminal records, as well as their use and subsequent consequences. Records of criminal activity are created and supported by the prosecutors and police security. For non-criminal legal needs, including availability to charging documents, intelligence agencies in India are often prohibited from providing specific details about criminal histories. It is difficult to share records across police departments in India because of the several local languages spoken throughout the country. The problem is that many Indians have the same name. AADHAR cards are being issued to every individual by the government. As a secondary source of information about criminal activity, the courts are a valuable resource. Records of judicial proceedings are subject to state regulation in terms of who has access to them and under what conditions. Court files are not open to the public, but trial court judgments are. Court approval is required for everyone who wants to see or copy the file, including the defendant. The chief judge would have to be petitioned by a third party. E-court system databases and commercial databases are making criminal judgments more accessible to the general public. English is the language of the e-courts website, whereas the local language is utilized by the trial courts. Private publications sell and report on high court and Supreme Court case rulings to their customers. Criminal records can be used to determine a person's trustworthiness by employers, lenders, and others.<sup>105</sup> A person's criminal

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<sup>104</sup> Rehabilitation of Offenders Act 1974

<sup>105</sup> Anubhav Pandey, how can I check if someone has previous criminal records? I pleaders (2017), [https://blog.iplayers.in/can-check-someone-previous-criminal-records/#\\_ftnref2](https://blog.iplayers.in/can-check-someone-previous-criminal-records/#_ftnref2) (last visited Feb 3, 2021).

history can also affect their ability to travel internationally, as well as whether or not they are charged with or sentenced for subsequent crimes.<sup>106</sup>

### 2.3 FUNCTION OF CRIMINAL RECORD<sup>107</sup>.

The main goal of keeping criminal records was to effectively identify and supervise prisoners or convicts who were freed from jail but weren't punished or deported to foreign countries. A more narrow focus on policing and justice was established, with the former serving as a tool to catch thieves on paper while the latter served to inform judges of a defendant's prior criminal history. Judiciary now includes prosecution agencies, jails and a probation agency, which all require documents to carry out their respective missions.

#### 2.3.1 THE POLICING PURPOSE-

**Police investigations**<sup>108</sup>-When a new crime needed to be investigated, a police officer would look to the collection of criminal records and the means of identification that went along with it as part of the arsenal of tools available to him or her in the line of duty. It was hypothesized that by doing so, they would unearth patterns of criminal behaviour that linked certain individuals to specific crime sites as well as crimes that were committed by the same person. Furthermore, throughout time, the unlawful act has been combined with the methodology, biometrics, DNA, finger prints, and other developments in an attempt to change to provide the investigator as clear view of a portrait as practicable. Not if the implementation was as clean and organized as the concept is less certain. It's likely that evidence received at the criminal investigation either

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<sup>106</sup> Criminal record, Wikipedia (2019), [https://en.wikipedia.org/wiki/Criminal\\_record](https://en.wikipedia.org/wiki/Criminal_record) (last visited Feb 3, 2021).

<sup>107</sup> T. Thomas, *Criminal Records* (New York, NY: Palgrave Macmillan, 2007); A.R. Mears, 'Rehabilitation of offenders -does the 1974 Act help them?', 55 *Probation Journal* (2008) pp. 161-170; T. Thomas and B. Heberton, 'Dilemmas and consequences of prior criminal record: A criminological perspective from England and Wales', 26 *Criminal Justice Studies* (2013) pp. 228-242.

<sup>108</sup> Section 2 (h) of the code of criminal procedure-1973 reads as under: "investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Chapter 12 of Crpc-1973(section- 154 to 176) provides Information to police and their powers to investigate"

from eyewitnesses won't result in a clear connection with the data stored. But even a complete similarity might result in varying levels of a favorable or unfavorable result, which can then prompt further research into other sources and the hunt for supporting data.

### 2.3.2 THE JUDICIAL PURPOSE-

After a finding of guilt has been reached in a case, the judge or magistrate presiding over the case will receive antecedents, which are lists of prior convictions and cautions, to assist them in determining an appropriate sentence for the defendant. There is usually some condemnation aimed at the offenders individually, whenever an individual is on investigation for a specific offense and the judge has been considering the "Facts of the case". This is the case even though the court has been hearing the "facts of the case." A person that has never had a felony or criminal record before may receive a sentence that is less severe than that of someone who already has a criminal record or a conviction.<sup>109</sup>

Evidence of a person's moral standing is considered crucial in virtually every jurisdiction. For millennia, a person's reputation has been taken into consideration while determining their level of culpability. Because of the law's gradual evolution over the years, the use of character evidence in both civil and criminal proceedings is becoming increasingly restricted. It is possible that the parties to the case, the witnesses, or even third parties will have their characters called into question during the proceeding. The objective of this research is to investigate not only the Indian legal system but also the English legal system with regard to the admissibility of character evidence including both civil and criminal matters. Even though the character of a person is not one of the facts that are in dispute, it is possible that it is still a fact that is important, and according to

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<sup>109</sup> Section 211(7) in The Code Of Criminal Procedure, 1973 provides that "If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed."

section 52 of the Indian Evidence Act-1872, it would be accepted as evidence. Evidence about a person's character has been upheld as admissible in a number of English instances, provided that the relevance of this evidence can be demonstrated. Even while a person's character might not be a truth that is being litigated in a case for damages, for instance, it is still an important fact that could be taken into consideration in order to lessen the amount of damage that has been caused. Accordingly, in both English law and Indian law, proof of a person's character can be shown in court during proceedings seeking damages for defamation, breach of commitment to marry, seduction, adultery, and other such offences.<sup>110</sup>

According to Section 55 of the Indian Evidence Act-1872 evidence about a person's character becomes relevant when it has the potential to influence the amount of damages that person should be awarded if that person's reputation is taken into account. It is permissible to present proof of the plaintiff's poor character in order to reduce the amount of damages, but it is not permissible to present evidence of the plaintiff's admirable character in order to enhance the amount of liability. In a similar vein, the nature of the prospective guardian becomes significant when it comes to issues of guardianship. According to subsection 10(1) of the Guardians and Wards Act -1870, the qualifications of the proposed guardian are required to be included in the application itself. Additionally, the Act states that no guardian can be appointed before an investigation into his or her suitability for the role has been conducted. This has been taken to suggest that if a court appoints a man as guardian without conducting an investigation into his character and suitability, then such a proceeding will be deemed to be irregular. If proof has been presented that the accused person has a character, then If the suspected individual is being tried for a crime, it is important to determine that they all have a temperament; otherwise, this evidence is meaningless.

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<sup>110</sup> Section 52 of the Indian Evidence Act - 1872

Explanation 1: The rules of this section do not apply to legal proceedings in which a defendant's poor character is at issue as a fact.

The second reason is that a prior conviction is significant as proof of a person's poor character.

According to this provision, previous negative character is irrelevant; nevertheless, in order to determine the quantum in criminal situations, previous negative character is relevant only if there is proof of his decent character, the maximum penalty can be clearly laid out to him if it can be shown that he has previously done something illegal of the same kind. In legal proceedings, the accused person's history of bad behaviour is important in the following circumstances:

- After the accused has shown evidence to the effect that he has been a person of good character, the prosecution is allowed to provide evidence to the effect that he has been a person of poor character.
- In cases when the accused's questionable character is at the heart of the dispute over a particular fact, it is permissible to provide proof of that character. As an example, under the Criminal Code section 110. A person is considered a habitual offender if they commit crimes such as robbing or breaking into houses on a regular basis, or if they are so destitute and harmful to society that the entire character of the accused is called into question, and evidence to that effect is admissible.
- Proof of bad character is relevant in cases where the prior conviction is useful as an indicator of poor moral character.<sup>111</sup>

### 2.3.3 PROBATION SERVICE-

Probation officers are entitled to receive criminal record histories or to gather himself to help them write a Report for Child welfare committee and board. The intake report shall be made available to the board by the probation officer with is

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<sup>111</sup> Bhagvan Sawarup V. State of Maharashtra, AIR 1965 SC 682, D. Shastri vs. K. B. Sahay 1953.

comments and observation, enabling the board to conduct the initial hearing.<sup>112</sup> Previous charges or convictions could have an impact on the decision that the juvenile board makes. It relates to pre-sentence reports, which are often issued by a judicially representative from a supervision or other custodial agency after a thorough which was before investigation. In addition to the offender's criminal record, an investigation will include a comprehensive review of the offender's background and social history, as well as their medical records and psychological reports. The officer who is authorized by the court will frequently request that the felony fill out a record form that is used to assist in the investigation as well as the presentation of facts to the judge.<sup>113</sup>

In addition to the functions listed above, this screening is also relevant to the process by which government personnel who are chosen for jobs who engage in crucial roles security and national, particularly ones working in The public sector Telecommunications or the Intelligence Services. In most cases, one can trace the beginnings of so-called positive vetting all the way back to the late 1940s and the beginning of the so-called "cold war." Concerns around the availability of classified knowledge and the likelihood of it being shared with the so-called "enemy" are especially prevalent with relation to nuclear power and nuclear armaments development programmes. The positive screening process entailed not only a review of the applicant's criminal history and references, but also more in-depth interviews and investigations into the applicant's a search for personality, a family members, politics, sensuality, and flaws.<sup>114</sup>

## 2.4 HISTORICAL OVERVIEW OF CRIMINAL RECORD DISABILITIES

Convictions or criminal records have a very long history, and many of the negative repercussions that occur today as a result of a conviction more or less precisely from actual responses to criminal behaviour. Thus, a cursory outline of

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<sup>112</sup> Juvenile Justice (Care and Protection of Children) Act - 2015

<sup>113</sup> Mona D. Rigdon & J.T. Gale, what is a Pre-Sentence Report? Wise geek (2019), <https://www.wisegeek.com/what-is-a-pre-sentence-report.htm> (last visited Feb 11, 2019).

<sup>114</sup> Hennessey, P. And Brownfield, G. (1982) Britain's Cold War Security Purge: the origins of positive vetting, *The Historical Journal*, 25: 965-973.

their development seems to be in order. Probably the earliest precursor of our present-day disabilities resulting from conviction is the ancient penalty of outlawry imposed for certain heinous crimes.

In Western civilization, it may be traced return to the beginnings of Roman history (when it was declared to be "sacer"), as well as in a number of Germanic tribes. At least in certain Germanic communities, being declared an *outlawry*<sup>115</sup> meant being exiled from the community and stripped of all privileges. This was the traditional definition of outlawry. The children of the outlaw were regarded to be orphans, and his wife was considered to be a widow. He destroyed all of his intellectual property, including his human dignity, in order to lose his privileges to his family (if we can use that word), since anyone was free to kill him without fear of repercussions.<sup>116</sup>

In the later stages of the ancient Greek and Roman civilizations, a more compassionate attitude toward the physical and mental impairments that could result from being convicted of a crime became the norm. The consequence of certain heinous crimes, in old Athens, for example, was the so-called "*infamy*"<sup>117</sup>. It entailed giving up all of the privileges that allowed a person to have a say in governmental decisions, including the freedom to speak publicly, voting, attend meetings, and run for public office. In other words, it meant that a citizen had no ability to exert any sort of influence over the government. The right to serve in the army, conceived as an honor and a source of standing, was also forfeited, and the persons declared infamous could not appear in court. In the Roman republic, outlawry fell into desuetude and was only exceptionally applied in the form of proclaiming a person guilty of treason as the enemy of the country.

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<sup>115</sup> Britannica, T. Editors of Encyclopedia (2021, May 4). Outlawry. Encyclopedia Britannica. <https://www.britannica.com/topic/outlawry>

<sup>116</sup> Treason in Roman and Germanic Law 95 ET. Seq. (1962); Von Bar, History of Continental Criminal Law 39 (1916); Brissaud, A History of French Private Law 883-84 (1912).

<sup>117</sup> Britannica, T. Editors of Encyclopedia. "Infamy." Encyclopedia Britannica, July 20, 1998. <https://www.britannica.com/topic/infamy>.

Infamy, which had repercussions quite similar to those that were found in Athens, appears to have been a prevalent method of degrading citizens who were convicted of specific acts involving moral turpitude. In Athens, residents who were found guilty of such crimes were sentenced to infamy. In the later years of the Empire, specific disqualifications that are similar to those used today began to emerge. For example, the court had the authority to declare that an individual had lost their right to engage in a particular trade or to occupy certain public offices. The option of exile, which had previously served as a means of evading punishment, is now itself a sanction. Some forms of exile entailed loss of Roman citizenship, confiscation and loss of hereditary rights. The barbarian states of the dark ages, by superimposition of the Roman "*infamia*" and the measure of "*excommunication*" applied by the Roman church over old Germanic practices, produced a wealth of variously called forms of outlawry. In some European laws, notably in the early Italian Statutes, the old outlawry was retained in all its vigor. Referring to the precursor of present-day banishment, these statutes explicitly state that the "*bannitus*" could be attacked by anybody with impunity.

In some other European laws, the outlaw retained at least some rights." "Civil death", in medieval continental countries, was the mandatory legal consequence of death sentences and sentences to imprisonment for life. The only practically important consequence of civil death in regard to those sentenced to death was confiscation of property. Regarding those who were the idea was to imitate the results if they were given a life term in jail that would occur as a result of a natural death, such as the establishment of a line of succession. The "*civilly dead*"<sup>118</sup> were not able to pass on their assets by inheritance or will, nor could they accept gifts. Every familial and political right was taken away from them. However, as a result of rudiments of compassion, some rights were left to them: they were capable of entering into onerous contracts, acquiring property for consideration, etc.

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<sup>118</sup> Planiol & Ripwert, *Treaties On Civil Death Law*, Part 2, No. 372-373, Translated By The Louisiana State Institute (1959).

In England, the so-called "attainder" was the mandatory consequence of the death sentence, as well as certain instances of absconding from the jurisdiction. Attainder entailed confiscation of property and various disabilities known under the label of "corruption of blood".<sup>119</sup> Foremost among them was the deprivation of all rights to inherit by or through the attained person. In some Continental countries, a less harsh consequence, called "infamy", resulted from the infliction of some degrading punishments such as the pillory, flogging or the "iron collar".

In France, for instance, persons struck with infamy were excluded from public office, disqualified from testifying, and lost all hereditary rights. The European Middle Ages also developed a great number of punishments whose only purpose was to expose the convict to public shame and ridicule. Old sources reveal that the "penologists" of the times attributed a great deterrent value to the loss of face in the community. Thus, convicts were forced to ride on a donkey through the streets, carry certain objects, etc. Even though these degrading punishments (in the most direct sense of the word) did not technically entail "infamy", they seem to have been very effective in exposing the convict and his family to ridicule and loss of face. Such humiliating and disgraceful punishments were retained in Europe much longer than one might expect. Most countries abolished them only around the middle of the 19th century, although in others they remained on the books until the last decade of the century. For example, some degrading punishments ("carcan") were abolished in France as late as 1894. Sweeping disqualifications resulting from death and life sentences were also retained very long. What made them particularly harsh was the fact that they affected the convict's family as well.

The Age of Enlightenment produced two legal provisions predicated on the view that the former convict, following execution of sentence, should be reinstated in the plenitude of his rights and capacities. This Phoenix-like restoration was

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<sup>119</sup> Lander, J. R. (1961). "I. Attainder and Forfeiture, 1453 to 1509". *The Historical Journal*. 4 (2): 119-151. Doi:10.1017/S0018246x0002313x.

specifically provided in the 1786 *Criminal Code of Leopold of Tuscany* and in the *Code of the Austrian Emperor Joseph II* of 1787. These two astonishing provisions were, of course, not based on ideas of reclaiming the individual and reintegrating him into society but were the outcome of legalistic views inspired by contractual thinking, coupled with the idea of expiation. Upon execution of the sentence, the offender was thought to have "paid his debt" to society, and any legal disqualifications outlasting the execution of sentence seemed unjust. Both Codes were, however, short lived. Although the century witnessed an important movement toward less cruelty in dealing with former convicts, even the French revolution, notwithstanding some humane views toward punishment, did not introduce changes in the area which concerns us. For instance, even though "civil death" does not appear in the revolutionary laws of 1791, it was provided by a statute of 1793. Provisions dealing with civil death reappeared in the Napoleonic codification,<sup>120</sup> and were not abolished until 1854. In the majority of German speaking countries, "civil death" was abolished around the middle of the century (Bavaria in 1849), and "attainder" disappeared from English law in 1870.<sup>121</sup> Consequently, in contrast to America, Europe entered the 20th century free of the anachronism of "civil death". To say that the medieval idea of civil death disappeared from the European scene before the turn of this century should not be taken to imply that similar sweeping disqualifications were not retained in many European countries. The only vestige of even more ancient reactions to crime known to this author is due to the revolutionary upheavals following the Russian revolution. A criminal statute enacted during Stalin's rule, dealing with the crime of "fleeing the country for the purpose of going over to the enemy", provided the sanction of "declaration to be outside of the law". Imposed in absentia, this sanction entailed confiscation of property and execution within 24 hours of the moment the outlaw's identity is established. This statute was abolished following Stalin's death.<sup>122</sup> In presenting the 20th century development

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<sup>120</sup> Art. 25, Civil Code; Art. 18, Penal Code.

<sup>121</sup> Targeting the twenty-first century outlaw. The Free Library, [https://www.thefreelibrary.com/Targeting the twenty-first century outlaw. -a0314800438](https://www.thefreelibrary.com/Targeting+the+twenty-first+century+outlaw.-a0314800438) (last visited Jun 6, 2019)

<sup>122</sup> Chikvadze, *Sovetskoe Ugolovizoe Pravo (Soviet Criminal Law)* 275 (Moscow, 1959)

of the law dealing with adverse effects of conviction, perhaps the best starting point is *France*. It was the French law that directly or indirectly served as a source of inspiration to a great number of contemporary laws on the matter. In regard to serious crime, "civil death"<sup>123</sup> and "infamy" were replaced by three measures of disqualification, classified as punishments:

- a) Twofold incapacity to gratuitously acquire or transfer property,
- b) Legal incapacitation, and
- c) Civic degradation or loss of civil rights.

All these measures are still positive law in France. The statute of 1854 abolished "civil death" and substituted *twofold incapacity* which attaches by operation of law to all life sentences and continues even if the life sentence is commuted. Twofold incapacity includes the incapacity to receive gifts or take by way of succession and the incapacity to make a valid will or make donations. Obviously, only the most objectionable disqualifications contained in "civil death" were rejected.

*Legal incapacity* attaches by operation of law to prison sentences of a particularly serious type and deprives the prisoner, until his release from the institution, of the exercise of the rights to manage his estate. His status resembles closely that of certified persons and a guardian is appointed for him. *Loss of civic rights* provides for a mandatory and permanent loss of a package of rights, privileges and capabilities. Because it served as a prototype of a great number of rather general, blanket disqualifications in other countries, usually called loss of "civil" rights, the disqualifications included in this punishment deserve to be presented in their entirety: The loss of civil rights consists of:

- The removal and exclusion of the convict from all public functions, positions or offices;

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<sup>123</sup> Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Penn. L. Rev. 1789 (2012)

- The deprivation of the right to vote, to elect and to be elected and, generally, of all social and political rights, including the freedom to practice decorations or honors;
- Disqualification from being a court appointed expert, a witness to legal instruments, rendering testimony, but not from merely giving information;
- Disqualification from being a member of the family council, a conservator-guardian, a curator, a joint conservator-guardian or a court-appointed guardian, except for his own children and only with the approval of the family;
- It is against the law to carry a concealed weapon, to be a part of the National Guard or the French Armed Forces, to educate, to occupy any job in an institution, to be the administrator of a university as a professor, teacher, or school monitor. In addition, it is against the law to be a teacher or a school monitor.

In the area of less serious crime, a more flexible technique was adopted. Article 42 of the Penal Code contains a long list of "civic, civil and family rights" which may be forfeited incident to conviction, but the imposition of these disqualifications has been made optional and the idea of blanket loss rejected. Here the judge can pick and choose from the list of disqualifications. In short, under this system, disqualifications, no longer automatic and in a package, may now be related to the crime, the criminal, and the public interest. This bird's eye view of adverse effects flowing from convictions in France is far from complete. It leaves out a great many disabilities which will all be taken up later in dealing with specifics. The brief description is, however, sufficient for our present purposes. It provides us with a rough sketch of the by now "traditional" regime of Sweeping legal disabilities resulting from convictions, which served as a basis of quite recent, further development in some countries. The "traditional" French regime, described above, is still positive law in a great number of countries. But the idea of depriving the convict of his capacity to manage property and placing him under guardianship has not found widespread acceptance. The equivalents of the French

legal interdiction are mostly limited in Europe to countries bordering on France, such as Belgium,<sup>124</sup> Italy,<sup>125</sup> Luxembourg,<sup>126</sup> Monaco<sup>127</sup> and Spain.<sup>128</sup> Outside of Europe it appears, for instance, in the Egyptian Penal Code. Thus, in contrast to America, it is very rare to find suspension or loss of the right to sue, to contract, to take or transfer property, etc. But, the successor of "infamy", the accessory punishment of loss of civil (sometimes called "honorary") rights in its traditional form of mandatory deprivation of a variety of rights, privileges and capacities, has mushroomed and found its way into a great number of legal systems. The list of disqualifications, however, varies. In some codes or statutes, it closely resembles the French (e.g., Italy, Monaco). In others it is restricted to political rights regarding participation in public life. ("Civic" rather than "civil" in the technical parlance of some civil law countries). Details also vary (e.g., the permanent or temporary nature of disqualifications), but the basic pattern remains the same. Outside of France, yet in Europe, the described sweeping and mandatory disqualifications attached to certain sentences will, for instance, be found in Austria, Belgium, Greece, Lichtenstein, Luxembourg, Monaco, Poland, Norway, Portugal, Spain and Switzerland<sup>129</sup>

Outside of Europe, they are known in Egypt and countries which (like Chile) follow the Spanish or Portuguese example. Further development is closely linked to the new criminological thinking with its strong emphasis on reintegration of the offender into society as a means of preventing recidivism. Proponents of this approach came to view many adverse effects resulting from criminal convictions as either unnecessary and irrational, or harmful and inhumane legal barriers.

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<sup>124</sup> Belgium (Code of 1867, art. 20-23)

<sup>125</sup> Italy (Code of 1931, art. 32)

<sup>126</sup> Luxembourg (Code of 1879, actually the Belgian Code, art. 20-23);

<sup>127</sup> Monaco (Code of 1874, art. 19)

<sup>128</sup> Spain (Code of 1944, art. 43).

<sup>129</sup> Austria (Code of 1852, art. 26); Belgium (Code of 1867, art. 31); Greece (Code of 1950, art. 59 et seq.); Lichtenstein (Code of 1859, art. 26); Luxembourg (Code of 1879, art. 31); Monaco (Code of 1874, art. 35); Portugal (Code of 1886, art. 76); Poland (Code of 1932- still in effect- art. 45, 47); Spain (Code of 1944, art. 34, 52); Switzerland (Federal Code, art. 52); Norway (Code of 1901 until 1953).

Often, they can prevent normal life in a community, impede efforts at rehabilitation and be instrumental in causing relapse into crime.

The punishments of loss of civil rights and legal incapacity came under sharp attack. There seems to be little question that their intent is to disgrace the culprit, which is why they are being administered. Occasionally even terminology testifies to it, e.g., Disqualification of former convicts should never be motivated by degradation. It is justified only if it is in some way related to a public interest such as a concern for the authority of and respect for certain offices, prevention of recidivism, etc. Relation to public interest cannot be established unless each disqualification is individually considered, and its imposition left to the discretion of the judge. Some disqualifiers mentioned in civil liberties forfeiture sanctions were declared as objectionable on principle (e.g., testimonial incapacity). Some critics went so far as to argue that even the label "punishment" should be discarded and another label expressive of non-punitive nature be adopted. This orientation ran into opposition in some quarters. Because the fear of being humiliated in front of others has a larger value as a deterrent than the dread of pain that is inherent in traditional punishments, a sizeable portion of people's opinions hold that degrading punishments are beneficial. However, there is no question that the viewpoints of opponents of the disqualifications who are merely driven by the desire to humiliate now predominate among criminologists and attorneys. This was reflected in the final acts of the *Seventh International Congress of Criminal Law held in Athens in 1957*. Although a result of compromise, it still contains the following passage: "all legal consequences of conviction motivated by the sole goal of degradation should be abolished."<sup>130</sup> Legal interdiction and loss of civil rights are specifically mentioned.

Equally significant is the recent development in another direction. The great inflation of regulatory activity in our century produced a colossal number of

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<sup>130</sup> 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, 2018).

statutes, decrees, regulations and ordinances providing for various adverse "side-effects" of convictions. As will later be seen, some appear in areas one would never expect. However, the process of rehabilitation of the offender requires a thought-out policy. Obviously, the latter cannot be implemented if numerous legal restrictions, many unknowns to the judge, shackle the ex-convict. Hence, the strong feeling in many quarters that there should be a general overhaul of the whole body of law, notably that dealing with licensing and regulatory restrictions.

The view seems to be gaining ground that the powers of regulating restrictions incident to conviction should either be centralized or at least the activity of various authorized bodies and agencies coordinated. Some of these views found their way into the final acts of the 7<sup>TH</sup> International Congress of Criminal Law as well. These recent developments were not limited to specialists in the field of criminal law and criminology. Echoes of new views reached the legal systems of some countries. The timidest step, taken by countries which retained the punishment of loss of civil rights, was empowering the sentencing judge to impose only those disqualifications from the list which seem warranted in a particular case. "Public interest" is sometimes explicitly mentioned. This is the case, e.g., with the Norwegian Penal Code's as amended in 1953, and the modern Code of Ethiopia (1957).<sup>131</sup> A similar technique can be found in the Italian Penal Code of 1930, and the Russian Code of 1922, abrogated in 1960. Some countries went further and abolished this type of punishment altogether, while retaining a number of disabilities in their codes, usually dealing with occupational disqualifications. The Soviet Union abolished the punishment of loss of civil rights by a repeal statute in 1958, and there is no such penalty in the new Russian Criminal abrogated of 1960<sup>132</sup>

*Yugoslavia* abolished the punishment in the amendments to the Criminal Code passed in 1959. These two countries thus joined the group of countries that never

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<sup>131</sup> Germany (Code of 1871, §32); Holland (Code of 1881, art. 28); Yugoslavia (until 1959).

<sup>132</sup> Art. 25-34.

adopted the sweeping disqualifications contained in the loss of civil rights (e.g., *England, Canada, Israel, Japan, etc.*).

An unsuccessful attempt to abolish the punishment was made in the Parliament of *Finland* in 1948. On the other end of the spectrum, from the traditional approach to effects flowing from conviction, are *Sweden* and *Denmark*.

In 1936, *Sweden* not only abolished the usual disqualifications such as the loss of electoral rights, testimonial incapacity, but also the almost universal disability to hold public positions, various occupational disqualifications, etc. As a result, revocation of driver licenses became one of the very few *legal* consequences resulting from conviction. The changes seemed to have been successful in *Swedish* circumstances, for the new Penal Code of *Sweden* which went into effect in 1965 did not revert to more traditional solutions."

*Denmark* followed *the Swedish* example in 1951. The movement in national legislation has of late been paralleled by an interesting development in the international arena. The so-called European A lot of Modern countries adopted the Treaty on Civil Liberties. European nations in the year 1950. This convention ensured that individuals would be granted a comprehensive list of rights and advantages. An enforcement machinery was also established consisting of the European Commission on Human Rights as well as the Court of Human Rights. In keeping with the traditional view that the individual, the real party in interest, has no *locus standi* under international law, individuals were not accorded the right to directly reach the Court.

However, an optional clause signed by *Belgium* and other countries provided for the right of individuals to petition the Commission if they felt their rights under the Convention were violated. The Commission is then tasked with conducting an investigation into the matter, and if it concludes that there is validity to the complaint, it is to report the subject to the Court. The parties that signed the document made a pledge to follow the court's judgment. Only tangential to the

subject-matter of this study, but significant as evidence of the growing concern of international bodies over the rights of convicted persons, is yet another development. In 1962, the Committee of Ministers of the *Council of Europe* passed a resolution on *electoral, civil and social rights of prisoners*. In it, claiming to express "European legal conscience", they urged member Governments of the Council of Europe to exercise great restraint in depriving prisoners of their rights *during the execution of sentence*. Some of the specific recommendations, notably those dealing with capacity to sue and defend legal actions, seem to be especially applicable to those countries that still have the system of legal in capacity and similar restrictions placed on convicts. Thus, the historical trend in the development of disabilities resulting from conviction seems to be decidedly in the direction of increasingly fewer legal restrictions on former convicts. The direction of the future seems to be toward retaining only those restrictions necessary for the safeguard of some public interest. But, as the survey of specific adverse effects of convictions will reveal, this trend only holds promises.

## 2.5 JUSTIFICATION OF COLLATERAL CONSEQUENCES -

One of the studies conducted by the Ministry of Justice in the United Kingdom found nine routes to reoffending. These pathways increase the risks of relapsing into offending behaviour or continuing down the path of recidivism. attitudes and behaviour, health, education, and employment - This is most significant in counter reacting against recidivism, finances and debt, abuse, prostitution, housing, alcoholism use, kids, and family members that former offenders must overcome to accomplish effective re-entry in society. For ex-offenders striving to avoid resuming criminal behavior, the incidental implications of having committed a crime constitute a mechanism of snowballing disadvantage. However, an arrest conviction poses a wholly or partly threat to many of these career paths. Some of these threats are direct, while others are indirect.<sup>133</sup> -

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<sup>133</sup> Freudenburg, N., Daniels, J., Crum, M., Perkins, T., & Richie, B. (2005). Coming home from jail: The social and health consequences of community re-entry for women, male adolescents, and their families and communities. *American Journal of Public Health*, 95, 1725-1736.

- (a) Types of discrimination that are allowed by law to be based on a person's history of convictions, as well as,
- (b) Restrictions that aren't mandated by statute, sometimes known as "invisible punishments."

Higher education, rehabilitation of custody responsibility, occupational license, work for private, accommodation from owners, and decision of residence in societies, and denied participation in civic activities can be included in the first scenario, whereas in the second scenario, many forms of social stigma and discrimination for ex-offenders that indirectly further the difficulties There were things related to the move from jail to society. It's likely that the shame and feelings associated with continued penalty after a person has served their imprisonment may cause them to have negative perceptions towards to the judicial system and the society both of which limit the odds of successful re-entry.<sup>134</sup>

In other words, the collateral consequences<sup>135</sup> or secondary implications are often located outside of the penal law, executed by entities that are not associated with the lawbreaker system of law, they are seen as civil rules instead of punitive measures by the judiciary. They are not considered to be a part of the immediate repercussions of a criminal conviction, such as going to jail, paying fines, or serving probation. As a direct result of the conviction, the state may take additional civil measures against the defendant. These are known as "consequential civil actions." Implementing the rules of investigative law to those charged with a criminal offence falls under the category of the judiciary. The judgment

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<sup>134</sup> Conner, D., & Tewksbury, R. (2011). Ex-offenders and educational equal access: Doctoral programs in criminology and criminal justice. *Critical Criminology*, 11, 1-14, Pager, D. (2007). *Marked: Race, crime, and finding work in an era of mass incarceration*. Chicago: University of Chicago Press.

<sup>135</sup> Archer, D., & Williams, K. (2006). Making America the land of second chances: Restoring socioeconomic rights for ex-offenders. *New York University Review of Law and Social Change*, 30, 527-584, Burton, V., Jr., Latessa, E., & Barker, T. (1992). The role of probation officers: An examination of statutory requirements. *Journal of Contemporary Criminal Justice*, 8, 273-282, Ewald, A. C. (2012). Collateral consequences in the American states. *Social Science Quarterly*, 93, 211-247.

authorities (usually a magistrate) will determine the sentence to be given to the offender in the instance that they are held responsible or enter a guilty verdict. The punishment that follows is directly and immediately impacted by the verdict. This penalty may include community service, home imprisonment, and supervision, the loss of some rights (like vehicle), monetary fines, or even incarceration. These repercussions of the criminal act are referred to collectively as direct consequences. Direct consequences are those that were intended by the judge, and they are frequently imposed at least in part by an applicable legislation or statute.

A person who has been convicted may, however, face additional state actions in addition to the terms of the sentence. The states view these extra state acts as collateral effects in the form of general limits. These additional state actions include things like disenfranchisement,<sup>136</sup> ineligibility for education loans due to things such as drug - related crimes in the US, losing a license to practice law, and being kicked out of housing projects.<sup>137</sup> The judge does not immediately impose these consequences, and they go beyond the confines of the sentence itself that is handed down for the original offence. They are instead considered to as secondary effects and are constitutional governmental proceedings. These collateral repercussions remain throughout an individual's life course if the offender's official record is not expunged (i.e., reclaimed, closed, or forgiven), consequently, the person's participation within or accessibility to community are significantly limited.<sup>138</sup>

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<sup>136</sup> "Felony disenfranchisement is the exclusion from voting of people otherwise eligible to vote (known as disfranchisement) due to conviction of a criminal offense, usually restricted to the more serious class of crimes"

<sup>137</sup> Ewald, A. C. (2012). Collateral consequences in the American states. *Social Science Quarterly*, 93, 211-247.

-Love, M. C. (2006). The debt that can never be paid: A report card on the collateral consequences of conviction. *Criminal Justice*, 21, 16-25, Mule, B., & Yavinsky, M. (2006). Saving one's home: Collateral consequences of innocent family members. *New York University Review of Law and Social Change*, 30, 689-699

<sup>138</sup> Hemmens, C., Miller, M., Burton, V., Jr., & Milner, S. (2002). The consequences of official labels: An examination of rights lost by the mentally ill and mentally incompetent ten years later. *Community Mental Health Journal*, 38, 129-140.

In most contexts, a felony prosecution can lead to state legal lawsuit, which comes in the form of an inquiry to determine whether or not the charge(s) in question result in the civil legislation that attach to the criminal charges. An example of this would be the fact that a criminal charge might result in the revocation of a professional license, such as a license to practice medicine, nursing, or pharmacy, despite the fact that the alleged offence was not particularly serious. Some people refer to it as a "civil death,"<sup>139</sup> which means that being exposed to collateral repercussions. The social repercussions of a criminal conviction should not be confused with the collateral implications that come with a conviction. The social implications can include being fired from a job and receiving a negative reputation in society. In nations where investigations and judicial procedures are publically available, these social implications of criminal allegations may occur, harming the guilty by letting everyone know more about incident whether the accusations lead to a verdict, is accurate.

As a result of their criminal conviction, millions of ex-offenders (Ex-Convicts and exonerees) who mainly identify to racial or ethnic minority communities or even other marginalized communities face a number of limitations on their constitutional and democratic rights. The guilty verdict or conviction directly contributed to these limitations (Ranging from felons to misdemeanours). In order to successfully serve their individuals who may have arrest histories, social services and other wellbeing care practitioners who often engage with this group must be aware of these fines and penalties. The researcher is attempting to investigate the effect that collateral repercussions have on their life. The researcher comes to the conclusion that the professional's initiatives as agents of renovation to seek legally permissible judicially erasure of their clients' misdemeanor conviction histories, as well as understanding, expertise, and interactions with both the secondary implications of clients' felony offenses, are

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<sup>139</sup> Chin, Gabriel Jackson (May 2012). "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction". *University of Pennsylvania Law Review*. 160: 1789–833. JSTOR 41511317. SSRN 2072736

all important. It was discovered that practitioners, in general, lacked comprehension of collateral repercussions, their applicability, and the possibility of expungement.

To give one illustration, this is projected that the proportion of people accused of a violence in the United States who might be subject to collateral effects is astonishing. This is only one illustration. Presently, the population ranges between 65 and 100 million residents of the United States who have been arrested for a criminal offence (or convicted of one)<sup>140</sup> and an Approximately 16 million of these are felons or criminals.<sup>141</sup> In addition, there are at least 7.5 million persons who are subject to some type of supervision by the criminal justice system; a majority of these offenders soon return to their respective societies and participate in the activities there.<sup>142</sup> Some researchers have characterized the limits that are linked to government records as unseen and unofficial forms of oppression against persons who have been sentenced, as well as their families and the community, as a result of the expanding usage of collateral consequences.<sup>143</sup>

## 2.6 CLASSIFICATION OF CONSEQUENCES OF CRIMINAL RECORDS

A considerable variety of federal and provincial limitations on governmental, financial, cultural, and daily life are imposed on persons who have been found guilty of a crime, or in some cases even only imprisoned for one. 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.

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<sup>140</sup> Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colour-blindness*. New York, NY: New Press.

<sup>141</sup> Binnall, J. (2010). Sixteen million angry men: Reviving a dead doctrine to challenge the constitutionality of excluding felons from jury service. *Virginia Journal of Social Policy and the Law*, 17(1), 2–41.

<sup>142</sup> Travis, J., Robinson, L., & Solomon, A. (2002). Prisoner re-entry: Issues for practice and policy. *Criminal Justice*, 17(1), 12–18.

<sup>143</sup> Pinard, M. (2010b). Reflections and perspectives on re-entry and collateral consequences. *The Journal of Criminal Law and Criminology*, 100, 1213–1224.

- (A) **Legal Consequences,**
- (B) **Social, Physical, Civic and Economical Effects,**
- (C) **Impact on Communities and Democracy And**
- (D) **Miscellaneous Consequences.**

We can further simplify the classification into two sides i.e. Firstly, the *Direct Consequence* which a person had to face in the form of punishment as a direct result of offence. This Legal form of consequence is justifiable by any democracy and law which is presently beyond the scope of research.

Secondly, the other devastating effects of criminal records are in the invisible forms. These effects can be described as *Indirect Consequences or Collateral Consequences or Collateral Sanctions*. One of the most important aspects that will be covered in this research is to be discuss these collateral implications. The societal repercussions of having a criminal record and prior convictions have the potential to have a negative impact that is far-reaching and widespread. Intimate relationships, experiences of parenting, and social interactions are the contexts in which these are felt the most strongly. The growing availability of internet criminal records to members of the general public has had the effect of drastically amplifying the negative repercussions that a criminal conviction has on society in recent years.

Even a minor incarceration would have far impacts on the financial status of an individual. This is particularly the case with violent criminals. An arrest conviction creates statutory and unofficial obstacles that constrain or prohibit professional and educational opportunities, prohibit some types of financial aid, and significantly reduce career earnings. These barriers can be overcome, but they can be difficult.

Convictions for crimes can affect a person's physical location and health in addition to their mental state. Formal and informal constraints frequently limit housing Alternatives, flexibility of mobility, and citizenship status are affected,

along with the cognitive and psychosocial wellbeing of the individual. Individuals who have now been acquitted of criminal charges, especially regarding misdemeanor offenses, may suffer downstream repercussions that prohibit or ban a range of forms of civic participation. These consequences vary by state, but often include restrictions on the right to vote, jury duty, and possess guns or join the military. Some of these repercussions, such as the inability to vote, are only transitory in some states but permanent in others. When it comes to the other kinds of restrictions, however, such as certain kinds of military duty, the prohibition is almost always permanent.<sup>144</sup>

#### **2.6.1- LEGAL CONSEQUENCES OF CRIMINAL RECORDS -**

A person convicted of any offence have some legal consequences which are direct order of court or any other tribunal. These consequences are varying throughout different judicial and democratic setup.

In USA and other countries for example a felony convicted will have certain disabilities which are either statutes provide, or law of countries prohibits by express way. This category itself contain different disabilities which can be given different heading namely Adoption right of convicted person, Defamation in wrongful conviction, travelling rights of felons, citizenship and political activity, restrictions of freedom, standing in the community, public office, profession and other occupations and employments, participation in the administration of justice, activities independent of employment, Gun rights of ex-offenders, Military Matters, possession of driver's licenses, Disenfranchisement, right to hold office etc. The researcher here tries to combine all different disabilities which arises due to previous criminal records of foreign state visa-a-vies with respect to Indian jurisprudence. The researcher here merely narrating direct consequences which are positively supported by researchers himself and this is also reasonable in the interest of the community.

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<sup>144</sup> Alec Ewald & Christopher Uggen, *The Collateral Effects of Imprisonment on Prisoners, Their Families, and Communities*, in *The Oxford Handbook Of Sentencing & Corrections* 83 (Joan Petersilia & Kevin R. Reitz eds., 2012);

### 2.6.1.1 RIGHT TO ADOPTION AND CRIMINAL RECORDS OF ADOPTEE

Before approving the placement of a child, a criminal background check must be performed on any prospective foster or adoptive parent. This check must include fingerprint-based inquiries into national crime information databases. This verification must be conducted irrespective over whether child welfare support income or immigration guidance funds are to be given in the child's name. Almost every jurisdiction, including India's, considers this to be a very significant task.

The vital consideration here is paramount welfare of adopted child that he should not be handed to a person who is having criminal tendencies and thereby may lead to compromise of adopted child future. The other condition generally are follows. State-maintained molestation and misuse public records are searched for details on current and future foster or adopted children or other individuals staying home. Needs to check of the child maltreatment registries within each state where a promising caregiver or any other senior citizen has stayed within the previous five years.

Before a corresponding parent could indeed obtain sense of belonging parental responsibility emergency aid payouts on behalf of a minor, that corresponding custodian should perform screening tests that might include biometric inspections of crime statistics online data. These background checks must also be performed on any other adult who resides in the same household as the relative guardian. In common jurisdiction, these are the primary reasons for disqualification, regardless of the type of court.<sup>145</sup> The petitioner has already been guilty of a misdemeanor charge of childhood abuse, marital abuse, a violation involving minors (especially child abuse images), or a misdemeanor involving firearms, such as murder, molestation, or killing, but not for other aspects of punishment unlawful act within the preceding five years, the applicant has been convicted of a felony for

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<sup>145</sup> Child Welfare Information Gateway. (2016). Background checks for prospective foster, adoptive, and kinship caregivers. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau

committing a crime involving physical assault or battery, or for a drug-related crime. No person is allowed to provide care for children unless they have subsequent development for and got confirmation that they too are not enrolled in the record of serious offenses of crimes against women and child molestation or that they have not really been sentenced of any severe sexual offence, child molestation, or any one of the related criminal convictions: aggravated sexual assault, aggravated child abuse, aggravated sexual assault with a child victim, aggravated sexual assault with a child victim Murder, homicide, or instigation to suicide, Crimes of a particularly serious nature, such as aggravated assault, rape, Homosexual intercourse, adultery, and savagery, Child endangerment, sexual seduction, extortion, roguery, or sexual business, Gradual emancipation constraints, assault or kidnapping of minors, Abandonment of a child who is underage, The illegal relinquishment of parental rights, the adoption of children in exchange for money, Abuse or exploitation of a child, begging in public while being a minor, Theft, extortion, or imposture are all types of theft. Mistreatment of children or people with disabilities, Arson or destruction of property.<sup>146</sup> The grounds are illustrative in nature as it differs to every jurisdiction. The base line here is just to confirm that the prospective parents will not adversely affects the adopted child. A person who is convicted with child trafficking (or any above-mentioned grounds) a grave offender, which is not a suitable person at any cost and prima facie disqualified as a deductive jurisprudence of adoption laws.

The wellbeing of the kid and Adopting legislation in India was influenced primarily by the interests of the child. When providing caretaker parenting approval, the judge must always be convinced that now the adopting is in the children's best interests, keeping in mind the child's growth and level of awareness. The judge must then be convinced that the candidate for parental approval really hasn't accepted or promised to take any money or reward in

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<sup>146</sup> Guidelines Governing the Adoption of Children. (2011) <http://www.adoptionindia.nic.in>. Hague Convention on Inter-country Adoption. (1993) ([http://www.hcch.net/index\\_en.php?Act=conventions.text&cid=69](http://www.hcch.net/index_en.php?Act=conventions.text&cid=69)).

exchange for the parenthood, and that no one has prepared, delivered, or promised to make and to provide the candidate any compensation or incentive in exchange for the adoptive parents. Only then will throughout the years, the non-negotiable principle that has been used to decide cases of child ownership belongs to the "*best interest and welfare of the child.*" This principle aims to ensure that each child is able to live and attain his or her maximum contribution, and it is the basis upon which cases of child custody have been decided.

The *UN Convention on the rights of the child* (here in after referred to this as the CRC) necessitates that the "best interests of the child" be given priority in all court hearings young minors, regardless of whether they have been witnessed in publicly or privately government welfare organizations, judicial branch of legislation, state agencies, or law makers. This is true regardless of whether the institution in question is public or private. According to a ruling from India's highest court, the welfare of a kid cannot be judged just based on monetary value or the level of their physical comfort. Instead, the term "welfare" must be interpreted in the broadest possible sense, which means that the bond of affection must be respected.<sup>147</sup>

According the UN High Commissioner for Human Rights, "child's welfare" is a placeholder for "a children's well-being depending on a variety of Human rights and fundamental freedoms considerations."<sup>148</sup> In particular, wellbeing as a consideration for selection is adaptive, versatile, and representative of engagement levels on the role that it plays in today's life.<sup>149</sup> However, the standard that considers what is in the child's best interest has been criticized for primarily two reasons. To begin, it is highly unpredictable and requires a lot of information because of this, divorced parents are often left guessing about how the judiciary would address their paternity issue. This may result in needless pre-trial agreements, which can be detrimental to both the child and the parents. A rule-based standard that is more predictable could be able to alleviate this problem. On

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<sup>147</sup> Nil Ratan Kundu v. Abhijit Kundu AIR 2009 SC (Supp) 732.

<sup>148</sup> UNHCR, UNHCR Guidelines on Determining the Best Interests of the Child, (2008).

<sup>149</sup> Gilmore, Stephen, *Great Debates: Family Law*, Palgrave Mac millian, (2014) pp. 76-83

the other hand, a standard that is based on rules is likely to be inflexible and will not take into account the specifics of each individual case. Second, the criterion that is based on what is in the child's best interest looks primarily at the circumstances that the child is in rather than taking into account the thoughts and feelings of the parents.<sup>150</sup> The parents also have a role in the drama that unfolds within the family.

The researcher here suggests that Indian adoption jurisprudence which prescribed some of the disqualification in the process of adoption, nowhere mention that because an individual with such a criminal record cannot legally adopt children. The wellbeing of the kid and the self-interests of the infant orientations practically require the elimination of individuals with such convictions. This is suggestive of nothing but one proposition that 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 problem of becoming a Rehabilitated ex-convict to an Adoptive parent.<sup>151</sup> On the same argument the researcher proposes that considering the condition (Literally millions of youngsters necessitate guidance, support and attention from Law) in India.

**If an ex-convict is fully rehabilitated and now want to take the responsibility of parenthood, why he should be denied this pious responsibility solely on the base of his/her past or criminal records.** This opportunity is beneficial for both as a child will have a family and the ex-convict will be toward full rehabilitation. It is probable that being a parent is a key aspect in the development of desistance from criminal activity; nevertheless, relatively limited investigations have examined the conditions through which being such a biological parent has been most probable to result in reductions in committing crime.<sup>152</sup>

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<sup>150</sup> *ibid*

<sup>151</sup> Shalini Ahuja, Judge Decides: Felon Can Adopt Kids, Too City Limits (2014), <https://citylimits.org/1999/09/20/judge-decides-felon-can-adopt-kids-too/> (last visited Mar 15, 2019).

<sup>152</sup> Giordano, Peggy & Seffrin, Patrick & Manning, Wendy & Long more, Monica. (2011). Parenthood and Crime: The Role of Wanted ness, Relationships with Partners, and SES. *Journal of criminal justice*. 39. 405-416. 10.1016/j.jcrimjus.2011.05.006.

### 2.6.1.2 GUN RIGHTS OF EX-OFFENDERS -

In Canada, that whenever a defendant is convicted of an offense involving the need for a firearms or the threatening to include a harm, the court imposes a mandatory minimum sentence that handed down the sentence has the authority to place a prohibition on the individual's ability to possess a weapon for a predetermined amount of time. When it comes to specific types of crimes, the restriction on possessing contraband is a need. In other types of instances, the judge has the option to decide whether or not to impose a possession ban.<sup>153</sup>

Three federal limitations are imposed on practically every convicted criminal in the United States. Federal law prohibits the sale of guns to felons,<sup>154</sup> and they are also unable to serve on federal grand and petit juries.<sup>155</sup> No convicted felon can serve in the military.<sup>156</sup>

Unlike the American Constitution (Second Amendment) where the bearing arms is a fundamental right of the American citizens, The Indian government doesn't always grant Indian citizens any type of liberty. The Arms Act - 1959 provides that bearing of arms is not a right but a privilege granted to citizens subject to certain conditions.

The Indian Arms Act's statements of objects and reasons state that a weapon for self-defense is available for all citizens under license, unless the citizens' antecedents or propensities do not qualify them for the privilege in India. However, this only applies if the citizens have a history of criminal activity.

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<sup>153</sup> Legislative Services Branch consolidated federal laws of Canada, Criminal Code Criminal Code (2019), <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-110.html> (last visited Jun 8, 2021).

<sup>154</sup> Legal Community against Violence. 2008. "Regulating Guns in America." Available at: [http://www.lcav.org/publications-briefs/reports\\_analyses/regguns.entire.report.pdf](http://www.lcav.org/publications-briefs/reports_analyses/regguns.entire.report.pdf)(last visited Mar 15, 2021).

<sup>155</sup> Kalt, Brian C. 2003. "The Exclusion of Felons from Jury Service." *American University Law Review* 53: 65-188.

<sup>156</sup> Office of the Pardon Attorney, U.S. Department of Justice. 2001. "Federal Statutes Imposing Collateral Sanctions upon Conviction." Available at: [http://www.usdoj.gov/pardon/collateral\\_consequences.pdf](http://www.usdoj.gov/pardon/collateral_consequences.pdf) (last visited Mar 15, 2021).

When determining whether or not to issue a permit for a firearm with a Non-Prohibited Bore, the question of whether or not the applicant is in danger of losing their life is one of the elements that is taken into consideration. The criteria for possessing firearms with a Prohibited Bore are even more strictly applicable to individuals who face immediate danger or threats, particularly those who hold a position in the government, as well as the family members of such individuals and those whose line of work by definition involves open danger and threats.

Since 2014, getting a license to operate a Prohibited Bore has become extremely difficult due to the stringent regulations that govern these operations. People who are eligible for Prohibited Bore licenses are routinely turned down for them on the grounds of national security concerns. There are a few exceptions, including defense officers who, according to the law for the Defense Service, are permitted to keep firearms without permits until they have completed their service, as well as a select few professional shooters.<sup>157</sup> The Indian Arms Act of 1959 prohibition of the acquisition ownership, selling, or exchange of guns by minors and perhaps other individuals if the individual has been convicted of an offense violent or sexual or illegal behavior and thrown in prison for just about any length, at any time within 5 years of diagnosis the end of the statement..<sup>158</sup> Before a license may be issued, the Indian Arms laws require a review of the applicant's prior criminal record.<sup>159</sup>

### 2.6.1.3 POSSESSION OF DRIVER'S LICENSES AND CANCELLATION-

People found guilty of certain acts in the United States are barred from obtaining licenses to practice a variety of professions under a number of federal occupational-licensure statutes. These occupational and licensing bans are imposed

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<sup>157</sup> Shah Ashfaq, Law on Firearm Legal Service India - Law, Lawyers and Legal Resources, <http://www.legalserviceindia.com/legal/article-625-law-on-firearm.html> (last visited Jun 9, 2019).

<sup>158</sup> Arms Act (1959), Act No. 54, An Act to Consolidate and Amend the Law Relating to Arms and Ammunition; Chapter 2 (Section 9).

<sup>159</sup> Parker & Sarah, Balancing Act: Regulation of Civilian Firearm Possession (2011), <https://www.gunpolicy.org/firearms/citation/quotes/5428> (last visited Jun 9, 2019).

in a variety of different ways, ranging from an automatic cancellation to the granting considerable authority to the judge in the case court or the licensing body. Individuals accused of drug-related offenses face further restrictions under federal law regarding their ability to obtain driving licenses, in addition to their eligibility for public assistance and food stamps.<sup>160</sup>The federal legislation creates a default policy of exclusion in both of these sectors, but it gives the states the option to opt out of this policy if they so desire. Driving while intoxicated or even with a blood alcohol content of above 80 mg per 100 ml of blood is prohibited and is one of the driving-related offences that can be found in the Criminal Code. Other driving-related offences Driving when intoxicated or with a blood alcohol concentration more than reckless driving (including risky driving resulting in physical harm or injury), aggressive driving, and operating with an alcohol content level higher than 80 mg of liquor in 100 ml of blood are all prohibited. If a crime was committed of some of these offenses, individuals could be barred for driving a car for a particular timeframe.<sup>161</sup>

In India, Suspension of driving license in certain cases are provided into Motor Vehicle Act- 1988. If a person has a driving license but has already been accused of an offense under section-184 (i.e. Driving Dangerously) and that offence resulted in the death of one or more persons or the grievous injury of one or more persons, then that person's driving license may be suspended for up to six months depending on the kind or specification of vehicle under which it was granted.<sup>162</sup>If a person is convicted of dangerous driving that is outlined Section 184 of any type or model of automobile that causes in the accidental death or harm between one or even more people, the judge that handed down the conviction has the authority to either revoke the person's driving license entirely or suspend it for a

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<sup>160</sup> Office of the Pardon Attorney, U.S. Department of Justice. 2001. "Federal Statutes Imposing Collateral Sanctions upon Conviction." Available at: [http://www.usdoj.gov/pardon/collateral\\_consequences.pdf](http://www.usdoj.gov/pardon/collateral_consequences.pdf) (accessed June 30, 2021).

<sup>161</sup> Legislative Services Branch consolidated federal laws of Canada, Criminal Code ARCHIVED (2019), <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-249-20030101.html> (last visited Jun 9, 2021).

<sup>162</sup> Sec- 21 Motor Vehicle act- 1988

period of time that it deems appropriate insofar as it relates to the particular class or description of motor vehicle that was involved in the incident.<sup>163</sup> In India the court hold discretionary power to for disqualification of having driver licenses. A court that finds someone guilty of an offence under this Act or of an offence for which a motor vehicle was used may, among other things, declare those found guilty of the offence permanently disqualified from holding a driver's license for any class or description of vehicle, subject to the provisions of this Act.<sup>164</sup>

#### **2.6.1.4 A TRAVELLER WITH CRIMINAL HISTORY-**

There are two ways in which these impacts have been studied: in passport issue and revocation as well as in the refusal to admit foreigners into the country. There are many regulations that govern the issuing and revocation of passports that are difficult to understand. According to the information available, the reasons for denying passports are typically stated in general terms, making it difficult to ascertain the effect of a criminal record on the case unlawful prosecution and unfulfilled prison sentences, however, are common reasons for denying passports. Only one case of passport denial as a form of punishment has been found.

Those who have been convicted of pandering in France may have their passports revoked. There are a variety of measures in place to ensure that criminals are not allowed to enter a new country.

Individuals accused of indictable offences could be refused entry into the nation in some regions such as England. According to other countries, people who have already been convicted of "moral turpitude" charges are not allowed entry.

There is no such legal restriction in most of continental Europe. Because of this, people with criminal records will be allowed into the nation, but their application for a longer stay may be denied. Many nations do not deny entry to someone

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<sup>163</sup> Sec- 22 Motor Vehicle act- 1988

<sup>164</sup> Sec- 20 Motor Vehicle act- 1988

with a minor or outdated criminal record, so there is little information accessible about travelling with a criminal record.

There is, however, a heightened awareness of the problem in United States, where the North America as well as Canada have an agreement that prohibits felons from immigrating. The immigration agency websites of most countries that give the problem any attention are likely to have the information you need. However, the length of time it takes for a criminal to be denied entry into a country (or the quantity of criminal history you have) can vary greatly through one nation to the next.

Even just a small guilty verdict from fifty years ago could lead in imprisonment in United States in you being denied entrance, but in other nations, a conviction for a severe or serious crime would be required.<sup>165</sup> The U.S. Supreme Court has raised new questions about its future with its landmark 2010 opinion in *Padilla v. Kentucky*.<sup>166</sup> It was found that a lawyer's omission to inform his client of the ramifications of a deportation conviction constituted ineffective counsel under the Sixth Amendment. Deportation is now "an inherent part—indeed, frequently the most integral part—of the sentence" for many non-citizens convicted of crime, according to the Supreme Court.

Indian jurisprudence is based solely on the laws themselves. Regional Passport Offices (RPOs) and the Foreign Ministry Two pieces of legislation are at stake here: Article 10(3) (e) of the Travel documents Act of 1967, as amended by Ministerial Notice No. G.S.R. 570(E) of 1993. In the first circumstance, an Indian citizen's passport might be seized or cancelled if he or she is the subject of an ongoing criminal investigation. The other tries to mitigate this impact by permitting judges whether too expressly state if border controls should be applicable to suspected

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<sup>165</sup> Travelling with a criminal history, Wikitravel, [https://wikitravel.org/en/Travelling\\_with\\_a\\_criminal\\_history](https://wikitravel.org/en/Travelling_with_a_criminal_history) (last visited Mar 16, 2019).

<sup>166</sup> 130 S.Ct. 1473, 1478 (2010).

criminal before them or to remain silent, where such case just one passport will really be granted.<sup>167</sup>

In accordance with Section 6 of the Indian Passport Act of 1976, clause (f) of sub-section (2) gives the Passport Authority to refuse to grant a passport or other travel papers to an applicant if a criminal case against the applicant is ongoing in India. It is impossible to see how this clause violates the mandate of the Constitution in any way. In addition, it doesn't provide the state arbitrary control over citizens. The authorities would be justified in acting and, in their judgment, even in declining to issue the passport if a lawsuit is awaiting approval before such a criminal court based on a police report. If a decision is not clearly erroneous or violates a fundamental rule of law, it is probably to be reviewed by a court. This is merely if the order contains an element of arbitrariness ex-facie that the Court may be justified in interfering in its writ authority.<sup>168</sup> So the passport authorities in India has a lot of flexibility.

#### 2.6.1.5 RIGHT TO REPUTATION AND ITS EFFECT ON THE PREVIOUSLY CONVICTED

A discrimination or stigma is a "socially inferior attribute" that identifies the bearer as someone detracts from recognized society's standards, irrespective the deviation is intentional.<sup>169</sup> Stigma, according to sociologist *Erving Goffman*, is "believed to be non-human and that we practice various forms of discrimination, by which we effectively limit the life possibilities of the individual with a stigma."<sup>170</sup>

This has never been truer than in the case of persons who have been labelled as ex-offenders. Those with ex-offender status have a stigma known as a "conduct" or

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<sup>167</sup> Saurav Datta, Can the Right to Travel Be Curbed? <https://www.livemint.com> (2015), <https://www.livemint.com/Politics/Cl4y2yarnpj9sjz9ypwd8i/Can-The-Right-To-Travel-Be-Curbed.html> (Last Visited Jun 9, 2021).

<sup>168</sup> Ranjit Bajaj Vs Regional Passport Authority On 13 May, 2004

<sup>169</sup> Mark C. Stafford & Richard R. Scott, Stigma, Deviance, And Social Control: Some Conceptual Issues, In *The Dilemma Of Difference: A Multidisciplinary View Of Stigma* 77, 80

<sup>170</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* 5 (1963).

"moral" stigmatized, that implies that the bearer has a questionable personal integrity which is separate from the "biological" and "cultural" reputation categories. In that persons who have sociocultural prejudices aren't often blamed for their stigmas. In contrast to those who carry conduct stigmas, those who are stigmatizing (or were stigmatizing) in some way are more likely to be accepted by society as a whole. People with conduct stigmas, on the other hand, are viewed as lesser worthy of societal acceptability as seen by the disgrace they endure that they have rejected socially accepted conduct.

Due to the fact that the approach under which a stigma is "carried" either renders the holder "discreditable" or "disreputable," one should also analyze the implications of the particular shame and how marginalization or "attachment" of disgrace happens. In order to be considered "discredited," a person's stigmatizing feature must be known or "immediately visible to others." Conviction is associated with a very visible event, such as pleading guilty in open court or being found guilty after a criminal trial. Like most behavioral stigmas, ex-offender status is frequently "discreditable," meaning that it is either unknown to others or not immediately perceptible by them, despite the fact that it was affixed in a public forum.<sup>171</sup> The stigmatized individual is "discredited" at the time of the stigma's disclosure. As a result, the formerly convicted person must constantly work to avoid being discredited in her social relationships in order to escape the marginalization and shame that follows. Any belief that a person's reputation as an ex-offender cannot be repaired leads to more punishment.

This sort of punishment, like other collateral repercussions, goes well beyond end of any jail or other court-imposed punishment. On the other side, former crime status connection carries the same indelible mark as the customary incidental sanctions by non-judicial bodies agencies because of its formal, judicial nature. As a result of this official stamp, which is a governmental conduct, stigma attachment

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<sup>171</sup> Moore KE, Milam KC, Folk JB, Tangney JP. Self-stigma among Criminal Offenders: Risk and Protective Factors. *Stigma Health*. 2018; 3(3):241-252. doi:10.1037/sah0000092

and the subsequent reputational loss might be considered for takings analysis. A person's reputation can suffer if honorary degrees, dignified titles, and other titles of distinction are revoked. Forfeitures of this type are common in most jurisdictions, with the exception of a few, such as Denmark and Sweden. With relation to ex-offenders, status and identity mix to create the "master status" of "ex-offenders," which restricts liberty because of the collateral repercussions that that status has on all parts of life.

Status as an ex-offender also functions as a "negative credential" awarded by the criminal justice system on its bearer (or carrier).<sup>172</sup> Negative credentials, on the other hand, are "official indicators that restrict access and opportunity"—hence, they limit individual freedom. It is also essential to identify that because reputation is a "status property," and ex-offender status is a "negative credential,"<sup>173</sup> the continued attachment of bad reputation to one's name is a sign of one's possession of "de-propriety" of favorable status or the capacity to repair poor image after release from jail.

That both disclosure by judicial order of a legal verdict and the entry of the judgment into the criminal record can have an impact on an individual's social standing. When a convict was sentenced to public humiliation, he or she was sentenced to public humiliation by the publication of his or her sentence. As a result of a conviction for a serious offence, publication was often an automatic collateral punishment. Until recently, France had a law like this in place. Today, few would accept that the publication's main objective is to harm the convict's reputation.<sup>174</sup> It has become less common for criminal convictions to be made public because of this shift in legislation. In addition, the number of offences for

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<sup>172</sup> Devah Pager, *Marked: Race, Crime and Finding Work In an Era of Mass Incarceration* 32 (2007).

<sup>173</sup> Mitchell F. Crusto, *Blackness as Property: Sex, Race, Status, and Wealth*, 1 *Stan. J. C.R. & C.L.* 51, 64–65 (2005).

<sup>174</sup> Art. 36, French P.C. For Details, See *Donnedieu Vabres, Traité de Droit Criminel* Et D. Legislationpen Alec Omparee 39s 98, Paris (1947)

which a conviction can be made public has been considerably decreased. As a rule of thumb, the indictable offences that define the offense also specify yet if the sentence may also be disclosed.

These precise regulations demonstrate that if the offences involved imply improper business conduct, publishing is generally permitted (For example - Insolvency scam, product harmful byproducts, unlawful stockpiling of commodities, etc.). The intention to warn the public about the dangers of the market is frequently cited as an explanation. It's important to keep in mind that any potential benefit should be weighed against the reality that the publication will have the same practical effect as the seizure of a corporation and the implementation of job restrictions.

Consequences of a Conviction being recorded in a person's criminal record include Many people believe that this legal repercussion of a conviction is the greatest obstacle to a former offender's recovery. Convicts are haunted by information from their felony histories for rest of the years despite this, felony histories are quite significant and no one would argue that they should be abolished for a variety of reasons. For the record, steps are made to limit the dissemination of criminal record information. Two issues arise in this situation:

1. how much secrecy has been imposed on the record
2. Ex-offenders may be eligible to have their convictions wiped from their records under specific conditions.

Only such question of data confidentiality remained for debate, as this matter will be handled in conjunction with the lifting of severe limitations resulting from punishment.. Non-socialist countries face the key question of whether or not persons ought to have accessibility to their police record details. Access to criminal record information is available in all nations studied. Included in this category are the judiciary and law enforcement authorities at all times. Those rules don't apply outside of that circle.

Over one side of the scale, Swedish law eliminates all other authorities besides government lawyers, courts, as well as security services. West German "higher administrative authorities" can also obtain information from a person's criminal history.<sup>175</sup>

Danish law brings the organization for child protection services, academic and regulatory agencies, organizations for such maintenance of the mentally ill, postal law enforcement agencies, and rails to the body.

In France, only the "high courts" possess recourse to all offenses, but only a variety of some of the other government entities can receive data about some individuals' verdicts. Different governmental authorities and social and commercial entities are permitted under Yugoslav law to get data to public record, but they must demonstrate "sufficient justification."<sup>176</sup> If information is sought to determine if an individual is ineligible due to a felony, and this evidence is applicable to the investigation, the latter is evident.

#### **2.6.1.6 MILITARY MATTERS AND CRIMINAL RECORDS-**

The first Adverse Consequences with respect to military is Disqualification from Serving in the Armed Forces. This could be done in two ways in some countries, it is largely a holdover from the times when being a soldier was basically an honor rather than a duty. Consequently, the disqualification is technically conceived as a degrading punishment.

This is the case under French law in which the disqualification is incorporated in the larger punishment of "civic degradation." Rather than being disqualified from serving, some convicts are sent nowadays to special units. Exceptions will also be found in West Germany whose Statute on Military Duty of 1956 provides dismissal from the army and disability from serving as a consequence of certain convictions.

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<sup>175</sup> §32 of the Decree on Criminal Registration of 1934.

<sup>176</sup> Art. 776, Code of Criminal Procedure.

In Norway penal code, although labelled as a penalty, the disqualification resembles a non-punitive, protective measure imposed only if it appears to the judge to be in the public interest that a convict not serve in the armed forces.

The second consequences are namely Forfeiture of Military Decorations. This is a widespread consequence resulting from criminal judgments. "Loss of civic rights", in countries which still have that punishment on the books, often entails forfeiture of military decorations.<sup>177</sup> Sometimes the forfeiture of decorations is coupled (i.e., Greece) with the disability to acquire them in the future. In other countries, it is not technically a punishment contained in the criminal judgment, but rather a collateral consequence flowing from conviction.

Thus, under Yugoslav law, certain sentences carry forfeiture of military decorations by operation of law. However, decorations for valour in time of war are forfeited only in exceptional cases provided by statute. Important limitations on the power of courts to take away certain medals also exist in the Soviet Union. Swedish law does not provide forfeiture of decorations.

The third consequences turned into Forfeiture of Military Ranks. As with decorations, the lowering or deprivation of military ranks is in many countries involved in the loss of civic rights. This is the case in *Austria, Belgium, Columbia* and *West Germany*. The laws of some countries provide only for the deprivation, not the lowering, of military ranks. In others, forfeiture of rank is coupled with the disability to acquire it in the future. Sometimes forfeiture of military rank is coupled with dismissal from the armed forces.<sup>178</sup> In a great many countries, special military laws provide for an elaborate public ceremony in the course of which the soldier is stripped of his rank, the purpose being to emphasize the degrading nature of the demotion.

The Indian jurisprudence with respect to Military services before and after joining are similar in nature. The recruitment board shall always have the discretionary

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<sup>177</sup> Austria, Columbia, Egypt, France and Italy.

<sup>178</sup> Austria, Columbia, Egypt, France and Italy.

power to select a suitable candidate over a candidate who is having criminal charges. These services are highly decorative and seek commitment and character of praiseworthy. Whether or not someone with a misdemeanours record can join the Indian Armed Services depends on a number of factors, such as the type, number, severity, and Situations of the offense or offences on evidence, in addition to the date of execution some types of felonies and misdemeanours may not prevent a person from joining the military, even if they have been committed in the past. But people can't join the military if they've been convicted of certain crimes, like domestic violence, unless they've been "expunged." A mere act of misdemeanours before joining services must not ipso facto debarred a suitable candidates and whole the defendant's situations should indeed be properly considered expect if he is not charged with an offence of moral turpitude.

#### 2.6.1.7 RESTRICTIONS ON FREEDOM

In line with the thesis's limitations, the researcher here won't look at how prison sentences limit personal freedom, since Article 21 of the Indian Constitution can be limited by the doctrine of due process nor will the researcher talk about the different rules that convicts on probation or parole have to follow.

Instead, the researcher will focus on restrictions on freedom that last after the final discharge, such as police surveillance and limits on where people can live and where they can go. This rule was first put in place when there were absolute monarchies in Europe. At first, surveillance was given to people who couldn't be convicted because there wasn't enough evidence, but there was a strong feeling considering people likely acted responsible. After the hearing, no innocence or conviction was confirmed for these individuals. That lawsuit were recently stayed and they had to be watched by the police as another mandatory punishment. When the idea of "presuming innocence" became popular, police could only keep an eye on people who had been found guilty of certain serious crimes. Even though it could only do a few things, most European countries got rid of it around the turn of the century.

In Italy supervision by the cops is a safety mechanism and the Penal Code says that surveillance must be done to help the offender get back into society. This is, of course, what the lawmaker wants.

In Luxembourg, a judge can order police to keep an eye on someone for life.<sup>179</sup> Outside of Europe, Ethiopia, Egypt, and Israel are some places where police keep an eye on people.

Another rule that follows ex-offenders is that they can't live in certain places. In a lot of countries, like Austria, Columbia, Ethiopia, France, Greece, Italy, Norway, Portugal, Russia, Spain, Switzerland, Venezuela, West Germany, and Yugoslavia, it is still illegal to live (and usually also to show up) in certain places. This is less severe than being forced to settle there. Most of the time, the "prohibited zone" is determined by how far away it is from where the crime was done.

In Switzerland, A criminal breaking a law may be lost the freedom to survive in the "canton" where the crime was committed, unless it is his home canton. In some countries, the ban can only be put in place by the courts. In other places, It is enforced either by the judicial or state officials, or by both (e.g., Yugoslavia) It's often referred to as a penalty, as in Germany, Norwegian, Portuguese, Russian, and Spanish. Rarely, like in Ethiopia, Greece, Italy, and Yugoslavia, it is called a non-punitive measure.

Most of the time, it is a short-term rule in the modern world. In this way, Ethiopia is different because the court there can put a permanent ban on it. In most countries, the ban is a punishment in and of itself. In West Germany, however, the ban is only effective if police watch the area. The practical reasons for the ban have a lot to do with whether or not it can be justified. In some countries, it is used to get rid of undesirable groups of people (like prostitutes, vagrants, and other social parasites) without caring much about what happens to

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<sup>179</sup> Art- 36, P.C.

them in the new place. If they are banned from the big cities, they may have trouble getting jobs and may be shunned by the locals. On the other hand, the current restriction may have been put in place because people want to get rid of some things that lead to crime and stop people from doing it again. When the ban is paired with good aftercare, it means something very different. Still, even in this situation, many people say it doesn't work, and ex-convicts who expect to be completely free after a "final discharge" don't like it. Another important rule against ex-offenders is that they can't go to certain places in the same area. This legal restriction goes into effect after a person is released from prison for good. It is different from similar rules that apply to people on probation or supervised release. In Italy and Switzerland, the rule is highly restrictive and only applicable to establishments that provide beer and wine are sold. In Ethiopia, it is said in a much more general way. The measure will only last for a short time (e.g., one year in Ethiopia). Whether or not the current ban can be enforced, especially in a big city, is something to think about when deciding how important it is.

Some of the same rules are in place in Indian law, and excommunication is a form of punishment. Under these rules, if the Special Court is persuaded by such a petition or a charge sheet that because an individual is inclined to commit an offense in Part II of this Law in the future a "Scheduled Area" or "tribal area," as defined in Article 244 of the Constitution, it can direct that person to leave the area.<sup>180</sup> As such there is not much legislation on this kind of punishment conversely, Indian state had some excommunication social consequences in societal fabric but now it's removed mostly.

*The Prohibition of Social Boycott Bill* was passed by the Maharashtra legislature unanimously to stop the Additional entities such as caste and society village leaders threaten. Bombay Prevention of Excommunication Act was passed by the

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<sup>180</sup> Section 10 of The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, 1989

State government in 1949. Its purpose of protecting person's intellectual, political, and religious rights who had been kicked out of their own communities.<sup>181</sup>

Religion in India also has this kind of religious punishment such as In Islamic Law (Sharia), an individual or group may be branded kafir, meaning non-believer. Judaism allows the exclusion of an individual from religious community through the *Cherem*, a solemn ritual equivalent to excommunication. Hinduism, perhaps because of the multiplicity of traditions within it, and Buddhism, do not appear to subscribe to the concept of excommunication. However, banishment and singularly harsh punishment in Hindu society based on infringement of the laws of caste is pervasive and still practiced.<sup>182</sup>

#### 2.6.1.8 OCCUPATIONAL DISQUALIFICATION OF CRIMINAL RECORDS

The dire consequences of possessing a criminal history before entering into a government job has an invisible counterproductive effect as data and human psychology tends not to inputs those kinds of person who is having criminal antecedents. This labelling remark of so-called “criminal” makes virtually a person Impossible to acquire Govt. jobs. During input process the credibility, suitability and integrity of the candidates is questioned. The employability chances of ex-offenders are minimum due to this disability, **but research and study shows that Economic independency (Employment Whether govt. or non-Govt.) reduces the chance of recidivism.**

Recidivism and employment have a strong correlating factor between them because when an offender managed to get into a labour market which ultimately decreased the risk factor of recidivism. In many advanced nations like United States of America, United Kingdom, Nordic countries and few European

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<sup>181</sup> Susan Abraham, Bill against excommunication a welcome move The Hindu (2016), <https://www.thehindu.com/news/cities/mumbai/news/bill-against-excommunication-a-welcome-move/article8478149.ece> (last visited Jun 11, 2019).

<sup>182</sup> India Legal, Maharashtra: First to fight a battle against excommunication India Legal (2017), <http://www.indialegallive.com/constitutional-law-news/acts-and-bills-news/maharashtra-first-to-fight-a-battle-against-excommunication-31367> (last visited Jun 11, 2020).

countries are providing financial aid to fulfill basic needs for transiting back to their communities. 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.<sup>183</sup>

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 Misdemeanours/non-cognizable offences) past criminal records is erased through Expungement process the chances of getting jobs will improved (Employment of ex-offenders has constantly been identified as a key factor in resettlement and desistance from crime.

The offender's position, money, and social connections (all of which contribute to a law-abiding lifestyle) may improve, allowing for future rehabilitation.

There are few occupational disabilities which are attached to previous as well as subsequent criminal records. The researcher here tries to point out some of them. One part of this topic is the lack of the privilege to stand for election or disability to hold "Public office" differs per nation. Even within the same specific nation, the concept can have a wide range of impact. So, the researcher had to work with a pretty vague idea of what "public office" meant. In order to use the term correctly, it would be helpful to compare what "public office" means in different legal systems and figure out how to find a common ground. We will use the following definition of public office so that we don't have to talk about lying. Public office will include all state, municipal, and local jobs except those that are just clerical.

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<sup>183</sup> 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](http://www.igga.co.uk) (last visited MAY 22, 2020).

There may be two ways in which criminal convictions change the status of public officials. If they are found guilty, they could lose the job they have. Most likely, this will be a result of a conviction in every country. Again, being convicted can mean that you can't run for public office. There are many ways to lose the right to hold public office. It can be said in the judgment, it can be a side effect of the judgment, or it can be a punishment for breaking the rules.

In some countries, it is illegal to hold any kind of public office. People who agree with this total disqualification say that people who have broken the State's laws shouldn't be able to serve and speak for the State. As a practical matter, this means that the State sometimes won't hire the former convict for any important work. Occasionally, the jury has to give this broad disqualification, and sometimes he or she can choose not to. So that the researcher can get a better idea of how flexible different disqualification systems are, he or she will look at mandatory (like Polish) and optional systems separately.

It is critical to emphasize, though, that in many legal approaches both mandatory and optional disqualifications exist side by side. In many other countries, if you lose your civil rights, you also lose the right to hold public office. However, this is not because you were convicted of a certain crime, but because you were given a certain punishment. Argentina, Columbia, Egypt, France, Greece, Italy, Spain, and Switzerland are some examples. In France, the disability for serious crimes is always permanent, but in Argentina, Colombia, Italy, Poland, and Spain, it can be either temporary or permanent. West Germany has another type of mandatory imposition that doesn't involve giving up civil rights.

In India, the Prevention of Corruption Act of 1988 says that a public servant can be taken to court if he accepts, gets, agrees to get, or tries to get from any person, for himself or for anyone else, any gratification other than legal pay, as a reward or incentive for doing or not doing an official act, or for showing or not showing favor or disfavor to anyone while performing administrative work.<sup>184</sup> The same

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<sup>184</sup> Sec-7 of prevention of corruption act - 1988

act is in addition to and does not replace any other law that is in effect at the time. Nothing in this act is meant to protect public servants from any legal action that could be taken against them without this act. This includes actions that could lead to suspension or dismissal.<sup>185</sup>

The Money Laundering Prevention Act of 2002 and the Criminal Law Amendment Ordinance of 1944 can be used to seize and manage property that was gotten by breaking the PC Act. Section 441 of the Companies Act, 2013 ("the Act"), which has not yet been put into effect, has rules about how crimes can be fixed. The offences, which are punishable by fines, can only be fixed by the Regional Director (referred to as "RD" below) or the National Company Law Tribunal (hereinafter called NCLT). In other words, crimes that can only be punished with jail time or jail time and a fine can't be fixed, and the same thing could be used to get rid of a director under the Companies Act of 2013.<sup>186</sup>

The Chairperson can be kicked out of his job by an order from the Central Government if he is found to be acting badly or is unable to do his job, or if He has been found guilty and condemned to prison for a crime that, in the Central Government's perspective, shows moral turpitude.<sup>187</sup>

The Juvenile Justice (Care and Protection of Children) Act, 2015 gives similar reasons. No one can be chosen as a member of the Board if they have a history of breaking human rights or child rights, have ever abused a child or used child labour, or have done any other act that breaks human rights or is immoral nature.<sup>188</sup>

When someone is convicted, they often lose their public office. In legal systems where judges can give disqualifications this type of infirmity is frequently restricted to specific occupations. It is most commonly encountered in legislation

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<sup>185</sup> Sec- 28 of prevention of corruption act – 1988

<sup>186</sup> Sec- 169 Companies Act, 2013 and Companies (Management and Administration) Rules, 2014

<sup>187</sup> Section 7 of Commission for protection of Child Right Act 2005

<sup>188</sup> Section – 4 of Juvenile Justice (Care and Protection of Children) Act, 2015

that have to do with how judges are chosen or elected.<sup>189</sup> In different pieces of delegated legislation, it's not uncommon to find disqualifications.

In Yugoslavia, they can only be put in place by a federal law. From what we know, this is a very rare way that power can be limited. In legal systems where a judge doesn't have the power to remove someone from public office, statutory disqualifications, which are like side effects, can be very big. Numerous Israeli legislation provide an illustration. In England, the law says that you can't do a lot of things. Individuals accused of heinous acts can't hold a civil office under the Crown or work for the government. They also can't be elected to or serve in either House of Parliament. But, like most other British disqualifications, the broad one ends when the sentence is carried out. In Sweden, there are no reasons to be disqualified.

Losing the right to a pension should be mentioned along with losing the right to hold public office. The following countries were chosen at random: Argentina, Colombia, England, Greece, Italy, Norway, and West Germany. If a public official is found guilty of a crime, they could lose their pension. Nevertheless, punishment is relatively restricted in Norway. It can only be enforced on people who have committed of disorderly conduct during the five years before registering for pension. Furthermore, it appears that the executive's family receives the vintage payments.<sup>190</sup>

In India also some rules and laws are made which prohibits an employee to be benefitted from pension right and it can be denied. i.e. if No government worker who is the subject of departmental or judicial proceedings, as described in Rule 9 of the Pension Rules, before the date of his retirement, or a pensioner who is the subject of such proceedings after the date of his retirement, shall be able to convert a portion of his provisional pension, as allowed by Rule 69 of the Pension Rules, or his pension, as the case may be, while such proceedings are still going

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<sup>189</sup> Art. 48 of the West German Statute on Public Officers

<sup>190</sup> Les consequences de la condamnation penal, 28 RIDP 363 (1957).

on.<sup>191</sup> If a pensioner is found guilty of a serious crime or grave misconduct, the person in charge of giving out pensions can order that all or part of the pension be withheld or taken away, either permanently or for a certain amount of time.<sup>192</sup>

Disqualifications by licensing and regulatory legislation on Occupation is a disability arises out of criminal conduct and the law of the different nations prohibits by express legislations. Even inside the confines of a particular judicial process, the technical organization of invalidations is often very complicated. So, different kinds of disqualifications for the same job often exist in the same country, sometimes at odds with each other. These disqualifications may be imposed by different authorities for example Disqualifications caused by court decisions, the law of that country, administrative decisions, academic and industrial groupings, as well as the bankruptcy of a company location Most of the time, occupational disqualifications can only be put on people who had the job at the time of the commission. This is because the requirements for putting them on people, like abusing their job, mean that they can only be put on persons who worked during the time of the occurrence General provisions authorizing Several Mainland European nations have judges who can prevent people from working in certain occupations if they are accused of a felony. It is sufficient to include Greece, Italy, Norway, Portugal, Russia, Switzerland, and Western Europe, and equivalent laws can be seen beyond the Europe, for example, in Argentina, Columbia, and Ethiopia. Formally, rejection is frequently regarded as a penalty (e.g., in the Penal Codes of Argentina, Columbia, Greece, It only, Norway, Poland, Russia and Switzerland). It is a security precaution in Ethiopian, Yugoslavian, and West German legal statutes. The basic criterion for installation is the judge's determination of a nexus between a certain vocation and the violation performed. The codes' phrasing ranges from quite generic to highly detail. For example, the Russian Code allows for the enforcement of prohibition when "the judge decided it impossible to protect the criminal's right to practice a

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<sup>191</sup> Rule 4 of Central Civil Services (Commutation of Pension) Rules, 1981

<sup>192</sup> Rule 8 Central Civil Services (Pension) Rules, 1972

given employment owing to the sensitivity of the violence perpetrated by the defendant in his profession.<sup>193</sup>

"Additional prohibition established directly by legislation. The range of dismissals established explicitly by legislation in multiple countries is so great, and the intricacies of legislation so diverse, that establishing an entire list even for a specific jurisdiction would need to have a unique extensive research. The analyst can offer a thorough list of found rejections with our nation comparability in this case.

#### **2.6.1.8.1 BAR FROM THE PRACTICE OF LAW-**

In India, a person can't join the bar if he has now been convicted of an offence that involves moral turpitude, if he has been convicted of a crime under The Untouchability (Offences) Act, 1955 (22 of 1955), or if he has been fired or removed from a job or office by the state for a crime that involves moral turpitude.<sup>194</sup>

In Australia, the Supreme Court and the Admissions Board are in charge of who gets to be a lawyer. A prosecutor's Licensing Board or Federal Court, or the board itself, can initiate disciplinary hearings.

In most places in the US, a lawyer who has been convicted of a felony is automatically kicked out of the profession. The American Bar Association is against this policy, but it has been called a convicted criminal's "Just Desserts".<sup>195</sup> In India, a public notary officer is a public worker who could be fired by the government or because of a complaint. An investigation into a notary's wrongdoing can be started either by the government on its own or when Form XXII is received.<sup>196</sup> The result could be taking away the notary's license to work and making it impossible for them to work ever again.

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<sup>193</sup> Greece, art. 67, P.C. Italy, art. 30, P.C. Portugal, art. 70, 8, 5, P.C.; Switzerland, art. 54, Federal P.C.

<sup>194</sup> Section 24A - (Disqualification for enrolment) of ADVOCATES ACT, 1961

<sup>195</sup> Gentile, Michael A.; Mc Shea, Sarah Diane (1985-1986), Automatic Disbarment: A Convicted Felon's Just Deserts, 13, Hastings Const. L.Q., p. 433

<sup>196</sup> RULE 12-A OF THE NOTARIES RULES, 1956

#### 2.6.1.8.2 BAR FROM THE PRACTICE OF MEDICINE

The Regulations of Professional Misconduct in India list 24 things that are considered to be professional misconduct. This list is not complete, which means that the Indian Medical Council and the Medical Board Association might add other things to it that they think are "inappropriate."<sup>197</sup>The Medical Council of India could give doctors a code of ethics and standards for how they should act as professionals. Recommendations adopted by the Council under paragraph (1) may specify which offenses are prohibited of them are professional misconduct. These rules apply even if something else in a law that is currently in force says something different.<sup>198</sup>

It is important to mention section 14, which says that a person can't be considered a member whether he or she has just been proven guilty to jail for a crime involved moral turpitude<sup>199</sup> in the view of the Public Authorities the qualified healthcare therapist's names will be sent to the State Medical Council for any necessary action to be taken, such as suspending the registration until the case is over and removing his name from the Council's register for Five years to life in prison for its first offense and life behind bars for the next.<sup>200</sup>Similar jurisprudence is applicable upon bar from the practice of dentistry, veterinary science, Pharmacy and various para-medical professions.

#### 2.6.1.8.3 LOSS OF LIQUOR LICENSE

Alcohol is one of the most commonly used drugs that make people feel drunk all over the world. According to the Seventh Schedule of the Constitution of India, alcohol is on the State list.<sup>201</sup> The licensing policy to bar and seller of liquors are subjected to different delegated Legislation which works under excise

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<sup>197</sup> MCI - Code of Medical Ethics, Code of Medical Ethics for MCI | Medical Council of India Code of Medical Ethics (2011), <http://www.indiaeducation.net/apexbodies/mci/code.aspx> (last visited Jun 14, 2019).

<sup>198</sup> Section 20-a of the Indian medical council act, 1956

<sup>199</sup> Ibid

<sup>200</sup> Section 23(2) of pre-conception & pre-natal diagnostic techniques act, 1994

<sup>201</sup> Lalwani, s. Dogra, td. (2005). Legal aspects of drug abuse in India. In r. Lal (ed.), substance use disorder: a manual for physicians (pp. 181-189). New Delhi: national drug dependence treatment center, all India institute of medical sciences

departments. The cancellation of Bar and shop license could be done on different basis that is selling of liquor to underage (generally above 18 years but every state has its own age criteria).<sup>202</sup>No alcoholic drinks will be sold in bottles, and no excisable goods will be sold outside of the terms and conditions of a license given for that purpose.<sup>203</sup>

The State Government can tell the authority that gives a license, permit, or pass under this Act that it can be revoked or put on hold if the possessor has been accused of a felony that is punishable under this Act or any other law in effect at the time that has to do with revenue, or of a crime that is punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985.<sup>204</sup>Has a good moral character and no criminal history.<sup>205</sup> Besides, No one who has been given a license under this law can ask for it to be renewed or ask for money if it ends or isn't renewed.<sup>206</sup>

The Cable & TV Network (Legislation) Reform Act, which was passed, effect on September 8, 2000, made it illegal to advertise alcoholic drinks in India. Private channels often let companies that sell alcohol advertise in other ways, like by selling the brand name of soda, water, or music.<sup>207</sup> In India, each state has its own Excise laws and a similar philosophy, with the exception of the Dry States, where alcohol is completely banned.<sup>208</sup>

Assuming that, as a matter of general criminal policy, criminal convictions should only be used to disqualify someone from a job if they have something to do with the person's ability to do the job, judging these automatic disqualifications

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<sup>202</sup> Section 22 and section 55 of the Rajasthan excise act, 1950

<sup>203</sup> Section 21 of the Rajasthan excise act, 1950

<sup>204</sup> Section 34 (d) of the Rajasthan excise act, 1950

<sup>205</sup> Section 13 (C) The Delhi Excise Act, 2009

<sup>206</sup> Section 37 of the Rajasthan excise act, 1950

<sup>207</sup> Supra

<sup>208</sup> Assam Excise Rule 1945), The Chhattisgarh Excise Act, 1915, The Dadra And Nagar Haveli Excise Regulation, 2012, The Goa, Daman And Diu Excise Duty Act & Rules 1964, The Goa Excise Duty Act And Rules, 1964, Jammu And Kashmir Excise Act, 1958, The Bihar & Orissa Excise Act, 1915.

depends on how well you know how they are put in place. For example, it is important to know if the disability comes from being convicted of certain crimes or getting certain punishments. Even if the crime was a sex offence, it's hard to see why a person who was sentenced to hard labour should automatically be disqualified from doing things like cosmetic depilation. This particular occupational disability seems fairer if it's because of a sex offence. In general, however, it seems like automatic occupational disability is only a good idea in a very small number of situations (e.g. Employment demanding public confidence or incurring risk). Most reasons for being disqualified from a job should be looked at on their own merits, and people should try to avoid being automatically disqualified.

The study of criminal records shows some other effect on occupational disqualification such as Disqualification from the insurance and brokerage business, bar certain persons from specific banking positions The bar normally only applies to public employment, such as those in Belgium and Israel, although it also applies to any job in a bank, like in France, Not being able to hold top positions in private companies (e.g., France, Belgium) Not being able to serve on the boards of businesses (Yugoslavia and India) One disqualifier is not being able to run hotels, nightclubs, or places of entertainment ( e.g., France) It is against the law to sell goods and services as a business owner or an employee (e.g., France) Not being able to trade with other countries (e.g., Yugoslavia) Bar from engaging In instalment selling deals (e.g., Belgium) Physical therapy can no longer be done (e.g., some Swiss cantons).

#### **2.6.1.8.4 ADMINISTRATIVE DISQUALIFICATIONS OF CRIMINAL RECORDS-**

Most of the time, administrative authorities make decisions that keep people from doing their jobs. Most of the time, the latter don't have the power to regulate specific jobs, so their decisions about occupational disabilities are usually based on different laws in the Lex loci. In order to start a job, you may need permission from the government. The permission comes in the form of a license, a franchise,

or a spot on a list of professionals. Good moral character is the best way for a person's beliefs and values to be, according to society.

In U.S. law, a person's good moral character can be judged by either how many good things they do or how many bad things they do. Scholars, jurists, courts, administrative agencies, and legislators have all talked about whether a person's good moral character depends more on the person doing the judging or the person being judged. However, no one has come to a clear answer.

Good moral character can be judged by the law based on *truthfulness, believability, dedication, reliability, human decency, dignity, candidness, flexibility, strict adherence of trustee, regard for another's' privileges, lack of hate and violence, fiscal prudence, cognitive and social consistency, practitioner criteria such as screaming and shouting to uphold the rule of law and the law, and the absence of a misdemeanor record*<sup>209</sup>

Teachers, nurses, doctors, lawyers, barbers, people who sell alcohol, pharmacists, and many other professionals need licenses from the state to do their jobs. To get a license to work, you have to meet the regular non-moral requirements, like the number of years you've been in school, and also show the state board that you're a good person.<sup>210</sup>

The laws of Norway, Switzerland, and West Germany as an example. Only those with "excellent image" can be given the authority to perform surgery, dental, animal science, pharmaceutical, exercise rehabilitation, physiotherapy, property investment and financial sector trading, accountancy, and legislation in Norway." It is also needed to get a liquor license and a license to run a hotel.

Under Swiss federal law, you need to have "good moral character" to run a "gaming establishment," sell insurance, or sell alcohol. The same formula is often

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<sup>209</sup> Roy F. Baumeister (2018). Graham, Jesse; Gray, Kurt James (Eds.). Atlas of moral psychology. New York: The Guilford Press. p. 334. ISBN 9781462532568. OCLC 1019835254.

<sup>210</sup> Rhode, Deborah L. (1985). "Moral Character as a Professional Credential". The Yale Law Journal. 94 (3): 491-603. Doi: 10.2307/796236. JSTOR 796236.

used in cantonal law as well. So, the Canton Vaud makes licenses for optometrists, ski instructors, and pedicurists depend on "good moral character."

The Regulation of Professions in West Germany provides a comprehensive list of vocations for which the regulatory board might decline to issue a permit to somebody who doesn't "influence motivation." There are permissions to operate a nursing facility or pool area, to teach dancing, diving, or acrobatics, to operate or own a flea market or second-hand business, to sell scratch cards, to operate or own an intelligence agency, and so on sometimes the laws that deal with licenses are more detailed. There are different levels of flexibility given to administrative authorities. On the one hand, there are rules like Article 57 of the above-mentioned West German Code of Occupations, which says that convictions mean a travelling salesman's license must be taken away. If the law talks about "grave failings"<sup>211</sup> or "crimes involving moral turpitude," the administration has more freedom. So, in West Germany, people who have also been tried and convicted by a grand jury of "severe failures" are not allowed to work in the medical, dental, or pharmaceutical fields. The Norwegian Statute on Commercial Activities and Crafts gives people even more freedom to use their own judgment. Under changes made in 1953, if the person applying for the license has been sentenced to prison, the license should be denied if "the facts on which the judgment is based indicate that the applicant is likely to relapse into crime."

In some cases, the rules for entering a certain job require the applicant to show a certificate of good conduct. In this case, anyone with a conviction can be turned away from a job. Some Swiss cantons, like Valais, and parts of Norway, like the "entrepreneur's" license, have this kind of licensing rule. As we've seen, a law can say directly that someone can't do a certain job. But it is usually paired with administrative exclusion from the job. In general, if an administrative agency has the power to give out licenses, it also has the power to take away licenses. Norwegian law, on the other hand, is not balanced. Even though doctors,

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<sup>211</sup> E.g. § 3 of the Statute on Physicians of 1961.

dentists, pharmacists, and veterinarians get their licenses from administrative authorities, only a court can take away their licenses.<sup>212</sup>

*The Austrian Penal Code* has a provision that is interesting. Under Section 30, the court must communicate a replica of the decision to the licensing agency certain situations after making a decision. The latter will then decide if the conviction means the license should be taken away.

In French law, it has been found that administrative authorities can exclude the most people. If someone is found guilty of tax fraud, an administrative agency can stop them from "carrying on any industry or commerce or practicing any profession."<sup>213</sup> However, it appears that somehow this rule is hardly used in practice.

#### 2.6.1.8.5 DISQUALIFICATIONS IMPOSED BY PROFESSIONAL AND OCCUPATIONAL GROUPS:

Academic and industrial organizations are frequently granted the authority to make decisions what qualifications are needed to join and what standards must be met to be kicked out of the group.

In France, a candidate for admission to the bar must have never been convicted of a crime. This is decided by the executive council of the Lawyers.<sup>214</sup>

In some Swiss cantons, people with a criminal record won't even be allowed to take the bar exam.

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<sup>212</sup> "It is interesting to note that symmetry exists with respect to the legal profession. Practice of law in Norway depends on the license issued by the administration, and administrative authorities can revoke the license. Thus, the legal profession is more dependent on administrative authorities than the medical and paramedical professions. The reverse is true in France, where disqualification for legal practice can only be decided by professional bodies, whereas disqualification from the practice of medicine can be ordered by extra-professional authority"

<sup>213</sup> Statute of April 14, 1952.

<sup>214</sup> A student of comparative law will note that we are dealing with the "avocats" and not with other branches of the French legal profession.

In Yugoslavia, the professional governing body of the bar decides if a person is "morally suitable" to be on the list of lawyers. Of course, not all convictions will keep people from getting in.<sup>215</sup>

Many countries have laws that are very similar. If a professional or occupational group has the power to let someone into the job, it usually also has the power to keep someone out of the job, either permanently or temporarily. Usually, the so-called "disciplinary procedure" comes before an exclusion. In this study, the researcher can't get into the details of how disciplinary law works. It's enough to give just a few examples.

In France, lawyers who commit professional misconduct can be kicked out of the bar for good by the executive council of the Lawyers' Guild (which, of course, may include criminal convictions). The same is true for doctors and nurses.

In Canada, the professional governing bodies for architects, accountants, and engineers all have similar powers. In France and Yugoslavia, some university bodies can kick a student out for bad behaviour and sometimes keep him from enrolling for a while. Student misconduct includes certain criminal convictions.

#### 2.6.1.8.6 CLOSING OF THE PLACE OF BUSINESS:

If someone is found guilty of a crime involving the illegal use of a certain occupation, the court or the administrative authorities can order the place of business where the crime happened to close. Sometimes this measure is paired with a ban on a certain job, so the owner of the business can neither run it himself nor sell it to someone else.<sup>216</sup>

Closure by judicial order was temporarily suspended in France in 1933, but it was swiftly reinstated. However, it is currently quite restricted. Some companies may be closed for appealing, and pharmacists may be closed for actions that threaten

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<sup>215</sup> Yugoslav Statute on the Advokatura of 1957.

<sup>216</sup> Article 335, §2 of the French P.C.

health of the public. This petition may be shutdown. The government (generally the authorities) can arrange a temporary ban throughout many situations. Organizational completion is often used in West Germany,<sup>217</sup> and it is highly probable that governmental closure exists in most nations. The federal court will usually conclude the matter. Apart from Europe, it finished in Ethiopia's Criminal Code.

#### 2.6.1.9 ADVERSE AFFECTS ON LAND, AGREEMENTS, INHERITED WEALTH, COMMUNITIES, AND LEGAL PROCEEDINGS

##### 2.6.1.9.1 MANAGING ONE'S ESTATE:

People who have been convicted are severely unable to do this in countries that still use the French idea of "legal interdiction."<sup>218</sup> Because of this ban, the law treats convicts in a way that is similar to how it treats people who are legally insane. They can't make contracts, sell or give away property, sue or defend themselves against a claim.<sup>219</sup> Shortly, they lose the right to manage their own property, and a guardian is put in charge of them. But they can still use their rights as family members and claim their inheritance. Most countries that still have the law don't let the inability last after the person gets out of prison. Even so, the widespread incapacity is hard to explain based on how we think about prisons today. It is also not a necessary part of being in jail. So, it shouldn't be a surprise that it's been getting a lot of harsh criticism lately.<sup>220</sup>

Another French idea, called "*twofold incapacity to freely transfer and acquire property*,"<sup>221</sup> makes it hard for convicted people to do many things. If a convict has this disability, he or she can't take property for free, whether it's given to them or

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<sup>217</sup> Schone & Schroder, *Strafgesetzbuch* (12th ed., Munchen, Berlin, 1965), commentary to § 42 L.

<sup>218</sup> An interdiction is a legal process where a court is asked to determine, from testimony and other evidence presented, whether a person is unable, due to an infirmity, to consistently make decisions regarding his person and/or his property, or to communicate those decisions.

<sup>219</sup> In Belgium and Luxembourg, they can make a valid will (Article 22, P.C.).

<sup>220</sup> Resolution (62)2 on electoral, civil and social rights of prisoners passed by the Council of Ministers of the Council of Europe [Recommendation no. 195 of February 1, 1962].

<sup>221</sup> For countries with the twofold incapacity, see the historical part of the present study.

passed on to them through a will or not. He also can't give away or will away his property without a reason. Wills made before being unable to make decisions are not valid. Life sentences always make people unable to do these things. But if the sentence is changed, the incapacity may last after the person gets out of prison. Even in the few countries that still have "two-fold incapacity" as a legal child of civil death, it has been criticized. Just the fact that it affects the prisoner's family is enough to show that it is not in line with modern criminal policy.

#### 2.6.1.9.2 INCAPACITY WITH RESPECT TO INHERITANCE:

Some of the effects of a conviction can make it hard to inherit. Most of them are pretty limited and make sense now. So, under the laws of succession in most civil law countries, if the person who died was convicted of a crime, they are "unworthy to succeed." This means that they can't get anything from their will or if they died without a will. Sometimes, very broad words are used to explain why someone can't work.

For example, Russian law makes it illegal for "anyone who has promoted the inheritance through illegal acts against the deceased or any of his heirs" to do so.<sup>222</sup> Austria,<sup>223</sup> Czechoslovakia,<sup>224</sup> and Poland<sup>225</sup> all have Civil Codes that talk about a "criminal offence" against the dead. West-German, French, and Swiss laws are more specific.<sup>226</sup> Only people who have been found guilty of killing or trying to kill the decedent are considered to be unable to do so. West German law adds forgery of the will to the list of reasons for incapacity.<sup>227</sup>

The Yugoslav law on inheritance also says that people who left the country to avoid being found guilty of a serious crime are not fit to take over. A crime conviction is another reason why the so-called compulsory portion could be taken

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<sup>222</sup> Article 531, Civil Code.

<sup>223</sup> Section 540.

<sup>224</sup> Section 469.

<sup>225</sup> Article 928.

<sup>226</sup> German Civil Code, § 2339; French Civil Code, Article 729.

<sup>227</sup> Section 2339, No. 4 Civil Code.

away.<sup>228</sup> So, the testator could take away from some relatives what the law says is their share of the estate. In this case, offences against the testator are not the only reason.

Polish law says, in a broad sense, its connection with "flouting social values" can be loss of their privileges share by the testator.<sup>229</sup> Yugoslav law lets people lose their inheritance if they are found guilty of crimes against the testator, his spouse, children, or parents, or some political crimes.<sup>230</sup> Only people who are sentenced to life in prison or twenty years in prison can be left out of an Austrian will.<sup>231</sup>

Under the regime of Indian personal laws, In Hindu law, according to Section 25 of the Hindu Succession Act of 1956, a person who commits murder or helps someone else commit murder is not allowed to inherit the dead man's property or other assets linked to the continuation through something he or she executed or aided conduct crime.

Section 27 of the Hindu Succession Act says that if someone isn't allowed to inherit property because of the law, it will be treated as though the individual had died prior to the joint estate. That shows that a person who kills someone through whom he wants to inherit property is not eligible to do so. This means that he will be seen as having died before him. When Section 25 and Section 27 of the Hindu Succession Act of 1956 are read together, they make it impossible for a murderer to inherit a person's estate. In the Act's "objects and reasons," the people who made it talked about the Privy Council's decision that a murderer shouldn't be seen as the start of a new line of descent, but as non-existent. That means that the person who killed the person can't be connected in any way to the estate of the person who died.<sup>232</sup>

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<sup>228</sup> On the concept of compulsory portion, see Pianiol & Ripert, *Traite Elementalre De Ijroit Civil*, 12th ed., Vol. 3, Pt. 2, no. 3047 [Engl. transl. by the Louisiana State Law Institute].

<sup>229</sup> Article 1008, Civil Code.

<sup>230</sup> Article 47, Statute on Inheritance.

<sup>231</sup> Section 768, Civil Code.

<sup>232</sup> *Swami Shradanand Judicial Custody Prisoner Vs. Gauhar Taj Namazie and Others* - AIR 2017

**2.6.1.9.3 DONATIONS:** *If a contributor is found guilty, he or his succession may be able to cancel a contribution.*<sup>233</sup>

**2.6.1.9.4 Terminations of contracts:** *(d) Possession of certain offenses may give the organization the right to terminate the job offer. This consequence of judgment has only been discovered in Greek law.*<sup>234</sup>

**2.6.1.9.5 MARRIAGE:**

A criminal record can often affect the marriage. The most common legal effect is that it gives a reason to get a divorce. Most of the time, the reason is a must, the jury has no alternative but to approve the divorce.

A punishment for a major crime is grounds for divorce under French law.<sup>235</sup> There are similar laws in Belgium, Italy, Japan, and Norway, among other nations.<sup>236</sup> The Yugoslav National Act on Marital relationship is more explicit, stating that only verdicts for political offenses or crimes misdemeanours, but also penalties place over three years, constitute marital unfaithfulness. However, certain provisions do not specify that a felony prosecution of a partner nullifies the union is a reason to get a divorce.

For example, the West German Statute on Marriage talks about "violations of marital duties that cause irreparable disruption of marriage" in a very general way.<sup>237</sup> But German doctrinal and judicial authorities have all agreed that one of these "violations of marital duties" is a crime.<sup>238</sup> Conviction of a crime can also be a reason to end a marriage. So, to use Yugoslavian law as an example, if one spouse didn't know the other had been convicted of a crime at the time of the

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<sup>233</sup> Austria, Civil Code §948; France, Civil Code Article 955; Poland, Civil Code Articles 898–99; West Germ any, Civil Code §530.

<sup>234</sup> 29 RIPD 83 (1958).

<sup>235</sup> Article 232, Civil Code.

<sup>236</sup> "The stigma flowing from condemnation to a serious penalty falls indirectly upon the spouse of the convict. It is proper that this spouse, thus affected by the unworthiness of the convict, should be able to obtain the rupture of the marriage and have nothing more in common with such a spouse."

<sup>237</sup> Ibid

<sup>238</sup> Bietzke, Familienrecht 105, Munchen, Berlin (8th ed., 1959).

wedding that can be a reason to get the marriage overturned if it causes problems in the marriage. Only a conviction for adultery is the last thing that could happen to a marriage after a conviction.<sup>239</sup> If two people are found guilty of adultery, they may not be able to get married again. This Roman marriage rule was put into the Napoleonic Code,<sup>240</sup> but it was taken away in 1904. A few Civil Codes still have it.<sup>241</sup>

In India, the conviction of a crime ipso-facto does not constitute the ground of divorce in Hindu law. It can be a ground of mental cruelty<sup>242</sup> and desertion or non-enforceability of conjugal rights or Rape<sup>243</sup> or under section 498-A.<sup>244</sup> Muslim personal law provides the ground of divorce on the conviction of husband<sup>245</sup> or under Parsi law<sup>246</sup>.

#### 2.6.1.9.6 PARENTAL POWER:

Even though each jurisdiction is set up differently, most allow judges to order that parents lose their rights if they are convicted of certain crimes.<sup>247</sup> If the crime is against the child or involves another breach of parental duties, the forfeiture seems fair, as long as it is not automatic. But some countries go further and allow forfeiture even when the crime has nothing to do with breaking parental duties.

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<sup>239</sup> Article 45, Fundamental Statute on Divorce.

<sup>240</sup> Article 298.

<sup>241</sup> Greece, Article 1363; Mexico, Article 156; West Germany, §6 Statute on Marriage; etc.

<sup>242</sup> If an extramarital relationship of a man causes serious domestic discord between the married couple, then he can be convicted for causing mental cruelty to his wife under Section 498A of the Indian Penal Code (IPC) and sentenced to imprisonment.

<sup>243</sup> The following are the grounds for divorce in India on which a petition can be filed only by the wife. 1) If the husband has indulged in rape, bestiality and sodomy.

<sup>244</sup> Section 13. Grounds of divorce under Hindu Marriage Act- 1956

<sup>245</sup> Dissolution of Muslim Marriage Act, 1939, a Muslim woman can seek divorce on the following grounds for divorce in India. 3) The husband has been under imprisonment for seven or more years.

<sup>246</sup> India included in the Parsi Marriage and Divorce Act, 1936 and the amendment of the same in 1988.8) Sentenced to prison for seven years or more

<sup>247</sup> As to the various systems of deprivation, see Spain (Article 43, P.C.); West Germany (Article 1676, Civil Code); Japan (Article 834, Civil Code); Greece (Article 1525, Civil Code); Russia (Article 31 of the Code of 1926, now superseded by the Code of 1960); Switzerland (Article 53, Federal Penal Code); France (Article 61 et seq., statute on the forfeiture of parental powers). In France, the convicted husband can also forfeit the father's preponderance in the exercise of parental power (Article 213, Civil Code)

So, the Swiss judge's power is not limited to taking away parental rights when the crime involves not doing what parents are supposed to do.<sup>248</sup> Even if there was no such violation, the court can still suggest to the guardianship authority that parental rights be taken away if the judge thinks the parent is "not fit" to be a parent.

Article 43 of the Spanish Penal Code says that the punishment of "civil interdiction" takes away parental rights in a way that is very strict and harsh. The conviction may have nothing to do with whether or not the person is fit to be a parent. In contrast, the reality that a convict may not even be able to serve as a parent should always result in the establishment of a provisional guardianship, as is the situation in certain regions. Most of the time, the welfare agency, the guardianship authority, or the family courts make the decision to take away parental rights. Criminal courts have the power to order forfeiture as an extra punishment sometimes.<sup>249</sup> But the later systems seem to be left behind more and more.

#### 2.6.1.9.7 GUARDIANSHIP:

In terms of family relationships, losing the right to be a guardian is another thing that makes someone unfit.<sup>250</sup> In regions like France, Greece, Spain, Switzerland, and West Germany, this is because civil rights were taken away. Often, it is not part of this broad penalty and is not even part of criminal law. It is instead set by family law laws and decided by guardianship authorities or family courts.

In India, there isn't a direct link between a guardian being convicted of a crime and the guardianship being taken away. In guardianship, the child's best interests come first, and anyone who does something that could hurt those interests or hurt the child's property will be kicked out.<sup>251</sup> The court will decide if the

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<sup>248</sup> Article 53, P.C.

<sup>249</sup> Columbian P.C., Article 45; Russian P.C. of 1926; Spanish P.C., Article 43; Swiss P.C., etc.

<sup>250</sup> Both civil law forms of guardianship (tutorship and curatorship) may be affected.

<sup>251</sup> *ibid*

guardians are capable of caring for and having charge of the kid. In accordance with Section 19 (a) & (b) of the Guardians and Wards Act of 1890, it is essential to ensure that the spouse and the child's father are suitable guardianship. Authorities would ensure that the guardians have stepped on from their majority ruling to entrust the child's welfare to others.<sup>252</sup>

In Islamic law, parenthood is sometimes referred to as "Hizanat"<sup>253</sup> It simply means to supervise or care for the youngster during his or her minority. The biological parent of a child is often the father, his administrator, or the kid's grandpa. Parenting differs from custodial. It simply depends on the physical ownership of a juvenile under a specific age. The origins of Muslim paternal law are the Quran and a few Hadis.

#### **2.6.1.9.8 FAMILY COUNCIL:**

In places that have something called a "family council," Individuals who have now been found guilty frequently cannot participate in council deliberations or votes.<sup>254</sup>

#### **2.6.1.9.9 CAPACITY TO SUE AND DEFEND AGAINST A CLAIM:**

In the past, this ability was often lost or put on hold. Since the time of reform in the 1800s, it has happened very rarely as a result of a conviction. Convicts have the right to go to court today, whether they are in jail or not. He can act on his right through a representative if he is not able to do it himself. We won't run into this out-of-date way of doing things very often. It is a natural result of the "legal prohibition" during incarceration and can be found in all old countries that still

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<sup>252</sup> Jijabhai Vithalrao Gajre v. Pathankhan and others AIR- 1971 All 248.

<sup>253</sup> Disqualification of the Hizanat

- (a) She leads an immoral life, has committed criminal offence
- (b) She neglects the child;
- (c) Felony;
- (d) If he is unfit as regards external circumstances.

<sup>254</sup> On the family council see PLAMOL & RIPERT, *op. cit.* supra notes 243, Vol. 1, Pt. 2, No. 1770. "The disqualification to deliberate and vote in the family council can be found in the penal codes of France (Articles 34, 42), Greece (Article 1622), Spain (Article 43) and West Germany (34). However, in some of these jurisdictions' family councils are practically obsolete"

have this broad inability to manage one's estate. Aside from that, Switzerland was found to have problems with how things were done. Some Swiss cantons' laws say that people who can't work must lose their civil rights.<sup>255</sup>

#### 2.6.1.10 DISQUALIFICATIONS AFFECTING PARTICIPATION IN THE LEGAL PROCESS:

Numerous regions don't let people who have been convicted of a crime do certain jobs in the judicial system. Some of these things have already been taken into account. Since judges are public officials, losing the right to be a judge has been talked about when talking about deprived of the ability to occupy government position.<sup>256</sup> Exact same thing includes public prosecutors<sup>257</sup> and some court workers (clerical personnel, execution officials, etc.). Bar ineligibility have already been addressed in relation to organizational dismissals. Consequently, only such functions in the enforcement of the law that are independently of government position and the practice of the practice of law survive for evaluation.

##### 2.6.1.10.1 LAY PARTICIPATION IN THE ADJUDICATORY PROCESS:

In modern court cases, lay people can take part in two different ways. One is the jury system, in which a group of ordinary people decides what happened. The other is known by different names, but we'll call it the system of lay assessors. In this system, the lay assessors and the professional judge talk about both the law and the facts before making a decision. So, there will be rules in different countries that keep people from serving on juries or as lay assessors.<sup>258</sup> Sometimes, both systems were used in the same country.

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<sup>255</sup> E.g., Article 2, Statute on Civil Procedure of the Canton Geneva.

<sup>256</sup> "Therefore, in some legal systems only disqualifications from public office are mentioned. However, other systems, in dealing with disqualifications, specifically refer to judgeships (e.g., Austrian P.C. in §26). Some countries inserted in their public employee statutes or statutes dealing with court organization, specific provisions that persons convicted of certain crimes cannot even be candidates for positions on the bench" (e.g., Israel, Japan, and Yugoslavia).

<sup>257</sup> "In most civil law countries, public prosecutors, though legally trained, need not be members of the bar. Thus, exclusion from the bar does not ipso facto render a person ineligible for the office of public prosecutor"

<sup>258</sup> "A difficulty arises from the fact that in some countries, due to the process of legislative inertia, some lay panels are called juries, even though they were transformed into panels of lay assessors (e.g., France and West Germany). The reader with a common law background

Wide-ranging statutory language can sometimes be used to figure out when lay people can't take part in the adjudication process. But you can often find specific mentions of lay judges (jurors or assessors). Sometimes, a person can't vote because the court took away their right to do so after they were convicted.<sup>259</sup>

Under Ethiopian law, a court can decide to keep a person from being an assessor if they have been convicted of a serious or repeated crime.<sup>260</sup>

Under Yugoslav law, you can't be a lay assessor if you've been convicted of a crime involving moral turpitude.<sup>261</sup>

A law that is based on the French Penal Code and says that losing civil rights means losing the right to serve on a jury is very common.<sup>262</sup>

It occurs underneath the laws of several nations such as *Swiss* cantons,<sup>263</sup> and under the Penal Codes of *Belgium*,<sup>264</sup> *Greece*,<sup>265</sup> *Italy*,<sup>266</sup> *Luxembourg*<sup>267</sup> and *Monaco*.<sup>268</sup>

There would be connections to both the judiciary system and the assessorship process, as certain locales utilized both. This is the situation with Austrian law, which still employs a genuine court, and Norwegian legislation<sup>269</sup> which also uses a jury system.<sup>270</sup>

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should therefore beware of equating each civil law jury with the jury in the common law system"

<sup>259</sup> The Norwegian Statute on Court Organization

<sup>260</sup> Article 122, P.C.

<sup>261</sup> Fundamental Statute on Courts of General Jurisdiction, Article 13.

<sup>262</sup> Under Article 34 of the French Penal Code, the loss is a permanent and mandatory consequence of the imposition of certain prison terms, while under Article 42 it is only temporary and optional.

<sup>263</sup> The Statute of the Canton of Geneva on Criminal Procedure, Article 216

<sup>264</sup> Article 31.

<sup>265</sup> Article 31.

<sup>266</sup> Article 28.

<sup>267</sup> Article 31.

<sup>268</sup> Article 35.

<sup>269</sup> Statute on Court Organization.

<sup>270</sup> Statute on Court Organization.

In West Germany, if you can't run for public office, you can't serve on a jury or as an assessor. For the purposes of criminal laws, holding a public office is seen as a part of the judging process. Disqualification is either an automatic result of some punishments<sup>271</sup> or an extra punishment that can be chosen.<sup>272</sup> No disqualification for jury or assessorship exists in *Sweden* and the *Soviet Union*. Both countries seem to rely on the judgment of the voters.

#### 2.6.1.10.2 TESTIMONIAL DISQUALIFICATIONS<sup>273</sup>:

In the past, people who were found guilty of certain crimes were not allowed to testify at all. Today, it's safe to say that most countries in Europe and Latin America, as well as most modern laws in Africa and Asia, don't disqualify people from testifying about their crimes. But some countries with civil law still have a number of old laws that are left over from when people couldn't testify at all.

Countries whose criminal laws are based on the Napoleonic Penal Code are an example of a country with outdated laws. Under this Code, when a convict loses their civil rights, they are either unable to testify for good or for a short time. This harsh rule is lessened by the fact that the convict may be able to give "mere information," which is not technically the same as testimony.<sup>274</sup>

This kind of government exists in Belgium,<sup>275</sup> Egypt,<sup>276</sup> and, of course, France. Greece<sup>277</sup> has the same rule when it comes down to it. In this case, a person's loss of civil rights doesn't stop him from being able to testify, but it does stop him from being able to testify under oath. The Greek Code of Civil Procedure also

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<sup>271</sup> Section 31, P.C.

<sup>272</sup> Sections 33 & 35, P.C. The reader will remember that the German jury should not be equated with the common law one.

<sup>273</sup> "Also included in this section are disqualifications for rendering expert testimony. Although civil law lawyers sharply distinguish between "experts" and "witnesses", both can be treated together for the purposes of the present study. The reader must also be reminded that there is in Continental systems no exact counterpart of impeachment of witnesses. Thus some problems that convictions present for impeachment purposes in American jurisdictions (see, e.g. *State v. Blevins*, 2 CrL 2502) do not arise in civilian legal systems"

<sup>274</sup> Articles 34 & 42, P.C.

<sup>275</sup> Article 31, P.C.

<sup>276</sup> Article 25, P.C.

<sup>277</sup> Article 221, Code of Criminal Procedure.

has a rule that says the person who has been deprived of his civil rights can't testify at all if the interested party wants to.<sup>278</sup>

These old laws that are still on the books are easy to criticize. A person's credibility as a witness is not necessarily affected by the fact that he or she has been convicted of certain horrible crimes or sentenced to certain harsh punishments. A former convict could be a valuable source of evidence, and if he or she isn't allowed to testify, it could hurt the state or other people who want to hear what they have to say.

Even the Napoleonic Code, which knew this, came up with a way to get around this problem. It doesn't stop the convict from "simply telling" the court, which is the same as giving testimony without taking an oath and is common in many parts of the world. How does this old rule affect things in the real world? Under the Continental rule of free evaluation of evidence, the court can give "mere information" as much or even more weight than sworn testimony. So, the convict's credibility as a witness is not hurt in any way. In reality, the disqualification, which was meant to be a punishment, just means that the convict doesn't have to take an oath and can't lie.

Much less likely to be criticized is the part of West German law that says you can't testify under oath if you've been convicted of lying.<sup>279</sup> This is because it only happens in some cases. This is a permanent disqualification. At least in this case, the prohibition is related to the verdict that resulted to it. Anything discussed regarding eyewitnesses in normal is also applicable to eyewitness testimony. In nations with evidentiary variety of causes, specialists also receive them.

#### 2.6.1.10.3 OTHER DISQUALIFICATIONS:

Reading through codes and laws shows that there are sometimes other things that make it hard to take part in the legal process. The Austrian Penal Code<sup>280</sup> says

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<sup>278</sup> Article 324, sub-Section 8.

<sup>279</sup> Section 161 P.C., § 393, No. 2, § 452, Code of Criminal Procedure

<sup>280</sup> Section 26.

that people who have been found guilty of serious crimes can't represent parties in front of public authorities. This disability affects a lot more than just getting into the bar. Both the Greek Penal Code and the Code of Criminal Procedure say that a person who has been convicted can't be a court-appointed interpreter.<sup>281</sup> The West German Rules Of court Law says that people who have been convicted may not be able to serve as arbitrators.<sup>282</sup> The Polish Criminal Code<sup>283</sup> uses a very broad formula that takes away "all rights to participate in the administration of justice" from people who are convicted of certain crimes, most of which are political crimes. No matter how broad this formula is, it doesn't include not being able to testify and not being able to sue or be sued.<sup>284</sup>

#### 2.6.2- SOCIAL CONSEQUENCES OF CRIMINAL RECORDS-

The worst thing about the criminal system is the accompanying disgrace with getting out. This kind of discrimination opposing race promotes it hard for them to get back into society, especially in the job market. Men make up a big part of the prison population, which hurts the stability of families. Social stigma is a problem that many people who have been in prison face today. One reason they can't change for the better is because of the labels that have been put on them. In other terms, the societal prejudice with which ex-offenders must cope and makes them less likely to change for the better. This is because they have a bad reputation and people think they won't do anything good in society.

Most likely, these things would lead to people being left out of the group. People who have been in prison won't find it easy to get out. Just having the label "ex-

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<sup>281</sup> Articles 226 & 234.

<sup>282</sup> Section 1032.

<sup>283</sup> Article 45.

<sup>284</sup> In many codes and statutes, one can find, as a consequence of criminal conviction, an incapacity to be a witness to "public acts" (e.g., legal documents like wills, etc.). See Austria, § 26 P.C.; Ethiopia, Article 122, P.C.; France. Articles 34, 42, P.C.; Poland, Article 956, Civil Code; Switzerland, Article 52, Federal P.C.; etc.

convict" will keep them from being a part of society.<sup>285</sup> It is usual in our culture to consider persons who have been in prison as dangerous or violent when they first meet them. But people should think about what being locked up really means. People say that a correctional institution helps rehabilitate prisoners in order for them to be valuable members of society upon completion of their imprisonment.<sup>286</sup> If people knew this, they might change how they think about and treat a former prisoner. Many people who used to be in prison said that they have been left out of society ever since they got out.

There are problems, like getting back to their families or getting jobs. Also, the longer the sentence, the longer they were incarcerated, the more probable it is that they will be rejected by the community toward which they formerly belonged. In other respects, they had degraded and ceased to serve any purpose.<sup>287</sup>

Recidivism is another important issue for people who have been in prison. When ex-convicts come back into society, they are often treated badly and don't feel welcome. This makes it likely that they will commit the same crimes again. They are treated unfairly in school and the workplace, and they may even be cut off from their own families and judged unfairly by society. Social rejection is frustrating and makes life hard for people who have been in prison. In addition to their effects on the economy, criminal convictions have a wide range of societal impacts these characteristics are experienced most deeply in intimate friendships, when bringing up children, and in social circumstances. In the past decade, people have been able to find more and more criminal records online, which has made the social effects of criminal convictions much worse.

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<sup>285</sup> 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* (ed. J. Petersilia & K. Reitz), Oxford University Press, 2011.

<sup>286</sup> Lynch, J. P., & Sabol, W. (2001). *Prisoner re-entry in perspective*. Washington, DC: The Urban Institute.

<sup>287</sup> Pager & manza, *Social Acceptance of Ex-Convicts and Finding Meaning in Their Life* Essay - 8976 Words study mode (2012), <https://www.studymode.com/essays/Social-Acceptance-Of-Ex-Convicts-And-Finding-1134514.html> (last visited Mar 20, 2021).

### 2.6.2.1 ONLINE CRIMINAL RECORDS-

Digital criminal records stand out because of how wide they are, how detailed they are, how easy they are to get, and how long they last. People's full names, booking photos, and arrest records can be posted online before they are charged with or convicted of a crime. As long as the Internet is around, these records will stay online. People like these sites because they can provide them with access to high quality crime data. This makes people feel as though they are reducing violence even though they don't have to deal directly with the criminal justice system.

Even though In the United States, prior convictions have all been publicly available information for a long time, it wasn't until recently that they were easy for most people to get.<sup>288</sup> For a criminal background check, People were frequently required to submit requests in person or electronically, which might require weeks or months to accomplish. This occurred when official entities (such as judges, cops, and jails) and commercial businesses began posting and transmitting content regarding convictions and crimes available on the internet. So, access to information about criminal records has grown a lot in the last 20 years.

Today, a simple Google search for a probationer's name will often bring up anything from authentic "Mugshot"<sup>289</sup> photographs to original case records such as accusations, sentences, and results, as well as demands to pay for further in-depth investigations. With more people being able to get access to criminal record information, a whole online industry has grown up to spread it. Most of the time,

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<sup>288</sup> Steven Raphael, *Improving Employment Prospects for Former Prison Inmates: Challenges and Policy*, in *Controlling Crime: Strategies and Tradeoffs* 521, 521 (Philip J. Cook et al. eds., 2012); Christopher Uggen, *The Effect of Criminal Background Checks on Hiring Ex-Offenders*, 7 *Criminology & Pub. Pol.* 367, 368 (2008); Michael A. Stoll & Shawn D. Bushway, *The Effect of Criminal Background Checks on Hiring Ex-Offenders*, 7 *Criminology & Pub. Pol.* 371, 372-74 (2008);

<sup>289</sup> What Is a Mugshot? MUGSHOTS, <http://mugshots.com/faq.html> (last visited Oct. 20, 2019) "It's an Investigation. It isn't an accusation nor an admission. Regardless of case resolution, the arrest (or other incident with the law) has happened, and a booking photograph was taken. This by itself is true and factual and this is what a Mugshot represents. It does not represent a case resolution, guilty plea, or not guilty plea."

these sites post all information, even if a case was dropped or the defendant was found not guilty. So, even the smallest Collaboration with the legal resulting into a photo and charges being posted online for a long time, if not forever. The stated goal of many of these sites is to keep people safe." For some of these sites, this might be the only thing they do. But most of these sites also try to get money from their users by charging people who want to get rid of their records.

For instance, Mugshots.com<sup>290</sup> charges \$399 to get rid of a Mugshot. This fee, however, is only requesting the removal of one arrest record from the internet. To delete one's complete police history from several websites, one must spend that much money toward each page or millions to an internet profile management firm. Even then, the content is probably to reappear on a new website. Also, some Mugshot sites go way beyond the supposed goal of "public safety" by calling people "hotties," "hunks," or "bad babes" or making fun of them with "Darwin awards." People are clearly made into objects, dehumanized, and humiliated in this way for business reasons. Significantly, such portals are not subject to any provenience, therefore they will penalize you to remove incorrect or horribly researched content.

Digital records that are easy to access have grown out of and been used in a number of important situations. One is the concurrent astronomical expansion of the judicial system as a push for open access to government data that has been digitized and is easy to share. Another reason is that criminal records are being used in more and more situations to judge morality and character. If you do a Google search on potential employers or landlords, you could lose your job or your place to live. Its simple thing to claim that the entire system has to be overhauled, but it wouldn't we all be intrigued if our toddler's caretaker had an easily accessible felony conviction?

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<sup>290</sup> "Mug-Shot Industry Will Dig Up Your Past, Charge You to Bury It Again". Wired. Retrieved February 28, 2020.

Police agencies maintain their own web records and endeavor to maintain them accurate but a lot of the information that is available to the public has already gotten onto unofficial websites that are not monitored. A simple, unofficial search on the Website may reveal a felony conviction uploaded on a local crime monitoring webpage, or a background investigation provider may only reveal a portion of a felony conviction under a barrier. Again, your colleague, a partner, or the parent of your child's beginning of the academic classmate may discover this information because a simple arrest, which might not even lead to charges, shows up online with a registration picture. This photograph and incident history may be republished on a Facebook account, a social blogging, or in a major newspaper crime report column.

Private companies also buy these data in bulk, and their sites are often paid to be at the top of a Google search. We need to change what we mean when we say someone has a "felony conviction" to encompass all forms of documentation resulting from any involvement with the legal system.<sup>291</sup> According to experts, police record investigations are frequently employed for recruiting which backs up the idea of rehabilitation justice. In some countries, like the UK, these checks tend to show not only convictions but also police information like arrests, warnings, and acquittals. In other continental European countries, on the other hand, employer records often reveal just offenses. **The researcher agrees with the idea that police records like arrest records should not be made public because it goes against the right to privacy and According to the European Court of Human Rights, there is a probability of innocent.**<sup>292</sup>

Talking about Indian Context the "*Age of information and data combined*", Nicholas Dirks says that we have been living in what he calls an "Ethnographic state," where facts about us are collected and made about us over and over again. Through our birth and mortality certificates to our academic records, the

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<sup>291</sup> Sarah Esther Lageson, Digital Punishment's Tangled Web, 15 Contexts, 22-27 (2016)

<sup>292</sup> Elena Larrauri, Are Police Records Criminal Records? 22 European Journal of Crime, Criminal Law and Criminal Justice , 377-395 (2014)

majority of our important matters, our income records, our health allowances, and our nationality, the majority of us have been recorded and reside in the database. In addition to investing, many corporate telecommunications companies such as banking, universities, health insurers, and telecommunications companies also maintain information about all of us. Different regulations demand that documentation be preserved of actions carried through under their control, and there are entire agencies devoted to this task just to keep these records. So, for example, the Registration Act says that different books must be kept that list documents that have been registered under the Act.<sup>293</sup>

Once a document has been registered under this Act, it becomes a public document. State Rules usually have rules that let the public get materials can be copied all for a price. In the same way, a number of laws, which usually deal alongside state-level land registry, contain excellent features for the public to gain access to them because of a charge. Even if there are no ways to get records from the law itself, there are still two ways for the public to get them.

First, the Evidence Act permits judges to view any government agency's documents. Second, under the Right to Information Act, private persons have access to records maintained by governmental agencies. Each of these options is discussed in further depth below. Section 74 of The Indian Evidence Act-1860 define "Public Documents"<sup>294</sup> to include Files comprising the conduct, or registers of the deeds - Of the supreme authority, Of Government entities and the Courts, and of police authorities, lawmaking, adjudicative, and executive, of any significant chunk of India, the Federation, or a neighboring country.

The second issue that must be posed is, "What about public materials stored in any state?" It is evident from this definition that the majority of government

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<sup>293</sup> Section 52 of the Registration Act 1908

<sup>294</sup> Section 74 of the Evidence Act, public documents are the documents forming the acts or records of the acts of the sovereign authority, official bodies and tribunals, and of public offices, legislative, judicial and executive of any part of India or of the commonwealth, or of a foreign country.

records are considered public papers. Section 76 specifies that any public official "in possession of a public document that any person has a right to examine" must provide a copy of the document to anyone who requests it, together with a certification that the replica is an authentic duplicate of the documents or a section of the content.

Since such Evidence Act does not specify who could be considered to have " a right to inspect," this has all been understood to suggest that when the ability to investigate and make copies is not explicitly given by a legislation, it does not exist "the extent of such right depends on the interest which the applicant has in what he wants to copy, and what is reasonably necessary for the protection of such interest". So, only people who have a real interest in the matter, either personally or financially, can get copies of these records.

In addition to The Evidence Act-1872 you can also get copies of documents through as "any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information about any private body that a public authority can access under any other law in force at the time." Section 8 (j) of the Act exempts "*disclosure of personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual*" unless the relevant authority "is satisfied that the larger public interest justifies the disclosure of such information".

In the 2008 case *Mr. Ansari Masood A.K. vs. Ministry of External Affairs*,<sup>295</sup> the Federal Communication Council determined that this was the fact. "Details of a passport are easily made available by any person in a number of situations, such as to travel agents, at airline counters, and when proof of residence is needed for phone connections, etc." Because of this, giving out information about a passport

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<sup>295</sup> CIC/OK/A/2008/987/AD dated December 22, 2008

cannot be considered an unjustified intrusion into an individual's confidentiality. For this reason, Section 8(1) (j) of the RTI ACT-2005 does not exempt passport information from disclosure. This is true even though the Passport Act itself doesn't let any documents be shared under any circumstances. But the Right to Information Act isn't as easy to use to break privacy rules as this case might make it seem. On many occasions, the RTI internal disciplinary authority has supported the rejection of data depends on confidentiality. The most infamous instance occurred when an applicant inquired about the "religion and faith" of Sonia Gandhi, the then-president of the strongest governing party in India. The High Court of Punjab and Haryana and the Central Information Commission, which is the highest court for RTI appeals, both agreed that the information should not be given because it would invade her privacy in an unwarranted way.

When private companies give out personal information about people without their permission, it seems like the same idea of "public interest" would apply. Without getting too deep into the issue, it would suffice to discuss one of the most significant cases pertaining to it. A man sued a hospital in *Mr. X vs. Healthcare Z*<sup>296</sup> because they told his fiancée that he had HIV without his knowledge. This caused them to call off their wedding. The Supreme Court said that the hospital did not break any privacy laws because the information was shared to protect the public interest. The court ruled that patients have a duty to keep their information private, but that privacy and security are not guaranteed. Instead, it is "subject to such action as may be lawfully taken to prevent crime or disorder, protect health or morals, or protect the rights and freedoms of others."

The interpretation of the word "Police record" means the history of a person which includes some conviction for crime. This kind of information is available to public and can be asked under RTI Act of 2005. Police record or criminal record of a person is maintained with National Crime Record\_Bureau at the Central record. Also, this information is present with the State Crime Record

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<sup>296</sup> AIR - (2003) 1 SCC 500

Bureau for respective states. This data is in computerized form and can be accessed all over the country on different systems. Such a system ensures that these records remain accessible to the person seeking it. Other than this, details of a police complaint and FIRs filed to Police Stations across the country are also available under RTI.

In the case of *Shri Rahul Kumar Goyal v. Delhi Police*<sup>297</sup> In this case, it was clarified that all documents like - Police complaint copies, Statement of parties involved, Police inquiry report are available under RTI and come under the definition of record. These records are Government property and are available to RTI applicants. So, the status of Police records in India is of public records and it could be easily got by the general public.

“THE REAL QUESTION TO BE PONDERED UPON IN THIS SECTION IS WHETHER THE RIGHT TO KNOW UNDER RIGHT TO INFORMATION ACT - 2005 BY GENERAL PUBLIC VIOLATES THE RIGHT TO PRIVACY OF EX-OFFENDER WHO HOLD THE RIGHT TO BE FORGOTTEN AND ESPECIALLY IN PRESENT ERA WHERE RIGHT TO PRIVACY IS A FUNDAMENTAL RIGHT.”<sup>298</sup>

In this research, the researcher wants to talk about how Article 8 of the European Convention on Human Rights (ECHR) was interpreted in the landmark case of *MM v. United Kingdom*.<sup>299</sup> Article 8 of the European Convention on Human Rights protects an individual's beliefs and concerns as part of his or her private life. According to the Court, publishing government info such as penalties threatens to interfere with private life. The Court is founded on two perspectives. First, according to European law, verdicts constitute "private confidential documents" (also called "sensitive personal data") and should be protected by laws about how information can be collected, stored, and shared. The right to privacy protects personal information, even if it's about things that a person has done in public. Second, the Court says that the right to a private life isn't just

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<sup>297</sup> Case No. CIC/SS/A/2012/003232

<sup>298</sup> Justice K.S.Puttaswamy (Retd) vs. Union Of India And Ors. on 24 August 2017

<sup>299</sup> ECHR 6-Oct-2010

about keeping secrets or being close to people; it also includes "the right to meet and get to know other people." Though India is not the signatory to ECHR Still these kinds of interpretation would support the idea of real rehabilitation.

#### 2.6.2.2 RELATIONSHIPS

The fact that online records are so widely available also has less formal social effects. Online arrest or conviction records make people look like criminals for the rest of their lives. Because these online records have so many different and widespread effects, they are hard to measure. For example, when dating, people often look internet for details about their actual or potential intimate relationships. According to a recent survey, 47 percent of single people who go on dates do research on internet dating services. In this case, an arrest conviction is relevant can make it hard to find a partner for the same reason it can make it hard to get a job or get into school: it can limit the number of people who could be potential partners. This is also a good way to meet new friends, coworkers, and acquaintances.

For instance, the Father of a children playmate may be hesitant to let a person with a felony record to oversee their children. As a result of their records, persons with criminal histories are more socially ostracized. While we all have a strong desire to understand about the previous behaviour of our knowledge on prospective romantic partners might arrive at a tremendous societal cost. A corpus of convincing victimology research indicates that the absence of secure and supportive family ties is strongly associated with future criminal behaviour. Online activities are associated with corrections violations, as well as heightened criminality and recurrence to the degree that they incite or amplify fear of persons with criminal histories.

A criminal conviction has severe repercussions that may be challenging to conquer. Several recently incarcerated persons are entitled to a chain of legislative action set sanctions after their release. These penalties, referred to as invisible

punishments,<sup>300</sup> were not enforced by the magistrate at conviction and are hardly comprehended by the common people.

Obviously, the consequence of the age of heightened incarceration is experienced very directly by the vast numbers of people who are now jailed, who strive to adjust to incarceration, establish social connections, anticipating their freedom, and face the discrimination with becoming a "ex-con." The immensity of this obstacle is evident. The bulk of incarcerated men and women come from poor neighborhoods with limited prospects and resources. Compared to the general population, the jailed population is significantly disadvantaged in terms of educational attainment, access to adequate health care, and legal work possibilities. Compared to the general population, jailed persons have lower levels of reading, lower high school graduation rates, and less postsecondary educational experience.<sup>301</sup>

Having a criminal record if coupled with poverty and neighborhood condition may have a devastating effect on future criminality as well. Family's socialization institution may very well be the community, but still the relatives doesn't really exist separately. People are embedded in a broader social framework that may either promote or inhibit family achievement.

The social setting in which a family is entrenched has a significant impact on the family's capacity to fulfil its socialization role. This framework includes social institutions including the economy, government, religion, and neighborhood or community. The beliefs, policies, and integrity of these social institutions have an inescapable effect on the performance and effectiveness of families. Unfortunately, there is substantial evidence that children who grow up in poor households are at a higher risk for a number of negative developmental outcomes, such as behaviour issues and delinquency. Poverty tends to have a disruptive influence on the

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<sup>300</sup> Travis, J. (2002). *Invisible punishment: An instrument of social exclusion*. In M. Mauer & M. Chesney-Lind (Eds.), *Invisible punishment: The collateral consequences of mass incarceration* (pp. 1-36). New York: New Press.

<sup>301</sup> Crayton, A., & Neusteter, S. R. (2008, March 30). *The current state of correctional education*. Paper presented to the Re-entry Roundtable on Education, New York.

quality of parenting, and this is one of the primary reasons why poverty increases a child's likelihood of engaging in deviant behaviour. Several studies have found that economically stressed parents give less assistance and supervision, as well as more inconsistent and severe discipline, than more affluent parents.<sup>302</sup>

#### 2.6.2.3- CHILDHOOD DELINQUENCY AND ADULT CRIME

Research indicates that antisocial behavior in adolescents is one of the strongest predictors of aggressive behaviour in adults. Youngsters who are violent and rebellious in middle school are at chance for youth violence and adult crime. The beginnings of an immoral adulthood life seems to have been formed throughout a person's developmental years, according to this study. It is extremely rare for a person who was a perfect kid and teenager to act aggressively as an adult. Clearly, there is no perfect association between adolescent mental problems and adult antisocial conduct. Numerous young troublemakers evolve into responsible adults. So, what explains the relationship among previous and current illegal wrongdoing? There are two extremely divergent approaches on aggressive behaviour across the lifecycle in the field of criminology.

According to Gottfredson and Hirschi's theory of self-control,<sup>303</sup> consciousness differences are set by age 10 and remain largely stable. It is considered that family upbringing styles and, to a minor extent, psychology are the primary determinants of an individual's self. Individual differences in aggressive behaviour across life are attributed, according to this theory, mostly to factors such as self-levels.

Sampson and Laub's (1990) The continuity theory, on the other hand, proposes that the consistency of sociopath over the course of a lifetime is due to delinquent acts in initial phases of development that destroys connections and behaviors that

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<sup>302</sup> Brody, G. H., Ge, X., Conger, R. D., Gibbons, F. X., Murry, V. M., Gerrard, M., & Simons, R. L. (2001). "The influence of neighborhood disadvantage, collective socialization, and parenting on African American children's affiliation with deviant peers." *Child Development*, 72, 1231-1246.

<sup>303</sup> Gottfredson, M. H., & Hirschi, T. (1990). *A general theory of crime*. Stanford, CA: Stanford University Press

are essential sources of supervision in later life. In addition to identifying the process that explains the persistence of sociopath, life path theory makes it very clear and circumstances that serve as pivotal moments, permitting victims and survivors of sociopath to adopt more conventional lives. In other words, the purpose of sociologists who study the life span is to describe both patterns of change in sociopath.

Childhood behaviour difficulties, according to Sampson and Laub (1990)<sup>304</sup> They enhance the chance of juvenile delinquency by weakening ties to relatives, conventional friends, and teachers. In response to a student's disapproval and defiance, parents generally reduce their surveillance and discipline efforts. In addition to raising the probability that a child would suffer underachievement, a grossly negligent personality increases the possibility that he or she might struggle in education.

Furthermore, typical friends have an inclination to reject confronting kids, which enhances the possibility that they could still join a delinquent friendship circle. Uninhibited by family limitations, disinterested in schoolwork, and inspired by a criminal circle of friends, these disruptive kids graduate through adversarial behaviors to more serious risky sexual behavior. Due to its destructive influence on family, school commitment, and friend connections, delinquent behavior in infancy leads to criminality.

#### 2.6.2.4 PARENTING

A rap sheet or criminal past may also inhibit mothering skills. The consequences of a felony conviction, especially imprisonment, are significantly more devastating and terrible. A disturbed family characteristic, such as poor parental monitoring of children, is commonly explored as a potential cause for juvenile criminality or criminality, and it is believed that youngsters from such homes are at a greater risk or are more likely to be criminals. When the contrary occurs, such as a

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<sup>304</sup> Sampson, R. J., & Laub, J. H. (1990). Crime and deviance over the life course: The salience of adult social bonds. *American Sociological Review*, 55, 609–627.

children growing up in a healthy and supportive environment, investigators often regard to these characteristics as "defensive" factors, since they increase a child's endurance and serve as barricades against by the start of criminal participation despite adverse conditions. It is also possible that familial variables interact with other elements in a manner that is difficult for researchers to disentangle.<sup>305</sup>

According with research, youngsters with delinquent parents had a 2, 4-fold higher probability towards becoming felons than youngsters without unlawful families. After controlling for other factors, such as economic factors, number of dependents, teenage childbearing, family conflicts, educational status, and childhood abuse, the risk that a child with delinquent parent would violate the law maintained 1.8 times higher.<sup>306</sup> The highest incidence rate would have been between parent and child, accompanied by mothers and brothers, father figures and girls, and eventually fathers and brothers. The main duty of the parent in raising children or the nonattendance of the dad, such as those in single family homes or circumstances under which the dad is imprisoned, are plausible reasons. In moreover, women exhibit illegal acts less frequently than men, which complicates things of these mothers and the progressively of illegal activity. The investigators, however, provides no descriptions for this. Over than 50 per cent of all imprisoned men and women are parents. Youngsters are negatively affected by parental conflict, which necessarily separates the caregiver from the child for a period of time.

The effects of parental imprisonment are long-lasting and intergenerational, affecting not just the inmates but also their children and communities. In many instances, parental participation does not cease with imprisonment. It is possible for parolees and individuals with criminal histories to lose custody of their children and/or have their parental rights revoked by the state. In many places,

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<sup>305</sup> Derzon, J. H. (2005). Family features and problem, aggressive, criminal, or violent behaviour: A meta-analytic inquiry. Unpublished manuscript. Calverton, MD: Pacific Institutes for Research and Evaluation.

<sup>306</sup> Sytske Besemer, A systematic review and meta-analysis of the intergenerational transmission of criminal behavior, *Aggression and Violent Behavior* (2017). DOI: 10.1016/j.avb.2017.10.004

imprisonment alone is sufficient to terminate parental rights, although in others, incarceration is a significant element in determining parental rights.<sup>307</sup>

In certain processes related, a guilty verdict can lead to a loss of custody responsibility even in the absent of incarceration. A family's responsibilities may be revoked in Georgia if the sentence "has a demonstrated bearing on the performance of the caregiver relationship." In custody hearings, which usually center on judgments on the best interests of the nation, felony prosecutions are acceptable.<sup>308</sup>

The Gluecks discovered that troublemakers were far more probable to have irresponsible families. Additional study corroborated the Gluecks' conclusions, showing that rebellious teenagers are more likely to have dishonest or fraudulent families. Robins found that a child's rebellious behavior was associated with 1) individual imprisonment of one or even both parents and 2) a background of delinquent behavior on the parents part in a study of the family of black miscreants in St. Louis. Young kids with two jailed parents were at an extremely heightened risk for criminality.<sup>309</sup>

Typically, aggressive parents raise violent children.<sup>310</sup> Conflict and violence between their parents is more likely to have been observed by violent kids. In 2011, According to the National Sample survey of People's Victimization, 22% of children had suffered abuse in their families, institutions, and societies, and 1 in 12 had watched a member of the family assaulting another in the preceding year.<sup>311</sup>

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<sup>307</sup> Child Welfare Information Gateway, U.S. Children's Bureau, Grounds for Involuntary Termination of Parental Rights (Sep. 2019), available at <https://www.childwelfare.gov/PDFs/groundtermin.pdf> (detailing grounds for the termination of a parental rights).

<sup>308</sup> Tamar Lerer, Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System, 9 *Nw. J. OF L. & Soc. POLY'* 24, 37 (2013).

<sup>309</sup> Kevin N. Wright and Karen E. Wright, "Family Life and Delinquency and Crime: A Policymaker's Guide to the Literature," prepared under interagency agreement between the Office of Juvenile Justice and Delinquency Prevention and the Bureau of Justice Assistance of the U.S. Department of Justice, 1992.

<sup>310</sup> Candace Kruttschmitt, Linda Heath, and David A. Ward, "Family Violence, Television View Habits and Other Adolescent Experiences Related to Violent Criminal Behaviour," *Criminology* 24, (1986): 235-267.

<sup>311</sup> Child Trends, "Children's Exposure to Violence" (2013). Available at <http://www.childtrends.org/?indicators=childrens-exposure-to-violence>.

Exposing children to parental aggression are often the most like to commit serious violent crimes by becoming "powerful and flexible" offenders - those conducted in a range of offenses, such as robbery, forgery, and drug consumption. Victims of violent crime are more willing to initiate violent crime again among these youths. Males who have suffered sexual harassment or assault are the most violent offenders. In these socially disordered neighborhoods, domestic violence is merely one of the key contributors to teenage violence. The neighborhood (which includes the youth's violent friends and is often based in their own dysfunctional homes) is also a significant factor, particularly in terms of violent delinquency.

For the majority of typical youngsters, attending school is their first significant move into the larger community. This initial experience, however, propels future offenders the progression of misbehavior and criminality. As a result of their parenting skills, many youngsters are already angry and violent. Normal, emotionally connected youngsters shun them, alienating and rejecting them in the process.<sup>312</sup> Consequently, they seek out companionship somewhere, in a company where they experience a sense of belonging.

As stated by Ronald Simons, professor of sociology at Iowa State University, writes, "*Ineffective parents produce aggressive first graders who are rejected by their peers and as a consequence must form friendships with other deviant youth.*"

Likewise, Gerald Patterson of the Oregon Social Learning Centre says: "*Poor social skills, characterized by aversive or coercive interaction styles, lead directly to rejection by normal peers.*"

Patterson, the foremost authority in this field, also notes that peer rejection is typically associated with inefficient parenting: "Specifically, early parent failures

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<sup>312</sup> Dan Olweus, "Stability of Aggressive Reaction Patterns in Males: A Review," *Child Development* 53, (1982): 1431-1446. L.R. Huesman, M.M. Lefkowitz, L.D. Eron, and Leopold O. Walder, "Stability of Aggression over Time and Generations," *Developmental Psychology* 20, (1984): 1120-1134.

correlate to subsequent skill deficits." There is a substantial correlation between parental problem-solving abilities and indicators of academic ability and peer relationships.

James D. Roff, professor of psychology at Eastern Michigan University, concluded in a research of 1,224 grade schoolboys that the youngster at most risk of becoming a criminal "was characterized by violent behaviour in the setting of peer rejection."<sup>313</sup>

Future criminals, cut out from their peers' group, seek for individuals with whom they feel at ease. These pals are similarly angry and aggressive youngsters with whom they feel comfortable and are welcomed. Thus, the Company encourages its own violent behaviour and opposes more the conventional conduct of usually interconnected youth. Continual disruption at home, ongoing use of harsh regulation by caregivers, and prolonged absence of a parent all relate to the escalation of hostility among these lawbreakers. Every next essential aspect on the path to habitual crime is involvement with deviance, practically both of whom have similar familial and paternal backgrounds.

### **2.6.3- CIVIC CONSEQUENCES OF CRIMINAL RECORDS**

Criminally accused people, especially those sentenced to prison. Offences, face collateral repercussions that limit or ban a vast array of kinds of civic engagement. State-by-state, these consequences include prohibitions on voting, jury duty, handgun ownership, and military service. Certain of these implications, like the right to vote in several regions, but not in others. In way of comparison, the large

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<sup>313</sup> James D. Roff, "Identification of Boys at High Risk for Delinquency," *Psychological Reports* 58, no. 2 (1986): 615-618. A three-step screening procedure identified, from a sample of 1,224 grade school boys, a subsample of 60 subjects at increased risk for delinquency. Peer status, childhood aggression, and pre-delinquent behaviors were used in a sequential set of predictive tables. Relative improvement over chance provided a measure of predictive efficiency.

proportion of other restrictions, such as certain aspects of serving in the military, are not imposed by the government duty, are permanent."<sup>314</sup>

#### 2.6.3.1 FELONY DISENFRANCHISEMENT (LOSS OF VOTING RIGHT)

The terminology felony disenfranchisement (or, more accurately, misdemeanor electoral disqualification) leads to the reduction of the ability to vote for incarcerated persons and discharged former who have also been sentenced of certain specified offenses, although not exclusively crimes.<sup>315</sup>

In Western nations, criminal imprisonment may be traced all the way back to ancient Greek and Roman formalities: exile was often imposed as additional punishment for "heinous" criminals, as portion of their "social burial.," wherein they lost all rights and property claims. The majority of mediaeval common law countries created penalties for offenders that involved banishment society, spanning from instantaneous sentencing to ejection from communal proceedings.

Since its implementation in colonial America, felony disenfranchisement has been widespread throughout the United States.<sup>316</sup> This tactic has been especially detrimental to racial minorities, whose capacity to exert political influence has been diminished. Independent of the legislative history, proponents of felony disenfranchisement depending on a pragmatic or redistributive theory of penalty, consider banishment a valid kind of incarceration. Thus, advocates of disenfranchisement say that it would prevent future criminal activity and is a legitimate punishment for violating society standards. Finally, disenfranchisement upon conviction of a crime is recommended as a measure to safeguard "ballot purity." Advocates of discriminatory practices assert that it prevents convicted

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<sup>314</sup> Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585, 586-87 (2006);

<sup>315</sup> Voting Rights Act of 1965.

<sup>316</sup> Human Rights Watch, and the Sentencing Project. 1998. "Losing the Vote: The Impact of Felony Disenfranchisement Law in the United States." Available from <http://www.hrw.org/reports98/vote/>.

individuals from advancing fraudulent ideologies through voting and minimizes the possibility of fraudulent voting.<sup>317</sup>

Other nations, like as the United Kingdom, have adopted the notion of disenfranchisement. The limitations on Section 3 and 3A of Representation of the People Act of 1983<sup>318</sup> govern the election system in the U.K. Inmates who are convicted of a crime are prohibited (including those sentenced by courts-martial, those felony at large from such sentences, and those committed to psychiatric institutions as a result of a criminal court sentencing process).<sup>319</sup> Social offenders convicted (for free of fines or disobedience, for example) including those on probation who have not yet been sentenced maintain the right to vote. Several European countries, notably France, Germany (reinstated after 2–5 years), and the Netherlands, allows disenfranchisement by court order. In a number of other states, there are no electoral disenfranchisements due to felonies. In addition, several European nations encourage citizens to vote by facilitating early voting in locations other than the actual election sites. This frequently involves pre-voting opportunities for convicts within the institution. This is the situation in Finland, for instance.<sup>320</sup>

At the period of Australia's Unification, the Commonwealth Franchise Act of 1902 severely restricted the electorate. "tainted with treason or convicted of a crime punishable by one year or more of imprisonment"<sup>321</sup> In 1983, this prohibition was lifted, and convicts serving sentences of less than five years for crimes punishable by law were permitted to vote. Throughout 1995, suffrage of prisoners was constrained to those serving terms of five decades or over, regardless

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<sup>317</sup> Lippke, Richard. 2001. "The Disenfranchisement of Felons." *Law and Philosophy* 20 (6): 553–580.

<sup>318</sup> Representation of the People Act 1983 (c. 2) – Statute Law Database". [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk). Retrieved 2010-10-31

<sup>319</sup> Although not specifically felons; the distinction between felony and misdemeanours was abolished by the Criminal Law Act 1967

<sup>320</sup> "Election Act 714/1998" (pdf). *Finlex Translations of Finnish acts and decrees*. Ministry of Justice, Finland. 1998. Pp. 1, 24. Retrieved 25 February 2016.

<sup>321</sup> Hill, Lisa (November 2009), Prisoner voting rights, *Australian Review of Public Affairs*, archived from the original on 18 March 2013

of the fact that the Keating Party had scheduled provisions to extend voting privileges to all offenders over the year. After discharge from prison for a long time, suffrage is not permanent.

In India, Disenfranchisement does not continue after any convicted person is released from jail or prison. Supreme Court decision of *Anukul Chandra Pradban v. Union of India* has upheld the Constitutional validity of S.62 of The Representation of Peoples Act, 1951.<sup>322</sup> It speaks like this “*No one may vote in an election if he is incarcerated or in the custody of the police: Provided, however, that nothing in this subsection shall apply to a person who is subject to preventive detention under any legislation now in effect.*” The Constitution guarantees adult citizens of India the right to vote by virtue of Article 326. 4 S. 62 seems to be in furtherance of Article 326 providing for the appropriate Legislature to make any law disqualifying a citizen on certain grounds that include “crime or corrupt or illegal practice”. Unfortunately, S.62 does not make any classification among persons confined in a prison except with regard to preventive detention.

Disenfranchisement of prisoners cannot be justified in the modern society. Articles 19 and 21 of our Constitution recognize the fundamentality of freedom of expression and of liberty. Right to vote is certainly a form of expressing one's political will and hence a fundamental right. The 'Magna Carta of prisoners', **Sunil Batra case**<sup>323</sup> has held, “The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether”. The opponents of felon disenfranchisement argue that the practice undermines both conventional penological objectives and progressive values they claim that it contradicts the goals of ex-offender reintegrating into community and the political system. Moreover, disenfranchisement systems are not proportionate, therefore failing a second objective of criminal punishment schemes. Critics also dispute the

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<sup>322</sup> A.I.R. 1997 S.C. 2814.

<sup>323</sup> Sunil Batra vs. Delhi Administration on 20 December, 1979 Equivalent citations: 1980 AIR 1579, 1980 SCR (2) 557

compatibility of criminal disenfranchisement with the ideals of extensive political participation and a commitment to universal suffrage.<sup>324</sup>

#### 2.6.3.2 JURY RIGHT OF EX-OFFENDER

In 31 state and national courts, the permanent exclusion of convicted individuals from jury's service is the prevailing rule. As a result, approximately 6% of the adolescent community is excluded, especially over 30% of black men. Despite its lower profile, the similar issue of criminal disenfranchisement has received considerable scholarly attention falling, and less racially charged proportions. Also extensively debated in the literature is the racial composition of jurors. In contrast, notwithstanding the abundance of laws and administrative cases, as well as blatant racial inequities, criminal jury duty has been almost largely disregarded.<sup>325</sup>

It is difficult to claim the basic issue with the American court system is the dearth of convicted individuals on our jurors. Nonetheless, the issue of whether and then when criminals (mostly "ex-felons") should serve as jurors is entangled with a number of bigger concerns. This section defends the existing statute of criminal exclusion and examines its evolution. It finds that it is lawful to either remove criminals from juries, as the majority of jurisdictions do, or include them, as some jurisdictions do.

It also contradicts the primary grounds for excluding felons from voting (preserving the impartiality of the court and removing judges with inbuilt prejudice). Although both restriction and participation are permitted. Several factors must be addressed, along with the constitution of the panel whether or not the removal of felons is congruent with it, a comparative comparison of the punishment of offenders, and extra larger considerations. While some felon exclusion may be acceptable, it should be carefully studied and not based on rigid generalizations about crimes, offenders, and trials, according to the study. Instead,

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<sup>324</sup> "Felony Disenfranchisement." Encyclopedia of Race and Racism. Retrieved February 12, 2019 from Encyclopedia.com: <https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/felony-disenfranchisement>

<sup>325</sup> Hiroshi Fukurai et al., Where Did Black Jurors Go? A Theoretical Synthesis of Racial Disenfranchisement in the Jury System and Jury Selection, *J. Black Stud.*, Dec. 1991, at 196

deserving offenders should be allowed to compete as individuals for a jury seat, under the same limits as everyone else.<sup>326</sup>

In India, jury duty is no longer applicable. In its fourteenth report to the Indian government in 1958, the Indian Law Commission suggested the abolition of the practice. In India, jury trials were gradually eliminated. The 1960s culminated in the Criminal Procedure Code of 1973, which remains in effect in the 21st millennium.

#### **2.6.4- ECONOMIC CONSEQUENCES OF CRIMINAL RECORDS**

Any interaction with the judiciary, even a single arrest,<sup>327</sup> can have enduring implications on a person's financial prospects. An arrest or conviction creates institutional and informal barriers to career and access to higher education prospects, ban some types of economic support, and substantially diminish lifetime earnings.<sup>328</sup>

##### **2.6.4.1 EMPLOYMENT:**

The researcher having special reservation with this effect and in his opinion, it is one of the main consequences which is result of criminal conviction and for the sake of importance it ought to analyze separately and so researcher will discuss in chapter 3 under the heading of Employment and recidivism.

Investigators and criminologists have long recognized that occupation plays a significant role in promoting offending from wrongdoing, or the prolonged stopping of illicit behavior. In fact, lawmakers and law enforcement professionals have emphasized the perks of a steady employment as vital, both for putting

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<sup>326</sup> Kalt, Brian C. "The Exclusion of Felons from Jury Service." *American University Law Review* 53, no.1 (October 2003): 65-189.

<sup>327</sup> Christopher Uggen, Mike Vuolo, Sarah Lageson, Ebony Ruhland & Hilary K. Whitham, *The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment*, 52 *Criminology* 627, 628 (2014).

<sup>327</sup> Sara Wakefield & Christopher Uggen, *Incarceration and Stratification*, 36 *Ann. Rev. Soc.* 387, 393-96 (2010); Nat'l Research Council, *The Growth Of Incarceration In The United States: Exploring Causes And Consequences* 233-60 (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014)

<sup>328</sup> *Ibid*

distance among existing and former behavior and as a possible route of overcoming poverty.<sup>329</sup> Nonetheless, an arrest conviction ironically sets up unofficial obstacles that prevent from finding employment in the short term and, by extrapolation, careers in the long term. Research on recruitment demonstrate indisputably that a conviction is a disqualifier for employment conviction drastically reduces the percentage of favorable company replies or "callbacks."<sup>330</sup> According to one research, a felony conviction lowered the callback percentage for white male candidates by half and for African-American male applications by roughly two-thirds.<sup>331</sup> By examining the impact of a single, three-year-old minor offence, our later study examined the limitations of such stigma.<sup>332</sup> One other way to look at criminal records that it promotes future criminality that could be called recidivism. The researcher suggests the connection in this way -

*"Recidivism and employment have a strong correlating factor between them because when an offender managed to get into a labour market which ultimately decreased the risk factor of recidivism. In many developed countries like United States of America, United Kingdom, Nordic countries and few European countries are providing financial aid to fulfil basic needs for transiting back to their communities. 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 relation 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".<sup>333</sup>*

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<sup>329</sup> Text of President Bush's 2004 State of the Union Address, WASH. POST (Jan. 20, 2004), [http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext\\_012004.html](http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext_012004.html)

<sup>330</sup> Devah Pager, The Mark of a Criminal Record, 108 AM. J. Soc. 937, 947 (2003) Devah Pager, Marked: Race, Crime, And Finding Work In An Era Of Mass Incarceration 58 (2007)

<sup>331</sup> Supra

<sup>332</sup> Supra

<sup>333</sup> 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](http://www.igga.co.uk) (last visited Mar 22, 2018).

#### 2.6.4.2 COLLEGE ADMISSIONS AND CRIMINAL RECORDS

Many individuals with criminal histories want to enhance their employability via education, since they are aware of the obstacles they will face on the job market. Academic qualifications are closely related with both employment and incomes, therefore investing in human capital makes economic sense for most people.

It appears that the "Ban the Box" campaign, which opposes the use of some criminal records in hiring and employment choices, has formally targeted college admissions forms that include criminal background inquiries. A criminal background can prevent a student from being admitted to college or university. In its proposal, the Department of Education refers to all persons with a criminal record as "justice-involved." Colleges and colleges frequently inquire about an applicant's criminal history as part of their student selection processes. Due to a rise in college campus violence, there has been a rise in interest in people's criminal histories during the previous few years.

The "Beyond the Box" statement does not explicitly indicate that inquiring for criminal histories on college applications is unlawful, but it does employ government pressure to discourage colleges and universities from doing so. Currently, there are almost 70 million Americans with a criminal records.<sup>334</sup> In recent decades, bullying in schools has attracted enormous attention due to many slightly elevated murders, including those at Virginia Tech and Northern Illinois Universities. Unfortunately, these deaths are only the most blatant example of undergraduate aggression.

Despite the fact that university students may be less vulnerable to the adverse effects of violent crime than respective non-college counterparts, research suggests that teenager aggression, especially interpersonal violence, continues a national epidemic. Schools evaluate the felony convictions of candidates by (1) approach to make to personality specific information about their backstories and/or (2)

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<sup>334</sup> Ibid

performing impartial thorough background checks on individuals.<sup>335</sup> A process to prevent potentially dangerous ex-offenders from enrolling at Institution of Higher Educations (IHEs) comes out of necessity for improved campus safety. Many IHEs have implemented such policies, but there is no evidence of their effectiveness. A review of case law demonstrates limited and conflicting legal foundations. Campus administrators should consider these findings in the review of their own admission practices to avoid unfairly denying admission to qualified applicants. Similarly, administrators must assess their admission process to ensure it is yielding actual campus safety outcomes.

Additional study is required to investigate the effects of special admission procedures on campus crime and misbehavior on a national scale, as well as the implications of these policies on the reintegration and rehabilitation of former criminals.<sup>336</sup> College and university collection and usage of criminal justice information (CJI) is problematic for a variety of reasons.

- (1) No direct correlation has been demonstrated between a criminal record and a threat to campus safety.
- (2) Possessing a criminal record is not uncommon in the majority of developed nations nowadays.
- (3) Racial discrepancies have been observed in the processing of every sort of crime, from juvenile delinquency to minor offences to the application of the death sentence. The most important shortcoming harming the nation's criminal history record information systems is the lack of
- (4) Correctness and completeness in criminal history records.
- (5) Accepting college candidates with prior convictions increases public safety.

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<sup>335</sup> College Admissions to Exclude Criminal Records, Skip ease Blog (2016), <https://www.skipease.com/blog/criminal-records/colleges-exclude-criminal-records-admissions/> (last visited Feb 28, 2019).

<sup>336</sup> Bradley D Custer, College Admission Policies for Ex-Offender Students: A Literature Review Academia.edu - Share research (2016), [https://www.academia.edu/29811061/College\\_Admission\\_Policies\\_for\\_Ex-Offender\\_Students\\_A\\_Literature\\_Review](https://www.academia.edu/29811061/College_Admission_Policies_for_Ex-Offender_Students_A_Literature_Review) (last visited Feb 28, 2020).

In Indian context, at the time of college or university admission the question and other information with respect to previous criminal records usually not required. The researcher did not find any literature upon this. The researcher collects certain information based on telephonic interview that generally the information related to previous criminal records were not asked by universities. This is even good as far as the other countries also scrapping down the requirement of criminal records.

#### 2.6.4.3 ASSISTANCE

In addition to informal and institutional impediments to employment and education, individuals with shady conviction have restricted access to social help. In 1996, for example, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, legal limits were established on aid for persons with felony drug convictions. Several states, including Missouri, Pennsylvania, and Texas, restrict healthcare facilities and other institutions from employing candidates with a felony conviction, as per the accompanying article, which outlines a variety of security clearance legislation pertaining to senior caretakers.<sup>337</sup> A Georgia law, on the other hand, demands background checks for candidates but allows medical institutions to hire convicted criminals.

The majority of states maintain exhaustive lists of infractions that reject candidates for open positions in long-term care institutions. For instance, Arizona restricts care facilities and assisted living facilities from attracting employees awaiting trial or found guilty of any of 23 wrongdoings, such as abusive behaviour of a victim; physical molestation or abuse; adultery; first or degree felony killing; raping; property destruction; child prostitution and donating to the criminal behavior of a misdemeanor; aggravated assault crimes encompassing spread of illicit drugs or risky or drug prescription painkillers, robbery, or burglary; and youngster abuse of a child. States vary in terms of which offences disqualify candidates and how recently the offence must have occurred.

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<sup>337</sup> Gail Chirnoff Conway, "There Ought To Be a Law: A Survey of Legislative Responses to Elder Abuse," *Clearinghouse Review: Journal of Poverty Law and Policy*, May-June 2001.

In certain jurisdictions, an executive agency determines which offences disqualify candidates for employment, but in others, the choice is left to the employer. In some instances, the candidate may request an exemption to the disqualification or have the chance to demonstrate that he has been rehabilitated and poses no risk to caregivers or visitors. In North Carolina, for instance, a similar misdemeanor history does not disqualify a person an applicant for work. The organization should consider the quantity and degree of the offense, when it happened, the offender's youth at the moment of sentencing, the events involved the offense, the relationship in between offense and the job duties, and the offender's legal and penitentiary history because since offence. An applicant who has now been guilty of a criminal offense in Wisconsin may still be hired if he can display rehabilitation.<sup>338</sup> In 1998, the Government accountability Office of the Centers for Medicare and Medicaid Services advocated for a broad - based criminal history measure to avoid healthcare facilities and other long-term clinical services from implementing felons to feel empathy for older individuals. In a report to Congress, it was also mentioned that state regulations differ significantly.

### **2.6.5 PHYSICAL CONSEQUENCES OF CRIMINAL RECORDS**

Additionally, criminal convictions affect a person's geographic location and wellness. Internal and external restraints typically limit residential facilities, movement, and ethnic background, so endangering health and quality of life.

#### **2.6.5.1-HOUSING**

In his memorable 1996 State of the Union address, President Bill Clinton urged housing authorities and tenant groups around the country to eliminate "criminal gang members and drug traffickers"<sup>339</sup> He advocated for a "one-strike-and-you're-out" policy for citizens who commit crimes or sell narcotics. While creating secure living conditions for public housing renters is undoubtedly a worthwhile objective, such remarks and the measures that followed aggravated housing issues

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<sup>338</sup> Hegla Niesza (2001) States' Criminal Background Check For Long-Term Care Workers

<sup>339</sup> Text of President Bush's 2004 State of the Union Address, WASH. POST (Jan. 20, 2004), [http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext\\_012004.html](http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext_012004.html)

for those with criminal histories. The availability of secure and suitable housing alternatives for persons under community supervision is severely diminished by a mix of statutory and informal repercussions.

Since 1987, the federal housing policy of the United States prohibits felons and some other criminals from getting subsidized housing.<sup>340</sup> The "one strike and you're out" In March 1996, an act was formulated that strengthened the prohibition on accused persons and provided a legitimate justification to remove not only the author of the offense as well as every individual of the residence, regardless of status in the offense.<sup>341</sup> When the legitimacy of this policy was contested, the U.S. Supreme Court maintained its validity, and it remains in place to this day.<sup>342</sup>

Public housing assistance constitutes a tiny fraction of the renting real estate market as a whole.<sup>343</sup> In many industries, the corporate sector seeks to obey official directives. According to a 2005 survey conducted by several of the three main renting property academic institutions, 80 percent of its members conduct background investigations on registrants.<sup>344</sup> David Thacher observes that whilst the majority of responses were wealthy land managers, the most well landowner "how-to" book for small landowners all contain police checks and provide sample lease requests with prior criminal questions.<sup>345</sup> In actuality, Thacher's sample of twenty identical "how-to" books (ten released prior 1990 and ten after) indicated that all post-1990 products mentioned felony convictions, whereas none of the pre-1990 articles did. Consider that in 1987, federal policy prohibited inmates from getting rental assistance.<sup>346</sup>

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<sup>340</sup> Anti-Drug Abuse Act of 1988, 42 U.S.C. § 1437(d) (l) (4) (A) (ii) (2012).

<sup>341</sup> Housing Opportunity Program Extension Act of 1996, 42 U.S.C. § 1437(d) (l) (6) (2012).

<sup>342</sup> Dep't of House. & Urban Dev. v. Rucker, 535 U.S. 125, 130 (2002).

<sup>343</sup> Joint ctr. For house. Studies of Harvard university America's rental housing: evolving markets and needs 3 (2013), available at <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/j>

<sup>344</sup> David Thatcher, the Rise of Criminal Background Screening in Rental Housing, 33 L. & SOC. INQUIRY 1, 12 (2008).

<sup>345</sup> Id

<sup>346</sup> "Thacher also provides a rich legal history that traces the changes in premises liability law, state statutes, and the law enforcement-led "landlord training programs" over time to the current state of affairs. Id. at 16. In sum, "law and government have moved on several fronts

There is a lack of supporting document about the effect of these regulations on the residential chances of correctional officers, convicted felons, and previous criminals. However, in our opinion, they pose major impediments to the quest for secure and suitable housing. For example, Valerie<sup>347</sup> traveled to Minnesota to participate in a doctoral program. Previous to this, she lived on the east coast, where she received a master's graduate assistantship two jobs and helping for a charitable group.

She was also a former offender, having served less than a year in jail for two drug-related misdemeanors convictions over 10 years earlier. She told us, "When I started looking for housing, I was unaware that my criminal record would be an issue, so I didn't give it much thought." She rapidly understood, however In Minnesota, in which a police record screening was required for each mortgage application she met, this is a serious concern. As a conclusion, she called almost two dozen rental organizations and property owners. Each of the nine supervisors she spoke with indicated that "no criminal history" or "at least 10 decades without incarceration" was required. She left tapes with her questions and phone numbers at the unresponsive agencies, but they never responded.<sup>348</sup> Ultimately, she was successful in finding a landlords who would lease to them but only after much research and anxiety. According to Thacher, "from the perspective of ex-convicts themselves, landlord screening is a particularly significant kind of institutional exclusion because housing (together with work) is one of its most significant impacts." In conjunction with other economic and social contact hurdles, these blanket limitations increase the difficulty of rehabilitation and readmission for correctional officers and former inmates".<sup>349</sup>

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over the past three decades to make tenants' criminal behavior part of the risk calculation that landlords must consider."

<sup>347</sup> E-mail from Valerie to Robert Austin Stewart, Ph.D. Student, Dep't of Sociology, Univ. of Minn. (Oct. 1, 2014) (on file with author). Valerie is a pseudonym to protect the student's identity.

<sup>348</sup> *Supra*

<sup>349</sup> Rue Landau, *Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter, in Every Door Closed*, *supra* note 108, at 51.

### 2.6.5.2 MOVEMENT

In addition to affecting housing alternatives, a criminal record sometimes imposes additional geographic constraints, typically by restricting entry into or exit from particular areas. These can take several forms, but the researcher focuses on the most prominent ones.

First, some acts or designations might result in Restriction from areas encompassing colleges and other specially approved zones. The rapid rise of geographical restriction, often known as "excommunication," as a weapon for controlling the masses and an extra type of discipline has been observed by academics.<sup>350</sup> As a probationary provision or parole, for instance, persons convicted of a variety of crimes may be prohibited from entering certain geographical locations, such as "drug-free zones" or "prostitution-free zones." Any entry within these zones may result in a breach of supervision, jail, or other punishments.<sup>351</sup>

Persons bearing the classifications of molester and criminal abuser are subject to different geographical boundaries. In most jurisdiction, it is illegal for them to reside in or near "kid assembly areas" such as universities, libraries, gyms, and public transport and daycare facilities.<sup>352</sup> In certain areas, the above regions can span up to 2,000 feet, or over a tenth of a mile.<sup>353</sup> Some limitations severely boundary the housing options available to offenders. For example, Community, Florida has prohibition zones within 1,000 feet of sites where minors assemble (attractions, bus stops, daycares, parks, and schools).<sup>354</sup> Therefore, sex offenders are not permitted to dwell in 95.2% of Orange County's housing neighborhoods

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<sup>350</sup> Katherine Beckett & Steve Herbert, *Banished: The New Social Control In Urban America* 6-9 (2009); Katherine Beckett & Steve Herbert, *Penal Boundaries: Banishment and the Expansion of Punishment*, 35 *L. & Soc. Inquiry* 1, 2-3 (2010)

<sup>351</sup> *Ibid*

<sup>352</sup> Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 *Harvard C.R.-C.L. L. Rev.* 531,537 (2007).

<sup>353</sup> *Ibid*

<sup>354</sup> Paul A. Zandbergen & Timothy C. Hart, *Residential Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS*, 8 *JUST. RES. & POL'Y* 1, 1 (2006); Jill S. Levenson & Andrea L. Hem, *Sex Offender Residence Restrictions: Unintended Consequences and Community Reentry*, 59 *Just. Res. & Poly* 59, 63 (2007).

zones.<sup>355</sup> Pastor Dick Withdraw developed "Miracle Village" as a Christian community for approximately a 100 recorded sexual felons who couldn't even find housing elsewhere accommodation elsewhere in Florida.<sup>356</sup> Despite this considerable social isolation, a Minnesota Department of Corrections research showed no correlation between residence location and recidivism for sexual offences.<sup>357</sup>

In the context of international travel, spatial exclusion happens on a much larger scale. Multiple nations ban the entry of people with arrest histories with those under supervised release. For example, Canada considers ineligible travelers convicted of treason in other countries that would have been felons in Canada.<sup>358</sup> Australia and the United Kingdom have comparable border controls.<sup>359</sup>

Non-citizens are subject to a second type of mobility restriction in addition to geographical exclusion. Immigrants with a violent record who interact with the judiciary are subject to imprisonment and removal. Consider the case of Alex,<sup>360</sup> a Mexican immigrant, as an illustration of how perilous life can be for unauthorized immigrants with arrest histories, as recounted by his pro bono experienced lawyer in Minneapolis.

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<sup>355</sup> Zandbergen & Hart, *Supra* Note

<sup>356</sup> Lisa F. Jackson & David Feige, *Sex Offender Village*, N.Y. TIMES (May 21, 2013), [Http://Www.Nytimes.Com/2013/05/22/Opinion/Sex-Offender-Viuage.Html](http://www.nytimes.com/2013/05/22/opinion/sex-offender-village.html)

<sup>357</sup> Grant Duwe Et Al., *Does Residential Proximity Matter? A Geographic Analysis of Sex Offense Recidivism*, 35 CRIM. JUST. & Behav. 484, 500-01 (2008).

<sup>358</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 36 (Can.); see also *Reasons for Inadmissibility*, GOV'T CAN. (Oct. 9, 2012)

<sup>359</sup> Immigration Rules, Part 9 § 322(5) (U.K.); Migration Act 1958 s 501(6) (Austl.). Conversely, nearly every member of the European Union participates in the Schengen Borders Code agreement which opens internal borders between member countries and sets immigration practices for external borders, and there is no criminal record restriction for these countries. See Regulation 562/2006, 2006 O.J. (EC) (establishing a Community Code on the rules governing the movement of persons across borders called the Schengen Borders Code).

<sup>360</sup> E-mail from Alex's Immigration Attorney to Robert Austin Stewart, Ph.D. Student, Dep't of Sociology, Univ. of Minn. (Oct. 2, 2014) (on file with author). To protect the identity and confidentiality of the client, "Alex" was chosen as a pseudonym, and the identity of his attorney shall remain confidential. Minor details of his case were slightly altered to protect his identity.

In the 1980s, Alex's family unlawfully came to The U.S. and were finally granted citizenship. Alex ultimately obtained a permanent residency due to his mother's nationality. Alex was had to identify as a potential rapist after being guilty of child molestation for his contact with a 13-year-old when he was 16 years old. Rosa,<sup>361</sup> whom he met when he was 23 years old, is his partner; altogether, they have 3 children and a home. Their kids are U.S. citizens.

Alex's background since his young misdemeanor includes three verdicts: (1) a gross misdemeanor for supplying misleading info, (2) a tortious act for procuring, and (3) a driving without a license in 2007. Over than 15 years after his sentencing for a violent felony, he stopped updating his location with rehabilitation authorities, leading to disruption to registration charge. Since 2007, he has not been arrested, charged, convicted, or even cited for minor traffic offences. In 2014, a Passport checks Investigations (ICE) officer uncovered a provisionally outstanding warrant for Alex's refusal to register in Minnesota dating back to 2007. The ICE agent then conducted a thorough inspection and identified his past offenses.<sup>362</sup> As a result, ICE officials came at his apartment as he was getting ready for work, detained him, and brought him to a prison camp, where he was interrogated and prosecuted with two misdemeanors, including one misdemeanours. His solicitor was able to convince ICE to cancel his deportation, preventing him from being jailed permanently and expelled. Others who lacked competent representation did not fare as well. However, Alex was detained for two months, resulting in enormous economic consequences difficulty for his family as he was the primary provider but was unable to work.

#### 2.6.5.3 HEALTH

Physical health problems are also observable as collateral repercussions of a conviction. The first and most visible effect stems from the aforementioned difficulties in getting secure, fulfilling job In the United States, medical

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<sup>361</sup> This is also a pseudonym to protect the identity of the client's partner.

<sup>362</sup> Raquel Aldana, Of Katz and "Aliens": Privacy Expectations and the Immigration Raids, 41 U.C. Davis L. Rev. 1081, 1096-1121 (2008) (explaining an in-depth study of ICE's practice of searching old warrants).

accessibility is strongly entwined with employment and additional benefits; hence, the absence of a stable job significantly limits medical possibilities.<sup>363</sup> Additionally, individuals who are jobless or require financial skills to acquire medication on the secondary sector utilize government aid.<sup>364</sup> As previously indicated, however, restrictions on state wellbeing of individuals with arrest histories may hinder the offering of adequate or continuous care. In terms of lack of affordable medical services, engagement in the judiciary itself can have protracted negative effects on humans. As many criminals missed adequate therapy prior to imprisonment, their narrow illness leads to enhanced while in prison.<sup>365</sup> However, these benefits are temporary and expire shortly after their release.<sup>366</sup> In actuality, compared to the national average, persons who have served days in prison are much more likely to have severe feelings of fatigue; this result remains the case and in the most meticulously designed research. Usually, earlier exposure to imprisonment dramatically impairs midlife health functioning.<sup>367</sup> In addition, ex-offenders tend to be adversely diagnosed with depression, viral infections, and strain disorders illnesses.<sup>368</sup>

#### 2.6.6- MISCELLANEOUS CONSEQUENCES

These are some of the remaining consequences which researcher would like to picture.

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<sup>363</sup> Congress passed healthcare reform in 2010 that mandated employers with more than fifty employees to offer health insurance to offer their full-time employees. See Patient Protection and Affordable Care Act, Pub. L. No. 111- 148, 124 Stat. 119 (2010) (codified in scattered sections of 42 U.S.C.).

<sup>364</sup> David Dooley, Jonathan Fielding, & Lennart Levi, Health and Unemployment, 17 *Ann. Rev. Pub. Health* 449,459 (1996)

<sup>365</sup> Jason Schnittker Et Al., Incarceration and the Health of the African American Community, 8 *Du Bois Rev.: Soc. Sci. Res. On Race* 133, 135 (2011).

<sup>366</sup> Jason Schnittker & Andrea John, Enduring Stigma: The Long-Term Effects of Incarceration on Health, 48 *J. Health & Soc. Behav.* 115, 123 (2007).

<sup>367</sup> Michael Massoglia, Incarceration, Health, and Racial Disparities in Health, 42 *Law. & Soc'y. Rev.* 275, 277 (2008).

<sup>368</sup> Michael Massoglia, Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses, 49 *J. Health & Soc. Behav.* 56, 65 (2008); See Also Schnittker & John, *Supra* Note 150, At 126  
Et Al., Out and Down: Incarceration and Psychiatric Disorders, 53 *J. Health & Soc. Behav.* 448, 458 (2012).

#### 2.6.6.1 TENANT SCREENING- COLOR OF CRIMINAL RECORDS

Physical health problems are also observable as collateral repercussions of a conviction. The first and most visible effect stems from the aforementioned difficulties in getting secure, fulfilling job. In the United States, health coverage is strongly entwined with employment and related costs; hence, the lack of a career position significantly limits healthcare possibilities. Additionally, those who are jobless or having the necessary means to acquire treatment on the private sector utilize government aid. As previously indicated, however, restrictions on government wellbeing of people with arrest histories may hinder the delivery of adequate or regular care.

In terms of lack of affordable medical insurance, engagement in the judiciary it can have hard consequences for the patient. As many offenders lacked proper treatment before to jail, throughout imprisonment, health leads to enhanced in the short term. However, these enhancements are not long-lasting and quickly disappear after their release. In actuality, than among, persons who have served time in jail seem to be more likely to experience severe health issues later in life; this result remains true in the most meticulously designed research. Particularly, earlier exposure to imprisonment dramatically impairs midlife health functioning. In addition, ex-offenders tend severely affected by depression, bacterial disorders, and anxiety ailments.<sup>369</sup> In some jurisdiction e.g., USA, California, Canada, Australia the tenant screening is common phenomena based on criminal records Under the Federal Fair Housing Act - 1968,<sup>370</sup> a wide policy of rejecting housing to potential tenants with any form of criminal background would be facially unconstitutional.

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<sup>369</sup> Tenant Screening, TU History - Tenants Union of Washington State (2016), <http://tenantsunion.org/en/rights/tenant-screening> (last visited Mar 2, 2019).

<sup>370</sup> The 1968 Fair Housing Act is a federal act in the United States intended to protect the buyer or renter of a dwelling from seller or landlord discrimination. Its primary prohibition makes it unlawful to refuse to sell, rent to, or negotiate with any person because of that person's inclusion in a protected class.

Landlords are permitted to implement regulations that restrict housing to those with specified criminal histories that endanger the safety of other tenants or the property. When reviewing a tenant's criminal background, the landlord must also evaluate the kind, severity, and length of time since the offence.<sup>371</sup> Large or even moderately risky loans may lead a lender to dig more into an applicant's background. It's the worst consequence a guilty may have on the purchase of a home. If a criminal past is revealed, it may be impossible to acquire the loan. Generally, business loans require borrowers to establish good character, which includes a clean criminal background. Loan officers may reject credit based on misdemeanours offences. Due to the fact that these charges stay on an individual's record for life, it is highly unlikely that they might qualify for a variety of loans.<sup>372</sup>

In India the rent control laws which regulate the relationship between landlord and tenants, specifically does not govern like another jurisdiction. Generally letting the house based on previous criminal records is pre-agreement formalities. A landlord is at complete liberty to let the premises based on criminal records and it's done through police verification which is mandatory in nature. This procedure aids with tenant background checks. Section 188 of the Indian Penal Code makes this violation a punishable offence. This reduces the likelihood that the residence may be rented to someone with a criminal record. The landlord must complete out the verification form and submit it to the local police station together with the tenant's identity.<sup>373</sup> The forms can be found on the websites of state police agencies. The right to expungement in India might abolish this type of prejudice based on a person's prior convictions or acquittals.

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<sup>371</sup> Erin Eberlin, Can You Refuse to Rent to Tenants with Criminal Records? The Balance Small Business (2019), <https://www.thebalancesmb.com/renting-to-tenants-with-criminal-records-4149540> (last visited Mar 2, 2019).

<sup>372</sup> Molly, How a Criminal Record can Affect the Purchase and Leasing of Property Blawg (2013), <https://www.propertyblawg.com/leases/how-a-criminal-record-can-affect-the-purchase-and-leasing-of-property/> (last visited Mar 2, 2019).

<sup>373</sup> Erin Eberlin, Can You Refuse to Rent to Tenants with Criminal Records? The Balance Small Business (2019), <https://www.thebalancesmb.com/renting-to-tenants-with-criminal-records-4149540> (last visited Mar 2, 2020).

#### 2.6.6.2 SECURITY CLEARANCE AND CRIMINAL RECORDS

In almost all jurisdiction including India the process of security clearance is done depending upon the necessity of various interests. A green card is a status awarded to persons following a comprehensive inspection that grants them access to classified material (state or corporate mysteries) or prohibited places. Sometimes, private firms with a systematic manner for evaluating personnel for access to classified data also use the phrase top secret clearance typically, a permission alone is inadequate to give access; moreover, the organization must determine that the authorized member has a need to know certain details. No one should be granted unrestricted access to sensitive information material based merely on their rank, position, or security clearance. Strong legal requirements apply to criminal records and government investigations. Several local, national, and federal statutes must be taken into account. The Equal Credit Opportunity Act (FCRA), Title VII of the 1964 Civil Rights act (EEOC), the Privacy Act of 1974, and the Americans with Disabilities Acts are regulations by which inquiries must adhere (ADA). Other policies and guidelines apply, although their application varies from case to case. Credit and debt problems are red flags for investigations; hence, credit records are frequently checked, requiring firms to conform to the FCRA.<sup>374</sup> The process of security clearance at multiple governmental position may be necessary for security of the state and other confidential information. But in remote cases of misdemeanours, honourable acquittal<sup>375</sup> or Multiple Lesser Offenses which are Not Serious<sup>376</sup> the rigors process of clearance could be diluted for the rehabilitation of ex-offenders. If it seems that the rehabilitation is

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<sup>374</sup> Brody, Richard & L. Cox, Virginia. (2015). Background investigations: A comparative analysis of background checks and federal security clearance investigations. *Business Studies Journal*. 7. 84-94.

<sup>375</sup> "To propound this mitigating condition there must be proof that the applicant did not commit the alleged offense. Being accused but not arrest, arrested but not prosecuted, or prosecuted but found not guilty, many not be sufficient proof of innocence, if there was insufficient evidence to meet the criminal standard to prove guilt or a technical/procedural error was made that prevented a successful criminal prosecution"

<sup>376</sup> Multiple minor traffic infractions without allegations of other criminal conduct would not be an issue under the Criminal Conduct criterion. However, they can be considered under the Personal Conduct criterion along with any other dishonest, unreliable, or rule-breaking behaviour.

successful in this way that The passage of time with no need for a resumption of criminal conduct or any other signs of persistent antisocial, reckless, or aggressive behavior is substantial proof of restoration.

There is no strict precedent specifying what more period must go ever since preceding felony act before the alleviating benefits of time alone are completely recognized. The period of time varies on the accused's age at the scene of the offence, the period of illegal activity, the quantity and seriousness of offenses, and the nature of the offenses. Positive indicators of recovery can significantly reduce the amount of time necessary to entirely eradicate criminal behavior. Included are guilt or restitution, career guidance or further degree, a good work history, and a favorable societal activity. Other good improvements in lifestyle, relationships, and social duty are also considered.

These factors may influence an adjudicator's determination that an applicant's past conduct is unlikely to be repeated or no further throws suspicion on the claimant's decision dependability, or integrity.<sup>377</sup> One of the key benefits of expunging a criminal record for the individual is the possibility of regaining the ability to own a handgun. Federal statutes prohibit felons and domestic violence offenders from possessing firearms. Some states also have laws that restrict some firearms rights, often for a certain length of time. In such locations, erasure may reestablish gun rights, but in others it will not suffice. Requesting recovery of gun rights may need that the applicant make a specific demand or acquire a sentence that returns all of his or her individual liberties.<sup>378</sup>

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<sup>377</sup> William Henderson, Effect of Criminal Conduct on Security Clearances Clearance Jobs (2017), <https://news.clearancejobs.com/2009/02/09/effect-of-criminal-conduct-on-security-clearances/> (last visited Mar 2, 2020).

<sup>378</sup> Expungement and Gun Rights, Bo Morton Criminal Defense Attorney (2018), <http://www.morton-law.us/mortonlaw/expungement-restoring-gun-rights> (last visited Mar 2, 2021).