

Role of Courts and Investigative Agencies in Access to Justice

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Abstract

This piece of paper shed its light of consistency and accuracy on various aspects related to the judicial institutions like courts and tribunals in access to justice where the law enforcement agencies like Police, CBI, RAW, IB, CID and other agencies played their role as the gateway of justice because the courts and tribunals are the only way which can provide clean and fair justice to every person in every matter. The basic rules and laws are formed by the courts which are enforced by their concern department and authority, if anyone go through against the Law then with the help of Police and investigative department the matter delivered to the courts for the further proceedings, and there after courts provide justice and punishment to the victims, and Tribunals are described as a governmental body which has authority to solve the disputes related to different matters, basically Tribunals are formed for the timesaving of the Courts. We will discuss in this paper on the issue of recent judgement of Supreme Court about “declaring that passive euthanasia is permissible”, and apply its terms and conditions with the help of concern department and investigative agencies that it would be beneficiary for the suffered person. We will also discussing about Matter of Triple Talaq where the Court gave the order in its judgement that triple Talaq is banned in India; this is the good achievement for Muslim women’s related to their safety and security matters. The Supreme Court issued guidelines to reduce the number of deaths that occur as a result of road accidents, the Bench comprising Justice M.B. Lokur and Justice Deepak Gupta noted that the number of deaths due to road accidents in the country is said by over 100,000 in a year, which translates to about one death every three minutes. We will also discussed upon the matter of right to privacy by the supreme court judgement which said that Right to privacy is the fundamental rights of the individuals where any person cannot interfere in the right of another’s privacy, and any individual can go direct to the Supreme Court for the violation of his / her right to privacy. So with the help of these issues we will discussed and talk about the role of Courts and Tribunals in India where the role of Police and the investigation agencies were seen as the rights hand of the courts and the individuals.

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Introduction

Problem Statement

To analyse the role of judicial institutions like courts and tribunals as these are the law making authority and how courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner in access to justice with the help of Law enforcement agencies like police and investigative agencies as a gateway of justice.

Objective

To investigate the role of judicial institutions like court and tribunals in access to justice, these are the law making agencies and if any individual or authority breaks the law then these agencies look after the proceedings against them, police and investigative agencies helps in proceeding of court by investigating against actual victim. Apart from that any individual can also file public interest litigation with the help of lawyer regarding concerned matter for justice.

Author pen down certain topics which enlighten judicial institution's works by making law like:

1. Triple talaq, deals with the rights of Muslims women's safety and security.
2. Guidelines to reduce road accidents, indicates to every individual for their duty and boundations in public roads for their safeguard.
3. Right to privacy, another law passed by Supreme Court.
4. Law of euthanasia, law passed by the Supreme Court for the persons suffering from painful disease.

Criminal justice system is a series of governmental agencies and institutions working to identify and catch the law-breakers and to inflict a form of punishment against them. The primary institutions of the criminal justice are police, prosecution and defence lawyers, the courts and prisons.

Scope of Study

Criminal justice system is essentially an instrument of social control; society considers some behaviour so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright.

Scope of judicial institutions is briefly stated in chapter IV of part V and chapter V, chapter VI of part VI and part XIV-A of the Constitution of India. These chapters include lot of points regarding judicial institutions, its jurisdiction and wide role for people of country in access to justice.

The criminal justice system consists of three main parts:

1. Law Enforcement (Police)
2. Adjudication (Courts)
3. Corrections jails, prisons, probation and parole.

In a Criminal Justice System, these district agencies operate together under the rule of law and as principle means of maintaining these rules within the society. An offender firstly contact with the police (or law enforcement) in criminal justice system. Police investigate against suspected wrong-doing and makes an arrest.

However, scope of Criminal Justice System is very vastas awareness of public rights and safeguard pointsis most important to everyone, whereby people can get off from doing illegal act and can get justice easily in rational manner.

Research Methodology

This study is based on deductive approach guided by qualitative methodology due to its flexible and evolving approach which may lead to discovery and clarification of situations, beliefs and perceptions of the society. Alsoauthor tried to build a relationship between theory and social ramifications whereby a hypothesis is deduced which can be translated into pragmatic terms by way of policy recommendations based on observations and findings.

Author studied a body of case laws together with relevant legislations to analyse the problem which makes the research doctrinal as well as tried to propose certain reforms in law and policies, which makes the research non-doctrinal.

In process of carrying out this research, author has relied on primary sources as well as secondary sources. Primary sources include case laws, any relevant legislation, The Constitution of India etc., while secondary sources include articles, journals, online books, research publications etc.

Description of the Research Issue Including Socio - Legal Analysis of the Problem

Society and legal connection or law is very close to each other as society is the close group of people where each person has their rights which are secured by some law. If someone goes beyond of these it is considered as law breaking activity.

Triple Talaq

The husband though given the unilateral power to pronounce talaq has to be very judicious in its exercise. The Quran has laid down certain rules which have to be followed strictly. He has been given this power with expectation that firstly he will not ordinarily exercise it and avoid

it as much as possible. Secondly if he finds it unavoidable then he shall do it with a sense of justice and rationality. There is nothing in Islamic law which gives husband the power to divorce his wife arbitrarily, irrationally and in unreasonable manner.

Guideline to Reduce Road Accident

Many governments throughout the world rely heavily on traffic law enforcement programmes to modify driver's behaviour and enhance road safety. There are two related functions of traffic law enforcement: apprehension and deterrence, these are achieved through three processes:

1. Establishment of traffic laws
2. Policing of those laws and
3. Application of penalties and sanctions to offenders.

Effectiveness of traffic law enforcement strategies from the perspective of range of high-risk, illegal driving behaviours, including drink/drug driving, speeding, no use of seat belt and red-light running. Road crashes have enormous social and economic impacts on individuals, families, communities and nations with many injured individuals still having a functional disability even 6–12 months after a road crash.

Right to Privacy

Privacy a legal right is highly problematic even though we have arrived at a European position where it is judicially more venerated than the right to receive information. The reasons behind are: First, that currently developing legal concept of privacy denies a social and interactive context to information; Second, that technological, commercial and governmental environment has so radically changed with digitization that many expectations of privacy are redundant; and Third, that legislation and judicial interpretation - when aimed at protecting privacy as, for example, in data protection law - usually misses its mark due to a combination of first two reasons.

Passive Euthanasia is Permissible

Misuse of euthanasia is still going on in society due to high cost of treatment. If the relatives find it difficult to meet the cost of treatment they take the patient at home against medical advice. For want of medical support the patient succumbs eventually. The proponents of Euthanasia argues unbearable pain, right to commit suicide - a private affair and people should not be forced to stay alive and above all proper safeguards can minimize misuse of right are sufficient reason for permitting Euthanasia. On other hand, opponents of Euthanasia treat it as a euphemism for murder and maintain that Euthanasia is not about the right to die but about the right to kill. The Centre has already proposed a law: the Medical Treatment of

Terminally ill Patient (Protection of Patients and Medical Practitioners) Bill, 2006. "The right of an individual to refuse medical treatment is unconditional. Neither the law nor the constitution can compel an individual who is competent and able to take decisions to disclose reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity," said Justice D.Y.Chandrachud.³ Before ArunaShanbaug case it was illegal but now it is legal but in condition that the patient is really want to die, without his/her permission no one can apply euthanasia in the hospitals.

Precedents and Judicial Proceedings

Triple Talaq

The constitutional validity of certain practices of Muslim personal law such as triple talaq, polygamy, and nikahhalala were illegal, unconstitutional, and in violation of Article 14 i.e. equality before law, Article 15 i.e. non-discrimination, Article 21 i.e. right to life with dignity and Article 25 i.e. right to freedom of conscience and religion of the Indian Constitution has been challenged in the supreme court like in the case of Shayarabano case. This is not the first case which is filed in court but In this case of Shayarabano where it is a five judge constitution bench of the Supreme Court by 3:2 majorities struck down triple talaq or instant divorce, practice as unconstitutional. Chief Justice J. S.Khehar and Justice S Abdul Nazeer held triple talaq is the part of fundamental right to religion of muslimand said it was not unconstitutional but Justice Kurian Joseph, R. F.Nariman and U. U.Lalit said triple talaq violated the fundamental rights of Muslim women as they are subjected to arbitrary irrevocable divorce through this practice. Among the others whointervened in this case, the All India Muslim Personal Law Board and the JamiatUlema-e-Hind argued that Court did not have jurisdiction to entertain a constitutional challenge to Muslim personal law and that the matter was in domain of the legislature.

Guidelines to reduce road accidents

Large number of accidents occur every day on Indian roads, causing loss of human lives besides loss of limbs and other injuries resulting in human tragedies, are wholly avoidable. In the case of *S.Rajaseekaranv. Union of India &Ors*,⁴ S. Rajaseekaran has filed the writ petition under Article 32 of Constitution seeking Court's intervention, primarily in the matter of enforcement of the prevailing laws and also seeking directions for enactment of what the petitioner considers to be more appropriate legislative measures and for more affirmative

³Ritika Jain, *Passive euthanasia is legal*, DNA INDIA (Mar 10, 2018, 05:00 AM), <http://www.dnaindia.com/india/report-passive-euthanasia-is-legal-2592404>.

⁴(1989) 4 SCC 286.

administrative action. Per WHO India Recommendations, 50% of the victims die in first 15 minutes due to serious cardiovascular or nervous system injuries and rest can be saved through providing basic life support during the 'Golden Hour'. Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and immediate medical assistance as a necessary corollary needs to be provided and also adequate legal protection and prevention from harassment to good Samaritans. In the case of *Savelife Foundation & Anr v. Union of India & Anr*,⁵ the Supreme Court directed the Central Government to issue necessary directions with regard to the protection of Good Samaritans until appropriate legislation is made by Union Legislature. Central Government considers it necessary to protect the Good Samaritans from harassment on actions being taken by them to save the life of road accident victims and, therefore, Central Government hereby issues some guidelines to be followed by hospitals, police and all other authorities for the protection of Good Samaritans.

Right to Privacy

Right to privacy is the fundamental right under article 21 of Indian constitution. It is the part of fundamental right since 2017 after judgment of *Justice K. S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*⁶ This holds that the right to privacy is protected as a fundamental right under Articles 14, 19 and 21. Nine-judge Constitution bench of Supreme Court, established to examine and determine if judgments in two cases that say that privacy is not a fundamental right were acceptable in the current context. If the bench were to decide that Indian citizens indeed have the right to privacy, a smaller bench will define the scope of that right. But the apex court held that privacy was not a fundamental right. Two cases i.e. *M. P. Sharma & Others v. Satish Chandra*⁷ in 1954 and *Kharak Singh v. The State of U. P. & Others*⁸ in 1962 played a crucial role in Supreme Court's verdict on right to privacy because these cases said that privacy was not a guaranteed constitutional right.

Declaration that Passive Euthanasia is Permissible

The Supreme Court has given legal sanction to passive euthanasia in a landmark verdict, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. A five Judge Bench of Supreme Court in *Smt. GianKaur v. The State*

⁵Writ Petition (Civil) No 235 of 2012.

⁶Writ Petition (Civil) No 494 of 2012.

⁷ 1954 AIR 300, 1954 SCR 1077(India).

⁸ 1963 AIR 1295, 1964 SCR (1) 332(India).

*of Punjab*⁹ held both euthanasia and assisted suicide not lawful in India and overruled the two Judge Bench decision in *P. Rathinam v. Union of India*.¹⁰ The Court held that the right to life under Article 21 of the Constitution does not include the right to die. But later in *Aruna Ramchandra Shanbaug v. Union of India & Ors*¹¹ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. Difference between 'active' and passive' euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. The Supreme Court not only showed a middle ground for the long standing debate of "Euthanasia", but also directed the government to abolish obsolete and inconsistent laws like sec 309 of IPC (which criminalizes and punishes the person attempting suicide).

Impact and Implications

Crime and its prevention has become a much debated issue. Claims and counter claims are made as to the real extent issue which has its impact and implication like:

Triple talaq, gives the couple ample amount of time to rethink their relationship and reconstruct their marriage. It enables in-laws, relatives, Islamic clerics to give their opinions and guidance to them. The law forces the man to provide his wife with some wealth (depending upon his earnings and properties) to meet her daily expense after their separation. It prohibits divorce if wife is pregnant until she yields her child and husband has to provide additional wealth to raise the child.

Guidelines to reduce road accident, the impact of enforcement can be estimated as potential accident saving results from drivers complies with traffic laws and regulations which is voluntary or a result of successful socialization mechanisms not depending on active policing. The safety impact assessment of police enforcement is manual speed enforcement; automated speed enforcement with cameras; drink drive enforcement; enforcement of seat belt use; warning letters, penalty point systems and license revocation.

Right to privacy, people sue the government if they think their privacy is being violated. It'll also force the government to prescribe new laws and regulations for its own agencies to protect consumer interests. Moreover, future consumer and digital laws needs to be designed with an inherent expectation of privacy.¹²

⁹ 1996 AIR 946, 1996 SCC (2) 648(India).

¹⁰ 1994 AIR 1844, 1994 SCC (3) 394(India).

¹¹ Writ Petition (Criminal) No. 115 of 2009(Supreme Court of India).

¹² How "Right To Privacy As A Fundamental Right" Will Impact Cyber Security In India?, FOSSBYTES (Aug, 29, 2018, 5:30 PM), <https://fossbytes.com/right-privacy-fundamental-right-cyber-security-impact-india/>.

Passive euthanasia, government has already been promoting palliative care policies for elderly, poor and terminally ill patients who are most likely to opt for euthanasia. “There are several programs for health and welfare of elderly, people inflicted with AIDS, cancer, terminal kidney disease and neurological disorders as it is essential to assess the mental health status of individual seeking euthanasia.”¹³

Possible Outcomes and Solutions

Nation can't progress if criminal justice system cannot deal with correct manner. As right method of pronouncing divorce should be as provided in the Holy Quran but it would be implied when and only law will be imposed to person. A bench comprising justices V. GopalaGowda and Arun Mishra directed the Centre to give wide publicity to the guidelines, which clearly stipulate that people who help victims of road accidents or other calamities are not harassed in any way.¹⁴ As result of it, people are coming forward to help accidental victims. Right to privacy is harmful when it comes to deal with law-breaker but this is also defined as any interference with the right to privacy can only be justified if it is in accordance with the law. Passive euthanasia The Ministry of Health and Family Welfare have posted a draft Bill that was Terminally ill Patients (Protection of Patients and Medical Practitioners) which is already drafted apart from this Government has decided to solicit public opinion/comments before formulation of Law on Passive Euthanasia because sometimes it's not the opinion of the ill person it was the statement given by his/her family member.

Conclusion

Justice has been defined and redefined and categorized and typecast over the generations, from an idea to a reality, being distributive or commutative to both, but it has been modernized and fit into systems, from political justice, to social, economic, racial, regional, gender and universal, it has transformed itself and has become transient, so as to never confine itself into one definition, into one mould, but it always fills up the idea of fairness. As discussed above, Criminal justice system is a series of governmental agencies and institutions working to identify and catch the law-breakers and to inflict a form of punishment against them. In the due course the judicial system has changed its course widely where the example of protest petition file by informant after the submission of police report is now a

¹³Neetu Chandra Sharma, *How will India accept passive euthanasia?*, LIVE MINT (May, 12 2018. 04:36 PM), <https://www.livemint.com/Science/Whfh9I34eZ8iAXWaHVqK/How-will-India-accept-passive-euthanasia.html>.

¹⁴Gaurav Vivek Bhatnagar, *SC Guidelines Now Protect Good Samaritans Who Help Road Accident Victims*, THE WIRE, (Mar, 30, 2018, 9:30 AM), <https://thewire.in/health/sc-guidelines-now-protect-good-samaritans-who-help-road-accident-victims>.

rule but more interestingly no procedural rule talks about the same even then it now takes its utmost important position in criminal trial. As above noted different incident including triple talaq, road safety, euthanasia hon'ble Supreme Court has shown the positive legislative work in the face of judicial activism. A country with billions of population and disputes legislative working tends to get slower and there we find role of court to formulate the guidelines. Till now it is largely accepted by our society but the caution is always necessary as the judicial activism in the field of making law do cause a threat of judicial interference. Upcoming generation may have to stretch and stress on the boundaries of several institutions.