EVIDENCE TAMPERING: COMPARISON AMONGST VARIOUS JURISDICTIONS

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The first state reorganisation commission report was released on 30th September 1955 under the chairmanship of Justice Fazal Ali. The other two members of the commission were H.M Kunzru and K.M Pannikar. Even before the commission's report came into recognizance of the government, there were many linguistic conflicts that were prevalent from time before independence. It all started with extremist leader Lokmanya Tilak who appreciated the diversity of languages and advocated reorganisation of provinces on linguistic basis. An excerpt from Kesari he wrote in 1869[1]:

"The present administrative division of India is the result of a certain historical process and in some cases purely result of accident… if they are replaced by units formed on a linguistic basis, each of them will have some measure of homogeneity and will provide encouragement to the people and languages of the respective regions."

Earlier bifurcation of Bengal by colonialists was done on religious basis i.e. Bengali Hindus and Bengali Muslims. However due to this force from common masses, it had to undo the same and made Assam and Bihar separate provinces in 1911. Language was yet to receive that important status when came to administration and self-government until 1920, when Gandhi emerged as a supreme leader. Seeing the linguistic agitation among the people, and announcement of congress made in 1927 session about "redistribution of provinces on linguistic basis", the colonial administration had to appoint Simon commission headed by sir john simon to take up the above said matter. However, it refused the principle of linguistic segregation of provinces. Later, it was after the Nehru committee report that Odisha became first state on linguistic principle pre independence.

After independence, creation of Andhra as a new state on linguistic basis itself called to many debates in the constituent assembly where it announced formation of separate committee to inquire into the demands of linguistic states. It was after this that Dhar commission and several other commissions came into existence to determine formation of states on linguistic basis. Finally, after State Reorganization commission or Fazal Ali Commission, when State Reorganisation Act was passed.

IMPORTANCE OF LANGUAGE BEING THE CRITERIA FOR REORGANISATION OF STATES

[1] K. Veeriah. "Question of Lingustic States". People's Democracy (weekly organ of communist party of India) Vol. 34; No. 3. (January 17, 2010)

India has been a mixture of various languages since early past. It has witnessed growth of both the cultures, religions in its early past. The debates on 'linguistic fanaticism' date back to the era of Modern India, i.e. during the time of great freedom fighter Mahatma Gandhi. Even before independence, congress stood with the decision of separating Indian states on the ground of language. In the words of Mahatma Gandhi, at the prayer meeting on January 25, 1948, five days before the assassination, "The Congress had decided some 20 years ago. That there should be as many provinces in the country as there are major languages." It can be followed here that the Constituent Assembly was worried with the issue of etymological states in India. Among the significant issues, wrangled in the Constituent Assembly was the etymological division of India, something Nehru stood up to. After freedom again Political developments for the production of new, etymological based states created. The Congress-drove Government got to be worried that the states framed exclusively on a semantic premise may be inadmissible, and may even represent a hazard to the national solidarity. This dread was produced fundamentally because of division of India. Then came Dhar Commission with its report[2], which said, "the formation of provinces on exclusively or even mainly linguistic considerations is not in the larger interests of the Indian nation". Further, The commission solicited the administration from India to revamp the states on the premise of 'geographical continuity, financial self-sufficiency, administrative convenience and capacity for future development'. After this non-linguistic point of view was shared, JVP committee was formed which in its report[3] stated, "if public sentiment is insistent and overwhelming, we, as democrats, have to submit to it, but subject to certain limitations in regard to the good of India as a whole." After many debates and discussion held on the same, finally, State Reorganisation Commission or Fazl Ali Commission was formed according to which, "it is neither possible nor desirable to reorganise States on the basis of the single test of either language or culture, but that a balanced approach to the whole problem is necessary in the interest of our national unity."[4]

LINGUISTIC AREA NOT JUST INCLUDES LANGUAGE

In chapter three of the report of the First state reorganisation commission, language and culture has been discussed widely as a factor of reorganising states. "One of the major facts of India's political evolution during the last hundred years has been the growth of our regional languages". The demand for linguistic States does not represent mere cultural revivalism. It has a wider purpose in that it seeks to secure for different linguistic groups political and economic justice. The political atmosphere, vitiated by linguistic differences, has now permeated into the administrative structure as a whole. Important administrative posts tend to become the monopoly of the members of dominant language groups and appointments and promotions are no longer governed by considerations of administrative

[2] The Dar Commission Report, 10th December, 1946
[3] The JVP Committee Report, 1st April, 1949
[4] Part II of Report of the States Reorganization Commission (SRC) 1955, titled "Factors Bearing on Reorganization"

purity, efficiency and fairness. Thus, linguistic area not just includes, but there are several other elements that get affected.

LANGUAGES AS A CONSIDERATION FOR NEW STATES

The political climate, vitiated by etymological contrasts, has now pervaded into the regulatory structure in general. Imperative regulatory presents tend on turn into the imposing business model of the individuals from overwhelming dialect gatherings and arrangements and advancements are no more administered by contemplations of managerial immaculateness, effectiveness and reasonableness. The expanding interest for new states brings up various issues with respect to the prosperity of India's government fair nation. This study is being directed by the specialist to explore into the requests for the formation of new states on phonetic premise in India and the Parliaments energy to do as such. "'One of the most difficult problems in the framing of India's new Constitution', wrote B.N Rau, 'will be to satisfy the demand for linguistic provinces and other demands of a like nature.'[5]

CONCLUSION

The protected arrangement under Article 3 was fused with a kind thought to acknowledge geological and financial unification of India yet now it appears that this arrangement has turned into a device for fulfilling territorial and phonetic yearnings of individuals and an instrument to accomplish appointive increases. The two terms "LINGUISTIC" and "CULTURAL" have never been more abused than as of late. It is hard to comprehend what has happened to our energy of digestion and why the sentiment etymological and provincial devotion is making progress step by step. The expanding interest for new states evidently shows this propensity springing up in our nation and sadly by making more expresses, our administration has encourage heightened the issue. Beneficiary claim state as though state is only a toy that could be taken care of and adjusted by. And the majority of this is being done for the sake of Linguistic division to bolster the improvement of the state and guarantee better administration.

RECOMMENDATIONS

Under the front of rearrangement of states, a steady balkanisation of the nation ought not be energized, as that would overcome the preambular order of and our tenacious journey for 'national trustworthiness.' The need of great importance is to focus more on advancement of the states effectively existing. It is irrelevant whether the state is little or enormous; what is required is a solid political will to oversee with full trustworthiness and earnestness. Improvement requires a favourable climate to be made by both; pioneers and residents and not division of states on the cases of helping the advancement of the states. No new state should be created on linguistic basis. This will put a keep an eye on the

[5] Rau, Constitutional Precedents, First Series, pg.17

escalating provincial and phonetic governmental issues. Infact "Dhar Commission" named by the legislature of India in 1948 to look at the association of the segments of Indian union completely dismisses the premise of etymological organization of state. In any case, legislative issues beat intelligence and states were made are as yet being made on phonetic and social grounds. No new state under Article 3 ought to be made on the premise just that lion's share tenant of the proposed new state talk a specific religion or take after a specific cIndia is developing at a lightning fast speed and is soon to overcome this segment of developing countries and enter the elite group of developed countries and recent example of this development is the inclusion of modern forensics in close analysis of the evidence and to bring out the impossibilities before the court but still there have been a number of cases, where the offenders have escaped liability and the victim was left unheard due to discrepancies with the evidences available which arises due to tampering with evidence.

Through many of the cases that have took place in the past and might still be going through currently, the concept of evidence tampering is evident and is being witnessed audaciously, as it is the very tendency of a wrong doer that in order to save himself or herself from being punished by law, do something in defence and tampering or planting with evidence is the first and foremost in this regard. Apart from legal definitions, evidence in its ordinary sense signifies anything that makes apparent the truth of the matter and it never includes the statements and admissions of the parties, their conduct and demeanour before the court and tampering means the unauthorized act of touching or making changes to anything so a person commits the crime of tampering with evidence when he or she knowingly:

- Alters, conceals, falsifies, or destroys
- Any record, document, or tangible object
- With an intent to interfere with an investigation, or possible investigation

Witnesses turning hostile out of coercion, major evidences exchanged, missing or the circumstances are manipulated in such a manner as to create a different image in the eyes of law, these are some examples to tampering but the main problem is that these situations are beyond the control of justice system as no one can predict anything before enquiry (Eg: the murder weapon is a knife, then if it is removed from the crime scene or if it is replaced with some other knife, then it will be considered as tampering with evidence). This causes obstruction in the path of justice as it forces the judges to decide the matter on the basis of incorrect facts and evidences and if the offence is not which negates the whole purpose of Justice and Rule of Law.

Evidences are not only tampered with by the offenders but also the police or the people who are on investigation which is a result of rapidly increasing corruption amongst people including government officials and police. Police being the body for rendering justice are themselves involved in such tampering and planting of evidences. This is generally done in lieu of some favours from the accused which may be monetary or administrative such as promotions.

Tampering with evidence is an offence and there are statutes prescribing tampering with evidence, fabricating evidence, and the concealment or destruction of evidence for the purpose of impairing its availability as evidence in an investigation or official proceeding. As per common law, this is referred as Obstruction of Justice.

COMPARISON AMONGST VARIOUS JURISDICTIONS

Indian Law:

Chapter XI (S.191 – S.229) of Indian Penal Code deals with false evidence and offences against public justice but there are various provisions specifically regarding evidence tampering:

- Section 191[6]:- Giving False Evidence
- Section 192[7]:- Fabricating False Evidence
- Section 193[8]:- Punishment for False Evidence
- Section 195A[9]:- Threatening any person to give false evidence

[6] Giving false evidence- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence

[7] Fabricating false evidence.—Whoever causes any circumstance to exist or 1 [makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement,] intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

[8] Punishment for false evidence.—Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

[9] Threatening any person to give false evidence.—Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

- Section 196[10]:- Using Evidence known to be false

Landmark Cases

1. **Uphaar Cinema Fire Case:** - Amongst worst fire tragedies that took place in India, Uphaar tragedy which occurred on Friday, 13 June 1997 at Uphaar Cinema, Delhi. The victims of this tragedy was awarded a sum of Rs. 25 Crores by the Delhi High Court, however the Supreme Court on 13th October, 2011 nearly halved the sum of compensation and slashed punitive damages to be paid by cinema owners Ansal brothers.. In its final order, SC on 25th August, 2015 modified its earlier order and ordered that Ansal Brothers will undergo a two-year rigorous jail term if they fail to pay Rs. 30 Crore each within three months.[11] The particular judgement which is related to the point of evidence tampering came on 20th November, 2007 in which 12 people were found guilty and later convicted for various charges including, causing death by negligent act and were given the maximum punishment of two years of Rigorous imprisonment.

2. **Arushi Talwar Case**: - This case is pertaining to the double murder of Arushi Talwar Daughter of Dr. Rajesh Talwar and Nupur Talwar and other victim was Hemraj Banjade, their domestic helper. At the time of the murder there were only four people in the house, Arushi, her parents and their domestic help Hemraj, that is why the prime suspect of murder were the parents of Arushi and as a reason police said that the parents found daughter and Hemraj in compromising situation and in sudden provocation, parents murdered them. This is the most prominent case of evidence tampering in India because it attracted lots of media's attention. In this case the investigation process led by Police was considered as shame as during process most of the evidences were destroyed by people on the crime scene and by police also although most of it was unknowingly done but because of the carelessness of the Police. When the vaginal fluids of victim were sent to forensic department they were sent to the hospital and hospital authority misplaced the sample and made report on the assumption and as it was made on the assumption, court denied to accept it as it was not admissible as there was no surety. In the middle of investigation, Investigation officers were changed and both officers gave different theories as of murder and that is why this case is the prominent case of evidence tampering.

English Law

In England, it is referred as perverting the course of Justice and it is an incredibly serious crime that involves the attempt to misdirect the direction of justice to influence the outcome of a case. It refers to an act that aims to meddle with the pursuit and administration of justice. The term incorporates various methods by which a man can affect

[10] Using evidence known to be false.—whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

[11] Sundaram, Venu. "Uphaar and the Curious Case of the Judges Who Wouldn't Listen." www.thewire.in.August 24,2015. Accessed November 17,2017. https://thewire.in/9075/the-curious-case-of-the-judges-who-wouldnt-listen/.

and impact the course of justice. Numerous different sorts of wrongdoing like tampering with evidence, fraud, manipulating a witness, perjury falls under this term. These are considered as serious crimes and they carry serious punishment.

To pervert the course of justice, any of these acts mentioned below must be carried out:

1. Intimidating or interfering with a case witness, juror or judge;
2. The disposal, or fabricating, of evidence;
3. Falsely accusing someone of a crime, resulting in their arrest.

Punishment: - The maximum sentence that can be imposed in such offences is life imprisonment and/or fine. However, Crown Prosecution Service (CPS) sentencing guidelines recommend a prison sentence for obstruction of justice between four and 36 months.

CPS is responsible for prosecuting criminal cases investigated by the police in England and Wales on behalf of the state. It is headed by the Director of Public Prosecutions (DPP) who is answerable to the Attorney General for England and Wales who is in-turn responsible to the Parliament.

Landmark Cases

1. **Chris Huhne and Vicky Pryce**: - After a controversial stint, Huhne admitted asking Pryce to take his speeding points to avoid losing his license in 2003 and Pryce was convicted of having agreed to do so and as a result Former Cabinet Minister Chris Huhne and his ex-wife Vicky Pryce have each been jailed for eight months for perverting the course of justice.
2. **Jeffery Archer Case:** - On 19th July, 2001, politician, failed businessman and millionaire novelist Lord Archer was jailed for 4 years after being found guilty of perjury and perverting the course of justice. He was accused of asking his former friend Mr. Francis, to provide him with a false alibi for a night relating to libel case and of producing fake diary entries to back up the story. The jury found him guilty of lying and cheating in his 1987 libel case against the Daily Star and was ordered to pay 175,000 Euros within 12 months.
3. **Stephen Lawrence Case:** - Stephen Lawrence was stabbed to death when he was 18, by a racist gang at a bus stop in Eltham, south-east London in 1993. Since then the case and investigation has been going on and in April 2010, detective Paul Steed, was demoted for trying to sabotage evidence connected with the Stephen Lawrence enquiry. It was proved that he tampered with key times and dates on an evidence log.

> However this officer was not given a very harsh punishment as the actions of this officer have not had any long-term impact on the review of the investigation.[12]

US Law

Witness tampering is defined by the statute 18 U.S.C § 1512[13], which defines it as "tampering with a witness, victim, or an informant." The punishment for the same is given

[12] "Policeman tampered with Stephen Lawrence evidence." BBC News. April 1, 2010. Accessed November 17, 2017. http://news.bbc.co.uk/2/hi/uk_news/england/london/8598729.stm.

13 (1)Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;
(B) prevent the production of a record, document, or other object, in an official proceeding; or
(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
Shall be punished as provided in paragraph (3).

(2)Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—
(A) influence, delay, or prevent the testimony of any person in an official proceeding;
(B) cause or induce any person to—
(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;
(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
(iv) be absent from an official proceeding to which that person has been summoned by legal process; or
(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;
Shall be punished as provided in paragraph (3).

(3)The punishment for an offense under this subsection is—
(A) in the case of a killing, the punishment provided in sections 1111 and 1112;
(B) in the case of—
(i) an attempt to murder; or
(ii) the use or attempted use of physical force against any person;
imprisonment for not more than 30 years; and

(C) In the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.
(b)Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—
(1) influence, delay, or prevent the testimony of any person in an official proceeding;
(2) cause or induce any person to—
(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
(D) be absent from an official proceeding to which such person has been summoned by legal process; or
(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings;
Shall be fined under this title or imprisoned not more than 20 years, or both.

(c)Whoever corruptly—
(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,
Shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—
(1) attending or testifying in an official proceeding;
(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation 1 supervised release,,1 parole, or release pending judicial proceedings;
(3) arresting or seeking the arrest of another person in connection with a Federal offense; or
(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;
Or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defence, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.
(f) For the purposes of this section—
(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and
(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.
(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—
(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agencyis before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or
(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.
(h) There is extraterritorial Federal jurisdiction over an offense under this section.
(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.
(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that

under paragraph 3 of the statute 18 U.S.C § 1512 which is up to 30 years and fine as per the seriousness of the crime. For example, if someone kills a person with the intent to prevent the testimony of any person, or to prevent the production of any record or any document, or to prevent communication of a person to a law enforcement officer then the he shall not be imprisoned for more than 30 years. In case of threat of the physical force against any person then he shall not be imprisoned for more than 20 years and fine, in case of harassing some person and hinders, delays, dissuades any person to testifying in the court proceeding or reporting to the Law enforcement officer shall not be imprisoned for more than 3 years and fine.

Landmark Case

Arthur Andersen LLP v. United States[14], In this case Arthur Andersen persuaded his employees to destroy the documents related to investigation of Enron Corporation who was one of his clients and found guilty, the question before United States Supreme Court was that if the employees who destroyed documents related to investigation can be taken under punishment and Court said that court must find the consciousness of wrongdoing, as the intention of doing wrong must be there and in here employees were corruptly persuaded by Arthur Andersen to destroy documents and hence employees were found not guilty as they had no ill intention in destroying documents and they were corruptly persuaded. Limiting criminality to persuaders conscious of their wrongdoing, complies with the level of culpability usually required in order to impose criminal liability. Importantly, "persuading" an individual with the intent to cause that individual to withhold documents or testimony from a government proceeding is not inherently wrong. For example, an attorney may persuade a client to withhold documents or testimony, that are subject to, the attorney-client privilege. Reversed and remandedulture or purport a specific religion.

otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.
(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

[14] Arthur Andersen LLP v. United States (May 31, 2015).