Kashish Gupta v. State of Kerala – Right to Change Name as a Fundamental Right in India

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Abstract

In the information age, identity is deemed as one of the most crucial aspects for truly reaping the privileges of being born as human – every aspect of a human life, be it the inclusion or respect in the society, working, making money, educating, travelling etc., revolve around a few documents, so attested by the State, which proves the existence of an individual. And while numerous ways of confirming such identities have evolved, the primitive method of "naming" a person continues to be in vogue even today, be it in the personal or professional era. The rapid development and the continued reliance of individuals upon the administrative departments for availing numerous benefits of the State mandate citizens to maintain a prior record of necessary documents to that effect, implying the need to have a proper legal name therein. Any contradiction therein, that, even the slightest mismatch of names on such documents can destroy one's social life today. As humans, we are prone to errors and attracted to change, bearing which, the Democratic Government like that of India permits its citizens to change their names and as of today, even recognize it as an integral facet of their right to privacy, assuring minimum interference with the name people to seek to be recognized by in the society – while reasonable restrictions prohibit the exercise of such right in a few instances, the unreasonable restriction of such right is practically impermissible in the country. And despite this position of Law in the Indian society, CBSE resorted to refusing the application for change of name of one Dinky Gupta from her records with the Board– when the move was challenged, the High Court of Kerala interpreted the prevailing Bye-Law in the favour of the Petitioner by granting her the right to alter her name, citing it as a matter of her Constitutional right to do so as it was being exercised within the permissible limits. Discussing the Judgment of **Kashish Gupta v. State of Kerala**, the Authors, through the

medium of this Paper shall shed light on the stance of the foreign jurisdictions on the freedom to utilize any personal name and enlightening the reader with the abridgment of the right of the Petitioner, had the said right not been recognized or protected in the country. In a nutshell, this Case Comment shall be a guiding tool for understanding the scope of the right to change the name in the country.

Keywords: Right to change name, Identity, Article 21, Unreasonable restriction

1. Introduction

Every living organism on this planet has its unique identity– animals recognize their kin and foe based on odour, marks on their bodies and in case of humans, by remembering the facial design or the bodily structure. And as cavepersons started living together for enhancing their security in the wilderness, it appears that the concept of bestowing names upon the individuals evolved for ensuring recognition – a survey of initial names concludes that they were largely derived from the terms used by the general masses for referring to the aspects of nature, such as rivers, trees, forests, hills etc. The dawn of the agricultural era witnessed the communities defining the very fabric of the society (more the land or domestic animals one possessed, wealthier he was perceived and therefore had more power and influence), which is believed to have perpetuated social classification. In the words of Dr. B.R. Ambedkar[1], the isolation of the sets of individuals involved in studying and preaching the Vedas and later, the warrior classes led to the birth of a rigid caste system in the subcontinent. One of the most important aspects of such division was identification, and people were branded with names, based on the profession they carried out, largely similar to the Germanic system; in India, however, the names and titles utilized by the members of the upper classes could never be availed for naming their children!

While the Ancient Indian society, largely perceived as a knowledge-based society resorted to such categorization in the name of divinity, the Romans, largely a warrior kingdom, had no such restrictions in naming people, though, certain were reserved for the Aristocracy– the titles however, were bestowed upon them based on their merit or the position in the

[1] Ambedkar, B. R. (Bhimrao Ramji), 1891-1956. Annihilation of Caste: An Undelivered Speech. New Delhi: Arnold Publishers, 1990.

society. With the dawn of Christianity and Islam however, the world witnessed the destruction of the existing social division in the Middle East and Europe, though the decentralization of names occurred wherever these religious movements gained fame. With time, however, the rise of the Royalty and Priestdom prevented the utilization of some names by slaves and the poorer classes. Where the principles of equality and equity began appearing to be a Myth in the European societies, the French Revolution played a pivotal role in asserting the rule of people in the country and amongst all their demands, sought to make the names restricted to the members of the Royalty, available to one and all. Meanwhile, Medieval India strictly practiced the idea of conferring select names to only the upper echelons of the society, a practice that continued until the implementation of the Constitution of India, 1950 – it is believed that Dr. Ambedkar, after converting to Buddhism and helping the oppressed classes gain a new identity, saw to it that the titles and names prevalent in the upper classes were well utilized by them. The classification and restrictions of names were perceived no less than promoting untouchability and was required to be disposed off, if equality and democracy were to truly flourish in India. The Marathas who were feared for their influence over the Indian subcontinent in the 1700s strictly indulged in allocating titles to noble citizens, assuring them respect accordingly – many scholars believe that the same was a method of securing the loyalty of the locals, which indirectly led to the increase in the plight of those belonging to the lower stratas. It is unfortunate that the British, after securing control over India, resorted to conferring titles upon the native loyalists, thereby dividing Indians for centuries and looting the riches back home at their expense. This is precisely why the Constituent Assembly sought to restrain Indians from accepting or using any titles before their names extending to having names of choice, irrespective of societal barriers – resultantly, the Constitution of India, 1950 vide it Article 18, prohibits the State from conferring any titles on individuals besides disallowing the latter from accepting any from foreign nations[2].

Nevertheless, with the ever-increasing numbers of administrative departments for the smooth functioning of rapidly growing empires, the implementation of the concept of a single legal name became imperative. The British introduced this idea to the Indian

[2] The Constitution of India, 1950, Article 18.

subcontinent, thereby seeking compliance of the natives with maintenance their records, making the possession of a legal name virtually indispensable. Post-independence, the administrative expanse within India required all its citizens to have a proper legal name, registered on the Birth Certificate, Marriage Certificate and even on the Marksheets for availing various benefits of the Government. It is surprising that, that despite the importance of such practice, the authorities are often ignorant or adamant on not cooperating with the demands of the people to rectify their names therein, thereby adding to their miseries owing to the administrative contradiction - in the recent years, such cases have soared drastically, especially in the educational sector, which has been thoroughly been enlightened through the medium of this Paper.

Identity of every individual in India, contrary to its understanding in the modern times, was earlier governed by traditions and customs, implying that the aspects of marriage, fate and death of that person were practically decided at birth, based on the alignment of the stars during his or her birth. Such influence also extended to deciding the names of the individuals, which practically remained unchanged throughout their lifetime – it reflected not just the aspirations of the family, but also the expectations from that being. The ritual of naming a person is undoubtedly considered to be one of the most sacred and prestigious moments in his or her life amongst the Hindus since it marks the official entry of the new-born in their community and is, therefore, celebrated with joy and pompous. And this given name is thereafter required to be registered with the concerned Municipal Department of the city through the Birth Certificate – the same stands proof of the person's existence as a citizen of the State. This document plays a crucial role in securing admission in desired schools or colleges, applying for Jobs, travelling abroad etc. and enables an individual to enjoy his or her liberty to the fullest – it is the most important aspect of every person's life and requires utmost caution and care while ascertaining its nature and even its spelling. Therefore, India being a democratic country allows a person to rephrase his or her name in accordance with the established procedure, if not satisfied with the one provided to them at the time of the birth. This permits the rectification of any spelling, or a complete revision after marriage in cases of women etc., thereby prohibiting any conflict in the administration realm. Undoubtedly, any refusal to effectuate the said process without any concrete reason

shall create a case in the favour of the aggrieved citizen, as recently observed in ***Kashish Gupta v. State of Kerala***[3].

2. Facts of the case

One Dinky Gupta, had her name transformed to Kashish Gupta, which was approved by the State of Kerala and published in the Government Gazette on 12.12.2017, 5 Months before the declaration of the result of her senior secondary exam, which was published with her previous name since it was based on the records available with the school. On the request of the Parents of the Petitioner, the Principal of the school also wrote an E-Mail to the Central Board of Secondary Education[4], requesting to alter the name of the Petitioner in the certificates and records maintained by Central Board of Secondary Education. In response, the said request was denied owing to the CBSE Notification dated 01-02-2018, Rule No. 69(i) of the Examination Bye-Laws. However, she was issued an ID Card with the name of "Kashish Gupta" for the main examination in 2020 and even had to appear for its two papers before the imposition of the nationwide Lockdown – such variance in the name of her Marksheet of 2018 and the one that would be produced in 2020 was asserted to have severe consequences on the future of the Petitioner and therefore, the writ of Mandamus was invoked for effectuating the variation in name as required therein.

3. Issue of the case

The lackadaisical attitude of CBSE gave rise to the following issue:

"To what extent can the CBSE decline the request for changing the name of an Applicant within its records?"

4. Judgment

Highlighting that name is a mode of expressing oneself and therefore, protected under Article 19(1)(a) of the Constitution of India, 1950, Justice Kurian Thomas read through the

[3] 2020 SCC Online Ker 1590.
[4] Hereafter referred to as "CBSE".

Rule 69.1(i) of CBSE[5], Examination Bye-laws and interpreted them to allow the Petitioner to succeed in her claim of getting her name changed in the documents maintained by the Respondent. In doing so, he reiterated the power of the Court to correct the errors in the Legislation, to eliminate the ambiguity presented by the particular law. To put it simply, the Kerala High Court, after realizing that the aforesaid Rule prohibits the incorporation of any transition in the name it records after the publication of the results after the **Order of the Court *and*** the **publication in the gazette** to that effect, pointed out that fulfilling both the conditions created vagueness - satisfying the former was declared to be evidence enough that the name of the person has been changed. However, rather than striking this rule down, the Court interpreted the usage of the term "and" to be equivalent to that of "or" and held that the publication in gazette maintained by the Government and the fact that the amendments to the Aadhar Card and the Birth Certificate were performed before the Petitioner write her exam in 2018 stood as a valid proof for allowing the reconstruction in her name in the official records maintained by the Respondents, thereby forbidding the former from facing unnecessary hardships. Briefly reading Rule 69(1) of the Bye-laws, the High Court held that the CBSE was bound to carry out the process for changing the name of the Petitioner, since the application for the same was made within 5 years, specifically, 16 months after the result was declared. Assuring to exercise extraordinary jurisdiction under Article 226 of the Constitution, the High Court of Kerala for safeguarding the career prospects of the Petitioner directed the Regional Officer, CBSE, Thiruvananthapuram to correct the name of the Petitioner from Dinky Gupta to Kashish Gupta within 6 weeks, thereby rending justice in the truest sense.

5. Right to Name as a Fundamental Right in India

Ideally, the fact that CBSE falls within the meaning of State under Article 12 of the Constitution mandates it to promote and protect the fundamental rights of the citizens, a duty, which it is has cleared failed at on numerous occasions[6]. Specifically, the refusal of the CBSE to incorporate the changes in the names of the Applicants in their records has

[5] Rule No. 69.1 (i): Applications regarding changes in name or surname of candidates may be considered, provided the changes have been admitted by the Court of law and notified in the Government Gazette before the publication of the result of the candidate.
[6] T.M.A Pai Foundation v State of Karnataka, (1994) 2 SCC 734.

been challenged in several legal forums throughout the country and in a majority of instances, has favoured the latter provided the legitimate pre-conditions of the Bye-Laws are fulfilled to that effect. However, contrary to the interpretation undertaken by the High Court of Kerala, the High Court of Delhi, for the sake of granting the request of changing the name of the Applicant, the Court ignored the assertion of the Bye-Laws for submitting the Court order for permitting the transition of the name. On confirming the publication of the change in name in the official gazette, the Court declared that the same was sufficient for the CBSE to edit the name as requested by the Applicant within its records[7]. In doing so, the Court averred that such a pre-condition of a Court Order would mandate the presence of a defendant, challenging the request of the Applicant for changing his or her name before the Civil Court, an element, which is absent in such cases. The notion of changing the name includes editing errors, typographical errors in the name of the candidate, or that of his or her mother or father and or alteration or deletion for bringing it in confirmation with the records maintained by the school[8] and the Applicant shall always be in a position of availing this facility as far as the same is appealed with the prescribed limitation period by the Bye-Laws – such restrictions are declared to be constitutionally valid and does not infringe the liberty of thought, belief, faith, worship etc. of the citizenry[9]. Post Amendment to these Bye-Laws, the Applicants are now required to initiate the process of changing their names before the declaration of results, failing which, their plea is bound to be rejected[10], a contention, also accepted by the High Court of Kerala in the instant matter. Unlike all of the previous cases, the High Court of Kerala went a step further and recognized the right to name extending to that of changing the same as per convenience as a fundamental right, compelling the authorities to not to refuse it arbitrarily hereafter, throughout the country.

The Constitution of India, 1950 recognizes self-autonomy of individuals as a fundamental right, specifically interpreting as a mode of self-expression and therefore, an inherent facet

[7] Naveen @ Naveen Dogra And Ors. v. CBSE, 2013 (205) DLT.
[8] Dhruva Parate v. CBSE And Anr., 2009 SCC Online Del 55
[9] Abhishek Kumar Bal Kishan v. Union of India And Ors., 2014 SCC Online Del 3459
[10] Aditya Srivastava (Minor) the Natural Guardian Mother v. Central Board of Secondary Education & Anr., 2017 SCC Online Del 6599.

of right to life and personal liberty[11]. Particularly, self-autonomy, which includes the idea of implementation of the legitimate desires of a person (those not conflicting with public order and health) and the way he or she is willing to be perceived in the society without minimum state intervention to that effect connotes the right to privacy of the citizens, now a constitutionally guaranteed fundamental right. In the light of these developments, the Courts are now expected to permit the citizens for opting for the name of the choice since this feature is to be construed as a medium of self-realization – reading these constituents together, it is evident right to choose name of choice is a fundamental right of the citizens and cannot be curbed arbitrarily, as witnessed in the present case. By declaring the right to have a name of choice extending to the liberty to edit the same at any stage, the interpretation of the High Court of Kerala is in consonance with the American jurisprudence, which too, has declared the right to utilize the name of choice as an inseparable part of the Right to Privacy therein. In *Fendall v. Goldsmid*[12], it was held that a name acquired by marriage can be amended by a reputed name in case the latter has gained such fame that it virtually supersedes the former. The concept of a proper legal name was sparsely introduced in the United Kingdom, whereby the Court of Common Pleas confirmed that every Christian therein could have only one baptismal name[13]. However, this too could be revised officially on confirmation by the Bishop[14], suggesting that liberty was guaranteed to the citizens for changing their name at any point of time during their lives. In Scotland, the Court of Division, First Session went to the extent of denying the masses from seeking permission of any authorities for changing name, suggesting a rather liberal approach with regards to the private matters of the people[15]. In a similar case[16], Lord Adam personally pointed out that the right to edit the name was a "perfect right" and no person could be prevented from changing his or her name. In both

[11] K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[12] (1877) 2 PD 263.
[13] Loyd's Case, (1609) Noy 135.
[14] Re Parrott, Cox v Parrott, [1946] Ch 183.
[15] Young, (1835) 13 S. 262.
[16] Robertson, (1899) 37 S.L.R. 82.

the United Kingdom[17] and the United States of America[18], Germany[19] it was clarified by the judicial forums that common law does not oblige women to assume the surnames of their husbands after marriage, suggesting that women cannot be compelled to undertake the same in India as well. In *Dunn v. Palermo*[20], it was pointed out that even the State cannot mandate people from using their names in a particular fashion, as far as it remains consistent and is modified in the prescribed manner with the absence of deceit. In the common law system, the refusal of the Courts to edit the name is equivalent to abuse of power and is perceived as undemocratic[21]. In the European context, the denial of the authorities to change the name of the requesting party amounts to a blatant violation of their right to privacy, besides leading to unreasonable discrimination on the part of the State[22].

Thus, it appears that every major jurisdiction in the world caters to its citizens, the right to keep and transform the name as per their perception, thereby sheltering them against societal stigma, enabling them to enjoy the identity through which they seek to be perceived without any form of unnecessary hindrance.

6. Conclusion

By undertaking a rigorous interpretation of the term "and" to be equivalent to that of "or" in the said Bye-Law, the Authors opine that the High Court of Kerala has reiterated the assurance given by the Founding Fathers of the Constitution and the landmark precedents of the Apex Court for going to any extent for safeguarding the interests of the society. The Courts indeed have unparalleled power with regards to the rectification of errors by the drafters of the law, when its language, on a plain reading gives rise to an ambiguity which is bound to cause injustice if construed that way[23]. In the Common Law system, every clause of the statute is to be interpreted with reference to the other clauses of the Act, for

[17] Cowley v. Cowley, A.C. 450 (1901).
[18] In re Petition of Kruzel, 67 Wis. 2d 138.
[19] Rainer Gildeggen, Jochen Langkeit, The new conflict of laws code Provisions of the Federal Republic of Germany: introductory comment and Translation, GA. J. INT'L & Comi P. L., 1986, p. 232.
[20] [522 S.W.2d 679 (1975)].
[21] Petition of Elizabeth Marie Hauptly, 312 N.E.2d 857 (1974).
[22] Burghartz v. Switzerland, Application No. 16213/90.
[23] M. Pentiah and others v. Muddala, AIR 1961 SC 1107.

making it consistent with the other clauses and the essence of the statue[24] and if the fault of the draftsman prevents the same, then, the Judge must exercise his judicial expertise to give "force and life" to the true intention of the legislature[25]. In the instant matter, the citizen-friendly interpretation of the statue paved the path for upholding their right to have the name of choice, thereby granting flexibility to the citizenry to determine their identity, which is conceived as "expression" under Article 19(1)(a) of the Constitution of India, 1950[26].

Inter-alia, had the Court refused to incorporate the said changes, the Petitioner would have suffered deeper trouble with regards to:

1. Pursuing further studies and educating herself which is an inherent facet of Life[27]
2. Travelling Abroad which forms the basis of the freedom of movement in India[28]
3. To earn living in a legal manner, which implies her exercising the profession of choice[29]
4. To express herself and enjoy her self-autonomy and space to the fullest, an inherent aspect of her right to privacy[30].

The said Judgment has undoubtedly increased the pressure on both the Courts and the administrative bodies to rectify the names of the individuals effortlessly, thereby granting the flexibility in matters of administration to that effect. Likewise, it has reiterated the responsibility of the Court to interpret the statutes in a manner which best safeguard the interests of the individuals. However, this would equally oblige the citizens for not resorting to such names, which could jeopardize their image or position in the public - a person should resort to bearing such a name, which does not hinder with the reasonable restrictions enshrined under Article 19(2) of the Constitution[31]. In summation, the Authors plead the concerned authorities to not reject the plea for the amendment of a personal name, thereby helping them exercise their fundamental rights peacefully in the country.

[24] Canada Sugar Refining Co. v. R., (1897) 27 SCR 395.
[25] Seaford Court Estates Ltd. v. Asher, 1949-2 All ER 155.
[26] National Legal Services Authority v Union of India and Others, (2014) 5 SCC 438.
[27] Cochin Institute of Science and Technology v. Jisin Jijo, 2019 SCC OnLine Ker 1800.
[28] Maneka Gandhi v. Union of India, 1978 AIR 597.
[29] State of Andhra Pradesh And Ors. v. McDowell And Co. And Ors., 1996 SCC (3) 709.
[30] Supra 11.
[31] Shreya Singhal v. Union of India, 2015 5 SCC 1.