SEDIMENT CLOSELY ALLIED TO TREASON- CRITICAL ANALYSIS OF SEC 124 OF I.P.C.

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The word Nation comes from the Latin, and when first coined clearly conveyed the idea of common blood ties. It was derived from the past participle of the word “Nasci” meaning to be born. Where all state nation states, no great harm would result from referring to them as nations and people who insisted that the distraction between nation and state be maintained could be dismissed as linguistic purists or semantic nitpickers. Where nation and state essentially coincide, their verbal underutilization is inconsequential because the two are indistinguishably merged in popular perception. The concept nationalism should come to mean identification with the state rather than loyalty to the nation.

The Assembly Constituted many such members who were active in the anti-colonial struggle and had been charged with sedition under the British Rule. There were many voices within the Assembly that felt that sedition, for its chilling on free speech, must not be included in the exceptions to the exercise of the freedom of speech and expression. K. M. Munshi was one of the Staunchest supporters of the above views who argued that the word sedition must be dropped from the list that empowered state to make any law relating to libel, slander, defamation, sedition, and other matters that would offend the decency or morality of the State or undermine the authority or foundation of the state.

He said:

“Our notorious Section 123-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the state…. As a matter of fact the essence of democracy is criticism of Government. The party system which necessarily involves an advocacy of the replacement of the one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy.”
Munshi’s speech challenged the validity of the offence of sedition in a democracy. It was reflective of nature of a democratic polity in which public opinion was imperious. The farmers were completely conversant with the fact that critical public opinion was indispensible for a democracy to function and sedition law curbed it. Munshi’s speech was also one of the earliest expressions regarding the ambiguous formulation of the law which exposed it to abuses.

Munshi had moved an amendment to delete the word ‘Sedition’ from the section on the restriction to the fundamental rights and replaced it with more definite phraseology of ‘undermining the security of, or tending to overthrow, the State’. This was an attempt at some kind of a compromise between upholding people’s freedom while maintaining a strong consolidated state. This view was also reflected in Krishnamachari’s speech—a member of Madras Legislative Assembly who supported Munshi’s proposal to remove sedition from the section on the fundamental rights. There was an implicit understanding that in case the law has to be used in ‘times of necessity’ to protect the State, its retention within the Penal Code, is useful.

He said:

“... It is quite possible that then years hence the necessity for providing in the Fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think its very necessary that there should be some express prohibition of application of these rights to their logical ends. The state here as it means in the amendment moved by my Hon’ble friend Mr. Munshi as I understand it, means the Constitution and I think it’s very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to genius of our people, we must take all precautions possible for maintenance and sustenance of the constitution and, therefore, I think the amendment moved by Hon’ble Friend Mr. Munshi is a happy mean and one is capable of such interpretations in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

We have to see how far the saving clause, namely, clause 2 of article 19 protects the portion aforesaid. The expression ‘in the interest of...public order’ are words of great amplitude and are much more comprehensive than the expression ‘for the maintenance of as observed by this court in the case of Virendra V State of Punjab AIR 957 SC 896, 899. Any law which is enacted in the interest of public order may be saved from the vice of constitutional validity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of the words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in the view of Article 19(1)(a) read with clause 2.
The provisions of the section read as a whole, along with the explanations, make it reasonably clear that the section aim at rendering penal only such activities as would be intended, or have tendency, to create disorder or disturbance of public peace by resorting to violence.

The explanations to the section make it clear that criticism of public measures or comments on Government action, however strongly worded, would be within reasonable limits and would be consistent with fundamental freedom of speech and expression. It is only when the words, written or spoken, etc. have the pernicious tendency or intentions or creating public disorder or disturbance of law and order, that the law steps in to prevent such activities in the interest of public order. The section strikes the correct balance between the individual fundamental rights and interests of public order.

The language of the clause (d) of the Section 4(1) Press (Emergency powers) Act (23 of 1931) is borrowed word from Section 124-A, Penal Code, commonly known as “Sedition”.

There is nothing in the law to prevent a person from attacking Government for its shortcomings in one or other respects with a view to remove them or correct them. It is also not prohibited to call upon the people to elect their representatives from one or the other political party which promises greater chances of religious or economic advancement. The state is, however, sacred, transcending all political parties and the Government as a whole cannot be brought into hatred or contempt without fear of disastrous consequences to all and sundry living in the State.

After correctly noticing that nation may comprise port of a state, or extend beyond the borders of a single state it elsewhere says of nationalism that it makes the state ultimate focus of the individual’s loyalty.

To apply S. 124 A against any person whose disloyalty and all feelings of almighty required to be scrutinized by his all done in context of that words, deeds or writing constitute sedition punishable under section 124 A, Indian penal code only if they violence 2 or disturb law and order or create public disorder or here the intention or tendency to do so 2


In Emperor Vs Sadashiv Narayan Bhalerao the word Sedition dose act recur in the section it is only found as marginal note to the section. But merely provides the name by which the crime defined in the section will be known. Where the section speaks of salred, contempt and disaffection, but of the same time it speaks of disapprobation, without existing hatred. Contempt disaffection if anyone speaks anything about the Govt Basically it is fundamental right of the every citizen of country in the demoralize state stat people have fundamental right if freedom of speech and expression of art 19(1)(a) of the constitution, to speak regularly policies of the state existing laws,
bills etc. if does not mean that, people have any kind or hatred or exciting hatred, contempt and disaffection towards the state. It is a soul of democratic country by allowing or guarantying their right to speak and express their views about the Govt. It is not anything against the state so for as contempt and disaffection.

4. Kedarnath V/s State of Bihar 
the constitutional Bench held that this Section 124 A of IPC is not unconstitutional and opinioned that the words written or spoken etc. which have the intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual F.R. and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Govt. or its measures, by way of criticism or comment so long as he does not invite people to violence against the Govt. established by law or with the intention of creating public disorder.

If I appreciate this above mentioned judgment which was formed constitutional bench for delivery this matter with reference to exact meaning of Sedition as well them some of the questions would still remain there like if I make criticism or comment so long as. I do not incite people to violence against the Government established by law or with the intention of creating public disorder.

My words or speech or comment or criticism does not create any kind of public disorder or incite people to violence against the Govt established by law or intention of creating public disorder but the words of comment is very much found to be falls in the ambit under section 124 A under such circumstances whether I am liable to punished by section 124 A of IPC?

In BalGangadharTilak V/s Queen Express 

The charge was under sec 124 A as it then stood, Confined to disaffection without any reference to hatred contempt. This interpretation was approved by the privy council but in MiharendraDatt V/s Emperor

The federal court considered that public disorder or the reasonable anticipation or likelihood of public disorder, is the gist of the offence but in subsequent case Sadashiv Narayan V/s Emperor the privy council held that a wrong construction of u/s 124 A the privy council said that they were unable find out anything in Language of S. 124 A which could suggest that the acts or words complained of must either incite or disorder or must be such as to satisfy reasonable men that is their intention or tendency explanation to S. 124 A provides that the expression disaffection includes disloyalty all feelings of enmity. This is quite unconstitutional with ILR 22 Bom 528 excite or attempts to exited disaffection, involves not only excitation of feelings of disaffection but also exciting disorder.
At the end, in Kedarnath V/s State of Bihar the S.C. held that a citizen has a right to say or write whatever he likes about the Govt. or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Govt. established by Law or with the intention of creating public disorder.

Recently the Supreme Court ordered in 2016, In common cause V/s Union of India that under section 124 of IPC shall be divided by the principles said down by the constitutional bench inkedarnath Singh Case.

Art 19 (1) (a) which is also part III guarantee’s that all citizens shall have right to freedom of speech and expression. There can be no doubt that sec 124 A and 153A of the IPC are restrictions on the freedom of speech and expression so guaranteed by article 19 (1) (a) of the constitution.

The criticism of government exciting disaffection or bad feelings towards it is not to be justifying around for restricting the freedom of expression and or the press. For democratic country it is required create such an atmosphere wherein people are free to expression their opinion about their government.

It is duty of the every democratic country ensured their own subjects to make their opinion expression or of the press against their government instead of initiating action against them under section 124 A or IPC and suppress their fundamental rights.

The words used in the amended clause (2) or Art 19 are Interest of Public order, necessary trends to maintenance or it so there must still be some real likelihood of public disorder taking place either immediately or in the near future, and where there is no such possibility, the interest or public cannot be said to be affected. Section 124 A is capable of being applied not only to cases where danger to public order could arise but also to cases where such a danger could not arise. In making all disaffection punishable section 124 A places a restriction on freedom of speech and expression which is not in the interest of public order of me.

Making of agitation by Hardik Patel in Gujrat for Reservation for Patel Community, the real question is that some of the people or group of people from Gujrat especially Patel community) made a violence protest against the government and the moment leading Hardik Patel by saying that, rather advise to resort to violence by killing four to five police officer, he could be said to have criticized the police force. In such circumstance a prime facie case of waging war against the Government could be said to have been made out.

Especially the word disaffection used in explanation or section 124 A of IPC that includes disloyalty and all feelings of enmity.
Disaffection means a feeling contrary to affection, is other word dislike or hatred. This section lays down the penalty of sedition have to suffer. Whether they excise disaffection or attempt to excite disaffection, they are in each case equally guilty and their criminality does not cease even if, failing to excite disaffection, their words only bring the Govt. in two hatred or contempt.

The same speech or writing may produce different feeling in different mind; one may feel contempt, hatred and third may feel disaffected by the same speech at the same time. And it is possible for the same person to feel hatred and contempt as well as disaffection in the senses those words have been used. It is not necessary to say that feeling was created at a given time, not it is possible as the section 124 A demands the matter to be seditions should have influenced to the public generally and not only particular members of it. At the end, one can say that the Govt is to hatred or contempt.

With the feeling of hatred the law can do nothing because it cannot see in to the heart and cannot reforms it but law lose step in when any attempt is made to excite the feeling in others.

At the end, there are two types of people involved in the sedition offence therein at the first type, the person who takes part in the committing of act by way of either words or spoken attempts to excite disaffection towards the government established by law in India.

Due to actual disaffection towards the government by way of words spoken by the person, the listener who has not actually acted on the attempt made by the accused but the accused who has shows his disaffection towards the Government shall be punished according to Section 124 A of IPC.

But certain accused persons were convicted for listing to some cassettes containing speeches of sedition nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly Facilitated commission of disruptive activities under TADA 1987, their conviction was set aside.

On the basis of above mentioned confusion, S. 124 of IPC sedition is required to eliminate from the IPC and for the same kind act done by the person should be punished according to respective act i.e. nuisance disturb etc. waging war against the state public tranquility.
References:

2. op.cit.119, 120
3. AIR 1947 PC 82
4. AIR 1962 Supreme Court 955
5. 22 Bombay 112 at P 125
6. AIR 1952 FC 22 at P 26
7. AIR 1947 PC 82 at P 84
8. AIR 1962 Supreme Court 955
11. Bhaskar 8 Bom L.R. 431 at P 437
POPULATION DYNAMICS OF PHYTOPLANKTON OF KUDALA DAM WATER, DISTRICT NANDED, MAHARASHTRA

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Key Words: Phytoplankton, Kudala Dam, Population dynamics, Chlorophyceae, Cyanophyceae

Abstract:
Present investigation has been undertaken to study the population dynamics of phytoplankton of kudala dam water during the year 2017. The monthly variations of phytoplankton were studied. During the present study Phyplankton from four families with total 23 species were reported. Among the phytoplankton species members of Chlorophyceae were found to be dominant throughout the study period.

Introduction:
Phytoplankton is an important component of ecosystem, which responds to ecosystem alterations rather rapidly. It is due to the fact that planktonic organisms play a key role in the turnover of organic matter and energy through the ecosystem (Telesh, 2004) Phytoplankton plays an important role of primary producer in aquatic environment, hence it is the first component in the trophic level. Phytoplankton which includes blue- green algae, green algae, diatoms, desmids, euglenoids etc. are important among aquatic flora. They are ecologically significant as they form the basic link in the food chain of all aquatic animals (Misra et al., 2001). When in large numbers they make the water greenish. Phytoplanktonons are important in an environmental impact study in as much as they are extremely responsive to change in the environment and thus indicate environmental change and fluctuations that may occur. Phytoplankton acts as a biological indicator of water pollution. The phytoplankton composition of reservoir indicates that water of this reservoir is slowly getting mesotrophic and leading to eutrophy. Substantial contribution of algal forms like Chlorella, Navicula, Nitzschia, Synedra, Phromidium, which are part of a palmer’s list of sixty more pollution tolerant genera in the world (Palmer, 1969 ). Phytoplankton is the pioneer of an aquatic food chain. The productivity of an aquatic environment is directly correlated with the density of phytoplankton. The Phytoplankton is the base of most of the lake food webs and fish production is linked to the
phytoplankton (Ryder et al., 1974), the growth of Phytoplankton is directly correlated to phosphate, silicates as well as nitrogen. These three elements are essential for the bloom of phytoplankton.

**Material and Methods:**

For the phytoplankton analysis, samples were collected monthly for a period of twelve months during year 2017 from three sampling sites namely site A, site B, and site C, over the dam by using plankton net of mesh size 25 µm.

Phytoplankton were preserved by using Lugol’s iodine solution and 4% formalin and counted by using Sedgwick- Rafter cell and identified by using keys, Trivedi and Goel (1986), Kamat (1985), Palmer (1968) and Patric Reimer (1966) and photographed by using phase contrast microscope. Zooplankton were preserved in 4% formalin and counted by Sedgwick- rafter cell. Standered keys and other literatures were used for identification of different species and the identified species were expressed in number per liter.

**Results and Discussion:**

The monthly fluctuations and average values of phytoplankton population are illustrated in the table 1 and 2. During the present study, Phytoplankton from four families with total 23 species were reported. The total number of phytoplankton population were found to be varied from 5 to 300 number per litre at site A, 8 to 290 number per litre at site B and 10 to 302 number per litre at site C. The family Chlorophyceae was represented by 10 species with dominance *Pediastrum* sp. and *Oedogonium* sp. The maximum Population of members of Chlorophyceae was recorded in May,297.33/L. Bacillariophyceae was represented by 6 species with dominance of *Navicula* sp. The maximum population of Bacillariophyceae was recorded in January 236.67/L. Cyanophyceae was represented by 5 species, maximum population was observed in May 122.30/L. Euglenophyceae was represented by 2 species, maximum population of Euglenophyceae was recorded in the month of May 112.00/L. The average population of Chlorophyceae was observed 40%, Bacillariophyceae was 36%, Cyanophyceae was 13% and Euglenophyceae was 11%.

The group wise population density was in the order;

Chlorophyceae > Bacillariophyceae > Cyanophyceae > Euglenophyceae.

List of Phytoplankton species observed

**Chlorophyceae:** *Ankistroesmus falcatus, closterium limneticum, Cosmarium contractum, Hydrodictyon, Oedogonium patulum, Pediastrum duplex, Pediastrum simplex, Spirogyra, Ulothrix zonata, Zygnema sp.*
**Bacillariophyceae:**  *Bacillariaparadoxa, Diatom sp., Diatom vuloare, Fragillaria capurina, Navicula radios, Navicula viridula.*

**Cyanophyceae:**  *Anabaena constricta, Anacystis species, Nostoc, Oscillatoria chlorina, Oscillatoria limosa.*

**Euglenophyceae:**  *Euglena stellata, Euglena viridis.*


Somani and Pejavar (2003) reported 14 genera of Chlorophyceae, in the Lake Masunda, Thane, Maharashtra.

Rao and Raju (2001) observed the Bacillariophyceae species such represented by *Melosira, Synedra, Navicula, Nitzschia, Gyrosigma, Cymbella* and *Amphora* in fish culture pond at Nambur near Guntur, Andhra Pradesh.


Perumalsamy *et al.,* (2003) reported 43 species of phytoplankton in perennial ponds in Tamilnadu. Among these 11 species belong to Bacillariophyceae, 18 species to Chlorophyceae, 11 species to Cyanophyceae and 3 species to Charophyceae.

Khapekar *et al.,* reported 20 phytopankton species during the study period of Naik Lake. The group of Chlorophyceae was found to be dominant with % composition of 49% and. The group of Cyanophyceae was found to be sub dominant with percent composition 25 %. Jayabhaye *et al.,* recorded (2004) 43 species of phytoplankton belonging to 4 major groups; *Chlorophyceae, Bacillariophyceae, Cyanophyceae and Euglenophyceae*; out of which Chlorophyceae was dominant. The group wise population density was in the order; Chlorophyceae > Bacillariophyceae >Cyanophyceae >Euglenophyceae. The 18 species of Chlorophyceae , 10 species of Bacillariophyceae 10 species of Cyanophyceae and 5 species of Euglenophyceae. In Parola Dam of Hingoli District, Maharashtra, maximum phytoplankton population was during summer and minimum during rainy season.

Sakhare and Joshi (2002) recorded 31 phytoplankton species in Yeldari reservoir Maharashtra. Pawar *et al.,* recorded 61 genera of phytoplankton from Pethwadaj Dam, Taluka
Kandhar, District Nanded, Maharashtra. Nafeesa . Aijaz et al., 2004, reported 100 species of phytoplankton Bacillariophyceae contributed 42 species, Chlorophyceae 43 species, Cyanophyceae 10 species, Euglenophyceae 3 species while Dinophyceae and Chrysophyceae contributed 1 species each from Wular Lake Jammu and Kashmir India.

**Monthly fluctuations of Phytoplankton (Organisms/L) of Kudala Dam during January 2017 to December 2017**

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### Average Values of Phytoplankton from Jan.2017 to
Conclusion:

Present study shows population dynamics of phytoplankton of Kudala dam water. It was observed that maximum phytoplankton was found in summer season while minimum were observed during winter season. Among the four families Chlorophyceae were dominant throughout the year while species of family Euglenophyceae were observed very less number. Thus population dynamics varies according to seasonal fluctuations and various physicochemical factors.

References:

The children are the assets of the nation. There are numerous laws both at the international and municipal level for the protection of the children. However many children due to several reasons adopt delinquent behavior. The problem of juvenile delinquency has always been a challenge to the criminal justice system across the globe. This problem if not tackled through appropriate laws and treatment of the juveniles, would be a setback to the nation as the youth are the future of the nation. Many teenagers are involved in some unlawful behavior during the adolescent years, however escape detection, apprehension or court involvement.

The term ‘Juvenile’ can be defined as a child who has not attained a certain age, at which, like an adult, under the law of the land, can be held liable for his criminal acts. The UN Convention on the Rights of Child, 1989 defines that “child” means a human being below the age of eighteen years unless the law declaration applicable to child, majority is attained earlier. The Juvenile Justice(Care and Protection of Children) Act 2015, defines the term juvenile to a child who is below the age of 18 years. Juvenile Justice (Care and Protection of Children) Act, 2015 which will now allow children in the 16-18 age group to be tried as adults if they commit heinous crimes. Only those who have been officially adjudicated as such by a juvenile court are normally designated as "juvenile delinquents". Juvenile delinquency is any action by a person in the juvenile status that would make such a young person subject to action by the juvenile court.

Across the globe there is increase in the number of juvenile crimes. In India too crime statistics reveal increase in juvenile delinquency. To tackle the problem of juvenile delinquency there has been various enactments in the criminal justice system of India. Moreover the incident of the Nirbhaya case shook the country at large and consequently the laws concerning the juveniles were reviewed for further approach in the juvenile justice system in India. However despite of the laws there are still various challenges to their effective implementation.

Research issues and methodology

The methodology adopted in this paper is purely doctrinal. Relevant books, journals and online research articles have been consulted for the same. The first part of the paper highlights briefly the development of the laws pertaining to juvenile delinquency in India. The second part focusses on
The salient features of the Juvenile Justice (Care and Protection of Children) Act 2015. The third part deals with the issues and challenges in Juvenile Justice System in India.

**Development of Juvenile Justice System in India**

The Apprentices Act of 1850 was the foremost legislation passed in the colonial era concerning the children in conflict with the law. This Act treated children committing petty offences as apprentices (a person who is undergoing a course training in industry or under any establishment). Such children were not sent to prison.

According to the Indian Penal Code, 1860 juvenile delinquency is considered under Sections 82 & 83 of the Code. These sections provide protection to children from criminal prosecution unless they understand the nature of their actions. The Code of Criminal Procedure 1861, and 1898, in sections – 298, 399 & 562 prescribed for separate trial for the persons below the age of 15 years and required that they should be confined in reformatories rather than in adult prisons. Later the Reformatory Schools Act 1876 provided that boys under the age of fifteen who were imprisoned or transported should be placed in the reformatories. The second Reformatory Schools Act of 1897 dealt specifically with the treatment and rehabilitation of juvenile delinquents in the age group of seven and fifteen years.

The Code of Criminal Procedure of 1898 extended imprisonment at the reformatory schools for the juveniles until they completed the age of eighteen years, and then prescribed that they be placed on probation till they are twenty one. There were different laws for children in various states such as Delhi Children Act 1941, Mysore Children Act 1943, The Travancore Children Act 1945, The Cochin Children Act 1946, and the East Punjab Children Act 1946.

The Vagrancy Act 1943 provided for care and training for children below fourteen years who survived on begging or who lacked proper guardianship, or had parents who were involved in criminal habits and drinking, visiting prostitutes or were destitute. The Children Act 1960, enacted by the Union Government was applicable to Union Territories which served as a model for the various state legislations. It was on the basis of this Act that the Juvenile Justice Act 1986 was passed.

The Juvenile Justice Act 1986 repealed the earlier Children Act, 1960 and was to give effect to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985). It mandated care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for adjudication and disposition of juvenile delinquency matters throughout the country. There were separate procedures through juvenile courts and juvenile welfare boards. A major aim of the 1986 Act was to bring the municipal law in conformity with the UN Standard of
1985. However, this aim was not fully achieved, which necessitated the enactment of a new law in 2000.

The Juvenile Justice (Care and Protection of Children) Act 2000 was passed in December 2000 and came into force on April 1, 2001. This was amended in 2002 and 2006 aiming to protect, care, rehabilitate and educate the juvenile and to provide them with vocational training opportunities. The amendment was made to address the gap and loopholes in the implementation.

**The Juvenile Justice (Care and Protection of Children) Act 2015**

This Act was passed by the Parliament in the backdrop of the Nirbhaya Case. It aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care & protection, development, treatment, social integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children. The Act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions. Some of the notable features of the Act:

- The Act segregates between ‘children in need of care and protection’ and ‘children in conflict with law’ (JJ Act, Sec. 2). While the former includes children who are in adverse conditions, requiring state support to become responsible citizens, the latter are those children who have committed crimes.
- The Act clearly defines and classified offences as petty, serious and heinous, and defined differentiated processes for each category
- The Act treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime.
- A child of 16-18 years age, who commits a serious offence, may be tried as an adult if he is apprehended after the age of 21 years.
- A heinous offence attracts a minimum seven years of imprisonment. A serious offence attracts three to seven years of imprisonment and a petty offence is treated with a three year imprisonment.
- Death penalty or life imprisonment cannot be awarded to a child.
- It mandates setting up of Juvenile Justice Boards (JJBs) in each district with a metropolitan magistrate and two social workers, including a woman.
- A Children’s court is a special court set up under the Commissions for Protection of Child Rights Act, 2005, or a special court under the Protection of Children from Sexual Offences.
Act, 2012. In absence of such courts, a juvenile can be tried in a sessions court that has jurisdiction to try offences under the Act.

- Children in need for care and protection Child Welfare Committees (CWCs) should be set up in each district with a chairperson and four other members who have experience in dealing with children. One of the four members must be a woman. The committee decides whether an abandoned child should be sent to care home or put up for adoption or foster care.

- The child will not suffer from any disqualification that arises from any conviction under the Act and the records of any conviction will be destroyed after the expiry period of appeal, except in the case of heinous crimes.

- Biological parents giving up children for adoption, will be given three months to rethink their decision, instead of the existing one month.

- The Act caters to the foster care in India and aftercare of the child and any child leaving institutional care can now receive financial support more than one time.

- Disabled children will be given precedence in inter-state adoption and abandoned children, found by the childcare facilities, will be kept for 60 days before being given up for adoption or foster care, instead of the existing 30 days.

- The Act ensures training of special juvenile units in the police force and that the NCPCR and SCPCR will be the nodal authorities to be responsible for monitoring and to look into cases that arise out of the Act.

**Issues and Challenges with Juvenile Justice System in India**

- **Term of sentence**: Regarding the term of the sentence it appears that there may not be total and complete rehabilitation of a child in conflict with the law within a maximum period of three years. Hence long term measures should be adopted by the government.

- **Aftercare of the child in conflict with law**: There is lack of implementation concerning the aftercare of a juvenile on completion of his sentence. It becomes difficult to track and ensure the aftercare of the juvenile.

- **Juveniles in Adult jails**: National Commission for Protection of Child Rights (NCPCR), a number of probable juveniles are found in adult jails. Further, the police subvert the guidelines of JJ Act and lodge juveniles into adult jails.

- **Juvenile homes**: The Juvenile homes lack trained staff, vocational training, counselling and individual care plans also financial corruption is a major concern in juvenile homes in India. The children in Juvenile homes are subjected to sexual assault, exploitation, torture and ill-treatment.
Conclusion

From NCRB statistics it is observed that the juvenile crimes in India are increasing at alarming rates. Despite of the having laws to curb juvenile delinquency however they are not creating a deterrent effect on the juveniles. The reasons behind a Juvenile to become criminal can be many, perhaps the social perspective of the causes of juvenile delinquency needs more attention. More than the curative and reformative measures there should be more focus on the preventive measures. Hence the issue of juvenile delinquency has to be seen from a socio-legal perspective which will be more effective in curbing the problem of juvenile delinquency in India.

Suggestions

- **Parenting counseling** clinics should be established at school level in order to make them understand as to how to deal with their children in different situations so that they do fall a prey to the delinquent behavior.
- Child counselling clinics should be established in school in order to ascertain the causes of disturbed children and find out appropriate solution.
- Society is a strong force in developing personality of the teens. Developing negative feelings from society can become a reason behind juvenile delinquency. Hence there should be awareness programmes in the society in dealing with the juveniles.
- Under-privileged children should be treated with utmost care so that they do not feel neglected and find a way out to seek attention elsewhere which may be detrimental to their development.
- The government should cater to the minimum needs of the people in the slum areas so that the children do not adapt to delinquent behaviour due to economic requirements.
- The staff in juvenile homes and observation homes should be trained to give proper treatment to the children in their custody.
- There should be a proper check through regular inspection on the institutions having the custody of the juveniles to avoid any kind of malpractice which will be detrimental to the development of the children.
- Effective implementation of the aftercare system should be done to ensure that a juvenile continues with his therapy and is rehabilitated in the society.
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HEALTH AND HYGIENIC PRACTICES ADOPTED BY HOMEMAKERS

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Abstract:
Present research paper emphasis on Health and Hygienic practices adopted by Homemakers. Data for present paper was collected from secondary sources like books, Journals, News papers etc. From this paper it can be concluded that health and hygienic practices are influencing factors for good health. Scientific knowledge regarding this factor improves health and quality of life.

Key words: Health, Hygiene, Hygienic practices, Scientific knowledge, Homemakers.

Aim: To study Health and Hygienic Practices adopted by Homemakers.

Introduction:
Health is a state of complete physical, mental, social well being of homemakers. Good health is a prerequisite to happiness. To be happy it is necessary to be healthy. Health and hygiene are synonymous to each other. Without good nutrition and proper hygiene health can not be at its best. Homemakers are low including the health practices. Health and hygienic practices adopted by homemaker is necessary to understand their problems by means of communication whether proper health and hygienic practices in their houses, hygienic sanitation plays a vital role in promoting and protecting the health and well being of homemakers in large numbers. Homemaker a person who manages the householder her own family especially as a for the sick or elderly one of the most effective ways we have to protect themselves and others from illness is good personal hygiene.

One should adopt proper diet, to maintain health. Proper hygienic practices should be adopted by homemakers. Homemakers should be aware about cleaning hands, cleaning clothes, homemakers should keep the surrounding cleaning and hygiene so that diseases can be avoided. For the disease free health surrounding hygiene should be adopted by homemakers. Homemakers should daily clean their clothes, such that self hygiene should be maintain, floors and surroundings must be keep clean and hygiene for the disease free life for the healthy life.

The percentage of the awareness about the hygiene, health is very low among the homemakers, society should be more aware about the hygienic practices. As the society is not aware about the hygienic practices and health practices it results into the various diseases, like malaria,
cough and typhoid. Due to the intake of contaminated water and contaminated food, various diseases can occur in homemakers, can avoid these diseases by adopting the various hygienic practices for the healthy and disease-free life. Thus, homemakers should adopt the proper hygienic methods to avoid the dangerous disease. Hygienic surrounding should be maintained by homemakers for the healthy life. Hygienic surrounding keeps the disease away, thus everyone should adopt all the hygienic methods for the disease-free life.

**Objectives:**

1. To study hygienic practices which adopted by homemakers.
2. Effect of hygienic practices on health
3. To study health practices which adopted by homemakers

**Methodology:**

The present paper is an essay type research paper data have been collected from secondary sources from books, journals, newspapers.

**Discussion:**

To study hygienic practices which adopted by Homemakers. Hygiene refers to conditions and practices that help to maintain health and prevent the spread of diseases personal hygiene refers to maintaining the body’s cleanliness home Hygiene practices that prevent the spread of diseases at home other everyday settings, social settings. Public transport, the workplace, public places etc. Hygiene in a variety of settings places an important role in preventing spread infectious diseases it includes procedures used in a variety of domestic situations such as hand Hygiene general home hygiene care of domestic animals and home health care. Wake up in the morning brush your teeth, take a shower, wash your hair and body and put on clean clothes we are doing because it is a routine these habits help in many ways using the word Hygiene is a fancy way of referring to clean living habits that keep us healthy. Personal Hygiene to the things we do to clean and care for your body’s dirt bodily secretions, Food particles and even germs can accumulate on our bodies if we don’t clean ourselves regularly the implementation of habits that helps us stay clean not only prevents this accumulation but also provides added personal and social benefits.

Keeping your hands clean is one of the easiest and surest ways to ensure good kitchen Hygiene stop the spread of germs and also safeguards your of family from illness. Kitchen is the most germ hidden space in your home so if is even vore imperative of practice effective hand Hygiene which preparing food.

Personal hygiene refers to maintaining cleanliness of body and clothing of preserve overall health and well-being it includes a number of different activities related to the general areas of self-care, washing bathing, including cleansing oneself after using the toilet, grooming of dressing, of
daily living laundry is considered as a non-instrumental activity of daily living long periods of housework combined with too much or too little sleep that is fewer than seven hours sleep, poor health among elderly homemakers. Housework is not a bad thing; it increases physical activity. Spending more than 3-5 hours a day.

**Effect of hygienic practices on health.**

Household duties such as cooking, cleaning of utensils, looking after children, fetching water, or agricultural activities, support services such as sewing, harvesting, transplanting and tending cattle and by cooking and delivering the food to those on the field during the agriculture season, constitute work that can be valued in monetary terms. These services are consumed at the family level. Homemakers have a common perception that most injuries and medical conditions only affect those women who spend several hours working. Homemakers spend more time indoors, susceptible to numerous health problems. Their home is where the heart is, but for countless homemakers, home is the place where hurt is suffered. Homemakers counters various injuries every year while engaging in household work like cleaning and washing. Cleaning duties include shifting heavy appliances and furniture from one place to another, and it's effect on sprain injury is mopping the floor, cleaning bathroom, chances of losing balance while working with water can cause back injuries.

Homemakers are at higher risk of developing a number of musculoskeletal symptoms compared to men. Housework is traditionally labor performed by women. It involves routine and compulsory household maintenance tasks, cleaning, cooking, purchasing, and family care duties. Child rearing and other caregiving responsibilities that require substantial physical, emotional, and intellectual labor. Homemaker engage in heavy workloads both paid and unpaid share of housework responsibilities than men. Many hours of household work repetitive hand movements were associated with upper extremity pain and discomfort, awkward postures, back pain, and extremity pain among participating homemakers. Housework tasks that typically require repetitive hand movements including cutting, chopping, and cooking food, as well as hand-washing dishes are generally performed by homemakers. Likewise, household tasks such as tie-lying, mopping, sweeping, washing the floor and cleaning the bathroom may sometimes require awkward working. Homemakers regularly engage in these tasks which are risk factors for neck and shoulder problems among women. Homemaker play such an important part in the life of the family. Their value is beyond measure no amount of money can adequately compensate a homemaker for work. Word cannot express what women mean to the success of their husband and children but women are valuable. They are not weak; giving birth to children, putting up with the daily pressures of life, dealing with the demands of children, maintaining a good relationship with her husband and often working a full-time job.
To study health practices which adopted by homemakers.

Personal health is to have a healthy diet physical activity, most healthy Homemakers should be active on a daily bases leisurely physical activity like biking and walking. Housework exercise include Yoga Morning walk Nutrition and diet well balanced diet should contain carbohydrates, proteins, of its, vitamins and minerals Perform various housekeeping and personal care services to families. Housekeeping and personal are services include cooking, housecleaning, laundering meal planning and preparation, grocery shopping, budgeting feeding of bathing children, in the various housekeeping and personal care of family members.

Health needs a lifestyle upgrade. Lifestyle is important because it affects the quality of life and the disease prevention poor quality housing can have a huge impact on health. It can make existing health conditions worse, cause injuries and prevent people from reaching their Full potential. Regular habits, neatness and cleanliness, punctuality and peace of mind are the primary conditions for good Health. Balance diet. fresh air and light in to our house for keeping good health, we should take a balanced diet containing required amount of essential nutrients like proteins, vitamins for keeping fruits and vegetables with clean water before using them. Homemakers should Filter and boil the water before drinking to make it clean and eliminate the disease causing bacteria to keep good Health, person should avoid chewing drinking tea and addiction Healthy eating and regular physical activity are keys to good health at any age. Change unhealthy behaviours such as poor eating habits. In many cases, adopting a healthier lifestyle can reduce your risk for disease that run in family. As a Homemaker, it is important to be aware of Health. Family structure influences health behavior decisions. The young Homemakers keeps the closest watch over her babies and young children because thy improve her status in the family.

Conclusion:

From this paper it can be conducted that homemakers scientific knowledge of health and hygiene practices adopted by them are very much influencing factor for good health human being as well as for improving of quality of life.

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DECRIMINALIZATION OF ADULTERY IN INDIA- NEED FOR A GENDER NEUTRAL LAW

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Introduction-

According to Oxford dictionary ‘Adultery’ is sex between a married person and somebody who is not their husband or wife.

According to Cambridge dictionary ‘Adultery’ is sex between a married man or woman and someone he or she is not married to.

In simple language Adultery is extramarital sex that is considered objectionable on social, religious and moral grounds as institution of marriage is based on trust and faith between husband and wife.

In many countries including Afghanistan, Indonesia, Algeria, Egypt, Maldives, etc adultery is a Criminal Offence. In India too adultery was a criminal offence punishable under section 497 of Indian Penal Code. However recently in 2018 the Supreme Court has decriminalized it on the ground of being gender bias.

The Objective of the Research Paper is to examine and analyse the effect of decriminalization of section 497 of Indian Penal Code on the institution of marriage, children, property rights, divorce, etc. and to find out whether a gender neutral Penal law relating to adultery can save the institution of marriage and the future of the children by causing deterrent effect in the society.

The research methodology employed in this study is doctrinal and includes review of literature available from Law Journal, Law Books, periodicals, Case Laws and Internet.

Adultery under section 497 of Indian Penal Code- Historical Perspective

Lord Macaulay, the chairman of the first Law Commission did not deem it fit to put the offence of adultery in his First Draft of the Indian Penal Code. Reviewing facts and opinions collected from all the three Presidencies about the feasibility of the criminalisation of adultery, he concluded:

"It seems to us that no advantage is to be expected from providing a punishment for adultery. The population seems to be divided into two classes - those whom neither the existing punishment nor any punishment which we should feel ourselves justified in proposing will satisfy, and those who consider the injury produced by adultery as one for which a pecuniary compensation will sufficiently
atone. Those whose feelings of honour are painfully affected by the infidelity of their wives will not apply to the tribunals at all. Those whose feelings are less delicate will be satisfied by a payment of money. Under such circumstances, we think it best to treat adultery merely as a civil injury.”

The Law Commissioners in their Second Report on the Draft Penal Code, however, took a different view. Disfavouring the Macaulian perception of adultery, but placing heavy reliance upon his remarks on the status of women in India, they concluded:

"While we think that the offence of adultery ought not to be omitted from the Code, we would limit its cognizance to adultery committed with a married woman, and considering the situation of women in the Indian society we would render the male offender alone liable to punishment."

Section 497 of the Penal Code reflects the above perception and defines Adultery as “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor”.

Explanation -

Section 497 of the Indian Penal Code was a mess and was not gender equal. It made man guilty and saved the adulteress even as a abettor. She was considered victim rather than an abettor even thou she actively participated in the offence of adultery. Also the aggrieved wife has no locus standi to file a complaint against the adulterer husband nor the adulteress which is evident by section 198(2) of Code of Criminal Procedure. Neither the aggrieved husband had the right to take an action against the wife for committing adultery.

Section 198(2) of Code of Criminal Procedure states “For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code: Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf”.

Section 497 of the Indian Penal Code stated that the adulteress should be a married woman but whether the offender(adulterer) is married or unmarried was not issue. Also if the adulteress is a widow or unmarried or even married whose husband gives consent to the sexual intercourse with other person such act will not amount to the offence of adultery. The law treats married women as the ‘property’ of their husbands on the ground that their relationship with other
married persons depends on the “consent or connivance of her husband”, which also means that a woman can have illegal relationship with the ‘consent’ of her husband.

Section 497 was based on the belief that the woman has no voice and identity after marriage. However with the advent of time and women empowerment this section became a debatable issue for two reasons. Firstly is that in modern era the Indian society is influenced by western culture and has liberal attitude towards sexual relations and secondly is gender equality. The question was whether section 497 should be amended, varied or decriminalized being violative of Article 14, 15(1) and 21 of the Constitution of India.

Adultery law was challenged before the Judiciary for the first time in the year 1951 in Yusuf Abdul Aziz v. State of Bombay, where in the petitioner contended that the adultery law violated the fundamental right of equality guaranteed under articles 14 and 15 of the constitution. The main point of argument in the court was that section 497 discriminated against men by not making women equally culpable in adulterous relationship. It was also argued that adultery law give a license to women to commit such act. In this case the Supreme Court ruled that section 497 was valid and did not give license to women to commit adultery and special provision for women to escape culpability was constitutionally valid under Article 15(3) of the constitution. Supreme Court also stated that, “it is the man who is the seducer and not the woman, she could only be the victim of the adultery and not the preparator”.

In Sowmithri Vishnu’s Case, the Supreme Court observed,” Section 497 does not envisage the prosecution of the wife by the husband for adultery.....Indeed, the section provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the section does not allow the wife to prosecute the husband for adultery. The wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery as defined under section 497 is considered by the legislature as an offence against the sanctity of the matrimonial home, an act committed by the man, as it generally is. The alleged transformation in feminine attitude, for good or bad may justly engage the attention of the law – makers when reform of penal law is undertaken. They may enlarge the definition of adultery to keep pace with the moving times. But until time law should remain as it is. The law, as it is, does not offend either Article 14 or Article 15 of the Constitution”.

V Revathy v. Union of India, the Supreme Court held that not including women in prosecution of adultery cases promoted social goods. It offered a couple to ‘make up’ and keep the sanctity of marriage intact. The Supreme Court observed that ‘adultery law’ was a shield rather than a sword.
In spite of the above decisions given by Supreme Court, the debate and controversy relating to section 497 continued. The Law Commission of India’s Report of 1971 (42nd report) and Malimath Committee on Criminal Law Reform of 2003 recommended amendment to section 497 of Indian Penal Code to make it gender neutral.

Finally in the recent Judgement in Joseph Shine V. Union of India, the Supreme Court has decriminalized section 497. In October 2017, Joseph Shine, a non resident Keralite filed Public Interest Litigation under Article 32 of the Constitution challenging the Constitutional validity of section 497 of Indian Penal Code with section 198(2) of the code of criminal procedure.

In this petition heard by Supreme court, the adultery law including section 497 of Indian Penal Code and section 198(2) of Criminal Procedure Code was held unconstitutional through unanimous decision being violative of Articles 14, 15(1) and 21 of the constitution.

The Chief Justice of India Dipak Mishra read out the Judgement on behalf of himself and Justice A.M. Khanwelkar, “Thinking of adultery as a criminal offence is a retrograde step. Mere adultery can’t be a crime unless it attracts the scope of section 306 (attempt to commit suicide) of Indian penal code. Adultery might not be the cause of an unhappy marriage, it would be the result of unhappy marriage”.

The Chief Justice also stated that adultery as an act is not criminal in China, Japan and many other western countries. The adultery law violates Articles 14, 15(1) and 21 of the constitution and lowers the dignity of women treating her property of men and was declared as manifestly arbitrary.

However, the Court ruled that adultery can be a ground for civil issues including divorce but it cannot be criminal offence.

Adultery is a ground for divorce under section 13(1)(i) of Hindu Marriage Act, 1955, section 27(1)(a) of Special Marriage Act, 1954, under section 32(d) of Parse Marriage and Divorce Act, 1936 and under section 10(1)(i) of Divorce Act, 1869. Under Dissolution of Muslim Marriage Act, 1939 adultery as such is not a ground for divorce but if the husband associates with women of evil repute or leads infamous life, it amounts to cruelty which is one of the ground to take divorce.

However, the decriminalization of adultery may cause negative impact. The men and women will have freedom to have adulterous relations as there is no deterrence of punishment and no fear of taboo which a person usually has when punished under criminal offence. In the modern world women are educated, working and have their own views, thinking and opinions. Both Men and women have lots of expectation from their spouse. This ultimately have resulted in unsatisfactory and unhappy marriages and increase in adulterous relations. Also the social media is readily available which aids in this relations. The institution of marriage will be affected and divorce cases will increase. Family will be disturbed which will ultimately ruin the future assets of the country i.e.
children both legitimate as well as those born out of adulterous relation. If the act of adultery is not
criminalized and punished such type of act will increase in the society and the aggrieved party may
either commit suicide or take revenge from the offender spouse. Thus crime rate will also increase.

Whether the Indian society will accept the child born out of adulterous relation. To get the
property right in the fathers property he will have to struggle for years and yearsthou under various
personal laws except Muslims both legitimate and illegitimate has the right to inherit the property of
father. Under Muslim Law however such child is called illegitimate and has no right to inherit the
property of father.

Also in the recent case Devraj Dev v. State of Bihar, the decision in Joseph Shine v. Union of
India, is given retrospective effect thus setting aside the proceedings under section 497 for the reason
that a Constitutional Bench of the Hon’ble Supreme Court has held S.497 to be unconstitutional and
also declared S.198 of Code of Criminal Procedure which deals with procedure for filing complaint
in relation to an offence of adultery as unconstitutional. This decision is again a threat which will
give free hand to the adulterer to continue with the illegal relation leaving the aggrieved
spouse without deterrent remedy.

**Conclusion**-

New law on adultery should be framed by the government which will be gender neutral Where the aggrieved wife should be given right to prosecute the adulterer husband as well as
the adulteress. Also the husband should be given right to prosecute wife for the offence of
adultery. The punishment prescribed under the new section should be deterrent i.e. rigorous
imprisonment and fine both.

While framing this new section provision should be made levying heavy compensation on the
adulterer which he should pay to his or her spouse for breaking the trust and imposing mental
agony. It will also cause deterrence in the society. Thus the parties will think before committing
adultery and thus the institution of marriage will remain intact resulting in happy marriages and
ultimately will save the future of the children being spoiled.
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PRINCIPLES OF HYPOTHESIS TESTING

Dr. Rajesh G. Umbarkar

A hypothesis is a tentative statement about the relationship between two or more variables. It is a specific, testable prediction about what you expect to happen in a study. Let's take a closer look at how a hypothesis is used, formed, and tested in scientific research.

A supposition or explanation (theory) that is provisionally accepted in order to interpret certain events or phenomena and to provide guidance for further investigation. A hypothesis may be proven correct or wrong, and must be capable of refutation. If it remains unrefuted by facts, it is said to be verified or corroborated.

Statistics:

An assumption about certain characteristics of a population. If it specifies values for every parameter of a population, it is called a simple hypothesis; if not, a composite hypothesis. If it attempts to nullify the difference between two sample means (by suggesting that the difference is of no statistical significance), it is called a null hypothesis.

In the world of statistics and science, most hypotheses are written as "if...then" statements. For example someone performing experiments on plant growth might report this hypothesis: "If I give a plant an unlimited amount of sunlight, then the plant will grow to its largest possible size."

Characteristics of hypothesis:

1. A hypotheses should be empirically testable. It should be so stated that it is possible to deduce logically certain inferences close to the level of concrete observation so that they can be tested by observation in the field. That is, the hypotheses should have empirical referents. The concepts embodied in the hypothesis must have clear empirical correspondence and should be explicitly defined. For example, ‘Bad parents beget bad children’ is hardly a statement that can qualify as a usable hypothesis, since ‘bad’ cannot be explicitly defined.

2. Hypotheses should be closest to things observable. Failing this, it would not be possible to test their accord with empirical facts. Cohen and Nagel rightly remark”… hypothesis must be formulated in such a manner that deductions can be made from it and consequently, a decision can be reached as to whether it does not explain the facts considered.”

3. The hypotheses must be conceptually clear. This point is implicit in the proceeding criterion. The concepts utilized in the hypothesis should be clearly defined not only formally but also, if possible, operationally.
Formal definition or explication of the concepts will clarify what a particular concept stands for, while the operation definition will leave no ambiguity about what would constitute the empirical evidence or indicator of the concept on the plane of reality.

An ambiguous hypothesis characterized by undefined or ill-defined concepts cannot be tested since, understandably, there is no standard basis for knowing what observable facts would constitute its test.

It is advisable that the concepts embodied in the hypotheses be defined in a manner commonly accepted and communicable. This would ensure continuity in researches and go a long way in bringing about a cumulative growth of scientific knowledge.

4. The hypotheses must be specific. One may hypothesize that something will happen in next five minutes, with absolute confidence but just because it is refuted it is empty of concrete information. We need to know what will happen and as soon as we commit ourselves to one view or another we become vulnerable; our prediction will be refuted if what was said would happen does not happen.

A scientific statement is useful to the extent it allows itself to be exposed to a possible refutation. Often the researchers are tempted to express their hypotheses in terms so general and so grandiose in scope that they are simply not amenable to test.

This temptation can be suicidal. The researchers would do well to avoid employing concepts in their hypotheses for which suitable tangible indices have not developed. An hypothesis should include a clear statement of indexes which are to be used. For example, the concept of social class needs to be explicated in terms of such indicators as income, occupation, education, etc.

Such specific formulations have the obvious advantage of assuring that research will be practicable and significant. It also helps to increase the validity of the results because more specific the statement or prediction, smaller the probability that it will actually be borne out as a result of mere accident or chance.

5. Advisedly, the hypotheses should be related to a body of theory or some theoretical orientation. This requirement concerns the theoretic rationale of a hypothesis, i.e., what will be the theoretical gains of testing the hypothesis?

If the hypothesis is related to some theory, research will help to qualify, support, correct or refute the theory. A science can become cumulative only through interchange between the existing body of fact and theory.

Will not deriving hypotheses as a rule from some theoretical base throttle ventures into new fields in which no articulate theoretical system has developed? Will not such hypotheses lead to unnecessary repetitions? Doubts of this order may be raised by some.
Theses objections do not have much substance since such hypotheses formulate imaginatively, besides serving the function of elaborating, extending and improving the theory, they may also suggest important links between it and certain other theories.

Thus, the exercise of deriving hypotheses from a body of theory may also be an occasion of a scientific leap into newer areas of knowledge. As Parsons put it, “Theory not only formulates what we know but also tells us what we want to know.”

If hypotheses were derived from a body of theory, to that extent it would be possible to formulate them as statements about what will happen, that is, the roots of hypotheses in theory would invest these hypotheses with the power of prediction.

One of the valuable attributes of a good hypothesis is its power of prediction. The potency of hypotheses in regard to predictive purposes constitutes a great advancement in scientific knowledge.

To quote Cohen and Nagel, “… the hypothesis to be preferred is one which can predict what will happen, and from which we can infer what has already happened, even if we did not know (it had happened) when the hypothesis was formulated.”

In the example cited earlier, the hypothesis that lower suicide rates should be expected among the Catholics than among the Protestants besides having a predictive potential would also afford by virtue of its theoretical moorings, the basis for saying that married persons or a minority community or a tribal community by virtue of high social cohesion would have lower suicide rates.

It is in this sense that a ‘good’ hypothesis helps us make statements about what is already there or what has already happened although we were not aware of it.

6. Hypotheses should be related to available techniques. This is, of course, a sensible methodological requirement applicable to any problem when one is judging its research ability. The researcher who does not know what techniques are available to test his hypotheses is in a poor way to formulate usable questions.

In other words, the hypotheses should be formulated only after due thought has been given to the methods and techniques that can be used to measure the concepts or variables incorporated in the hypotheses. This should not mean as implying, however, that formulation of hypotheses which are at a given time too complex to be handled by contemporary technique is a taboo.

We must not forget that if the problem is significant enough as a possible frame of reference, it may be useful regardless of whether or not it is amenable to verification or test by the techniques available at the time. The works of Marx and Durkheim have been of paramount importance to sociology even though at that time their larger ideas were incapable of being handled by available techniques.
Lastly, it would be well to remember that posing of ‘impossible’ questions may stimulate the growth and innovations in technique. There is no doubt that some amount of impetus to modern developments in technique has come from criticisms against significant studies which were at that time considered inadequate because of limitations of available techniques.

**Hypothesis Testing:**

1. Hypothesis testing is about making decisions
2. Is a hypothesis true or false?
3. Are women paid less, on average, than men?
4. The null hypothesis is initially presumed to be true
5. Evidence is gathered, to see if it is consistent with the hypothesis, and tested using a decision rule
6. If the evidence is consistent with the hypothesis, the null hypothesis continues to be considered ‘true’ (later evidence might change this)
7. Hypothesis
8. If not the null is rejected in favour of the alternative.
9. Two Possible Types of Error:

Decision making is never perfect and mistakes can be made
- Type I error: rejecting the null when it is true
- Type II error: accepting the null when it is false

<table>
<thead>
<tr>
<th>Type I and Type II Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision</td>
</tr>
<tr>
<td>Accept H₀</td>
</tr>
<tr>
<td>Reject H₀</td>
</tr>
</tbody>
</table>

**Avoiding Incorrect Decisions:**

- We wish to avoid both Type I and II errors
- We can alter the decision rule to do this
- Unfortunately, reducing the chance of making a Type I error generally means increasing the chance of a Type II error Hence there is a trade off
Diagram of the Decision Rule

How to Make a Decision:
- Where do we place the decision line?
- Set the Type I error probability to a particular value. By convention, this is 5%
- There is therefore a 5% probability that we are wrongly rejecting the null
- This is known as the significance level \( \alpha \) of the test. It is complementary to the confidence level \((1-\alpha)\) of estimation
- 5% significance level \(\equiv\) 95% confidence level

Example: How Long do Batteries Last?
- A well known battery manufacturer claims its product lasts at least 5000 hours, on average
- A sample of 80 batteries is tested. The average time before failure is 4900 hours, with standard deviation 500 hours
- Should the manufacturer’s claim be accepted or rejected?

The Hypotheses to be Tested
- Formal statement of the null and alternative hypotheses
- \(H_0: \mu \geq 5,000\) against \(H_1: \mu < 5,000\)
- This is a one tailed test, since the rejection region occupies only one side of the distribution
the alternative hypothesis suggests that the true distribution is to the left of the null: left-tailed test.

**Should the Null Hypothesis be Rejected?**

- Is 4,900 far enough below 5,000?
- Is it more than 1.64 standard errors below 5,000?
- 1.64 standard errors below the mean cuts off the bottom 5% of the Normal distribution.
- Calculate a z-score for the sample mean

\[ z = \frac{\bar{x} - \mu}{\sqrt{\frac{2}{n}}} = \frac{4,900 - 5,000}{\sqrt{\frac{500^2}{80}}} = -1.79 \]

**Should the Null Hypothesis be Rejected?**

- 4,900 is 1.79 standard errors below 5,000, so falls into the rejection region (bottom 5% of the distribution)
- Hence, we can reject \( H_0 \) at the 5% significance level or, equivalently, with 95% confidence
- *If* the true mean were 5,000, there is less than a 5% chance of obtaining sample evidence such as \( x = 4,900 \) from a sample of \( n = 80 \)

**Diagram of the Decision Rule**

[Diagram showing normal distributions for \( \mu = 5000 \) and \( \mu < 5000 \) with critical values -1.79 and -1.64]

**Formal Layout of a Problem**

1. Write out the null and alternative hypotheses eg: \( H_0: \mu \geq 5,000 \) against \( H_1: \mu < 5,000 \)
2. Choose a significance level, e.g. 5%
3. Look up the critical value $z^*$, e.g. at 5% sig. level $z = -1.64$

4. Calculate the test statistic, in our example $z = -1.79$

5. Decision: reject $H_0$ or do not reject.

In our example since $-1.79 < -1.64$ and falls into the rejection region, we reject the null hypothesis

Specifying the Alternative: One vs. Two Tailed Tests

- Use a one-tailed test if,
  - you are only concerned about falling in one side of the hypothesised value
    e.g. we would not worry if batteries lasted longer than 5,000 hours. You would not want to reject $H_0$ if the sample mean were anywhere above 5,000
  - you know that one of the sides is impossible (e.g. demand curves cannot slope upwards)
- Use a two-tailed test if
  - you are just as concerned about being above or below the hypothesized value
  - you know both outcomes are possible you are not sure!

Two Tailed Test Example

- It is claimed that an average child spends 15 hours per week watching television. A survey of 100 children finds an average of 14.5 hours per week, with a standard deviation of 8 hours. Is the claim justified?
- The claim would be wrong if children spend either more or less than 15 hours watching TV. The rejection region is split across the two tails of the distribution. This is a two tailed test.

A Two Tailed Test – Diagram
### Solution to the Problem

1. Write out the hull and alternative
   \[ H_0: \mu = 15 \]
   \[ H_1: \mu \neq 15 \]

2. Choose the significance level, e.g. 5%

3. Look up the critical value, \( z^{*}_{0.025} = 1.96 \)

4. Calculate the test statistic:

   \[
   z = \frac{\bar{x} - \mu}{\sqrt{\frac{s^2}{n}}} = \frac{14.5 - 15}{\sqrt{\frac{8^2}{100}}} = -0.625
   \]

5. Decision: we do not reject \( H_0 \) since \(-1.96 < -0.625 < 1.96\) and so does not fall into the rejection region

### Choice of Significance Level

- **Why 5%?**
  - Like its complement, the 95% confidence level, it is a convention. A different value can be chosen
  - If the cost of making a Type I error is especially high, then set a lower significance level, e.g. 1%. The significance level is the probability of making a Type I error

### Testing Hypotheses About a Proportion

- Same principles: reject \( H_0 \) if the test statistic falls into the rejection region
  - To test \( H_0: \pi = 0.5 \) vs \( H_1: \pi \neq 0.5 \) (e.g. a coin is fair vs not fair) the test statistic is

  \[
  z = \frac{p - \pi}{\sqrt{\frac{\pi(1-\pi)}{n}}} = \frac{p - 0.5}{\sqrt{\frac{0.5(1-0.5)}{n}}}
  \]

### Testing a Proportion (cont.)

- If the sample evidence were 60 heads from 100 tosses \( (p = 0.6) \) we would have

  \[
  z = \frac{0.6 - 0.5}{\sqrt{\frac{0.5(1-0.5)}{100}}} = 2
  \]

  so we would (just) reject \( H_0 \) since \( 2 > 1.96 \)

### Small Samples (\( n < 25 \))
Two consequences:

- the \( t \) distribution is used instead of the standard normal for tests of the mean

\[
\frac{X - \mu}{\sqrt{\frac{S^2}{n}}} \sim t
\]

- tests of proportions in small samples cannot be done by the standard methods used in the book

Testing a Mean with Small Samples

- A sample of 12 cars of a particular brand average 35 mpg, with standard deviation 15. Test the manufacturer’s claim of 40 mpg as the true average.

\[H_0: \mu = 40\]
\[H_1: \mu < 40\]

Testing a Mean (cont.)

- The test statistic is

\[
t = \frac{35 - 40}{\sqrt{15^2/12}} = 1.15
\]

- The critical value of the \( t \) distribution (df = 11, 5% significance level, one tail) is \( t_{0.05,11} = 1.796 \)
- Hence we cannot reject the manufacturer’s claim

Summary

The principles are the same for all tests:

- write out the null and alternative
- choose a significance level
- look up the critical value from the z or t tables
- calculate the test statistic
- decide whether to reject or not reject null (sketch!)

The formula for the test statistic depends upon the problem (mean, proportion, etc)

The rejection region varies, depending upon whether it is one or two tailed test
Importance of Hypothesis

Development of Research Techniques

There are various types of social problems which are complex in nature. For this research is very difficult. We cannot cover it with a single technique but it requires many techniques. These techniques are due to hypothesis provided to a researcher.

Separating Relevant From Irrelevant Observation

A Researcher during study will take the observations and facts which are accordance to the condition and situation. While drop out the irrelevant facts from his study. This separation is due to hypothesis formulation which keeps away relevant observation from irrelevant.

Selecting Required Facts

During study a researcher come across many factors but he confined himself to the selection of required facts through formulation of hypothesis. Hypothesis helps him in selection of relevant facts regarding to the problematic situation.

Direction of Research

Hypothesis acts as a guide master in research. It gives new knowledge and direction to a researcher. It directs a scientist to know about the problematic situation and its causes.

Acts as a Guide

Hypothesis gives new ways and direction to a researcher. It acts as a guide and a leader in various organizations or society. It is like the investigator’s eye.

Prevents Blind Research

Hypothesis provides lighting to the darkness of research. It gives difference b/w scientific and unscientific, false and true research. It prevents blind research and give accuracy.

Accuracy & Precision

Hypothesis provides accuracy and precision to a research activity. Accuracy and precision is the feature of scientific investigation which is possible due to hypothesis.

Link between Theory & Investigation

Theory is a source of hypothesis which leads to its formulation. Hypothesis leads to scientific investigation. So, hypothesis acts as a bridge b/w theory and investigation.

Link between Assumption & Observation

During formulation hypothesis is in the stage of assumption. In the field it transformed into hypothesis in working form. This transformation is due to observation in the field. So, it creates a link between assumption & observation.
Provide answer for a Question

A hypothesis highlights the causes of a problematic situation. Further solution is also given by a hypothesis which provides answer to a question.

Save Time, Money & Energy

Hypothesis save time, money and energy of a researcher because it is a guide for him and help him in saving these basic things.

Proper Data Collection

Hypothesis provides the basis of proper Data Collection Relevant and correct information collected by a researcher is the main function of a good formulated hypothesis.

Proper Conclusion

A proper formulated hypothesis may lead to a good reasonable, utilized and proper conclusion. If the hypothesis is better than the conclusions drawn by a researcher would be better for solution of a problem.

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EFFICACY OF JALAUKA AVCHARAN IN THE MANAGEMENT OF BAHYA ARSHA (RAKTAJ)

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Abstract-
According to Ayurveda Arsha occurs mainly due to vitiation of Agni(Agnimandya), which leads to Malavasthambha (constipation) and Vimarga gamana of Apana Vayu. So obviously the ayurvedic treatment which has the capacity to streamline the vitiated Agni and regulate the anulom gati of Apan Vayu, will be used for the treating the Arshas. Modern science recommends such patients primarily NSAID’s, laxatives and Antibiotics. In Ayurveda The first degree piles can be treated with Agnidipan, Pachan, Anuloman drugs. First and second degree piles are best treated with medicine along with local Kshara and oil and Malahar application. Third and fourth degree piles can be treated with Kshsrasutra ligation. The external thrombosed piles can best manage with the help of Jalaukavacharan. That’s why we can choose jalauka avcharan for this singal case study.

Key words – Jalaukaavcharan, Arsha , piles.

Introduction –
The description of Arsha in Ayurvedic literature has similarity with hemorrhoids in modern parlance. Arsha is a commonest clinical condition in ano-rectal disorders. Recently lot of research work on Arsha has been under taken with different approach, depending upon different stages and variety of the disease. The term Arsha is the condition which gives maximum trouble to the patient like an enemy which shows grave nature of the disease. Hemorrhoids are classified by their anatomic origin within the anal canal and by their position relative to the dentate line; which categorized into external and internal hemorrhoids. Internal hemorrhoids are usually painless and make their presence known by causing bleeding with a bowel movement. If the condition left untreated, internal hemorrhoids can prolapsed or protrude through the anus. The clinical gradations of prolapsed internal hemorrhoids are grade 1 to grade - 4 and surgery planned accordingly. External hemorrhoids became painful when they inflamed / thrombosed and is self limiting called as perianal hematoma. The patient complaints with clinical features like mild pain in anal region, bleeding per anus and discomfort.

Aim & objectives –

● To study the efficacy of Jalaukaavcharan in the Management of Arsha .
● To find out simple, safe and cost effective therapeutic regimes in the management of Arsha.
Material & methods –

Case report –

52 yrs male complaint about sever pain at anal region , he can’t walk properly ,H/o – Hemorrhoids since 5 yrs taking treatment but cant get relief .

Patient having sever pain so jalauka avcharan carried out on emergency basis .

Patients History –

Occupation – Bus driver (shift duty)

Vysana – tea , tobacco ,Alcohol .

Perinial examination –

Two External thrombosed pile mass was seen at 7 o’clock position and 11 o’clock position, no any fissure was noticed, slightly inflammation and tenderness was noticed ,O/E- Temp. - 99.1 F ,P- 88/min, BP -140/90 mmhg,RR -18/min, R/S- clear, P/A- Soft

Application of Jalauka -

Purva karma –

● Jalauka shodhan done with haridra churna .
● Due care was taken properly , so that the leeches do not enter the anal canal.
● Two leeches are apply simultaneously

Pradhan karma –

● Given lithotomy position to patient.
● Applied jalauka on external pile mass .
● Then kept moist gauze piece on jalauka.
● Time was noted .

Paschat karma-

● After 20 min if jalauka not detached from this site sprinkle haridra churna on jalauka.
● Site of application clean with triphala kwath.
● Kept pichu of Shatdhauta ghrita on wound , then apply T shaped bandage on wound .
● Patient kept under observation for minimum 7 hrs .
● Jalauka shodhan were done again

Shaman chikitsa –

● Gandharva haritaki churna 5gm HS with warm water for 3 months.
● Abhayarishta 15 ml BD with koshna jal for 3 months.
Three siting of Jalaukaavacharan done again, 7 days interval kept in two sittings.

Results & observation –

After Jalaukaavacharan pain subside at next day inflammation and tenderness was also decreases, patient walk properly, after taking all sitting of Jalaukaavacharan and shaman chikitsa patients feels better, he having no any problem of hard stool, no any pain tenderness and inflammation on anal region.

Discussion –

Gandharav Haritaki Churna acts as an anulomak and laxative, thus helps in relieving constipation. In Jalauka Avcharan The Saliva of Leech contains hirudin, calin, factor xa inhibitor which inhibits the coagulation of blood and also dissolves the clots of blood. Bdellins & Eglins are compounds in the leech’s saliva that acts as Anti-Inflammatory agent. The Saliva of leech also contains anesthetic substances which deaden pain on the site. Abhayrishta helps to easy evacuation of stool as well as helps to increase the immunity.

Conclusion –

Jalauka avacharan is safe & effective method of management of Arsha.

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HUMAN RESOURCES PROBLEMS IN BANCASSURANCE SERVICES WITH SPECIAL REFERENCE TO STATE BANK OF INDIA IN MARATHWADA REGION

Ramnarayan Kishanprasad Darak

Introduction:

India obtained freedom from British Rule in 1947. The banking industry was required to play a major role in the development of nation. It was assumed the responsibility of economic growth and development. India adopted Socialistic Pattern of Society in the Directive Principles of Constitution of India. In view of this major Banks were nationalized. Nationalized banks have to implement government schemes and assists solution of economic problems of poverty, unemployment and so on.

Banking service is becoming most essential services in day to day life. Banking is a financial service industry. Bank is an organization that accepts deposits and lends money. It also does the work of remittances i.e. transferring money from one place to another or from one account to another. In early days, private money lenders used to do the business of banking. As the joint stock company form of organization came into existence corporate banks came into existence. After industrialization banks became important. In India banks are established right from eighteenth century. During the nineteenth and twentieth century the network of banks developed. In the twentieth century banks became the foundation of economic growth and development.

Now a day’s banking sector is working in Insurance also. State Bank of India is one of them. State Bank of India (SBI) is providing bancassurance services to its customers.

Being a service industry banks are working on the basis of human resources. As banks are dealing in money and that too in the money of other people it is necessary that the bank employees have some special qualities. These qualities are particularly related with loyalty and credibility. Human resources therefore are an important part of banking industry.

Statement & Significance of the Problem under Study:

Although the success or failure of an organization or enterprise depends on an effective combination and utilisation of the money, material, machinery and men (four Ms), it is the management of men which is most important and a challenging job since it is a job of administering a social system. Therefore, the importance of human resources management has been expressed with the analogy of the human body thus, human resources management is not the brain, the controller,
nor only just a limb, a member, nor yet the blood stream, the energizing force, it is the nervous system. The nervous system can never be thought of as an adjunct of the body no more can human resources management be an extraneous or superimposed element on the structure of an organization. The personnel function lies embedded in the structure, is inherent in the dynamism of that structure and is an integral part of the process of management itself.

Human resources management is inseparable from management. It is not the whole of management but it is a major sub-system in the total management system. Human resources management is constantly concerned with company's human resources with the way in which these resources are developed and utilized, with the assumptions made about them, with the formulation of personnel policy, with the work force. Management thus is inevitably a people-cantered activity since managing people is the heart and essence of being a manager. Quite obviously management of human resources is now regarded as a must for successful functioning of an enterprise.

The importance of management is now being greatly realized in the under developed or developing countries like India, of late, it has been emphasized by economic development specialists that provision of capital or technology alone does not bring development. The limiting factor in almost every case has been the lack of quality and vigor on the part of managers. Even in developed countries, analysis of failures in various organizations or enterprises made over many years has shown that a very high percentage of such failures has been due to unqualified or inexperienced management. In countries like India, newly recruited managers and employees are quite often different from members of the work force they join. They mostly have different employment experience or no experience at all and they see their work responsibilities and obligations in a different light. They may expect more or different factions from their work. However, with the changes in the social climate, values and norms, employees in modern enterprises are certainly better informed and more competent as compared to those employed in the past. While they may, as such, be great assets to the organizations, they are liable to create critical problems if the organization is unable to manage such human resources efficiently and properly. The importance of human resources management is, therefore, being increasingly realized in industrial as well as non-industrial enterprises both in developing and developed countries.

Personnel Management that also called as human resources management is a major part or sub-system of the total management process or system. It covers all levels of personnel in an organization. It is concerned with employees both as individuals as well as a group and aims at getting optimum results with their collaboration. It is a continuing process. It gives due recognition to its social responsibilities. It is concerned with the well-being of all members of the organization. It
endeavors to maintain goodwill and 'community feeling' of the people at work at each level and to attain the established goals or objectives of the enterprise with an animating spirit of co-operation.

Manpower or the human resources or persons employed at various levels, constitute the most important and valuable asset of an organization to be utilized effectively towards the achievement of individual and organizational goals of an enterprise. Planning for manpower in modern industrial organizations, therefore, is considered very important.

As SBI is providing bancassurance services; the employees have to work on bancassurance with their regular banking services. The burden comes to the employees working in this sector. There are number of problems which arise regarding human resources in banking sector. The first and main problem is the problem of availability of trained & qualified staff. This aspect is very essential for banking sector. The trained and qualified staff may help for smooth running of banking work.

1. Problem of Non-Cooperation Between the Staff
2. Problem of Coordination with Managerial Staff
3. Problem of Motivation
4. Problem of Approaches & Attitudes

Considering this the researcher has studied the human resources problems faced by State Bank of India particularly in providing Bancassurance services. The study covers the bank branches in rural and urban areas of Marathwada region.

The researcher has therefore opted to study various problems related with human resources before bancassurance in this research. The study can be said really fruitful only when banks will motivate further research & take active steps for implementation, the recommendations and suggestions.

Objective:

The objective of this study is to analyze the problems related with human resources faced by branches of State Bank of India in Marathwada region in Bancassurance services.

Hypothesis:

State Bank of India is facing various problems related with human resources in Bancassurance services.

Limitations :

The study is geographically limited to Marathwada region only. The study is also limited to human resources problems faced by State Bank of India in Bancassurance services.
**Research Methodology and Selection of Sample:**

This study is based upon primary data. This is a field survey specially made for employees of State Bank of India in Marathwada region. Therefore, the researcher has opted a survey based model of research methodology.

The researcher has firstly selected 80 branches of SBI, 10 from each district of Marathwada including rural and urban branches distributed evenly. The researcher has further selected 03 bank employees from each selected branch of SBI. Thus the total sample comes to 480 (240 rural and 240 urban) bank employees. The researcher has with the help of random sampling by strategic convenience method.

**Problems Related with Human Resources:**

The most significant aspect in banking sector is that of human resources management. Managing finance or machines is easy but managing men is very difficult. Particularly in the bancassurance services provided by the banks there is pressure policy and the target policy is adopted by the higher authorities. The employees are generally not ready to complete the targets in stipulated time period. Already the bank working load is heavy to the bank employees and in addition to this the bancassurance service targets is prove the burden on the employees. The SBI branches in Marathwada region are facing various Human Resources problems. The researcher has enquired about these problems to the sample respondents representing rural and urban bank branches. These problems are as under:

This includes following problems such as –

1. Problem of Trained & Qualified Staff
2. Problem of Non-Cooperation Between the Staff
3. Problem of Coordination with Managerial Staff
4. Problem of Motivation
5. Problem of Approaches & Attitudes

These are analyzed here.

**Problem of Trained & Qualified Staff:**

Banking services needs trained and qualified staff for getting the target done especially for bancassurance services. There is a vast competition in insurance sector. To handle properly the competition situations the staff must be trained properly. This is one of the significant problems faced by the bank employees. Therefore the researcher has analyzed the problem of Trained & Qualified Staff on the basis of opinions of employees of SBI in Marathwada region. The results are shown in the following table.
Problem of Trained & Qualified Staff

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Intensity of Problem</th>
<th>Rural Employees</th>
<th>%</th>
<th>Urban Employees</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Severe</td>
<td>62</td>
<td>25.83</td>
<td>46</td>
<td>19.17</td>
<td>108</td>
<td>22.50</td>
</tr>
<tr>
<td>2</td>
<td>High</td>
<td>98</td>
<td>40.83</td>
<td>88</td>
<td>36.67</td>
<td>186</td>
<td>38.75</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>52</td>
<td>21.67</td>
<td>38</td>
<td>15.83</td>
<td>90</td>
<td>18.75</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
<td>16</td>
<td>6.67</td>
<td>43</td>
<td>17.92</td>
<td>59</td>
<td>12.29</td>
</tr>
<tr>
<td>5</td>
<td>No Problem</td>
<td>12</td>
<td>5.00</td>
<td>25</td>
<td>10.42</td>
<td>37</td>
<td>7.71</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>240</td>
<td>100.00</td>
<td>240</td>
<td>100.00</td>
<td>480</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Source: Primary Data.*

It can be observed from the above table that,

Out of the total 240 sample employees of SBI from rural parts of Marathwada, 62 (25.83%) have opined that the problem of Trained & Qualified Staff is ‘Severe’, whereas 98 (40.83%) have expressed that the problem of Trained & Qualified Staff is ‘High’, that of 52 (21.67%) have responded that the problem of Trained & Qualified Staff is ‘Moderate’ and that of 16 (6.67%) have opined that the problem of Trained & Qualified Staff is ‘Below Average’ and 12 (5%) have opined that there is no problem of Trained & Qualified Staff.

Out of the total 240 sample employees of SBI from urban parts of Marathwada, 46 (19.17%) have opined that the problem of Trained & Qualified Staff is ‘Severe’, whereas 88 (36.67%) have expressed that the problem of Trained & Qualified Staff is ‘High’, that of 38 (15.83%) have responded that the problem of Trained & Qualified Staff is ‘Moderate’ and that of 43 (17.92%) have opined that the problem of Trained & Qualified Staff is ‘Below Average’ and 25 (40.42%) have opined that there is no problem of Trained & Qualified Staff.

Problem of Non-Cooperation between the Staff

Co-Operation is necessary in every organization to achieve the goals. Without cooperation between the staff the targets cannot be achieved. The bancassurance service in SBI is target oriented. To complete the targets in give time period the cooperation between the staff is very necessary. Non-cooperation between the staff is one of the significant problems faced by the bank employees. Therefore the researcher has analyzed the problem of Non-Cooperation between the Staff on the basis of opinions of employees of SBI in Marathwada region. The results are shown in the following table.
Table No. 2  
Problem of Non-Cooperation between the Staff

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Intensity of Problem</th>
<th>Rural Employees %</th>
<th>Urban Employees %</th>
<th>Total</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Severe</td>
<td>105</td>
<td>76</td>
<td>181</td>
<td>37.71</td>
</tr>
<tr>
<td>2</td>
<td>High</td>
<td>65</td>
<td>102</td>
<td>167</td>
<td>34.79</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>39</td>
<td>31</td>
<td>70</td>
<td>14.58</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
<td>17</td>
<td>20</td>
<td>37</td>
<td>7.71</td>
</tr>
<tr>
<td>5</td>
<td>No Problem</td>
<td>14</td>
<td>11</td>
<td>25</td>
<td>5.21</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>240</td>
<td>240</td>
<td>480</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Primary Data.

It can be observed from the above table that, Out of the total 240 sample employees of SBI from rural parts of Marathwada, 105 (43.75%) have opined that the problem of Non-Cooperation Between the Staff is ‘Severe’, whereas 65 (27.08%) have expressed that the problem of Non-Cooperation Between the Staff is ‘High’, that of 39 (16.25%) have responded that the problem of Non-Cooperation Between the Staff is ‘Moderate’ and that of 17 (7.08%) have opined that the problem of Non-Cooperation Between the Staff is ‘Below Average’ and 14 (5.83%) have opined that there is no problem of Non-Cooperation Between the Staff.

Out of the total 240 sample employees of SBI from urban parts of Marathwada, 76 (31.67%) have opined that the problem of Non-Cooperation Between the Staff is ‘Severe’, whereas 102 (42.50%) have expressed that the problem of Non-Cooperation Between the Staff is ‘High’, that of 31 (12.92%) have responded that the problem of Non-Cooperation Between the Staff is ‘Moderate’ and that of 20 (8.33%) have opined that the problem of Non-Cooperation Between the Staff is ‘Below Average’ and 11 (4.58%) have opined that there is no problem of Non-Cooperation Between the Staff.

Problems of Coordinating with Managerial Staff

One more important aspect is that the coordination with the managerial staff. There should be proper coordination between the staff and manager for better results in business. Bancassurance services in SBI also needs coordination of staff and the managerial staff for achieving the desired goals. This is one of the significant problems faced by the bank employees. Therefore the researcher has analyzed the problem of Coordination with Managerial Staff on the basis of opinions of employees of SBI in Marathwada region. The results are shown in the following table.
Table No. 3

Problem of Coordination with Managerial Staff

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Intensity of Problem</th>
<th>Rural Employees</th>
<th>%</th>
<th>Urban Employees</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Severe</td>
<td>110</td>
<td>45.83</td>
<td>72</td>
<td>30.00</td>
<td>182</td>
<td>37.92</td>
</tr>
<tr>
<td>2</td>
<td>High</td>
<td>72</td>
<td>30.00</td>
<td>112</td>
<td>46.67</td>
<td>184</td>
<td>38.33</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>34</td>
<td>14.17</td>
<td>38</td>
<td>15.83</td>
<td>72</td>
<td>15.00</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
<td>16</td>
<td>6.67</td>
<td>13</td>
<td>5.42</td>
<td>29</td>
<td>6.04</td>
</tr>
<tr>
<td>5</td>
<td>No Problem</td>
<td>8</td>
<td>3.33</td>
<td>5</td>
<td>2.08</td>
<td>13</td>
<td>2.71</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>240</td>
<td>100.00</td>
<td>240</td>
<td>100.00</td>
<td>480</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Primary Data.

It can be observed from the above table that,

Out of the total 240 sample employees of SBI from rural parts of Marathwada, 110 (45.83%) have opined that the problem of Coordination with Managerial Staff is ‘Severe’, whereas 72 (30%) have expressed that the problem of Coordination with Managerial Staff is ‘High’, that of 34 (14.17%) have responded that the problem of Coordination with Managerial Staff is ‘Moderate’ and that of 16 (6.67%) have opined that the problem of Coordination with Managerial Staff is ‘Below Average’ and 8 (3.33%) have opined that there is no problem of Coordination with Managerial Staff.

Out of the total 240 sample employees of SBI from urban parts of Marathwada, 72 (30%) have opined that the problem of Coordination with Managerial Staff is ‘Severe’, whereas 112 (46.67%) have expressed that the problem of Coordination with Managerial Staff is ‘High’, that of 38 (15.83%) have responded that the problem of Coordination with Managerial Staff is ‘Moderate’ and that of 13 (5.42%) have opined that the problem of Coordination with Managerial Staff is ‘Below Average’ and 5 (2.08%) have opined that there is no problem of Coordination with Managerial Staff.

Problem of Motivation

This yet another significant aspect related with human resources i.e. bank staff for doing the business with rapid growth. Motivation by the managers or the higher authorities work as booster for performing the business. Bancassurance services in SBI also need motivation to the employees which are engaged in bancassurance services. This is one of the significant problems faced by the bank employees. Therefore the researcher has analyzed the problem of Motivation on the basis of opinions of employees of SBI in Marathwada region. The results are shown in the following table.
Table No. 4
Problem of Motivation

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Intensity of Problem</th>
<th>Rural Employees</th>
<th>%</th>
<th>Urban Employees</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Severe</td>
<td>75</td>
<td>31.25</td>
<td>66</td>
<td>27.50</td>
<td>141</td>
<td>29.38</td>
</tr>
<tr>
<td>2</td>
<td>High</td>
<td>113</td>
<td>47.08</td>
<td>95</td>
<td>39.58</td>
<td>208</td>
<td>43.33</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>30</td>
<td>12.50</td>
<td>47</td>
<td>19.58</td>
<td>77</td>
<td>16.04</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
<td>13</td>
<td>5.42</td>
<td>23</td>
<td>9.58</td>
<td>36</td>
<td>7.50</td>
</tr>
<tr>
<td>5</td>
<td>No Problem</td>
<td>9</td>
<td>3.75</td>
<td>9</td>
<td>3.75</td>
<td>18</td>
<td>3.75</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>240</td>
<td>100.00</td>
<td>240</td>
<td>100.00</td>
<td>480</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Primary Data.

It can be observed from the above table that,

Out of the total 240 sample employees of SBI from rural parts of Marathwada, 75 (31.25%) have opined that the problem of Motivation is ‘Severe’, whereas 113 (47.08%) have expressed that the problem of Motivation is ‘High’, that of 30 (12.50%) have responded that the problem of Motivation is ‘Moderate’ and that of 13 (5.42%) have opined that the problem of Motivation is ‘Below Average’ and 9 (3.75%) have opined that there is no problem of Motivation.

Out of the total 240 sample employees of SBI from urban parts of Marathwada, 66 (27.50%) have opined that the problem of Motivation is ‘Severe’, whereas 95 (39.58%) have expressed that the problem of Motivation is ‘High’, that of 47 (19.58%) have responded that the problem of Motivation is ‘Moderate’ and that of 23 (9.58%) have opined that the problem of Motivation is ‘Below Average’ and 9 (3.75%) have opined that there is no problem of Motivation.

Problem of Approaches & Attitudes

Approaches and attitudes of the staff must be positive. Generally it is found that the approaches and attitudes of the bank staff is not very good. Bancassurance services of SBI needs very meagerly the good approach and attitude from the staff end. This is one of the significant problems faced by the bank employees. Therefore the researcher has analyzed the Problem of Approaches & Attitudes on the basis of opinions of employees of SBI in Marathwada region. The results are shown in the following table.
### Table No. 5

**Problem of Approaches & Attitudes**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Intensity of Problem</th>
<th>Rural Employees</th>
<th>%</th>
<th>Urban Employees</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Severe</td>
<td>115</td>
<td>47.92</td>
<td>46</td>
<td>19.17</td>
<td>161</td>
<td>33.54</td>
</tr>
<tr>
<td>2</td>
<td>High</td>
<td>74</td>
<td>30.83</td>
<td>61</td>
<td>25.42</td>
<td>135</td>
<td>28.13</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>28</td>
<td>11.67</td>
<td>103</td>
<td>42.92</td>
<td>131</td>
<td>27.29</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
<td>14</td>
<td>5.83</td>
<td>19</td>
<td>7.92</td>
<td>33</td>
<td>6.88</td>
</tr>
<tr>
<td>5</td>
<td>No Problem</td>
<td>9</td>
<td>3.75</td>
<td>11</td>
<td>4.58</td>
<td>20</td>
<td>4.17</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>240</td>
<td>100.00</td>
<td>240</td>
<td>100.00</td>
<td>480</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Source: Primary Data.*

It can be observed from the above table that,

Out of the total 240 sample employees of SBI from rural parts of Marathwada, 115 (47.92%) have opined that the Problem of Approaches & Attitudes is ‘Severe’, whereas 74 (30.83%) have expressed that the Problem of Approaches & Attitudes is ‘High’, that of 28 (11.67%) have responded that the Problem of Approaches & Attitudes is ‘Moderate’ and that of 14 (5.83%) have opined that the Problem of Approaches & Attitudes is ‘Below Average’ and 9 (3.75%) have opined that there is no Problem of Approaches & Attitudes.

Out of the total 240 sample employees of SBI from urban parts of Marathwada, 46 (19.17%) have opined that the Problem of Approaches & Attitudes is ‘Severe’, whereas 61 (25.42%) have expressed that the Problem of Approaches & Attitudes is ‘High’, that of 103 (42.92%) have responded that the Problem of Approaches & Attitudes is ‘Moderate’ and that of 19 (7.92%) have opined that the Problem of Approaches & Attitudes is ‘Below Average’ and 11 (4.58%) have opined that there is no Problem of Approaches & Attitudes.

**Conclusion:**

The conclusions of this survey are as follows:

1. It is concluded that, highest i.e. 40.83% of the employees of SBI of rural branches have opined that the problem of Trained & Qualified Staff is ‘High’, whereas, highest i.e. 36.67% of the employees of SBI of rural branches have opined that the problem of Trained & Qualified Staff is ‘High’.

2. It is concluded that, highest i.e. 43.75% of the employees of SBI of rural branches have opined that the problem of Non-Cooperation between the Staff is ‘Severe’ whereas, highest
3. It is concluded that, highest i.e. 45.83% of the employees of SBI of rural branches have opined that the problem of Coordination with Managerial Staff is ‘Severe’ whereas, highest i.e. 46.67% of the employees of SBI of rural branches have opined that the problem of Coordination with Managerial Staff is ‘High’.

4. It is concluded that, highest i.e. 47.08% of the employees of SBI of rural branches have opined that the problem of Motivation is ‘High’ whereas, highest i.e. 39.58% of the employees of SBI of rural branches have opined that the problem of Motivation is ‘Moderate’.

5. It is concluded that, highest i.e. 47.92% of the employees of SBI of rural branches have opined that the Problem of Approaches & Attitudes is ‘Severe’ whereas, highest i.e. 42.92% of the employees of SBI of rural branches have opined that the Problem of Approaches & Attitudes is ‘Moderate’.
AN ANALYTICAL VIEW ON THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018 IN THE CONTEXT OF EXISTING LAWS

Dr. More Atul Lalasaheb
Asso.Professor, B.Sc. (Hons.), LL. M. (NET-Law), Ph.D. (Law)

1. Introduction

In recent times India has witnessed a number of scams and economic offences which have left an adverse impact on the Indian economy and also the banking sector. So, it is viewed that there has been a shift from general welfare to the individual or family welfare wherein, the big entrepreneurs by indulging in scam abscond from our country to foreign countries to avoid legal process. Some prominent of these have been the IPL Scam having Lalit Modi (former IPL Commissioner) at the center of it, the Rotomac Scam, but probably the most reported one has been the alleged fraud by owner of the now defunct Kingfisher Airlines Vijay VittalMallya, who has been out of India for quite a while now in order to evade trail for criminal offences. Hence, it is opined that this shift leads to mounting of NPA’s and shake the financial stability of the country and trust of the common people. It is important to note that Government is of the opinion that the existing laws are incapable of effectively resolvingthis situation, so this is high time to have separate legislation regarding such offenders. Hence, Government has passed Fugitive Economic Offenders Act, 2018, to remedy this evil and to suppress the agitation of the common man, besides upholding investor’s trust and well-being of the country’s economy.

Thus present Act represents the Government’s ambitious endeavour to buttress the multitudinous peril of economic offenders who cheat and defraud the country and seek haven outside of India, in an attempt to evade prosecution.¹

However, the provisions under this Act are criticised on the ground that it not only amount to extra burden on the existing law enforcing machinery but also additional law in the existing similar legislations in India e.g. Economic offences relate to fraud, counterfeiting, money-laundering, and tax evasion, among others. Currently, various laws contain provisions to penalise such offences. These include –

(i) the Prevention of Money-Laundering Act (PMLA), 2002 which prohibits money-laundering,
(ii) the Benami Properties Transactions Act, 1988 which prohibits benami transactions,

¹ This is reveals from an objective of the Act that it intended to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.
(iii) the Companies Act, 2013 which punishes fraud and unlawful acceptance of deposits and
(iv) the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 also cover economic
offences, such as forgery and cheating.

It is important to note that in 2017, the Ministry of Finance released a draft Bill to address
cases of high-value economic offenders fleeing the country to avoid prosecution.2

But the Ministry of Finance justified this Act on following grounds—
(a) a new legal framework was required as the current civil and criminal laws do not contain
specific provisions to deal with such offenders3,
(b) the procedures under existing laws are time-consuming, which obstructs investigation and
impacts the financial health of banks4 and
(c) the Ministry of External Affairs stated that due to these lacunas over 30 businessmen, under
investigation by the CBI and the Enforcement Directorate, had absconded to avoid facing
prosecution before Indian courts.5

Hence, in the light of these contradictions, it is become relevant to analyse this new Act in
the context of existing laws on the same subject matter.

2. Salient features of the Fugitive Economic Offenders Act, 20186

(a) Fugitive economic offender (FEO)

An FEO is a person against whom an arrest warrant has been issued for committing
any offence listed in the Schedule to the Act, and the value of the offence is at least Rs 100
crore. Further, the person has left the country and refuses to return, in order to avoid facing
prosecution. The Act lists 55 economic offences in the Schedule, which include—
(i) Counterfeiting government stamps or currency,
(ii) Dishonouring cheques,
(iii) Benami transactions,
(iv) Transactions defrauding creditors,
(v) Tax evasion, and
(vi) Money-laundering.

The central government may amend the Schedule through a notification.7

2 Draft Fugitive Economic Offenders Bill, 2017,
3 Explanatory Note on the Fugitive Economic Offenders Bill, 2017, Ministry of Finance, May 2017,
4 Ibid
5 Ibid
6 Unstarred Question No. 3198, Lok Sabha, Ministry of External Affairs, Answered on March 14, 2018.
7 Ibid
8 See Schedule – I, r.w. Section 2(l) to (m)
(b) Authorities

The authorities under the PMLA, 2002 will exercise powers given to them under the Act. These powers will be similar to those of a civil court, including –

(i) search of persons in possession of records or proceeds of crime,
(ii) search of premises on the belief that a person is an FEO, and
(iii) seizure of documents.

(c) Process under the Act to declare a person as a Fugitive Economic Offender –

1) Application

The authorities appointed under the PMLA may file an application before a Special Court (designated under the PMLA) to declare a person an FEO. The application will contain –

(i) reasons to believe that an individual is an FEO,
(ii) information about his whereabouts,
(iii) list of benami properties, properties believed to be proceeds of a crime, or foreign properties for which confiscation is sought, and
(iv) list of persons having an interest in these properties.

2) Attachment

Authorities may attach any property mentioned in the application with the permission of the Special Court. The attachment will continue for 180 days, which may be extended by the Special Court. They may provisionally attach any property without the permission of the Special Court, if they file an application before the court within 30 days.

3) Notice

The Special Court will issue a notice to the individual: (i) requiring him to appear at a specified place on a date which is at least six weeks after the issue of notice, and (ii) stating that a failure to appear will result in him being declared an FEO. Notice may also be served at the individual’s email address recorded in the PAN or Aadhaar databases.

4) Proceedings

If the person appears, the Special Court will terminate proceedings. If the person does not appear in person, but is represented by his counsel, the Special Court may allow the
counsel a week to file a reply. If, at the conclusion of proceedings, the person is found not to be an FEO, his attached properties will be released.

5) **Declaration**\(^{14}\)

If the person does not appear in person or through his counsel at the stipulated time, the Special Court will proceed with hearing the application. After hearing the application, the Special Court may declare the person an FEO.

6) **Confiscation**\(^{15}\)

The Special Court may confiscate properties of an FEO which are proceeds of crime, benami properties, or any other properties. These properties may be in India or abroad. The Special Court may exempt certain properties from confiscation where any other person has a legitimate interest in them. Upon confiscation, all rights and titles in the property will vest in the central government, free from encumbrances (claims or rights in the property). The central government may dispose these properties after 90 days. Proceeds of crime will include properties (or equivalent value), which have been obtained by committing a scheduled offence. The standard of proof shall be “preponderance of probabilities”.

7) **Bar on civil claims**\(^{16}\)

Any court or tribunal may bar an FEO from filing or defending any civil claim before it. The court may bar a company or a limited liability partnership from filing or defending any civil claim if the promoter, key managerial personnel (such as manager, managing director, or CEO), or majority shareholder has been declared an FEO.

8) **Appeal**\(^{17}\)

Appeals against the orders of the Special Court will lie before the High Court. Such appeals can only be filed within 30 days of the order (extendable to 90 days if the High Court is satisfied with the reasons for delay).

3. **Comparison between current laws with the Fugitive Economic Offenders Act, 2018**

Most of the procedural aspects under the Act (with a few exceptions) are similar to existing laws such as the Cr. P. C., 1973, and the Prevention of Money-Laundering Act (PMLA), 2002. This can be realised by comparing the provisions of existing laws and Bill as given below:\(^{18}\)

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\(^{14}\) Section 12

\(^{15}\) Section 8 & 9

\(^{16}\) Section 18

\(^{17}\) Section 17

\(^{18}\) PRS Legislative Research, June 11, 2018
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Provision</th>
<th>The Fugitive Economic Offenders Act, 2018</th>
<th>Current Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Absconding</td>
<td>A person may be declared an FEO if he leaves the country and refuses to return to face prosecution. He may be asked to appear at a specified place at least six weeks after notice</td>
<td><strong>Cr. P. C.:</strong> Section 82 allows a to issue a proclamation requiring a person evading a warrant to appear at a specified time and place at least 30 days after notice.</td>
</tr>
<tr>
<td>2</td>
<td>Attachment</td>
<td>A person’s property may be attached for 180 days. Attached properties may include those believed to be proceeds of crime and benami properties.</td>
<td><strong>Cr. P. C.:</strong> Section 83 allows properties of absconders to be attached. <strong>PMLA:</strong> Section 8 allows attachment of properties which are proceeds of crime.</td>
</tr>
<tr>
<td>3</td>
<td>Confiscation or recovery</td>
<td>An FEO’s property may be confiscated and vested in the central government, free of encumbrances. The central government may dispose this property only after 90 days. The Special Court may exempt certain properties from confiscation where any other person has a genuine interest.</td>
<td>**Cr. P. C.:**Section 85 allows attached property to be sold by the state government after six months. It will have to return the property or proceeds if the absconder returns within two years. <strong>PMLA:</strong> Section 8 allows a person’s property to be confiscated upon conviction, or if trial cannot be concluded. Such property will be vested in the central government, free of encumbrances. <strong>SARFAESI:</strong> Under SARFAESI, creditors can take possession of collateral without court intervention. <strong>Search</strong></td>
</tr>
<tr>
<td>4</td>
<td>Search and seizure</td>
<td>Authorities may search premises and persons on the belief that a person may be an FEO, or has proceeds of crime, among others. They may also seize documents. While searching a person, if the person requires, authorities may take him to a gazetted officer or a Magistrate, within 24 hours.</td>
<td><strong>Cr. P. C.:</strong> Under Section 100, authorities may conduct a search. The search will have to be conducted in the presence of two witnesses, upon issuance of a search warrant. Provisions related to search under Cr. P. C. followed in other laws such as: (i) the PMLA, (ii) the Securities and Exchange Board of India Act, 1992, (iii) the Central Excise Act, 1944, (iv) the Companies Act, 2013, and (v) the Central Goods and Services Tax Act, 2017. <strong>PMLA:</strong> While searching a person, if he so requires, authorities may take him to a gazetted officer or a Magistrate, within 24 hours.</td>
</tr>
</tbody>
</table>
5  Contracting state

The Special Court may request a court or authority in a contracting state (countries with whom an agreement has been signed to enforce provisions of the law) to execute its confiscation order.

Cr. P. C.: Under Chapter VIIA, courts may request contracting states to execute their orders (where central government has entered into agreements with such countries).

PMLA: Provisions under Chapter IX similar to CrPC.

Extradition Act, 1962: Chapter IV allows for the extradition of an offender (accused or convicted) from a foreign country.

4. Analysing the Constitutionality of the Fugitive Economic Offenders Act, 2018

(a) Barring persons from filing or defending civil claims may violate Article 21

Under Section 14, any court or tribunal may bar an FEO from filing or defending any civil claim before it. Further, the Act allows courts to bar a company from filing or defending any civil claim before it if the promoter, key managerial personnel (such as manager or CEO), or majority shareholder is an FEO. The research is of the view that such a bar may violate Article 21 of the Constitution.\(^\text{19}\) Besides this, the Supreme Court has interpreted Article 21 that it includes the right to access justice, which cannot be taken away.\(^\text{20}\) This right includes the availability of a forum which aggrieved persons may approach to seek legal remedy.\(^\text{21}\)

This provision under sec. 14 will consequently affect rights of individual and company. In case of individual such a bar even though it may be marriage suit or inheritance dispute would violate his right to file or defend such a claim.

Besides this, in case of company there may be cases where an FEO is the majority shareholder of a company. In such cases, even though the company is a separate legal entity, it may be barred from filing or defending cases. For example, a company may be barred from filing a suit against a supplier of goods or from defending a case where tax dues are imposed on it. There may also be instances where creditors obtain court orders for repayment of loans against the company, without the company having an opportunity to present its defence. In all such cases, the interests of the remaining shareholders will not be protected owing to such a bar on companies.

Hence, the provision under section 5(2), section 10(3)(b) and section 14 has been questioned by the critics for taking the powers of the State and authorities at an unnecessary length, leading to denying the fundamental right of access of justice and Right to a fair trial. This is fundamental norm

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\(^{19}\) Article 21 provides that “\textit{No person shall be deprived of life or personal liberty, except procedure established by law.}”

\(^{20}\) Maneka Gandhi vs. Union of India AIR 1978 SC 597

\(^{21}\) Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509
in every democratic country and international human rights also. The law forbids conviction of an individual violating *Audi Alteram Partem* to the accused person. So, this right has been held to be an integral part of the Right to Liberty under Article 21 of the Constitution, which has been affirmed by the Apex Court in a number of significant judgments. Hence, as in Indian arena in addition to this right the provisions under section 243 of Cr.P.C. affirms awarding opportunity to alleged individual to defend his case.

The researcher would like to emphasise that the provisions under Section 5, 10 and 14 are arbitrary as they stands against the basic doctrine of criminal jurisprudence “presumption of innocence” and “proven beyond reasonable doubt” as it enables the appropriate authorities to search, seize and confiscate the property before the commencement of any proceedings on mere suspicion.

**(b) Use of sale proceeds from confiscated property not specified in the Act:**

Under Section 12, 15 it is specified that an FEO’s properties will be confiscated and vested in the central government, free of encumbrances (claims or rights in the property). The central government may dispose of the properties after 90 days. However, the researcher would like to point out that this Act does not specify how the Central Government will use the sale proceeds. That is, would the government be obliged to share the sale proceeds with persons who may have a claim against the FEO.

The researcher viewed that these sections need to be read in the light of section 178 of Bankruptcy Code, thereby the Special Court under this Act may exempt certain properties from confiscation if a person shows his legitimate interest in these properties. For example, this may cover secured creditors who have claims against specific properties of the FEO. The Act does not require the confiscated properties to be used to settle dues of other claimants (for example, unsecured creditors or persons claiming unpaid wages). In contrast, the Insolvency and Bankruptcy Code, 2016 specifies that sale proceeds from the property of the defaulter will be distributed among all claimants according to an order of priority.  

**(c) Provisions related to search may not contain safeguards**

Under Section 8 and 9 the Act, authorities may search a person or premises on the belief that a person may be declared an FEO or has proceeds of crime. The Act allows a search to be conducted without a search warrant or witnesses.

The researcher is of the view that these provisions differs from other laws, such as the Code of Criminal of Procedure (CrPC), 1973, which provide certain safeguards. Under Sections 94 and 100 of Cr. P. C. permits a search to be conducted only if a warrant has been issued by a Magistrate and requires the presence of two or more independent witnesses while authorities search premises.

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respectively. It is important to note that other laws such as the Prevention of Money-Laundering Act, 2002 and Securities and Exchange Board of India Act, 1992 follow these procedures specified in the Cr. P. C., 1973 in case of a search. These safeguards seek to protect against instances of harassment of persons or cases where evidence may be planted against the accused.

Note that Rules have been notified under the Fugitive Economic Offenders Ordinance, 2018, but why not in the present Act in case of a search. 23

(d) Danger of finality of attachment confiscation of properties of absconders

Under section 12 of the Act, confiscation of properties will be final once a person is declared an FEO by the Special Court. This differs from other laws, such as the Code of Criminal Procedure (Cr. P. C.), 1973, which contain such safeguards. These safeguards protect against harassment and planting of evidence.

In addition to above there are inevitable challenges while implementing the Act such as –

1) The Rs. 100 crore thresholds would allow many other offenders to go scot-free.
2) It is contested for asserting mere failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under this Act, thus paves the way for ex-parte order.
3) Deterioration in value of seized assets and finding suitable buyers are some other concerns around this Act.

5. Conclusion

The Fugitive Economic Offenders Act, 2018 aims to tackle a peril of today that has far reaching implications upon the core of investor confidence and the well-being of the economy. The disdain and disregard shown by the Fugitive Economic Offenders is of such a nature that is representative of a deeply worrying state of affairs and a growing community of individuals who seek not to make a living honestly, but to make one, essentially based upon wrongful gains derived by way of scams and fraudulent enterprises, who seek a safe exit from the consequent liability of their actions by evading the grasp of justice. The Act represents an efficacious endeavour to curb the far reaching menace that are, Fugitive Economic Offenders.

However in light of above controversies the researcher would like to suggest some way forward for proper implementation of the Act –

1) The Act should provide for time limits for disposal and encashment of confiscated property, separate limits for movable-immovable property and running business.

23. G. S. R. 393 (E) to 397 (E), Gazette of India, Ministry of Finance, April 24, 2018.
2) Any property which would be subject to valuation loss over a period of time must be disposed of quickly.

3) The authority under the Act should be restrained from abuse of power; it must stand the test of intelligible differentia and rational nexus. This can be maintained only on the ground that if the authority proceeds under the rational nexus with the object of the Act i.e. to deter evading persons from the process of law and subject him to India jurisdiction and to restore the rule of law in India. This rational nexus has the effect not only of saving from unconstitutionality but also to some other provisions of the Act including the attachment of properties upon suspicion of them being siphoned off.

4) No doubt this Act gives the discretion to any civil court or tribunal from disallowing fugitive economic offender from contesting – filing or defending any claim or proceeding before it. However if this bar finds there is no nexus with the offence in this Act then it would amount to violation of Article 14. Hence, the constitutionality of this discretion is justified under Article 14, 19 and 21 on the basis of the reasonable restrictions upon these rights, which are imposed in pursuance of compelling social, moral, state and public interest. Besides this, even though the Act intends to remedy the effect of social injustice the fugitive economic offenders have caused it must follow the above tests. Hence, individual justice, right, liberty has to pay the way for proper implementation of this Act.
PHYSICO-CHEMICAL ANALYSIS OF POLICE WATER TANK, TQ. LOHA, DIST. NANDED (M.S.)

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Head, Department of Zoology, Netaji Subhashchandra Bose College Nanded.

Abstract:

In the present study, water samples were collected from single locations of Policewadi tank for physico-chemical analysis. The laboratory test of the collected water samples were performed for analysis of various parameters such as pH, Temperature, Total Dissolved Solids (TDS), Dissolved Oxygen (DO), Alkalinity, Acidity, Total Hardness (TH), Chloride and Phosphorus. The methods employed for the analysis as per standard methods recommended by APHA, WHO, ICMR. The obtained values are compared with the standard limits.

Key words: Physico-chemical parameters, Policewadi,

Introduction:

Water is one of the most important compounds to the Ecosystem. Better Quality of water described by its Physical, Chemical and Biological Characteristics. But some Correlation was possible among these parameters and the significant one would be useful to indicate quality of water. The quality of water is vital concern for mankind because it directly linked with human health.

We need water every day for various domestic, irrigation and drinking purposes. Economy of our country is agro based economy. Most of the people who live in villages get their jobs in agriculture field due to irrigation facilities in that sector.

Before Industrial revolution water quality was near about good. But due to industrial and agriculture revolution waste water which is coming from various water resources is highly polluted in various ways, So it become unsafe for drinking and domestic purposes. Aim of present study is to find out Physico-chemical analysis of water.

Materials and methods

Study Area

Policewadi tank is on the road of loha Ahmedpur state road 50 k.m. away from the district place, the water is used by the villagers for their day to day activities like Drinking, Agriculture, Washing clothes, Washing their vehicles, etc.

Collection of water samples

The water samples were collected in polythene bottles of capacity 1 to 2 liter in the month of Dec 2017 to Nov 2018 at one month intervals between 9.00 a.m. to 7.00 p.m. from the sampling site.
These samples were collected from approximately 15-20 cm below the water surface. Care must be taken not to catch any floating material or bed material into the container. The standard procedures were adopted for the determination of physico-chemical parameters.

**Water quality parameters**

The analysis of various physico-chemical parameters namely pH, Temperature, Total Dissolved Solids (TDS), Dissolved Oxygen (DO), Alkalinity, Acidity, Total Hardness (TH), Chloride and Phosphorus were carried out as per the method described in APHA (1992). The instruments used were in the limit of précised accuracy. The chemicals used were of AR grade. Utmost care was taken during sampling to avoid any kind of contamination. Temperature and pH were measured at the site.

**Results and discussion:**

The monthly values of physico-chemical parameters of Policewadi are shown in table no.1

1. **pH of the collected water sample**

   It was observed that pH of the water normally remains higher in summer and in rainy seasons. It depends on photosynthetic activity. It was relatively more in winter. It was almost same during summer and monsoon. The variation occurs in the pH values due to change in the values of CO₂, carbonate and bicarbonate in the water. The lower values of pH may cause tuberculation and corrosion while the higher values may produce incrustation, sediment, deposition and difficulties in chlorination for disinfections of water. In the present study the pH values in all the collected water samples ranges from 7.0 to 8.1 which are all within the limit.

2. **Temperature (°C)**

   There is a closed relation between the atmospheric temperature and water temperature. Air temperature is one of the most important ecological factors which control the physiological behavior of the aquatic system and distribution of the microorganisms. The temperature of the collected water samples varies in between 19°C to 32°C.

3. **Total Dissolved Solids (TDS)**

   It was reported that alkaline ponds were richer in solids than acidic ones. The quantity of TDS was proportional to the degree of pollution. The TDS were recorded more during rainy season. This is because of the addition of solids from runoff water. The value of TDS in the collected water samples varies from 233 mg/L to 490 mg/L.

4. **Dissolved Oxygen (DO)**

   DO is one of the most important parameter in assessing water quality and understanding the physical and biological process prevailing in the water. The importance of DO was reported by many researchers because DO in aquatic ecosystem brings out various biochemical changes and it
influence on metabolic activities on organisms. A good quality water should have the solubility of oxygen 7.0 mg/L at 30 °C. DO was maximum in winter while minimum in summer season. The DO of the collected water samples is about 9.24 mg/L to 9.34 mg/L. It is quite close to the prescribed values.

5. Alkalinity

Alkalinity of water is measure of its capacity to neutralize acids. This is due to the primarily salts of weak acids or strong bases. Bicarbonates represent the measure form of alkalinity. Bicarbonates are formed in considerable amount from the action of carbon dioxide upon basic materials in soil and other salts of weak acids. Alkalinity in the dam water caused by bicarbonate as carbonates values in all the collected samples ranges from 59 mg/L to 75.1 mg/L.

6. Total Hardness (Calcium and Magnesium (Mg2+))

The total hardness in all the collected water samples of Policewadi was found in the range of 110. Mg/L to 120.9 mg/L. Vijayakumara et. al. (2005) observed calcium ranged from 8.60 – 94.10 mg/L 75.25 – 124 mg/L in surface and sub-surface water of Bhadra River respectively in June-December 2002.

7. Chloride

High chloride ion concentration indicates organic pollution in the water. The chloride concentration on fresh natural water is quite low generally less than that of sulphate and bicarbonates. Chloride is a natural substance present in all portable water as well as sewage effluents as metallic salt. Many researchers reported that rainfall add chloride directly. It is low in summer as compared to rainy season and occupying the intermediate position in winter. The chloride concentrations in most of the samples were higher than highest desirable level 200 mg/L by ICMR. Yet these values are well below the maximum permissible limits 500 mg/L. Yadav and Kumar, (2011), investigated chloride values ranged from 18 to 88mg/L from river Kosi in Rampur district, Uttar Pradesh. The maximum chloride content was due to addition of natural contaminants and pollutants. Dhanalakshmi et. al. (2008), studied water quality of Sulur pond at Coimbatore during October 2001 to September 2002. They found phosphate concentration ranged between 1.30 – 1.90 mg/L.

During present study chloride level were in between 32.4-45.5mg/L was observed.

8. Acidity

The acidity in all the collected water samples of Policewadi was found in the range of 9.71 mg/L to 9.88 mg/L.

9. Phosphorus
The amount of phosphorus in all the collected water samples of Policewadi was found in the range 0.200 mg/L to 0.308 mg/L. Shubhachandra et. al. (2006) analyzed water quality of Purna River, Maharashtra during July 2001 – June 2002. The observed phosphate values fluctuated between the range of 0.96 – 1.90 mg/L, 1.20-2.0 mg/L and 1.60-2.30 mg/L at upstream, midstream and downstream respectively. The highest phosphate content in summer season due to agricultural run-off and domestic sewage.

**Conclusion**

The analysis of the water quality parameters of Policewadi shows that pH, Temperature, Total Dissolved Solids (TDS), Dissolved Oxygen (DO), Alkalinity, Acidity, Total Hardness, Chloride and Phosphorus values are well within the permissible limits. The TDS of the sample was well below the desirable limit. The result of study reveals that, quality of water is though fit for domestic and drinking purposes need treatments to minimize the contaminations.

Table No.1 Shows monthly values of physico-chemical parameter of Policewadi.(Dec.17 to Nov.18)

<table>
<thead>
<tr>
<th></th>
<th>pH</th>
<th>Temperature</th>
<th>TDS</th>
<th>DO</th>
<th>Alkalinity</th>
<th>Calcium</th>
<th>Chloride</th>
<th>Acidity</th>
<th>Phosphorous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec-17</td>
<td>7.1</td>
<td>19</td>
<td>245</td>
<td>9.34</td>
<td>65</td>
<td>115</td>
<td>35.5</td>
<td>9.75</td>
<td>0.235</td>
</tr>
<tr>
<td>Jan-18</td>
<td>7.6</td>
<td>20</td>
<td>265</td>
<td>9.25</td>
<td>63</td>
<td>114</td>
<td>45.1</td>
<td>9.73</td>
<td>0.248</td>
</tr>
<tr>
<td>Feb-18</td>
<td>7.8</td>
<td>22</td>
<td>233</td>
<td>9.27</td>
<td>59</td>
<td>112</td>
<td>36.5</td>
<td>9.76</td>
<td>0.285</td>
</tr>
<tr>
<td>Mar-18</td>
<td>7.3</td>
<td>24</td>
<td>265</td>
<td>9.24</td>
<td>58</td>
<td>120</td>
<td>32.4</td>
<td>9.88</td>
<td>0.307</td>
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<tr>
<td>April-18</td>
<td>7.5</td>
<td>25</td>
<td>325</td>
<td>9.26</td>
<td>59</td>
<td>119</td>
<td>41.2</td>
<td>9.71</td>
<td>0.200</td>
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<tr>
<td>May-18</td>
<td>8.0</td>
<td>32</td>
<td>347</td>
<td>9.25</td>
<td>72</td>
<td>117</td>
<td>45.5</td>
<td>9.76</td>
<td>0.289</td>
</tr>
<tr>
<td>June-18</td>
<td>8.1</td>
<td>30</td>
<td>365</td>
<td>9.27</td>
<td>75.1</td>
<td>115</td>
<td>39.8</td>
<td>9.79</td>
<td>0.279</td>
</tr>
<tr>
<td>July-18</td>
<td>7.8</td>
<td>26</td>
<td>490</td>
<td>9.28</td>
<td>74</td>
<td>114</td>
<td>38.6</td>
<td>9.85</td>
<td>0.308</td>
</tr>
<tr>
<td>Aug-18</td>
<td>7.5</td>
<td>24</td>
<td>432</td>
<td>9.32</td>
<td>70</td>
<td>120.1</td>
<td>37.9</td>
<td>9.84</td>
<td>0.299</td>
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<tr>
<td>Sept-18</td>
<td>7.9</td>
<td>22</td>
<td>412</td>
<td>9.31</td>
<td>71</td>
<td>116</td>
<td>41.2</td>
<td>9.81</td>
<td>0.287</td>
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<tr>
<td>Oct-18</td>
<td>7.4</td>
<td>20</td>
<td>365</td>
<td>9.24</td>
<td>69</td>
<td>112</td>
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<tr>
<td>Nov-18</td>
<td>7.6</td>
<td>21</td>
<td>398</td>
<td>9.26</td>
<td>71</td>
<td>111</td>
<td>39.9</td>
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**References:**


ENIMITY BETWEEN SPOUSE AND CRUELTY OF HUSBAND AS GROUND OF DISSOLUTION OF MUSLIM MARRIAGE

Dr Badre Alam Khan*

1. INTRODUCTION

Marriage is an important aspect of human life. It gets the sorrow, uneasiness and unpleasant things changed into happiness. It may be said that to get easiness and pleasure it is a must. Quran says

“He created for you
Mates from among yourselves
That you may dwell in
Tranquility with them,
And he has put love
And mercy between your (hearts);
Verily in that are signs
For those who know”

Thus, the creator, in order to keep the person in tranquility and love, the institution of marriage has introduced. That is why Allah has guided the men in the following verse.

“All the contrary live with them
On a footing of kindness and equality”

Abu Bakar Jasas Razi has, while commenting the above verse, said “Don’t talk with them in rough manner, do not ignore them in the home affairs”.

Thus, talking in good manner, showing the love and affection so that they may feel happy, is necessary, as Allah has revealed in the above-mentioned verse. Allah further guides -

“They are your garments
And ye are their garments”

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1 I have written several papers on the grounds of dissolution of Muslim Marriage in which the introductory part and grounds of dissolution are common.
2 Sura (Chapter denoted as S) 30 : Ayat (Verse or sentence denoted as A) 21
3 Holy Quran S 4:A 19
5 Holy Quran S 2 :A 187
Meaning there by that like garments one is the need of the other at every time and not for temporary period or only sexual passion.

Since man is free in his acts, he can do the good work as well as bad work. Sometimes it happens that a man keeps his wife in complete misery. She is subjected to the excess of her husband. She has nothing to do except tolerating. But sometimes it becomes intolerable for her. In that extreme circumstances woman has right to get this pious tie broken. If a husband is feeling aggrieved, he can use the right of divorce. Where woman is aggrieved, she can get the marriage dissolved. But women are also cautioned in the use of their rights. Prophet (PBUH) has said 6 –

“Every woman who ask her husband to divorce her without cause, the smell of paradise is forbidden to her.”

But when she is feeling that the continuance of tie will lead her in a life which is unfavourable for her in this world as well as hereafter she can use her right to reach the Qazi to get the marriage dissolved. Before using the right, a woman is guided to choose the other solutions. Allah commands 7-

“If a wife fear
Cruelty or desertion
On her husband’s part
There is no blame on them
If they arrange
An amicable settlement
Between themselves;
And such settlement is best”
And further if they are unable to reach on any amicable solution, they can appoint the arbitrators.

“If ye fear a breach between them twain,
Appoint (two) arbiters
One from his family,
And one other from hers
If they wish for peace
Allah will cause
There is reconciliation
For Allah hath full knowledge

6 Fatwa Qazi Khan Vol. I p. 123
7 Holy Quran S 4 : A 128
And is acquainted
With all things”.8

Not only women but also men are guided to use the right of divorce in extreme circumstances. Prophet (PBUH) has said –
“The most detestable among all permitted things in the sight of Allah is divorce”9
Dare Qutni reports that Prophet (PBUH) has said to Muadh (Raz) –
“Nothing has been created by Allah on the earth which is more detestable than divorce”10
But when it is the extreme need and the parties, instead of getting satisfaction from each other passing the life in jealousy and hatred and the family becomes the open scene of the hell, in such circumstances this detestable thing becomes a boon.

2. GROUNDS OF DISSOLUTION

The Hanafi jurists describe twelve11 grounds of dissolution of marital tie but in India there are more grounds than that which are based on primary sources, other schools and legislations i.e.

1) Migration – when a woman comes in Islamic territory after embracing Islam immigrating from non-Muslim state while her husband remains in that state (non-Muslim state).
2) Improper marriage;
3) Marriage in contravention of status or Inequality of the husband (Kufu);
4) Dower if not in accordance with status;
5) Musahirat;
6) Acceptance of Islam by wife (barring the husband);
7) Acceptance of Islam by husband (barring the wife);
8) Fosterage (if the wife has fed her husband during childhood);
9) Option of slavery (Khayare Ataq);
10) Option of puberty (Khayare Balugh);
11) If one of the parties becomes non-Muslim;
12) Relation of master and slave;
13) Untraceability of the husband;
14) Inability to maintain the wife;
15) Neglect of the husband;
16) Impotence of the husband;

8  Id S 4 : A 35
9 “Ibne Umar says that the thing which is lawful, but disliked by Allah is divorce.” Abu Daud Vol. I p. 123
10 Abdul Samad Rahmani “Kitabul Fashkh waltafriq” (Patna: Imarate Sharia, 1400 AH) 2nd ed. p. 35 citing Dare Qutni
11 Id pp 37-38
17) Insanity of the husband;
18) Virulent or Venereal disease of the husband;
19) Cruelty of the Husband;
20) Enmity between the spouses.  

Amongst these I shall discuss the ground of enmity and cruelty of the husband.

3. DISSOLUTION ON THE GROUND OF ENMITY AND CRUELTY OF THE HUSBAND

Enmity between the spouses is also a ground of dissolution of marriage. Similarly, cruelty is also a ground for this. But the dissolution is not the motto of the spouses. So, before that remedies are to be searched for reconciliation

3.1 RECONCILIATION BEFORE DISSOLUTION

Allah in the Holy Qur’an says, “If a wife fears cruelty or desertion on her husband’s part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best.”

At another place, He says, “If ye fear a breach, between them twain, appoint (two) arbitrators, one from his family and the other from hers. If they wish for peace. Allah will cause their reconciliation.”

The question arises as to who are the addressees in these verses? The first verse asks the couple to act in reconciliation. In the second verse addressing the officials of the State, Allah says that if they find disagreement between the couple it is incumbent upon them to appoint one arbitrator from the families of each of the couple, with a view to bring about reconciliation in them. Commenting upon this Tafsire Tabri, through the narrative of Sayeed b. Jubayr (Raz) says that the verses are addressed to Amer. Imam Jassas has, as narrated by Suddi, written that the verses are addressed to husband and wives. But, to be more correct, it is the leaders of the community or the officials of the State that are addressed by the words, In khiftum i.e. if ye fear in the second verse. The Qur’anic verse has in the background that social order of the Arabs wherein no regular media for dispensing justice was established by a sovereign less society; rather the tribal heads themselves settled disputes arising between the individuals of their tribes. Hence the word, Khiftum in this (second) verse means Officials of the State appointed for the purpose i.e. Qazis.

On a study of the above Qur’anic verse it appears that in this (second) verse the apprehension that requires the appointment of arbitrators is that of disagreement (Shiqaq) between the spouses. The literal meaning of the word, Shiqaq is disagreement. It has been derived from the word, Shiq

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14 Id S 4 : A 128
that means direction. As the husband and the wife due to some misunderstanding between them stand oriented in two directions, the Holy Qur’an describes the situation by the word, Shiqaq.

From the words, “in urida islaha” in the above verse, the intention of both the arbitrators is meant; this is according to Ibne Abbas and Mujahid (Rah). That is to say, if both the arbitrators intend reconciliation, Allah would bring about harmony in the couple. Some people assert that by these words the intention of the couple is meant. If they (husband and wife) intend to remedy the situation and tell the arbitrators the truth. Allah (SWT) shall bring about reconciliation between them.

3.2 DISCUSSION ABOUT ARBITRATORS

The term arbitrators (in Arabic Hakam) that has been used in the above verse stands for several meanings. In general, it means Official or a Judge. Its literal meaning is to forbid as stated by Ibn Abbas. In his famous work, Al-Mufradat Fi Gharib al-Qur’an has said that the real meaning or hakam is to restrain something with a view to reform it. Imam Shafeyee has said, “If the husband and wife be apprehensive of desertion amongst them and take their case to the official, duty is casted upon him to depute wise and patient arbitrators, one from husband’s family and the other from wife’s family, to enquire into the real cause of desertion and bring about a settlement between them. It will not be valid for them, even if they consider it proper, to pass order of separation between them except when the husband empowers them to do so. Nor can they give way on the wife’s property nor can they get Khula effected between them. If the husband and wife are reconciled it is responsibility of the official to pass such order that should emphasise the spiritual, pecuniary and ethical rights of each against the other.

Allah has said that if they have the intention of improving their relations, Alah shall bring about agreement between them. Allah has not said that separation shall be effected between them. The official concerned, however, has been authorised to enquire of the husband and wife whether they agree to the decision of the arbitrators and whether they give them the right of effecting separation. If the husband gives them that right and both the arbitrators consider it advisable, they may, effect separation between the couple. The couple, however, shall not be compelled to give that right to the arbitrators.

Imam Shafeyee, as written in Al-Mughni al-Muhtaj is of the view that apparently arbitrators (hakams) are representatives.

Imam Hambal says arbitrators are representatives and they are not deputed without their (husband and wife’s) consent.

Imam Ibn Hazam, writes in his book, 'Al-Muhalla' the two arbitrators have no right of getting
separation effected between the couple, neither by khula nor by any other means”.

There are jurists who say that there is no authority of the arbitrators to get the separation effected the couple in the event of their failure in bringing about reconciliation between them.

4. MODERN LEGISLATION

It is time of legislation. The Muslim countries have also enacted laws regarding this. In Iraq section 40 (1) it is provided that when one of the couple has complaint of receiving injury from the other on account of which leading life together is impossible, or one of the two has complaint of mutual altercation, that one shall have the right of claiming separation through Qadi (court). (2) Before the Qadi passes some order it is necessary for him to appoint, if available, an arbitrator on behalf of the wife and another on behalf of the husband with a view to bring about reconciliation between them. If the arbitrators are not available, the Qadi shall instead of these two hakams, authorise the spouses to choose the two arbitrators. If the spouses fail to choose them, the Qadi himself shall appoint the arbitrators. In Egypt, Section 6 of relevant statute says that When the wife complains of such cruelty of her husband that it is impossible for her to have permanent matrimonial relationship with him, she shall have the right of applying to the Qadi for getting her separated from the husband. On an application made if the Qadi finds the cruelty proved and no possibility of the rectification of the same, he shall get effected an irrevocable divorce to the wife. If the said application is rejected and the wife files the complaint again and the husband’s cruelty is not proved, the Qadi shall, under sections 7,8,9,10,11, appoint two arbitrators. As per section 7 it is essential that the arbitrator be males, be just and be as far as possible, from the couple’s family. If they be not from the couple’s family they must be well aware of the couple’s circumstances and have the power of re-conciliation between them. As per section 8 it is essential for the arbitrators to find out the cause of difference between the couple and try to ameliorate the situation. If the amelioration, in ordinary course, be possible they should come to a decision in accordance, with the requirements of the case. When the two arbitrators fail in their attempt to bring about amelioration because of the excesses of the husband or because of the excesses from both sides or because of their not being able to know the correct situation, they shall have the power of getting a separation effected between them (the couple) through an irrevocable divorce. It is incumbent upon the arbitrators that whatever decision they give they must place the same before the Qadi and it is incumbent upon the Qadi to

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15 The same is written in a book on Ja’fari fiqh “Mukhtulif al-Shi’ah” that the arbitrators have no right to get separation effected without the permission of the couple.
17 Qanun al Ahwal al Shakhsiyah,1959
18 Qanunal-Ahwak al-Shakhsiyah (No.25 of 1929)
deliver judgment in conformity with the requirements of that decision. In Tunisia, where one of the spouses complains of the cruelty perpetrated by the other but has no witness for the same and the official by himself finds it difficult to establish cruelty with either of them, he shall appoint two hakams (arbitrators). It shall be incumbent upon the two arbitrators so appointed to make investigation in the case. If they find that they can bring about conciliation between the couple they would do so, but in other cases they shall have to place the matter before the Qadi. In Morocco,

(1) When the wife ascribes to her husband such cruelty that makes intrinsically the leading of life permanently with that husband by a woman of her type impossible, and whatever she ascribes gets proved and the Qadi remains unable to bring about reconciliation between them, he shall pass an order effecting divorce. (2) When the wife's complaint is rejected and she for the second time files the complaint before the Qadi and fails to prove the same, the Qadi shall appoint two arbitrators with the purpose of bringing about reconciliation between them. (3) It shall be incumbent upon the arbitrators to find out the cause of difference between the spouses and try to bring about reconciliation between them. If the two arbitrators are unable to bring about reconciliation, they shall place the matter before the Qadi who, in the light of their report, shall decide the matter. Thus, under the law of Morocco, the Hakams do not have authority separate the couple. In Jordan where the wife has complaints of such cruelty of her husband which make the passing married life with him by a woman of her type impossible, she shall have the right of applying to the Qadi demanding separation. The Qadi, after such complaints are proved before him and he fails in his attempt to bring about reconciliation between them, shall appoint two arbitrators, having in view as regards the following matters:

(a) It is incumbent that the arbitrators be males, just, capable of bringing about conciliation and be, as far as possible, from the family of the spouses, if it is not possible, they may be taken from other families.

(b) It is incumbent upon the arbitrators to find out the cause of difference between the couple and to try at bringing about conciliation between them and settle the matter, if possible, in best manner.

(c) If the arbitrators fail in bringing about conciliation and in that the husband be at fault, they shall pass order for separation effected through irrevocable divorce without compensation. If the wife be at fault or the correct situation does not become known, separation shall be got effected

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1919 Sections 9,10
20 Mujkallatul Ahwal al-Shakhsiyah
21 Mudawwanatul Ahwal al Shakhsiyah
22 Qunun al-Huquq al-A’jah
between them with payment of a portion of dower that be in conformity with the fault of each of the couple. If the fault be of the wife alone separation shall be got effected on appropriate compensation paid by her. It shall also be incumbent upon the arbitrators to have the compensatory allowance deposited with themselves prior to such divorce (separation).

d) If the arbitrators differ between themselves the Qadi shall appoint other arbitrators in place of them or shall, besides the two, appoint from a third family another person as an umpire.

e) It is incumbent upon the arbitrators; whatever the conclusion they arrive at, that they must submit it to the Qadi. The Qadi in the light of that conclusion, provided the same be based on the principles of Shari-ah, shall pass appropriate orders.

Section 97. The order passed for separation shall tantamount to an irrevocable divorce.

(Under the law of Islam, the Hakams may decide about separation, but their decision is to be given effect to by the order of the Qadi.)

In Syria Section 112 of relevant statute\(^{23}\) says- (1) When any one of the couple has complaints of cruelty against the other on account of which their passing of married life together permanently becomes impossible, they shall have the right of demanding separation through the Qadi. (2) When such cruelty is proved and Qadi is unable to bring about conciliation he shall get separation effected between them and the same shall have the force of an irrevocable divorce. (3) When cruelty is not proved or on the complaint of cruelty by the husband the Qadi grants time for conciliation, which shall not be less than a month, and inspite of that the husband insists on his complaint and conciliation is not brought about, the Qadi shall appoint two arbitrators from the family of the couple possessing ability on oath that they shall carry out the purpose set before justly and honestly.

Section 113. (1) It shall be incumbent upon the arbitrators that they find out the cause of difference between the couple and hold their sitting in camera under the supervision of the Qadi, wherein no one shall be present except the couple and the persons summoned by the arbitrators.

(2) The non-appearance of any one of the couple before the arbitrators, inspite of their having notice of it, shall not in any manner affect the orders passed by them. Section 114. (1) The arbitrators shall attempt to bring about reconciliation between the couple. When the two arbitrators fail in this and find fault either mainly or completely with the husband, they shall pass orders for separation by way of an irrevocable divorce. (2) If the fault be mainly for completely of the wife, the arbitrators shall pass orders for separation between the couple in lieu of full or part of the dower (if not paid). In case the dower is to be returned it shall be returned to the husband before the Qadi passes the order of separation. (3) If difference arises between the arbitrators, the Qadi shall, in their place, appoint

\(^{23}\) Qanun al-Ahwal al-Shakhsiyyah, 1953
some other person as umpire, or shall appoint with them a third arbitrator after putting him an oath. Section 115. It shall be incumbent upon the arbitrators to submit report of their findings before the Qadi, it shall not be necessary for them to give in the report the reasons for their finding. If the report is proved to be in order it shall be incumbent upon the Qadi to give his decision in accordance with the same.

5. INDIAN LEGISLATION AND COURTS

Section 2 (viii) of the Dissolution of Muslim Marriage Act. 1939 says, ‘a Muslim married under Muslim law shall been titled to obtain a decree for the dissolution of her marriage on anyone or more of the following grounds namely:-

(i) ---(viii) that husband treats her with cruelty that is to say,-

(a) habitually assaults or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or (b) associates with women of evil repute or leads an infamous life; (c) attempts to force her to lead an immoral life; or (d) disposes of her property or prevents her from exercising her legal rights over it: or (e) obstructs her in the observance of her religious profession or practice, or (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur’an.

This ground is invoked even before the passing of the Act.24 In Itwari v. Asghari,25 it was said that bringing a second wife during the subsisting of first marriage will constitute mental cruelty. Similarly in M. B. Rahim v. Shamsoonnissa Begum, the Privy Council held that if under the Muslim law no wife can separate herself from her husband (in cruel circumstances) then such law is clearly repugnant to natural justice and the Privy Council was not bound to follow it and case was decided in favour of the wife on the doctrine of justice, equity and good conscience.

6. CONCLUSION

Muslim Law was derived from the Qur’an and Hadis. Sometimes parties became so biased in their pleas that they ignore the clear mandate of sources. Similar is the case of cruelty where Privy Council held that if there is no ground of separation of spouses in extreme circumstance court is not bound to accept the plea of absurdity in the name of schools. The application of DMM Act was a good move to consolidate Muslim Law.

25 AIR. 1960 All 684