

Decriminalization of Attempt to Suicide

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Abstract—*The law governing attempt to commit 'Suicide' as a crime in India is going through several reforms. The government bodies responsible for amending the laws are emphasizing the need to decriminalize the act of attempt to Suicide. Attempt to suicide as such is an effort of self-killing due to depression and disappointment about few things or several things that is either unbearable or unmanageable to cope up. Though suicide according to a few is an act of cowardice, but the weak mind yielding to such an act is far from applying rational to decide better ways to resolve his problems. Suicide to the one who is tempted to commit is the easiest problem resolving technique over the actual existence!*

How should we handle this particular act of suicide under our present statutes? Is it worthwhile in punishing such a weak mind as a criminal when on the alternative, the temptation of committing suicide is in itself is the ultimate voluntary self-imposed punishment? Here is a need to amend our age old laws which still treats a person attempting to committing suicide as a punishable criminal rather than finding the need for reforming him to help resolve and lead a better contended life.

This article on decriminalization of attempt to suicide makes an effort to state the historical outlook and perspectives of Suicide both as a phenomena and a procedure in law to be treated as a crime. This article brings out the present need of the legislation to decriminalize the attempt to suicide as a crime in the various perspectives of sociological and psychological behaviors. Further, the article shall also discuss several important judgments of the Supreme Court of India to affirm that the act of attempt to suicide is a condition to be reformed but not a crime.

1. INTRODUCTION

Suicide is an act of causing one's own death intentionally. According to the latest report of World Health Organization (WHO),^[1] Suicide is the second largest cause of death in the world among 15-29 years olds. It also reports that close to 800 thousand people succumb to suicide every year and out of these, about 17%, which is around 135 thousand people are Indians. Suicide is no doubt a global phenomenon which commonly happens due to the breakdown of the individual's ability to deal with various life stresses. Life is to live it's full but should not be let to end at one's own mercy. It therefore requires an urgent need to bring about comprehensive multifaceted prevention methods to curb this societal epidemic growing further. India as a country has continued to follow several legislations from the good old times of its enactment in

the British period. One such law is Section 309 of Indian Penal Code, 1860 where it is laid down that, "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for term which may extend to one year or with fine, or with both". Here is now the dichotomy on us to determine whether an act of suicide or an attempt to commit suicide should be branded as a crime as per Indian Penal Laws or should it be categorized as one such essential mental condition of a human being to self-immolate for being unable to exist with body and mind any more. It is very necessary to bisect into the annals of history, law and modernity to build up the requisite rationale to continue punishing a person who is all prepared to self-impose the ultimate punishment of death upon himself voluntarily. Furthermore, this tiny paper should help rekindle the minds of people in power and position to amend the laws in decriminalizing such act viz., 'Suicide' to be a crime anymore.

2. HISTORICAL PERCEPTION

The ancient Indian mythology has record of several instances of self-incriminations which includes the Jala-samadhis committed by Lord Rama and his brothers. In Mahabharata, Pandava King Arjuna wanted to jump into fire after hearing the news of his son Abhimanyu's death. In 298 BC, Chandra Gupta Maurya with few Jain Saints and other Monks ended their life deliberately by slow starvation in the orthodox Jain manner as they believed that renunciation was praiseworthy. Hitherto, several religious leaders have sacrificed their life by voluntarily fasting unto death (pranarpana) largely being influenced by sacrificial motives, sake of honor, religious and sociocultural beliefs apart from psychiatric and other causes. The practice of self-immolation of a widow, popularly known as 'Sati' in India, was treated to be an obligatory altruistic suicide according to the famous Sociologist Emile Durkeim. Mahatma Gandhiji's popular movement of Satyagraha was in a way a threat of 'Fasting unto Death' if the necessary demands are not met.

On the contrary, the well-known thinkers through the annals of history around the World viz., Pythagoras, Aristotle and Plato have condemned suicide. The famous philosophers like Socrates believed that any harm to the human body would be

an offence against the Divine Laws. During the Middle-Ages, the Church excommunicated people who attempted suicide and buried such dead bodies outside the graveyard. There are scores of references both in India and around the world where suicide and the attempt to commit suicide was not just condemned but was also enlarged as a punishable offence. However, there are few instances on how several small groups during the Middle-Ages treated their suicide as Martyrdom. Further, during the period of Renaissance and the Enlightenment, suicide got to become a remedy and also an act of courage. Moving further with the Western Legal System, committing suicide was not considered illegal or crime against the State except when it was committed by soldiers, slaves and those punished with capital punishment. There are references in Roman history that a person intending to commit suicide could make an application to the Senate to get permission. If the said Senate found such application acceptable, the Senate would not only grant the permission but also give a poisonous plant Hemlock free of cost to be consumed.

3. LEGAL STANDPOINT

After the French Revolution in 1789, the European countries decriminalized the attempt to commit suicide. England also passed the Suicide Act in the year 1962, to decriminalize suicide as an offence in itself but made it punishable for any person who aids, abets, counsels or procures the suicide of another. As early as in 1985, the Hon'ble High Court of Delhi observed that the provision of Section 309 of IPC has no justification to remain in the statute book.^[2] The Hon'ble Bombay High Court observed that Right to Life under Article 21 of the Indian Constitution should also contain the 'Right Not To Live'. The said High Court further opined that *"those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement. Those on the other hand who make the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again."*^[3]

In the landmark case of Rathinam v. Union of India,^[4] the Division Bench of the Hon'ble Supreme Court held the Right not to live a forced life is a part of Right to Life. *Suicide is a psychiatric problem and not a manifestation of criminal instinct. The suicide prone persons require soft words and wise counseling but not stony dealing by a Jailor following harsh treatment meted out by a heartless Prosecutor.* The Supreme Court proclaimed repealing Section 306 in order to humanize the Penal Code and laws contained in it.

But in the other popular case of Gian Kaur v. State of Punjab,^[5] the Hon'ble Supreme Court over-ruled the previous judgments and upheld the constitutional validity of Section

309 of the IPC. The Supreme Court through this case again clarified that the Right to Life could not be stretched to the extent of including Right to Die under the ambit of Article 21.

Likewise, the 42nd Report of the Law Commission in the year 1971 proposed to repeal Section 309 by substituting it with new penal provisions, and to punish only those who cause a person to commit suicide with imprisonment of up to 3 years and fine, was proposed.^[6] Keeping in mind the recommendations made in the 42nd Law Commission, the Indian Penal Code (Amendment) Bill, 1972 intended to 'decriminalize' attempt to suicide was introduced and passed in the Upper House of Parliament in the year 1978. However, it could not pass in the Lower House as it was dissolved in the following year 1979. Further, 156th Report of the Law Commission in the year 1997, recommended 'retention' of criminalization of attempt to commit suicide.

India is also a signatory to the UN Convention on Rights of Persons with Disabilities and its Optional Protocol, adopted on the 13th December, 2006 at United Nations Headquarters in New York which came into force on the 3rd May, 2008.^[7] In October 2008, India signed and ratified the Convention on Rights of Persons with Disabilities and Additional Protocols of it. This was a step further to fulfill India's international obligations arising out of the above mentioned Convention. The said Convention analyses the years of work by the United Nations to change the attitudes and approaches to persons with disabilities. Pursuant to that, the 18th Law Commission of India on "Humanisation and Decriminalization of Attempted Suicide" submitted its report in 2008. The Law Commission then opined that it would be irrational and inhuman to put to trial a person who wants to end his life and it would be imposing a double punishment on him.^[8]

Finally, in October 2008, the 210th Law Commission Report chaired and presented by Dr. Justice A. R. Lakshmanan recommended repealing of Section 309 of IPC. The commission recommended the following: *"Life is a gift given by god he alone can take it. A person attempts to take his life out of unbearable circumstances. Therefore, it would not be just and fair to aggravate such person's pain by punishing him. In case any law is ineffective in curing the intended evil, it should not exist. Section 309 of IPC is a stumbling block in prevention of suicide. Rather, in such a case, the unfortunate person deserves counseling, sympathy and treatment. Section 309 is inhuman, irrespective of whether it is constitutional or unconstitutional."* Therefore, this Commission recommended that suicide warranted medical and psychiatric care and not punishment. Further, in view of the opinions expressed by the WHO, International Association for Suicide Prevention, the Indian Psychiatric Society and the representations received by the Commission from various persons, the Commission recommended the Government to initiate steps to repeal Section 309 of IPC and thus decriminalize attempt to suicide.

The Government on 10th of December 2014, after taking the views and responses of about 18 States and 4 Union

Territories on the recommendations of the Law Commission and considering the stand point of various Courts for over 3 decades, seems to have cleared the air by announcing the provision of Section 309 to be deleted from IPC.^[9]

The further need of modernity and compulsions from all sections of existence to protect and safeguard human dignity and life compelled the Indian Parliament to bring into force 'The Mental Health Care Act (MHCA), 2017,'^[10] which virtually decriminalized 'Attempt to Suicide' under Section 309 of IPC, and emphasized the need to deal with the issue of suicide and attempt to suicide with more humanitarian approach than penalizing it. It further recognizes the problem of attempts and commission of suicide as a psychological disorder but not a crime.

3.1 The Mental Healthcare Act, 2017

The real turning point to the whole concern of decriminalization of attempt to suicide came in as the Mental Healthcare Bill of 2016 got the assent of the President of India on 27th March 2017. The important aspect of the said Bill shall be to presume that a person attempting to suicide shall be suffering from severe stress (the words 'mental illness' in the old Bill was substituted with 'severe stress') and hence, exempt from trial and punishment. This act repealed the Mental Healthcare Act, 1987 and decriminalized Section 309 of the IPC, 1860. The parent act of 1987, defined mentally ill person as a person in need of treatment by reason of any mental disorder other than mental retardation. The latest said act of 2017 attempted to clarify the vagueness and redefined the meaning of 'mental illness' as: *A substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence.* Thus, the said Act seeks to fulfill our country's obligation to harmonize its laws with the Convention on Rights of Persons with Disabilities and its Optional Protocol, ensuring the Right of mentally ill to be a part-of and not be segregated from the society.

The Section 115 of the said Mental Health Care Act, 2017,^[11] clearly repeals and nullifies the criminal conviction or punishment embedded in Section 309 of IPC stating that the suicide attempters should be presumed to have been under severe stress and thus they should not to be punished. It further imposes duty upon the Government to provide care, treatment, and rehabilitation to a person, having severe stress and who attempted to commit suicide, and thereby to reduce the risk of recurrence of such an attempt. Such a stabilized confirmation and assurance from the law framers and the enforcement authorities to decriminalize the act of attempt to suicide might most likely lead to openly seeking help,

improvement in epidemiological data, better planning, and resource allocations.

We now see the paradigm shift from Legal repercussions to Medical condition in treating the case of attempt to suicide. The challenge earlier was to investigate the motive of the crime and now it has shifted to establish the levels of stress and susceptibility to get access to mental healthcare to be provided by the Government. The accused who have escaped their attempt to commit suicide should now be presented to a Doctor for psychiatric consultations but not to be made a subject to an unwarranted criminal trial upon unconfirmed investigation report or charge-sheet by the Police. In this context, it may also get to become the choice of the accused who failed in his attempt to suicide to now choose either to be prosecuted by law or seek medical assistance. If the accused succeeds the presumption of stress and vulnerability, then the State Government is at its duty to stabilize him, but on the contrary, if the accused fails to establish the presumption of stress, he will be justified in being tried under the charges of committing a crime under Section 309.

4. THE CONSTITUTIONAL VALIDITY

The Constitutional validity of Section 309 was raised, and whether 'Right to Die' was part of the Fundamental Right under Article 21 was explored. The Division Bench of Bombay High Court has held that Section 309 of IPC was discriminatory and violative of Article 14 of the Constitution and the 'Right to Die' was included within the ambit of 'Right to Life' under Article 21 of the Constitution, and therefore, the Right to Life under Article 21 of the Constitution of India could also be interpreted as the 'Right Not to Live a Forced Life.' Similarly, the Division Bench of Andhra Pradesh High Court negated the constitutional validity of said Section 309, and held that persons attempting to commit suicide should not be subjected to prejudice or unwarranted harsh action but they needed care and treatment.^[12]

Further, the Supreme Court upheld a similar view in *P. Rathinam v. Union of India*, as follows: "What is required is to reach the soul to stir it to make it cease to be cruel. Let us humanise our laws. It is never late to do so." However, in *Gian Kaur v. State of Punjab*, the Five-Judge Constitutional Bench of the Supreme Court held that the Right to Life under Article 21 of the Constitution cannot be interpreted to mean 'Right to Die'. The Supreme Court held that it was not possible to construe Article 21 to include the Right to Die as a guaranteed fundamental right. The essence of the Apex Court's ruling was that suicide being an unnatural event; it cannot be harmonious with the concept of Right to Life.

5. ROAD AHEAD

In the backdrop of the historical events, various cases decided by the Courts in India and abroad, UN Conventions, Indian Law Commission Reports and such other debates on whether attempted suicide should be punished as an offence and the

provision of 309 to be repealed, India has passed the said new law, the Mental Healthcare Act, 2017, which decriminalizes the attempt to commit suicide but has not repealed Section 309 of IPC completely, nor has reduced the quantum of punishment of up to One year for the offence of attempting to commit suicide. It looks arbitrary that while 'Suicide' itself is agreed to be a psychological disorder, temporary mental illness etc., the act of attempt to suicide is still a crime in the Indian Penal Code.

The coward act of the deceased to die voluntarily, be it due to one's own stress, abetment or on advice from others, shall still qualify to be his faint-heartedness more than alleging to have been led by any other factors. The Law now requires to not just easily decriminalize the act of attempt to commit suicide but there is a grave necessity to also throw more light on the criminality of abetment to suicide as described in Section 306 of IPC.^[13] Several decided cases have from time to time explained how and what constitutes abetment. Accordingly, to attract the said offence under Section 306 of IPC, the accused must have done some positive action proximate to the time of occurrence of the incident, and further the most important ingredients of instigation, provocation, incitement or goading the deceased to commit suicide must exist in order to constitute the said offence. However, in plethora of cases registered under section 306 of IPC for abetment of suicide, we can see fleeting instances of how the said provision has been more misused than used, due to the ill-will, hatred, vengeance, family feud etc. Moreover, even the deaths of the married women under suspicious circumstances are often charged with Section 306 read with Section 498A of IPC (Husband or relative of husband of a woman subjecting her to cruelty). The provision of Section 306 of IPC available to punish the abettor of a suicide is misused as a tool to connect every case of voluntary suicide to be an abetment. The innocent spouses, friends, relatives have been victimized due to the cowardice act of the person committing suicide, and in many cases, such criminal prosecutions are initiated by the deceased legal heirs hand-in-glove with the investigating authorities for their mutual selfish gains.

The concept of what constitutes a 'crime' depends on the values of a given society. Justice Krishna Iyer, in his book writes: "What is a sex crime in India may be a sweetheart virtue in Scandinavia. What is an offence against property in a capitalist society may be a lawful way of life in a socialist society. What is permissible in an affluent economy may be a pernicious vice in an indigent community. Thus, criminologists must have their feet all the time on terra firma."^[14]

The moot question to be answered here would be whether all those concerned authorities who do not fulfill such a demand in a 'Fast unto Death' motion or those who support the person leading such a motion, be made liable for abetment to commit suicide? Similarly, can we attribute non-religiosity in the act of suicide or call it as immoral? A stiff question that now

arises after decriminalizing suicide is whether, abetment of suicide would continue to be treated as an offence in the light of decriminalization of attempted suicide?

6. CONCLUSION

India being on the list of highest trends of suicide, decriminalization must reduce the higher trauma of possible prosecution in the aftermath of such a suicidal attempt. The guilty mind to commit suicide if saved from the first attempt may be reformed to live, rather than to be scared to face the ugly criminal prosecution in the Courts. But having said that it is a mechanism to reduce the rate of suicides, we equally require effective medical and psychological assistances to deliver free and fair essential mental health services to all those who attempted suicide. No doubt, the newly enacted Mental Healthcare Act, 2017 will be reckoned in the history as a breakthrough to achieve legal reforms to decriminalize attempt to commit suicide, but no better move than that of completely repealing Section 309 from the IPC and further detailing clearly, the various pros & cons of the way the crime connected to occurrence and non-occurrences of suicide if any should be clearly spelt out by the existing Code. It may be argued that repealing Section 309 completely would lead to lawlessness befitting the cause of terrorists and such other suicide bombers and so on. Here, lastly, as a point to refute, I wish to write the champion motto of our entire criminal jurisprudence, that, "Let a hundred guilty be acquitted, but one innocent should not be convicted." Suicide is majorly a tendency, a voluntary act and a mental condition that requires evaluation and empathy beyond the shackles of Law to be branding it as a Crime.

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- [11]Section 115: *Presumption of severe stress in case of attempt to commit suicide.—(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.*
- (2) *The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.*
http://legislative.gov.in/sites/default/files/A2017-10_0.pdf
- [12]Chenna Jagadeeswar and anr. v. State of Andhra Pradesh, 1988 *Cr.L.J.549*
- [13]Section 306: *Abetment of suicide:— If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
- [14]Perspectives in Criminology, Law and Social Change (1980) at pp. 7 and 8