



DE-LEGALIZING ATTEMPT TO SUICIDE By: Gayatri Virmani¹

ABSTRACT

Attempt to suicide has been of much relevance lately in the constitutional and social domain. Statistics reveal that India is positioned 12th on the global suicide charts in 2015. Right to life, as guaranteed under Article 21 of the constitution aids in giving citizens a right to live a life with dignity. A life with full control over it is supposedly guaranteed by the Constitution. The conflict, however, begins when liberty is guaranteed to an individual but no such right is given to end his life with his own will. Thus this article aims at extensively examining the true sense of section 309 & 306 of The Indian Penal Code along with its constitutional framework. This era has been witness to emerging trends in this domain which is being extensively dealt in the paper with specific reference to the landmark judicial pronouncements and the present situation in India.

The paper lays down the background of the provision, its meaning and relevance in the present time. Section 309 has been the subject of controversy in many cases, especially over the last two decades. Most notably, the subject was under scrutiny in the cases of *P. Rathinam v. Union of India* and *Smt. Gian Kaur v. State of Punjab*.

The paper further presents a qualitative study and analyses the difference between the right to die and euthanasia in reference to the landmark pronouncement of the *Aruna Shanbaug Case* which not only aims at digging deeper into the present scenario but also following the inductive methodology analyzing the constitutionality of the provision.

The research summarizes by briefly examining the upcoming problems and gives a brief analysis of social, intellectual and legal aspect of the issue. It also gives suggestions for making the provision more victim friendly so that the sufferer can be given rehabilitation or advice instead of punishment for his actions.

INTRODUCTION

Suicide (felo de se), as defined by the Blacks Law Dictionary,² means self-destruction; the deliberate termination of one's existence, while in *the* possession and enjoyment of his mental faculties (Sui-of oneself and Caedre - to kill). It is an act or instance of taking one's own life

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² Revised 4th Edition, 1957.



voluntarily and intentionally; the deliberate and intentional destruction of one's own life by a person of years of discretion and of sound mind; one that commits or attempts his self-murder.³

The concept of suicide has been well-explained by eminent French sociologist Émile Durkheim in his book suicide (1897). It was the first methodological study of a social fact in the context of society. Subsequently the Indian judiciary also made a threefold classification of suicides made on the basis of the disturbance in the relationship between society and the individual and mentioned in this book as a part of their judgment. The Bombay High Court in a 1986 judgment⁴ mentioned this threefold classification:

- (i) Egoistic suicide which results when abnormal individualism weakens society's control over him; the individual in such cases lacks concern for the community with which he is inadequately involved;
- (ii) Altruistic suicide which is due to an excessive sense of duty to community; and
- (iii) Anomic suicide which is due to society's failure to control and regulate the behaviour of individuals.

This classification, the court said, is not regarded as adequate by many, but gives us the broad causative factors of suicide. It is estimated that about one-third of the people who kill themselves have been found to have been suffering from mental illness. The Court observed 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.

India has accounted for the highest estimated number of suicides in the world in 2012. Every 40 seconds a person dies by suicide somewhere in the world and over 800, 000 people die by suicide every year.⁵ Social and economic causes have led most of the males to commit suicides, whereas emotional and personal causes have mainly driven females to end their lives.

BACKGROUND OF ATTEMPT TO SUICIDE IN INDIA

³Webster's Third New International Dictionary, 1968.

⁴ Maruti Shripati Dubal vs State Of Maharashtra, (1986) 88 BOMLR 589.

⁵ "Preventing suicide: a global imperative" - First WHO report on suicide, 2014.



The Indian penal code drafted in 1860 on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833 under the chairmanship of Thomas Babington Macaulay came into force in British-ruled India in 1862.⁶ It has substantially survived for over 150 years without major amendments in several jurisdictions.⁷ But there has been a need to rethink and amend several of its sections as per the prevailing societal beliefs from time to time. The recent amendment of the section 377 is one such example. As per the Indian penal code, 1860, chapter XVI of offences affecting the human body and of offences affecting life, section 309 deals with Attempt to commit suicide. It states that “*whoever attempts to commit suicide and does any act toward the commission of such offence, shall be punished with simple imprisonment for a term which may extend to 1-year.*” This law has remained untouched and not amended for the past 155 years since it came into force, thus warranting a relook and repeal as per today's scientific understanding of the subject and societal attitude.

Throughout history, suicide has been both condemned and commended by various societies. Since the middle ages, society has used first the canonic and later the criminal law to combat suicide. Following the French Revolution of 1789 criminal penalties for attempting to commit suicide were abolished in European countries, England being the last to follow suit in 1961. In England, the Suicide Act, 1961 abrogated the law laying down that attempt to commit suicide is an offence. Although suicide is no longer an offence in itself, any person who aids, abets, counsels or procures the suicide of another or an attempt by another to commit suicide, is guilty of an offence and liable on conviction on indictment to imprisonment for a term which may extend to 14 years⁸.

In India, not only abetment of suicide is an offence (vide section 306, IPC), but also attempt to commit suicide is an offence (vide section 309, IPC). Thus, in India, attempt to commit suicide is constituted an offence punishable under section 309, IPC. Although completed act was not a crime, surprisingly, attempt to commit the act was made an offence.

CONSTITUTIONALITY AND DESIRABILITY OF PENAL PROVISIONS FOR SUICIDE

⁶John FR. Praeger Publishers; 2006. The History of British India: A Chronology.

⁷Law Commission of India – Early Beginnings Indian Penal Code. Available on: <http://www.lawcommissionofindia.nic.in/>

⁸Law Commission of India - Humanization and Decriminalization of Attempt to Suicide Report No. 210 October 2008.



Attempted suicide, though a failed act has gained more importance (than the suicide which is a successful act) since it is considered as an offence and is punishable under Section 309 of Indian Penal Code. It is because our legislature makes an offence dependent on proof of intention. Legally, an act is intentional if it exists in idea before it exists in fact, the idea realizing in itself is the fact because of the desire it is accompanied with. A lot of conflicting opinions have generated on the desirability of retaining or abolishing section 309 of Indian Penal Code because of some contrasting judgments given by our courts⁹.

Abetment to suicide (sec. 305 and 306),¹⁰ on the other hand, create a specific offence and the liability arises only when the suicide is committed. Abetment, thus, is punishable in a manner different from attempt to suicide as the abetment to suicide also falls in the specific offence of abetment (sec. 107 of the Penal Code) which states that there must be instigation, conspiracy or assistance to commit an offence only then will it amount to abetting an offence¹¹.

LEGAL STATUS OF ATTEMPT TO SUICIDE: INDIAN SCENARIO

According to Article 21 of the Indian constitution, “*No person shall be deprived of his life or personal liberty except according to procedure established by the law*”. While the constitution covers the right to life or liberty, it does not include the ‘right to die’. The attempts at taking one's own life are not considered to fall under purview of constitutional right to life.

The High Court, however, in *Maruti Shripati Dubal v. State of Maharashtra*¹² observed that the right to die or to end one's life is not something new or unknown to civilization. Some religions like Hindu and Jain have approved of the practice of ending one's life by one's own act in certain circumstances while condemning it in other circumstances. The attitude of Buddhism has been ambiguous though it has encouraged suicide under certain circumstances such as in the service of religion and country. Neither the old nor the new testament has condemned suicide explicitly. However, Christianity has condemned suicide as a form of murder. In contrast, the Quran has declared it a crime worse than homicide.

⁹ Dr. B.S.Yadwad, Professor & Head Dr. Hareesh.S.Gouda, Post Graduate student Dept. of Forensic Medicine, Jawaharlal Nehru Medical College - Journal of Indian Academy of Forensic Medicine, 2007 29 (2) ISSN: 09710973.

¹⁰ State of Punjab v. Iqbal Singh, AIR 1991 SC 1532.

¹¹ State of Kerala v. Unnikrishnan Nair, AIR 2015 SC 3351.

¹²(1986) 88 BOMLR 589.



The first signs of a change in perception towards attempt to suicide and the interpretation of right to die in India appeared in 1981, when the Delhi High Court first condemned section 309 of the Indian penal code as “unworthy of society.” The Supreme Court in 1994 even went on to call it “irrational and cruel and hence void.” It held that the right to life and liberty, under article 21 of the constitution, must also be interpreted to include the right to die. But this was overruled a couple of years later by a five-judge constitutional bench of the apex court subsequently, who then reinstated the law in the 1996.¹³

Maruti Shripati Dubal v. State Of Maharashtra¹⁴ - The Bombay High Court held that section 309, IPC is *ultra vires* the Constitution being violative of Articles 14 and 21 thereof and must be struck down. It was pointed out that the fundamental rights have their positive as well as negative aspects. For example, the freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. The freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognized by Article 21 of the Constitution will include also a right not to live or not to be forced to live. To put it positively, Article 21 would include a right to die, or to terminate one’s life. The Court further pointed out that the language of section 309; IPC is sweeping in its nature. It does not define suicide. In fact, philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. While some suicides are eulogized, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. The want of a plausible definition itself makes the provisions of section 309 arbitrary and violative of Article 14. There are different mental, physical and social causes which may lead different individuals to attempt to commit suicide for different ends and purposes, there being nothing in common between them. Section 309 makes no distinction between them and treats them alike, making the provisions thereof arbitrary. Further, the Court observed that if the purpose of the punishment for attempted suicide is to prevent the prospective suicides by deterrence, the same is not achieved by punishing those who have made the attempts, as no deterrence is going to hold

¹³Indian J Psychiatry. 2015 Apr-Jun; Decriminalization of attempted suicide law: Journey of Fifteen Decades - Prakash B. Behere, T. S. SathyanarayanaRao and Akshata N. Mulmule.

¹⁴Ibid 11.



back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. The provisions of section 309 are unreasonable and arbitrary on this account also. As is rightly said, arbitrariness and equality are enemies of each other. The blanket prohibition on the right to die on pain of penalty, it was pointed out, is not reasonable.

Chenna Jagadeeswar and Anr. v. State of Andhra Pradesh¹⁵ - The Andhra Pradesh High court held that sec. 309 of the IPC is not violative of the Constitution. The argument that there is a right to die in Article 21 was rejected.

P. Rathinam v. Union of India¹⁶ - In this case the division bench of the Supreme Court of India declared Section 309 IPC as unconstitutional and void. Before arriving at the conclusion, the Supreme Court took into consideration the cases argued / disposed by the high Courts of some states namely, Delhi, Bombay and Andhra Pradesh on the aforesaid issue and held that Section 309 IPC which has no justification to continue to remain on the statute book.

Gian Kaur v. State of Punjab¹⁷

The Gian Kaur vs. State of Punjab overruled P. Ratinam v. Union of India in which right to die was recognized to be inclusive in right to life and liberty Article 21 of the constitution, and the constitutional validity of section 306, 309 that is abetment of suicide and suicide was questioned.

Currently the verdict given in Gian Kaur v. state of Punjab is followed, in which the Supreme Court upheld the validity of Section 309 and states that it is within the constitutional mandates and is not violative of any fundamental rights.

LEGAL STATUS OF ATTEMPT TO SUICIDE: INTERNATIONAL SCENARIO

Much of the legal stance against suicide originated from the declaration by St. Augustine of suicide being a sin. Historically, the influence of religious institutions was instrumental in shaping the legal stance favoring the criminalization of suicidal attempts. After the French Revolution, along with other socio-cultural changes in Europe, the attitude towards suicide and attempted suicide gradually started to change. During 19th and 20th century, most of the developed countries have repealed criminalization of attempted suicide, but some countries including India, continue to treat suicidal attempt as a criminal offense.

¹⁵1988 Cr.L.J.549.

¹⁶1994 SCC (3) 394.

¹⁷1996 SCC (2) 648.



Countries criminalizing attempt to suicide

Countries that have retained attempted suicide as a criminal offense are mainly from two regions viz. North African region and South Asian region.

In the African region, Kenya, Nigeria, Rwanda, Tanzania, Ghana and Uganda are among the countries that currently criminalize nonfatal suicidal behavior. For example, In Rwanda, a person who engages in nonfatal suicidal behavior is liable, on conviction, to a 2-5 year prison sentence. In Uganda, non-fatal suicidal behavior is a felony punishable by up to 2 years imprisonment. In Ghana Criminal Code, 1960, non-fatal suicidal behavior is considered a crime.

In the South Asian region, India, Pakistan, Malaysia, Singapore, Bangladesh are among the countries that continue to criminalize the suicidal attempt. In Singapore, a person who attempts suicide can be imprisoned for up to one year. Additionally, North Korea also criminalizes suicide with a peculiar deterrent, where the family and relatives of the suicide victim might be penalized as a form of collective punishment for the act of suicide.

Countries decriminalizing attempt to suicide

Countries that have decriminalized attempted suicide have continued to criminalize the abetment to suicide, suicide pacts and at times, deliberate self-harm. In the Australian state of Victoria, the survivor of a suicide pact can be charged with manslaughter and abetting other person's suicide. In New Zealand, the abetment of the suicides of others is a crime and similarly in Russia, inciting someone to suicide is punishable by up to 5 years in prison. Attempted suicide has been decriminalized in Ireland as early as 1993, but self-harm is not seen as a form of attempted suicide. Suicide and attempted suicide are not crimes under the Roman-Dutch law. Some of the states (Alabama, Oregon and South Carolina) of U.S. continue to have laws against suicide pacts, aiders and abettors, and for insurance purposes. Only a few countries from South Asia, which include Sri Lanka, Indonesia, Maldives and Thailand do not treat attempted suicide as a crime.

Currently, World Health Organization identified 59 countries across the world that have decriminalized suicide. As seen from above, the attempted suicide has been decriminalized in whole of Europe, North America, much of South America and few parts of Asia. Decriminalization of suicidal attempt occurred relatively late in countries which were influenced by the English common law. Similarly, the legal and coroners' involvement in suicide certification tends to be much higher in these countries compared to the continental



Europe and Scandinavian region where doctors are allowed to certify suicidal deaths without recourse to legal authorities.

CHANGING INDIAN SCENARIO OF ATTEMPTED SUICIDE

The law commission had earlier recommended repeal of section 309 in its 42nd report submitted in 1971. The IPC (amendment) bill, 1978 was passed by the Rajya Sabha, but before it could be passed by the Lok Sabha, the lower House was dissolved, and the bill lapsed. The commission then submitted its 156th report in 1997 after the Gian Kaur judgment, recommending retention of section 309.

However, the commission, in its 210th report, recommended that attempt to suicide warranted medical and psychiatric care and not punishment. 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 resolved to recommend the government of India to initiate steps for repeal of the anachronistic law contained in section 309, IPC¹⁸.

As law and order is a state subject, the central government requested the views of states/ UTs on the recommendations of the law commission. Eighteen states and four Union Territories administrations supported that Section 309 of the IPC may be deleted. Thus keeping in view the responses from the states/UTs, after on and off stand regarding this section by various law bodies like courts and law commissions for nearly three decades, it has been announced on December 10, 2014, to delete section 309 of IPC from the statute book.

ROADBLOCKS IN DECRIMINALIZING ATTEMPTED SUICIDE

There are two major kinds of arguments that are generally put forth for criminalization of suicidal attempts, though in the contemporary political and socio-cultural times, these have been challenged.

The *first major argument* is rooted in the religious belief that only God should have the right to dictate the end of life of a person and when a person attempts to end the life himself or herself, it should be considered as a sinful act. Traditionally, suicide has been condemned by religions across the world. In some ethnic groups, the suicidal deaths are kept devoid of the customary funeral rituals. In Hinduism, it is believed that death by suicide do not lead to achievement of salvation (*moksha*). In general, suicidal death is associated with bringing dishonor to the entire lineage, social stigma and other consequences. But at the same time,

¹⁸Indian J Psychiatry. 2015 Apr-Jun; Decriminalization of attempted suicide law: Journey of Fifteen Decades - Prakash B. Behere, T. S. SathyanarayanaRao and Akshata N. Mulmule.



many religions have also hailed suicide as necessary in certain situations or circumstances. The ancient Hindu living principles sanctioned some suicides such as, to expiate sins such as incest, those suffering from incurable disease and unable to perform their religious duties, 'sati' (a once-culturally sanctioned practice where widow commits suicide by jumping in the burning pyre of dead husband). Similarly many Rajput women from India chose death over humiliation in the aftermath of war. Jainism have approved of the practice of ending one's life by one's own act in certain circumstances (*Sallekhana*), while condemning it in other circumstances. The attitude of Buddhism has been ambiguous, though it has encouraged altruistic suicide under certain circumstances.

Another major argument for criminalization is the belief that law can act as a deterrent against other such attempts in the society. However, it is still not clear whether having a law to prosecute suicide attempters indeed act as a deterrent or not. Internationally, the research on the impact of repeal of anti-suicide legislation has yielded mixed results.

In Indian context, while the level of awareness about existence of section 309 cannot be deemed to be too high, but a significant proportion are aware of its existence, but not deterred to make a suicidal attempt. A study of 200 attempted suicides in a General Hospital Emergency facility revealed that 46.2% males and 26.6% females were aware of the existing law before making the attempt.¹⁹

CONCLUSION AND IMPLICATIONS OF DECRIMINALIZING ATTEMPTED SUICIDE

The criminal prosecution and the imposition of custodial and financial penalties on those convicted of suicidal behaviors constitute an affront to human dignity. In a large majority, the suicidal behavior is typically a symptom of psychiatric illness or is an act of psychological distress, indicating that the person requires assistance in his personal and psychological life, not punishment by fine and/or imprisonment. As many as 93% of suicide attempters were found to be psychiatrically ill at the time of commission of the act, though a psychiatric contact was established by only 33-50% of them. Penal sanctions will only serve to exacerbate suicidal persons' risk for depression, anxiety, and repetitive suicidal behavior.

Further, many a times, the suicidal behavior is a result of a host of factors, some of which are outside a person's control, such as endogenous biological causes, socioeconomic causes such as poverty, frustration in love, setbacks in finances, family or other such reasons. Technically,

¹⁹Indian J Psychiatry.2014 Jan-Jun; (De-) criminalization of attempted suicide in India: A review - Rajeev Ranjan, Saurabh Kumar, Raman Deep Pattanayak, AnjuDhawan, and Rajesh Sagar.



it may not be considered as an offence against the state. On the contrary, the state itself may be indirectly responsible for the plight of the victim who is left with no other alternative, except but to end his life.

In Indian context, the cases admitted after attempted suicide should have a 'medico-legal' stamp on the case record which is confidential and kept in safe custody. The Medical Superintendent of the hospital is required to inform the police for the necessary proceedings and action. The police usually visit the hospital and collect information about the circumstances of the suicide attempt from the person/family. There are often unnecessary delays or even refusals from hospitals, fear of punitive action and added trauma and stigma of having to deal with police and courts. The following case demonstrates the harsh reality and untoward consequences of criminalizing suicide for the individual and family.

A 40-year-old male, clerk, from middle socioeconomic status suffered from a depressive illness and tried to commit suicide by consuming the insecticide, but family members found out and took him to a nearby hospital immediately. The hospital refused to admit him due to fear of legal hassles associated with attempted suicide; finally the family members took him to another hospital and had to report the case as accidental overdose in order to avoid further delay. From a legal perspective, what happens to this person in case his life is saved? He is, then, prosecuted for a criminal offence under section 309 IPC.

Most importantly, as a majority of attempted suicides are reported to the authorities to be accidental, so the necessary emotional and mental health support is not available to those who have attempted suicide. With decriminalization, the patients and their families will be in a better position to openly seek mental health care after the attempt.

From a societal perspective, decriminalization is a more sensitive and humane way of dealing with the problem compared to prosecution. Additionally, it will also help in improving the reporting and generation of better epidemiological data on suicidal tendency. The criminalization of suicidal acts causes the problem of suicide to go underground, making it difficult for suicidal persons to receive necessary assistance. Improved and accurate statistics can help in better planning and resource allocation for efforts towards suicide prevention.