

Analysis of Self-Murder and Decriminalization of Its Attempt

AsweenKaurSapra¹

Abstract

Death is a universal fact which cannot be denied. Suicide is an unnatural act involving self-harm or self-murder resulting in pre-mature death. It is often seen as an easy road to escape from the troublesome world or one's own fate. It is an irreversible process which doesn't offer a person with a second opportunity to repent upon. Suicide can be associated with mental illness, self-liberation, blackmail, martyrdom and so forth.

Suicide becomes punishable only when it is unsuccessful. St. Augustine said "Thou shall not kill" implies a general prohibition of killing human beings, "neither another, nor yourself". Indian law too made it punishable under section 309 of IPC. This living-dead law has for years haunted the Indian legal system and is subject to great criticism and debate.

This paper analyses in detail the reasons, methods, evolution of the law relating to suicide in India and highlights the boons and bane of the recent step undertaken by the Indian parliament by de-criminalizing attempt to suicide. Lastly, it suggests certain measures to surmount auto homicide.

¹ 4th year student, Army Institute of Law, affiliated to Punjabi University.

Introduction

Suicide does not end the chances of life getting worse, but eliminates the possibility of it getting better.

Globally suicide is the second leading cause of death in 15–29-year-olds. Every 40 seconds a life is lost through suicide worldwide as per WHO data. The action of killing oneself intentionally is known to be suicide (or auto homicide) in common parlance. It is a deliberate destructive act committed by a sane person.² The word suicide has its origin from ‘sui’ and ‘cide’ which means self and killing respectively, implying self-killing, self-murder, or self-destruction. This word was derived from the Latin phrase “sui cadere” which means to kill oneself. The essence of suicide is that, first, it should be intentional and, second, the person committing suicide must commit it himself, and i.e. both victim and victimizer is the same person.³ This feature makes it different from euthanasia or mercy-killing which calls for intervention of some other agency to end life. Emile Durkheim, a French sociologist, in his book *Le Suicide* (1897) classified suicide into Egoistic suicide, Altruistic suicide, Anomic suicide and Fatalistic suicide.

Premature death is hence what is sine qua non and not the means employed. It may be given effect by the way of cutting the wrist, drowning, jumping from heights, suffocating, shooting or staggering oneself, using excessive sleeping pills or some poisonous substance including pesticides, hanging, injuring oneself, self-immolating, lying before train, going for Jala Samadhi etc. However, there often arises a doubt whether practices like fasting, going on an adventurous trip, hunger strikes, sati, jauhar, hara-kiri, drinking or taking drugs, Mohammedan practice of punishing oneself with whip, could also fall in the ambit of suicide. The position regarding hunger strike was cleared in the case of *Ram Sunder v. State*⁴ in which accused was suspended from service, as a result on which he went on hunger strike. He was shifted to District Hospital when his condition deteriorated and then to the District Jail. The Allahabad High Court differentiated between ordinary strike and strike unto death and held only the latter is punishable under Section 309. Further, it is required to be proved by the prosecution that no nourishment of any kind was taken by the accused whereas this was not so in the case at hand.

Suicide in Indian Context

Principle and Scope of Suicide Law in India

²*Mani v. State*, 2014 SCC Online Mad 1139.

³*M. Mohan v. State*, (2011) 3 SCC 626.

⁴AIR 1962 All 262.

Precedent : A Publication of Jus Dicere Center of Research In Law

The law of suicide in India is based on the concept of State being protector of the lives of the people. It, hence, protects life not only from any harm caused by some other person but also from the person himself. Indian law does not classify suicide on the basis of whether it is committed out of depression or out of satisfaction. This was so held by Kerala High Court in the case of *C. A. Thomas Master v. Union of India*⁵ wherein a retired teacher of 80 years wanted to put a peaceful end to his life after having lived successfully and happily and after achieving all the missions in life. Voluntary termination of one's life for whatever reason would amount to suicide within the meaning of Sections 306 and 309, I.P.C.

The First WHO Report on Suicide Prevention (2014) provided that India accounted for the highest number of suicides in the world in 2012. The majority of suicides are by persons below the age group of 30. Furthermore, 71% of suicides in India are by persons below the age of 44 years. This creates an alarming situation as huge social and economic burden is laid on the society. Though worldwide, male to female ratio committing suicide is more than one but the trend is reverse in India. In India, poisoning (36.6%) is the most common means for committing suicide, followed by, hanging (32.1%) and self-immolation (7.9%). The suicide rates are not uniform throughout the country, while the southern states of Kerala, Karnataka, Andhra Pradesh and Tamil Nadu have a suicide rate exceeding 15; in the Northern States of Punjab, Uttar Pradesh, Bihar and Jammu and Kashmir, the suicide rate is less than 3. The probable reason for such census is higher rate of literacy, a better reporting system and higher socio-economic status in the former.

Reasons of Suicide in India

Suicide is not a desire but a compulsion. A person is sometimes frustrated by circumstances surrounding him to such an extent that his brain becomes incapable of seeing any other alternative than this. Further, feelings of self-hatred, desire to self-punish or to gain attention/love or to test feelings of another person, stimulates a person to take this step. While Esquirol said "all those who committed suicide are insane"; Durkheim opined that suicide is an outcome of societal situations. The major reasons for commission of suicide in India are crop failure, death of dear relation, failure in exams, unemployment, feeling of guilt, loss of prestige or reputation in the society, chronically poor health, failure to fulfil dowry demands, domestic violence, love affairs or extra-marital affairs, illegitimate pregnancy, mental disorder or over-emotionalism, mood disorders, etc. Further, a series of suicide usually take place on the death of a celebrity, cricketer, or a politician. This practice is known to be

⁵2000 Cri LJ 3729.

suicide cluster. As per National Crime Register, family problems and health are the two most important causes. Research conducted by the National Institute of Mental Health has brought forth that majority of the suicide victims are diagnosed with some form of depressive illness, which is a biological condition related to chemical imbalances in the brain. Hence, biological, psychological, social, environmental and cultural factors, together contribute to commission of suicide. It is believed that men usually commit suicide for social and economic causes and women, for emotional and personal causes.

Law Relating to Suicide in IPC

Indian law does not punish the actual act of suicide but its abetment under Section 306 and attempt under Section 309. Auto homicide is itself not punishable when completed because the offender goes out of the jurisdiction of all the Courts.⁶ Attempt to suicide is cognizable, bailable, non-compoundable offence and is triable by a Metropolitan Magistrate or any Magistrate. Recently, a 25-year-old youth was sentenced to 12 years rigorous imprisonment for driving a 13-year-old girl to commit suicide after he kissed her on a public road in 2014. Though, there is a presumption that a dying man does not lie but that does not mean a suicide note can alone be proof enough to charge someone with abetment of suicide. There must be evidence of the accused having intentionally aided, or instigated the victim to end his or her life. It requires an active act or direct act on the part of accused which led the deceased to commit suicide.

Constitutionality of Section 309 IPC

Constitutionality of section 309 was called into question time and again. In 1986, the Delhi High Court held in the case of *State v. Sanjay Kumar Bhatia*⁷ that continuance of this section is an anachronism unworthy of a human society and has no justification to continue to remain on the statute book. While a person could escape human punishment if he succeeds; he would be hounded by the police if he fails. Court emphasised the need for adopting a humane, civilized and socially oriented outlook and penology.

Similarly, in *Maruti Shripati Dubal v. State of Maharashtra*,⁸ the Bombay High Court in 1987 held that section 309 IPC is ultra vires as it violates Articles 14 and 21 of the Constitution and must be struck off. Like the freedom of speech and expression includes freedom not to speak and to remain silent, by analogy; right to life would include also a right not to live or not to

⁶Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750.

⁷1986 (10) DRJ 31.

⁸1987 (1) BomCR 499.

be forced to live. In other words, Article 21 would include a right to die, or to terminate one's life.

In contrast, Andhra High court in 1988, in the case of *ChennaJagadishwar v. State of A.P.*,⁹ upheld the constitutionality of section 309, I.P.C., and remarked that "right to life does not necessarily signify a right to die" which is an offence and therefore section 309 is not violative of Articles 14, 19 and 21 of the constitution.

The Apex Court, then, in *P. Rathinam v. Union of India*¹⁰ observed that section 309 is a cruel and irrational provision, and results in punishing a person twice. An act of suicide does not have any baneful effect on the society so as to justify interference by the state. So, it recommended deletion of this section. But later, Constitution Bench of the Supreme Court in *GianKaur v. State of Punjab*¹¹ cleared the position overruling the decision in *MarutiShripatiDubal*¹² and held that Article 21 cannot be construed to include within its ambit 'right to die' and therefore, it cannot be said that section 309, IPC is violative of Article 21.

The same court adopted a liberal and rational approach in *ArunaRamchandraShanbaug v. Union of India &Ors.*¹³ and held that, although Section 309 of IPC was held to be constitutionally valid in GianKaur's case, but it having become anachronistic, should be deleted by the Parliament. A person attempts suicide in a depression, and hence he needs to be helped, rather than punished.

Claims in Favour and Against Criminalization of Suicide

Points in Support of Criminalization

1. Suicide is an unhealthy approach towards the problems of life. It violates God's supremacy and man's worth as a human resource. It is opposed almost by all the religions. In Christianity, it is believed that life is a gift given by God and he alone can take it.
2. It is not correct to say that the individual has complete authority over his body and life; his spouse and children do have a claim. Even if the person is not interested to live, the society, because of its embedded love for sanctity of life, has interest in continuance of his life. Bentham in his concept of 'Pleasure and Pain' based on the theory of Utilitarianism, declared suicide to be an evil because, whereas the pleasure

⁹(1988) Cr LJ 549 (AP).

¹⁰ AIR 1994 SC 1844

¹¹(1996) 2 SCC 648.

¹²1987 (1) BomCR 499.

¹³(2011) 4 SCC 454.

Precedent : A Publication of Jus Dicere Center of Research In Law

is obtained only by one person who commits suicide to escape from the problems of life; pain is caused to many others.

3. In order to gather evidence and to conduct investigation, criminalization is necessary to catch hold of a terrorist or drug trafficker who failed to consume cyanide pill or the human bomb who failed to blow him up.
4. It will be a win-win situation for an assured, wherein if he is successful in his attempt his family can claim insurance amount and if fails, he will be given special treatment and treated with sympathy.
5. If a pregnant woman attempts suicide but only the foetus dies, then it would be very harsh for the foetus as the would-be mother can neither be charged with murder of foetus nor attempt to suicide.
6. Section 309 comes to the rescue of the law enforcement agencies when some persons resort to fast until death or self-immolation to put pressure on the government to accept their unreasonable or illegitimate demands. They can be force-fed in such circumstances.
7. Criminalization prevents a person from making a mock attempt to commit suicide without making a true and a real effort merely to put the blame on his enemy, thereby misusing the provision of Section 306.
8. Of all those who engage in non-fatal suicidal behaviours, one-third of them repeat it within a year and nearly 10% eventually commit suicide.

Points in Support of Decriminalization

After the French Revolution of 1789 criminal penalties for attempting to commit suicide were abolished in European countries. Only a few countries in the world, like Pakistan, Bangladesh, Malaysia, Singapore and India have this law alive. It is a strange paradox that in the age of votaries of Euthanasia, suicide is still criminally punishable. The aim of the law to prevent suicide by legal methods has proved to be counter-productive.

1. Suicide is a psychiatric problem and not a manifestation of criminal instinct. Suicidal individuals need to be helped by way of psychiatric treatment and counselling; imprisonment only make their situation worse. Medical clinics are, hence, the perfect place for such social misfits and not the prison cells.
2. A person, who attempts suicide, suffers most probably from injury of the tendons of the extrinsic flexor muscles, the ulnar and median nerves, thereby, reducing the victim's sensory or motor ability temporarily or permanently. It may also result in

Precedent : A Publication of Jus Dicere Center of Research In Law

internal organ damage and brain damage, paralysis, coma, etc. So, such a person should not be further punished by the law of the country.

3. Fearful of legal hassles, emergency care is often denied by the hospital authorities to those who have attempted suicide.
4. The actual data on attempted suicides becomes difficult to be ascertained as many attempts are described to be accidental to avoid entanglement with police and courts.
5. The Indian Penal Code has its roots the times of the British rule in India. Suicide ceased to be a legal offence there (UK) with the passing of the Suicide Act 1961. So, continuing with this law in India is irrational.
6. If a person is living a miserable life or is seriously sick or having incurable disease or is paralyzed, or is in coma; it is too rude to ask him to live a painful life and to suffer agony, declaring it to be his duty. It is an insult to humanity.
7. Man is captain of his soul and therefore in any act he makes towards himself, state should not poke its nose unnecessarily. Suicide or attempt to commit it causes no harm to others, so State's interference with the personal liberty of the persons concerned is not called for.
8. Rather than creating a deterring effect, it rather promotes successful commission of suicide. It can be considered not a punishment for attempt but a failed attempt. Survival has, therefore, become an offence. Isn't survival itself sufficient punishment? When a person frustrated in his life decides to kill himself, he never gives it a second thought that what if he fails. The attempts are always made to be successful. For example, a wife tortured for dowry, who can neither return her maternal home due to the social value nor allow her parents to suffer, would never think of punishment under Section 309. 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.
Further, it can also not be considered reformatory in character because a sick man is thrown among the felons.
9. A conception exists, that if attempt to suicide was decriminalized, it would promote more suicides. But, from the experience of the other countries like Singapore (where suicide rates have increased in recent years despite suicide being punishable there), Sri Lanka (where the suicide rate decreased after repeal of penal clause) and Canada and New Zealand (where ten years before and after decriminalization of suicide no rise in the rate was detected), this conception was proved wrong.

Evolution of Decriminalization of Attempt to Suicide

1. The Law Commission in its 42nd Report recommended repeal of Section 309; following which the IPC (Amendment) Bill, 1978 was passed by the RajyaSabha, however the bill ultimately lapsed because of dissolution of LokSabha.
2. Then, in its 156th Report, the Commission recommended retention of Section 309 focusing merely on the constitutionality aspect of Section 309 and without going much into the wisdom of retaining or deleting the same.
3. Again in its 210th Report in 2008, titled 'Humanization and Decriminalization of Attempt to Suicide', the Commission recommended decriminalization of Attempt to suicide.
4. In May 2013, the 66th World Health Assembly adopted the first ever Mental Health Action Plan of the World Health Organization (WHO) with suicide prevention as its integral part. The aim was to reduce the rate of suicide in countries by 10% by 2020. This can be possible by taking steps such as limiting access to pesticides and firearms or putting barriers on bridges.
5. To give effect to the recommendations of the Law Commission and also to action plan in accordance with Article 51 of the Constitution, Mental Health Care Bill, 2013 was introduced in the RajyaSabha on August 19, 2013. It sought to repeal the earlier Mental Health Act of 1987. However, due to of the dissolution of LokSabha, this bill failed to take form of an Act.
6. Later, Mental Healthcare Bill was introduced in LokSabha and was passed by RajyaSabha on August 8, 2016. This bill received the assent of the President on 7th April 2017 and was to come into effect on such dates as the Central Government by notification may decide or within the period of 9 months (7th January 2018), whichever is earlier. Eighteen States and four Union Territories supported the repeal of Section 309 IPC proposed by the Act. Incidentally, at least five states, namely, Bihar, Madhya Pradesh, Delhi, Punjab and Sikkim expressed reservations against this move with respect to suicide bombers, terrorist and cases of self-immolation and fast unto death.

Section 115 of the Act of 2017 provides that, notwithstanding anything contained in Section 309 of IPC any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried under the said

Precedent : A Publication of Jus Dicere Center of Research In Law

code. Hence, Section 309 IPC is conditionally repealed by this section. Immunity is provided against both prosecution and punishment unlike in the previous bill of 2013. Further, the appropriate government is entrusted with the duty to provide care, treatment and rehabilitation to a person, under severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide. For this purpose, designs and plans are required to be made and necessary public health programmes undertaken under Section 29 of the Act.

A person may be admitted in mental health establishment either compulsorily, if an application made by nominated representative of the person if that person has threatened or attempted or is threatening or attempting to cause bodily harm to himself or voluntarily, if he so desires to be admitted.

However, despite passing of Act, the Supreme Court recently in *Satish Nirankari v. State of Rajasthan*,¹⁴ decided on 9 June 2017, held the appellant-accused guilty for attempting to commit suicide, though he later realised and made efforts to save himself and his lover. This was due to failure to issue any notification. But now this Act automatically came into force.

Recommendations

Auto-homicide is a cowardly act to escape the sufferings of life. Various TV shows create a wrong picture of suicide on the brains of the people that it can be used to gain sympathy and publicity or to prove love thereby romanticizing death. In this way, the Indian media tends to glamorize suicide and this provokes copycat suicides. Suicide is not any kind of a trial but full and final process from where there is no going back.

Steps were undertaken worldwide to control the rate of suicide. World Suicide Prevention Day was first celebrated on 10th September 2003, followed annually since then on the same date by International Association for Suicide Prevention (IASP) in collaboration with WHO. The theme for September 10, 2017 (15th celebration) was 'Take a minute, change a life.'

1. Suicide is a social issue which needs to be addressed by the society as a whole. The government cannot alone be expected to row the boat and bear the burden to oar it throughout. The national mission of Zero suicide can be achieved only with active involvement, cooperation and coordination of all the stakeholders. Suicide Prevention is everybody's responsibility after all.

¹⁴(2017) 8 SCC 497.

Precedent : A Publication of Jus Dicere Center of Research In Law

2. An individual with suicidal thoughts is required to create positivity around, keep himself busy in some or the other constructive activity. Depression is a major cause of attempting suicides. So, laughing and yoga can help to overcome this.
3. Suicide, which is in the nature of premature and preventable death, is required to be inhibited. Time has now come to immediately set up a National Taskforce for Elimination of suicide. Earlier too, many public health issues were successfully dealt with in this manner.
4. There is a need to develop a national plan for suicide prevention in India.
5. NGOs can as well provide support to suicidal individuals by befriending them and also by undertaking education of gatekeepers, raising awareness in the public, etc.
6. In the interest of justice, Section 115 of 2017 Act should be given retrospective effect, covering attempts prior to coming into force of the Act.
7. Suicide is not a crime. Criminals commit crimes. Due to the stigma attached to the word “committed”, it would be better to use the expression “died by suicide” instead of “committed suicide”.

In India, sooner or later it was realised that criminalization of suicide has no links with suicide control. It rather persuades opting for severest means in order to avoid any possibility of survival and falling into the jaws of penal law. However, it must be kept in mind that decriminalizing suicide doesn't mean legalising attempt to suicide but avoiding punishment to those who attempted it.