

# Punishing the Suicide Survivors- The Justifiability

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## Abstract

Suicide is a product of social abnormality, and originates from social incapability and mental distress; it cannot be appropriately addressed under the orders of law. In India, day by day, thousands of individuals irrespective of gender, age, social status and educational qualifications are ending their lives by committing suicide. The privilege to end one's own life has become much talked about subject all through the world. In India, Criminal Law students are very often asked a question that 'What is that act, which if completed is not made punishable but the failure to complete it or the mere attempt is made punishable?' The answer is "suicide" and 'attempt to commit suicide' is made punishable under Section 309 of the Indian Penal Code. An individual who is successful with regards to taking his own life gets away from all worldly miseries as well as legal action where as one who fails in suicidal attempt is brought into the trawl of criminal courts. The issue with regard to de-criminalization of attempted suicide has been questioned with controversies, besides moral and human point of view. The present article aims at discussing the various factors responsible as to why a person attempt to commit suicide and the attention towards the ongoing debate of retaining or deleting Section 309 of the Indian Penal Code, 1860 by testing its validity.

**Key words-** Suicide, attempt, decriminalization, offence, life, death

## Introduction

Thomas Jefferson once remarked: *"the care of human life and happiness and not their destruction is the first and only legitimate object of good government"*

Suicide means deliberate termination of one's own physical existence or self murder. Suicide as a predicament is the combination of social, psychological, philosophical, moral, ethical and legal reasons behind it. A demonstration of suicide requires grave mindfulness in light of the fact that there is nothing a normal reasonable man fears more than his death, and that panic in the huge majority of cases, is as consistent as it is inescapable.<sup>1</sup> According to "Suicide Death rates in India are amongst the Highest in the World" *The Week* (December 10, 2018), Suicide came to be ranked first in India as the

cause of death in this age group; whilst it is ranked as third globally. According to the recent report published in 'Crime in India 2018 Statistics (National Crime Records Bureau, Ministry of Home Affairs) under the Chapter II (Suicide in India) recorded a total of 1,34,516 suicides were reported in the country during 2018 showing an increase of 3.6% in comparison to 2017 and the rate of suicides has increased by 0.3 during 2018 over 2017.<sup>2</sup> Every year, more than 1,00,000 people commit suicide in our country. There are various causes of suicides like professional/career problems, sense of isolation, abuse, violence, family problems, mental disorders, addiction to alcohol, financial loss, chronic pain etc. NCRB collects data on suicides from police recorded suicide cases. From this it is clear that police recorded cases does not include the unreported cases and in India many suicide cases are not reported and mainly the attempted cases are reported minimal because attempt to commit suicide is still considered an offence. According to the WHO, around 8 lakhs people die of suicide every year and up to 25 times as many make a suicide attempt. And in 2019, *National Crime Records Bureau* provides that the

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average rate of suicide in India is 10.4. In India, attempt to commit suicide is made punishable under Section 309 of Indian Penal Code, 1860. There is always conflicts because of judgments given by our Courts about whether right to life includes right to die within the meaning of Article 21 of the Constitution of India.

### Objectives:-

- To analyse the validity of 'attempt to commit suicide as an offence' from the societal point of view.
- To ascertain the Indian judicial trend relating to attempt to commit suicides.

### Legislative Provisions:-

- **Section 309 of Indian Penal Code, 1860-** Attempt to commit suicide: Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.
- **Article 21 of the Constitution of India, 1950-** Right to Life and personal liberty: provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."
- **Mental Healthcare Act** passed on 7 April 2017 and came into force from 29th May, 2018. **Section 115 of (MHCA), 2017-** Presumption of severe stress in case of attempt to commit suicide-

(1) "Notwithstanding anything contained in Section 309 of the Indian Penal Code 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."

### Judicial Decisions

In *Maruti Shripati Dubal v. State of Maharashtra* [1987 (1) BomCR 499] the Bombay High Court was of the view that Sec. 309 of IPC is violative of Art. 14 of the Constitution for being discriminatory in nature and for violating arbitrarily the equality guaranteed to the

persons. The provision was further held to be violative of Art. 21 as right to life include the right to terminate one's own life also. In *Chenna Jagadeeshwar & Anr. v. State of Andhra Pradesh* [1988 CrL.J.549] the Andhra Pradesh High Court, however, rejected the above contention made by the Bombay High Court and held that Sec. 309 IPC is not violative of Article 14 and Article 21 of the Constitution. In *P. Rathinam/N. Patnaik v. Union of India* [1994 AIR 1844] where the Supreme Court held that S, 309, I.P.C. is violative of Art. 21 of the Constitution, as there exists under A. 21 a 'right to die'. In *Gian Kaur vs. State of Punjab* [1996 AIR 946] the decision of Ratnam was overruled holding that Article 21 cannot be construed to include within it Right to Die as a part of the Fundamental Rights guaranteed therein, and therefore, it cannot be said that Section 309 is violative of Article 21. The Supreme Court in the case of *Aruna Ramachandra Shanbaug v Union of India and Ors* [(2011)4 SCC 454] had recognised passive euthanasia in 2011 and had even laid down elaborate procedures to execute the same. SC allowed "passive euthanasia" of withdrawing life support to patients in a permanently vegetative state but rejected out rightly 'active euthanasia' of ending life through the administration of lethal substances. In *Common Cause (registered society) v Union of India & Anr* (Common Cause) [W.P. (Civil) 215 of 2005] , Court recently in 2018, clarified that Article 21 covers within its ambit only passive euthanasia and not active euthanasia. Finally, the Court goes on to say that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in permanent vegetative state with no hope of recovery and that is why it also recognises Advance Directives akin to a 'Living Will' through which persons of sound mind and in a position to communicate can indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to. The SC ruled that the interest of the patient shall override the interest of the State in protecting the life of its citizens and that right to live with dignity attaches throughout the life of the individual.

### Concept of Attempt to Commit Suicide:-

The word 'Suicide' got its source from the Latin word 'Suicidium' which is derived from *Sui Caedere* meaning 'To Kill Oneself'. More appropriately 'Suicide'

can be defined as a “self-intended lethal behaviour for extinguishing one’s own life”. The concept of decriminalization of attempted suicide is based on the philosophy of humanism and comparison. It recognizes the autonomy of the individual, freedom of choice to live or die with dignity.<sup>3</sup> It is a very sensitive issue that polarized the world; and one of the most perplexing issues which the world faces today. Few developed countries have given nod to decriminalize attempted to commit suicide. India too seems to have joined the club and is about to decriminalize attempted suicide; with a proposal to delete the relevant provision i.e. Section 309 of The Indian Penal Code relating to attempt to commit suicide. Differences arise in the question of what constitute an offence. Basically, a certain type of conduct is regarded as offence, because the conduct is supposed to cause harm to others.<sup>4</sup> Moreover, it has been argued that irrespective of harm caused to others by one’s actions, there exists the element of “public morality”, which holds the fabric of the society together. This means that individual autonomy should be coupled with public morality and the responsibility of an individual to the society. When criminal law chooses a particular conduct for punishment and distinguishes it from another conduct, it must take into account the magnitude of the harm likely to be caused.<sup>5</sup>

The move towards de-criminalization probably began with the feeling that for “certain types of conduct labelled as criminal in a particular legal system, the use of criminal sanctions is not really appropriate. This stems from a variety of considerations including the eternal debate as to the proper scope and limitations of criminal law in enforcing morality. Also, particular types of conduct against which criminal sanctions have been applied, may in due course of time, come to be regarded as not appropriate for the use of such sanctions for example conduct that is worth moral condemnations or disapprobation may not necessarily be made the subject matter of criminal sanction.<sup>6</sup>

Personal and social reasons, financial problems and poor health are considered as major reasons of suicide in India. The common modes of suicide are poisoning, drug overdose and hanging. Nowadays, it is found that the suicide rate is increasing in every age group of person especially in the teenagers and the elderly person (above the age of 60 years), which will pose

additional challenges. Recently, I visited and enquired in the Private Hospital **SUM; Faculty of Medical Sciences of Siksha ‘O’ Anusandhan (SOA Deemed to be University), Bhubaneswar, Odisha** and got to know from the records of patients from Psychiatric ward that around 40% of Teenagers, 25% of Old age people, 20% of Married women and rest 15% people from other category have attempted suicide. For the Teenagers; love failures, failure in exams and pressure from parents and peer group are the main causes to take an attempt in such early age. For the elderly; social isolation, depression, functional disability, and the feeling of being a burden on their family have been cited as reasons for suicides. For the married women; adjustments with the husband and in laws and responsibilities in the matrimonial home, even dowry related issues are pertinent causes for attempted suicide by married women.

The act of attempted suicide is always given more importance than the act of committed suicide as because in case of the later the culprit is no more alive to get punishment, but in the former case the culprit is still alive to get some deterrent punishment so as not to repeat the same offence in future.<sup>7</sup> Section 309 of the Indian Penal Code categorically makes attempt to commit suicide punishable, but time and again there arose several debates on the necessity of retaining or deleting this section from the statute book. The impact of legislation is reflected in a study of **100 attempted suicides in a Government Hospital Psychiatric Department in Balangir, Odisha**. Where 19 of the 56 males i.e. 33.9% and 05 out of 44 females i.e. 11.3% were aware of the existing legal provisions relating to suicide attempts, however the majority did not know that ‘attempt to commit suicide’ is a punishable offence.

According to World Health Organization, *Suicide Prevention* (2012), attempted suicides are usually twenty times more common than the completed suicides. It is estimated that, of all those who engage in non-fatal suicidal behaviours, one-third repeat the tendency within a year and nearly 10% eventually commit suicide. Many of the countries worldwide no longer criminalize suicidal attempts; however India, continues to hold it as a punishable offence, despite the enactment of the Mental Health Act, 2017.<sup>8</sup>

Psychiatric illness constitutes a major cause for non-fatal suicidal behavior. Risk factors include depression and other mental disorders. Other risk factors are childhood adversities such as sexual/physical abuse, alcohol/drug abuse, stressful life events such as death of a loved one, loss of a job or relationship, financial bankruptcy, imminent criminal prosecution and suffering from, or having recently been diagnosed with, a terminal illness.<sup>9</sup> Essentially, people who attempt suicide are in need of help rather than punishment in view of association with a high psychiatric or psychological morbidity. The philosophical dilemmas surrounding the individual's right to life and death has been debated, *albeit* inconclusively, across several disciplines with differing outlook and perspectives.<sup>10</sup>

As per direction of World Health Organization, **September** is considered as **Suicide Prevention Month**. Because, over 800,000 people per year lose their lives by committing suicide. Suicide is considered the leading cause of death for men less than 50 years of age. It is the 10<sup>th</sup> biggest cause of death worldwide. Two of the leading factors that contribute to suicide are isolation and feeling like a burden. So, as a human being, it's our duty to check in on these kinds of people around you and listen without judgement.

### Conclusion

The Indian law criminalizing attempt to commit suicide was in place from the time of colonial rule, and Britain itself had decriminalized suicide attempts in the year 1961 through Suicide Act, 1961. In view of these issues and the decriminalization of attempted suicide in many other countries worldwide, there was ongoing debate between lawmakers and various stake holders on removal of this antiquated law in India. This was lead by the judiciary and welcomed by health professionals and activists. As a matter of first importance the quick impact would be improvement in detailing of suicide attempts and getting immediate clinical consideration unafraid of prosecution. Despite of the fact that a significant percentage of the population knows that suicidal attempts are punishable, the number of persons who try to commit suicide is very high. This means that conditions sometimes become so pressurising that if they fail, people are not in a position to think about the repercussions. This means that while laws prosecute

efforts to commit suicide, this rule has not been able to discourage and prohibit persons from seeking to commit suicide, however technically speaking. That is why the Law Commission of India and the Honourable Supreme Court are of the opinion that it should be decriminalised instead of prosecuting attempts to commit suicide, and that the State should make efforts to advise and rehabilitate the victims of such situations. This is explained by the countries that have decriminalised attempts to commit suicide on the basis that the person who takes such a drastic action is now a victim of conditions and suicide is not a common life function. Circumstances and conditions have already punished him. And if he fails, punishing him for his failure amounts to doubly punishing him, which ultimately magnifies his pain. Rather than punishment, he requires empathy, support and counselling.

Indian law makes 'Attempt to Commit Suicide' punishable under Section 309 of Indian Penal Code, 1860 and it is an offence against the human body under Chapter 16 of IPC. Even after passing the Mental Health Care Act, 2017 which impliedly decriminalize attempt to commit suicide, the problem is not solved. Complete repeal of the provision is the need of the hour; else the shadow of criminalization will choke the neck of suicide survivors.

**Ethical Clearance:** Not required, as the article is based on aspects which are doctrinally taken.

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### References

- 1- Chandra Vijay. Attempt to Commit Suicide- Crime or a Social Problem. Cri LJ. 1995; 95-96
- 2- National Crime Records Bureau. Accidental Deaths and Suicides in India: 2018. New Delhi, India: Ministry of Home Affairs, Government of India. 2018.
- 3- Aggarwal Shivesh. Repeal Of Section 309 Of Indian Penal Code: Is It The Right Time?. SACJ. 2014; 1:1-7.
- 4- Behere Prakash B, Rao Sathyanarayana TS, Mulmule Akshata N. Decriminalization of attempted suicide law: Journey of Fifteen Decades. Ind J Psy. 2015; 57(2): 122-124.

- 5- Thakur Naveen. Attempt to Commit Suicide: From Offence to No Offence to Offence. Cri.LJ. (Mad). 1997; 2327
- 6- Khan Sheeraz Latif. Attempt and Abetment to Commit Suicide an Offence: A note on the Supreme Court Judgment. Civ Mil LJ. Jan-Mar 2001; 87(1): 237-246
- 7- Latha, Geetha. Criminalizing Suicide Attempts: Can it be a deterrent?. MSL.2004; 44 (4)
- 8- Ranjan Rajeev, Kumar Saurabh, Pattanayak Raman Deep, Dhawana Anju, Sagar Rajesh. (De-) criminalization of Attempted Suicide in India: A Review. Ind J Psy. 2004; 23(1): 4-9.
- 9- Rao Meghana. Administating Death: Role of Law, Medicine and Development in (Re)defining Suicide in India. 2014. <https://pdfs.semanticscholar.org/e872/7c72ea2d7cbbe01fa014f9a2767693043345.pdf>
- 10- Tewari Shubhangi. Attempt To Suicide- A Blessing Or A Woe?. IJLDAI. 2015; 1(2): 173-176