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Author:

Anshika Bhadauria

Symbiosis Law School, Noida

2nd Year, BBA LL.B.

SOCIAL ROOTS AND LEGAL PERSPECTIVE OF
SUICIDAL LAWS IN INDIA

INTRODUCTION-

Indian Penal Code (IPC) is the official criminal code of India. It deals with explaining the offences and their punishments or we may say, it punishes people who cause threats, and are capable of impacting society. There are four stages for a crime; first, intention to commit; second, preparation to commit it; third, attempt to commit it; and finally, the accomplishment stage. A person can only be punished for the last two stages i.e., where he/she tries to attempt the crime or has accomplished the crime. The article focuses on the offence of attempting to commit suicide, which comes under the third stage and, is punishable under section 309 of IPC. Though, what the section tries to bring to society and, how it actually impacts society are two very different things. Suicide is defined as a non-fatal self-directed potentially injurious with an intent to die¹. According to the World Health Organization (WHO) report, in 2019 nearly 7,00,000 people die of suicide. The fourth leading cause of death is suicide, among 15-19 years old people. It is a serious problem that requires mental health interventions, though it still continues to be an offence. WHO reported India as the highest country in suicide rate in comparison to other South Asian regions. The major reasons stated by the National Crime Records Bureau for the increase in the number of suicides are mental illness, dowry disputes, drug abuse/addiction, exam failure, bankruptcy, family problems, poverty or sudden change in economic status.

¹ Rajeev Ranjan et al., *(De-) Criminalization of attempted suicide in India: A Review*, 23 IND PSYCHIATRY J, 4-9, 2014

Most of the people who attempt the offence are in need of help rather than punishment. Even after the decriminalisation of suicide (under severe mental illness) under the Mental Health Care Bill is there, the law fails to understand the mens rea of the survivor. The societal pressure and social roots of suicide are different and what law fails to see. Suicide is a multidimensional problem that includes legal, social and psychological implications. Hence, all three aspects need to work together to achieve a common goal.

RESEARCH OBJECTIVES -

- 1.To study the suicidal laws through their legislative enactment and judicial interpretation.
- 2.To study the comparison between suicidal laws in India and foreign countries.
- 3.To study social causes that lead to suicide and arguments on de-criminalization of suicide.

HOW CHANGES WERE BROUGHT IN INDIA REGARDING DECRIMINALIZATION OF SUICIDE-

The first signs of changes were seen when the recommendation was given by the law commission in its 42nd report to repeal section 309 of IPC in 1971. The amendment bill for IPC was passed by the Rajya Sabha in 1978, but the bill got lapsed before it could pass Lok Sabha as it got dissolved. Delhi High Court denounced section 309 of IPC as “unworthy of society” in 1981, which marked the beginning of a shift in public opinion towards suicide attempts in India. Supreme Court in 1994 even held the section “cruel, irrational and void” . They interpreted to include the ‘right to die’ under the right to liberty mentioned in article 21 of the Indian Constitution. The judgement was overruled by the five-judge bench in the case of Gian Kaur v. the State of Punjab . They upheld section 309 of IPC as constitutional, though the real motive behind the section i.e., to prevent people from taking their own lives and to protect the life of people, is slowly fading away.

However, the law committee advised in its 210th report that attempts at suicide should be treated medically and psychologically rather than punished. The commission decided to recommend that the government of India take action to repeal the antiquated law found in Section 309, IPC, in light of the views expressed by the WHO, International Association for Suicide Prevention, Indian Psychiatric Society, and the representations it had received from various parties . Out of 29 states, 25 agreed to the proposal to bring the amendment to repeal section 309 of IPC in September 2011. In 2013, the Mental Health Care Bill was introduced in Rajya Sabha and finally, in 2017 bill was passed that decriminalises the attempt to suicide in severe mental illness and eventually came into force in 2018.

PRESENT LEGAL STATUS OF ATTEMPT TO SUICIDE-

Indian Scenario-

Article 21 of the Indian Constitution says, “No person shall be deprived of his life or personal liberty except according to procedure established by the law”². It covers the right to life or liberty and the right to die with dignity but, it does not cover the ‘right to die’. Conflict arises when liberty is guaranteed by the constitution and one has control over his life but cannot end his/her life by his own will. It is considered an offence under IPC. Interestingly, IPC doesn’t define the term ‘suicide’ though, the case of Clift v Schwabe gives the definition of this term as, “to commit suicide is for a person voluntarily do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having, at the time, ‘sufficient mind to will the destruction of life’³. The word ‘intention’ is essential to determine the offence. The person must be aware of the consequences of his actions in order to make him liable under the section. While there is no punishment for the accomplished act, the penal procedures make sure that the person is punished if the action is unsuccessful.

Section 309 of IPC states very clearly, “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 both”⁴. The section basically criminalises the attempt to suicide. The reason the section exists in the criminal law is to prevent people from committing suicide.

Several questions are raised in the context of this section. First, the legal treatment of attempt to suicide against the state is a question. Second, it is included in chapter XVI of IPC, which covers the category of crimes committed to the ‘human body of the other person’. Third, the inference of the act is on the basis of intention but, in some cases, it can be ambiguous and unclear.

The IPC was formulated in 1860, during the British Raj Regime. Ironically, the British decriminalised suicide in 1961 whereas, India still follows the same. In a landmark judgement of 1985, Delhi High Court observed that “the continuance of section 309 IPC is an anachronism unworthy of a human society like ours”.

The government passed the Mental Health Care Act in 2017. The act was passed on April 7, 2017, and came into force on May 29, 2018. Section 115 of the act decriminalises suicide mentioned under

² INDIAN CONST. art. 21

³ Clift v. Schwabe, 3 C.B. 437 (1846)

⁴ Indian Penal Code, 1860

section 309 of IPC, giving an overriding effect to it. The section states, “notwithstanding anything contained in section 309 of Indian Penal Code, 1860 any person who attempts to die by committing suicide, they shall be presumed to be under severe stress and they shall not be tried and punished under the same section”⁵. It took 157 years to bring such an act and decriminalise the attempt to suicide. The legal stance on attempts to suicide in India is still not clear, as we do have two conflicting acts. Though, the High Court of Delhi held that “Section 309 of IPC is not suitable for the current society and it must be repealed as they do not have any justification”⁶, in the case of *State v Sanjay Kumar Bhatia*.

International Scenario-

Historically, religion had a very strong influence on criminalising suicide and shaping its legal stance. A change in mindset was seen after French Revolution along with socio-cultural changes in Europe. Most of the developed countries tried to decriminalise suicide during the 19th and 20th centuries, but some countries continue to treat it as an offence against the state.

- Countries which have criminalised attempt to suicide-
Nonfatal suicide is criminalized in Kenya, Malawi, Uganda, Rwanda, Tanzania and Ghana (African region). In Rwanda, punishment for nonfatal suicidal behaviour is 2-5 years of prison life. In Uganda, it is 2 years of imprisonment. In the South Asian region, Pakistan, Malaysia, Singapore and Bangladesh still continue to consider suicide a crime⁷.
- Countries which have decriminalised attempt to suicide-
Though some countries have decriminalised attempt to suicide, they still continue to criminalise the abetment to suicide and suicide pacts. Roman-Dutch Law does not see attempt to suicide and suicide as crimes. Self-harm is not seen as a form of attempt to suicide in Ireland, which decriminalised attempt to suicide in 1993. Only few countries are there which have decriminalised attempt to suicide in the South Asian region, that includes Maldives, Sri Lanka, Thailand and Indonesia. The survivors are provided with medical support from the state⁸.

SOCIO-LEGAL PERSPECTIVE OF SUICIDAL LAWS-

Even after the enactment of the Mental Health Care Act relationship between the suicidal laws with that of the society has not seen much difference. The major reasons stated by the National Crime

⁵ Mental Health Care Act, 2017

⁶ *State v Sanjay Kumar Bhatia*, (1986) 10 DRJ 31

⁷ Rajeev Ranjan et al., (*De-*) *Criminalization of attempted suicide in India: A Review*, 23 IND PSYCHIATRY J, 4-9, 2014

⁸ Rajeev Ranjan et al., (*De-*) *Criminalization of attempted suicide in India: A Review*, 23 IND PSYCHIATRY J, 4-9, 2014

Record's Bureau for the increase in the number of suicides are mental illness, dowry disputes, drug abuse/ addiction, exam failure, bankruptcy, family problems, poverty or sudden change in economic status. In these cases, imposing of penalties and imprisonment is not the solution. There is a need for psychological assistance and personal assistance from friends, families and society in order to come out of the illness and stress. We cannot completely blame the legislation and government for this also. There is a stigma in society, particularly relating to mental illness and disorders. People prevent themselves from sharing their problems like such and, from getting some help in such matters. The problem is not adequately addressed due to the lack of awareness of suicide as a major health problem among people. Taboo has been created about mental health and in order to prevent self-destruction activities, community awareness is important. This could be possible by effective implementation of section 30 of the Mental Health Care Act, 2017, which talks about creating awareness among the people about mental disorders by use of public media.

Through examples, three broad categories of the attempt to suicide can be presented-

1. Fasting to Death: In August 2011, Delhi Anna Hazare announced fast-until death demanding better legislation in Lokpal to empower people. It went long for 12 days and after that police intervened when some people reported it to be a danger to health. Similarly, Irom Chanu Sharmila also known as, the Iron lady of Manipur started a hunger strike against the Armed Forces Special Powers Act and demanded the act be repealed. She was arrested by the police many times. These were real-life instances where people stake their lives to protest against the state's policies. The state intervenes because there was a danger to life and deterioration of health.
2. Religious Practices: '*Santhara* or *Salekhana*' is an age-old practice followed in Jainism. It is a spiritual decision to give up the body in order to purify the soul and find redemption. Article 25, 26 and 27 of Indian Constitution allows every person to choose his/her religion and practice any religion, though it will be punishable under section 309 of IPC if the attempt goes unsuccessful. PIL was filed against the practice of *salekhana*, but in 2016, the final verdict of the Supreme Court lifted the ban imposed by the High court.
3. Mental Illness: It is the most horrible yet most common reason for suicide attempts. Mental illness could happen due to several reasons, like adverse life events, poverty, exam failure, stress, societal pressure, detachment of loved ones or bankruptcy. For example, a woman was charged under the section for attempting suicide, she attempted it after seeing her boyfriend's violent death. In a case where a person attempted suicide due to unemployment and bankruptcy,

the session judge order to not impose severe punishments as it was because of his condition and helplessness.

CONCLUSION-

Among the various countries where the attempt to suicide is still a crime, India became one of those countries where it isn't. Though we do have two conflicting laws regarding it. Recent judgements like the Simi C.N. State of Kerala⁹ and Pratibha Sharma v. the State of Orissa¹⁰, where the court upheld the validity of special law over the general law i.e., Section 115 of the Mental Health Care Act was used in defence of the accused. They held it to be under legal luminary and the general view of the court. The real motive behind criminalizing attempt of suicide was to discourage people from self-destruction but, does it ever help? In a recent judgement of the Supreme Court, a question was raised, "whether the attempt to suicide is even a crime against the state, to which section 309 of IPC stands? And, isn't the state indirectly responsible for the plight of the victim who was left with the only choice except to take his life?"¹¹ There are various social and religious practices that cannot be stopped as it is covered by our fundamental rights, society is becoming more and more competitive, and mental health is a growing issue. India is still moving toward a better option by bringing Mental Health Care Act. But, is decriminalising suicide enough? There is a need for effective implementation of the act. The act talks about measures government should take to ensure awareness among the people about mental disorders by, effective use of public media, organizing training and awareness sessions among government officials and funding programmes that are already working for the same cause. Providing access to mental health care for everyone who has tried suicide will be a significant problem from a policy viewpoint when the official attitude on attempted suicide shifts from a "legal" to a "medical" approach. Anytime a patient reports having attempted suicide, psychiatric consultation should be recommended. In light of this, it is necessary to set aside the required funds for the mental health care services across the nation and districts.

Law alone cannot solve the problem of suicide; the people have poor knowledge of the law and taboo in society needs to be lifted. Clear-cut data needs to be prepared with respect to suicidal deaths so that, effective measures can be taken to reduce the suicidal rate. National Crime Records Bureau reports are based mostly on police records and because the attempt to suicide is dealt under IPC for which FIRs have to be lodged and many people fail to report due to fear of penalisation. People need to understand

⁹ Simi C.N. State of Kerala, (2022) SCC OnLine Ker 2184

¹⁰ Pratibha Das v. the State of Orissa, (2019) 2 OLR 249

¹¹ Pratibha Sharma v. State of Himachal Pradesh and Ors. (2019)

suicide is not the only option. Society needs to be more inclusive of each other, by just keeping a check on our loved ones and accepting the people we can solve half a problem. Most suicides happen in covid times because people lost their loved ones and others were not so cooperative with them. Students are taking their lives on exam failure and due to being bullied at school for how they look and do acts. Schools should arrange programmes where they encourage students to look beyond the marks obtained in an exam, strict actions must be taken against students who do bully other students. Only the effective implementation of the act and spreading of awareness among the people could reduce the suicidal rate. Thus, the onus lies on us all and we as a society should try to give our best to reduce this cause.



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