

# **CRIMINALISATION OF ATTEMPT TO SUICIDE - AN EFFECTIVE DETERRENCE?**

By Venuka Mehta<sup>301</sup>

## **INTRODUCTION**

Mahatma Gandhi once observed “Death is our friend, the trust of friends. He delivers us from agony. I do not want to die of a creeping paralysis of my faculties – a defeated man”.

Suicide, when literally defined, is the intentional act to kill one own self. Statistics show that India witnesses the highest number of suicides in the world in any given year. Data for the year 2012, compiled by the World Health Organisation (WHO), showed that India topped the world in suicides. During this period, a total number of 258,075 people committed suicide in 2012, with 99,977 women and 158,098 men taking their own lives. The suicide rate of India stood at 21.1 per 100,000 people.

## **SECTION 309 – THE INDIAN PENAL CODE, 1860, 1860**

Suicide has not been declared as a crime by The Indian Penal Code, 1860 obviously because once a person successfully commits suicide, that person is no longer alive to be prosecuted and the crime abates with him. However, an attempt to commit suicide is punishable under Section 309 of The Indian Penal Code, 1860.

Sec 309 of the Indian Penal Code, 1860 states – “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.”

The Indian Penal Code, 1860 also declares a person who instigates another person to commit suicide as a criminal. To make a case of abetment, there must be some active suggestion/instigation, provocation, incitement or encouragement by the accused to a person to do an act. The offence of abetment, must conform to the definition of the term ‘abetment’ given under Section 107, of The Indian Penal Code, 1860. There must be instigation, cooperation or intentional assistance given to the would-be suicidee. Neither a mere suggestion

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<sup>301</sup> 3rd Year BBA LLB Student, School of Law, Christ University, Bangalore

nor a casual remark suggesting a suicidee to commit suicide amounts to abetment to commit suicide.

## **CONSTITUTIONAL VALIDITY**

The Constitutional Validity of Section 309, is struck down as being violative of Articles 14, 19 and 21 of The Indian Constitution, 1950. There was an ongoing debate upon the need to abolish Section 309, of The Indian Penal Code, 1860.

In *P. Rathinam v. Union of India*<sup>302</sup>, the court opted for its abolishment, stating that Section 309, of The Indian Penal Code, 1860, thus, decriminalising attempt to suicide. They used the principle of ‘double’ punishment. It stated “It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.”

This was completely ruled out in the case of *Gian Kaur v. State of Punjab*<sup>303</sup>, which overruled the prior judgment, by upholding the Constitutional Validity of Section 309, of The Indian Penal Code, 1860 and by stating that right to life is not inclusive of right to death. Thus, any failed attempt to commit suicide would definitely attract criminal liability on the victim.

## **SOCIETAL ISSUES**

The major problem faced by the society, when it debates about such issues, is how it defines the act. In this case, the act being that of Suicide, can be defined as, an act caused by a mental health issue, coupled with a personality disorder, where in the victim was filled with feelings of hopelessness and helplessness. After exhausting all possibilities of rectifying the problems faced by him and believing that there is no way out, the person decides

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<sup>302</sup> 1994 AIR 1844, 1994 SCC (3) 394

<sup>303</sup> 1996 AIR 946, 1996 SCC (2) 648

to end his own life. Thus, in need of psychiatric help. Criminalising such act, does not help the victim to combat such feelings, rather it leaves a person feeling worse than before. The same can also be taken as that of a criminal activity, in which the person is making a conscious choice. This brings me to question, as to what accounts for an act of commission of suicide? Would acts like, smoking tobacco or heavy alcohol consumption be taken as a criteria? As in such cases the person is aware of the consequences, yet he decides to go ahead with his acts. Moreover, the object behind punishing the wrongdoer, for any activity being deterrence, is not being solved by criminalising the act of suicide, as it only leaves a person feeling more worthless, which in turn increase the chance of him committing the act all over again.



## CONSTITUTIONALITY AND MORALITY

Consider an example; of a married woman, who undergoes marital rape by husband and fails to get justice. In India, marital rape is still not widely recognised and many such women may be driven to commit suicide. Here how would Law and The Constitution deal with the failure of the State to provide justice to a citizen (a victim of marital rape) and how moral and just is it to punish such a person for a crime – committing suicide and failing to take one’s life? Now who is the real “wrong-doer in this case, the woman or the State”?

In my view, Section 309 of Indian Penal Code, 1860 goes against the Fundamental Right bestowed upon us by Article 14 and Article 21 of The Constitution of India, 1950.

Article 14<sup>304</sup> stipulates equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and would not discriminate any person on grounds of religion, race, caste, sex or place of birth. Article 14<sup>305</sup> would not be supportive of Section 309 of Indian Penal Code, 1860 as quantifying and equalising the tragedies faced by one citizen with those faced by another, which is morally wrong as well. The State cannot equate failing in examination (as a cause for suicide) with unemployment (as a cause for suicide) and put them on the same pedestal.

Article 21<sup>306</sup>, stipulating protection of life and personal liberty read in conjunction with Section 309<sup>307</sup> gives rise to a two-fold argument that is highly incongruous. Protection of life and personal liberty guaranteed by The Constitution puts the onus of protecting the life of a

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<sup>304</sup> The Constitution of India, 1950

<sup>305</sup> The Constitution of India, 1950

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<sup>307</sup> The Indian Penal Code, 1860

citizen on the State. The State also has the responsibility to provide a healthy environment to its citizens. The State should look into the causes which are driving its citizens to commit suicide and combat those – unemployment and poverty being the top reasons. Instead of combatting these issues, or giving the victims necessary psychiatric help, the State decides to put the victims behind the bars, when they commit suicide and fail. Such persons can only mingle with criminals and get influenced in the wrong direction.

After a long debate within the society over the criminalisation of suicide, Union Government has attempted to decriminalise the act of committing suicide by announcing intent to erase Section 309 of The Indian Penal Code, 1860 from the statute books.

Last year in December, The Union Government in Parliament stated that it had decided to delete Section 309<sup>308</sup> from the Statute books, but the Parliamentary procedure to do away with this penal provision is yet to be carried out.

## CONCLUSION

It would be in the fitness of things as a civil society to give a decent and ritualistic burial to Section 309 of The Indian Penal Code, 1860, and take a step towards a more humane law. We must all support The Union Government's intention to do away with this archaic and problematic penal provision and hope that the Government manages to push the relevant bills through Parliament and delete it permanently through an Act.

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<sup>308</sup> The Indian Penal Code, 1860