THE PARTIAL DECRIMINALISATION OF SUICIDE IN INDIA

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ABSTRACT

Section 309 of the Indian Penal Code criminalizes "an attempt to commit suicide" with a punishment ranging from "simple imprisonment for a term up to one year or with fine, or with both".[i] While the Penal Code does not attempt to define suicide, the common understanding that this paper seeks to argue should be decriminalized is an act of intentionally taking one's life.

The Law Commission has twice, in 1971[ii] and 2008,[iii] recommended repealing Section 309. In fact, in 1978. The IPC (Amendment) Bill 1978[iv] was even passed by the Rajya Sabha, but the Parliament had dissolved before the Lok Sabha could pass it, and the bill lapsed. In March 2011 and again in 2018, the Supreme Court also recommended that Parliament consider deleting this Section.[v]

Finally, in 2017, the Mental Healthcare Act was passed, coming into effect in 2018, which effectively decriminalized suicide. Section 115(1) of the Mental Healthcare Act provides that "notwithstanding anything contained in Section 309", a person who attempts suicide will be, "unless proved otherwise" to have severe stress and shall not be tried and punished under the said Code." Further, under clause 2, it casts a duty on the government to provide treatment and rehabilitation to persons having "severe stress and who attempted to commit suicide".[vi] While this is more progressive than the punitive nature of Section 309, it is a job half done at best. This paper aims to analyse the issues inherent in our current legal system that has partially decriminalized suicide through the Mental Healthcare Act while simultaneously retaining

Section 309 and propose reforms to reduce the onerous burdens currently placed on the victims, who continue to be treated as criminals.

INTRODUCTION

"National Law University girl student *commits* suicide!"[vii] "Teacher *commits* suicide",[viii] "Chandigarh: Man *commits* suicide".[ix] These are some headlines that ran over the week, which continue to treat suicide as the *commission* of an offence, and arguably, rightly so, given the Indian Penal Code continues to treat them as a punishable crime under Section 309.[x]

In a country where approximately 1 in 20 people suffer from episodes of depression, where 1 in 60 people are affected by suicide in some way or another, and where over 1 lakh people lose their lives to suicide, it is criminal to treat this public health issue as a punishable offence when it has not made the situation any better.[xi] This paper attempts to trace the history of this criminalization, the current legal system in place to deal with such cases and propose reforms to reduce the onerous burdens currently placed on the victims.

HISTORY OF CRIMINALISATION

Historically, suicide was deemed to be the work of the devil and spiritually polluting in 16th and early 17th century England. An attempt to suicide was seen as a religious crime, punished by ex-communication. Those who died by suicide were met with profane funerals such as their bodies being interred in public highways along with the forfeiture of the entire estate to the King.[xii] While it is not known for sure, whether it was St Aquinas' declaration of suicide as sinful or King Edgar's law of forfeiting the deceased's property that led to the criminalization of suicide, the massive influence religion had in its criminalisation is not subject to dispute.

By the 1800s, the coroners, sympathetic to the families of the deceased increased, began helping them evade forfeitures. Juries also began showing increased tolerance, which eventually led to a more humane understanding of suicide. In 1823, the Burial of Suicide Act abolished the requirement in England of burying suicides at crossroads. But it took till the latter half of the twentieth century, with the decline of religion and rise of individualism in Europe, for views on suicide to diverge from their theological understandings. This led to the abrogation of its criminality through the Suicide Act of 1961.[xiii]

ISSN 2581 6551
VOLUME 7 – 2022

While clearly, the law on suicide in India has colonial remnants, having been directly imported from British law, it is also important to note that religions like Hinduism have also condemned suicide. For instance, the Yama Smriti, not unlike the Catholic Church of England, punished those successful in their attempts by defiling their bodies and others by fine.[xiv] Islam regards suicide as worse than homicide, while Buddhism is rather ambiguous on this issue. Therefore, the survival of the decriminalization of suicide long after colonial independence indicates how the law is also just as much grounded in Indian value systems.[xv] Moreover, what the history of its criminalization clearly suggests is the religious influence behind the law, especially before public acceptance of ideals like the right to liberty and dignity.

THE CASE FOR STRIKING DOWN SECTION 309

The Right to Life and Liberty under Article 21

Article 21 of the Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."[xvi] Whether this article includes the right to die by suicide has been a subject of intense debate among courts.

In *Maruti Shripati Dubal v. State of Maharashtra* (1986), the Bombay High Court held Section 309 as being violative of Articles 14 and 21. The Court pointed out that fundamental rights have positive and negative aspects— that Article 19 (a) contained within it, both the freedom to express and the right to remain silent, and Article 19 (g) included both the freedom to practice any profession and the freedom not to do business. Drawing on this line of reasoning, it must therefore follow that the right to life under Article 21, can be interpreted as also enshrining the “right not to live or not to be forced to live. To put it positively it would include a right to die, or to terminate one's life." The Court held that the mere exceptional nature of suicide could not be reason enough to criminalize it.[xvii]

Critics of the Bombay High Court's judgement also point out how fundamental rights are different, and a blanket comparison of rights as varied as speech and life is misplaced. A five-judge Constitutional Bench upheld the validity of Section 309 in *Gian Kaur v. State of Punjab* (1996), holding that "The 'right to die', if any, is inherently inconsistent with the 'right to life, as is death with life". It was held that the right to life is a natural right inherent in all humans, whereas the termination of that right is unnatural and cannot be read under Article 21.In a

ISSN 2581 6551
VOLUME 7 – 2022

similar vein to the Gian Kaur judgement, opponents of complete decriminalisation argue that "the negative aspect of the right to live would mean the end or extinction of the positive aspect" and hence cannot be deemed analogous.[xviii]

Note, that the argument that the “right to die” is inherently inconsistent with the “right to life” stems from a narrow understanding of life and death as mutually exclusive, and irreconcilable rights. Except, as Justice Hansaria BL points out in *P Rathinam v. Union of India* (1994) "life" has more than mere animal existence.[xix] “Life' in Article 21 means the right to live with human dignity and the same does not merely connote continued drudgery". This implies that if one believes that a dignified life is impossible, then that is violative of Article 21, and they should also have a "right not live a forced life". Or in other words, a right to die actually aids in a fuller realization of what the “Right to life” actually connotes. (Note that such a conception of the right to life, as having a wider meaning beyond just existence is a view that has been held by Courts previously as well, in cases like *Sunil Batra v. Delhi Administration*[xx] and *Boards of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkami*.)[xxi]

But even if the debate on the interpretation of life as interpreted in Article 21 remains controversial, what is not is the personal liberty guaranteed in Article 21, which would include the right to refuse to live if life was not fulfilling enough to demand further living. Thus, they cannot be "forced to enjoy the right to life to his detriment, disadvantage or disliking."[xxii] Note that the host of restrictions imposed on fundamental rights, particularly those under Article 19 all have an underlying theme—they involve harm to the broader public and its citizenry, the State or protection of specific minorities. None of them would allow a restriction of individual choice merely based on a paternalistic understanding of what the State believes might cause harm to the individual. An attempt to suicide does not involve third party harm, and therefore criminalisation of its attempt is unjust.

This is pertinent especially when you did not choose to be born in the specific circumstances you do live in, but even more so, when it is often gross state negligence and failure, through poor healthcare or extreme conditions of poverty which leads people to attempt suicide. At that point, states themselves, imprisoning someone against their will in their bodies is violative of their dignity and liberty, especially when no state can lay claim of ownership or control over one’s own body. There is always a right to live with dignity, and to choose not to undergo pain and suffering, as held by the Supreme Court most recently in 2018, in the landmark judgement

ISSN 2581 6551
VOLUME 7 – 2022

of *Common Cause v. Union of India & Anr*.[xxiii] Thus, it is evident through the interpretation of the Supreme Court of the right to life, that the criminalization of suicide is against the Constitutional principles.

Public Policy

Public policy and the practical implications every law passed through parliament has on its people is just as important as a rights-based case for why certain sections of the Indian Penal Code need to be struck down. Thus, the fact that the IPC's criminalization of an attempt at suicide runs counter to the Fundamental Rights guaranteed by the Constitution forms the moral case for why it must be removed from the statute. Nevertheless, even from a public policy perspective, the presence of 309 and labelling people who attempt suicide as "criminals" also has practical concerns at every step of the process for its victims.

Unwillingness to Seek Help Before Attempting Suicide

There is already social stigma that follows from religious and societal beliefs around suicidal individuals as weak and sinful. Added to this, are the legal systems that still categorize you as a criminal with mandatory follow-up police visits, and the fear of prosecution they help create, resulting in individuals not seeking mental health help they critically need. It also means families conceal the true nature of the attempt under the guise of accidental poisoning or other unintentional mishaps to avert legal cases being filed,[xxiv] resulting in gross under-reporting of attempted suicide that makes it impossible to know the actual magnitude of the crisis.

In countries across Europe and North America, decriminalization of attempted suicide in many instances led to decreased rates since more suicidal individuals received the help that they need,[xxv] i.e., while criminalization will not deter individuals who are willing to die not to attempt suicide, complete decriminalization at least will encourage them to seek help by reducing the stigma and criminal label surrounding it.

While the partial decriminalisation of suicide through the Mental Healthcare Act has aided in this aspect, it is important to note that the Act only states that the person may be exempt from 'punishment' and not 'prosecution'. I.e., there is still very much the possibility that the police can remand someone who has attempted suicide and produce them before a magistrate. The magistrate, then under Section 111 still has the power to admit someone for treatment, if proved

ISSN 2581 6551
VOLUME 7 – 2022

that a person has severe mental illnesses. Furthermore, the Mental Healthcare Act only creates a rebuttal presumption favouring the accused as having "severe stress".[xxvi] This implies that courts still retain the power to adjudicate cases to determine if the person has "severe stress". The prospect of testifying before magistrates, at the end of which being subjected to institutionalization against their will, continues to create a similar regime of fear and shame that deters people more from reporting death by suicide or seeking help before attempts rather than deterring the actual attempts to suicide.

De-prioritisation of Critical Medical Treatment Post Failed Attempts

Attempted suicides are at least 20 times more common than completed suicides due to failed attempts.[xxvii] And since Section 309 makes attempted suicide a medico-legal case despite its decriminalization, the cases admitted on attempted suicide or deemed so after examination by doctors have a medico-legal stamp on the record. The police are, in turn, informed of the same, who usually visit the hospital to collect information about the circumstances surrounding the suicide with the person/family.[xxviii]

This leads to several problems. Since it is termed a medico-legal case, emergency treatment is not immediately provided by local hospitals or doctors who refer it to tertiary centres. At other times, hospitals fear legal hassles of attempted suicide and refuse to take up such cases.[xxix] The most critical time to save the patient is lost in such cases.[xxx] Moreover, in most cases, those who attempted suicide and their families are already in massive mental and psychological pain and subjecting them to police interrogation would increase shame, stigma, guilt, and distress.[xxxi] Therefore, the focus shifts from mental health treatment to criminal interrogation, inflicting further psychological trauma in the process.

Court Processes and Penal Punishments Post-Treatment

If one is unfortunate to survive both the suicide attempt and the subsequent medical treatment, the Penal Code as it right now stands would imprison them. Sachar J (rightly) held that continuing 309 would be an "anachronism unworthy of human society like ours. Medical clinics for such social misfits certainly but police and prisons never. The very idea is revolting."[xxxii] While "social misfits" might not aid in a humane, civilized outlook that he demands of society, this judgment clearly points out the impracticality of imprisonment as a form of punishment. *Maruti Shripati Dubal v. State of Maharashtra* also reached a similar

conclusion that those who attempt suicide should not be imprisoned. It was held that there would be no deterrence for "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. Thus in no case, the punishment serves the purpose and in some cases, it is bound to prove self-defeating and counter-productive."[xxxiii]

However, as late as 2009, in cases like *Davinder Singh*, attempted suicides were being prosecuted as criminal offences.[xxxiv] Especially given that the rate of conviction in S.309 cases is three times that of other crimes because of the "clinching evidence" available in these cases, the presence of criminal punishments makes the situation worse. Penal sanctions often exacerbate the risk for depression, thus pushing individuals towards repetitive suicidal behaviour.[xxxv]

But with the Mental Healthcare Act and changing judicial attitudes, imprisonment is no longer sentenced with such frequency. The Andhra Pradesh High Court in *Chenna Jagadeeswar v. State of Andhra Pradesh* (1988)[xxxvi] and the Supreme Court in *Gian Kaur v. State of Punjab*, (1996), both instances where S.309 was held to be Constitutionally valid, have ruled that courts had adequate power to ensure that "unwarranted harsh treatment or prejudice is not meted out to those who need care and attention" and that a "sentence of imprisonment is not even compulsory."[xxxvii] In a different case, the Additional Sessions Judge also held that "There is no justification for imposing severe punishment on such convicts."[xxxviii]

Thus, if judgements, even when they uphold the validity of S.309, have a broad consensus on not imposing penal punishments under a section that is meant to penalize suicide criminally, it is evident that striking down that law is necessary if what it is essentially doing is labelling those attempting suicide as criminals, despite courts being reluctant to treat them as such. This is critical because the decriminalization of suicide under the Mental Healthcare Act 2017 which limits courts from applying the penal punishments of S.309 to those under "severe stress" is not adequate to prevent such inhumane treatment for three reasons.

Firstly, the Mental Healthcare Act only applies in cases where persons have "severe stress", a presumption, if rebutted by the prosecution, will mean that the protections accorded under the act would no longer apply to the accused. The act does not attempt to define what "severe stress" means, leaving its interpretation up for grabs to individual judges (both in terms of what

ISSN 2581 6551
VOLUME 7 – 2022

is deemed "stress" and what magnitude of said stress is "severe"). However, even otherwise, some people attempt suicide without recorded stress or mental illness per-say. Some attempt suicide because of problems like extreme poverty, terminal illness, loss of senses resulting in what one might deem an unfulfilling existence, physical conditions that prevent a person from taking care of their body, a sense of fulfilment and an urge to leave the world at the right moment, etc. I.e., technically not being instances of stress, these cases will fall under S.309, resulting in imprisonment or other forms of criminal sanction rather than the dignified death they seek.[xxxix] For instance, in *C A Thomas Master and etc. vs. Union of India and Ors* (2000), a retired teacher of 80 years who wanted to end his life since he believed his purpose had been fulfilled was treated under S.309 of the IPC, a section that would continue to attract such cases even with the Mental Healthcare Act.[xl]

Secondly, the act only creates a rebuttable presumption that a person who attempts suicide will be deemed to have had "severe stress" and is exempt from criminal prosecution. The state can deny this in criminal reports, which means that the individuals have to actively seek a label that deems their condition severe enough to avoid prosecution. For those who can't, S.309 will still apply, while those who can now have a psychiatric label in their records.[xli]

Thirdly, as evident from the recent PIL filed by Sangeeta Dogra in a case seeking prevention of suicide attempts in zoos where the Supreme Court sent a notice to the Union government seeking clarifications regarding the contradictory positions of the Mental Healthcare Act and IPC (questioning how a provision of the IPC could be rendered ineffective by Central legislation), there remains ambiguity regarding which Section to apply.[xlii] And even otherwise, instead of accessing rehabilitation centres, because FIRs continue to be made under S.309, individuals continue to be treated as criminals and are forced to relive their trauma in court proceedings adding to their mental strain. In *Jhansi Rani Bhuyan v. State of Orissa*,[xliii] an FIR filed under 309 was quashed on grounds that S.115 of the MENTAL HEALTHCARE ACT gives a presumption of severe stress, which was evident in this case and hence the accused could not be penalized under the IPC. Similarly, an FIR under 309 was quashed in *Maria Raja Alphonse v. State Represented by Inspector Of*.[xliv] Most recently in 2022, the Kerala High Court had to quash a criminal case registered against an officer for attempting suicide, with the court re-iterating the need to strike down Section 309 from the IPC. The petitioner had to prove severe stress by talking about how she was pressurised by the Gram Panchayats to issue

ISSN 2581 6551
VOLUME 7 – 2022

certificates against the office procedure.[xlv] However, the fact that FIRs can continue to be filed, forcing court proceedings on individuals who are already profoundly distressed, the results of which ultimately depend on whether one can prove "severe stress," shows that the presence of Section 309 continues to create legal hassles for victims, contributing to increased psychological trauma and repeat suicides as a result.

Repeat suicides owing to increased pressures placed by the system

"It was her third attempt, she attempted suicide two times before. At last, she could kill herself by consuming pesticide."[xlvi]

Of the individuals who attempt suicide and survive the attempt, one third repeat their attempts within a year, with nearly 10% ultimately dying by suicide.[xlvii] By criminalizing suicide and forcing individuals who attempt the same to go through stigmatizing procedures of the law, the state ultimately becomes instrumental in pushing individuals to repeat attempts rather than deterring or supporting them. The entire legal system ultimately places individuals right where they began, if not in a worse position.

PROPOSED REFORMS

The Mental Health Act, 2017 has undoubtedly brought much-needed changes to the laws surrounding suicide. In *Common Cause v. Union of India*, a constitutional bench referred to 115 of the Mental Healthcare Act, remarking that it "marks a pronounced change in our law... by treating a person who attempts suicide being in need of care, treatment and rehabilitation rather than penal sanctions."[xlviii] But, as a first step, it is necessary to remove 309 from the IPC and completely decriminalize suicide to ensure that people are given the help they need rather than criminalized.

Decriminalising suicide has repeatedly been shown to reduce suicide rates in the long run, and where it increased in the short term, research has shown that the increase was linked more to increased reporting of suicide rates than an increase in absolute terms. In 1992, a study by Lester compared rates of suicidal behaviour in Canada over a decade and found no increase in the rate post-decriminalization. Such results were also similar in New Zealand. A different study also found no increase in suicide rates in the United Kingdom.[xlix] The increase in suicide rates noticed after decriminalisation in Finland, Hong Kong, and Sweden when comparing the

ISSN 2581 6551
VOLUME 7 – 2022

five years before and after the law was passed were attributable more to the increased reporting rather than a decreased deterrence effect.[l] In 2019, Singapore decriminalised suicide and within a year, the deaths reported due to suicide decreased by at least half with the calls to the police reporting and seeking help for cases of attempted suicide or having suicidal thoughts increasing manifold.[li]

Secondly, despite the Mental Healthcare Act placing duties on states to ensure the availability of mental health support, the state of the system as it stands needs more funding. WHO has recorded that there are merely 1.5 beds per 10,000 in psychiatric hospitals and 0.8 psychiatric beds per 100,000 in general hospitals.[lii] There are just three psychiatrists, and lesser psychologists for every million people, a number that's eighteen times fewer than the average commonwealth country.[liii] Thus, there is an urgent need to increase capacity and infrastructure, especially given that the ICMR has found that at least 70 million people across the country need care for various mental disorders.[liv]

Lastly, it requires a collective societal change in attitude not to criminalize and maintain social sanctions against those attempting suicide. As the Supreme Court has previously held, "What is needed to take care of suicide-prone persons...are wise counselling (of a psychiatrist), and not stony dealing by a jailor following harsh treatment 17 meted out by a heartless prosecutor."[lv] This applies as much to broader society as it does to the criminal justice system. In a country where at least 150 million Indians are in need of urgent intervention, with grim predictions that one-third of the projected global burden of mental illness will fall on India,[lvi] it is important to take stock of why our policies are ineffectual.[lvii]

ENDNOTES

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ISSN 2581 6551
VOLUME 7 – 2022

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ISSN 2581 6551
VOLUME 7 – 2022