

SUICIDE AND LAW IN INDIA

Written by Ankita Jaiswal

1st Year BBA LLB Student, Symbiosis Law School, Pune, India

INTRODUCTION TO THE ISSUE

Suicide refers to the act of killing oneself intentionally, this word is derived from the Latin phrase “Sui cadere” which means to end oneself. The essence of suicide is that, first, it should be intentional and, second, the person committing suicide must commit it himself, i.e. both victim and victimizer are the same person.ⁱ There are various ways to effect it such as hanging, drowning, suffocating, shooting oneself, using poisonous stuff or other harmful meds in a huge amount, among various others. Suicide was criminalized in India till 2018 under section 309 of the Indian Penal Code(IPC) which states “Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment of a period which may extend to one year.”ⁱⁱ

This article talks about how criminalizing suicide was one of the biggest mistakes, why it needed to be decriminalized, what can be done to ensure a healthy society without violating someone's rights, what steps have been taken by the Indian lawmakers to tackle such issue and what can be seen in the near future.

DESCRIPTION OF DEVELOPMENT

Response to this issue by the legislation:

Attempt to commit suicide was an offence till 2018 under section 309 of the IPC which was defined by the Britishers in 1860. India kept following this unhealthy law while Britain decriminalized it in 1961, India took quite a lot of time to take this action but it's better to be late than to never do it. The first time the recommendation to repeal section 309 was in the 42nd report of The Law Commission following which the IPC(Amendment) Bill,1978 was

passed but the bill became void due to the dissolution of Lok Sabha. The latest attempt was successful through the passing of the Mental Healthcare Bill which was passed in both houses on 8th August 2016 and got the approval of the president on 7th April 2017. This came into effect on 7th January 2018. 18 states and 4 union territories supported decriminalizing suicide while a minimum of 5 states, Bihar, Madhya Pradesh, Delhi, Punjab, and Sikkim communicated reservations against this step with respect to suicide bombers, terrorist attacks as well and self-immolation.

Past and present of section 309 of IPC:

Article 21 states the “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”ⁱⁱⁱ Section 309 has been considered violative of this article but the Supreme Court has not given a straightforward answer to this issue. This section was declared violative of Article 21 in the case of P. Rathinam v. Union of India^{iv} but was overruled in the case of Gian Kaur v. State of Punjab^v and “Right to Die” unconstitutional as Section 306 of IPC: “f any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”^{vi} Would become constitutional because it will be considered assisting in the enforcement of a fundamental right therefore section 306 cannot be declared constitutional as a result the judgement was overruled. In 2011 the Supreme Court adopted a practical and liberal approach in the case of Aruna Ramchandra Shanbaug v. Union of India & Ors^{vii} was held that section 309 has been held unconstitutional as in the present, it has become obsolete and should be removed from the IPC.

Aftermath of such cases Mental Health Care Bill, of 2013 was introduced in the Rajya Sabha to repeal the Mental Health Act of 1987, but the dissolution of the Rajya Sabha resulted in the failure to transform the bill into an act. Finally, in 2017 Mental Healthcare Act, 2017 was passed. As per section 115 of the Act, section 309 is conditionally repealed.

At the same time Mental Healthcare Act, 2017 aims to provide healthcare facilities to its people and ensure their healthy state of mental health. In section 18(2) it is stated that: “The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs,

class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and caregivers.”^{viii} This shows how the government aims to ensure a healthy mental state while keeping various factors, it must be kept in mind that not only this particular section but chapter 5 of the Act aims for the same. Despite the passing of this act in the case of *Satish Nirankari v. State of Rajasthan*^{ix}, the appellant was accused of committing suicide, this occurred due to the failure to issue any notification in relation to the Mental Healthcare Act, 2017.

Why Section 309 of IPC was a mistake and why it should be decriminalized:

Apart from being violative of Article 21 punishing a person who is attempting to take his own life may suffer from certain physical injuries along with damage to the nervous system should not be further punished by law for unsuccessful attempt at the same.

Suicide was declared an offence under British rule in India but in the present United Kingdom suicide has ceased to be an offence since the passing of the Suicide Act of 1961 therefore India following the same is unreasonable.

There is an existence of a misconception that decriminalization of suicide would encourage more suicides but through the examples of countries such as New Zealand, where there is no change in the rate of suicide 10 years before and after decriminalization it can be proved wrong.

The main aim of such decriminalization should be to help suicidal individuals. Such individuals experience psychiatric problems and do not show criminal intention, therefore suicidal individuals require help in the form of counselling and psychiatrist treatment and not imprisonment and fines which would only take a worse turn.

Future of suicide and law in India?

Rather than considering suicide a cowardly act and glamorizing it, there is a need for people to understand the consequences that lead to it and help individuals facing such issues. Therefore, to create awareness “World Suicide Prevention Day” is observed every year on 10th September, The theme this year is “Creating Hope through Action” set by the World Health Organisation (WHO). The mission of reduced suicide can be achieved with the active involvement and cooperation of all stakeholders.

It is high time that taskforces and plans at various levels are created for the elimination of suicide to establish a healthy society for the development of the nation.

CONCLUSION

India sooner or later realized that no connection existed between suicide control and the criminalization of suicide. It can be understood that failed suicide attempts can be a “Cry for Help”, rather than helping such individuals with their troubles it would be cruel to punish them. The step of the Indian lawmakers towards this respective area is thriving towards a positive path and such steps would help the development of the society at large. The decriminalization of section 309 of IPC should not be perceived as a “Right to Die” but as a form of encouragement for the government and society to act as caretakers of those who are in pain around us and to fight for their pain, to avoid suicide should be considered one of our social duties.

ENDNOTES

-
- ⁱ M. Mohan v. State, (2011) 3 SCC 626.
 - ⁱⁱ Indian Penal Code (IPC), 1860
 - ⁱⁱⁱ INDIA CONST. art 21
 - ^{iv} (1994) 3 SCC 394
 - ^v (1996) 2 SCC 649
 - ^{vi} Indian Penal Code(IPC), 1860
 - ^{vii} (2011) 4 SCC 454
 - ^{viii} Mental Healthcare Act, 2017, section 18(2)
 - ^{ix} (2017) 8 SCC 497