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Need to Decriminalise Attempt to Commit Suicide in India

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Suicide is defined as the act of taking one's own life intentionally and voluntarily. Suicide is a leading cause of death worldwide. While most countries have decriminalised suicide, there are still many countries where any form of suicide is illegal. The criminalisation of suicide law in India which was framed by Britishers is no longer a crime in their own country. Section 309¹ of the Indian Penal Code mentions the Attempt to commit suicide. The Supreme Court of India in the case of P Rathinam v Union of India² held that the right to life includes within its ambit the right to die. The section was held to be constitutionally invalid, as it violated the fundamental right to life guaranteed under article 21³ of the Indian Constitution. The court opined that since the right to speech includes the right to not speak, then the right to life also includes the right to not live. In a time where the right to life and a life with dignity is crucial rights of a citizen, state has no authority to take away the right to die.

Keywords: *fundamental rights, interpretations, welfare state, other authorities, state control.*

INTRODUCTION

Suicide is defined as the act of taking one's own life intentionally and voluntarily. It is the act committed by a person who has given up on the will to survive. Attempt suicide is when a

¹ Indian Penal Code 1860, s 309

² *P Rathinam v Union of India* (1994) SCC (3) 394

³ Constitution of India 1950, art 21

person does not die as a result of such an act. It is an incomplete or unsuccessful attempt of taking one's own life. People commit suicide due to a plethora of reasons, the main being the urge to end one's sufferings. Psychological and sociological factors play a vital role in developing suicidal tendencies among people. It is generally seen that people who commit suicide suffer from some kind of psychological or physical ailment. For example, depression is one of the leading causes of suicide and incurable diseases such as cancer are also a factor. Suicidal tendencies stem from some deep-seated trauma or setbacks faced by a person. Such trauma or setbacks are usually unidentified or uncured and develop into an illness. Apart from psychological reasons, sociological reasons such as fear of failure, societal pressures, and other fears also contribute to developing suicidal tendencies among people. People who commit suicide are not criminals but are helpless people who become fed up with their living conditions to such an extent that they do not find any reason to live.

To get a better understanding of the factors of suicidal tendencies let us look at the recent data from the National Crime Records Bureau. According to the survey by NCRB, 'Family Problems' and 'Illness' were the major causes of suicides which accounted for 33.6% and 18.0% of total suicides respectively in 2020. Causes not known and other causes accounted for 10.4% and 9.8% of total suicides respectively⁴. The data reflects that the majority of people who committed suicide were either ill or burdened by family problems that caused mental and physical imbalances. Now if the attempt of these people did not succeed, they would be jailed under Section 309⁵, instead of given adequate help and support. It creates a humongous burden on not only the victims but also their families as they have to go through rigorous litigation at a time when they need mental health support and guidance the most.

HISTORICAL ASPECTS

The Indian Penal Code was adopted in 1860 when India was a British colony. The law of attempt to suicide was framed at a time when suicide was considered as an offence to the state and to

⁴ 'Accidental Deaths & Suicides in India 2021' (National Crime Records Bureau)

<https://ncrb.gov.in/sites/default/files/ADSI-2021/ADSI_2021_FULL_REPORT.pdf> accessed 29 January 2023

⁵ Indian Penal Code 1860, s 309

one's religion. The state had the authority over men's lives and had exclusive rights to end any citizen's life. Moreover, it was enacted to punish people who protested against the state by going on hunger strikes and by other suicidal measures. It was used as a tool to curb protests by people who pressurised the state to fulfill people's demands. As for religion, it was believed that any person who took his/her own life did not attain salvation or moksha. In Hinduism, it was believed that people who took their own lives were going against the dharma or the rule of god, and hence their last rites could not be performed. The Holy Quran says that only Allah has the right to take away human life, as it is the sacred property of Allah only. Hence, Suicide was considered a sin and was not allowed by any religion.⁶

In the present times, however, the right to life is guaranteed to every citizen and the state does not have exclusive rights over anyone's life. The makers of our Constitution envisioned a nation where every citizen has the freedom to dictate his/her personal affairs. This is why the right to life was guaranteed as a fundamental right to every citizen. Freedom to dictate one's affairs without the intervention of the state was necessary to ensure the smooth functioning of a democratic state. Hence individual freedoms are of utmost significance in a country like India.

LEGAL POSITION IN OTHER COUNTRIES

Suicide is a leading cause of death worldwide. While most countries have decriminalised suicide, there are still many countries where any form of suicide is illegal. The criminalisation of suicide law in India which was framed by Britishers is no longer a crime in their own country. In 1961, attempt to suicide was decriminalised, though abetment to suicide is still considered a crime⁷. The Russian Federation also does not consider suicide and attempt to suicide as a crime. The major consensus of western countries on suicide is that it is a major public health problem requiring assistance and not punishment. The suicide rate in these countries is significantly lower as compared to the countries which have not decriminalised suicide or attempted to suicide yet. The sociocultural factors and mental health awareness in those countries are

⁶ Sheikh Shoib et al., 'Suicide in Muslim world and way forward' (2022) 5(4) Health Science Reports <<https://doi.org/10.1002/hsr2.665>> accessed 28 January 2023

⁷ Suicide Act 1961

comparatively higher than in countries like North Korea, Pakistan, and India. The availability of mental health treatment, rehabilitation, and support from the state results in a better-equipped and healthy citizenry which is vital to the development of a nation.

The two major regions where suicide is still considered as a crime are the South Asian region and the North African region.⁸ North Korea has draconian laws to deter the commitment of suicide since the state punishes the relatives and close friends of the person who commits suicide. In Pakistan, the people who attempt to commit suicide, are punished severely to the extent that they have to pay large amounts of fines to the state apart from serving punishment in jails. Sometimes people have to pay bribery to the police in large amounts to escape the litigation process and the punishment. As a result the plight of the victim only worsens, without any recourse to rehabilitation or medical treatment. Many cases of suicide or attempt to suicide even go unreported and undetected as it is still a social taboo and the criminalisation by the state deters people to report such cases or even seeking help.

LEGAL POSITION IN INDIA

Section 309⁹ reads as ‘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.]’. The criminalisation of attempted to suicide has been enacted since 1860 and the section has not been repealed despite various recommendations by the Indian judiciary and the law commission reports. Suicide and mental health in India are still grey areas, which people do not recognize as public health problems. Various landmark cases of suicide attempts and societal stigma faced by the victims have time and again brought to the fore the issue of decriminalization of suicide.

The Supreme Court of India in the case of *P Rathinam v Union of India*¹⁰ held that the right to life includes within its ambit the right to die. The section was held to be constitutionally invalid, as it violated the fundamental right to life guaranteed under section 21 of the Indian

⁸ Keith Hawton & Kees van Heeringen, *The International Handbook of Suicide and Attempted Suicide* (Wiley 2000)

⁹ Indian Penal Code 1860, s 309

¹⁰ *P Rathinam* (n 3)

Constitution. The court opined that since the right to speech includes the right to not speak, then the right to life also includes the right to not live. However, this judgement was overruled by a five-judge bench in *Gian Kaur v State of Punjab*¹¹, where the court held that the right to die is not a natural right guaranteed with the right to life. The ratio decidendi of this case was that no person has the right to accelerate the process of death. Hence, the constitutional validity of section 309 was upheld.

The government recently attempted to decriminalise suicide by enacting the Mental Healthcare Act of 2017 which states that any person who attempts to commit suicide shall not be punished. The provision under the section states that “any person who attempts to commit suicide shall be thought to suffering through heavy stress and thus not guilty unless proven otherwise”. Although the provision prohibits punishment there is no bar to prosecution or litigation against such a person. There still remains the fear of charges being levied against such persons and the rigor of the law-enforcing authorities. Another loophole in the legislation is what is the limit or extent of severe stress while deciding a case of a suicide attempt. There is ambiguity over what situations come under the ambit of severe stress. The gap in legislation results in arbitrary and often unfair actions by the state. Section 309 IPC and the Mental Healthcare Act, 2017 are in direct conflict, since the former imposes punishment while the latter prohibits punishment. The Indian Parliament has still not repealed Section 309, which makes it easy for the authorities to impose punishment upon people who attempt suicide. There is no provision for providing support, rehabilitation, or mental health treatment to persons who attempt suicide, which results in further deterioration of the mental health of such victims. Hence, the legal position of an attempt to suicide in India still remains an offence against the state.

NEED OF THE HOUR

Law is a diverse and evolving subject. Laws and rules are made with the intent to serve the changing needs of society. Any law that does not serve society or serve for its betterment should be repealed. The proponents of the view that suicide should be decriminalised hold that the section is violative of the Right to Life guaranteed under the Constitution of India. The right to

¹¹ *Gian Kaur v State of Punjab* (1996) SCC (2) 648

end one's life is an intrinsic right attached with the right to life. It is an individual's freedom to dictate his/her life according to his wishes, circumstances, and other factors. If the state can't intervene in an individual's life aspects or right to life, then what gives the state the right to intervene in an individual's right to end life? It is a personal choice of a victim who is sociologically, psychologically, or physically troubled. Considering the rate of mental health care support and workforce in our country and the awareness regarding the same, section 309 worsens the plight of victims. It is the most inhumane way of dealing with a social problem.

Though India has a long way to go in reducing the stigma around mental health and suicide, the first step in the right direction would be the abrogation of section 309. Suicide should not be seen as an offence to the state but as a loss of a human life affected by the lack of support from the state. The state has to provide adequate measures for people, through which they can seek help. It will not only help the citizens but also the state through early detection of suicidal cases and attempts. The burden of proving attempted suicide cases will also be reduced, resulting in a lower workload on the judiciary and investigation authorities. Another step should be to provide support systems where patients can easily seek help without the fear of being caught by the authorities. Skilled psychologists and psychiatrists should be available at a reasonable price on platforms that are easily accessible to every citizen. The existing support system should be made more flexible and the workforce should be increased. Thus, changes should be made not only for the betterment of people but also for the betterment of society as a whole.

CONCLUSION

In a time where the right to life and a life with dignity is crucial rights of a citizen, the state has no authority to take away the right to die. Mental health should not be treated as a taboo but as an illness requiring medical assistance. The state needs to do away with laws that create more problems for society rather than reducing its burdens. Moreover, the section is not only violative of individual freedoms but also fundamental rights of life and dignity. Reducing the suicide rate in our country will only begin by acknowledging the loopholes in our legislation and societal conditions. How can society treat suicide as a public health problem when the state itself recognizes it as a crime? Thus, section 309 is anachronistic that needs to be repealed.