Suicide and the Law : Indian Perspective

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INTRODUCTION

Suicide is defined as an act in which a person intentionally causes his/her own death. In India, the number of people who ended their lives by committing suicide was 131, 666^[1] in 2014; 133, 623^[2] in 2015; and 230, 314^[3] in 2016. Attempt to die by suicide is defined as a nonfatal and self-injurious behavior with an intent to die. For every death by suicide, on an average, 25 people attempt to die by suicide.^[4-6]

Of all those who engage in non-fatal suicidal behaviors, one-third repeat the behavior within a year and nearly 10% eventually commit suicide.^[7,8] While a person who has died by suicide is beyond the reach of the law, there can still be legal consequences in the cases of treatment of the corpse or the fate of the person's property or family members.

Attempted suicide needs intervention by mental health care professionals, but it continued to be treated as a criminal offence under the section 309 of Indian Penal Code until recently.

Obviously there should be laws which should deal with associated factors related with attempted suicide.

Laws against suicide and mercy killing have developed from various religious doctrine, for example, the claim that only God has the right to determine when a person will die.

In ancient Athens, a person who had died by suicide (without the approval of the state) was denied the honours of a normal burial and the person would be buried alone, on the outskirts of the city, without a headstone or marker.^[9] A criminal ordinance issued by Louis XIV in 1670 was far more severe in its punishment : the dead person's body was drawn

through the streets, face down, and then hung or thrown on a garbage heap. Additionally, all of the person's property was confiscated.^[10]

In this article, I have tried to review the legal perspective of attempted suicide in our country, highlight the changes in MHCA 2017 in this aspect. But euthanasia and hunger strike till death are out of scope for present paper. For the preparation of this article, review of published scientific literatures and the information from some Indian sources/reports was incorporated.

CURRENT SCENARIO IN SOUTH EAST ASIAN COUNTRIES

Countries that have retained attempted suicide as a criminal offence are mainly from two regions viz. North African region and South Asian region. In the South Asian region, Pakistan, Bangladesh, Malaysia are among the countries that continue to criminalise the suicidal attempt.

Other countries including Bhutan, Srilanka, Indonesia, Maldives, Thailand and China do not treat attempted suicide as a crime.

Until now, an attempt to die by suicide was a criminal offense as per Section 309 of Indian Penal Code (IPC), 1860.^[11] Section 309 of the Indian Penal Code (IPC) clearly states as follows : "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."

After the Mental Health Care Act (MHCA) 2017 was passed in April 7, 2017 India also enters the list of countries where suicide is legal.

ROAD TOWARDS DECRIMINALIZING SUICIDE IN INDIA

The Indian judiciary and polity both have recognized the need to repeal the section and several attempts have been made starting from 1970^[12]. In 42 nd report of the Law Commission of India recommended the deletion of offence of the attempt to commit suicide from the penal code. This recommendation was accepted by Rajyasabha in 1978. Unfortunately before it could be passed by Lok Sabha, the Lok Sabha was dissolved and the bill lapsed^[12]. In 1994 a 2-judge bench of the Supreme Court in *P Rathinam Vs Union of India* [***AIR 1994 SC 1844] struck down section 309 of IPC as unconstitutional as it violates Article 21. But 1996 in *Gian Kaur's case* [***AIR 1996 SC 946], a Constitution bench of the SC headed by justice JS Verma overruled the 1994 verdict stating that the right to life does not include right to die and upheld the validity of Section 309. In 2008 Law Commission favoured scrapping of Section 309 of the IPC in 210 th report on humanisation and decriminalisation of Attempt of Suicide. In 7th March 2011, Supreme Court had recommended to Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic. Eventually, it was included in a few sections of the drafted Mental Health Care Bill 2013 which had been introduced to Rajya Sabha for approval and ultimately incorporated in Section 115 of MHCA 2017.^[13]

LAWS PREVAILING IN INDIA IN RELATION TO SUICIDE

Suicidal attempt is covered in Section 115 of MHCA 2017. Part 1 of the section states that "Notwithstanding anything contained in Section 309 of the IPC, any person who attempts to die by suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code."

The Supreme Court expressed the view that section 309 of IPC deserves to be effaced from the statute book to humanise our penal laws. It is a cruel and irrational provision, as it may result in punishing a person again who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. [*** law commission 210]. In fact, such persons deserve compassionate and sympathetic treatment.⁽¹⁴⁾

The suicide attempt is decriminalized by MHCA 2017, superseding Section 309 of IPC. However, that does not absolve anyone from abetting an attempt to die by suicide.^[14] Abetting an offence is clearly punishable. But for this, there must be an offence in terms of the law i.e., Section 40 IPC. Unless there is a defined offence, there cannot be abetment thereof.

SECTION 306, IPC WHICH READS AS

"If 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 10 years, and shall also be liable to fine."

If a person by his act and by his continuous course of conduct create a situation which leads to the deceased perceiving no other option except to commit suicide, the case may fall within the four corner of 306 IPC.

Section 108 - IPC says "The abetment of an offence being an offence, the abetment of such an abetment is also an offence." So abetment of an abetment is a well- recognised legal proposition.

Section 109 - IPC states that "Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence."

Section 116 IPC says - Abetment of offence punishable with imprisonment if offence be not committed

Now take one situation where A instigates B to instigate C to instigate Z to commit suicide.

Now if Z commits suicide, there will be problem at all in a legal sense. In such a case, C will be liable to be punished under Section - 306 IPC. Clearly C has committed an offence but since C himself was instigated by B to commit that offence, B will be liable as an abettor (be it noted that here we are not talking about suicide which is not an offence but abetment of suicide which is an offence in itself). In turn, B himself was instigated by A to commit the above abetment and therefore, by virtue of Section-108, A will also be liable for another abetment.

But if Z does not commit suicide, the instigation by C will not materialise and as such C would not be liable under Section 306/116. However, B had primarily instigated the C to abet commission of suicide. Now abetment to commit suicide is punishable and therefore is an offence. (As such, B abetted an offence and became the abettor. From here Section 108 IPC will come into the picture as an offence has been abetted.). Therefore even if abetted offence i.e., punishable under Section 306 does not stand committed, B will be liable under Section 116. A had abetted B to further abet and therefore A will be liable for abetment of abetment by Section 108 IPC. So there are two culprits here.

Now if Z attempts to commit suicide in this situation C will be punishable under 109 for abetting an attempt to commit suicide.

C was in turn, instigated by B, the said B will be liable for abetment by virtue of Section 109 for abetting Section 306 irrespective of the fact whether Z actually commit suicide or not.

Similarly, if the B was in turn instigated by A, the said A would be liable for abetment of abetment by virtue of Section 108 IPC irrespective of the fact whether Z actually commits suicide or not.

ADVANTAGES OF DECRIMINALISATION OF SUICIDE

The criminal prosecution and the imposition of custodial and financial penalties on those convicted of suicidal behaviors constitute an affront to human dignity.^[15] In a large majority, the suicidal behavior is typically a symptom of psychiatric illness or is an act of psychological distress, indicating that the person requires assistance in his personal and psychological life, not punishment by fine and/or imprisonment.^[16] As many as 93% of suicide attempters were found to be psychiatrically ill at the time of commission of the act, though a psychiatric contact was established by only 33-50% of them. Penal sanctions will only serve to exacerbate suicidal persons' risk for depression, anxiety, and repetitive suicidal behavior.^[17]

Sometimes suicidal behaviours occurs due to factors which are out of personal control like loss in business, cyclone, poverty, death in family which should not be considered as offence. On the contrary, the state itself may be indirectly responsible for the plight of the victim who is left with no other alternative, except but to end his life.^[12]

In our hospitals we experienced that when an attempted suicide case admitted it falls under medico-legal case. Police does make a visit to the emergency ward of the hospital. This is because hospital authorities are bound to inform them. A series of harassment and settlement follows and focus shifted from mental health treatment.

There are often unnecessary delays or even refusals from hospitals, fear of punitive action and added trauma and stigma of having to deal with police and courts^[16].

Most importantly, as a majority of attempted suicides are reported to the health care professionals to be accidental, so the necessary care and support is not available to those who have attempted suicide. It will encourage the patients and their families to openly seek mental health care after the attempt by decriminalisation.

Though, those who have attempted suicide have rarely been actually prosecuted, decriminalisation is a more sensitive and humane way of dealing with the problem compared to prosecution. The criminalization of suicidal acts causes the problem of suicide to go underground, making it difficult for suicidal persons to receive necessary assistance.^[19]

We can expect better reporting and correct epidemiological data regarding suicide which will help in better understanding, planning and use of resources for efforts towards suicide prevention.

CONCLUSION

We the mental health care professionals should update our knowledge regarding legal nuances of Section 108, 109, 116, 306 and 309 of IPC in the background of MHCA 2017 and follow the management guidelines of persons who attempted suicide.

Moreover, the governments, nongovernmental organizations, health care establishments, professionals, and other related and concerned people need to educate and create awareness among the public at large to fulfill the aims, objectives, and the purpose of enactment of the MHCA 2017 with reference to suicide and attempt to die by suicide^[14].

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