

IS ATTEMPTED SUICIDE AN OFFENCE ?

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ABSTRACT

Life is a stage with one entrance but many exits. Among those, suicide is one exit having a long ancestry. In 1968, the World Health Organisation defined suicidal act as "the injury with varying degree of lethal intent" and that suicide may be defined as "a suicidal act with fatal outcome". Suicidal acts with non fatal outcome are labeled by World Health Organisation as "attempted suicide." Suicide has been an act of condemnation as well as commendation through the ages. The act of suicide is forbidden in Khoran and the Holy Bible. The common belief among Hindus is that a person who commits suicide will not attain "Moksha" and his Soul will wander around, haunting and tormenting people. In recent times, attempted suicide, though a failed act has gained more importance (than the suicide, a successful act) since it is considered as an offence and is punishable under Section 309 of Indian Penal Code. A lot of conflicting opinions have generated on the desirability of retaining or deleting Section 309 of Indian Penal Code because of some contrasting judgments given by our Courts. Article 21 of the Constitution of India is a provision guaranteeing protection of life and personal liberty and by no stretch of the imagination can extinction of life be read to be included in protection of life. By declaring an attempt to commit suicide a crime, the Indian Penal Code upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State can not turn a blind eye to a person in attempting to kill himself. Another set of people are of the opinion that the Section 309 of Indian Penal Code is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. It is cruel to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide. And also, what is the legal status of individuals who, by virtue of their religion refuse food and fast unto death? In India there are innumerable cases wherein religious ascetics fast to death without State intervening and are not punished though such acts amount to attempt to suicide.

Key words: Suicide, attempted suicide, Section 306 & 309 of Indian Penal Code, legal anomaly

INTRODUCTION

Life is a stage with one entrance but many exits. Among those, suicide is one exit having a long ancestry. The word "Suicide" literally means, "to kill oneself" (Sui-of oneself and Caedre - to kill) [1]. In 1968, the World Health Organisation defined suicidal act as "the injury with varying degrees of lethal intent" and suicide is defined as "a suicidal act with fatal outcome [2]. But as per definition it is difficult to determine whether a particular death was a suicide since it requires the injuries leading to death to be self inflicted. This may be obvious in most cases, but in many others it is impossible to ascertain. Legally suicide is defined as "the intentional act of self destruction committed by someone knowing what he is doing and knowing

the probable consequences of his action." Suicidal acts with non fatal outcome are labeled by World Health Organisation as "attempted suicide [2]. The "attempt to suicide" terminology is now recommended to be used only to denote events in which there has been a failure of conscious efforts to end life. These are the people who commit to end their life through suicide but somehow survive.

Suicide has been an act of condemnation as well as commendation through the ages. The philosopher's approach considering sacredness of life, its quality as well as quantity hinges on the central query - Can a man decide to blow out the flame? Can he choose death over life? People have been killing themselves from the beginning of recorded history. Ramayana and Mahabharata

have recorded instances of suicide. When Lord Shri Rama relinquished his life, there was an epidemic of suicide in Ayodhya. Bhagvad Gita is against self torture and self killing. During Vedic and Upanishadic times, apart from "Sati", death from drowning at the confluence of rivers to achieve "Punya" (salvation in the next life) , the self destruction for incurable diseases, ascetics undertaking a great journey towards the terminal years of life (Mahaprasthan) , were allowed, but suicide in general was penalised with the above exceptions [2] A verse from the Isavaya Upanishad declares: "He who takes himself (his life) reaches after death, Sunless regions, covered with darkness". The Holy Bible contains no law forbidding man to kill himself, but the taboo that is tagged on to suicide, coupled with denial of a decent burial was a deterrent to self destruction by suicide [3]. Islam asks man and woman to wait for his/her destiny rather than snatching it from the hands of Allah. If he does not, he will be depicted as an unfaithful wretch [2]. The common belief among Hindus is that a person who commits suicide will not attain "Moksha" and his soul will wander around, haunting and tormenting people.

Attempted suicide, though a failed act has gained more importance (than the suicide which is a successful act) since it is considered as an offence and is punishable under Section 309 of Indian Penal Code. According to this Section, "whoever attempts to commit suicide or any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year or fine or both [4]. It is because, our legislature makes an offence dependent on proof of intention. Legally, an act is INTENTIONAL if it exists in idea before it exists in fact, the idea realising in itself is the fact because of the desire it is accompanied with.

A lot of conflicting opinions have generated on the desirability of retaining or abolishing section 309 of Indian Penal Code because of some contrasting judgements given by our courts. In 1981, the Delhi High Court condemned the penal provision (Section 309 of Indian Penal Code) as "unworthy of human society" and its Bombay Counterpart, in 1986, held it to be ultravires-on the ground that it violates Articles 14 and 21 of Indian Constitution [3]. The Andhra High Court, on the contrary held that Section 309 of Indian Penal Code

is valid, as it "does not offend" Articles 14 and 21 of the Constitution [5]. In April 1994, a two judge bench of Supreme Court (Justice R M Sahai and Justice B L Hansaria) had declared the Section 309 of Indian Penal Code void. They observed that "the right to live (under Article 21 of the Constitution of India) can be said to bring in its trial the right not to live a forced life". They declared section 309 of Indian Penal Code as irrational and cruel. However, in March 1996, a five judge constitution bench of the Supreme Court setting aside the earlier judgement, held that attempted suicide is an offence under the Indian Penal Code. So, now the Section 309 of Indian Penal Code continues to be valid [4]. These judgements opened the door for a good debate on whether the offence of attempt to commit suicide under Section 309 Indian Penal Code should be retained or abolished.

DISCUSSION

Ordinary law makes no provision for the situation which is considered instinctively natural for human beings. If some individuals create some situations, which usually human beings do not create, the Society has a tendency to look down upon them as being uncommon or unnatural and this attitude is reflected in laws. Law presupposes a society of normal individuals with certain general instincts. Self preservation is the most general instinct of human beings. In fact, the urge to attempt to commit suicide runs contrary to the instinctive urge of the normal individuals who constitute a majority in the society. Those who attempt to commit suicide is a minority. It is the instincts of majority segment of society that give rise to ethics and morality which lead to uniform norms. So, attempt to commit suicide is against the generally accepted norm. Such general norms usually do not vary from society to society in as much as human life is the same in every society. And every civilized society in the world may develop legal norms against breaches of uniform social norms. Viewed in this perspective, individual autonomy can never be granted to the extent of permitting the individual to take away his life. This is because it is unnatural and so against the moral stand points of normal individuals who constitute the society [6]. And also it is not correct to say that the individual has complete authority over his body and life. His spouse and children do have claims on his body

and life. Even if the person is not interested to keep himself alive, the society, because of its embedded love for sanctity of life, may have an interest in the body and life of that individual.

The Supreme Court in 1994 in Rathinam case, not only declared Section 309 of Indian Penal Code as being violative of Article 21 and thus unconstitutional but also conceded constitutional right to die. In doing so, the Supreme Court seemed to have relied heavily on the Bombay High Court decision in Dubal case. The Bombay High Court argument was plain: the right to one's life also includes the right to take it away. But on closer scrutiny, several sub questions of substantial law surface. The right to buy property implies the right to sell also. In the same vein, does the right to one's life also imply the right to dispose off one's life? Also, do parents "create" the life of their children? No civilized country would subscribe to the theory that parents have a right to dispose off the life of their children because they have created them.[3]

The right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens survival of the nation. Article 21 of the Constitution is a provision guaranteeing protection of life and personal liberty and by no stretch of the imagination can extinction of life be read to be included in protection of life. The right to life is a natural right embodied in this Article but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life.

Thus, by declaring attempt to commit suicide a crime, the Indian Penal Code uphold the dignity of human life because human life is as precious to the State as it is to its holder and the State can not turn a blind eye to a person's attempt to kill himself.

Another set of people are of the opinion that the Section 309 of Indian Penal Code is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. It is cruel to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide. According to this school of thought, suicide attempt is very often a cry for help. The Society owes responsibility towards those

who scream out against life because of personal reasons. They need sympathy and psychiatric help rather than criminal prosecution.

The Supreme Court judgement of 1996 occasioned unhappiness amongst mental health professionals across the country. Would any court decree that vomiting is a criminal offence? Vomiting is a symptom of an underlying physical illness. In like manner, an attempted suicide or a completed suicide is almost invariably a symptom of underlying psychiatric disorders. Should it then be viewed as an illegal act? Depression is the commonest diagnosis associated with suicidal attempt like other common diagnoses such as alcoholism, drug abuse, Schizophrenia, etc.[7] All these disorders require medical and/or psychological therapy. Mc Naughten's rule can be invoked in the interpretation of the criminality of an attempted suicide. This rule represented by Section 84 of Indian Penal Code, specify that, "Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to Law." [8] Therefore attempted suicide is not an offence if the person at the time of committing it, by reason of mental illness, did not know what he was doing or what he was doing was either wrong or contrary to Law. And also a mentally ill person or a person experiencing intense psychological distress is not likely to consider legal issues when he contemplates suicide; and, if he does think of the law on the subject, he is likely to take precautions to ensure that his act is successful. Eitherway, the law on suicide fails to serve as deterrent.

The Supreme Court judgement of 1994 stated that the right to live also implies the right not to live a forced life.⁴ In many cases the cause behind desperate shortcut to death is poverty, feeling of burden on the family or of the family. Such people may commit/attempt to commit suicide in order to relieve themselves of the unbearable burden of life which may be greater torture than the pain of death. Supporters of this theory ask "Does the State today have a right to force a person to stay alive, when the state itself can not provide him means of a decent livelihood?

Persons who attempt suicide therefore require assistance in their physical and

psychological life and not punishment by fine and/or imprisonment. Penal deterrents are better suited to criminal act, not acts of distress. Hence the Section 309 of Indian Penal Code deserves to be effaced from the statute book to "humanise our penal laws". In this connection, in 1971, the Law Commission recommended the abolition of Section 309 of Indian Penal Code. The then Government of India accepted the recommendation but could not pass the bill in the Lok Sabha in 1979 as the elected body was dissolved and the bill elapsed.[2]

Some are of the view that if attempt to suicide is not an offence then the section 306 of Indian Penal Code becomes unconstitutional. Section 306 of Indian Penal Code defines abetment of suicide and punishment for the same. But offences defined under both these Sections are distinct offences and Section 306 of Indian Penal Code can survive independent of Section 309 of Indian Penal Code.

What is the legal status of individuals who by virtue of their religion refuse food and fast to death? In India there are innumerable cases wherein religious ascetics fast to death without the State intervening and are not punished though such acts amount to attempt to suicide. For example, in February 1988, a 82 years old Jain ascetic starved himself to death in Sonapat in Haryana. In April 1993, a female Jain monk starved herself to death in Kutch District. In April 1993, Bangalore Police registered a case of attempted suicide against a Bollywood actress. Cases were similarly registered against some of the 22 youths who attempted self-immolation during the anti Mandal Stir in 1991.5 Seeing the different State responses to these cases, a simple question leaps up the mind. Why an actress is charged with attempted suicide but not Jain monks starving themselves to death? Does this double standard mean that the State condones a slow suicide but not a quick one?

CONCLUSION

Therefore it is, however, not to say that the Indian Penal Code is a modern code in every sense of the term. It requires change to meet the aims and aspirations of contemporary society. Ultimately the endeavour should be to evolve a consensual and conceptual model effectively tackling the evils, without sacrificing human rights.

Social problems cannot be solved by applying

technological solutions. As long as medicine depends on science and science promises hope, there is always hope for mankind and people who make decision should make them judiciously.

In democracy, law making is a public exercise. Resultantly, a legislative empowerment in contrast to an executive aggrandizement of power can not occur without public scrutiny. The Constitution, however, does not just require a legislative procedure but the one, which is just fair, reasonable and acceptable to the society at large.

It is said that Suicide is a legal anomaly wherein an attempted act is punishable while an accomplished act is not!

Should we, today, in the ever changing trends of the Society continue with and adhere to this anomaly?

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