



Attempt to suicide: An atrocious law of India

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Abstract

It is duty of state under article 47 of Indian Constitution to maintain public health. Suicide is a public health issue, around 2.2 lakh people take their own lives in India every year. But, the state deals with it by penalising attempt to suicide under section 309 of Indian Penal Code, which is derogatory to the duty of state.

People attempting to suicide does so because of many reasons. One of the reasons is mental health problem. Mental health issues are still a stigma in India, moreover there is lack of mental health facilities and availability of psychiatrist and psychologist. Because of the lack of professional help people in India are more prone to suicide. However, attempted suicide by the reason of mental health issue has now been addressed under section 115 of Mental Health Care Act superseding punishment under section 309 of IPC and providing proper care to such people. But what about other reasons for suicide attempt such as: religion, protest, illness. In such cases, suicide attempter is still punishable which is violative of his rights.

Mental health problems are not the only issues that drive a person to attempt suicide, thus enactment of section 115 of MHC act is not sufficient. Moreover, freedom of personal liberty and right to choice are fundamental rights of people and penalising attempt to suicide is against it so it should be decriminalized as it is of no good anyways.

Keywords: suicide, attempt to suicide, Indian Penal Code, Mental Health Care Act, constitutionality, decriminalisation

Introduction

Suicide is a socio-legal issue. It is also a public health issue. Usually suicidal behaviour indicates depression mental health issues.

Around 2.2 lakh people take their own lives in India every year, a quarter of the total lives lost to suicide worldwide and more than any other nation in south-east Asia. Suicide is the second leading cause of death among people aged 15-29 years, after road injury^[1].

Around 80,000 people die of suicide every year. The global age-standardized suicide rate for 2016 was 10.5 per lakh^[2]. Suicide rates are high amongst people experiencing conflict, disaster, violence, abuse, or loss and a sense of isolation, vulnerable groups who experience discrimination, such as refugees and migrants; indigenous peoples; LGBTQ+ persons; and prisoners. Moreover, highest risk factor for suicide is a previous suicide attempt.

While 79% of the world's suicides occurred in low- and middle-income countries, high-income countries had the highest rate. Nearly three times as many men as women die by suicide in high-income countries, in contrast to low- and middle-income countries, where the rate is more equal^[3].

According to the NCRB, India's suicide rate dropped by two percent between 2015 and 2016 – a decrease to 131,008 deaths in the latter year compared to 133,623 in the former year. However, World Health Organization (WHO) figures suggest 100,000 more suicide deaths than what the NCRB indicated in its estimates during the same time period – with 230,000 deaths recorded in 2016 due to suicide.

With one in seven Indians affected by mental health issues, there are just 898 clinical psychologists and 3,800 psychiatrists available i.e. 0.3 psychiatrists, 0.12 psychologists and 0.07 social workers for every 100,000 Indians to respond to their needs^[4]. Mental health services are typically found only within India's cities. Moreover,

mental healthcare accounts for a mere 0.16 percent of the government budget for health^[5].

For every suicide there are many more people who attempt suicide every year. There are 11 nonfatal suicide attempts for every suicide death. The American Association of Suicidology reports higher numbers, stating that there are 25 suicide attempts for every suicide completion. By these numbers, approximately 92–95% of suicide attempts end in survival.

These attempts and suicides can be prevented with timely, evidence-based and often low-cost interventions. For national responses to be effective, a comprehensive multisectoral suicide prevention strategy is needed rather than penalising attempt to suicide.

Issues with penalising suicide

The penalising of attempt to suicide is altogether is questionable.

Attempt to suicide is an attempt of intentionally causing one's own death.

A person who tries to commit suicide would be doing that because of either mental illness or some other trouble in life inducing him/her to take such steps. Either ways the person is under some sort of problem. And punishing a person for attempt to suicide would be of no good rather it'll be adding additional problems in the said person's life.

The concept of penalising attempt to suicide is against the policy of law in India. Penal laws tend to be reformatory in nature however punishment under this section is likely to have a derogatory effect rather than reformatory.

It is highly possible that the person who attempted suicide may attempt the same in prison.

Moreover, penalising attempt to suicide would not stop such person from attempting suicide rather making them do it in an extreme way. Because of the fear of prosecution if they

failed in the attempt, thereby diminishing chances of saving such life.

Other than these criminalising attempt to suicide have some indirect effect such as it prevents the reporting of Suicide. An attempted suicide has an inhibitory effect and the considerable stigma associated with it. Suicide attempt survivors, family members of people who have died from suicide and suicide-loss therapists set up to investigate suicide stigma. It revealed an array of stereotypes, prejudices, and discrimination, in particular the fact that those who attempted suicide are predominantly viewed as attention-seeking, selfish, incompetent, emotionally weak, and immoral. The fear of marring family’s social image converges with prosecution from the police to inhibit people from reporting suicidal behaviour and seeking help early [6]. Suicide is a decision about one’s own life. Thus, punishing someone on attempt of suicide is technically violation of one’s right of personal liberty and freedom of choice. In cases of attempt to suicide it is more appropriate to need such person help rather than punishing them.

International Perspective

By the end of 20th century, most of the developed countries decriminalised attempt to suicide. Currently, 59 countries have decriminalised attempt to suicide as an offence. Legal status with respect to suicide in different countries is as follows-

Table 1

Countries penalising-	Attempt to suicide	Passive euthanasia
<i>Australia</i>	Yes	No
<i>Canada</i>	No	No
<i>Iran</i>	-	-
<i>Ireland</i>	No	No
<i>New Zealand</i>	No	Yes
<i>Malaysia</i>	Yes	-
<i>Netherlands</i>	No	No
<i>Norway</i>	No	Yes
<i>Romanian</i>	No	Yes
<i>Singapore</i>	No	-
<i>South Africa</i>	No	No
<i>England</i>	No	No
<i>Wales</i>	No	No
<i>Scotland</i>	Yes	No
<i>Germany</i>	No	No
<i>France</i>	No	No
<i>Denmark</i>	No	No
<i>Finland</i>	No	No
<i>Sweden</i>	No	No
<i>Hong Kong</i>	No	Yes
<i>Sri Lanka</i>	No	Uncertain
<i>Bangladesh</i>	Yes	Yes
<i>Pakistan</i>	Yes	Yes
<i>North Korea</i>	Yes	Yes
<i>Japan</i>	No	No
<i>United States</i>	No	No

Initially in every country there existed law which criminalised attempt to suicide however with time few of these countries acknowledged the need to decriminalise and did so.

Recent decriminalisation of attempt to suicide is done in 11 February 2019, with the passing of the Criminal Law Reform Act, which repealed Section 309 of the Singapore Penal Code.

Other than this some countries deals with attempt to suicide distinctly-

- In England and Wales suicide has not being recognised as a criminal offence, though civil liability upon the person attempting suicide or if successful, might arise under civil law.
- In Russia, a person whose mental disorder can be put into a psychiatric hospital.

Law on attempt to suicide in India

In the India the Directive Principle of State Policy under the Article 47 considers it duty of the state to improve public health and securing of justice. However, laws relating to suicide in Indian Penal Code under section 309 which talks about attempt to suicide; which is impediment for the state to fulfil its duty.

Section 309 of Indian Penal Code is as follows

309. 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] [7].

Section 309, I.P.C. is questioned not only on grounds of morality but also on the constitutionality of the provision. Constitutionality of section 309 has been challenged several times which caused the status of section 309 to change from time to time.

In *Maruti Shripati Dubal v. State of Maharashtra* (1986) [8], the Bombay High Court held that section 309, IPC is ultra vires the Constitution being violative of Articles 14 and 21 thereof and must be struck down.

In *P. Rathinam v. Union of India* (1994) [9], a Division Bench of the Supreme Court also held that section 309, IPC violates Article 21, as the right to live of which the said Article speaks of can be said to bring in its trail the right not to live a forced life.

The Supreme Court in *Gian Kaur* (1996) focused on constitutionality of section 309, IPC. The Court did not go into the wisdom of retaining or continuing the said provision in the statute. Treating Sections 309 I.P.C. to be constitutionally valid [10].

In *State v. Sanjay Kumar Bhatia* [11], the Division Bench of the Honourable High Court of Delhi observed “The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours. The provision like Section 309 IPC which has no justification has no right to continue to remain on the statute book.”

The said section has been brought into question several times; subsequently, the Law Commission of India recommended decriminalisation of section 309 via Law Commission 42th Report and 210th Report.

The Law Commission of India in its 42nd Report (1971) recommended repeal of Section 309 being of the view that this penal provision is “harsh and unjustifiable”. The apprehension that the repeal of the law criminalizing attempted suicide would result in increase in suicide is betrayed by the fact that Sri Lanka repealed the law four years ago and the suicide rate is showing a trend in reduction. On the contrary, in Singapore suicide rates have been increasing in recent years despite their having suicide as a punishable offence.

The 18th Law Commission in its 210th Report titled ‘Humanization and Decriminalization of Attempt to Suicide’ submitted on October 17, 2008 gave the following

recommendations: Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of whether it is constitutional or unconstitutional. The repeal of the anachronistic law contained in section 309 of the Indian Penal Code would save many lives and relieve the distressed of his suffering.

Government of India recognised the problem with section 309 and tried to overcome it via section 115 of Mental health care Act. Mental health care act is only legislation in India for mental health.

Mental health care act came into force on 7th April, 2017 the said act is to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto^[12].

Section 115 relates to the people attempting to commit suicide

Section 115 (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code

Section 115 (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide^[13].

The offence of suicide attempt under Section 309 of IPC is superseded by Section 115 of Mental Health Act. However, Section 309 IPC is not repealed by it. Moreover, the overruling of Section 115 of MHC Act over Section 309 leaves no legal trail and address only the mental health care issues. However, in reality there are more causes for attempt to suicide than only mental health. Other causes for attempted suicide maybe-

1. Accident

If a person does an act that is likely to kill him, but such act was not done with intention of dying. Thus, in such cases he wouldn't be entitled to protection under section 115 of Mental Health Care act. Although in such cases, the accused will have the defence of accident under general defence section 80 of Indian Penal Code.

2. Protest or hunger strike

If a person declares hunger strike unto death, he can be made guilty of attempt to suicide and would not have any defence general defence IPC nor under section 115 MHC act. Also, it is direct violation of his fundamental rights such as right to peaceful protest and personal liberty.

3. Religious

'Santhara or Salekhana' an age-old religious practice followed in Jainism. It is essentially a spiritual decision to abandon the body, purify one soul and achieve salvation. Articles 25, 26 and 29 of Indian constitution protects all religious practices, but it is made punishable under section 309 IPC.

4. Euthanasia

Although passive euthanasia is allowed in India however in absence of judicial pronouncements there is now law legalising it.

Thus, introduction of Section 115 of MHC act is not sufficient as it only deals with attempt to suicide due to mental health issue. And attempted suicide due to all other causes remain punishable. In conclusion, the whole provision of attempt to suicide under section 309 should be decriminalised.

Section 309 is not doing any good anyways. In India, while the level of awareness about the existence of section 309 cannot be deemed to be too high, but a significant proportion are aware of its existence, even then not deterred to make a suicidal attempt. A study of 200 attempted suicides in a General Hospital Emergency facility revealed that 46.2% males and 26.6% females were aware of the existing law before making the attempt^[14].

There is definitely uncertainty about the impact of decriminalisation of attempt to suicide. Although, there was no indications of increase in suicides following decriminalization in the countries decriminalising it, neutral effects of decriminalisation's seen in research conducted in 1992, comparing suicide rates in Canada in the 10-year periods before and after decriminalization of suicide, and found no increase in the rate of suicide following decriminalization. Similarly, no change was observed in the New Zealand during the decade before or after decriminalization^[15]. Moreover, it is thought that suicide decreased as decriminalising it reduces the stigma attached with suicides. People will no longer hide their suicidal thoughts and subsequently seek professional help.

Moreover, criminalising attempt to suicide is of no good anyways countries such as Singapore, which still imprison some suicide attempts, do not appear to have any benefits from those practices. For example, in Singapore suicide rates have been increasing despite having suicide as a punishable offence. The criminalization of suicidal acts results in the person hiding, making it difficult for suicidal persons to receive necessary assistance.

Decriminalization is a more prudent way of dealing with the problem as compared to prosecution. Also, it will also help in improving the reporting and generation of better epidemiological data on suicidality^[16]. Improved and accurate statistics can help in better planning and resource allocation for efforts towards suicide prevention.

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