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RIGHT TO LIFE DOES NOT INCLUDE RIGHT TO DIE: A SOCIO-LEGAL PERSPECTIVE OF ATTEMPT TO COMMIT SUICIDE IN INDIA

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Abstract

Life is a precious gift of God. No person has the authority to put end to ones own life or that of the other. The Constitution of India under Article 21 declares right to life and personal liberty as a fundamental right. Through judicial interpretations it was well settled that right to life does not include right to die, as such attempt to commit suicide was criminalised under the Indian Penal Code, 1860. However under the Mental Health Care Act 2017 (MHCA), the survivors of suicide are taken as victims due to social/psychological problems with severe stress and are to be dealt with care and compassion and therefore section 309 of Indian Penal Code was used to criminalise attempted suicide only as an exception. Under the Bharatiya Nyaya Sanhita 2023 (BNS), attempt to commit suicide is punishable offence, only if it is aimed at preventing a public servant from doing their job. From human rights perspective the provisions relating to attempt to commit suicide under the MHCA and the BNS are placing the survivors in safe zone as they are considers as victims.

This paper deals with the attempt to commit suicide and the judicial approach in addressing the constitutional validity of the existing legal framework to address this issue.

Key words: Suicide, IPC, Bharatya Nyaya Sanhita, Mental Health Care Act.

Introduction

Suicide is a worldwide public health concern. The World Health Organisation (World Health Organization, 2023) estimates that about 703,000 people die by suicide each year. Suicide continues to be one of the biggest killers in the world, with suicide rates varying between 8.1 and 58.3/100,000 population for different parts of India. ⁱAccording to NCRB India records

approximately 170,000 to 171,000 suicides annually, translating to a rate of 12.4 deaths per 100,000 population.ⁱⁱ

The Indian Penal Code under section 309 criminalised attempt to commit suicide. However with the passage of time it was realised that suicide and attempted suicide are more of a complex socio-psychological phenomenon. It sits at the intersection of individual psychological vulnerability and broader environmental, cultural, and societal stressors. Rather than being driven by a single cause, it is typically the tragic culmination of compounding internal distress and external pressures.ⁱⁱⁱ In this backdrop the Mental Health Care Act, 2017 was enacted and lately the Bharatiya Nyaya Sanhita, 2023 wherein attempted suicide is no longer a criminal offence in India. The law presumes that individuals who attempt suicide are suffering from severe stress. Instead of criminal punishment, the government is mandated to provide medical care and mental health support to the survivors of suicide.

Methodology

The researcher has adopted doctrinal method for this study wherein statutes, judicial precedents, scholarly works, legal commentaries, and law journals and online resources have been taken into consideration.

Suicide & Attempt to Commit Suicide

According to Oxford Dictionary, the word 'Suicide' is defined as an act of killing oneself deliberately. The Latin word *suicidium* is where the term "suicide" originates. *Cidium* is derived from *caedere*, which means murdering; it refers to the act of taking one's own life. *Sui* literally means oneself. Suicide was defined as "a person who kills himself deliberately". "One who commits suicide" was referred to as *felo-de-se* in Anglo-Latin, which means "one guilty concerning himself."

Attempt to commit suicide means when a person has taken all the efforts to put an end to one's own life but has failed in his/her attempt. Section 309 of the Indian Penal Code defines attempt to commit suicide as - Whoever attempts to commit suicide and does any act towards the commission of such offense shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Legal Framework and Judicial Approach towards Attempt to Commit Suicide

In India, the legal framework regarding suicide attempts has completely shifted from criminal prosecution to a victim-focused, public health perspective. Attempting suicide is no longer classified as a general criminal offense. The law assumes that individuals in distress are experiencing significant stress and requires the government to provide care, rehabilitation, and support.

The Indian Penal Code, 1860

Section 309 of the Indian Penal Code criminalised attempt to commit suicide. For decades the legality of punishing attempt to commit suicide was controversial and the said section was interpreted by the High Courts as well as the Supreme Court. The judgements of various High Courts differed regarding the constitutionality of section 309 IPC which was even affirmed by the Supreme Court. In *Maruti Sripati Dubal V State of Maharashtra*^{iv} The Bombay High Court declared Section 309 of the IPC unconstitutional, stating that it is unreasonable to punish people who attempt suicide with intent. The court struck down section 309. But in *Chenna Jagadiswar and Anr. v. State of Andhra Pradesh*,^v the Andhra Pradesh High Court upheld the validity of section 309 IPC.

The Hon'ble Supreme Court in *P. Rathinam v. Union of India*^{vi} struck down Section 309 of IPC as unconstitutional observing that right to life under Article 21 of the Indian Constitution includes right to die. However in *Gian Kaur v. State of Punjab*^{vii} the Supreme Court reversed P. Rathinam's decision and held that the right to life under Article 21 of the Constitution of India does not include the right to die. The court held that Sections 306 and 309 of the IPC are constitutional and hence do not violate Articles 21 and 14 of the Constitution.

The Mental Healthcare Act, 2017 (MHCA)

Section 115 of the Mental Healthcare Act, 2017 serves as a presumption of severe stress in case of attempt to commit suicide. This provision decriminalises attempted suicide in India by instituting a legal presumption of extreme stress. Under this regulation, individuals who make an attempt on their own life are safeguarded from prosecution and trial. Moreover, the legislation alters the state's function from one of penalization to that of medical rehabilitation, obligating the government to deliver care, treatment, and support to mitigate the chances of

recurrence. Thus this Act made it clear that Section 309 of IPC could be used to punish attempted suicide only as an exception.

In the case of *Common Cause (a regd. society) v. Union of India and Anr.*^{viii} the Supreme Court recommended the Parliament to contemplate the decriminalization of attempted suicide, asserting that the existing provision had become outdated, while also providing guidelines for passive euthanasia. Furthermore the Law Commission of India was also in favour of decriminalising attempt to commit suicide which is mentioned in its 42nd and 102nd report.

Following the enactment of the MHCA, Section 115 has provided support for individuals who attempt suicide by establishing a presumption of severe stress. Nonetheless, various Courts have interpreted Section 115 of the MHCA in different ways. In many judgments, the issue of severe stress has been neglected. Furthermore, the care and rehabilitation provisions outlined in Section 115(2) have not been implemented.

In *S. Kameswaran v. The Inspector General of Police*,^{ix} the appellant was appointed as a police constable, assigned to serve as a security guard for one of the honourable judges of the Madurai Bench of the Madras High Court. On June 9, 2016, he made an attempt to end his life with his service rifle, which led to his dismissal from service. He subsequently appealed to the Deputy Inspector General of Police, but his appeal was denied due to two prior suicide attempts in 2015. The appellant then filed a writ petition in the Madras High Court, asserting that his suicide attempts were due to overwhelming stress and mental distress, and noting that he was merely 24 years old, he requested a modification of the order. The court concluded that section 115(1) of the MHCA does not apply to departmental proceedings, but only to the prosecution of the petitioner under section 309 of the IPC. Therefore, the decisions of the disciplinary authority and the appellate authority were upheld, and the writ appeal was dismissed.

In a petition to the Supreme Court by the NGO in *Red Lynx Confederation v. Union of India*^x addresses the issue of individuals attempting to leap into zoo animal enclosures for the purpose of suicide and examines the relationship between Section 115 of the Mental Healthcare Act, 2017, and Section 309 of the Indian Penal Code. Consequently, the Court issued a notice to the Attorney General for India to defend the legitimacy of Section 115 of the MHCA.

The case of *Sapna Chaudhary, v the State of NCT of Delhi & Anr* revolves around the question

of whether a person can be subjected to criminal charges for attempting suicide, in light of the decriminalization provisions established by the Mental Healthcare Act of 2017. An FIR was lodged against the stage performer and artist Sapna Choudhary under Section 309 of the IPC, which criminalizes the act of attempting suicide. The State subsequently submitted a cancellation report to dismiss the charges, recognizing the inconsistency between the IPC provision and the more recent mental health legislation. However, despite the State's recommendation for cancellation, the Trial Court chose to reject it and continue with the criminal proceedings against her. In response, Sapna Chaudhary filed a writ petition in the Delhi High Court, requesting the complete annulment of the FIR and a stay on the ongoing trial. Her legal team contended that Section 115 of the Mental Healthcare Act, 2017 establishes a statutory presumption of significant stress, which effectively prohibits prosecution under Section 309 of the IPC.^{xi}

In *Simi C.N. v. State of Kerala*,^{xii} the petitioner, a village officer from Thrissur, Kerala, endured significant workplace harassment and was unlawfully confined by local leaders who pressured her to issue irregular, manual certificates. Overwhelmed by severe mental distress and fatigue, she made an attempt on her life by cutting her veins. Subsequently, the police filed a case against her under Section 309 of the IPC, which addresses suicide attempts. However, the High Court dismissed the criminal proceedings, referencing Section 115 of the Mental Healthcare Act. The Court determined that an individual attempting suicide under extreme stress is regarded as a victim of their circumstances, deserving of care and rehabilitation rather than being treated as a criminal offender.

Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita became effective on July 1, 2024. This Sanhita replaces Section 309 of the Indian Penal Code with Section 226 of the BNS. It stipulates punishment for attempted suicide only in instances where the act is intended to compel or restrain a public servant in the execution of their official duties. Other individuals who attempt suicide are not subject to punishment under this Sanhita. Furthermore, this provision does not provide any remedy or relief for those who commit suicide for reasons other than the aforementioned. Additionally, the assumption of significant stress under the MHCA in cases of attempts under this section remains questionable. Section 2 (28) of the BNS identifies eleven categories of individuals as public servants. This introduces new challenges, particularly in situations where an individual attempting suicide is trying to compel or restrain someone who is not classified

as a public servant. For instance X compels Y to surrender the property or threatens to commit suicide. Y rejects and X attempts to commit suicide. X survives. Here, X can take the defence of Section 115, MHCA. Thus Section 115 of the MHCA can be misused to escape from liability in such cases.

Attempted Suicide: International Scenario

The global perspective on the legal status of attempted suicide has been evolving towards decriminalization and a more empathetic approach to mental health challenges. Various countries have acknowledged that individuals who attempt suicide frequently require medical and psychological assistance rather than punitive measures. As a result, there has been a noticeable movement towards repealing laws that criminalize suicide attempts and establishing policies that emphasize mental health care and support for those in crisis.

Several countries have revised their legislation to decriminalize attempted suicide or have eliminated specific legal clauses that penalize individuals for such attempts. For instance, in the United Kingdom, the Suicide Act 1961 decriminalized attempted suicide by abolishing the offense of suicide and the common law crime of aiding and abetting suicide. Likewise, nations such as Canada, New Zealand, and Australia have also decriminalized attempted suicide by repealing or modifying pertinent legal provisions.

Moreover, international human rights organizations, including the United Nations Human Rights Council, have advocated for the decriminalization of suicide attempts and have highlighted the necessity of ensuring access to mental health care and support services for individuals in distress. These initiatives are in line with broader global efforts to enhance mental health and well-being, such as the World Health Organization's Mental Health Action Plan and the Sustainable Development Goals, which encompass objectives related to mental health promotion and suicide prevention.

In summary, the current international review highlights an increasing acknowledgment of the necessity to adopt a more compassionate and rights-oriented approach to addressing suicide and mental health concerns. By decriminalizing attempted suicide and prioritizing mental health care and support, countries worldwide are making strides to guarantee that individuals in distress receive the assistance and support they require to overcome their challenges.

Conclusion

Prior to the enactment of the MHCA it was observed that the suicide and attempted rates are very high. When the factors for the same was analysed it was revealed that cases of suicide and attempted suicide are more of socio-psychological issue and thus criminalizing attempted suicide has been shown to have a negative impact on people encountered with mental disorders. Recognising the offender as a victim is more beneficial to the individual and the society at large creating a more supportive and inclusive environment.

Research has consistently shown that evidence-based interventions and psychological therapies such as dialectical behavior therapy, cognitive-behavioral therapy, family therapy, motivational interviewing-based intervention, intensive community care service, integrative therapy are much helpful to address the suicidal behaviors.

In Universal Criminal Justice System the accused is presumed to be innocent until the guilt is proved. In attempted suicide the accused himself is a victim hence is in need of treatment and not punishment as such it is appreciating that the laws in India are well regulated to rebuild the life of the survivors of suicide.

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ⁱⁱ NCRB Report, 2022

ⁱⁱⁱ <https://www.who.int/news-room/fact-sheets/detail/suicide>

^{iv} 1987(1)BOM CR 499

^v 1988 Cri LJ 549

^{vi} (1994) SCC (3) 394

^{vii} (1996) SCC (2) 648

^{viii} (2018) 5 SCC 1

^{ix} W.A.(MD)No.37 of 2018

^x SLP (Crl.) No. 3185 of 2020.

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