

## DE-CRIMINALISATION OF ATTEMPTED SUICIDE IN INDIA: AN OVERVIEW

---

By- Aditi Aggarwal

LLB, Punjabi University, Patiala

### ABSTRACT

---

People think that,  
Those who commit suicide are against life- they are not.  
They are too lusty for Life; they have great lust for life;  
And because life is not fulfilling their lust,  
In anger, in despair, they destroy themselves.

~OSHO

#### Abstract:

Attempting the suicide is a significant problem which requires the mental health involvement, but in India it is considered as a criminal offense under Section 309 of the Indian Penal Code, 1860. This article reviews the legal perspective of attempt to suicide in India and also various regions around the World. And highlights the need for de-criminalisation of the attempt to suicide in India. The Mental Health Care Bill, 2017 was a unanimous decision passed in Lok Sabha, which was passed in Rajya Sabha in August 2016, and got its approval by the Honourable President of India in April 2017. De-criminalisation of the attempt to suicide will serve to cut down the inappropriate disgrace and avoid the punishment in the backwash of the incident. This will lead to collection of more accurate data related to suicide. From the perspective of the Act, it will further foreground the need to develop a proper substructure to deliver mental health services to all those who attempt suicide.

**Research Questions:**

The Following thesis revolves around the following Research questions:

1. Whether the number of suicides is increasing in the present times?
2. Whether there is a need for introducing any special provisions for mentally ill victims?
3. Whether De-criminalisation of attempted suicide have brought some kind of change or not?
4. How can the government help the victims to tackle the implications?

**Statement of Problem (RESEARCH PROBLEM):**

Despite the de-criminalisation of the attempted suicide in India for reducing the number of suicides in India, and how the government has failed in reducing the number of suicide cases in India.

- Firstly, a comparative study of suicides carried out by the National Crime Records Bureau report (NCRB) shows that the suicide cases in India have risen by 23% between the year 2000 – 2015. In 2016 the suicide rate in India stands at 17.8 suicides per 1,00,000 people.<sup>264</sup> Over 1,34,000 people were found dying due to suicide in India. By the year 2020, it is analysed that 28 lives are lost every day in India due to suicide.
- The data from NCRB shows that the daily wage workers and those who are earning less than 1 Lakh per annum are more likely to commit suicide in India. Further, the record also depicts that the suicides have mushroomed at an average rate of 28 cases per day.
- Secondly, the impact of punishment or the electric shocks given to the accused adds more fear in the minds of victims suffering from mental illness. This study is, hence, concerned with the problem mentioned herein earlier and the issues are stated further.

**Hypothesis:**

It is hypothesized that the commission of suicide has been referred to as a criminal offense before the Mental Health Care Bill, 2017. And the victims committing suicide have had a lot of different reasons, varying from person to person and the different in their human nature. It is further

---

<sup>264</sup> [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov).

hypothesized that suicide the new Mental health Care Bill, 2017 will focus more on saving the lives of the people by providing them proper care and help post survival of the commission of the suicide.

## INTRODUCTION

---

The term 'Suicide' refers to as an 'act of killing oneself, or taking such an action that is very destructive to the person's self-interest. It is derived from modern *suicidium*, where *sui* refers to 'of oneself' and *cidium* referring 'a killing'. It is generally ruining one's self - interest through own actions, police, and much more. Suicide is a very serious public health problem which is preventable with timely measures, evidence-based and often very low-cost interventions. It is considered to be a taboo to speak about it. For the National responses to be very effective for the prevention of suicide, a comprehensive multi-sectorial suicide prevention strategy is highly needed.<sup>265</sup>

More than One lakh lives are lost in India every year due to suicide. There is a wide variation in the suicide rates with India. And there are several reasons for attempting suicide. It is a problem that is prevailing not only in India, but it is such a major issue which is taking place at every corner of the World. Attempting suicide has been a major problem which is generally found in the persons suffering from mental health issues.

### **Why do people commit suicide?**

Suicide is mostly influenced by the mental disorders like Depression, failures in life, Family Issues and many more. It is very difficult to analyse what led a person to commit such things. It depends on person to person and depends on the different problems faced by the different persons. There are many factors that can lead a person to take such drastic step to commit suicide. Most of the people take such a decision of committing suicide in a very short span of time before doing so impulsively rather than planning it out extensively.

The most common factor that can influence a person to commit suicide is 'depression'. The term 'depression' generally refers to as a common and serious medical illness that affects negatively

---

<sup>265</sup> [www.who.int](http://www.who.int).

how you feel, way of thinking, and the way you act on the different situations. And Fortunately, Depression is treatable. It causes a feeling of sadness or lost on interest in the activities you once enjoyed. Severe depression can persuade a person to commit suicide. The reason for commission of suicide is not only depression, but several other reasons can that can lead a person to commit suicide. The other reasons for commission of suicide can be Breakup, Failures in life, Family issues, Bullies, Ragging, Poverty, Paranormal activities, and many more other situations can lead a person to commit suicide.

Breaking up with a loved one or getting away from the close persons, family problems in terms of fights between the husband and wife or the other family members, Bullies in school or colleges, Poverty which is the core reason for committing suicide, unemployment has also merged to be a greater reason for committing suicide.

### **Who is at risk?**

As we know that the link between suicide and mental disorders such as in Particular - Depression and alcohol use disorders has been well established in many countries. Most of the incidents of suicide happen impulsively to be in the plight of the breakdown in the ability to deal with any kind of life stresses, such as financial crisis or the relationship breakup, or any chronic pain or illness.

In addition to this, persons suffering from any mental illness, experiencing conflicts, have gone through any disaster, abuse, violence, any loss or a feeling of isolation are strongly associated with suicidal behaviour. Suicide rates are seen to be strongly amongst the vulnerable groups who are experiencing social discrimination in terms of untouchability or based on their religion. This includes refugees, migrants, indigenous people, lesbian, gay, bisexual, transgender, intersex (LGBTI) people, and prisoners. By far the strongest factor for attempting suicide is a previously failed suicide attempt.

### **Methods of Suicide generally opted by People:**

It is estimated by the World Health Organisation (WHO), that around 20% of the suicides cases globally are due to the consumption of pesticide self- consumption, most of which the population belongs to the agricultural areas in low and middle- income countries. The other methods that are being used are self-hanging and firearms.

The knowledge of most common method of attempting suicide is important to draw prevention strategies which results to be effective and helps in saving more lives by considering the behaviour and the activities of the victims.

### **Society's stigma towards Suicide and Mental – Illness:**

The people who are suffering from mental illness often say that the social stigma and discrimination is attached to mental health issues and the way they experience discrimination is worsened over a period of time. This makes it harder for them to recover, basically it reduces their recovering process.

We know that Mental Illness is common and 1 in every 6 people tend to experience it. But even when most of the people at a higher rate are suffering from it, there is still a social stigma attached to mental ill health and the victims experience this discrimination in all aspects of their lives.

This stigma not only comes from the society, but it comes from the Families, friends and employers. Nearly 9 out of 10 people suffering from mental health problems state that the stigma and discrimination imposes a negative impact on their lives.

The society in general have stereotyped views about mental health issues and it badly affects the Victims. Many people have a believe that such victims have violent and dangerous behaviour. But in fact, they are more at risk of harming themselves and being attacked than harming other people.

### **Barriers faced by Patients in accessing Mental Health Care:**

Despite the interest of the Patient in accessing the mental health care, the patients are left wanting due to the limited clinical facilities availability, the cultural or society's stigma and also the high costs which becomes difficult for a common person to afford it.

Patients all around the country experiences mental health issues every day. But, instead of visiting the doctor the victims face inconsiderable patient access barriers keeping them out of mental health settings and they might not feel important to see a doctor in sprained ankle or the chest pains.

### **Prevention and Control of Suicide:**

Suicide can be prevented. It is preventable by the due care of the victim. Only if the number of measures are taken, the life of a person can be saved. These measures can be taken at a population,

a sub-population and at an individual level to prevent suicide and the suicide attempts. The measure includes:

- Reducing the availability of means of suicide such as pesticides, firearms or certain medications.
- The reporting by the media can be done in a responsible way.
- Introduction of the alcohol policies, for reducing harmful use of alcohol.
- Early identification and treatment at an early stage of the mental disorder.
- Care for the people with mental health issues and those suffering from acute emotional distress.
- Follow-up care can be provided to the people who attempted suicide and the provisions of community support.

### **The Countries where attempting suicide is a Criminal Offense**

#### **Legal status of attempted suicide: International Scenario**

The commission of suicide has been a major problem for a long period of time which is taking many lives and is not only affecting one country but is spreading globally. The attempting of suicide has increased a lot of number of deaths and is affecting many people around the globe. Commission of suicide does not only affect the life of the victim but also affects a lot of persons that relate to the victim.

In many countries, commission of suicide is a criminal offense and the punishments are given for attempted suicide, if alive. During 19<sup>th</sup> and 20<sup>th</sup> century, most of the countries that are developing or are developed have repealed criminalisation of attempted suicide. Criminalisation refers to that it is a criminal offense and post survival of the attempted suicide, punishment is given.

#### **Countries that have retained attempting the suicide as a criminal offense:**

The countries that have retained suicide as a criminal offense are mainly from the South Asian Region and the North African Region. In the African region, Malawi, Kenya, Nigeria, Rwanda, Tanzania, Ghana and Uganda are some of the countries that have currently criminalised non-fatal suicidal behaviour. For example- in Rwanda, any person who is engaged in non-fatal suicidal

behaviour, on his/her conviction, is given a punishment of 2-5 years of imprisonment. Or in Uganda, any person engaged with suicidal behaviour is a felony punishable by up to 2 years imprisonment. In Ghana Criminal code (Act 29, 1960), non-fatal suicidal behaviour is considered as a crime.

The countries where attempted suicide is not considered to be a criminal offense are In the South Asian region such as Pakistan, Malaysia, Singapore, Bangladesh. In Singapore, a person who attempts suicide can be given a punishment of up to one year. In addition to this, North Korea also has criminalised suicide with a peculiar deterrent, where the family members and the relatives of the suicidal victim might be penalized as a form of collective punishment for the act of attempting suicide.

### **The Countries where attempting suicide is not a Criminal Offense**

There are some countries where the suicide has been de-criminalised or attempting suicide is not considered to be a criminal offense and no punishment is given for attempting suicide, if alive. But these countries continue to criminalize the abetment to suicide, the suicide pacts, and at times, harming own self deliberately.

In the Australian state of the Victoria, the victim or the survivor of the suicide pact can be charged with other person's suicide or the man slaughter. In New Zealand, the abetment of the suicides of others is a crime and in the same way in Russia, inciting someone to commit suicide is punishable by up to 5 years of imprisonment. Attempted suicide has already been decriminalised in Ireland in the early 1990s, but the self-harm is still not considered to be a part of attempted suicide. Suicide and attempted suicide but failed, are not considered as a crime under the Roman - Dutch Law. Some of the states of United States of America such as Alabama, Oregon and the South Carolina continue to have laws against the suicide pacts, aiders and abettors, and for the purpose of taking insurances. Only a very few Countries from the South Asia including Sri Lanka, Maldives, and Thailand still do not treat attempting suicide as a crime.<sup>266</sup>

---

<sup>266</sup> ncbi.nlm.nih.gov.

**Legal status of attempted suicide: Indian Scenario**

In India, the attempted suicide is not considered to be a criminal offense after the proposition of the Mental Health Care Bill, 2017. It means that the attempted suicide has been de-criminalised in India. So, any person who attempts suicide, but survives, will not be harassed nor be punished by the authorities under the Mental Health Care Bill, 2017.

Before the Mental Health Care Bill, 2017 an individual who has attempted suicide, on the post-survival the victim was punished with imprisonment up to one year under the Indian Penal Code, 1860. The absurd law, which was in practice for decades, has been replaced with a more humanistic Mental Health Care Bill, 2017.

This Act ensures that all the persons have the right to live a life with complete dignity and not be harassed by the authorities or not be discriminated against. And the scope of this Act is bigger than most of the people think. For occurrence, the criminalisation of the attempting suicide is often used to suppress the peaceful hunger strikes.

According to the report by the World Health Organisation, (WHO) more than 56 million of the Indians are suffering from Depression, which is a major contributor to suicide deaths and a further 38.4 million people are suffering from anxiety disorders.<sup>267</sup>

Most of the nations do not punish the victims of the suicide attempt survivors but rather they provide the rehabilitation facilities such as providing the medical support and the emotional assistance for their rehabilitation. Only a few countries like Pakistan, China, Singapore, etc. continue to put penalty on the individuals for committing suicide.

**India's new Act finally removes it to be a criminal offense:**

The new Act brings a ray of hope for the people who are suffering from the mental illness such as Anxiety or depression. The new "Mental Health Care Act, 2017 (MHCA)" defines the term 'mental illness' as a disorder of thinking or a memory which impairs the ability of judgement. The MHCA, 2017 gives a right to confidentiality and forbids them from being subjected to solidarity confidentiality to the persons who are mentally ill. The Apex Court of India has also stated that

---

<sup>267</sup> www.who.int.

the Section 309 of Indian Penal Code, 1860 also violates the right to life as given under the Article 21 of the Constitution of India.

The amendment of the Mental Health Bill is two- fold, it is incorporating that the people who go on hunger strikes and thus threat to kill themselves to make the authorities act on or any statute or provisions and do some act in advancement of the same, can be punished in the prescribed section, this section also includes the persons who persuades others to commit suicide or threaten them to commit suicide.

The MHCB, 2017 provides various Rights to the persons who are mentally ill, and these rights are as follows:

- Each person has a Right to access the care for mental health and treatment from the services or the programmes that are run by the government.
- The Right to access care for Mental Health Care includes good quality of the services and affordable treatment and also easy access to the services provided by the Government.
- Persons suffering from Mental Illness also have the Right to Equality of protection and treatment from inhuman and humiliating treatment, free legal services, also access to their medical records and they can file a complaint regarding deficiencies in provision of mental health care.
- The Mental Health Care Act, 2017 also specifies the process and the procedure which is to be followed during the admission, treatment and discharge of the mentally-ill victim.
- This Bill also assures free treatment to the persons who are financially unstable or are homeless or may belong to Below Poverty Line, even if they do not hold a BPL Card.
- A medical practitioner or a mental health care professional shall not be held liable in any circumstances for any unforeseen consequences on following a valid advance directive for the treatment of the victim.
- The photographs or any other related information to the victims shall not be released in media without the consent of the person suffering from mental illness.
- Every victim of the mental illness are having a Right to Live with dignity which comes under the Article 21 of the Constitution of India, also there shall be no discrimination on the basis of religion, caste, sex, origin, culture, social or political beliefs, class or any disability.

- This bill puts a lot of responsibilities on the state for Training the Mental Health professionals and providing the access to public healthcare.
- It also requires the Insurance companies to provide health insurance for the victims suffering from mental illness.
- Sterilisation will not be performed on mentally ill persons. Sterilization is one of the kinds of medical techniques that intentionally leaves a person in a condition that they are unable to reproduce. It is a kind of birth control. Sterilization methods can be both surgical and non-surgical, and it exists for both males and females. Sterilization procedures are always intended to be permanent; reversal of this process is generally difficult or may be impossible.
- The victims shall not be chained in any manner or form whatsoever under any of the circumstances. A person suffering from mental illness shall not be subjected to seclusion or solitary confinement. Physical restraint may only be used in rare cases, if necessary.
- Solitary confinement refers to the isolation of a prisoner in a separate cell where they are given punishment.

#### **Constitutional Validity of Section 309 of Indian Penal Code, 1860:**

Before the Mental Health Care Bill, 2017 there were many Rights that have been violated and this comes under the Article 21 of the Constitution of India. Article 21 of the Constitution of India states that every person has a “Right to Life”. It means that no person shall be destitute of his life or the personal liberty except the procedures that has been established by the law.

According to Article 21, Right to Life hereby refers to the Right to lead a meaningful, a dignified and complete life. It does not have a rigid meaning. The objective of the fundamental right under Article 21 of the Constitution of India is to prevent any restriction by the State to a person upon his personal liberty and destitution of life except according to procedure that is established by law.

The meaning of the words ‘personal liberty’ came up for consideration of the Supreme Court for the first time in the case of A.K. Gopalan vs. Union of India<sup>268</sup>. The scope of Article 21

---

<sup>268</sup> 1950 AIR 27, 1950 SCR 88.

was seen to be a bit narrow at that time. In this case, the Apex Court held that the word 'deprivation' was interpreted in a narrow sense and it was also held that deprivation does not restrict a person upon the Right to move freely which came under Article 19 (1) (d). Finally, in the case of *Maneka Gandhi v. Union of India*<sup>269</sup>, the Supreme Court has overruled Gopalan's case and broadens the scope of the two words personal liberty, which is explained as follows:

The term Personal Liberty in Article 21 is widest in its nature and it covers a bunch of Rights which helps in constituting the personal liberty of an Individual and also some of them have raised to the status of a separate Fundamental Right and are given additional protection under Article 19 of the Constitution of India.

Now, the question that arises before the Court of Law is that whether right to life under Article 21 includes Right to die or not. This question came into being for first time before the High Court of Bombay in the case of *State of Maharashtra vs. Maruti Sripati Dubal*<sup>270</sup>. In this case, the Bombay High Court decided that the Right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down Section 309 IPC which provided punishment for attempt to commit suicide by a person but alive, as unconstitutional.

In *P.Rathinam v. Union of India*<sup>271</sup> a Division Bench of the Supreme Court supporting the decision of the High Court of Bombay in the case of *Maruti Sripati Dubal* held that under Article 21 Right to life also includes the Right to die and laid down that section 309 of Indian Penal Code, 1860 which deals with 'attempt to commit suicide is a penal offense' as unconstitutional.

This issue came again before the court in the case of *Gian Kaur vs. State of Punjab*<sup>272</sup>. In this case a five judge Constitutional Bench of the Supreme Court reversed the decision of P. Ratinam's case and further held that Right to Life under Article 21 of the Constitution does not include Right to die or the Right to be killed and there is no ground on which it can be held that the Section 309, of Indian Penal Code, 1860 is constitutionally invalid. So, the true meaning of the word 'life' in Article 21 means a 'life with human dignity'. Any facet of life

---

<sup>269</sup> 1978 AIR 597, SCR (2) 621.

<sup>270</sup> 1986 MAH LJ 913.

<sup>271</sup> 1994 AIR 1844, 1994 SCC (3) 394.

<sup>272</sup> 1996 AIR 946, 1996 SCC (2) 648.

which makes life dignified may be included in it but not that which douses it. The 'Right to Die' if any, is inherently incompatible with the Right to Life as is death with Life.

### CONCLUSION

---

Suicide was a criminal offense in India. Before the Mental Health Care Act, 2017 attempted suicide, if failed was punishable under Section 309 of Indian Penal Code, 1860. Suicide is an act of killing oneself and taking such an action that is very destructive in its nature. There are many countries where attempting suicide is still considered to be a criminal offense. But the attempted suicide has been decriminalised and thus the punishment for the victim has been removed by the Supreme Court of India. The new Mental Health Care Act, 2017 works in the favour of the victims and thus provides many Rights to the victims such as the Right to access medical facilities provided by the government and the Right to Equality of protection and treatment from inhuman and humiliating treatment and also the Right to access free legal services. There are many other Rights that are provided by the Government for the victims that are suffering from Mental Health issues. Post Care and Help is also provided by the government.

**Conflict of Interest:**

None