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TO DIE IN INDIA – CRIMINALISATION OF ATTEMPT TO SUICIDE.

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“Marte hain aarzoo mein marne ki maut aati hain par nahin aati” – Mirza Ghalib

I. ABSTRACT:

One cannot take his own life person has a Right to Life but not a Right to Die after Gian Kaur Judgment. There are other set of people also who does not losses their hope towards life such as Hunger strikers, Illiterate and tradition bound sets of people, people who gives threats to suicide they are not under mentally ill and under severe stress then how can state give them freedom to take their own life and goes unpunished if they are failed in their attempt. What is the relevance of Mental Health Care Act and how is connected to Section 309 IPC which criminalize suicides?

The article reviews the Indian and international legal perspective of attempted suicide, discusses the Relationship between Section 309 and Mental Health Care Act 2017, Importance of Criminalisation of Section 309 and the consequences after decriminalizing suicidal acts and highlights the need to retain the criminality of Section 309 IPC.

Keywords: Right to life vs Right to Die, Mental Health Care Act 2017, Importance of Criminalisation.

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II. INTRODUCTION:

‘MAN IS born free; and everywhere he is in chains’¹. Do individuals have complete authority over their body? Does the individual autonomy be to that extent that they can take away their own life? If No, what are the legally and morally acceptable grounds for curtailing man’s freedom? What constitutes ‘culpability’ in an act? What social interest is served by holding one liable for ‘attempt to commit suicide’? There are certain apposite questions which need to be raised and answered. There is a perceptible tension between individual freedom and authority of the state ever since the time men organized themselves politically and formed a state.

An attempt to commit suicide is a criminal offence in India, punishable with imprisonment of up to one year and a fine under Section 309² of the Indian Penal Code, 1860 (hereinafter mentioned as IPC). It is a unique offence if you fail you are punished, but if you succeed, you are not since, of course, a ‘successful’ suicide means that there is no one to punish. Those who abet suicide can be imprisoned for up to ten years and fined under Section 306³ of IPC. For a long time, this was the only safeguard against the instigation of sati⁴.

The law penalizing suicide attempts has been widely criticized over the last few decades. A lot of conflicting opinions have generated on the desirability of retaining or deleting Section 309 of IPC because of some contrasting judgments given by our Courts about whether a right to life includes right to die within the meaning of Article 21 of the Constitution of India. One set of people are of the opinion that Article 21 of the Constitution of India is a provision guaranteeing the protection of life and personal liberty and by no stretch of the imagination can extinction of life be read to be

¹ Rousseau, The Social Contract, (Ch.-I) cited in Clarence Morris (ed.), The Great Legal Philosophers 215 (1971).

² “Section 309-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”

³ “Section 306-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 be extent to ten years, and shall also be liable to fine.

⁴ An ancient Hindu custom according to which a widow was expected to immolate herself at the funeral pyre of her husband. Although it is now illegal, it is still prevalent in certain parts of India

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included in the protection of life. By declaring an attempt to commit suicide a crime, the IPC upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State cannot turn a blind eye to a person in attempting to kill himself it. Another set of people are of the opinion that the Section 309 of IPC is cruel and irrational because 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.

III. WHAT IS SUICIDE AND ATTEMPT TO SUICIDE?

Suicide has not been defined anywhere in the IPC. However briefly defined, ‘suicide’ is the human act of self-inflicted, self-intentioned cessation⁵. In simple plain language suicide connotes killing oneself intentionally so as to extinguish one’s life and to leave this world. According to William James wrote the famous founder of modern of modern psychology “I take it that no man is educated who has never dallied with the thought of suicide”⁶.

Suicide has the following four elements/ingredients

- It involves the death of at least one person.
- Death results either from action/inaction.
- It involves the clear intent to cause one’s own death.
- A victim who causes his own death.

An attempted suicide, however, does not always fall squarely within the category of a ‘failed suicide’ i.e. a genuine effort to kill himself gone awry. Rather, a suicide attempt refers to a set of intentional self-harm carried out with the awareness that the result could be fatal but there is no fatal outcome. Attempted suicides are, thus, on a different footing; they are much more numerous than suicides and the groups differ in several aspects from each other, and only a small proportion

⁵ Encyclopedia Britannica, (1973) at p. 383.

⁶ Cited in Donald McCormick, The Unseen Killer – A Study of Suicide, Its History, Causes and Cure 9 (1964).

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of the former enters into the latter group.⁷ In the large majority of cases, one fails in his purpose because the person is either too well or too ill or not sincere or determined enough to kill himself.

IV. REASON FOR SUICIDE:

There is perceptibly some relation between suicide and society. It is thus incorrect to speak of a man taking his own life; one should rather speak of his putting himself in a state so that his life can be taken from him the person is often driven to commit suicide. Undoubtedly there are series of a reason for a person who is committing suicide such as owing to poverty or distress, loss of honor and fortune; while others are driven to self-effacement under the impulse of religion, as witness the case of suttee and of those who starve or torture themselves to death to attain nirvana or a supreme beatitude by absorption in the divine essence.

‘Suicide’, as a problem, is more out of the socio-psychological reasons arising out of sufferings. It is a common perception that almost all the acts of suicides attempts are the result of depression. However, it is the fact that many suicidal patients are not just suicidal.

Attempted suicide though mostly calculative, is often not repeated; perhaps because the mission gets accomplished in the first attempt itself, only a few numbers of people repeat it again.

V. LEGAL STATUS OF SUICIDE IN INDIA:

The statutory provision on ‘attempt to commit suicide’ is under section 309 of the Indian Penal Code, which lays down as under: “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.”

The words ‘or with fine or with both’ were substituted for the words, ‘and shall also be liable to fine’ by the amendment act of 1882.⁸ As stated earlier suicide is no such crime under IPC.

⁷ E. Stengel, “The Social Effects of Attempted Suicides” supra note 14 at 376.

⁸ Indian penal code (amendment) act (VIII OF 1882), Sec 7.

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However, attempt to commit suicide is made punishable under this section. Mens rea is one of the essential elements of this offence. Attempt to commit suicide is punishable but not every case under section 309 of IPC leads to a punishment.

After passing of The Mental Healthcare Act 2017 has to some extent diluted the strictness of the law relating to attempt to suicide. Section 115 of the Act, laying down a presumption of severe stress in a case of attempt to commit suicide says:

Notwithstanding anything contained in section 309 of the IPC (45 of 1860) 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.

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.

Not only this Section 309 of IPC by no means mandated that a court should punish attempted suicide, it only lays down the upper limits of such punishment. But there are other acts which provide a discretion to the court. Sections 3, 4 and 13 of the Probation of Offender Act, 1958, confers a wide discretion on the court either to bind such a person to psychiatric care or release him with an admonition. Section 12 of the Act enables a court to ensure that no stigma or disqualification should attach to such a person notwithstanding anything contained in any other law. The court has sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention.

It is interesting to note that, The Mental Healthcare Act 2017 barring the provision presuming 'severe stress' on part of the person who attempted on his life, has not either explicitly repealed Section 309 of IPC or made it applicable to all attempts of suicide. A plain reading of the provision reveals that a person who attempts on his life is presumed to be under 'severe stress' and therefore he will not be prosecuted and punished for the offence of attempt to commit suicide. Further, it puts government under a legal obligation to treat and rehabilitate him so that the risk of recurrence

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of the attempt to commit suicide is reduced. It seems that a person who attempts on his life happens to be a person with no (proved) 'serve stress' cannot be kept out of the penal orbit of section 309 of IPC and the government is neither bound to take care of him nor to treat and rehabilitated him⁹.

VI. PRINCIPLE OF SECTION 309 IPC:

In the eye of the law the lives of men as not only valuable to their own possessors. But as also valuable to the state which protects them and for the protection and amelioration of which the state exists. It is therefore, rightly claims to prevent persons from taking their lives of others. Its emphasized on the duty we have towards the state and this right has been claimed by the state at all time, though the nature of his interference varied from time to time. This question can be raised that how the state can decide and interferes with one's personal choice to live or die? Why there's a law which prevents individuals from taking away his own life. Generally, the law makes no provisions for a 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 the provisions of the law. Likewise attempt to commit suicide is a crime belonging to a genre that signifies societal disapproval of an act against the sanctity of human life. Thus by declaring attempt to commit suicide a crime the IPC seems to uphold the dignity of human life. It also seems to signify the recognition of the urge for self-preservation of human beings. It may be said that the policy of punishing an attempt, where the completed act goes unpunished, might encourage those who make the attempt to make it successful. But this has not been the experience of jurists who have found the provision as existing both salutary and deterrent.

VII. ATTEMPT MUST BE INTENTIONAL:

As stated above the essence of suicide is an intentional self-destruction of life. if, a person takes an overdose of poison by mistake, or in a state of intoxication, or in order evade his arrest by his

⁹ PSA Pillai's and KI Vibhute, Criminal Law 98 (Lexis Nexis, 13th edn.,2017).

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pursuers.¹⁰ He could not be held accountable for his action. But, if there was an intention to commit suicide and an attempt for that purpose was made, the accused could not escape responsibility for his action.

VIII. IS HUNGER STRIKE AN ATTEMPT TO COMMIT SUICIDE?

Announcement of hunger strikes is a common scenario in India. Very often, these hunger strikes are resorted to as a means to pressurize some authority to concede demands of the hunger strike. Some cases of fasting unto death for a social or political cause. Anna Hazare who announced to fast-until death to demand a stronger Lokpal legislation empowering people. Similarly, Iron Lady of Manipur- Irom Chanu Sharmila's hunger strike started a decade back in order to demand the repeal of Armed Forces Special Powers Act in the state of Manipur. The state has intervened in most such cases especially when the health deteriorates or there is an imminent danger to life.

Generally speaking, the intention of a person on a hunger strike is not to kill himself, but to the contrary, very often it is done for improvement, advancement or amelioration of some situation. In view of this-the essential requirement of the offence, namely the intention to kill oneself, is absent and hence it cannot amount to an offence under this section. Thus only in cases where the accused intends to persevere to the end, refuse all nourishments and reaches such a stage that there is imminent danger of death ensuing, can he be held guilty of the offence of attempt to commit suicide.¹¹

IX. RIGHT TO LIFE VIS-À-VIS RIGHT NOT TO DIE:

There have been cases, which have varied on the basis of the right to life and right not to die.

Maruti Shripati Dubal v. State of Maharashtra¹²: This is the case in which first time it came for the consideration before the court that whether a person has a right to die. The petitioner, a police

¹⁰ Dwarka Poonja v. Emperor, 14 B.L.R. 146; 14 I.C. 598

¹¹ Ram Sunder Dubey v. State AIR 1962 ALL 262, (1962) CrLJ 697

¹² (1987) CrLJ 473 (Bom.).

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constable, who became mentally ill after a road accident attempted to commit suicide by dousing himself with kerosene and then trying to light a match was prevented and prosecuted under section 309 of IPC. In 1987, the Division Bench of Bombay High Court struck down section 309 of IPC, as ultra vires vide Article 14 and 21 of the constitution which guarantees 'right to life and personal liberty'

***Chenna Jagdeshwara v. State of Andhra Pradesh*¹³**: However, in a case in the following year, the Andhra Pradesh High Court upheld the constitutionality of Section 309 of the IPC. The court found that a law punishing an attempt to commit suicide was an important tool in the age of hunger strikes and self-immolation threats. It also held that not every case under Section 309 would necessarily result in punishment or imprisonment; the section only defined the upper limits of possible punishment.

***P. Rathinam v. Union of India*¹⁴**: The Apex Court while striking down Section 309 of IPC, said it is cruel and irrational provision violate Article 21 of the Constitution. The Court upheld that Right to life includes, right not to live a forced life". The Court further said that a person who attempts to commit suicide does not deserve prosecution because he has failed.

***Gian Kaur v. State of Punjab*¹⁵**: The Supreme Court's judgement in Rathinam did not hold for long. In Gian Kaur v. State of Punjab (Gian Kaur), The appellant and her husband were convicted by the Trial Court under Section 306 of IPC for abetting the commission of suicide by Kulwant Kaur. In special leave before the Apex Court the conviction of the appellant has been assailed (challenged), inter alia on the ground that Section 306 of IPC is unconstitutional in view of Judgment in 1944(Rathinam); wherein Section 309 of IPC has been held to be unconstitutional as violate Article 21 of the Constitution. This logic was clearly flawed and the Supreme Court rejected the argument, and rightly so. However, it also overruled its earlier judgement in Rathinam and ruled afresh that the constitutional right to life did not include the right to die. So, Section 309 of

¹³ (1988) Cr LJ 549 (AP)

¹⁴ AIR 1994 SC 184

¹⁵ AIR 1996 SC 1257

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IPC was once again held to be constitutionally valid and effective. The Apex Court further held that Section 306 of IPC as constitutional and said that 'right to life' does not include 'right to die'. Extinction of life is not included in protection of life. The Court further went on to say that Section 306 constitute a distinct offence and can exist independently of Section 309 of IPC. As regards Section 309 of IPC is concerned, the court said that the 'right to life' guaranteed under Article 21 of the Constitution did not include the 'right to die' or 'right to be killed' and therefore an attempt to commit suicide under section 309 of IPC or even abetment of suicide under section 306 of IPC, are well within the constitutional mandated, and are not void or ultra vires.

The court highlighted the difference between the desirability of a law and the constitutionality of a law. Although a law may not be desirable, it could be struck down as unconstitutional only if it infringed on specific provisions of the constitution. Now, since Section 309 of IPC did not actually contravene any constitutional provision, it would stay valid. After the two-year window during which a suicide attempt was not illegal (from Rathinam to Gian Kaur), the Supreme Court restored the position that committing and abetting suicide were both punishable crimes.

X. WHY RIGHT TO DIE NOT INCLUDED IN RIGHT TO LIFE?

"ARTICLE 21, No person shall have deprived of his life or personal liberty except according to procedure established by law" From this Article, it is seen that the right to life is not specifically mentioned. But, in a broader sense, unless a man is assured of physical existence there can be no other fundamental right and since the state exists for the common good of the citizens to life. In last four decades there's expansion of right to life such as the right against fetters and handcuffing, right to speedy trial, legal aid, medical aid, shelter, access to road etc. are all concerned with facilitating and enhancing the enjoyment of right to life itself. In contrast, a right to die - that assures a right to universal self-destruction and implies the extinction., the human race - has nothing in common with these rights. The basic necessities of life are yet to be met the promise of the right to life remains the last hope. That is why a right to die is a movement in the reverse direction. This may ultimately absolve the State from any kind of obligation to provide life-enhancing conditions.

LEX RESEARCH HUB JOURNAL [VOLUME I ISSUE I]**XI. WHAT CAN BE ACHIEVED BY DECRIMINALIZING ATTEMPT TO SUICIDE?**

Another set of people are of the opinion that the Section 309 of IPC is cruel and irrational because provides double punishment for a person who has already frustrated with his own life and section 309 of IPC need to be decriminalized and effaced from the statute book. Another major argument for criminalization is the belief that law can act as a deterrent against other such attempts in the society. Countries that have decriminalized attempted suicide have continued to criminalize the abetment to suicide, suicide pacts and at times, deliberate self-harm¹⁶. However, it is still not clear whether having a law to prosecute suicide attempters indeed acts as a deterrent or not. Internationally, the research on the impact of repeal of anti-suicide legislation has yielded mixed results. In 1992, Lester compared 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 [Lester (1993)]. Lester (2002)¹⁷ compared the suicide rates in seven countries (Canada, England and Wales, Finland, Hong Kong, Ireland, New Zealand, and Sweden) 5 years prior and 5 years following decriminalization, with an increase in the suicide rates after decriminalization of suicide. This increase in suicide rates can be possibly explained due to better reporting of such attempts as earlier they could have been reported as accidents to prevent legal hassles. In Indian context, while the level of awareness about existence of section 309 cannot be deemed to be too high, but a significant proportion are aware of its existence, but 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.¹⁸

¹⁶ Lathe KS, Geetha N. Criminalizing suicide attempts: Can it be a deterrent? Med Science Law. 2004;44:343–7. [PubMed]

¹⁷ Lester D. Decriminalization of suicide in seven nations and suicide rates. Psychology Rep. 2002;91:898. [PubMed]

¹⁸ Ibid

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XII. IMPORTANCE OF CRIMINALISATION OF SECTION 309 OF IPC:

The most dangerous thing is when violence meets with success because success secures to legitimize violence. Attempt to commit suicide too is a form of violence, committed on one's own self, and hence letting it off as the non-criminal act may go down as a wrong notion of right and wrong, harm and benefit. At present Section 309 of IPC plays a role in unmasking the real reasons for an attempt to commit suicide by a person. If the attempter is not to be prosecuted it is likely that the affair may be hushed up. For example, take the case of a woman who as a result of torture by her husband attempted to commit suicide. If she is prosecuted under Section 309 of IPC it is likely that the facts about torture may be disclosed in the inquiry. If she is not to be prosecuted the husband may escape as the tendency may be to hush up the whole affair. If section 309 of IPC is held to be decriminalized, we are highly doubtful whether section 306 of IPC could survive. For example, suppose a victim of an accident who has lost his eyes is brought to the hospital. He expresses his wish to die and asks the doctor either to give him a lethal injection or to refrain from treating his infections. If the doctor acts either way, in the absence of attempt to commit suicide under Section 309 of IPC, he cannot be proceeded against for the offence of abetment to commit suicide under Section 306 of IPC, thus people who actively assist and induce persons to commit suicide may go scot free. Then the cases like hunger strikes, Threatened self-immolations and other potentially employed situations. If the section 309 of IPC is not criminalized, no action can be taken against the people resorting to this practice, on the ground that they have a right to dispose of themselves.

XII. CONCLUSION:

If suicide is capable of being morally rightful and legally colorless, it may be an arguable possibility that the provision of agreeable means of suicide may be perceived as a necessary social service! A French writer Binet- Sangle has actually gone as far as this.¹⁹ Suicide occurs in all ages. Life is a gift given by God and He alone can take it. Its untimely termination cannot be permitted

¹⁹ Ibid.

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by any society. To confer a right to destroy oneself and to take it away from the purview of the court to enquiries into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and is not desirable to permit them. It is therefore in *Gian Kaur's*²⁰ Case Court asserted that: *We find it difficult to construe Article 21 to include within it the "right to die" as a part of the fundamental right guaranteed therein. "Right to life" is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of "right to life".* It's true that if a person is sick, depressed, mentally ill we treat him, we do not punish him. There's law as discussed above Mental Healthcare Act 2017 according to Sec 115 of the Act, the person who commits attempt to suicide is presumed to be under 'severe stress' and burden shift on the prosecution to prove that a person is not under severe stress. Nevertheless, the appropriate government is put under legal mandate 'to plan design and implement programs for the promotion of mental illness in the country', in general, and 'to plan, design and implement public health programs to reduce suicides and attempted suicides in the country, in particular'²¹

Let us not forget the other side of the coin there are another set of people also who are charged with attempt to suicide likewise hunger strikes, people who give threat to suicides. India is still a country where its women –fold who constitutes the majority are illiterate and tradition-bound. The community, caste, and family still have the precedence over the individual. In this environment, the women may be subjected to barbarous and inhuman pressures a criminalisation of Section 309 should be retained.

²⁰ AIR 1996 SC 1257

²¹ . According to Section 29 of Mental Healthcare Act 2017.