TO PUNISH OR NOT TO PUNISH: ATTEMPT TO COMMIT SUICIDE

Joydip Ghosal[1]

I. Introduction

After more than three decades of measured debate in courts and public outrage elsewhere and after repeated recommendations from the Law Commission, the government of India has moved to scrap Section 309 of the Indian Penal Code[2], which criminalised the attempt to commit suicide. People who are driven to attempt the extreme step, either by illness or extreme adversity, deserve the support of society and the government. Instead, this antediluvian law had heaped insult on injury by turning them into felons. The government's decision to de-criminalise suicide attempts is a welcome step in the direction of a humanitarian approach towards people who are driven to taking their lives.

The action that follows effectively punishes the unfortunate victim twice over; he is tormented first by the circumstances that led him into taking the step and tormented again by the law. The government's resolve to scrap Section 309 IPC will mean that no longer will attempted suicide be punishable with imprisonment or fine. As of now, Section 309 IPC entails that a person who makes such an attempt--- and fails--- faces imprisonment for up to a year or a fine or both. The offence of suicide is cognisable. A policeman is empowered to go to the hospital where the individual who attempted suicide is recovering, arrest him and put him through the torture of criminal proceedings at a time when he is already emotionally fragile.

In 1968, the World Health Organization (WHO) 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 labelled by WHO as "attempted suicide." According to one of their report, India has the highest suicide rate in the world after China and world leader in suicides among 15 to 29 years old. The highest suicide rate is not amongst the disadvantaged groups, which means that young, educated adults are facing problems. In many countries, attempt to commit suicide is regarded more as a manifestation of a diseased condition of mind deserving

---

[1] Ph. D. Scholar, WB NUJS, Kolkata; Guest Lecturer, SN Law College, Kolkata.

[2] Section 309 of the Indian Penal Code reads thus: "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."

treatment and care rather than an offence to be visited with punishment. Acting on the view that commission of such act deserves the active sympathy of the society and not punishment, the British Parliament had enacted the Suicide Act in 1961 whereby attempt to commit suicide ceased to be an offence. Only a handful of countries in the world like India, Pakistan, Bangladesh, Malaysia, Singapore etc. have persisted with this law.

II. Law Commission of India on Suicide

The Law Commission of India had undertaken revision of the Indian Penal Code as part of its function of revising Central Acts of general application and importance. The Law Commission has already recommended the removal of Section 309 IPC and doing so would now be a bit of progress in India becoming a country governed by modern precepts of the law. Duly, the Law Commission had noted that someone trying to take their own life should be treated more as a cause of deep unhappiness and not a penal offence. Section 309 IPC had outlived its purpose long ago and should have been scrapped. The Law Commission of India had six years ago suggested doing away with the provision of the IPC, which it termed as unreasonable because it inflicted further pain on the victim. Since then, several states and union territories concurred with this view and sought a repeal of the section.

In 1970, the Law Commission's 42nd report recommended repeal of Section 309 IPC and found it "monstrous ... to inflict further suffering on even a single individual who has already found life unbearable and happiness so slander."[3] The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of Section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed in 1979. The Commission submitted its 156th Report in 1997 after the pronouncement of the judgment in *Gian Kaur*[4], recommending retention of the section asserting that owing to rise in narcotic drug-trafficking and terrorism offences in different parts of the country, the phenomenon of human bombs etc. have led re-thinking on the need to keep attempt to commit suicide an offence. However, the suggestion to repeal Section 309 IPC came up again in the 210th report of the Law Commission in 2008, a document concentrating solely on the decriminalisation of suicide. This report did make references to the fact that

---

[3] It relied, among other sources, on the commentators on Manu in the Dharmashastra to state that a person who is driven to death is either "incurably diseased or meets with a grave misfortune".

[4] Gian Kaur v. State of Punjab, AIR 1996 SC 946.

persons committing suicide need sympathy, care and treatment, not punishment.

One reason for the failure of the authorities so far to strike down Section 309 IPC was that legal opinion itself had been divided. While the Law Commission held that attempt to suicide was a "manifestation of diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment", the Constitution Bench of the Supreme Court had in *Gian Kaur*[5] upheld the validity of Section 309 IPC on the ground that the Constitution, which gives the right to life, cannot also give the right to take one's life[6]. It did not go into the wisdom of retaining or continuing the same in the statute book. In view of the views expressed by the WHO, the International Association for Suicide Prevention (France), decriminalization of attempted suicide by all countries in Europe and North America, the opinion of the Indian Psychiatric Society and the representations received by the Commission from various persons, the Commission has resolved to recommend to the government to initiate steps for repeal of the anachronistic law contained in Section 309 IPC, which would relieve the distressed of his suffering.

III. Judiciary on Attempt to Commit Suicide

Suicide is nowhere defined in the Indian Penal Code. While some suicides are eulogised others are condemned. That is why, perhaps, no attempt has been made by the legislature to define either. But the difficulty in providing a plausible definition cannot certainly be pressed in favour of the validity of the provision, particularly when it is penal. The want of a plausible definition to distinguish the felonies from the non-felonies act itself, therefore, makes the provisions of Section 309 IPC arbitrary and violative of Article 14 of the Constitution as it was held in *Maruti Sripati Dubal v. State of Maharashtra*[7]. Justice P B Sawant pointed out that the discriminatory nature of Section 309 IPC becomes particularly prominent when its provisions are compared with Section 300 IPC. While defining murder, the legislature has taken pains to make a distinction between culpable homicide amounting to murder and one not amounting to murder and has prescribed different punishments for the two. However, Section 309 IPC prescribes the same punishment to all individuals irrespective of the different sets of circumstances under which the suicide attempt is made.

---

5 Ibid.
6 Ibid.
7 1987 Cr LJ 743 (Bom).

The matter reached the Supreme Court in *P. Rathinam v. Union of India*[8] which, in a sprawling and untidy judgment, struck down the provision. The Supreme Court was of the opinion that Section 309 IPC was a "cruel and irrational provision and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide" and recommended that the section be deleted in view of the global trend in criminal laws. The Supreme Court not only decriminalised the attempt to commit suicide but also observed that the 'right to life' includes the 'right to die'. The Court strongly observed that all fundamental rights have positive connotations as well as negative connotations. The freedom of speech under Article 19 (1) (a) included right to silence, freedom to do business under Article 19 (1) (g) includes freedom not to do any business. Similarly the right to life includes the right not to live. But then decriminalising attempt to suicide is one thing and conferring a right to die is another. Right to silence or right not to do any business constitutes merely temporary suspension of rights and on any future date a person may exercise these rights. But once a life is extinguished, it is lost forever. The divisional bench observed that the view taken by them would advance not only the cause of humanisation, which is a need of the day, but of 'globalisation' also, as by effacing Section 309 we would be attuning this part of our "criminal law to the wavelength". But some Supreme Court judges felt that the right to die was inconsistent with "life and liberty". The need to decriminalise attempts to suicide has been considered by the courts only from the perspective of the right to life under Article 21 of the Constitution not from a mental health perspective.

Since the 1970's, most criminal statutes the world over have been decriminalising attempts to suicide. However, in *Gian Kaur v. State of Punjab*[9], the Supreme Court viewed this differently and held that the "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". The court made it clear that the "right to life" including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. This may include the right of a dying man to also die with dignity when his life is ebbing out. But the "right to die" is an unnatural death curtailing the natural span of life. The court reiterated that the argument to support the views of permitting termination of life in such cases (dying man who is terminally ill or in a vegetative state) by accelerating the process of natural death when it was certain and imminent was not available

[8] AIR 1994 SC 1844.
[9] Ibid, at 3.

to interpret Article 21 include therein the right to curtail the natural span of life.

The court set aside the judgment of the Bombay High Court in *Maruti Sripati Dubal*[10] and the decision of the Supreme Court in *P. Rathinam*[11] case wherein Section 309 IPC was held to be unconstitutional and upheld the judgment of the Andhra Pradesh High Court in *Chenna Jagdeeswar v. State of A. P.*[12] holding that Section 309 of the IPC does not violate Articles 14, 19 and 21 of the Constitution.

IV. Mental Health Bill 2013 on Suicide

The new Mental Health Care Bill, 2013 repeals the Mental Health Act, 1987 and is a marked change from its predecessor. The bill adheres to the principles of the UN Convention on the Rights of Persons with Disabilities and moves the current mental health care law from a medical to a social model based on human rights. The social model of disability urges us to look beyond the issues of medical treatment and disease, to the identification of the social barriers that deny people with psycho-social disabilities the rights to employment, education, recreation and even citizenship. That person driven to commit suicide are, more often than not, facing mental health disorders and are in need of care and treatment was suggested in the new Mental Health Care Bill, 2013.[13]

One provision of the bill that has been widely publicised is Section 124 which provides that there shall be no prosecution of any person who may attempt to commit suicide and presumes that such a person has a mental illness unless shown otherwise. What is important is that sub-section (2) of Section 124 goes on to state that in such a case, it would be the duty of the government to provide the person care, treatment and rehabilitation. This provision seeks to nullify Section 309 IPC, which made the attempt to suicide a criminal offence. Chapter V of the bill guarantees to every person the right to affordable, accessible, non-discriminatory and good quality mental health care and treatment. However, the bill does not give any

---

[10] Ibib, at 6.

[11] Ibid, at 7.

[12] 1988 Cr LJ 549 (AP).

[13] The statements of objects and reasons to the Bill state the government ratified the United Nations Convention on the Rights of Persons with Disabilities in 2007. The Convention requires the laws of the country to align with the Convention. The new Bill was introduced as the existing Act does not adequately protect the rights of persons with mental illness nor promote their access to mental health care.

guidelines on how care and treatment should be provided for such vulnerable persons.

The wording of Section 124 is clumsy in the sense that if the person is shown to not have a mental illness, he gets neither medical help nor immunity from prosecution. Not all individuals attempting suicide are mentally ill as they may suffer from frustration, debt, poverty, romance, failure, shame or health. The Supreme Court also considered suicide as a mental health concern in its judgment on euthanasia in *Aruna Ramchandra Shanbaug v. Union of India and Others*[14] in which it recognised that a person attempting to suicide is in need of help rather than punishment and it recommended that the Parliament consider the feasibility of deleting Section 309.

V. Suicide and Euthanasia

The repeal of Section 309 IPC also calls into question a lot more than only attempted suicide. It could also be perceived as the starting point for the revival of debates on euthanasia or medically-assisted suicide. Although the term euthanasia implies 'good-health', it has largely come to be identified with physician-assisted suicide and regarded as a form of suicide that a terminally-ill person can commit through the assistance of the other, mainly the treating physician. Therefore suicide and mercy killing are different and should not be confused as one and the same. In the former no third party is involved but in the latter the third party is crucial. We may need a law permitting euthanasia, but not suicide.

Euthanasia gained significant attention in our country with the *Aruna Shanbaug case* in 2011[15]. In this case the court subsequently turned down the plea for euthanasia, but laid down guidelines for passive euthanasia, which involves the withdrawal of life-continuing treatment or food, under the 'rarest of rare' circumstance[16]. Justice M. Katju's judgment on euthanasia in *Aruna Shanbaug's case* did not find approval in *Common Cause (A Registered Society) v. Union of India*[17], which was referred to a larger bench on the grounds that Justice Katju had misconstrued *Gian Kaur's case*, which validated suicide and permitted passive euthanasia. The constitutional bench, constituted for the purpose of providing a new set of guidelines on euthanasia, alleged that a clear law on the subject of euthanasia in India was mandatory. It was stated that the procedure set in the

[14] (2011) 4 SCC 454.
[15] Ibid.
[16] Active euthanasia involves injecting lethal drugs into the patient's body.
[17] Writ Petition (Civil) No. 215 of 2005.

Shanbaug verdict did not comply with Article 21 of the Constitution, which guarantees the 'right to die with dignity'.

The sudden removal of Section 309 IPC shall play an instrumental role in making a move for the validation of euthanasia. The primary question law makers shall be confronted with is whether Indian society is equipped to have a law on euthanasia. Legalising euthanasia in India, the majority population of which still lies below the poverty line, could have serious implications on society at large. In the absence of proper guidelines and checks, legalising euthanasia will be misused and carried out in a rampant manner. On the other hand, a legislative move on passive euthanasia should be considered seriously. The basic thrust behind the debate should be to arrive at a conscious and acceptable decision that shall be beneficial for Indian society at large.

VI. Suicide and Abetment to Suicide

The next question arises is what do we do in cases where someone else provokes or abets the suicide? It may be argued that if an attempt to commit suicide is not considered an offence, it must logically follow that the aiding and abetting of the attempt must also not be an offence. However, the Supreme Court in *P. Rathinam case* observed that self-killing is conceptually different from abetting others to kill themselves. The Delhi and Bombay High Courts felt that while suicide should be decriminalised, abetment of suicide should remain on the statute books. Thus, there was no ground for any apprehension that Section 306 of the IPC may not survive if Section 309 IPC declared unconstitutional. The court in *Gian Kaur case* also held that Section 306 IPC enacts a distinct offence independent of Section 309 of the Code which is enacted even in the law of countries where attempted suicide is not punishable.

The abettor and anyone he is in conspiracy with are guilty of homicide. That is why Section 305 IPC deals with abetment of the suicide of a child or insane person. The charge invites death, life or other terms of imprisonment and a fine. Again, Section 306 deals with abetment of suicide where the abettor, if guilty, may be awarded 10 years and a fine.[18] Those who drive a person to suicide are criminals and not to be spared. We see this in dowry death cases. But since 1986, there has been a direct provision, Section 304B IPC, where punishment is not less than seven years and goes

[18] Section 306 IPC says that 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 extend to ten years, and shall also be liable to fine.

up to a life term. The mandatory seven years creates a problem, making judges reluctant to convict under Section 304B of the IPC.

Therefore the fears expressed that abolition of Section 309 IPC could weaken other relevant provisions such as Section 306 IPC, which makes abetment to suicide a punishable offence, is misplaced because the spirit of the law behind the two sections is different. In any case, once Section 309 IPC is repealed, law makers will surely make changes that are deemed necessary to continue holding abetment to suicide as a punishable offence.

VII. Conclusion

Although Section 309 IPC has been on the statute books, suicide has never really been treated as an offence. There have not been any serious prosecutions of persons who attempted to commit suicide and almost no convictions. It has also to be realised that a determined suicide can never be prevented by the fear of only one year's imprisonment or fine or both which Section 309 IPC seeks to achieve. The holding of a 'right to die' is in accordance with a capitalistic, property-oriented outlook which prefers to treat everything including the human body, organs as a form of commodity and he is the sole master of it. He has the freedom to dispose it off as and when he desires. Even at present, the relevant statutes permit donation by an individual of certain parts of his body under certain conditions, thereby recognising the right of the individual to deal with his body as he chooses. Besides, to criminalise suicide while extending state support to contraception and the termination of pregnancies logically inconsistent, since both acts violate the sanctity of life. Again there are people who use suicide not as an exit but as an instrument like suicide bombers and those who kill themselves to erase evidence and activists who starve or immolate themselves for a cause. So far suicide bombers are concerned they are covered by provisions that deal with murder, terrorism, disruption of peace and by the legislations like the Unlawful Activities Prevention Act. Whereas hunger strikers are concerned that the deletion would force the government to seek cures for the political diseases that hunger strikes draw attention to, not cosmetic alleviation of the symptom.

The logic behind the criminalisation of suicide flows from the presumed sanctity of life. The European tradition was that suicide is illegal because humans do not have the right to take a life, not even their own. The act of suicide is forbidden in the Quran and the Holy Bible. The common belief among Hindus is that a person who commits suicide will not attain 'moksha' and his soul will wonder around haunting and tormenting people. But how is a particular society supposed to treat practitioners of its own socially-sanctified customs such as seppuku or hara-kiri, kamikaze, self-

immolating monks and the tricky cases of Hindu rituals of prayopravesa, which is suicide by fasting and mahasamadhi where death occurs as a result of consciously and intentionally leaving one's body behind at the time of enlightment. Most of these are highly formalised customs and have been acceptable for a long time because of their religious context even though a few have run afoul of the law and have become criminalised. Yet, failure to complete the ritual successfully does not result in something that calls for 'treatment' because it automatically endows default dishonour on the person concerned that, in most cases, is 'punishment' enough. Perhaps that is the real reason why an unsuccessful suicide is still a punishable offence.