

# LEGALFOXES LAW TIMES

## THE DECRIMINALIZED CRIME – SUICIDE

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### ABSTRACT

Life is a gift bestowed by nature and it shall not be taken away unnaturally. Everyone wishes to live a life which is free from dilemma and distress. Life is a cycle, a mysterious cycle where you come across misfortunes and contentment. Terrorized by feeling of isolation, misery and depression a person can't find any other way other than surrendering to death. It's not that a person may want to end their life rather they may want to put an end to the pain they go through. They go through mixed feelings – fluctuating between wanting to live and wanting to die.

### INTRODUCTION

“Suicide is a permanent solution to a temporary problem”

 -Phil Donahue

Suicide is a desperate attempt to get away from the suffering that has become unbearable. It is the taking of one's own life intentionally. There has been alarming increase in the suicide rates. According to the study of World Health Organisation (WHO), nearly 800,000 die due to suicide every year, this means one person every 40 seconds<sup>1</sup>.

**Section 309 of IPC<sup>2</sup>** states that attempting to end one's own life is an offence and prescribes punishment for attempt to suicide.

The change in perception towards suicide and attempt to suicide began at an early stage itself. In 1981, the Delhi High Court condemned the provision of the section as “unworthy of human

<sup>1</sup>[https://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/](https://www.who.int/mental_health/prevention/suicide/suicideprevent/en/)

<sup>2</sup><https://indiankanoon.org/doc/1501595/>

society” and in 1986 the Bombay High Court in *MarutiShriптиDubal vs. State ofMaharashtra*<sup>3</sup> held the provisions of the section as ultravires on the ground that it violates Article 14 & 21 of the constitution. Thereafter in 1994 it was even called “irrational and void” by Supreme Court.

### **RIGHT TO DIE – NOT A FUNDAMENTAL RIGHT UNDER ARTICLE 21**

The constitutionality of Section 309 of IPC has been a subject matter of challenge several times before the High Courts and the Supreme Court.

The case of *MarutiShriптиDubal vs. State ofMaharashtra* initiated a question whether Right to die is included in the Article 21 of the constitution. The Bombay High Court observed that if the Right to remain silent exists simultaneously with the Right to freedom and Expression then Right to die can also exist with Right to life and thereafter held that suicide is not unnatural but merely abnormal and struck down Section 309 of IPC as unconstitutional.

Contradictory to this decision the Andhra Pradesh High Court in *ChennaJagadeeswar vs. State of Andhra Pradesh*<sup>4</sup> held that Section 309 of IPC is not unconstitutional since it Right to die is not a Fundamental right within the meaning of Article 21 of the Constitution.

Quashing the above decision, a Bench of the Supreme Court in the case *P.Rathinam vs. Union of India*<sup>5</sup> held that a person cannot be forced to live a life against his disadvantage and it is cruel and irrational to punish a person who has already suffered so much agony and pain leading to which he/she has decided to take such a step.

Abrogating the *P.Rathinam* case judgement, the Supreme Court in *Giankaur vs. State of Punjab*<sup>6</sup> held that “Right to die” is inconsistent with “Right to life” as former is a natural right and latter is unnatural termination of life and supported that Section 309 of IPC did not violate Article 14 & 21 of the Constitution.

However the Supreme Court in *ArunaRamachandraShanbaugh vs. Union of India*<sup>7</sup> justified the validity of Passive Euthanasia (a state where the treatment and food that would allow the patient

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<sup>3</sup>1987 Cr LJ 549

<sup>4</sup>1988 Cr LJ 549

<sup>5</sup> (1994) 3 SCC 394

<sup>6</sup>(1996) 2 SCC 648

<sup>7</sup>AIR 2011 SC 1290

*to live is withdrawn). It is only promoted in exceptional circumstances and only with the permission of the Supreme Court.*

### **DECriminalIZATION OF SUICIDE**

The Mental Health Care Bill 2016 got assent by the President on 27<sup>th</sup> March 2017 thereafter decriminalizing attempt to suicide.

According to Mental Health Care Act (MHCA) people committing suicide are generally going through a severe mental stress or depression therefore which punishing them would be inhumane. Rather the Government must take due care to provide them with help and treatment in order to reduce the suicidal thoughts coming in. It should be recognized as a psychiatric problem rather a criminal act.

Observing that Section 309 of IPC is contradictory to **Section 115 of Mental Health Care Act 2017<sup>8</sup>** which states that any person who commits suicide shall be presumed to have stressed and shall not be tried and punished unless proved otherwise the Government decriminalised attempt of suicide. It is viewed as an issue which requires treatment than punishment. The act regards the person who commits suicide as a victim of circumstances and not an offender.

Decriminalisation of suicide is a more humane way of dealing with the problems of the victim rather prosecution. It will bring out many cases of attempt to suicide otherwise which were gone underground in fear of being punished and appropriate medical assistance could be provided.

### **ARGUMENTS AGAINST DECriminalISATION OF SUICIDE**

The state is entrusted to promote and protect the life of its citizens and therefore faced several arguments against decriminalisation of the Section.

- Decriminalisation of the Section would create an obstacle for the concerning authorities to manage the people going on hunger strike done by activists to force the government to accept their demands which may not be rightful at times.
- The Section 309 of IPC was significant in punishing the suicide bombers and drug traffickers. This argument is also unreasonable as such crimes have separate laws to

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<sup>8</sup><https://ruralindiaonline.org/library/resource/the-mental-healthcare-act-2017/>

punish the offenders such as the *Narcotic Drugs and Psychotropic Substances Act, 1985*, *Unlawful Activities Prevention Act 1967* etc.

- Suicide is seen to have been an unhealthy approach towards life. A person committing suicide is actually unfit to make decisions. There are various means to cope up with problems of life rather committing suicide.

An important question that arises is **what if stress is not proved?** The enactment does not talk about anything to be done if the stress is not proved as there be situations where a person commits or attempts to commit suicide for bizarre reasons such as to just experience the moment. In situations like these, acts are to be supervised under section 309 of IPC (which has fortunately not been revoked completely) as Section 115 of MHCA clearly mentions that - *“person who commits suicide shall be presumed to have stressed and shall not be tried and punished unless proved otherwise”*

In accordance to the above raised question suicides are still seen as a Medico-Legal case. (MLC refers to injury or infirmity that indicates legal investigation to establish and fix the responsibility regarding the condition of the patient). Therefore the hospital authorities are bound to report to the investigation authorities to facilitate investigation or to provide medical treatment.

### **CONCLUSION**

Decriminalisation of suicide is a step to build up a new India, understanding the human behaviour and recognizing psychological disorders. It shows India's changing attitude towards mental problems. It is the adverse circumstances that make a person to take such a step therefore they must be given proper psychiatric guidance rather than putting them behind the bars which would only contribute to their sufferings. But this enactment should not be taken as encouraging suicide. Decriminalising the act is merely not enough but there should be health programs and awareness campaigns.