

EDITORIAL

PUNISHING ATTEMPTED SUICIDE - ANACHRONISM OF TWENTIETH CENTURY'

"Any act which takes a person further from life and nearer to death has been regarded as felony" was the logic of the medieval Europe. Suicide was punishable in Europe till the end of 18th century. Following the French revolution of 1789, attempted suicide was abolished as an offence in France, and soon other countries of Europe followed suit, and the recent addition to this list is England which in 1961, by Suicide Act, abolished this 'crime'. Neither USSR nor USA, the latter barring few states, has any such statute. The punishment for attempted suicide had more material logic, as pointed out by Allan Harding, namely that Crown confiscated the material goods of the person found doing so, and thus the state got richer.

Our mythology is also replete with incidences of completed suicide. Maharshi Dadhichi 'gave his bones' to God Indra for the fight against 'Asuras', and Sant Dhyaneswar committed suicide by entering into 'samadhi'; these could be classified as altruistic suicide, as classified by Emil Durkheim. The instances of 'Johar' by Rajput females following defeat in war of their menfolk, and 'harakiri' in Japan are further examples of this. However while these acts are regarded as laudable, suicide is not looked upon favorably for reasons other than altruism in Hindu religion. Other religions like Islam and Christianity condemn suicide altogether.

In the current times, suicide is dealt in Section 309 of Indian Penal Code, which states **"Whoever attempts to commit suicide or 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 both"**. This act takes into account

an attempt at suicide or any act towards the commission of such an offence, and the underlying rationale is that the law esteems the life of an individual as not only valuable to him/her, but also valuable to the State. As the law prevents a person from taking the life of another person, it also does not allow a person to take his own life. The other sections buttressing section 309 are 306 and 304B. Section 306 deals with the abetment of the commission of suicide (but not with abetment of the attempt to commit suicide) while section 304B deals with dowry deaths which states that a person shall be deemed to have caused the death of a woman if that woman dies as a result of burns or injury within seven years of her marriage and if before her death she has been subjected to cruelty or harassment by her in-laws in connection with dowry.

A popular view is that the essence of suicide is the intentional self-destruction of life. Hence, courts have often tried to employ the test of intention, and tried to gather information to this extent before passing a judgment. An obdurate example of this is that attempt to suicide is not punishable if the person took the overdose of poison by mistake or under an intoxicated state. Another lacuna in the legislature is the unclear status of those persons who declare their intention to fast unto death or declaration of self-immolation, for any cause. Allahabd High Court (Ram Sunder v State, AIR 1962 Allahabad, 262) has commented on the problem of fast unto death, saying that even if there was such an overt declaration by the person, it is difficult to be sure that he really intended to persevere to the end, and it being a long drawn out process can be interrupted at

any stage, except the very last.

Why does a person chooses to commit suicide, the end-result of attaining success in this venture being immaterial. The various suggestions which come to mind immediately are psychosocial stressors and psychiatric illness - namely, depression, schizophrenia, substance abuse or as a part of attention seeking behavior; the detailed discussion of these is beyond the scope of this editorial, and readers themselves would be familiar with the volumes of work published in this regard. The psychologists and sociologists have their own views, while the former believe it to be inwardly directed aggression towards the internalised object of hate, self-devaluating thinking and loss of meaningfulness and hope, the latter group attribute it to a disturbed relation between the individual and the society.

It has been noted with consistency that of all suicide cases, a majority suffer from psychiatric illness. The incidence of previous psychiatric contact has been estimated to be 33-50% (Barraclough et al., 1974), and a detailed retrospective analysis revealed that 93% of those who had attempted suicides were mentally ill at the time of the commission of the act (WHO, 1968, cited in Srivastava & Rao, 1996).

Thus, a number of salient facts emerge. Suicide, in special circumstances, had been acceptable in mythology and history. Other sections of Indian Penal Code are related to it. Section 309 itself is not foolproof, and circumstantial evidence leading to the act has been considered in various cases to prove the intent of the person attempting suicide. Situations like fasting unto death and self-immolation test the knowledge and judicial skill of the presiding court. Most of the developed nations have done away with legislatures dealing with punishment to suicide attempters. And, lastly, a majority of persons attempting suicide, some of which are successful and therefore beyond the clutches of human law, suffer with some psychiatric

illness. Besides, the social consequences of the failed act are enormous which has been aptly quoted by Justice Rajinder Sachar : Instead of society hanging its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to commit suicide, it compounds its inadequacy by treating the boy as a criminal. Instead of sending the young boy to a psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive section of the Penal Code.

The cumulative impact of these facts seems considerable on the law pundits of the country, who have pointed towards the redundancy, or even the detrimental consequences, of Section 309 of IPC. About 25 years ago, in 1971 to be precise, the Law Commission, the body whose function is to facilitate law reform, in its Forty-second report recommended the abolition of this section. This recommendation was accepted by Government of India, but before it could be passed by the Lok Sabha in 1979, the august elected body of the country was dissolved, and the Bill lapsed.

However, this view is not shared by everyone. Some carp that the abolition of Section 309 would render Section 306 (dealing with abetment of suicide) ineffectual. The fallacy of such a line of thinking is evident as Section 306 does not deal with abetment to attempt to suicide, and it can still be effective as shown in the Suicide Act 1961 of England, where it is stated that a person facilitating another's suicide or attempt to suicide is punishable. Similarly abrogation of Section 309 would not influence in any way Section 304B dealing with dowry deaths.

Recently, resurgence of interest in this matter was created when a two judge bench of Supreme Court Hon' ble Justice R M Sahai and B L Hansaria, ruled in the case of P.Rahinam/Nagbhushan Patnaik v. Union of India (Jahagirdar, 1996) that "Section 309 of the Penal Code deserves to be effaced from the Statute book to humanise our personal law.

EDITORIAL:- PUNISHING ATTEMPTED SUICIDE

It is cruel and irrational provision... and an act of attempted suicide has no baneful effect on society.". They further ruled that this "would advance not only the cause-of humanisation which is the 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 global wave-length.". This judgment came to be reviewed by larger bench of five judges (presided over by Hon'ble Justice J S Verma) which held that P Rathinam was wrongly decided (Smt Gian Kaur v. State of Punjab, decided on 21st March 1996 and reported in 1996 cited from Jahagirdar, 1996).

To sum up, the Johar undertaken by Rajput females was an act to save themselves from disgrace. In present day times also, if taken an humanitarian view, suicide is attempted by persons for reasons beyond their control. Such individuals need sympathy, care, love and treatment. Adding insult to injury, is the fact that people needing mental treatment who are driven to commit suicide are prevented from seeking the same for fear of being punished. The opinion of a retired Justice R.A. Jahagirdar (1996) succinctly, yet forcibly, summarises the issue : In an age where the theory of punishment

is moving away from one of deterrence to one of reformation, it is really shocking that an anachronistic provision like Section 309 of the Indian Penal Code should continue to be on the statute book, which is further substantiated by Hon. Justice Sachar - "Need is for a humane civilised and socially-oriented conscious penology".

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