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Legislation and Jurisdiction of Suicide Laws in India Conflicts and Retrospective Analysis

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ABSTRACT

Looking at statistics of suicide in India a total of 1,53,052 suicides were reported in the country during 2020 showing an increase of 10.0% in comparison to 2019 and furthermore, the rate of suicides has increased by 8.7% during 2020 over 2019. Statistics provided by National Crime Records Bureau Ministry of Home Affairs. Every year, more than 1,00,000 people commit suicide in our country. The incidence and rate of suicides during 2016-2020 is presented in the manuscript.

One has to understand that this imposes a huge social, emotional and economic burden on a nation. This shows us just how incredibly important this discussion is for a young legal audience. To help understand how the drafting of legislative acts that aim to punish over rehabilitate those in desperate need of medical care can be of catastrophic damage to a nation.

Retrospecting the suicide cases globally and in Indian context; the paper aims to bring forth a discussion on very important aspect of dignified life among law researchers and students. The paper unfurls the history of Indian laws on suicide and emergence of suicide prevention laws. It highlights the emergence of Indian Penal Code, more commonly referred to as the IPC; which governs all criminal acts, offences, and the punishments for said offences.

The Paper will discuss section 309 of IPC and Medical Healthcare act 2017 discussing the validity, conflicts of the existing laws and acts as per the emergent situation. The paper tries to unfurl a discussion, whether right to die can be included in right to life or not and will the Indian government allow it. The paper also discusses prevalent acts and amendments at international level related to Active and passive Euthanasia. The discussion of prevalent laws will bring a retrospective comparison and contrast of various reasons that weigh in spiking the nations suicide rate and mental health issues.

Keywords: *Suicide, India, Euthanasia, Indian Penal Code, Medical Healthcare act*

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I. INTRODUCTION

Suicide is a complex and multifaceted phenomenon that has always existed globally, not something strange that appears out of nowhere as some may treat it to be. It moves in waves, depending on the social, economic, political and personal factors in an individual's life. Emile Durkheim, an eminent sociologist of the 19th century gave a comprehensive definition of suicide. *"The term suicide is applied to all cases of deaths resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result. An attempt is an act thus defined but falling short of actual death."* [2]

Suicide in India is an even more complex problem to track, given the size of the population and the diverse cultural backgrounds. A serious emerging public health issue. However, it is indeed preventable with timely, evidence-based and often low-cost interventions. The suicide mortality rate per 100 000 population in 2016 was 16.5, while the global average was 10.5 per 100 000. The most vulnerable as according to WHO, are the 15–29-year old's, the elderly, and persons with special needs. [3] Because of this, laws in regards of suicide are more relevant than ever.

Looking at the prevalent scenario, statistics have revealed that Suicide has been a leading cause of death. The alarming and continuous increase in suicide cases is truly heart rendering. Thus, the present paper discusses the fundamental right of Indian constitution with emphasis on right to life and Indian laws regarding the same.

The objective of enacting the IPC was to provide a general and exhaustive penal code for crime in India. But as we see here in this paper, there is one section of IPC that has long been under fire, and that is Section 309. The Hon'ble Supreme Court of India has, on some occasions, questioned the apparent conflict between Medical Healthcare Act 2017, and Section 309 of Indian Penal code, 1860. The Court directed the central government to clarify its stance on the said subject, and ever since the matter has been on hold.

The section states quite clearly:

Attempt to commit suicide. *"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]."*

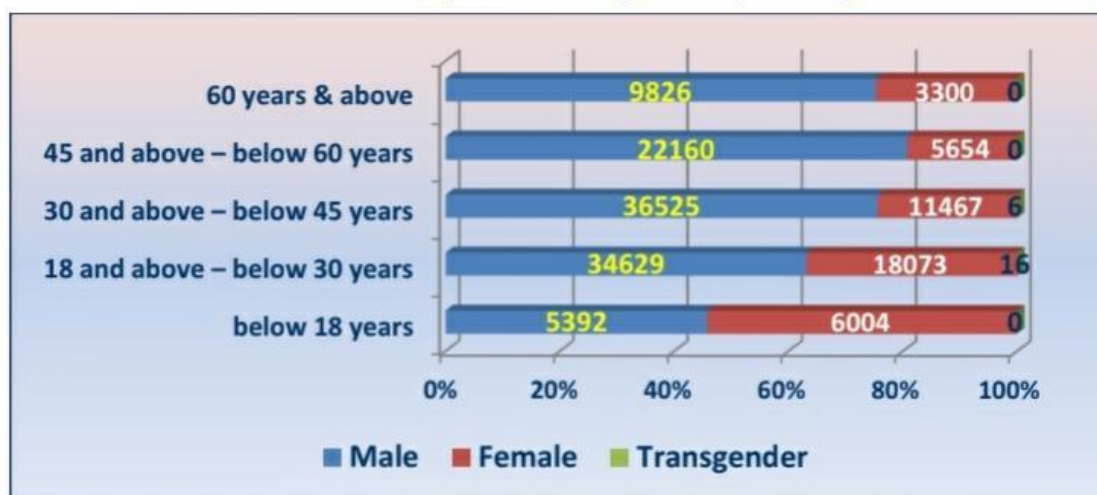
So the main question is can the right to die be included in right to life or not? Should it be? and will the Indian government allow it. Attempt to Suicide is an offence under section 309 of IPC, which is in conflict with fundamental right of Right to life, as has been argued by many legal experts, and yet it has not been repealed. Furthermore, we also discuss Medical Healthcare act

2017, that comes in conflict with Section 309 of IPC.

It is of great importance to note that statistics of suicide in India is a total of 1,53,052 suicides were reported in the country during 2020 showing an increase of 10.0% in comparison to 2019 and the rate of suicides has increased by 8.7% during 2020 over 2019. Again, the incidence and rate of suicides during 2016-2020 are visible in [Figure 1]. The age group (18 – below 30 years) and persons of 30 years – below 45 years of age were the most vulnerable groups resorting to suicides. [Figure 2] These age groups accounted for 34.4% and 31.4% suicides respectively. [1]

(The figure above is an extract from the National Crime Records Bureau Ministry of Home

Suicide Victims by Sex and Age Group during 2020



Affairs in – Accidental Deaths and Suicide in India 2020, which you can find cited below)

This is something that imposes a huge social, emotional and economic burden on a nation. Showings us just how incredibly important this discussion is for a young legal audience. With the purpose to help understand how the drafting of legislative acts that aim to punish over rehabilitate those in desperate need of medical care can be of catastrophic damage to a nation. The same goes for harboring old unchanged laws when the field of science, particularly psychology here in this situation, has long out grown them.

This paper, with reference to Healthcare Act and section 309 of IPC, aims to discuss the existing contradiction between the Section 309 of IPC that criminalizes the attempt of suicide, and the Medical Healthcare Act 2017, which has barred the prosecution of a person trying to take their own life under mental distress. Further paper imposes a question on validity of the existing laws and acts as per the emergent situation. The paper also discusses prevalent acts and amendments in Indian constitution related to Active and passive Euthanasia as well as bring a retrospective comparison and contrast of various reasons that weigh in spiking the nations suicide rate and

mental health issues. In its historical context, such as the Jain practice of Santhara and Sati in Hinduism, and hharakiri in Japan is good examples of how the morally complicated nature of suicide is not something limited to India, but transcends cultures and boundaries. We will contemplate over this and then provide our views on whether we are no one to consider, IPC has been drafted by the legislature and legally, either the judiciary or the legislature can consider Section 309, IPC ought to be change or removed entirely.

This article will help teacher to bring a better approach into the classroom regarding suicide and constitutional laws, counselling of legal students in a manner that that will help them comprehend the importance of mental health awareness in the field of law and how suicide laws can be framed in a way that works for the betterment of the individual, allows them to continue their lives in society in a mentally and physically stable fashion.

II. HISTORICAL BACKGROUND OF SUICIDE IN INDIA

India has had an interesting relationship with suicide; and while other nations like Great Britain which criminalized suicide during the Middle Ages however later repealed it during the contemporary age, India continues to treat attempt to suicide as a criminal offence. Looking back into the history of this nation, suicide in India was something of a social and cultural practice. Let's look into some examples.

In Jainism, the most devoted may perform the practice of santhara, or orsallekhanā the vow of fasting to one's own death. This is a rare practice, but a practice that still exists nonetheless. Out of a belief in karma, and rebirth a Practitioner of Jainism may, when certain of their death, commit to this practice as a way of purifying themselves and preparing for transition into the next life. In contrast with other religions like Christianity, Islam, Judaism; Jainism believes such a practice to not be an offense or a harmful act but a process of transitioning into a different life. This practice believes in a willing renunciation of the body and prescribes the best way to leave it, according to its Ideology.

In the case of 'Nikhil Soni vs Union of India &Ors. On 10 August, 2015. High Court of Rajasthan' it was decided that a voluntary fast unto death is an act of self-destruction, which amounts to suicide. Which is a criminal offence and is punishable under section 309 of IPC with simple imprisonment for a term that may extend to one year or with fine or with both. The abetment of suicide is also punishable under section 306, IPC with imprisonment of the term which may extend to ten years and also liable to fine. The judgement has been the subject of much debate and critique, since the same seems to be in direct contradiction with Article 21 and 25 of the Constitution of India, 1950 that states quite clearly "*No person shall be deprived of*

his life or personal liberty except according to a procedure established by law.” and “freedom of religion to all persons in India.”, respectively.

So, can the right to life also includes the right to voluntarily end that life? It is hard to argue, since keeping a person alive against their own will would appear as a violation of that person's liberty and as it is given under the Medical Healthcare Act 2017 a person does have the right to decide their care taker and treatment. In retrospect, if we look back to 2015 when this case was still in court, our present stance on the subject given the introduction of Medical Healthcare Act 2017 may contradict.

Further, we would like to throw light on the historic and an outdated Hindu practice called Sati. First seen during Gupta Empire, Sati was a Hindu practice of burning, burying or the use of any other means to put an end to a women’s life against her will, or with consent to, typically the widow would sacrifice herself by sitting atop her deceased husband’s funeral pyre.

Section 2 (c) The Commission Of Sati (Prevention) Act, 1987 defines sati as;

Sati means the burning or burying alive of

- (i) Any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or*
- (ii) Any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise.*

Culturally it is believed that the practice originated out of a fear of invaders, afraid of what may happen in a patriarchal society where the male is no longer present to support the needs of his wife, and the dangers she might be put into, slavery and abuse. The practice was abolished in the early part of 19th century by the efforts of Lord Bentick and Raja Rammohan Roy. But this is not the end, over 150 years after banning of Sati in 1828-29, there was the case of burning alive of Roop Kanwar, an 18-year-old widow of Deorala, on September 4th, 1987. And unfortunately, that is not where it ends either, though Roop Kanwar is often remembered as the last victim of sati Pratha but that is false. On August 7th, 2002, another incident of Sati took place, self-immolation of a woman Kuttu Bai who committed Sati by immolating herself in her husband’s pyre in Tamoli, Patna village of Pana district of Madhya Pradesh. The prevention of Sati act is enforced but this incident occurring one decade after Roop Kanwar sati case, and is a glaring example of how the Implementation of law is defective. [4]

We saw Santhara a voluntary practice of suicide and sati a forced practice. On one side, keeping

IPC 309 of 1850, will help stop the still continued practice of sati, but on the other it will greatly complicate the position of Jain practitioners. To ever positive there is a negative and selective application of this law has had turned it incredibly vague, the approach We have to any changes or amendment must be respectful towards all religious values and at the same time maintain the dignity of human life. A change in the public's opinion is needed here in India and it can be possible through the Medical Healthcare Act.

Sometimes a person kills himself as a gesture of sacrifice. "Sati" in India and 'Harakiri' in Japan are some examples. In Japan committing suicide is considered Illegal, but it is not punishable. Assisted-suicide is considered illegal and anyone found assisting in suicide can be punished. In primitive societies, men of old age embraced death so that they were not a burden to society. Seppuku, sometimes referred to as hharakiri i.e. action of abdomen/belly cutting is a form of Japanese ritual suicide by disembowelment.

Seppuku as judicial punishment was abolished in 1873, shortly after the Meiji Restoration, but voluntary seppuku did not completely die out. Dozens of people are known to have committed seppuku since then, for example Isao Inokuma in 2001, being the most recent notable case recorded under this practice. With this example we can understand that this is not a concept limited to India.

III. MEDICAL HEALTHCARE ACT 2017

On 7 March 2011, the Supreme Court recommended that Parliament consider deleting section 309 from the statute. [11]

On 10 December 2014, in response to a question by Vivek Gupta in the Rajya Sabha on decriminalization of suicide, the Minister of State for Home Affairs, Haribhai Chaudhary replied that "it has been decided to delete Section 309 of IPC from the Statute book." [12]

On 24 February 2015, the Minister of State in the Ministry of Home Affairs, Haribhai Parathibhai Chaudhary, said that a proposal to delete Section 309 from the Indian Penal Code had been sent to the Legislative Department of the Ministry of Law and Justice for drawing up a draft Amendment Bill. [13]

But it was on the date of March 27, 2017, when Lok Sabha in a unanimous decision passed the Mental Healthcare Act, 2017, which was initially passed in Rajya Sabha on August 2016 and got its approval from the Honorable President of India on April 2017. The new act defines "mental illness" as a substantial disorder of thinking, perception, mood, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions

associated with the abuse of alcohol and drugs.” This act itself rescinds/revoked the existing Mental Healthcare Act 1987 its predecessor, which had been strongly criticized for not recognizing the rights of a mentally ill person. [5]

Keeping view of the massive health burden of mental illness in our country, existing inadequate infrastructure and lack of proper workforce equipped, all the social stigmas attached, and the many shortcomings of Mental Healthcare Act 1987, it had become a necessity to address this issue.

Further, like every other nation, we have an equal obligation to work upon our country’s owed responsibilities toward the mentally ill as per the Convention on Rights of Persons with Disability (2007) Hence, a patient-centric bill that safeguards available, affordable, and accessible mental healthcare services had been long due in India and so, that is how the Medical Healthcare Act 2017, came in being.

The objective of the Act said, as per quoted:

“An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”

Keeping all this in mind, what about assisted suicide, euthanasia?

Cases and Euthanasia, within and outside Indian context.

If we discuss suicide in the content of Euthanasia, which is the practice of intentionally ending life to relieve pain and suffering of an individual. The case of Aruna Ramchandra Shanbaug vs Union Of India & Ors is the first thing that will come up in the conversation, being the landmark case that set laws for Euthanasia in India. While Airedale N.H.S. Trust v Bland [1993] A.C. 789 House of Lords and the case of Janet Johnstone, being the cases from United Kingdom and Scotland.

Firstly, let’s look at Airedale N.H.S. Trust v Bland, this was a case of euthanasia where the patient faced such an accident that reduced him to a persistent vegetative state. His brain stem was still functioning, which controlled his heartbeat, breathing and digestion, so technically he was still alive. After the accident he had been in this state for three years and alive on life support. He was not conscious and had no hope of recovery. The hospital with the consent of his parents applied for a declaration that it might lawfully discontinue all life-sustaining treatment and medical support measures designed to keep him alive in that state, including the termination of ventilation, nutrition and hydration by artificial means. The declaration was

granted. The court recognized in the case that there existed the intention to cause death. Lord Goff stated to actively bring a patient's life to an end is: - *"to cross the Rubicon which runs between on the one hand the care of the living patient and on the other hand euthanasia - actively causing his death to avoid or to end his suffering. Euthanasia is not lawful at common law"*: per Lord Goff at p. 865 F. Ever since this case, the legality of euthanasia was decided in the United Kingdom, as illegal.

Lord Browne-Wilkinson stated that *"the whole purpose of stopping artificial treatment is to bring about the death of Anthony Bland"* while he accepted that the removal of nasogastric tube as reasonable, despite it he held: *"If, instead of removing the nasogastric tube, it was left in place but no further nutrients were provided for the tube to convey to the patient's stomach, that would not be an act of commission....if the switching off a ventilator were to be classified as a positive act, exactly the same result can be achieved by installing a time-clock which requires to be re-set every 12 hours; the failure to reset the machine could not be classified as a positive act."* [10] this example we can see the grey area pointed out by Lord Browne-Wilkinson.

In the second case Mrs. Janet Johnstone, one of the most highly publicized and controversial cases to come before Scotland's civil courts in recent years that saw Scots legal history made. On April 24th, in the Court of Session in Edinburgh, Lord Cameron of Lochbroom ruled that life-sustaining treatment could be withdrawn from Johnstone, a patient at Lanarkshire's Law Hospital. Typically this is done with the consent of the patient but where no instruction was provided by the patient due to any circumstance, like in the previously stated case, one could not say that treatment was being withdrawn or withheld with the agreement of the patient, in such a situation the patient is not in a position to relieve the doctors of the duty of care if this duty is considered to be a continuing one, its breach could result and legal liability.

As it is stated in Ferguson PR. 'Causing death or allowing to die? Developments in the law' elaborating on the English law, where a patient is not in a position or is unable to decide for themselves the law allows the doctor at determine whether there is any medical benefit to be obtained by continuing a treatment. There is no legal obligation of a doctor to continue with treatment which is futile. Is continue treatment of benefit to the PVS patient? Lord Hope stated in Johnstone case that *" ... Existence in a vegetative state with no prospect of recovery is by a large body of informed and responsible medical opinion regarded as not being a benefit."* The house of lords authorized to withdrawal of artificial feeding in the Bland case and this was applied to Scotts law and the Johnstone case.

Again, Lord Hope Stated: *"I can see no relevant distinction between the way and which the*

underline principles was applied in the Bland case and the question which has to be decided here in the case of Mrs. Johnstone” in granting the declarations in Bland and Johnstone that cessation of artificial hydration and nutrition’s would not be unlawful, the court categorized artificial feeding as a form of treatment. This allowed them to hold that a doctor is not under a duty to continue this where it is in capable of improving a patients transfer recovery at least so far as PVS patients. [11] Simply put, with PVS patients the symbolic significance of feeding does not exist as the person is in Persistent vegetative state.

Onto the third case we have mentioned in regards of euthanasia, Aruna Ramchandra Shanbaug vs Union Of India & Ors. The difference between the first two and Aruna Ramchandra’s case is that Aruna did not wish to end her life, as far as the medical professionals could tell, this made the ultimate difference in the outcome. This was a landmark case, after which passive euthanasia was legalized in India.

Here in this case it was decided that the power to determine termination of an individual’s life would be subjected to High Court’s approval following a due procedure. Whenever any application will be filed in High Court for euthanasia (Active euthanasia is the process of killing a patient by active means, for example, injecting a patient with a lethal dose of a drug. Whereas Passive euthanasia: intentionally letting a patient die by withholding artificial life support such as a ventilator or feeding tube. Passive euthanasia can be voluntary or involuntary.), the Chief Justice of the High Court should constitute a Bench of at least two judges deciding the matter that whether such termination should be granted or not. The Bench before judgement must consider the opinion of a committee of 3 reputed doctors. These doctors are also nominated by the Bench after discussing with the appropriate medical practitioners. Along with appointing this committee, it is also the duty of the court to issue a notice to the state, relatives, and friends and also provide them with a copy of the report made by a committee of doctors, as soon as it is possible. And only after hearing all the sides, the court should deliver its judgement. A person who does not follow the prescribed procedure by high court shall face serious repercussions. Aruna Shaunbaug was denied euthanasia and the court also recommended the repealing of section 309 of the IPC. It was later in the year 2018 when the Supreme Court passed another order in the case of Common Cause v. Union of India, in which right to die with dignity was again recognized and passive euthanasia was legalized and permit was given to withdraw the life support system of those who are terminally ill and are in life long coma.

‘Right to die’ is a subject under controversy but undisputedly, right to lead a good life with necessary facilities that a human requires is well protected and if we look at the present mental institution, staffing, and equipment, they are in a horrendous condition. A person should not be

forced to live a life they do not desire, in conditions not appropriate for them.

IV. MEDICAL RESPONSIBILITY AND HEALTHCARE, WITHIN THE CONTEXT OF SUICIDE.

According to a study conducted by the National Institute of Mental Health and Neurosciences, 1 in 40 and 1 in 20 people are suffering from the past and current episodes of depression in India. [6] Unfortunately, this is still an issue that continues to be misunderstood in developing countries such as India.

This survey shown that the lifetime prevalence of mental disorder is 13.7% as a whole, which would mean at least 150 million Indians are in need of urgent intervention. Mental illness is particularly prevalent in age groups such as adolescence. Another report regarding the projected burden of mental illness conveys that it will increase more rapidly in India than the other countries over the next 10 years and will account for one-third of the global burden of mental illnesses, a figure greater than all developed countries put together. [7] And a great part of this problem is the stigmatization of mental illnesses. Another problem is the existing infrastructure and workforce in our country to address this health challenge. Although Section 115 (2) of Medical Healthcare Act 2017 provides that *“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.”*, nonetheless, the issue still stands that, there are about 40 mental institutions (out of which only nine are equipped to provide treatment for children) and fewer than 26,000 beds available for a nation comprising 150 billion people.[5] The WHO report on the Mental Health Atlas reveals that there are just three psychiatrists, and even lesser number of psychologists for every million people in India, which is 18 times fewer than the commonwealth norm of 5.6 psychiatrists/100,000 people.[5,8] Now these are numbers that leave one appalled.

The afore said act empowers accessibility to mental health services for all. This right is meant to ensure that services be accessible, affordable, and of good quality. It also mandates the provision of mental health services be established and available in every district of the country, and further introduces the concept of advance directive, which empowers a mentally ill person to have the right to make an advance directive toward the way the patient desires to be treated for the requisite illness and who they nominated as representative shall be. This directive has to be vetted by a medical practitioner.

It should also be noted that threatening suicide with and act of terrorism such as, suicide bombings by any sleeper cells, will be dealt under the National Security Act of 1980 and the Unlawful

Activities (Prevention) Act, 1967. The criminal justice system of India like Criminal Procedure Code (Cr.p.c.) was not designed to deal with such type of crimes. At present, the legislations in force that check upon terrorism in India are through the National Security Act, 1980 and the Unlawful Activities (Prevention) Act, 1967. Any attempt of suicide that threatens the public safety shall be felt under these two acts and not under the Indian Procedural Code, 1860.

V. THE CONFLICT

Before The Hon'ble High Court of Bombay, in the case of 'State of Maharashtra V. Maruti Sripati Dubal' (1986) 88 Bom LR 589, the constitutionality of section 309 Of Indian Penal Code, 1860 first came up for consideration. The Hon'ble Court came to the conclusion that right to die is indeed included under 'right to life' enshrined under Article 21 of the Constitution of India and hence section 309 indeed violates the Fundamental Rights of the citizens, and thus, the Hon'ble court struck down section 309 of the IPC and held section 309 to be unconstitutional.

Mr. Bhat, the learned Counsel appearing for the petitioner in this case, canvassed three propositions. His first contention was that an attempt to commit suicide cannot constitute an offence and in so far as S. 309 makes it an offence, it is violative of Arts. 19 and 21 of the Constitution. (Article 19 Freedom of Speech and Expression and, Article 21 Protection of Life and Personal Liberty). The second contention was that the section treats all cases of attempt to commit suicide equally and makes them an offence and prescribes punishment for them arbitrarily by the same measure. The section is therefore violative of Art. 14 of the Constitution. (Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India.) The last contention was that the assuming that an attempt to commit suicide is an offence, the punishment is barbaric, cruel, irrational and self-defeating.

However, the Hon'ble High court, Andhra Pradesh in the case of 'Chenna Jagdeshwar V. State of Andhra Pradesh' (1988) cr LJ 549 held that the 'right to die' is absolutely not a fundamental right, given within the meaning of Article 21 of the Indian Constitution, and hence section 309 of the IPC is not unconstitutional in its nature.

The following was held in the aforementioned judgment:

"33. If S. 309 is to be held illegal, we are highly doubtful whether S. 306, IPC could survive. Thus, people who actively assist and induce persons to commit suicide may go scot-free. It is true that a Society which is indifferent to improving the living conditions of distressed persons cannot with justification punish them at self-help or self-deliverance. But the question is

whether it is right for the State to adopt the position that those unable to lead a dignified life are welcome to depart it.

34. It is a paradox that society will neither provide sustenance nor allow the sufferer to die. In this complexity of social mal-adjustments, the best safeguard is the Court which should exercise and temper its judgment with humanity and compassion. In a Country like India, where the individual is subjected to tremendous pressures, it is wise to err on the side of caution. To confer a right to destroy one-self and to take it away from the purview of the Courts to enquire into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them. We, therefore, hold that S. 309 I.P.C. is valid and does not offend Arts. 19 and 21 of the Constitution.”

These two different views of the afore mentioned Hon’ble High courts were considered, we cannot say at last settled, because this judgment was overruled, by the highest Court of law in our country i.e. a division bench of the Hon’ble Supreme Court in the case of ‘P. Rathinam V. Union of India’ (1994) 3 SCC 394. Here, the petitioner challenged the validity of section 309, IPC on the ground that it was violative of Article 14 and 21 of the constitution, and it was held that views expressed by the Hon’ble High Court, Bombay in the case of ‘State of Maharashtra V. Maruti Sripati Dubal’ (1986) 88 Bom LR 589 were correct via the said judgement and further observed that a person has a right to die, declaring section 309, IPC unconstitutional.

However, via a later judgment, the issue regarding the right to die and constitutionality of section 309 of the IPC was discussed in detail and the Constitution bench of the Hon’ble Supreme Court, India, in the case of ‘Gian Kaur V. State of Punjab’ (1996) 2 SCC 648 ruled that ‘right to life’ under Article 21 of the constitution does not include ‘right to die’ or ‘the right to be killed’.

The Hon’ble Supreme Court of India (If it a constitutional bench, we cannot only specify the name of one judge i.e. Justice J.S Verma) observed as follows, in the aforementioned case of Gian Kaur vs The State of Punjab on 21 March, 1996:

“Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and incompatible and inconsistent with the concept of right to life.”

The Hon’ble court held made it clear in its judgement that the right to life including the right to live with human dignity would mean the existence of such a right only up to the end of natural life. Right to die with dignity at the end of life must not be confused with the right to die an unnatural death curtailing the natural span of life. The court finally held that section 309 of IPC does not violate Article 21 of the constitution.

Subsequently, the Hon'ble Supreme Court of India overruled its own judgment in P.Rathinam's case, setting aside the judgment passed by the Hon'ble High Court, Bombay in the case of 'State of Maharashtra V. MarutiSripatiDubal' (1986) 88 Bom LR 589 and upheld the judgment passed by the Hon'ble High court, Andhra Pradesh in 'ChennaJagdeswar V. State of Andhra Pradesh' (1988) cr LJ 549, which declared section 309 of the IPC as constitutional.

So the said matter was finally settled by the Highest Court of our country, as regards the constitutionality of Section 309 of the IPC and it was held that it does not in any way, violate Article 14 and 21 of the Indian Constitution.

Now that we have established the back and forth that went into deciding the legality of Section 309 of IPC, 1850, what arguments each side presented et al., let us look into how the introduction of Medical Healthcare Act 2017 restarted this debate.

In 2020, The Hon'ble Supreme Court of India issued notice to the Attorney General of India, in a petition, wherein the Petitioner sought for directions to ensure the prevention of attempts to commit suicide by persons who threw themselves in animal enclosures in Zoos. The Bench comprising of Chief Justice of India i.e. Justice SA Bobde, Justice AS Bopanna and Justice V. Ramasubramanian further sought for an explanation from the Centre.

It was raised that section 115 of Medical Healthcare Act 2017, directly came into conflict with the section 309 of Indian Penal Code.

Under Medical Healthcare Act, 2017 it is stated that;

'115. Presumption of severe stress in case of attempt to commit suicide. – (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proven otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) 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.'

This is a very important section in the Act. While the said Section barred the prosecution of mentally unstable individuals, it seems to be in contradiction with section 309 of IPC, thus, greatly restricting the objective of the former Section. Although not complete abolition, it was a plea by many NGO's and law practitioners that Section 309 be amended as with the introduction of Medical Healthcare Act 2017, it had finally outlived its purpose. But Section 309, IPC still exists.

To further complicate matters, concerns have been raised that removal of section 309 will directly impact section 306(abetment of suicide), threatening suicide or self-harm may be used as a form of coercion to manipulate an individual.

This is understandable, but we would like to vehemently contend that no person who is of sound mind, threatens suicide or self-harm, even as a form of manipulation. Whether under distress, or as a form of threat or not, a person showing the desire to inflict harm upon themselves in any way, shape or form should always be a cause of concern towards that person's mental state. (MarutiShripatiDubal vs State of Maharashtra on 25 September, 1986) here in this case we saw the petitioner, who was a patient of schizophrenia, threaten and attempt to commit suicide. The incident in question which led to the impugned criminal prosecution occurred on 27th April, 1985 on which day about 10 a.m. he tried to commit suicide outside the office of the Municipal commissioner, Greater Bombay by pouring kerosene on himself and by trying to light his clothes. The immediate cause of his attempt to commit suicide was the delay in disposal of his wife's application for license for a stall for vending vegetable near Colaba Market. Given his condition can his arrest and prosecution be justified? rather than being given the appropriate medical help he was hauled away from the scene with an arrest warrant.

The reasonable response, or even moral, if we may say so, to such a situation is not to arrest the person, fine them or imprison them but to restrain them from making any hasty decisions and rehabilitate them. That is the entire purpose of Medical Healthcare Act i.e. to rehabilitate rather than apprehend. In our opinion, removal of section 309, IPC will not affect 306, IPC as apprehended and our intention, via this paper on this issue, is to propose a middle ground. Therefore, in our opinion, complete abolition of S. 309, IPC may be unwarranted, however, it may be essential to amend punishment granted for the same, from 'a year of imprisonment or fine; or both', changing it to 'compulsory medical treatment under governmental supervision' and 'compulsory social work for the betterment of the society' instead.

This will still uphold Section 306 of IPC to its full capacity, and amending the punishment given under 309 will help the section align its tone better with the Medical Healthcare Act 2017, which is more adept to the people's needs and the contemporary times.

The Mental Health Care Act does not repeal Section 309 of the Indian Penal Code, but merely provides the presumption of mental illness.

VI. IN CONCLUSION

A Bench of Justices Markandey Katju and Gyan Sudha Misra commented though a Constitution Bench in Gian Kaur's case that's had held Section 309 IPC constitutionally valid, "*the time has*

come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in depression, and hence he needs help, rather than punishment.”

A change in the section 309 of IPC has long been overdue. Professor Glanville Williams of Cambridge, and Professor Mannheim made the observation in *Suicide As A Crime* – by Doris Odlum, *The British Medical Journal*.

How India is one of the few places in the world where attempted suicide is regarded as a legal offence. In all other parts of the world, it is dealt with more compassion i.e. through medical and social services, and they do not appear to feel the need for any legal sanction. In the rare case a person contemplating or threatening or having attempted suicide refuses to co-operate, the police have the power to remove compulsorily to a general hospital if he is in need of medical care, or, if his mental state is questionable. He can be kept under observation, thus there is no reason to invoke legal intervention to protect the individual from themselves. If a case should arise where the public safety might be threatened, the person contemplating or threatening suicide could be dealt with by the “breach of the peace” procedure. In Scotland, suicide directly involving only the deceased person is not by itself a criminal offence under Scots Law.

However, attempting suicide might be a Breach of the peace if it is not done as a private act.

The Suicide Act 1961 applies only to England and Wales but under Scots Law a person who assists a suicide might be charged with murder, culpable homicide, or no offence depending upon the facts of each case.

Breach of peace is a common public order offence in Scots law. If a person shouts, swears, or conduct themselves in a disorderly manner they are committing a breach of peace, more than just disorderly conduct, breach of peace encompasses a wide variety of conduct, even suicide. It is to be noted that breach of the Peace is not a criminal offence: a person can be arrested for their own safety, but cannot be charged. The police have the power to detain or arrest if a “breach of the peace” has occurred, or to prevent it from occurring.

This is the practice that has been used in Scotland and proved itself to be quite effective. It is less and less used presently, since there as better medical and social facilities become available. Professor E. Stengel, of Sheffield and Dr. Phyllis Epps, of Holloway Prison, who are experts in the field in question and have made special studies on cases of attempted suicides, have spoken of how present laws and practice are detrimental to the wellbeing and hope of recovery of the person who has attempted suicide and interfere with the medical and rehabilitation. [9] A prison sentence will only put further distress on an already distressed individual and act as a hindrance in his process of treatment. Medical Healthcare Act 2017 focuses on meeting the needs of the

people rather than punishing them, I personally do believe here in India we have certainly outgrown section 309 of Indian Penal Code and is high time that steps be taken to remove any conflict it holds with the Medical Healthcare Act 2017.

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