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Victims of Depression Ending in Suicide and Restorative Justice

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ABSTRACT

Duties owed to the Sovereign is one of the four duties envisaged by Austin and it is the duty of every Sovereign State or Welfare State to protect and promote the economical and social wellbeing of its subjects. Victims are persons who are harmed, injured or made to feel helpless in the face of ill fortune, and the criminal justice system in a Welfare State for its efficient administration must be cautious and careful in identifying a victim and redress his mishaps, which is the outcome or consequences of a crime inflicted on him.

The World Health Organisation on its official website has reported that approximately 280 million people in the world suffer from depression and when it recurs, it may become a serious health problem and at worst lead to suicide. There is a large number of factors increasing the risks of suicidal thoughts and they may be child abuse, cyberbullying, sexual abuse, etc., and the WHO recognises victims of suicidal thoughts are a kind of mental disorder patients and they may be cured by the correct psychiatric treatment.

Indian Penal Code in section 309, penalises a person who attempts to commit suicide, creating an obligation on the State to sue such persons blanketly. Whereas, section 115 of the Mental Healthcare Act, 2017 negates the penalising theory of section 309 of IPC with a presumptive clause that the persons who attempt to commit suicide will be presumed to be under severe depression until otherwise proved. Hence a study is very much necessitated in amending section 309 IPC to bring it in consonance with the Mental Healthcare Act, 2017 in the interest of the survivor victims of suicide who were proved to be in severe depression.

I. INTRODUCTION

Victims are defined in section 2(wa) of the Criminal Procedure Code, 1973 which would read as, “victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir”². While the code defines a victim in the above terms, it is the duty of the Welfare State to identify a victim and to take rehabilitative measures to make good

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² Section 2(wa) of Criminal Procedure Code, 1973

his or her losses and make good his or her traumatic conditions suffered by him or by the outcome or the consequences of the crime or offence committed on him or her. It is the duty of a Welfare State to sue on behalf of a victim in the criminal prosecution against a perpetrator of the crime and to bring out a good and effective criminal justice system.

(A) Need of the Study

As the victims of a crime are ill-fortuned ones and their degree of suffering differs with that of the intensity of the crime they are put into and being the subjects of the State, their rehabilitation is an essential duty of the State which will ensure them a decent living combating the shock and loss they might have suffered by the commission of the crime on them. In any crime, there will be a perpetrator and a victim though the victim is an individual or a community or even the State against whom a crime is committed, and for the efficient administration of a criminal justice system, it is very much important to identify the victim of a crime for the purpose of rehabilitating him or her which is very much essential to ensure the social justice in that State. Now, in our study, we focus on the point that, whether the Indian Penal Code is sufficient in identifying a victim and differentiating a victim from an offender in the crime of attempting to commit suicide in section 309 of the Indian Penal Code.

(B) Research Methodology

The methodology adopted in this study is a Doctrinal Study and references from various statutes were taken for the study. Further for this Doctrinal Study various Supreme Court citations have been referred to touch the crux of the study problem and to reach a conclusion to give a solution to the problem.

(C) Data and Sources of Data

Both primary and secondary sources of data have been utilised in the study. References from the Indian Penal Code, Criminal Procedure Code, Mental Healthcare Act, 2017 were used as primary data and secondary data such as Supreme Court Judgements and the website of the World Health Organisation has been referred to as a secondary source of data.

II. LAW ON VICTIMS OF SUICIDE AND SURVIVOR VICTIMS OF SUICIDE ATTEMPTS

“Suicide”- though the term is not defined in the Indian Penal Code which deals with it in its sections namely, 305 - Abetment of suicide of child or insane person, 306 - Abetment of suicide, 309 - attempt to commit suicide and in Explanation to 498A, the literal meaning of the word suicide can be sought from the Merriam Webster’s dictionary which defines the word suicide as an act or an instance of taking one’s own life voluntarily and intentionally or of

performing a deliberate act resulting in the voluntary death of the person who does it.

III. REPORT OF WORLD HEALTH ORGANISATION ON VICTIMS OF DEPRESSION

The International Association for Suicide Prevention (IASP) organises World Suicide Prevention Day (WSPD) on the 10th of September every year. The World Health Organisation in its official website *who.int*, have reported that 5% of the world's adult population suffer from depression is a **common mental disorder** and is the leading cause of worldwide disability and it contributes a major portion of the overall global burden of disease and worst the condition is, depression leads to suicide and more than 7,00,000 people die due to suicide every year globally, and in 15- 29-year-old persons, suicide is the major leading cause of death holding the fourth place.

The World Health Organisation website would further report that approximately 280 million people in the world suffer from depression and when it recurs with moderate or severe intensity, depression may become a serious health problem affecting the victim to a greater extent and at its worst leading to suicide.

IV. FACTORS LEADING TO SUICIDE

There is a large number of factors increasing the risks of suicidal thoughts. They may be, child abuse, cyberbullying, sexual violence, financial crisis and related threats, alcohol or narcotics or drug addiction, fear of social stigmatization for some reason or other, etc. The World Health Organisation on its official website has reported that these victims of suicidal thoughts are a kind of mental disorder patients and they may be cured by the correct psychiatric treatment which does not happen at large in underdeveloped countries and 77 per cent of the total suicide across the world occur in countries with low and middle income and this is a problem encountered globally.

V. VICTIMS OF SUICIDAL THOUGHTS

Almost all suicides are attempted impulsively in peer pressure in a crisis moment and breakdown, and a lack of ability to handle the stresses caused by financial crunches, chronic pain or illness, breaking up of relationships, victimization or betrayal by the loved or trusted ones, sexual violence, cyberbullying, child abuse, cheating, misappropriation, breach of trust, etc. Suicidal thoughts seem to be high in the case of Drug addicts, LGBT persons with the fear of social stigmatization, and prisoners who fear social stigmatization.

VI. RESPONSE OF THE WORLD HEALTH ORGANISATION ON SUICIDE

Suicide is recognised as a public priority by the World Health Organisation and the First World Health Organisation Suicide Report “Preventing Suicide: a Global Imperative”, published in 2014 is made with an aim of increasing the awareness of the suicidal significance and suicidal thoughts and attempts and prioritising the preventive measures of suicide globally. Further, the World Health Organisation has launched a Mental Health Gap Action Programme (MHGAP), for the purpose of providing evidence-based technical guidance with respect to service and care for neurological, substance or narcotics use and mental disorders. In the World Health Organisation Mental Health Action Plan 2013 – 2030, the Member States have committed themselves to strive towards achieving a global target of reducing the suicidal rates in the Member Countries by one third by 2030.

VII. LEGISLATIVE PERSPECTIVE OF THE ACT OF SUICIDE IN INDIA

While the Indian Penal Code penalises the abettors of suicide in sections 305, 306 and 498A, section 309 penalises the person who attempts to commit suicide and the section would go on to say, “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. While the section reads as above, the first schedule of the Criminal Procedure Code would stipulate the offence of attempt to commit suicide under section 309 Indian Penal Code as Cognizable, Bailable and Triable by any Magistrate. By categorising the offence of attempt to commit suicide as a cognizable one, the Criminal Procedure Code gives power to the police to register a criminal case under section 309 IPC against the attempter, thereby raising the status of the person who attempts to commit suicide to the level of ‘accused of a crime’, for which the State, who is the Guardian of its subjects and whose responsibility is ensuring the welfare of its subjects, is placed under an ironical situation of prosecuting the person, a subject of the State, who attempts to commit suicide. The State in this case is under the obligation of suing a person who punishes himself by extinguishing his or her life for not wanting to continue his existence for any reason either told or untold when such act neither harms nor injures any other person or community or even the State.

An overview of the term offence

The explanation is given for the term Offence in the Indian Penal Code in Chapter II - General Explanations in section 40 is that “Except in the Chapters and sections, mentioned in clauses 2

³ Section 309 of Indian Penal Code, 1860

and 3 of this section, the word “offence” denotes a thing made punishable by this code”⁴. The explanation so provided by the Indian Penal Code is generalistic and instead of defining the word, it would proceed to state reversibly that a thing made punishable by the code is an offence. As the Indian Penal Code does not specify any particular definition for a thing to be construed as an offence, the literal meaning for the word offence is sought from the Merriam Webster’s Dictionary which defines the word offence as “a breaking of a moral or legal code” and the antonym for the word offence as “non-crime”. Therefore when the Indian Penal Code does not provide any specific definitions for a thing to be construed as an offence, literal construction for the word offence shall be sought and which would state that any act which is a non-crime is not an offence, and any act which amounts to crime would be an offence. Therefore it could be noted that the term offence is a synonym for the term crime and the Indian Penal Code does not define the word crime too. Literal meaning when resorted to would say that a crime could be an act of commission or omission contrary to the law which could injure or harm or prejudice any individual or community or the State, which act imposes criminal liability on the perpetrator and infliction of punishment for the same would be the outcome of a judicial proceeding carried out by the State against the perpetrator of the crime.

The Indian Penal Code deals with various types of offences under various chapters and they are, of offences against the State under Chapter VI, of offences relating to the army, navy and air force under Chapter VII, of offences against the public tranquillity under Chapter VIII, of offences by or relating to public servants under Chapter IX, of offences relating to elections under Chapter XA, of false evidence and offences against public justice under Chapter XI, of offences relating to coins and Government stamps under Chapter XII, of offences relating to weight and measures under Chapter XIII, of offences affecting the public health, safety, convenience, decency and morals under Chapter XIV, of offences relating to religion under Chapter XV, of offences affecting the human body under Chapter XVI, of offences against property under Chapter XVII, of offences relating to documents and to property marks under Chapter XVIII, of offences relating to marriage under Chapter XX and of attempts to commit offences under Chapter XXIII. From the above classification of various offences under various Chapters, it could be noted that an offence or crime is an overt act of any person or group of persons which is harmful or injurious to some other person or to the community or to the State.

Research Problem

The research problem of this study is: does the Indian Penal Code is right with provision 309

⁴ Section 40 of Indian Penal Code, 1860

with the blanket penalisation of the persons who attempt to commit suicide when many the countries like Australia and many Western countries have already decriminalised the act of suicide?. Does the benevolent provision of the Mental Healthcare Act, 2017, is made aware to the law enforcement agencies and does suitable measures stipulated in the said Act is enforced by the appropriate Government?. What should be done to resolve the contradictions between the two statutes that is the Indian Penal Code and the Mental Health Act, 2017 which emanates two different views on the act of suicide?

Failure to consider actus reus and mens rea and impact of the statute

The Indian Penal Code by terming the phrase “commission of attempt to commit suicide as an offence” places the act of attempt to commit suicide in the ambit of offence wherein law an act which constitutes crime or offence must bear two elements – one actus reus and the other mens rea, while the former meaning the physical aspect of attempting or committing a crime and the latter meaning the mental aspects that is a guilty mind. That is to say in a simple way, a crime or offence is an act done with a criminal intention, while such an act is forbidden by law. In the light of the above discussion when we consider an act of attempt to commit suicide, the person who does that act in an extreme mental traumatic condition to extinguish his life with an intention to end his life, but not with an intention to break any law particularly. Now, this intention to commit suicide has to be given the colour of criminal one to bring the act into the ambit of an offence. But how? Yes, that is the subject of this study.

For the mens rea to be complete, it requires the intention of the perpetrator to commit the act as well as the knowledge of the perpetrator with respect to the consequences of that act. In the light of the above-said requisites to constitute a mens rea and when applying the same in the case of an attempt to commit suicide and in the attempts made by the persons who are deeply depressed by being victimized by various acts of others such as child abuse, sexual assault, etc and the persons who fear social stigmatization, the intention of those persons could not be given the colour of a criminal one because they are victims already and they need care and rehabilitation and as reported by the World Health Organisation, they need to be treated for their mental illness and they need to be taken out of the traumatic condition they are in. But when the intention of the person who attempts to commit suicide could be a criminal one is when they choose the act of attempt to commit suicide to escape a liability which may be criminal or civil and when such an act is made with an intention to threaten or to bring some other innocents into the clutches of law.

Hence the intention of the attempters is very much crucial in bringing down the act into the

ambit of crime to make it to be punishable. In more simple words, when the person who attempts to commit suicide is in deep stress and victimized already by some other acts discussed earlier, then the intention of that person would not be considered a criminal one, but when the person attempts to commit suicide to escape a criminal or civil liability or to threaten some innocent person or to bring such person into the clutches of law, then such intention of attempting to commit suicide would be treated as a criminal one bringing such attempt straight into the ambit of an offence. Further in this case no such depression or peer pressure of handling a critical situation that is out of control of that person tending the person to resort to suicide is absent in the second case and the attempt to commit suicide is resorted to just to make himself escape from certain proceedings or to cause unlawful loss or damages to some other person.

Identification of victim and differentiating a victim and the offender

In the light of the above discussion, we can differentiate a victim and the offender in the case of an act or attempt to commit suicide. It is the duty of the welfare state to prosecute a perpetrator on behalf of a victim and when the differentiation of a victim and the offender is not done properly, then it will be very much a fault on the part of the State, who will be put in a place of suing a victim instead of defending him or her which will be an injury inflicted by the State on the victim who suffered the trauma of depression again by the criminal prosecution of the State, instead of being provided with a rehabilitative measure in order to enable them to come out of the odd situation they would have been in which drove them to attempt to commit suicide.

The benevolent provision in the mental healthcare act, 2017 with respect to the suicidal survivors

Section 115 of the Mental Healthcare Act has been amended in the year 2017 which reads as “(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (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.

(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”⁵

The above section 115 of the Mental Healthcare Act, 2017, is a statutory provision decriminalising the act of attempt to commit suicide and it takes a juxtapose stand with that of

⁵ Section 115 of Mental Healthcare Act, 2017

the Indian Penal Code, which penalises the same under section 309 of it. Further, the above section of the Mental Healthcare Act presumes severe stress in the persons who attempt to commit suicide and the second part of it is a more philanthropic one, directing the appropriate Government to provide care, treatment and rehabilitation to a person having severe stress for those persons who attempted to commit suicide and to safeguard them against the risk of resorting to the same again.

Further, on a careful study of section 115 of the Mental Healthcare Act, 2017, it could be seen that the inclusion of the words “unless proved otherwise” when viewed in the light of our earlier discussion on the intention of the person who attempts to commit suicide to be a criminal one to constitute it to an offence then penalising such an attempt will be the right one.

Therefore proving otherwise that such a person who attempts to commit suicide is not under ‘severe stress’ should be the essential ingredient to trying a person who attempts to commit suicide criminally under section 309 of the Indian Penal Code.

VIII. JUDICIAL APPROACH BY THE SUPREME COURT IN THE CASE OF SUICIDE

Supreme Court of India in its judgement in *Rathinam v Union of India* in the year 1994 have analysed the constitutional validity of section 309 and drew a conclusion that the fundamental right of right to live enshrined under Article 21 of the Constitution of India includes the right not to live and declared section 309 of the Indian Penal Code to be unconstitutional. Further in the year 1996, a Constitutional Bench in *Gian Kaur v State of Punjab* again analysed the constitutional validity of section 309 and in that case, the Supreme Court upheld the constitutional validity of section 309. While being so in the year 2020 the Supreme Court in *Red Lynx Confederation v Union of India* have made findings in its judgment as follows:

“However, we find that Section 115 of the Mental Healthcare Act, 2017, which creates a presumption, has an impact on section 309 of IPC. Section 115 of the Mental Healthcare Act, 2017 reads as 115. Presumption of severe stress in case of attempt to commit suicide.- (1) Notwithstanding anything contained in section 309 of the Indian Penal Code (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. (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.” Issue notice to the learned Attorney General for India, calling upon the

Union of India to justify the validity of section 115 of the Mental Healthcare Act, 2017 which negates section 309 of IPC”⁶

With the above findings, the concern of the Supreme Court of India in resolving the contradictions between the two statutes could be noted and further, it could be noted that the legal positions in India on suicide is ambiguous and not clear, and the contradictions between the two statutes in force in India holding two different views on imposing criminal liability on the attempters of suicide needs to be attempted to, for the purpose of resolving the anomalies prevailing in the statutes, and for preventing any further harassment of the persons who are in deep anguish and who failed in facing the world for the reason of the ill-fortune they have faced in their life.

IX. RATIONAL DISCUSSION OF THE PROBLEM

Considering the legal provisions with respect to the persons attempting to commit suicide stipulated in the Indian Penal Code and the Mental Healthcare Act, 2017 and the various judgements of the Supreme Court in this aspect, it is pertinent to note the presumption clause mentioned in the Mental Healthcare Act, 2017, which has an impact on section 309 of the Indian Penal Code and which is rightly pointed out by the Supreme Court in the above-said case *Red Lynx Confederation v Union of India*. All the above discussions and the view of the World Health Organisation on the attempters of suicide throws light on the **grey area** of section 309 of the Indian Penal Code which is left uncovered and which remains silent on the presumptive clause that it elucidated in the Mental Healthcare Act, 2017. Now is the time to resolve this contradiction between two statutes where one negates the penal provision of the other.

As mens rea or guilty mind or criminal intention is essential to constitute an act into offence, the attempters of suicide, in other words, survivors of suicide when appears to have been put in a deep depression, then though there is an intention to commit suicide, it cannot be attributed a criminal colour on par with the Mental Healthcare Act, 2017, but when the attempters of suicide could not be proved to have depression, that is when the state of depression cannot be proved, before their act of attempting to commit suicide, and when on the contrary, the guilty mind of those attempters with the intention of harming other innocent people or evading liability or punishment could be proved sufficiently, then the significance of the presumptive clause enshrined in the Mental Healthcare Act, 2017 will be absent in that case, fixing criminality to the act of attempting to commit suicide, thereby creating a criminal liability of

⁶ *Red Lynx Confederation v Union of India*

punishment provided in section 309 of the Indian Penal Code.

- **Solution to the Problem**

The intention of the lawmakers and the objective of section 115 of the Mental Healthcare Act, 2017 in securing the protection and wellness measures for the ill-fortuned victims of depression, who resort to suicide lies in the phrase “shall be presumed to have severe stress and shall not be tried or punished under the said Code” and differentiating those persons from others who do not fall into this category lies in the words “until proved otherwise”. Further interpretation of the phrase “until proved otherwise” in this context would mean to state that, when proved otherwise on the contrary that the attempters were not in a severe depression, while they attempted to commit suicide, then such an act would sufficiently embrace the attribute of ‘offence’ thereby attracting criminal liability. As the Mental Healthcare Act, 2017 provides a beneficial provision to the survivors of suicide, who are in severe depression, the Indian Penal Code needs to be revisited to hold the beneficial provision enshrined in the Mental Healthcare Act, 2017.

The Non-Obstante clause “Notwithstanding anything contained in section 309 of the Indian Penal Code” provided in section 115 of the Mental Healthcare Act, 2017 is particularly made to overcome and avoid the operation and effect of the contrary provision of section 309 of the Indian Penal Code. The phrase “unless proved otherwise” used in the Mental Healthcare Act, 2017 is the operative part and a corresponding provision is found missing and it is the **grey area** to be attended to in section 309 of the Indian Penal Code to get the contradictions between the two statutes resolved. Therefore, to resolve the contradictions between the two statutes, an addition of the phrase, “not sufficiently proved to be under deep depression” immediately after the word “Whoever” in section 309 of the Indian Penal Code would throw light on the grey area of that section, and it would bring the section 309 of the Indian Penal Code, in consonance with section 115 of the Mental Healthcare Act, 2017.
