

## DECRIMINALIZING ATTEMPTED SUICIDE IN INDIA: A PARADIGM SHIFT IN APPROACH

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### I. INTRODUCTION

Suicide is an anti-thesis to self-preservation symbolising man's great retreat from life, attracting either condemnation or commendation since the dawn of civilisation. Suicide knows no barrier of race, caste, religion, community, age, sex, time or space. Historically, suicide suffers from conceptual ambiguity, lack of uniform nomenclature and standardized assessment methods. Suicidal behaviour is culmination of adaptive failure to cope with mental and social disabilities, resulting in ultimate regression from reality. Since long several jurisdictions contemplated deterrent criminal proceedings for unsuccessful attempt to commit suicide but right based jurisprudence demands for humanistic state response towards suicide. Evolving concepts of individual's liberty and life with dignity have recognized 'choice death' and physician assisted death but suicide as a matter of right finds no recognition in any of the instruments of human rights at international, regional or national level. Justice demands that instead of hand cuffs and prison cells, the survivors of attempted suicide need sympathy, medical care and rehabilitation. In changing percept, recognizing suicidal behaviour a result of social and mental disabilities, anti-suicide laws have been repealed by many countries and India is on way forward.

At global level, suicides accounted for 1.4% of all deaths.<sup>1</sup> The risk of suicide increases with age; the risk in men peaks at the age of 45 and in women at the age of 55.<sup>2</sup> Pesticide poisoning, hanging and firearms are among the most common methods of committing suicide globally.<sup>3</sup> Among 0.8 million suicides annually reported worldwide,<sup>4</sup> India contributed 0.13 million suicides, highest number in the world,<sup>5</sup> due to several causative factors ranging from hopelessness,

psychosis, prolonged illness, domestic violence to jilted lovers and a cute depression due to various reasons.<sup>6</sup> Every day, India witnesses nearly 274 persons committing suicide and persons of average age below 44 years including teenagers are more susceptible to ending their lives. Attempted suicides are nearly twenty times higher than the succeeded suicides.<sup>7</sup> Scientific evidence shows that for every ten people who attempt suicide or commit suicide, nine of them have mental health problems. Additionally, the social structure, cultural ethos and life style also impact suicides due to hopelessness in life.<sup>8</sup> The incidents of suicide adversely reflect on the socio-economic dynamics, cultural ethos and public policies for social security.

In fact, attempted suicide faces challenge of being under reported due to strictness of penal provisions, cultural shame of frequent follow-up visits by police and stigma attached to the family. Suicide needs holistic review under the lens of mental health as well as accounting for social inequities causing inner state of turmoil responsible for marginalization.<sup>9</sup> Indeed, if suicide is a wrong, punishing failed suicide is another wrong committed by the state putting the carriage before the horse. Decriminalising attempted suicide may reduce under reporting and ensure social justice by improving state response towards vulnerable targets.

Several countries like United States and United Kingdom have relaxed penal rigor by decriminalizing attempted suicide. In India, the constitutional validity of anti suicide laws has been discussed several times but without accomplishing final conclusion. The Law Commission of India and the judiciary had argued both for retaining and annulling suicide laws thus making the debate complex but interesting. The Mental Health Care Act, 2017, recently been enacted in India has not only set the tone for decriminalising attempted suicide but also imposed a duty on the government to provide care, treatment and rehabilitation of suicide survivor to reduce the risk of recurrence. The approach under the recent law integrates jurisprudence on suicide with global approach of extending medical care and rehabilitation. This article deliberates upon the nuances of abrogating anti-suicide laws and the relevant concepts involved therein.

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<sup>1</sup> World Health Organisation, Suicide Data – 2016, available at [http://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/](http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/) (last visited on June 30, 2017).

<sup>2</sup> Benjamin J. Sadock, Virginia A. Sadock, Harold I. Kaplan, SYNOPSIS OF PSYCHIATRY BEHAVIOURAL SCIENCES/CLINICAL PSYCHIATRY (Lippincott Williams and Wilkins, New York, 2003).

<sup>3</sup> Vladeta Ajdacic-Gross, Mitchell G. Weiss, Mariann Ring (*et al.*), *Methods of Suicide: International Suicide Patterns Derived from the WHO Mortality Database*, 86(9) BULLETIN OF THE WORLD HEALTH ORGANISATION 657-736 (2008).

<sup>4</sup> World Health Organisation, PREVENTIVE SUICIDE: A GLOBAL IMPERATIVE (2014).

<sup>5</sup> *India has highest number of suicides in the world : WHO*, THE TIMES OF INDIA, New Delhi, September 4, 2014.

<sup>6</sup> National Crime Records Bureau, Ministry of Home Affairs, ACCIDENTAL DEATHS AND SUICIDES IN INDIA – 2014. In 2014, reported suicides were 1,31,666 having rate of 10.6 per million population.

<sup>7</sup> *Ibid.*

<sup>8</sup> D. Lester, K. Agarwal and M. Natarajan, *Suicide in India*, 5 ARCHIVES OF SUICIDE RESEARCH 91-96(1999).

<sup>9</sup> Thomas Joiner & M. David Rudd (eds.), *SUICIDE SCIENCE : EXPANDING THE BOUNDARIES* (Kluwer Academic Publishers, New York, 2002).

## II. TENETS OF SUICIDE

Suicide is a multi-dimensional human act involving several facets ranging from individual to community, biology to sociology, psychiatry to psychology, and offender to victim. Jurisprudence of suicide mainly underlines three legal issues: firstly whether attempted suicide constitutes a crime; secondly whether one can be held guilty of a crime, if he/she while attempting suicide, without culpable negligence, kills another person; and thirdly does it constitute a crime to aid, advise, abet or encourage another person to commit suicide?<sup>10</sup> In the existing global legal panorama, these questions by no means are free from complexities and have broadly been discussed here for holistic understanding.

### A. Various modes of terminating human life

If life begins, end is inevitable either by natural or unnatural death. Suicide falls under unnatural death commissioned either by self-killing or through assisted suicide. The unnatural means for exterminating one's own life may vary from starvation to strangulation. Since homicide involves killing of a person by another person, suicide may not attract penal provisions for homicide. In case death of a person becomes confusing between accident and suicide, a medical tool called 'suicide psychological autopsy' (SPA)<sup>11</sup> helps in determining the circumstances of death.<sup>12</sup>

### B. Suicide defined

Historically, the first use of word suicide, as claimed by some, is traced back to Sir Thomas Brown in the 1635 edition of *Religio Medici*,<sup>13</sup> but others credit Charleton for using it in 1651. Some French historians found its use either in the Abbe Prevot in 1734 or the Abbe Desfontaines in 1737.<sup>14</sup> The word 'suicide' (*felo de de*) is etilogically derived from 'sui' means oneself and 'caedre' means to kill.<sup>15</sup> The Oxford dictionary defines suicide, "the action of killing oneself intentionally."<sup>16</sup> The scientific study of suicidal behaviour and

<sup>10</sup> R.W. Withers, *Statute of Suicide as a Crime*, 19(9) THE VIRGINIA LAW REGISTER 641-747 (1914).

<sup>11</sup> Suicide psychological autopsy (SPA) entails a collaborative investigation involving mental health experts and law enforcement agencies to determine the state of mind of a person prior to the fatal act.

<sup>12</sup> E.T. Isometsa, *Psychological Autopsy Studies – A Review*, 16(7) EUR.J. PSYCHIATRY 379-395 (2001).

<sup>13</sup> G Minois, *HISTORY OF SUICIDE VOLUNTARY DEATH IN WESTERN CULTURE* (The Johns Hopkins University Press: Maryland, USA, 1999).

<sup>14</sup> Lucas Giner, et. al., *Nomenclature and Definitions of Suicidal Behaviour*, in Philippe Courtet (ed.), *UNDERSTANDING SUICIDE FROM DIAGNOSIS TO PERSONALIZED TREATMENT* (Springer: London, 2016) p. 4.

<sup>15</sup> Kelly Posner et. al., *The Classification of Suicidal Behaviour*, in Peter E. Nathan et. al. (eds) THE OXFORD HANDBOOK OF SUICIDE AND SELF-INJURY (Oxford University Press: New York, 2014) p. 8.

<sup>16</sup> Suicide, *Oxford Dictionaries*, available at <<https://en.oxforddictionaries.com/definition/suicide>>(last visited on April 15, 2017).

prevention strategies constitute the subject matter of Suicidology integrating both sociology and psychology of suicide.<sup>17</sup>

Shneidman has defined, "Suicide is an intended act of self-inflicted cessation"<sup>18</sup> but Motto observed, "Suicide is self-inflicted, self-intentioned death."<sup>19</sup> Freud, under his psychoanalysis theory, understood suicide as a murder in reverse.<sup>20</sup> According to Lacan, suicide represents displacement of the object of aggression; before the impossibility of releasing it upon the other, it is released upon oneself. The World Health Organisation, in 1968, defined suicidal act as "The injury with varying degree of lethal intent" and suicide as "A suicidal act with fatal outcome".<sup>21</sup> In 1986, WHO preferred term 'suicidal acts' instead of 'suicide' or 'suicidal attempt'<sup>22</sup> and in 2014 defined suicidal behaviour as "a range of behaviour that include thinking about suicide (or ideation), planning for suicide, attempting suicide and suicide itself."<sup>23</sup> Intentional self inflicted harm resulting in death has three components: death by harm, intentional act, and against oneself.<sup>24</sup> An attempted suicide may or may not lead to death. Suicide attempt, also known as parasuicide,<sup>25</sup> pseudosuicide,<sup>26</sup> and deliberate self-harm<sup>27</sup>; may be defined as a non-fatal self-indicted potentially injurious behaviour with some intent to die.<sup>28</sup> Vulnerability mapping helps for evaluating suicidal risk in a patient to design preventive strategies.<sup>29</sup>

<sup>17</sup> James R. Rogers & Sharon Apel, *Revisiting Suicidology: A Call for Mixed Method Designs*, 1 SUICIDODOLOGY ONLINE 92-94 (2010).

<sup>18</sup> Edwin S. Shneidman, *DEFINITION OF SUICIDE* (Rowman & Littlefield Publishers Inc., Maryland, USA, 2004).

<sup>19</sup> J.A. Motto, *Suicide and Suggestibility*, 124 AM. J. PSYCHIATRY 252-256(1967).

<sup>20</sup> Susan Kahn and Andreas Liefoghe, *Thanatos: Freudian Manifestations of Death at Work*, 20(1) CULTURE AND ORGANIZATION 53-67 (2014).

<sup>21</sup> K.E.S. Unni, *Human Self Destructive Behaviour*, in J.N. Vyas and N. Ahuja (eds.) *TEXTBOOK OF POSTGRADUATE PSYCHIATRY* (Jaypee Bros: New Delhi, 2003) pp. 526-556; Hareesh S. Gouda and B.S. Yadwad, *Is Attempted Suicide an Offence*, 29(2) JIAFM 44-46 (2007).

<sup>22</sup> World Health Organization, *SUMMARY REPORT, WORKING GROUP IN PREVENTATIVE PRACTICES IN SUICIDE AND ATTEMPTED SUICIDE* (WHO Regional Office for Europe: Copenhagen, 1986).

<sup>23</sup> World Health Organization, *PREVENTING SUICIDE: A GLOBAL IMPERATIVE* (WHO Press: Geneva, 2014).

<sup>24</sup> Operational Criteria for Determination of Suicide Working Group, Division of Injury Epidemiology and Control, Centre for Environmental Health and Injury Control, CDC (1988) 37(50) MMWR 773-780.

<sup>25</sup> N. Kreitman, A.E. Philip, S. Greer, C.R. Bagley, *Parasuicide*, 115(523) BR. J. PSYCHIATRY 746-747 (1969).

<sup>26</sup> N. Kessel, *Suicide by Poisoning I: Suicide and the Survivor*, 61 NURSING TIMES 960-961 (1965).

<sup>27</sup> H.G. Morgan, *DEATH WISHES? THE UNDERSTANDING AND MANAGEMENT OF DELIBERATE SELF-HARM* (John Wiley & Sons: Chichester, 1979).

<sup>28</sup> E. King, *WORLD REPORT ON VIOLENCE AND HEALTH-I* (Geneva World Health Organization: 2002) p. 185.

<sup>29</sup> J.Lopez-Castroman, E.Olie, P. Courtet, *Stress and Vulnerability: a Developing Model for Suicidal Risk*, in T.J. Hudzik, K.E. Cannon (eds), *SUICIDE: PHENOMENOLOGY AND NEUROBIOLOGY* (Springer, Switzerland, 2014) pp. 87-100.

### C. Religious response to suicide

Religions generally denounce the act of suicide and endorse that life and death are creation of God and hence self-annihilation is proscribed by religions and punished under various legal systems. Survivors of the attempted suicide are viewed as tainted members of the society.<sup>30</sup> Ethics and religions generally tag suicide as cowardly act but as an exception, sacrificing one's life also rewards commendation and earn praise in the society like the custom of *Sati*<sup>31</sup> and *Jal-samadhi*<sup>32</sup> in Hinduism;<sup>33</sup> and the 'self-martyrdom' in battlefield under the *Shariat*.<sup>34</sup> Islam considers suicide worse than homicide, as the Prophet said, "He who commits *suicide* by throttling shall keep on throttling himself in the Hell Fire (forever) and he who commits *suicide* by stabbing himself shall keep on stabbing himself in the Hell-Fire".<sup>35</sup>

Christianity proscribes acts of suicide and abortion being sinful attracting blasphemy and as a deterrent to it, social denial of decent burial was prescribed.<sup>36</sup> In the sixth century AD, suicide became a secular crime and in thirteenth century, Thomas Aquinas denounced suicide as an act against God. Saint Augustine says, "Hence, it follows that the words 'Thou shalt not kill' refer to the killing of a man – not another man; therefore, not even thyself. For he who kills himself, kills nothing else than a man."<sup>37</sup> Attempted suicide in 1693, under Christianity became an ecclesiastical crime punishable by excommunication.

Many of the legal systems, under the influence of religion, criminalized the act of self-destruction but last century witnessed changing legal percepts by relaxing anti-suicide laws. There are ensued a debate whether suicidal tendency reflects an imbalanced mental state deserving sympathy and medical care or it

<sup>30</sup> S. Mojica and D. Murrell, *The Right to Choose: When Should Death be in the Individual's Hands?*, 12 WHITTIER L. REV. 471-504 (1991).

<sup>31</sup> *Sati* is a social practice among some Hindu communities whereby a recently widowed woman either voluntarily or by use of force or coercion commits suicide preferably by putting herself on her husband's funeral pyre. On a petition filed by Raja Ram Mohan Roy, Lord William Bentick, the then Governor General of India, banned this practice by introducing the Sati Regulation (XVII), 1929.

<sup>32</sup> Drowning in water for achieving salvation.

<sup>33</sup> Hinduism approves three methods of self-sacrifice; firstly *agnipravesa* (offering the body to fire); secondly *prayopavesa* (offering the body to Air); and *samadhi* (self-aborption- offering body to earth).

<sup>34</sup> Bernard K Freamon, *Martyrdom, Suicide and the Islamic Law of War: A Short Legal History*, 27(1) FORDHAM INT'L L. J. 299-369 (2003).

<sup>35</sup> Hadith narrated by Abu Huraira (Sahih Al-Bukhari – Book 2/23/446).

<sup>36</sup> Plato, 'Laws' 360 B.C.E. The dead body of a person committing suicide would be buried alone, on the outskirts of the city, without a headstone or marker.

<sup>37</sup> St. Augustine, DE CIVITATE, BOOK 1, Chapter XX' translation by GE McCracken in the LOEB Classical Library series Augustine City of God I Books I-III (Cambridge, Mass : Harvard University Press, 1981) p. 91.

amounts to a behavioral aberration setting legal machinery into motion to instill deterrence in the social system. Indeed life is a complex phenomenon lived differently by different person under varied circumstances. Individual is the best master to understand the dynamics of one's own life. The debate on right to end one's life in light of quality of life reflects upon the growth of physician assisted death being legally approved under several jurisdictions. Before delving upon the issue of delisting anti-suicide laws, the linkages between right to life and right to die need to be understood.

### D. Suicide: Whether an Offence or Psychological disability

Historically, suicide has been condemned under religious ethos which influenced legal system to criminalize suicidal attempts. Indeed, act of suicide is a purely personal decision without undermining religion, morality or public policy, having no baneful effect on society. Suicide is a cry for help in helplessness. The psychology of suicide is deeply rooted in depression reflecting upon the abnormally exaggerated feeling of despair, sadness, hopelessness and alienation from society. Mental stress (transient or prolonged) collectively impairs mental balance, incapacitates rational thinking and stimulates thoughts, provoking suicide as recourse to ending all despair.<sup>38</sup> The motives of suicide may be physical pain, including frustration of instinctive demands, social sufferings and fears, or doubts and dreads pertaining to the hereafter.<sup>39</sup>

De-stigmatization of the act of suicide started with the pioneering work of Durkheim who propounded that societal stressors mainly contribute in suicidal behaviour.<sup>40</sup> Durkheim defined suicide as "all types of death that results, directly or indirectly, from an act, positive or negative, committed by the victim himself, knowing full well the intended results".<sup>41</sup> Reflecting on cause effect relationship, he classified suicide as egoistic, altruistic and anomic suicide.<sup>42</sup> Sigmund Freud contemplated the concept of psychosis projecting suicide as resultant of mental disorder needing medical attention and intervention.<sup>43</sup> The emotional and mental stressors having biological or environmental origin are the root cause of the suicidal conduct and warrants sympathetic attitude towards victim rather than

<sup>38</sup> Vernon J. Geberth, *The Psychology of Suicide: An Investigative Assessment*, 5(1) J. LEGAL MEDICINE 72-77 (1997).

<sup>39</sup> H.Crichton-Miller, *The Psychology of Suicide*, 2(3683) THE BRITISH MEDICAL JOURNAL 239-241 (1931).

<sup>40</sup> Prakash B Behere *et.al.*, *Decriminalisation of Attempted Suicide Law: Journey of Fifteen Decades*, 57(2) INDIAN J. PSYCHIATRY 122-124(2015).

<sup>41</sup> E Durkheim, *ELSUICIDE* (Alal Universitaria: Madrid, 1982).

<sup>42</sup> Egoistic suicide results when abnormal individualism weakens social control and he lacks concern for community; altruistic suicide results due to excessive sense of duty to community and anomic suicide culminates due to failure of social control for regulating individual's behaviour.

<sup>43</sup> Sigmund Freud, *INTRODUCTORY LECTURES ON PSYCHOANALYSIS - COMPLETE PSYCHO-LOGICAL WORKS OF SIGMUND FREUD* (Hogarth Press: London, 1927).

criminalising the act.

Currently, World Health Organization identified 59 countries across the world that have decriminalized suicide considering suicidal behaviour typically as a symptom of psychiatric illness or act of psychological distress, indicating that the person requires assistance in his personal and psychological life. Penal sanctions may exacerbate risks of anxiety, depression, and repetitive suicidal behaviour. In fact decriminalisation of attempted suicide acknowledges and enables the right of health care of a person suffering from impaired mental health.

### *E. Suicide, Assisted Suicide and Euthanasia*

Suicide deals with extinguishing one's own life, but if facilitated by other person, it constitutes assisted or aided suicide. In general, assisted suicide is discouraged by all jurisdictions by initiating penal action against the aider except in case of medical advice. Euthanasia, also known as mercy killing, is a hospital procedure of ending life (either by omission or commission) on the advice of health experts certifying no ray of hope to improve health of critically ill person suffering from tremendous pain and agony. Involvement of single party with intent of causing death of self, differentiates suicide from euthanasia where another party, normally a medical expert, is mandatory to facilitate death of a terminally ill person.

The first recorded use of the word 'euthanasia' was by Suetonius, a Roman historian in his treatise "De Vita Caesarum-Divus Augustus" (The Lives of the Caesars - The Deified Augustus).<sup>44</sup> The word 'Euthanasia' is derived from the Greek words 'Eu' means good and 'Thanatosis' meaning death. The Oxford dictionary defines euthanasia as the painless killing of a patient suffering from an incurable and painful disease or in irreversible coma. Euthanasia, is the intentional premature termination of another person's life either by direct medical intervention (active euthanasia) or by withholding life-prolonging measures and resources (passive euthanasia), either at the express or implied request of the subject (voluntary euthanasia), or in absence of such approval (non-voluntary euthanasia).<sup>45</sup> If performed against patient's wishes, euthanasia becomes involuntary.<sup>46</sup>

<sup>44</sup> Suetonius describes the death of Augustus Caesar, "...while he was asking some newcomers from the city about the daughter of Drusus, who was ill, he suddenly passed away as he was kissing Livia, uttering these last words: "Live mindful of our wedlock, Livia, and farewell, thus blessed with an easy death and such a one as he had always longed for. For almost always, on hearing that anyone had died swiftly and painlessly, he prayed that he and his might have a like euthanasia, for that was the term he was wont to use."

Indeed, euthanasia and physician assisted suicide (PAS) are used interchangeably but both have subtle difference. In fact euthanasia is an act whereby a physician intentionally causes the death of a terminally ill patient but PAS represents an act of self-destruction committed by the patient himself by consuming a lethal dose of medical prescription advised by the physician. A physician 'acts' for performing euthanasia but under PAS he only 'advice' a patient as to how to terminate his life. In *Washington v. Glucksberg*<sup>47</sup> and *Vacco v. Quill*,<sup>48</sup> the US Supreme Court made the distinction explicit by observing that, "when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by the medication". Despite benevolent purpose, the intentional act of physician of euthanasia technically constitutes a homicide and hence proscribed under various jurisdictions.

### *F. Suicide Tourism*

The limited legal choice to end one's life led to suicide tourism to jurisdictions like Switzerland, Netherland, Belgium, Luxemburg and Oregon where laws are liberal for altruistic motive.<sup>49</sup> Under Swiss law the assistance of suicide is criminalized only if motive for assistance is selfish.<sup>50</sup> Motives provide legal basis to operate assisted suicide clinics like Dignit as in Switzerland where several people have availed services for committing suicide.<sup>51</sup> In UK touring Switzerland has become a euphemism for assisted suicide. Several Britons such as Reginald Crew (April, 2003) and John Close (May, 2003) travelled with family to Dignitas in public glare for suicide tourism but the prosecution of family members was not deemed to be in public interest because the act of suicide was contemplated outside UK.<sup>52</sup> Ms. Brittany Maynard, a resident of

<sup>45</sup> D.Chao, N. Chan and W. Chan, *Euthanasia Revisited*, 19 FAMILY PRACTICE 128-34(2002); A.F.Rashid, B. Kaur and O. Aggarwal, *Euthanasia Revisited: The Aruna Shanbaug Verdict*, 34(2) J. INDIAN ACD. FORENSIC MED.165-169 (2012).

<sup>46</sup> Robert M. Walker, *Physician-Assisted Suicide: The Legal Slippery Slope*, 8(1) CANCER CONTROL 25-31 (2001).

<sup>47</sup> 117 S Ct 2258 (1997).

<sup>48</sup> 117 S Ct 2293 (1197).

<sup>49</sup> Switzerland permitted assisted suicide in 1942 while Oregon, Netherland, Belgium and Luxemburg permitted in 1997, 2002, 2002 and 2009 respectively. Belgium became most liberal on assisted suicide law in 2015 by lifting age restrictions. In June 2015, Ms. Laura, aged 24 years, suffering from depression was allowed to exercise her right to die.

<sup>50</sup> Article 115 of the Swiss Criminal Code, 1937: Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>51</sup> Stella Hambly, *The Choice to give up living: Compassionate Assistance and the Suicide Act*, 3(2) UCLAN J. UNDERGRADUATE RESEARCH 1-15 (2010).

<sup>52</sup> The World Federation of Right to Die Societies, *Death Tourism*, available at <http://www.worldrtd.net/news/%E2%80%9Cdeath-tourism%E2%80%9D> (accessed 30 June, 2017)

California, also planned death tourism to Portland and ‘died with dignity’ on 01 November, 2014.<sup>53</sup> Indeed ‘not in our back yard’ approach may bring ambiguity in suicide jurisprudence and such legal lacunas promoting suicide tourism must suitably be addressed.

### III. LEGAL PERSPECTIVE ON SUICIDE: GLOBAL LANDSCAPE

In ancient Athens, a person who died by suicide was denied the honours of normal burial and was buried alone on the outskirts of the city, without a headstone or marker. The Middle Ages, marked the beginning of criminalizing the act of suicide. According to Bracton (in the 13<sup>th</sup> century) suicide was not a felony *per se* but if committed by a criminal it indicated confession of the crime and attracted forfeiture of his goods.<sup>54</sup> In 1562, the court in *Hales v. Petit*,<sup>55</sup> ruled that suicide was a felony punishable by confiscation of assets irrespective of whether committed by a criminal or other person.<sup>56</sup> In 1670, Louis XIV of United Kingdom issued a criminal ordinance under which the body of suicide doer was drawn through streets, face down, and then thrown on garbage heap and his property was confiscated.

The Burial of Suicide Act of 1823 abolished the legal requirement in England of burying suicides at crossroads. The Coroners Act, 1887 enabled the forfeiture of the suicide victim’s assets to the King’s treasury based on coroner’s investigation and suicide certification.<sup>57</sup> Attempted suicide was dealt as misdemeanour by the courts in *R.v. Doody*<sup>58</sup> (1854) and *R v. Burgess*<sup>59</sup> and less serious than murder. English law, by 1879, had begun to distinguish between homicide and suicide but forfeiture of property still continued. In *R v. Mann*<sup>60</sup> (1914) the court finally held that suicide was a felony but attempted suicide was a misdemeanour. The Magistrate in *R v. Trench* (1955) had observed, “... to say attempted suicide is to be regarded as a very serious crime show as entire lack of proportion”. A person who aids, abets, counsels or procures the commission of any misdemeanour is liable to be tried, indicted and punished as

<sup>53</sup> *End of Life Ethics: Application to the Case of Brittany Maynard*, BIOETHICS BLOG 28 February, 2015, available at <https://scholarblogs.emory.edu/phil116bioethics/2015/02/28/end-of-life-ethics-application-to-the-case-of-brittany-maynard/> (last visited on June 30, 2017).

<sup>54</sup> East W. Norwood, *Suicide from the Medico-Legal Standpoint*, 2 BR. MED. J. 241-244 (1931).  
<sup>55</sup> 438 A.2d 226 (1981).

<sup>56</sup> J. Neeleman, *Suicide as a Crime in the UK: Legal History, International Comparisons and Present Implications*, 94 ACTA PSYCHIATRA SCAND. 252-257 (1996).

<sup>57</sup> Under the Coroner’s Act, 1887 the prime function of the coroner (since 1927, legally or medically qualified person) was to investigate the causes and circumstances of the violent and unnatural death and to decide the legal ownership of his assets.

<sup>58</sup> (1854) 6 Cox 463.

<sup>59</sup> (1862) 2 L and C 258.

<sup>60</sup> (1914) 10 Cr.App.R.

principal offender.<sup>61</sup> However, in 1983, the Roman Catholic Church reversed the canon law that prohibited proper funeral rites and burial in church cemeteries for persons committing suicide.<sup>62</sup>

#### A. Decriminalizing Attempted Suicide

No country in the world explicitly recognises the right to die or to commit suicide but gradually legal rigour for attempted suicide got relaxed.<sup>63</sup> Scotland had never criminalised attempted suicide. Germany became the first country to repeal anti-suicide laws in 1751.<sup>64</sup> Aid and abetment for suicide have legal approval under German laws. After French Revolution, various countries of Europe and North America witnessed decriminalisation of self-killing. Except Cyprus, all European countries have legalised the act of suicide. Gradually, worldwide attempted suicide got recognition having linkages with mental health and psychological instability of the attempter rather than criminal intent liable for punishment. Legal intent for defacing laws on attempted suicide in some countries has been discussed below.

##### (i) United Kingdom

Till 1961, English law perceived suicide as an immoral criminal act both against the God and the Crown.<sup>65</sup> Steered by the views of judiciary, clergy and the British Medical Association,<sup>66</sup> the British Parliament enacted the Suicide Act, 1961, applicable to England and Wales, under which attempted suicide ceased to be an offence,<sup>67</sup> but criminalised aiding and abetting suicide.<sup>68</sup> The House of Lords refused to permit assisted suicide in the *Pretty* case<sup>69</sup> by observing, “Article 2 (of the European Convention on Human Rights, 1950) cannot without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.”<sup>70</sup>

<sup>61</sup> K.S. Latha and N. Geetha, *Criminalizing Suicide Attempts: Can it be a deterrent?*, 44(4) MED. SCI. LAW 343-347 (2004).

<sup>62</sup> Jacob Crouch Foundation, *THE HISTORY OF SUICIDE* (2011).

<sup>63</sup> M. Ariens, *Suicidal Rights*, 20 RUTGERS LAW J.79-123 (1988).

<sup>64</sup> S.H. Kazarian & D.R. Evans, *HANDBOOK OF CULTURAL HEALTH PSYCHOLOGY* (Academic Press: San Diego, CA; 2001).

<sup>65</sup> S. Annies Mararet, Fara Azida Binti Ahmad Bakri and Lee Mah Ngee, *Suicide Prevention Using Jurisdiction*, 1 INT. J. BUSINESS & LAW 98-103 (2012).

<sup>66</sup> SECOND REPORT (SUICIDE) BY CRIMINAL LAW REVIEW COMMITTEE (HMSO: London, 1960).

<sup>67</sup> The Suicide Act, 1961 (9 and 10 Eliz 2 c 60).

<sup>68</sup> Section 2 of the Suicide Act, 1961 determines criminal liability for complicity in another’s suicide. Section 2(1) criminalizes for aiding and abetting of suicide.

<sup>69</sup> *The Queen on the Application of Mrs. Dianne Pretty v. Director of Prosecution* [2001] UKHL 61, para 35.

<sup>70</sup> *Id.*, para 39.

In *R. (Purdy) v. DPP*,<sup>71</sup> the petitioner claimed review of specific offence of assisted suicide policy of UK under section 2(1) of the Suicide Act as contravening Article 8 of the European Convention on Human Rights, 1950. Since her claim failed in the High Court and Court of Appeal, she approached the House of Lords. Deviating from the *Pretty* case, the House held that requirement of accessibility and foreseeability must be satisfied while dealing with Article 8(2) of the European Convention and the Public Prosecutor is expected to exercise his discretion of 'compassionate assistance' in such cases.<sup>72</sup> Accordingly, section 2(1) of the Suicide Act was amended by replacing 'aid, abet, counsel and procure', to 'acts capable of encouraging or assisting' the suicide of another.<sup>73</sup> However, euthanasia continues to be illegal in UK.

### (ii) United States

Various States of USA have decriminalized suicide since 1960s. The Oregon's Death with Dignity Act, 1994 and the Washington Death with Dignity Act, 2009 enabled physician assisted suicide but patient having sound mind, must be diagnosed with less than six months remainder life and must make oral or written request. Two doctors must approve and after 15 days the patient needs to reaffirm the request. A doctor may prescribe a lethal dose of a medication but may not administer it. In California, the End of Life Option Act, 2016 enables the terminally ill patients to take decision of taking aid-in-dying medication under certain conditions.<sup>74</sup> Thus, active euthanasia, with certain riders, got partial recognition under US legal system.

In the *Glucksberg's* case,<sup>75</sup> the US Supreme Court held that the right to assistance in committing suicide does not attract fundamental liberty protected by the due process clause under the Fourteenth Amendment.<sup>76</sup> The court held that the decision to commit suicide with the assistance of another person may be a personal matter similar to a decision of refusing unwanted medical treatment and may not attract legal protection. The nine judges Bench of the US Supreme Court in 1990 except Justice Scalia in the *Cruzan* case<sup>77</sup> have acknowledged that the right to die is a federal constitutional right. The court emphasised on the consent of person for withdrawing artificial medical support to the patient

<sup>71</sup> [2009] UKHL 45.

<sup>72</sup> *Ibid.*

<sup>73</sup> Section 2(1) of the Act, 1961 was amended by the Coroners and Justice Act, 2009.

<sup>74</sup> The Act, 2016 came into force on 9 June, 2016.

<sup>75</sup> *Washington v. Glucksberg* 521 U.S.702 (1997).

<sup>76</sup> Philip King, *Washington v. Glucksberg: Influence of the Court in Care of the Terminally Ill and Physician Assisted Suicide*, 15 J LAW AND HEALTH 271-301 (2001).

<sup>77</sup> Amy Zelaya, *Cruzan v. Director, Missouri Department of Health* 497 U.S.261, 14 J. CONTEMP. LEGAL ISSUES 313 (2004).

suffering from vegetative state. The court held that bodily integrity embodied informed consent in medical treatment and law proscribe touching a person by another without consent which amounts to committing a battery. The Court observed, "An erroneous decision not to terminate results in maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment, at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to withdraw life-sustaining treatment, however, is not susceptible of correction."

In case of permanent vegetative state (PVS),<sup>78</sup> enabling the right to privacy *In re Karen Quinlan*,<sup>79</sup> the US Supreme Court approved disconnecting the ventilator on the request of the parents even in absence of consent of the patient.<sup>80</sup> In *Conroy* case<sup>81</sup> the U.S. Supreme Court, contrary to *re Quinlan*, emphasized on informed consent and the best interest standards.<sup>82</sup> *Conroy* case upholds the right of refusal by mentally impaired and competent patients on grounds that their rights of free choice, self-determination and privacy outweigh medicine's and state interests in prolonging life and preventing suicide. This case culled out two "best standards tests" for withholding life sustaining treatment from a patient: a limited-objective test and pure-objective test. In limited-objective test, life sustaining treatment may be withdrawn from a patient like Claire Corony's situation based on some trustworthy evidence proving refusal by the patient to continue treatment. But the decision maker must be satisfied that the burdens of treatment outweigh the benefits of life. Under pure-objective test, the net burden of the patient life with the treatment should clearly and markedly outweigh the benefits that the patient derives from life. However, assisted suicide by aiding and abating is illegal in USA.

<sup>78</sup> Persistent vegetative state (PVS) is a diagnostic term coined by the American Academy of Neurology. PVS is clinical disorder of consciousness in which patient with severe brain damage remains in a state of partial arousal rather than true awareness. After four weeks in a vegetative state (VS), the patient is classified as in a PVS.

<sup>79</sup> *In re Karen Quinlan* (70 N.J. 10, 355 A.2d 647 1976). In this landmark case the parents of Ms. Karen Ann Quinlan (she suffered from persistent vegetative state (PVS) but kept alive by artificial means) were allowed by the court to remove her artificial ventilation. The case paved the way for legislation on Euthanasia in California. However, the End of Life Option Act was signed by the Governor Brown of California in October 2015 and came into effect on 09 June, 2016.

<sup>80</sup> H.L. Hirsch and R.E. Donovan, *Right to Die: Medico-Legal Implications of in re Quinlan*, 30 RUTGERS L REV.267 (1976).

<sup>81</sup> *In re Claire C. Conroy*, the Supreme Court of New Jersey (1985) 98 N.J. 321 486 A.2d 1209.

<sup>82</sup> R.Dresser, *Relitigating life and death*, 51 OHIO ST. L. J. (1990)1425-1447; Harold Y. Vanderpool, *Doctors and the Dying of Patients in American History*, in Robert F. Weir (ed.) ASSISTED SUICIDE (Indiana University Press, Bloomington, Indiana, USA, 1997) pp. 33-68.

**(iii) Canada**

Canada repealed penal provisions for suicide in 1972 but physician assisted death is illegal under section 241(b) of the Criminal Code of Canada. However, anyone found guilty of counselling another to take one's life or of aiding suicide is liable to imprisonment up to 14 years whether or not the suicide attempt is successful.<sup>83</sup> In *Rodriguez v. Attorney General of Canada*,<sup>84</sup> court has refused to permit physician assisted suicide whereby Justice John Sopinka observed, "Given the concerns about abuse that have been expressed and the great difficulty in creating appropriate safeguards to prevent these, it cannot be said that the blanket prohibition on assisted suicide is arbitrary or unfair, or that it is not reflective of fundamental values at play in our society".<sup>85</sup> Recently the Supreme Court of Canada, in *Carter v. Canada (Attorney General)*,<sup>86</sup> held criminal prohibition on physician-assisted suicide and euthanasia under section 141 and 14 of the Criminal Code, under certain circumstances,<sup>87</sup> as unconstitutional since it violates the right to life, liberty and security of person provided under section 7 of the Canadian Charter of Rights.<sup>88</sup> Thus at present, in Canada euthanasia is permitted but aid or abetment to suicide is illegal.

**(iv) Other Jurisdictions**

Netherlands is the only country permitting euthanasia and doctor assisted suicide under the Termination of Life on Request and Assisted Suicide (Review Procedure) Act, 2002. Progressively, euthanasia was permitted only for terminally ill patients, then to chronically ill, and subsequently for psychological sufferings and incompetent patients including children.<sup>89</sup> However, criminal proceedings get contemplated in Netherland, if one participates in execution for or execution of a suicide including lethal means. In 1993, Ireland decriminalised attempted suicide but assisted suicide and euthanasia still continued to be illegal. Singapore enacted the Advanced Directive Act, 1997 under which Singaporeans, in order to minimise sufferings and to honour dignity, may sign an advanced

<sup>83</sup> Section 241(b) of the Criminal Code, Canada 1985; similar to section 2(1) of the Suicide Act, 1961; S. Annie Margaret, Fara Azida Binti Ahmad Bakri, and Lee Mah Ngee, *Suicidal Prevention using Jurisdiction*, 1 INT. J.BUSINESS, ECONOMICS AND LAW 98-193 (2012).

<sup>84</sup> [1994] 2 LRC 136.

<sup>85</sup> *Id.*, para 189.

<sup>86</sup> (2015) SCC 5.

<sup>87</sup> *Id.*, para 147. Three conditions to permit physician assisted death: (1) a person is a competent adult, (2) clearly consents to the termination of life and (3) has a grievous and irremediable condition (including an illness, disease or disability) that causes enduring suffering that is intolerable.

<sup>88</sup> Benny Chan & Margaret Somerville, *Converting the 'Right to Life' to the 'Right to Physician-assisted suicide and Euthanasia': An analysis of Carter v. Canada (Attorney General)*, *Supreme Court of Canada*, 24(2) MEDICAL L. REV. (2016)143-175.

<sup>89</sup> D. Benatar, *A Legal Right to Die: Responding to Slippery Slope and Abuse Arguments*, 18(5) CURR. ONCOL.206-207 (2011).

medical directive (AMD) declaring that one does not wish to receive extraordinary life-sustaining devices in case of prolonged illness. However, Singapore has humanized enforcement practice of suicide laws which gets operational, firstly, if the person repeatedly tries to kill oneself; secondly, when resources are wasted in preventing from suicide; and thirdly, when the person while attempting suicide has committed other offence such as injuring other person.

In Asian continent, suicide is permissible in various jurisdictions like Bhutan, Sri Lanka, Thailand, China, Cambodia, Indonesia, Israel, South Korea, Iran, Japan, Qatar and Vietnam. But jurisdictions including Pakistan, Bangladesh, UAE, Saudi Arabia, North Korea, Malaysia, Jordan, Singapore and Yemen continued to criminalise attempted suicide like in India. In Europe majority countries have legalised suicide except Cyprus. In African jurisdictions like South Africa, Angola, Botswana, Cameroon, Egypt, Zambia and Zimbabwe attempted suicide is legal.

**B. Global Response to Assisted Suicide**

All jurisdictions criminalize and punish assisted suicide considering it a form of intentional homicide despite being assisted on victim's request. While the proscription of assisted suicide and euthanasia virtually remain absolute in US, a notable exception existed for a short time.<sup>90</sup> In 1902, the Texas Court of Criminal Appeals on assisted suicide held, "It is not a violation of any law in Texas for a person to take his own life...So far as the law is concerned the suicide is innocent; therefore the party who furnishes the means to the suicide must also be innocent of violating the law."<sup>91</sup> In *State of Missouri v. Webb*<sup>92</sup> the court held, "Every person deliberately assisting another in the commission of self-murder shall be deemed guilty of manslaughter in the first degree." Unlike Germany<sup>93</sup> and Switzerland<sup>94</sup> where outcome of assisted suicide attracts more significance, English law emphasize upon intent irrespective of outcome of the attempt. In Netherlands, if the outcome is not fatal, assisted suicide is not punishable.<sup>95</sup>

<sup>90</sup> Neil M. Gorsuch, *THE FUTURE OF ASSISTED SUICIDE AND EUTHANASIA* (Princeton University Press, New Jersey, 2006) p. 44.

<sup>91</sup> *Grace v. State* (Tex.) 69 S.W. 529.

<sup>92</sup> 216 Mo. 378, 115 S. W. 998.

<sup>93</sup> A.Bridgae, *Germany's Seller of Death Arrested*, 306 BR. MED. J. 351-352 (1993).

<sup>94</sup> N. Spfijer, *HET ZELFMOORDVRAAGSTUK; CEN SAMENVATTEND OVERZICHT VAN DE VERSCHILLENDE ASPECTEN VAN ZELFMOORD* (Arnhem: Van Loghum Slaterus, 1969).

<sup>95</sup> J.A. Fruin, *NEDERLANDSE WETBOEKEN* (Wetboeken Zwolle, Tjeenk Willin, 1994).

In 1983 while deciding an appeal from an English citizen against the law of assisted suicide, the European Court of Human Rights (ECtHR) in *R v. United Kingdom*<sup>96</sup> had observed, “It recognizes the right of the State under the Convention to guard against the inevitable criminal abuses that would occur in the absence of legislation against the aiding and abetting suicide”.<sup>97</sup> As discussed earlier the *Pretty*<sup>98</sup> and the *Prudy*<sup>99</sup> laid down the foundation of the right to assisted suicide. This right was further strengthened in *Haas v. Switzerland*<sup>100</sup> and the verdict has been recognized as proclaiming “a real conventional right to suicide’ establishing indeed a right to decide one’s own death, and even outlines at the expense of the State, a positive obligation”<sup>101</sup> to provide anyone endowed with discernment means to cause their own death. In the *Haas*, the court stepping ahead, from the ‘choice’ recognised in the *Pretty*, to a right to commit suicide by observing, “An individual’s right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention”.<sup>102</sup> Thus assisted suicide is no longer limited only to liberty but is gradually evolving as a right.

The *locus standi* was refused to the husband by the German administrative court in *Koch v. Germany*<sup>103</sup> since the Petitioner went to Dignitas<sup>104</sup> in Switzerland and committed assisted suicide when the case was pending in the court. Later the husband applied to the ECHR but faced challenge on admissibility since under Article 34 of the Convention, only a person who is victim of a violation of the convention may apply to the court. Under the similar facts in *Sanles Sanels v. Spain (dec.)*,<sup>105</sup> the court held that ‘the applicant has no standing to assert the rights to his wife by Article 8 of the Convention, due to the non-transferable nature of these rights.’ In the *Koch*, given the exceptionally close relationship of her wish to end her life, the court considers that ‘the applicant can claim to have been directly affected by the Federal Institute’s

<sup>96</sup> *R v. United Kingdom* (1983) 33 DR 270.

<sup>97</sup> *Id.*, para 17.

<sup>98</sup> [2001] UKHL 61. In the *Pretty* case, the court held that being prevented by law ‘to exercise one’s choice’ to end one’s life could constitute a violation of the right to respect for one’s private life.

<sup>99</sup> *Supra* n. 72.

<sup>100</sup> (2011) 53 EHRR 33.

<sup>101</sup> *Id.*, para 61.

<sup>102</sup> *Supra* n. 100, para 51.

<sup>103</sup> [2013] 56 EHRR 6.

<sup>104</sup> Dignitas, a Swiss non-profit organisation - founded by Ludwig Minelli on 17<sup>th</sup> May 1998, advice on palliative care and assisted/accompanied suicide, to sufferers of terminal illness or severe physical/mental sickness, with the support of qualified medical aid.

<sup>105</sup> No. 48335/99 ECHR 2000-XI, as quoted in Alastair R. Mowbray, *CASES AND MATERIALS ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (Oxford University Press, New York, 2007) p. 23.

refusal to grant authorization to acquire a lethal dose of pentobarbital of sodium’.<sup>106</sup> Indeed by this ruling, the court considerably expanded the concept of a victim being more obedient to emotions rather than to strict rationality by reversing the ratio in *R v. United Kingdom*,<sup>107</sup> where the court observed that “the acts aiding, abetting, counselling or procuring suicide are excluded from the concept of privacy by virtue of their trespass on the public interest of protecting life, as reflected in the criminal provisions of the 1961 Act”.<sup>108</sup>

In *Haas v. Switzerland*, the Court held that Switzerland had the obligation ‘to establish a procedure capable of ensuring that a decision to end one’s life does indeed correspond to the free will of the individual concerned’<sup>109</sup> in order to prevent the ‘the individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved’.<sup>110</sup> After the *Hass* case, it is no longer safe to say that right to life constitutes an inalienable attribute of the human person and that it forms the supreme value in the scale of human rights. In fact individual’s liberty symbolizes the ‘supreme value’. In *Gross v. Switzerland*,<sup>111</sup> the court held that Switzerland had an obligation to create a legal framework allowing each person to claim right to assisted suicide. This case transferred the practice of assisted suicide from medical domain to civil liberties. Indeed the ECtHR gradually adopted a liberal position on assisted suicide underlining the evolving percept of human dignity.

In *R (Nicklinson) v. Ministry of Justice*,<sup>112</sup> an irreversibly paralysed petitioner requested to permit assisted suicide arguing that provisions for punishing a person assisting in suicide under section 2 of the Suicide Act, 1961 contravene Article 8 of the European Convention, 1950. The Supreme Court of United Kingdom held that the judiciary has authority to make declaration of incompatibility as regards to the general prohibition of assisted suicide but the Parliament must resolve the sensitive issue by enacting apt legislation. The ECtHR, in this case, held that “If the domestic courts were to be required to give a judgment on the merits of such a complaint this could have the effect of forcing upon them an institutional role not envisaged by the domestic constitutional order. Further, it would be odd to deny domestic courts charged with examining the compatibility of primary legislation with the Convention the possibility of

<sup>106</sup> *Supra* n. 103, para 50.

<sup>107</sup> (1983) 6 EHRR 140.

<sup>108</sup> *Id.*, para 13.

<sup>109</sup> *Supra* n.100, para 58.

<sup>110</sup> *Id.*, para 54.

<sup>111</sup> No. 67810 EctHR 2014.

<sup>112</sup> [2014] UKSC 38.

concluding, like this Court, that Parliament is best placed to take a decision on the issue in question in light of the sensitive issues, notably ethical, philosophical and social, which arise.”<sup>113</sup>

In last five decades, suicide and the assisted death have emerged as socio-psychological notion facing multifaceted challenges in the evolving legal panorama. India, facing high prevalence of suicides,<sup>114</sup> is also processing for defacing anti-suicide laws to integrate with emerging global neo-jurisprudence of suicide.

### *C. Legal Perspective in India on Suicide*

India has attempted several times to deface anti-suicide laws based on humanitarian discourse. Recently the Mental Health Care Act, 2017 has acknowledged that a person attempting suicide must be assumed to be suffering from mental illness and has imposed duty upon the government to provide adequate care, treatment or rehabilitation to the victim. The proposed legislative intent has started a debate to understand the legal nuances of suicide attempts and judicial response thereof. Before entering into the discourse of defacing these laws, snapshot on the existing laws has been presented below.

#### *(i) Section - 309 and 306 of the Indian Penal Code, 1860*

Since 1860, the Indian Penal Code criminalizes attempted suicide under section 309,<sup>115</sup> but the language of section is sweeping in nature and does not define suicide.<sup>116</sup> Ratanlal and Dhirajlal on section 309 had commented, “It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence.”<sup>117</sup> Section 306 of the Penal Code criminalizes the abatement of suicide with condition precedent of successful commission of suicide.<sup>118</sup> In fact abatement of failed suicide remains unpunished in India.

#### *(ii) Response of the Law Commission and the Legislature*

The back and forth approach of the Law Commission of India in last

<sup>113</sup> *Nicklinson and Lamb v. The United Kingdom* [2015] ECHR 783, para 84.

<sup>114</sup> *Supra* n. 5.

<sup>115</sup> Sec. 309 IPC: “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.”

<sup>116</sup> The Law Commission of India, 210<sup>TH</sup> REPORT ON HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE (October, 2008), p. 14.

<sup>117</sup> Ratanlal and Dhirajlal, *INDIAN PENAL CODE* (LexisNexis, 2017) p. 740.

<sup>118</sup> Section 306: Abatement of suicide – ‘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’.

four decades is a tale of criminalising and decriminalising attempted suicide. In response to the 42<sup>nd</sup> Report of the Law Commission of India to decriminalize the attempted suicide,<sup>119</sup> the Indian Penal Code (Amendment) Bill, 1978 was passed in Rajya Sabha on November 23, 1978 but lapsed since Lok Sabha was dissolved in 1979. In *P. Rathnam v. Union of India*,<sup>120</sup> the Apex Court decriminalized attempted suicide considering right to die *sine quo non* to right to life under Article 21, but in *Gian Kaur* case of 1996 revived section 309. This was echoed in the 156<sup>th</sup> Report of the Law Commission of India.<sup>121</sup>

In 2008, Justice AP Lakshmanan, the Chairman of the Law Commission of India has recommended for effacing section 309 by observing “It is felt that attempt to suicide may be regarded as a manifestation of diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment.”<sup>122</sup> The Law Commission hold the view that “assisting or encouraging another person to (attempt to) commit suicide must not go unpunished, the offence of attempt to commit suicide under section 309 needs to be omitted from the Indian Penal Code”.<sup>123</sup>

#### *(iii) Observations by Higher Judiciary in India*

Suicide contradicts the monopolistic power of the State to take away life as mentioned under Article 21 of the Indian Constitution.<sup>124</sup> A socio-legal dilemma is that in case the State is incapable of providing enabling environment to enjoy dignified life, does it compel an individual to live ‘undignified life’ or he has the option to end his life. The constitutionality of section 309 has been challenged time and again before the Supreme Court and different High Courts. In *State (Delhi Administration) v. Sanjay Kumar Bhatia*,<sup>125</sup> the Delhi High Court had observed, “The continuance of section 309 of Indian Penal Code is an anachronism unworthy of a human society like ours.”<sup>126</sup> This case indeed set the tone for decriminalising the act of attempted suicide.<sup>127</sup>

<sup>119</sup> The Law Commission of India, 42<sup>ND</sup> REPORT ON INDIAN PENAL CODE (June 1971) recommended to repeal section 309 of the Code, p. 244.

<sup>120</sup> (1994) SCC 394.

<sup>121</sup> The Law Commission of India, 156<sup>TH</sup> REPORT ON ‘INDIAN PENAL CODE VOL. II (1997) recommended to continue sec. 309 of the Code, p. 133.

<sup>122</sup> *Supra* n.116, p.7.

<sup>123</sup> *Id.* at 39.

<sup>124</sup> Article 21 – Right to life: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>125</sup> 1986 (10) DRJ 31.

<sup>126</sup> *Id.*, para 1.

<sup>127</sup> K. Latha and N. Geetha, *Criminalising Suicide Attempts: Can it be deterrent?*, 44 *MEDICINE, SCIENCE AND THE LAW* 343-347 (2004).

The Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*<sup>128</sup> held section 309 *ultra vires* the Constitution being in violation of Articles 14 and 21 thereof and must be repealed.<sup>129</sup> Contrarily, the High Court of Andhra Pradesh, by upholding the constitutional validity of section 309, has observed that “unwarranted harsh treatment or prejudice is not meted out to those who need care and attention”.<sup>130</sup> In fact various High Courts have interpreted constitutional validity of anti-suicide laws in contradictory manner.

In 1994, the Supreme Court in *P. Rathinam v. Union of India*<sup>131</sup> decriminalized section 309 on the argument that scope of Article 21 of the Indian Constitution, 1950 incorporates the ‘right to die’. By drawing analogy from Article 19, the court observed that freedom of speech and expression also include right to silence and to move anywhere and right to carry business incorporate not to do business. The Apex Court argued that section 309 does not violate Article 14 but abridges right to life under Article 21 and held section 309 void, being cruel and irrational. The Constitutional Bench of the Apex Court in *Gian Kaur v. State of Punjab*,<sup>132</sup> in 1996, overruled the judgment of the *Rathinam*, giving life back to section 309 construing that right to die violates Article 21 and 14 of the Indian Constitution and upheld the constitutional validity of both sections 306 and 309 of the Penal Code. Justice J.S. Verma observed that the ‘right to die’, if any, is inherently inconsistent with the ‘right to life’. The court cited the decision of the United States Court of Appeals for the Ninth Circuit in *Compassion in Dying v. State of Washington*,<sup>133</sup> which reversed the decision of United State District Court W.D. Washington,<sup>134</sup> whereby the District Court held the provisions of punishing for promoting suicide attempt as unconstitutional. Thus section 309 was revived in India by the *Gian Kaur* case.

Euthanasia, in *sensu stricto*, does not fall under section 309. The Kerala High Court in *C.A. Thomas Master v. Union of India*<sup>135</sup> held that voluntary termination of life for whatever reason would amount to suicide within the

<sup>128</sup> 1987 Cr.LJ 743.

<sup>129</sup> B.R.Sharma, A. Sharma and D. Harish, *Abolition and restoration of Section 309 IPC - An overview*, 7(1) ANIL AGRAWAL’S INTERNET JOURNAL FORENSIC MEDICINE & TOXICOLOGY (2006), available at [http://www.anilagrawal.com/ij/vol\\_007\\_no\\_001/papers/paper003.html](http://www.anilagrawal.com/ij/vol_007_no_001/papers/paper003.html) (last visited on June 30, 2017).

<sup>130</sup> *Chenna Jagadeeswar v. State of Andhra Pradesh*, 1988 Cr.LJ 549. The court raised doubt as to whether sec. 306 IPC could survive, if sec. 309 IPC held illegal.

<sup>131</sup> *Supra* n. 123.

<sup>132</sup> AIR 1996 SC 1257.

<sup>133</sup> 49 F.3d 586.

<sup>134</sup> 850 Federal Supplement 1454.

<sup>135</sup> 2000 CriLJ 3729. In this case, a retired teacher of 80 years demanding for voluntarily put an end to his life since arguing that he has had a successful and contended life and his mission of life has ended.

meaning of section 306 and 309. In the *Gian Kaur*, the Apex Court held that euthanasia could be made lawful only by legislation. However, the writ petition in *Aruna Ramchandra Shanbaug v. Union of India*<sup>136</sup> raised perplexing issue of mercy killing.<sup>137</sup> In this land mark judgment, the Apex Court legitimized ‘passive euthanasia’<sup>138</sup> by way of removing life saving devices or treatment on recommendation of medical board. However, the Court refused to permit ‘active euthanasia’, by administering life ending prescriptions. The Court recommended for legislature to delete section 309 since it appears “anachronistic though constitutionally valid”.<sup>139</sup>

In *Gian Kaur v. State of Punjab*,<sup>140</sup> the Apex Court held that abetment to attempt of suicide is beyond the purview of section 306 and punishable only under section 309 read with section 107 of the *Penal Code*. In *Satbir Singh v. State of Punjab*,<sup>141</sup> Court observed that “It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.” In *Berlin P. Thomas v. State of Kerala*,<sup>142</sup> the High Court of Kerala has opined that a person can go on abetting commission of suicide, but his conduct will not be culpable if the offence of suicide is not committed, would certainly defeat the purpose of the law. Thus abatement of suicide even if suicide fails must be punished.”

#### (iv) *The Mental Health Care Act, 2017*

Recently India has enacted the Mental Health Care Act, 2017 which is a paradigm shift in legal approach enabling presumption of severe stress in case of attempt to commit suicide.<sup>143</sup> Further legislature has casted a duty upon the appropriate government to plan, design and implement programme for

<sup>136</sup> (2011) 4 SCC 454.

<sup>137</sup> M.K. Jha, P. Bhattacharya & A. Garg, *Euthanasia: Indian Scenario*, 12(1) J. PUNJAB ACADEMY OF FORENSIC MEDICINE & TOXICOLOGY 43-47 (2012).

<sup>138</sup> Passive death (Orthothanasia) has been observed in history by with-holding treatment to made death easy in passive form.

<sup>139</sup> *Supra* n. 138, para 100.

<sup>140</sup> *Supra* n. 134.

<sup>141</sup> (2001) 8 SCC 633.

<sup>142</sup> (2008 CrLJ 1759).

<sup>143</sup> The Mental Health Care Act, 2017: Presumption of mental illness in case of attempt to commit suicide by person:

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

(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.

promotion of mental health and prevention of mental health illness to reduce incidents of suicide and attempted suicide in the country.<sup>144</sup>The Act, 2017 is a great leap to promote mental health care along with decriminalise attempted suicide.

#### IV. CONCLUSION

Self-killing cannot be a blissful event rather it symbolises abnormal behaviour in despair as a result of either mental disorder or social incompatibility silently yearning for help from various quarters like family, society and the state. Suicide has been denounced as a great sin by some and eloquently defended as a natural right of man by others.<sup>145</sup>H. Romilly Fedden, an English writer has observed on attempted suicide, “It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation.”<sup>146</sup>

Suicide laws virtually countermand the strategies for suicide prevention. Lodging the attempter of suicide in prison cell may aggravate the mental derangement inciting further attempt. Decriminalisation of abortive suicide attempt is justified on insanity defence under section 84 of the Indian Penal Code augmented by M’ Naughten,<sup>147</sup> exempting the survivor from criminal liability being incapable of framing guilty mind to cause injury to other person; incriminating for causing injury to self under distress amounts to double punishment without legal justification.<sup>148</sup>

Considering suicide as consequence of circumstances, state must arrange counselling, mental health care and rehabilitation for implementing effective prevention strategies.<sup>149</sup> Besides repealing suicide laws, cultural values towards suicidal behaviour must also be addressed through educating people

<sup>144</sup> The Act, 2017: Section 29(1).

<sup>145</sup> D.M. Wright, *Criminal aspects of suicide in the United States*, 7 NORTH CAROLINA CENTRAL LAW J. 156-163 (1975).

<sup>146</sup> H. Romilly Fedden, *SUICIDE: A SOCIAL AND HISTORICAL STUDY* (Peter Davies Ltd.: London, 1938) p. 42.

<sup>147</sup> *R v. M’ Naughten* (1843) 8 E.R. 718. M’ Naghten Rule was formulated as a reaction to the acquittal of Daniel M’ Naghten in 1843 for murdering Edward Drummond mistakenly considering him Robert Peel, the then British Prime Minister. The M’Naghten Rule is a defence of insanity, which demand to prove that, at the time of the committing of the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing.

<sup>148</sup> P.C. Ellsworth, R.M. Bukaty, C.L. Cowan & W.C. Thompson, *The death-qualified jury and the defense of insanity*, 8 LAW AND HUMAN BEHAVIOUR 81 (1984).

<sup>149</sup> Jacinta Hawgood & Diego De Leo, *Suicide Prediction – A Shift in Paradigm Is Needed*, 37 CRISIS 251-255 (2016).

viewing suicide as a public health issue.<sup>150</sup> Suicide prevention help lines and assistance must be in place with wide publicity having active role of media and NGOs. Suicide prevention must be integral component of public health care and vulnerability mapping for suicidal behaviour needs policy intervention. Systematic epidemiological studies of suicide may help to understand complexity of self killing behaviour in diversified Indian society. India must design well researched customized anti-suicide strategies befitting cultural and social diversities. India is far from legalizing assisted suicide, and demand for euthanasia warrants revisiting constitutionality of the right to die.

The Mental Health Care Act, 2017 has rightly attempted treating suicidal behaviour as mental stress, in need of psychiatric treatment, social support and rehabilitation to live life with dignity and compassion rather than handcuffs and jail cell. Like decriminalising homosexuality in various countries, revoking anti-suicide laws, from a social perspective, by helping the ‘helpless’ may be a step forward for humanising the state response towards suicide survivors which in turn may boost the reporting of suicidal behaviour. The suicidal behaviour poses a major public health and mental health problem symbolizing – ‘a cry for help’ to provide psycho-socio-medical support.<sup>151</sup> Effacing section 309 of the Penal Code may be accentuated to synchronise Indian criminal law with global jurisprudence but it must not extinguish the onus of the state to provide the basic needs of common people. In fact repealing draconian anti suicide law may not grant a licence to die, but offer an opportunity for the state and the society to help, support and care for those suffering from distress. Defacing anti-suicide laws may symbolize the progressive jurisprudential approach towards freedom and from there to a right, a right to commit suicide, a progressive legal journey deliberated in the *Pretty* to the *Haas* cases.

<sup>150</sup> I.R.H. Rockett, *Counting Suicides and Making Suicide a Public Health Problem*, 31 CRISIS 227-230 (2010).

<sup>151</sup> Deborah L. Kahn & David Lester, *Efforts to Decriminalize Suicide in Ghana, India and Singapore*, SUICIDOLOGY ONLINE (2013).