

THE LAW OF “RIGHT TO DIE” SUICIDE/MERCY KILLING

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ABSTRACT

Suicide is the willful and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish the result of self-destruction. Suicide is the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-killing by an insane person is not suicide. The paper presents many kinds of suicides as recommended and researched. The paper also discusses the current scenario the perspectives the law shows. Distinction of Suicide from euthanasia and mercy killing is also presented.

Keywords: Right to Die, Suicide, Mercy Killing

INTRODUCTION

Death is a fact of life¹. Suicide is not a natural phenomenon to terminate a life. Suicide is the act of killing oneself, most often as a result of depression or other mental illness². The term, “to commit suicide” is for an individual who voluntarily do an act, for the purpose of destroying himself, being conscious or unconscious of that probable consequence.

Suicide is the willful and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish the result of self-destruction. Suicide is the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-killing by an insane person is not suicide.

There are many kinds of suicides as recommended and researched by on the basis of the disturbance in the relationship between society and the individual:

Egoistic Suicide³: According to Durkheim, egoistic suicide is caused by lack of social integration of society in the religious, domestic and the political sphere. The more weakened the groups to which he belongs, the less he depends on them, the more he consequently depends only on himself and recognize no other rules of conduct that are founded on his private interests. The individual ego asserts itself to excess in the face of the social ego and at its expense; it may be called egoistic the type of suicide springing from excessive individualism.

Altruistic Suicide⁴: This type of suicide is characterized by a sense of being overwhelmed by a group's goals and beliefs. It occurs in societies with high

needs as a whole. If excessive individuation leads to suicide, insufficient individuation has the same effects. When a man has become detached from society, he encounters less resistance to suicide, and he does so when social integration is too strong. Bartholin, in his book reports, has said that the Danish warriors considered it a disgrace to die in bed of old age or sickness, and killed themselves to escape this humiliation. The Goths also believed that those who die a natural death are destined to languish forever in caverns full of venomous creatures. So old men would throw themselves from the high pinnacle called ‘The Rock of the Forefathers’ and accordingly they assigned a delightful abode to those who commit.

Anomic Suicide⁵: This is a type of suicide if due to certain breakdown of social equilibrium, such as bankruptcy or after winning a lottery. In other words, anomic suicide takes place in a situation which has cropped up suddenly. It reflects an individual's moral confusion and lack

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of social direction, which is related to dramatic social and economic upheaval. It is the product of moral deregulation and a lack of definition of legitimate aspirations through a restraining social ethic, which could impose meaning and order in the individual conscience.

Fatalistic Suicide⁶: Fatalistic suicide is the opposite of anomic suicide. It happens when a person is excessively regulated, when their futures are pitilessly blocked and passions violently choked by oppressive discipline. It occurs in overly oppressive societies, causing people to prefer to die than to carry on living within their society. A good example would be that some people prefer to die than to live in a person with constant abuse and excessive regulation that prohibits them from pursuing their desires. This type of suicide is due to overregulation in society.

In the case of *DS Nakara v. Union of India*, the right to life was further defined as right to live with human dignity, as mere living of a human will be equal to living like an animal. In the case of *C.A. Thomas Master v. Union of India*, where in the accused, a retired teacher of 80 years, wanted to voluntarily put an end to his life after having had a successful, contented and happy life. He stated that his mission in life had ended and argued that voluntary termination of one's life was not equivalent to committing suicide. The Kerala High Court held that no distinction can be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life. Voluntary termination of one's life for whatever reason would amount to suicide within the meaning of sections 306 and 309, IPC. No distinction can be made between suicide committed by a person who is either frustrated or defeated in life and that by a person like the petitioner. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation is wholly irrelevant.

Two commentators on Manu, Govardhana and Kulluka, say that a man may undertake the mahaprasthana (great departure) on a journey which ends in death, when he is incurably diseased or meets with a great misfortune, and that, because it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide.

To this Max Muller adds a note as follows:-

“From the parallel passage of Apastambha -2, 23, 2, it is, however, evident that a voluntary death by starvation was considered the befitting conclusion of a hermit's life. The antiquity and general prevalence of the practice may be inferred from the fact that the Jaina ascetics too, consider it particularly meritorious.

Disadvantage of the rule

Many people show off that if their demands are not met, they will attempt suicide. The person who tries to suicide can blame another person without any reasonable cause of attempting a suicide as abetment to suicide is a criminal offence. The researchers vent their views by stating that the above incident is an exceptional occurrence of the society.

CURRENT SCENARIO

There are many who make the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age of disablement need nursing homes and not prisons to prevent them from making the attempts again.

Quoting from a lecture of Harvard University Professor of Law and psychiatry, Alan A Stone⁷, the Supreme Court noted that right to die inevitably leads to the right to commit suicide. In criminology, Suicide word originates from “sui” means Self, Cide means killing. A chronological study states that all suicide is among the top ten causes of death in India. Suicide is also among the top 3 causes of death in India between 16 and 35 years.

The numbers of suicides in the country have risen from 40,000 in 1968 to 1.1 lakh in 1999 which means an increase of 175 percent in three decades. The national incidence rate stands at 11 per 1 lakh per year according to a study conducted by NIMHANS, Bangalore. The

term suicide refers to the decedent having a mental condition consistent with that of one who intends to end this life.

The psychologists mentioned that there are many reasons of suicide and they are mostly oriented to their personal. Some individuals are concerned about their debts, relationship issues, domestic violence, peer pressure and many more. Suicide rate is the highest in India with 1.34 lakh persons committing suicide in 2013. The world Health Organization listed India as one of the countries with the highest suicide rates at 21.1 per 1000,000 people in 2012.

A provision in the proposed special law bill (mental Health Care Bill) states, “No complaint, investigation or prosecution shall be entertained against the person who attempted to commit suicide, notwithstanding anything contained in the Indian Penal Code.”

In our country, attempt to suicide is an offence punishable under section 309 of the Indian Penal Code. Section 309 reads thus: Attempt to commit suicide. “Whoever attempts to commit suicide and does any act of 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.”

The provision of the new legislation bill which exempts criminal prosecution, further defines the provision as, “any person who has attempted to commit suicide shall be examined by a psychiatrist before any criminal investigation takes place. (If the psychiatrist) certifies that the person has mental illness and there are reasonable clinical grounds to believe the suicide attempt was a result of the illness, no complaint shall be entertained against the person.” The Bill has not been introduced till date.

WHAT PERSPECTIVE DOES LAW SHOWS?

Article 21 of the Constitution of India States that no person shall be deprived of his life or personal liberty except according to procedure established by law. In the 42nd and 210th report, the law Commission of India has recommended to decriminalize attempt to commit suicide.

A Division Bench of the Supreme Court in P.RAthnam v. Union of India held that the right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life and therefore, section 309 violates Article 21. This decision was, however, subsequently holding that article 21 cannot be construed to include within it the ‘right to die’ as a part of the fundamental right guaranteed therein and therefore, it cannot be said that section 309 is violates article 21. The sociological and psychological factors contributing to the suicidal tendencies are uplift in Gian Kaur.

The researchers do not find that Section 309 of IPC is violative of article 21 or Indian Constitution, because both of the particular provisions are defined in their own perspective. Article 21 conforms that right to personal liberty is a fundamental right, but one cannot do anything with his own life which will cause less to society. Liberty is guaranteed to every individual, but that doesn’t concludes the person has legal right to end his life.

A person, who has already found his life so unbearable, will make him intolerable if he is punished under law.

DOSE RIGHT TO DIE EXIST?

Every statement has positive as well as negative aspects in their nature even the rights too. It’s really a shocking fact, neither the judiciary not the legislature (parliament) have raised questions in defining the term suicide. Thought the law commission report does so, but they explained the term rather than defining it. The British Parliament enacted the Suicide Act in 1961 whereby attempt to commit suicide ceased to be an offence.’

If suicide is considered as one’s right, then one day the country will loss youths and their ideas. Many who resort to suicide and who manage to survive do not seek medical help for fear of being arrested and penalized. Suicide is a “cry for help”.

Some religions like Hindu and Jain have approved of the practice of ending one's life by one's own act in certain circumstances while condemning it in other circumstances. In the chapter on "the hermit in the forest", Manu's Code says, - "31. Or let him walk, fully determined and going straight on, in a north – easterly direction, subsisting in water and air, until his body sinks to rest.

32. A Brahmana having got rid of his body by one of those modes practiced by the great sages is exalted in the world of Brahmana, free from sorrow and fear". But a person cannot take excuse of such religions.

A criminal lawyer named Nitya Ramakrishnan argued about the decision of the union cabinet regarding deleting the section 309, as she stated that what will the punishment for abetment to attempt to commit suicide. The researchers find that the answers were already provided in the law Commission report.

Many constitutional debates raised question relating dowry deaths portrayed as suicides, but it is very much cleared by the parliament that the perspective of removing the section 309 was that the law was against morality and rather than giving a better life, the person would suffer from mental trauma in jail custody for one year imprisonment. There should not be any doubt in that abetment of suicide cannot lead to unpunishable offence as suicide is made so.

Suicide is made unpunishable only for the fact that the suicide survivor deserves a peaceful happy life, but the abettor who tried to kill an individual is obviously an offence under IPC laws. The abetment of commission of suicide, as provided in section 306 IPC is punishable with imprisonment for a period of 10 years and fine. It is a unique legal implementation of the parliament where only abetment to attempt will be considered as a

criminal offence but not the attempt to commit suicide.

On 10th December 2014, eighteen states and four union territories consented in declaring section 309 as unconstitutional and against morality. The 210th law commission report have uplifted many arguments regarding the unconstitutionality of section 309 of IPC, that the international association for suicide prevention has also suggested that attempted suicide should be decriminalized and that suicidal individuals need to be helped and imprisonment only makes their problems worse. The same declared September 10 of every year as 'world suicide prevention day' as a part of its efforts to achieve effective suicide prevention.

Each and every individual's contribution counts the society. A criminal offence done against an individual, effects the society and it is considered to be done against the society. People have rights to breathe in unpolluted environment and to live with human dignity. Thus, life does not mean mere living, but a glowing vitality, the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. It's true that a person should not live with miserable happenings of disliking's of his live, but now the Government have the facility to provide psychological aid to the people.

The researchers found that the number of individuals attaining for psychological assistance to the government hospitals are very few in number. Practically, the psychologists states that problem of the society is they think that attaining a counseling session might prove that the individual had become insane. But, every individual is different from another, so why people hesitate to feel the difference by nature too? The people must aware the society as well as themselves about the medical help provided by the Governments. The facility of counseling has also been already opened to farmers, women in rural areas, children.

Thus, right to live would include right to die with dignity at the end of life and it should not be equated with right to die an unnatural death curtailing natural span of life. Suicide occurs in all ages. Life is a gift given by God and He alone can take it. Its premature termination cannot be approved by any society. But when a troubled individual tries to end his life, it would be cruel and irrational to visit him with punishment in his failure to die. The provision is inhuman in nature.

Rights or even duties are not provided for animals. Thus, animals have existence in the world but they do not have to perform their duties neither required to ensure their rights in the world. The people ensure that the animals live with dignity. Just like an animal, man cannot live in the basis of mere existence, they requires rights and duties. So, if Right to die is provided then, there will no difference between a human being and an animal.

DISTINCTION BETWEEN SUICIDE, EUTHANASIA AND MERCY KILLING

A dying man who is terminally ill or in a persistent vegetative state can be permitted to terminate it by premature extinction of his life. In fact, these are not cases of extinguishing life but only of accelerating process of natural death which has already commenced. In such cases, causing of death would result in end of his suffering.

There is an ethical debate about euthanasia but the law does not allow one to kill another person and there is no exception for the medical profession, even when a patient wants to die and agrees to being killed. Consent is not a defense to a murder charge. A patient may, for any reason, decide to commit suicide and that is a criminal offence. It is a crime to help or assist any way another person to commit suicide. It would be a criminal offence to deliberately prescribe drugs for a patient with terminal cancer which would assert them in ending their life.

When a person kills another in circumstances that would amount to murder, the law reduces the crime to manslaughter if the defendant was either (1) provoked or (2) suffering from diminished responsibility. A person may also be found guilty of manslaughter when, he carries out a dangerous and criminal act or when somebody dies due to gross negligence. The duty of care owed to the victim and which if breached, causing the death of the victim's is negligence. The jury has to decide whether there is required standard of care. If not, then decide whether, the risk of death is due to the conduct of the defendant. An anesthetist was found guilty of manslaughter when he failed to detach the patient from the ventilator. The endotracheal tube had become detached and after about four and a half minutes, the blood pressure monitor alarmed. The anesthetist carried out various procedures including the administration of atropine for bradycardia, but failed to check the endotracheal connection and the patient suffered a cardiac arrest. The prosecution expert witness described the standard of care as "abysmal" and stated that the conduct amounted to 'a gross dereliction of care⁸'.

Medical procedures which involve bodily touching might come within the potential scope of the crime of battery (popularly known as assault). But the absence of consent is an essential element of the offence”.

If legally effective consent has been given, the medical touching will not constitute the offence of battery. If legally effective consent has not been given to the doctor the therapeutic medical touching will amount to the offence of battery. The absence of consent is the essential element. The law insisted that 'application of force' to which legally effective consent could not be obtained is offence of battery. The leading cases, which supported the existence of such a category, were concerned with issues as far removed from medical practice as prize-fights" and flagellation for the purpose of sexual gratification”. But the importance of these cases has been diminished by Attorney General's Reference ‘5. According to the opinion of the Court of appeal that touching which occurring the course of medical practice does not involve 'any hurt or injury' calculated to health or comfort. In the course of medical practice there is often good reason in attempting something which is beneficial to patient's health, even though there is a risk of harm resulting”.

All medical procedures are not intended to benefit the person on whom they are performed”. Sometime a procedure is conducted on a person with the knowledge that it will certainly be to that person's bodily detriment, like in the case of a kidney taken from a healthy person, for transplantation into someone who is in need of it. The operation is a major one, and is not without risks”. But it is not always unreasonably dangerous, and the probable benefit to the recipient outweighs the probable detriment to the donor”. The courts may be expected to take

the view that the operation did not amount to the offence of battery, even though the operation causes serious bodily harm.

CONCLUSION

”Right to live would, however, mean right to live with human dignity up to the end of natural life.” Death is a fact of life. Suicide is not a natural phenomenon to terminate a life. It is very much sympathetic issue that the suicide survivor is already disturbed rather depressed with his life (personal or professional) tried to commit suicide and after the failure to commit such act, the government is providing jail custody for him. The researchers found that rather than providing the individual with jail custody and fine, it's better to provide with psychological assistance to help him out from the trouble the person is facing. The law is unable to detect the mind of the suicide survivor. The thought of suicide arises from a depressed state of mind.

It's better late than never. The need for counseling was felt after the increase in the number of student suicides in the certain places.

Suicide knows no barrier of race, religion, caste, age or sex. There is secularization of suicide. Law is the instrument of social change. Thus, right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to end his life. He has to perform his duties towards himself and towards the society at large.

Many governance systems have acquired some effective steps like providing with helpline numbers of NGO concerned with psychological issues in the metro railways in Kolkata, as the rate of suicides have increased in Kolkata metro stations in recent years.

The individuals who tried to commit suicide are suffering from psychological problems. The researchers conclude that the religions which are promoting silently the path of suicide are areas of conflict of Laws and they must be declared as void.

The laws should be oriented towards society as they are the cause, reason and effect for which law is made. Need is for humane, civilized and socially oriented outlook and obviously to live a healthy life.

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