

ISSN: 2582 - 2942



# LEX FORTI

---

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

## DISCLAIMER

---

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

# EDITORIAL BOARD

---

**EDITOR IN CHIEF**

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

**EDITOR IN CHIEF**

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE  
OF ARBITRATORS

PHONE - +91-8500832102

**EDITOR**

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+  
YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK  
EXPERIENCE IN BANKING SECTOR; CONTENT  
WRITER FOR BUSINESS TIMES AND ECONOMIC  
TIMES; EDITED 50+ BOOKS ON MANAGEMENT,  
ECONOMICS AND BANKING;

**EDITOR**

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL  
UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

# EDITORIAL BOARD

---

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND  
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS.SRISHTI SNEHA

STUDENT EDITOR



## ABOUT US

---

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Suicide: An Overview of the Existing Legal Mechanisms**

**Mayuri Sundar and T. Kiran Rani**

## **ABSTRACT:**

---

*Suicide is a global phenomenon and occurs throughout the lifespan. It is the act of taking one's own life. Close to 800 000 people die due to suicide every year, this is one person every 40 seconds. Every suicide is a murder in a way, the aggression being directed inwards against one's own self or the internalized "other". Every human being wants to lead a healthy and prosperous life. Suicides and suicide attempts have a ripple effect that impacts families, friends, colleagues, communities, and societies. People tend to not give much importance to mental health, consulting a psychiatrist is still considered to be taboo. NGO's primary aim is to support suicidal individuals and give hope in life. Countries across the world are taking necessary actions to reduce the suicidal rates by bringing in guidelines, suicide prevention centers, improving social and economic conditions. The impact of suicide is felt more in Indian society. There has been an increase in the rates of suicide in India over the years, although trends of both increases and decline in suicide rates have been present. This paper tends to deal with factors, legal mechanisms regarding suicide.*

---

## **INTRODUCTION:**

---

As we all know, life is a gift from God and it can be given only by him. But, taking away a life that too one's own, has always been forbidden. Since ancient times, Suicide has been a constant argument and unending debate. There has been an alarming increase in suicide rates in recent years. Approximately, The World Health Organization estimates that 1 million people will die each year because of suicide. What initiates so many individuals to take their own lives? To those who are not in the grips of suicidal depression and despair, it's difficult to understand what drives so many individuals to take their own lives.

Still, a suicidal person is in so much pain and that he or she can see no other option. Despite all the advances made by the man, Suicide remains one of the biggest social menaces of the 20<sup>th</sup> century.

Suicide is defined as the act of death that will be intentionally caused by one's own. A suicide attempt may or may not result in harm. The people who committed or attempted suicide have always been the subjects of indignation of the religion bound societies in the past. Following these types of religious trail, Lawmakers in the past have served some punishments to the victims and also to the survivors of a suicide attempt. Occasionally even the surviving family members were penalized for their act. Even so, liberalization and education with the help of progress in understanding the underlying causes of suicide, have led to a change in this posture worldwide. The present paper would try to dig through a few layers that related to those aspects of suicide, and the attempted ones, where the cause is socio-psychological arising out of desperation, depression, desolation, etc. Thus law also plays a major role in suicide. An act of suicide demands serious attention because there is nothing a normal person dreads more than thus own death, and that dread in the vast majority cases, is as rational as it is unavoidable, for unless we continue to live, we have no chance whatever of achieving goals that are ultimate interest.

## **SUICIDE A CRIME?**

---

### **Psychological View Over Suicide:**

It goes long without saying that suicide is a major issue of health problems and a leading cause of death worldwide. Recent reports are also notifies that around a million people die by suicide annually, representing an annual global age-standardized suicide rate of 11.4 per 100,000



populations. According to the World Health Statistics, 2019<sup>1</sup> published by WHO, India's suicide rate stood at 17.8 suicides per 1, 00,000 people in 2016, much higher than the global suicide rate of 10.5. The report gave the suicide rates for countries and regions using data from the WHO Global Health Estimates for 2016<sup>2</sup>. The decriminalisation of suicide is not enough.

There is a need for an inclusive health program to reduce this incidence. Furthermore, the stigma attached to suicide will only move away if the government and the social sector take a dynamic role in spreading anti-suicide awareness. The law can never be the entire answer for suicide. Thus, framing the laws and getting them perfect should not take up all our time. Suicide is such a multidimensional problem having legal, psychological, and social implications. Hence, teamwork is required to assess and tackle this problem. So, Detail workups should be done by multidisciplinary teams which should include social workers, government officials, non-government organizations, medical professionals, and psychologists/psychiatrists.

The main key factor leading to suicide is intolerable mental pain. Several studies have spotlighted the importance of psychology as the major and primary facilitator of suicide ideation and behaviour. Other psychological factors like personality traits, emotional characteristics, and deregulation also seems to play a role, with emerging importance to decision-making deficit among suicidal individuals. Interpersonal factors also play an essential role in suicides.

### **Legal Mechanism In International Context:**

The legal posture against suicide derived from the declaration by St. Augustine of suicide being a sin (354-430 CE). Historically, the impact of religious institutions was instrumental in shaping the legal posture of favoring the criminalization of suicidal attempts. The attitude towards suicide and attempted suicide moderately started to change after the French Revolution along with other socio-cultural changes in Europe. During the 19<sup>th</sup> and 20<sup>th</sup> centuries, most of the developed countries have repealed criminalization of attempted suicide, but some countries including India, continue to treat suicidal attempts as a criminal offense<sup>3</sup>.

- A. Australia: In the Australian state of Victoria, though suicide itself is no longer a crime, a survivor of a suicide pact can be charged with manslaughter. Also, it is a crime to

---

<sup>1</sup> [https://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/](https://www.who.int/mental_health/prevention/suicide/suicideprevent/en/).

<sup>2</sup> World Health Organisation; <https://www.downtoearth.org.in/>

<sup>3</sup> <https://www.ncbi.nlm.nih.gov/>

counsel, stimulate, or succor and aid another in attempting to suicide, and the law explicitly allows any person to use "such force as may be reasonably mandatory" to prevent another from dying by suicide. The state of Victoria passed the Voluntary Assisted Dying Act on 29 November 2017, making it judicial for a doctor to assist a terminally ill patient with less than six months to live and to end their own life. And the law came into effect on 19 June 2019<sup>4</sup>.

- B. Canada: The common law crimes of attempting suicide and of abetting suicide were codified in Canada when Parliament enacted the Criminal Code in 1892. It takes a maximum penalty of 2 years' imprisonment<sup>5</sup>. In 1972, the Parliament revoked the offence of attempting suicide from the Criminal Code based on the argument that a legal disincentive was unnecessary. The prohibition on aiding suicide remained, as Section 241 of the Criminal Code: Counselling or aiding suicide –

Section 241 says that everyone who counsels a person to commit suicide, or aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.<sup>6</sup> In 1993, the offence of assisted suicide was constitutionally challenged in the Supreme Court of Canada, in the case of *Rodriguez v. British Columbia (Attorney General)*<sup>7</sup>. The plaintiff, sue Rodriguez, had been determined with Amyotrophic Lateral Sclerosis (ALS) in early 1991. She desired to commit suicide at a time of her own choosing, yet it needed help to do so because her physical condition averted her from doing so without assistance. By a 5-4 majority, the Court held that the prohibition on assisted suicide did not contravene Section 7 of the Canadian Charter of Rights and Freedoms, which provides constitutional protection for liberty and security of the person. The majority held that while the law did affect those rights, it did so in a manner stable with the principles of fundamental justice. The majority also decided that the interdiction on abetted suicide did not violate the Charter's prohibition against cruel and unusual treatment or punishment. Presuming the prohibition did differentiate on the basis of disability, the majority held that the contravention was a justifiable limitation.<sup>8</sup> The Royal Society of Canada published its report on end-of-life decision making in 2011. In the report, it endorsed that the

---

<sup>4</sup> "Victoria becomes first state to legalise assisted dying as parliament passes bill".

<sup>5</sup> Criminal code, 1892

<sup>6</sup> Criminal Code, RSC 1985, c C-46, s 241, as amended by RSC 1985, c 27 (1st Supp), s 7

<sup>7</sup> [1993] 3 SCR 519.

<sup>8</sup> Supra note 5.

Criminal Code be altered so as to permit assistance in dying under some conditions<sup>9</sup>. In 2012, the Select Committee on Dying with Dignity of the Quebec National Assembly produced a report recommending a modification to legislation to identify the medical aid in dying as being a suitable constituent of end-of-life care. That report resulted in an Act respecting end-of-life care, which came into force on December 10, 2015. On June 15, 2012, in *Carter v. Canada (Attorney General)*<sup>10</sup>, the British Columbia Supreme Court ruled that the criminal offence prohibiting physician assistance of suicide was unconstitutional on the grounds that denying people access to assisted suicide in hard cases was contrary to the Charter of Rights and Freedoms guarantee of equality under Section 15. This decision was subsequently overturned by the majority of the British Columbia Court of Appeal (2:1) on the basis that the issue had already been decided by the Supreme Court of Canada in the Rodriguez case, invoking stare decisis. A landmark Supreme Court of Canada's decision on February 6, 2015, overturned the 1993 Rodriguez decision that had ruled against this method of dying. The unanimous decision in the further appeal of *Carter v. Canada (Attorney General)* stated that a total prohibition of physician-assisted death is unconstitutional. The court's ruling limits exculpation of physicians engaging physician-assisted death to hard cases of "a competent adult person who clearly consents to the termination of life and has an awful and irremediable medical condition, including an illness, disease or disability, that causes enduring suffering that is insufferable to the individual in the circumstances of his or her condition." The ruling was suspended for 12 months to allow the Canadian parliament to draft a new constitutional law to replace the existing one. Certainly, the Supreme Court held that the current legislation was overbroad in that it forbids "physician-assisted death for a competent adult person who distinctly consents to the ending of life and has an awful and irremediable medical condition that causes enduring suffering that is unbearable to the individual in the circumstances of his or her condition." The court decision includes a requirement that there must be rigid limits that are "scrupulously monitored." This will require the death certificate to be completed by an independent medical examiner, not the treating physician, to ensure the accuracy of reporting the cause of death<sup>11</sup>.

---

<sup>9</sup> *Carter v. Canada (Attorney General)*.- SCC Cases (Lexum).

<sup>10</sup> 2015 SCC 5

<sup>11</sup> <https://www.canada.ca/en/public-health/services/suicide-prevention/suicide-canada.html>.

- C. Iran: The suicide has not been criminalized in the Penal Law of the Islamic Republic of Iran. Still, no one is allowed to ask him/her. In addition, intimidating to kill oneself is not at all an offence by the law, but if this act happens inside the Prison by a prisoner, then that would be considered as a contravention of the prison's regulations and the delinquent may be punished according to penal law. According to the Act, Section 836 of the civil law of the Islamic Republic of Iran, if a suicidal person prepares for suicide and writes a piece of evidence if he/she dies, then by law the will is considered void and if he/she doesn't die, then the will is officially accepted and can be carried out. Assisting in suicide is considered a crime only when it becomes the "**cause**" of the suicidal person's death; for example when someone takes advantage of someone else's unawareness or simplicity and convinces him/her to kill him/herself. In such cases assisting in suicide is treated as murder and the offender is punished accordingly.
- D. United States: In ancient times, different states listed the act of suicide as a felony, but these policies were scantily imposed. In 1960s, 18 U.S States had no laws against suicide. By the late 1980s, 50 states had no laws against suicide or suicidal attempts, but every state had laws proclaiming it to be a felony to aid, advice, or encourage another person to suicide. By the early 1990s, only two states were listed suicide as a crime, and these have since removed that classification. In some U.S. states, suicide is still considered as an unwritten "common law crime," as stated in Blackstone's Commentaries. That is, the suicide must be proven to have been an unintentional act of the victim in order for the family to be awarded monetary damages by the court. Some of the American legal scholars focused at the issue as one of personal right. Physician-assisted suicide is legal in some states. It is legal in the state of Oregon under the Oregon Death with Dignity Act for the incurable ill. In Washington State, it became legal in 2009, when a law modeled after the Oregon act, the Washington Death with Dignity Act was declared. In California, medical facilities are authorized or required to commit anyone whom they believe to be suicidal for evaluation and treatment. In Maryland, it is an open interrogation as to whether suicide is unlawful. In 2018, a Maryland man was sentenced to attempted suicide<sup>12</sup>. In New York State in 1917, while suicide was "a grave public wrong", an attempt to commit suicide was a felony, punishable by a maximum penalty of two years' imprisonment.

---

<sup>12</sup>Article on suicide: Attempting suicide is not a crime under Maryland Law. But an Eastern Shore man was convicted of it.-<https://www.baltimoresun.com/news/crime/bs-md-suicide-criminal-charge-20180222-story.html>

E. UNITED KINGDOM: In England and Wales until 1961, Laws against suicide and attempted suicide existed in English common law. English law discerns suicide as an unethical, criminal offence against God and also against the Crown. In the 13<sup>th</sup> Century, it first became illegal. Until 1822, in fact, the possessions of somebody who committed suicide could even be relinquished to the Crown. Suicide ceased to be a criminal offence with the declaring of the Suicide Act, 1961; the same Act made it a crime to assist in a suicide. With respect to civil law, the simple act of suicide is lawful but the result of dying by suicide might turn an individual event into an unlawful act, as in the case of *Reeves v Commissioners of Police of the Metropolis*<sup>13</sup>, where a man in police custody hanged himself and was held equivalently culpable with the police for the loss suffered by his widow; the practical effect was to reduce the police damages liability by 50%. In 2009, the House of Lords pronounced that the law regarding to the treatment of people who accompanied those who committed assisted suicide was unclear, following Debbie Purdy's<sup>14</sup> case that this lack of coherence was a contravention of her human rights.

F. Indian Judicial Opinion:

According to "Suicide Death rates in India are amongst the highest in the World" The Week (December 10, 2018), Suicide came to be ranked first in India as the cause of death in this age group; whilst it is ranked as third globally. The laws governing suicide in India has always been under conflict and constant debate regarding its legality. The current position of India has been elucidated below by explaining relevant case laws and the guidelines governing suicide.

Abetment Of Suicide:

Suicide is the human act of self-inflicted, self-intentioned cessation<sup>15</sup>. The word Suicide has not been defined in the Indian Penal Code. There are approximately one million suicides a year worldwide, and it is estimated that around six people are affected by each death. Section 107<sup>16</sup> & 108<sup>17</sup> of the IPC defines abetment of a thing and who is an abettor respectively.

---

<sup>13</sup> (2000) 1 AC 360.

<sup>14</sup> In her case, as a sufferer from multiple sclerosis, she wanted to know whether her husband would be prosecuted for accompanying her abroad where she might eventually wish to commit assisted suicide, if her illness progressed.

<sup>15</sup> Encyclopaedia- Britannica (1973) 383.

<sup>16</sup> The Indian Penal Code-Section 107: Abetment of a thing: A person abets the doing of a thing, who-

The three ingredients of abetment laid down in *R. Pattusamy v. Union Territory of Pondicherry*<sup>18</sup> are,

- instigation to commit an offence,
- engaging in a conspiracy to commit an offence, and
- aiding the commission of offence.

Abetment thus necessarily means some active suggestion or support to the commission of the offence. Abetting a person to commit suicide is a punishable offence under the IPC. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of section 107. Section 305<sup>19</sup> of the IPC deals with the abetment of suicide of child or insane person. Section 306 of the IPC reads as follows,

*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.*

Intention to aid the commission of the crime is the gist of the offence of abetment by aid<sup>20</sup>. The concept of intention plays a crucial role in determining whether there was abetment. Under section 306 one has to prove:

- the fact of commission of suicide by a person.
- That the accused abetted the commission of the offense.<sup>21</sup>

As known the ingredients to constitute a crime are men's rea and actus reus, there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than mere passive acquiescence. The word 'instigate' literally means to goad, urge forward, provoke, incite, or encourage doing an act. Contiguity, continuity, culpability, and complicity of indictable acts or omission are concomitant indices of

---

First instigates any person to do that thing; or secondly engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or; thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

<sup>17</sup> The Indian Penal Code-**Section 108:** Abettor.-A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

<sup>18</sup> 1992 MLJ (Crl.) 665

<sup>19</sup> IPC-**Section-305:** Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or 1 [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

<sup>20</sup> Trilok Chand Jain vs. State of Delhi, 1977 AIR 666.

<sup>21</sup> B.M. GANDHI'S INDIAN PENAL CODE, FOURTH EDITION.

abetment. Instigating a person to do a thing denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, and, further held that presence of mens rea is the necessary concomitant for instigation.

Reading Sections 306 and 107 together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under S. 306 of the Indian Penal Code for abetting the commission of suicide<sup>22</sup>. A clear demarcation is drawn between murder and suicide in ‘Sangarabonia Sreenu v State of Andhra Pradesh’<sup>23</sup>:

*“Despite the intention of the accused to drive a person to commit suicide, abetment of suicide is not the same as murder. Although in both cases, causing the death of another person is a common factor, the two are distinct offences.”*

In the Gurbachan Singh case<sup>24</sup>, constant dowry demands from newly-wedded wife and consequent taunts, ill-treatment, cruel behaviour, and an insinuation that she was carrying an illegitimate child are grave and serious provocations enough for an ordinary woman in the Indian set-up to commit suicide. In 1983, an amendment was made in the Code of Criminal Procedure that the husband is presumed to be guilty if his wife commits suicide within seven years of marriage<sup>25</sup>. This amendment was made to stricture the rising dowry deaths which fall under suicide.

The section should be clearly construed for example, a word uttered in fit of anger or emotion cannot be taken as instigation to commit suicide. It is understood that in the case of murder the person is directly involved in the final act whereas in the case of suicide the final act is not done by the accused in abetment of suicide. Abetment does not involve the actual commission of the crime abetted; it is a crime apart.

#### ATTEMPT TO COMMIT SUICIDE:

Suicide has always been a controversial and convoluted subject. A dead person cannot be made liable for an offence and the question raised is whether a person has the right to take his own life

---

<sup>22</sup> Wazir Chand and Anr vs. State Of Haryana, AIR 1989 SC 378.

<sup>23</sup> AIR 1997 SC 3233.

<sup>24</sup> Gurbachan Singh v. Satpal Singh, (1990) SCC 445.

<sup>25</sup>The Evidence act- Section 113A- Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

if he does not wish to live further. There has always been a conflict whether an attempt to suicide is a crime or not. Several nations have legalised this concept as discoursed above.

India's suicide rate stood at 16.5 suicides per 100,000 people in 2016, according to the WHO report. India also had the highest suicide rate in the South-East Asian region for females (14.5). Section 309 of the IPC states that whoever attempts to commit suicide and does any act towards the commission of suicide is punishable with imprisonment up to one year or fine or with both. The constitutional validity of this section has always been under debate. The contention is whether section 309 of the IPC violates Article 14<sup>26</sup> & 21 of the Constitution.

The Law Commission of India in its 42nd Report<sup>27</sup> published in June 1971 had recommended the deletion of Section 309 stating it to be harsh and unjustifiable. In the case of **Maruti Shripati Dubal vs. State Of Maharashtra**<sup>28</sup>, the dispute raised stated that the section is cruel, barbaric in nature as it punishes a person who is in need of medical assistance rather than punishment which will further deteriorate the mental state of the person. The Bombay high court struck down section 309 as ultra vires the Constitution.

Article 21<sup>29</sup> of the Indian Constitution guarantees a positive right to protection of life and personal liberty. The argument placed was that the negative right to not to live is guaranteed under Article 21. Several forms and various causes of suicide are known which makes it strenuous and complex to decide its legality. There are certain forms like sati, Samadhi which has always been acclaimed with reverence. The term 'life' means more than mere animal existence, a person has the right to live with dignity<sup>30</sup> in the society and even a dead person has the right to have a decent burial which falls under the scope and ambit of article 21.

Article 14 which guarantees the right to equality is said to be violated on the basis of two reasons. First, which act or acts in a series of acts will constitute an attempt to suicide, where to draw the line, is not known some attempts may be serious while others were non-serious.

---

<sup>26</sup>The Indian Constitution, 1950- **Article-14:** Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

<sup>27</sup> Law Commission 42<sup>nd</sup> Report June, 1971: The Indian Penal Code. <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>.

<sup>28</sup>Cri LJ 755, Para 20.- *“Those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in the person cells where their condition is bound worsen leading to further mental derangement. Thus in no case the punishment serves the purpose and in some cases it is bound to prove self-defeating and counter-productive.”*

<sup>29</sup> The Indian Constitution, 1950-Article-21: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

<sup>30</sup> Vikram Deo Singh Tomar vs. State Of Bihar, 1988 AIR 1782.



Another reason given was that Section 309 treats all attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made<sup>31</sup>.

The Supreme Court in Gian Kaur v. State of Punjab<sup>32</sup> overruled the P. Rathinam's case and held that section 309 is not violative of Article 14 & 21 of the Constitution. It was held that:

***“'Right to life' is a natural right embodied in Art.21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life'. With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to freedom of speech' etc. to provide a comparable basis to hold that the 'right to life' also includes the 'right to die'.”***

Despite the emphatic view, the constitutionality issue remains alive. The law commission in its 210<sup>th</sup> report again recommended the abolition of the offence based on humanity considering the person as a victim rather than a criminal.

The Mental Health care bill, 2013 was passed and the act was enforced in 2017<sup>33</sup>. MHC act is published in the spirit of UNCRPD<sup>34</sup> with human rights of persons with mental illness (PMI) and review board acting as the backbone on the fulcrum of mental capacity<sup>35</sup>. According to the Mental Health Care Act, a person who attempts to commit suicide is presumed to be under severe stress unless proved otherwise needs treatment<sup>36</sup>.

## **EUTHANASIA:**

---

**Euthanasia** is an act or practice of painlessly putting to death persons suffering from a painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures<sup>37</sup>. It is also called as mercy killing or

---

<sup>31</sup> P.Rathinam vs. Union of India, 1994 AIR 1844.

<sup>32</sup> 1996 AIR 946

<sup>33</sup> <https://www.prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act,%202017.pdf>

<sup>34</sup> United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006.

<sup>35</sup> Mental health care act 2017: Review and upcoming issues--Department of Psychiatry, Andhra Medical College, Visakhapatnam, Andhra Pradesh, India

<sup>36</sup>The Mental Health Care act, 2017- **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 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.

<sup>37</sup> Encyclopaedia, Britannica- Definition of Euthanasia.

happy death. Netherland was one of the first countries to have legalized euthanasia followed by several countries like South Korea, Belgium.

Euthanasia is allowed only when the person is suffering from a terminal illness and subjected to intense suffering where the possibility of curing the disease is merely possible. Euthanasia can be classified as follows:

- **Active and Passive Euthanasia:** In active euthanasia, a person directly and deliberately causes the patient's death. In passive euthanasia they don't directly take the patient's life, they just allow them to die.
- **Voluntary and Involuntary Euthanasia:** Voluntary euthanasia occurs at the request of the person who dies. Involuntary euthanasia occurs when the person who dies chooses life and is killed anyway i.e. where a person is unable to give their consent
- **Indirect Euthanasia:** This means providing treatment (usually to reduce pain) that has the side effect of speeding the patient's death.
- **Assisted Suicide:** the person who is going to die needs help to kill themselves and asks for it.

The 196<sup>th</sup><sup>38</sup> Law commission report in its opening remarks clarified that it was dealing with a different issue stating euthanasia or assisted suicide was unlawful. In the 241<sup>st</sup> Law commission report, withdrawing life support for certain categories of people such as those in persistent vegetative state (PVS) or in irreversible coma or of unsound mind, who lack mental faculties to make decisions for themselves should be allowed was placed.<sup>39</sup>

In P. Rathinam<sup>40</sup> and Gian Kaur's case<sup>41</sup> the concept of euthanasia was mentioned but was not dealt in depth. The court stated that the argument to support the view of permitting termination

---

<sup>38</sup>Report on Medical Treatment To Terminally Ill Patients (Protection Of Patients And Medical Practitioners) <http://lawcommissionofindia.nic.in/reports/rep196.pdf>

<sup>39</sup>The 241<sup>st</sup> Law Commission Report, 2012-“Passive Euthanasia: A Relook”.  
<http://lawcommissionofindia.nic.in/reports/report241.pdf>

<sup>40</sup> Supra note 15. Para 101-“*One would, therefore, be right in making a distinction logically and in principle between suicide and euthanasia, though it may be that if suicide is held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. For the cases at hand, we would remain content by saying that the justification for allowing persons to commit suicide is not required to be played down or cut down because of any encouragement to persons pleading for legalisation of mercy-killing.*”

<sup>41</sup> Supra note 16. “**Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity' is of no assistance to determine the scope of Art.21 for deciding whether the guarantee of right to life' therein includes the right to die.... the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die' an unnatural death curtailing the natural span of life.**”

of life in such cases to reduce the period of suffering the process of certain natural death is not available to interpret Art.21 to include therein the right to curtail the natural span of life.<sup>42</sup>

India's approach towards the concept of euthanasia exhibited a completely divergent approach in the landmark case of Aruna Shanbaug v. Union of India<sup>43</sup>. Aruna Ramchandra Shanbaug was a nurse in the King Edwards Memorial Hospital in Mumbai. In November 1973, she was sexually assaulted and strangled with a dog chain by a ward boy. The attack cut off oxygen supply from her brain leaving her blind, deaf, paralysed and in a vegetative state for the next 42 years. From the day of the assault till the day she died on May 18, 2015, Aruna could only survive on mashed food. She could not move her hands or legs could not talk or perform the basic functions of a human being. The apex court responded to the plea (filed by journalist Pinki virani) setting up a medical panel to examine her.

The three-member medical committee subsequently set up under the Supreme Court's directive, checked upon Aruna, and concluded that she met "most of the criteria of being in a permanent vegetative state". However, it turned down the mercy killing petition on 7th March 2011. The court rejected the plea for Aruna Shanbaug's euthanasia and observed that:

*"the general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it, passive euthanasia is legal even without legislation provided certain conditions and safeguards are maintained"*.

The High Court acts as a '**Parens patriae**'<sup>44</sup> in the case of granting request to a patient who is in need of Passive Euthanasia. Only after the acceptance of the High Court the process is allowed. A five judge bench of the Supreme Court, headed by Hon'ble former Chief Justice of India Dipak Misra in the case of Common Cause v. Union of India<sup>45</sup> legalised the right to die and approved 'living will'<sup>46</sup> made by terminally-ill patients for passive euthanasia.

In this case the court laid down guidelines and certain procedure for advance directives to give effect to Passive Euthanasia. The court declared that a person of competent mental faculty to take an informed decision has the right to refuse medical treatment including withdrawal from life-saving devices and is also entitled to execute an advance medical directive in accordance with safeguards as laid down.

---

<sup>42</sup> Supra note 7.

<sup>43</sup> (2011) 4 SCC 454.

<sup>44</sup> **Parens Patriae** means "Parent of the country". It is a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf.

<sup>45</sup> Writ petition (Civil) No. 215 of 2005

<sup>46</sup> Living will is a written document that allows a patient to give explicit instructions in advance about the medical treatment to be administered when he or she is terminally-ill or no longer able to express informed consent.

In India, the laws governing suicide are intricate in nature and demands due care and diligence while deciding by balancing the fundamentals guaranteed to a human being. Though a plethora of cases across the world has been dealt with regard suicide and its legality, the kernel issue under conflict remains very much alive.

## **SUGGESTIONS AND CONCLUSION:**

---

Right to life, with a right to live a life of eminence, does not certainly mean to live a forced life. Decriminalizing 'attempt to commit suicide' would not actually result in an increase in the number of suicides but would only encourage the survivors to seek help. The best way to stop or prevent suicide is to recognize the warning signs of the individuals and knowing how to respond to such a disaster situation. In the 21<sup>st</sup> century, the task of suicide prevention is becoming daunting day by day. Young adults are a particularly vulnerable group and currently, show the highest rates of suicide the world over. Factors contributing to the high rate of suicide in this vulnerable population include economic adversity, exclusive dependence on rainfall for agriculture, and possibly monetary compensation to the family following suicide.<sup>47</sup> There should be a coordinated multi-dimensional, multi-agency, multi-phase and multi-departmental approach to bring this outbreak under the control. Quoting from the 241<sup>st</sup> Law Commission Report<sup>48</sup>,

***“Right to live would, even so, mean right to live with human dignity up to the end of natural life. Therefore, right to live would include right to die with dignity at the end of life and it should not be compared with right to die an abnormal death diminishing the natural span of life. In fact, these are not cases of terminating life but only of escalating the process of natural death which has already began.”***

The decriminalization of section 309 of the Indian Penal Code laid the foundation for the Mental Health Care Act, 2017. People attempt to commit suicide out of sheer frustration, depression, or due to living in such circumstances that invoke suicidal thoughts. The victim needs treatment and care rather than a criminal treatment was the basic fundamental analysed after a plethora of cases. There is a need to improve the mental health coverage and provide a framework to deliver essential mental health services to all those who attempted suicide. This is

---

<sup>47</sup> Behere PB, Behere AP. Farmers' suicide in Vidarbha region of Maharashtra state: A myth or reality? Indian J Psychiatry. 2008;50:124–7.

<sup>48</sup> Supra note 35.

not just a health issue, but a social issue, and it is everyone's duty to save a life. Everyone can save a life, and it is time to act before it is too late.

*Together, hopefully, we can decrease that statistic and save lives!*