

# A case to decriminalise suicide

It is time for India to repeal Section 309 of the Indian Penal Code or strike it down

RAJMOHAN UNNITHAN

India has the highest suicide rate in the Southeast Asian region, according to the World Health Organization. Depression, chronic ill health, guilt, trauma, substance abuse, failure in exams, and loss of loved ones are some of the reasons which influence a person's decision to take his or her life. A total of 1,34,516 cases of suicide were reported in 2018 in India, according to the National Crime Records Bureau. While the rate of suicide was 9.9 in 2017, it increased to 10.2 in 2018.

## Crime and punishment

Section 309 of the Indian Penal Code dictates the penal provision for attempting suicide. If a person is suffering from any mental trauma or illness, he or she should be given reformatory treatment rather than a deterrent punishment which is "simple imprisonment for a term which may extend to one year [or with fine, or with both]". India has retained much of the colonial legal legacy in its penal jurisprudence. But the fact is that the British Parliament decriminalised attempts to suicide in 1961 through the Suicide Act. In India, a Bill to repeal Section 309 was first introduced in the Rajya Sabha in 1972 but it failed to pass in the Lok Sabha because the House was dissolved.

We have witnessed a century-long tussle between two camps in which one advocates for penal provision and the other continuously demands that attempts to suicide be decriminalised. Those who favour the penal provision generally quote the judgment in *Gian Kaur V. State of Punjab* (1996) where the court held that the "right to life is a natural right embodied in Article 21" of the Constitution but "suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life". In *Aruna Ramchandra Shanbaug v. Union of India* (2011), the Supreme Court endorsed the earlier judgment.

On the other hand, those who argue that the act of attempting suicide should not be criminalised quote *Maruti Shripati Dubal v. State of Maharashtra* (1986). In this judgment, the

Bombay High Court declared Section 309 unconstitutional. It said: "For example, the freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere... If this is so, logically it must follow that right to live... will include also a right not to live or not to be forced to live."

The court also said: "If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts... Those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in prison cells." This idea was recorded in *Chenna Jagadeeswar v. State of Andhra Pradesh and P. Rathinam v. Union of India* (1994) where the court held that Section 309 of the Indian Penal Code is a violation of Articles 14 and 21 and is void and unconstitutional.

## A solution

In 2017, Parliament passed the Mental Healthcare Act. Section 115 (1) of the Act provides, "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." However, this law applies only to those suffering from mental illness. There is presumption of severe stress in case of an attempt to die by suicide.

But what if severe stress is not proved? We have to shift from penalising attempts to suicide to making such cases medico-legal ones and provide psychological or mental treatment and support to the persons affected. As the issue demands a reformatory stance, we need a permanent solution like repealing Section 309 of the Indian Penal Code or striking it down.

Rajmohan Unnithan is the current Member of Parliament in the Lok Sabha from Kasaragod