ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 4
Issue I

August 2022

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

Volume 4, Issue I August, 2022 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No.	Title of the Paper/ Author	Page No.
1.	Negative' And 'Positive' Obligations of The State – The Journey Thus Far *J. Ravindran*	1
2.	Clinical Legal Education and The Role of Legal Aid Clinics In India *Navjeet Sidhu Kundal*	24
3.	Section 115 Of Mental Healthcare Act, 2017: A Lifeline to Suicide Attempters *Deepa Kaushik*	35
4.	Convention On the Status of Refugees 1951: More Eurocentric Than Universal *Aroup Raton Shaha*	45
5.	Principal-to-principal relationship with respect to Automobile manufacturer and dealer in consumer dispute cases *Hansie Singh Nagpal*	59
6.	Domestic Violence During Pandemic: A Socio-Legal Analysis *Nivedita Chaudhary*	70

STUDENTS SECTION

7.	From Rio to Paris: What Have Developing Countries Really Achieved? *Niranjan E.V. & R. Divya Meenakshi*	87
8.	Intellectual Property Right: The Asset of New India *Prarthna R. Markod*	100
9.	The Concept of Judicial Review as A Process – An Analytical Study *Riya Jacob*	119
10.	Third-Party Funding in International Arbitration: The Need for India to Step It Up? *Arushi Anand*	128
11.	Explication On the Concept of Crowdfunding in The Indian Legal System *Saket Agarwal and Charu Agarwal*	139

12. Need For Formalisation of Gig Workers: Towards A Paradigm Shift in Working Model
Kinjal Keya and Aditya Pratap Singh 151

13. The Competition Commission of India's Attitude Towards Cross Border Mergers
Ahan Gadkari 166

14. Rising religious majoritarianism in India - the impediment to minorities rights and representation
Divyanshu Dubey 184

15. Racial discrimination in sports activity
Yuvraj Sharma 201

16. Evolving Interpretations of Legal Provisions Of 'Intestate Succession' In Light of Judicial Precedents
Samrat Bandopadhyay 214

CASE COMMENTS

17. Married women: Less than Humans? RIT Foundation v. Union of India
Yashvi Aswani 222

SECTION 115 OF MENTAL HEALTHCARE ACT, 2017: A LIFELINE TO SUICIDE ATTEMPTERS

Deepa Kaushik*

VIPS Student Law Review
August 2022, Vol. 4, Issue 1, 35-44
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

Abstract

Changing lifestyle, competition, modernisation, a race to prove oneself has tremendously increased the incidence of suicide in the last few years in our so-called advanced society. Number of suicidal attempts supersede the actual commission of suicide. As per a report of WHO, a very large number of people who attempt suicide actually lose their lives and those who survive, their life is worse than death. Section 309, IPC has been often an issue of controversy in our legal history but the new Mental Health Care Act, 2017 has brought in a revolutionary change by decriminalising suicide under Section115. Making suicide non punishable will motivate people to seek help openly, thereby effectively controlling the suicidal incidents. The need of the hour is to counsel and rehabilitate such persons who attempt suicide rather than punishing them. Government, judiciary, mental health professionals and society need to work hand in hand to reduce the stigma that haunts the individual who attempted to terminate his life. There is a need to initiate large-scale awareness campaign across the nation to achieve the above said goal.

***Key words**: Decriminalization, Suicide, Euthanasia, Living Will*

I. Introduction

As we all know that life is the most precious gift of God, so committing suicide is considered to be an act against the will of God. But at the same time Constitution of India, the fundamental law of land under Article 21 states 'Right to life includes right to die with

* Assistant Professor, Vivekananda School of Law and Legal Studies, Vivekananda Institute of Professional Studies-TC, New Delhi.

dignity' as was recently laid down by the Supreme Court in "*Common Cause v UOI & Others*".[1]

As per dictionary meaning, suicide is an act wherein a person terminates his life through some self-accomplished action. Earlier studies have shown that majority of the persons who attempted suicide were not in a sound state of mind (often suffering from mental stress, anxiety, depression) when they did so. As per the report of National Crime Record Bureau[2] out of various causes of suicides across the nation, family problems, illness, drug abuse/ addiction etc account for a large percent of suicides. This proves that inflicting punishment on a person attempting suicide is kind of punishing him thrice, firstly due to his stressful life circumstances, secondly humiliation he faces due to failure of suicidal attempt and thirdly by the penal provisions under Section 309, IPC. But Section 115, Mental HealthCare Act, 2017 considering this aspect, presumes that a person who attempts to terminate his life must be suffering from severe anxiety or depression and therefore it is the duty of state to provide him with psychological treatment and counselling instead of punishing him with imprisonment or fine.

II. Causative Factors

A number of common factors responsible for suicide in India are as follows:

1. Illness such as AIDS, Cancer, Mental Illness (anxiety, depression, substance abuse etc.)
2. Poverty
3. Unemployment, Property disputes
4. Drug addiction
5. Marriage related issues, divorce, domestic violence, impotency
6. Indebtedness (as observed in various sectors specially farmers, a rising trend of suicide is commonly observed in farmers who due to financial incapacity to repay loans or exploitation or droughts are compelled to end their life in despair).
7. Broken Families such as family history of child abuse, violence, trauma, sense of loneliness, hopelessness.

1 Common Cause v. Union of India and Others, AIR 2018 SC 1665.

2 NCRB, *Accidental Deaths and Suicides in India 2019,* 200 (Ministry of Home Affairs, 2019) https://www.legalserviceindia.com/legal/article-3705-from-right-to-die-to-right-todie-with-dignity.html) (Last visited Sept. 12, 2021)

III. Role Of Judiciary

Since decades, judiciary has played a crucial role to safeguard rights of vulnerable sections of society. In year 2001, the Court Suo motu took the cognisance of a heart shaking tragedy[3] where more than 25 persons confined in mental asylum in Tamil Nadu were charred to death as they could not escape fire (being chained to their beds and poles depicting the inhuman treatment of mentally challenged persons in the society) and directed state and Central government to take effective measures to protect rights of mentally challenged persons in the society. Section 309 of Indian Penal Code[4] lays down the punishment for attempt to suicide, making suicide the only offence whose attempt is punishable but not the commission. The object of this section was to have a deterrent effect on such attempts of terminating one's life. This section of IPC was often a challenging subject to be dealt in the courts especially in context of its constitutionality.

In *Maruti Shripati Dubal v. State of Maharashtra*[5] this provision was questioned and held to be violative of Article 14 & 21 and therefore *ultra vires* Indian Constitution. There was infringement of Article 14 as this section neither defined suicide nor it differentiated felonious suicides from non-felonious ones ignoring the relevance of circumstances at the time of attempt. Article 21 was stated to be violated by interpreting it in the light of Article 19 (that, since right to speak or right to form association includes right not to speak or not to form association, so right to life should also include right not to live). In this case, Court also analysed difference between suicide and euthanasia (Literal meaning of euthanasia is "good death/ gentle, easy death"/ mercy killing).

Afterwards similar view was expressed by the Apex Court in the matter of *P. Rathinam v. Union of India* [6] where Section 309 was criticised as cruel and irrational provision as Right to Life under Article 21 impliedly include right not to live a forced life. Section 309 was interpreted to be violative of Fundamental Right under Article 20 of Indian Constitution that no person should be punished twice for the same offence (here person is already punished by the stressful life circumstances, so inflicting punishment is double jeopardy).

Later in *Gian Kaur v. State of Punjab*[7] the decision given in *Maruti Shripati Dubal and P.Rathinam*",were overruled stating that right to life being a fundamental right cannot be

3 In Re: death of 25 chained inmates in asylum fire in Tamil Nadu v. Union of India, AIR 2002 SC 979.

4 Indian Penal Code, 1860, § 309, No.45, Acts of Parliament, 1860.

5 Maruti Shripati Dubal v. State of Maharashtra, (1986) 88 BOMLR 589.

6 P. Rathinam v. Union of India, AIR 1994 SC 1844.

7 Gian Kaur v. State of Punjab, 1996 AIR 946.

waived off. Court also differentiated between right to die a natural death (with dignity in terminally ill without any scope of recovery) or unnatural death. Court opined that only in the cases where patient is terminally ill or in a state of persistent vegetative state execution of (Physician assisted) termination of life will be interpreted as die with dignity.

After these landmark decisions it was "42nd report of the Law Commission of India" which endorsed that Section 309 of IPC be repealed. The commission clarified that repealing this section will not increase the incidents of suicide as is evident from the fact that Sri Lanka observed marked reduction in such incidents after its repeal. On the contrary Singapore has witnessed persistent rise in incidents of suicide despite of having it as a punishable offence. The report also took a note of Manu's code emphasizing on the fact that even our ancient shastras approved taking lives of ourselves as was practiced by our sages renouncing the world for salvation and peace.

Various unsuccessful attempts were made by the legislature as well as Law commission to repeal penal provisions laid down under IPC to punish those who attempted suicide as such provisions are stumbling block in their treatment and rehabilitation. As per the recommendations under 210th Report[8] of the commission: a) No mentally and physically sound person will ever take such grave step to end his life and if he does so and subsequently fail (which is another setback to him) it would be very cruel and inhuman to inflict punishment on him. b) Section 309 to an extent is violative of Article 20 of Constitution of India as the person is doubly punished by his fate, unsuccessful attempt and thereafter by law. c) There is a need to omit only Section 309 and not Section 306, IPC as it should only be the attempter and not the abetter of suicide who should not be allowed to go unpunished.

In *C.A. Thomas Master case*[9],"the accused was an eighty-year-old retired teacher who wanted to terminate his life not due to terminal illness or disability but after leading a contended and successful life. He argued that terminating his life voluntarily cannot be considered equivalent to suicide. But Court rejected this contention holding termination of one's life amounts to suicide, a punishable offence."

In Aruna Ramchandra Shanbaug v. Union of India[10]*, the Apex court differentiated between different types of euthanasia [active/ passive, voluntary (done with free voluntary consent of the subject)/ non voluntary (when patient is either unconscious or unable to make a*

8 Law Commission Report No. 210, *Humanization and Decriminalization of Attempt to Suicide* https://lawcommissionofindia.nic.in/reports/report210.pdf (Last visited September 10, 2021).

9 C.A. Thomas Master v. UOI, 2000 CriLJ 3729.

10 Aruna Ramchandra Shanbaug v. Union of India, (2011)4 SCC 454

decision)]. Active euthanasia is administration of some lethal injectables to terminate the life whereas in passive euthanasia, life is terminated by removing the life support system or by starvation. Although religious perspective disapproves acts of euthanasia as human life is sacred and since it is the god who gave us life, so only he has the right to take it away. *In this case a petition was filed to terminate the life of a nurse, Ms. Aruna to relieve her from PVS state she was in since last 37 years. India does not recognise/validate active euthanasia but permits passive euthanasia*[11] *in exceptional circumstances as per the guidelines enlisted by the Apex Court. But Court denied execution of euthanasia in this case because despite of being in vegetative state she could breathe without any artificial support system, she had feelings and also responded to stimulus. At the same time court laid down exhaustive guidelines and procedure*[12] *to be followed for executing passive euthanasia till the parliament enacts a law for the same.*

But in the year 2017with the enactment of Mental HealthCare Act, the act of attempting to commit suicide has been decriminalised as a special law overrides a general law. Therefore, even though Section 309 has not been removed from IPC, the Mental Healthcare Act (7th April 2017) to an extent decriminalizes attempted suicide by creating a presumption in favour of the person that he was suffering from some mental illness[13] which forced him to commit such serious act.

11 "Passive euthanasia is when the doctor switches to the support system or when the person is deprived of all the nutrition, foods and results in starvation."

12 The procedure laid down is as follows: in cases of a person being brain dead or so terminally ill that he/she can't be ever be come back from that stage then then close relatives/friends/medical staff of the hospital can apply to High Court under Art. 226 for withdrawal of life support. On filing of application, the Chief Justice of High court should constitute a bench of at least 2 judges to accept or reject. Before taking the decision, the bench should consult committee of 3 reputed doctors (to be nominated by bench after consulting such medical authorities or practitioners as it may deem fit) one of whom shall be psychiatrist, which shall examine the patient and attending record and thereafter submit its report to the bench. The bench, simultaneously with appointing committee, should issue notice to the state and close relative/next friend and supply the copy of report of committee, thereafter the bench should give the verdict.

13 Mental Healthcare Act, 2017, §2, No. 10, Acts of Parliament,2017: Mental illness means "a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence"

IV. Section 115 of Mental Healthcare Act, 2017

Section 115, MHCA[14] has revolutionised the concept of "Right to Die with Dignity in India". As it is often observed that a large number of people in India are not aware of current laws and their amendments, so making suicide attempt a criminal offence section 309 IPC will not serve the deterrent purpose unless public is aware of it. Also, Person who attempts suicide is presumed to be already under severe stress and it is the duty of the government to provide him with due care and treatment rather than punishing him to reduce its recurrence. Section 115(1) presumes the person to be suffering from some kind of mental stress or disorder and Section 115(2) makes it obligatory for the government to ensure proper counselling of the person, medicinal/ psychological treatment and rehabilitation so that he can resume a normal stress-free life in the community and prevent any future recurrences.

In the matter of *Pratibha Sharma v. State of Himachal Pradesh*[15], a woman was accused of attempting suicide under Section 309 of IPC. Taking the defence of provisions laid down under Section 115 MHCA,2017 (that she suffered from severe mental stress due to demand for dowry made by her in laws), the decision was made in her favour that she needs counselling and support rather than punishment. Court also discussed the constitutionality/ unconstitutionality of Section 309, IPC and need to decriminalise it. Court stated that Right to life under Article 21 unlike Rights given under Article 19(1)(a) does not have negative right attached to it as terminating one's life is not a natural right and it requires a positive action to realise it. On the other hand, Court also brought into light the changing attitude of the nations across the globe towards decriminalizing suicide. Even the Britishers who framed our laws including IPC have repealed such provisions along with other nations such as North America, European countries, Canada etc. Nations like Netherland, Switzerland, Thailand have moved a step ahead by even legalising euthanasia in those patients who are terminally ill with least scope of any improvement. This is high time that India needs to change or repeal such obsolete, harsh provisions to meet the evolving/changing needs of the society.

14 Mental Healthcare Act, 2017, § 115, No. 10, Acts of Parliament,2017: (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.

15 Pratibha Sharma v. State of Himachal Pradesh, 2020 SCC OnLine HP 835.

Chapter III of the Mental Healthcare Act, 2017 deals with Advance Directive[16],which enables a person with mental illness to choose the mode/manner of treatment of his illness and also to nominate a person as his representative to decide the line of treatment on his behalf. This section empowers everyone to write Advance Directive except minor. So, it makes it compulsory for the treating psychiatrist to plan the treatment taking into consideration the Advance Directive. But Advance Directive is not applicable in the emergency situations.

In the latest landmark judgement of *Common Cause (Registered Society) v. UOI* [17], passive euthanasia was legalised whereby it permitted terminally ill persons or those patients suffering from incurable disease, or are in vegetative state to exit the world in a painless, dignified manner by consenting for it in Living Will. This step will be a great relief to those poor families who cannot afford prolonged, hopeless indoor admission of such patients. It was held by the honourable court that only in the cases where the patient is terminally ill such that end of life is inevitable as the process of natural death has begun right to die with dignity becomes a part of right to life with dignity. Court introduced a new concept of Advance Directives, Living Will and Nominated Representatives in our society to prevent misuse/ abuse of passive euthanasia.

The Indian Penal Code (Amendment) Bill, 2016: The Bill proposed to decriminalise suicide attempts by addressing relevant issues such as empowering appropriate authorities to intervene and take necessary steps in such attempts if posing threat to public order and to ensure that the abetter of suicide does not escape the liability.

V. Important Surveys and Targets

1. As per a WHO report, anxiety, depression are the most important causative factors of suicide worldwide.

16 Mental Healthcare Act, 2017, §5, No. 10, Acts of Parliament,2017: "A person with mental illness shall have the right to make an advance directive that states how he/she wants to be treated for the illness and who his/her nominated representative shall be. The advance directive should be certified by a medical practitioner or registered with the Mental Health Board." As per section 14(3) The "person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act."

17 Common Cause (Registered Society) v. UOI, AIR 2018 SC 1665.

2. There is an alarming rise in the rate at which suicide is committed worldwide[18] such that suicide accounts for one of the commonest causes of death specially in females.
3. WHO has recognised Suicide as a "public health priority".
4. Year 2019 experienced enhanced number of suicides (Specially in the age group of 15-29) as COVID-19 increased mental stress across the globe.[19]
5. Under Agenda 30, "UN has set to achieve a sustainable goal of reducing rates of suicide by one third.[20]"

Around 25 nations across the world have decriminalised suicide as most of them have appreciated the fact that counselling and rehabilitation of suicide survivors will be more advantageous and fruitful for the whole society in place of punishing the one who is already tortured. Sri Lanka decriminalised suicide in 1998 and subsequently suicide levels have dropped remarkably. Setting examples of such nations India can also hope for the same. Despite of promise of commitment, only about 38 nations have "National suicide prevention strategy". Although terrorists and suicide bombers are excluded from such decriminalisation. Decriminalisation may in certain exceptional circumstances may be misused as some politicians might sit on protest fasts to an extent of renouncing their life to threaten or coerce the authorities if their demands are not accepted.

18 Following are the observations made as per the statistics from the World Health Organization (WHO) and the Centre for Disease and Control (CDC):
   a) 1 million people die of suicide every year
   b) Suicide rates have increased by 60%
   c) By 2020, 1 person will die of suicide every 20 seconds
   d) By 2020, 1 person will attempt suicide every 1-2 seconds
   e) Most suicide attempts are by the elderly but more youths are successful
   f) Youth suicide is increasing at the fastest rate and suicide now ranks among the three leading causes of death for those 15-44
   g) Males are 4 times as likely to die from suicide than females, but females attempt suicide 3 times more than males
   h) In Eastern Europe, the rates of suicide for men and women are the same
   i) Most deaths from suicide occur in Eastern Europe
   j) The second highest rates of suicide occur in the island countries of Cuba, Japan and Mauritius
   k) China and India report the most deaths but this number is due to their large population size
   l) The lowest rates of suicide are in the Eastern Mediterranean and Islamic countries
   m) Some of WHO's numbers are skewed by the fact that Africa has not reported suicide rates, Asia rarely does and the Eastern Mediterranean, Western Pacific and Latin American countries do so irregularly.

19 Report titled, "Suicide worldwide in 2019" published in 2021, org.in/news/health/world-not-on-track-to-reduce-suicide-mortality-rate-by-2030-who-77573 (Last visited Sept. 13, 2021)

20 *Ibid*.

VI. Conclusion & Suggestions

1) There is a need to spread awareness amongst people about the causes and prevention of suicide through media and mass campaigns.
2) National priority should be given to suicide prevention.
3) To reduce accessibility to suicide means such as pesticides, medications etc.
4) More focus should be laid on correcting causative factors of suicide specially in children and youth such as physical violence, torture, sexual abuse, unsoundness of mind etc.
5) Important community members such as doctors, teachers, parents should be trained in identifying as well as correcting causative factors of suicidal behaviour among younger generations and thereby prevent suicide attempts.
6) Media can play a crucial role in spreading awareness about the new laws relating to suicide amongst general public.
7) Framing and effective implementation of alcohol and drug policies to decrease the harmful use of such substances.
8) The early identification and treatment of vulnerable population can be useful.
    a. Special training should be given to the medical staff for timely detection, treatment, counselling of persons suffering from mental illness so that there will be significant decrease in the incidents of suicide.
    b. To keep a follow up for proper rehabilitation along with community support to suicide attempters.

A person who attempts suicide should be looked upon as a person in need of assistance by the society and not a criminal who should be punished and we need to correct the reason for such grave step taken by him. In an attempt to do so we may think that restricting availability of lethal means may help in lowering down the suicide rates. This was tried in few states but without any success as people merely shifted to a newer mean or mode of attempting to suicide. But this should not disappoint us as there are other possible preventive ways which will prove to be effective and fruitful, Section 115 of new MHCA, 2017 is one of those. Need of the hour is to explore even better means to prevent suicide attempts. Also, we cannot ignore the efficient role played by our judiciary in recognising fundamental right of an individual to not only live a dignified life but also right to die with dignity (Euthanasia) and giving importance to the psychological aspect of an individual while deciding upon a matter of his attempt to suicide. Role of Living Will and Advanced

Directive has also widened the scope of fundamental right under A-21, which interprets that Right to die (in exceptional circumstances in accordance with the guidelines laid down by the Apex Court) is another facet of Right to lead a dignified Life. So, it would not be wrong to say that new Mental HealthCare Act has proved to be a lifeline for the Suicide attempters. As is rightly said that a person who is mentally unsound, needs a doctor to treat and not the police to punish.