

## “ABETMENT OF SUICIDE: TROUBLE FOR THE INNOCENT”

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*The authors have tried to explain the dire need for changing laws on abetment of suicide. Abetment of suicide is a criminal offence under IPC and the provisions have often led to troubles for the innocent accused. There are various decisions of the court regarding Abetment of Suicide in India and the paper looks into those decisions. The paper also deals with the cases where the suicide is caused due to burden of debt. The Mental Health Care Act, 2011 has decriminalized attempt to suicide and the paper demands for the same for Abetment of suicide.*

*Key words: Suicide, Abetment of Suicide, Abettor, Sec 306 & 305.*

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### INTRODUCTION

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Supreme Court has defined the word ‘abet’ as “meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage; induce, or assist, to encourage or to set another one to commit.”<sup>1</sup>

Sec 107 of the IPC, 1860 deals with Abetment. According to this section abetment may be caused by instigation, conspiracy or intentional aiding.

Abetment of Suicide has been punished under section 306 of the Indian Penal Code, 1860. The section reads:

“S.306 - **Abetment of suicide** - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.”

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<sup>1</sup> Kartar Singh v/s State of Punjab

Sec 108 of the IPC, 1860 defines the term abettor.

**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.

There are certain Explanations to this section.

Explanation I— The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation II— To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Explanation III— It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Explanation IV— The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Explanation V— It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

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## **SUICIDE AND ATTEMPT TO SUICIDE**

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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<sup>2</sup>.

Suicide is mostly carried out as a result of despair, the cause of which may be mental disorder such as depression, bipolar disorder, alcoholism, or drug abuse. Stress factors such as financial problems also play a role many times.

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<sup>2</sup> Nimick v. Mutual Life Ins. Co., 10 Am. Law Reg. (N. S.) 101, Fed. Cas. No. 10,266

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.<sup>3</sup>

Sec 309 of the IPC deals with the attempt to commit suicide.

S.309: Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

The constitutional validity of Section 309 was initially struck down as a cruel and irrational provision and violative of Article 21 of the Constitution, in the case of P. Rathinam v. Union of India<sup>4</sup>. However, in Gian Kaur v. State of Punjab<sup>5</sup>, P. Rathinam case judgment was reversed and the constitutional validity of Sec 309 was upheld by indicating that it does not violate Art 14, 19 and 21 of the Indian constitution.

Recently the Parliament by passing the Mental Healthcare Act (7th April 2017) has effectively decriminalized attempted suicide. Therefore, despite S.309 being not removed from IPC, technically it has no effect.

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## ABETMENT OF SUICIDE

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The provisions relating to abetment of Suicide under IPC can be seen under 2 sections i.e. Sec 305 and Sec 306.

**Section 305** - 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 imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

**Section 306**- 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.

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<sup>3</sup> Gangula Mohan Reddy v. State of Andhra Pradesh, AIR 2010 SC 327; (2010) 1 SCC 327; Gian Kaur v. State of Punjab, 1996(2) SCC 648; AIR 1996 SC 946.

<sup>4</sup> AIR 1994 SC 1844

<sup>5</sup> AIR 1996 SC 946

Before the actual conviction of a person under Sec. 305 or 306, it must be established that such other person has committed suicide. The provisions of these sections create a specific offence and the liability does not arise in case of an attempted suicide which will attract section 309, IPC.

In order to bring a successful conviction under this section it is important that its following three essential ingredients stand to be fulfilled:

- i. The deceased should have committed suicide.
- ii. The accused should have instigated or abetted to commit suicide.
- iii. There must be direct involvement of the accused in such abetment or instigation.<sup>6</sup>

To attract the ingredients of abetment, the intention of the accused to aid, instigate, or abet the deceased to commit suicide is necessary<sup>7</sup>.

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### **ABETMENT OF SUICIDE RELATED TO LOAN REPAYMENT**

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One of the major causes of suicide in our country is suicide due to burden of loan. Many debts ridden people who are not able to pay out their loans and are constantly pressurized by the creditors find no other way then to commit suicide.

It has been observed in many cases that the person committing suicide leaves behind a suicide note naming his creditors and blaming them for his suicide.

The question here arises that is asking for repayment of a loan constitutes abetment under sec 107 of IPC? It has been held in various decisions that mere asking for repayment of loan cannot be stretched to the extent of falling within the definition of instigation u/S.107 of IPC.

In *Vedprakash v. State of M. P.*<sup>8</sup> the accused persons intimidated and goaded the deceased for repayment of loan. The deceased committed suicide soon thereafter, it was held that this did not amount to abetment to commit suicide, and no case under Section 306/34 was made out.

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<sup>6</sup> *Jagannath Mondal v. state of West Bengal*, 2013Cr.L.J. 1994 (Cal).

<sup>7</sup> *Pallem Deniel Victorations Victor Manter v. State of Andhra Pradesh*, (1997) 1 Crimes 499 (AP)

<sup>8</sup> 1995 Criminal Law Journal 893

In a case<sup>9</sup>, the accused persons were charge-sheeted under Section 306 read with Section 34 of Indian Penal Code on the basis of a suicide note left by the deceased in which he had blamed all the five accused and held them responsible for his (suicidal) death. However, it was found that none of the accused had goaded or urged forward, provoked, incited or urged or encouraged the deceased to commit suicide. They merely goaded him to refund/repay the amount of loan advanced by them to him. They never intended that the deceased should commit suicide. Moreover, the deceased could have lodged a report against accused those who had allegedly tortured him and threatened him to kill. May be, as it sometimes happens, the police officials might have declined to record the report. In that case, he could have moved higher officials. But instead of taking this legal and legitimate action, the deceased adopted an escapist course of committing suicide in order to take revenge from his alleged tormentors. No case for alleged commission of the offence was made out against the accused persons.

In a **Ramesh Banshkaar @ Manju Banshkaar Vs The State Of Madhya Pradesh**<sup>10</sup>, it was observed that the applicant had no intention of instigating or goading deceased to commit suicide, for the simple reason that with the suicide of the deceased, his chances of extracting further amount would practically vanish, in spite of the threat issued by him to recover the same by selling the house of the deceased.

In spite of these decisions the creditors who are at no fault and are named in the suicide notes have to face a lot of trouble during the investigation process. Though at the end justice may prevail but the mental agony which the innocent creditors face without any reason is something quite distressful to see.

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## DEVELOPMENT

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### **P Rathinam vs Union of India**<sup>11</sup>

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<sup>9</sup> Ram Naresh and another V. State of M.P.; 2002 (2) M.P.H.T. 183

<sup>10</sup> CRR-1677-2015

<sup>11</sup> 1994 (3) SCC 394

It was held by the Supreme Court that Section 309 (punishment for attempt to commit suicide) is unconstitutional and violative of Article 21 of the constitution. It also held that Article 21 that enshrines the “right to life” also inherently enshrines the “right to die”.

### **Gian Kaur vs State of Punjab<sup>12</sup>**

The Supreme Court in this case reopened the issue and the two main contentions therein were that:

- (i) Abetment of suicide under Section 306 does not constitute a crime as it is only assisting another person who is exercising a fundamental right resting on the judgment in P Rathinam vs Union of India
- (ii) Section 306 is equally violative of Article 21.

The constitution bench held that Article 21 does not include “right to die” and hence overruled P Rathinam vs Union of India and categorically stated that the judgment in it does not stand judicial scrutiny. It was also held that the right to live with dignity cannot be construed to include the right to terminate one’s natural life, at least before commencement of the natural process of death and so Section 309 was neither violative of Articles 21 nor 14.

With regard to abetment of suicide, the Supreme Court held that as the challenge to the constitutional validity of Section 309 had been rejected, hence no serious challenge survives for the constitutional validity of Section 306. It was also held that Section 306 enacts a separate offence that survives independent of Section 309. The apex court stated that the arguments for not punishing a person attempting suicide cannot be used to benefit a person who assisted a person who had committed suicide or attempted to. The law views the abettor differently from the perpetrator of the crime, as he abets the extinguishment of life of another person.

### **Vedprakash Bhaiji v. State of M.P.<sup>13</sup>**

The Court has held that the accused persons were intimidated by the deceased that if they do not repay the loan advanced to them, then they will have to face with dire consequences and immediately thereafter he committed suicide. This Court has held that it could not be said that

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<sup>12</sup> 1996 AIR 946, 1996 SCC (2) 648

<sup>13</sup> 1995 Criminal Law Journal 893

the accused persons provoked, incited, urged or encouraged the deceased to commit suicide. A person is said to “instigate” another to an act when he actively suggests or stimulates him to the act by any means of language, direct or indirect for commission of the offence.

### **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)<sup>14</sup>**

The court opined that there should be intention to provoke incite or encourage the doing of an act by the latter. Each person’s pattern of suicide is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any strait-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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## **DRAWBACKS**

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The basic principle of criminal law is that a person is liable for his own act, but the provisions that punish the abetment of suicide infringes this fundamental rule, how some other person is said to be liable for the act done by another person.

A person may die like a coward and there is no way another person should be punished for someone else’s act. They are weak minded. They are persons of frail mentality and for their foolish mentality or decision, another person cannot be blamed.

There are hundreds of farmers who have committed suicide because they are not able to pay back the loan they have taken from the bank. Now will we make the bank guilty of abetment to suicide? The bank doesn't even know that this is what the farmer's circumstances are, whether he is feigning poverty or is genuinely in difficulty. Normally, the intention of suicide is kept a secret. Then how it is possible to say that the person was intentionally goaded or instigated to commit suicide?

There are some persons who can handle defeat and frustration but there are others who cannot. Every suicide does not mean that with whosoever you have a grievance, that person is responsible for abetment. Even in a marriage, a husband and wife will have arguments. Now, if

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<sup>14</sup> 2009 (11) SCALE 24

solely on account of an argument, a person commits suicide, that implies that no two persons will be able to live together. Suicide is always a product of a depressed mind.

If an innocent is named in the suicide note or dying declaration not only the accused but his family too has to go through a lot of mental agony. In India, process is punishment. Abetment to suicide under IPC is a cognizable, non-bailable and non-compoundable offence. This means that the person named in the Suicide Note is implicated in a manner which leaves him/her with no other alternative than to be harassed by the Police/Investigating Authorities or else suffer pre charge/pre-trial incarceration. Also there is a possibility of opening up floodgates of corruption by the Investigating officer who may try to make money in the guise of investigation.

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## SUGGESTIONS

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A dowry death, murder or suicide because of dowry, takes place every 77 minutes, a girl is molested every 15 minutes and a rape takes place every 29 minutes.<sup>15</sup> So in such a society we cannot do away with punishment for abetment to suicide but to make it according to the changing circumstances, it can be amended.

The basic principle of criminal law is that a person is liable for his own act and as sec 306 of IPC is an exception to this principle the punishment under this sec must be reduced to 2-3 years.

The person named in the suicide note should not go through unnecessary imprisonment as it causes a great deal of mental stress for the innocent accused and his family. It is suggested that the same can be taken care of by amending the current provisions of abetment and making the offence bailable instead of non-bailable and thereby facilitating smoother investigation and prevent unnecessary harassment or running for Anticipatory Bail.

It is further suggested that appointment of qualified forensic psychologist should be made mandatory in order to ensure that the right cause of suicide (with and without the aid of Suicide note) is detected at the earliest.

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<sup>15</sup> [http://www.business-standard.com/article/beyond-business/jiah-s-case-shows-misuse-of-abetment-to-suicide-kts-tulsi-113061500742\\_1.html](http://www.business-standard.com/article/beyond-business/jiah-s-case-shows-misuse-of-abetment-to-suicide-kts-tulsi-113061500742_1.html)