

A CRITICAL STUDY ON ABETMENT OF SUICIDE, CHILD OR INSANE PERSON

¹KEERTHANA.K, ²ROJA.K

¹Student, B.A,LLB,(Hons),Saveetha School Of Law, Saveetha University , Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India

²Assistant Professor, Saveetha School Of Law, Saveetha University, Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India

¹keerthanakrish0599@gmail.com, ²rojak.ssl@saveetha.com

ABSTRACT:

The aim of study is to critically analyse the existing laws on abetment of suicide and the guidelines issued by Supreme Court of India with respect to different cases. There are sections for abetment of suicide in Indian penal code (IPC). Section 306 of the Indian Penal Code penalizes abetment of suicide. "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." Section 306 prescribes punishment for 'abetment of suicide' while section 309 punishes 'attempt to commit suicide'. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 read with section 107, IPC. In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.

Suicide (self annihilation) is a common incident affecting the people of all classes throughout the globe. It is a peculiar crime where both the accused and victim is same person.

Attempt to suicide and abetment of suicide is punishable under Sec. 309 and Sec.306 of Indian Penal Code. Medicolegists should be very cautious regarding the opinion while dealing such cases because many times the exact cause and circumstance of the incident remains concealed. Thorough investigation, meticulous examination including visit to the scene of crime is utmost essential to take correct decision to avoid miscarriage of justice. Such a situation arose when a young married male person was admitted in unconscious state in hospital with history of attempt of suicide by hanging. The case was booked under Sec.309 of Indian Penal Code by the police. But presence of some unexplainable mysterious mechanical injuries over his 247 body found during medico legal

autopsy following his death after eight days put the forensic experts in a dilemma to rethink the background.

Keywords: suicide, punishment, insane, intoxicated, offence, abetment, abettor, provisions

INTRODUCTION:

Abetment to suicide are as old as civilization itself. It is self murder or self destruction and it is done in many ways in which life itself can be destroyed. The reason for the same are also numberless. In case of suckles by the married women during early of the married life the dowry demands and consequent taunts and cruelty may be one of the major reasons. But it is not only the reasons. Now-a-days in most of unfortunate deaths of young brides in the matrimonial homes, dowry demands and their non satisfaction by the parental side of the women is projected as the reason for the suicide. In section 306 of the Indian penal code penal penalises abetment of suicide. It is in section 306 prescribes punishment for "abetment of suicide" while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the preview of section 306 and it is punishable only under 309 read with section 107 of ipc. Thus even where the punishment for attempt to commit suicide is not considered desirable, it's abetment is made a penal offence. Section 306 of the Indian Penal Code penalizes abetment of suicide. It reads as:

"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."

Section 306 prescribes punishment for 'abetment of suicide' while section 309 punishes 'attempt to commit suicide'. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 read with section 107, IPC. In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.

AIM OF THE STUDY:

1. To analysis about the abutment of suicide
2. To study about the insane person and child those who are pushed towards abutment of suicide
3. To study about the punishment under abetment of suicide

CONCEPT OF ABETMENT:

ABETMENT is an offence as defined under section 107 of Indian Penal Code, 1860. Abetment in its literal sense means, the instigation of a person to do (or not to do) an act in a certain way, or aid given by some person to another either of his own accord or under the provisions governing joint and constructive liability. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing.

CONCEPT OF SUICIDE AND ATTEMPT TO COMMIT SUICIDE:**SUICIDE:**

The word suicide in itself is nowhere defined in the Indian Penal Code, however its meaning and import is well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing', thus implying an act of self-killing.

Suicide is often carried out as a result of despair, the cause of which is frequently attributed to a mental disorder such as depression, bipolar disorder, schizophrenia, borderline personality disorder, alcoholism, or drug abuse. Stress factors such as financial difficulties or troubles with interpersonal relationships often play a role.

While a person who has completed suicide is beyond the reach of the law, as the crime abates with him. However, when a person is unsuccessful in commission of suicide or if the desired intention of the offender is not met in committing suicide, he is within the ambit of Indian penal code under section 309.

This section is based on a reasonable public policy to prevent other person's involvement, instigation and aiding in terminating one's life. It takes care of the situation and threats imposed by death baiters.

CONCEPT OF ABETMENT OF SUICIDE:

Section 305 under Indian Penal Code, 1860- 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 under Indian Penal Code, 1860- 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.

Illustration:

- i. If A persuades B to kill himself by taking poison and B takes it, then A would be liable as an abettor under this section.

Constitutional Validity of Section 306, IPC:

The constitutional validity of section 306 has been upheld in *Naresh Morotrao v. UOI*. It was observed that section 306 constitutes an entirely independent offence. It is based on the principle of public policy that nobody should involve himself in, or instigate, or aid, the commission of a crime. It is not violative of Articles 14 and 21 of the Indian Constitution.

ABETMENT OF SUICIDE

For conviction under this section, the prosecution has to prove -

1. The deceased committed suicide,
2. The accused instigated or abetted for committing suicide, and
3. Mens Rea of the accused.

The liability arises only when the suicide is committed. In case of an attempted suicide, provisions of Section 306 will not be applicable.

For conviction under Section 305 or 306, the offence of abetment must conform to the definition of 'abetment' given in section 107 of the Indian Penal Code. There must be instigation, or engaging in conspiracy, or assistance in the commission of the offence.

In order to convict a person under Section 305 or 306, IPC, there has to be a clear Mens Rea to commit the offence. A conviction for abetment to suicide is possible only if the accused actually made a positive move to push the victim to take his or her own life.

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

The basic constituents of an offence under section 306 are suicidal death and abetment thereof.

The direct involvement by the accused in such abetment or instigation is necessary.

CO-RELATION BETWEEN S. 107 AND S.306:

Abetment of suicide involves a mental process of instigating a person or intentionally aiding a person in committing suicide. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court are clear that in order to convict a person under section 306 IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or a direct act which let the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide

No straight jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct relationship between section 306 and Section 107. Therefore, in such a case an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a

person committed suicide. In order to convict a person under section 306, IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

JUDICIAL TREND:

Indian courts in its judgments have established the nexus between Section 107 and Section 306 IPC very cautiously. Though the basic ingredient for both of these sections is instigation or aiding, but for conviction under section 306 IPC, a reference has to be made to Section 107 IPC. The court has held that each case has to be decided on the basis of its own facts and circumstances. The basic constituents of an offence under section 306, IPC, are suicidal death and abetment thereof as held in Sangarabonia Sreenu v. State of Andhra Pradesh.¹⁷

In Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), the court dealt with the dictionary meaning of the word “instigation” and “goading”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidal pattern 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 straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

ABETMENT OF SUICIDE IN CHILD OR INSANE PERSON:

Abetment of suicide is an act of abetting, instigating or aiding a person to an extent that drives him to commit suicide. Though, Indian penal provisions do not punish a person for abetment if it is an attempted suicide. For bringing a case under S. 305 and S. 306, the suicide must not be a mere attempt but it must have been completed.

Both Abetment of suicide and Consent killing involves death of a person, but the concepts of both the matters are entirely different and a thin line demarcates both the acts of abetment of suicide and consent killing. The former is an offence, which is an outcome of instigation or provocation and is punishable under section 306 of Indian Penal Code while the latter is homicide by consent, Exception 5 to section 300, IPC and punishable under section 304, IPC.

Illustration:

If a doctor to hasten his patient’s death, who is terminally ill (incurable disease) injects poison with patient’s consent, the doctor will be liable for culpable homicide not amounting to murder under section 304, IPC.; but if the doctor places the poison by patient’s bed and he takes it, the doctor will be liable for abetment of suicide under section 306, IPC.

CONCLUSION:

With the changing time, pattern of the society is changing vastly, calling for new and amended laws and provisions, as already enacted laws and legislations are falling short of the purpose for which they were enacted. Over a period of time, the ways of commission of offences have changed in such a way that they have gone beyond the ambit of the enacted provisions. There arises need for such laws that does not restrict the judgments to mere pigeon hole patterns of the criminal laws. Each case should be decided on its own merits keeping in mind the facts and circumstances of such case so that the justice is administered in its true sense. In today's emerging society, people face many problems relating to their homes or workplaces, and few people, who are unable to deal with such pressures tends to end up their life and thus, suicides are becoming very common. Moreover, along with an increase in the number of suicidal cases, there has been a steady rise in cases of Abetment of suicide, be it a case of abetment by instigating or by aiding the victim in committing suicide. The accused can easily defeat the penal provisions dealing with such offence as the ambit of the provision is limited to three categories, only. Thus, there is a dire need to amend the provisions dealing with the offence of abetment, in such a way that the criminals are not able to bypass the legislations and mend the cases suiting their own desires and escape the punishments. Also, the laws are needed to be interpreted not strictly in a confined manner. But according to the facts and circumstances of each case so that justice prevails. The current definition of abetment falls short. The section covers abetment by way of aid, instigation and conspiracy, but there are instances where the actions of the person do not strictly fall in these three categories but pressurize a person to commit suicide. Thus the abetment of suicide, child or insane person create a problem. Therefore null hypothesis is proved.

REFERENCES:

1. www.indiankanoon.org, November 12, 2014
2. <http://freelegalconsultancy.blogspot.in/2012/10/section-306107-ipc-whether.html>, November 20, 2014
3. <http://curarelegal.com/suicide-note-consequential-menace/>, November 20, 2014
4. <http://www.lawyersclubindia.com/articles/Presumption-as-to-abetment-of-suicide-A-Critical-Analysis-5577.asp>, November 21, 2014
5. <http://lawcommissionofindia.nic.in/reports/report210.pdf>, January 8, 2015
6. 1. Gaur, K.D. Text Book On Indian Penal Code, 4th edition, Universal Law Publishing Co. Pvt. Ltd.(2012) 2. Ratanlal & Dhirajlal. The Indian Penal Code, 34 edition. LexisNexis.(2014) 3. Pillai, P.S.A. Criminal Law, 9th edition. LexisNexis 4. Baker, Denis J. Glanville Williams' Textbook of Criminal Law, 3rd edition. Sweet & Maxwell.(2012)
7. Banerjee (1994). Law of Insurance, Hyderabad: Asia Law House.
8. Birds, J. (1997). Modern Insurance Law, London: Sweet & Maxwell.

9. Colinvaux, R. (1997). Law of Insurance, London: Sweet & Maxwell.
10. Gilmar, JCB., Mustill, A. (1981). The Law of Marine Insurance, Lonodn: Sweet & Maxwell.
11. Halsbury's Laws of England. (2000). Reissue, 11(1), Para 106.
12. Hardy Ivamy, E. R. (1993). General Principles of Insurance Law, London: Butterworth & Co.
13. . "NewYorkSuicideVictimConfessestoKilling For Women", Detroit News, Sept. 9, 1973, 23-A.
14. Dublin, L. I. & Bunzel, B (1935) Survey Graphic, 24, 127.
15. Wolfgang, M. E. (1958) "An Analysis of Homicide-Suicide", J.
16. clin. exp. Psychopath., 19, 208.
17. Guttmacher, M. S. (1960) The Mind of the Murderer, USA: Farrar, Straus & Cudahy.
18. McDermaid, G. & Winkler, E. G. (1950) "Psychiatric Study of Homicide Cases", J. clin. exp. Psychopath., 11, 93-146.
19. West, D. J. (1967) Murder Followed by Suicide, USA: Harvard Press.
20. Resnik,H.L.P.(ed)(1968)Suicidal Behaviors:Diagnosis And Management by 48 Authors, USA: Little Brown.
21. Gibbens, T. C. N. (1958) "Sane and Insane Homicide", J. crim. Law Criminal., 49, 110-15.
22. Cavan, Ruth (1928) Suicide, USA: Univ.
23. MacDonald,J.M.(1961)The Murderer and his Victim
24. Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
25. Trishala A , Lakshmi T and Rajeshkumar S," Physicochemical profile of Acacia catechu bark extract –An In vitro study", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

