

RELIGIO-MORAL ASPECTS OF ATTEMPT TO COMMIT SUICIDE AND CONSTITUTIONALISM

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ABSTRACT

There is a long standing debate that the legal provision punishing attempt to commit suicide should be repealed from the Indian Penal Code. While framing/ interpreting laws, most of the times, the policymakers/ judges as interpreters of law find it likely to consider the standpoints in major religious orders also as law is strongly connected to morality. This paper attempts to take a look at the position of some major religions on suicide/ attempt to commit suicide. Hindu religion considers suicide or attempt to commit suicide attempt as a Mahapataka (cardinal sin) to be meted with severest punishments. However, religious suicides have been exempted from these punishments. In Jain religion also, suicide or suicide attempt is generally condemned but suicide for religious purposes has been eulogized. Sikh religion considers human body as a precious gift from God not to be wasted away in any case. Buddhism and Islam also disapprove the killing of self. The Christian religion holds that life is gift of God and no human being has any right to terminate it except in case of sacrifice for others. The study shows that suicide/ suicide attempt has been strongly condemned by almost all the religions barring a few exceptions in Hindu, Jain and Christian religions. The present paper analyses the religio-moral aspect of attempt to commit suicide and, through judicial scrutiny, its intertwining with law/ constitutionalism.

1. Introduction

Law and morals often intersect and there can be no doubt that historically at least law and morals were closely related and that in many areas the law continues to look upon its function as the enforcement of morals, the reinforcement of moral standards in society, and the punishment of

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moral depravity.¹ Though the question of morality normally arises with laws relating to sex and acts evincing moral depravity like cheating but the question of birth and death has moral significance.² It is the sanctity of human life which is said to be defaced when one commits suicide and the question of morality, therefore, arises. The sanctity of human life thus makes the morality of suicide traceable in its religious context. In the cases of suicide/ attempt to commit suicide³, a person asserts an absolute right to dispose of his body in any way he likes. As human assertions are rooted deeply in their religious faiths, an analysis of moral acceptability of this practice of ending one's life by one's own act under different religions thus becomes imperative.

2. 'Suicide/ Attempt to Commit Suicide' under Various Religions

2.1. Hindu Religion

The question whether ending one's life is a sin agitated the minds of many writers on *Dharmasastra*. Many refer to a Vedic passage, 'one who desires heaven should not (seek to) die before the appointed span of life is at an end (of itself).'⁴

The *Dharmasastra* writers generally condemn suicide or an attempt to commit suicide as a great sin. According to Parasara (IV.1-2), if a man or woman hangs himself or herself through extreme pride or extreme rage or through affliction or fear, he or she falls into hell for sixty thousand years.⁵ Manu says that no water is to be offered for the benefit of the souls of those who kill themselves.⁶ The *Kurmapurana* also prescribes that for him who kills himself by means of fire, poison and the like, no cremation and no offering of water is prescribed. If water

¹ Burton M. Leiser, *Liberty, Justice and Morals* 19 (1973) quoted in *P. Rathinam Patnaik v. Union of India*, AIR 1994 SC 1844, para 81.

² *P. Rathinam Patnaik v. Union of India*, AIR 1994 SC 1844, para 85.

³ Attempt to commit suicide is an offence under Section 309 of the Indian Penal Code, 1860 which reads thus- '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.'

⁴ P.V. Kane, *History of Dharmasastra*, 2nd Ed., Vol. II, Part-II, 927 (1974).

⁵ *Id.*

⁶ *Manusmriti*, V. 89.

and *pinda* (oblations) are offered to such people (who die willfully, e.g. suicide in water through wrath or sorrow), such water and *pinda* do not reach them and perish in the mid-air.⁷ Gautama (14.11) prescribes that no mourning need be observed for those who willfully meet death by fasting, or by cutting themselves off with a weapon or by fire, or poison or water or by hanging or by falling from a precipice.⁸

Thus, the writings of the *Dharmasastrakaras* indicate that suicide or an attempt to suicide was condemned as a cardinal sin (*Mahapataka*), and such sinners were not to be cremated nor any funeral rites were to be performed for them. However, religious suicides were not subject to these punishments.⁹

Religious Suicides:¹⁰

1. *Mahaprasthan* (starting on the Great Journey) i.e., terminating the life towards an end. It was a recognized form of exit from this world by undertaking the journey from which one realized, he had to arrange for self-cremation by preparing and igniting the pyre will never return. The pilgrim for this journey was advised to walk on and on till he dropped down dead or perished in the Himalayan snow. But if these two events were not himself.¹¹
2. Drowning at the confluence of sacred rivers like Ganga and Yamuna and in holy places like Baranasi.¹²

⁷ P.V. Kane, *History of Dharmasastra*, 2nd Ed., Vol. IV, Part-II, 301 (1973).

⁸ *Supra* note 4 at 926.

⁹ K.N. Bagchi, *Poisons and Poisoning: Their History and Romance and their Detection in Crimes*, 114 (1969).

¹⁰ *Id.*

¹¹ Govardhana and Kulluka, the two commentators of Manu (Medhatithi's commentary on Manu), say that a man may undertake the *Mahaprasthan* (the great departure) or a journey that ends in death when he is incurably diseased or meets with a great misfortune, and that because it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide. See F. Max Mueller, Ed., *Sacred Books of the East*, Rep. Vol. 25, 204 (1967).

¹² At extremely holy places like Prayaga, the Saraswati and Benares persons were allowed to kill themselves by drowning with the desire of securing release from *samsara*, i.e. the mortal world. The Salyaparva states whoever abandons his body at Prthudaka on the northern bank of the river Saraswati after repeating vedic prayers would not be troubled by death thereafter. (*Supra* note 4).

3. Falling from a cliff at Amarakantaka.¹³
4. Sacrificial fire or in self lit fire at holy places like Baranasi. This was specially recommended for ascetics and for those who undertake *mahaprasthanas*.
5. Starvation as a means to salvation undertaken in holy places.

F. Max Mueller has also given references of these practices from Manu's Code.¹⁴

In later years, the *Puranas* and *Smritis* also prescribed the *Sati* or self-immolation of a woman, either *Sahamarna* (with the dead husband) or *Anumarna* (after the husband); suffering from incurable diseases or inability to perform religious duties due to old age as religious suicides.¹⁵

The *Dharmasastras* also provide a reference that a man guilty of Brahmana murder, as a penance was allowed to meet death at the hands of archers in a battle who knew that the sinner wanted to be killed in that way for expiation or the sinner may offer himself head downwards in fire.¹⁶ In the same manner, the drinker of spirituous liquor expiated his sin by taking boiling wine, water, ghee, cow's milk or urine and dying thereby.¹⁷ According to Anusasnaparva (25.62-64), if a man who knows the Vedanta and understands the ephemeral nature of life, abandons life in the holy Himalayas by fasting, he would reach the world of *Brahma*.¹⁸

¹³ The Matsya-purana eulogises the peak of Amarakantaka by stating 'whoever dies at Amarakantaka by fire, poison, water or by fasting enjoys the pleasures. He who throws himself down (from the peaks of amarakantaka) never returns (to *samsara*, i.e. the mortal world).' Matsyapurana 186.34-35 as quoted in P.V. Kane, *supra* Note 4 at 925.

¹⁴ F. Max Mueller, *supra* note 11. He mentions that in the chapter on 'The Hermit in the Forest,' Manu's Code (Shlokas 31 and 32) says:

31.Or let him (forest hermit) walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to eternal rest (till the body fell down to rise no more).

32.A Brahmana having got rid of his body by one of those modes (i.e., drowning, precipitating, burning or starving) practiced by the great sages, is exalted in the world of Brahmana, free from sorrow and fear.

¹⁵ *Supra* note 9 at 115.

¹⁶ Manu XI. 73. Also Yajnavalkyasmriti 111.248 as quoted in P.V. Kane, *supra* note 4 at 925.

¹⁷ Manu XI, 90-91, Yajnavalkyasmriti 111.253 as quoted in P.V. Kane, *supra* note 4 at 925.

¹⁸ *Id.* There are also historical examples of religious suicides provided by Epigraphy. The Khairha plates of Yasahkarnadeva (dated Kalacuri Samvat 823, i.e., 1073 A.D.) narrate that King Gangeya obtained release alongwith his one hundred wives at the famous Banyan tree of Prayaga (E.I. Vol. XII, p. 211). King Dhangadeva of the Chandella dynasty is said to have lived for more than 100 years and to have abandoned his body at Prayaga while

From the above account it is clear that barring the exception of religious suicides, suicide or attempt to commit suicide under the passion of guilt, anger or so has been strongly condemned by almost all the writers of the *Dharmasastras*.

There are also references in the *Dharmasastras* regarding *prayascitta* (expiation) of the sin of attempting to commit suicide, Chagleya holds that *prayascitta* for a sin frees a sinner from the consequences of sins committed unintentionally but no penance exists which frees a man from the consequences of a sin knowingly committed except in cases of *uppatakas* (lighter sins) and in attempts at suicide.¹⁹ If a person intending to commit suicide by entering water or fire or by hanging himself or by taking poison or by falling from a precipice or the dome of a temple or by cutting his belly with a weapon or by fasting, does not die, but luckily lives, he has to undergo a *prayascitta* for 3 years.²⁰

2.2. Jain Religion

Though in Jain religion also, suicide or attempt to suicide is generally condemned but it is permissible in case of resolving on death by fasting for religious purposes. The *Ratnakarandasravakacara* (Chap.5) of *Samantabhadra* (about 2nd century A.D.) refers to the practice of *Sallekhna*, which consists in abandoning the body for the accumulation of merit in calamities, famines, extreme old age and incurable disease.²¹

contemplating on Rudra (E.I. Vol. I, p.140). The Calukya King Somesvara after performing Yoga rites drowned himself in the Tungabhadra in 1068 A.D. (E.C. Vol. II, Sk. 136). The Raghuvamsa VIII. 94 describes that Aja, Lord Rama's ancestor, in his old age when his health was shattered by disease resorted to fasting and drowned himself at the confluence of the holy rivers, the Ganges and the Sarayu, and immediately obtained the position of a denizen of heaven. In the Ramayana, (Aranyakanda, Chapter 9), Sarabhanga is said to have entered fire. The Mrchhakatika (1.4) narrates King Sudraka as having entered fire. In the Gupta Inscriptions No. 42, the great emperor Kumaragupta is said to have entered the fire of dried cowdung cakes. (*Supra* note 4).

¹⁹ *Supra* note 5 at 64.

²⁰ *Prayascitta Prakarna*, p. 15 as quoted in P.V. Kane, *supra* note 7 at 95.

²¹ *Supra* note 4.

The Kalandri (Sirohi State) Inscription records the suicide of a Jain congregation by fasting in *samvat* 1389 (E.I. Vol. XX, Appendix No. 691, p. 98).²²

2.3. Sikh Religion

In Sikh religion, human body is considered as a precious gift of God not to be wasted away in any case. In the holy scripture of Sikh religion, i.e., *Sri Guru Granth Sahib ji*, the first Sikh Guru Sri Nanak Dev Ji has said:

*'Hatth kar mare na lekhe paave'*²³

i.e., one who kills oneself intentionally renders oneself unacceptable in the realm of God.

Another verse by the third Sikh Guru Sri Amar Das Ji says:

*'Aatamghati hai jagat kasai'*²⁴

which means that just as a butcher who mercilessly slaughters an animal, commits an atrocity on such animal; in the same way, a person who commits suicide, commits an atrocity on the whole of the humanity.

A verse by Bhakt Sri Ravidas Ji runs thus:

*"Bahut janam bichhre thhe madho, eh janam tumhare lekhe"*²⁵

which means that after having been parted from God for the last so many of the births, I owe this birth of mine to Him. This body is for the worship of God.

Thus, the act of suicide is considered to be a heinous sin in Sikh religion as the human body is considered to be sacred to be put to the worship of God.

²² *Id.* at 928.

²³ *Sri Guru Granth Sahib Ji* at 226.

²⁴ *Id.* at 118.

²⁵ *Id.* at 694.

2.4. Buddhism

Nowhere in Buddhism has the killing of a living being been praised. Buddhism never glorifies or favours killing whether it is killing someone else or oneself. Though no direct reference to suicide has been made in Buddhist religion, a brief reference to condemnation of abetment of suicide has been found in the literature of the earliest Theravada sect of Buddhism which is as follows:

*Yo pana bhikkhu sancicca manussaviggahan jivita voropeyya, sathaharakan vassa pariyeseyya, maranavarnan va samvanneyya, maranaya va samadapeyya- Ambho purisa, kin tuyhimina papakena dujjivitena, matan te jivita seyyo ti iticittamano cittasankappo anekapariyayena maranavannan va samvanneyya, maranaya va samadapeyya-ayampi parajiko hoti asamvaso.*²⁶

i.e. if a monk kills someone intentionally or provides some weapon to a disgusted or disappointed person fed up with life, or praises death before him, or incites him to commit suicide by saying: "What is the use of leading such a (painful and disgusting) life! It is better to die!"- such a monk is considered to have committed a *parajika* offence (one of the gravest crimes). He loses the capacity to lead the life of a recluse in the company of the monks and is consequently expelled from the Sangha (Buddhist order) forever.

2.5. Islam

In Islam, suicide is strongly condemned. The holy scripture of Muslim religion, i.e., The Holy Quran (which contains the revelations made by God to Prophet Mohammed) categorically forbids suicide and warns of its dire consequences, i.e., the wrath of God (the Allah) in the world hereafter. The verses in the Holy Quran indicative of the condemnation of suicide are as follows:

²⁶ Parajika Rule No. 3, *Patimokkha*, R.D. Vadekar, Ed., 2 (1939); Parajika Rule No. 3, *Pratimoksasutram*, Nathmal Jatia, Ed., 7 (1976).

- i. "Spend your wealth for the cause of Allah, and be not cast by your own hands to ruin and do good. Lo Allah loveth the beneficent."²⁷
- ii. "And kill not yourselves. Lo Allah is ever merciful unto you. And whoso doeth that through aggression and injustice, we shall cast him into Fire and that is ever easy for Allah"²⁸

The second authentic source of Muslim religion is *hadis* and *sunna*,²⁹ wherein also suicide is condemned. According to Hazrat Jandab-Bin-Abdullah, the Prophet Hazrat Mohammed (P.B. U.H) says- 'Before you people there lived a person who got his hand injured. He did not tolerate the pain and severed his hand with a knife. His blood did not stop and he died. Allah said my man killed himself in haste. I have closed the door of Heaven on him.' (Muslim Sharief). Hazrat Abu Huraira (Raz.) quotes the Holy Prophet (Sal'am) to have said that if a man commits suicide in the world, he will be given the similar punishment in the Hell (Bukhari, Muslim).³⁰ Hazrat Abu Huraira (Raz.) also quotes the Holy Prophet (Sal'am) to have said that he who chokes his own throat to death will continuously have his throat choked in Hell and he who wounds himself to death will continuously be wounded in Hell (Bukhari).³¹ Hazrat Jabir (Raz.) says that the Holy Prophet (Sal'am) refused to say the funeral prayer for the wounded man who happened to commit suicide by piercing an arrow into his throat (Ibn-e-Habban).³² Hazrat Abu Qulaba quotes Hazrat Sabit-Bin-Zahaak (Raz.) to have said that.... he who commits suicide with a certain thing will be killed with that very thing on the Day of Judgement.³³

The above Qoranic references as well as the references from the *hadis* and *sunna* clearly show that suicide is totally against the teachings of Islam. The Muslim religion considers suicide as one among the gravest sins, for which there is no pardon.

²⁷ *The Holy Quran*, Sura: Baqr, Ayat 195.

²⁸ *The Holy Quran*, Sura: Nisa, Ayat 29-30.

²⁹ The term *hadis* is applied to the story of a particular instance or occurrence, while the *sunna* is the rule of law deduced from the instance or occurrence i.e. the practice of the Prophet or his model behavior.

³⁰ Sahbanul Hind Maulana, *Dozakh Ka Khatra (Fear of Hell)*, Mohd Hanif Khan, Translator, 174 (1994).

³¹ *Id.*

³² *Id.*

³³ *Id.* at 175

2.6. Christian Religion

In the Bible, the holy scripture of the Christian religion, there are ten guiding principles that are popularly known as Ten Commandments. These Ten Commandments are essential for Christians and these state very clearly that life is gift of God and no human being has any right to terminate it. The Doctors of the Church, whose interpretations of the biblical texts have been accepted by all, also affirm the same notion.

According to the teachings of the Church and the Bible, suicide is direct taking away of one's own life. A person directly takes away his life when he places a cause whose proper effect is death, and he places that cause in order that death may follow.

In the entire Bible, we find three forms of suicide through which individuals have given up their lives voluntarily.

1. For the good of others e.g., the death of Jesus Christ on the Cross.
2. To take revenge, e.g., the death of Samson.³⁴
3. Due to the guilt feeling e.g., the death of Judas.³⁵

Among these three forms, the death of Jesus is considered according to the plan of God and it has a sacrificial aspect. The Bible and the Church never compare it with any other human death. Though the death of Jesus on the cross was willed yet it has not been condemned due to its

³⁴ *R.S.V. Bible*, Judg. 16:29-30, 235 (1993). According to the biblical account, Samson, born by God's plan to an Israelite father to deliver Israelites from Philistines was granted supernatural strength by God in order to combat his enemies, the Philistines. The secret of his strength lay in the locks of his hair, which he disclosed to his beloved Delilah, a Philistine woman planted by the Philistines to know Samson's secret of strength. She got his hair shaved off. Debilitated, he was captured by the Philistines who blinded him and imprisoned him. To avenge his eyes, he later killed himself by pulling the central pillars of the Temple of Dagon, a Philistine deity, where he was summoned, killing a huge number of Philistines with him.

³⁵ *Id.*, Mt. 27:3-10 at 31. Judas was one of the Twelve Apostles of Jesus Christ. He is infamously known for his kiss to identify Jesus to arresting soldiers and betrayal of Jesus to the hands of the chief Sanhedrin priests in exchange for a payment of thirty silver coins. Filled by remorse following his betrayal, he hanged himself to death.

sacrificial aspect. The Church and the Bible hold that life is a gift of God and nobody has a right to will his own or anybody else's death.

3. Constitutionalism and Religio-moral Aspect of 'Attempt to Commit Suicide'

In *Maruti Shripati Dubal v. State of Maharashtra*³⁶, a Division Bench of the Bombay High Court, striking down S.309 of IPC which declares attempt to commit suicide as an offence as unconstitutional being violative of Articles 14 and 21³⁷ of the Constitution, inter alia, also made reference to the religio-moral ideology in the *Dharmasastras* underlying the acts of suicide/ attempt to commit suicide. The Court then observed:

The attitude of the Hindu and Jain religions depicted in the writings of the Dharmashastrakararas shows that though ordinarily suicide was disapproved, in certain circumstances it was tolerated, condoned connived at, accepted and even acclaimed depending upon the person and the particular circumstances. What is instructive to note is that the exceptions made were more or less in conditions similar to those which are pleaded today as circumstances extenuating suicides or attempts to commit them....³⁸

The Supreme Court of India also, confirming the above judgement of the Bombay High Court, i.e., *Maruti Shripati Dubal v. State of Maharashtra*, inter alia, derived support for its decision also from the religiosity of the act of suicide. The Court noted:

Every individual enjoys freedom of religion under our Constitution, vide Article 25. When the earthly objectives are complete, religion would require a person not to cling to the body. Shri G.P. Tripathi (in a paper presented at the World Congress on Law and Medicine held at New Delhi) stated that a man has moral right to terminate his life, because death is simply changing the old body into a new one by the process known as Kayakalp, a therapy for rejuvenation.... In the Encyclopaedia of Religion, Vol. 8 (1987), mention has been made at pp. 541 to

³⁶ 1987 Cri. L.J. 743.

³⁷ The Court held that right to life as recognised by Article 21 will include also a right not to live or not to be forced to live. To put it positively, it would include a right to die or to terminate one's life. There is nothing unnatural about the desire to die and hence with the right to die. (Para 10, *Id*). Regarding violation of Article 14 of the Constitution, the Court said that the equality guaranteed by Article 14 stands violated by the provisions of S.309, IPC because it treats all attempts to commit suicide by the same measure without regard to the circumstances in which the attempts are made.

³⁸ Para 14, *Id*.

547 as to how "life" has been understood by different religions. After discussing the subject as understood by the primitive societies, Judaism, Christianity, Hinduism and Buddhism, the discussion has been included by stating that the very act of posing the question "What is life?" produces an initial sense of bafflement and perplexity. It has been stated thereafter that a precise, distinct and universally acceptable concept does not accompany the use of the word "life"; and that posing of the above query brings in its wake a sense that life is an "inexhaustible storehouse of mysteries, a realm of endlessly self-perpetuating novelties, in which the solution to any given problem gives rise to a plethora of other questions that beckon the always restless, never contented mind of Homo Sapiens to seek further for additional answers or, at least, to search out more intellectually refined, morally elevating, and spiritually salutary ways of pursuing the quest". So, life does not end in this world and the quest continues, may be after the end of this life. Therefore, one who takes life may not really be taken to have put an end to his whole life. There is thus nothing against religion in what he does. Insofar as our country is concerned, mythology says Lord Rama and his brothers took Jalasamadhi in river Saryu near Ayodhya; ancient history says Buddha and Mahavira achieved death by seeking it; modern history of Independence says about various fasts unto death undertaken by no less a person than Father of the Nation, whose spiritual disciple Vinoba Bhave met his end only recently by going on fast, from which act (of suicide) even as strong a Prime Minister as Indira Gandhi could not dissuade the Acharya. The aforesaid persons were our religious and spiritual leaders; they are eulogised and worshipped. Even the allegation against them that they indulged in a non-religious act, would be taken as an act of sacrilege. So, where is non-religiosity in the act of suicide so far as our social ethos is concerned? And it is this ethos, this social mores, which our law has to reflect and respect.³⁹

Thus in the above two cases the judiciary took a view that suicide /attempt to commit suicide is not anti-religious. However, it may be pointed out that the judiciary here took support actually from the 'exclusions' prescribed under various religions.

However, a 5-Judge Bench of the Supreme Court, in *Gian Kour v. State of Punjab*⁴⁰ held that there is no ground to hold that S.309, IPC is unconstitutional. Restoring S.309, IPC back to the statute book, the Court held that S.309, IPC prescribing punishment for attempt to commit

³⁹ Paras 77-81, *Id.*

⁴⁰ AIR 1996 SC 946; (1996) 2 SCC 648.

suicide is not violative of Article 21 as right to life does not include right to die. Article 21 provides protection of life, a right to live with dignity up to natural death, including a dignified procedure of death, but does not include unnatural extinction of life. Further, it held that S. 309, IPC is not violative of Article 14 on ground of being barbaric and arbitrary as S. 309 confers a wide discretion in the matter of sentencing as it does not prescribe any minimum punishment nor does it make the sentence of imprisonment compulsory. This will fulfil the requirement of mitigation of the severity of the provision in cases of suicide attempts made under various mental and social pressures.

4. Conclusion

From the above discussion, it is clear that, suicide/attempt to suicide has been strongly condemned as immoral by almost all the major religions barring a few exceptions in Hindu religion (where it has been viewed with approbation in certain circumstances for religious purposes which was also allowed in case of Jain religion) and in Christianity (where offering the body for some higher or sacrificial purpose is not seen with disapproval). The law and the judicial approach have also brushed aside the approbation for attempt to commit suicide. The judiciary's stand on attempt to commit suicide and the punishment for it has been guided by moral considerations. In *Maruti Shripatati Dubal and P.Rathinam Patnaik*, the judiciary though claiming to place reverence, *inter alia*, to the religio-moral aspects actually was relying on 'exceptions' under different religions, however, the case of *Gian Kour*, through the long arm of the Constitution again brought the law in consonance with the religio-moral stand in all the religions. All the religions have shown disapprobation for the act of suicide/ attempt to commit suicide. By stamping with disapproval any act of curtailment of natural life by an unnatural death in *Gian Kour*, the Supreme Court through constitutional provisions has interpreted Section 309 of the IPC in the spirit of the religio-moral aspects of attempt to commit suicide as all religions

as well as the law see such attempts as opposed to the sanctity of life, though at the same time carving a scope for those resorting to such attempts under social, economic or mental duress.
