

ATTEMPT TO SUICIDE-THE WAY FORWARD.

Tasneem Kawoos, Student, Aligarh Muslim University.

Dr.Yuman Kawoos., M.D Psychiatry.

INTRODUCTION-Each and every activity on the surface of earth is motivated by the sole objective of sustaining life, improving its quality. Advancement, progress and development presupposes life but juxtaposed to the technical progress of the contemporary world scenario, is a contrasting truth of the popularity of the will to end life. Where it could have been asserted that a technologically advanced world would add worth and meaning to life, what emerges as reality is a sharp contrast to the assumption. What is to be appreciated as the primary inference is that it represents an inability to cope with distress and hopelessness. The topic has been under discussion among sociologists, psychiatrists, psychologists and the policy makers suggesting thereby that it can't be approached from a pigeon hole view and needs to be understood in the broader purview of law, society and medicine, taken holistically. Suicides are becoming common, across the different countries of the world, and thus the interventions are actively being made by state through punitive and reformatory measures. The efficacy of these measures is however an issue of debate, however the objective remains unaltered, which is to protect life. Deterrence is one of the grounds on which the penal treatment of suicide can be justified but justice suggests otherwise. This debate in Indian law surfaced from the challenges to the constitutional validity of Article 309, Reports of Law Commission suggesting its removal from the code and the breakthrough in the form of Mental Healthcare Act, 2017.

MEANING AND DEFINITIONS;

Understood in common parlance and suggestive from the etymology, Suicide is an act of intentionally killing oneself, derived from "sui" which means oneself and "cedare" which means to kill. Historically, the first use of word suicide, as claimed by some, is traced back to Sir Thomas Brown in the 1635 edition of *Religio Medici*,¹ but others credit Charleton for using it in 1651. Some French historians found its use either in the Abbe Frevot in 1734 or the Abbe Desfontaines in 1737.² In 1968, the World Health Organisation defined suicidal act as "the injury with varying degree of lethal intent" and that suicide may be defined as "a suicidal act with fatal outcome". Suicidal acts with non fatal outcome are labeled by World Health Organisation as "attempted suicide." Although there is no universally accepted definition of suicide, Chad Varah has collected a variety of definitions from those who tried:

Suicide is the intentional tendency to take one's own life. Erwin Ringel (Austria)

Suicide is the intentional act of taking one's life either as a result of mental illness (these illnesses frequently though not always causing distress to the individual carrying out the act) or as a result of various motivations

¹ G Minois, *History of Suicide Voluntary Death in Western Culture* (The John Hopkins University Press, 1999).

² Philippe Courtet (ed.), *Understanding Suicide From Diagnosis to Personalised Treatment* (Springer, 2016)4.

which are not necessarily part of any designated mental illness but which outweigh the instinct to continue to live. Charles Bagg (England)

The decision to commit suicide is more often prompted by an inner desire to stop living than by a wish to die. Suicide is a determined alternative to facing a problem that seems to be too big to handle alone. Walter Hurst (New Zealand) I vengeful, killer, hate-inspired-so I die I guilty, sinner, trapped-escaping life I hoping rebirth, forgiveness divine-live again. Sarah Dastoor (India).³Shneidman has defined, "Suicide is an intended act of self-inflicted, self-intentional cessation."⁴ but Motto observed, "Suicide is self-inflicted, self-intentional death."⁵ Freud under his psychoanalysis theory, understood suicide as "a murder in reverse."⁶According to Lacan, suicide represents displacement of the object of aggression before the impossibility of releasing it upon the other, it is released upon oneself.

EXAMINING THE NATURE OF SUICIDE-

1.AN OFFENCE;

Several lines of research have analysed the repercussions of categorizing suicide as an offence, which of course if successful can't be punishable but otherwise, has been penalized by certain legal systems. In this regard, a distinction is to be appreciated between private and public spheres of life and activity. While the former are kept out of the jurisdiction of state, in the latter, the state has both the power and duty, to intervene. As regards suicide, attempt and abetment are to be dealt separately. An important example of this can be found in the Suicide Act, 1961 of England, which decriminalized attempt but penalized abetment. Hall concludes that, "There was, it seems, an identifiable strategy. Essentially this consisted of setting into practice a 'double taxonomy in the field of moral regulation. In each domain there is an increased regulation by the state, a greater intervention in the field of moral conduct - sometimes making more refined distinctions and often taking a more punitive and repressive form than previously existing mechanisms of regulation and control. At the same time other areas of conduct are exempted from legal regulation - and, so to speak, from the gaze of morality...". This 'double taxonomy as defined by Hall stands as a remarkably apt description of the Suicide Act, which exempted suicide from legal regulation, but made "aiding, abetting, counselling or procuring another's suicide" a new and very serious crime.

The source of this strategy, according to Hall, is to be found in the Woftenden Report on homosexuality and prostitution which set out a "new principle for articulating the field of moral ideology". This principle, Hall says, was a clear separation of public and private spheres of personal behaviour; a sharp distinction between

³ C. Varah (ed.), *Answers to Suicide* (London, 1978).

⁴ Edwin S. Shneidman, *Definition of Suicide* (Rowman and Littlefield Publishers Inc., 2004)

⁵ J.A. Motto, 'Suicide and Suggestibility' (1967) 124(2) Am. J. Psychiatry 252.

⁶ Susan Kahn and Andreas Liefoghe, 'Thanatos: Freudian manifestation of Death at Work' (2014) 20(1) Cult. Organ. 53.

morality and illegality, between what was a 'sin' and what was a 'crime'. It was the Wolfenden Report that made the much quoted statement that " Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business."

Newburn agrees about the importance of what he says has become known as the "Wolfenden strategy" private morality". What happened, according to Newburn, is that "the boundaries of what is considered to be private behaviour are extended and the areas of public behaviour are more minutely defined and subjected to increased surveillance". The practical effect of the decriminalisation was to re-define successful suicide as "private behaviour", outside the state's jurisdiction, but attempted suicide as "public behaviour", and a legitimate object of state intervention. This is a very balanced approach and suggests that moral sanctions are effective curbs on suicide. Empirical studies also yield a similar observation. Only 25 countries have criminalized suicide. There are no reports or data suggesting that decriminalization promotes suicides. In fact UK decriminalized suicide in 1961 through the Suicide Act because of inefficacy of legal sanctions as a deterrent.

2.A PSYCHOLOGICAL DISABILITY- WHO reports that worldwide, more people die by suicide than by any other form of violent death, including homicide and terrorist attack.⁷ Obviously, it can't be a normal course of conduct. . Suicidal behavior is an offspring of the interplay of social, environment, biological and cultural factors such as cultural belief, social standards, gender bias, educational problems, income levels, living status, growing aspirations and pressure of modern life style. A person can't under a stable state of mind attempt to kill himself. The will for survival is stronger than the will to die and its only under debilitating circumstances, a the former takes over the latter. Suicide is a cry for help in helplessness. The psychology of suicide is based in depression reflecting the feelings of despair, sadness, hopelessness and alienation. It represents a regression from reality. It is suggestive that the mental and emotional burden on a person increases to an extent that he finds recourse in death. Suicide attempts have been associated with a history of psychiatric disorders situational context and social stresses also play a major role in suicidal behavior and these social factors may vary across cultures. Both in developing and developed countries majority of people (up to 90%) who commit suicide have a diagnosable mental disorder. Risk of suicide is a 3 to 4 times higher in psychiatric patient than general population. Depressive disorder account for 80 percent, schizophrenia accounts for 10 percent, dementia/delirium for 5 to 25 percent. Substance abuse and antisocial personality disorder in person less than three 30 years of age, mood disorders and cognitive disorders are often associated with suicide in those more than 30 years age.⁸ Regarding the psychological genesis of suicide, sociologists and psychologists have offered explanations. Durkheim propounded that societal stressors mainly contribute in suicidal behaviour. He defined suicide as , "all types of death that results, directly or indirectly, from an act, positive or negative, committed

⁷ WHO, *World Report on Violence and Health*, (WHO, 2002).

⁸ Amrita Yadava, Nov Rattan Sharma, *Suicide :Attitude and Prevention* (Global Vision Publishing House, 2013) 249.

by the victim himself, knowing full well the intended results".⁹ Sigmund Freud, the father of psychology contemplated the concept of psychosis projecting suicide as resultant of mental disorder needing medical attention and intervention.¹⁰ The stressors, whatever be their origin warrant that the person is provided with due care and sympathy. The sufferer is to be understood as a victim of stress, anxiety and depression who should in any case be exposed to any further risks that further deteriorate his condition.

CRUDE SUICIDE RATES (PER 100000 POPULATION).

GLOBAL AVERAGES

BOTH SEXES	10.6
MALE	7.7
FEMALE	13.5

¹¹

LEGAL PERSPECTIVE ON SUICIDE-

1. THE CASE FOR CRIMINALISATION- Suicidal tendencies are indicators of behavioral deviation or aberration warranting legal intervention to create deterrence. Though religion and ethics are also restricting factors yet they are soft in comparison to legal sanctions in instilling deterrence. The objective of a punishment is to develop repulsion from the very fear of it, to inflict a deterrent effect on the prospective criminal himself and to set a precedent for others by actually punishing the offence, so that they don't commit the crime fearing the consequence i.e. the punishment. The punishment should act as a restraint on the offender and others as well and prevent him from engaging in that crime. State can't look into the minds of people bearing suicidal tendencies, it can only ensure through stringent measures that the execution is discouraged to the maximum possible extent. It can't be silent on such behaviours that are detrimental to the life of its citizens, such silence can amount to encouraging such behaviours. Cesare Beccaria remarks, "The end of punishment, therefore is no other than to prevent the criminal from doing further injury to the society, and to prevent others from committing the like offence."¹²

⁹ E Durkheim, *El suicide* (Alal Universitari, 1982).

¹⁰ Sigmund Freud, *Introductory Lectures on Psycho analysis-Complete Psycho-Logical works of Sigmund Freud* (Hogarth Press, 1972).

¹¹ WHO, Suicide Data; Suicide Crude Rates: data tables, World health statistics, 2019, available at: <https://apps.who.int/gho/data/node.sdg.3-4-viz-2?lang=en> (last accessed 12 July 2020).

¹² Beccaria, *On Crimes and Punishments*, (1764) 27.

2.THE CASE FOR DE-CRIMINALISATION; Criminalisation of suicide has been abandoned by most of the legal systems on the basis of empirical researches reflecting the inefficiency as well as human rights considerations. Further many legal systems found it irrelevant to criminalise an attempt, the act of which wasn't an offence. In *Com. v. Dennis*,¹³ Dennis was indicted for an attempt to commit suicide. Held, that a demurrer to the indictment should have been sustained; that all attempts were regulated by statute in Massachusetts, and that only attempts to commit acts which if completed would constitute crimes and be punishable were provided for; that suicide is not punishable, and, therefore, the attempt to commit it cannot be punished. The court says: "The end of punishment is the prevention of crime, and it may have been thought at least impolitic to punish an attempt to do that which is itself dispunishable, when the direct effect of the penalty must be to increase the secrecy and efficiency of the means employed to accomplish the end proposed." This ruling of the court highlights a very reasonable consideration for decriminalisation. Under an impending threat of being punished at a failure of the act, the already distressed person attempting suicide will try modes that are sure to achieve the objective, i.e: death. Thus, though the purported objective of criminalization is to save the life of the person attempting suicide, it may conversely minimize the chances of his survival. He might also opt for multiple methods at the single attempt to achieve success in the act and evade any chances of survival and the resultant punishment. Also, threat of punishment leads to under-reporting and consequently, the magnitude and nature of problem is either not known or wrongly known. A World Health Organization report titled "Preventing Suicide, A Global Imperative", notes that "no data or case-reports indicate that decriminalization increases suicides; in fact, suicide rates tend to decline in countries after decriminalization. It is possible that decriminalization will increase the reporting of suicides once fear of legal recriminations is eliminated. This allows for more accurate estimates of the true extent of the issue. When suicide is considered a criminal act, suicide attempts are often hidden and suicide deaths are unreported, thus giving the false impression that suicidal behaviours are less prevalent."¹⁴ It is the provision of support mechanisms, instead of the threat of prosecution, which can serve the object of saving lives. The penal provisions do nothing but criminalise survival, for if the person succeeds in suicide, he can't in any probability be punished.

SECTION 309 OF THE INDIAN PENAL CODE- Sec 309 of the Indian Penal Code, 1860 states – "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."¹⁵ The Section has been under fire on several occasions by the Law Commission, NGOs and other human rights organizations. It is seen to be inconsistent with the considerations of mental health and betterment of the individuals it seeks to protect. The rates of suicide in India are alarming and hence an intervention is necessary for despite having the penal provision, there has been no apparent deterrent effect.

¹³ 105 Mass. 162.

¹⁴ Shekhar Saxena, Etienne Krug, Oleg Chestnov, (ed) *Preventing Suicide: A Global Imperative* (WHO, 2014).

¹⁵ Indian Penal Code, 1860 Section 309.

S.NO.	YEAR	TOTAL NUMBER OF SUICIDES	MID-YEAR PROJECTED POPULATION(IN LAKH)	RATE OF SUICIDES (INCIDENCE OF SUICIDE PER ONE LAKH OF POPULATION).
1	2	3	4	5
1	2014	131666	12440.4	10.6
2	2015	133623	12591.1	10.6
3	2016	131008	12739.9	10.3
4	2017	129887	13091.6	9.9
5	2018	134516	13233.8	10.2

The Law Commission in its 210th report titled, “**Humanization and Decriminalization of Attempt to Suicide**,” has elaborated certain potential arguments against the section. Suicide is one of the important factors contributing to premature or unnatural end of precious human lives. It is a global problem and the World Health Organization has in regard to attempted suicide expressed the view that punishing with imprisonment a behaviour consequent to either a mental disorder or a social difficulty gives completely a wrong message to the population, and that the WHO encourages efforts for the prevention of suicide. The Commission recommended that the criminal law must not act with misplaced overzeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture. It is unreasonable to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his own life. In such a case, the unfortunate person deserves sympathy, counselling and appropriate treatment, and certainly not the prison. Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of whether it is Constitutional or unconstitutional. The repeal of the anachronistic law contained in Section 309 of the Indian Penal Code would save many lives and relieve the distressed of his suffering.¹⁶

APPROACH OF JUDICIARY-

The concerns were also reflected in the ruling of Delhi High Court; A young man had allegedly tried to commit suicide presumably because of over emotionalism. It is ironic that Section 309 I.P. C. still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one's own life would have escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed.

¹⁶ Law Commission Of India, 210th Report on Humanization and Decriminalisation of Suicide (October, 2008).

Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive Sections of the Penal Code. **The continuance of Section 309 I.P.C. is an anachronism unworthy of a human society like ours. Medical clinics for such social misfits certainly but police and prisons never. The very idea is revolting.** This concept seeks to meet the challenge of social strains of modern urban and competitive economy by ruthless suppression of mere symptoms - this attempt can only result in failure. Need is for humane, civilized and socially oriented outlook and penology. Many penal offences are the offshoots of an unjust society and socially decadent outlook. No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 I.P.C. which has no justification right to continue remain on the statute book."¹⁷ Further the section has also been held to be unconstitutional, being violative of the right to live when the right is read to include the right to die. Right to life is the right to live a dignified life and if a person thinks his life is no longer so, he can't be compelled to live such a life. Section 309, IPC is ultra vires the Constitution being violative of Articles 14 and 21 thereof and must be struck down. It was pointed out that the fundamental rights have their positive as well as negative aspects. 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. The freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognized by Article 21 of the Constitution will include also a right not to live or not to be forced to live. To put it positively, Article 21 would include a right to die, or to terminate one's life. The Court further pointed out that the language of Section 309, IPC is sweeping in its nature. It does not define suicide. In fact, philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. While some suicides are eulogized, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. The want of a plausible definition itself makes the provisions of Section 309 arbitrary and violative of Article 14. There are different mental, physical and social causes which may lead different individuals to attempt to commit suicide for different ends and purposes, there being nothing in common between them. Section 309 makes no distinction between them and treats them alike, making the provisions thereof arbitrary. Further, the Court observed that if the purpose of the punishment for attempted suicide is to prevent the prospective suicides by deterrence, the same is not achieved by punishing those who have made the attempts, as no deterrence is going to hold back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. The provisions of Section 309 are unreasonable and arbitrary on this account also. As is rightly said, arbitrariness and equality are enemies of each other. The blanket prohibition on the right to die on pain of penalty, it was pointed out, is not reasonable.¹⁸ The

¹⁷ *State v Sanjay Kumar Bhatia*, 1985 CriLJ 931.

¹⁸ *Maruti Shripati Dubal v. State of Maharashtra*, 1987 CriLJ 743.

Supreme Court examined the Constitutional validity of Section 309 in *P. Rathinam v. Union of India*¹⁹ with reference to Articles 14 and 21, the Supreme Court observed: "On the basis of what has been held and noted above, we state that Section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.

We, therefore, hold that Section 309 violates Article 21, and so, it is void. May it be said that the view taken by us would advance not only the cause of humanization, which is a need of the day, but of globalization also, as by effacing Section 309, we would be attuning this part of criminal law to the global wavelength." But this view of Supreme Court was overruled by a larger Bench in *Smt. Gian Kaur v. State of Punjab*²⁰ wherein Verma J., (as he then was) speaking for the Court, held that *P. Rathinam's* case was wrongly decided. It was held, "Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. To give meaning and content to the word 'life' in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The 'right to die', if any, is inherently inconsistent with the 'right to life' as is 'death with life.'"

RECENT DEVELOPMENT-MENTAL HEALTHCARE ACT,2017;

Section 115 of the Mental Healthcare Act, 2017 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. Several lines of research support the aforesaid provision by establishing a correlation between mental disorders and suicidal behaviors. Suicide is seen as a behavioral aberration, and is a complex interplay of social, cultural and psychological factors but it is infact, the mental condition of the person attempting to commit suicide which should be considered. It is a cardinal principle of criminal law that an act alone cant make a person guilty unless backed by the requisite intention which reflect the weight attached to mental state in criminal law. One of the two constituents of an offence is *mens rea* (guilty mind). It is important to hold a person liable for an offence that he should have committed that offence with the requisite intention. He can be excused of all liability if found wanting of intention. This is also reiterated in the *Mc Naghten* rules relating to the defence of insanity under the Section 84,

¹⁹ AIR 1994 SC 1844.

²⁰ AIR 1996 SC 946.

Indian Penal Code which states that nothing is an offence which was done by a person, who at the time of doing it was by reason of unsoundness of mind, is incapable of knowing the nature of the Act or that he is doing what is either wrong or contrary to law.²¹ The Mc Naghten rule places its reliance on “cognition” and states that if a man was laboring under such a defect so as not to know the nature and quality of the Act that he was doing or if he did know it, that he didn’t know he was doing what was wrong, he wouldn’t be guilty. According to scientific study, for every ten people who commit suicide nine of them have mental health problems.

In a report published in 2000 titled, “**PREVENTING SUICIDE A RESOURCE FOR GENERAL PHYSICIANS**,”²² the WHO stated that between 40% and 60% of people who commit suicide had seen a physician in the month prior to suicide; of these, many more had seen a general physician rather than a psychiatrist. In countries where the mental health services are not well developed, the proportion of people in suicidal crisis consulting a general physician is likely to be higher. Studies from both developing and developed countries reveal an overall prevalence of mental disorders of 80-100% in cases of completed suicide. It is estimated that the lifetime risk of suicide in people with mood disorders (chiefly depression) is 6-15%; with alcoholism, 7-15%; and with schizophrenia, 4-10%. A review found that 87% of the suicides were diagnosable with a mental disorder based on history from their friends and family following their death. and 27% of suicides in England between 2000 and 2010 had been in contact with mental health services in the year prior to their deaths.²³ It is estimated that from 87% to 98% of suicides are committed by people with some type of mental disorder. Broken down by type: mood disorders are present in 30%, substance abuse in 18%, schizophrenia in 14%, and personality disorders in 13% of suicides. About 5% of people with schizophrenia die of suicide. Major depression and alcoholism are the specific disorders most strongly correlated with suicide risk.²⁴ Depression and substance use disorders, mostly alcohol, are the most prevalent diagnoses among suicide victims.²⁵ The Act thus recognizes the need for rehabilitation and treatment rather than enforcing the doctrine of punishment as a deterrent.

CONCLUSION-Though through the Mental Healthcare Act, the psychological elements underlying the act have been recognized and duly addressed, it needs to be discarded as an irrelevant provision and further steps for rehabilitation and reform must be taken. It must be appreciated that the need is not to curb this behavior only at the manifest or symptomatic level but towards its very origins. Law ultimately should satisfy the test of progress and laws for suicide should be such as promote progress of human race and not its regression which is why the state should not be overwhelmed by the number of people living but their physical and mental well being as well. Thus it is not only important to see if the citizens are living, mere breathing of an individual

²¹ Indian Penal Code, 1860 Section 84.

²² Mental and Behavioural Disorders, Department of Mental Health World Health Organization Geneva 2000, available at: <https://apps.who.int/iris/handle/10556/67165>, (last accessed 10 July, 2020).

²³ Arsenault-Lapierre G, K.C., Turecki G, ‘Psychiatric diagnoses in 3275 suicides: a meta-analysis’ (2004) 4 BMC Psychiatry 37.

²⁴ Palmer BA, P.V., Bostwick JM, ‘The lifetime risk of suicide in schizophrenia: a reexamination’ (2005) 62 Arch. Gen. Psychiatry 242.

²⁵ Bertolote, J.M., Fleischmann, A, ‘Suicide and psychiatric diagnosis: A world wide perspective’ (2002) 1 World Psychiatry 181.

shouldn't be the end of law rather his health, in case of suicide, mental health should be taken into due consideration. Criminalising suicide has proven ineffective to curb the risk of people ending their lives, a more prudent approach would be to make life so favourable that death is not an option, that can of course not be achieved by material satisfaction of wants of all individuals but it is very important that the mental condition of individuals be taken seriously, interventions at earlier stages among people who display suicidal tendencies should be considered more seriously. Pressure at workplace, academic institutions can be effectively reduced through awareness programs, interventions that focus on health first, and mental health awareness should be the agenda of health policies. With the increase in pressures, the hopelessness among people will only increase. The need of the hour is to prevent them from succumbing to these pressures, which an impending fear of punishment has probably failed to achieve. The time is ripe to work on the causative factors, and to adopt a preventive rather than punitive approach. Suicide must essentially be understood as a culmination and actualization of self-destructive behavior which stems from unbearable mental pressure and the legislation needs to divert to the cause of mental health in this regard rather than resting on the notion of deterrence, which has been rejected by theory and experience alike.

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