

REVISITING THE CRIMINALIZATION
OF ATTEMPT TO SELF-ANNIHILATION:
A COMPARATIVE STUDY OF
BANGLADESH AND INDIA

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Abstract—Self-annihilation propensity is a crime, the happening of which no legal sanction can be attributed but the failure would fall under the purview of punishment. Attempt to commit suicide is considered as a conventional and argumentative phenomenon and it is deliberated as a global crux. Various religious textbook reproaches attempted suicide. At the very earliest period England treated this as crime but in the year of 1961 by incorporating an enactment they decriminalize suicide. In the Indian-Sub-Continent the British formulated and incorporated a section to give punishment on an attempted suicide. The law takes into account attempted suicide to be 'intentional', 'voluntary' and 'unaccidental' of a sane man eventually causes his departure. Since the advent of civilization, numerous factors tend few people to attempt suicide and after several attempts finally people achieve their goal towards a smashing distress from where they never come back to take any punishment of it. Thus, suicide and attempt to commit suicide is very complex issue. Instead of law mentioned by the Penal Code, it seems to be impossible to give a pause on it. Day by day due to several causes but mainly mental reasons the actions towards suicide increases. An attempted self-murder is often considered as the consequence of psychological trend of person who are not bold enough to confront the jeopardy of life. Countries like India, Bangladesh, Pakistan and few other countries still considered attempted suicide as crime while all the developed countries like European

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countries ceases attempted suicide to be a criminal offence. The view of World Health Organization in this perspective is completely against punishment, thus it will transmit a negative message to the population. Thus, the WHO patronizes endeavor for the preclusion of attempted on suicide and suicide. This article focused on the present context on suicide; attempt to commit suicide and punishment in Bangladesh. It also highlights the cessation of attempt to commit suicide as crime and amalgamated it in the Mental Health Act, 2018, more immensely and precisely. To this end a comparative study has been instituted between India and Bangladesh in order to achieve the goal.

Keywords: Suicide, Self-annihilation propensity, Mental-health, World Health Organization, Cessation as crime

I. INTRODUCTION

Suicide is one of the vital reasons that tend to untimely or unusual termination of invaluable existence of a human being. There are several ways that causes human death, and suicide is one of the twentieth among them¹. The term ‘suicide’ has been derived from the Latin word *suicidium* which is derived from *Sui Caedere* signifying ‘To Kill Oneself’. The Oxford dictionary states the term suicide as self-immolation, where one has done the act knowingly. Further it pointed out on the term ‘an attempted suicide’ where the person who commits the act survives². Law does not consider the term suicide as crime, but long-ago England regards this as felony³. Law only considers attempt to commit suicide as crime⁴. It is noteworthy to mention the word crime which has been defined by eminent writers as a harmful act⁵ or an intentional act⁶ or omission that violates the criminal law whereas an attempt connotes an act towards the commission of crime or here self-annihilation⁷. Section 309 of the Penal Code, 1860 articulates that, if any person intends to commit suicide s/he will be punished with simple imprisonment which may be

¹ Suicide in the World Global Health Estimates, <<https://apps.who.int/iris/bitstream/handle/10665/326948/WHO-MSD-MER-19.3-eng.pdf?sequence=1&isAllowed=y>> (last visited on 17 December 2020, p. 7).

² *Oxford Advanced Learner's Dictionary* 8th edn.

³ *Gangula Mohan Reddy v. State of A.P.*, (2010) 1 SCC 750 : AIR 2010 SC 327.

⁴ Ratanlal and Dhirajlal, *The Indian Penal Code* 755 (Lexis Nexis, 2017).

⁵ Baron Raffaele Garofalo, *Criminology* 33-34 (Boston, Little Brown and Company, 1914).

⁶ Paul W. Tappan, *Crime, Justice and Correction* 10 (McGraw-Hill Book Company Inc., 1960).

⁷ Dr. Sir Hari Singh Gour, *The Penal Law of India* 2562 (Law Publishers- Sardar Patel Marg-Allahabad, 1980).

enlarged with one year or with fine or both⁸. Thus, if a person flinging himself into a pit with a desire to drowning himself, and is carry on by other, is liable to be committed an offence as per section 309 of the Penal Code⁹.

The main purpose of criminal justice is to punish the person who commits it. To this end several theories of punishment¹⁰ had been incorporated and divided into two classes. The philosophies of one class of the theories are that criminal justice ensures the protection and beneficence of a State. However, the other classes track down the purpose of punishment as retaliation¹¹. So, as per law, in this case of section 309, theory of deterrence¹² may be applied as it was designed to deter others from committing the same crime in future. There are several doctrines on suicide, for instance, sociological, psychological, biochemical and environmental those place their views on suicide. There also exists enormous mental, physical and social reasons so far persuade various person as to take such abominable attempt to take their lives. Suicide recognizes no boundary as to sex, race, religion, caste, creed, age etc. Section 309 of the Penal Code fails to distinguish between them and thus make the provisions thereof arbitrary and unreasonably.

It has been reported by a reputed newspaper that, the Bangladesh Police admits on an average around 30 people commit suicide every day and, in the year of 2019, and the total count was 11,308 and 11,204 died after a suicidal attempt in 2018¹³. As we are having a law mentioned in section 309 of the Penal Code, the question may easily strike in mind that, why instead of decreasing the rate of suicidal attempt and suicide, it increases? There are several causes which tends people to take such awful decision that not only destroy them but also devastate their family.

Hence, the main objective of this article is to ascertain the inefficiency or ineffectiveness of section 309 of the Penal Code in order to eradicate suicidal attempt in Bangladesh. Since the ambit of section 309 is extensive, it will show reasons or causes of people behind attempt to commit suicide. To this extent it

⁸ S. 309 of the Penal Code, 1860 § 309, No. 45, Act of Parliament, 1860 (Bangladesh).

⁹ *Emperor v. Mullia*, 1919 SCC OnLine All 155 : AIR 1919 All 376 (2).

¹⁰ Notes: Theories of Punishment: a. Retribution, b. Deterrence, c. Rehabilitation, d. Restitution.

¹¹ A.B.M. Imdadul Haque Khan and Rashadul Islam, *A Handbook on the Penal Code with Special Laws 7* (University Publications: Babupura Market, 2016).

¹² Notes: Justice P.B. Sawant of India mentioned in a case, if the main objective is to impose punishment in order to prevent the expected self-murder by means of deterrence, it is too tough or cumbersome to comprehend that the same can be attain by penalizing those who have made the endeavor. Persons who attempt suicide on account of various mental disorders need psychiatric interference rather confining themselves into imprisonment. In the prison cell their condition will deteriorate thus further mental derangement might happen with them. Thus, it is not always correct to pronounce punishment because in some cases like attempt to commit suicide it might tend to be self-defeating or counterproductive.

¹³ “World Suicide Prevention Day: Why is Suicide Prevention Not a Priority for Bangladesh?” *Dhaka Tribune* September 10 2020.

will focus on the comparative study between India-Bangladesh while analyzing the section 309 and mental health laws. Last but not least, this article aims to concentrate on the circumstances that most of the attempt to commit suicide is due to mental health issues and thus beyond crime.

II. EVOLUTION OF ATTEMPT TO COMMIT SUICIDE AS CRIME AND ETIOLOGY BEHIND ATTEMPTED SUICIDE

A. Origin of criminalizing Attempted Suicide

Suicide has been discredited by enormous societies. Since, this article focuses on the approach towards attempt to commit suicide and the mental condition of the accused in India and Bangladesh, so it is an exigency to elaborate the history of treating 'attempt to commit suicide' as crime in the eye of law in England, India, and Bangladesh.

In the year of 967 under the reign of King Edgar there was a provision to forfeit the goods of the person who commits suicide unless done by madness or illness. At the very early-stage suicide was not considered as crime in English Law. Bracton¹⁴ in his '*De Legibus et Consuetudinibus Angliae*' deals with the legal consequences of self-killing. His write-ups were disregarded and by this time with the practice of forfeiture of property as criminal penalty the concept of suicide regarded as felony¹⁵. Since suicide was considered as crime therefore in the 19th century in England, attempt to commit suicide was also regarded as crime and in 1854 the law was declared¹⁶. However, internationally Germany was the first country which ceases self-annihilation to be a crime in the year of 1751¹⁷. But, pursuing the French Revolution of 1789, almost all the European countries quash criminal penalties for attempting suicide. However, with the passage of time several cases arise that tends the British Parliament to enact a law named Suicide Act, 1961 which abolishes the suicide as crime but keeps the abetment in suicide as an offence¹⁸. In the year of 1983, the Roman Catholic Church capsized the canon law that forbidden appropriate exequial rites and burial in church tomb for those who had committed suicide. All of this prosperity has been created positive vibes about suicide in modern society¹⁹.

¹⁴ Notes: Bracton is the earliest English Legal writer who deals with the legal consequences of self-killing. He died in the year of 1268.

¹⁵ Sir John Vincent Berry's "Suicide and the Law" <<http://www.austlii.edu.au/au/journals/MelbULawRw/1965/1.pdf>> (last visited 1 February, 2020 p. 2).

¹⁶ *Id.* at 5.

¹⁷ Prakash B. Behere et.al., "Decriminalization of Attempted Suicide Law: Journey of Fifteen Decades", *Indian Journal of Psychiatry*, 122, 123 (2015).

¹⁸ The Suicide Act, 1961, § 2, No. 60, Acts of Parliament, 1961 (United Kingdom).

¹⁹ Prakash B. Behere et al., *supra*, 123.

Prior to the advent of British in India, the *Dharmashastras* reproaches suicide. The directions were hard for the person who wishes to go for a suicidal attempt, as the rule was to impose fine upon him. If the individual successfully commits suicide, his relations and pal were liable to give fine. Despite this, few matters were taken into consideration, such as, *sati*²⁰, persons fighting with incurable disease thus unable to perform his obligations²¹. However, in the year of 1802, an enactment was introduced to prevent people from drowning themselves before the Temple of Puri Jagannath²². Yet, this is a matter of fact that before the arrival of British in the Indian Sub continent, the Muslims were the discipliner. As per the British, the Islamic law of crimes was not adequate to the suppression of crime in society. There were a number of inconsistent features, principles and rules therein which no civilized government could suffer for long²³. Hence, The Charter Act of 1833 introduced a single legislature for the whole British India. With some modifications and alterations the Penal Code 1860 introduced. The same Penal Code, 1860 is applicable for India and Bangladesh. Therefore, section 309 is applicable for both of these countries.

B. Root Cause behind Suicide

The neoteric knowledge on suicide starts on the 20th century with the two medium of investigation: the sociological originally with Durkheim and the psychological with Sigmund Freud. Emile Durkheim in his 'Le Suicide' opines three types of suicide viz. (i) 'egoistic suicide': in this situation the individual lacks concern from the society and thus tends him to commit suicide thus it can be considered as self-oriented suicide; (ii) 'altruistic suicide': it is the opposite of egoistic suicide where the individual feel pressure from the community or religious space etc. and thus commit suicide. It may also be termed as non-egoistic suicide; and (iii) 'anomic suicide'²⁴: in here the society fails to control and regulates the behavior of the individual²⁵. Though this classification was opposed by many but it gives the causative factor of suicide. However,

²⁰ Notes: Sati means anneal the woman on the mildew with her dead husband. This is against public policy, unlawful and inhuman.

²¹ Notes: Persons who were affected with incurable disease and incapable to execute their functions could embark on Mahaprasthan (Great Journey of Life), moving in a northeasterly direction and subsisting on water and air until they pass away. Suicide by drowning at holy places such as Varanasi and Prayag were supposed to relieve the soul from the never ending cycle of birth and death.

²² Antoon A. Leenaars, "Suicide and Human Rights A Suicidologist's Perspective" 6 The President and Fellows of Harvard College 129, 136 (2003).

²³ Mohd. Abdul Halim, *The Legal System of Bangladesh: A Comparative Study of Problems and Procedure in Legal Institutions* 54 (CCB Foundation 12th edn. 2017).

²⁴ Dr Hafizur Rahman Karzon mentioned, 'It contributed to the development of criminological study'.

²⁵ Emile Durkheim, *Suicide: A Study in Sociology* XVI (The Free Press, 2002).

Durkheim also claims that suicide and crime are not congruent²⁶ and hence stated several causes²⁷ of suicide.

The medical jurisprudence identifies a disease named ‘simple melancholia²⁸’ to be one of the reasons of self-annihilation. In here the person attempted suicide out of mental depression. Persons, who overworked, having mental worry of domestic or financial character, fear of having no natural affection for their family is having a tendency to commit suicide²⁹. Well-experienced individuals disclosed comprehensive contention behind attempted suicide which arises from, ‘depressive disorders, bipolar disorders, anxiety disorders, alcohol and other substance abuse, schizophrenia and other psychoses, personality disorders, aggression, impulsivity, and hostility, hopelessness, heredity, childhood trauma, past attempts, and ideation’. In fact, The Executive Director Mostafa Sohel Ahmed of ‘Bangladesh Society for the Enforcement of Human Rights’ pointed out the impulsivity – despondency among juvenile, addiction into drugs, infancy trauma and earlier endeavor and conceit are the prime affairs of suicidal attempts³⁰. It is pertinent to mention here that there are almost 20 countries of the world termed suicide as crime thus Bangladesh is one of them³¹. No attempts have been taken to decriminalize attempted suicide.

²⁶ Durkheim, supra, XVII.

²⁷ Notes: According to Emile Durkheim, ‘The degree of intensity of this potential is founded in infancy and early childhood by the frights, excessive concern, gloominess, loves and hatreds engendered in the individual by the family-environment in terms of eliminatory processes, weaning, sex-education, sibling rivalry, rejection or over-acceptance by the parents, degree of dependence. Where through excessive mother-love, father-rejection, inferiority induced by siblings, the individual is not readied for responsible adulthood according to the customs and mores of the society he is to participate in, the suicide-potential of an individual may be very high. At the other extreme, is the individual whose rearing has channeled the basic psychic configurations into work-activities or other activities, with no promises or rewards not possible in the world of reality; here the suicide-potential of the individual is slight. But slight as it may be, the woes, trials, and tribulations of adulthood may aggravate it to a point where self-murder becomes a possibility. Suicide is an ego manifestation even though it is an annihilation of the ego. It is a pain inflicted on the ego, which, in being a compensation for guilt or a relief from anxiety, may be the only form of release, the utmost in going beyond the pleasure principle’.

²⁸ Melancholia perceives mental depression. Here the person is self centered and impose his trouble to some act of his own. There may be simple and chronic melancholia.

²⁹ Edward D. Fisher. M.D. *Medical Aspect of Insanity in its Relations to Medical Jurisprudence*, 218 (Chicago Star Bindery, 1906).

³⁰ Kamrul Hasan and Arifur Rahman, “Examining the Alarming Suicide Trends in Bangladesh”, *Dhaka Tribune*, 2018.

³¹ Sarah Johnson, “Suicide Still Treated As a Crime in At Least 20 Countries, Report Finds”, *The Guardians* for 200 Years (9th September 2021, 06:01 BST) <<https://www.theguardian.com/global-development/2021/sep/09/suicide-still-treated-as-a-in-at-least-20-countries-report-finds>>.

III. ENVISAGING ATTEMPT TO COMMIT SUICIDE

A. Actions that will be considered attempted suicide

Since suicide is not a crime under the Penal Code of Bangladesh, consequently no penalty could be imposed on the happening³². It is the attempt itself which is punishable under section 309 of the Penal Code, 1860. Attempts that are intentional, deliberate termination of life and hunger strike is regarded attempted suicide. In Bangladesh no explanation has been given on the section 309 by the Penal Law. Few Indian cases disclose the actions that will be considered attempted suicide.

The quintessence of suicide is an intentional self-annihilation. Thus, if a human being by default, or in a state of inebriety or in order to elude his seizure by his pursuers takes an overdose of venom, he could not be held answerable for his action³³. Yet, except upon alienation, if there was an intention to commit suicide and an attempt towards thus is made, the inditcee/chummy could not avoid accountability of his action³⁴. Hence, in Bangladesh and India capital punishment is death penalty *i.e.* hanging unto die. Offences like murder, dacoity with murder, abetment of mutiny, war against State etc. are punishable with death penalty³⁵. A person who intentionally commits suicide knows the consequences very well as it is likely pronouncing a judgment towards the capital punishment, whatever the means is. Thus the intention itself is the punishment.

Deliberate Abandonment from Life is also discouraged. After leading a successful life, a person cannot just end it by saying that the mission of his/her life is accomplished. It will amount to attempt to commit suicide³⁶. Thus whatever the situation is, whether bed ridden or praying for demise or brain is still working he/she has to live unless they will violet s. 309 of the Penal Code. Even if the doctors aid them to finish their life would be considered an abetment to attempt to commit suicide under s. 306 of the Penal Code, 1860 both in India and Bangladesh. It is a matter of sorrow that ‘Euthanasia³⁷’ is not permitted in Bangladesh. Through this method of euthanasia the doctors getting

³² 3, Dr Hari Singh Gour, *Penal Law of India* 2561 (Law Publishers 9th edn., 1972).

³³ *Emperor v. Dwarka Poonja*, (1912) 14 Bom LR 146

³⁴ Dr Hari Singh Gour, *supra*, 2563.

³⁵ S. 309 of the Penal Code, 1860 § 302, 396, 132, 121 No. 45, Act of Parliament, 1860 (British India).

³⁶ *Thomas Master v. Union of India*, 2000 SCC OnLine Ker 430 : 2000 Cri LJ 3729. – In this case the convicted who was a retired teacher wants to terminate his life and he argued on the ground that he has enjoyed his life with dignity and fulfils all of his desires, and thus voluntary termination of his life will not amount to suicide. His argument was not granted by the Kerala High Court.

³⁷ 210th Report of Indian Law Commission, <<https://lawcommissionofindia.nic.in/reports/report210.pdf>> (last visited on 15 January 2020, p. 8.)

assent to take life with medicine of a critical patient who are waiting for their death.

This is a matter of quandary to determine whether the hunger strike is to kill person himself or simply to enforce authorities to accomplish the demands. Thus if the intention is to take his/her life then s/he is liable to commit an attempt under the perspective of section 309³⁸.

In the case of Mst. Dhirajia, woman of twenty years of age was maltreated by her spouse. Upon being threatened of beating, she at late night fled away from the house along with her six months old baby. After getting aware of the incident the husband chased her and about to catch her on the railway line. After hearing her spouse she frightened and jumped into a well. The consequence was the death of the baby and her little or no injury at all. One of the charges against her was attempt to commit suicide. Held, 'attempt' denotes conscious endeavor and hence she did the act out of fear. Therefore, the High Court finding no intention of attempted suicide quashed the case³⁹.

After having the case studies it can be said that the explanation of section 309 is not justifiable. The section should be more specific towards attempt to commit suicide, as because the section may include persons who are fighting with several causes which tends them to commit this heinous sin.

However, the 210th report of Indian Law Commission, they found by that almost one third of the people commit suicide due to mental illness. Even the Mental Healthcare Act, 2017 of India incorporated a section 115, which emphasize that, the people who out of stress tried an attempt to commit suicide shall not be punished under section 309 of the IPC. It further mentioned that, the Government should treat them with reasonable care⁴⁰. This section opens a

³⁸ *Ram Sunder Dubey v. State* 1961 SCC OnLine All 55 : AIR 1962 All 262: An accused was employed in the Mental Hospital, Bareilly, but was suspended from service. He alleged that the authorities in charge of the institution were guilty of unjust disparity and on 27-2-1960 in order to compel them into re-establishing him; he lay down on a bed near the Gandhi statue in the heart of the city of Bareilly, flanked by placards proclaiming his grievances, and proceeded to fast. On 1-3-1960 the Station Officer found that the condition of the accused was deteriorating and hence transferred him to the District Hospital and from there to the District Jail. The accused admitted that he had gone on a prolonged refusal to eat but denied that he had intended fasting unto death. He procured evidence to show that he was taking lemon juice in the morning and evening during the continuance of his fast. The lower court, however, did not rely on this defense and reached the outcome that the accused virtually meant to fast unto death unless his requirements were fulfilled. Setting aside the conviction, the Allahabad High Court said that the evidence in the present case fell short of an attempt to commit suicide. If a person openly declares that he will fast unto death and then proceeds to refuse all food until the stage is reached when he may deteriorate at any time, then there is impending chance of death ensuing and he would be guilty of an attempted suicide under S. 309, Penal Code.

³⁹ *Emperor v. Mt Dhirajia*, AIR 1940 All 486.

⁴⁰ The Mental Healthcare Act, 2017, § 115, No. 10, Acts of Parliament, 2017 (India).

new door for the persons who is suffering from similar difficulties that instead of imprisonment they may have the opportunity to get rid of the mental situation through proper means as rehabilitation or care. Though the mentioned section could not cover the entire sec. 309 of IPC but what it covers is wisely adequate for the persons who attempt to commit suicide out of mental illness. This section did not undermine the section 309 of IPC rather it justly separated the term ‘mental illnesses’. But, the people who are suffering from various illnesses or wants a death of dignity shall not be appurtenant.

B. Standpoint of World Health Organization

World Health Organization has started working on the reduction of suicide issues long ago. As per the World Health Organization every year almost 80000 people die after self-annihilation and many more attempt towards it. The WHO considered attempted suicide as the second main reasons behind demise among 15 to 29 years aged people. The commutation of self-annihilation has been highly prioritized by the World Health Organization as a universal target and comprised as significant in the United Nations Sustainable Development Goals (SDGs), the WHO 13th General Program of Work 2019-2023 and the WHO Mental Health Action Plan 2013-2030⁴¹.

However, the report of WHO indicates that the suicide rate of females are higher than males in Bangladesh⁴². The WHO in its report mentioned that around 79% suicide occurs more in the low and middle income countries and therefore to reduce it proper registration should be needed. Again, as per the report ‘improving the surveillance of suicide is important in order to inform planning and evaluation in countries, and to accurately assess progress towards global suicide mortality targets’⁴³. Hence the WHO considered this as public health issue⁴⁴.

Subsequently the WHO suggested to give a bar on the accessibility of the means of suicide, reporting in the newspaper that does not encourage people to attempt, school going child is to be handled attentively by the school intervention, non-specialized health worker to be guided properly, proper care of those people who attempts self-destruction etc. The only obstacle and challenges the WHO finds is the suicide attempters shy to seek help and several countries do not give much priority as a major problem⁴⁵.

⁴¹ WHO 2019 Report pp.7-11

⁴² *Id.* at 13.

⁴³ *Id.* at 13.

⁴⁴ Preventing Suicide: A Resource for Media Professionals, update 2017. Geneva: World Health Organization; 2017, p. 1.

⁴⁵ World Health Organization: Suicide Prevention Day, South East Asia- Bangladesh, 2017, <<https://www.who.int/bangladesh/news/detail/10-09-2017-suicide-prevention-day>> (last visited on 25 March 2019).

IV. MUNICIPAL CONTEXT UNTO ATTEMPTED SUICIDE AND ARGUMENT ON DECRIMINALIZATION

A. Upstepping of India

In 1971 The Law Commission of India, in its 42nd report recommended to repeal section 309 on ground of its ‘harsh and unjustifiable’ context. In the year of 1985 Delhi High Court in *State v. Sanjay Kumar Bhatia*⁴⁶ while acquitting a boy under s. 309 of the IPC upon taking poison, strongly advocated against 309 and states that instead of sending a boy into mental care how could he be sent in a jail with other criminals. In the above-mentioned case, the bench of Rajinder Sachar and M Sharief-Ud-Din considered the section as anachronism and unworthy of a human society. Again, in India many argue section 309 to be unconstitutional thus opposed to article 21 of the Constitution of India. In *P. Rathinam v. Union of India*⁴⁷ a Division Bench of the Supreme Court considered art. 21 that is, right to live⁴⁸ include right not to live a forced life. Thus the decision termed section 309 as unconstitutional. Subsequently, the decision was overruled in the case of *Gian Kaur v. State of Punjab*⁴⁹ by a Constitution Bench of Supreme Court holding that Article 21 cannot be construed to comprise within it the ‘right to die’ and thus s. 309 is not unconstitutional. However, if a ‘right to die’ is established as a fundamental right, that would demonstrate the State’s duty to kill. But if section 309 ceases to be neither a section it doesn’t ensure the right to die nor it affects sections 305⁵⁰ and 306⁵¹ of the Indian Penal Code as this is completely separate from 309. In 2008 in its 210th report, it considered the section 309 to be cruel, irrational and also a double punishment for the person in failure to die. After analyzing various cases, the Law Commission in its report recommended omitting s. 309 from the Indian Penal Code whether constitutional or unconstitutional due to its inhuman and irrespective atmosphere⁵². However, in the year of 2011, the case of *Aruna Ramachandra Shanbaug v. Union of India*⁵³, the Supreme Court mandated guidelines for passive euthanasia whereby the blood relative or spouse or next friend with the prior approval of court can withdraw treatment or necessities for the survival of patient thus consummately conduct to person’s termination of life. Later on, in the year of 2018, the case of *Common*

⁴⁶ 1985 SCC OnLine Del 134 : (1986) 10 DRJ 31.

⁴⁷ *P. Rathinam v. Union of India*, (1994) 3 SCC 394 : AIR 1994 SC 1844.

⁴⁸ Constitution of India. Art. 21.

⁴⁹ *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : AIR 1996 SC 946.

⁵⁰ Whoever abets a minor or unsound minded person or insane person to commit suicide; he shall be punished with the capital punishment or lifetime imprisonment or ten years of imprisonment and be charged with fine.

⁵¹ Whosoever abets any person to commit suicide shall be punished with imprisonment of ten years and be charged with fine.

⁵² 210th Report of the Indian Law Commission, <<https://lawcommissionofindia.nic.in/reports/report210.pdf>> (last visited on 20 August 2020).

⁵³ (2011) 4 SCC 454.

*Cause v. Union of India*⁵⁴, the Supreme Court passed another verdict where ‘right to die with dignity’ was avowed and passive euthanasia was approved by law hence legitimized. Therefore, the persons who have undergone through lifelong coma and terminally ill got the approval of withdrawal of life support. However, the Government of India comprehend section 115 in the Mental Health Care Act, 2017(MHCA 2017)⁵⁵ (unless proved otherwise), which shall presume the person who attempts suicide having severe stress and emphasize the Government to provide adequate measures in overcoming the condition. But still section 309 isn’t repealed from the statute.

B. Upstepping of Bangladesh

The reality is, in Bangladesh section 309 is almost ineffective. A spokesman in the Bangladesh Police uttered that suicides are recorded as unnatural deaths and attempted suicides are rarely filed⁵⁶. It seems that the law goes in vain. It can say the provision has been mistakenly placed here. According to the records of The Bangladesh Police, who keep evidences of the suicides in Bangladesh in 2014 the figure were 10,200, in 2015 the digit was 10,500, in 2016, the total number of suicide was 10,600 and the number increased to 11,095 in 2017⁵⁷. Suicidal reports among male and females were published by the ‘Bangladesh Society for the Enforcement of Human Rights’⁵⁸. It was taken from 2014-2017. Following is the table showing the rate of self-annihilation among male and female.

Table 1: Suicide Rate in Bangladesh among Male and Female		
Suicide more prevalent among women than men		
Year	Male	Female
2014	198	367
2015	126	223
2016	178	367
2017	194	414
Total	696	1374

⁵⁴ (2014) 6 SCC 552.

⁵⁵ The Mental Healthcare Act, 2017, § 115, No. 10, Acts of Parliament, 2017 (India).

⁵⁶ Kamrul Hasan, “World Suicide Prevention Day: What is Bangladesh Doing to Reduce the Risk of Suicide?” *Dhaka Tribune*, (10th September 2019 13.21 a.m.), <<https://www.dhakatribune.com/bangladesh/2019/09/10/world-suicide-prevention-day-what-is-bangladesh-doing-to-reduce-the-risk-of-suicide>>.

⁵⁷ Kamrul Hasan and Arifur Rahman, Examining the Alarming Suicide Trends in Bangladesh, *Dhaka Tribune*, (8th May 2018, 13.17 a.m.), <<https://www.dhakatribune.com/opinion/special/2018/05/08/examining-alarming-suicide-trends-bangladesh>>.

⁵⁸ Bangladesh Society for the Enforcement of Human Rights, <https://www.manabdhikar.org/?page_id=94> (last visited on 4 April 2021).

The Bangladesh Police admits on an average around 30 people commit suicide every day and in the year of 2019 and the track was 11,308 and 11,204 died after a suicidal attempt in 2018. In fact, the data gathered from newspaper, police and hospitals collected by Aanchal Foundation found that almost 14,436 people committed suicide in 2020, while as per the report of Directorate General of Health Services (DGHS), the death by covid-19 was half of it. Even the Bangladesh Bureau of Statistics also declares that 10,000 people die after committing self-annihilation⁵⁹.

However, in Bangladesh the number of suicide rate is high as aforementioned. Even the situation of Bangladesh was not in a better position at the earlier stage because Bangladesh took 10th place in the catalog of high suicide-prone countries. However, Joysree Zaman, convener of anti-suicide campaign, Brighter Bangladesh observed the possibility between 21 to 30 years of aged human being to indulge with suicide and she blame the family or social reasons for it.⁶⁰ Zia Rahman, Chairman of the department of criminology at University of Dhaka, opines to focus on the parent-children relationship. Dr Helal Uddin Ahmed of the National Institute of Mental Health and Hospital (NIMH), comments on the failure of Government in order to take proper initiative. The government agencies are lacking behind to research over suicide issues in the last few years. Mental health experts are expectant to remit suicide if proper initiatives are taken by the Government⁶¹. A spokesman of WHO Bangladesh mentioned that they are working to develop mental health and suicide prevention material. The NIMH Directorate General of Health Service and enormous stakeholder are collaborating to train primary healthcare service providers. However, instead of the aforementioned organization a private NGO named Kaan Pete Roi are working since 2013 to aid those people suffering from willful self-destruction⁶².

Howsoever in Bangladesh still we are following the same section as prepared erstwhile. In fact like India, no such recommendations have been made by the Law Commission. Contrariwise by repealing the Lunacy Act, 1912 the Mental Health Law 2018 was came into force in order to give protection to the people who are suffering from mental issues. In the aforementioned enactment section 14 sub-section 4 specify very shortly on the treatment of persons who

⁵⁹ Tribune Report, 70% More Suicides Than Covid-19 Deaths in the Last Year, *Dhaka Tribune*, (13th March 2021, 7.57 p.m.) <<https://www.dhakatribune.com/bangladesh/2021/03/13/70-more-suicides-than-covid-19-deaths-in-the-last-year>>.

⁶⁰ Independent Online Desk, Suicide Incidents Increased in Bangladesh, *The Independent*, (9th September, 2015 05.07 p.m.), <<https://www.theindependentbd.com/post/15116>>.

⁶¹ Sohel Mamun, World Suicide Prevention Day: Why is Suicide Not a Priority for Bangladesh, *Dhaka Tribune*, (10th September 2020, 16.24 p.m.), <<https://www.dhakatribune.com/bangladesh/2020/09/10/world-suicide-prevention-day-why-is-bangladesh-unconcerned-to-save-people-from-suicide>>.

⁶² Jinat Jahan Khan, “Kaan Pete Roi” on Suicidal Thoughts in Bangladesh’, *The Daily Star*, (30th April 2021, 12.00 a.m.) <<https://www.thedailystar.net/toggle/news/kaan-pete-roi-suicidal-thoughts-bangladesh-2086289>>.

attempts to commit suicide⁶³. Unfortunately, the Act is unable to highlight the portion of attempted suicide like the Indian Mental Health Care Act 2017 did and it does not denounce section 309 of the Penal Code, 1860. Therefore, there is still remaining a scope on the part of people to file cases against a person who attempt to commit suicide. Retaining section 309 in the Penal Code, 1860 would consider as barrier and counterproductive for the prevention of suicidal attempts.

C. Justification in favor of Decriminalization

Propensity of self-destruction are often occurred by those people who are not courageous enough to confront imminences in life. Materially they undergo with a psychological complication⁶⁴. Thus, throwing them to jail instead of medical treatment would constitute more difficulties for the person who does an attempt. However, despite of his observance in law, it is difficult for an offender to lead a normal life after getting back home from imprisonment because they would face annoyance and abnegation from society. One should accept the fact that punishment is literally institutional oppression, and it can be upheld only when it deter the offender from doing crimes in future⁶⁵. For the purpose of retribution or deterrence people are often incarceration. The theories of punishment whatever the theory is whether deterrence or retributive, people who have propensity of involving them into suicide those principle will not be applicable upon them⁶⁶. Criminals are sent to prison in order to deprive them from enjoying their fundamental rights as 'freedom of movement'⁶⁷. How far a person having suicidal tendency be cured by snatching fundamental rights. The person will develop serious crux. The Criminal Justice Act, 1991 of England and Wales mentioned two reasons to send an offender into imprisonment that should be either heinous or protection of the community. How far a self-murder would fall such of those abovementioned ground? As per the Code of Criminal Procedure of Bangladesh, in this case the police may arrest without warrant, and it is a bailable offence⁶⁸. However, arrest might borne to mental malfunction. Self-murder may be considered as sin as it violets the didactic and righteous rules but until and unless the legal implication that continued in sec. 309 of the Penal Code, is erased, it will consider as crime which is not justified. However, the prisons in Bangladesh are populous and prisoners are devoid of their primary facilities which are essential to lead a human life⁶⁹. How far the persons who have suicidal propensity can sustain there with other criminals and in such an atmosphere?

⁶³ The Mental Health Act, 2018, § 14, No. 60, Act of Parliament, 2018 (Bangladesh).

⁶⁴ Prof N.V. Paranjape, *Criminology and Penology* 60 (14th edn. Central Law Publications, 2009).

⁶⁵ (*Supra* 47.)

⁶⁶ Sheikh Hafizur Rahman Karzon, *Theoretical and Applied Criminology* 288 (Pallal Prokashoni and Empowerment through Law of the Common People, 2008).

⁶⁷ (*Supra* 289.)

⁶⁸ The Code of Criminal Procedure, 1898, Sch. 2, No. 5, Act of Parliament, 1898 (Bangladesh).

⁶⁹ Sheikh Hafizur Rahman Karzon, *supra* note 65, p. 295.

However, decriminalization does not operate to support suicide or attempted suicide rather through proper treatment it can be treated the person who might be regarded as a victim of situation rather offender. Sections 305 and 306 of the Penal Code is completely separate to that of section 309, thus by repealing the section will not amount to ineffective those aforementioned sectioned. Hence, it is noteworthy to mention that it had been observed by the 210th report of Indian Law Commission that almost two-third people commit suicide due to mental incapacity. Thus it is the need of contemporary world to decriminalize attempt to commit suicide and place it in to the Mental Health Laws of each country. Finally, it is pertinent to mention that criminalizing attempted suicide would put down the efforts of municipal and international suicide prevention strategy the vulnerable condition would extend if the persons are unable to get mental health care⁷⁰. The Law Commission of Bangladesh should follow the measures taken by the Indian Law Commission and also observe the directions put in the aforementioned case of Aruna Ramchandra Shanbaug v Union of India and Common Cause v. Union of India.

V. CONCLUSION AND RECOMMENDATION

It is indispensable to impose punishment for the protection of society and prevention of crime. Crimes can only be committed by such persons who are in a condition to be held responsible for their action. Considering attempt to commit suicide a crime and treating the human being as an offender is literally unwise. Hence, when it comes to punishing persons who attempted suicide out of several causes such as family issues, depression, disorder etc. and giving them punishment as per section 309 of the Penal Code is more likely to impose a double punishment on the person who already suffers a lot. Hence, retaining section 309 might be counterproductive for the suicide prevention. The ambit of section 309 is too vague. It is very unclear and vast, thus it may include every attempted suicide into consideration. Moreover, the law in Bangladesh is seldom applicable thus a silent section. The applicability might take its place in any other law. However, the Government should rethink on the application of punishment on attempted suicide and enhance the Mental Health Act, 2018 so that instead of fear of a penalty the people may at least approach before them for a solution. Again, by preaching the recommendations mentioned by the WHO, it can also be taken under control. However, it is the Law Commission to provide suggestions on that issue. The Commission may follow the 210th report of Indian Law Commission and again compare the Mental Health Care Act 2017 of India with ours.

⁷⁰ International Association for Suicide Prevention, Decriminalization of Attempted Suicide – IASP Policy Position Statement, <<https://www.iasp.info/2020/08/31/6998/>> (last visited on 20 January 2021).