

## ABETMENT OF SUICIDE

*Rishabh Shrivastava*<sup>1</sup>

### INTRODUCTION

Section 306 of the Indian Penal Code penalizes abetment of suicide. It reads as:

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

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

### OBJECTIVES OF STUDY

The aim of study is to critically analyze the existing laws on abetment of suicide in India and the guidelines issued by Supreme Court of India with respect to different cases. Therefore for going into depth for conducting the research, I decided to carry present research keeping in mind the following objectives:

1. To study the objects of Abetment, Suicide and Abetment of Suicide.
2. To study the laws relating to attempt and abetment of suicide in India.
3. To study the laws of abetment of suicide in foreign countries.
4. To study the guidelines issued by Supreme Court in landmark cases.
5. To study the other problems of abetment of suicide in India.
6. To study the various aspects of laws on abetment of suicide in various countries.

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<sup>1</sup>5<sup>th</sup> year student of CPJ College Of Higher Studies & School Of Law (G.G.S. Indraprastha University), New Delhi

7. To study the dire need for changing laws on abetment of suicide.
8. To suggest some measures in curbing the problems relating to abetment of suicide.

## **HYPOTHESIS AND METHODOLOGY**

Critical analysis of the prevailing laws laid down under penal code and other acts relating to abetment of suicide in India.

For conducting the present research/ non-empirical research is considered and all sources are outcome of only such research methodology. The reason for selecting such research methodology is that documentary sources are easily available on this subject.

## **CHAPTERISATION SCHEME**

My research project has been divided into eight chapters.

The first chapter of my research project is “*Suicide: Abetment and Attempt*”. This chapter gives the definitions and provisions of abetment, suicide and abetment of suicide.

The second chapter is “*Correlation between S. 107 and S. 306 of IPC, 1860*”. In this chapter comparative analysis between section 107 and section 306 has been done.

The third chapter is “*Suicide note & Dying Declaration*”. This chapter relates to admissibility of suicide note.

The fourth chapter is “*Abetment of suicide by a married woman*”. This chapter states the provisions for presumptions relating to suicide by a married woman.

The fifth chapter is “*Abetment of suicide and consent killing*”. This chapter emphasize on the concept of abetment of suicide, euthanasia and PAS.

The sixth chapter is “*International Perspective*”. This chapter emphasizes on the laws of abetment of suicide in foreign countries.

The seventh chapter is “*Case Study*”. This chapter emphasizes on the landmark cases on abetment of suicide and the guidelines issued by the Supreme Court of India.

The eighth chapter and the concluding chapter is “*Conclusion and suggestions*”. This chapter gives the conclusion to the whole project and also suggests various measures that can be taken to make the abetment of suicide laws more effective in India.

## CHAPTER ONE

### SUICIDE: ABETMENT AND ATTEMPT

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#### 1.1 CONCEPT OF ABETMENT

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

As per Indian penal code, Section 107 deals with Abetment as under:

**Abetment of a thing.** — A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

## Important Elements of Abetment

The main ingredients to constitute the offence of abetment under section 107 are:

- I. There must be an abetment
- II. The abetment must be an offence or an act which would be an offence, if committed by a person capable in law of committing the offence with same intention or knowledge as that of the abettor.
- III. Mens Rea or the Guilty mind.

Mens Rea is a very important element in abetting of an offence. Requirement of mens rea is considered as a pre-condition for liability of the offence of abetment.

Illustration:

- i. If A says to B that 'I am going to kill C' and B replies 'Do as you wish and take the consequences', whereupon A kills C, B cannot be said to have instigated A to stab C. Thus, B is not liable for abetment.

As per the section, abetment can be done by various ways, i.e., by instigating, conspiracy or by aiding.

### 1. Abetment by Instigation:

The word "instigate" means to goad or urge forward or to provoke, incite, urge or encourage doing an act prohibited by the law. A person is said to instigate another, when he actively suggests or estimates him to do an unlawful act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragements<sup>2</sup>.

Another form of instigation is that of approval of an act. While generally passive or unresponsive approval may not necessarily be considered to be instigation, there are specific instances when approval has been held to instigation.

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<sup>2</sup>Gangula Mohan Reddy v. State of Andhra Pradesh, CRIMINAL APPEAL NO. 1301 of 2002

Illustration:

- i. A incites B to kill C by uttering words 'Maro Maro' (beat beat) and D puts a knife in A's hand. Here both A and D are guilty of abetting the offence of murder, one by instigation and the other by aiding to commit the offence.

## 2. Abetment by Conspiracy

The second leg of the definition of abetment is the abetment engaging with one or more persons in a conspiracy to commit an offence. The distinction between an offence of abetment by conspiracy and the offence of criminal conspiracy, so far as an agreement to commit an offence is considered, is that for abetment by conspiracy, mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for.

Illustration:

- i. A, a servant enters into an agreement with thieves to keep the door of his master's house open in the night so that they might commit theft. A, according to the agreed plan keeps the doors open and the thieves take away the master's property. A is guilty of abetment by conspiracy for the offence of theft. But should the thieves not come; A will not be liable under this section.

## 3. Abetment by aid

A person is said to abet the commission of an offence, if he intentionally renders assistance or gives aid by doing an act or omitting to do an act. Mere intention to render assistance is not sufficient.

Intentional aid consists of following three components:

- Doing of an act directly assisting the commission of the crime, or
- Illegally omitting to do a thing which one is bound to do, or
- Doing any act which may facilitate the commission of the crime by another.

Illustrations:

- i. A incites B to kill C by uttering words 'Maro Maro' (beat beat) and D puts a knife in A's hand. Here, both A and D are guilty of abetting the offence of murder, one by instigation and the other by aiding to commit the offence.
- ii. A priest who officiates at a bigamous marriage was held to have intentionally aided in the commission of a marriage prohibited by law<sup>3</sup>.

## ABETTOR

As per Indian Penal Code, Section 108 deals with Abettor as under:

**Abettor**—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

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

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

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

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

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

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<sup>3</sup>Sec.494 IPC.

The abettor could either be an instigator or a conspirator or a person giving aid to the commission of a crime. The abetment must be of an offence or an act which amounts to an offence. If the thing abetted is not an offence, then the person abetting will not be considered an abettor and is not under the scope of this section. The section states that for an offence of abetment it is not essential that the person abetted should be capable in law, of committing that offence, or that such person should have the same guilty intention as that of the abettor.

Illustrations:

- i. When the substantive offence is not established and the principal offender is acquitted, then generally the abettor cannot be held guilty. In another words, when the substantive charge fails, then the charge of abetment also fails<sup>4</sup>
- ii. A instigates B to murder D, and B in pursuance of the instigation stabs D, but D recovers from the wound, A is guilty of instigating B to murder despite of the fact that the act of B did not produce the desired effect<sup>5</sup>.

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<sup>4</sup>Faguna Kanta Nath v. State of Assam AIR 1959 SC 673

<sup>5</sup>State of Maharashtra v.Pandurang Ramji 1971 ILR (Bom) 1061

## 1.2 CONCEPT OF SUICIDE AND ATTEMPT TO COMMIT SUICIDE

### SUICIDE

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

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

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

This section is based on a reasonable public policy to prevent other person's involvement, instigation and aiding in terminating one's life. It takes care of the situation and threats imposed by death baiters<sup>6</sup>.

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<sup>6</sup>Raghunath Das v. Emperor AIR 1920 pat 502

## ATTEMPT TO COMMIT SUICIDE

As per Indian penal code, Section 309 deals with attempt to commit suicide as under:

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

The essence of suicide is intentional self-destruction of life. Intension to commit suicide is essential in order to constitute an offence under this section. Where an accused jumped into a well to avoid the police and later came out of the well of his own accord, it was held that in absence of evidence that he jumped into the well to commit suicide; he couldn't be convicted of an offence under this section, that is, Section 309<sup>7</sup>.

The constitutional validity of Section 309 was initially struck down as a cruel and irrational provision and violative of Article 21 of the Constitution, in the case of *P. Rathinam v. Union of India*<sup>8</sup>. However, in *Gian Kaur v. state of Punjab*<sup>9</sup>, *P. Rathinam v. Union of India* was reversed and a constitutional bench of the Supreme Court upheld the constitutional validity of section 309 by indicating that it does not violate Art 14, 19 and 21 of the Indian constitution.

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<sup>7</sup>Emperor v. Dwarka Poonja, (1912) 14 BOMLR 146

<sup>8</sup>AIR 1994 SC 1844

<sup>9</sup>AIR 1996 SC 946

### 1.3 CONCEPT OF ABETMENT OF SUICIDE: Law in Brief

“When you have said or done a thing, that fixes it, and you must take the consequences”

-The Red Queen to Alice

**Section 305 under Indian Penal Code, 1860-** If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Instance:

- i. The material placed by the prosecution before the trial judge must be such that if it is accepted at its face value, it would establish that the commission of suicide by the girl below 18 years of age was direct and proximate cause of abetment or instigation offered by the accused<sup>10</sup>.

**Section 306 under Indian Penal Code, 1860-** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration:

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

Creation of circumstances that provoked or forced wife to commit suicide attracts section 306 of Indian Penal Code-*Brij Lal v. Prem Chand*<sup>11</sup>

Thus, In order to convict a person under section 305 or 306, IPC, there has to be a clear Mens Rea to commit the offence. It also requires an active act or a direct act which lead the deceased to commit suicide seeing no other option and this act must have been intended to push the deceased into such a position that he committed suicide.

<sup>10</sup>Chandan Soni v. State 2006Cr.L.J 3528 (Chh)

<sup>11</sup>AIR 1989 SC 1661

Suicide is self-murder and the person committing suicide is beyond the reach of the law. Nevertheless, it does not follow that abetment of suicide is not forbidden by the code. A man encouraging and abetting another to commit suicide is certainly a criminal and his act is punishable under section 306. In fact, such an act is not only criminal but condemnable from every point of view.

To make out a case of abetment, there must be instigation by the accused—**provoking, inciting or encouraging** a person to do an act. The offence of abetment under this section must conform to the definition given under section 107 of Indian Penal Code, i.e., there must be instigation, cooperation or intentional assistance given to the person committing suicide.

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

The direct involvement by the accused in such abetment or instigation is necessary<sup>12</sup>.

### **Constitutional Validity of Section 306, IPC**

The constitutional validity of section 306 has been upheld in *Naresh Morotrao v. UOI*<sup>13</sup>. It was observed that section 306 constitutes an entirely independent offence. It is based on the principle of public policy that nobody should involve himself in, or instigate, or aid, the commission of a crime. It is not violative of Articles 14 and 21 of the Indian Constitution.

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<sup>12</sup>Jagannath Mondal v. State of West Bengal

<sup>13</sup> (1995) 1 Cr. L.J. 96 (Bom)

## 1.4 KEY INGREDIENTS OF ABETMENT OF SUICIDE

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

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

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

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

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

To attract the ingredients of abetment, the intention of the accused to aid, instigate, or abet the deceased to commit suicide is necessary<sup>14</sup>

The basic constituents of an offence under section 306 are suicidal death and abetment thereof<sup>15</sup>.

The direct involvement by the accused in such abetment or instigation is necessary<sup>16</sup>.

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<sup>14</sup>Pallem Deniel Victor lions Victor Manter v. State of Andhra Pradesh, (1997) 1 Crimes 499 (AP)

<sup>15</sup>Sangarabonia Sreenu v. State of Andhra Pradesh, (1997) 4 Supreme 214

<sup>16</sup>Jagannath Mondal v.. State of West Bengal 2013Cr.L.J. 1994(cal)

## **CHAPTER TWO**

### **CO-RELATION BETWEEN S. 107 AND S. 306**

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

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

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

## JUDICIAL TREND

Indian courts in its judgments have established the nexus between Section 107 and Section 306 IPC very cautiously. Though the basic ingredient for both of these sections is instigation or aiding, but for conviction under section 306 IPC, a reference has to be made to Section 107 IPC. The court has held that each case has to be decided on the basis of its own facts and circumstances.

The basic constituents of an offence under section 306, IPC, are suicidal death and abetment thereof as held in *Sangarabonia Sreenu v. State of Andhra Pradesh*.<sup>17</sup>

In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, the court dealt with the dictionary meaning of the word “instigation” and “goadings”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidal pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

There should be some live link, or approximate link between the act of the accused and the act of committing suicide. If the live link is missing, it cannot be said that the accused has instigated, or intentionally aided the commission of suicide.<sup>18</sup>

Mere threats of involving the family in a false and frivolous case cannot be tantamount to instigation.<sup>19</sup>

For the purpose of bringing home any charge, vis-à-vis Section 306/107 IPC against the accused, there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide or had engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. In the said case, this court, after assessing the material on record, found that the deceased was suffering from mental imbalance which caused depression. The accused had never intended for the deceased employed under him to commit suicide.<sup>20</sup>

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<sup>17</sup>(1997) 4 Supreme 214

<sup>18</sup> M. Mohan v. State 2011(3) SCC 626

<sup>19</sup>Vijay Kumar Rastogi V. State of Rajasthan 2012(2) Crimes 628 (Raj)

<sup>20</sup>Madan Mohan Singh V. State of Gujarat (2010) 8 SCC 628

## CHAPTER THREE

### SUICIDE NOTE & DYING DECLARATION

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The question which arises is can a suicide note be termed to be a valid Dying declaration for the Police/Investigating Authorities to act upon. The element of admissibility of such a dying declaration was considered by the Honorable Supreme Court of India in *Sharad Birdhi Chand Sarda v. State of Maharashtra*<sup>21</sup>

The Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English law where only the statements which directly relate to the cause of death are admissible. The second part of cl. (1) of S.32, IEA, viz, “the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question” is not to be found in the English Law.

From a review of the various authorities of the Courts and the clear language of Section 32 (1) of Indian Evidence Act, the following propositions emerge:

(1) Section 32, IEA, is an exception to the rule of hearsay and makes admissible the statement of a person who dies. Whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or relates to circumstances leading to the death. In this respect, Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of S.32, IEA, to avoid injustice.

One of the vital conditions for acceptability of dying declaration is a sound mental condition of the person writing or dictating a dying declaration. It has been held by the Hon’ble Supreme Court in *Laxmi v. Om Prakash & Ors.*<sup>22</sup>, that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired, or if the court entertains grave doubts regarding whether the deceased was in a fit physical and mental state to make such a statement, then the court may, in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act upon it’.

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<sup>21</sup>AIR 1984 SC 1622

<sup>22</sup>AIR 2001 SC 2383

## **CHAPTER FOUR**

### **ABETMENT OF SUICIDE BY MARRIED WOMEN**

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#### **Provisions under Indian Evidence Act, 1872**

**Section 113A** of the Indian Evidence Act, 1872 lays down presumption as to abetment of suicide by a married woman. Under this section, when it is found that a woman has been subjected to cruelty as defined in section 498A, IPC, by her husband or his relatives, and she is shown to have committed suicide within the period of seven years from the date of her marriage, then the court may presume that such suicide had been abetted by her husband or such relative of her husband.

A Court may presume and convict the husband (or his relatives) for harassing and subjecting his wife to 'cruelty' and there by driving her to commit suicide even if he (or his relatives) is (or are) not formally charged under section 306, IPC along with section 498A of the IPC. And where an accused is held guilty for cruelty under section 498A, he can, on the same evidence, be convicted under section 306, IPC, for abetting the suicide. Similarly, a court can convict a person under section 306, IPC, even if he is not charged under S. 498A, IPC.<sup>23</sup>

For attracting the provisions of 113A, I.E.A., 1872, the following things has to be proved:

1. Suicide must be committed by a married woman
2. Suicide must have been abetted by husband or any relative of her husband
3. Suicide must be committed within seven years of the marriage
4. She must have been subjected to cruelty (as defined in 498A of Indian Penal Code) by her husband.

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<sup>23</sup>State of Karnataka v Anni Poojary (2005) Cr LJ 2662 (Kant)

Presumption under section 113A, Indian Evidence Act, refers to one of the three ingredients of abetment as defined in section 107, IPC, i.e. instigation, conspiracy and intentional aiding of the act. Where conduct of the accused indicated that he did not want her to die even though he might have treated her cruelly earlier, it cannot be presumed that he abetted the suicide.

The presumption of abetment of suicide by a married woman is rebuttable. If the accused is able to prove that the woman has committed suicide by other reason or she was not harassed in her matrimonial house by her in-laws in the name of demanding more dowry. This presumption can be rebutted. There is a noteworthy fact that the presumption of 113A, Indian Evidence Act, is applicable only against the husband not against woman. This was revealed in an interesting case that came before the HC of Madhya Pradesh in 2000.

The law of evidence being procedural law, sections 113A and 113B are retrospective in their application.<sup>24</sup> They enact a rule of presumption. It should be noted that the initial burden of proof is on the prosecution.

They enact a rule of presumption. It should be noted that the initial burden of proof is on the prosecution. In other words, on the prosecution discharging the initial burden of proof that the husband or in-laws subjected the woman to cruelty, etc, then the court will presume that the husband and the in-laws abetted the suicide by the woman. Similarly, once the initial burden that the woman died on account of demand for dowry, then the presumption under section 113B, IEA, 1872 will apply. Both the sections are retrospective. Thus if at the date of occurrence it is shown that within seven years of marriage, the married woman committed suicide or was murdered, the presumption will apply, even though this period commenced before the coming into force of the provisions of sections 113A and 113B of the Indian Evidence Act.

The mere fact that a married woman committed suicide within seven years of her marriage and that she was subjected to cruelty by her husband and his relatives does not automatically give rise the presumption that the suicide was abetted by the husband or his relatives, as the case may be. A court is not bound to presume that the accused persons have abetted the suicide even though the prosecution has established that the deceased woman committed

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<sup>24</sup> Romesh Kumar v. State of Punjab, (1989) 2 Cri. L.J. 2087

suicide within a period of seven years of her marriage and that the accused subjected her to cruelty.<sup>25</sup>

The difficulty in most of the cases of this nature arises on account of the following factors:

- (a) Direct evidence is hardly available.
- (b) The circumstantial evidence is sometimes, so scanty that the accused escapes from the arm of law.
- (c) Even accidental or suicidal deaths (without any abetment) are tried to pass on as dowry deaths and in such cases proof is ordinarily not available.

Some of the cases falling in these categories are being reviewed here.

In *Wazir Chand v. State of Haryana*<sup>26</sup>, it was pleaded that the deceased was abetted to commit suicide. The husband and the father-in-law of the deceased pleaded that the deceased committed suicide of her own free will. In this case Veena, the deceased was married on 16.10.1983 and within less than a year of marriage she died after having sustained extensive burn injuries at the residence of her husband. She was shifted to a nursing home and within six hours she died. The prosecution was that not being satisfied with the dowry she brought, her husband and in-laws were making demands for further articles of dowry from Veena and her relatives and were harassing, humiliating, and insulting Veena and ultimately she was driven to commit suicide by setting herself on fire. The case appears to be that she sprinkled kerosene on her clothes and set herself on fire. It is also the case of prosecution that, although Veena cried, the noise of her cries were suppressed by someone in family by putting on loudly a television set and that the neighbors and the outsiders whose attention was attracted by the cries of Veena were prevented from entering the residence as the doors were shut. It was also alleged by the prosecution that there were deliberate delay in taking Veena to the hospital where she died. The learned Additional Session Judge acquitted mother-in-law but convicted the husband and the father-in-law under section 306 and 498A of the Indian Penal Code. On appeal, the High court confirmed the sentence but reduced the sentence of the father-in-law under section 306 to three years. Later The Supreme court also confirmed the verdict of the High Court.

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<sup>25</sup>Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v State of Madhya Pradesh* 2002 SC 1998; *Hans Raj v State of Haryana* AIR 2004 SC 2790,(2004) 12 SCC 257; *Sahebrao & Anr v State of Maharashtra* (2006) 9 SCC 794

<sup>26</sup> AIR 1989 SC 378

*Gurbachan Singh v. Satpal Singh*<sup>27</sup> has a similar story. There were persistent demands of dowry from the wife by her husband and in-laws. Above all insinuation was made that she was carrying a illegitimate child. The prosecution case was that these taunts, humiliations and torture amounted to instigation and abetment that compelled the deceased to commit suicide by pouring kerosene oil on herself and ignite it. Although the incident took place at 2:30pm she was shifted to hospital at 6.30 p.m. by that time she had died. No effort was made by anyone in the house to save her. The trial court convicted her husband, mother-in-law and father-in-law as abettor under section 306 of the Indian Penal Code and sentenced them for a rigorous imprisonment for five years and to a fine of Rs. 2000 on each of them. The high court did not agree with the findings of the trial court and acquitted them.

On appeal, Supreme Court restored the conviction of the accused made by the trial court. The Supreme Court observed:

Having regard to the circumstances of the case, there is no direct evidence indicating the circumstances in which the death took place, the conduct of the accused and the nature of the crime with which the accused was charged, there cannot be any scope of doubt that the learned session judge was right and the conviction was properly made. This is not a case where there could be two view Possible on the facts found and on the facts which could not possibly found because of the nature of the offence. The fact that the two views are reasonably possible is not established by the fact that two different conclusions are reached by two adjudicatory authorities. The factum of that may be only a piece of evidence, but whether two views at all are possible or not, has to be judged in all circumstances by the judge, by the logic of the facts found in the background of law.

Ray, J., concurred with the above observation and said:

In the instant case on a proper consideration and weighing of the evidences is the only reasonable view that can be taken is that the cruel behavior and constant taunts and harassment caused by the accused persons while deceased was in her in-laws house instigated her to commit suicide and in our considered opinion no other reasonable view follows from a proper consideration and appraisal of the evidence on record. As such the decision cited above is not applicable to the facts and the circumstances of the instant case.

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<sup>27</sup> AIR 1990 SC 20

In *Bimla Devi v State of Punjab*<sup>28</sup>, the Punjab and the Haryana court said that merely providing that the married woman committed suicide within seven years of her marriage and that she was subjected to cruelty by her husband or in-laws was not sufficient to bring into operation presumption under section 113A. The Court should have regard to all other circumstances. Then only it should apply the presumption. Further, cruelty or harassment of the married woman by her husband or in-laws should be of such quality to drive or prompt her to commit suicide. It is only then that the court should apply the presumption of abetment to suicide. It may be emphasized that presumption will arise only when the married woman committing suicide was subjected to cruelty by the husband or in-laws. The presumption will apply if the woman had in fact committed suicide.<sup>29</sup>

The legislature has by amending the Penal Code and Evidence Act made Penal Law more strident for dealing with and punishing offences against abetment to suicide. Such strident laws would have a deterrent effect on the offenders only if they are so stridently implemented by the law courts to achieve the legislative intent. On the facts found and the offence proved to have been committed leading to suicidal death. For offence under Section 306, IPC, the sentence may extend to ten years. In case the husband is found to have harassed his wife to such an extent as to drive her to commit suicide, sentence of five years would be proper sentence for the crime with the amount of fine of Rs. 20000 to be paid to the parents of the deceased.

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<sup>28</sup>Unreported Criminal appeal no. 424-SD 1985 decided on 12.8.1988

<sup>29</sup> State of Madhya Pradesh v Ashok,(1993) 1 Crimes 764

## **CHAPTER FIVE**

### **ABETMENT OF SUICIDE AND CONSENT KILLING**

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

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

Illustration:

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

#### **Euthanasia**

Euthanasia is derived from Greek roots 'eu' means 'well or good' and 'thanatos' means 'death'. In common terminology euthanasia means the act or practice of putting to death painlessly, esp. in order to release a man from incurable suffering. There may be three situations when euthanasia might take place viz.:

- 1) 'Voluntary euthanasia.' occurs when a person voluntarily requests the termination of his or her life;
- 2) 'Non-voluntary euthanasia' when a person is not mentally fit to make an informed request for termination of life ;
- 3) 'Involuntary euthanasia' when a person has not made a request for termination of his or her life.

## Physician Assisted suicide

Assisted suicide is suicide committed with the aid of another person, sometimes a physician. The term is often used interchangeably with physician-assisted suicide (PAS), which involves a doctor "knowingly and intentionally providing a person with the knowledge or means or both required to commit suicide, including counseling about lethal doses of drugs, prescribing such lethal doses or supplying the drugs." Assisted suicide and euthanasia are sometimes combined under the umbrella term "assisted dying". Other euphemisms in common use are "physician-assisted dying", "physician-assisted death", "aid in dying", "death with dignity", "dying with dignity", "right to die" "compassionate death", "compassionate dying", "end-of-life choice", and "medical assistance at the end of life".

Physician-assisted suicide is often confused with euthanasia (sometimes called "mercy killing"). In cases of euthanasia, the physician administers the means of death, usually a lethal drug. Physician-assisted suicide (PAS) is always at the request and with the consent of the patient, since he or she self-administers the means of death.

According to recent statistics, more than half of the oncologists have received requests from patients wanting to end their life. Physicians are only allowed to prescribe lethal medications in jurisdictions where it is legal, regardless of what the patient wants or the prognosis for their disease.

**Active Euthanasia:** Under this category, the person consenting his or her own death is administered with some lethal medication or injection, which would end his/her life.

**Passive Euthanasia:** Under this category, generally person whose life is to be ended is in an unconscious state and his life is ended by stopping his life support system or discontinuation of the medication which helps the survival of the person, after taking due permission from the court.

## **Aruna Ramchandra Shanbaug Case<sup>30</sup>**

Aruna Ramchandra Shanbaug was a former nurse from Haldipur, Uttar Kannada, Karnataka in India. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Parel, Mumbai, she was sexually assaulted by a ward boy, Sohanlal Bhartha Walmiki and had been in a vegetative state since the assault. On 24 January 2011, after she had been in this status for 37 years, the Supreme Court of India responded to the plea for euthanasia filed by Aruna's friend journalist PinkiVirani, by setting up a medical panel to examine her. The court turned down the mercy killing petition on 7 March 2011.

### **THE CASE**

On the night of 27<sup>th</sup> November, 1973, Shanbaug was sexually assaulted by Sohanlal Bhartha Walmiki, a sweeper on contract at the King Edward Memorial Hospital. Sohanlal attacked her while she was changing clothes in the hospital basement. He choked her with a dog chain and sodomized her. The asphyxiation cut off oxygen supply to her brain, resulting in brain stem contusion injury and cervical cord injury apart from leaving her cortically blind.

The police case was registered as a case of robbery and attempted murder on account of the concealment of anal rape by the doctors under the instructions of the Dean of the hospital, Dr. Deshpande, perhaps to avoid the social rejection of the victim, and her impending marriage. Sohanlal was caught and convicted, and served two concurrent seven-year sentences for assault and robbery, but neither for rape and nor for sexual molestation, unnatural sexual offence. Since the assault in 1973, she has been in a vegetative state.

### **THE VERDICT**

Refusing mercy killing of Aruna Shanbaug,<sup>31</sup> a two-judge bench of Supreme Court comprising of Justices Markandey Katju and Gyan Sudha Mishra, in a landmark judgment on 7<sup>th</sup> March 2011, allowed "passive euthanasia" of withdrawing life support to patients in (PVS) but rejected outright active euthanasia of ending life through administration of lethal substances.

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<sup>30</sup>Aruna Ramchandra Shanbaug v. Union of India & Ors.

<sup>31</sup> "Aruna to live, but SC says 'passive euthanasia' legal"- Hindustan Times, New Delhi, March 07, 2011

The apex court while framing the guidelines for passive euthanasia asserted that it would now become the law of the land until Parliament enacts a suitable legislation to deal with the issue. The bench also asked Parliament to delete Section 309 IPC (attempt to suicide). A person attempts suicide in a depression, and hence he needs help, rather than punishment," Justice Katju writing the judgment said. The Apex Court noted that though there is no statutory provision for withdrawing life support system from a person in PVS, it was of the view that "passive euthanasia" could be permissible in certain cases for which it laid down guidelines and cast the responsibility on high courts to take decisions on pleas for mercy killings.

## **CHAPTER SIX**

### **INTERNATIONAL PERSPECTIVE**

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The quantum of punishment and the interpretation in particular circumstance may vary from country to country but abetment to Suicide remains an offence in almost every country. A comparative analysis shows the different laws existing in different countries and the legislations backing the law as under:

#### **AUSTRALIA**

It is a crime to counsel, incite, or aid and abet another in attempting to commit suicide, and the law explicitly allows any person to use "such force as may reasonably be necessary" to prevent another from committing suicide.

#### **BHUTAN**

Under Bhutanese law, the act of committing suicide is itself not illegal, but abetting a suicide is regarded as a crime.

#### **CANADA**

Suicide is no longer a crime in Canada as it was removed from the Criminal Code of Canada in 1972 by the Parliament of Canada. But everyone who

- (a) Counsels a person to commit suicide, or
- (b) Aids or abets a person to commit suicide,

Whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

#### **ENGLAND AND WALES**

The Suicide Act, 1961 has decriminalized suicide in England. However, Section 2(1) of the Act states that "A person who aids, abets, counsels or procures the suicide of another, or any attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years."

## **IRELAND**

Attempted suicide is not a criminal offence in Ireland and, under Irish law, self-harm is not generally seen as a form of attempted suicide. It was decriminalized in 1993. Assisted suicide and euthanasia are, however, illegal. This is currently being challenged at the High Court, as of December 2012. As of 2014 assisted suicide remains illegal in Ireland.

## **NETHERLANDS**

In the Netherlands, being present and giving moral support during someone's suicide is not a crime; neither is supplying general information on suicide techniques. However, it is a crime to participate in the preparation for or execution of a suicide, including supplying lethal means or instruction in their use.

## **NEW ZEALAND**

As with many other western societies, New Zealand currently has no laws against suicide in itself, as a personal and unassisted act. However, as with comparable societies, there are still legislative sanctions against 'assisting or abetting' the suicides of others, under Section 179 of the Crimes Act 1961.

## **ROMANIA**

Suicide itself is not illegal in Romania, however encouraging or facilitating the suicide of another person is a criminal offense and is punishable by up to 10 years in prison, depending on circumstances

## **RUSSIA**

According to Article 110 of the Criminal Code of the Russian Federation, Inciting someone to suicide by threats, cruel treatment, or systematic humiliation is punishable by up to 5 years in prison.

## **SCOTLAND**

Assisting a suicide in Scotland can in some circumstances constitute murder or culpable homicide.

## **SINGAPORE**

In Singapore, attempted suicide, abetment of suicide, and abetment of attempted suicide are criminal acts.

Clause 17(1) of the Advance Medical Directive Bill states that nothing in the Act "shall authorize an act that causes or accelerates death as distinct from an act that permits the dying process to take its natural course".

Clause 17(2) of the Bill declares that "nothing in this Act shall condone, authorize or approve abetment of suicide, mercy killing or euthanasia". Abetment of suicide, mercy killing and euthanasia remains criminal offences punishable under the Penal Code.

## **UNITED STATES**

By the late 1980s, thirty of the fifty states had no laws against suicide or suicide attempts but every state had laws declaring it to be a felony to aid, advice or encourage another person to commit suicide.

The typical statute reads: "Every person who deliberately aids, or advices, or encourages another to commit suicide, is guilty of a felony.

There are at least twelve states in United States which have enacted legislation dealing with aiding, abetting, and advising suicide.

Florida, Kansas, Missouri, and Washington specify that the felony is manslaughter, whereby aid, advice or encourage another person to commit suicide has been held as a felony.

Minnesota, North Dakota, Oklahoma, South Dakota, and Wisconsin do not label the aiding and abetting as either a felony or as manslaughter, but merely prescribe a prison term ranging from 7 to 15 years for aiding or abetting a person to commit suicide.

New York classifies causing or aiding another to commit suicide as manslaughter. It also provides a lesser penalty if the suicide is not successful.

Only North Dakota and Oklahoma specifically provide that furnishing the weapon or poison is aiding and abetting.

## INTERNATIONAL CASES

The criminality of the actual suicide is incidental in determining the liability of the aider, abettor, and adviser, as long as a causal connection can be established between the incitement and the death.<sup>32</sup>

The court stated that even if the defendant had not actually furnished the Poison but was present at the time it was taken and urged the deceased to commit suicide, this would also constitute murder.<sup>33</sup>

The Michigan Supreme Court acknowledged that suicide was not a crime in that jurisdiction, but nevertheless affirmed a conviction for murder by poison against an individual who mixed the poison and placed it within the reach of the suicide.<sup>34</sup>

The courts of Massachusetts in *Commonwealth v. Bowen*,<sup>35</sup> The courts of Tennessee in *Turner v. State*,<sup>36</sup> and The courts of South Carolina in *State v. Jones*,<sup>37</sup> have also held that the aider and abettor is guilty of murder in his own right, reasoning, inter alia, that the consent of the victim is no excuse.

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<sup>32</sup>Schulman, Suicide and Suicide Prevention: A Legal Analysis, 54 A.B.A. J. 855, 859 (1968)

<sup>33</sup>*Blackburn v. State*

<sup>34</sup>*People v. Roberts*

<sup>35</sup>13 Mass. 356 (1816)

<sup>36</sup>119 Tenn. 663, 108 S.W. 1139 (1908)

<sup>37</sup>86 S.C. 17, 67 S.E. 160 (1910)

## CHAPTER SEVEN

### CASE STUDY

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#### 1. Gian Kaur v. Union of India

In *P. Rathinam v. Union of India*<sup>38</sup>, the Court made a reference to the global view on suicide and found that attempt to suicide is not an offence in United Kingdom and in United States of America. This led both the Bombay High Court and the Supreme Court, holding that there is a need to decriminalize attempted suicide by parting with Section 309, IPC.

In 1996, the Supreme Court got an opportunity to reconsider the decisions made in Rathinam's case in *Gian Kaur v. State of Punjab*.<sup>39</sup> The Trial Court under Section 306, IPC, convicted the appellants, Gian Kaur and her husband Harbans Singh, for abetting commission of suicide by Kulwant Kaur. The appellants challenged the constitutional validity of Section 306 on the ground that Section 309 has already been held unconstitutional by the Court in *P. Rathinam v. Union of India*, since right to life under Article 21 includes right to die. Once we recognize right to die as a fundamental right, any person abetting commission of suicide cannot be said to have committed an offence, since he is merely assisting in the enforcement of a fundamental right. Due to this reason, Section 306, IPC, which penalizes assisted suicide, is equally violative of Article 21. As the argument was entirely dependent on the unconstitutionality of Section 309 held in P.Rathinam case, the Court was confronted with two questions:

Firstly, whether the Court was right in deciding the P. Rathinam case?

Secondly, if so, does Section 306 violate Article 21?

While answering both the questions in negative, the Supreme Court observed that certain positive overt acts are the prerequisites for the commission of suicide, and the genesis of those acts cannot come within the ambit of protection provided under Article 21. Extinction of life cannot be interpreted to be within the protection of life. Right to life, just like other rights, is a natural right, but suicide is an unnatural extinction of life. Therefore a natural positive right cannot go hand in hand with unnatural negative. Further, the Court found

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<sup>38</sup> 1994 AIR 1844

<sup>39</sup> 1996 AIR 946

inherent distinction between the nature of right to life under Article 21 and other rights such as right to freedom of speech, right to carry on business etc.

The negative aspect of right to life would mean the end or extinction of the positive aspect, which doesn't happen in case of all other fundamental rights.

Article 21 speaks of a dignified life. Any aspect of life that makes it dignified may be read into it, but not those aspects, which extinguish it. Such a right to dignified life exists up to the end of natural span of life. It is true that everyone has right to die with dignity. However, right to die with dignity at the end of natural life should not be confused with right to die an unnatural death curtailing the natural span of life. Therefore, Section 309, IPC, was held to be constitutionally valid.

On the question of constitutional validity of Section 306, IPC, Court observed that once Section 309, IPC, is found valid, no serious challenge to the constitutionality of Section 306 remains. The Court also pointed out that Section 309, IPC, and Section 306, IPC, speak of altogether different offences. While Section 309, IPC, deals with a failed act, i.e., attempt to suicide, section 306 refers to a completed act of suicide. Section 306, IPC, punishes abetment of suicide, while abetment of attempt to commit suicide is not within its purview.

So, Section 306, IPC, can stand independent of Section 309, IPC. Furthermore, the Court observed that in most other jurisdiction, even though attempt to commit suicide is not a penal offence; abetment to suicide as well as abetment to attempt to commit suicide are punishable offences. This was found to be desirable to prevent the possible misuse in the absence of such provision.

## 2. Gurbachan Singh v. Satpal Singh & Ors <sup>40</sup>

Ravinder Kaur, daughter of Gurbachan Singh was married to Satpal Singh in November, 1962. She died on 25<sup>th</sup> June, 1983 at about 2.30 P.M. It was alleged, she committed suicide because of the harassment, constant taunts and cruel behavior of her in-laws towards her and persistent demand for dowry and insinuations that she was carrying an illegitimate child. It was alleged that, provoked by the aforesaid conduct and behavior, she committed suicide. The father-in-law, mother-in-law and the husband of the deceased have been the abettors of the crime and the deceased died of second to third degree burns.

The learned Additional Sessions Judge on the totality of evidence on record held that the accused were guilty of abetment to suicide and as such punishable under Section 306 of the IPC. On appeal by the accused, the High Court was of the view that the guilt of the accused had not been proved and as such acquitted them.

The complainant and father of the deceased aggrieved by the order of the High Court preferred appeals by way of special leave to appeal. The Supreme Court held that the order of acquittal made by the High Court is not sustainable and affirming the conviction of the accused under section 306 of I.P.C. and the sentence imposed by the Additional Sessions Judge, Amritsar,

**HELD:** (Per Sabyasachi Mukharji, J.) Abetment is a separate and distinct offence provided the thing abetted is an offence. Abetment does not involve the actual commission of the crime abetted; it is a crime apart. Criminal charges must be brought home and proved beyond all reasonable doubts. While civil case may be proved by mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. There must not be any 'reasonable doubt' of the guilt of the accused in respect of the particular offence charged. The courts must strictly be satisfied that no innocent person—innocent in the sense of not being guilty of the offence of which he is charged—is convicted even at the risk of letting of some guilty persons.

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<sup>40</sup> AIR 1990 SC 20

### 3. Brij Lal v. Prem Chand<sup>41</sup>

In the case of Brij Lal v. Prem Chand<sup>41</sup>, Veena Rani, in her mid-twenties, an employed woman, was married to Prem Chand, an ex-policeman. She and Prem Chand were living on their own and no in-laws were involved. Veena Rani had been harassed by Prem Chand for a long time and in 1975 had returned to her parents' home in Patiala for several months. When she was sent back to her marital home, the harassment continued. On September 10, Veena wrote to her mother that Prem Chand was demanding Rs.1,000 to repay a loan on his scooter. On September 14, a day before she died, she again wrote to her mother asking for Rs.1,000 for Prem Chand, and also for money to pay the rent of the matrimonial home. On September 15, 1975, Veena Rani burnt to death when she was alone in the house, Prem Chand having gone out. The trial court convicted Prem Chand of instigation and abetment of suicide and sentenced him to three years' imprisonment.

However, on appeal, the High Court of Punjab and Haryana acquitted him. The State did not appeal against this decision, but on a private appeal, the Supreme Court reversed the high court decision and upheld the Trial Court's decision.

**Held:** The court held that although Prem Chand was not present when Veena was burnt, the circumstantial evidence clearly pointed to her having committed suicide by burning herself. In one letter to her mother, she had written that Prem Chand had told her that he did not care if she died, but she had to get money for him.

(Per S. Natarajan, J.) Instigation and Abetment must be adjudged in the context of the entire evidence. Creation of circumstances that provoked or forced wife to commit suicide attracts section 306 of Indian Penal Code.

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<sup>41</sup> AIR 1989 SC 1661

#### 4. Mangat Ram v. State of Haryana

After holding the appellant guilty, the trial Court convicted the appellant under Section 498-A IPC and sentenced him to undergo imprisonment for three years and to pay a fine of Rs.1,000/- , in default, to further undergo rigorous imprisonment (RI) for six months. The appellant was also convicted under Section 306 IPC and sentenced to undergo imprisonment for a period of seven years and to pay a fine of Rs.4,000/-, in default, to further undergo RI for two years.

Aggrieved by the conviction and sentence awarded by the trial Court, the appellant preferred Criminal Appeal No. 592-SB of 1997, which when came up for hearing before the Division Bench of the High Court on 3.5.2007, the Court also dismissed the appeal confirming the conviction and sentence awarded against the accused by the trial Court.

On a further appeal to Supreme Court,

**K. S. Radhakrishnan, J.** observed that, “We fail to see how the failure of a married person to take his wife along with him to the place where he is working or posted, would amount to cruelty leading to abetment of committing suicide by the wife. Taking wife to place of posting depends upon several factors, like the convenience of both, availability of accommodation and so many factors. In the instant case, the accused had left the wife in the matrimonial home in the company of his parents and we fail to see how that action would amount to abetment to commit suicide.

We are of the view that the circumstances of the case pointed out by the prosecution are totally insufficient to hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113A of the Evidence Act have also not been satisfied.”

Consequently, the appeal was allowed and the conviction and sentence awarded by the trial Court and confirmed by the High Court, were set aside.

## CHAPTER EIGHT

### CONCLUSION AND SUGGESTION

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#### SUGGESTIONS

The current definition of Abetment falls short. The section covers abetment by way of aid, instigation and conspiracy, but there are instances where the actions of the person do not strictly fall in these three categories but pressurize a person to commit suicide. The following instance can be considered for the study of the suggestion:

#### **Ruchika Girhotra case**

This case involves the molestation of 14-year-old Ruchika Girhotra in 1990 by the Inspector General of Police *Mr. Shambu (S.P.S. Rathore)* in Haryana, India. After she made a complaint, the victim, her family, and her friends were systematically harassed by the police leading to her eventual suicide. On 22 December 2009, after 19 years, 40 adjournments, and more than 400 hearings, the court finally pronounced Rathore guilty under Section 354 IPC (molestation) and sentenced him to six months imprisonment and a fine of Rs 1,000.

Since, this case falls in neither of any of the three categories under section 107, IPC; the accused was convicted under section 354 for the offence of molestation and not under section 306 for abetting of suicide.

Going on the facts, the accused had created such circumstances that the victim was left with no other option, but to commit suicide.

Thus the court should not be strictly restricted to the language of the provisions but also it should apply its judicial mind in dealing with such cases.

Moreover, the provision should be amended so as to include all other cases not falling in any of the above mentioned three categories.

It is also important to note that abetment to suicide is a cognizable, non-bailable and non-compoundable offence. This means that the person named in the Suicide Note is implicated in a manner which leaves him/her with no other alternative than to be harassed by the Police/Investigating Authorities or else suffer pre charge/pre-trial incarceration. Also there is

a possibility of opening up floodgates of corruption by the Investigating officer who may try to make money in the guise of investigation.

While proper investigation and participation in investigation by persons who may be suspected to be involved (including the person named in a suicide note) is crucial in the investigative process, considering the circumstances and reasons leading to such suicides, the persons named should not unnecessarily go through incarceration. It is suggested that the same can be taken care of by amending the current provisions of abetment and making the offence bailable instead of non-bailable and thereby not only facilitating smoother investigation but also reducing the burden on courts and prevent unnecessary harassment or running for Anticipatory Bail.

It is further suggested that investigation of a suicide case be conducted with the mandatory assistance of a qualified forensic psychologist which would ensure that the right cause of suicide (with and without the aid of Suicide note) is detected at the earliest.

## CONCLUSION

The framers of the law, while enacting the legislations, were well versed with the circumstances that may sprout out of emerging patterns of the changing society that they have tried to include every possible aspect that may be essential to deal with the offences of different kinds and provided for punishments, thereof.

With the changing time, pattern of the society is changing vastly, calling for new and amended laws and provisions, as already enacted laws and legislations are falling short of the purpose for which they were enacted. Over a period of time, the ways of commission of offences have changed in such a way that they have gone beyond the ambit of the enacted provisions. There arises need for such laws that does not restrict the judgments to mere pigeon hole patterns of the criminal laws. Each case should be decided on its own merits keeping in mind the facts and circumstances of such case so that the justice is administered in its true sense.

In today's emerging society, people face many problems relating to their homes or workplaces, and few people, who are unable to deal with such pressures tends to end up there life and thus, suicides are becoming very common. Moreover, along with an increase in the number of suicidal cases, there has been a steady rise in cases of Abetment of suicide, be it a case of abetment by instigating or by aiding the victim in committing suicide. The accused can easily defeat the penal provisions dealing with such offence as the ambit of the provision is limited to three categories, only.

Thus, there is a dire need to amend the provisions dealing with the offence of abetment, in such a way that the criminals are not able to bypass the legislations and mend the cases suiting their own desires and escape the punishments. Also, the laws are needed to be interpreted not strictly in a confined manner. But according to the facts and circumstances of each case so that justice prevails.

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