MAINS 2016 CURRENT AFFAIRS
GENERAL STUDIES – II
15. DECRIMINALISING SUICIDE

At last, India has joined liberal democracies by moving to decriminalise suicide. The Mental Health Care Bill passed by the Rajya Sabha gets around Section 309 of the Indian Penal Code (IPC) that makes attempting suicide a criminal offence.

SECTION 309 OF IPC

At present, attempt to suicide is a criminal offence and the person can be booked under Section 309 of IPC, which provides for up to one year simple imprisonment or fine or both. The provision uses the expression “may”, which means that there is no minimum punishment prescribed for the offence and hence the courts are free to use their discretion not to impose a punishment in case a person is found guilty of the offence. Section 309 is based on the principle that the State has an obligation to protect human lives, and therefore if attempt to murder another person is an offence, a similar attempt to take one’s own life is also an offence. However, while murder is an offence, suicide is not, as the person who successfully attempts suicide would no longer be alive to face prosecution. Therefore, even if suicide is made an offence, it has to abate even before it is taken note of.

SECTION 309 AND ARTICLE 21

The issue arose before the Supreme Court in the P Rathinam v. Union of India case in 1994. The Supreme Court bench ruled that right to life under Article 21 could have a logical corollary that a person could not be forced to live a distressed life and hence, Section 309 violated Article 21 and was unconstitutional. It observed Section 309 is a cruel and irrational provision and it may result in punishing a person doubly who has suffered agony and would also be suffering humiliation because of his failure to commit suicide. It said, "Suicide is a psychiatric problem and not a manifestation of criminal instinct. What is needed to take care of suicide-prone persons are soft words and wise counselling and not stony dealing by a jailor."

Thereafter, the issue came up for consideration before a Supreme Court Constitution Bench in Gian Kaur v. State of Punjab (1996). The bench held that Section 309 is not violative of Article 14 or Article 21. It is not unconstitutional. The court ruled that it was not possible to construe Article 21 to include the right to die as part of the fundamental right guaranteed therein. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination of life, therefore, incompatible and inconsistent with the concept of right to life.

Predilection of the constitution bench was that suicide is morally wrong and unethical. It failed to appreciate that if Section 309 is invoked, persons of integrity who fast unto death for laudable objectives would be criminals punishable under Section 309.

ARGUMENTS IN FAVOUR OF DECRIMINALISATION

The law is no deterrent to suicide. Sri Lanka decriminalized suicide in 1998 and suicide levels dropped, possibly because of concerted suicide-prevention programmes. Only 25 nations criminalise suicide now; most have realised that investment in mental health is more useful than prosecuting someone already tortured.

The Law Commission of India in its 42nd Report in June 1971 recommended repeal of Section 309 based on cogent reasons. The 156th Report of Law Commission followed the constitution bench judgment in Gian Kaur’s case and favoured retention of Section 309. The Law Commission, in its 210th report on ‘Humanisation and Decriminalisation of Attempt to Suicide’, concluded that it would not be just and fair to inflict additional legal punishment on a person who had already suffered agony and ignominy in an unsuccessful suicide bid. The report found that Section 309 was also a stumbling block in preventing suicides and improving the
access of medical care to those who attempt suicide. It **recommended** that the **Section** needs to be **deleted from the statute book** because the **provision is inhuman**, irrespective of whether it is constitutional or unconstitutional. The repeal of the anachronistic law, it hoped, would save many lives and relieve the suffering.

Retention of Section 309 is an **anachronism** unworthy of any decent and civilised human society. It is monstrous, inhuman and smack of sadism to inflict further suffering on an individual who for no fault of his has already found life so unbearable, his chances of happiness so slender, that he’s willing to face pain and death to cease living. The people who try and take their lives need **compassion and emotional support**. Decriminalisation would make it easier for all of us to extend our hands and support in **reducing suicides in India**.

From a societal perspective, decriminalization is a more sensitive and humane way of dealing with the problem compared to prosecution. Additionally, it will also help in **improving the reporting and generation of better epidemiological data** on suicidality. The criminalization of suicidal acts causes the problem of suicide to go underground, making it difficult for suicidal persons to receive necessary assistance. Improved and accurate statistics can help in **better planning and resource allocation for efforts towards suicide prevention**. In India, criminalization of suicide has meant substantial under-reporting making it difficult to identify risk groups or provide support. A 2002 study found that suicide was prevalent among students who failed in one subject. The Tamil Nadu Government softened its policy allowing them to retake the exam without losing a year. Suicides halved in the next decade.

Though Section 309 has been in operation for more than a century and punishes suicide attempts, courts have hardly convicted and punished anyone for the offence. In 20 years, only one case reached the Supreme Court, that too in the shape of an appeal filed by the Maharashtra Government challenging a Bombay High Court decision holding Section 309 unconstitutional. There also the higher Judiciary struck down the charge against the accused who attempted suicide.

This law, which essentially says that a person in extreme distress either kills herself efficiently or face legal punishment, is a colonial hand-me-down. Most western nations struck down the law criminalising suicide. **Attempt to suicide is decriminalised in most countries** except a handful like India, Pakistan, Bangladesh, Malaysia and Singapore. In 1961, the UK removed the provision under which a person surviving an attempt to suicide was punished, from its penal law.

**ARGUMENTS AGAINST DECRIMINALISING SUICIDE**

The first major argument is rooted in the **religious belief that only God should have the right to dictate the end of life of a person and when a person attempts to end the life himself or herself, it should be considered as a sinful act**. In Hinduism, it is believed that death by suicide do not lead to achievement of salvation (moksha). In general, suicidal death is associated with bringing dishonor to the entire lineage, social stigma and other consequences. Abrahamic religions such as Christianity and Islam believe that God has a claim on life.

Another major argument for criminalization is the belief that law can act as a **deterrent against other such attempts in the society**. In Japan and India, suicides driven by honour and duty - seppuku and sati, for instance - were culturally endorsed. Continuation of IPC Section 309 can ensure that social evils like sati are kept away from the society. However, it is still not clear whether having a law to prosecute suicide attempters indeed act as a deterrent or not.

Five States in India were against decriminalising suicide. It was argued that repealing the section would lead to **law and order problems**. It may **benefit “suicide bombers”** and “terrorists who consume potassium cyanide”.

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MENTAL HEALTH CARE BILL & SUICIDE

The main aim of Mental Health Care Bill is to provide better healthcare for people suffering from mental illness, protection and promotion of their rights in getting healthcare. 6-7% of the country's population suffered from some kind of mental illnesses, while 1-2% suffers from acute mental diseases. There is shortage of medical staff dealing with mental health in the country. The bill focuses on community-based treatment and there are special provisions for women. The bill also provides for rehabilitation of persons with mental illness in a manner that does not intrude on their rights and dignity. It also specifies that no photograph or any information relating to such persons undergoing treatment shall be released to the media without his/her consent. It says electro-convulsive therapy shall be allowed only with the use of muscle relaxants and anesthesia. The therapy is prohibited for minors.

Apart from the above provisions, the Mental Health Care Bill also provides for medical care for those making suicide attempts, presuming them to be suffering from “severe stress”. The Bill also says that Government shall provide care, treatment and rehabilitation of any one who attempted to commit suicide to reduce the risk of recurrence.

The Bill says such persons shall not be liable to punishment under IPC. Thus the proposed law does not in terms repeal or amend Section 309 but in substance nullifies its penal consequences.

In the original bill that was first introduced by UPA-II, the government had proposed presuming people trying to commit suicide to be suffering from mental illness, which has now been changed to severe stress. The amendment was recommended by the Standing Committee when the bill was referred to it. Though the bill does not specify what is severe stress, this will be described in the rules, which will be framed after the bill is passed in Lok Sabha as well. But this may also create difficulties. In order to avoid being punished under Section 309 of the IPC, an accused should allow the presumption of suffering from severe stress, and accept the care, treatment and rehabilitation offered by the government for the purpose. However, if the accused succeeds in challenging this presumption of suffering from severe stress, then the State will be justified in applying the rigour of Section 309.

ISSUES AND CHALLENGES: THE ROAD AHEAD

Whether the decriminalization of suicidal attempts should be done through a separate amendment rather than as part of Mental Health Care Bill with more careful consideration of various relevant issues which may arise in the context of suicide attempts, remains open to debate.

With a shift in official position from ‘legal’ to a ‘medical’ model of attempted suicide, an important challenge from a policy perspective will be to provide an access to mental health care for all those with attempted suicide. Patients presenting with an attempted suicide should be advised for a psychiatric consultation in all cases. In this context, there is a tremendous need to allocate the necessary resources for strengthening the primary mental health care services in all districts of the country.

There is a need to further increase the emphasis on the public health approach to suicide prevention e.g. increased awareness generation, restrictions on access to commonly used lethal methods of suicides (insecticides, prescription medications) and control over facilitating factors such as alcohol. There is a need to develop an effective framework integrating the mental health with social welfare, education and other related sectors.

We need a suicide prevention programme. Suicide rates have soared globally and India has specific vulnerabilities. For instance, given the large number of suicides among housewives, marital status is not a protection against suicide as it tends to be in the West. The World Health Organisation, seeing suicide as a preventable public health problem, has tried to analyse national
risk factors. Early identification of vulnerable individuals and adequate mental health workers are crucial to avert suicide. This is where India has a problem. There is a stigma around seeking professional help for mental illness. There is a deficit of mental health professionals and infrastructure, with only 0.3 psychiatrists per 1,00,000 people. The Mental Health Care Bill acknowledges the lack of resources, but the government must put its money where its mouth is.

CONCLUSION
Decriminalization will reduce the trauma and potential prosecution in the aftermath of a suicidal attempt. However, there is a need to improve the mental health coverage and provide a framework to deliver essential mental health services to all those who attempted suicide. The passage of the Mental Health Care Bill, 2016, marks an important milestone in the legal struggle to reform the law so as to decriminalise attempt to commit suicide. The Government’s decision is a sensitive and humane step. While the passage of the Mental Health Care Bill, 2016, in the Rajya Sabha will help further the debate on decriminalising suicide, nothing but the repeal of Section 309 of the IPC can help humanise the law.

MODEL QUESTION
1. Whether decriminalizing suicide humanize the attitude towards suicide attempts? Analyse the issue of decriminalizing suicide in the light of Mental Health Care Bill, 2016. (200 words)