

**INVESTIGATING THE LEGAL ORIENTATION
TOWARDS SUICIDE IN CASES OF WOMEN WITH
BATTERED WOMAN SYNDROME**

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ABSTRACT

News of women committing suicide due to the constant abuse they suffered at the hands of their partner often paints our news headlines. In such cases, the judiciary becomes the last resort to bestow some semblance of justice to the woman, whose screams, till then, went unheard. This paper aims to analyse the legal perception towards the act of suicide in such cases. In pursuance of the same, the paper shall trace the origins of suicide laws in India with respect to Section 309 of the Indian Penal Code (hereinafter referred to as IPC), analyse how it shapes the courts' understanding of the act of suicide and how this understanding then reflects in cases of women committing suicide due to Battered Women Syndrome vis-à-vis cases registered under Section 306 of the IPC. The paper also aims to propose an alternative orientation to suicide in such cases and address its possible implications with respect to punishment for the batterer.

Introduction

"Woman ends life in NY after blaming husband, in-laws for domestic abuse."¹ "Kannur woman suicide: relatives accuse

¹ *Woman ends life in NY after blaming husband, in-laws for domestic abuse; FIR registered in UP*, THE ECONOMIC TIMES (Oct. 20, 2022,

husband's family of abetment of suicide."² The Battered Woman committing suicide as a result of the constant abuse suffered at the hands of their partners is a phenomenon that has haunted the legal landscape since time immemorial. Battered Woman Syndrome refers to a psychological condition observed in women where male partners inflict psychological, physical, sexual, or other forms of Intimate Partner Violence on their partner. The syndrome is a result of a three-stage cycle of abuse where first, there is a build-up of tension leading to abuse, and finally, a period of gestures of contrition by the violent partner. This results in a never-ending cycle where the victim is forced to choose between killing her abusers or killing herself to end this cycle.³ In the instances where the woman does end up committing suicide, courts are often approached in a last-ditch effort to bring her justice. In such cases, the legal orientation towards suicide plays a decisive role in the degree of punishment meted out to the batterer. In order to understand the aforementioned orientation towards suicide in such cases, it becomes imperative to trace its historical origin and subsequent evolution of jurisprudence surrounding suicide in the Indian legal sphere. The same shall be addressed in the forthcoming section.

History of suicide laws: a colonial hangover

The advent of colonialism saw the imposition of British ideals and morality on Indian society, which was also reflected in the laws that were formulated to govern Indians under their rule. The same is evident from Section 309 of the IPC, which criminalises the attempt to suicide.⁴ It finds its origins in the Christian view on suicide in contemporary Britain. While the Bible does not explicitly condemn suicide, the biblical justification for the same was derived from the interpretation of the commandment "Thou shall not

3:30 AM), <https://economictimes.indiatimes.com/news/india/woman-ends-life-in-ny-after-blaming-husband-in-laws-for-domestic-abuse-fir-registered-in-up/articleshow/93404428.cms>.

² *Kannur woman suicide: relatives accuse husband's family of abetment of suicide*, MATHRUBHUMI.COM (Oct. 20, 2022, 3:32 AM), <https://english.mathrubhumi.com/news/kerala/parents-of-woman-who-killed-self-accuses-husband-s-family-of-abetment-of-suicide-1.7851911>.

³ J MCLENNEN, SOCIAL WORK AND FAMILY VIOLENCE, SECOND EDITION: THEORIES, ASSESSMENT, AND INTERVENTION 184-186 (Springer 2016).

⁴ The Indian Penal Code, 1860.

kill". Since the commandment did not specify who should not be killed, killing oneself was also considered a sin as per this commandment.⁵ Alternatively, one's life was seen as the property of God; thus, taking away one's life is to assert domination over God or attack him remotely. Regardless of the reason, suicide was regarded as a mortal sin resulting in eternal condemnation.⁶

A more secular view on why attempting to commit suicide was a crime originates from the belief that by killing oneself, one is committing theft against the State. This comes from the underlying norms of society where men belong to other men, as in the case of slavery or the military. For a man who belonged to another man (or the State as in the case of soldiers), the act of killing oneself was an act of theft from the dominus (or an act of desertion with respect to the army), thus justifying punishment. Gradually, this idea started to encompass members of society beyond soldiers and enslaved people.⁷ The forthcoming section aims to analyse the current legal orientation towards suicide and the role of this historical background in shaping the same.

Suicide as an Internal Phenomenon

The law on suicide stands on two assumptions on human life and human agency. The first is that the ownership of human life extends beyond that of the individual. Suicide laws originate from a place that views suicide not as an act that affects an individual but as an act that causes loss to an entity external to the individual, such as the State or God. By extension, it implies that ownership of one's life does not belong to an individual alone.

The second assumption revolves around the fact that there is a high degree of agency exercised by the individual over the act of suicide, which is greater than external influences.

⁵ Michael Cholbi, *Suicide*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Oct. 20, 2022, 9:30 PM), <https://plato.stanford.edu/entries/suicide/#ChrPro>.

⁶ ROBERT BARRY, *BREAKING THE THREAD OF LIFE: ON RATIONAL SUICIDE* 20-22 (Routledge 2017).

⁷ MARZIO BARBAGLI, *FAREWELL TO THE WORLD: A HISTORY OF SUICIDE* 108-109 (Polity Press 2015).

For the purpose of this project, agency means "the ability to initiate, execute, and control one's own volitional actions in the world."⁸ Agency cannot exist without the existence of meaningful alternatives. Due to this assumption of a high degree of agency available to an individual, suicide can be punished. This assumption can be better understood with the following analogy-

When a thief X, is punished for the act of theft, the exercise of agency in committing the act is being punished. If X had been forced to commit theft by another individual, he would not be punished for the same because there is a loss of agency of the individual in such a case. Additionally, whatever circumstances, such as poor economic conditions that may have compelled the individual to commit theft, would not be given much consideration unless there is a shift in agency over the act to another individual. The fault lies with the individual and not the surrounding circumstances, as the thief is expected not to be influenced by the same.

Similarly, suicide could not be criminalized without the assumption of the existence of sole agency of the individual over the act. This assumption has percolated into society and becomes explicit when the news of a person committing suicide is heard, and the first question that comes to mind is "What was wrong with them?" and not "What forced them to take such a step?" Due to this assumption, the social, political, and economic factors leading to suicide become ancillary, and suicide comes to be seen as an internal phenomenon.

Suicide as an internal phenomenon implies that the inadequate cognitive abilities of the individual in terms of stress management, emotion regulation, coping mechanisms, etc., are the prime drivers of suicidal behaviour. This focus on intrinsic rather than extrinsic factors also play a role in shaping the duty of the State towards a suicidal individual. Suicide as an internal

⁸ Marc Jeannerod, *The mechanism of self-recognition in human*, NATIONAL LIBRARY OF MEDICINE (Oct. 20, 2022), <https://linkinghub.elsevier.com/retrieve/pii/S0166432802003844>.

phenomenon lowers the duty of care owed by the State in creating an environment that would be conducive to the mental health of the suicidal individual, as the environment plays a minor role. Additionally, it increases the power of the State to impose restrictions on individual liberty to prevent suicide. Such an exercise of power is visible when the State force-feeds activists on hunger strikes or locks them up in mental institutions.⁹ If the State were to take measures to develop an individual's internal capacities, it would be seen as an act of benevolence. If such measures were inadequate, the State could not be blameworthy as the low success rates of such measures could easily be pinned on the individual.

Subsequent legal developments

With the increase in research on the act of suicide, there was an increased awareness of the role of environmental factors that lead to suicidal tendencies. Developments in the legal field tried to reflect this change which started from the case of *P. Rathinam v. the Union of India*¹⁰ and culminated with the passage of the Mental Healthcare Act, 2017. In *P. Rathinam v the Union of India*, Section 309 was challenged on the grounds that it is violative of Articles 14 and 21. In the judgment, it was held that the Right to Life includes the Right to Die under Article 21, making the provision unconstitutional. This judgment was later overturned in *Gian Kaur v. the State of Punjab*¹¹, which held that the Right to Life does not include the Right to Die or the Right to be killed, thus effectively overturning the *Rathinam* judgment. Following this judgment, the Mental Healthcare Act of 2017 was introduced, which limited the circumstances in which a person could be held liable under Section 309 of the IPC. Section 115 of the Act reads as follows-

- i. "Notwithstanding anything contained in Section 309 of the Indian Penal Code, any person who

⁹ Reuters Staff, *Force-fed Indian activist Irom Sharmila to end 16-year hunger strike, run for office*, REUTERS (Oct. 20, 2022, 8:30 PM), <https://www.reuters.com/article/us-india-rights-army-idUSKCN1061WN>.

¹⁰ *P. Rathinam v. the Union of India*, 1994 AIR 1844, 1994 SCC (3) 394.

¹¹ *Gian Kaur v. the State of Punjab*, 1996 SCC (2) 648.

attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said code.

- ii. The Appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."¹²

It is important to note that Section 309 has not been decriminalized. Only its application has been restricted; thus, the assumptions on which the law stands regarding human life and human agency over suicide still exist to a certain degree. Additionally, under the Act, a person is not liable not because he does not have the sole agency over suicide, thus making it unfair to punish him, but because the State has decided not to punish him, despite him doing a wrongful thing, and instead provide care and treatment to prevent and reduce the re-occurrence of the 'crime'. Thus, the Act reaffirms suicide as an individualistic act.

Legal orientation towards Battered Women Syndrome

Suicide legislation revolves around the assumption of the existence of agency over suicide. The question then arises how this orientation towards suicide shapes how the court deals with cases of women committing suicide due to Battered Woman Syndrome. In pursuance of the same five landmark cases and the language used in the judgment was analyzed which are as follows-*Gurbachan Singh v. Satpal Singh & Ors.*,¹³*State of Punjab v. Iqbal Singh & Ors.*,¹⁴*Arjun Jagannath Kushwah v. State Of M.P.*,¹⁵*K. Prema S. Rao and Another v. Yadla Srinivasa Rao and Ors.*,¹⁶and *State v. Hari Prashad*.¹⁷

¹² The Mental Healthcare Act, 2017, § 115, No. 10, Acts of Parliament, 2017 (India).

¹³ *Gurbachan Singh v. Satpal Singh & Ors.*, A.I.R. 1990 S.C. 209.

¹⁴ *State of Punjab v. Iqbal Singh & Ors.*, A.I.R. 1991 S.C. 1532.

¹⁵ *Arjun Jagannath Kushwah v. State Of M.P.*, 1999 (2) MPLJ 117.

¹⁶ *K. Prema S. Rao and Another v. Yadla Srinivasa Rao and Ors.*, 2003 1 S.C.C. 217.

¹⁷ *State v. Hari Prashad*, 2003 S.C.C. 9 60.

It is important to note that the judiciary does not legally recognize Battered Woman Syndrome in the sense that the presence or absence of Battered Woman Syndrome does not impact the judgement. Only a passing reference to the same was made in the *State v. Hari Prashad* judgment in 2016. However, for the purpose of a comprehensive analysis, cases with a fact pattern of women committing suicide due to abuse by their husbands, prior to the *Hari Prashad* judgment, are also considered to determine the evolution of the court's perspective in such cases.

An analysis of the judgments shows that the court's view of suicides as an individualized action due to the exercise of agency has not changed. The same is evident in the language of the judges in their judgments. Phrases such as "she took the extreme step of putting an end to her life."¹⁸, "if the deceased had *maintained her cool*, this incident would have been averted."¹⁹, and "where married women, who are *unable to muster courage* to fight"²⁰ illuminate the underlying notions of the court that in the end, it is the deceased who made a choice. The abettors were only at fault for creating conditions leading to such a choice which may not have necessarily led to the outcome i.e., the suicide. While the case of *State v. Hari Prashad* is often considered a landmark judgment due to its reference to the Battered Woman Syndrome, it is unable to bring about any meaningful change in how judicial exercise in such cases is carried out. While the judgment did attempt to address the various structural barriers faced by women stuck in domestic abuse situations, which renders them virtually helpless, the judgment still paints suicide as a wilful exercise of choice rather than a forced exercise of self-preservation. The same is evident from the following quote from the judgment "while recognizing that *the primary responsibility would rest upon the shoulders of Pushpa for her action*, the law would be fair to insist that Hari Prashad, who by his conduct - acts of bestiality - having greased the

slope down which Pushpa slid to perdition, must pay for his wrongs."²¹

However, such assumptions are inherently incongruent with the understanding of Battered Women Syndrome. This shall be elaborately discussed in the forthcoming section.

Agency of the battered woman over suicide: Does it exist?

The concept of Battered Woman Syndrome was first proposed by Lenore E. Walker in 1979, who described it as "the pattern of the signs and symptoms that have been found to occur after a woman has been physically, sexually, or psychologically abused in an intimate relationship, when the partner (usually, but not always a man) exerted power and control over the woman to coerce her into doing whatever he wanted, without regard for her rights or feelings."²² The key word here is coercion. The degree of coercion in such cases is so high, and its application so widespread (in terms of what aspects of the victim's life it dictates) that it erodes the woman's sense of autonomy and agency to the point where she may believe her agency in any area of life does not exist. This is termed as learned helplessness. Learned helplessness is defined as "a mental state in which an organism forced to bear aversive stimuli, or stimuli that are painful or otherwise unpleasant becomes unable or unwilling to avoid subsequent encounters with those stimuli, even if they are "escapable," presumably because it has learned that it cannot control the situation."²³

Any attempts to overcome this learned helplessness and oppose the coercion are met with retaliation in the form of more physical, mental or sexual abuse. There is an unending three-stage cycle of abuse where there is a build-up of tension leading to abuse and then a period of expression of remorse by the abuser (also known as the 'loving contrition' or 'honeymooning' phase). As the cycle continues, the abuse increases in severity and duration, and

²¹ *supra* note 11.

²² *supra* note 3.

²³ Jeannette L. Nolen, *Learned Helplessness*, BRITANNICA (Oct. 2, 2022, 12:30 AM), <https://www.britannica.com/science/learned-helplessness>.

¹⁸ *supra* note 8.

¹⁹ *supra* note 9.

²⁰ *supra* note 10.

the 'honeymooning' period decreases to the point of disappearance. The victim is backed into a corner where she can only escape the cycle by either killing herself to end her misery or killing the perpetrator.²⁴ However, the latter option is usually not viable because even if she were to kill him, she would still be spending several years behind bars considering the fact that Battered Woman Syndrome is not recognized as a mitigating circumstance in such offences.²⁵ Thus, her autonomy that was once curtailed by her husband is now curtailed by the State, and freedom only remains a distant dream. Additionally, other external considerations also come into play when deciding between her life and the abuser's, such as the survival of the perpetrator may be necessary to provide for her children, if the husband is aided by other family members in the abuse, whether she could be reintegrated into society if her abuser were killed and she was sent to jail for the same.²⁶

While it may be argued that she always had the choice of escaping the marriage by getting a divorce or filing a police complaint, such alternatives only exist in theory and not in practice, as supported by the facts of all the cases analyzed here. In every one of these cases, someone, be it the victim's maternal family or the police, was informed of the abuse, yet she could not escape. It is not that she did not *want to* escape but that she *could not* escape because of the various socio, economic and structural barriers that disproportionately work in favor of the perpetrator because of the foundational patriarchal underpinnings of society. Legal recourse for such women is often out of reach due to lack of knowledge or means of access to the same or the fear of retaliation in case she approaches the authorities.²⁷ For example, in the case of *State of Punjab v. Iqbal Singh*

²⁴ *Battered Woman Syndrome*, FINDLAW (Oct. 20, 2022, 1:30 AM), <https://www.findlaw.com/family/domestic-violence/battered-women-s-syndrome.html>.

²⁵ *Battered Woman Syndrome as a Legal Defense*, CRIMINAL JUSTICE (Oct. 20, 2022, 2:30 AM), <http://criminal-justice.iresearchnet.com/crime/domestic-violence/battered-woman-syndrome-legal-defense/>.

²⁶ *Why It's So Difficult To Leave*, WOMEN AGAINST ABUSE (Oct. 20, 2022, 2:35 AM), <https://www.womenagainstabuse.org/education-resources/learn-about-abuse/why-its-so-difficult-to-leave>.

²⁷ Ravneet Kaur, *Addressing Domestic Violence Against Women: An Unfinished Agenda*, NATIONAL LIBRARY OF MEDICINE (Oct. 22, 2022, 10:30 AM), <https://www.livemint.com/Politics/WcYf6TP5Y4YD6AANX6vTiN/Why-women-continue-in-abusive-relationships.html>.

and Ors., the victim had petitioned for divorce but later retracted the petition in fear of violence towards her and her three children.²⁸ An uncooperative, untrained, and insensitive police force and the huge costs and time involved in litigation all make the law beyond her reach.²⁹ In such a situation, the only viable alternative available to the woman is to kill herself. It is not a matter of choice but a matter of lack thereof. Thus, the assumption of the existence of agency of such women is falsified, and 'she chose to commit suicide' turns into 'she was forced to commit suicide'.

This assumption of lack of agency in actions undertaken by battered women is supplemented by legal developments in jurisdictions such as the United States of America, where Battered Woman Syndrome acts as a mitigating factor in cases of homicide. In American courts where the defence of Battered Women Syndrome has been successfully claimed, the basic premise of such a defence rests on the fact that the accused was acting in self-defence. However, in law, the plea of self-defence should fulfil the criteria of using reasonable and proportionate force for protection in the face of imminent danger. Since, in most cases, women fail to meet these traditional requirements of self-defence it is claimed that these departures from the traditional expectations of self-defence law can be explained by the psychological dynamics involved in such cases. It is claimed that the woman viewed her predicament from a psychologically distorted perspective and thus could not perceive her options accurately. The woman was driven to the breaking point by the circumstances of her situation and, therefore, could not be reasonably expected to conform to the requirements of law.³⁰ From the above application, a clear distinction can be seen between a battered woman and a reasonable man, with the former being reasoned to have a diminished agency over their actions owing to their trauma

²⁸ *supra* note 8.

²⁹ Meenal Thakur, *Why Women Continue In Abusive Relationships*, MINT (Oct. 22, 2022, 10:04 AM), <https://www.livemint.com/Politics/WcYf6TP5Y4YD6AANX6vTiN/Why-women-continue-in-abusive-relationships.html>.

³⁰ Rocco C. Cipparone Jr., *The Defense of Battered Women Who Kill*, 135 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 427, 433 (1987).

and the psychological effects therewith. While the fact scenario in these cases and the case of a battered woman committing suicide are different, this general principle still stands.

Thus, in order to make the crime addressal mechanism of courts truly victim-centric and in line with the perceived realities of battered women, there needs to be a fundamental shift in the way suicide is understood by the courts. The following section aims to address what this change in orientation would entail and hypothesise about its possible implications.

Suicide as an External Phenomenon: Application and Implications

With the recognition of the loss of agency of the battered woman, the external, strenuous circumstances become the prime driver of suicidal tendencies. This orientation is called suicide as an external phenomenon. The recognition of suicide of battered women as a product of external circumstances implies that the batterer was not only the person who created circumstances that could be reasonably expected to lead to the victim's death but the cause of the victim's death where chances of survival cannot be reasonably foreseen. Consequently, this change in orientation towards suicide leading to a change in perspective towards the batterer's role in the same has the potential to bring about a significant transformation in jurisprudence surrounding this issue. Traditionally, such cases are registered under Section 306 of the IPC, for abetment to suicide. Section 107 of the IPC defines Abetment as follows-

“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; or

(Thirdly) - Intentionally aids, by any act or illegal omission, the doing of that thing.”³¹

This section implies that an abettor must have appeared to support the commission of the wrongdoing deliberately.³² However, the transformed perspective on the role of the batterer from a ‘supporter’ to the ‘cause’ of suicide shifts the batterer's actions from under the ambit of abetment to suicide to murder or culpable homicide.

Even if we were to restrict the punishment in such an offence under the ambit Section 306, it is reasonable that punishment of a higher degree should be imposed. The reason for this can be understood with the following example-

Take the case of a person, X, who shot himself. In situation one, the abettor Y buys a gun, gives it to X, and tells him to shoot himself with it. In situation two, Y buys a gun, puts it to X's head, and forces X to shoot himself. In situation one, Y's actions could be one of many reasons why X chose to shoot himself, but in situation two, Y is the primary cause of X's death. Additionally, the probability of X's death in situation two is much higher than in situation one. Thus, it is evident that Y's action in situation two demands punishment of a higher degree due to a higher degree of involvement in the suicide.

Similarly, a batterer takes up the role of Y in situation two, illustrated above. Thus, it is proposed that in cases under Section 306 of the IPC, if it can be proved that the victim suffered from Battered Woman Syndrome, this should be considered an aggravating factor for imposing a severer punishment on the accused in the interest of justice, fairness, and good conscience.

Conclusion

The colonial origins of suicide laws have shaped the legal orientation towards suicide as an internal phenomenon. This

³¹ The Indian Penal Code, 1860.

³² *Section 306 IPC Case Laws*, IPLEADERS (Oct. 20, 2022, 5:30 PM), <https://blog.ipleaders.in/section-306-ipc-case-laws/>.

originates from an assumption that there is a high degree of agency exercised by the individual over the act of suicide, which is greater than external influences. As a result, environmental circumstances are considered ancillary to the act of suicide, and the individual's inability to handle trauma becomes the main culprit. The fault lies with the victim for 'choosing' suicide. This orientation toward suicide has been termed as suicide as an internal phenomenon.

This orientation of the court towards suicide is also visible in the cases of battered women killing themselves to escape the cycle of abuse in cases registered under 306 of the IPC. However, this orientation is inherently flawed because, in such cases, external abuse is the primary driver of suicide. Due to the nature of the abuse, the victim has no choice but to kill herself to break the abuse cycle. In this situation, suicide becomes a matter of 'force' and not 'choice'. Such an orientation towards suicide can be termed suicide as an external phenomenon. When we begin to see suicide as a result of force, the batterer moves beyond the role of abettor of suicide to the cause of her death, which raises a case for liability under murder or culpable homicide. Even if punishment is to be restricted under Section 306 for the abetment of suicide, Battered Woman Syndrome should serve as an aggravating factor to increase the term of punishment.

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