

A CRITICAL STUDY TO FINDOUT THE CAUSES OF SUCIDE BEHIND BARS AND REMEDY *

Introduction

According to Section 377 of Indian Penal Code “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”¹

According to MERRIAM-WEBSTER DICTIONARY Sodomy means “*Anal or oral copulation with a member of the same or opposite sex*”²

Again according to YOUR DICTIONARY Sodomy means “*Anal or oral copulation between two persons, especially when they are of the same sex; oral or anal copulation between a human and a non-human.*”³

The Sexual Offences Act, 1967 defines ‘homosexual act’ as “For the purposes of this section a man shall be treated as doing a homosexual act if, and only if, he commits buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.”⁴

From the above discussion we found Sodomy means un-natural sex or Sex between same sexes. In India any kind of Unnatural sex is Penal Offence defined under Section 377 of Indian Penal Code.

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¹ K.D.Gaur, *Textbook On The Indian Penal Code*, 551 (Universal Law Publishing Co. Pvt.Ltd, 4th.ed., 2009)

² <http://www.merriam-webster.com/dictionary/sodomy>

³ <http://www.yourdictionary.com/sodomy>

⁴ Bhairav Acharya, “*Privacy, Autonomy, and Sexual Choice: The Common Law Recognition of Homosexuality*” <http://cis-india.org/internet-governance/blog/privacy-autonomy-sexual-choice-common-law-recognition-of-homosexuality.pdf>

So any one found guilty of it will be punished according to law. And the gravity of this crime is also considered as heinous like rape when it is done or committed with someone forcefully.

It is found that in most of the cases of Jail Suicide the reason behind is the rape between the same sexes done by the inmates of the jail. And this kind of act in Jail was highlighted only after the suicide of the accused Mr. Ram Singh of the Delhi gang rape case December 2012 at Tihar Jail⁵. To find out the reason behind the suicide of the prisoner a study was conducted during the tenure of Chief Justice of India, Balakrishnan's and he study the suicide cases from 2007 to 2011. In a statement given by former National Human Rights Commission (retired) chief Justice K.G Balakrishnan in prisoner suicide after the Study was conducted that, "It's really very shocking as same-sex rape, or sodomy, is one of the main reasons behind suicides in jails. This has been brought out in an extensive report prepared by the panel's fact-finding team,"⁶

In this study it is found that the average jail suicide rate of 16.9 per cent was 1.5 times the figure of 11 in the general public.⁷ While taking interview of the inmates who were prevented from committing suicide, *among them many has given statement that they had been raped or coerced for sexual favors.*

According to Section 309 of Indian Penal Code "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"⁸

In India only Right to life is granted and protected under Article 21 Constitution of Indian. And Right to die is not allowed. According to Article 21 of the Constitution of India, 1950, "No person shall be deprived of his life or personal liberty except according to procedure established by law."⁹ The question regarding Right to die first time comes before Bombay High Court in **State of Maharashtra v. Maruty Sripati Dubal 1987 Cri LJ 743**¹⁰. And here in this case court declare that Right to Life includes Right to die, thus making Section 309 of Indian Penal Code, 1860 which makes attempt to suicide as punishable offence unconstitutional to Article 21. But Supreme Court in **Gian Kaur v. State of Punjab (1996)2 SCC 648**¹¹, held that Right to life does not include "Right to die" or "Right to be killed". Thus, attempt to suicide is punishable offence under section 309

⁵ Imran Ahmed Siddiqui, "Sodomy behind jail suicides", THE TELEGRAPH, (Thursday , June 4 , 2015) http://www.telegraphindia.com/1150604/jsp/nation/story_23829.jsp#.VuffIkComSp

⁶ Ibid.

⁷ Ibid.

⁸ K.D.Gaur, *Textbook On The Indian Penal Code*,551 (Universal Law Publishing Co. Pvt.Ltd,4th.ed., 2009)

⁹ Mamta Rao, *Constitutional Law*, 215 (Abhinandan Malik, 1st ed,2013)

¹⁰ V.D Mahajan, *JURISPRUDENCE & LEGAL THEORY*,270(Eastern Book Company 5th ed, 1987)

¹¹ Ibid.

of Indian Penal Code, 1860 and it is not unconstitutional to Indian Constitution Art. 21. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in unnatural way. And state has the duty to protect life of all the citizens including the life of the prisoners.

REASON BEHIND SUICIDE

The study which was conducted during the tenure of Chief Justice of India, Balakrishnan's and to study reason behind the suicide cases from 2007 to 2011, found that same-sex rapes caused trauma and humiliation, leading many of those abused to kill themselves in prisons.¹²

Some other reason behind suicides includes "distrust of the authoritarian environment", isolation from family, and the "shame and dehumanizing aspects of incarceration".¹³

Even many times it is also found that most of the prisoners took the extreme step for committing suicide due to mental stress claimed by the Prison authorities¹⁴.

It is also found that many times prisoners even after getting parole and bail did not get release from jail due to non-availability of surety and financial restraints which is another cause of mental stress and may be cause of suicides also.

"A 39-year-old architect, Vikram Bhatia, who was sent to Tihar Jail for strangling his 3-year-old son and wife, committed suicide in the jail's behavioral therapy ward. Bhatia was found drunk in his house and the body of his son and wife discovered beside him. Police officials said that Bhatia was about to kill himself as well. A note was recovered in which he had scribbled that he had taken the extreme step because of a financial crisis." Experts from the Institute of Human Behavior and Allied Sciences were constantly monitoring him and administering cognitive behavioral therapy. The crime that he had committed had pushed him into severe depression, after which he had developed suicidal tendencies. A strict watch was kept on him," said Mukesh Prasad, AIG, Delhi Prisons¹⁵

Here we find that sometime feeling of guilt also create mental stress in prisoner which developed in suicidal tendencies.

¹² Supra.5

¹³ Ibid.

¹⁴ "11 prisoners commit suicide in Delhi jails in 3 yrs", TIMES OF INDIA,(Dec 21, 2014, 11.57 AM)
<http://timesofindia.indiatimes.com/city/delhi/11-prisoners-commit-suicide-in-Delhi-jails-in-3-yrs/articleshow/45592103.cms>

¹⁵ "39-yr-old who killed wife, kid hangs self in Tihar Jail", TIMES OF INDIA, (Mar 1, 2016, 12.04 AM)
<http://timesofindia.indiatimes.com/city/delhi/39-yr-old-who-killed-wife-kid-hangs-self-in-tihar-jail/articleshow/51200764.cms>

In an article published by Tihar Jail psychiatrists¹⁶ in the Delhi Journal of Psychiatry, mentioned that 20 prisoners were committed suicides in Tihar Jail between 2001 and April 2012 and all the prisoners who committed suicide were under trial prisoner.

Even in the report of 2012 submitted by psychiatrists¹⁷ Anju Gupta and N.K. Girdhar stated that “ongoing stress related to court proceedings and anticipation of unfavourable outcome of trial” as a reason for suicides. Internationally, pre-trial detainees have a suicide attempt rate of about 7.5 times that of males in the general population, the authors say.

Even according to Dr. Gupta and Dr. Girdhar, suicides in prison are of two categories: egoistic and fatalistic¹⁸. “Egoistic suicide occurs when an individual has a low level of integration into society, while fatalistic suicide occurs in a highly regulated, social environment where the individual sees no possible way to improve his or her life.”

Again in a study conducted on Arthur Road jail in Mumbai and article published on same at Indian Journal of Medical Research in 2010 found that 72 per cent of the total inmates who were interviewed said **sex between men is common**. About 11 percent said, they have had sex with other men. And this trend is not new. *The People's Union of Civil Liberties had this to say about Tihar way back in 1981: "When a young boy enters, the prisoners have been known to have bid a price for the boy. The price offered is in terms of 'bidis', soap or charas. Often prisoners have been divided into camps and the groups have fought each other on the issue of who shall have the new entrant."*¹⁹ *"This is similar to what BBC had reported from east Africa. The trend is so common across all the continents, and in a large number of cases the trauma of a rape leads to assaults, murders, life-long psychological illnesses and suicides. There are a million personal accounts of rapes of males in jails that is out there! In simple words, raping another man becomes part of a dominant prison identity for reasons ranging from power and criminality, to sexual gratification. Often, young and new entrants are the victims. Some recover, while some are traumatised forever."*²⁰

"The high incidence of rapes in jails has to be read with another fact: about 65 % of the under-trials belong to the 16-18 age-group while the convicts are almost twice as old. The chances of sexual abuse of the under-trials therefore

¹⁶ Joanna Sugden, “Tihar Jail’s Suicide Record”, INDIA REAL TIME,(Mar 11, 2013, 1:25 pm), <http://blogs.wsj.com/indiarealtime/2013/03/11/tihar-jails-suicide-record/>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ G Pramod Kumar, *Ram Singh's death: Rape and ugly sexual violence in Indian jails*, F.INDIA,(Mar 12, 2013 14:51), <http://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jails-657071.html>

²⁰ Ibid.

are very high. As the Tibar figures show, a large number of the under-trial prisoners finally leave the jail declared innocent by the courts, but not before potentially being raped by one or many men.²¹

So, from here we get that under-trial prisoners were kept along with the convicted which is again a point for consideration as well as discussion that under trial prisoners should be kept separate from the convicted prisoner to prevent them from sexual abuse.

Somewhere, from the above discussion we find that Sexual abuse and sodomy is a kind of act done by the jail mates for fun, entertainment and also to satisfy their sexual lust. These, indicates that, without finding any other alternate way for their entertainment in jail, they do such kind of immoral act with other. It means, they need different kinds of entertainment for their amusement. Now this is another point of discussion that what kind of entertainment can be done in jail for the prisoners for their amusement. So that, they should not do such kind of immoral act with other.

Thus from above discussion we find that there are several reasons behind the suicide of jail prisoners. Some are manmade like Sodomy done by jail mates and some are psychological reasons like guilt feeling and jail environment.

According to **Section 306: Abetment of Suicide²² of Indian Penal Code- *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.***

So those, who commit such kind of sinful act with others and those who are involved in the creation of any such environment because of which the person has committed suicide due to mental stress and trauma, in such cases the person, should be charged under Section 306 of IPC.

SUGGESTIONS

1. Proper monitoring both physically and electronically should be done to control sodomy and any other sexual act in jail.
2. And this will be possible only when the jail will not be over crowded.
3. Under trial prisoners should be kept separately from convicted prisoners.
4. Physiological distress persons should be cared more and all kind of medical facilities as well as family support if required should be provided.
5. Time to time counselling should be done for physiological monitoring.
6. Tress free environment should be provided to them.

²¹ Ibid.

²² Supra.8 at 528

7. More research and study is required to find out the appropriate solution for the protection of the prisoner and their behaviour in jail.
8. Especially man made environment where inmates feel not secured should be studied and to find out the causes.
9. All those modes which are used to commit suicide in jail by the prisoner should be restricted.
10. Establishment of new jails for proper monitoring.

CONCLUSION

From the above research I found that by proper monitoring and time to time providing physiological counselling can help us to find out those prisoners who are in high risk of committing suicide. And above all the jail should not be over crowded. So that, proper step can be taken within time to protect their life.

