

SUICIDE, ITS CONSTITUTIONALITY AND DEVELOPMENTS IN INDIA

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Abstract

Suicide is the act of intentionally causing one's own death. This essay explores the constitutionality and legality of the act of suicide in the country of India, and how the stance regarding the act has swayed throughout the years by way of legislative developments, judicial pronouncements and interventions, and executive and legal reports. This essay is more of an informative, positivist essay rather a normative one, explaining the *what is* rather than the *what should*.

Introduction

Suicide (*felo de se*) means deliberate termination of one's own physical existence or self-murder, where a man of age of discretion and *compos mentis* voluntarily kills himself. Suicide needs to be distinguished from euthanasia or mercy-killing. Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own life sans the aid or assistance of any other human agency. Euthanasia, on the other hand, involves the intervention of other human agency to end the life. Euthanasia is nothing but homicide, and unless specifically excepted, it is an offence.¹

The Oxford Dictionary defines suicide as "*the intentional killing of oneself*".² As per Halsbury's Laws of England³, "*every act of self-destruction is, in common language described by the word 'suicide' provided it is an intentional act of a party knowing the probable consequence of what he is about.*" Therefore, suicide is never to be presumed. Intention is the essential legal ingredient.

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¹ *Humanization and Decriminalization of Attempt to Suicide*, Report No. 210, Law Commission of India, 17th October 2008.

² Concise Oxford Dictionary, 9th Edition, p. 1393.

³ 4th Edition, Volume 9, p. 686.

Hence, a person who jumps into a well in order to avoid and escape from her husband and subsequently comes out of the well herself, cannot be convicted of attempt to suicide if there is no evidence to show that she wanted to commit suicide.⁴

Following the French Revolution of 1789, criminal penalties for attempting to commit suicide were abolished in European nations, England being the last to follow suit with the Suicide Act, 1961.⁵

In India, not only abetment of suicide is an offence (*vide* Section 306, Indian Penal Code, 1860), but also attempt to commit suicide is an offence (*vide* Section 309, Indian Penal Code, 1860). Although suicide is not an offence in itself, any person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, is guilty of an offence and liable on conviction on indictment to imprisonment.

This is quite ironical as suicide is a crime, but if it is successful, there is no one to punish.⁶

Constitutionality and Legality in India

In India, attempt to commit suicide is constituted an offence punishable under Section 309 of the Indian Penal Code, 1860. Although the completed act is not a crime, attempt to commit the act is made an offence. The aforementioned Section reads as follows:-

309. Attempt to Commit Suicide.- *Whoever attempts to commit suicide and does any act towards the commission of such an offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or both.*⁷

The constitutionality of Section 309 of the Indian Penal Code, 1860 has been the subject matter of challenge several times before the Supreme Court and High Courts. The tricky nature of the issue can be gauged well from the fact that the Supreme Court

⁴ *Emperor v. Dhirajia*, AIR 1940 All 486.

⁵ The New Encyclopaedia Britannica, Volume 11, Micropaedia, 15th Edition (1987), p. 359.

⁶ Retrieved from <<http://legal-dictionary.thefreedictionary.com/Suicide>>.

⁷ Section 309, Indian Penal Code, 1860.

itself has given various dictums with regard to the issue.⁸ The constitutionality of the aforesaid section is mainly disputed with regards to the following Articles of the Constitution:-

Firstly, Article 14 of the Constitution of India, 1950 which provides for equality before law, and reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”; and

Secondly, Article 21 of the Constitution of India, 1950 which provides for protection of life and personal liberty, and reads as under:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

It is *sine qua non* to comprehend the following with regards to this important issue.

Judicial Landmarks

It will be pertinent to first note the following observation of the Delhi High Court in *State v. Sanjay Kumar Bhatia*⁹, a case under Section 309, IPC:

“It is ironic that that Section 309 still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one’s own life would have escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed... Instead of the society hanging its head in shame that there should be such social strains that a young boy (the hope for tomorrow) should be driven to suicide compounds its inadequacy by treating the boy as a criminal... The continuance of Section 309, IPC is an anachronism unworthy of a society like ours... This concept seeks to meet the challenge of social strains of modern urban and competitive economy by ruthless suppression of mere symptoms- this attempt can only result in failure... No wonder so long as society refuses to face this reality its coercive

⁸ *Suicide, Euthanasia and the Indian Law*, V. M. Syam Kumar, Lecturer for Maritime Law, National University for Advanced Studies, Kochi, retrieved from < <http://www.lawyersclubindia.com/articles/Suicide-Euthanasia-and-the-Indian-Law-3579.asp#.VbXNLvmqqko>>.

⁹ 1985 CriLJ 931.

machinery will invoke the provision like Section 309, IPC which has no justification right to continue remaining on the statute book.”

In *Maruti Shripati Dubal v. State of Maharashtra*¹⁰, the Bombay High Court held that Section 309, IPC is *ultra vires* the Constitution being violative of Articles 14 and 21 thereof and must be struck down. It was pointed out the fundamental rights have positive as well as negative aspects. For instance, the freedom of speech and expression also gives the freedom to not speak and to remain silent. The freedom of business and occupation includes freedom not do business and close down existing business. If this is so, it logically follows that that the right to live as enshrined in Article 21 also includes a right not to live i.e. a right to die, or to terminate one’s life. Furthermore, the language of the Section itself is sweeping in nature as it does not define suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. The want of a plausible definition itself makes the provisions of section 309 arbitrary and violative of Article 14. If the purpose of the punishment for attempted suicide is deterrence, the same is not achieved as no deterrence is going to hold back who wants to leave the world for a social or a political cause, or because of loss of interest in life. The provisions of Section 309 are arbitrary in this regard. As, it has rightly been said, arbitrariness and equality are enemies of each other.

The High Court also observed that there is nothing unnatural about the desire and the right to die. While the means adopted for doing so may be unnatural, the desire which leads one to do it, is not. Suicide is an abnormality or of an uncommon trait since it is not a feature of a normal life. However, abnormality and uncommonality are not unnatural merely because they are exceptional.

In *P. Rathinam and Nagbhusan Patnaik v. Union of India*¹¹, a Division Bench of the Supreme Court also held that Section 309, IPC violates Article 21, as the right to live of which the said Article speaks of, can be said to bring in its trail the right not to live a forced life. The right to die inevitable leads to the right to commit suicide.¹²

¹⁰ 1987 CriLJ 743.

¹¹ AIR 1994 SC 1844, JT 1994 (3) SC 392.

¹² *The Right to Die: New Problems for Law and Medicine and Psychiatry* by Alan Stone, Professor of Law and Psychiatry, Harvard University for Emory Law Journal, Volume 37, 1988, p. 627 to 643.

However, the Supreme Court disagreed with the view of the Bombay HC that Section 309 is also violative of Article 14. Dealing with the argument relating to want of a definition of 'suicide', the Supreme Court- irrespective of differences- assigned a broad definition to 'suicide' as the "*intentional taking of one's life*".¹³ The Supreme Court further observed that suicide has been a part of human behaviour since prehistory. Suicide is a psychiatric problem and not a manifestation of criminal instinct. What is needed are soft words and wise counselling rather than stony dealing by jailor following harsh treatment by a heartless prosecutor. The Supreme Court finally expressed the view that Section 309 of the Indian Penal Code deserves to be effaced from the statute book for the following reasons:-

Firstly, to humanize our penal laws;

Secondly, to avoid punishing someone who has suffered agony and might be undergoing ignominy;

Thirdly, an act of suicide cannot be said to be against religion, morality or public policy;

Fourthly, an act of attempted suicide has no baneful effect on society;

Fifthly, suicide or attempt to suicide causes no harm to others due to which State's interference with personal liberty is uncalled for; and

Sixthly, to attune domestic criminal law to the global wavelength.

In *Gian Kaur v. State of Punjab*¹⁴, however, a Constitution Bench of the Supreme Court overruled the decisions in *Maruti Shripati Dubal v. State of Maharashtra*¹⁵ and in *P. Rathinam and Nagbhushan Patnaik v. Union of India*¹⁶, holding that Article 21 cannot be construed to include within it the 'right to die' as a part of the fundamental guaranteed therein and therefore it cannot be said that Section 309, IPC is violative of Article 21. 'Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination of life that is inconsistent with this right. The comparison with other rights such as the freedom of speech, etc., is misguided. The right to die is as inconsistent with the right to life as is death with life. The apex court observed as under:

¹³ *Encyclopaedia of Crime and Justice*, Volume IV, 1983 Edition, p. 1521.

¹⁴ AIR 1996 SC 946.

¹⁵ 1987 CriLJ 743.

¹⁶ AIR 1994 SC 1844, JT 1994 (3) SC 392.

“The significant aspect of sanctity of life is not to be overlooked... by no stretch of imagination can extinction of life be read to be included in ‘protection to life’... Any aspect of life which makes it dignified maybe read into Article 21 but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself.”

In *C. A. Thomas Master v. Union of India*¹⁷, a retired teacher aged 80 years wished to voluntarily put an end to his life after leading a successful and contented life. He stated that his mission in life had been accomplished and argued that voluntary termination of one’s life was not equivalent to committing suicide. The Kerala High Court held that no distinction can be made between suicide committed by a person who is either frustrated or defeated in life and that by a person like the petitioner who wished to voluntarily put an end to his own life.

Law Commission Reports

The 42nd Report of the Law Commission of India entitled *Indian Penal Code* published on June 2, 1971, brought to conclusion the second major revision undertaken by the Commission since its constitution in March, 1968. Revision of the Indian Penal Code was undertaken by the Law Commission as part of its function of revising Central Acts of general application and importance. It said that suicide was regarded as permissible in some circumstances in Ancient India. It relies on Manu’s Code¹⁸ to claim the same. It also cites an English writer quoted hereunder:

*“It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse litigation.”*¹⁹

The Commission was thus of the view that the penal provision is harsh and unjustifiable and should be repealed.

¹⁷ 2000 CriLJ 3729.

¹⁸ *Laws of Manu*, translated by George Buhler, *Sacred Books of the East* edited by F. Max Muller, (1967) Volume 25, p. 204.

¹⁹ *Suicide*, H. Romilly Fedden, 1938, p. 42.

The 156th Report of the Law Commission of India entitled *Indian Penal Code (Volume II)*²⁰ published in August, 1997, undertook comprehensive revision of the Indian Penal Code with special reference to the Indian Penal Code (Amendment) Bill, 1978, in light of the altered socio-economic scenario. This report first reminded of the revisions suggested by the 42nd Report with regard to Section 309 and the consequent omission of the Section by way of Clause 131 of the Amendment Bill. It then parleys subsequent significant judicial developments and cites the following cases:-

- (i) *State v. Sanjay Kumar Bhatia*, 1985 CriLJ 931;
- (ii) *Maruti Shripati Dubal v. State of Maharashtra*, 1987 CriLJ 743; and
- (iii) *P. Rathinam and Nagbhushan Patnaik v. Union of India*, AIR 1994 SC 1844, JT 1994 (3) SC 392.

The aforementioned cases are precedent for Section 309 being violative of Article 21 of the Constitution of India and hold the view that the penal provision should be struck from the statute books. But this view of the Supreme Court was overruled by a larger bench in the case of *Gian Kaur v. State of Punjab*²¹ which held that the view taken in *Rathinam* could not be sustained. Not just compassionate and sympathetic people who fail to end their lives have to be considered; terrorists or drug-traffickers who fail to consume a cyanide pill or a human bomb who fails to blow himself also have to be considered.

Accordingly, the Report recommended that Section 309 should continue being an offence under the Indian Penal Code and Clause 131 of the Amendment Bill be deleted.

The 210th Report of the Law Commission of India entitled *Humanization and Decriminalization of Attempt to Suicide*²² published on October 17, 2008, presents the following. In our country, attempt to suicide is an offence punishable under section 309 of the Indian Penal Code. Section 309 reads thus:

Attempt to commit suicide. 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.

²⁰ Retrieved from <<http://lawcommissionofindia.nic.in/101-169/Report156Vol2.pdf>>.

²¹ AIR 1996 SC 946.

²² Retrieved from <<http://lawcommissionofindia.nic.in/reports/report210.pdf>>.

Article 21 of the Constitution of India enjoins that no person shall be deprived of his life or personal liberty except according to procedure established by law.

A Division Bench of the Supreme Court in *P. Rathinam v. Union of India* (AIR 1994 SC 1844) held that the right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life, and therefore, Section 309 violates Article 21. This decision was, however, subsequently overruled in *Gian Kaur v. State of Punjab* (AIR 1996 SC 946) by a Constitution Bench of the Supreme Court, holding that Article 21 cannot be construed to include within it the 'right to die' as a part of the fundamental right guaranteed therein, and therefore, it cannot be said that Section 309 is violative of Article 21.

The Law Commission had undertaken revision of the Indian Penal Code as part of its function of revising Central Acts of general application and importance. In its 42nd Report submitted in 1971, the 6 Commission recommended, inter alia, repeal of section 309. The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of Section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. The Commission submitted its 156th Report in 1997 after the pronouncement of the judgement in *Gian Kaur*, recommending retention of Section 309.

The criminal law must not act with misplaced overzeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture. With these words, the Law Commission once again recommended deletion of Section 309.

Recent Developments and Current Standing

Considering more recent times, the Mental Health Care Bill, 2013 as introduced in the Rajya Sabha on 19th August 2013 seeks to decriminalize 'attempt to suicide' as given in Section 309 of the Indian Penal Code, 1860 by linking them to the state of mental health of the person attempting the act.²³ The Bill provides that those attempting suicide will be treated as mentally ill unless proved otherwise and therefore exempted from the current provisions of Section 309 of Indian Penal Code.

²³ Retrieved from < <http://www.thehindu.com/news/national/new-mental-health-bill-decriminalises-suicide/article5045156.ece>>.

The relevant portion reads as under:

124. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to be suffering from mental illness at the time of attempting suicide and shall not be liable to punishment under the said section.

*(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having mental illness and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.*²⁴

It is important to note that the aforementioned Bill does not repeal Section 309 of the Indian Penal Code; it merely gives a way out- a protective veil of a kind by providing presumption of mental illness. On 10th December 2014, the Minister of State for Home Affairs, Haribhai Parathibhai Chaudhary stated in a written reply to Vivek Gupta that “it has been decided to delete Section 309 of IPC from the statute book.”²⁵

However, pending the passage of the Mental Health Care Bill, 2013, Section 309 of the Indian Penal Code, 1860 is yet to be repealed or even limited.

²⁴ Section 124, The Mental Health Care Bill, 2013.

²⁵ *Decriminalization of Section 309*, Press Information Bureau, Government of India, 10th December 2014.