

DECriminalization of Attempt to Suicide in India

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INTRODUCTION :

In India, attempt to suicide is made punishable under section 309 of Indian Penal Code, 1860. There is always conflicts because of judgments given by our Courts about whether right to life includes right to die within the meaning of article 21 of the Constitution of India. There is two kinds of opinion by people that Article 21 of the Constitution of India is a provision providing Right to life and personal liberty. By declaring an attempt to commit suicide a crime, the Indian Penal Code upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State cannot turn a blind eye to a person in attempting to kill himself. Another set of people are of the opinion that the Section 309 of Indian Penal Code is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. It is cruel to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide.

RELATED PROVISION :

Indian Penal Code

Indian Penal Code does not define 'suicide'. Generally The term 'suicide' is the human act of self-Killing, self-death It has been defined by various sociologists and psychologists in different ways. Some of the definitions are 'suicide is the initiation of an act leading to one's own death' . " It is synonymous with destruction of the self by the self or the intentional destruction of one's self." (3)

S. 309 – 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.” (1)

Indian Constitution

The Constitution of India provides a long list of fundamental rights under Part-III. Article 21 of our Constitution is one of the important fundamental rights among those rights.

Article 21 – Protection of Life and Personal Liberty: “ No person shall be deprived of his life or personal liberty except according to procedure established by law.” (2) The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.

The scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in *A.K.Gopalan v. State of Madras* (3) that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). At that time *Gopalan’ s* case was the leading case in respect of Article 21 along with some other Articles of the Constitution, but post *Gopalan* case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law.

Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after *Gopalan’ s* case in the case of *Maneka Gandhi v. Union of India*(4) , the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This view has been further relied upon in a case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others*[6] as follows: Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be

reasonable, fair and just and not arbitrary, whimsical or fanciful. The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just.

In the same case Bhagwati J. held: “ We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingle with fellow human beings.” The Judge conceded that “ the magnitude and content of the components of this right would depend upon the extent of the economic development of the country” , but emphasised that “ it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human – self.”

RIGHT TO LIFE AND RIGHT TO DIE :

The Indian constitution under Article 21 confers the right to Life as the fundamental right of every citizen. The Right to Life enriched in Article 21 have been liberally interpreted so as to mean something more than mere survival and mere animal existence. The Supreme Court has asserted that Article 21 is the heart of the fundamental Rights provided under part III of the constitution. The Supreme Court has clearly stated that in order to treat a right as a fundamental it is not mandatory that it should be expressly stated as a fundamental right. In India “ The right to life” under Article 21 of the Constitution has received the widest possible interpretation under the able hands of the judiciary and rightly so. On the grounds as mentioned, Article 21 does not have a restrictive meaning and needs to be interpreted broadly. This affirms that if Article 21 confers on a person the right to live a dignified life, it should bestows the “ Right to Die” also, but the inclusion of Right to die under Article 21 contradict the provision of Indian Penal Code under section 309. As according to section 309 of the I.P.C. “ 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” . This section is based on the principle that lives of men are not only valuable to

them but also to the state which protects them. By considering both the laws the provision of I.P.C. under section 309 is contradictory to the fundamental right guaranteed under Article 21 of the Indian Constitution. The state's power under section 309, I.P.C. to punish a man for attempt to commit a suicide is questioned not only on the grounds of morality, but also on the constitutionality of the said provision. A lot of conflicting opinions have been given on desirability of retaining or abolishing section 309 of Indian Penal Code because of some contrasting judgement given by the courts.

A very fascinating development in the Indian constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post-Maneka era. Since then, Article 21 has proved to be multi-dimensional. This aspect of Article 21 is brought up by many judicial pronouncements. This right is inalienable and is inherent in us. It cannot and is not conferred upon us. This vital point seems to elude all those who keep on clamoring for the "Right to die". That means that every individual has a fundamental freedom to choose not to live. On this issue the stance taken by the judiciary is unquestionable. The main question arises is that whether right to life include right to death.

CONSTITUTIONAL VALIDITY ON SECTION 309 OF IPC :

The state's power under section 309, I.P.C. is questioned not only on grounds of morality, but also on the constitutionality of the provision.

In the case of *Maruti Shripati Dubal v. State of Maharashtra*(5), It is the first time it came for the consideration before the court that whether a person has a right to die. The petitioner, a police constable, who became mentally ill after a road accident attempted to commit suicide by dousing himself with kerosene and then trying to light a match was prevented and prosecuted under section 309 of I.P.C. In 1987, the Division Bench of Bombay High Court struck down sec 309, I.P.C., as ultra vires vide article 14 and 21 of the constitution which guarantees 'right to life and personal liberty'. The court said the 'right to life' includes 'right to live' as well as 'right to end one's life' if one so desires. It was pointed out that Fundamental Rights have positive as well as negative aspects. For example: Freedom of Speech and Expression also includes freedom not to speak and to remain silent. If this is so, logically it must follow that right to live as recognised by article 21 of the constitution also includes a right not to live or not to be forced to live.

Justice P.B. Sawant: “ If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of mental disorder requires psychiatric treatment and not confinement in the prison cells where their condition is bound to be worsen leading to further mental derangement. Those on the other hand, who makes a suicide attempt on account of actual physical ailments, incurable disease, torture (broken down by illness), and deceit physical state induced by old age or disablement, need nursing home and not prison to prevent them from making the attempts again. No deterrence is going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. Thus in no case does the punishment serve the purpose and in some cases it is bound to prove self defeating and counter – productive.

Gian Kaur v. State of Punjab (6)

In 1996, a five judge Constitutional Bench of the Apex Court said about the Constitutional validity of sec 309 of IPC.

The appellant and her husband were convicted by the Trial Court under Section 306, I.P.C. for abetting the commission of suicide by Kulwant Kaur. In special leave before the Apex Court the conviction of the appellant has been assailed (challenged), inter alia on the ground that Section 306 I.P.C. is unconstitutional in view of Judgment in 1944; wherein Section 309 I.P.C. has been held to be unconstitutional as violative of Article 21 of the Constitution. The Court while dismissing the petition held that the ‘ right to life’ is inherently inconsistent with the ‘ right to die’ as is ‘ death’ with ‘ life’ . In furtherance, the right to life, which includes right to live with human dignity, would mean the existence of such a right up to the natural end of life. It may further include ‘ death with dignity’ but such existence should not be confused with unnatural existence of life curtailing natural span of life. In progression of the above, the constitutionality of section 309 of the I.P.C. which makes “ attempt to suicide” an offence, was upheld, overruling the judgment in P. Rathinam’ s case.

The Apex Court further held that Section 306, I.P.C. as constitutional and said that ‘ right to life’ does not include ‘ right to die’ . Extinction of life is not included in protection of life. The Court further went on to say that Section 306 constitute a distinct offence and can

exist independently of Section 309, I.P.C. As regards Section 309, I.P.C. is concerned, the court said that the 'right to life' guaranteed under Article 21 of the Constitution did not include the 'right to die' or 'right to be killed' and therefore an attempt to commit suicide under section 309, I.P.C. or even abetment of suicide under section 306, I.P.C., are well within the constitutional mandated, and are not void or ultra vires. [14]

The Court said – “ Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can ‘extinction of life’ be read to be included in ‘protection of life’ whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, it is difficult to construe Article 21 to include within its ambit the ‘right to die’ as a part of the Fundamental Right guaranteed therein. ‘Right to life’ is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and therefore incompatible and inconsistent with the concept of ‘right to life’ .”

WHETHER IT IS MORALLY RIGHT TO PUNISH FOR SUICIDES :

This World every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it. Death is certain. It is a fact of life. Suicide is not a feature of normal life. It is an abnormal situation. But if a person has right to enjoy his life, he cannot also be forced to live that life to his detriment, disadvantage or disliking. If a person is living a miserable life or is seriously sick or having incurable disease, it is improper as well as immoral to ask him to live a painful life and to suffer agony. It is an insult to humanity. Right to life means right to live peacefully as an ordinary human being. One can appreciate the theory that an individual may not be permitted to die with a view to avoiding his social obligations. He should perform all duties towards fellow citizens. At the same time, however, if he is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with torture and painful life. In such cases, it will indeed be cruel not to permit him to die. There are people who though see suicide as morally wrong, still create obligatory grounds to commit suicide and advanced some arguments with moral backups in favour of suicide. Thus giving us the chance of raising the question whether man has the moral right to die or take his or her life.

INDIAN LAW COMMISSION REPORTS :

42nd LAW COMMISSION REPORT:

The Law Commission of India in its 42nd Report (1971) recommended repeal of Section 309 being of the view that this penal provision is “harsh and unjustifiable”. The apprehension that the repeal of the law criminalizing attempted suicide would result in increase in suicide is betrayed by the fact that Sri Lanka repealed the law four years ago and the suicide rate is showing a trend in reduction. On the contrary, in Singapore suicide rates have been increasing in recent years despite their having suicide as a punishable offence.(7)

210th LAW COMMISSION REPORT:

The 18th Law Commission in its 210th Report titled ‘Humanization and Decriminalization of Attempt to Suicide’ submitted on October 17, 2008 gave the following recommendations:-

Suicide occurs in all ages. Life is a gift given by God and He alone can take it. Its premature termination cannot be approved by any society. But when a troubled individual tries to end his life, it would be cruel and irrational to visit him with punishment on his failure to die. It is his deep unhappiness which causes him to try to end his life. Attempt to suicide is more a manifestation of a diseased condition of mind deserving of treatment and care rather than punishment. It would not be just and fair to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide.

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.

Section 309 of the Indian Penal Code provides double punishment for a person who has already got fed up with his own life and desires to end it. Section 309 is also a stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide. It is unreasonable to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his own life. In such a case, the unfortunate person deserves sympathy, counselling and appropriate treatment, and certainly not the prison.

Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of whether it is constitutional or unconstitutional. The repeal of the anachronistic law contained in section 309 of the Indian Penal Code would save many lives and relieve the distressed of his suffering.

The Commission is of the view that while assisting or encouraging another person to (attempt to) commit suicide must not go unpunished, the offence of attempt to commit suicide under section 309 needs to be omitted from the Indian Penal Code.

CONCLUSION :

The desirability for deletion of Section 309 of I.P.C. is also the view supported by the majority of states in India. Twenty five Indian states except Madhya Pradesh, Bihar and Sikkim have favoured striking down I.P.C. Section 309 that criminalises attempt to commit suicide by making it punishable with imprisonment. It is wrong to say that the Indian penal code is a modern code in every possible sense. Laws are made for the people and it should be change to meet the aims and aspiration of the changing society. Ultimately, the aim should be to evolve a consensual and conceptual model effectively handling the evils without sacrificing human rights. Therefore section 309 should be deleted from the Indian penal Code because as mentioned in Maruti Shripati Dubal case that “ No deterrence is going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or for self- deliverance. Thus in no case does the punishment serve the purpose and in some cases it is bound to prove self defeating and counter – productive” . In any case a person should not be forced to enjoy the right to live to his detriment, disadvantage, and disliking. Further, the “ Right to life” under Article 21 should not include “ right to die” because this provision might increase the rates of suicides in the country and moreover the “ Right to life’ is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore incompatible and inconsistent with the concept of “ right to life” .

The judgement given by Supreme Court in Gyan Kaur is followed but according to me this should be scrapped from the I.P.C. but the ‘ right to die’ should not be expressively included in the “ right to life” , because “ Life is a gift given by God and He alone can take it” . Its premature termination cannot be approved by any society. Neither it should be penalised.

Attempt to commit suicide is a ‘ manifestation of diseased mind’ . So what is to be done is rightly stated by the decision given in P. Rathinam’ s case-“ What is needed to take care of suicide prone persons are soft words and wise counselling (of a psychiatrist), and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor. Section 309 of the Penal Code deserves to be effaced from the statute book to humanise our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide.”

It should be noted that Indian penal code was made by British people in 1860. They included this sec 309 as an offense, but later in they decriminalizes the attempt to suicide in their country. But In India we are still following the britisher's concept. So It is morally not good to punish suicide committed persons and giving them another pain in their life. So it is time Decriminalizing the attempt to suicide in India.