

LET ME DIE CRY THE SOUL: ERADICATE SECTION 309 FROM INDIAN PENAL CODE

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Stormy or calm, life is dear to all but this precious gift has been bestowed to us not free of cost. Life is bequeathed with the composition of happiness and adversities. Irony of the matter is, that before gifting it god never ask our permission or opinion or take our advice that whether we are ready to accept this valuable gift or not. The gift is foisted upon us without even knowing the price of it. If the amalgamation is balanced we accept it whole heartily. But if the share of misfortunes or sorrows is more than the share of gaiety then not every individual gather courage to fight it back and accept the gift with contentment. Everyone is not competent to pay the cost of it and hence those who find it difficult to foot its bill, chooses to end their life. This act of murdering oneself is called suicide.

Suicide dictionary meaning is the act of killing oneself intentionally¹. It means deliberately 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. Former 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. Latter, on the other hand, involves the intervention of other human agency to end the life. Euthanasia is nothing but homicide,

¹ *Cambridge Dictionary*, s.v. "Suicide" accessed on 10 august 2016, <http://dictionary.cambridge.org/dictionary/english/suicide>

and unless specifically exempted it is an offence². It is noteworthy that our whole planet is the victim of this problem. Suicide is a principal cause to premature or unnatural death in the world³.

In India, not only attempt to commit suicide but also abetment to commit suicide is an offence, punishable under section 309 and section 306 respectively of Indian penal code. Although committing suicide as such is not actionable under the code. Since if he succeeds in his attempt, there would be no offender who could be thrown behind the bar. The underlying principle behind the provision is, that state protects the life of an individual not only against the aggression of the stranger but also from the individual's own acts too which further strengthens the fact that state values and protects the existence of man.

Section 309, Indian Penal Code read as under:

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".

It is noteworthy that Suicide was not a taboo in ancient India. Hindu and Jain have approved the practice of ending one's life subject to certain circumstances. The Buddhism has encouraged sacrifice of life for religion and country and never treats suicide as species of murder. In contrast, the quran has declared it a crime worse than homicide⁴.

This is evident from the statement of Manu when he says:

² Law commission of India, 210th report on Humanization and Decriminalization of Attempt to Suicide, October 2008, pg 9.

³See also, *Ibid*, n.2, pg 11.

⁴ *Id*, n. 2, pg 15.

“A Brahman having got rid of his body by one of those modes (*i.e.*, drowning, precipitating, burning or starvation) practiced by the great sages, is exalted in the world of Brahmana, free from sorrow and fear⁵”.

Govardana and kulluka, while writing commentaries on Manu said:

“A man may undertake the mahaprasathana, (great departure) on a journey which ends in death, when he is incurably diseased, or meets with a great misfortune, and that, it is not opposed to Vedic rules which forbid suicide⁶”.

In India there is a culture of observing law more in breach. Data shows that provision dealing with attempt to commit suicide is useless because while committing suicide or attempt to suicide, the offender never gets bothered by the idea of punishment coupled with failing the attempt. Even the consequence of failing the attempt never haunts him and plays no role to dissuade him from committing the crime.

In common law, culprit who committed suicide as could not be brought within the purview of the law, his sin resulted into forfeiture of his property. Following the French revolution of 1789 criminal penalties for attempting to commit suicide were abolished in European countries, England being the last to follow suit in 1961⁷. In England, the Suicide Act 1961 abrogated attempt to suicide as an offence. Although suicide is no longer an offence in itself, any person who either abets the commission of suicide, or abets an attempt to commit suicide of another, is guilty of an offence and liable on conviction to imprisonment for a term which may extend to 14 years⁸.

⁵ *Manu's Code Chapter on the Hermit in the Forest*, sec. 32 quoted in K.D. Gaur, *A Textbook on The Indian Penal Code*, (Universal Law Publication (3rd ed.) 2007).

⁶ *Laws of Manu*, translated by George Buhler, *Sacred Books of the East* by F. Max Muller (1967 reprint) Vol. 25, p.206 quoted in K.D. Gaur, *A Textbook on The Indian Penal Code*, (Universal Law Publication (3rd ed.) 2007).

⁷ The New Encyclopaedia Britannica, Vol. 11, Micropaedia, 15th ed. (1987), p. 359 quoted in Law commission of India, 210th report on Humanization and Decriminalization of Attempt to Suicide, October 2008, pg 10.

⁸ Halsbury's Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106 quoted in Law commission of India, 210th report on Humanization and Decriminalization of Attempt to Suicide, October 2008, pg 10.

The conviction of attempt to commit suicide is based upon the proof of the fact of intentional self- destruction of life thus if a person consumes poison by mistake or in a state of intoxication, or jeopardise his life to evade greater harm he cannot be held liable under the section.

Constitutional validity of section 309 of the IPC is challenged before the court number of times. The Bombay High Court in *Maruti Shripati Dubal*⁹ held 309, IPC ultra vires vide Article 21 of the Constitution which ensures 'right to life and liberty'. The court said the 'right to life' includes right to die. Justice P.B.Sawant in his judgment said:

"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 disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen and leading to further mental derangement. Those on the other hand, who make a suicide attempt on account of acute physical ailments, incurable disease, torture (broken down by illness), decrepit physical state induced by old age or disablement, need nursing homes and not prison to prevent them from making the attempts again. No deterrence is further 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".

Similarly, in 1985 Delhi High Court in *Sanjay Kumar*¹⁰ while acquitting a young boy who attempted to commit suicide by consuming 'Tik Twenty' recommended effacement of section 309, IPC from the statute and held that-

"Instead of sending the young boy to a psychiatric clinic society, gleefully (happily) sends him to mingle with criminals, as if trying its best to see that in future he

⁹ *Maruti Shripati Dubal v. State of Maharashtra*, 1987 Cri LJ 743(Bom).

¹⁰ *State v. Sanjaya Kumar*, 1985 Cr LJ 931.

does fall foul of the punitive sections of the penal code. The continuance of section 309 of the Indian Penal Code (hereinafter IPC) is an anachronism unworthy of a human society like ours. Medical clinics for such social misfits certainly, but police and prison never”.

In the year 1994 a division Bench of the Supreme Court comprising of Justices R.M. Sahai and B.L. Hansaria in *P. Rathinam*¹¹, while allowing the petition approved the Bombay and Delhi High Court’s verdict and overruled Andhra ruling declaring that the same infringes Article 14 and 21 of the constitution.

Invalidating section 309, IPC, the apex court opined that ‘it is cruel and irrational provision violative of Article 21 of the Constitution’. Enlarging the scope of Article 21, the court held that, ‘right to life’ include ‘right not to live a forced life’; *i.e.*, to end one’s life if one so desires. The court went on to say that-

“...it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy (humiliation) because of his failure to commit suicide...An act of attempted suicide has not baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which state’s interference with the personal liberty of the concerned persons is not called for”.

However, in 1996 Constitution Bench comprising Justices J.S Verma, G.N. Ray, N.P. Singh, Faizuddin and G.T Nanawati overruled *P. Rathinam*. In *Gyan kaur*¹² the appellant and her husband were convicted by the trial court under section 306, IPC 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, IPC has been held to be unconstitutional as violative of Article 21 of the constitution.

¹¹ *P. Rathinam v. Union of India*, AIR 1994 SC 1844.

¹² *Gyan Kaur v. State of Punjab*, AIR 1966 SC 1257.

It was argued that 'right to die' is included in Article 21 of the Constitution the net effect of which is to make section 309, IPC redundant being unconstitutional as the section is directly in conflict with Article 21. Any person abetting the commission of suicide by another is merely helping other to exercise fundamental 'right to die' under Article 21 and therefore section 306, IPC also violates Article 21 of the constitution.

Dismissing the petition, the apex court upheld the validity of section 306, IPC and held that 'right to life' does not include 'right to die'. Extinction of life is not included in protection of life. The court further held that section 306 constitutes a distinct offence and can exist independently of section 309, IPC there is no correlation between the two sections. As regards section 309, IPC 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, IPC or even an abetment of suicide under section 306, IPC are well within the constitutional parameters, and are not void or ultra vires. The 'right to die with human dignity' cannot be construed to include within its ambit 'the right to terminate natural life', at least before the natural process of certain death. The 'right to die', if any, is inherently inconsistent with the 'right to life' as is death with life. 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'¹³.

¹³ *Ibid*, pg 1263, (para 19).

As regards the contention that treating different circumstances leading to attempt to commit suicide by the same measure is violative of Article 14 of the Constitution, the court said, it does not hold good in as much as the nature, gravity and extent of attempt may be taken care of by tailoring the sentencing appropriately. Section 309, IPC has only provided the maximum sentence which is upto one year. It also provided for imposition of fine only as a punishment. It is this aspect which is important and reported decisions show that even on conviction under section 309, IPC in practice the persons have been dealt with compassion by invoking the provisions of section 360 of the code of criminal procedure, 1973(section 562, CRPC., 1898) and Probation of Offenders Act 1958¹⁴.

The reasoning given in the last two conflicting pronouncements of the Supreme Court *i.e.* in P. Ratinam and Gyan Kaur are equally convincing. Both the judgments are reflection of judicial wisdom. The debate on effacement or retention of s. 309 requires a careful perusal of the arguments of both the sides.

42nd Law Commission report suggested to repeal s. 309 and to decriminalize attempt to commit suicide. The Indian Penal Code amendment bill which was passed by Rajya Sabha, before it could be passed by Lok Sabha, Lok Sabha got dissolved. 156 Law Commission Report contrary to 42nd Law Commission report recommended to retain the provision. This report was submitted after Gian Kaur V. State of Punjab. Law commission again got itself engaged in this discussion through 210 Law Commission report. This time it showed its tilt towards effacing the Section 309 of the IPC from statutory book. It observed that attempt to suicide is a manifestation of diseased/ unhealthy condition of mind deserving care and treatment rather than punishment. The commission has recommended the government to initiate steps and repeal the anachronistic law contained in Section 309, Indian Penal Code. Also as law and order is state subject, state and union territory view were requested by the commission to give their opinion with

¹⁴ *Rukmina Devi v. State of Maharashtra*, 1976 Cr LJ 548.

regard to the subject. 18 state and 4 union territory give their assent to repeal the provision but Bihar, Madhya Pradesh, Delhi, Sikkim and Punjab have expressed reservations against the move. Bihar argues distinction to be drawn between person driven to suicide due to medical illness and terrorist who failed to blow themselves and terrorist consume pill to wipe out evidences. Claiming latter should be continued to be punished with same rigor and must be ousted from the protection and wanted them to be covered by separate legislation. On this, Home Ministry clarified that the culprits will be booked in stringent Unlawful Activities Prevention Act and will not be spared at all.

Delhi, Madhya Pradesh, and Sikkim argued that decriminalizing it, would result into disabling our law enforcement agency from throwing the book on perpetrator who resort to fast unto death or self- immolation to intimidate government to bow down before their unreasonable or illegal demands. Delhi Madhya Pradesh argued eradicating section 309 would also dilute 306(abetment to suicide) after which abettor cannot be proceeded against for a failed suicide attempt¹⁵. Punjab instead of opposing, insisted state to come forward for rehabilitation of people who attempt to commit suicide¹⁶. To provide medical assistance, psychological care, public assistance in case of old age, rape victim, unemployment, distressed farmer¹⁷.

World health organization, the International Association for suicide prevention, France, decriminalization of attempted suicide by all countries in Europe and North America, the opinion of the Indian psychiatric society, and the representations received by the commission from various persons, all are in favour to efface it¹⁸.

Recently Rajya Sabha also has passed the Mental Health Care Bill paving the way for decriminalising attempt to suicide. The bill require government to assure “care, treatment and rehabilitation” of such individuals, presuming them to be under

¹⁵ “Government decriminalizes attempt to commit suicide, removes section 309”, *The Times of India*, 10th Dec 2014.

¹⁶ *Ibid*, n. 15.

¹⁷ *Ibid*, n. 15.

¹⁸ *Supra*, n. 2.

“severe stress”. The bill, also aims to furnish better healthcare for people suffering from mental illnesses. The fate of the bill is now in the hands of Lok Sabha¹⁹.

Conclusion

Two facts although inconsistent are absolutely true about India, one that India is the largest democracy of the world and other that India is one of those few countries whose citizens are very much in favour of abolition of attempt to commit suicide and despite that fact this anachronistic law managed to survive in the law book even though the introducer of IPC themselves get rid of the provision way back in the year 1961. Democracy means citizens of the state will choose the government and by this way the government will represent the voice of the nation which means the state indirectly will be run by the people of India themselves and that is why rule of adult franchise was introduced in India but ironically the government although assured us right to vote but took away from us the right to own ourselves, our existence, our life. Jug suraiya in his beautiful article wrote that if you don't own your own life, all the other rights that devolve from it become illusory. Because if you don't own your life, you don't own yourself as a morally conscious, autonomous entity and if you don't own yourself, you can't possible own anything else. Such a non-violent self -termination is not a negation of life but an affirmation of the ownership of one's own life. He is very much right. In fact the provision of section 309 should have died its natural death, the moment constitution of India came into existence in the light of Article 13 of the Constitution which clearly provides that “all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, (Part III), shall to the extent of such inconsistency, be void”. Hence it would be unmerited to thrust further suffering and torment his soul who is already indifferent towards his life and finds it unbearable, full of sufferings, having no hopes of

¹⁹ Also see, “Defanging suicide-attempt law brings new hope to life”, *Times of India*, 12th Aug 2016.

merriment and decides to end his agony. Isolating him from the society and sending him in remand if he fails in the attempt would aggravate the sensitivity of the matter, will serve no purpose and magnify his frustration and grievances against the state. Hence the article suggests effacement of the draconian law from the code.

