

SECTION 309: A PROPOSED PERSPECTIVE

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According to Indian philosophy that which is born must die.²⁵⁴

Does commission of suicide damage the monopolistic power of the State to take life?

The aforesaid point is not required to be gone into detail, because nobody can claim to have monopoly over a human life. It is God alone who can claim such a power.²⁵⁵

A crime presents these characteristics: (1) It is a harm, brought about by human conduct which the sovereign power in the State desires to prevent; (2) Among the measures of prevention selected is the threat of punishment; and (3) Legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so.²⁵⁶²⁵⁷ Thus, “attempt to commit suicide”, does surely come under the ambit of being a crime, which shall surely be punishable and sanction should be attached to it.²⁵⁸

Taking one characteristic at a time, we will now analyse and see how suicide or attempt to commit suicide is actually against the basic principles of law and morality and how it should again be criminalised.

If we trace back the Legal History in India we see that there have been many instances that have tried to remove Section 309 and over a few years such attempts to remove this Section was clearly been over shadowed either by judiciary or legislation not acting upon it. But it is now that the legislature has taken a final stand upon it and has struck down Section 309 of the Indian Penal Code, 1860 in its 210th Law Report of Law Commission of India.²⁵⁹

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²⁵⁴ ¶29, P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Cr)209

²⁵⁵ ¶99-100, P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Cr)209

²⁵⁶ ¶51, P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Cr)209

²⁵⁷ See pages 1 to 5 of Kenny's Outlines of Criminal Law (19th Edn.)

²⁵⁸ Gian Kaur V. State of Punjab AIR 1996 SC 946

²⁵⁹ lawcommissionofindia.nic.in/reports/report210.pdf

If we see then we can trace back the History of the same then we can clearly see that in the case of *Maruti Shripati Dubal*²⁶⁰, the High Court of Bombay read down the provision and held the Section 309 to be unconstitutional. Whereas in the case of *Chenna Jagadeeswar*²⁶¹, Andhra Pradesh High Court held the provision to be intra constitutional and that it is in accordance with the provisions of Fundamental Rights. *P. Rathinam V. Union of India*²⁶² that Section 309 of Indian Penal Code was declared to be violative of Article 21 of the Indian Constitution and thus Supreme Court of India read down the provision.²⁶³

Does suicide produce adverse sociological effects?

One of the points raised against suicide is that the person who had so done might have been the sole bread-earner of the family, say a husband, a father, because of whose death the entire family might have been left in lurch or doldrums, bringing in its wake untold miseries to the members of his family. It is therefore stated that suicide has adverse effects on the social set up.²⁶⁴ Thus, it is absolutely clear how attempt to commit suicide is something which is a harm, brought about by human conduct which the sovereign power in the State should desire to prevent, the reason being human resource; in India, is one of the most effective and efficient resource. This is for what most of the Multi National Corporations also try and look for a market in India, government invests in the Human Resource of the country by giving free Education as under Article 21A²⁶⁵, free legal aid²⁶⁶, Pradhan Mantri Jan Dhan Yojana,, Beti Bachao Beti Padhao, NAREGA, National Health Mission²⁶⁷, Jan Aushadhi²⁶⁸.

No person is ever going to invest in any kind of a dead stock or in any such resource from which she/he feels that no return can be reaped. Government of India invests in the citizens of India because they can clearly forecast that this is the best resource in which they should invest as this resource will clearly give them the best returns. But if this investment only goes waste because of some kind of social forces like the economy, religion and socio-economic status are

²⁶⁰ (1986) 88 Bom LR 589

²⁶¹ (AIR 1988)

²⁶² *P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another* 1995-1-LW(CrI)209

²⁶³ *P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another* 1995-1-LW(CrI)209

²⁶⁴ ¶89-90, *P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another* 1995-1-LW(CrI)209

²⁶⁵ Constitution of India, Article 21A

²⁶⁶ Article 39A, Constitution of India.

²⁶⁷ <http://nrhm.gov.in/>

²⁶⁸ <http://janaushadhi.gov.in/>

responsible for suicides in such a case such an investment would be of no use. There are various theories of suicide, to wit, sociological, psychological, bio-chemical, and environmental.²⁶⁹

The causes of suicides are many and varying in as much as some owe their origin to sentiments of exasperation, fury, frustration and revolution; some are the result of feeling of burden, torture, and sadness. Some are caused by loss of employment, reverse of fortune, misery due to illness, family trouble and thwarted love. Sometimes killing is in opposition to society and sometimes in opposition to particular persons. This happens when the person committing suicide nurses a feeling of unjust treatment, maltreatment and cruelty^{270 271}

Such reasons as stated by the Supreme Court in the case of P. Rathinam /Nabhusan Patnaik V. Union of India (UOI) and another 1995, according to me can never ever be a valid ground to take one's life. On one hand where the Government of India invests over 14,00,000 Crores of Rupees (approximate) and had given out a budget of 15,68,111.43 Crores of Rupees²⁷². More than 65.23% on people below the age of 35 as Indian population is 65.23% below 35 years and 50% below 25 years and by 2020, India will have the youngest population with an average of 29 years²⁷³. It is the youth who commits the maximum amount of suicides and they do the same in light of problems which can easily be dealt with if seen properly and which is just a phase of the life.

While on the question "Who commits suicide?" it would be relevant to state that there has been great increase in the number of commission of suicides. In his aforementioned article, Sh. Faizan Mustafa pointed out that the number of suicides by the youths below 18 in 1986 was 7545. But out of about 60,000 persons who committed suicide in 1990 nearly half of them were aged from 18 to 25, which is generally considered to be the best of a person's life.²⁷⁴ Youngsters in the **15-29** years age group accounted for the highest rate of suicide per **1,00,000** population in India during 2012. India has the highest estimated number of suicides in the world in 2012 with one suicide in every 40 seconds.²⁷⁵ So, if the youth of this country alone has such an

²⁶⁹ ¶ 68, P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Cr)209

²⁷⁰ PARA 69, P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Cr)209

²⁷¹ See The 'Causes of Suicide' by Maurice Halbwachs (Translated by Harold Goldblatt).

²⁷² <http://indiabudget.nic.in/ub2014-15/eb/stat01.pdf> (Union budget, Government of India.)

²⁷³ Census of India;

²⁷⁴ ¶71, Gian Kaur V. State of Punjab AIR 1996 SC 946

²⁷⁵ World Health Organisation (WHO) report, 2012.

attitude then, it is better to criminalise such an offence rather than actually keep such an act to be given a blanket of “FUNDAMENTAL RIGHT”.

People now contend that “Right to Die” should be treated as a “Fundamental Right” and shall come under the preview of “Right to Life” as under Article 21 of the Constitution. It is clearly stated in the case of Gian Kaur V. State of Punjab, which was a Special Leave Petition under Article 136 of the Constitution of India, keeping in light the analogy of P. Rathinam’s case, which stated that “If a person has a right to live, question is whether he has right not to live.” The Bombay High Court stated in paragraph 10 of its judgment that as all the fundamental rights are to be read together, as held in *R.C. Cooper v. Union of India* what is true on one fundamental right is also true of another fundamental right. It was then stated that is not, and cannot be, seriously disputed that *fundamental rights have their positive as well as negative aspects. For example, freedom of speech and expression includes freedom not to speak. Similarly, the freedom of association and movement includes freedom not to join any association or move anywhere. So too, freedom of business includes freedom not to do business. It was therefore, stated that logically it must follow that the right to live will include right not to live i.e., right to die or to terminate one's life.*²⁷⁶

To, the same argument the Constitutional Bench of the Supreme Court of India, clearly said that the whole analogy of the R.C. Cooper²⁷⁷ judgement given by the Supreme Court was interpreted in a completely wrong manner by the Division Bench of the Supreme Court. It was clearly a superficial argument which clearly had no proper logic attached to it. As, such a chronology only comes to a conclusion that not following any of a Fundamental Right and to take their negative aspects can only limit till the time a Fundamental Right is not adhered to and not when the actual Jurisprudence of the Right ends and there is a clear extinction of the positive aspect of that Right. The same has been mentioned by a Constitutional Bench in the Gian Kaur case and they clearly stated that “*Those decisions merely held that the right to do an act includes also the right not to do an act in that manner. It does not flow from those decisions that if the right is for protection from any intrusion thereof by others or in other words the right has the negative aspect of not being deprived by others of its continued exercise e.g. the right to life or personal liberty, then the converse positive act also flows there from to permit expressly its discontinuance or extinction by the holder of such right. In those decisions*

²⁷⁶ P. Rathinam/Nabhusan Patnaik V. Union of India (UOI) and another 1995-1-LW(Crl)209

²⁷⁷ AIR 1970 SC 1318

it is the negative aspect of the right that was invoked for which no positive or overt act was required to be done by implication. This difference in the nature of rights has to be borne in mind when making the comparison for the application of this principle."²⁷⁸

Suicide is a social shame in a civilised society. Suicide is an unnatural way of termination of one's life and therefore, it does not fall in line with "Right to Life" A state always does contribute to a person's life and thus, Section 309 of Indian Penal Code, 1860 clearly stated that 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."²⁷⁹ Thus, this Section was laid down and was given importance from Law point of view since 1860 and now if we see this and analyse the same from the nature point of view then none of us have a Right to Birth or no one can actually themselves decide, when do they want to come into the existence, thus, no one should even have the right when they should die and Section 309 should again be made legal and the whole legal provision of Section 309 should go in this way.

Though the discussion of active and passive euthanasia might be that of an important one as Right to Life clearly does include Right to live with human dignity and in case if a person is in Permanent Vegetative Condition or if the person or terminally ill or in coma, there shall be a clear exemption. Though passive euthanasia shall always be regarded. The same was upheld in *Aruna Shanbaug Case*²⁸⁰ and in *Airedale NHS Trust v. Bland*²⁸¹ in which passive euthanasia, by restricting the person of the lifesaving drugs, food or any other thing to keep the person alive can be withheld, was upheld. The view in case of active euthanasia is something of great concern as the same needs an act by an external force or by a third party by doing such an act which takes away the life of the person. But if the person is in such a condition where the death of the person is certain and the person is rather merely surviving on life saving drugs and is suffering, in such a case the active euthanasia only after looking into the facts of the case shall be taken into consideration. Also, with regards to passive euthanasia, in cases where person is in Permanent Vegetative Condition or in coma in such a case looking into the facts of the case the relatives or legal heirs of individuals or any other person that the court feel can be next

²⁷⁸ ¶ 21, *Gian Kaur V. State of Punjab* AIR 1996 SC 946

²⁷⁹ Section 309, Indian Penal Code, 1860.

²⁸⁰ (2011) 4 SCC 454

²⁸¹ MHD (1993) 2 WLR 316.

friend shall be allowed. Though only in these conditions active euthanasia shall not be allowed. The following table shows the conditions in which euthanasia shall or shall not be allowed.

	Active Euthanasia	Passive Euthanasia
Voluntary Euthanasia	Shall be allowed.	Shall be allowed.
Involuntary Euthanasia	Shall not be allowed.	Shall be allowed.

Thus, except in the case of non-voluntary or involuntary active euthanasia, in all the other conditions, such as, voluntary active euthanasia, voluntary passive euthanasia, involuntary and non-voluntary passive euthanasia, euthanasia shall be allowed. But the same shall only be allowed by doing a proper check or a proper survey by the High Court, though High Courts shall be allowed to further delegate the fact finding to the lower courts and based on facts and circumstances only High Court shall grant such a permission.

A proposed perspective of Section 309, Indian Penal Code, 1860, reads as follows-

SECTION 309.

Section 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.

Provided that

- (i) *A person suffering from either brain death or/and coma or/and is in permanent vegetative condition where in the said individual cannot recover back in such a manner that, the said person can actually be capable of leading a normal life again, in such a case the said individual shall be allowed to terminate his/her life by getting the consent of either*
- a) *The said individual himself/herself;*
 - b) *The blood relatives of the individuals;*
 - c) *The legal heirs of the individual or;*
 - d) *Any other person that the Court may feel fit can be a next friend of such a person.*

Explanation-

Under this these respective people shall actually approach the High Court and shall get the said hearing within a period, not exceeding 3 days and the decision of terminating the life

under these circumstances as under Section 309(i) shall be given in a period not exceeding 3 days.

In case of a vacation of the High Court a Magistrate officer shall be a competent person to listen to the same and to give the decision, whether or not can an individual's life be terminated.

The nature of punishment of 1 year which was provided under Section 309 should be such that the victims of such a punishment shall be kept in an isolated place, or in a normal jail and should be given Simple Imprisonment where in there shall be a psychiatrist to council these victims and there shall be proper treatment given to them. As at the end of the day jails are not just for deterrence and to prevent crime but also for rehabilitation or treatment directed toward changing the offender and thereby preventing future criminal behaviour of the treated individual.²⁸²

So, if the government is investing Crores of Rupees every year in its Human Resource and there are people in the society who are actually undergoing such problems and are going to an extent of taking their own lives, then in such a case, there shall be a proper intervention of the government and the government should set up such cells where in psychiatrist help can be given to the victims and the precious Human Resource of India can be utilised to the fullest with utmost efficiency.

Also, there shall be a pattern check by the government in order to see the real reason behind this mishap and shall come up with a regulatory mechanism under which the Government of India shall actually take up the responsibility and shall end the problem at the grass root level itself so that such problems do not actually exist. Problems like unemployment, lack of seats in Under Graduation, increasing crime rates etc. shall be stopped. There should be a proper cell where in if any person feels that the other person has some kind of suicidal tendencies in such a case any person can actually go and report to such cells and can actually stop the crime in the initial stage, even before it actually happens.

HOHFELD'S CUBE

²⁸² Chapter 9, CRIMINAL JUSTICE AND CRIME PREVENTION by Doris Layton MacKenzie; <https://www.ncjrs.gov/works/chapter9.htm>

Now let us analyse the same under Hohfeld's cube of Right and Duty from the point of view of a person who does not come under the ambit of Section 309(i).

In the diagram it clearly shows that there is a Jural Correlation between the Right and Duty.²⁸³ This means that without one the other cannot be used and one only survives because the other is present and both are clearly inter related on each other.

It can be also treated that one of them is the main product and the other is a complementary good that is one cannot survive without the other. Example- Petrol Car and Petrol.

Thus, in the same case if we see that as Right to Life is there, there is a Res Ipsa Loquitur a Duty vested in the rest of the world to protect and safeguard such a Right. As, here we are talking about Suicide, the attempt of which can be categorised under a criminal act thus, it is the duty of the State to safeguard this Right. So, in any criminal act the state does the same by putting up a sanction against the same, so that if any person actually attempts to do the same then in such a manner there is a clear punishment for him which is the duty of the State.

In case of suicide it is not only the duty of the State to give the punishment to the convict but also to keep the convict in an isolated place where in the convict who is also the victim of some kind of a proper brain wash can be done so that the victim can actually be used efficiently for the Nation's Development.

Thus, Right of the Government to get back the investment which it does in its people should also have a corresponding duty, which shall lie with the people in whom such investment is made. Such people are the residents of India.

Thus, it is a clear duty of such people to repay back to the nation as it was national resources that were invested in them.

Now if we see in the case of a person suffering either from

- a) Brain Death;
- b) Is in Coma or;

²⁸³ Murdoch University Electronic Journal of Law [2005] MurUEJL 9. By Nikolai Lazarev

c) In Permanent Vegetative Condition.

Then in such a case the person has a Right to dignified life which the State has a duty by respecting the same and by helping the person to lead a dignified life.

So, the Right of the person to lead a dignified life will clearly include putting a stop on any such an act or circumstance by which this Right is affected which can clearly happen in the above mentioned three cases. Here as this Right can only be safeguarded by terminating the natural life and doing the same otherwise would result a Criminal Act, thus it is the duty of the State to help the person safeguard his Right.

Thus, Article 21 should include Right to Die, but the same shall be applicable only in case where there is either Brain Death or Coma or the person going in a Permanent Condition. Rest nothing should be under the ambit of Right to Die.

The Hohfeldian Approach

- Communication sectors and bureaus as collective communities
- Communication laws as public policies

Jural Opposites	Right	Privilege	Power	Immunity
	No right	Duty	Disability	Liability
Jural Correlatives	Right	Privilege	Power	Immunity
	Duty	No right	Liability	Disability

Table 1 Hohfeld's fundamental legal conceptions (Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning, 1916)