

Constitutionality of Attempt to Commit Suicide- Unlocking The Controversy

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Abstract

A person is born free but he does not have this freedom to choose his death. Suicide is a deliberate act of killing of oneself. Suicide as such is not a crime but when an attempt is taken it can be considered as one under Section 309 of Indian Penal Code. The debate round the corner is whether attempt to commit suicide should be punished or not. A person was aware of the outcome of committing suicide, still knowingly takes an attempt. Suicide as a problem is the mixture of social, psychological, philosophical, moral, ethical and legal reasons behind it. An act of suicide requires grave awareness because there is nothing an ordinary prudent man fears more than his death, and that fear in the huge majority of cases, is as logical as it is inevitable. This paper has drawn the attention towards the ongoing debate of retaining or deleting Section 309 by testing its validity on the ground of Article 21 of the constitution of India which provides right to life as a fundamental right.

Key words- *Suicide, attempt, crime, right, life, death*

Introduction-

“To be, or not to be-that is the question:

Whether it is nobler in the mind to suffer,

The slings and arrows of outrageous fortune,

Or to take arms against a sea of troubles,

And by opposing end them.”

- Shakespeare, Hamlet, III, i.

The right to take one's own life has become much discussed topic throughout the world. A person who succeeds in taking away his life escapes all worldly miseries as well as legal action whereas one whose attempt fails is drawn into the dragnet of criminal courts. A person when enters into the stage of life finds only one entrance to go inside but with several exit doors to come out of which suicide is one such exit door. Several

researches are being made throughout the globe to find out the causes and outcomes of suicide. The World Health Organisation in 1968 while carrying on one such research found out suicidal act to be 'the injury with varying degree of lethal intent'. The Organisation further differentiated between suicidal acts with fatal outcome and non fatal outcome as- the former being coined as suicide and the later as attempted suicide. For whatever reason it might be caused, but suicide is never being appreciated as an act to be commended. Mythological treatises like the Holy Quran and Bible expressly prohibit the act of suicide. Hindu Dharma too believes that a person committing suicide will be devoid of attaining 'Moksha', i.e. free from the cycle of rebirth due to good fortune and that his soul will roam around with severe pain.¹

Suicide is a more of a concept related to moral, religious or psychological qualities of the person or the existing socio-economic, cultural circumstances of the society. Section 309 of the Penal Code deserves to be eradicated from the statute book to improve our penal laws. It is inhumane and illogical provision, and it may effect in punishing an individual all over again who has undergone pain and would be undertaking humiliation as of his unsuccessful attempt to commit

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suicide. For coming to a conclusion that Section 309 of the Indian Penal Code is obsolete, unreasonable and unkind the court appears to have closely relied upon 42nd Law Commission report which had in early 70's itself suggested the removal of the offence of attempt to commit suicide from the Penal Code.²

The question whether the crime of attempted killing oneself is punishable or not has been a topic of moral and legal debate over a long time. 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; is not like other Fundamental Right such as the right to form associations and speech which are positive rights. Right to speech includes the right not to speak, the right to form associations, includes the right to form associations. But the right to life does not include the right not to live.³

The act of attempted suicide is always given more importance than the act of committed suicide as because in case of the later the culprit is no more alive to get punishment, but in the former case the culprit is still alive to get some deterrent punishment so as not to repeat the same offence in future. Section 309 of the Indian Penal Code categorically makes attempt to commit suicide punishable, but time and again there arose several debates on the necessity of retaining or deleting this section from the statute book. The judiciary too perceived the criminalization of suicide with contrasting views. While Article 21, the life-line of all fundamental rights under the Indian Constitution guaranteeing right to life and personal liberty, sometimes interpreted to be including right to die under its wrap, in some other cases it is bluntly denied of having any such interpretation. Considering the legislative intent behind insertion of penal provision for attempt to commit suicide in the 1860 statute, it could be very well understood the amount of importance given to the dignity of human life in that statute considering human life is precious not only for the person concerned holding it but also for the State which cannot stand blind-folded by allowing the person attempting to commit suicide set free without any punishment. Something deterrent would make the offender aware of the value of his life for himself as well as for others. The persons criticizing this view are of the opinion that the insertion of Section 309 under the Penal Code is altogether a wrong provision as it punishes the distressed person doubly who had tried to end his life due to deep depression. Instead of having sympathetic

approach towards the victim, if further punishment would be inflicted upon him it would be simply ruthless act. The supporters of this view also opine that why the State remain as a silent spectator in thousands of cases when saints due to their faith and belief went on fast for indefinite period without being punished under section 309? ⁴

If a person succeeds in committing suicide, he is saved from being convicted but if he survives he may face legal consequences. The logic is obvious Article 21 of the Constitution which is its backbone and the people who advocates the theory of deletion of Section 309 of IPC on the basis of Article 21 of the Constitution. Article 21 of the Constitution provides that "No person shall be deprived of his life and personal liberty except according to procedure established by law" So, it the duty of the State constitutionally that it should protect a citizen's life howsoever his condition is miserable.⁵

The problem of suicide is of controversial nature, The Constitution of India provides religious freedom from Article 25 to 28. However, no religion allows suicide, whether it is Hinduism, Christianity or Islam. Christianity prohibits suicide considering it as a sin which leads to a felony. In Hinduism it is considered that there is a process of rebirth, i.e. life after death. Still it appears that Hindu law does not permit Suicide. In Islamic law, it is believed that Allah has given the life to serve the society and it will be disrespect to Allah if someone takes his own life.⁶

Objective-

The purpose of research in this topic are-

1. To know whether the fundamental right to life includes right to die.
2. To know whether attempt to commit suicide under Section 309 of Indian Penal Code violates Article 21 of Indian Constitution.
3. To know how the Indian Judiciary is tackling these types of cases relating to attempt to commit suicide.

Constitutionality of Sec. 309 IPC with Reference to Fundamental Rights-

What is an attempt of commit suicide? An attempt implies at least an act towards the commission of suicide, such as drowning or poisoning or shooting oneself. If a person throws himself into a well with a view to

drowning himself, and if rescued, he is guilty of such an attempt as is punishable under this Section 309 IPC.

In *Emperor v. Mst. Dhirajia* [AIR 1940 All. 486] a twenty year old lady ran away from her husband's house after serious confrontation between the two with her six-month old child. The husband followed them and found them crossing the railway line. The lady apprehending him coming closure to them, got frightened and jumped into a nearby well with the baby in hand. This caused the death of the baby, but the lady was rescued with slight injury. The lady was subsequently charged with two offences- one for murdering her child and the other for attempting to commit suicide. The court, however, discharged her from the charge of murder of her baby considering absence of mens rea in the act as it was caused out of fear without any guilty intention. Regarding the second charge for punishing the lady under sec.309, the court was of the view that the word 'attempt' used under the provision speaks for some conscious effort made on the part of the offender to constitute the act, which was lacking in the instant case as the lady jumped into the well being frightened and without having the consciousness of the act she was committing.⁷

Regarding the Constitutionality of Sec. 309 of IPC, lots of diversifying views have come to the fore by the Hon'ble Apex Court time and again. For the first time the question was raised in the Delhi High Court in 1985 in the case of *State v. Sanjay Kumar Bhatia* [1985 CrL.J. 931] where the Division Bench headed by Sachar, J. Held the view that continuation of sec.309 in the Indian Penal Code would be an anachronism disgraceful for the Indian society. The court, however, not gave any comment on the constitutional validity of the provision.

In *Maruti Sripati Dubal v. State of Maharashtra* [1987 CrL. L.J. 743] the Division Bench of Bombay High Court presided by P.B. Sawant, J. Was of the view that Sec. 309 of IPC is violative of Art. 14 of the Constitution for being discriminatory in nature and for violating arbitrarily the equality guaranteed to the persons. The provision was further held to be violative of Art. 21 as right to life include the right to terminate one's own life also.

In *Chenna Jagadeshwar v. State of Andhra Pradesh* [1988 CrL. L.J. 549] the Division Bench of Andhra Pradesh High Court, however, rejected the above contention made by the Bombay High Court and held that Sec. 309 IPC is not violative of Article 14 and

Article 21 of the Constitution

The decision of the Bombay High Court in *Maruti Sripati Dubal's* Case is however, gained much momentum by the Supreme Court in *P. Rathinam v. Union of India* [1994 AIR 1844] where a Division Bench of the Court presided by B.L. Hansaria, J. held that right to life under Art. 21 of the Constitution doesn't speak for a right to live a forced life to one's own disadvantage. The court further reasoned out that Art. 21 ensures the right to live with dignity which in no way can include to live with continuous drudgery. To justify the point, the Court expressed its view in the following lines:

"One may refuse to live, if the living be not according to the person concerned worth living or if the richness and fullness of life were not to demand living further. One may rightly think that having achieved all worldly pleasure and happiness, he has something to achieve beyond this life. This desire to communion with God may very rightly; lead even a very healthy mind to think that he would forgo his right to live and would rather choose not to live. In any case, a person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking".

While categorically declaring Sec. 309 IPC unconstitutional, the Court further reiterated that "attempt to commit suicide is in realty a cry for help and not for punishment" and that right to life includes right to die also. Considering the point from a humanitarian approach, the Court held that when a person due to his various sufferings from life problems attempts to kill oneself, but becomes unsuccessful, if will be penalized for his act, it would be completely inhuman. Rather efforts are to be made to mitigate his problems by using separate methods.⁸

The Bombay High Court's decision in *Maruti Sripati Dubal's* Case to include right to die within right to life is, however, not declared absolute to be exercised under all circumstances, rather it was applicable only under certain situations satisfying the act. It entails in the absence of sufficient reasons for the court to rely upon for the attempted suicide, the act would be considered as an offence being punishable under the law.

The *Rathinam* verdict created large hue and cry throughout the country and within few months only again the Apex Court came to review the ruling through a full bench Court in *Gian Kaur v. State of Punjab* [1996 AIR 946]. The important point raised before the court

against the previous judgment was that after the principal offence of attempt to commit suicide is declared void being violative of right to life under Art.21, how the abetment for the same can be made punishable under Sec. 306 of IPC? It was contended that right to die being a part of Art.21 after declaration of unconstitutionality of sec. 309, anybody abetting another to commit suicide be not punished as abettor, rather he be considered to be assisting the victim to put into effect his fundamental right under Art. Considering the far-reaching adverse consequence of the Rathinam verdict and to put an end to the much debated controversy, the Court overruled the decision and held that 'right to life and personal liberty' as enshrined under Art.21 of the Constitution by no stretch of imagination can be extended to include 'right to die'. Clarifying the point further the Court held that "'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 Court also differentiated between 'Euthanasia' and attempt to commit suicide by saying the former may come within the purview of right to live with dignity up to the end of natural life and thus may include the right of a dying man to desire to die with dignity when his life is ebbing out, but the later in no way be equated with it to allow a person to die an unnatural death reducing natural duration of life.

No Constitution can ignore the rights of individuals living in the country to lead a life with dignity, failing which the fundamental rights available to the citizens will be meaningless. Keeping the judicial analysis made above in view, it can be asserted that right to life by no implication be stretched to include right to die as it may lead to social disorder. If sec. 309 be declared as ultra vires, punitive actions cannot be taken against those adopting the practice of attempting to commit suicide with the plea that they have right to do so. It is true that in most of such cases the victims attempt such acts due to heavy mental stress, for which instead of punishing, some reformatory actions be taken against them. The very essence of sec. 309 also doesn't mandate for punishment in every case, rather it only sets the higher limit of such punishment. The courts are endowed with enormous power to ensure that unnecessary harsh dealing or injustice is not caused to the victims who are under severe mental stress.⁹

Conclusion

Attempt to commit suicide from an offence to

no offence to an offence and now in verge of again happening to be a No Offence. However, declaration of unconstitutionality to sec. 309 IPC would adversely affect the continuance of the provision under sec. 306. Ours is a male dominated society, women in some areas being still illiterate and bound by blind traditions. They very often fall victims to the cruel and inhuman treatments by their male counterparts and in-laws. Under such circumstances if any woman commits suicide, the persons responsible for active assistance and inducement to commit suicide may leave scot-free. It is quite pertinent that a society being unresponsive to social causes have no right to punish the distressed. At the same time it is also not possible for the State to adopt the principle that those not able to lead a dignified life are allowed to depart it.

Ethical Clearance: Not required, as the article is based on aspects which are doctrinally taken.

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References

- 1- Thakur Naveen. Attempt to Commit Suicide: From Offence to No Offence to Offence. *Cri.LJ.* (Mad). 1997; 2327
- 2- Chandra Vijay. Attempt to Commit Suicide- Crime or a Social Problem. *Cri LJ.* 1995; 95-96
- 3- Khan Sheeraz Latif. Attempt and Abetment to Commit Suicide an Offence: A note on the Supreme Court Judgment. *Civ Mil LJ.* Jan-Mar 2001; 87(1): 237-246
- 4- Tewari Shubhangi. Attempt To Suicide- A Blessing Or A Woe?. *IJLDAI.* 2015; 1(2): 173-176
- 5- Yadwad B.S., Gouda Hareesh.S. Is Attempted Suicide an Offence?. *JIAFM.* 2005; 27 (2)
- 6- Chaudhary Aman, Garvit Pawar. Case Review of Smt. Gian Kaur Vs. State of Punjab. *IJRA.* 2014; 1 (3)
- 7- Latha, Geetha. Criminalizing Suicide Attempts: Can it be a deterrent?. *MSL.*2004; 44 (4)
- 8- Gaur KD. Textbook on The Indian Penal Code. 4th Ed. Universal Law Publishing House; 2013.
- 9- Ratanlal & Dhirajlal. The Indian Penal Code. 33rd Ed. Nagpur: Lexis Nexis Butterworths Wadhwa; 2010.