

ATTEMPT TO SUICIDE- A BLESSING OR A WOE?

By Shubhangi Tewari³⁸¹

“I feel certain that I'm going mad again. I feel we can't go thru another of those terrible times. And I shan't recover this time. I begin to hear voices”

-Virginia Woolf, author, March 28, 1941³⁸²

The above lines were part of Virginia Wood's farewell letter to the world before she committed suicide. It is in these lines that one gets an idea about the state of mind of a person about to commit such an act of self-destruction and what he/she goes through. Further on in this article while discussing decriminalization of suicide, Virginia's death note will make us conscious of what most of our society has been ignorant about for so many years.

INTRODUCTION

What is section 309 of the Indian Penal Code (hereinafter referred to as 'IPC')? Section 309 of the IPC talks about punishment to suicide, which is one year of imprisonment or fine, or both. However, the essence of suicide is an *intentional* self-destruction of life. Thus, if a person takes an overdose of poison by mistake or in a state of intoxication, or in order to evade capture by his pursuers he is not guilty under this section. Similarly, if a person because of family discord, destruction, loss of a near and dear relation or other cause of like nature overcomes the instinct of self-preservation and decides to take his life, he should not be held guilty for attempt to suicide. In such a case, the unfortunate man deserves leniency, sympathy and consolation instead of punishment.

But recently, taking a step towards a more compassionate law, the Union Government decided to repeal Section 309 with overwhelming favor from a majority of the States, also keeping in mind the recommendations of the 210th Law Commission Report, 2008³⁸³, thereby decriminalizing the attempt to commit suicide.

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³⁸² <http://www.corsinet.com/braincandy/dying3.html>

³⁸³ <http://www.thehindu.com/opinion/letters/section-309/article6686904.ece>

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*³⁸⁴ held that the right to live of which Article 21 speaks can be said to bring within its power, 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*³⁸⁵ by a Constitution Bench of the Supreme Court, holding that Article 21 cannot be construed to include within its ambit the ‘right to die’ as a part of the fundamental right guaranteed, and therefore, it cannot be said that section 309 is in violation of Article 21³⁸⁶.

Existence of Section 309 was considered an anachronism dishonorable of human society in the 21st century. It was felt that attempt to suicide may be viewed more as a indication of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. Criminalizing suicide is a form of condemnation rather than a way of helping people cope with their underlying mental health problems and the various immediate triggers that lead them to attempt to take their lives. As the World Health Organization had pointed out, criminalization had the opposite effect of deterring people from attempting suicide as it discouraged them from reaching out for medical help and treatment. Recognizing it as an illness will help us to cautiously address cases relating to abatement to suicide.

ARTICLE 21 AND SECTION 309

Article 21 of the Constitution reads as follows:

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

Safety of life and liberty of person are the two indispensable elements in an systematic and well-ordered

³⁸⁴ AIR 1994 SC 1844

³⁸⁵ AIR 1996 SC 946

³⁸⁶ <http://lawcommissionofindia.nic.in/reports/report210.pdf>

society. Thus, right to life and personal liberty is guaranteed under Article 21 of the Indian Constitution. A person can be deprived of his life and personal liberty if two conditions are fulfilled,

- i. There must be law and
- ii. There must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.

Right to life is a phrase that defines the belief that a human being has a crucial right to live, especially that a human being has the right not to be killed by another human being. Thus, right to life means to lead a meaningful and dignified life. This right is inalienable and is inherent in us. It cannot and is not conferred upon us. That means that every individual has a fundamental freedom to choose not to live. On this issue the stance taken by the judiciary is indisputable. The main question that arises is whether right to life includes right to death.

While giving one of his judgments on Right to Life, Justice P.B. Sawant stated, "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 productive³⁸⁷."

In this regard, lawyer Ram Jethmalani said "The right to die is a part of a wider concept of liberty. The whole nation of the state controlling your life and death is grotesque. Equally radical is Dr. Appa Ghatate, Supreme Court lawyer who approves, "The right to die should be included in the Indian Constitution as a fundamental right. The very idea of the state controlling your life is absurd."

WHETHER RIGHT TO LIFE INCLUDES THE 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 incorporated in Article 21 has been as liberally interpreted as possible

³⁸⁷ http://www.legalservicesindia.com/article/print.php?art_id=492

so as to mean something more than mere survival and mere animal existence. 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. This affirms that if Article 21 confers on a person the right to live a dignified life, it should bequeath the “Right to Die” also, but the inclusion of Right to die under Article 21 opposes the provision of IPC under section 309. Whereas the reasoning behind section 309 has its basis in the principle that lives of men are not only valuable to them but also to the state, which protects them. By contemplating both the laws, the provision of IPC under section 309 is contradictory to the fundamental right guaranteed under Article 21 of the Indian Constitution. That means that every individual has a fundamental freedom to choose not to live³⁸⁸. On this issue the main question that arises is whether right to life includes right to death.

LANDMARK JUDGMENTS:

a. Maruti Shripati Dubal vs. State of Maharashtra³⁸⁹:

It was in this particular case that for the first time it came for consideration before the court as to whether a person has the right to die. The petitioner, a police constable, who became mentally ill after a road accident attempted to commit suicide by drenching himself with kerosene and then trying to light him on fire, 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’ contains ‘right to live’ as well as ‘right to end one’s life’ if one so wishes. It was specifically mentioned that Fundamental Rights have positive as well as negative aspects. For example: Freedom of Speech and Expression also incorporates freedom not to speak and to remain silent. If this is so, rationally it must follow that right to live as recognized by article 21 of the constitution also includes a right not to live or not to be forced to live.

As P.B. Sawant stated in his judgment, “Those who make the suicide attempt on account of mental disorder requires psychiatric treatment and not confinement in the prison cells where their

³⁸⁸ <http://www.lawctopus.com/academike/decriminalization-attempt-commit-suicide/>

³⁸⁹ (1987) Cr LJ 473 (Bom.)

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.”

b. P. Rathinam vs. Union of India

The two petitioners in this case charged the validity of Section 309 by contending the same to be violative of Articles 14 and 21 of the Constitution and the prayer was to declare this section as void. In 1994, the Division Bench of Supreme Court comprising of Justices R.M. Sahai and B.L. Hansaria, approved the Judgment of Bombay and Delhi High Courts, but overruled the Andhra Pradesh High Court Judgment which upheld the constitutionality of section 309, I.P.C., and remarked that *“right to life does not necessarily signify a right to die”* which is an offence and therefore section 309 is not violative of Articles 19 and 21 of the constitution³⁹⁰. The court further 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 suicide cannot be said to be against religion, morality or public policy and 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 a personal liberty of the concerned person is called for.” For example, students who jump into the well after having failed in their examinations but survive; girls and boys who resent arranged marriage and prefer to die, but ultimately fail, do not deserve punishment; rather soft words, wise counseling of a psychiatrist and not compassionless dealing by a jailor following cruel treatment meted out by a cold-blooded prosecutor.

c. Gian Kaur vs. State of Punjab

³⁹⁰ Chenna Jagadishwara vs. State of Andhra Pradesh (1988) Cr LJ 549 (AP)

The Trial Court under Section 306, IPC convicted the appellant and her husband for abetting the commission of suicide by Kulwant Kaur. In special leave before the Apex Court, the conviction of the appellant had been challenged, *inter alia* on the ground that Section 306 of the IPC is unconstitutional in view of Judgment in 1994; 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 comprise 'death with dignity' but such existence should not be confused with unnatural existence of life decreasing the natural span of life. In advancement of the above, the constitutionality of section 309 of the IPC, which makes "attempt to suicide" an offence, was upheld, overruling the judgment in P. Rathinam's case. Extermination of life is not included in protection of life. The Court further went on to say that Section 306 constitutes a distinct offence and can exist independently of Section 309, IPC. It further stated that 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 abetment of suicide under section 306, IPC, are well within the constitutional mandated, and are not void or ultra vires.³⁹¹

EUTHANASIA AND DECRIMINALIZATION OF SUICIDE:

The discussion between euthanasia which means withdrawal of life support for terminally ill patients³⁹², also referred to as assisted suicide, and decriminalizing section 309 of the IPC came into limelight in 2000, with the case, *C. A. Thomas Master v. Union of India*³⁹³. The accused, a retired teacher of 80 years, wanted to voluntarily put an end to his life after having had a successful, contented and happy life. He specified that his mission in life had ended and argued that voluntary termination of one's life was not corresponding to committing suicide. The Kerala High Court held that no distinction could be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life. Voluntary termination of one's life for whatever reason would

³⁹¹ Varun Kumar, *Right to Die and constitutionality of Section 309 IPC: a global perspective*, Referred Research Journal, July, 2011, ISSN-0975-3486, RNI: RAJBIL 2009/30097, VOL-II*ISSUE 22

³⁹² <http://www.thebetterindia.com/17062/india-decriminalizes-attempt-suicide-positive-change-section-309-government-law/>

³⁹³ 2000 Cri LJ 3729

amount to suicide within the meaning of Sections 306 and 309, IPC. 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. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation is wholly irrelevant. There is a flaw in the reasoning of the Court in the said judgment. With the Union Home Ministry's announcement to decriminalize suicide, the debate to legalize euthanasia is intensely connected and has become a highly disputable topic. "With adequate safeguards, there is a possibility of legalizing euthanasia"³⁹⁴ Lok Sabha Member of Parliament, Mr. A. Sampath has been in approval of this matter and has voiced his opinion time and again about taking a stand regarding the issue. "If there is a person in a vegetative state or in a situation from where he cannot return to normal life, he should be in a position to decide to end his life," Sampath argued. "It is also a torment for the family, which has to continue with the costly medical treatment because of social pressures. The government does not bear the cost because we are not a welfare state." Supporting the move to do away with criminal action for suicide, the MP said Section 309 of the IPC had created a contradictory situation, which had to be done away with. "If a person kills himself, there is no action. But if a person fails in his attempt to take his life, then he faces police action. This is not fair," Sampath said.

WHAT ABOUT THE ALTERNATIVE VIEW?

Another debate, which has popped up is how the government will be able to deal with anti-social elements that threaten the authorities by sitting on protest fasts? Some people believe that decriminalizing suicides will give them the independence to take extreme steps and there would be no provision to legally book these people.

Some examples of the above subject matter can be seen ahead. The decision of deleting section 309 can also bring a big change in Irom Sharmila's case who has been fasting since 14 years. When she began her hunger strike in 2000, she was taken into custody and nasogastric intubation was enforced on her to keep her alive as committing suicide was against the law.

Many people believed that it was unfair to force feed Sharmila and jail her several times. Decriminalizing

³⁹⁴ <http://timesofindia.indiatimes.com/india/Decriminalization-of-suicide-attempt-rekindles-debate-on-euthanasia/articleshow/45464717.cms>

suicide on the one hand will eliminate the label of being “illegal” and allow her to continue with her protest but on the other hand it will also incite the others to follow the same path.

Similarly, when Anna Hazare started his twelve days’ fast in Delhi to protest against corruption even when doctors warned otherwise, the government picked him up from the site and put him in jail. These incidents show that earlier the law allowed and necessitated the government to take these people into custody even if the hunger protest was for public good, but there would be no stopping more and more of these protestors and rebellions from taking such drastic fasts and measures to remonstrate against Government orders.

Failed suicide bombers and terrorists were some of the major concerns, which popped up against the government’s decision. Bihar, Madhya Pradesh, Delhi, Punjab and Sikkim wanted refinement in the law between mentally ill people and suicide bombers who survive after blowing themselves up or those terrorists who consume cyanide pills.

However, the government clarified that these terrorists will still face punishments under Unlawful Activities Prevention Act, whether or not they are successful in their mission. *“Suicide bombers should not be an issue because they are anyway charged under other laws, and this law might be the last thing they would be charged for,”* says Madiyal, former Director-General and Inspector-General of Police of State of Karnataka, India

CONCLUSION:

The law may be struck off, but the social problem of suicide still remains. India has a suicide rate of 15 per 1,00,000 population, and the world’s highest rate among 15- to 29-year-olds, according to the WHO³⁹⁵.

Suicide occurs in all ages. Life is a gift given by God and He alone can take it. Its untimely termination cannot be permitted by any society. But when a distressed and troubled individual tries to end his life, it would be cruel and illogical to visit him with punishment on his failure to die. It is his deep misery that causes him to try to end his life. Attempt to suicide is more a manifestation of a contaminated and unhealthy condition of mind deserving treatment and care rather than retribution³⁹⁶. It would not be just and fair to inflict additional legal punishment on a person who has already undergone pain and ignominy in his failure to commit suicide.

³⁹⁵ <http://forumias.com/home/decriminalizing-suicide-government-decides-scrap-section-309-ipc/>

³⁹⁶ <http://lawcommissionofindia.nic.in/reports/report210.pdf>

Section 309 needed to be effaced from the statute book because the provision was inhuman, irrespective of whether it was constitutional or unconstitutional. The repeal of the anachronistic law contained in section 309 of the Indian Penal Code will save many lives. The Law Commission was 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 needed to be omitted from the Indian Penal Code.

The decision to repeal Section 309 should not be treated as a license to die, but as an opportunity for the Government, society and everyone around to assist, support and care for those in agony; the social responsibility to prevent suicides and protect our fellow-beings has only enlarged over time³⁹⁷. At the same time, steps must be taken to ensure that this does not encourage suicide-bombers, hunger strikes or any other sort of protests that seek to exercise unreasonable pressure on the state to be adaptable on demands. Now that section 309 is done away with, the state must see to it that there is ample legislation and procedures to report all sorts of suicide attempts. The Government ought to discover ways and methods by which people can be prevented from being driven to commit suicide. The society should come together and take it upon itself as a societal responsibility to protect our folks in distress, and in need of support and care.

Lastly, the judgment of Maruti Shripati Dubal³⁹⁸ sums up the view that should be adopted by society towards the victims of suicide, “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 counterproductive³⁹⁹”

³⁹⁷ <http://www.thehindu.com/opinion/letters/section-309/article6686904.ece>

³⁹⁸ 1987 Cr. LJ 743 (Bom.)

³⁹⁹ http://www.legalservicesindia.com/article/print.php?art_id=492