

## Relevance of Section 309 Indian Penal Code (IPC) : A Perspective

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**Abstract:** 'Suicide' (*felo de se*) which means deliberate termination of one's own physical existence or self-murder, is distinctly a human act. Suicide knows no barriers of race, religion, caste or sex as it appears in all societies from earliest times. Throughout history, suicide has been condemned by various societies. Since the Middle-Ages, society has used first the canonic and later the criminal law to combat suicide. In India, suicide per se is not a crime but attempted suicide under Section 309, Indian Penal Code and abetment of suicide under Section 306 of the Indian Penal Code are.

In a country like India, which is highly influenced by religion and orthodox beliefs, people have various viewpoints on the issues of life and death, courtesy the cosmopolitan nature of the country due to amalgamation of many cultures, traditions and religions. In India, the 'sanctity of life' has been placed at the highest pedestal. Its reflection can be seen in Article 21 of the Constitution of India, which deals with protection of life and personal liberty. The judiciary has given a wide interpretation to the 'Right to Life' under Article 21 of the Constitution. In its various decisions, the Supreme Court has held that the word 'life' in Article 21 means right to live with human dignity and the same merely does not connote continued drudgery and mere animal existence. However, for long the central issue being raised is whether the 'Right to Life' recognized by law as fundamental includes the 'Right to Die'?- A point common to the debate on the validity of continuation of Section 309, in the Statute Book dealing with Attempt to Commit Suicide and Euthanasia. Going by this discussion, it is clear that human dignity will be lost if one is left to suffer in the old age, crippled and abandoned or in any point of life when one is suffering from an incurable disease. If Article 21 can be interpreted as has been done, then why can't 'Right to Die' be included? Thereby, paving the way to scrap Section 309 from the Indian Penal Code, which makes Attempt to Commit Suicide punishable. But in India, the decision is not that simple where one has to take into consideration not only the interest of a few but that of 1 billion people whose lives will be either positively or negatively affected by such a decision, because of the prevalent socio-economic conditions. Thus, this paper makes an attempt to discuss the relevance of the much in-debate provision of the Indian Penal Code, i.e., Section 309: Attempt to commit suicide, in present times.

**Key words:** Canonic, Euthanasia, IPC, Right to life, Suicide

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The word "suicide" is taken from the modern Latin word Suicide "act of suicide", but it is derived from the Latin phrase "*sui cadere*" which means to kill oneself [*sui*- 'of oneself' & *cadere*- 'kill']<sup>1</sup>. It is an act in which a person intentionally causes his own death.<sup>2</sup>

According to French sociologist Emile Durkhiem (1897), "The term suicide is applied to all cases of death resulting directly or indirectly from a positive or negative act of the victim himself which he knows will produce this result".<sup>3</sup>

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].

### I. Explanation: Attempt To Commit Suicide:

Suicide is obviously no crime under the Indian Penal Code, it is only attempt to commit suicide that is punishable under this section. This means when a person is unsuccessful in committing suicide only then the provisions of section 309,IPC are attracted.<sup>4</sup>

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. The State is under obligation to prevent persons from taking their lives.<sup>5</sup>

An attempt under section 309, implies an act towards commission of suicide such as voluntary drowning, poisoning or shooting oneself.

Illustration- If A, with an object to commit suicide, throws himself into a well is guilty of an attempt to commit suicide and this is punishable under this section, if he fails in his attempt.  
The essence of suicide is an intentional self destruction of life.<sup>6</sup>

## II. Attempt Must Be Intentional:

As stated above that 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. [*DwarkaPoonja v. Empereor*]<sup>7</sup>.

Likewise, if a person because of family discord, distraction, loss of near and dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his life, he should *not be held guilty for attempt to commit suicide* [*Queen Emperor v. Ramakka*].<sup>8</sup>  
In such a case, the unfortunate man deserves indulgence, sympathy and consolation instead of punishment.

## III. Is Hunger Strike An Attempt To Commit Suicide?:

Hunger strike is resorted to at times for getting the demands of the strikers fulfilled. There can be difficulty in determining whether the hunger strike is to kill person, himself or simply force authorities to fulfill demands. If the intention of the accused is to kill himself then he is liable for attempt to commit suicide. If the answer is in negative then he does not fall within the purview of section 309, IPC.<sup>9</sup>

An illustrative case on this point is that of *Ram Sunder v. State*.<sup>10</sup> The accused was charged under section 309, IPC for an attempt to commit suicide by resorting to hunger strike.

FACTS IN BRIEF- Accused was employed in the Mental Hospital, Bareilly, but was suspended from service. He alleged that the authorities in charge of the institution were guilty of unfair discrimination and on 27-02-1960 in order to coerce them into reinstating him, he lay down on a bed near the Gandhi statue in the heart of the city of Bareilly, flanked by placards proclaiming his grievances, and proceeded to fast. On 01-03-1960 the Station Officer found that the accused's condition was deteriorating and hence transferred him to the District Hospital and from there to the District Jail. The accused admitted that he had gone on a hunger strike but denied that he had intended fasting unto death. He procured evidence to show that he was taking lemon juice in the morning and evening during the continuance of his fast. The lower court, however, did not believe this defense and reached the conclusion that the accused actually meant to fast unto death unless his demands were fulfilled.

Setting aside the conviction, the Allahabad High Court said that the evidence in the present case fell short of an attempt to commit suicide. If a person openly declares that he will fast unto death and then proceeds to refuse all nourishment until the stage is reached when he may collapse any moment, then there is imminent danger of death ensuing and he would be guilty of an attempted suicide under section 309,IPC.

## IV. Right To Life Vis-`A-Vis Right Not To Die:

The states' power under section 309, IPC to punish a man having failed in his attempt to commit suicide is questioned not only on grounds of morality but also on the constitutionality of the said provision. There have been cases, which have varied on the basis of right to life and right not to die.

In 1987 the Bombay High Court in *MarutiShripatiDubal v. State of Maharashtra*,<sup>11</sup> struck down Section 309, IPC as ultra vires vide Article 21 of the Constitution, which guarantees 'right to life and liberty'. The court said the 'right to life' includes the 'right to live' as well as the 'the right to end one's life' if one so desires.

### Justice P.B.Sawant 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 leading to further mental derangement... Thus, in no case does the punishment serve the purpose and in sometimes is bound to prove self-defeating and counter-productive.<sup>12</sup>

Similarly, in 1985 Delhi High Court in *State v. Sanjaya Kumar*<sup>13</sup>, while acquitting a young boy who attempted to commit suicide by consuming poison strongly advocated for deletion of Section 309,IPC from the statute book and observed that:

The continuance of Section 309 of the Indian Penal Code is an anachronism unworthy of a human society like ours. Instead of sending the young boy to a psychiatric clinic, society, gleefully (happily) sends him

to mingle with criminals. Medical clinics [are needed] for such social misfits, but police and prison never.<sup>14</sup>

In *Chenna Jagdeshwara v. State of Andhra Pradesh*<sup>15</sup>, the Andhra Pradesh High Court upheld the constitutionality of Section 309, IPC and remarked that right to life does not necessarily signify a right to die, which is an offence.

In *P. Rathinam v. Union of India*<sup>16</sup>, while striking down Section 309, IPC, the Apex Court said it is cruel and irrational provision violative of Article 21 of the Constitution. The Court upheld that right to life includes 'right not to live a forced life'. The Court further said that a person who attempts to commit suicide does not deserve prosecution because he has failed.

But the decision of P. Rathinam was subsequently overruled by Supreme Court in *Gian Kaur v. State of Punjab*<sup>17</sup>, it was held that provision for penalizing attempt to commit suicide is not unconstitutional. In this case the appellant and her husband were convicted under Section 306, IPC for abetting the commission of suicide by Kulwant Kaur. It was held extinction of life is not included in protection of life. Article 21 did not include 'right to die'. Thus, Section 309 and 306 of IPC are not ultra vires.

## V. Deletion Of Section 309 Ipc: The Debate:

### A. Arguments in favour of decriminalization of the offence of attempt to commit suicide:-

i. Implementation of Section 309 IPC to deal with those who attempt to commit suicide is not only unsatisfactory but also discriminatory. Infact, it would be a monstrous Act to inflict further suffering on a man who has already found his life so unbearable, and chances of happiness so slender that he decides to incur pain and death in order to end his life. If such a man fails in his endeavor, causing him further torture and degradation by inflicting punishment would be unreasonable and unjust.

ii. Persons favouring the decriminalization of the offence of attempt to commit suicide plead for a compassionate and sympathetic treatment for those who fail in their attempt to put an end to their lives. Their argument is that deletion of Section 309 is not an invitation or encouragement to attempt to commit suicide. A person indulges in the act of attempt to commit suicide for various reasons some of which, at times, are beyond his controls.<sup>18</sup>

iii. With regard to the offence of attempting to commit suicide, it has been observed by an English writer:-

"...That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation"<sup>19</sup>

iv. In *State v. Sanjay Kumar Bhatia*<sup>20</sup>, speaking through Sachar J, as he then was, the Division Bench of the Delhi High Court observed:

"The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours.....the provision like Section 309 IPC which has no justification has no right to continue to remain on the statute book".

v. While dealing with the discriminatory nature of Section 309 of the code, Justice P. B. Sawant in *Maruti Shripati Dubal v. State of Maharashtra*<sup>21</sup>, has rightly observed:

The discriminatory nature of Section 309 becomes particularly prominent when its provisions are compared with Section 300, IPC. While defining murder, the legislature has taken pains to make a distinction between murder and culpable homicide not amounting to murder and has prescribed different punishments for the two. However, Section 309 prescribes the same punishment to all individuals irrespective of the different sets of circumstances under which the suicide attempt is made. This is strange, although, murder is a more heinous offence with consequences to the other members of society.

### B. Arguments against decriminalization of the offence of attempt to commit suicide:

i. On the other hand, certain developments, such as, rise in narcotic drug trafficking offences, terrorism in different parts of the country, the phenomenon of human bombs etc. have lead to a rethinking on the need to keep attempt to commit suicide an offence. For instance, a terrorist or drug trafficker who fails in his or her attempt to consume the cyanide pill and the human bomb who fails in the attempt to kill himself or herself along with the targets of attack, have to be charged under Section 309 and investigations be carried out to prove the offence. However, these groups of offenders under Section 309 stand under a different category than those, who

due to psychological and religious reasons, attempt to commit suicide.<sup>22</sup>

ii. **Rattanlal&Dhirajlal in Law of Crime, say:**

“Every civilized legal system recognizes right to life. We are having a written Constitution. There are certain basic rights, which have been treated as fundamental by the Founding Fathers of the Constitution. Thus, right to life guaranteed under Article 21 is also considered to be duty to live. Ordinarily, therefore, an individual has no right to end his life. He has to perform his duties towards himself and towards the society at large. Thus, life does not mean mere living, but a glowing vitality-the feeling of wholeness with a capacity for continuous intellectual and spiritual growth”.<sup>23</sup>

**C. Reports of the Law Commission of India:**

- i. Considering the views of WHO (World Health Organization) and ISAP (International Association for Suicide Prevention), the Law Commission *suomoto* decided to take up study of this important issue of suicide prevention.<sup>24</sup>
- ii. The Law Commission had undertaken revision of the Indian Penal Code as part of its function of revision of the Indian Penal Code as part of its function of revising Central Acts of general application and importance. In its 42<sup>nd</sup> Report submitted in June , 1971, the Commission recommended, inter alia, repeal of section 309.<sup>25</sup>
- iii. The 156<sup>th</sup> Report of the Law Commission, submitted in August, 1997, after the judgment in Smt. GianKaur, recommended retention of section 309,IPC.<sup>26</sup>
- iv. However, in its 210<sup>th</sup> Report in October 2008, on *Humanization and Decriminalization of Attempt to Suicide*, the Law Commission again has recommended repeal of Section 309 stating the penal provision to be harsh and unjustifiable. It called Section 309 a “stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide”.<sup>27</sup>
- v. In a recent development Minister of Home Affairs has decided to accept the recommendations of the Law Commission of India. A draft note, containing the proposal to delete Section 309 from IPC has been sent to the Legislative Department of the Law Ministry for drawing up a draft amendment bill.<sup>28</sup>

## VI. Euthanasia:

Euthanasia means an act of putting to death painlessly in order to release man from incurable suffering. It is derived from Greek roots, ‘eu’ meaning ‘well or good’ and ‘thanatos’ meaning ‘death’.<sup>29</sup>

### A. Types:<sup>30</sup>

Euthanasia is mainly of two types:-

- 1.ACTIVE EUTHANASIA- It is the intentional killing of a terminally ill patient by a physician or by someone, such as a nurse, who acts on the direction of the physician.
- 2.PASSIVE EUTHANASIA-The doctor allows the patient to die, either by withholding treatment or by discontinuing treatment, where the relevant treatment is designed to keep a patient alive who is terminally ill.

Further, the above main two types may be of either of the 3 forms:-

- i. Voluntary, i.e., on request of the patient.
- ii. Non- Voluntary, i.e., when person is not mentally fit to make informed request for termination of his life.
- iii. Involuntary, i.e., when person has not made request for termination of his life.

### B. Relation between euthanasia and suicide:

Study shows that both euthanasia and suicide essentially involve the question of the right to die.<sup>31</sup>

Differences-While these terms may seem similar in their connotation, they differ vastly in their meaning and need to be distinguished:-

- (1). The first and the most important is that suicide is taking of one’s own life but euthanasia is taking of the life of another.<sup>32</sup>
- (2). Suicide itself is the crime but euthanasia amounts to homicide.<sup>33</sup>
- (3). Another point of difference is that euthanasia or mercy killing essentially involves pain and suffering due to some incurable medical ailments while suicide need not involve any such malady.<sup>34</sup>
- (4). Then there is the question of consent. Consent to kill oneself is implied by the very commission of the act of

attempt to commit suicide but in euthanasia the consent has to be in the form of a request essentially by the patient himself or close kith and kin.<sup>35</sup>

(5). Distinguishing euthanasia from suicide, Hon'ble Justice Sawant observed in *MarutiShripatiDubal*<sup>36</sup> case: Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy killing, on the other hand, means and implies the intervention of other human agency to end the life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provision of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected.

(6). Moreover, Hon'ble Justice B.L.Hansaria, speaking for the Division Bench of the Supreme Court in *P. Rathinam v. Union of India*<sup>37</sup> observed:

Euthanasia is not much related to the act of committing suicide in as much as wherever passive euthanasia has been held to be permissible under the law, one of the requirement insisted is consent of the patient or of his relations in case the patient be not in a position to give voluntary consent. So, if one could legally commit suicide, he could also give consent for his being allowed to die. But then, the legal and other questions relating to euthanasia are in many ways different from those raised by suicide. One would therefore, be right in making distinction logically and in principle between suicide and euthanasia, though it may be that if suicide is held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. The justification for allowing persons to commit suicide is not required to be played down or cut down because of any encouragement to persons pleading for legalization of mercy killing.

***C. Two submissions as to the reasons for which the concept of euthanasia is commonly discussed along with Section 309, I.P.C 'Attempt to Commit Suicide':***

1. One view relates to the 'act' of a terminally ill patient having an intention to die, whereby he/she expressly consents to euthanasia.
2. Other view is, that a person having failed in his attempt to commit suicide, lands into a vegetative state, thus becoming a source of agony and torture for his family, does not deserve punishment under section 309, I.P.C. Rather, this state imparts a right upon his relatives to fulfill his/her desire to die by consenting for a non-voluntary passive euthanasia.

***D. Legality of euthanasia: Right to Die- A new dimension ArunaShanbaugh's Case: ArunaRamchandraShanbaugh v. Union of India***<sup>38</sup>

In a path breaking judgment, the Supreme Court of India allowed "passive euthanasia" of withdrawing life support to patients in permanently vegetative state (PVS) but rejected out rightly active euthanasia of ending life through administration of lethal substances.

The main ground for adjudication before the Apex Court was- whether a person who refuses to accept lifesaving treatments or food in order to die, commits a crime under Section 309,IPC. This landmark judgment was pronounced in relation to a journalist-writer, PinkiVirani's plea to allow passive euthanasia for ArunaShanbaugh.

**BRIEF FACTS:-**ArunaShanbaugh hailing from Karnataka, was a junior nurse who was brutally raped by a hospital ward boy. The brutalities led to severe brain stem injury and cervical cord injury apart from leaving her cortically blind.

**VERDICT:-** The verdict on 7<sup>th</sup> March 2011 allowed passive euthanasia contingent upon circumstances. The 2 Judges Bench of Justice MarkandeyaKatju and GyanSudha Mishra, also asked the Parliament to delete Section 309,IPC as it has become "anachronistic though it has become constitutionally valid." Justice M. Katju while writing the judgment, also said that, "A person attempts suicide in a depression and hence he needs help, rather than punishment."

## **VII. Conclusion**

In the light of the above discussion, it becomes clear that in order to declare the Indian Penal Code, a modern Code in every possible sense (or for that matter any legislation) amendments and repeals are necessary to bring the provisions in tune with the needs of current day and age.

Ultimately, the aim of any legislation should be to evolve a consensual and conceptual model effectively handling the evils without sacrificing human rights. Therefore, Section 309 IPC should be deleted. As it is rightly observed in *MarutiShripati Dubal's*<sup>39</sup> 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.

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