



Whether Section 309 of Indian Penal Code (IPC) is violative of Article 21 of the Indian Constitution or not?

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Suicide is the act of taking one's own life on purpose. The person ends their life intentionally to run away from their problems. It is a harsh reality that a person attempting to commit suicide has already drenched mentally and has lost all hopes as well as expectations from their lives. In year 2018, a total of 1,34,516 cases of suicides were reported as per the NCRB (National Crime Records Bureau) data. Section 309 of Indian Penal Code lays down the provisions related to "Attempt to commit suicide." As per the report from WHO, around 8 lakh people die from suicide every day and almost 25 times as many do a suicide attempt. All around the world, India contributes to about 34% of suicides. In 2019, person died every four minutes due to suicide. In most of these cases were related to mental issues. There had been great controversy about the Constitutional validity of Section 309 of IPC by virtue of decisions of High Courts and Supreme Court. 'Right to Life' as enshrined in Indian Constitution under Article 21 is the fundamental right of every citizen. The Supreme Court has asserted that Article 21 is the heart of the fundamental rights provided under Part III of the Indian Constitution. The Supreme Court has clearly stated that to treat a right as fundamental it is not mandatory that it should be expressly stated as a fundamental right. In India "Right to Life" under Article 21 the Constitution has received the widest possible interpretation under the judiciary. The grounds as mentioned, Article 21 does not have a restrictive meaning and thus needs to be broadly interpreted. This affirms that if Article 21 confers on a person the right to live a dignified life, it should also grant the "Right to Die," but the inclusion of Right to die under Article 21 contradict the provision of Indian Penal Code under Section 309. According to Section 309 of IPC, "whoever attempts to commit suicide and does any act toward 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. This Section is based on the principle that the lives of

people are not only valuable to them but also to the State which protects them. In consideration of both the laws the provision of Indian Penal Code under Section 309 is contradictory to the fundamental right guaranteed under Article 21 of the Indian Constitution. The power of the State under Section 309 of the Indian Penal Code, to punish a person for attempt to suicide is questioned not only on the ground of morality but also on the ground of constitutionality of the provision of Section 309 IPC. Different people have given different opinions on the desirability of retaining or abolishing Section 309 of the Indian Penal Code because of the contrasting Judgement given by High Courts as well as Supreme Court. In post-Maneka era, the Supreme Court has done a fascinating development in the jurisprudence of the Indian Constitution and thus extended the dimension given under Article 21 of the Constitution. Since then, Article 21 has proved to be multi-dimensional. This aspect of Article 21 has been brought up by many judicial pronouncements. This right is inherent in us and is not conferred upon us. This vital point seems to elude all those who keep on claiming for "Right to Die" which means that every individual has a fundamental freedom to choose not to live. Here, the steps taken by the judiciary is unquestionable but the main question which arises is that whether the right to life include right to death or not? For the first time the same came for consideration before Bombay High Court in **Maruti Shripati Dubai Vs. State of Maharashtra**¹ where **Section 309 of Indian Penal Code was held to be unconstitutional vide Article 21 of the Constitution** which guarantees 'right to life' and 'personal liberty.' The court said that 'right to life' include 'right to end one's life' if so desired. The right to life has both positive as well as negative aspects. In the positive sense, it would include right to die, or to terminate one's own life. The right to

¹1987 (1) BomCR 499, (1986) 88 BOMLR 589



die on pain of penalty considered unreasonable and prohibited.

According to Justice P.B. Sawant: "if the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same could be achieved by punishing those who have made the attempts. Those who attempt to commit suicide 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. On other hand, those who makes a suicide attempt on account of actual physical ailments, torture, incurable disease, and deceit physical state induced by old age or disablement, need nursing home, and not prison to prevent them from making the suicide attempts again. No deterrence can 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 none of such cases does the punishment serve as the purpose and in some cases, it is bound to prove self-defeating and counterproductive. Further in year 1985, the Delhi High Court in case of **State Vs. Sanjay Kumar² while acquitting a young boy who attempted to commit suicide by consuming 'Tik Twenty' strongly advocated for deletion of Section 309 IPC from the statute book** and held that the continuance of Section 309 of the Indian Penal Code is an anachronism unworthy of human society like ours. Later, this issue came before the Supreme Court in **P. Rathinam Vs. Union of India³** in which the Supreme Court upheld the verdict given by Bombay High Court in Maruti Sripati Dubai and held that a person has 'right to die', therefore **Section 309 of the Indian Penal Code was violative of Article 21 of the Indian Constitution, hence the same is void.** A person cannot be compelled to enjoy the right to live to his detriment or disadvantage. The 'right to live' in Article 21 of the Constitution also includes the 'right not to live.' The Court said that a person who attempts to commit suicide does not deserve prosecution because he has failed and there can be no justification to prosecute sacrifice of life. In this regard Ram Jethmalani who was an eminent lawyer said, "The right to die is a part of a wider concept of liberty."

² 1985 Cr.LJ

³ 1994 Cr. LJ 1605

❖ **Constitutional validity of section 309 of Indian penal code:**

Disposing the case of P. Rathinam Vs. Union of India, the Division Bench of Supreme Court declared Section 309 of the Indian Penal Code as unconstitutional and void.

Before, concluding, the Supreme Court took into consideration the cases disposed by the High Courts of few States namely, Delhi, Andhra Pradesh and Mumbai on the aforesaid issue and held that Section 309 IPC which has no justification to continue to remain on the Statute book. However, the Andhra Pradesh High Court in case of **Chenna Jagadeeshwar Vs. State of Andhra Pradesh⁴** upheld the Constitutional validity of Section 309 IPC and remarked that 'right to life' does not necessarily signify 'right to die' which is an offence. The judgement therefore dissented the view of Bombay High Court. Mr. V.S. Deshpande after his retirement as Chief Justice of the Delhi High Court, referring to what had been held by this court regarding the scope of Article 21, took the view that if Section 309 is restricted in its application to attempts to commit suicide which are unworthy, then only this Section would be in consonance with Article 21 because if a person decides to end his life and relieve himself from the pain of living and the others from the burden of looking after him, prosecution of such a person would be adding insult to injury and was asked: "should a court interpret Section 309 IPC to apply to such cases?" Later, in an article of Justice R.A. Jaghirdar of Bombay High Court in which the learned Judge took in view that Section 309 was unconstitutional for four reasons:

- a) Neither academicians nor jurists agreed on what constitutes suicide, much less attempted suicide.
- b) Mens Rea, without which no offence can be sustained, is not clearly discernible in such acts.
- c) Temporary insanity is the ultimate reason of such acts which is a valid defense even in case of homicides.
- d) Individuals driven to suicide require psychiatric care and not prison cells.

In one of the cases, the accused poured kerosene on his body and attempted to commit suicide and it is proved that the accused after receiving head injury

⁴ AIR 1988

DECriminalisation OF
ATTEMPT TO SUICIDE
UNDER SECTION 309 IPC.



in a road accident had started showing abnormal behavior. Therefore, before the start of the case, the accused challenged the power of Section 309 and the High Court declared Section 309 IPC ultra vires the Constitution. On appeal, the Supreme Court set aside the order of High Court and following the decision in **Lokendra Singh Vs. State of Madhya Pradesh**⁵ upheld the validity of Section 309 and said that the criminal case initiated on charge of attempt to commit suicide required to be decided on merit. However, in this case the Supreme Court took the sympathetic view, quashed the criminal proceedings, and directed that accused should be treated sympathetically. Later in year 1996, a 5 Judge Bench of the Supreme Court in **Gian Kaur Vs. State of Punjab**⁶ upheld the constitutional validity of Section 309 of Indian Penal Code by indicating that it does not violate Articles 14, 19 and 21 of the Indian Constitution. In this case, the ratio of P. Rathinam's case overruled. Mr. Justice J.S. Verma while delivering the judgement held that, **right to life** is a natural right given under Article 21, but suicide is an unnatural termination of life and incompatible and inconsistent with the concept of Right to life. Thus, 'right to die' is not a part of the 'right to life.' Regarding Section 309 of IPC, the court said that the 'right to life' guaranteed under Article 21 of the Indian Constitution does 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 of the Indian Penal Code are well within the Constitutional mandated and are not void. In 1971, the Law Commission of India submitted a 210th report to Union Law Minister for decriminalization of attempt to suicide. The Law Commission in its 210th Report titled 'Humanization and Decriminalization of Attempt to Suicide' gave the following recommendations:

- People of all age group commits suicide. Life is a gift given by God and it would be cruel and irrational to visit him with punishment on his failure to die. It is the deep unhappiness of a person which leads him to try to end his life. Attempt to suicide is more a manifestation of dejected condition of mind who deserves treatment and care rather than punishment. It would not be just and fair to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide.

- The criminal law must not act with misplaced over zeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture.

- Section 309 of the Indian Penal Code provides double punishment for a person who has already fed up with his own life and desires to end it. Section 309 is also an obstacle in prevention of suicides and improving the access of medical care to those who have attempted suicide. It is unreasonable to inflict punishment upon a person who on account of family discord, loss of dear relation, destitution or other similar causes overcomes the instinct of self-preservation and decides to take his own life. In such a case, the unfortunate person deserves sympathy, appropriate treatment, counselling and certainly not prison.

- Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of the fact whether it is constitutional or unconstitutional. The repeal of the anachronistic law contained in Section 309 of the Indian Penal Code would save many lives and relieve the distressed of his suffering.

- The Commission is of view that while assisting or encouraging another person for an attempt to commit suicide must not go unpunished, the offence of attempt to commit suicide under Section 309 needs to repeal from IPC. The International Association for Suicide Prevention also favors decriminalization of attempt to suicide. This has been in practice in the countries like Europe and North America and supported by the Indian Psychiatric Society.

❖ Present Status:

The government has modified from a legal outlook to a more medical point of view by decriminalizing the attempt to commit suicide. The Mental Health Care Act, 2017 which replaced the previous Mental Health of 1987, has revolutionized the entire concept of law related to an attempt to suicide in India. In that order, The Rajya Sabha and Lok Sabha passed the bill on 8th August 2016 and 26th March 2017. The President gave his assent for the Mental Healthcare Act, 2017 on 7th April 2017. The most relevant section of the Act regarding the attempt to commit suicide is Section 115. It provides that:

⁵1996 Cr LJ 1660 (SC)

⁶(1996) 2 SCC 649



- Any person who attempts to commit suicide shall be presumed to be under severe stress and not be tried and punished under Section 309 or any other section of the Indian Penal Code unless otherwise is proved.

- It is the duty of the appropriate government to take care and provide adequate treatment and rehabilitation to anyone who attempts to commit suicide due to severe stress. The purpose is to reduce the risk of reoccurrence of an attempt to commit suicide by the individual.

This Act is the most crucial step towards developing mental and emotional health in India. This Act also grants that any person who is suffering from mental illness should be treated at the same level as the physically ill in terms of healthcare services. There shall be no difference based on such illness. Right to life means the right to an evocative and dignified life, i.e., to live with dignity. The major reason behind this step was the realization of the fact that a person who attempts to commit suicide is already in pain and is suffering from a mental health issue, punishing those individual leads to just exasperation of pain and mental torture which the person is already into. The Court believes that for a person who has failed in an extreme attempt to end their life, the answer is to provide them with the facilities of rehabilitation rather than putting them through a rough patch of trial and punishment. Thus, these steps have helped the victims to take a second chance to live their life rather than getting stuck in legal inconvenience.

From above discussions, it is evident that it is wrong to consider the Indian Penal Code as a modern code in every sense. Laws are made for people, and they should keep changing to meet the aims and aspirations of the changing society. The aim should be to evolve a consensual and conceptual model effectively managing evils without sacrificing human rights. Therefore, Section 309 should be removed from IPC because as mentioned in Maruti Shripati Dubai 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 any case a person should not be forced to enjoy the right to live to his disadvantage, disliking and detriment. Further, the “Right to life” under Article 21 of the Indian Constitution should not include “Right to die” because this provision might increase the rates of suicides in the country and moreover the “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”. Thus, attempting to suicide calls for complete decriminalization and the State should focus on providing counselling and better mental healthcare rather than imprisoning someone to lifetime misery. Suicide is now viewed as one which requires treatment more than punishment, which itself is a great start. Right to basic healthcare as a fundamental right is an overwhelming dream, but an attempt to include mental healthcare and counselling in directive principles can go a long way for people in India. The Section 309 of the Indian Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is an irrational provision and may result in punishing a person again who has suffered agony and would be undergoing ignominy because of his failure to commit suicide.”