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## Right to die, A modern day requirement?

*Treat Suicide like a public health crisis*

Barry Smith

### Introduction

Article 21 of the Constitution of India is the most important of Fundamental Rights; it gives us the Right to Life and Personal Liberty. This right ensures that a person lives a life of dignity, devoid of any kind of discrimination or inequality. According to many scriptures in Hinduism, Islam and Christianity, suicide is equivalent of murdering someone since it involves the process of killing oneself. Accordingly it is the command of the God to give or take away one's life. Though life in the 21<sup>st</sup> century has given people immense ease to the way of living, it is an undeniable fact that pressure has been a corollary to the changing lives. Some people find it difficult to cope with the mental stress caused by changing circumstances and hence decide to take their lives away by themselves.

It is to be noted that the act of committing suicide is not pertinent to this era and has been an act since time immemorial though the present era is witnessing the highest numbers. Even around the 19<sup>th</sup> century, many Indians were committing suicide due to the difficulties caused by natural calamities that resulted in lack of produce and payment of taxes became difficult. It was during that era, when the Colonial Masters of India enacted the Indian Penal Code, 1860 inserted provision for penalizing committal of suicide under Section 309. "Attempt to commit suicide. This provision said that if a person attempts to commits suicide, hewould be liable for a punishment of imprisonment for a year or he has to pay a certain amount as a fine or he's liable to receive both as punishments. This provision was taken from the commentary

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of the 1<sup>st</sup> Earl of Halsbury<sup>1</sup>. This was added with the intention to decrease instances of suicide and by inciting fear into the minds of those who would likely want to commit suicide.

In the recent days, many people oppose the existence of such a provision for the undeniable fact that the person who is attempting to commit suicide act solely due to the fact that he/she is mentally disturbed to such an extent that by only taking away the life, would he/she be relieved from the pain. Such controversies with the regards to the morality of this provision led to the passing of The Medical Health Care Act, 2017 wherein it clearly provides for decriminalizing attempt to commit suicide. This was enacted only after various suggestions made by the Law Commissions and Judgments of the Hon'ble High Courts and the Supreme Court upholding the tenets of moral laws.

## **Suicide and the Indian Penal Code:-**

Section 306: Abetment of suicide. — If a person commits suicide and another person abets the commission of such suicide, he shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 309: Attempt to commit suicide. — Any person who attempts to commit suicide and does any act towards the commission of such offence, shall be punished with by being imprisoned for a term which may extend up to one year or with fine, or with both

## **Why Section 309?**

The Constitution of India guarantees the right to life under Article 21 which technically means that there are rights which are treated as fundamental for one's life under it. Hence, Right to Life guaranteed by Article 21 also means that there is a duty imposed to live as well and hence an individual does not have the right to take away his/her life.<sup>2</sup> Another reason why the law exists is that 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 of committing suicide and also killing the targets of attack, have to be charged under Section 309 and investigations be carried out to

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<sup>1</sup>Halsbury's Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106

<sup>2</sup> Gian Kaur v. The State of Punjab, 1996 AIR 946

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prove the offence. However, these groups of offenders under Section 309 stand under a different category than those, who due to psychological reasons, attempt to commit suicide.<sup>3</sup>

## **Why remove Section 309?**

Section 309 is a bar on a very critical area called right to life. Before giving the Judgment on the case P. Rathinam v. Union of India<sup>4</sup>, Justice Hansaria commented why do we have to persecute an already tormented woman. He also said that we have to humanize our laws and that it is never late for us to do it. The Supreme Court felt that such a section should not be present in Indian Law for the fact that it does not demarcate morals from legalities and such a provision would only be perfect for the existence of a utopian nation.

The concept of euthanasia too cannot be implemented if such a provision exists. The Supreme Court of the State of Nevada, the United States, delivered a Judgment in the case of McKay v. Bergstedt<sup>5</sup> which said that if a patient wants to withdraw from using a respirator further on, it did not amount to committing suicide but rather it was an exercise of his constitutional and common law right to discontinue unwanted medical services.

## **Landmark Judgments of the Honourable High Courts and the Supreme Court of India on Section 309:-**

### **State v. Sanjay Kumar Bhatia<sup>6</sup>:**

In this case, the Delhi High Court said that a young man attempted to commit since because of over emotionalism. The court felt that due to the presence of such a provision, a boy who wanted to end his life and escape human punishment due to complete frustration had to be hounded by a punishment which was a another pressure on his already brittle mental health he would also have to sent to mingle with criminals as well. The judges were of the opinion that persons booked under this provision had to be sent to a psychiatric clinic and that Section 309 had no justification remaining to stay in the statute books.

### **Maruti Shripati Dubal v. State of Maharashtra<sup>7</sup>**

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<sup>3</sup> 156<sup>th</sup> Law Commission Report

<sup>4</sup>1994 SCC (3) 394

<sup>5</sup>Pacific Reporter, 2d Series 1990; 801: 617-63

<sup>6</sup>1985 CriLJ 931

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The Bombay HC in this case was of the opinion that Section 309 of the IPC is a provision which is contrary to the ideals of Equality before Law and Right to Life, enshrined under articles 14 and 21 of the Constitution of India. Furthermore, it held that; "No person shall be deprived of his life or personal liberty except according to the procedure established by law. Those who attempt to commit suicide 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. On the other hand those who attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement require to be sent to nursing homes and not prisons to prevent them from making the attempts again".

## **P. Rathinam v. Union of India**<sup>8</sup>

A Division Bench of the Supreme Court in this landmark case held that; "Suicide is a psychiatric problem and not a manifestation of criminal instinct. What is needed to take care of suicide-prone persons are soft words and wise counseling (of a psychiatrist), and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor. It is a matter of extreme doubt whether by booking a person who has attempted to commit suicide to trial, suicides can be taken care of".

The court further expressed their view that Section 309 of the Penal Code should be effaced from the statute book to humanize our penal laws. Being a cruel and irrational provision, it would result in punishing a person again (doubly) because he has suffered agony and would be undergoing ignominy because of his failure to commit suicide. An act of suicide cannot be said to be against any religion, morality or public policy, and an act of attempted suicide has no harmful effect on the society either.

Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the concerned persons is not needed since there would not an invasion of into another person's space.

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<sup>7</sup>1987 (1) Bom.CR 499

<sup>8</sup>AIR 1994 SC 1844

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## Gian Kaur v. The State Of Punjab<sup>9</sup>

The Supreme Court of India in this case held that Right to Life is a natural right and committing suicide is an unnatural termination of life and therefore the concept of Article 21 being violated isn't within the ambit of Right to Life. Hence, the SC overruled the cases mentioned above. Hence, attempted suicide was given protection by this constitutional bench.

### Recommendations of the Law Commissions of India :-

The Law Commission, under the chairmanship of K.V.K Sundaram in the year 1971 prepared the **42<sup>nd</sup> Report** wherein it referred to Dharmashastras and Manusmriti which legitimized the practice of committing suicide in some situations. The commission also referred to the Suicide Act, 1961 passed in Britain. After considerable examination, the commission recommended to the Central Government to repeal Section 309 as it is harsh and unjustifiable. The Commission further recommended an insertion of a new provision to punish those, who by their persistent acts of cruelty force a family member to commit suicide, with imprisonment of up to 3 years and fine.

In the 156th Law Commission Report presented in the year 1997, it recommended retaining Section 309 of IPC due to many other new factors which have risen not only under law but science too. The report referred to the Judgment given in the Gian Kaur case and also added points which in essence said that the phenomenon of human bombs led to the commission rethink on its previous report and felt that there was a need to keep attempt to commit suicide an offence.

The **210<sup>th</sup> Law Commission Report** presented in the year 2008 under the chairmanship of Dr. Justice A.R. Lakshmanan recommended that Section 309 is a stumbling block in preventing suicides and rather the person deserves to undergo counseling and rehabilitation. Furthermore, the report recommended decriminalization of attempt to suicide irrespective of whether Section 309 is constitutional or unconstitutional.

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<sup>9</sup>1996 SCC (2) 648

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## Status of Suicide laws in other nations:-

**United Kingdom:** Until 1961, suicide and attempting to commit suicide was kept as a criminal offence and a person trying to commit suicide was against the crown. After the passing of the Suicide Act in the year 1961, suicide and attempt to commit suicide was decriminalized.

In Scotland, suicide directly involving only the deceased person is not by itself a criminal offence if done as a private act.

**Canada:** The common law crimes of attempting to commit suicide and assisting a person to commit suicide were codified in Canada when Parliament enacted the Criminal Code in 1892. The punishment for such an offence committed can be imprisonment for a period of 2 years. The Parliament however repealed the offence of attempting suicide from the Criminal Code based on the argument that a legal deterrent was unnecessary.<sup>10</sup>

**Iran:** Attempting to commit suicide is not an offence. However, no one is allowed to ask another to kill him/her which would amount to attempt murder and abetment to murder and both the parties would face imprisonment.

**New Zealand:** While there are no laws currently focusing on commission of suicide or attempt to commit suicide, Section 179 of the Crimes Act, 1961 says that a person assisting or abetting another person to commit suicide is punishable.

## Amendments Proposed in India:-

### **IPC Amendment Bill, 1978:**

Keeping in mind the recommendations of the 42<sup>nd</sup> Law commission report, the Rajya Sabha introduced a bill in the year 1978<sup>11</sup> to amend the Indian Penal Code. The main intention of this bill was to “decriminalize attempt to commit suicide”. The bill was passed in the year 1978 but unfortunately did not pass in Lok Sabha since the house dissolved in the year 1979.

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<sup>10</sup>Carter v. Canada (Attorney General), 2012 BCSC 886

<sup>11</sup>The Indian Penal Code-Vol. II

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## Mental Health Care Act 2017:

This act was passed in the year 2017 and came into force in 2018. Section 115 of the act decriminalized the attempt to die by committing suicide, thereby reducing further stress on the victim. This has implications on the provisions for abetment under Sections 109, 116, 306, and 309 of Indian Penal Code. In respect of mental healthcare delivery, this act enables the person who attempted to die by committing suicide, to access free healthcare, treatment, and rehabilitation. The act further emphasized on the fact that Section 309 inflicts double punishment in the sense that he is jailed and has to pay a fine number one. Number two his already very brittle mental stability is further worsened. Keeping in mind these, the report stated that it is unreasonable to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his own life.

## Conclusion:

Even after the passing of Mental Health Care Act of 2017, there are still cases being filed under Section 309 of IPC and the person who is already under severe mental agony faces a tougher task ahead. Since India is a country which follows the common law, it should take example from the UK and pass a similar legislation to the Suicide Act of 1961. Only after passing such an act and also amending the IPC with regard to Section 309, will the questioning of existence of such a law stop.

Post *Maneka Gandhi v. Union of India*<sup>12</sup>, Article 21 was given a very wide purview. Right to Life means a person has the right to lead a meaningful, complete and dignified life. It does not have restricted meaning. It is more than just surviving or having an animal existence and the meaning of the word “life” cannot be narrowed down. When the other aspect of Article 21, that is Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. Article 21 provides ‘right to live with dignity’ as well as ‘right against cruel and unusual punishment’. Article 21 also provides another right. Those who see a person as a free agent, suicide is morally a personal choice. His/her life belongs to him/her; hence they are at liberty to take it without denial. When a

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<sup>12</sup>1978 AIR 597

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person is mentally ill (inclusive of all kinds of mental illness) or is physically incapacitated or has a terminal illness, it is morally right to allow that person to die. This would not constitute as abetment to suicide and should not be punishable too.

While that approach should be taken into consideration, another fact to be considered is the taking away one's life by him equivalent to murdering oneself. Arthashastra, one of the most important texts considered by many jurists as an important source of proof condemns suicides and it says "a man committing suicide commits a murder and will not attain moksha and a person committing suicide is a coward".

Attempt to commit suicide should be a crime with limitations recommended by the 156<sup>th</sup> Law Commission Report.

Fali S. Nariman, a senior Supreme Court Advocate commented that "It is the time for India to take consideration of the International hue and cry which has been going on and take a humane step towards mankind and his existence with dignity."