

IS IT TIME TO DECRIMINALIZE ATTEMPTED SUICIDE IN INDIA? – A REVIEW

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“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. Section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide.”

- Observation of the Apex Court in *P. Rathinam vs. Union of India*.³

I. Introduction

Recently a British Journal *Lancet* published a study on suicide, conducted by the London School of Hygiene and Tropical Medicine which states that suicide has become the second leading cause of death among the youth in India. This report prompted the legal experts to focus on a long time lingering issue – Whether a person who attempts to commit suicide a criminal or a victim and what social interest is served by holding one liable for ‘attempt to commit suicide’? According to the latest data available with country’s National Crime Record Bureau, 1,34,599 people committed suicide in 2010 and 15 suicides take place every hour in India.

Suicide has been an act of condemnation as well as the commendation through the ages. The right to die or to end one’s life is not something new or unknown to civilization. Some religions like Hindu and Jain have approved of the practice of ending one’s life by one’s own act in certain circumstances while condemning it in other circumstances. The Holy Bible has not condemned suicide explicitly. In contrast, suicide is forbidden in the Koran and it has declared it as a crime worse than homicide. The common belief among Hindus is that a person who commits suicide will not attain “*Moksha*” and his soul will wander, haunting and tormenting people.

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³ AIR 1994 SC 1844 : 1994 AIR SCW 1764 : 1994(3) SCC 394.

On the other hand, suicide was regarded as permissible in some circumstances in ancient India. Two commentators of Manu, Govardhana and Kulluka⁴ say that a man may undertake the *mahaprasthan* (great departure) on a journey which ends in death, when he is incurably diseased or meets with a great misfortune, and that, because it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide. The attitude of Buddhism has been ambiguous in this respect, though it has encouraged suicide under certain circumstances such as in the service of religion and country.

Suicide was a felony in common law punishable by forfeiture of goods and chattels and called for ignominious burial of the body in the highway. It was not until the Suicide Act, 1961 was passed in England that suicide and attempted suicides were no longer crimes though complicity in another's suicide remained a felony.⁵ Attempt to commit suicide in England has now ceased to be a crime by virtue of Section 1 of the Suicide Act, 1961 which says that 'the rule of law where it is a crime for a person to commit suicide is hereby abrogated.' In *Curzon vs. Missouri*,⁶ the US Supreme Court has observed that "the choice between life and death is a deeply personal decision of obvious and overwhelming finality." After *State of Washington vs. Harold Gluckesberg*,⁷ the law in the US has certainly moved towards non-culpability of 'attempt to commit suicide'.⁸

According to government data, 134,799 people committed suicide in 2013 compared to 135,445 in the previous year.⁹ There was no official data on the number of attempted suicides. In recent times in India, attempted suicide, though a failed act, has gained importance since it is considered as an offence punishable under Section 309 of the Indian Penal Code (IPC). Causes for committing suicide are many. These being mental disease and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical conditions disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses; extremely cruel or unbearable conditions of life making it painful to

⁴ See Laws of Manu, translated by George Buhler, *Sacred Books of the East*, edited by F. Max Muller, (1967 Reprint) Vol. 25, page 204.

⁵ Md. Ali Ashraf, Culpability of attempt to commit suicide – A legal labyrinth amidst ethical quandary, *JILI*, Vol. 49, No. 4, 2007, p. 512-513.

⁶ 497 US 261, 281 (1990).

⁷ 521 US 702 (1997).

⁸ It may be noted here that in England, the United States, Canada and in most of the European countries the act of an attempt to commit suicide has been abolished. See, Smith and Hogan, *Criminal Law*, Butterworths : London, 6th Ed. 1988, pp. 358-360.

⁹ See, http://www.business-standard.com/article/pti-stories/govt-decides-to-decriminalise-attempt-to-suicide-to-scrap-sec-309-ipc-114121001160_1.html. (Accessed on 28-01-2015)

live, a sense of shame or disgrace or a need to defend one's honour or a sheer loss of interests in life or disenchantment with it, or a sense of fulfillment of the purpose for which one was born with nothing more left to do or to be achieved and genuine urge to quit the world at the proper moment.¹⁰

➤ **Government decides to repeal Section 309 from IPC and the debate**

The Government has reached consensus to legalize attempt to suicide by repealing Section 309 of the Indian Penal Code. According to the Code, any person who attempts to commit suicide shall be penalized with imprisonment to an extent of one year or with fine or both. The Government of India on December 10, 2014 has taken decision to decriminalize attempt to commit suicide, a decision that will ensure people driven to take their lives do not end up in prison in case they don't succeed. It has decided to repeal Section 309 from the Indian Penal Code, which makes the act punishable with jail term of up to one year and fine.

In the Rajya Sabha, Minister of State for Home Haribhai Parathibhai Chaudhary said that the Law Commission of India, in its 210th Report, had recommended that Section 309 (attempt to commit suicide) of IPC needs to be effaced from the statute book and since law and order is a state subject, views of all states and union territories were sought on the recommendations of the Law Commission." 18 states and 4 union territory administrations have supported that Section 309 of the IPC may be deleted. Keeping in view the responses from the States/UTs, it has been decided to delete Sec 309 of IPC from the Statute book," he said in reply to a written question.¹¹ R K Singh, BJP MP pointed out that the people who attempt to commit suicide need counseling and not legal action.

The five states which did not fully support the move to delete Section 309 are Bihar, Madhya Pradesh, Punjab, Sikkim and Delhi. The State of Bihar expressed its concern over suicide bombers and terrorists who often commit suicide to wash off evidence as distinguished from persons attempting to suicide due to mental unhealthiness. The State raised its need for separate legislation covering the former category of persons. But the officials replied that such persons will have to undergo criminal proceedings under Unlawful Activities Prevention Act. It was also stated that like India only some of the nations including Bangladesh, Singapore, Pakistan and Malaysia are continuing with this unwanted principle. But other States opined that when Section 309 is annulled, attempt to suicide will definitely

¹⁰ See *Maruti Shripati Dubal vs. State of Maharashtra*, 1987 Cri LJ 743.

¹¹ See, http://zeenews.india.com/news/india/govt-decides-to-repeal-section-309-from-ipc-attempt-to-suicide-no-longer-a-crime_1512479.html. (accessed on 28-01-2015)

reduce the authority of the law enforcement agencies while cases like self-immolation to coerce the government to accept their illegal or unjust demands come before them. In addition, the States like Madhya Pradesh and Delhi made its note that when Section 309 is deleted, Section 306 that provides punishment for abetment to suicide will automatically get watered down and the abettor will have to be set free for unsuccessful attempt. Punjab, though was in favor of such crossing out, suggested that people who attempt to commit suicide should be rehabilitated by giving adequate medical care. The Government had promised that prior to the initiation draft amendment bill, the Government will consider all the suggestions and views of States.¹²

Critics of the law say that it is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. They say it is cruel to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide. Apart from favoring opinions, the Government is also facing criticisms from persons who are against decriminalizing attempt to suicide. Such people are of the opinion that this decision will increase the number of suicides. There has also been a conflicting opinion that by declaring an attempt to commit suicide a crime, the IPC upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State cannot turn a blind eye to a person in attempting to kill himself. In the light of this above conflicting opinions, this paper attempts to clarify the issue, i.e., attempt to commit suicide.

II. Legal Position Relating to Attempted Suicide in India

The term 'suicide' has not been defined in Indian Penal Code (IPC). The word 'suicide' in plain English language means a person voluntarily putting an end to his life. It is obvious, on a plain reading of the definition of 'suicide', that the causes and circumstances leading one to take such a decision are wholly irrelevant for deciding the question as to whether the death was a suicide or not.¹³ In 1968, the World Health Organisation (WHO) defined a suicidal act as "injury with varying degrees of lethal intent" and that suicide may be defined as "a suicidal act with the fatal outcome". Suicidal acts with non-fatal outcomes are labeled as "attempted suicide" by the WHO. A suicide is not an offence in India, but attempted suicide is

¹² <http://lawyerslaw.org/parliament-to-repeal-attempt-to-commit-suicide-under-section-309-ipc/>. (accessed on 27-01-2015)

¹³ Justice Palok Basu, *Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws*, Modern Law Publications, 2009, p. 337.

under Section 309, IPC.¹⁴ Section 309 is based on the principle that the lives of men are not only valuable to them but also to the State which protects them.¹⁵ The word ‘attempt’ in Section 309 involves conscious effort.¹⁶ The act done must be in the course of the attempt, otherwise no offence is committed. In a case where the accused went on hunger strike but there was no positive proof of his intention to commit suicide and he readily accepted nourishment in the hospital, the charge under Section 309, IPC failed.¹⁷

The Law Commission of India called Section 309 a "stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide." The 5th Law Commission of India in its 42nd Report (1971) recommended the repeal of Section 309 being of the view that this penal provision is "harsh and unjustifiable". Pursuant to this recommendation, the same was incorporated in the Indian Penal Code (Amendment) Bill, 1978. The Bill was passed by the Rajya Sabha, which provided for omission of Section 309. But before it could be passed by the Lok Sabha, the lower house was dissolved and the Bill lapsed. Again, the 18th Law Commission in its 210th Report titled ‘Humanization and Decriminalization of Attempt to Suicide’ had also recommended repealing of Section 309, IPC terming it as “anachronistic law”. The Law Commission in its report in 2008 had recommended decriminalization of Section 309, saying: “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 interest of self-preservation and decides to take his own life. In such a case, the unfortunate person deserves sympathy, counseling and appropriate treatment, and certainly not prison.” The 18th Law Commission in its 210th Report gave the following recommendations in relation to the issue, i.e., attempt to commit suicide:¹⁸

- “1. Suicide occurs in all ages. Life is a gift given by God and He his life, it would be cruel and irrational to visit him with punishment on his failure to die. It is his deep unhappiness which causes him to try to end his life. Attempt to suicide is more a manifestation of a diseased condition of mind deserving of treatment and care rather

¹⁴ Sec. 309 reads: “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.”

¹⁵ K. D. Gaur, *Commentary on Indian Penal Code*, Universal Law publishing Co. Pvt. Ltd., 2006, p. 975.

¹⁶ *Emperor vs. M. T. Dhiraja*, AIR 1940 All 486.

¹⁷ Ratanlal and Dhirajlal, *Indian Penal Code*, 29th Ed. 2002, p. 1506.

¹⁸ Should attempt to Suicide be Decriminalised. *See*, <http://www.unilawonline.com/articles/Should%20attempt%20to%20Suicide%20be%20Decriminalised%20.htm>. (Accessed on 02/07/2012)

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.

2. Section 309 of the IPC provides double punishment for a person who has already got fed up with his own life and desires to end it. Section 309 is also a stumbling block 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, 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. In such a case, the unfortunate person deserves sympathy, counselling and appropriate treatment, and certainly not the prison.
3. Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of whether it is constitutional or unconstitutional. The repeal of the anachronistic law contained in section 309 of the IPC would save many lives and relieve the distressed of his suffering.
4. 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.
5. The Commission is 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 needs to be omitted from the IPC.”

In sum, this brief survey of the law as it stands holds criminally responsible people who..... attempt to commit suicide.¹⁹ Though in contrary, in many countries attempt to commit suicide is regarded more as a manifestation of a diseased condition of mind deserving of treatment and care rather than an offence to be visited with imprisonment.²⁰

III. Attempted Suicide and Role of Indian Judiciary:

Section 309, IPC has been the subject of controversy in many cases. In India, the case law relating to attempt to commit suicide has converged on the issue of ‘right to die’ and the constitutionality of Section 309, IPC. In *State vs. Sanjay Kumar Bhatia*,²¹ the Division Bench of the Delhi High

¹⁹ Stanley Yeo, *Dying with Dignity: Case for Legalising Physician-assisted Suicide*, *JILI*, Vol. 50, No. 3, 2008, p. 325.

²⁰ R. N. Craid, *Mental Abnormality and Crime*, *Macmillan*, 1944, p. 110.

²¹ 1985 Cri LJ 931.

Court said that the continuance of Section 309, IPC is an anachronism unworthy of human society like ours and the accused being 'social misfits' call for medical treatment not the legal one. However, the question of its constitutional validity with reference to any provision of the Constitution was not considered.

In 1987 the Bombay High Court in *Maruti Shripati Dubal vs. State of Maharashtra*,²² struck down Section 309, IPC as *ultra vires* vide Article 21 of the Constitution. The Court said that 'right to life' includes 'right to live' as well as the 'right to end one's life' if one so desires. The provision was also held to be discriminatory in nature and also arbitrary so as to violate the equality guaranteed by Article 14. In this case Justice P. B. Sawant observed:

"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 accounts 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. Those on the other hand, who make a suicide attempt on account of actual physical ailment, incurable disease, torture (broken down by illness), decrepit physical state inducted by old age or disablement, need nursing homes and not prison to prevent them from making the attempts again. No deterrence is further 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."

An author has criticized the decision of Maruti Shripati case. According to him, not only the State but also an individual is under a constitutional obligation not to take away human life except by a procedure which is just and reasonable established by law. This individual may also be the victim himself. Read in this backdrop committing suicide is a breach of fundamental right. And there is no question of waiver of fundamental right. A completed act of suicide may remove the author of the breach beyond the reach of law, but attempted violation may be brought to justice through Section 309, IPC.²³

²² 1987 Cri LJ 743.

²³ A. N. Saha, Right to die – a fundamental right, *Criminal Law Journal*, 1987, p. 70.

Again, in *Chenna Jagadeeswar vs. State of Andhra Pradesh*,²⁴ a Division Bench of the Andhra Pradesh High Court was rejected the challenge to the constitutional validity of Sec. 309, IPC. The argument that Article 21 includes the “right to die” was also rejected. It was pointed out by the Court that the Courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention. This negative the suggested violation of Article 14.

Most notably, the subject was under scrutiny in the cases of *P. Rathinam vs. Union of India*²⁵ and *Gian Kaur vs. State of Punjab*.²⁶

In *P. Rathinam case*, a Bench of two Judges of the Supreme Court held that right to live of which Article 21 speaks of can be said to bring in its trial the right not to live a forced life. Further, an act of suicide can’t be said to be against religion, morality and public policy and act of attempted suicide has no baneful effect on society. Suicide or attempt to commit it causes no harm to others, because of which State’s interference with the personal liberty of the persons concerned is not called for. It was stated the “fundamental rights have their positive as well as negative aspects. For example, freedom of speech and expression includes freedom not to speak..... It was, therefore, stated that logically, it must follow that the right to live will include right not to live, i.e., right to die or to terminate one’s life.” However, this was subsequently overruled by the Apex Court in the *Gian Kaur case*.

In *Gian Kaur case*, in the course of its deliberations, the Court opined that the right afforded by Article 21 includes “the right to live with human dignity” would mean the existence of such a right up to the end of normal life, including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the ‘right to die’ with dignity at the end of life is not to be confused or equated with the ‘right to die’ an unnatural death curtailing the natural span of life.” “‘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’ and by no stretch of imagination can extinction of life be read to be included in ‘protection of life’.”

Further, Section 309 merely ordains for simple imprisonment up to one year with full discretion to the court as far as sentencing is concerned. In *Mt. Barkat vs. Emperor*²⁷ the Lahore High Court has held long back that the

²⁴ 1988 Cri LJ 549.

²⁵ AIR 1994 SC 1844 : 1994 Cri LJ 1605 (SC).

²⁶ AIR 1996 SC 1257.

²⁷ AIR 1934 Lah. 514.

court must in each case consider the motive, which had prompted a person to destroy his or her life. In fact ‘the unfortunate person deserves indulgence and should either be released on probation of good conduct or sentenced to a fine if he is not too poor.’²⁸ The sentencing part and the criminal procedure, therefore, should not blur the issue of ‘culpability’ that stands on a different footing.²⁹

A careful perusal of the above conflicting ruling of the Apex Court – one holding Section 309, IPC (constitutionally) valid, while the other striking it down being violative of Article 21 of the Constitution, would reveal that there is ample force in both the contentions. Perhaps the entire matter or retention or abolition of Section 309, IPC from the statute book needs a careful study so as to strike a balance between the two propositions.

➤ **Section 309, IPC and few Problems:**

Though it is a debatable issue whether Sec. 309, IPC is violating Articles 14 and 21 of the Constitution or not, but apart from this there are other issues in support of deleting this section from the statute book. **Firstly**, this Law forces victims who have tried and failed to take their lives to try again. This law makes it difficult for people to start a fresh life. For suicide survivors, police interrogation adds insult to injury. So this law actually pushes people already prone to suicide to take their lives. **Secondly**, attempted suicide victims often lose their lives in hospitals because doctors have to treat them as medico-legal cases, which entail long-winding procedures.³⁰ Often private hospitals do not admit these patients to avoid legal complications. A lot of time is consumed in shifting patients from private hospitals to government ones and as a result of it sometimes they do not survive all this. **Last** but not the least, the discriminatory nature of Section 309n 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 punishment to all individuals irrespective of the different sets of circumstances under which the suicide attempt is made.³¹

IV. Concluding observations

Our penal laws are handiwork of Britishers but “what a pity that Britishers have themselves amended their penal laws and decriminalized

²⁸ Ratanlal and Dhirajlal, *Indian Penal Code*, 1508 (2005).

²⁹ Md. Ali Ashraf, Culpability of attempt to commit suicide – A legal labyrinth amidst ethical quandary, *JILI*, Vol. 49, No. 4, 2007, p. 512.

³⁰ The Telegraph, Calcutta, 27 June 2012, p. 11.

³¹ This is the observation of Justice P.B. Sawant in *Maruti Shripati Dubal* case.

attempted suicide way back in 1961 but we are yet to even deliberate on taking any action on this decisive issue which subjects an already tormented person to further punishment and ignominy!”³² Logic is given that if this is not made punishable then suicide cases would increase manifold but the present registered cases of suicide show that law is meaningless if one wants to die. Moreover, countries in Europe and North America which have decriminalized attempted suicide have shown no indication of increase in suicide cases after decriminalization. Whereas Singapore, which criminalizes suicide attempts, has seen an increase in the number of suicide cases. A man who has lost his prestige, self-respect, dignity and all the values he stands for may decide on attempting suicide and he is having every right to do so. Nobody must come in between his desire of ending himself. There may be hundreds of reasons to think and decide on quitting this world, it is therefore very necessary to allow everybody to decide on this matter without interference of police, judges, law and the government. Therefore, looking at the offence of attempting to commit suicide, it has been observed by an English writer, H. Romilly Fedden – “It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation.”

It is unreasonable to inflict punishment upon a person who on account of family discord or destitution overcomes the instinct of self-preservation and decides to take his own life. People who attempted suicide needed compassion, emotional support and sometimes even psychiatric help. So instead of punishing them for trying to kill themselves they should be counseled and shown an alternate way. All these people need help, not apathy. A year of punishment or fine or both will only give them another reason to take their lives. If the act of attempted suicide were to be decriminalized, it will make things easier for all to extend their hand and support in reducing suicide in India. The present piece of legislation is vague and undefined to suit today's parlance as it fails to appreciate the sensitivity and compassion that is required to deal with individuals who have already suffered much trauma in life and have to undergo another round of suffering due to this redundant provision of law. Thus Section 309 as a law should be amended suitably keeping in view the kind of people who attempt suicide. The section should be amended to punish only those who try to escape punishment due to other criminal liabilities excluding those who attempt it out of sheer frustration, depression or due to living in such circumstances

³² Sanjeev Sirohi, Should Attempt to Suicide be Decriminalised?, Lawyers Update, Vol. XV, Part 9, Sept. 2009, p. 38-40.

that would invoke suicidal thoughts.³³ Therefore, I openly and sincerely support the decriminalisation of attempt to commit suicide.

Only a handful of countries in the world *viz.* India, Pakistan, Bangladesh, Malaysia, Singapore, etc. have persisted with this undesirable law. Even Sri Lanka has decriminalized it. Are we still waiting only to be the last country in the world to decriminalize attempt to suicide? Fortunately, the Union government is on course to delete Section 309 (attempt to commit suicide) from the Indian Penal Code as 25 States have given their consent to the Law Commission's recommendation for removal of the criminal provision from the code while four States including Bihar and Madhya Pradesh have opposed the proposal to delete the provision.³⁴ It is high time that Section 309, IPC be repealed from the statute book because it has lost its utility in the present day tension and stress.

We would like to conclude with the observation of the Apex Court in *Aruna Ramachandra Shanbaug case*³⁵ in this regard: “*A person attempts suicide in a depression, and hence he needs help, rather than punishment. We therefore recommend to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.*”

³³ Crime of Attempt to Commit Suicide by Neeraj Chhabra. *See*, <http://legalservicesindia.com/article/article/crime-of-attempt-to-commit-suicide-1081-1.html>. (Accessed on 02/07/2012)

³⁴ Attempt to suicide to be decriminalized. *See*, <http://www.thehindu.com/news/national/article2477158.ece>. (Accessed on 02/07/2012)

³⁵ *Aruna Ramachandra Shanbaug v. Union of India*, AIR 2011 SC 1290.