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**CONSTITUTIONALITY OF ATTEMPT TO COMMIT SUICIDE WITH
SPECIFIC REFERENCE TO MENTAL HEALTH CARE ACT 2017 – A
BRIEF ANALYSIS**

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ABSTRACT

A person is born free, but he does not have the freedom of choosing his or her own death. Suicide is essentially the purposeful or self-inflicted annihilation of one's self.³ Under the IPC⁴, suicide is not a crime since there is no perpetrator who can be punished. Only the attempt to commit suicide is prohibited & penalized under the provisions of Section 309 of IPC. This section is based on the principle that "the life of a man is significant not only to the individual but also to the state." The state has the same duty to keep its people from killing themselves as much as it has to keep them from murdering others. People in a country like India, which is heavily impacted by religion and orthodox beliefs, have diverse opinions on life and death issues. In India, the sacredness and significance of life has been exalted to the greatest extent. This is reflected in Article 21 of the Indian Constitution, which deals with the protection of life and personal liberty. There is a heated dispute about whether suicide attempts should be penalized or not. In this research paper, we will discuss the dispute surrounding Section 309 of the Indian Penal Code, as well as the constitutionality of the section itself in light of Article 21 of the Indian Constitution.

Keywords: crime, suicide, attempt, IPC, life, death

INTRODUCTION

In recent times, attempted suicide, while being a failed act, has received more prominence than suicide, which is a successful act, due to the absence of a punishable culprit. An Individual is punished for attempting to commit suicide so as to prevent him to repeat the same offence in

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³ Kl Vibhute, Criminal Law, pg. 713 (14th ed., 2021)

⁴ The Indian Penal Code Act, 1860, § 309

future.⁵ Suicide attempts are punishable in India under Section 309[1] of the Indian Penal Code, 1860. The World Health Organization, in 1968, defined suicidal act as "the harm with varying degrees of lethal intent", and suicide as "a suicidal act with fatal consequence." The World Health Organization classifies suicidal actions that do not result in death as "attempted suicide."⁶Owing to the varied views expressed by our Courts on whether the right to life includes the right to die within the ambit of Article 21 of the Indian Constitution, a number of conflicting views have emerged over whether Section 309 of the Indian Penal Code should be kept or abolished.

Some argue that Article 21 of the Indian constitution, while guaranteeing right to life and personal liberty to an individual, does not include the right to die within its ambit. Given the legislative intent behind the inclusion of a penal provision for attempting to commit suicide in the 1860 statute, it is easy to see how much importance was placed on the dignity of human life in that statute, given that human life is valuable not only for the person who holds it, but also for the State, which cannot stand by and let the person attempting to commit suicide go free without punishment. Something deterrent would make the perpetrator realize the worth of his life, both for himself and for others. Opponents of this position think that the inclusion of Section 309 to the Penal Code is a completely inappropriate provision since it punishes the distressed person for attempting to terminate his life due to profound despair. Instead of being sensitive to the person, inflicting further punishment on him would be a cruel act.

SECTION 309 OF INDIAN PENAL CODE,1860

As previously mentioned, suicide is not considered a crime under the Indian criminal code since there is no culprit who can be punished; nonetheless, an individual who tries to commit suicide is penalized under Section 309 of the Indian penal code. This indicates that the provisions of Section 309, IPC apply only when a person fails to commit suicide. Section 309 of IPC states that:

“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

⁵ Naveen Kumar Gautam, *DECRIMINALIZATION OF ATTEMPT TO COMMIT SUICIDE*, *Academike* (July 24, 2014),

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

⁶Smita Satapathy, *CONSTITUTIONALITY OF ATTEMPT TO COMMIT SUICIDE – UNLOCKING THE CONTROVERSY*, *Medico Legal Update* (April 09,2020)

<https://ijop.net/index.php/mlu/article/view/326>

or with fine, or with both”

This basically indicates that if an Individual tries to commit suicide and undertakes any act for the purpose of committing suicide but thereafter fails to accomplish the desired act then the individual is liable under section 309 of IPC.

ATTEMPT TO COMMIT SUICIDE MUST BE INTENTIONAL

Mens rea (guilty mind) is considered to be one of the essential elements under section 309 of IPC.⁷ The essence of section 309 ipc is the intentional annihilation of one's own existence/life. if a person inadvertently drinks poison without intending to harm himself or while intoxicated, or to elude arrest by his pursuers, he is not accountable under section 309 of the IPC. Similarly, if a person willingly chooses to do the act after losing the instinct for self-preservation as a result of family dispute, destruction, the death of a close member, or other comparable reason, he should not be held guilty for attempted suicide.⁸ In the face of exceptionally compelling negative circumstances, a person proceeds to the extreme step of attempting suicide. Some of them include depression, schizophrenic attitude, unbearable physical illness, poverty, unemployment, disappointment, dowry problems, and so on.

HUNGER STRIKE- NOT A SUICIDE ATTEMPT

In many cases, hunger strikes are utilized as a tactic of exerting pressure on certain authorities to meet the demands of those who are on hunger strike. Hunger strikes are not undertaken with the goal of self-harm; rather, they are undertaken for the purpose of improving or alleviating a particular circumstance, and as such they do not constitute an offence under Section 309 of the Indian Penal Code in most cases.

An accused person may only be prosecuted with attempted suicide if he or she wants to persevere to the end, refuses all forms of nutrition, and reaches the stage at which the likelihood of death is high.⁹

CONTRADICTING JUDGEMENTS BY THE COURTS ON RETAINING OR DELETING SECTION 309 OF IPC

There have been various instances in which the courts have ruled on the constitutionality of Section 309 IPC. While acquitting a young child who attempted suicide by consuming poison in

⁷Emperor V. Dwarka Poonja, (1912) 13 Cr LJ 264

⁸K Kannan & Anjana Prakash, The Indian Penal Code, pg.542 (36th ed., 2021)

⁹ Ram Sunder Dubey V. State, (1962) Cr LJ 697

the case of *State v. Sanjaya Kumar*¹⁰, the Delhi high court strongly recommended for the repeal of Section 309, IPC, stating that "the continued existence and application of Section 309 of the Indian Penal Code is an anachronism unworthy of a human society like ours". As per the viewpoint of Judge Rajinder Sachar J, the young child should be handed over to a psychiatric clinic instead of sending him to prison where his mental condition is bound to worsen. Medical clinics are essential for such social misfits, but they are seldom provided by the police or the other authorities.

Similarly, in *Maruti Shripati Dubal v. State of Maharashtra*¹¹, the Bombay High Court's Division Bench ruled that Section 309 of the Indian Penal Code is unconstitutional because it violates Articles 14 and 21 of the Indian Constitution, which provide the "right to life and personal liberty." According to the court, the 'right to life' includes both the 'right to live' and the 'right to end one's life,' if desired.

However, following the above case, in the case of *Chenna Jagadeshwar v. State of Andhra Pradesh*¹², the Division Bench of the Andhra Pradesh High Court disregarded the finding of the Bombay High Court and held that Section 309 IPC did not infringe on the purview of Articles 14 and 21 of the Constitution. The court concluded that Article 21 of the constitution's definition of the right to life does not necessarily encompass the right to die.

In the case of *P Rathinam v. Union of India*¹³, a Division Bench of the Supreme Court for the first time struck down Section 309 as a harsh and senseless legislation that violated Article 21 of the Indian Constitution. The court ruled that an individual has the right to die, and as a result, Section 309 was found to be unconstitutionally invalid. In this particular instance, the petitioner argued that Section 309 was unconstitutional because it violated Articles 14 and 21 of the Indian Constitution. The court concluded that Section 309 of the Indian Penal Code is an irrational provision and that Article 21 does not contain a right to live a forced existence within its purview of application.

The verdict delivered in *P.Rathinam v. Union of India* was reversed in *Gian Kaur v. State of Punjab*¹⁴, and a Constitutional Bench of the Supreme Court maintained the constitutional

¹⁰ *State v. Sanjaya Kumar* (1985) Cr LJ 931

¹¹ *Maruti Shripati Dubal v. State of Maharashtra* (1987) Cr LJ 473

¹² *Chenna Jagadeshwar v. State of Andhra Pradesh* (1988) Cr LJ 549

¹³ *P Rathinam v. Union of India* (1994) 3 SCC 394

¹⁴ *Gian Kaur v. State of Punjab* (1966) SC 946

validity of Section 309 of IPC, ruling that it does not contradict with Articles 14, 19, and 21 of the Constitution. In the aforementioned case, the appellant and her husband were found guilty of abetting Kulwant Kaur's suicide by the Trial Court under Section 306, IPC. A special leave was sought from the Supreme Court to challenge the appellant's conviction on the grounds that Section 306 IPC is invalid in light of the 1944 judgement (P.Rathinam V. Union Of India) and that Section 309 IPC is invalid because it is violative of Article 21 of the Constitution. According to the court, the right to life protected by Article 21 of the Constitution does not include the right to die. Suicide is an unnatural termination or extinction of life that is incompatible and inconsistent with the understanding of the right to life outlined in Article 21 of the Constitution. When it comes to the right to life, the court made it clear that it encompasses the right to live with dignity, and that it would imply the existence of such a right until natural life came to an end. The right to die with dignity at the end of one's life should not be mistaken with the right to die in an unconventional way that shortens one's normal life span.

As a result, the judge reached a conclusion that Section 309 of the IPC did not encroach upon the purview of Article 21 of the Constitution. The 'right to life' is evidently inconsistent with the 'right to die', just as 'life' and 'death' are contradictory.

A DILEMMA AS TO WHETHER RIGHT TO LIFE ENCOMPASSES WITHIN IT THE RIGHT TO DIE

The right to life is guaranteed to every citizen by Article 21 of the Indian constitution. Right to life," as outlined in Article 21 of the Constitution, has been given the broadest possible interpretation by the able hands of the country's judiciary. Article 21 does not have a narrow interpretation and must be construed liberally. Due to the fact that Article 21 grants a person the right to live a dignified life, it should also give the person the "Right to Die". However, including the "Right to Die" within the scope of Article 21 would be in conflict with the provision contained in Section 309 of the Indian Penal Code. The inclusion of the Right to Die under Article 21 of the constitution is still being debated.¹⁵

MENTAL HEALTH CARE ACT, 2017 AND ITS IMPACT ON SECTION 309 OF IPC

Following an alarming rise in the incidence of suicides, the government enacted the Mental Health Care Act in 2017 in order to comply with the United Nations Convention on the Rights

¹⁵ KI Vibhute, *THE RIGHT TO DIE AND CHANCE TO LIVE- A FUNDAMENTAL RIGHT IN INDIA: SOME CRITICAL REFLECTION*, Vol. 24, Indian Bar Review, 65-96 (1997)

of Persons with Disabilities. Section 115 of the Mental Health Care Act 2017 provides a presumption of extreme stress in the case of a suicide attempt, which helps to mitigate the effect of Section 309 of the Indian Penal Code (IPC). According to Section 115(1) of the Mental Health Care Act 2017, regardless of what is stated in Section 309 of the IPC, if an individual attempts suicide, he/she is deemed, until proven otherwise, to be suffering from severe stress¹⁶ and thus shall not be prosecuted or punished under the aforementioned code & such people who are suffering from excessive stress and have attempted suicide are entitled to treatment and rehabilitation under Section 115(2) of the Mental Health Care Act 2017, which states that the government owes a legal duty to provide these services in order to decrease the likelihood of that person attempting suicide again.

The specific act has not explicitly made the application of section 309 of IPC redundant or made it applicable to all suicide attempts. A simple reading of the Act indicates that an Individual who makes an attempt to commit suicide is assumed to be under extreme stress, and so will not be prosecuted or penalized for his actions. It removes the element of culpability that is attached to a suicide attempt under Section 309 of the IPC. Furthermore, it places the government under legal duty to treat and rehabilitate such person such that the likelihood of a repeat of suicide attempts is decreased.

The Supreme Court upheld the Gian Kaur case in Common Cause vs. Union of India¹⁷ ruling that section 115 of the Mental Health Care Act 2017 is a non-obstante provision that states that anyone who attempts suicide is presumed to be suffering from severe stress unless the prosecution can show otherwise.

RECOMMENDATION

- 1) Section 309 of IPC should be declared unconstitutional as it has become anachronistic keeping in mind that the one who abets or encourages another person to commit suicide shouldn't be given immunity from the realm of punishment under IPC. Instead of taking a humane step and providing treatment to an individual who made an attempt to commit suicide, punishing him for his failed attempt will set a wrong example in the society since punishing him will aggravate that very particular person's mental state.
- 2) An individual who has made an attempt in committing suicide should be handed over to a psychologist or a rehabilitation centre for the treatment so that the likelihood of

¹⁶The Act has not defined "severe stress" although mental illness has been defined by it.

¹⁷Common Cause vs. Union of India (2014) 5 SCC 338 : (2014) 2 SCC 557

recurrence of attempt to commit suicide is reduced instead of putting that person in prison to mingle with the criminals.

- 3) There must be initiation of some public health programs for promoting mental health and prevention of mental illness in the country for the sake of reducing suicide rates and attempted suicide in the country.
- 4) Regardless of the circumstances surrounding the suicide attempt, Section 309 imposes the same punishment on all persons. Even if Section 309 is not deemed an irrelevant provision and is not removed from the scope of the IPC, legislators should at the very least distinguish between the various sets of circumstances under which a suicide attempt is made and accordingly punish the perpetrator by taking into account the circumstances under which the failed attempt was made.

CONCLUSION

Given the foregoing discussion, it is clear that revisions and repeals are necessary to bring the provisions of the Indian Penal Code into compliance with the demands of the modern day and age in order to proclaim the code a Modern Code in every imaginable sense (or, for that matter, any legislation). Any regulation should aim to offer a consensus and conceptual framework for dealing with evils without jeopardizing human rights. It is thus necessary to abolish Section 309 of the IPC. No degree of deterrence should prevent individuals who wish to die for a particular or political cause, or who want to depart the world owing to lack of interest in life or for the sake of self-deliverance. As a consequence, punishment is seldom effective in accomplishing the goal, and in certain situations it is destined to be self-defeating and counterproductive.