

Analysis of Position of Law on Attempt to Suicide in India

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I. Introduction

Right of a person to live a dignified life, devoid of any form of discrimination, inequality and injustice, is given paramount importance in the Constitution of India, 1950. Life is considered as a gift of God and therefore, he alone can take it. However, in 21st Century the pace of life has increased manifold and so has the pressure of survival. Many people, under mental stress and agony caused by these miserable, unfortunate and painful circumstances, attempt to bring an end to their lives by committing suicide.

Therefore, with an intention to decrease instances of suicide, the Indian Penal Code provides for inflicting punishment for those who failed in their attempt to do so. Suicide in itself is not an offence but attempt and abetment of attempt are offences punishable under the Penal Code. Suicide is not defined anywhere in the Indian Penal Code but it can be defined as an act to kill oneself while provisions related to attempt to suicide are attracted when a person fails in the act of killing himself/ herself.

Section 309 of the IPC was haunted with many controversies regarding its validity over the decades on the grounds of legality and morality. Finally, giving approval to the various Law Commission Reports and judgments of the Hon'ble High Courts and the Supreme Court, **attempted suicide is de-criminalized (not punishable) after passage of The Medical Health Care Act, 2017.**

However, abetting the commission of suicide is **punishable** under section 306 of the IPC.

II. Attempt to Suicide and the Indian Penal Code

a. Section 306

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

b. Section 309

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.

III. Judgments of the Hon'ble High Courts and Supreme Court of India

1. State v. Sanjay Kumar Bhatia, 1985 CriLJ 931

The Delhi High Court in this case **opined in favour of de-criminalization of Section 309** and it further held that;

“A young man was allegedly tried to commit suicide, because of over emotionalism. It is ironic the Section 309 of IPC still continues to be on our Penal Code. A young boy driven to such frustration so as to seek his life would have escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed. Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive sections of the Penal Code. The continuance of Section 309 I.P.C. is an **anachronism** unworthy of a human society like ours. No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 I.P.C. which has no justification right to continue remain on the statute book.

2. Maruti Shripati Dubal v. State of Maharashtra, 1987 CriLJ 743

The Bombay High Court in this case opined that **Section 309 of the IPC is contrary to the ideals of Equality before Law and Right to Life, enshrined under articles 14 and 21** of the Constitution of India respectively. While referring to the presence of Right to Remain Silence under the ambit of Right to Freedom of Speech and Expression, the court ruled that **Right to Life under article 21 also contains the Right NOT to live**. The Court observed that “*those who make the suicide attempt on account of the 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 the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again.*”

3. P. Rathinam v. Union of India, AIR 1994 SC 1844

In this landmark judgment by a Division Bench, the Hon’ble Supreme Court held the following that;

Right not to live a forced life is a part of Right to Life. 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. Therefore, **the court proclaimed repealing Section 306 in order to humanize the Penal Code and laws contained in it.**

4. Gian Kaur v. State of Punjab, AIR 1996 SC 946

The Hon'ble Supreme Court in this case **over-ruled** the judgment given by the High Court of Delhi and Mumbai in the above stated cases. The court **upheld constitutional validity of Section 309 of the IPC**. According to the view taken by the court, Right to Life could not be stretched to the extent of including Right to die under the ambit of article 21. Hence, attempted suicide was got protection of this constitutional bench.

5. Chenna Jagadeeswar v. State of Andhra Pradesh

The Hon'ble High Court of Andhra Pradesh also **upheld the constitutional validity of Section 309 of Indian Penal**.

IV. Recommendations of Law Commissions

1. 42nd Report of the Law Commission

In the year 1971, 42nd law commission report was prepared by the Fifth Law Commission under chairmanship of Mr. K.V.K. Sundaram. In its report on Indian Penal Code, 1860, the Commission talked about Section 306 of the IPC, under following heads; view of Ancient and British law makers about this subject followed by a proposal to repeal section 309 and substitute it with new penal provisions, to punish those who cause a person to take extreme step of ending his/her life.

The commission stated that Manu's code and various commentaries on it, held commission of suicide valid, in case the person was diseased and living under miserable and unfortunate conditions. Among Brahmins, one who got rid of his body, was taken into high regard and considered to have left the earthly pleasures, sorrow and pain behind. The report went on describing view taken by British writers to de-criminalize the act of attempted suicide.

Therefore, Law Commission recommended repealing the 'harsh and unjustifiable' provision. **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, was proposed.**

2. 156th Report of the Law Commission

The 156th report of Law Commission presented in the year 1997, **recommended 'retention' of criminalization of attempt to commit suicide or to say this report favored punishment for attempt to suicide**. This report was influenced by new developments in medical science and law.

While relying on the legal position laid down by the Hon'ble Supreme Court in the case of Gian Kaur, that article 21 can't be stretched and interpreted to include 'right to die.' This report emphasized the fact that Supreme Court upheld constitutional validity of this section only after giving due consideration to relevant principles of Law.

This report further supported its argument by bringing the issues of narcotic- drug trafficking and terrorism. It was thought by the commission that a terrorist or a drug- trafficker who failed in his attempt to take life of his own and his targets, deserved to be charged under section 306 for disturbing the law and order situation in the society.

3. 210th Law Commission Report

The 210th report of law commission, chaired by Dr. Justice AR. Lakshmanan and presented on October 17, 2008 titled 'Humanization and Decriminalization of Attempt to Suicide', recommended repealing section 309 of IPC. The commission recommended the following;

- a. Life is a gift given by god he alone can take it. A person attempts to take his life out of unbearable circumstances. Therefore, it would not be just and fair to aggravate such person's pain by punishing him.
- b. In case any law is ineffective in curing the intended evil, it should not exist.
- c. Section 309 of IPC is a stumbling block in prevention of suicide. Rather, in such a case, the unfortunate person deserves counseling, sympathy and treatment.
- d. Section 309 is inhuman, irrespective of whether it is constitutional or unconstitutional.
- e. **Therefore, this commission recommended decriminalization of attempt to suicide.**

V. Legislative Intent; proposed amendments to IPC and the Mental Health Act

a. Proposed amendments in the Indian Penal Code

The Indian Penal Code (Amendment) Bill, 1972 was introduced and passed in the upper house of parliament i.e. the Rajya Sabha in the year 1978. Keeping in mind the recommendations made the 42nd Law Commission, this **bill intended to 'decriminalize' attempt to suicide**. However, this bill could not be passed by the Lower House i.e. the Lok Sabha because it was dissolved in the following year (1979).

b. The Mental Healthcare Act, 2017

The Mental Healthcare Bill of 2016 got the assent of the President of India on 27th March 2017. **This act** repealed the Mental Healthcare Act 1987 and **de-criminalized Section 309 of the IPC, 1860**. Mentally Ill person as defined in the parent act of 1987 meant a person who is in need of treatment by reason of any mental disorder other than mental retardation. This definition was vague and hence the new act defined 'mental illness' as;

A substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence.

Section 115 of this act provides;

Notwithstanding anything contained in Section 309 of the IPC, any person who attempts to commit suicide shall be presumed to have severe stress and shall not be tried and punished under this Code; and

The government is duty bound to provide care, treatment and rehabilitation to such a person in order to reduce the risk of recurrence of attempt to commit suicide.

c. Convention on Rights of Persons with Disability and additional Protocols of it

In October 2008, India signed and ratified the Convention on Rights of Persons with Disabilities and additional Protocols of it. This act is also a step further to fulfill India's international obligations arising out of the above mentioned convention.

VI. Conclusion

Attempt to suicide **is not an offence** under the Indian Penal Code, 1860. While rightly so, **abetment** to attempt the act of suicide **is an offence** punishable under Section 306 of the IPC, 1860.