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Author:

Shruti Gautam

Symbiosis Law School, Noida

2nd Year, BBA LL.B.



**ANALYSIS OF SECTION 309 IPC WITH REFERENCE TO ARTICLE 21
OF THE INDIAN CONSTITUTION**

ABSTRACT

This article talks about killing one own self, which is probably not out of happiness or joy. Hurting yourself so grievously is as difficult as trying to stop wind to enter in an enclosed room. So, if one takes a decision to do such act which is capable of marking an end to his life and he fails to do so for any reason, will it be just to punish him on any ground. Should his state of mind not be considered before treating him? And if yes, what are the possible defenses available to him by law? And if no, how can he be convicted fairly under law? If someone is being punished for attempt of suicide then will it not be in contradiction to the article 21 of the Indian constitution as it basically states that a person has the right to live?

Keywords: - Killing; end to his life; Punish; defense; attempt; Article 21; right to live.

INTRODUCTION

Taking away our own life can never be out of reasonableness. It is always an outcome of an unstable mindset. It involves intentional killing with the knowledge of the consequences of the act. In last ten years the numbers of attempt of suicides have reasonably increased from 1,87,000 to 1,33,760¹ in India. The suicide of the late actor Mr. Sushant Singh Rajput drew a major attention of the society to the issues related to mental health. In India, the laws are rigid on suicide. The Section 309 of the Indian Penal Code, 1860, deals with suicide, according to which a person who

¹ Data taken from <https://ncrb.gov.in>

attempts to suicide and fails can be convicted and imprisoned for one year with or without fine or by both.

Imprisoning a person with suicidal tendencies will nowhere be helpful to him but only worsen his mental state. So, is it just to punish a person who is already under miserable condition?

SCOPE OF SECTION 309

This clause criminalizes the act of attempting to commit suicide. This is the only provision in the whole IPC where an attempt is deemed criminal even if the attempt is not an offence since the perpetrator, being deceased, cannot be punished. The term 'offence' in the statement 'any act towards the commission of such offence' does not relate to 'suicide,' but to the 'attempt to commit suicide,' which is rendered criminal as an offence under this section.

The question of whether the suicide was performed explosively or after extensive thought is completely immaterial.

There is no difference between suicide done by a person who has led a successful life and has accomplished his life's goal and suicide committed by a citizen who is disappointed or defeated in life. The same should be true in the case of a suicide attempt.²

QUESTIONING CONSTITUTIONAL VALIDITY OF SECTION 309, IPC.

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.”*

A person who dies by killing himself cannot be prosecuted but a person who fails to die can be punished under Indian Penal Code.

The constitutional validity of this particular section has been questioned several times in the four walls of the court in different cases with respect to Article 21 of the Indian Constitution.

Article 21 of the Constitution- *Protection of life and personal liberty—No person shall be deprived of his life or personal liberty except according to procedure established by law.*

21A. Right to Education—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

For the first time it was challenged in the case of *P. Rathinam v. Union of India 1994 AIR 1844*³ in which the Supreme Court held that Section 309 is irrational and infringe of Article 21 of the Indian Constitution. Hence, should be struck down on the ground of being unconstitutional. Again in 1996 in *Gian Kaur v. State of Punjab 1996 AIR 946*⁴ the court held that Article 21 does not include the right to die. Therefore, the section should not be struck down. *Maruti Shripati Dubal*

² CA Thomas Master v Union of India (2000) Cr LJ 3729 (Ker) (DB).

³ Indian Law Portal; P. Rathinam v. Union Of India

⁴ Jus Corpus; GIAN KAUR V. STATE OF PUNJAB (1996 AIR 946)

*v. State of Maharashtra*⁵ is a leading case by Bombay High Court in which the court stated that Section 309 is violative of Article 21 and Article 14 of the Constitution. The statute was held to be discriminatory and arbitrator in nature with respect to the Article 14 of the principle of the equality. The judges also stated that Article 21 is inclusive of Right to Die which means Section 309 is violative of Article 21. In the case of *State v. Sanjay Bhatia*⁶ the Delhi High Court held that Section 309 is against human society but the question related to the its constitutional validity was not considered. The Andhra Pradesh High Court rejected the argument which questioned the constitutional validity of Section 309 and also rejected the question which was raised that whether Right to Die is included in Article 21 or not in the case of *Cheena Jagadeeswar v. State of Andhra Pradesh*⁷.

The result of this discussion may be summarized as follows: Section 309 of the Penal Code needs to be removed from the statute in order to humanize our penal laws. It is a cruel and illogical provision that may result in the punishment of a person who has experienced anguish and would face humiliation as a result of his failure to commit suicide. Then suicide cannot be considered to be against religion, morals, or public policy, and attempted suicide has no negative impact on society. Furthermore, suicide does no harm to others, thus the state's intervention with the personal liberty of the individuals involved is inappropriate.

In *Gyankaur v State of Punjab*⁸, a Constitutional Bench of the Supreme Court considered the preceding judgements of the High Courts and the Supreme Court and overturned *P Rathinam's*⁹ appeal, stating that when a man commits suicide, he must engage in certain positive overt activities, the origins of which cannot be traced back to or included within the protection of the "right to life" under Article 21. The significance of sanctity of life' should not be disregarded. Article 21 is a clause that guarantees the protection of life and personal liberty, therefore extinction of life cannot be construed to encompass 'protection of life.' Whatever the reasoning behind allowing someone to end his life by committing suicide, we find it impossible to interpret Article 21 to include the 'right to die' as a component of the basic right protected therein. The 'right to life' is a natural right enshrined in Article 21, however suicide is an artificial termination or extinction of life, making it incompatible and inconsistent with the notion of 'right to life.' With all due respect and humility, we see no parallel in the nature of other rights, such as the right to "freedom of speech," to offer a comparable foundation for holding that the "right to life" also encompasses the "right to die." In this regard, the comparison is inappropriate for the reasons stated in the context of Article 21. There are no cases pertaining to other fundamental rights in which the lack of compulsion to exercise a right was determined to be included within the exercise of that right to support the conclusion expressed in P Rathinam's case, qua Article 21.

LAWS RELATED TO MENTAL HEALTH

⁵ Indian Legal Solution; Maruti Shripati Dubal v. State of Maharashtra

⁶ Sanjay Bhatia Petitioner v. State | Delhi High ... - Casemine

⁷ Chenna Jagadeeswar And Anr. vs State Of ... - indiankanoon.org

⁸ (1996) Cr LJ 1660 (SC).

⁹ P Rathinam/Nagbhusan Patnaik v Union of India AIR 1994 SCW 1764, (1994) 3 SCC 394, AIR 1994 SC 1844 [LNIND 1994 SC 1533], (1994) Cr LJ 1605 (SC).

Considering the rapid increase in the numbers of the suicides in our country, the government passed the Mental health Care Act in 2017 with UN Convention. The act was basically formulated to lessen the impact of section 309 of the Indian Penal Code emphasizing on the presumption of stress. In India in the year of 2016 there were highest suicides in Maharashtra and lowest in Nagaland.

Section 115 of Mental Health Care Act - Presumption of severe stress in case of attempt to commit suicide:

(1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.”

The Mental Health Care Act does not repeal Section 309 of the Indian Penal Code, but rather provides a presumption regarding mental illness.

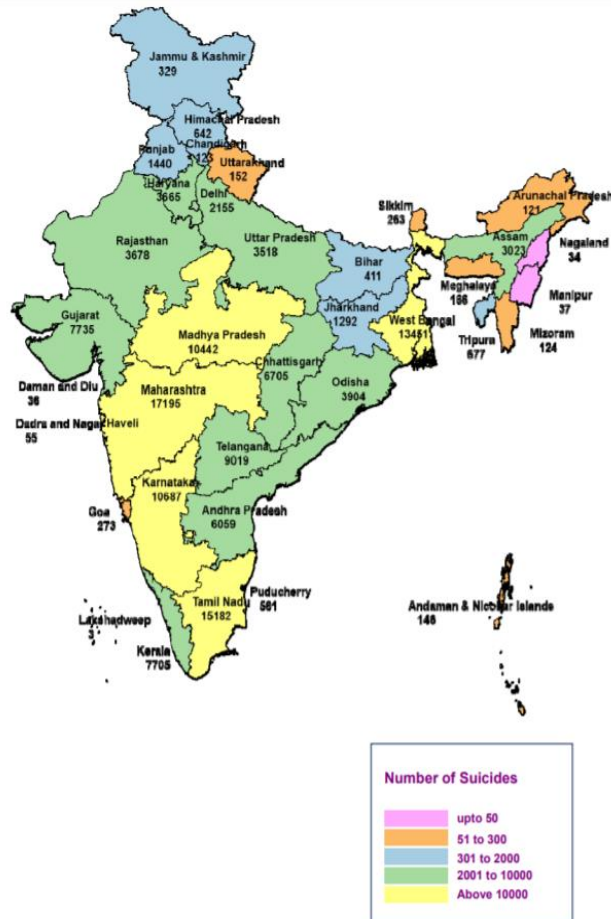
In the case of *Common Cause V. Union of India*¹⁰, the Supreme Court reaffirmed that the judgement of the case Gian Kaur and states that Section 115 of Mental Health Care Act protects a person who had attempt to suicide on the ground of presumption of his suffering from severe stress unless the prosecution successfully proves the contrary. Recently in a writ petition filed in *Lynx Confederation v. Union of India & Ors.*¹¹ the question on punishing or safeguarding a survivor of suicide was raised.

State wise total number of suicides during 2016¹²

¹⁰ 15 SCC 269(2016) Justice India

¹¹ Best Law Firm in Gurgaon; Constitutional Validity of Section 309 of Indian Penal Code

¹² National Crime Records Bureau; National Crime Records Bureau



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CONCLUSION

In my opinion Article 21 of the Indian Constitution does not include the Right to Die as a part of Right to live. After the enactment of the Mental Healthcare Act the impact of Section 309 has significantly reduced. Suicide in no Jurisdiction is an offence but to encourage or to motivate someone to kill himself surely is. As a result, I believe that Section 309 of the IPC violates Article 21 of the Constitution and should be declared null and invalid. It might be argued that our position would promote not just the cause of humanization, which is urgently needed today, but also the cause of globalization, because by repealing Section 309, we would be attuning this component of our criminal code to a worldwide wavelength.