

DE JURE NEXUS LAW JOURNAL

Author:

S. Naina

Symbiosis Law School, Noida

1st Year, BBA LL.B.**SUICIDE- DOES AN INDIVIDUAL HAVE THIS RIGHT IN RESPECT TO ARTICLE 21 OF CONSTITUTION OF INDIA?****ABSTRACT**

According to the 21st Article, “No person shall be deprived of his life or personal liberty unless according to procedure established by law”. Article 21's the right to give up own's life is not a part of a person's right to life. To have the liberty to live a life is a fundamental human right. My query is whether or whether not a person having the liberty to a decent life encompasses as to having the liberty to a dignified life. If the answer is yes, then why should a cancer patient who is towards the final stage of life have to face so much anguish till they die? In many circumstances, active euthanasia is the only method to relieve cancer agony. How can we say that someone who is bedridden and utterly depends on others is living with dignity?

In the following research paper, full study of Article 21 of Indian constitution is offered along with the legal scenario of attempted suicide in India as well as in other countries.

KEYWORDS- Article 21, Suicide, Indian Penal Code, Euthanasia, Constitution

INTRODUCTION

The IPC doesn't classify the term "suicide". However, a judgement given in “*Clift v. Schwabe*”¹ gives a valid meaning of the phrase, “to ‘commit suicide’ is for a person deliberately committing an act, for the aim of ending his own life, being conscious of that probable consequence.” The fundamental question is whether humans should have the right to die, and if so, what philosophy would justify such a right.

¹ Clift v. Schawbe, (1846) 3 C. B. 437

This right to life is defined in numerous ways by the Indian judiciary, which includes “right to live with human dignity, right to livelihood, right to shelter, right to privacy, right to food, etc. Right to education, right to clean air and water, and some other rights that are highly vital for improving people's living situations, is required to truly enjoy the right to life”.

ARTICLE 21 OF THE CONSTITUTION OF INDIA

As per this article, “*No individual shall be deprived of his life or personal liberty unless according to method prescribed by the law*”.

While the “right to life and liberty” are constitutionally protected, the “right to die” is not. Suicide attempts are not recognized within the broad framework of the constitutional right to life.

In our country, the right to die specifically applies to fatal cases of illness persons and the relatives, permitting them to determine when they should cease receiving life-sustaining care and die in dignity. If A when terminally ill, has the right to die in a dignified manner, then B or the state needs to respect that right.

LEGAL STATUS OF ATTEMPTED SUICIDE: INDIAN SCENARIO

Despite the fact that 309th section of the Indian Penal Code was just deemed to be unconstitutional and the nation repealed any former punishments in heed for people who tried to attempt suicide, the nation continues to discourage suicide. The state simply does not criminalise it and recognize it as a mental health disorder.

309th Section of the IPC plainly says: “*Whoever attempts to commit suicide and undertakes any act towards the commission of such offence, will be punished with simple imprisonment for a term which may extend to one year or with fine or both*”.

Consisted inside the framework of section 309, a variety of questions are raised. For example, it is within the group of offences described in IPC Chapter XVI. All other violations inside this category are done against another person's body, and attempt to suicide is included in the same category. On the grounds of intention, which is derived from circumstances, it is assumed that the act of attempted suicide was done. However, in many cases, the aim is hazy or ambiguous. Furthermore, there are few supporters of treating people who tried suicide against the state.

A REVIEW OF THE LEGAL CONDITON OF ATTEMPTED SUICIDE ON A GLOBAL SCENARIO

Countries which criminalized attempted suicide:

The bulk of nations that legalised made attempting suicide a offence criminal in nature, originate from majorly areas of: Northern Africa as well as Southern Asia.

Nigeria, Tanzania, Kenya, Ghana, Malawi, Rwanda, and Uganda are some of the African countries that have made suicide behaviours illegal. For some reference, in the nation of Rwanda an individual found to be engaged in unsuccessful suicide activity faces a 2–5-year jail term if convicted.

India, Singapore, Malaysia, Pakistan, and Bangladesh are some of the nations in the South Asian area that continue to penalise suicide attempts. Suicide attempts in Singapore are punishable by up to a year in jail. Furthermore, North Korea criminalises suicide with a unique deterrent that the suicide victim's family and relatives may be punished as a means, to shared punishment for the attempt of suicide.²

Nations which decriminalized attempts of suicide:

Attempts of suicide has been decriminalised in various nations, however encouraging someone to commit suicide, making pacts of suicide, or purposefully harming yourself have remained illegal.

Under Roman-Dutch law, attempted suicide or suicide aren't considered crimes. Only a few South Asian nations, notably Sri Lanka, Indonesia, Thailand, and the Maldives, don't consider attempt to suicide to be a crime.

59 nations throughout the globe have decriminalised suicide, according to the World Health Organization.³

De Jure Nexus

EUTHANASIA:

According to the dictionary of Oxford, "Euthanasia" is described to be "the painless death of a patient who is suffering from an incurable illness or in an irreversible coma."

Euthanasia can be done in two ways: actively or passively. Active mercy killing is the deliberate killing of a patient. It might be voluntary, in which the patient's agreement is sought; non-voluntary, in which consent is not acquired; and involuntary, in which the step is taken against someone's will. The act of withholding or eliminating life-sustaining measures is known as passive euthanasia.

ARGUMENTS IN FAVOUR OF LEGALIZING EUTHANASIA:

(i) It is a means of putting an end to a life that has been exceedingly miserable and painful. The perseverance on delaying death against the requests of the patient are illegal, harsh, and not medically suitable.

(ii) The physical, emotional, financial, and mental strain on the dying patient's family members is alleviated. It also gives the sufferer respite from discomfort and improves comfort.

² Jiang G, Cheng Q. Suicide attempts in Asia. In: Wasserman D, Wasserman C, editors. *Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective*. Oxford: Oxford University Press; 2009. pp. 109–12. [[Google Scholar](#)]

³ World Health Organization (WHO) Suicide prevention. 2012. Available from: http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/index.html

(iii) An individual is allowed to choose whether or not to exercise his or her right to die.

ARGUMENTS AGAINST LEGALIZING EUTHANASIA:

(i) This might be employed by the destitute to get over the financial obstacles of treatment.

(ii) The aged and destitute are commonly considered as a burden, and others could take advantage of this to avoid taking responsibilities.

INDIA'S LEGAL POSITION OF RIGHT TO DIE

□ Legitimacy of the "right to die" in India initiated with a case named "*State v. Sanjay Kumar Bhatia*"⁴, under which the High Court of Delhi criticised the 309th section of IPC to be "anachronism and a paradox," which was followed by a diversity of opinions on 309th section of the Indian Penal Code from several High Courts.

□ Under the case of "*Naresh Marotrao Sakhre v. Union of India*", our court differentiated suicide from euthanasia. Suicide is defined as "*an act of self-destruction in which a person ends their own life without the assistance or support of any other human agency*" yet, euthanasia differs in that as "it requires the engagement of a human agency to terminate one's life" 309th section of IPC says:

"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 time which may extend to one year [or with fine, or with both]"

□ Under a case named "*Gian Kaur v. State of Punjab*"⁵, the verdict was rendered, where it was concluded that the right to die or be killed is not to not be a part of right to life. Further such was held that "*right to life was a natural right inherent in Article 21, but suicide constituted unnatural termination or extinction of life and hence, 'incompatible and inconsistent' with the concept of the right to life*".

□ Passive euthanasia and living will/advance directive were accepted and sanctioned by a five-judge bench of the Supreme Court in "*Aruna Shanbaug v Union of India*"⁶. As a result, the Right to Die with Dignity will now be accepted as a Fundamental Right. The judgement was delivered by a bench which included, "*Justice A.K. Sikri, former chief justice Dipak Misra, Justice D.Y. Chandrachud, Justice A.M. Khanwilkar and Justice Ashok Bhushan*".

Our court also developed the system of a "Living Will" also called "Advance Directive," under what it was permitted to the fatally ill patients to select that whether or not they are willing to

⁴ State v. Sanjay Kumar Bhatia 1985 Cri.L.J 931 (Del.).

⁵ Gian Kaur v State of Punjab 1996 (2) SCC 648.

⁶ Aruna Shanbaug v. Union of India (2011) 4 SCC 454

stay in the coma vigil state with the help of “life support system”, if they are not able to convey their preferences.

LEGAL STATUS OF RIGHT TO DIE IN OTHER COUNTRIES

1. In 1995, Australia established the world's first euthanasia statute, however assisted suicide was only authorised for a brief time and is currently banned.

2. France—Due to the country's "well-developed hospice care system," the country's debate isn't as intense. However, following the case of Vincent Humbert in 2000, new law was enacted that says that medicine would serve "no other aim than the official sustenance of life," it might be "terminated or not done."

3. While active euthanasia is outlawed across The United States, assisted euthanasia is lawful in Oregon, Washington, Vermont, California, and Mexico.

RECENT ATTEMPTS TOWARDS DECRIMINALIZING SUICIDE IN INDIA



De Jure Nexus

LAW JOURNAL

Year	Event
1970-71	42 nd report of the Law Commission of India recommended the deletion of the offence of the attempt to commit suicide from the penal code
1978-79	Recommendation was accepted by the GOI but before it could be passed by the Lok Sabha in 1979, elected body of the country was dissolved and the Bill lapsed
1985	Decisions by Delhi High Court, Chief Justice Rajinder Sachar in State v. Sanjay Kumar Bhatia condemned the penal provision as "unworthy of human society"
1986	Bombay High Court held it to be ultravires on the ground that it violates Articles 14 and 21 of Indian Constitution
1994	A 2-judge bench of the Supreme Court in P Rathinam Vs Union of India struck down Section 309 of IPC (attempt to suicide) as unconstitutional
1996	In Gian Kaur's case, a Constitution bench of the SC (five judge, headed by justice J S Verma) overruled the 1994 verdict stating that the right to life does not include right to die and upheld the validity of Section 309
2008	Law Commission favoured scrapping of Section 309 of the IPC in 210 th report on 'humanization and decriminalization of Attempt to Suicide.'
March 7, 2011	Supreme Court had recommended to Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic, while giving guidelines for passive euthanasia
Sep, 2011	25 out of 29 states agreed to the proposal to bring amendment to delete 309 IPC
2012	Drafting and Consultations for Mental Health Care Act
Aug 19, 2013	Mental Health Care Bill introduced in Rajya Sabha [upper house], pending approval of parliament. Still to be formed as an act

Source: Indian Kanoon.org, Law commission report no. 210.^[23] IPC – Indian penal code

SHOULD SUICIDE BE ALLOWED OR NOT?

Many elderly folks end up taking their own lives, frequently in hideously violent or painful ways, simply because they lack the ability to do it gently. Should we supply them with the resources? This is the conundrum's central question. What can we do to facilitate a peaceful "passing"? We can't do it! It goes against all of our human values in the protection of life at all costs, but do we genuinely analyze or assess that cost in terms of the anguish or, worse, the loss of dignity that the individual may be experiencing?

Assisted suicide is a method in which a person who would usually be unable to commit suicide is given the tools (drugs or equipment) to do so. The words "assistance in dying" or "death with dignity" are often used instead. These words came to be usually used to distinguish themselves from suicide. In many legal areas, "suicide" (whether helped or not helped) is still prohibited, whereas "help in dying" is authorized.

In view of the groups of individuals who attempted to commit suicide, 309th section as a legislation should be looked into properly. Only those who intend to dodge punishment owing to new criminal obligations should be prosecuted, not those who do so out of sheer frustration, grief, or situations that would lead them to consider suicide.

CONCLUSION

Suicide survivors require emotional and psychological care. Because many survivors are now frightened of being penalized, decriminalising attempted suicide would encourage them to come forward and seek help. Decriminalizing attempted suicides would not make suicides more likely, but it would motivate the people who failed to seek medical treatment.

Report from the Law Commission of India stated that,

“Right to live would, however, mean right to live with human dignity up to the end of natural life. Thus, right to live would include right to die with dignity at the end of life and it should not be confused with right to die an unnatural death shortening natural span of life. Hence, a dying man who is chronically ill or in a protracted vegetative state can be entitled to terminate it by premature extinction of his life. In truth, they are not examples of killing life but rather of accelerating process of natural death which has already began. In such instances, causation of death would result in end of his suffering.”

De Jure Nexus

LAW JOURNAL