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*Right to Die Under the
Constitution of India*

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ABSTRACT

Life is the greatest gift of all, but the debate stands on the point as to who has the right to take away the gift. Whether this right lies with the person whose life it is or based on the best friend doctrine. The answer is not the same throughout the world, as it differs on jurisdiction.

Mental element of the person wishing to die is very essential to note, so as to grant the wish or not. The paper proceeds by discussing section 309 of the Indian Penal Code, to why shall this particular attempt be punished, followed by some case laws. Understanding of suicide pacts is succeeded by the plea for removing section 309 and its constitutional validity. The paper would remain incomplete without a mention to euthanasia and whether right to die is granted under Article 21 of The Constitution of India or not.

In this project secondary research methodology has been used. Hence it has no primary source of data. Analysis is made by interpreting Bare Acts, books, laws, journals, articles online and in newspaper, online websites, etc. The interesting part is that we all are the stakeholders for this research study. As being born we all have a Right to Life but the discussion here is how many of us have Right to Die?

Thus the scope of study will be very vast, therefore to simplify things we are only concerned with the jurisdiction of India. Meaning thereby that only Indian Laws like the Constitution of India and The Indian Penal Code 1860, Indian Citizens are to be studied, whether they have a Right to Die or not? These are the few questions the author has tried to answer.

INTRODUCTION

Criminal law punishes not only completed crimes but also conduct short of completion of a crime. Criminal attempt falls in the category of inchoate crimes. The law of attempt continues to be somewhat enigmatic and notorious for its intricacies.¹

A brief historical survey of the law of criminal attempt may thus be useful in the formulation of the problem created by the court when it applies the same rule to utterly dissimilar situations.² Harmful tendencies of aggravated nature were to be made punishable as criminal attempt and this remains the underlying policy of the law even today.³

No person is allowed to voluntarily terminate his life for any reason. If he does, then it will amount to suicide. The interesting point is a person who commits suicide cannot be punished, as he is already dead. But, a person who attempts to suicide and fails in his attempt will surely be penalized under section 309 of IPC.

So it is like if one succeeds then he cannot be punished but if in case he, fortunately or unfortunately fails, then will be penalized. This might be called the irony of the situation.

This was to introduce the point whether a person is allowed to take away his own life or not. But what if the person is not mentally and physical fit to take away his own life. And his life is just a burden onto him. Then are other people allowed to gift him death and relieve him of the burden? This will be introduced in the coming section of Passive Euthanasia.

But does Right to Life include Right to Die?

Right to Die should not be perceived as committing suicide. Attempt to Suicide is a Punishable offence under Indian Penal Code, 1860. Right to Die can be best understood by the term "Euthanasia". What is it? It is like a passive death granted by a medical practitioner by the consent of the patient's nearest kin. It is granted only when the patient is in a permanent vegetative state.

SECTION 309, INDIAN PENAL CODE, 1860:

1 K.N.Chandrasekharan Pillai, Shabistan Aquil, The Indian Law Institute, Essays on the Indian Penal Code, Shivam Offset Press, New Delhi, 2008

² For an analysis of the law of criminal attempt in historical perspective, See Hall, *Id.* At 553; Holdsworth, *History of English Law*, vol. V., p. 200, Sayre, "Criminal Attempts" 41 *Harvard Law Review*, 821.

³ Hall *supra* note 3 at 559. *R v. Toole*, (1987) Cri L R 759.

RIGHT TO DIE: ATTEMPT TO COMMIT SUICIDE

Any person who attempts to commit suicide shall be punished with simple imprisonment of maximum a year or with fine or both. In the introduction itself we dealt with the reason of why shall an “attempt” be punishable when the objective of the act is not even achieved. The rationale behind the imposition of responsibility for criminal attempts has been stated to be to control dangerous conduct or persons. Generally speaking, the commission of a crime by a person involves four stages:

- (i) formation of the intention or mental element;
- (ii) preparations for the commission of the crime;
- (iii) acting on the basis of the preparations; and
- (iv) commission of the act resulting in an event proscribed by law.

The basic question in attempt law is whether the actors have done all they had to do but still not realized their criminal objective, either to engage in criminal conduct or to cause a result the law defines as a crime. There may not be a responsibility for attempt if the person was negligent or reckless inasmuch as attempt is a crime of purpose.

WHY PUNISHMENT?

There are two dimensions to punishment. They are the purpose that justifies the punishment and the proportionality of the nature and quantum of punishment in relation to the nature and seriousness of the crime. Punishment requires several elements:

- (i) the infliction of pain or unpleasant consequences;
- (ii) prescribed by law;
- (iii) administered in accordance with procedure; and
- (iv) by the state.

Many theories have been advanced in justification of punishment. They include:

- (i) retribution;
- (ii) deterrence;
- (iii) prevention and

(iv) reformation, etc.

If we examine them minutely it becomes clear that since prevention covers general deterrence, incapacitation and rehabilitation or reformation, in fact there are only two basic justifications which underline all criminal punishment viz. retribution and deterrence. Thus to make people realize that they are not free to take away their life in any circumstances or their wish, punishment is provided if anyone attempts to suicide. Our constitution gives us a “Right to Life” and it is not given in order to give us the liberty to end this right if life is not so pleasant. Therefore if unhappy or in pain or life being miserable as claimed by the one who commits suicide, does not give them the liberty to end their right to life and have an access to something called “Right to Die”; there is no such right provided to us by our constitution, society, custom, etc. No one is allowed to end their life, and if they try so, they’ll be punished accordingly. Life is something to be cherished not to end it.

The other underlying purpose for awarding punishment for the attempt to suicide might be to prevent the abetment of suicide.

Cause if someone abets a person to commit suicide and the person does commit suicide, and then he has lost his life because he got instigated. The abettor will be accordingly punished but it will not return the life of that person, and hence to create a threat or to prevent people from getting influenced from such abetment, punishment is provided for attempt to suicide. Because every time it might not be that the person attempting succeeds and hence to create that threat in mind as to “what if I fail?”, attempters are penalized.

CASE LAWS ON SECTION 309, IPC

In the case of:

Bhujang S/o Laxman Nimawad v. State of Maharashtra, Through Police Station Officer, Police Station Bhokar 2013 Indlaw MUM 709

It was held that:

The appeal is filed against judgment and order of Sessions Case No. 17 of 2012, which was pending in the Court of Additional Sessions Judge, Bhokar, District Nanded. The Trial Court has

convicted and sentenced the appellant for offences punishable under sections 376 and 306 of the Indian Penal Code. Both the sides are heard. The appellant stands acquitted of the offences punishable under section 376, 306 of Indian Penal Code.

He is to be set at liberty forthwith, if he is not required in other case.

In the case of:

Pinakin Mahipatray Rawal v. State of Gujarat 2013 Indlaw SC 569

It was held that:

We are in this case concerned with the question as to whether the relationship between A-1 and A-2 was extra-marital leading to cruelty within the meaning of Section 498A IPC and also amounted to abetment leading to the act of suicide within the meaning of Section 306 IPC. In the circumstances, we are inclined to allow this appeal and set aside the order of conviction and sentence imposed on the appellant, and he is set at liberty.

In the case of:

Union of India, through the General Manager South Central Railway, Secunderabad (A.P.) v. Godawaribai W/o Amruta Kothiwale and others 2013 Indlaw MUM 680

It was held that:

that it is obligatory for railway administration to lead evidence to prove that the deceased died because of suicide or attempt to commit suicide or as a result of self-inflicted injuries or because of his own criminal act or that death had occurred as a result of natural or medical or surgical reason.

Thus, having perused the rulings in respect of strict liability of railway administration to pay compensation to the claimants/dependents of the deceased together with reasonable interest thereon, who traveled by a train and met with an accident as a result of untoward incident

In the case of:

Vinay Garg and another v. State of Punjab and another 2013 Indlaw PNH 1771

It was held that:

In the instant case, a perusal of the FIR itself does not lead to the inference that deceased had been instigated by the petitioners to commit suicide. Rather as per the FIR, petitioners through

the persons, who had allegedly visited the shop of the complainant, were demanding their due amount.

During investigation it transpired that apart from the petitioners, Sunil Garg already owed money to a number of persons and due to this reason, he had got mentally upset and had committed suicide. The Magistrate fell in error in not accepting the cancellation report and by summoning the petitioners to face the trail. In these circumstances, criminal proceedings against the petitioners would be nothing but an abuse of process of law.

In the case of:

Maruti Shripati Dubal v. State of Maharashtra⁴

It was held that:

Section 309 of IPC is violative of Article 14 as well as Article 21 of the Constitution. The provision was held to be discriminatory in nature and also arbitrary so as to violate the equality guaranteed by Article 14. Article 21 was construed to include the 'right to die', or to terminate one's own life. For this reason it was held to violate Article 21 also.

In the case of:

Rustom Cavasjee Cooper v. Union of India⁵

It was held that:

What is true of one fundamental right is also true of another fundamental right.

It was then stated that it is not, and cannot be seriously disputed that *fundamental rights have their positive as well as negative aspects. For example, freedom of speech and expression freedom not to speak.*

Similarly, the freedom of association and movement includes freedom not to join any association or move anywhere. So too, freedom of business includes freedom not to do business.

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.

⁴ 1987 Cri LJ 743: 1986 Mah LJ 913.

⁵ (1970) 1 SCC 248: AIR 1970 SC 564

SUICIDE PACTS

Section 4(1) of the Homicide Act 1957 (as amended by the Suicide Act 1961) provides ‘It shall be manslaughter and shall not be murder for a person acting in pursuance of a suicide pact between him and another to kill the other or be party to the other being killed by a third person’. Section 4(3) defines ‘suicide pact’ as follows:

a common agreement between two or more persons for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

If, for example, D enters into an agreement to kill V and then himself, and having killed V he relents or is prevented from killing himself, he may, on a charge of murder, raise the defence of suicide pact. In this case the burden of proof is upon the defence (s. 4 (2)) to prove the facts grounding the defence on the balance of probabilities (*Woolmington V DPP [1935] AC 462*).

In their Consultation Paper, No. 177, *A New Homicide Act for England and Wales?* Published in 2005, the Law Commission recommended the repeal of the defence of suicide pact; deserving cases should be covered by a reformed defence of diminished responsibility. In their report, *Murder, Manslaughter and Infanticide* (Law Com No. 304) the Law Commission reconsidered this recommendation now taking the view that the defence should be retained pending a review of the broader question of whether there should be a partial defence of ‘mercy’ killing.⁶

⁶ Michael Allen, *Criminal Law*, Oxford University Press, New York, 11th Edn, 2009

PLEA FOR REMOVING SECTION 309, IPC

It should be stated in this connection that in many countries attempt to suicide is regarded more as a manifestation of a diseased condition of mind deserving of treatment and care rather than as an offence to be visited with punishment. ⁷What to speak of attempt to suicide, even euthanasia (mercy killing) entitles the accused in U.K. to get the benefit of diminished responsibility. ⁸It has also to be realized that a determined suicide can never be prevented by the fear of only one year's imprisonment or fine or both as s. 309, I.P.C., seeks to achieve. It is high time that we abolished this section from the penal law of India. ⁹

CONSTITUTIONAL VALIDITY OF SECTION 309

In the case of:

Ahluvaliya v. State of Tamil Nadu, 1995 Cr LJ 3511 (Mad).

It was held that:

Where the accused was convicted in 1992 under section 309 for an attempt to commit suicide, he was acquitted in view of the subsequent ruling of the Division Bench of Supreme Court in *P. Rathiram v Union of India*¹⁰, wherein s. 309 was held to be violative of Article 21 of the Constitution of India.

In the case of:

Lokendra Singh v. State of Madhya Pradesh¹¹

It was held that:

Constitutional Validity of section 309 of I.P.C. was upheld. The Constitution Bench of Supreme Court said that this provision does not offend Art. 14 because there is inbuilt flexibility therein. It

⁷ R.R. Criag : *MENTAL ABNORMALITY AND CRIME, MACMILLA, . 1944*, p. 110.

⁸ Siddeswari Bora, 1981 Cr LJ 1005 (Gau); See also comments under s. 84 I.P.C. ante.

⁹ Ratanlal & Dhirajlal, *The Indian Penal Code*, Wadhwa and Company, Nagpur, 33rd Edn, Reprint 2011, pp 657-658.

¹⁰ (1994) 3 SCC 394; 1994 SCC (Cri) 740

¹¹ (1996) 2 SCC 648 : AIR 1996 SC 946 and 1257.

gives discretion to the Court to award suitable punishment commensurate with the gravity of offence against compulsion of giving disproportionately harsh punishment in all cases of offence of attempt to commit suicide. This flexibility protects S. 309, IPC, from the vice of being unconscionably harsh. In an appropriate case, the Court can even impose fine.

ARTICLE 21, CONSTITUTION OF INDIA INTER ALIA PASSIVE EUTHANASIA

Fundamental Rights are explained in part III of the constitution. Every Right is coupled with a duty. Part III of the Constitution confers rights, duties and regulations are the intrinsic property. Such reasonable regulations are explained in this part of the Indian Constitution. Amongst the six Fundamental Rights provided one is Right to Freedom which extends from Article 19 to Article 22.

All of us want to live a happy and healthy life, it's the obvious human desire. But sometime a reason might arise when it may not be so obvious. The Encyclopedia of Crime and Justice explains euthanasia as "an act of death which will provide relief from a distressing or intolerable condition of living". It involves direct intervention or withholding of life-prolonging measures. If it is with the patient's consent and he has consciously and expressly approved of the decision, it is known as 'voluntary'. Where the individual concerned is not aware of the decision and has not consciously and expressly approved it in advance, it is called 'non-voluntary'. When there is direct intervention we call it active euthanasia whereas when just support systems are removed we call it passive euthanasia.

The act of death mentioned in euthanasia shouldn't be confused with suicide. In suicide the person should be able to take away his own life but in euthanasia the person maybe incapable in doing so.

In euthanasia, death is granted as a relief from the constant physical pain suffered by a patient, which is not in the case in suicide.

When a patient is in the last and most painful stages of a fatal disease, to prolong life is to violate the promise to relive pain and suffering, it's inhuman.

CASE LAWS

Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. Its definition, the reason for its evolution, its applicability in different situations are discussed in detail. Types of euthanasia, difference between euthanasia and suicide are also clarified. Landmark cases like P.Rathinam v Union of India, Smt. Gian Kaur v State of Punjab and Aruna Ramchandra Shanbaug v Union of India and others are discussed thoroughly. We'll see how the judiciary faced a new problem in deciding every new situation in this regard. The mentality and reaction by the Indian society while discussing euthanasia has also affected the judgments delivered by the judiciary.

P.Rathinam v Union of India

Supreme Court of India

26 April 1994

Bench B. L. Hansaria

Subject: Criminal; Municipalities & Local Governments; Tort

Judgment: Section 309, IPC has been held to be unconstitutional as violative of Article 21 of the Constitution. 'right to die' being included in Article 21 of the Constitution as held declaring Section 309, IPC to be unconstitutional, any person abetting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under Article 21; and, therefore, Section 306. IPC penalizing assisted suicide is equally violative of Article 21.

This argument, is alone sufficient to declare that Section 306, IPC also is unconstitutional being violative of Article 21 of the Constitution. There is also no minimum fine prescribed as sentence, which alone may be the punishment awarded on conviction under Section 309, IPC.

Smt. Gian Kaur v State of Punjab

Supreme Court of India

21 March 1996

Bench J. S. Verma, G. N. Ray, N. P. Singh, Faizanuddin, G. T. Nanavati

Subject: Constitution; Criminal; Defence & Security Forces

Judgment:

The appellant Gian Kaur was sentenced to R.I. for three years, and her husband Harbans Singh was awarded a sentence of six years R.I. and each with a fine of Rs. 2,000/-, in default, further R.I. for nine months, for abetting the commission

of suicide by Kulwant Kaur. These appeals by special leave are against their conviction and sentence under Section 306, IPC.

Aruna Ramchandra Shanbaug v Union of India and others

Supreme Court of India

07 March 2011

Bench Markandeya Katju, Gyan Sudha Misra

Subject: Constitution; Human Rights; Practice & Procedure

The case was a writ petition under Article 32 of the Constitution, and was filed on behalf of the petitioner Aruna Ramachandra Shanbaug by one Ms. Pinki Virani of Mumbai, claiming to be a next friend.

Brief: Aruna Ramachandra Shanbaug, a nurse, attacked by a sweeper, due to which she was put to a vegetative state for the past 37 years, as irreparable damages caused to her brain. Judged by any parameter, she cannot be said to be a living person and it is only on account of mashed food which is put into her mouth that she is in a condition of a living dead. It is alleged that there is not the slightest possibility of any improvement in her condition. The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully.

Judgment: The honorable Supreme Court of India said:

Aruna Ramchandra Shanbaug has the right to live in her present state.

The state that Aruna Ramchandra Shanbaug is presently in does not justify terminating her life by withdrawing hydration/food/medical support. The aforesaid acts or series of acts and/or such omissions will be cruel, inhuman and intolerable.

CONCLUSION

People might say that 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 legislature.

In reply to this Art. 21 is self-sufficient, which is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to be included. Whatever maybe the philosophy of permitting a person to extinguish his life by committing suicide, it is difficult to construe Art. 21 to include 'Right to Die' as part of the fundamental right guaranteed therein. Does not matter what constitutes suicide, there is no doubt that suicide is intentional taking of one's life.

The point to be noted here is the sentencing punishment is not even compulsory; there is no minimum number of sentences. It is worth pointing out that section 309 has only provided the maximum sentence which is up to one year. It provides for imposition of fine only as a punishment. It can even be sought as if imprisonment is provided then it gives time to the convict to realize how precious life is. As discussed earlier under the heading of punishment, the aim of punishing might be to cause reform in the person from within. Hence the sentenced time might gift him with the opportunity to reform from within and he might realize the value of life.

All the cases of passive euthanasia adjudged in India do not support one single opinion whether it should be allowed or not. They not only differ in time, facts but also in the interpretation of legal principles by the different judges in the country over time. It leaves us somewhat in a perplexed thought as to what precedent the coming cases in future should follow in cases where passive euthanasia will be pleaded.

Though it is commendable how the judicial system of India is treating each case differently and not basing them on the same balance or judging them on the same rules and regulations. It shows that our judicial system respects the dignity of every new situation and understands that all situations are different from each other and thus need to be treated differently.

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