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Abolition and Restoration of Section 309 IPC - an overview

B. R. Sharma[1], Anup Sharma[2], D. Harish[1]

[1]Reader, Department of Forensic Medicine and Toxicology, Govt. Medical College & Hospital, Chandigarh - 160030, India

[2]Junior Resident, Department of Forensic Medicine and Toxicology, Govt. Medical College & Hospital, Chandigarh - 160030, India

Contact: the corresponding author B. R. Sharma · drbrsharma@yahoo.com

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ABSTRACT

A lot of conflicting opinions have generated on the desirability of retaining or abolishing section 309 of Indian Penal Code because of some contrasting judgments delivered by the various courts of India. In 1981, the Delhi High Court condemned the penal provision (Section 309 IPC) as 'unworthy of human society' and its Bombay counterpart, in 1986, held it to be 'ultra-vires' on the ground that it violates Article 14 and 21 of the Indian Constitution. The Andhra Pradesh high Court, on the contrary held that section 309 IPC 'does not offend' Article 14 and 21 of the Indian Constitution. In April 1994, a two-judge bench of Supreme Court declared the Section 'irrational and cruel and hence void' observing that the right to live under Article 21 of the Constitution can be said to bring with it 'the right not to live a forced life'. However, in March 1996, a five-judge constitution bench of the Supreme Court setting aside the earlier judgment held that attempted suicide is an offence and section 309 IPC 'continues to be valid'. These judgments provide a stage for debate on whether the offence of attempt to commit suicide under section 309 IPC should be retained or abolished, particularly when many countries have legalized euthanasia. This paper attempts to examine the various judgments in this regard.

Keywords: Attempted suicide; Section 309 IPC; Right to live; Right to not live; Penal offence

Disposing the case Rathinam v union of India[1], Division Bench of the Supreme Court of India declared Section 309 IPC as unconstitutional and void. Before arriving at the conclusion, the Supreme Court took into consideration the cases argued / disposed by the high Courts of some states namely, Delhi, Bombay and Andhra Pradesh on the aforesaid issue.

The first in point of time is the decision of a Division Bench of Delhi High Court in State v. Sanjay Kumar Bhatial in which the Court was seized with the question as to whether the investigation of the case under Section 309 should be allowed to continue beyond the period fixed by Section 368 Criminal Procedure Code. The Bench observed: ".... The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours. Medical clinics for such social misfits certainly but police and prisons never." The very idea was revolting. The Bench further observed, "The concept seeking to meet the challenge of social strains of modem urban and competitive economy by ruthless suppression of mere symptoms can only result in failure. Need is for humane, civilized and socially oriented outlook and penology.... No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 IPC which has no justification to continue to remain on the statute book."[2]

Soon came the Division Bench decision of Bombay High Court in Maruti Shripati Dubal v. State of Maharashtra[3] in which the Bench, on being approached for quashing a prosecution launched against the petitioner under Section 309 of the Indian Penal Code on the ground of unconstitutionality of the section, took the view that the section was ultra-vires being violative of Articles 14 and 21 and was therefore struck down. Striking down of the section by the Bombay High Court however, received some criticism.[4,5]

Close on the heels was the decision of a Division Bench of Andhra Pradesh High Court in Chenna Jagadeeswar v. State of A.P.[6] in which, the High Court on being approached against the conviction of the appellants under Section 309, inter-alia, on the ground of the section being violative of Articles 14 and 21 of the Constitution, the Bench held that the section was valid as it did not offend any of these articles. The judgment, therefore, dissented to view of the Bombay High Court.

The unreported decision of the Delhi High Court as noted in some articles[7,8] was rendered in a suo moto proceeding titled Court on its own Motion v. Yogesh Sharma. The Court once again pointed out the futility of creating criminal liability in suicide cases, but instead of striking down the section or declaring it invalid, the learned Chief Justice quashed all the 119 proceedings pending in the trial courts on the ground that dragging of the prosecutions for years when the victims have had enough of misery and the accused also belonged to poorer section which added further insult to the injury, would be abuse of the process of the court.

Mr. V. S. Deshpande after his retirement as Chief Justice of Delhi High Court[9], referring to what had been held by this Court regarding the scope of Article 21, took the view that if Section 309 is restricted in its application to attempts to commit suicide which are cowardly and which are unworthy, then only this section would be in consonance with Article 21, because, if a person having had no duties to perform to himself or to others when he is terminally ill, decides to end his life and relieve himself from the pain of living and the others from the burden of looking after him, prosecution of such a person would be adding insult to injury and it was asked : "Should a Court construe Section 309 IPC to apply to such cases?"

Sometime afterwards appeared an article of Justice R.A. Jahagirdar of Bombay High Court[10] in which the learned Judge took the view that Section 309 was unconstitutional for four reasons: (1) neither academicians nor jurists are agreed on what constitutes suicide, much less attempted suicide; (2) mens rea, without which no offence can be sustained, is not clearly discernible in such acts; (3) temporary insanity is the ultimate reason of such acts which is a valid defence even in homicides; and (4) individuals driven to suicide require psychiatric care.

Apart from the aforesaid judicial and legal thinking on the subject relating to justification and permissibility of punishing a man for attempting to commit suicide, there are proponents of the view that euthanasia (mercy killing) should be permitted by law. Though we limit ourselves to the offence of attempted suicide, it is nonetheless required to be stated that euthanasia is not much unrelated to the act of committing suicide inasmuch as wherever passive euthanasia has been held to be permissible under the law in some countries, one of the requirements insisted upon is consent of the patient or of his relations in case the patient be not in a position to give voluntary consent. The relationship between suicide and euthanasia has come to be highlighted in a decision of the Supreme Court of Nevada in Mckay v. Bergstedt,[11] where a patient filed a petition to the court for permitting disconnection of his respirator. The district court, on the facts of the case, granted permission. The State appealed to the Supreme Court of Nevada, which, after balancing the interest of the patient against the relevant State interest, affirmed the district court's judgment. The court took the view that the desire of the patient for withdrawal of his respirator did not tantamount to suicide the same was rather an exercise of his constitutional and common law right to discontinue unwanted medical treatment.

A comment has been made on the aforesaid decision[12] by stating that the distinction made by the majority between suicide and euthanasia because of differences in motive and mental attitude, is not tenable and the commentator referred to the dissenting opinion in which it was observed that the patient was in fact requesting the court to sanction affirmative act which was entirely consistent with the court's definition of suicide, inasmuch as the majority had defined suicide as "an act or instance of taking one's own life voluntarily and intentionally; the deliberate and intentional destruction of his own life by a person of years of discretion and of sound mind; one that commits or attempts his self-murder".[13]

The reasons given by the Bombay High Court in Shripati case[3] for striking down the section as violation of Article 21 include:

(1) Article 21 has conferred a positive right to live, which carries with it the negative right not to live. Mention has been made of freedom of speech and expression, as to which it was observed that the same includes freedom not to speak and to remain silent. Similarly, about the freedom of business and occupation, it was stated that it includes freedom not to do business.

(2) Notice was then taken of the various causes, which lead people to commit suicide. These being mental diseases and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel or unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one's honor or a sheer loss of interest in life or disenchantment with it, or a sense of fulfillment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment.

(3) It was also observed that the saints and savants, social, political and religious leaders have immolated themselves in the past and do so even today by one method or the other and society has not only not disapproved of the practice but has eulogized and commemorated the practitioners. It may be pointed out that the Bench made a distinction between "suicide" and "mercy-killing"; so also, between suicide and aiding or abetting the same.

The Bombay High Court held Section 309 as violation of Article 14 also mainly because of two reasons. First, which act or acts in series of acts will constitute attempt to suicide, where to draw the line, is not known, some attempts may be serious while others non-serious. It was stated that in fact philosophers, moralists and sociologists were not agreed upon what constituted suicide. The want of plausible definition or even guidelines, made Section 309 arbitrary as per the learned Judges. Another reason given was that Section 309 treats all attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made.

Whatever differences there may be as to what constitutes suicide, there is no doubt that suicide is intentional taking of one's life.[14] Of course, there still exists difference among suicide researchers as to what constitutes suicidal behavior, for example, whether narcotic addiction, chronic alcoholism, heavy cigarette smoking, reckless driving, other risk-taking behaviors are suicidal or not. It may also be that different methods are adopted for committing suicide, for example, use of firearms, poisoning especially by drugs, hanging, inhalation of gas etc. Even so, suicide is capable of a broad definition, as has been given in the Webster's Dictionary. Further, on prosecution being launched it is always open to an accused to take the plea that his act did not constitute suicide whereupon the court would decide this aspect also.

Insofar as treating of different attempts to commit suicide by the same measure is concerned, the same also cannot be regarded as violative of Article 14, inasmuch as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. 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 is this aspect which weighed with the Division Bench of Andhra Pradesh High Court in its aforesaid decision to disagree with the Bombay High Court view by stating that in certain cases even Probation of Offenders Act can be pressed into service, that (Section 12) enables the court to ensure that no stigma or disqualification is attached to such a person. But the Bombay Bench was more involved with Article 21 and its violation by Section 309 and its decision led some thinkers to express their own views. The broad points of their objection/ criticism were:

(1) Suicide is an act against religion;

(2) It is immoral;

(3) It produces adverse sociological effects;

(4) It is against public policy;

(5) It damages monopolistic power of the State, as State alone can take life; and (6) It would encourage aiding and abetting of suicide and may even lead to 'constitutional cannibalism'.

Opponents to the abolition of Section 309 IPC plead that the section is not violative of Article 19, which states that 'all citizens shall have the right to':

(a) freedom of speech and expression;

(b) assemble peaceably and without arms;

(c) form associations and unions;

(d) move freely throughout the territory of India;

(e) reside and settle in any part of the territory of India and (f) practice any profession or to carry on any occupation, trade or business.

Article 21 of the Indian Constitution states that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. The right to life is not specifically mentioned but, in a broader sense, unless a man is assured of physical existence, there can be no other fundamental right and since the state exists for the common good of the citizens, no constitution can ignore the right of the citizens to life though it may not be explicitly explained. In these circumstances, it is rather difficult to hold that the right to life impliedly guaranteed by the constitution includes the right to die. They argue that can the parents who are responsible for the life of their children be said to have a right to dispose of the life of their children because they have created it. Then there are cases of hunger strikes, threatened self-immolation and other potentially employed situations, if Section 309 IPC is held to be 'ultra vires', no action can be taken against the people resorting to these practices on the ground that they have a right to dispose of themselves.

What is already known on this topic

Petitions have assailed the validity of Section 309 IPC praying time and again to declare the section void. On the other hand, euthanasia and physician assisted suicide have become prominent public issues in many countries over the past few years.

What This study adds

This paper by examining various judgments in this regard, reopens the debate on whether the offence of attempt to commit suicide under section 309 Indian Penal Code should be retained or abolished.

Suggestions for further development

The interesting issue, both legal and philosophical in nature, needs to be discussed at more diverse fora, conferences, symposiums - both technical and nontechnical - involving people from different disciplines dealing with the subject of suicide. A comparison and contrast of suicide law from all different nations (numbering more than 200) and jurisdictions (such as different states of US), which to the best of knowledge of authors of this paper, has not been done so far, is likely to shed more light on this complex issue.

Ordinarily, law makes no provisions for a situation that is considered instinctively natural for human beings. If some individuals create some situations, which usually the human beings do not create, the society has a tendency to look down upon them as being unnatural and this attitude is reflected in the laws. Law presupposes a society of normal individuals with certain general instincts and self-preservation is the most general instinct of human beings. In fact, the urge to attempt suicide runs contrary to the instinctive urge of the normal individuals, who constitute a majority in the society, while as, it is the instincts of majority segment of the society that give rise to ethics and morality which lead to uniform norms. So, attempt to commit suicide is against the generally accepted norms and every civilized society in the world may develop legal norms against breaches of uniform social norms. Viewed in this perspective, individual autonomy can never be granted to the extent of permitting the individual to take away his life, because it is unnatural and so against the moral stand points of normal individuals who constitute the society. Furthermore, it is not correct to say that the individual has complete authority over his body and life, his spouse and children do have claims on his body and life. Even if the person is not interested to keep

himself alive, the society, because of its embedded love for sanctity of life, may have an interest in the body and life of that individual.[15]

Suicide, or self-killing, has been known throughout the whole of recorded history and has been a phenomenon in every culture and social setting despite the fact that most widely followed religions oppose the act of suicide. During Vedic period, apart from 'sati' 'jalasamadhi' (drowning at the confluence of rivers to achieve salvation) was permitted, even Lord Ram is said to have relinquished his life through 'jalasamadhi'. Conversely a verse from the Isavaya Upanishad declares, "he who takes himself (his life) reaches after death, sunless regions covered with darkness", the common belief among Hindus is that a person who commits suicide will not attain 'moksha'. The Holy Bible denies decent burial to a person committing suicide. According to the Jewish view, "no one is truly and radically autonomous. "Autonomy can only be the property of a 'Force' who is capable of creation out of nothing (creatio ex nihilo). Only God has this capacity; it is a capacity that no creature should attempt to achieve, let alone assume that that it already possesses".[16] However the Church did not always condemn suicide when, for example, following some severe assault, such as rape, the victim took a 'virtuous' or honorable way out. She could then claim sympathy and the forgiveness of her society and family, in both Roman and Christian times.[17] The Islam depicts a person who commits suicide as an unlawful wretch and according to the religion, almighty God says in the Quran, "He is the one who gives life and causes death, and to him you shall all return".[18] However, in the same religion, there is a unique category of suicide called 'self-martyrdom' applicable in a narrow range of circumstances in combat (battlefield), and which is believed to guarantee the believer immediate entry into paradise.[19]

Conclusion

Suicide has been an act of condemnation as well as commendation through the ages. People have been killing themselves from the beginning of recorded history. While there can be no end to this debate on account of the existing differences of opinion in religious, social, cultural and legal aspects of the act to attempt suicide, however, it can be said that by declaring attempted suicide a penal offence, the IPC upholds the dignity of human life, because human life is as precious to the state, as it is to the holder and state cannot turn a blind eye to a person in attempting to kill himself.

References

1. P. Rathinam v Union of India (1994) 1605 SC INSC 254; [1994] 3 SCC 394; AIR 1994 SC 1844. [Available at http://www.austlii.edu.au/~andrew/CommonLII/INSC/1994/254.html]
2. State v. Sanjay Kumar Bhatia, Cr L J 931: (1985) 2 DMC 153 (Del). [For more info on this case, please visit http://www.ebc-india.com/lawyer/articles/94v4a3.htm]
3. Maruti Shripati Dubal v. State of Maharashtra (1986) cited in Andh LJ 263: 1987 APLJ (Cri) 110 (AP). [For more info on this case, please visit http://www.ebc-india.com/lawyer/articles/94v4a3.htm]
4. Pande D.C. Annual Survey of Indian Law, Indian Law Institute publication 1987; 23: 260 - 270
5. Editorial, 'Taking One's Life' CWN (Journal Section) 1986-87; 91: 37 - 40
6. Chenna Jagadeeswar and another Vs. State of Andhra Pradesh, 1988 Crl.L.J.549. [For more info on this case, please visit http://www.austlii.edu.au/~andrew/CommonLII/INSC/1996/432.html]
7. Pande BB, Islamic and Comparative Law Quarterly 1987; VII (1): 112 - 120 quoted in P. Rathinam v Union of India (1994)
8. Faizan Mustafa, SCJ Journal Section 1993; 1: 36 - 42 quoted in P. Rathinam v Union of India (1994)

9. Deshpande VS "To be or not to be" SCC (Journal section) 1984; 3: 10 - 15 quoted in P. Rathinam v Union of India (1994)
10. Jahagirdar RA. Illustrated Weekly of India September 29, 1985 quoted in P. Rathinam v Union of India (1994)
11. Supreme Court of Nevada in Mckay v. Bergstedt quoted in P. Rathinam v Union of India (1994)
12. Suffolk University Law Review, 1991; 25: 829 - 838 quoted in P. Rathinam v Union of India (1994)
13. Webster's New International Dictionary, 3rd Ed 1968.
14. Kadish SH Eds. Encyclopedia of Crime and Justice, Free Press Publications, 1983, p. 1521
15. Yadwad BS, Gouda HS. Is attempted suicide an offence J Ind Acad of Forensic Med 2005; 27 (2): 108 - 111. [IndianJournals.com] [IndMed]
16. Sinai T and Librach CE. Is there a Jewish right to commit suicide? [Available at http://www.suicidereferencelibrary.com/test4~id~693.php]
17. Suicide as seen in Islam [Available at http://www.inter-islam.org/Prohibitions/suicide.html]
18. Quran: chapter 10 Yunus; Verse 56 [Available at http://www.alislam.org/quran/tafseer/?page=254®ion=TS]
19. Kramer M. Hijacking Islam: a religion in danger of deteriorating into a manifesto for terror. *National Review* September 19, 2001 [Available at http://www.meforum.org/article/76]