



**AN ANALYTICAL STUDY ON SUICIDE AND
ARTICLE 21 OF THE INDIAN
CONSTITUTION**

*By B.S.Vikashini
From The Tamil Nadu Dr.Ambedkar Law
University, The School Of Excellence In
Law, Chennai.*

ABSTRACT:

Each year over one lakh people commit suicide in India. Suicide was ranked as the 10th cause of death in 2005, but now suicide now India's eighth biggest killer as per the data of the Institute for Health Metric and Evaluation at the University of Washington¹. Suicide is not a crime to be punished, it is an illness to be treated. An attempt to commit suicide is a serious problem that requires mental health intervention. People who commit suicide when they have lost the will to live, with no inner strength and ability to strive in the society. Recent research suggests that the psychiatric illness is the major cause for suicidal behaviour. But Section 309 of Indian Penal Code, 1860 punishes attempt to suicide and so its constitutional validity has been questioned in many cases. After various debates and Law Commission Reports, Indian Parliament passed the Mental Healthcare Act in the year 2017. This Act decriminalised suicide to certain extent. On the other hand if suicide is completely decriminalised, then Article 21 of Indian Constitution will also include the right to die. Subsequently people start to commit suicide or make an attempt for frivolous matters. Also when the right to die is granted, the legality of active and passive euthanasia is in question. And if euthanasia is permitted, no

doubt in a country like India, people won't hesitate to abet suicide or perform euthanasia of someone just for the sake of property. These acts infringe the person's fundamental right to live and also would be burdensome to the government. In this article, suicide – decriminalising and right to die under article 21 are explained in detail.

I) INTRODUCTION:

Everyone wants to live happily and lead a life with dignity. As Mother Teresa quoted, "*The right to life does not depend, and must not be declared to be contingent, on the pleasure of anyone else, not even a parent or sovereign,*" people want to make own choices for their life. And of course they have the right to do so. Article 21 of the Indian constitution provides the Indian citizens with the right to life and personal liberty and the state is entrusted with the duty to protect its citizen and give them a good and respectable life. In a situation when a person is terminally ill or had any tragic experience and lives through lot of sufferings, pain and so he desperately wanted to end his life, can he commit suicide? If he commits suicide, will that be a crime? In India, both abetment to suicide and attempt to suicide are criminal offences and punishable under Indian Penal Code, 1860. Since attempt to suicide is criminalised, does that mean a person has no right to make choices in life? Doesn't he have the right to die? Definitely people have right to die but only under certain circumstances. The philosophical dilemmas regarding the individual's right to life and death has been debated across several disciplines with differing outlook and perspectives.

¹ The Institute for Health Metric and Evaluation at the University of Washington used GDB 2016 data to list the top causes of deaths in India.,

<https://www.hindustantimes.com/health/the-top-10-causes-of-death-in-india/story-IFLxCFVHmF7svw2RKC170K.html> (01.09.2021)



Euthanasia is completely a different concept from suicide, but it plays an important part when we discuss about the right to die. Permitting euthanasia allows the terminally ill or people in persistent vegetative state to die with dignity but there is more chance of exploiting euthanasia. While exploring deep into the subject of suicide and right to die we get many questions in our mind like isn't it inhumane to punish a person for suicide attempt? Is it correct to decriminalise suicide? Decriminalising suicide also escapes the abettor of suicide, will that be righteous? Granting a person with the right to die, imposes duty on other person to help him exercise his right, is this fair and just? This article helps to get clear idea about these questions with main focus on suicide, to what extent suicide is decriminalised, whether article 21 includes right to die, scope of right to die in other countries, etc.,

II) LITERATURE REVIEW:

1) **Maggie Hendry and crew** in 2012 conducted a survey on '*Why do we want the right to die? A systematic review of the international literature on the views of patients, carers and the public on assisted dying.*' This study throws light on ordinary people's perspective on assisted suicide, when suffering from various illness. It put forwards various arguments on legalisation of assisted dying. Most of the respondents

were in relevance with assisted dying as they were concerned about the poor quality of life, unbearable suffering, dependency, burden and loss of self. So they had a feeling of not worth living. They valued autonomy in death as much as in life.²

2) **Kevin M Simmon's** article on '*Suicide and Death with Dignity*' focussed on PAS Bill titled "Oregon Death With Dignity Act." He quoted many justifications of the patients, politicians, judges and prominent third-party advocates supporting the Act. All justifications emphasized on loss of autonomy over the relief from pain. He also wrote down certain restrictions regarding the PAS as to who will be given priority, who and when the PAS can be given access, etc.,³

3) The article, '*Does Right to Life include Right to Die?*' by **Diganth Raj Sehgal**, analyses as to whether right to die can be included in the ambit of right to life. The author discusses the legal status of right to die in India with the help of judgements of the landmark cases. He also put forth the arguments regarding legalising euthanasia.⁴

4) Pyali Chatterjee's conference paper, titled '*Right to Life with Dignity also includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthanasia,*' focusses on the Constitutional validity of right to die in India. The author

² Maggie Hendry, Diana Pasterfield, Ruth Lewis, Ben Carter, Daniel Hodgson and Clare Wilkinson, *Why do we want the right to die? A systematic review of the international literature on the views of patients, carers and the public on assisted dying*, Palliat Med, 1 January 2013, <http://pmj.sagepub.com/content/27/1/13> (27.08.2021)

³ Kevin M Simmons, *Suicide and Death with Dignity*, *Journal of Law and the Biosciences*, Volume 5, Issue 2, August 2018, Pages 436–439, <https://doi.org/10.1093/jlb/l5y008> (27.08.2021)

⁴ Diganth Raj Sehgal, *Does Right to Life include Right to Die?*, Ipleaders, May 13, 2019, <https://blog.ipleaders.in/does-right-to-life-include-right-to-die/> (31.08.2021)



elaborately explained the right to life with dignity with reference to countries that legalised right to die. Further the article gave clear understanding about active and passive euthanasia and Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill 2006 Medical Practitioners) Bill 2006.⁵

III) LEGAL QUESTIONS:

This article seeks to answer the following questions:

- i) Whether suicide is decriminalised in India?
- ii) Whether right to life includes right to die with dignity under Article 21?

IV) CONCEPTS:

1) HOMICIDE:

Homicide is derived from a Latin word 'homocida'. 'Homo' means man and 'cida' refers to killing. So homicide means killing of a human being by another human being. It is legally defined as murder.

2) SUICIDE:

Suicide means ending your own life. It is the act of intentionally causing one's own death as a way to escape pain or suffering.

3) SUICIDE ATTEMPT:

If a person tried to commit suicide, but did not succeed (not died) and survived, he is said to have committed suicide attempt.

4) PASSIVE EUTHANASIA:

It is defined as hastening the death of a person by removing the life support and letting the death by natural phenomenon. It is mostly done to people in persistent vegetative state.

5) ACTIVE EUTHANASIA:

It is the act done in mercy, intended to shorten the life of a person. In these the person is injected with a baleful dosage of medicine (Sodium Pentothal) to put him into the state of death without any pain.

6) PHYSICALLY ASSISTED SUICIDE:

It is a semi passive form of euthanasia, where the doctor prescribes the right amount of Lethal dose for the termination of life at the

⁵ Pyali Chatterjee, *Right to Life with Dignity also includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthanasia*, Conference Paper, IJSRST, September 2015,

https://www.researchgate.net/publication/282293996_RIGHT_TO_LIFE_WITH_DIGNITY_ALSO_INCLUDES_RIGHT_TO_DIE_WITH_DIGNITY_TIME_TO_AMEND_ARTICLE_21_OF_INDIAN_CONSTITUTION_AND_LAW_OF_EUTHENESIA
(01.09.2021)



request of patient itself. It can also be self-injected.

V) SUICIDE:

Suicide means killing oneself. 'Sui' means 'a person under his/her control' and 'cide' means 'act of killing'. So suicide is said to be committed if any person takes his or her life. The case *Clift vs Schwabe*⁶ gives an appropriate definition of the term 'to commit suicide'. It means a person voluntarily a person does an act or refrain from doing anything, for the purpose of destroying his own life and being conscious of the probable consequences at that time (i.e.) 'having sufficient mind to will the destruction of life.'

So suicide is a voluntary act and mens rea plays an important role in determining suicide. There are many reasons like depression, incurable disease, trauma, guilt, failure in exams, loss of loved ones, extreme poverty, loss of autonomy, etc., that influence people's decision to end his or her life.

VI) STATISTICAL DATA:

India and China together constitute about 40 percent of total population of the world. World Health Organisation(WHO) estimates of suicide rates reported that among its 194 member states, India and China account for 40 percent or more of 8,00,000 annual suicide deaths globally⁷. According to World Health Organisation, India has the highest suicide rate in the South East Asian region. As per the data of National Crime Records Bureau, a total of 1,34,516 cases of suicide are

reported in 2018. While the rate of suicide in 2017 was 9.9 percent, it increased to 10.2 percent in 2018 and there was an increase of 3.4 percent of suicide deaths with average 381 deaths by suicide daily in 2019. The number of attempt to suicide cases are at least twenty times more than that of suicide deaths⁸.

VII) LEGAL PROVISIONS:

i) INDIAN PENAL CODE, 1860:

Suicide is not defined under IPC. In India, we use the term 'committed suicide' but in other countries like USA, they use the term 'died by suicide'. This is because suicide has been decriminalised in other countries and a person who commits a crime is criminal. So the other countries do not use the terms 'committed suicide' or 'attempt to commit.' In India, Section 309 of Indian Penal Code, 1860 punishes attempt to suicide. **Section 309** gives

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

Similarly abetment to suicide is an offence under section 306 of Indian Penal Code, 1860. **Section 306** reads

Abetment of suicide - "If any person commits suicide, whoever abets the commission of such suicide, shall be

⁶ Clift et al. v. Schwabe, 3 Man., Gr. & Scott 437 (54 Eng. Com. L. 43), <http://www.legalservicesindia.com/article/1081/Crime-of-Attempt-to-commit-Suicide.html>

⁷ World Health Organization. Geneva: WHO; 2014. Preventing suicide: A global imperative.

⁸ World Health Organization (WHO) Suicide prevention. 2017



punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

A person is punished for abetment of suicide if he or she

- instigates someone to commit suicide
- helps the victim to commit suicide
- takes part in the conspiracy to commit suicide

The abetted person should have clear mens rea or intention with an objective to aggravate, incite or persuade the other person (victim) to commit suicide. There should be dynamic act or direct act of the abettor that resulted in suicide of the deceased. In the landmark case, *M. Mohan vs State*⁹, the Apex Court held the abetment essentially means some active proposition or support to the commission of the offence.

ii) MENTAL HEALTHCARE ACT, 2017:

Realizing the fact that a person who attempts to commit suicide is already in pain and suffering from a mental health issue, punishing that individual just intensifies the pain and mental torture which the person is already exposed to. The Government of India decided to decriminalise suicide to some extent. So in April 2017, the Indian Parliament passed the Mental Healthcare Act, 2017 and the act commenced in July 2018. **Section 115** of The Mental Healthcare Act, 2017, states,

“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.”

According to clause 2 of this section, any person due to severe stress attempts suicide, the Government has the duty to provide care, treatment and rehabilitation to that person, to reduce the risk of recurrence of attempt to commit suicide. This act helps the victims to take a second chance at living life rather than struck in the legal inconvenience.

a) DICHOTOMY IN THE PROVISIONS OF SUICIDE:

A Public Interest Litigation was filed by an activist Sangeeta Dogra¹⁰ regarding the torture inflicted to an elephant in the zoo as a man jumped into its enclosure attempting to commit suicide and sought the centre to take steps to prevent people from jumping into animal enclosures to commit suicide.

On September 10, 2020, the Bench headed by CJI S A Bobde heard the case and noticed the clash between the two provisions on suicide. The Indian Penal Code makes attempt to suicide while the Mental Healthcare Act presumes severe stress as the origin of suicide thus decriminalise it. The court also stated that not all suicide committed or attempted are with the reason of stress pointing the suicide case of two monks in Vietnam and practice of Santhara (fastening to death) in Jainism. The Supreme Court sought the Centre to justify its 2017

⁹ M. Mohan v. State, (2011) 3 SCC 626 (India)

¹⁰ Sangeeta Dogra vs Union Of India ,W.P.(CRL) 1427/2020 (India),
<https://indiankanoon.org/doc/39579708/> (31.08.2021)



Mental Healthcare Act which virtually negates the pre-existing Penal provision that makes suicide attempt a punishable offence. It further issued a notice to the Attorney General K.K.Venugopal. The Court also stated that the decision shall be taken as expeditiously as possible and feasible.

b) ARGUMENTS AGAINST DECRIMINALISING SUICIDE:

- Rights and freedom of people are not absolute. The state has the duty to prevent persons from terminating their lives. Section 309 of the Indian Penal Code allows the state to intrude into people's life and curtails their freedom.
- If the suicide attempt is decriminalised, it would handicap the authorities dealing with people going on hunger strike or fastening till death. The Government would have hardship to accept their demands, that may not be legitimate.

c) ARGUMENTS IN FAVOUR OF DECRIMINALISING SUICIDE:

- Majority of people who commit or attempt suicide have Diagnosable mental disorder. So attempt to commit suicide should be given treatment and not punishment.
- It is inhumane to punish suicide attempt because he or she is already going through emotional and mental turmoil. Decriminalising suicide escapes the person from strain of court, fine, criminal record and gives him a chance to start a new life.

iii) ARTICLE 21 OF THE CONSTITUTION OF INDIA:

Every person has the right to life, right to liberty and right to security. Right to life is the basic natural right of the human beings. Right to Life is guaranteed under Article 21 of the Indian Constitution as Fundamental Right in Part III. Article 21 of the Constitution of India, 1950 provides,

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The Supreme Court has described Article 21 as “the heart of Fundamental Rights” and characterised article 21 as “the Procedural Magna Carta protective of life and liberty.” The right to life is not only about the right to survive. It includes right to live a complete life with dignity. But does this article permit a person to die with dignity? Whether article 21 includes the right to die? There have been various instances in court as to whether article 21 guarantees a person to end their life. The opinion on justification of this provision continued to differ till today.

The Article 21 has wide scope and we cannot confine it. But when a person is given the ‘right to die’, it also bars punishing the person who abets him. In other instance, when a person decides to end his life, other persons will have the duty to let him exercise his right to die which is not the correct conclusion to draw.

VIII) THE SCOPE OF RIGHT TO DIE:

1) IN INDIA:

The scope of right to die in India extends only to terminally ill patients or patients in



persistent vegetative state. It allows the patients or their family to decide as to when to withdraw the life support and let the patient die with dignity. In 2006, the 196th Law Commission Report¹¹ recommended legalising passive euthanasia for the protection of terminally ill patients who is in persistent vegetative state with no chance of recovery. Although the Report was refused, still the passive euthanasia was made legal without any legislation under the guidelines provided in Aruna Ramchandra Shanbaug vs Union of India¹² in 2011. Further, the Supreme Court has recommended to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.

Again in the landmark case, Common cause (A Regd. Society) vs Union of India and Anr¹³ (2018), the Supreme Court of India held that any person in persistent vegetative state can opt for passive euthanasia and that person in persistent vegetative state can execute a living will to refuse medical treatment in case of a terminal illness. The court upheld that the right to live with dignity includes the right to die with dignity.

Permitting passive euthanasia provides the right to die with dignity. So every citizen has the right to live with dignity according to themselves and in accordance with the public policy.

The Court in Aruna Shenbaug case¹⁴, has ruled that active euthanasia shall remain illegal until legislature comes with law to

legalise it. The court refused its legality as it would amount to constitutional cannibalism, judicial murder and in the fear of being misused by unscrupulous person to inherit property.

2) OTHER COUNTRIES:

i) **Germany:** Germany was the first country to decriminalise the attempt to commit suicide in the entire world in the year 1751.

ii) **England:** The attempt to suicide is decriminalised in England by virtue of section 1 of Suicide Act, 1961. But still abetting, aiding, procuring the suicide of another is an offence and can be imprisoned upto 14 years.

iii) **Netherland:** Netherland allows person to provide moral support during someone's suicide. But participation (like preparations, giving instructions to commit suicide) is considered as crime. On April 2002, Netherland passed 'Termination of Life on Request and Assisted Suicide (Review Procedures) Act' to regulate euthanasia.

iv) **United States of America:** Suicide is still considered an unwritten common law crime which can bar recovery for the deceased family in law suit unless proved the deceased as an unsound mind. The concept of euthanasia is illegal in US. However the Doctor Assisted Suicide is allowed in various states through respective Acts.

¹¹ 196th Report of the Law Commission on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners (March 2006)

¹² Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454 (India)

¹³ Common Cause (A Regd. Society) v. Union of India & Anr., W.P. (Civil) 215 of 2005

¹⁴ Supra note 6



v) **Canada, Ireland, Sri Lanka and Singapore** decriminalised the attempt of suicide in the year 1972, 1993, 1998 and 2002 respectively. However in Ireland, Assisted Suicide and euthanasia are illegal.

vi) **North Korea:** It has peculiar deterrent for suicides. Though law cannot punish a dead person, the relatives of the suicide victim are penalised as a form of collective punishment.

vii) Still some countries like **Malaysia, Pakistan and Bangladesh** consider suicide attempt as an offence and one can be punished with imprisonment upto one year or fine or both according to their respective Penal Codes.

IX) CONCLUSION:

“We have no control over how we arrive in the world, but at the end of a life we should have control over how we leave it.”

-Sir Patrick Stewart

To conclude, punishing attempt to suicide does not serve the purpose and sometimes it becomes counter-productive. No person should be forced to enjoy the right to live life to his detriment, disadvantage and disliking. But the right to life under article 21 should not include right to die because this might increase the rate of suicides in the country. A person who attempted suicide should be treated properly. He should not be secluded and treated as a victim, rather should be treated as a normal human being by the society. Though article 21 talks about natural right while suicide is an unnatural concept, still ‘right to die with dignity’ should be

included under article 21. Simply suicide should not be punished in the meantime the right to die should also be restricted (i.e.) right to die should not be generalised but it should be exercised as an exception in the ‘RAREST OF RARE cases’ like death penalty in India. Right amendments should be made in the law in such a way that it distinguishes between people who are doing it because they are weak and who are doing it as a mark of protest¹⁵.

END NOTES:

1) P S A Pillai, Criminal Law 713 (K I Vibhute, 14th ed. 2019)

2) M P Jaisankar, Indian Constitutional Law 1231 (Justice Jasti Chelameshwar and Justice Dama Seshadri Naidu, 8th ed. 2018)

3) Dhananjay Mahapatra, Attempt to suicide punishable or survivor requires rehabilitation, asks SC, TNN, Sep 12, 2020, 11:02, <https://timesofindia.indiatimes.com/india/should-suicide-bid-be-punished-or-survivor-treated-with-care-sc/articleshow/78069068.cms>

4) Bhadra Sinha, Is attempt to suicide punishable? Two laws have opposing views, SC seeks govt's response, 11 September, 2020 10:13 pm, <https://theprint.in/judiciary/is-attempt-to-suicide-punishable-two-laws-have-opposing-views-sc-seeks-govt-response/500905/> 5) Devina Srivastava, “The Right to Die with Dignity: The Indian Supreme Court Allows Passive Euthanasia and Living Wills” (OxHRH Blog, 11 April 2018) <<https://ohrh.law.ox.ac.uk/right-to-die-with-dignity-a-fundamental-right-indian->

¹⁵ Shailesh Madiyal, an advocate of Supreme Court of India.



supreme-court-allows-passive-euthanasia-and-living-wills> [29.08.2021].

6) Parth Jaisinghani, *Validity of Suicide: Section 309 of IPC vs. Section 115 of Mental Healthcare Act, 2017*, Centre for Academic Legal Research, <https://calr.in/validity-of-suicide-section-309-of-ipc-vs-section-115-of-mental-healthcare-act-2017/>

7) Kalaskarnetra, Abetment to Suicide an offence under Section 306 of Indian Penal Code (IPC), 1860, <https://www.legalserviceindia.com/legal/article-4864-abetment-to-suicide-an-offence-under-section-306-of-indian-penal-code-ipc-1860.html>

8) Achal Gupta, *Euthanasia — Indian View*, Scotline Online Blog, November 28, 2020, http://www.sconline.com/blog/post/2020/11/28/euthanasia-indian-view/#_ftnref16

9) *Decriminalizing Suicide*, Journals of India, June 24, 2021, <https://journalsofindia.com/decriminalization-suicide/>

10) Astha Dwivedi, *Right to die : all you need to know about it*, IPleaders, April 14, 2021, <https://blog.ipleaders.in/right-to-die-all-you-need-to-know-about-it/>

