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**LAW
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INDIA**

**Humanization and Decriminalization of
Attempt to Suicide**

Report No. 210

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**LAW COMMISSION OF INDIA
(REPORT NO. 210)**

**Humanization and Decriminalization of
Attempt to Suicide**

**Forwarded to Dr. H. R. Bhardwaj, Union Minister
for Law and Justice, Ministry of Law and Justice,
Government of India by Dr. Justice AR.
Lakshmanan, Chairman, Law Commission of India,
on the 17th day of October, 2008.**

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17 October, 2008

Dear Dr. Bhardwaj ji,

Sub: Humanization and Decriminalization of
Attempt to Suicide.

I have great pleasure in submitting herewith the 210th Report of the Law Commission of India on the above subject.

In our country, attempt to suicide is an offence punishable under section 309 of the Indian Penal Code. Section 309 reads thus:

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.”

Article 21 of the Constitution of India enjoins that no person shall be deprived of his life or personal liberty except according to procedure established by law.

A Division Bench of the Supreme Court in *P. Rathinam v. Union of India* (AIR 1994 SC 1844) held that the right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life, and therefore, section 309 violates Article 21. This decision was, however, subsequently overruled in *Gian Kaur v. State of Punjab* (AIR 1996 SC 946) by a Constitution Bench of the Supreme Court, holding that Article 21 cannot be construed to include within it the ‘right to die’ as a part of the fundamental right guaranteed therein, and therefore, it cannot be said that section 309 is violative of Article 21.

The Law Commission had undertaken revision of the Indian Penal Code as part of its function of revising Central Acts of general application and importance. In its 42nd Report submitted in 1971, the

Commission recommended, *inter alia*, repeal of section 309. The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. The Commission submitted its 156th Report in 1997 after the pronouncement of the judgement in *Gian Kaur*, recommending retention of section 309.

However, it is felt that attempt to suicide may be regarded more as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment. The Supreme Court in *Gian Kaur* focused on constitutionality of section 309. It did not go into the wisdom of retaining or continuing the same in the statute. In view of the views expressed by the World Health Organization, the International Association for Suicide Prevention, France, decriminalization of attempted suicide by all countries in Europe and North America, the opinion of the Indian Psychiatric Society, and the representations received by the Commission from various persons, the Commission has resolved to recommend to the Government to initiate steps for repeal of the anachronistic law contained in section 309, IPC, which would relieve the distressed of his suffering. It needs mention here that only a handful of countries in the world, like Pakistan, Bangladesh, Malaysia, Singapore and India have persisted with this undesirable law.

The criminal law must not act with misplaced overzeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture.

With kind regards,

(AR. Lakshmanan)

Dr. H. R. Bhardwaj,
Union Minister for Law and Justice,
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LAW COMMISSION OF INDIA

HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE

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1. INTRODUCTION

1.1.1 While approximately one million people die by suicide worldwide¹, more than one lakh persons (1,18,112) in the country lost their lives by committing suicide during the year 2006. This indicates an increase of 3.7 per cent over the previous year's figure (1,13,914). The number of suicides in the country during the decade (1996-2006) has recorded an increase of 33.9 per cent (from 88,241 in 1996 to 1,18,112 in 2006).²

1.1.2 The overall male: female ratio of suicide victims for the year 2006 was 64:38; however, the proportion of boys: girls suicide victims (up to 14 years of age) was 48:52, i.e., almost equal number of young girls have committed suicide as their male counterparts. Youths (15-29 years) and lower middle-aged people (30-44 years) were the prime groups taking recourse to the path of suicides. Around 35.7 per cent were youths in the age group of 15-29 years and 34.5 per cent were middle-aged persons in the age group of 30-44 years of the total suicide victims. Senior citizens have accounted for 7.7 per cent of the total victims. Social and economic causes have led most of the males to commit suicides, whereas emotional and personal causes have mainly driven females to end their lives.³

1.2 Suicide (*felo de se*) means deliberate termination of one's own physical existence or self-murder, where a man of age of discretion and *compos mentis* voluntarily kills himself. It is an act of voluntarily or intentionally taking one's own life. Suicide needs to be distinguished from euthanasia or mercy-killing. Suicide by its very nature is an act of self-

¹ International Association for Suicide Prevention

² *Accidental Deaths and Suicides in India – 2006*, National Crime Records Bureau, Ministry of Home Affairs, Government of India

³ *ibid.*

killing or self-destruction, an act of terminating one's own life sans the aid or assistance of any other human agency. Euthanasia, on the other hand, involves the intervention of other human agency to end the life. Euthanasia is nothing but homicide, and unless specifically excepted it is an offence. *A priori*, an attempt at mercy-killing is not an attempt to suicide.

1.3.1 Throughout history, suicide has been both condemned and commended by various societies. Since the Middle Ages, society has used first the canonic and later the criminal law to combat suicide. Following the French Revolution of 1789 criminal penalties for attempting to commit suicide were abolished in European countries, England being the last to follow suit in 1961.⁴

1.3.2 In England, the Suicide Act 1961 abrogated the law laying down that attempt to commit suicide is an offence. Although suicide is no longer an offence in itself, any person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, is guilty of an offence and liable on conviction on indictment to imprisonment for a term which may extend to 14 years.⁵

1.4.1 In India, not only abetment of suicide is an offence (*vide* section 306, IPC), but also attempt to commit suicide is an offence (*vide* section 309, IPC). Section 309, IPC reads as under:

⁴ The New Encyclopaedia Britannica, Vol. 11, Micropaedia, 15th ed. (1987), p. 359

⁵ Halsbury's Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106

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.”

1.4.2 Thus, in India, attempt to commit suicide is constituted an offence punishable under section 309, IPC. Although completed act was not a crime, surprisingly, attempt to commit the act was made an offence.

1.5 Suicide is one of the important factors contributing to premature or unnatural end of precious human lives. It is a global problem and the World Health Organization has in regard to attempted suicide expressed the view that punishing with imprisonment a behaviour consequent to either a mental disorder or a social difficulty gives completely a wrong message to the population, and that the WHO encourages efforts for the prevention of suicide.

1.6 The International Association for Suicide Prevention has also expressed the view that attempted suicide should be decriminalized and that suicidal individuals need to be helped and imprisonment only makes their problems worse. The said Association on September 10 every year sponsors ‘World Suicide Prevention Day’ as a part of its efforts to achieve effective suicide prevention.

1.7 In view of the above, the Law Commission *suo motu* decided to take up study of this important issue of suicide prevention.

2. CONSTITUTIONALITY AND DESIRABILITY OF SECTION 309, IPC

2.1 The constitutionality of section 309 of the Indian Penal Code, 1860 has been the subject matter of challenge several times before the Supreme Court and High Courts.

2.2.1 Article 14 of the Constitution provides for equality before law and reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

2.2.2 Article 21 of the Constitution provides for protection of life and personal liberty and reads as under:

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

2.3 It will be apposite to first note the following observation of the Delhi High Court in *State v. Sanjay Kumar Bhatia*⁶, a case under section 309, IPC:

“A young man has allegedly tried to commit suicide presumably because of over emotionalism. It is ironic that Section 309 I.P.C. still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one’s own life would have

⁶ 1985 CriLJ 931

escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed. Strange paradox that in the age of votaries of Euthanasia, suicide should be criminally punishable. Instead of the society hanging its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide compounds its inadequacy by treating the boy as a criminal. Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive sections of the Penal Code. The continuance of Section 309 I.P.C. 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 is revolting. This concept seeks to meet the challenge of social strains of modern urban and competitive economy by ruthless suppression of mere symptoms – this attempt can only result in failure. Need is for humane, civilized and socially oriented outlook and penology. Many penal offences are the offshoots of an unjust society and socially decadent outlook of love between young people being frustrated by false consideration of code, community or social pretensions. No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 I.P.C. which has no justification right to continue remain on the statute book.”

2.4.1 In *Maruti Shripati Dubal v. State of Maharashtra*⁷, the Bombay High Court held that section 309, IPC is *ultra vires* the Constitution being

⁷ 1987 CriLJ 743

violative of Articles 14 and 21 thereof and must be struck down. It was pointed out that the fundamental rights have their positive as well as negative aspects. For example, the freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. The freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognized by Article 21 of the Constitution will include also a right not to live or not to be forced to live. To put it positively, Article 21 would include a right to die, or to terminate one's life. The Court further pointed out that the language of section 309, IPC is sweeping in its nature. It does not define suicide. In fact, philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. While some suicides are eulogized, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. The want of a plausible definition itself makes the provisions of section 309 arbitrary and violative of Article 14. There are different mental, physical and social causes which may lead different individuals to attempt to commit suicide for different ends and purposes, there being nothing in common between them. Section 309 makes no distinction between them and treats them alike, making the provisions thereof arbitrary. Further, the Court observed that if the purpose of the punishment for attempted suicide is to prevent the prospective suicides by deterrence, the same is not achieved by punishing those who have made the

attempts, as no deterrence is going to hold back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. The provisions of section 309 are unreasonable and arbitrary on this account also. As is rightly said, arbitrariness and equality are enemies of each other. The blanket prohibition on the right to die on pain of penalty, it was pointed out, is not reasonable.

2.4.2 The High Court also observed that there is nothing unnatural about the desire to die and hence the right to die. The means adopted for ending one's life may be unnatural varying from starvation to strangulation. But, the desire which leads one to resort to the means is not unnatural. Suicide or an attempt to commit suicide is not a feature of a normal life. It is an incident of abnormality or of an extraordinary situation or of an uncommon trait of personality. Abnormality and uncommonality are not unnatural merely because they are exceptional.

2.4.3 The High Court further observed that the right to die or to end one's life is not something new or unknown to civilization. Some religions like Hindu and Jain have approved of the practice of ending one's life by one's own act in certain circumstances while condemning it in other circumstances. The attitude of Buddhism has been ambiguous though it has encouraged suicide under certain circumstances such as in the service of religion and country. Neither the old nor the new Testament has condemned suicide explicitly. However, Christianity has condemned suicide as a form of murder. In contrast, the Quran has declared it a crime worse than homicide.

2.4.4 The High Court quoted the eminent French sociologist, Emile Durkheim's threefold classification of suicides made on the basis of the disturbance in the relationship between society and the individual: (i) Egoistic suicide which results when abnormal individualism weakens society's control over him; the individual in such cases lacks concern for the community with which he is inadequately involved; (ii) Altruistic suicide which is due to an excessive sense of duty to community; and (iii) Anomic suicide which is due to society's failure to control and regulate the behaviour of individuals. This classification is not regarded as adequate by many, but gives us the broad causative factors of suicide. It is estimated that about one-third of the people who kill themselves have been found to have been suffering from mental illness. The Court observed that those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement. Those on the other hand who make the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again.

2.5.1 In *P. Rathinam v. Union of India*⁸, a Division Bench of the Supreme Court also held that section 309, IPC violates Article 21, as the right to live of which the said Article speaks of can be said to bring in its trail the right not to live a forced life. Quoting from a lecture of Harvard University Professor of Law and Psychiatry, Alan A Stone, the Supreme Court noted that right to die inevitably leads to the right to commit suicide. However, the

⁸ AIR 1994 SC 1844

Supreme Court disagreed with the view of the Bombay High Court that section 309 is also violative of Article 14. Dealing with the argument relating to the want of a plausible definition of suicide, the Supreme Court observed that irrespective of the differences as to what constitutes suicide, suicide is capable of a broad definition and that there is no doubt that it is intentional taking of one's life, as stated at page 1521 of *Encyclopaedia of Crime and Justice*, Volume IV, 1983 Edn. As for the reason that section 309 treats all attempts to commit suicide by the same measure without regard to the circumstances in which attempts are made, the Supreme Court held that this also cannot make the said section as violative of Article 14, inasmuch as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately; in certain cases, even Probation of Offenders Act can be pressed into service, whose section 12 enables the court to ensure that no stigma or disqualification is attached to such a person.

2.5.2 The Supreme Court observed that suicide, the intentional taking of one's life has probably been a part of human behaviour since prehistory. Various social forces, like the economy, religion and socio-economic status are responsible for suicides. There are various theories of suicide, to wit, sociological, psychological, biochemical and environmental. Suicide knows no barrier of race, religion, caste, age or sex. There is secularization of suicide.

2.5.3 The Supreme Court further observed that suicide is a psychiatric problem and not a manifestation of criminal instinct. What is needed to take care of suicide-prone persons are soft words and wise counseling (of a psychiatrist), and not stony dealing by a jailor following harsh treatment

meted out by a heartless prosecutor. It is a matter of extreme doubt whether by booking a person who has attempted to commit suicide to trial, suicides can be taken care of.

2.5.4 The Supreme Court expressed the view that section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, as it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. An act of suicide cannot be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the concerned persons is not called for.

2.5.5 The Supreme Court also observed that the view taken by it would advance not only the cause of humanization, which is a need of the day, but of globalization also, as by effacing section 309, we would be attuning this part of our criminal law to the global wavelength.

2.6 In *Gian Kaur v. State of Punjab*⁹, however, a Constitution Bench of the Supreme Court overruled the decisions in *Maruti Shripati Dubal* and *P. Rathinam*, holding that Article 21 cannot be construed to include within it the 'right to die' as a part of the fundamental right guaranteed therein, and therefore, it cannot be said that section 309, IPC is violative of Article 21. It was observed that when a man commits suicide he has to undertake certain

⁹ AIR 1996 SC 946

positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the 'right to life' under Article 21. 'Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. The comparison with other rights, such as the right to 'freedom of speech', etc., is inapposite. To give meaning and content to the word 'life' in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The 'right to die', if any, is inherently inconsistent with the 'right to life', as is death with life.

2.7 It is significant to note that the Supreme Court in *Gian Kaur* focused on constitutionality of section 309, IPC. The Court did not go into the wisdom of retaining or continuing the said provision in the statute.

2.8 It may not be inapposite to also note *C. A. Thomas Master v. Union of India*¹⁰, wherein the accused, a retired teacher of 80 years, wanted to voluntarily put an end to his life after having had a successful, contented and happy life. He stated that his mission in life had ended and argued that voluntary termination of one's life was not equivalent to committing suicide. The Kerala High Court held that no distinction can be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life. Voluntary termination of one's life for whatever reason would amount to suicide within the meaning of sections 306 and 309, IPC. No distinction can

¹⁰ 2000 CriLJ 3729

be made between suicide committed by a person who is either frustrated or defeated in life and that by a person like the petitioner. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation is wholly irrelevant.

3. PREVIOUS REPORTS OF THE LAW COMMISSION OF INDIA

3.1 The Law Commission had undertaken revision of the Indian Penal Code as part of its function of revising Central Acts of general application and importance. In its 42nd Report submitted in June, 1971, the Commission recommended, *inter alia*, repeal of section 309. The relevant paras of this Report are quoted below:

16.31. *Section 309—suicide in the dharma shastras.* ‘Section 309 penalises an attempt to commit suicide. It may be mentioned that suicide was regarded as permissible in some circumstances in ancient India. In the Chapter on “The hermit in the forest”, Manu’s Code says,-

“31. Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to rest.

32. A Brahmana having got rid of his body by one of those modes (i.e. drowning, precipitating burning or starving) practised by the great sages, is exalted in the world of Brahamana, free from sorrow and fear.”

Two commentators on Manu, Govardhana and Kulluka, say that a man may undertake the *mahaprasthan* (great departure) on a journey which ends in death, when he is incurably diseased or meets with a great misfortune, and that, because it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide. To this Max Muller adds a note as follows:-

“From the parallel passage of Apas tambha II, 23, 2, it is, however, evident that a voluntary death by starvation was considered the befitting conclusion of a hermit’s life. The antiquity and general prevalence of the practice may be inferred from the fact that the Jaina ascetics, too, consider it particularly meritorious.”

16.32. *Should attempt to commit suicide be punishable?* ‘Looking at the offence of attempting to commit suicide, it has been observed by an English writer:

“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 legislation.”

Acting on the view that such persons deserve the active sympathy of society and not condemnation or punishment, the British Parliament enacted the Suicide Act in 1961 whereby attempt to commit suicide ceased to be an offence.’

16.33. *Section 309 to be repealed.* ‘We included in our Questionnaire the question whether attempt to commit suicide should be punishable at all. Opinion was more or less equally divided. We are, however, definitely of the view that the penal provision is harsh and unjustifiable and it should be repealed.’

3.2.1 Clause 126 of the Indian Penal Code (Amendment) Bill, 1972, introduced in the Council of States on 11.12.1972, provided for the omission of section 309. It was stated in the ‘Notes on Clauses’ appended to the Bill that the said penal provision is harsh and unjustifiable, and that a person making an attempt to commit suicide deserves sympathy rather than punishment.

3.2.2 Clause 131 of the Indian Penal Code (Amendment) Bill, 1978, as passed by the Council of States on 23.11.1978, correspondingly carried the above change.

3.2.3 As the House of the People was dissolved in 1979, the Bill, though passed by the Council of States, lapsed.

3.3 In 1995, pursuant to the reference made by the Government of India, the Law Commission undertook a comprehensive revision of the Indian

Penal Code, with special reference to the Indian Penal Code (Amendment) Bill, 1978, in the light of the changed socio-legal scenario. The 156th Report of the Law Commission, submitted in August, 1997, after the judgment in *Gian Kaur*, recommended retention of section 309, IPC. Chapter VIII of the said Report is reproduced below:

‘CHAPTER-VIII
SUICIDE: ABETMENT AND ATTEMPT
Section 306: Abetment of Suicide

Section 306 of the Indian Penal Code penalises abetment of suicide. It reads as:

“306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.”

8.02. The constitutionality of section 306 was challenged in Smt. Gian Kaur v. State of Punjab. Upholding the constitutionality of section 306, the Supreme Court held that section 306 enacted a distinct offence which is capable of existence independent of section 309. The Court observed:

“Section 306 prescribes punishment for ‘abetment of suicide’ while section 309 punishes ‘attempt to commit suicide’. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 read

with section 107, IPC. In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.”

8.03. In England and Wales, the Suicide Act of 1961 has abrogated the rule of law whereby it is a crime for a person to commit suicide (S.1). Section 2(1) of the Act imputes criminal liability for complicity in another’s suicide. It reads:

“2(1).- A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.”

II. Section 309 – ATTEMPT TO COMMIT SUICIDE

8.04. Section 309 of IPC punishes attempt to commit suicide with simple imprisonment for a term which may extend to one year or with fine or with both.

8.05. The Law Commission in its Forty Second Report had examined whether attempt to commit suicide be retained as a penal offence. The Commission referred to the Dharma Sastras which legitimized the practice of taking one's life in certain situations and also referred to the provisions of Suicide Act, 1961 in Britain which decriminalized the offence of attempt to commit suicide. After examining these views, the Commission recommended that section 309 is harsh and unjustifiable and it should be repealed.

8.06. In pursuance of the recommendations of the Law Commission, clause 131 of the Bill omits section 309 from IPC.

8.07. Subsequently, there have been significant judicial developments. The Delhi High Court in State v. Sanjay Kumar Bhatia speaking through Sachar J, as he then was, for the Division Bench observed that the continuance of section 309 is an anachronism and it should not be on the statute book. However, the question of its constitutional validity was not considered in that case.

8.08. Soon thereafter the Bombay High Court in Maruti Shripati Dubal v. State of Maharashtra speaking through Sawant J., as he then was, examined the constitutional validity of section 309 and held that the section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14.

Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

8.09. The Andhra Pradesh High Court also considered the constitutional validity of section 309 in Chenna Jagadeeswar v. State of Andhra Pradesh. Amareshwari J., speaking for the Division Bench, rejected the argument that Article 21 includes the right to die. The court also held that the courts have adequate power to ensure that “unwarranted harsh treatment or prejudice is not meted out to those who need care and attention”. The court also negated the violation of Article 14.

8.10. The Supreme Court examined the constitutional validity of section 309 in P. Rathinam v. Union of India with reference to Articles 14 and 21. The Court considered the decisions of the Delhi, Bombay and Andhra Pradesh High Courts and disagreed with the view taken by Andhra Pradesh High Court on the question of violation of Article 21. Agreeing with views of the Bombay High Court, the Supreme Court observed:

“On the basis of what has been held and noted above, we state that section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion,

morality or public policy and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.

We, therefore, hold that section 309 violates Article 21, and so, it is void. May it be said that the view taken by us would advance not only the cause of humanization, which is a need of the day, but of globalization also, as by effacing section 309, we would be attuning this part of criminal law to the global wavelength.”

8.11. But this view of Supreme Court was overruled by a larger Bench in Smt. Gian Kaur v. State of Punjab wherein Verma J., (as he then was) speaking for the Court, held that P. Rathinam's case was wrongly decided. The Court observed:

“When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the ‘right to life’ under Article 21. The significant aspect of ‘sanctity of life’ is also not to be overlooked. Article 21 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 in ‘protection of life’. Whatever may be the philosophy of permitting a person to extinguish his life by

committing suicide, we find it difficult to construe Article 21 to include within it the 'right to die' as a part of the fundamental right guaranteed therein. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to 'freedom of speech' etc. to provide a comparable basis to hold that the 'right to life' also includes the 'right to die'. With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam qua Article 21.

To give meaning and content to the word 'life' in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The 'right to die', if any, is inherently inconsistent with the 'right to life' as is 'death with life.'"

8.12. On the question of violation of Article 14, the Court agreed with the view taken by Hansaria J. in P. Rathinam's case.

8.13. Verma J. further observed that the argument “on the desirability of retaining such a penal provision of punishing attempted suicide, including the recommendation for its deletion by the Law Commission are not sufficient to indicate that the provision is unconstitutional being violative of Article 14. Even if those facts are to weigh, the severity of the provision is mitigated by the wide discretion in the matter of sentencing since there is no requirement of awarding any minimum sentence and the sentence of imprisonment is not even compulsory. There is also no minimum fine prescribed as sentence, which alone may be the punishment awarded on conviction under section 309, IPC. This aspect is noticed in P. Rathinam for holding that Article 14 is not violated.

8.14. The Supreme Court’s decision in Smt. Gian Kaur has thus categorically affirmed that right to life in Article 21 does not include the right to die. Consequently section 309 which penalises attempt to commit suicide is not unconstitutional.

8.15. There is a school of thought which advocates the decriminalization of the offence of attempt to commit suicide. They plead for a compassionate and sympathetic treatment for those who fail in their attempt to put an end to their lives. They argue that deletion of section 309 is not an invitation or encouragement to attempt to commit suicide. A person indulges in the act of attempt to commit suicide for various reasons some of which at times are beyond his control.

8.16. On the other hand, certain developments such as rise in narcotic drug-trafficking offences, terrorism in different parts of the country, the phenomenon of human bombs etc. have led to a rethinking on the need to keep attempt to commit suicide an offence. For instance, a terrorist or drug trafficker who fails in his/her attempt to consume the cyanide pill and the human bomb who fails in the attempt to kill himself or herself along with the targets of attack, have to be charged under section 309 and investigations be carried out to prove the offence. These groups of offenders under section 309 stand under a different category than those, who due to psychological and religious reasons, attempt to commit suicide.

8.17. Accordingly, we recommend that section 309 should continue to be an offence under the Indian Penal Code and clause 131 of the Bill be deleted.’

3.4 The Supreme Court upheld that constitutional validity of section 309, IPC only by applying the relevant principles to adjudge the constitutional validity of the provisions thereof. It did not go into the desirability of having the same in the Indian Penal Code.

4. OTHER VIEWS

4.1 Shri Justice Jahagirdar has expressed his view in his article entitled “*Attempt At Suicide – A Crime or A Cry*” in the following words:

“A man commits suicide for various reasons and in diverse circumstances. The aim, in all cases, is to get deliverance from the several real or imaginary misfortunes to which that person is subjected. If he is successful in his attempt, it is regarded as deliverance; if unsuccessful it is regarded as an offence. Survival is an offence. It is impossible to find any rational justification for inflicting a punishment upon a person who has made an attempt to escape punishment which he thinks society is inflicting upon him. Is survival itself not sufficient punishment? ... Over a long period, fortunately, the attitude towards suicide and attempted suicide has changed and most civilised countries have done away with the concept of attempted suicide as an offence. ‘Suicide’, said Goethe, ‘is an incident in human life which, however much disputed and discussed, demands sympathy of every man and in every age must be dealt with anew’. That attempted suicide is a matter for treatment and not punishment has been recognised by several countries. After the French Revolution in 1789, attempted suicide was abolished as an offence in France and subsequently in all European countries. England, as usual, was laggard in reforms, but fortunately in 1961 by the Suicide Act, the ‘crime’ of attempted suicide was abolished. In USSR and in most of the states in the US, it is not an offence. It was accepted that suicide is the result of psychological disturbances impervious to rational deterrents. In England a society called The Samaritans provides psychological support to those contemplating suicide. ... Most of the cases are psychiatric. ... The presence of Section 309 of the Penal Code is thus not only irrational and obnoxious but also positively harmful to the members of a society for

whose benefit it is supposed to be on the statute book. As a result of this provision existing on the statute book, people needing mental treatment who are driven to commit suicide are prevented from seeking the same for fear of being punished. ... Which is the theory of punishment which informs section 309 of the IPC? It cannot be deterrent because a man commits the act for reasons beyond his control; it cannot be reformatory because a sick man is thrown among the felons. The punitive theory is wholly irrelevant because the person attempting suicide does no wrong to others. In sum, the attempt to commit suicide cannot and should not be regarded as an offence. It is not committed by a person who wants to hurt anyone; it is not resorted to by one with criminal intention. Suicide and attempted suicide are difficult to define. An act which cannot be defined precisely cannot be punished. Suicide is attempted by people for reasons beyond their control. They need sympathy, care, love and treatment. By branding such people as 'criminals', treatment is rendered difficult. Punishment for attempted suicide is unsupportable by any recognized theory of punishment. ... What the 'abolitionists' of Section 309 are asking for is a fair treatment for those unfortunate, hapless people who fail in their attempts to commit suicide. The deletion of Section 309 is not an invitation or encouragement to attempt to commit suicide. ... Do not punish the helpless; help the helpless."

4.2 The World Health Organization, on knowing the efforts of the NGO, the SNEHA, Suicide Prevention Centre, for prevention of suicide, stated to them that having suicidal behaviours specified by law as a punishable offence has many negative effects at a public health level. Moreover,

punishing with imprisonment a behaviour consequent to either a mental disorder or a social difficulty gives a completely wrong message to the population. There is now evidence from countries that have repealed similarly old legislation, of the overall improvement.

4.3 The President of the International Association for Suicide Prevention, France, has, *vide* his letter of 9 October 2007 addressed to Hon'ble Minister of Law and Justice, Government of India, strongly supported withdrawal of the status of attempted suicide as a punishable offence. He has stated that most countries in the world who have had laws criminalizing attempted suicide have withdrawn those laws in the second half of the twentieth century, justifying the withdrawal by the belief that attempting suicide is not a crime that should be punished but rather a desperate reaction to a difficult life situation by people who usually suffer from a mental disorder. These changes have indicated awareness that suicidal individuals need to be helped and imprisonment only makes their problem worse. One of the fears expressed when all countries in Europe and North America decriminalized attempted suicide was that suicide rates may increase. There are no indications whatsoever that there was an increase in suicides following decriminalization, and in many instances it is thought that suicide decreased since more suicidal individuals received the help they need. Countries such as Singapore, which still imprison some suicide attempters, do not appear to have any benefits from those practices. For example, in Singapore suicide rates have been increasing in recent years despite their having suicide as a punishable offence. The International Association for Suicide Prevention wishes India to join the countries of the world, who have decriminalized attempted suicide in order to clearly communicate to suicidal individuals

that they should seek help, rather than avoid admitting to their problems for fear of imprisonment.

4.4 The SNEHA, Chennai is of the opinion that the continuance of the archaic law in India, like section 309, IPC, is proving to be counterproductive to the cause of suicide prevention. In many countries, including the whole of Europe, North America, much of South America and Asia, including neighbouring Sri Lanka, attempted suicide is not a criminal offence any more. Many who resort to suicide and who manage to survive do not seek medical help for fear of being arrested and penalized. Suicide is a “cry for help”. People who attempt suicide need extensive and sometimes long-term psycho-social support. The panacea for them certainly cannot be imprisonment. They need compassion, emotional support and sometimes even psychiatric help. If the act of attempted suicide were to be decriminalized it will make things more workable and easier for all to extend their hand and support in reducing suicide in India. It will encourage those who attempted suicide to seek medical and professional help immediately without fear or inhibition. Only a handful of countries in the world, like Pakistan, Bangladesh, Malaysia, Singapore and India have persisted with this law. The apprehension that the repeal of the law would cause an increase in suicides is belied by the fact that Sri Lanka repealed the law four years ago and the suicide rate is showing a trend in reduction. In the opinion of the SNEHA, the persistence of this law leads to following difficulties:

1. Emergency treatment for those who have attempted suicide is not readily accessible as they are referred by local hospitals and

doctors to tertiary centres as it is termed as Medico Legal case. The time lost in the golden hour will save many lives.

2. Those who attempt suicide are already distressed and in psychological pain and for them to face the ignominy of police interrogation causes increased distress, shame, guilt and further suicide attempt.
3. At the time of family turmoil dealing with police procedure adds to the woes of the family.
4. It also leads to a gross under-reporting of attempted suicide and the magnitude of the problem is not unknown. Unless one is aware of the nature of extent of the problem effective intervention is not possible.
5. As many attempted suicides are categorized in the guise of accidental poisoning etc. emotional and mental health support is not available to those who have attempted as they are unable to access the services.

4.5 It will be advantageous to quote the following paragraphs from *Ratanlal & Dhirajlal's Law of Crimes* (26th Edn., 2007, pages 1825-1827):

“Right to live: General – Every civilized legal system recognizes right to life. We are having a written Constitution. There are certain basic rights which have been treated as fundamental by the Founding

Fathers of the Constitution. Article 21 is one of them. It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. Section 309 of the Indian Penal Code makes an attempt to commit suicide an offence punishable with imprisonment up to one year or with fine or with both. Thus, right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to end his life. He has to perform his duties towards himself and towards the society at large.

Right to live: Ambit and scope – It is settled law that life does not mean ‘animal existence’. Before more than 100 years, it was recognized by the U.S. Supreme Court in the leading case of *Munn v. Illinois*¹¹. This principle is recognized by our Supreme Court in *Kharak Singh*¹², *Sunil Batra v. Delhi Administration*¹³ and in various other cases. After *Maneka Gandhi v. Union of India*¹⁴, various rights have been held to be covered by Article 21; such as right to go abroad, right to privacy, right against solitary confinement, right to speedy trial, right to shelter, right to breathe in unpolluted environment, right to medical aid, right to education, etc. Thus, life does not mean mere living, but a glowing vitality – the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.

Right to die? - As a normal rule, every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it.

¹¹ (1876) 94 US 113

¹² AIR 1963 SC 1295

¹³ AIR 1978 SC 1675

¹⁴ AIR 1978 SC 597

Death is certain. It is a fact of life. Suicide is not a feature of normal life. It is an abnormal situation. But if a person has right to enjoy his life, he cannot also be forced to live that life to his detriment, disadvantage or disliking. If a person is living a miserable life or is seriously sick or having incurable disease, it is improper as well as immoral to ask him to live a painful life and to suffer agony. It is an insult to humanity. Right to live means right to live peacefully as ordinary human being. One can appreciate the theory that an individual may not be permitted to die with a view to avoiding his social obligations. He should perform all duties towards fellow citizens. At the same time, however, if he is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with torture and painful life. In such cases, it will indeed be cruel not to permit him to die. ...

Reduction of suffering - 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 equated with right to die an unnatural death curtailing natural span of life.

Hence, a dying man who is terminally ill or in a persistent vegetative state can be permitted to terminate it by premature extinction of his life. In fact, these are not cases of extinguishing life but only of accelerating process of natural death which has already commenced. In such cases, causing of death would result in end of his suffering.

But even such change, though desirable, is considered to be the function of the legislature which may enact a suitable law providing adequate safeguards to prevent any possible abuse.”

5. RECOMMENDATION

5.1 Suicide occurs in all ages. Life is a gift given by God and He alone can take it. Its premature termination cannot be approved by any society. But when a troubled individual tries to end his life, it would be cruel and irrational to visit him with punishment on his failure to die. It is his deep unhappiness which causes him to try to end his life. Attempt to suicide is more a manifestation of a diseased condition of mind deserving of treatment and care rather than punishment. It would not be just and fair to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide.

5.2 The criminal law must not act with misplaced overzeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture.

5.3 Section 309 of the Indian Penal Code provides double punishment for a person who has already got fed up with his own life and desires to end it. Section 309 is also a stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide. It is unreasonable to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his

own life. In such a case, the unfortunate person deserves sympathy, counselling and appropriate treatment, and certainly not the prison.

5.4 Section 309 needs to be effaced from the statute book because the provision is inhuman, irrespective of whether it is constitutional or unconstitutional. The repeal of the anachronistic law contained in section 309 of the Indian Penal Code would save many lives and relieve the distressed of his suffering.

5.5 The Commission is of the view that while assisting or encouraging another person to (attempt to) commit suicide must not go unpunished, the offence of attempt to commit suicide under section 309 needs to be omitted from the Indian Penal Code.

5.6 We recommend accordingly.

(Dr. Justice AR. Lakshmanan)
Chairman

(Prof. Dr. Tahir Mahmood)
Member

(Dr. Brahm A. Agrawal)
Member-Secretary

Dated: August , 2008.