Page 1:  
GOVERNMENT OF INDIA  
  
LAW  
COMMISSION  
OF  
INDIA  
  
Humanization and Decriminalization of  
Attempt to Suicide  
  
Report No. 210  
  
OCTOBER 2008  
  
  
Page 2:  
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LAW COMMISSION OF INDIA.  
(REPORT NO. 210)  
  
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.  
  
  
  
Page 3:  
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Order No. A.45012/1/2006-Admn.III (LA) dated the  
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Page 4:  
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Page 6:  
DO No.6(3)141/2008-LC(LS) 17 October, 2008  
  
Dear Dr. Bhardwaj ji,  
  
Sub: Humanization and Decriminalization of  
Attempt to Suicide.  
  
Thave great pleasure in submitting herewith the 210 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:  
  
Altempt 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 ean 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.  
tate 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 42 Report submitted in 1971, the  
  
  
  
Page 7:  
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 156° 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,  
Government of India,  
Shastri Bhawan,  
  
  
  
Page 8:  
LAW COMMISSION OF INDIA  
  
HUMANIZATION AND DECRIMINALIZATION OF  
ATTEMPT TO SUICIDE  
  
TABLE OF CONTENTS  
  
1. INTRODUCTION 9  
  
2. CONSTITUTIONALITY AND 12  
DESIRABILITY OF  
SECTION 309, IPC  
  
3. PREVIOUS REPORTS OF THE 20  
LAW COMMISSION OF INDIA  
  
4. OTHER VIEWS 31  
  
5. \_ RECOMMENDATION 38  
  
1. INTRODUCTION  
  
  
Page 9:  
1.1.1 While approximately one million people die by suicide worldwide’,  
more than one lakh persons (1,18,112) in the country lost their lives by  
  
committing s  
  
cide 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)  
  
1.1.2 The overall male: female ratio of suicide vietims for the year 2006  
was 64:38; however, the proportion of boys: girls suicide victims (up to 14  
years of age) was 48:52, ie., 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 vietims. 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.®  
  
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 merey-killing. Suicide by its very nature is an act of self-  
  
Tnternational Association for Suicide Prevention  
  
Accidental Deaths and Suicides in India ~ 2006, National Crime Records Bureau,  
Ministry of Home Affairs, Government of India  
  
‘ibid,  
  
  
Page 10:  
ins the aid  
  
killing or self-destruction, an act of terminating one’s own life s  
  
or assistance of any other human agency. Euthanasia, on the other hand,  
  
involves the intervention of other human agency to end the life. Euthanas  
  
is nothing but homicide, and unless specifically excepted it is an offence. A  
  
priori, an attempt at merey-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  
  
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.\*  
  
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:  
  
“The Now Encyclopaedia Britannica, Vol. 11, Mieropaedia, 154 ed (1987), p. 359  
alsbury’s Laws of England, 4 ed. 2000 Reissue, Vol. 11(1), Para 106  
  
10  
  
  
Page 11:  
Altempt 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.”  
  
tuted an offence  
  
1.42 Thus, in India, attempt to commit suicide is con:  
  
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 dectiminalized 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.  
  
  
Page 12:  
2. CONSTITUTIONALITY AND D!  
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’, 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  
  
1985 CriLJ 931  
  
  
Page 13:  
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 LP.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  
LP.C. which has no justification right to continue remain on the  
  
statute book.”  
  
2.4.1 In Maruti Shripati Dubal v. State of Maharashtra’, the Bombay High  
Court held that section 309, IPC is ultra vires the Constitution being  
  
"1987 CHiLI 743  
  
  
Page 14:  
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  
  
“4  
  
  
Page 15:  
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,  
  
arbitrarines  
  
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  
  
2.42 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.  
  
  
Page 16:  
2.44 The High Court quoted the eminent French s  
  
Durkheim's  
  
threefold classification of suicides made on the basis of the  
  
disturbance in the relationship between society and the individual: (j)  
  
Egois  
  
je 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 exe ‘Anomic  
  
fe sense of duty to community; and  
  
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. Itis 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’, 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  
  
FAIR 1994 SC 1844  
  
  
Page 17:  
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  
  
7  
  
  
Page 18:  
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 @ 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 concemed 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’, 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  
  
AIR 1996 SC 946  
  
  
Page 19:  
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 Itis 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 Itmay not be inapposite to also note C. A. Thomas Master v. Union of  
India’, 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 distinetion 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  
  
1000 CriLI 3729  
  
  
  
Page 20:  
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 42™ 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.”  
  
20  
  
  
Page 21:  
Two commentators on Manu, Govardhana and Kulluka, say  
that a man may undertake the mahaprasthana (great departure) on a  
journey which ends in death, when he is incurably diseased or meets  
with a great misfortune, and that, because itis 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, itis,  
  
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 asceties, 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.”  
  
  
Page 22:  
‘Acting on the view that such persons deserve the active  
sympathy of s  
  
ciety 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 he repealed. ‘We included in our Questionnaire  
the question whether attempt to commit suicide should be punishable  
  
at all. Opinion was more or les  
  
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 @ 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  
  
  
Page 23:  
Penal Code, with special reference to the Indian Penal Code (Amendment)  
  
Bill, 1978, in the light of the changed socio-legal scenario. The 156% 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-VIIL  
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  
  
23  
  
  
Page 24:  
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 t0 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 compli  
  
ty  
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.”  
Il, 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.  
  
  
Page 25:  
8.05, The Law Commis  
  
sion 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 Si  
  
ide 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  
  
  
Page 26:  
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 negatived 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 s  
  
id to be against religion,  
  
  
Page 27:  
morality or public policy and an act of attempted suicide has no  
baneful effect on society. Further, suicide or attempt to  
because of which State's  
  
commit it causes no harm to others  
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 s  
  
id 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 @ person to extinguish his life by  
  
27  
  
  
Page 28:  
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 right  
  
such as the right to “freedom of speech’ ete. to  
  
provide a comparable bas  
  
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.  
  
  
Page 29:  
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.  
  
  
Page 30:  
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 ete, 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:  
  
30  
  
  
Page 31:  
“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  
fan 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  
  
a  
  
  
Page 32:  
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 reformative because a sick man is thrown among  
  
the felons. The punitive theory is wholly irrelevant becaus  
  
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; itis 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.”  
  
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,  
  
2  
  
  
Page 33:  
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 s  
  
tus 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  
  
‘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 inerease. 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  
  
3  
  
  
Page 34:  
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,  
  
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 “ery 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 acces  
  
ble as they are referred by local hospitals and  
  
M  
  
  
Page 35:  
doctors to tertiary centres a  
  
s 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, Italso 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 ete. 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 (26% 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  
  
35  
  
  
Page 36:  
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,  
tight 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 s  
  
ciety 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.  
Mlinois!". This principle is recognized by our Supreme Court in  
  
Kharak Singh, Sunil Batra v. Dethi Administration” and in various  
other cases. After Maneka Gandhi v. Union of India'\*, 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, ete. ‘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  
  
(1876) 94 US 113  
  
= AIR 1963  
  
AIR 1978  
“AIR 1978  
  
36  
  
  
Page 37:  
Death is certain. Itis a fact of life. Suicide is not a feature of normal  
  
life. Itis an abnormal s  
  
uation. 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 ot 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,  
  
7  
  
  
Page 38:  
But even such change, though desirable, is considered to be the  
  
funetion 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  
4 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  
  
38  
  
  
Page 39:  
‘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) (Dr. Brahm A. Agrawal)  
  
Member Member-Secretary  
  
Dated: August, 2008.  
  
39